IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Keith Rogers, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 15-cv-11632
-vs-	)	
	)	(*Judge Chang)*
Sheriff of Cook County and Cook County,	)	
	)	
	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO DEFENDANTS' RULE 56.1(a)(2) STATEMENT

Plaintiffs, by counsel and pursuant to Local Rule 56.1(b)(2), submit the following response to the Local Rule 56.1(a)(2) Statement of defendants Sheriff of Cook County and Cook County (ECF No. 276):

1. Plaintiffs Keith Rogers, James Hill, and Wanda Hollins are each individuals [a] who were detained in the Cook County Department of Corrections (CCDOC) between September 2013 and February 2014, and [b] each was legally prescribed Medication for Opioid Use Disorder (MOUD) at the time of their admission. Plaintiffs' Second Amended Complaint, Dkt. 133 at ¶¶ 2, 17-25.

RESPONSE: [a] Admit.

[b] Objection to ambiguous phrasing. Admit that each plaintiff had been legally prescribed medication for opioid use disorder before admission to the Cook County Jail. Deny that any of the named plaintiff was prescribed MOUD on entry to the Jail:

Rogers entered the Jail on January 20, 2014, was prescribed methadone by a jail physician on January 21, 2014, and received his first dose of methadone on January 26, 2014. Plaintiffs' Exhibit 1, Methadone Referral Form; Plaintiffs' Exhibit 2, Rogers Methadone Prescription; Plaintiffs' Exhibit 3, Methadone Dosing History.)

Hill entered the Jail on December 23, 2013 (Plaintiffs' Exhibit 4, Methadone Referral Form) was prescribed methadone by a jail physician on December 25, 2013 (Plaintiffs' Exhibit 5, Methadone Prescription), and received his

first dose of methadone on December 25, 2013. (Plaintiffs' Exhibit 6, Methadone Dosing History.)

Hollins entered the Jail on September 12, 2013 (Plaintiffs' Exhibit 7, Jail Intake Records), was prescribed methadone by a jail physician on September 20, 2013 (Plaintiffs' Exhibit 8, Methadone Prescription), and received her first dose of methadone on September 20, 2013. (Plaintiffs' Exhibit 9, Methadone Dosing History.)

2. The Court has certified this case as a class action, with two subclasses that after redefinition are defined as follows:

a. Class 1 (Pretrial Detainees) comprises all pretrial detainees who(1) entered the Cook County Jail between December 23, 2013 and July 1, 2017, inclusive and (2) opted out of, or are otherwise excluded from, participation in Parish v. Sheriff, 07-cv-4369; and were, at the time of entry into the Jail, lawfully taking an opioid antagonist, as defined in 42 C.F.R. 8.12(h)(2), who were not then on parole or held on a warrant from another jurisdiction, who were not pregnant, and who received more than one does of methadone while detained;

b. Class 2 (Post-sentence Prisoners) comprises all post-sentencing prisoners who (1) entered the Cook County Jail between December 23, 2013 and July 1, 2017, inclusive and (2) opted out of, or are otherwise excluded from, participation in Parish v. Sheriff, 07-cv-4369; and were, at the time of entry into the Jail, lawfully taking an opioid antagonist, as defined in 42 C.F.R. 8.12(h)(2), who were not then on parole or held on a warrant from another jurisdiction, who were not pregnant, and who received more than one dose of methadone while detained.

Dkt, 243 at 14-15.

RESPONSE: Admit.

3. Thomas Dart at all times relevant to this case was the Sheriff of Cook County. Dkt 135 at ¶ 4.

RESPONSE: Admit.

4. Cook County, in coordination with Sheriff Dart, is responsible for the provision of medical services within the CCDOC. Dkt 138 at ¶ 6.

RESPONSE: Admit.

5. [a] Plaintiff alleges claims under 42 USC § 1983 and the Fourteenth and Eight Amendments as to the Class Plaintiffs and [b]

under Americans with Disabilities Act, 42 U.S.C. § 12132 and Rehabilitation Act, 29 U.S.C. § 794(a) with regard to the individual Plaintiffs. Dkt. 133 at ¶ 1. Jurisdiction is proper under 28 U.S.C. § 1331 and § 1343.

RESPONSE: [a] Admit.

[b] Disputed. Plaintiffs Rogers and Hollins bring individual claims under 42 U.S.C. § 1983 for delay in continuation of methadone following their admission to the Cook County Jail. (ECF No. 133, Second Amended Complaint, ¶¶ 29-34.) Plaintiffs did not seek class certification on this claim. (ECF No. 153 at 8 n.12.)

6. All events occurred in this District, and therefore venue is proper pursuant to 28 U.S.C. §1391(b). Dkt 133.

RESPONSE: Admit.

7. "Opioid Use Disorder (OUD) is a problematic pattern of opioid use that causes significant impairment or distress." Preventing Opioid Use Disorder, Ctrs. Disease Control (May 8, 2024), www.cdc.gov/overdose-prevention/prevention/preventing-opioid-use-disorder.html

RESPONSE: Admit.

