IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAUN STRICKLAND, Plaintiff, v. DELAWARE COUNTY, et al., Defendants.	:	Civil Action No: 21-4141 Judge Michael M. Baylson

PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The opioid crisis has gripped this country for years, and it is conspicuously visible in our jails and prisons. Despite lingering outdated views about opioid use disorder (OUD), the scientific and medical communities are in agreement: OUD is a chronic disease. And like other chronic diseases, it is treated with medication. While it might be unthinkable for someone with diabetes or heart disease to be denied medication while incarcerated, it is far too common for jails to refuse to provide proper medical treatment to people with OUD.

Plaintiff Shaun Strickland was regularly participating in a methadone treatment program that tackled his opioid use disorder after decades of struggle. However, when he arrived at George W. Hill Correctional Facility, located in Delaware County and operated by GEO Group Inc. and GEO Secure Services, he was forced to suffer through severe withdrawal from his medication, as a result of a blanket policy denying people this lifesaving medication. Plaintiff Strickland brings this lawsuit seeking to vindicate his rights under the Americans with Disabilities Act, Rehabilitation Act, the Fourteenth Amendment of the U.S. Constitution, and Pennsylvania state law.

II. SUMMARY OF FACTS

Shaun Strickland was getting his life back on track. In recognition of the fact that methadone was the only thing that had ever helped him stay clean, he was traveling daily to a methadone clinic to get his medication. SMF ¶¶ 73-75. After he was pulled over and arrested on an old warrant for alleged failure to appear at a hearing about unpaid costs and fines, he was taken to George W. Hill Correctional Facility ("George W. Hill"). SMF ¶¶ 83-84, 87. He knew, from the moment he was arrested, what this would mean for his recovery and felt that it was "like doomsday." SMF ¶ 85. It would mean the pain of withdrawal and, by missing multiple days, having to restart his methadone program from the ground up.

When Mr. Strickland arrived at George W. Hill, he made it clear to the medical staff that he had opioid use disorder and was prescribed methadone, even providing his dose and the information for the clinic where he was receiving treatment. SMF ¶¶ 88, 89, 92, 95. Despite having this information, the medical staff, including Defendants Jeff Withelder, Ronald Phillips, and Kristen Grady, did nothing to confirm it or attempt to provide Mr. Strickland with this life-saving medication. SMF ¶¶ 93, 101, 104-106. Without regard to medical necessity or making any individualized assessment of Mr. Strickland, he was denied medication for his chronic disease. SMF ¶ 111. This decision was made pursuant to George W. Hill's blanket policy against providing medication for opioid use disorder to individuals in Mr. Strickland's situation. SMF ¶¶ 203-208.

As a result of his being taken off his medication, Mr. Strickland suffered severe withdrawal. SMF ¶ 111. He could not eat or sleep. He was in so much pain, he could not think. At times, he hallucinated. SMF ¶¶ 112-119. Shortly after Mr. Strickland's lawyer contacted George W. Hill notifying them of their legal obligation to provide methadone to Mr. Strickland, he was released. SMF ¶ 120, 123. Fortunately, Mr. Strickland was able to return to the methadone clinic and restart

his medication, but that was certainly no easy feat. SMF ¶ 124. People released from incarceration are 129 times more likely to overdose in the first two weeks after their release as compared to the general public.[1] The time after being released from jail is incredibly vulnerable, and the challenges do not end there. Mr. Strickland had to restart methadone, beginning with a low dose and slowly having his dose increased to what it had been before over the course of eight months. SMF ¶¶ 125, 126. During this period of time, he continued to experience cravings, withdrawal symptoms, and was at increased risk of overdose and death. SMF ¶¶ 127-132.

Outdated and unsupported ideas about people who use illegal drugs have led many to have mistaken beliefs about medications for opioid use disorder like methadone. But addiction and opioid use disorder is not a moral failing, it is a chronic disease. SMF ¶ 136. And the treatment for this chronic disease is medication. SMF ¶ 135. The Substance Abuse and Mental Health Services Administration explains, "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." Plaintiff's Counterstatement of Material Facts ("SMF") ¶ 137.

There is now consensus that the standard of care for people with opioid use disorder is to provide medication, such as methadone or buprenorphine, and to continue them on this treatment without abrupt changes. Major medical associations, including those specializing in addition medicine and primary care, government bodies, and professional groups with expertise in correctional healthcare, have weighed in and all agree, including the Centers for Disease Control (CDC), American College of Physicians, World Health Organization, Substance Abuse and Mental

[1] Ingrid A. Binswanger, Marc F. Stern, Richard A. Deyo, et al., *Release from Prison—A High Risk of Death for Former Inmates*, 356 New England Journal of Medicine 2 (2007), https://perma.cc/L49X-7MZ7.

Health Services Administration, American Society of Addiction Medicine, and National Commission on Correctional Health Care. SMF ¶¶ 137, 198-202.[2]

III. ARGUMENT

A. Legal Standard

Summary judgment is only appropriate when "there is no genuine issue as to any material fact and [ ] the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(a). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A factual dispute is material when it "might affect the outcome of the suit under the governing law." *Id.* In addition to depositions and other evidence in the record, a court must consider affidavits, declarations, and statements made in verified complaints, provided they are "made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ P. 56(c)(1)(A), 56(c)(4); *Parkell v. Danberg*, 833 F.3d 313, 320 n.2 (3d Cir. 2016). In deciding the motion, the court must "view the record in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor." *Thomas v. Cumberland Cnty.*, 749 F.3d 217, 222 (3d Cir. 2014). This standard means that "a district court may not make credibility determinations or engage in any weighing of the evidence." *Montone v. City of Jersey City*, 709 F.3d 181, 191 (3d Cir. 2013).

[2] Additional facts are found at Plaintiff's Response to Defendants' Statement of Undisputed Material Facts and Plaintiff's Counterstatement of Materials Facts.

B. Plaintiff Has Ample Evidence Establishing That Defendants Violated the ADA and Rehabilitation Act.

Summary judgment should be denied on Mr. Strickland's disability discrimination claims because Defendants' blanket policy against providing methadone as a treatment for opioid use disorder violated his rights under Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("RA").[3] Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). The ADA is "a remedial statute, designed to eliminate discrimination against the disabled in all facets of society" and "must be broadly construed to effectuate its purposes." *Schorr v. Borough of Lemoyne*, 243 F. Supp. 2d 232, 235 (M.D. Pa. 2003) (citing *Tcherepnin v. Knight*, 289 U.S. 332, 335 (1967)). While the ADA and RA may be distinguished from one another in their applicability to various actors, since the statutes' "substantive standards for determining liability are the same," courts "consider [ ] Title II and Section 504 claims together." *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 288 (3d Cir. 2019).

Mr. Strickland should prevail on his disability claims because a reasonable jury could find that (1) he is a qualified individual; (2) with a disability; (3) who was precluded from participating in a program, service, or activity; (4) or otherwise was subject to discrimination, by reason of his disability. *Id.* at 288-89.

[3] *See also* the Statement of Interest by the United States Department of Justice ("DOJ Statement of Interest"), explaining the position that Defendants violated the ADA. *See* ECF No. 71.

1. Mr. Strickland is an individual with a disability within the meaning of the ADA and RA.[4]

The ADA defines disability as a "physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A). The phrase "physical or mental impairment includes, but is not limited to . . . drug addiction, and alcoholism." 28 C.F.R. § 35.108(b)(2); *see also A Helping Hand, LLC v. Baltimore Cty., Md.,* 515 F.3d 356, 367 (4th Cir. 2008) ("Unquestionably, drug addiction constitutes an impairment under the ADA."); *P.G. v. Jefferson Cnty.,* No. 21-388, 2021 U.S. Dist. LEXIS 170593, at *10-11 (N.D.N.Y. Sept. 7, 2021) ("Plaintiff counts as an 'individual with a disability' because he has been diagnosed with opioid use disorder and is participating in a supervised rehabilitation program[,] [and] is also 'eligible' to receive medical services while he is incarcerated.").

Mr. Strickland has a diagnosis of severe opioid use disorder (OUD), a chronic disease from which he has suffered for much of his life. SMF ¶¶ 62-66. Defendants' suggestion that Mr. Strickland does not have OUD completely ignores the record in this case, instead picking a line of his medical records out of context to suggest that he instead has "opioid dependence." The diagnosis report from Recovery Centers for America, the facility where Mr. Strickland was receiving treatment clearly states his diagnosis as severe opioid use disorder. SMF ¶ 66.

These records also document that Recovery Centers for America followed the standard protocol for diagnosing OUD, reviewing a list of eleven criteria and determining how many of those criteria Mr. Strickland met. SMF ¶¶ 76, 77. Anyone who meets six or more of those criteria

[4] Defendants' Memorandum of Law advances the argument that Mr. Strickland is not a person with a disability only in regard to Delaware County and only within the context of the ADA. However, Mr. Strickland brings claims against Delaware County under both the ADA and RA. Defendants' Memorandum of Law does not raise this argument in regard to Mr. Strickland's claim against GEO Group and GEO Secure Services under the RA.

has severe opioid use disorder. *Id.* Mr. Strickland met all eleven. *Id.* As explained by Plaintiff's expert, any reference to opioid dependence in Mr. Strickland's records is a result of outdated terminology. SMF ¶¶ 78-80. Opioid dependence is an older diagnosis, and more recently, the American Psychiatric Association's diagnostic manual replaced the terms "opioid addiction" and "dependence" with one diagnosis of "opioid use disorder," which can be mild, moderate, or severe. SMF ¶¶ 78, 79. Defendants' own expert even states that Mr. Strickland had opioid use disorder and makes no reference to "severe opioid dependence." *See* Def. Br. (at ECF 68), Ex. J: Joshua Dep. at 6, 7 ("Mr. Shaun Strickland was a 40-year-old male . . . who had a past medical history of opiate use disorder . . . .").

