



PENNSYLVANIA INSTITUTIONAL LAW PROJECT

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Via Email and First-Class Mail

Timothy Betti, Warden (bettit@lackawannacounty.org)
India Smith, Health Service Administrator (InSmith@wellpath.us)
Lackawanna County Prison
1371 North Washington Ave
Scranton, PA 18509

Re: Medication for Opioid Use Disorder

Dear Warden Betti and HSA Smith:

On behalf of the Pennsylvania Institutional Law Project (PILP), we are writing regarding the provision of Medication for Opioid Use Disorder (MOUD), specifically methadone and buprenorphine, at Lackawanna County Prison (LCP). We commend LCP for recently taking the very important step of implementing the provision of MOUD to those individuals who were prescribed it prior to their incarceration. However, it is our understanding that this new program only applies to individuals who arrived at the prison after March 2023. We write to urge you to start providing MOUD to all incarcerated people with Opioid Use Disorder (OUD), and as soon as possible.

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. Last year we issued a report regarding the provision of MOUD in Pennsylvania jails and prisons, which we mailed to you. For your convenience, an electronic version of the report is available at www.pilp.org/moud.

Your report at last year's April 2022 Prison Board meeting acknowledges that MOUD "operates to normalize brain chemistry, block the euphoric effects of alcohol and opioids, relieve physiological cravings, and normalize body functions without the negative and euphoric effects of the substance used." It also explains that at point, Lackawanna County Prison was in "Phase I" of implementing MOUD, which consisted of providing medication to incarcerated people who are pregnant. It appears that this program has now moved into a new phase of providing continuation of MOUD.

Unfortunately, this program still leaves out many people who also require MOUD to treat Opioid Use Disorder. Recently, PILP has spoken with several individuals incarcerated at Lackawanna County Prison who have and are experiencing severe consequences as a result of your failure to continue their MOUD. These individuals were all prescribed MOUD prior to their incarceration. This treatment is medically necessary for them, and allowed them to lead more stable and successful lives. They all consistently described the painful experience of withdrawing from their medication while incarcerated, which included severe nausea, vomiting, diarrhea, chills, sweating, body aches, stomach cramps, and dehydration. These individuals all arrived at LCP prior to the recent expansion of the MOUD program.

These individuals also continue to suffer from post-acute withdrawal syndrome. This can last for weeks or months, and typically involves severe discomfort associated with cravings, irritability, and difficulty sleeping. Post-acute withdrawal syndrome also puts individuals at a significantly increased risk of overdose and death. Within the first two weeks after release from incarceration, the risk of death from overdose is 12.7 times higher than for the general population.¹

PILP has also received reports of significant delays in confirming an individual's prescription for those who arrived after the start of the MOUD program. Such delays defeat one of the main purposes of providing MOUD, which is to prevent painful and dangerous withdrawal. If medication is not provided in a timely manner, individuals will experience withdrawal, including all the symptoms described above. These delays are inexcusable. PILP is aware that in other jails and prisons, including the state prison system, the medical department is able to confirm an individual's prescription using Pennsylvania's Prescription Drug Monitoring Program (PDMP), providing them quick access to this information that prevents delay in providing this necessary medication to the patient.

Those who do not have a prescription for MOUD before incarceration also suffer from the same, if not worse, symptoms, and face the same risks of relapse and death upon release. They suffer from the same disease as others who receive treatment in the community, and are entitled to the same treatment while incarcerated. Therefore, Lackawanna County Prison should also implement an MOUD induction program along with a comprehensive MOUD continuation program.

OD has been proven to be especially unresponsive to non-medication-based, abstinence-only treatment, because of the alterations in the brain's biological pathways caused by opioids. Broad consensus in the medical and scientific communities, as well as the National Commission on Correctional Health Care ("NCCCHC") and the National Sheriffs' Association, is that MOUD is necessary to effectively treat OUD. The National Sheriff's Association and NCCCHC 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

¹ Elizabeth Needham Waddell, et al, *Reducing overdose after release from incarceration*, Health & Justice (July 2020), <https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-020-00113-7> (last visited Dec. 15, 2021).

maintenance of a safe and secure facility for inmates and staff,” “reducing costs,” among other benefits.²

Scientific evidence shows that MOUD, in particular agonist MOUD (methadone and buprenorphine), reduces illicit drug use, overdose deaths, and crime. SAMHSA 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

Research also demonstrates that providing MOUD is the best way to eliminate the illicit market for these medications. While use of buprenorphine without a prescription is quite common, the vast majority of people who do so, use it to control the otherwise debilitating symptoms of their OUD, not to get high.⁴ As buprenorphine becomes more available legally, the less likely people are to seek it out illegally.⁵ Therefore, “the potential for diversion as the primary reason for not providing evidence-based treatment is not only counter to public health efforts but also may actually exacerbate the illicit use of these medications.”⁶

It is your duty to provide all those in your custody with adequate medical care. It is well-settled law that the Eighth and Fourteenth Amendments to the United States Constitution impose 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 your 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

² 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>.

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 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/>.

⁵ *Id.*

⁶ Doernberg, Molly, et al., *Demystifying buprenorphine misuse: Has fear of diversion gotten in the way of addressing the opioid crisis?*, 40 *Substance Abuse* 2 (2019), <https://pubmed.ncbi.nlm.nih.gov/31008694/>. See also Wright, Nat, et al., *Addressing misuse and diversion of opioid substitution medication: guidance based on systematic evidence review and real-world experience*, 38 *Journal of Public Health (Oxford)* 3 (2016), <https://pubmed.ncbi.nlm.nih.gov/26508767/> (“One strategy that is not supported by the literature is limiting access to treatment.”)

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

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

Further, the denial of MOUD implicates LCP's obligations under the Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA"). LCP 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 Individuals with OUD are unquestionably individuals with a disability for the purposes of ADA and RA and are entitled to their broad protections.¹¹ Recent guidance from the United States Department of Justice specifically states that failure to continue an incarcerated person on their legally-prescribed MOUD constitutes a violation of the ADA.¹²

Several federal courts have also now required jails to provide MOUD and have found that the failure to do so likely violates the ADA and Constitution.¹³ Your failure to provide individuals with MOUD has already caused people to experience symptoms of painful withdrawal, and your continued denial exposes them to an unacceptable risk of even greater harm, including overdose and death.

We appreciate the effort LCP has made to provide MOUD to some individuals in its custody, but urge you to take necessary further steps **and begin providing methadone and buprenorphine to all those in your custody with OUD, including those who arrived at LCP with a prescription for one of these medications prior to the implementation of the MOUD program, as well as those with OUD but not previously prescribed medication, and do so in a timely manner.**

Given the seriousness of these issues, please respond in writing by June 16, 2023. In your response, please explain how you will address the concerns we have raised here and whether and when you intend to begin providing these medically-necessary prescriptions. Depending on your response, or if we do not receive a response by the appointed time, we will consider the best way to proceed, including potential litigation in federal court.

⁹ See *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998); 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).

¹² U.S. Department of Justice, Civil Rights Division, *The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery* (April 5, 2022), https://www.ada.gov/opioid_guidance.pdf.

¹³ *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").

If you would like to discuss this further, you can reach Sarah Bellos at sbellos@pilp.org or by phone at 215-925-2966.

Thank you for your attention to this matter.

Sincerely,



Sarah Bleiberg Bellos
Attorney



Su Ming Yeh
Executive Director

CC: Honorable James Gibbons (gibbonsj@lackawannacounty.org)
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