8. Treatment for OUD can include medications, counseling, and psychosocial support. Id.

RESPONSE: Admit.

9. The medications used in treatment are collectively referred to as Medications for Opioid Use Disorder (MOUD). Id. There are three approved medications for the treatment of OUD: methadone, buprenorphine, and naltrexone. Dep. of Jasdeep Mangat, at 60:5-16.

RESPONSE: Admit.

10. Naltrexone, brand name Vivitrol, is a full opioid antagonist. Mangat Dep at 67:1. It works by fully blocking the opioid receptors in the body to prevent opioids from binding to them. Mangat Dep at 67:1-6.

OBJECTION: Naltrexone is not relevant to this lawsuit. Without waving this objection: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

11. Buprenorphine is a partial opioid agonist. Mangat Dep at 64:20-65:12. It binds to opioid receptors in the body. Mangat Dep at 65:7-12. However, it has a ceiling effect, which prevents the euphoric "high" that many illicit opioids or full opioid agonists

may produce. Mangat Dep at 64:20-65:6; Dep. of Adeyemi Fatoki at 18:16-19:1.

OBJECTION: Buprenorphine is not relevant to this lawsuit: Without waving this objection: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

12. [a] Methadone is a long-acting opioid that acts as a full agonist. Mangat Dep at 60:17- 19, 64:21-23. [b] It binds to the same receptors that other opioids do and acts on them similarly. Fatoki Dep at 18:1-8. [c] However, because of its long half-life, correct dosing can eliminate withdrawal symptoms and cravings for illicit opioids without producing euphoria or sedation. Mangat Dep at 60:20-61:5.

RESPONSE: [a] Disputed that methadone is "long-acting." (Plaintiffs' Exhibit 10, Dr. Mangat Rebuttal Report at 1: "The medical literature states that the half-life of methadone varies depending on the individual, ranging from 5 to 130 hours with a mean value of around 22 hours."

[b] Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019)..

[c] Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019)..

13. Prescribing buprenorphine requires a physician to obtain special certification and waivers from oversight organizations. Fatoki Dep at 30:15-31:5. Not all doctors are able to prescribe buprenorphine. Fatoki Dep at 30:4-19.

OBJECTION: Buprenorphine is not relevant to this lawsuit: Without waving this objection: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

14. Methadone generally must be dispensed from a licensed Opioid Treatment Program (OTP). Fatoki Dep at 38:18-39-1.

RESPONSE: Admit.

15. Licensing for OTPs involves obtaining certification from both state and federal oversight agencies. Fatoki Dep at 20:12-21-5, 49:2-50:2; Dep. of Stamatia Richardson at 19:2-13. The certification involves a review of the written policies of the OTP as well as site visits to the program facilities by an accrediting agency. Fatoki Dep at 60:20-61:2; Mangat Dep at 51:2-18.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

.

16. Among the reasons that methadone in particular is so highly regulated are the risk of abuse and the danger of potential overdose. Fatoki Dep 65:2-22.

OBJECTION: Plaintiffs' expert, Dr. Fatoki is not competent to answer why methadone is highly regulated. Without waiving this objection, DISPUTED because the contention is not supported by the cited excerpt of Dr. Fatoki's deposition:

Question: And what's your understanding of why you need to confirm the level of dosage and the date of last dosage prior to administering methadone at an OTP facility?

Dr. Fatoki: I mean, again, that's something you have to do at all OTPs. It's not restricted just to jails. But the reason we do that is to make sure that you don't overdose a patient. Methadone, I mean, it's a very good drug. It works very well, but in the wrong hands, it can be misused, and people can overdose from it. So a lot of people overdose while you're inducing them on methadone, when you first start it. So that's why it's highly regulated.

So, I mean, I have to verify with other OTPs when I have a new patient coming in, because if they haven't taken the – if someone, for example, hasn't taken methadone or any medication in a week, and you give them the same high does they were on, the risk of overdose if pretty high. You know, but if you verify the does, and they are still on it, then they have more tolerance to medication.

(Plaintiffs' Exhibit 12, Complete Deposition of Dr. Fatoki, 60:20-61.5.)

17. MOUD, also known as Medication Assisted Treatment (MAT) can be used for maintenance therapy of patients with OUD or may be part of supervised withdrawal off of opioid medications. Fatoki Dep at 42:23-43:4.

RESPONSE: Disputed as not supported by the cited material. Dr. Fatoki did not testify that MOUD "may be part of supervised withdrawal."

Question: And are some people on maintenance medication indefinitely?

Dr. Fatoki: Yes.

Q: And are some gradually taken off the medication?

Dr. Fatoki: Yes.

(Plaintiffs' Exhibit 12, Complete Deposition of Dr. Fatoki, 42:23-43:4.)

18. The use of MOUD for detoxification or medically supervised withdrawal from opioids is a well-recognized treatment protocol. Fatoki Dep at 101:5-102:20.

RESPONSE: Disputed. Dr. Fatoki, in the cited portion of his deposition, stated that detoxing is not "the proper treatment." (Plaintiffs' Exhibit 12, Fatoki Dep. 101:5-13.)