Defendants also wrongly assert that because methadone, Methamphetamine, and amphetamines, were found in Mr. Strickland's system, Defendants could not know he had a disability. Methadone is an FDA-approved medication and is not an illicit use of drugs. *See* 28 C.F.R. § 35.104. At a minimum, its presence required the jail and medical staff to further inquire. *See* SMF ¶¶ 189-193. Further, the ADA and its implementing regulations emphasize that even illicit drugs do not allow a jail to deny a person their medication. *See* 42 U.S.C. 12210; 28 C.F.R. 35.131; *see also* DOJ Statement of Interest at 5.

Mr. Strickland's OUD is severe and chronic, substantially limits Mr. Strickland's major life activities, including sleeping, communicating, concentrating, thinking, and working, and is a disability within the meaning of the ADA and RA. *See, e.g.* SMF ¶¶ 77, 112-113. Therefore, Mr. Strickland is an individual with a disability pursuant to the ADA and RA.

2. Defendants excluded Mr. Strickland from participation in services, programs and activities by reason of his disability.[5]

Delaware County and the GEO entities improperly excluded Mr. Strickland from participation in services, programs, and activities by reasons of his disability. Title II of the ADA bars a public entity from excluding individuals with disabilities from its services, programs, or activities, or from otherwise subjecting individuals with disabilities to discrimination. 42 U.S.C. § 12132. Mr. Strickland was precluded from participating in medical services and other programs at the jail.

Puzzlingly, Defendants assert that "there is no evidence that any of the Defendants knew of [Mr. Strickland's] diagnosis or alleged disability." Defendants' Memorandum of Law ("Defs. Mem. of Law"), ECF No. 67 at 26. On the contrary, there is ample evidence that Mr. Strickland repeatedly told Defendants about his treatment history for OUD and need for ongoing care including during his intake and many times thereafter. SMF ¶¶ 88, 89, 92, 95, 110. Further, in the Third Circuit, public entities have an affirmative obligation to take "pro-active measures to avoid the discrimination proscribed by Title II," even in the absence of a specific request for an accommodation. *Chisolm v. McManimon*, 275 F.3d 315, 324–25 (3d Cir. 2001). Thus, a diagnosis is not necessary for protection under the ADA, only that a person have an impairment that substantially limits one or more major life activities, which Mr. Strickland had.

A "prison's refusal to accommodate [an incarcerated person's] disabilities 'in such fundamentals as mobility, hygiene, medical care, and virtually all other prison programs' constitutes a denial of the benefits of a prison's services, programs, or activities under Title II."

[5] Defendants' brief contends only that Defendant Delaware County did not discriminate against Mr. Strickland by reason of his disability. Defendants GEO Group and GEO Secure Services do not raise this argument.

Furgess, 933 F.3d at 290 (quoting *United States v. Georgia,* 546 U.S. 151, 157 (2006)); *see also Pesce v. Coppinger*, 355 F. Supp. 3d 35, 45 (D. Mass. 2018) ("As an initial matter, the medical care provided to [the jail's] incarcerated population qualifies as a 'service' that disabled inmates must receive indiscriminately under the ADA.").

The Supreme Court has clearly stated that medical services constitute a "program, service, or activity" under the ADA. *Pa. Dep't of Corrs. v. Yeskey*, 524 U.S. 206, 209–10 (1998). "[T]he phrase 'service, program, or activity' under Title II, like 'program or activity' under Section 504, is extremely broad in scope and includes anything a public entity does." *Furgess*, 933 F.3d at 289 (quotations omitted); *see also* 28 C.F.R. §35.102(a) ("[C]overage extends to 'all services, programs, and activities provided or made available by public entities").[6]

Courts have found that complete denials of medical care constitute violations of the ADA. For example, in *Hollihan v. Pa. Dept. of Corr.*, the District Court found that a blanket policy resulting in the categorical denial of medical care stated a claim under the ADA. *See* 159 F. Supp. 3d 502, 509–10 (M.D. Pa. 2016); *see also Kiman v. N.H. Dep't of Corr.,* 451 F.3d 274, 287 (1st Cir. 2006) (withholding of prescribed medications was not "a medical 'judgment' subject to differing opinion[, but] an outright denial of medical services" that could violate the ADA).

[6] The Supreme Court has noted that "modern prisons provide [incarcerated people] with many recreational 'activities,' medical 'services,' and educational and vocational 'programs,'" all of which are covered by the ADA. *Yeskey*, 524 U.S at 210; *see also Owens v. Chester Cty*, No. 97-1344, 2000 U.S. Dist. LEXIS 710, at *32–33 (E.D. Pa. Jan. 28, 2000) ("[U]nder a common understanding of the terms, the prison and all of its facilities (i.e., the phone, the library, the yard, and meals) constitute services and programs of Chester County to which the ADA applies."); *Rouse v. Plantier*, 997 F. Supp. 575, 582 (D.N.J. 1998), *vacated on other grounds*, 182 F.3d 192 (3d Cir. 1999) (denying summary judgment because "Plaintiffs have come forward with evidence that Defendants either directly or indirectly, i.e., by failing to adequately treat their diabetes and the complications thereof, excluded Plaintiffs from participating in prison programs").

Here, Defendants' blanket policy categorically disallowed the provision of medication for opioid use disorder. SMF ¶ 23. When an individual with OUD arrived at George W. Hill, in recovery and taking their prescribed medication, as Mr. Strickland did, the jail would not provide treatment for their chronic disease. *Id.* The entire reason for this categorical denial was because he has OUD, and had he been seeking medication for another medical condition, he likely would have received it. Instead, the jail would force individuals with OUD to go through the painful experience of withdrawal, entirely unnecessarily and contrary to the medical standard of care. SMF ¶¶ 141-157. Mr. Strickland was coerced into an abrupt stop to his prescribed medication. Mr. Strickland's requests for treatment were denied, not due to any reasoned medical judgment or individualized assessment, but as a result of the jail's refusal to provide this treatment to anyone except people who were pregnant. SMF ¶¶ 203-205. These constitute a denial of Mr. Strickland's access to the jail's medical services, a "program, service, or activity" under the ADA by reason of his disability.

3. Defendants intentionally discriminated against Mr. Strickland by reason of his disability.

Plaintiffs can demonstrate discrimination under the ADA and RA in two ways: "adverse actions motivated by prejudice and fear of disabilities" and "failing to make reasonable accommodations for a plaintiff's disabilities." *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 306 (3d Cir. 1999). In enforcing their methadone ban against Mr. Strickland, Defendants engaged in both types of unlawful discrimination. Defendants' policy was discriminatory on its face, and Defendants failed to provide Mr. Strickland with a reasonable accommodation for his disability.

First, Defendants' action in prohibiting a standard, medically necessary treatment for OUD is motivated by prejudice and facially discriminatory. Defendants have implemented a categorical ban on providing treatment to non-pregnant individuals with OUD at George W. Hill. SMF ¶¶ 203-205. Defendants suggest that Mr. Strickland was not discriminated against because he was

"treated the same as all others similarly situated." Defs. Mem. of Law at 26. Presumably, Defendants suggest that Mr. Strickland was treated the same as all other non-pregnant people with OUD who were incarcerated at George W. Hill. However, this assertion misunderstands the meaning of discrimination under the ADA and RA.

The question to ask is whether Mr. Strickland was treated the same as all other incarcerated people at George W. Hill, i.e., as a person diagnosed with OUD, did he receive the same access to medical care as those who did not have OUD. In purpose and effect, Defendants' ban singles out Mr. Strickland and others with OUD for categorical exclusion from minimally adequate medical treatment at the jail. A similar ban on the primary mode of treatment for other chronic conditions such as asthma, diabetes, or hypertension would be virtually inconceivable, but because of societal apprehension and misunderstanding of OUD, George W. Hill's policy not only permits, but requires discrimination against individuals with OUD.

Several courts in considering this exact circumstance have found that a policy against providing methadone, or other medication for opioid use disorder, is discriminatory and violates the ADA. *See, e.g., M.C. v. Jefferson Cty,* 6:22-CV-190, 2022 U.S. Dist. LEXIS 87339, at *8 (N.D.N.Y. May 16, 2022) (granting preliminary injunction finding that a jail's refusal to provide access to methadone to people with OUD deprives plaintiffs 'meaningful access' to the jail's healthcare services); *P.G.*, 2021 U.S. Dist. LEXIS 170593, at *12 ("[A] refusal to guarantee access to methadone treatment likely violates the ADA."); *Smith v. Aroostook Cty.*, 376 F. Supp. 3d 146, 159–60 (D. Me. 2019) ("The Defendants' out-of-hand, unjustified denial of the Plaintiff's request for her prescribed, necessary medication . . . is so unreasonable as to raise an inference that the Defendants denied the Plaintiff's request because of her disability."); *Pesce*, 355 F. Supp. 3d at 47 ("Absent medical or individualized security considerations underlying the decision to deny access

to medically necessary treatment, Defendants' policy as applied to Pesce is either arbitrary or capricious-as to imply that it was pretext for some discriminatory motive or discriminatory on its face."); *see also* the United States Department of Justice's ("DOJ") Statement of Interest ("DOJ Statement of Interest"), ECF No. 71 at 7-9 (describing cases).

Second, Defendants' refusal to modify their policy of not providing methadone to accommodate Mr. Strickland's disability independently violates Title II. *See* 28 C.F.R. § 35.130(b)(7)(i) ("A public entity shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability"). As courts have long recognized, ensuring meaningful access for people with disabilities sometimes requires public entities to make reasonable modifications to their policies, practices, and procedures. *See Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (noting Congress recognized "that failure to accommodate persons with disabilities will also have the same practical effect as outright exclusion" or discrimination).

