UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

DEFENDANTS' CROSS MOTION FOR
SUMMARY JUDGMENT RESPONSE AND REPLY

Oliver Kassenbrock
Assistant State's Attorney
50 W. Washington, Ste. 2760
Chicago, IL 60602
(312) 603-1424
oliver.kassenbrock@cookcountysao.org
ARDC No. 6345940
Attorney for Defendant Cook County

John M. Power
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, IL 60602
(312) 603-4634
John.power@cookcountysao.org
Attorney for Sheriff of Cook County

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INTRODUCTION

The Cook County Department of Corrections (CCDOC) was—and is—at the forefront of correctional healthcare in offering methadone to detainees with Opioid Use Disorder (OUD). While it now provides maintenance and initiation of new patients onto Medications for OUD (MOUD), during the class period the Opioid Treatment Program (OTP) was licensed to use methadone for the purpose of medically supervised withdrawal. This allowed the CCDOC to use methadone to treat opioid withdrawal through a slow tapering off prescribed methadone rather than the cold-turkey cessation that detainees would have received in nearly all jails and prisons in the country during the class period.

These policies allowed the CCDOC OTP to serve the legitimate governmental interests of maintaining security and ensuring adequate staffing, preventing diversion of highly regulated drugs, and operating within budget. The

policies were tailored to serve these interests while minimizing discomfort experienced by detainees through tapering dosages over time, adjusting the rate of taper, and using other medications to treat symptoms of withdrawal as needed.

Plaintiffs cannot support their case for summary judgment on the class claims because they cannot carry the burden to demonstrate that the policies were not related to a legitimate governmental interest or were excessive. Nor can Plaintiffs demonstrate deliberate indifference. Further, the individual claims fail under both Section 1983 and the ADA/RA. Summary judgment should be granted in favor of Defendants on all counts.

ARGUMENT

I. Plaintiffs Misapply the Applicable Legal Standards and Engage in Impermissible Burden Shifting.

The Parties agree on the standard for cross motions for summary judgment and there is no dispute over the relevant standards for Plaintiffs' challenges to the policies in question. As this Court stated—and Plaintiffs recited—"Pretrial detainees 'can prevail by providing only objective evidence that the challenged governmental action [the linear taper-to-zero policy] is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose.'" Dkt. 178 at 10 (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015)). Post-trial prisoners must "show 'deliberate indifference,' that is, 'a showing that the defendant had a "sufficiently culpable state of mind" and [that] the official

actually believed there was a significant risk of harm.'" *Id.* at 11 (citing *Miranda v. Cnty. of Lake*, 900 F.3d 335, 350 (7th Cir. 2018)).

Plaintiffs' motion repeatedly strays from this established standard and incorrectly shifts the burden to Defendants to justify their policies. *See, e.g.*, Dkt. 301 at 11 ("These paragraphs fail to establish any undisputed questions of material fact"), 21 ("defendants have failed to show any legitimate penological purpose"). While Defendants have in fact provided substantial evidence justifying the policies at issue, it is ***Plaintiffs'*** burden to prove the policies are "not rationally related to a legitimate governmental objective" or are excessive regarding the pretrial detainees. *Kingsley*, 576 U.S. at 398. Pre-trial detainees must further show that Defendants "acted 'purposefully, knowingly, or perhaps even recklessly,' but that action is then measured against objective reasonableness." Dkt. 178 at 11 (citing *Miranda*, 900 F.3d at 353-54). Post-sentencing detainees must clear an even higher bar and show "the official actually believed there was a significant risk of harm." *Miranda*, 900 F.3d at 350. Neither subclass can make the requisite showing.

II. Substantively, Plaintiffs Fail to Support Their Case for Summary Judgment and Cannot Meet Their Burden of Proof to Establish that Summary Judgment in Favor of Defendants is Not Proper.

In addition to Plaintiffs' above errors about who carries the burden, Plaintiffs fail to substantively show that CCDOC's tapering program during the relevant class period violated the Constitution.

A. The OTP Policies are directly related to multiple legitimate governmental interests and do not violate the Constitution.

Plaintiffs' erroneous contention that Defendants "have failed to show any legitimate penological purpose" for the policies in question, Dkt. 301 at 21, is improper framing of the issues. It is Plaintiffs' burden—not Defendants'—to show "that the actions are not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose.'" *Kingsley*, 576 U.S. at 398 (citing *Bell v. Wolfish*, 441 U.S. 520, 561 (1979)).

"[A] court must take account of the legitimate interests in managing a jail, [the Supreme Court] acknowledg[es] as part of the objective reasonableness analysis that deference to policies and practices needed to maintain order and institutional security is appropriate." *Kingsley*, 576 U.S. at 399-400. The Eighth Amendment prohibits "pain and suffering which no one suggests would serve any penological purpose." *Estelle v. Gamble*, 429 U.S. 97, 103, (1976). Accordingly, under either Eighth or Fourteenth Amendment standards, the OTP policies that serve legitimate purposes in the operation of the CCDOC are given more latitude.