19. The availability of MOUD in correctional facilities during the class period was extremely limited and remains limited to this day. Richardson Dep at 20:16-22; Fatoki Dep 128:9-130:1; Mangat Dep at 70:19-71:19.

RESPONSE: Disputed. When deposed on May 10, 2018, Dr. Richardson stated that she did not know the percentage "of facilities that hold pretrial detainees [that] have an OTP program." (Plaintiffs' Exhibit 13, Richardson Dep. 21:7-10, Plaintiffs' Exhibit 15.) Dr. Fatoki stated that he did not "have a specific number" of jails that provided "some sort of methadone treatment," estimated that the number was "five percent of correctional facilities," and stated that "the numbers have been going up since [2013], as people are starting to realize that it's probably more economical and safer for the patients and for the community as a whole to provide treatment." (Fatoki Dep. 127:3-128:3, Plaintiffs' Exhibit 12.) Dr. Mangat stated that he did not "know roughly how many" jails offered methadone programs (Plaintiffs' Exhibit 11, Mangat Dep. 70:19-71:2), agreed that the number was "less than 50 percent" and offered the "best guess" that "it's less than 20 percent." (*Id.*, Mangat Dep. 71:3-12.) Dr. Mangat agreed that the number of jails offering methadone had increased since 2013, but could only guess about the size of the increase. (*Id.*, Mangat Dep. 71:13-24.)

20. Many jails and prisons are resistant to offering MOUD in their facilities for a variety of reasons including stigmas and attitudes around addiction, lack of resources, and security concerns. Mangat Dep at 70:5-18; Fatoki Dep at 126:19-127:19.

RESPONSE: Disputed. This contention is not supported by the cited material. Dr. Mangat did not offer any opinion about reasons why jails and prisons may be resistant to offering MOUD in the cited excerpt of his deposition; his testimony at page 70 consists of his opinion about "limitations on providing MAT's in jail that are different from limitations in the community." (Plaintiffs' Exhibit 11, Mangat Dep. 70:1-18.) Dr. Fatoki likewise did not offer any opinions about why jails and prisoner may be resistant to offering MOUD. The question at page 126, line 19 of Dr. Fatoki's deposition is, "Would you agree with me that it requires a lot of resources to make those

sort of analyses, determining which detainees are going to be sentenced to prison time, and which ones will not?" After Dr. Fatoki answered this question by stating that the analyses would not take a lot of resources, the examination turned to Dr. Fatoki's experience working in a correctional system that did not have an OTP program. (Plaintiffs' Exhibit 12, Fatoki Dep. 127:3-128:2.)

21. Providing medications like methadone in a correctional environment provides a unique set of challenges for an already highly controlled substance, including requiring a secure area for storage of the medication and a secure area to dispense the medication, medical and correctional staff availability in getting the medication to detainees, and risk of diversion or abuse of the medication by detainees. Fatoki Dep at 97:3-98:1; Mangat Dep at 70:6-18.

RESPONSE: Disputed. This contention is not supported by the cited material. Dr. Fatoki answered questions about "any limitation on provid[ing] medication assisted treatment in a jail" and answered that the "biggest thing is the stigma that's associated with it … there may be staffing issues … and also with security." (Plaintiffs' Exhibit 12, Fatoki Dep. 97:3-14.) Dr. Fatoki then answered a question about security issues in a jail. (*Id*, 97:15-98:1.) Dr. Mangat stated that the "biggest limitation is, for one, getting all of the jail and prisons in the system to offer medication assisted treatment." (Plaintiffs' Exhibit 11, Mangat Dep. 70:5-9.) Dr. Mangat continued: "The second limitation is being that the individuals are incarcerated or detained, having to do daily observed therapies for every individual … while dealing with the challenges of housing, escorting patients to get their medication, to go see medical, alarms that might be going off during these circumstances …" (*Id.* at 78:10-18.)

22. [a] No jail in the state of Illinois other than CCDOC provides methadone to detainees, [b] nor does the Illinois Department of Corrections state prison system. Fatoki Dep at 124:21-24; Mangat Dep at 94:23-95:24.

RESPONSE: [a] Disputed. The cited materials are to the deposition testimony of plaintiffs' subject matter experts. Dr. Fatoki answered "I don't believe there are any." (Plaintiffs' Exhibit 12, Fatoki Dep. 124:21-125:7.) Dr. Mangat qualified his answer to the same question "as far as my understanding." (Plaintiffs' Exhibit 11, Mangat Dep. 95:17-24.) A report of the Illinois Criminal Justice Information Authority, published in 2018, found that 8% of the 36 Illinois jails responding to a survey reported that they offered methadone to detainees. (Plaintiffs' Exhibit 14, ILCJAI, *Addressing Opioid Use*

Disorders in Corrections: A Survey of Illinois Jails (September 18, 2018) at 7.)

[b] Admit.

23. During the class period, less than five percent of correctional institutions provided any MOUD treatment to detainees. Richardson Dep at 20:16-22; Fatoki Dep 128:9-130:1.