Each time Mr. Strickland requested medication for his opioid use disorder, he was informed that the jail did not provide methadone to those who were not pregnant. SMF ¶¶ 203-205. On September 3, 2021, Plaintiff's counsel sent a letter to Defendants describing Mr. Strickland's disability and requesting modifications to Defendants' policies to ensure that Mr. Strickland had meaningful access to the programs and services at George W. Hill. SMF ¶ 120. Rather than engage in any evaluation of whether such treatment could be provided or was appropriate medical care, Defendant Grady simply responded on behalf of George W. Hill that the facility "does not offer a methadone MAT program." SMF ¶ 121.

While George W. Hill may have a minor exception to its blanket ban on methadone for the purpose of protecting a fetus, it still discriminates against all individuals with opioid use disorder

during the time in which they are not pregnant. Even if a small subcategory of individuals receives a certain accommodation, others can still be discriminated against due to their disability.

DOJ makes clear that George W. Hill's blanket ban on methadone is out of step with current treatment protocols for individuals with OUD. *See* DOJ Statement of Interest 5-7. Further, it explains that categorically denying methadone to people with prior prescriptions is a violation of the ADA. *Id.* at 12. The DOJ has released guidance to this effect, as well as taken numerous enforcement actions in this area, including recently against Allegheny County Jail. *Id.* at 11-12.

Last, a reasonable jury could conclude that Defendants engaged in intentional discrimination. Defendants had knowledge that a federally protected right was substantially likely to be violated, as there was ample discussion on expanding access to MOUD at Jail Oversight Board meetings, *see, e.g.* SMF ¶¶ 232-240, and especially after the jail's Warden and Health Services Administrator received a letter from Mr. Strickland's lawyer, and yet failed to do anything. SMF ¶¶ 120-122; *see Haberle v. Troxell*, 885 F.3d 171, 181 (3d Cir. 2018); *see also* Section III.C.1. below discussing deliberate indifference.

4. The plain text of the ADA and RA and their regulations make clear that Delaware County is a proper defendant.

Delaware County is a proper defendant for the ADA and Rehabilitation Act claims. Defendants incorrectly argue that Delaware County is an improper party for the ADA claim due to Delaware County not operating the prison. *See* Defs. Mem. of Law at 25. This ignores the plain language of the ADA and its implementing regulations which state that a public entity's responsibilities under the ADA cannot be delegated or contracted away. *See* 42 U.S.C. § 12182(b)(1)(A) (disability discrimination prohibited when it is either direct or committed "through contractual, licensing, or other arrangements"); 28 C.F.R. § 35.130(b)(1) ("[A] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other

arrangements, [discriminate] on the basis of disability.");[7] *see also Marks v. Colo. Dep't of Corr.*, 976 F.3d 1087, 1096 (10th Cir. 2020) (holding that the state's Department of Corrections and Department of Criminal Justice "farm out operations to others, but doing so would not prevent liability under the Americans with Disabilities Act or Rehabilitation Act."); *Castle v. Eurofresh*, 731 F.3d 901, 910 (9th Cir. 2013) ("The law is clear—the State Defendants may not contract away their obligation to comply with federal discrimination laws.").

Similarly, the regulations implementing the Rehabilitation Act prohibit recipients of federal funding from discriminating against people who are disabled "through contractual, licensing, or other arrangements." 28 C.F.R. § 42.503(b) (2013). A public entity is defined as "[a]ny state or local government," or [an]y department, agency, special purpose district, or other instrumentality of a State or States or local government." 28 C.F.R. § 35.104.

The ADA implementing regulations specifically addressing correctional facilities further explain, "This section applies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, **either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part, including private correctional facilities**." 28 C.F.R. § 35.152(a) (emphasis added). Delaware County is the public entity that owns the prison. *See Regan v. Upper Darby Twp.*, No. 06-1686, 2009 U.S. Dist. LEXIS 19807, *13 (E.D. Pa March 11, 2009) ("Defendant Delaware County Prison also contends that Delaware County owns the facility . . . ."); *see also* DOJ Letter, "The United States' Findings and

[7] The regulations applying directly to jails and prisons contain similar language: "Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." 28 C.F.R. § 35.152(b)(1).

Conclusions Based on its Investigation of the George W. Hill Correctional Facility under Title II of the Americans with Disabilities Act, DJ # 202-62-241" ("DOJ Findings Letter") at 1 (Nov. 1, 2023), *available at* https://www.justice.gov/crt/case-document/file/1553731/download ("The GWH Facility is owned by Delaware County, although until recently the day-to-day operations of the facility were managed by contractors."). Under the plain text of the ADA and its implementing regulations, Delaware County is liable for harm in the programs, services, and activities of its jail.[8]

Defendants argue that because the Delaware County Board of Prison Inspectors is a separate legal entity created by legislation, *see* Defs. Mem. of Law at 25, Delaware County cannot be held liable under the ADA. However, the ADA does not make a distinction on this basis. Other courts in this district have permitted ADA and/or Rehabilitation Act claims to proceed against Delaware County during the time period when the Board of Prison Inspectors operated the jail. *See, e.g. Doe v. Delaware County*, No. 22-1405, ECF No. 42, slip. op. at 1 (E.D. Pa. Aug. 5, 2022); *Rainey v. County of Del.*, No. 00-548, 2000 U.S. Dist. LEXIS 10700, *9 (E.D. Pa. Aug. 1, 2000). DOJ similarly has explained that Delaware County was responsible for ADA violations in another matter, while the jail was operating under the same contract with GEO. *See* DOJ Findings Letter at 2 (determining the "ADA applies to Delaware County because it is a 'public entity' as defined by the statute. 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104" based on incidents in 2020).

Furthermore, Defendants' argument is belied by the facts of this case. Delaware County retained authority and control over the programs, activities, and services at George W. Hill. The record even demonstrates that the County was specifically involved in providing Vivitrol,[9] another

[8] Note that the ADA differs from a constitutional claim brought pursuant to 42 U.S.C. § 1983 in that the ADA specifically applies to public entities. Furthermore, just because the Board of Prison Inspectors can be sued does not mean a suit cannot be brought against Delaware County,
[9] Vivitrol was not an appropriate medication for Mr. Strickland, nor did he qualify under George W. Hill's rules. SMF ¶¶ 208-210.

medication for opioid use disorder, at George W. Hill, as evidenced by the "Memorandum of Understanding between GEO Secure Services, Inc. and Delaware County to augment [*sic*] the Vivitrol Medically Assisted Treatment (MAT) Program."[10] SMF ¶¶ 230-231.

The Memorandum of Understanding clearly states, "GEO Secure Services, LLC and **Delaware County** enter this Memorandum of Understanding to augment the above indicated contract for the expressed purpose of maximizing participation in the Vivitrol MAT program at the George W. Hill Correctional Facility (GWHCF), Glen Mills, PA." SMF ¶ 231 (emphasis added); *see also* SMF ¶ 227, 229 (Defendant Tatum, an employee of Delaware County, explaining his involvement in changing the policy relating to Vivitrol). For these reasons, Delaware County is a proper defendant pursuant to the ADA and Rehabilitation Act.

5. GEO Group, Inc. and GEO Secure Services, LLC are properly sued under the Rehabilitation Act.

GEO Group, Inc. and GEO Secure Services, LLC are proper defendants for a Rehabilitation Act claim. While the ADA and Rehabilitation Act are analyzed almost identically, one key difference is that the ADA applies to "public entities," but the Rehabilitation Act can apply to private companies. *See above* n.3. The text of the Rehabilitation Act states that a qualified person with a disability cannot be excluded from a "program or activity," and "the term 'program or activity' means all of the operations of . . . (3) **an entire corporation, partnership, or other private organization, or an entire sole proprietorship**." 29 U.S.C. § 794(b)(3) (emphasis added). The Supreme Court has also explained that § 504 of the Rehabilitation Act prohibits discrimination against the disabled by recipients of federal funding, including private organizations. *See Barnes v. Gorman*, 536 U.S. 181, 184-185 (2002) (citing 29 U.S.C. §

[10] Medication for Opioid Use Disorder is sometimes referred to as "Medication-Assisted Treatment" or "Medically-Assisted Treatment."

794(b)(3) and distinguishing between the ADA and Rehabilitation Act). Defendants cite to *Matthews v. Pennsylvania Dept. of Corrs.*, 613 Fed. Appx. 163 (3d Cir. 2015), a non-precedential Third Circuit case. However, the Third Circuit did not have the opportunity to distinguish whether a private company would fare differently under the Rehabilitation Act claim pursuant to *Barnes* and the text of the Rehabilitation Act.

GEO Group Inc. is a company with "worldwide operations" that receives federal funding[11] – its SEC filings show that the GEO Group, Inc. receives federal funds via public-private partnerships with federal, state, and local governmental agencies, and through contracts with the federal government. SMF ¶ 214. GEO Secure Services, LLC is a national company that receives federal funding through federal contracts. SMF ¶ 214 (noting that "[o]ur GEO Secure Services business unit served over 260,000 individuals, while managing an average daily population of approximately 40,000 in our facilities in the Unites States" and that that six of their 13 contracts were with the federal government). Plaintiff Strickland did not bring an ADA claim against the GEO entities, but did properly bring a Rehabilitation Act claim.

