

# MAT for Incarcerated Individuals: Case Law Update

Medication-assisted treatment (MAT) is an evidence-based method of treatment for opioid use disorder (OUD), alcohol use disorder, or nicotine use disorder that combines behavioral therapies and medications approved by the Food and Drug Administration (FDA). There are currently three FDA-approved drugs to treat OUD: methadone, naltrexone, and buprenorphine.

Many correctional facilities do not provide access to MAT for OUD for their inmates. Yet, offering MAT in jail or prison can help save lives. Upon release, people with OUD who were not provided MAT often return to using opioids sooner than if treated while in custody. Additionally, people who do not receive OUD treatment generally have reduced tolerance levels, increasing the chance of an overdose. Recently, case law emanating from federal courts has established that policies that categorically prohibit the use of MAT in correctional facilities violate the 8th Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

## 2019

### **Sclafani v. Mici (2019) | United States District Court for the District of Massachusetts**

Before their incarceration in Massachusetts Correctional Institution – Cedar Junction (MCI-Cedar Junction), Joseph Sclafani, Michael Feinstein, and Bret Cappola had each been diagnosed with OUD and prescribed buprenorphine based on their individual medical needs.

MCI-Cedar Junction, a Massachusetts Department of Corrections (DOC) facility, is the only Massachusetts DOC facility that provides MAT for OUD to individuals while they are incarcerated. It is not DOC policy that its correctional facilities must provide MAT. MCI-Cedar Junction policy provides that an incarcerated individual's buprenorphine dose can be no more than 8 mg per day for no more than 90 days.

Consequently, Sclafani, Feinstien, and Cappola's doses were all involuntarily reduced to 8 mg per day when they entered MCI-Cedar Junction. Each individual was also informed that after 90 days, the facility would no longer allow him to access his buprenorphine prescription.

Sclafani, Feinstien, and Cappola filed suit on December 19, 2019, claiming that MCI-Cedar Junction's treatment policy violated the 8th Amendment and the ADA.

On December 23, 2019, the DOC agreed to allow Feinstein and Cappola to continue taking the buprenorphine as prescribed. Because Sclafani had been transferred to another MCI facility that did not provide buprenorphine for the treatment of OUD, the DOC did not agree to permit him to continue his OUD treatment as prescribed. Rather, he would have to be evaluated for transfer back to MCI-Cedar Junction to access his treatment.

### **Smith v. Fitzpatrick (2019) | United States District Court for the District of Maine**

Zachary Smith had been prescribed MAT with buprenorphine for the treatment of OUD. Smith had pled guilty to criminal charges, and is expected to be required to report to prison after his upcoming sentencing.

Smith filed a motion for a preliminary injunction against the Commissioner of the Maine Department of Corrections and the Aroostook County Sheriff. He claimed that the state and county jails' refusal to provide MAT violated the 8th Amendment and the ADA.

The case settled out of court and the Maine Department of Correction's Commissioner Fitzpatrick agreed to provide MAT to Smith.

### **DiPierro v. Hurwitz (2019) | United States District Court for the District of Massachusetts**

Stephanie DiPierro filed suit against the acting director of the Federal Bureau of Prisons. Prior to being sentenced to prison for benefits fraud, DiPierro had been diagnosed with OUD and had been receiving MAT with methadone for many years. She alleged that the Bureau's policy of refusing to provide MAT to non-pregnant inmates violated the 8th Amendment and the ADA.

The case settled out of court and the Federal Bureau of Prisons agreed to administer MAT to DiPierro.

## **Kortlever et. al. v. Whatcom County Jail (2019) | United States District Court for the Western District of Washington at Seattle**

A “class of nonpregnant people who have an OUD and who are incarcerated, or who will be incarcerated in the future, at the Whatcom County Jail in Bellingham, Washington” filed suit against Whatcom County Jail seeking declaratory and injunctive relief. They claimed that the jail’s refusal to provide MAT violated the ADA.

The case settled out of court and the Whatcom County Jail agreed to institute policies allowing inmates to undergo MAT, regardless of whether they were undergoing MAT prior to incarceration.

## **Smith v. Aroostook County (2019) | United States Court of Appeals for the First Circuit**

Brenda Smith had struggled with opioid use since she was eighteen, resulting in loss of employment, stable housing, and custody of her children.<sup>1</sup> She began taking buprenorphine ten years ago after she was diagnosed with OUD and has since regained employment, housing, and custody of her children. Her doctors previously have attempted to taper her treatment without success.