RESPONSE: Disputed. After stating that "Only about 1 percent of correctional facilities have an OTP [opioid treatment program]," (Plaintiffs' Exhibit 13, Richardson Dep. 20:19-20), Dr. Richardson stated that she "may not have counted how many OTP programs there are in the country" (*Id.* at 21:19-20) and that she did not know how many facilities holding pre-trial detainees offered OTP programs in 2018. (*Id.* at 22:5-23-1.) Nor did Dr. Richardson know how many pretrial detention facilities offered OTP programs in 2014. (*Id.* at 22:18-21.) Dr. Richardson stated that these numbers were ascertainable, but she had never counted them. (*Id.* at 23:2-12.) Nothing in the cited excerpt of Dr. Fatoki's deposition supports this contention: Dr. Fatoki did know a "specific number" of jail that offered methadone treatment. (Plaintiffs' Exhibit 12, Fatoki Dep. 128:9-14.)

24. No expert presented by Plaintiffs is aware of any correctional facility where all patients who were admitted with a prescription for MOUD were maintained on their pre-incarceration dose during the class period. Fatoki Dep at 138:23-139:16; Mangat Dep at 142:9-12.

OBJECTION: Plaintiffs did not attempt to present any expert opinion testimony on this issue and no inference should be drawn from plaintiffs' trial strategy. Without waiving this objection: DISPUTED. Methadone maintenance was first employed at New York Riker's Island Jail in 1987. Plaintiffs' Exhibit 15, excerpt from Robert B. Greifinger, *From Public Health Behind Bars from Prisons to Communities*, (2007), at 391).

25. The Cermak OTP maintained its certification from all relevant bodies throughout the class period. Mangat Dep at 42:8-16.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

26. [a] As part of the accreditation, the OTP maintained written policies which were reviewed and approved at the federal level by the Substance Abuse and Mental Health Services Administration (SAMHSA) and at the state level by the Division of Substance Use Prevention and Recovery (SUPR). [Footnote omitted.] Mangat Dep at 40:12-22, 49:7-15; Richardson Dep at 19:2-8; Fatoki Dep at 33:1-5. [b] Because the OTP was within a correctional institution,

accreditation was performed by the National Commission for Correctional Healthcare (NCCHC). Mangat Dep at 40:12-22, 50:11-20, 52:14-53:4.

OBJECTION: That the written policies may have been reviewed and approved is not relevant to the constitutional questions in this case. *Thompson v. City of Chicago*, 472 F.3d 444, 453-55 (7th Cir. 2006); *Gomez v. City of Chicago*, No. 13 C 05303, 2015 WL 13651138, at *10 (N.D. Ill. June 29, 2015). Without waiving this objection:

[a] Disputed. This contention is not supported by the cited material. Dr. Mangat did not testify about any review of written policies in the cited portions of his deposition, stating only that to obtain certification, the Jail had "to submit their written policies." (Plaintiffs' Exhibit 11, Mangat Dep. 49:7-10.) Dr. Richardson named the accrediting bodies, but did not testify about approval of policies. (Plaintiffs' Exhibit 13, Richardson Dep. 19:2-8.) Dr. Fatoki answered questions about the licensure of his present employer, Great Heights QTP, at the cited section of his deposition. (Plaintiffs' Exhibit 12, Fatoki Dep. 32:18-33:6.)

[b] Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

27. During the class period, the CCDOC was certified by the DEA and DASA as a detoxification facility. Richardson Dep at 59:16-60:15; OTP Certification Documents, Bates Stamped 010349-53.

OBJECTION: That the written policies may have been reviewed and approved is not relevant to the constitutional questions in this case. Thompson v. City of Chicago, 472 F.3d 444, 453-55 (7th Cir. 2006); Gomez v. City of Chicago, No. 13 C 05303, 2015 WL 13651138, at *10 (N.D. Ill. June 29, 2015). Without waiving this objection: Disputed. This contention is not supported by the cited excerpt of Dr. Richardson's deposition, which described exhibits. The "OTP Certification Documents" submitted as Defendants' Exhibit H show a DEA certification for Detoxification for August 5, 2015 through August 5, 2016 (ECF No. 276-8 at 2), an email from SAMHSA certifying the opioid treatment program through March 31, 2017 (ECF No. 276-8), and a license from the State of Illinois Department of Human Services for "Detox Ambulatory or Clin. Manag. Methadone used as Adjunct to Tx" valid from December 1, 2013 through November 30, 2016.

28. SAMHSA and the NCCHC each had protocols during the class period specifically relating to detoxification facilities or tapering/medically supervised withdrawal protocols. Richardson Dep at 58:8-59:20; Fatoki Dep at 66:21-67:18, 137:7-17.