C. Defendants Have Violated Plaintiff Strickland's Constitutional Rights Under the Fourteenth Amendment.

Summary judgment should be denied because a reasonable jury could conclude that Mr. Strickland has stated a constitutional claim against all Defendants for inadequate medical care.[12] While the Eighth Amendment protects incarcerated people serving criminal sentences from "cruel and unusual" punishment, the Fourteenth Amendment protects pretrial detainees from being

[11] Defendants did not provide any evidence that GEO Group, Inc. or GEO Secure Services, LLC did not receive federal funding.

[12] Defendants argue that there is no constitutional right to methadone. Defs. Mem. of Law, III.A. This misstates Mr. Strickland's position. Rather, Mr. Strickland has a constitutional right to proper medical care.

punished at all. *See Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015) (applying an "objective reasonableness" standard); *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979); *Hubbard v. Taylor*, 399 F. 3d 150, 167 n.23 (3d Cir. 2005).

Defendants suggest that Mr. Strickland's constitutional claim be analyzed under the Eighth Amendment standard. *See* Defs. Mem. of Law at 27-28. However, as a pretrial detainee, Mr. Strickland is "entitled to greater constitutional protection than that provided by the Eighth Amendment." *Hubbard*, 399 F. 3d at 167 n.23. *See also Kingsley*, 576 U.S. at 400; *Bell*, 441 U.S. at 535 n.16. The Eighth Amendment standard is "relevant to conditions of pre-trial detainees only because it establishe[s] a floor." *Hubbard*, 399 F. 3d at 165–66. Nevertheless, a reasonable jury could find that Defendants' actions toward Mr. Strickland were both objectively unreasonable and demonstrated deliberate indifference to his serious medical needs.

1. Defendants subjected Mr. Strickland to conditions of confinement that amounted to punishment.

As a pretrial detainee, Mr. Strickland's claim should be evaluated under an objective reasonableness standard. The court in *Davis v. City of Phila*., explained that "the law in this circuit is well settled" that the controlling standards under the Eighth and Fourteenth Amendments are distinct, and that pretrial detainees are entitled to greater constitutional protections than convicted prisoners. 284 F. Supp. 3d 744, 752 (E.D. Pa. 2018). An objective standard for pretrial detainees' conditions of confinement and medical claims is consistent with the Supreme Court's holding in *Kingsley* that "a pre-trial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." 576 U.S. at 398. While *Kinglsey* considered a

pretrial detainee's excessive force claim, multiple courts have since held that pretrial detainees alleging unconstitutional conditions of confinement need not establish deliberate indifference.[13]

Instead, conditions of confinement to which a pretrial detainee is subjected, including denial of medical treatment, are unconstitutional when they "amount to punishment prior to adjudication of guilt." *Montgomery v. Ray*, 145 F. App'x 738, 740 (3d Cir. 2005) (citing *Hubbard*, 399 F. 3d at 158). To determine when inadequate medical treatment amounts to punishment, courts first must ask whether the complained of conditions serve any legitimate purpose and if so, whether the conditions are rationally related to that purpose. *Davis*, 284 F. Supp. 3d at 752 (quoting *Hubbard*, 399 F. 3d at 159). If the conditions are not rationally related to any legitimate purpose, the plaintiff prevails. *See Stevenson v. Carroll*, 495 F. 3d 62, 67–68 (3d Cir. 2000). If they are, the court must then determine "whether the conditions cause[d] the detainee to endure such 'genuine hardship' that the conditions are 'excessive in relation to the purposes assigned to them.'" *Davis*, 284 F. Supp. 3d at 752; *see also Camps v. Giorla*, 843 F. App'x 450, 453 (3d Cir. 2021) (analyzing pretrial detainee's conditions of confinement claim under the *Bell/Hubbard* punishment standard).

Failing to provide necessary medication does not serve any legitimate purpose, but even if it did, the failure to provide methadone poses an objectively serious danger to incarcerated individuals. *See Davis v. Carter*, 452 F. 3d 686, 695–96 (7th Cir. 2006) (explaining that failing to provide timely methadone treatment constituted a danger to the inmate that is objectively serious,

[13] *See, e.g.*, *Short v. Hartman*, No. 21-1396, 2023 U.S. App. LEXIS 32521, *16 (4th Cir. 2023) ("*Kingsley's* objective standard extends not just to excessive force claims; it applies equally to deliberate indifference claims"); *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc); *Bruno v. City of Schenectady*, 727 F. App'x. 717, 720 (2d Cir. 2018) (applying objective standard to medical care cases); *Darnell v. Pineiro*, 849 F.3d 17, 21 n.3, 29 (2d Cir. 2017) (applying *Kingsley* objective standard to conditions of confinement claims); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) ("We thus conclude . . . that medical-care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry identified in *Kingsley*.").

posing a substantial risk of serious harm); *M.C.*, 2022 U.S. Dist. LEXIS 87339, at *9 (finding that forcibly withdrawing an incarcerated person from medically necessary treatment for OUD will cause "irreparable harm"); *P.G.*, 2021 U.S. Dist. LEXIS 170593, at *13–14 (holding that the plaintiff would likely succeed on his claim that "defendants knew, or should have known, that failing to provide the omitted medical treatment would pose a substantial risk to the detainee's health"); *see also Foelker v. Outgamie Cnty.*, 394 F. 3d 510, 513 (7th Cir. 2005). In Mr. Strickland's case, it was objectively unreasonable to ignore the standard of care, as outlined by the major medical associations and the National Commission on Correctional Health Care, and to withhold necessary medication for a chronic condition. Moreover, it was objectively unreasonable to take Mr. Strickland off his prescribed medication without an individualized determination, causing him to suffer severe health consequences.

2. Plaintiff Strickland has a serious medical need.

Even if Mr. Strickland has to state a constitutional claim under the Eighth Amendment standard, he would prevail. Under this standard, an incarcerated individual must establish that prison officials were deliberately indifferent to his serious medical needs. *See Farmer v. Brennan*, 511 U.S. 825, 835 (1994). Medical care cases are governed by *Estelle v. Gamble*, where "the incarcerated individual must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." 429 U.S. 97, 103–06 (1976).

Mr. Strickland's opioid use disorder and forced withdrawal from opioids both constitute serious medical needs. A serious medical need is one that "has been diagnosed by a physician as requiring treatment" or one in which "needless suffering result[s] from a denial of simple medical care." *Atkinson v. Taylor*, 316 F.3d 257, 266 (3d Cir. 2003). As discussed above, although Defendants suggest that Mr. Strickland does not have a diagnosis of OUD, this is blatantly

incorrect. SMF ¶¶ 66, 76-81. Courts have recognized that OUD is an objectively serious medical condition. *Gonzalez v. Cecil County, Md.*, 221 F. Supp. 2d 611, 616 (D. Md. 2002) (heroin addiction); *Messina v. Mazzeo*, 854 F. Supp.116, 140 (E.D.N.Y. 1994). Mr. Strickland's OUD has been diagnosed by multiple physicians as requiring treatment. SMF ¶¶ 66, 76-81.

While at George W. Hill, Mr. Strickland also suffered from forced withdrawal from opioids. SMF ¶¶ 111-119. Mr. Strickland was taken into custody on August 8, 2021, and denied access to the medication he needed to manage his opioid use disorder. SMF ¶¶ 83, 93-94. By August 11th, he was unable to sleep. SMF ¶ 114. By August 12th, he was experiencing nausea, vomiting, aches, sweats, and tremors. SMF ¶¶ 115-116. On August 13th, he continued to experience nausea, vomiting, gooseflesh, and muscle aches. SMF ¶¶ 117-118. During this period of time, he was hallucinating and desperate for sleep. SMF ¶¶ 112-113. Mr. Strickland experienced these symptoms for the entire period of time that he was incarcerated at George W. Hill. SMF ¶¶ 111-119, 127-132. A reasonable jury could conclude that over a month of nausea, aching, sweating, and hallucinations constitute "needless suffering resulting from a denial of simple medical care." *Atkinson*, 316 F.3d at 266; s*ee also Sylvester v. City of Newark*, 120 F. App'x 419, 423 (3d Cir. 2005) (determining that a jail detainee suffering from acute withdrawal with excessive vomiting constituted a serious medical need); *Alvarado v. Westchester Cnty*., 22 F. Supp. 3d 208, 217 (S.D.N.Y. 2014) (opioid withdrawal "sufficiently serious" to state deliberate indifference claim); *P.G.,* 2021 U.S. Dist. LEXIS 170593, at *13 (N.D.N.Y. Sept. 7, 2021) ("opioid withdrawal has been recognized as an 'objectively' serious medical condition").[14]

[14] Defendants cite *Mower v. Dauphin County Prison*, 05-0909, 2005 WL 1322738, (M.D. Pa. June 1, 2005) for the proposition that withdrawal from opioids is not a serious medical need and suggest that *Mower* is "a case virtually identical to the instant matter." Defs. Mem. of Law 12. However, *Mower,* brought by a *pro se* litigant, was dismissed during the initial screening process required by the Prison Litigation Reform Act on the basis that "Plaintiff fail[ed] to make any

3. Defendants Delaware County,[15] GEO Group, Inc. and GEO Secure Services, LLC acted with deliberate indifference.

Defendants Delaware County, GEO Group, and GEO Secure Services are not entitled to summary judgment as to Mr. Strickland's constitutional claim because a reasonable jury could conclude that they had personal and direct participation in the adoption, implementation, and enforcement of an unconstitutional policy. The Supreme Court has held that private entities that are state actors and municipal bodies can be considered "persons" and sued under 42 U.S.C. § 1983. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Newport v. Fact Concerts*, 453 U.S. 247, 249 (1981).