Still, Defendants have shown the direct relation of the policies to several legitimate interests. Among the legitimate government interests influencing policy are security and adequate staffing to operate an OTP in a correctional setting. Plaintiffs' expert Dr. Fatoki testified that "there may be staffing issues … and also with security." Dkt. 284 at ¶ 21. Dr. Mangat added that among the limitations on providing MOUD in a correctional setting "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.*

Additionally, MOUD, like methadone, come with the risk of diversion. Nat'l Sheriffs' Ass'n & Nat'l Comm'n Corr. Health Care, *Jail-Based Medication-Assisted Treatment: Promising Practices, Guidelines, and Resources for the Field* (Oct. 2018), www.sheriffs.org/publications/Jail-Based-MAT-PPG.pdf. Preventing diversion of medication is another legitimate government consideration. *Id.* at 17-18 ("Precautions must be exercised to guard against the illicit diversion of agonist medications. Some studies have found that these medications are both effective for jail populations and are subject to diversion."). Limiting the total dosage and number of patients in the OTP is a rationally related government action to address that risk. *Id.* at 10-11 (noting higher risk of diversion with higher dosing of MOUD), 28 (describing a program limiting the number of participants to lower the risk of diversion). Harm mitigation provided by tapering rather than withdrawing methadone cold turkey demonstrates that the policy was not excessive in relation to that goal.

Further, finances are an acceptable factor to consider. *See Petties v. Carter*, 836 F.3d 722, 730 (7th Cir. 2016). As Plaintiffs' expert attested, this is a regular concern for correctional facilities providing MOUD. Dkt. 302 at 303, Pltfs. Statement of Facts ("PSOF") Ex. 12, Dep. of Dr. Fatoki at 127:12-24 (noting that lack

of resources and funds was a roadblock to some jails establishing opioid treatment programs). Further, Dr. Richardson testified that this was, in fact, a concern for the CCDOC OTP, and changes were made when more money became available. Dkt. 290, PSOF Ex. 13, Dep. of Dr. Richardson 38:22-39:7 ("As we had more resources in the community and more public moneys actually, more grant moneys . . . we were able to start more patients, to keep – maintain patients on methadone and to start patients on buprenorphine.").

Thus, tapering was rationally related to Defendants' interests in providing medical care to inmates while managing the associated risks and costs that come from keeping and dispensing opioids in a jail setting.

B. Supervised withdrawal of methadone through tapering rather than cold turkey cessation demonstrates that the policy is not excessive.

Plaintiffs insist that "[t]his is not a case about whether tapering methadone to zero is 'more humane' than an abrupt, 'cold turkey' cessation of methadone," and that the Court instead must evaluate only Plaintiffs' preferred treatment versus the policy in place. Dkt. 301 at 17-18. This is a false dichotomy. This case requires the Court to determine whether the CCDOC OTP's policies pass constitutional muster; that is to say, whether "the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398. Plaintiffs' preferred policy is not relevant to that determination. Indeed, it is well settled that prisoners are "not entitled to demand specific care," and medical professionals may choose from a

range of acceptable courses based on prevailing standards. *Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 965 (7th Cir. 2019) (citations omitted.)

A comparison of the policies in question to the common alternative of providing no methadone whatsoever is highly material to the reasonableness of the policies in question. When a court is called to consider what is "reasonable" or "excessive," the predicate question is "compared to what?" Supervised withdrawal or detoxification through tapering methadone has been a widely used practice for decades. *See, e.g.*, Ilene B. Anderson & Thomas E. Kearney, *Use of Methadone*, 172 W. J. Med. 43 (Jan. 2000). The CCDOC OTP had licensure specifically to use methadone for detoxification purposes during the class period. Dkt. 276, Defendants' Statement of Facts ("DSOF") at ¶ 27. Supervised withdrawal is better for patients than cold turkey cessation. *Id.* at ¶¶ 54-55, 57-58. This demonstrates that the policies were in place to mitigate harm and support better outcomes for the detainees receiving medical care than they would have at almost any other correctional facility in the country at that time.

Plaintiffs also complain that "Defendants fail to establish that tapering is preferable to cold turkey withdrawal." Dkt. 301 at 17. This does not hold water. Plaintiffs' and Defendants' experts were essentially unanimous on this point. Dkt. 302 at 305, PSOF Ex. 12, Dep of Dr. Fatoki at 129:12-17 (". . . tapering people off methadone is better for the patient than no methadone."); *Id.* at 99-100, PSOF Ex. 11, Dep. of Dr. Mangat at 72:16-73:8) (calling tapering "Without a doubt, better."); Dkt. 290, PSOF Ex. 13, Dep. of Dr. Richardson at 84:3-6 (". . . it is much preferable

for a patient to taper methadone than to abruptly stop it"). Additionally, Plaintiffs admit this fact, even if only for purposes of summary judgment. Dkt. 284 at ¶¶ 54-55, 58.

It is undisputed that tapering is better than a forced "cold turkey" withdrawal, and it is also undisputed that if the Plaintiffs had been arrested anywhere else in Illinois or almost anywhere else in the country during the class period, they would have been forced to withdraw "cold turkey." Compared to the alternatives, CCDOC's tapering was not excessive, and it was more than reasonable.