OBJECTION: That the written policies may have been reviewed and approved is not relevant to the constitutional questions in this case. *Thompson v. City of Chicago*, 472 F.3d 444, 453-55 (7th Cir. 2006); *Gomez v. City of Chicago*, No. 13 C 05303, 2015 WL 13651138, at *10 (N.D. Ill. June 29, 2015). Without waiving this objection: Disputed. This contention is not supported by the cited material. The cited materials do not support the existence of any "protocols," i.e., a "system of rules." Dr. Richardson described SAMHSA as requiring an individualized treatment plan, mental health programming, and urine toxicology screens. (Plaintiffs' Exhibit 13, Richardson Dep. 59:5-60:15.) Dr. Richardson stated that there is nothing else in the SAMHSA standards or the NCCHC guidelines that "speaks to tapering." (*Id.*, Richardson Dep. 63:4-14.) Nothing in the deposition testimony of plaintiffs' expert Dr. Fatoki supports the existence of a withdrawal protocol in either the SAMHSA or NCCHC guidelines. In addition, the best evidence of what is in the SAMHSA and NCCHC rules are the rules themselves, which defendants do not include in their summary judgment submission.

29. [a] During the relevant class period, it was the policy of the Cermak OTP that upon arrival, any detainee who had a prescription for methadone would need to have their dose verified with the previous methadone provider before receiving their first dose. Richardson Dep at 70:7-71:12. [b] This is not unique to Cermak but is a standard precaution any time a patient transitions between OTPs. Fatoki Dep at 64:18-66:9. [c] If the strength and timing of the previous dose are not verified, there is a risk that providing a patient with methadone could lead to a dangerous and potentially fatal overdose. Richardson Dep at 69:5-70:16, 109:17-111:12.

RESPONSE: [a] Disputed as to "had a prescription for methadone." This suggests that methadone was only available to persons who arrived at the Jail with a prescription in their possession. The policy required the Jail to verify active enrollment in a methadone program by contacting the program. (Plaintiffs' Exhibit 16 at 3, Cermak Police G-06.1, Opioid Treatment Program, 2012, Section B.4.b.)

[b] Disputed. Dr. Fatoki referred in his expert report (Plaintiffs' Exhibit 21 at 3) to 21 CFR 1306.07(b), which allows for the emergency administration of methadone for up to three days "while arrangements are being made for referral for treatment." This regulation provides, in pertinent part, as follows:

> (b) Nothing in this section shall prohibit a practitioner … from dispensing (but not prescribing) narcotic drugs … for the purpose of initiating maintenance treatment or detoxification treatment (or both). Not more

> than a three-day supply of such medication may be dispensed to the person or for the person's use at one time while arrangements are being made for referral for treatment. Such emergency treatment may not be renewed or extended.

21 CFR 1306.07(b)

[c] Disputed. This contention is not supported by the cited material. Dr. Richardson's deposition testimony at 69:5-70:16 relates to the delay in providing the first dose of methadone after arrival at the jail; her testimony at 109:17-111:12 is about the general benefits and dangers of methadone, without any mention of potential dangers of providing methadone before verifying dosage.

30. [a] Cermak's OTP policy during the class period stated that any opioid-dependent pregnant detainee *could* be maintained on a consistent maintenance dose of methadone during the pregnancy. Fatoki Dep at 75:1-14. [b] This is due to the possibility of additional risk to the fetus. Fatoki Dep at 76:18-77:8. (emphasis added)

RESPONSE: [a] Disputed. The policy was to provide for the "maintenance of pregnant women who are opioid-dependent for the duration of their pregnancies, with detoxification to follow delivery." (Plaintiffs' Exhibit 16 at, Cermak Policy #G-06.1 (July 2, 2012).

[b] Disputed. Fatoki, one of Plaintiffs' experts, lacks personal knowledge of why the policy was adopted and is therefore not competent to testify about this issuel.

31. Cermak's policy during the class period [a] stated that any non-pregnant detainees would be tapered from their initial dose of methadone down to zero in a linear taper, with a physician determining the rate of taper [b] but never reducing the dose by more than seven milligrams per day. Fatoki Dep at 76:8-17; 85:1-4.

RESPONSE: [a] Disputed. The policy mandated "a linear taper to zero, with daily doses decreasing at an integer rate proportional to initial dose, starting at the verified prior dosage and decreasing not more than 7 mg each day." (Plaintiffs' Exhibit 16, Methadone Policy at 4, Procedure, Section 6(h).

[b] Admit.

32. The policy also called for follow up review of the patient's symptoms including scheduling at least two follow up visits and allowed a physician to adjust or pause a taper depending on how the patient was tolerating the tapering. Fatoki Dep at 86:8-14; OTP Policy G06.1 (Ex. 5 to Fatoki Dep).

RESPONSE: Disputed. Dr. Fatoki disagreed with this contention in the cited portion of his deposition:

Question: So would you agree with me that this policy allows for a physician to provide an individualized assessment of inmates and their rate of taper?

Dr. Fatoki: I mean, not really, because again, it's not saying how often they need to be assessed. Because if you look at the top one, it says they will schedule at least one program – appointment, at least one appointment. And then, you know, I believe from the deposition and the records that I reviewed, it looks like those are not being done regularly. There is no set schedule

Plaintiffs' Exhibit 12, Fatoki Dep. 86:15-87:1.