The deliberate indifference standard is met where: (1) a doctor intentionally inflicts pain on a prisoner; (2) when prison authorities deny reasonable requests for medical treatment and such denial exposes the inmate to undue suffering or the threat of tangible residual injury; or (3) when knowledge of the need for medical care is accompanied by the intentional refusal to provide that care. *Spruill v. Gills*, 372 F.3d 218, 235 (3d Cir. 2004). The fourth way to meet the deliberate indifference standard is when medical treatment is delayed for non-medical reasons. *Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro,* 834 F.2d 326, 346 (3d Cir. 1987). A plaintiff may establish a *Monell* claim through "an allegation that official policy is responsible for a deprivation of rights protected by the Constitution" or that "constitutional deprivations visited pursuant to governmental 'custom.'" *Monell*, 436 U.S. at 690-91.

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specific allegations as to any of the named Defendants and fail[ed] to state any of their personal involvement in the denial of any required medical care," as well as other technical reasons. *Id.* at *10. As such, *Mower* is distinguishable and inapplicable here. And again, Plaintiff is not asserting a constitutional right to methadone, but a constitutional right to proper medical care.

[15] It is unclear from Defendants' Memorandum of Law whether they intended to argue that summary judgment should be granted as to Delaware County on Mr. Strickland's constitutional claim. The Memorandum refers to "Defendants" in the plural but advances no argument specific to Delaware County in regard to Mr. Strickland's constitutional claims.

At the time Mr. Strickland was incarcerated at George W. Hill, the jail would not provide methadone or buprenorphine to anyone who was not pregnant. SMF ¶¶ 203-205. Contrary to Defendants' assertion, Mr. Strickland is not relying on a theory of *respondeat superior* for GEO Group's and GEO Secure Service's liability, but rather on their promulgation and enforcement of a policy which denied him medical treatment. As the contractors that both operated George W. Hill and provided the medical services at the jail, GEO Group and GEO Secure Services can be liable for its policies, practices, and customs. *See Natale v. Camden Cnty. Corr. Facility,* 318 F.3d 575, 578 (3d Cir. 2003) (holding that a prison medical subcontractor could be liable for a constitutional violation where the subcontractor had a relevant policy or custom which caused the alleged constitutional violation); *see also Johnson v. Stempler,* No. 00-711, 2005 U.S. Dist. LEXIS 765, at *17 (E.D. Pa. Jan. 18, 2005) (denying summary judgment where incarcerated plaintiff alleged that the private medical provider at a prison had a custom of denying or delaying medical care for cost reasons).

Stripping Mr. Strickland of life-sustaining medical treatment for OUD pursuant to a policy that disallows an individualized medical determination is not sound medicine and demonstrates Defendants' deliberate indifference. SMF ¶¶ 133, 135, 137, 142-147. In *Pesce*, the court specifically determined that a jail's implementation of a policy prohibiting the use of methadone treatment demonstrated a likelihood of success on the merits of a constitutional claim. The *Pesce* court explained, "[t]he [jail officials] have stood by the policy without any indication that they would consider [the plaintiff's] particular medical history and prescribed treatment in considering whether departure from such policy might be warranted." *Pesce,* 355 F. Supp. 3d at 47. Further, because the plaintiff alleged that Defendants' policy "ignore[ed] treatment prescriptions given to Plaintiff by [his] doctors," the court concluded that the plaintiff was likely to succeed on the merits

of his Eighth Amendment claim. *Id.* at 48. Similarly, in *Chimenti v. Pa. Dept. of Corrs.*, the court found that the state prison system's blanket refusal to provide direct-acting antiviral medication for Hepatitis C to any incarcerated person, without individualized medical determination, constituted deliberate indifference to a serious medical need. No. 15-3333, 2017 U.S. Dist. LEXIS 124892, at *22 (E.D. Pa. Aug. 7, 2017).

Defendants' blanket policy against methadone treatment is contrary to current treatment standards for OUD. SMF ¶¶ 198-202. Every major medical association's recommended treatment for OUD includes the FDA-approved medications. This includes the leading medical association in addiction medicine (the American Society of Addiction Medicine), the Centers for Disease Control and Prevention, the World Health Organization, and the American College of Physicians. SMF ¶¶ 39, 198, 201-202. Even the National Commission on Correctional Healthcare recognizes that medication for opioid use disorder is the standard of care. SMF ¶¶ 199-200. Current treatment standards for OUD recognize the important and differing roles that methadone, naltrexone, and buprenorphine play in treatment and call for an individualized determination of which OUD medication may be most appropriate for a particular patient. *See* DOJ Statement of Interest at 5-6; *see also* SMF ¶¶ 193-195. Courts have frequently turned to community care standards under the Eighth Amendment standard, and these standards – especially for chronic conditions like diabetes, Hepatitis C, HIV, high blood pressure, and OUD -- apply with equal weight in a jail medical setting. Ignoring these standards weighs heavily towards deliberate indifference.

As early as 2020, Defendant Delaware County acknowledged that its Vivitrol pilot program was "altogether inadequate considering the magnitude of the population at the George W. Hill Correctional Facility with OUD and the life-or-death nature of this crisis." SMF ¶ 235. In February 2020, the Delaware County Jail Oversight Board passed a resolution calling for the expansion of

treatment for incarcerated with people with OUD and noted that a significant portion of the population at George W. Hill at any given time is dealing with an addiction to opioids. *Id.* As discussed above, at the time Mr. Strickland was at George W. Hill, the jail did ensure pregnant people could receive methadone, indicating that they had the ability to provide such treatment for Mr. Strickland, but simply chose not to do so. SMF ¶ 206.

This denial of medication for opioid use disorder exposed Mr. Strickland to weeks of unnecessary suffering from methadone withdrawal, and intentionally caused him pain. SMF ¶¶ 111-119. "[A] scientific consensus is growing that refusing to provide individuals with their prescribed MAT is a medically, ethically, and constitutionally unsupportable denial of care." *Aroostook Cty.*, 376 F. Supp. 3d at 161 n. 20. A reasonable jury could easily find multiple ways in which the foregoing facts with regard to Defendants Delaware County, GEO Group, Inc. and GEO Secure Services, LLC demonstrate deliberate indifference.

Confusingly, Defendants suggest that Mr. Strickland has failed to prove that Defendants' policy against providing methadone or buprenorphine to non-pregnant incarcerated people was applied to others. *See* Defs. Mem. of Law at 21. Defendants seem to suggest that Mr. Strickland's claim is based simply on a pattern of conduct, when in fact it is based on a policy decision of Defendants. Ample evidence in the record makes clear that Defendants' policy applied to all non-pregnant people with opioid use disorder incarcerated at George W. Hill. SMF ¶¶ 203-205.

Defendants cite *Holly v. Rapone*, 476 F. Supp. 226 (E.D. Pa 1979) for the proposition that there is no constitutional right to receive methadone. Defs. Mem. of Law at 11. Mr. Strickland has never asserted a constitutional right to methadone; rather he asserts a right to proper medical care

based on his individualized needs. Further, *Norris v. Frame*,[16] cited by the *Holly* court and quoted here by Defendants, held that jail's refusal to allow an incarcerated person to continue to receive methadone could be unconstitutional. 585 F.2d 1183, 1185 (3d Cir. 1978).

4. Defendants Tatum, Grady, and Christakis acted with deliberate indifference.

Defendants Tatum, Grady, and Christakis are not entitled to summary judgment as to Mr. Strickland's constitutional claim because a reasonable jury could conclude that they each are liable due to their personal and direct participation in the adoption, implementation, and enforcement of an unconstitutional policy. "Personal involvement" can be shown in several ways: either through direct participation, personal direction of subordinates, or through knowledge and acquiescence in subordinates' acts. *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988); *Savage v. Bonavitacola*, No. 03-16, 2005 U.S. Dist. LEXIS 3695, at *32-33 (E.D. Pa. March 9, 2005).

"[P]olicymakers may be liable under § 1983 if it is shown that such defendants, 'with deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused [the] constitutional harm.'" *A.M. v. Luzerne Cnty. Juvenile Det. Ctr.*, 372 F.3d 572, 586 (3d Cir. 2004) (citing *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 725 (3d Cir. 1989). In *Beers-Capitol v. Whetzel*, the Third Circuit outlined a four-prong test for supervisory liability: "(1) the existing policy or practice created an unreasonable risk of the Eighth Amendment injury; (2) the supervisor was aware that the unreasonable risk was created; (3) the supervisor was indifferent to that risk; and (4) the injury resulted from the policy or practice." 256 F.3d 120, 134 (3d Cir. 2001). Supervisory liability may also exist where "there are situations in

[16] *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) later clarified the legal standard for evaluating conditions of confinement for pre-trial detainees but did not reverse *Norris v. Frame.* Nevertheless, the court found that a jail removing an individual already in a methadone treatment program for penological reasons could be unconstitutional. *Id.* 1188-89.

which the risk of constitutionally recognizable harm is so great and so obvious that the risk and the failure of supervisory officials to respond will alone support findings of the existence of an unreasonable risk, of knowledge of that unreasonable risk, and of indifference to it." *Id.* at 134.

Here, Defendants Christakis and Grady both signed the jail policy which outlines the withdrawal policy for individuals at George W. Hill. SMF ¶¶ 221, 223. Defendant Christakis is responsible for overseeing the provision of medical care, as well as setting and enforcing policies relating to the health and medical treatment of those incarcerated at George W. Hill. SMF ¶¶ 217-221. Defendant Grady is responsible for policy development and handling problems related to housing, medical care, and access to treatment for people incarcerated at George W. Hill. SMF ¶¶ 222-225. George W. Hill's policy against providing methadone, in which Defendants Christakis and Grady had a direct role, caused Mr. Strickland to be denied proper medical care.