In 2014, Smith was incarcerated for one week during which the jail did not provide access to MAT. She underwent forced opioid withdrawals, which include symptoms such as nausea, vomiting, pain, anxiety, muscle aches, fever, and sweating. She described this as the worst pain of her life.

While she immediately began MAT upon release, her cellmate did not and suffered a fatal overdose. In 2018, Smith was sentenced to forty days in Aroostook County Jail for taking \$40 dollars from the Walmart self-checkout when she noticed another patron had failed to collect their money.

Smith filed a motion for a preliminary injunction against the Aroostook County Jail in the U.S. District Court for the District of Maine to require the jail to administer MAT. She claimed that the jail’s refusal to provide MAT violated the 8th Amendment and the ADA.

<sup>1</sup> Smith v. Aroostook County, 376 F.Supp.3d 146, (D. Maine 2019)

The court granted Smith's motion on March 27, 2019, finding that she would likely suffer irreparable harm if forced to undergo withdrawal and would likely prevail on both claims. It stated:

"[b]ased on the evidence offered by the Plaintiff's experts, the available scientific evidence, and Ms. Smith's medical history, I find that forcing Ms. Smith to withdraw from her buprenorphine would cause her to suffer painful physical consequences and would increase her risk of relapse, overdose, and death."

The court also noted that, because the jail provided MAT for pregnant inmates, it had demonstrated that it could safely administer buprenorphine without high risk of diversion.

Aroostook County Jail appealed to the First Circuit to overturn the preliminary injunction alleging the district court had erred in applying the facts, laws, and otherwise abused its discretion because it did not grant proper discretion to the prison to execute policies to ensure safety, did not consider the impact of MAT on other inmates, and did not consider the economic burden MAT would create.

The First Circuit upheld the district court ruling on April 30, 2019.

## 2018

### **Pitkin v. Corizon Health, Inc. (2018) | United States District Court for the District of Oregon, Portland Division**

Madaline Pitkin was incarcerated in the Washington County Jail in Oregon. During her medical evaluation, she told doctors she had ingested one gram of heroin prior to her arrest and was experiencing withdrawal symptoms. She had not been previously diagnosed with OUD and had not previously received MAT.

Pitkin was placed on a Partial Opiate Withdrawal Protocol consisting of oral doses of hydroxyzine, acetaminophen and promethazine to manage withdrawal symptoms. Over the following seven days, Pitkin's medical condition deteriorated, and she was moved to the Medical Observation Unit. Pitkin was found dead in her cell the next morning.

Pitkin's husband sued the jail's medical services provider, Washington County, and a number of practitioners who worked at the Washington County Jail where Pitkin was incarcerated. He alleged that the jail's medical policies did not provide adequate medical staff, screenings, or treatment access for its patients and that Ms. Pitkin died as a direct result of those policies.

The case settled out of court and the jail's medical service provider agreed to pay \$10 million.

## **Pesce v. Coppinger (2018) | United States District Court for the District of Massachusetts**

Before receiving methadone treatment, Geoffrey Pesce had struggled with a heroin and oxycodone addiction for many years, which ultimately resulted in his loss of employment, custody of his son, and his driver's license. Pesce began receiving a daily dose of methadone, which, for two years, prevented him from relapsing and helped to get his life back on track.

Because methadone may only be dispensed in highly controlled environments, his parents drove him daily to the clinic – until one day Pesce's mother was unexpectedly unable to drive him to his treatment. Fearing relapse after even one missed dose, Pesce drove himself without a license, was pulled over for going six miles above the speed limit, charged with driving with a suspended license, and sentenced to the mandatory minimum of 60 days in jail in Essex County, Massachusetts.

Pesce filed a motion for a preliminary injunction against the Essex County Jail in the U.S. District Court for the District of Massachusetts. He claimed that the jail's refusal to provide MAT violated the 8th Amendment and the ADA.

The Essex County Jail prohibited MAT, claiming that it was dangerous and posed a high diversion risk. It instead required managed withdrawal.

The court granted Pesce's motion on November 26, 2018, stating that forced withdrawal from MAT would likely cause him irreparable harm and that he would likely prevail on both the 8th Amendment and ADA claims. The court found that:

- The Essex County Jail likely violated the 8th Amendment's prohibition on deliberate disregard for delayed or inadequate medical treatment by denying Pesce access to MAT even though it had actual knowledge that Pesce had OUD and that there was no viable treatment alternative to methadone for him because previous treatments had not worked for him.
- The court also found that Pesce would likely prevail on his ADA claim because OUD qualified as a disability under the ADA and the jail withheld MAT from all inmates with OUD based on generalized safety concerns, rather than a specific evaluation of the patient.