33. Both at intake into the CCDOC and during follow up appointments with the OTP, the policy instructs medical providers to "prescribe non-opioid medications for relief of withdrawal symptoms, as needed" and "[a]ssess for symptoms and signs of active opioid withdrawal and treat as needed." OTP Policy G06.1 (Ex. 5 to Fatoki Dep).

RESPONSE: Admit.

34. Patients in the OTP can also request to see a provider by submitting a health request form at any time if they do not have an upcoming appointment. Fatoki Dep at 87:2-11.

RESPONSE: Disputed. Dr. Fatoki explained at his deposition that he did not know the answer to this question:

Question: Do you know how a detainee at Cook County Jail is able to access a physician?

Dr. Fatoki: I don't recall if – I don't – I think they have to put in a request from the depositions, but I'm not sure how quickly the request gets sent over.

Question: Okay. So it is your understanding, though, that detainees can seek an appointment with a physician at Cook County Jail?

Dr. Fatoki: Yes. They can – I know they can request an appointment.

Plaintiffs' Exhibit 12, Fatoki Dep. 87:2-11

35. [a] The CCDOC OTP offers mental health programming to patients. Richardson Dep at 59:21-60:12. [b] Providing counseling is a key aspect of treating OUD and is required in order to run an OTP. Fatoki Dep at 153:8-14.

RESPONSE: [a] Disputed. This contention is not supported by the cited material. Dr. Richardson did not say that the Jail offers mental health programming, but stated "We have to have mental health programming for our patients." (Plaintiffs' Exhibit 13, Complete Deposition of Dr. Richardson, 60:11-12.)

[b] Disputed. This contention is not supported by the cited material. Dr. Fatoki stated that counseling "is a requirement to run an OTP program," and that he does not know what kind of counseling program "are available to people that are accepted to the OTP at Cermak." (Plaintiffs' Exhibit 12, Fatoki Dep. 153:8-18.)

36. The policy also allowed physicians to seek a waiver to maintain an individual detainee on their full dose of methadone as continuous maintenance therapy if they believe that the situation warranted it. Fatoki Dep at 87:12-88:1.

RESPONSE: Admit.

37. [a] Across the board tapering ended in the CCDOC OTP in July 2017 [b] because new grant money became available to help administer the program. Richardson Dep at 38:13-39:9.

RESPONSE: [a] Disputed. The data produced by defendants and summarized in Plaintiffs' Exhibit 17, show that all incoming detainees, other than two presumably pregnant persons, were tapered in July of 2017.

[b] Disputed. This contention is not supported by the cited portion of the deposition of Dr. Richardson. In addition, Dr. Richardson was unable to explain why a grant was required to determine how long persons serving misdemeanor sentences would be at the Jail, stating that the Sheriff had been unable to provide her with information about the length of sentence being served by persons in custody following conviction. (Plaintiffs' Exhibit 13, Richardson Dep. 86:20-88:3.)

38. Plaintiffs allege that "each plaintiff experienced painful withdrawal symptom, [sic] including anxiety, chills, muscle pain (myalgia) and weakness, tremor, lethargy and drowsiness, restlessness and irritability, nausea and vomiting and diarrhea." Dkt 133 at ¶ 37.

RESPONSE: Admit.

39. Plaintiffs allege that these symptoms are common to the class of Plaintiffs in this case. Dkt 133 at ¶ 38.

RESPONSE: Admit

40. Plaintiffs allege that many patients (approximately 35%) will leave the jail within three weeks. Dkt 133 at ¶ 16. Plaintiffs further allege that a substantial portion of patients leave the jail before they have been fully tapered off of MOUD. Dkt 133 at ¶ 40.

RESPONSE: Admit

41. Plaintiffs acknowledge that they were treated for withdrawal symptoms with non-opioid medications prior or in addition to receiving MOUD. Dep. of Keith Rogers at 30:17-24, 43:19-22; Dep. of Wanda Hollins at 54:12-23. These included medications for nausea and diarrhea, among others. Rogers Dep at 30:17-24, 43:19-22; Hollins Dep at 54:12-23.

RESPONSE: Disputed. Plaintiff Rogers was given a shot of "something" to subdue withdrawal symptoms—no mention of other treatment. (Plaintiffs' Exhibit 18, Rogers Dep at 30:17-24.) Plaintiff Hollins was given "some green stuff" and some pills for nausea and diarrhea. (Plaintiffs' Exhibit 19, Hollins Dep at 54:12-23. Plaintiff Hill did not testify at his deposition about treatment for withdrawal symptoms. Plaintiffs' Exhibit 20, Hill Deposition.)

42. Dr. Stamatia Richardson, called by Defendants as an expert, served as the Medical Director of the CCDOC OTP throughout the class period. Richardson Dep at 7:5-7.

RESPONSE: Admit.

43. Dr. Richardson graduated from medical school in 1990 and at the time of her deposition in May 2018 she had been employed as a physician with Cook County for approximately 25 years. Richardson Dep at 6:6-10.