Similarly, Defendant Tatum was the warden at the time when Mr. Strickland was incarcerated at George W. Hill and was responsible for overseeing all aspects of the functioning of the jail, including the provision of medical care. SMF ¶¶ 226-230. In direct contradiction of counsel's argument that Defendant Tatum had no involvement in writing medical policies or procedures at George W. Hill, Defendant Tatum testified that he was involved in developing and implementing policies at George W. Hill, including medical policies generally as well as policies relating to the treatment of Opioid Use Disorder specifically. SMF ¶ 56. He claimed responsibility for drafting a "Memorandum of Understanding Between GEO Secure Services, LLC and Delaware County" to augment the pre-existing contract in order to maximize participation in the Vivitrol program at the jail. SMF ¶¶ 229-230. He also actively participated in discussions regarding the expansion of the MAT program beyond Vivitrol, and was therefore aware of the risks of failing to provide proper MOUD. SMF ¶ 233. In addition to coordinating between the Jail Oversight Board

and GEO, he was responsible for giving the Jail Oversight Board "what was needed" in terms of "expertise on the running of a jail." SMF ¶ 234. Defendant Tatum himself described his role in communicating the Jail Oversight Board's goals regarding the opioid problem to GEO as follows: "it had to be facilitated, it had to be adjusted, it had to be improved." *Id.* A facilitator responsible for adjusting and improving medical policies and procedures has personal and direct participation in those policies and procedures.

Defendants Tatum and Grady also received individualized notice of Mr. Strickland's medical needs and the risks posed by denial of methadone. As explained above, Mr. Strickland's counsel notified Defendants Tatum and Grady, among others, of the issues posed by their actions and Defendant Grady responded by simply restating the jail's policy. SMF ¶¶ 120-122.

Defendants Grady and Christakis argue that they cannot be liable because they did not treat Mr. Strickland. Defs. Mem. of Law at 31. It is immaterial whether they were specifically involved in Mr. Strickland's medical care or even aware of the denial of his care, as they are responsible for the administration of medical care to all individuals incarcerated at George W. Hill. "A high-ranking prison official can expose an inmate to danger by failing to correct serious known deficiencies in the provision of medical care to the inmate population. That the official had no specific knowledge of any particular inmate or the failure of subordinate officials to treat that inmate's serious medical condition is irrelevant." *Barkes v. First Corr. Med., Inc.,* 766 F.3d 307, 324 (3d Cir. 2014).

Prison officials are likewise deliberately indifferent when their actions or policies deny prisoners needed medical care for non-medical reasons, including cost and other administrative factors, or block access to necessary medical care. *See Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014); *Chimenti*, 2018 U.S. Dist. LEXIS 115961, at *27–28; *Aswegan v. Bruhl*, 965 F.2d

676, 677-78 (8th Cir. 1992) (finding deliberate indifference when prison officials denied inmate access to medical personnel for coronary heart disease and denied timely access to prescribed medication).

Based on the foregoing, there are more than sufficient facts in the record to permit a reasonable jury to conclude that Defendants Tatum, Grady and Christakis each acted with deliberate indifference to Mr. Strickland's serious medical needs.

5. Defendants Phillips and Withelder acted with deliberate indifference.

Even if they were following policy, any person who plays a role in the denial of care, whether by establishing or implementing policy is jointly liable for the deprivation. *See*, *e.g.*, *McRaven v. Sanders*, 577 F.3d 974 (8th Cir. 2009) (holding that prison officials cannot rely on medical advice where they have independent information that inmate needs medical care). Defendant Phillips is a physician and Defendant Withelder is a physician assistant; each therefore has the duty and the authority to order constitutionally necessary medical care. *See Roe v. Elyea,* 631 F.3d 843, 860–63 (7th Cir. 2011) (finding that a doctor's policy was motivated by administrative convenience rather than patient welfare and upholding a finding of unconstitutionality); *McKenna v. Wright*, 386 F.3d 432, 437 (2d Cir. 2004) (finding medical supervisors could be liable for applying a policy restricting Hepatitis C treatment). Furthermore, as licensed medical practitioners, they are required to continuously keep up with the standard of care, participate in continuous medical education, and use their individual clinical judgment. SMF ¶¶ 190, 193.

Defendants Withelder and Phillips were the direct medical care providers for Mr. Strickland at George W. Hill. SMF ¶¶ 90, 99. During the intake process and during his incarceration, Mr. Strickland informed Defendant Withelder that he had opioid use disorder, he

had been in a treatment program at Recovery Centers of America, and that he was receiving a methadone dose of 170 mg daily. SMF ¶ 92. Despite this knowledge, pursuant to George W. Hill's policy, Defendant Withelder made no attempt to provide Mr. Strickland with methadone and instead ordered that he be given a drug test and forced into withdrawal. SMF ¶¶ 93-94. Defendant Phillips supervised the care provided by Defendant Withelder and signed off on his plan. SMF ¶¶ 98-99. Thus, they were both responsible for Mr. Strickland's treatment, aware that he required medication, but ignored the risk of depriving him, and failed to make any individualized assessment of his medical needs, such as considering his twenty-five-year history of severe OUD, four incidences of overdose, and being in multiple treatment programs. SMF ¶¶ 62-68.

This is not a mere difference of opinion regarding proper medical care, as Defendants argue. Defs. Mem. of Law at 31. The only treatment provided by Defendants, some alleged assistance with alleviating symptoms of withdrawal, ignores the fact that Defendants themselves caused Mr. Strickland to undergo withdrawal due to the complete lack of *any* medical care for his opioid use disorder. There was no medical basis for causing Mr. Strickland to suffer from the painful symptoms of withdrawal, and providing some medication to resolve those symptoms does not rectify the fact that it was done in the first place. Withdrawal is not treatment for OUD. *See* Statement of Interest; *see also Henry v. Maue*, No. 06-1439, 2008 U.S. Dist. LEXIS 118627, at *14 (explaining that the intentional refusal to provide any medical treatment is actionable under the Eighth Amendment). Therefore, a reasonable jury could conclude that Defendants Phillips and Withelder were deliberately indifferent to Mr. Strickland's serious medical need.

D. Defendant Tatum is Not Entitled to Qualified Immunity on Mr. Strickland's Constitutional Claim.

Mr. Strickland's claim of inadequate medical care under the Fourteenth Amendment invokes his right as a pre-trial detainee to receive adequate medical care, a right that has long been

established for those who are incarcerated. *See Estelle*, 429 U.S. 97; *Montgomery*, 145 F. App'x at 740 (citing *Hubbard*, 399 F. 3d at 158). The judicially created doctrine of qualified immunity only shields government officials from civil damages liability "if they can show that a reasonable person in their position at the relevant time could have believed, in light of clearly established law, that their conduct comported with recognized legal standards." *E.D. v. Sharkey*, 928 F.3d 299, 306 (3d Cir. 2018); *see Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity does not protect government officials who are "plainly incompetent or . . . knowingly violate the law." *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). Courts apply a non-sequential, two-part test to qualified immunity defenses, asking (1) whether, "[t]aken in the light most favorable to the party asserting the injury, [ ] the facts alleged show the officer's conduct violated a constitutional right," and (2) "whether the right was clearly established, such that it would have been clear to a reasonable officer that his conduct was unlawful." *Peroza-Benitez v. Smith*, 994 F.3d 157, 165 (3d Cir. 2021)[17]; *see Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Defendants bear the burden of establishing they are entitled to qualified immunity, *E.D.*, 928 F.3d at 306, which they can do by showing "[a]n answer in the negative to either prong" of the analysis, *Peroza-Benitez*, 944 F.3d at 165.

As discussed extensively above in Section III.C.3, a reasonable jury could conclude that Defendant Tatum acted with deliberate indifference to Mr. Strickland's serious medical needs. Therefore, we turn our attention to whether Mr. Strickland's right to medical care "was clearly established, such that it would have been clear to a reasonable officer that his conduct was

[17] Although the Lexis version of this opinion identifies it as being non-precedential, this is apparently an error, as the Westlaw version contains no such label, the opinion is reported in the Federal Reporter, and it is identified on the Third Circuit's website as a precedential opinion. *See* http://www2.ca3.uscourts.gov/opinarch/201390p.pdf.

unlawful." *Peroza-Benitez v. Smith*, 994 F.3d 157, 165 (3d Cir. 2021). Again, a reasonable jury could easily conclude that this question must be answered in the affirmative.

It is well-established that an incarcerated person "must rely on prison authorities to treat [their] medical needs; if the authorities fail to do so, those needs will not be met." *Estelle,* 429 U.S. at 103. Consequently, "needless suffering" caused by the denial of medical care without any penological purpose runs afoul of the Eighth Amendment's prohibition of cruel and unusual punishment. *Atkinson*, 316 F.3d at 266. Here, as a pre-trial detainee, Mr. Strickland had an established right not just to medical care that avoided the imposition of suffering that rose to the level of cruel and unusual punishment, but to medical care that avoided the imposition of punishment. *Montgomery*, 145 F. App'x at 740 (citing *Hubbard*, 399 F. 3d at 158).

Furthermore, 45 years ago, in *Norris v. Frame,* the Third Circuit found a possible constitutional violation in a case brought by an individual "already receiving methadone as a qualifying participant in an approved program," where the state "terminated this course of treatment without, as yet, demonstrating a legitimate interest in so doing," a decision that was made by penal authorities rather than the authorized methadone clinic. *Norris*, 585 F. at 1188-89. The Third Circuit then held that "the refusal to allow [a pre-trial detainee] to continue to receive methadone operates to deprive him of a liberty interest without due process of law." *Norris,* 585 F.2d at 1185.