RESPONSE: Admit.

44. Dr. Jasdeep Mangat, retained by Plaintiffs as an expert, graduated from medical school in 2014. Mangat Dep at 13:12-15.

OBJECTION: This contention is relevant only to Dr. Mangat's credibility and is thus improper on summary judgment. Without waving this objection: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

45. Among his most relevant experience, after completing his residency in October 2017 (shortly after the close of the class period), Dr. Mangat began working at Rikers Island. Mangat Dep at 17:6-11. He became the deputy medical director for the OTP program in that facility in approximately July 2018, then the medical director of the program in January 2020, before leaving Rikers Island in September 2021. Mangat Dep at 19:2-7, 24:3-17.

OBJECTION: This contention is relevant only to Dr. Mangat's credibility and is thus improper on summary judgment. Without waving this objection: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

46. Dr. Mangat believes that the Rikers Island OTP under his direction violated the standard of care that he advocates adopting. Mangat Dep at 116:10-117:14.

OBJECTION: This is an apparent attempt to challenge Dr. Mangat's credibility, which is not material on defendants' motion for summary judgment. Moreover, this contention is not supported by the cited testimony. Dr. Mangat stated that tapering a detainee off methadone before they were transferred to a serve a sentence was a violation of the standard of care; Dr. Mangat did not state that the entire OTP program at Rikers violated the standard of care.

47. Dr. Adeyemi Fatoki, retained by Plaintiffs as an expert, graduated from medical school in 1990 and received a master's degree in addiction studies in 2011. Fatoki Dep at 11:22- 23, 15:5-10.

RESPONSE: Admit.

48. He is now self-employed running two OTP locations but has previous experience in a number of correctional healthcare roles. See, e.g., Fatoki Dep at 19:2-22, 21:14-20.

RESPONSE: Admit.

49. Dr. Fatoki concedes that at least some of the facilities that he worked at or oversaw during the class period (and later) violated the standard of care that he advocates adopting. Fatoki Dep at 108:15-109:19, 123:12-19.

OBJECTION: This is an apparent attempt to challenge Dr. Fatoki's credibility, which is not material on defendants' motion for summary judgment. Moreover, this is an inaccurate summary of the deposition testimony of Dr. Fatoki, who did not "concede" having violated the standard of care. Dr. Fatoki testified "Sometimes, I was not [able to treat patients in compliance with this standard [of care]] because of the restrictions there, but it's not for not trying…" (Plaintiffs' Exhibit 12, Fatoki Dep. 18-19.)

50. During and after the class period, Plaintiffs' experts believe that the care they themselves provided fell below what they now propose should be considered the standard of care. Mangat Dep at 134:4-10; Fatoki Dep at 108:15-19.

OBJECTION: This is an apparent attempt to challenge the credibility of Dr. Fatoki and Dr. Mangat, which is not material to defendants' motion for summary judgment. Moreover, neither of plaintiffs' experts testified that he had provided treatment that did not meet the standard of care in the cited excerpts.

51. When a patient stops taking an opioid or an opioid agonist medication, they experience withdrawal symptoms. Fatoki Dep at 40:18-41:6; Mangat Dep at 78:24-79:6.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

52. Those symptoms may include nausea, vomiting, diarrhea, muscle and joint paint, insomnia, and mood disturbances. Fatoki Dep at 90:12-19; Mangat Dep at 79:4-6.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

53. The specific symptoms, as well as the duration and the severity of the symptoms, varies from person to person and depends on a variety of factors including what drug or combination of drugs the person was taking and at what doses, their tolerance, and how their body metabolizes the drug. Fatoki Dep at 92:9-18; Mangat Dep at 78:8-23.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

54. Medically supervised withdrawal including a tapering of a dose of opioid agonist medication will result in less severe symptoms than an abrupt cessation or "cold turkey" withdrawal from the medication. Mangat Dep at 72:16-73:5.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

55. If an opioid agonist medication is to be stopped, tapering or medically supervised withdrawal is the more humane method of stopping the medication. Fatoki Dep at 164:5-13.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

56. The speed at which a patient's dosage is tapered will contribute to what symptoms they may experience while withdrawing or "detoxing" from the opioid agonist. Fatoki Dep at 46:18-21; Mangat Dep at 76:11-24.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

57. Some patients experience no symptoms during a medically supervised withdrawal. Fatoki Dep at 103:12-14; Mangat Dep at 76:12-14. While most will experience some symptoms, the duration and severity vary significantly. Fatoki Dep at 103:15-21; Mangat Dep at 76:12-77:10.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

58. Medically supervised withdrawal or tapering of the dose of opioid agonist medication is preferable to abrupt "cold turkey" cessation of the medication. Fatoki Dep at 45:18- 46:1; Mangat Dep at 73:2-8, 93:7-11; Richardson Dep at 84:7-10.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

59. Because methadone is itself a long-acting opioid, the withdrawal from methadone is very clinically similar to withdrawal from other opioids. Fatoki Dep at 90:20-23; Mangat Dep at 58:5-9, 79:2-4.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

60. If a patient is withdrawing from both methadone and illicit opioids such as heroin, it is not possible to distinguish symptoms of withdrawal from methadone from the symptoms of withdrawal from illicit opioids. Fatoki Dep at 91:10-16; Mangat Dep at 88:23-89:6; Richardson Dep at 67:5-20.