As discussed *supra,* Defendant Tatum enforced a blanket policy against providing medically assisted treatment to incarcerated people with opioid use disorder, even though he knew of the risk of harm and suffering engendered by that policy. SMF ¶ 56. Further, he continued to enforce that policy against Mr. Strickland, even after it was brought to Defendant Tatum's attention that Mr. Strickland was suffering harm as a result of that blanket policy. SMF ¶ 120.

The Third Circuit "takes a broad view of what constitutes an established right of which a reasonable person would have known." *Id.* at 166. "'Officials can still be on notice that their conduct violates established law even in novel factual circumstances' as long as the law gives the officials 'fair warning' that their treatment of the inmate is unconstitutional." *Porter v. Pa. Dep't of Corr.*, 974 F.3d 431, 449 (3d Cir. 2020) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). "If the unlawfulness of the defendant's conduct would have been apparent to a reasonable official based on the current state of the law, it is not necessary that there be binding precedent from this circuit so advising." *Kedra v. Schroeter*, 876 F.3d 424, 450 (3d Cir. 2017) (quoting *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 211 n.4 (3d Cir. 2001)). "A public official does not get the benefit of 'one liability-free violation' simply because the circumstance of his case is not identical to that of a prior case." *Peroza-Benitez v. Smith*, 994 F.3d 157, 166 (3d Cir. 2021) (quoting *Kopec v. Tate*, 361 F.3d 772, 778 (3d Cir. 2004). The Third Circuit has recently reiterated that to be clearly established "it need not be the case that the exact conduct has previously been held unlawful so long as the 'contours of the right' are sufficiently clear." *E. D.*, 928 F.3d at 308 (quoting *Kedra*, 876 F.3d at 450).

In addition to applicable Supreme Court precedent and precedential opinions of the Third Circuit, a "robust consensus of persuasive authorities," including "district court cases, from within the Third Circuit or elsewhere" can clearly establish a right for the purposes of qualified immunity. *Jefferson v. Lias*, 21 F.4th 74, 81 (3d Cir. 2021); *see also Fields v. City of Phila.*, 862 F.3d 353, 361 (3d Cir. 2017); *Doe v. Delie*, 257 F.3d 309, 321 n.10 (3d Cir. 2001). Courts around the country have recognized a constitutional right to continuation of treatment for incarcerated people with opioid use disorder. *See Davis v. Carter*, 452 F. 3d at 695–96 (explaining that failing to provide timely methadone treatment may be a violation of an incarcerated person's Eighth Amendment

rights); *Foelker,* 394 F. 3d 510 (holding that a reasonable jury could conclude that defendants were deliberately indifferent to plaintiff's serious medical needs when they denied plaintiff access to methadone maintenance treatment); *P.G.,* 2021 U.S. Dist. LEXIS 170593 (granting injunctive relief to plaintiff on the basis that failure to treat plaintiff's opioid use disorder with methadone may amount to constitutionally inadequate medical care in violation of the Fourteenth Amendment); *Alvarado*, 22 F. Supp. 3d at 217 (opioid withdrawal "sufficiently serious" to state deliberate indifference claim); *Pesce*, 355 F. Supp. 3d 35 (granting injunctive relief to plaintiff on the basis that failure to treat plaintiff's opioid use disorder with methadone may amount to constitutionally inadequate medical care in violation of the Eighth Amendment); M.C., 2022 U.S. Dist. LEXIS 87339 (granting injunctive relief to an entire class of plaintiffs on the basis that failure to treat plaintiffs' opioid use disorder with agonist medication may amount to constitutionally inadequate medical care in violation of the Eighth Amendment).

Moreover, courts around the country have recognized that enforcing a blanket ban on a specific medical treatment, without regard to an incarcerated person's individual medical needs, is a constitutional violation. *See Keohane v. Fla. Dep't of Corr. Sec'y,* 952 F.3d 1257, 1266-67 (11th Cir. 2020) ("[R]esponding to an inmate's acknowledged medical need with what amounts to a shoulder-shrugging refusal even to consider whether a particular course of treatment is appropriate is the very definition of 'deliberate indifference.'"); *Mitchell v. Kallas*, 895 F.3d 492, 501 (7th Cir. 2018) ("The denial of hormone therapy based on a blanket rule, rather than an individualized medical determination, constitutes deliberate indifference in violation of the Eighth Amendment.") (quoting *Hicklin v. Precynthe*, 2018 U.S. Dist. LEXIS 21516, 2018 WL 806764, at *11 (E.D. Mo. Feb. 9, 2018)); *Roe*, 631 F.3d at 862-63 ("The failure to consider an individual inmate's condition in making treatment decisions is, as we already have concluded, precisely the kind of

conduct that constitutes a 'substantial departure from accepted professional judgment, practice, or standards, [such] as to demonstrate that the person responsible actually did not base the decision on such a judgment.'") (quoting *Sain v. Wood*, 512 F.3d 886, 895 (7th Cir. 2008)); *Chimenti*, 2017 U.S. Dist. LEXIS 124892, at *22 (finding that the state prison system's blanket policy in not providing direct-acting antiviral medication for Hepatitis C to any incarcerated person, without individualized medical determinations, would constitute deliberate indifference to a serious medical need); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 247 (D. Mass. 2012) ("This blanket ban on certain types of treatment, without consideration of the medical requirements of individual inmates, is exactly the type of policy that was found to violate Eighth Amendment standards in other cases both in this district and in other circuits.").

Lastly, when a plaintiff has sufficiently shown deliberate indifference, it is nearly impossible for a defendant to claim qualified immunity, "because deliberate indifference under *Farmer* requires actual knowledge or awareness on the part of the defendant, a defendant cannot have qualified immunity if she was deliberately indifferent." *Beers–Capitol,* 256 F.3d at 143 n.15; *see also Hollihan,* 159 F. Supp. 3d at 513 (stating that "state actors who are the subject of well-pled claims of deliberate indifference cannot invoke qualified immunity at the Rule 12 stage of litigation"); *Carter v. City of Philadelphia,* 181 F.3d 339, 356 (3d Cir.1999) (holding that if plaintiff succeeds in establishing defendants acted with deliberate indifference to plaintiff's constitutional rights, then defendant's conduct was not objectively reasonable and qualified immunity is not available). Here, Mr. Strickland has sufficiently proven deliberate indifference such that a jury could reasonably find the Defendant acted with deliberate indifference. Therefore, based on all of the foregoing reasons, Defendant Tatum is not entitled to qualified immunity.

E. Defendants Are Not Entitled to Summary Judgment on Mr. Strickland's Professional Negligence Claim Under Pennsylvania Law.

Mr. Strickland has sufficient evidence to prove a professional negligence claim against Defendants Christakis, Grady, Phillips, and Withelder.[18] Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances." *Martin v. Evans*, 551 Pa. 496 (1998) (citations omitted). As applied to a medical malpractice claim, the plaintiff must allege: "(1) a duty owed by the physician to the patient; (2) a breach of that duty by the physician; (3) that the breach was the proximate cause of the harm suffered; and (4) the damages suffered were a direct result of the harm." *Toogood v. Owen J. Rogal, D.D.S., P.C.*, 573 Pa. 245, 254 (2003).

Here, Plaintiff has established that opioid use disorder is a chronic medical disease that is treatable, even if it has periods of relapse and remission. SMF ¶¶ 133-136. The standard of care for moderate or severe OUD is methadone or buprenorphine, and it is beneath the standard of care to abruptly stop methadone. The same standard applies to all people whether or not they are in jail. SMF ¶¶ 137-143. To the extent that there is a valid medical reason for stopping methadone, it must be tapered slowly. SMF ¶¶ 145-148. For someone on 170 mg of methadone daily, like Mr. Strickland, this process should take 1-2 years, otherwise removal would cause severe withdrawal within a few days that would last several weeks, with post-acute withdrawal syndrome lasting weeks or months longer. SMF ¶¶ 147-149; 162-164. These symptoms are painful, and can include nausea, vomiting, diarrhea, muscle aches, and headaches, among other symptoms, and are predictable. SMF ¶¶ 162-170. This standard applies regardless of whether someone is taking other

[18] Plaintiff also brought a professional negligence claim against the GEO Group and GEO Secure Services, under vicarious liability. *See Ruta v. Ivy Ridge Pers. Care Ctr.*, 29 Phila. 185, 193 (Pa. Ct. Comm. Pl. March 14, 1995). Defendants did not present any arguments on behalf of the GEO entities disputing this claim.

illicit drugs, because treatment should not be stopped for manifestations of the underlying illness. SMF ¶¶151-153. Furthermore, giving someone with OUD Tylenol with codeine can worsen a person's OUD because codeine is an opioid that is abusable, similar to Vicodin. SMF ¶¶ 154-160.

Defendants all had a duty to provide adequate medical care to Mr. Strickland while he was in their custody, and their actions, or lack thereof, breached that standard of care. They refused to provide methadone to him, by either devising and implementing policies that forbade giving it to him, or by failing to use their own clinical judgment.

Defendant Withelder conducted Mr. Strickland's intake and created his treatment plan that failed to meet the standard of care. SMF ¶¶ 91-96. Defendant Phillips signed off on the intake assessment by Defendant Withelder and failed to review his decision-making, leading to subpar medical care. SMF ¶¶ 98-100. Defendants' argument that they saved Mr. Strickland's life by preventing him from taking large amounts of dangerous opioids, *see* Defs. Mem. of Law at 16, is completely baseless and misguided, and ignores sound medical practice, the findings of the U.S. Department of Justice, and numerous federal courts across the country. Defendants' expert explained it is common practice at jails to verify prescriptions, *see* SMF ¶ 191, but Defendants made no effort to verify Mr. Strickland's prescription. *See* SMF ¶ 93, 101-102, 104; *see also* SMF ¶ 192-194 (Defendants' expert explaining that medically necessary medication might be provided at a jail even if a prescription is not verified).