RESPONSE: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

61. The CCDOC OTP was in compliance with accrediting body NCCHC guidelines regarding correctional facility opioid treatment programs generally and detoxification in particular during the class period. Fatoki Dep at 66:10-67:18; Mangat Dep at 52:24-53:4.

OBJECTION: That the written policies may have been reviewed and approved is not relevant to the constitutional questions in this case. Thompson v. City of Chicago, 472 F.3d 444, 453-55 (7th Cir. 2006); Gomez v. City of Chicago, No. 13 C 05303, 2015 WL 13651138, at *10 (N.D. Ill. June 29, 2015). Without waiving this objection: Admit only for purposes of the cross motions. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019).

62. Any detainee who was tapered off of methadone while in the CCDOC and later transferred to a facility that offered no methadone at all in fact benefitted from the taper because they avoided the cold turkey withdrawal at the new facility. Mangat Dep at 94:15-96:8.

OBJECTION: Dr. Mangat, one of plaintiffs' experts, gave this answer in response to an incomplete hypothetical.

63. Plaintiff Rogers entered the CCDOC on January 20, 2014. Dkt 138 at ¶ 17. He was released on February 16, 2014. Id.

RESPONSE: Admit.

64. Plaintiff Rogers received his first dose of methadone on January 26, 2014. Dkt 138 at ¶ 19.

RESPONSE: Admit.

65. Plaintiff Rogers experienced an atypical delay during the required process of verifying his prior dose of methadone and having his new prescription entered through the OTP. Richardson Dep at 105:24-107:20.

RESPONSE: Disputed. The required process of verifying Rogers's dose and entering his new prescription was completed on January 21, 2014, when a physician at the Jail ordered that Rogers receive "methadone 200 mg then taper per protocol." (Plaintiffs' Exhibit 2, Rogers Prescription.) Rogers did not receive methadone until January 26, 2014. (Plaintiffs' Exhibit 3, methadone dosing records.) Plaintiff Hollins experienced a similar delay: She entered the Jail on September 17, 2013 (Plaintiffs' Exhibit 7); a pharmacist verified her prescription the same day (*id.*), and Dr. Richardson prescribed methadone on September 20, 2013 (Plaintiffs' Exhibit 8), the day that Hollins first received methadone. (Plaintiffs' Exhibit 9.)

Plaintiffs' Exhibit 23 identifies 491 persons who entered the Jail between December 23, 2013 and July 1, 2017 who received their first dose of methadone three or more days after having entered the Jail.

66. Plaintiff Hill entered the CCDOC on December 23, 2013. Dkt 138 at ¶ 21. He was released on December 31, 2013. Id.

RESPONSE: Admit.

67. Plaintiff Hill received his first dose of methadone on December 25, 2013. Dkt 138 at ¶ 23.

RESPONSE: Admit.

68. Community methadone clinics frequently take longer to respond on weekends and holidays. Mangat Dep at 39:9-18, 88:11-16; Fatoki Dep at 94:13-95:2.

RESPONSE: Disputed. This contention is not supported by the cited material. Dr. Mangat "could not think of a time" when he could not reach an outside community clinic and pointed to Sundays and holidays as events "that would theoretically slow the process down." (Plaintiffs' Exhibit 11, Mangat Dep. 39:9-18.) Dr. Mangat agreed "that the [Christmas] holidays sometime slow down getting responses from OTPs in the community." (*Id.*, Mangat Dep at 88:11-16). Dr. Fatoki did not agree that it was "common" or "uncommon" for there to be delay in providing the first methadone dose and stated that "unless it's a Sunday when the OTP is closed, or it's a holiday, we can get the dose verified almost right away," (Plaintiffs' Exhibit 12, Fatoki Dep at 94:13-22.) Dr. Fatoki also agreed that "it may take a longer time" on weekends or holidays to get the methadone dosage verified. (*Id.*, Fatoki Dep. 94:23-95:2.) Neither of plaintiffs' experts used the word "frequently" or any phrasing that could convey that impression.

69. Plaintiff Hollins entered the CCDOC on September 12, 2013. Dkt 138 at ¶ 25. She was released on October 5, 2013. Id.

RESPONSE: Admit.

70. Plaintiff Hollins received her first dose of methadone on September 13, 2013. Fatoki Dep at 93:10-94:12; Mangat Dep at 89:19-90:3.

RESPONSE: Disputed. Dr. Richardson prescribed methadone for Hollins on September 20, 2013 (Plaintiffs' Exhibit 8) and methadone was dispensed to Hollins that day. (Plaintiffs' Exhibit 9.)

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 0830388
Joel A. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2430
(312) 427-3200
Attorneys for Plaintiff