Defendants argue that Christakis and Grady cannot be liable for a medical malpractice claim because they did not provide medical care to Mr. Strickland. Defs. Mem. of Law at 16. First, Defendant Grady was specifically notified about Mr. Strickland's condition and still personally refused to provide him methadone. SMF ¶¶ 103, 120-122. Defendant Christakis testified that he

frequently interacted with the medical providers in discussing cases (patients) that came up, at least 4 times a week. SMF ¶ 217.

Furthermore, Defendants Christakis and Grady were responsible for developing, establishing, authorizing, and implementing medical policies that fell below the standard of care. SMF ¶¶ 216-225. "[T]o say that one event was a proximate cause of another means that it was not just any cause, but one with a sufficient connection to the result." *Paroline v. U.S.*, 134 S. Ct. 1710, 1719 (2014). It is "a flexible concept" that generally requires a direct relationship between the injury and the injurious conduct. *Id.* Moreover, proximate causation is explained in terms of foreseeability or the scope of the risk created by the predicate conduct. *Id.*

Defendants' purposeful withholding of a necessary medication directly and substantially caused Mr. Strickland to suffer needlessly, and increased his risk of relapse, overdose, and even death. In *Chimenti v. Pa. Dep't of Corr.*, the plaintiff brought a medical malpractice claim against several defendants, including higher level supervisory medical staff who had instituted the medical policy of not providing treatment for people with Hepatitis C. The court permitted the claims to move forward against all the medical defendants, including supervisory staff, finding that sufficient facts had been alleged. No. 15-3333, 2016 U.S. Dist. LEXIS 36682, at *32 (E.D. Pa. March 21, 2016). Similarly, the professional negligence claims should proceed against Christakis and Grady. Their actions in developing and implementing a methadone ban directly caused Mr. Strickland's suffering.

Defendants imply that Dr. Santoro's opinion should not be considered because he has not worked in a correctional facility. Def. Br. at 5. There is no separate standard of care for people in jail or prison. *See Parker v. Corr. Care, Inc.*, No. 3:20-427, 2023 U.S. Dist. LEXIS 53202, at *9 (M.D. Pa. Mar. 28, 2023) (Mannion, J.) ("There is nothing to indicate that the 'standard of care for

the specific care at issue' changes depending upon the setting the care takes place in."). Further, Defendants' own expert stated that medical clinicians in a jail must use their own clinical judgment and apply the standard of care. SMF ¶¶ 194, 196-197. Lastly, Dr. Santoro has worked successfully with a jail system to implement access to methadone. SMF ¶¶ 182-186. At the summary judgment stage, the evidence is not to be weighed but rather viewed in the light most favorable to Plaintiff, and the evidence here is more than sufficient to proceed to trial.

Defendants argue that Pennsylvania's "two schools of thought" doctrine warrants dismissal of this claim. Defs. Mem. of Law at 15. Defendants inexplicably fail to cite a leading Pennsylvania Supreme Court case on this issue, *Jones v. Chidester*, which explains that "there must be a considerable number of physicians, recognized and respected in their field, sufficient to create another 'school of thought'" in order for this to be used as a defense. 531 Pa. 31, 40 (1992).

There are not two schools of thought here. Every major medical organization recommends the treatment of opioid use disorder with medications including methadone, and cautions against abrupt discontinuation, including the CDC, the American College of Physicians, the World Health Organization, the Substance Abuse and Mental Health Services Administration, the American Society of Addiction Medicine, and the National Commission on Correctional Health Care. *See* SMF ¶¶ 198-202; *see also* Ex. 15, Santoro Rep. at 2-5; Exs. 29-37. Defendant's expert report cites nothing to the contrary.[19]

[19] In their brief, Defendants also cite to a document from Narcotics Anonymous, which is not a medical association, and cannot determine the standard of care. Defendants also misrepresent Dr. Santoro's testimony regarding people with opioid use disorder who are not taking medication. Rather, he testified from his experience, that some people with opioid use disorder are not on medically-assisted treatment, but they are at the highest risk of relapse, overdose, and death, and the "odds are they're not going to be successful." SMF ¶172. This includes Plaintiff Strickland, who relapsed after not being on his medication. *Id.*

Lastly, Defendants cite a Pennsylvania statute, making a red herring argument that it is illegal for a jail to have a methadone clinic, and pointing to the licensing restrictions for prescribing methadone. Defs. Mem. of Law at 16. Defendants' argument misconstrues Plaintiff's request and is contradicted by the record in this case. Mr. Strickland does not argue that providers at the jail must prescribe him methadone, but merely that they find a way to provide this medically necessary treatment. It was entirely feasible to provide access to methadone, as evidenced by: (1) the jail's ability to provide methadone to pregnant people at the time Mr. Strickland was incarcerated, either by transporting them to a clinic or jail staff administering a "take-home" dose, SMF ¶¶ 206-207; (2) the ability of other jails in Pennsylvania to provide access to methadone, such as by collaborating with methadone clinics, SMF ¶¶ 181-188; and (3) the fact that George W. Hill currently provides methadone to anyone who was prescribed it prior to their incarceration. SMF ¶ 211. Therefore, Plaintiff Strickland has provided ample evidence in the record that Defendants breached the standard of care, causing Mr. Strickland harm. The medical malpractice claim should not be dismissed.

F. The Factfinder Should Decide Whether Punitive Damages are Imposed.

Punitive damages can be awarded against individual officials or employees when "the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983). While punitive damages are not available to municipalities or governmental agencies, *Newport v. Fact Concerts, Co.*, 453 U.S. 247 (1988), they are available against Defendants GEO Group, GEO Secure Services, Tatum, Christakis, Grady, Phillips, and Withelder, with regard to Mr. Strickland's constitutional and state law claims.

Defendants suggest that Mr. Strickland has failed "to demonstrate wanton, outrageous, reckless, or intentional conduct on the part of the Defendants." Defs. Mem. of Law at 36. However, in the context of punitive damages in a federal civil rights action, "the term 'reckless indifference' refers to the defendant's knowledge that he may be acting in violation of federal law." *Whittaker v. Fayette Cty.*, 65 F. App'x 387, 393 (3d Cir. 2003) (quotations omitted). With regard to punitive damages, "'malice' and 'reckless indifference'…refer not to the egregiousness of [a particular actor's] conduct, but rather to the [actor's] knowledge that it may be acting in violation of federal law." *Alexander v. Riga,* 208 F. 3d 419, 431 (3d Cir. 2000) (citing *Kolstad v. Am. Dental Assoc.*, 527 U.S. 526, 535 (1999)). Similarly, punitive damages may be awarded in a Pennsylvania state law context where a defendant's "conduct [ ] is outrageous, because of the defendant's evil motive **or his reckless indifference to the rights of others**." *Hutchison v. Luddy*, 582 Pa. 114, 121 (Pa. 2005) (quoting *Feld v. Merriam,* 506 Pa. 383, 485 (Pa. 1984) (emphasis added).

As discussed extensively above with regard to Mr. Strickland's constitutional claim, each of the defendants acted with deliberate indifference to Mr. Strickland's serious medical needs in violation of his Fourteenth Amendment right to be free of punishment when they promulgated and enforced their blanket policy against providing medically assisted treatment to incarcerated people with opioid use disorder. Also discussed above with regard to Mr. Strickland's professional negligence claim, each of the defendants breached their duty of care in failing to treat Mr. Strickland's opioid use disorder. An incarcerated person's right to medical care is well-established. The record contains more than ample facts to allow a reasonable jury to decide that Defendants were aware they were violating Mr. Strickland's rights under both federal and state law and that punitive damages are warranted.

G. The Prison Litigation Reform Act Does Not Apply to This Case and Failure to Exhaust is No Basis for Dismissal.

Defendants' argument that Mr. Strickland's case should be dismissed because of his failure to exhaust his administrative remedies pursuant to the Prison Litigation Reform Act (PLRA) flies in the face of clearly on-point and precedential Third Circuit case law.[20] In *Garrett v. Wexford Health*, the Third Circuit held that even if the Plaintiff was incarcerated when the initial complaint was filed, the PLRA **does not apply** if the Plaintiff is not in custody at the time of the filing of the operative complaint. 938 F.3d 69, 91 (3d Cir. 2019) (cert denied May 18, 2020) ("Because [the plaintiff] filed the [third amended complaint] as a non-prisoner, administrative exhaustion was not an appropriate basis for its dismissal."). The operative complaint in this case (the Second Amended Complaint, ECF No. 47) was filed on Dec. 1, 2022, while Mr. Strickland was not in custody. Under *Garrett*, the PLRA and its requirement that an incarcerated person exhaust their administrative remedies before filing a lawsuit, does not apply to this case.

IV. CONCLUSION

For the reasons explained above, Defendants' motion for summary judgment should be denied, and Mr. Strickland's claims should proceed to trial.

[20] Plaintiff's counsel has made Defendants' counsel aware of the Third Circuit's holding in *Garrett* and its applicability to this case on multiple occasions. Nevertheless, Defendants' counsel continues to raise this bad faith and blatantly incorrect legal argument in violation of his obligation of candor with the Court. *See* Fed. R. Civ. P. 11; Pa. Rules of Professional Conduct 3.3(a)(1).

Respectfully submitted,

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DATE: December 20, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAUN STRICKLAND, Plaintiff, v. DELAWARE COUNTY, et al., Defendants.	:	Civil Action No: 21-4141 Judge Michael M. Baylson

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have on this date of December 20, 2023 caused a copy of Plaintiff's Response to Defendants' Motion for Summary Judgment, to be served via ECF upon the following counsel of record:

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