C. Any alleged harm caused by the OTP policies is not excessive in relation to the legitimate interests served by those policies.

Plaintiffs correctly state that Opioid Use Disorder and withdrawal from opioids can be objectively serious medical conditions. However, the OTP policies existed to mitigate potential harm and to treat these conditions. Defendants do not dispute that some Plaintiffs experienced discomfort during the tapering process. Plaintiffs' expert Dr. Fatoki described withdrawal symptoms as "just like -- it's just like having a bad case of the flu. They will be okay." Dkt. 302 at 217, PSOF Ex. 12, Dep of Dr. Fatoki at 41:11-13. He also noted that not all patients who are tapered will have withdrawal symptoms at all. *Id.* at 279, PSOF Ex. 12, Dep of Dr. Fatoki at 103:12-14.

Plaintiffs' claims that the OTP policies were in violation of the Eighth Amendment based on *King v. Kramer*, 680 F.3d 1013 (7th Cir. 2012), are misplaced

at every step. The Seventh Circuit in *King* stated that "a municipality would violate the Eighth Amendment under *Monell* if it had a policy requiring jail staff to throw away all prescription medications without implementing an appropriate mechanism for providing alternative treatment." *King*, 680 F.3d at 1021 (7th Cir. 2012). However, the tapering of methadone and provision of additional medication for withdrawal symptoms along with mental health services was the alternative treatment in this case. Dkt. 284 at ¶¶ 32-36; Dkt 276, DSOF at ¶ 35. Indeed, the Seventh Circuit in *King* noted that it is "not saying here that prescription formularies are per se unconstitutional, or that restricted physician access is by definition inappropriate." *Id.* at 1020-21.

Further, Plaintiffs assert that "policymakers at the Jail knew that there was no legitimate penological purpose for their mandatory taper policy." Dkt. 301 at 30. Again, this is inappropriate burden shifting. Plaintiffs must demonstrate this fact and have not done so. Regardless, Defendants have provided ample evidence of several legitimate government interests driving the policies. Additionally, there is no support for Plaintiffs' contention that jail officials knew of and disregarded harm to patients from these policies. *See* Section II.D. below. As discussed below in Section III.A, Plaintiffs' claim that "Defendants' mandatory tapering policy did not involve any medical judgment; the only judgment involved was to divide the prisoner's last dosage by 21" is also incorrect. The rate of taper was determined individually, frequently over more than 21 days, and was often adjusted during the course of the taper. Further, a physician in the OTP had the ability to seek a

waiver to maintain even non-pregnant detainees on a constant dose of methadone on an individual basis if they believed it was necessary. Dkt. 284 at ¶ 36. And, in addition to the taper itself, there is no genuine dispute that Defendants offered mental health services and additional medications to address withdrawal symptoms, which may be minimal or non-existent. *Id.* at ¶¶ 33, 35, 41. These policies were reasonably tailored to minimize potential harm and not excessive for the government interests they served.

D. Plaintiffs' assertion that Defendants were "on notice of the [alleged] harm" from the OTP policies is not supported.

Plaintiffs claim that Defendants were "on notice of the harm" that they allege the OTP policies cause, but none of their cited cases support that conclusion. Dkt. 301 at 25. In *Davis v. Carter,* 452 F.3d 686 (7th Cir. 2006), the Seventh Circuit makes no pronouncement, as Plaintiffs suggest, that "a person in a methadone maintenance program has a 'medical need' to continue to receive methadone." Dkt. 301 at 26. The opinion in *Davis*, denying summary judgment, only states that plaintiff ***alleged*** the decedent's medical needs were ignored or that there was a material dispute as to the same. *Davis*, 452 F.3d at 687-698. The only time the quoted phrase appears in Plaintiffs' cited page range, the context is "The plaintiff here ***alleged*** that Cook County was deliberately indifferent to Davis's serious medical needs . . ." *Id.* at 691 (emphasis added).

There, the decedent was abruptly cut off from his methadone and provided no treatment at all for his increasingly serious withdrawal symptoms, including a

seizure, a cerebral aneurism, and ultimately his death. *Id.* at 689-91. In that case, both the decedent and his wife repeatedly requested medical attention and were ignored. *Id.* The Seventh Circuit held that there were disputed material facts about deliberate indifference to the decedent's clear medical needs where he went several days repeatedly asking for help while unwell enough that he was excused from his assigned work, and never received any type of treatment. *Id.* at 692-698.

Davis did not address a tapering policy like the case at bar. While Davis received no medical care, both the policy here and evidence of the practice from both individual Plaintiffs' and Dr. Richardson's depositions show that other non-opioid medications were also used to treat symptoms of withdrawal, alongside the methadone tapering itself. Dkt. 284 at ¶ 41.

Plaintiffs cite the court's ruling in *Bradley v. Sheriff of Rock Island,* No. 4:12-cv-04008, 2016 WL 9775233 (C.D. Ill. Mar. 2, 2016), that "people entering jail at significant risk of withdrawal are entitled to adequate medical treatment." *Id.* at *10. "Adequate medical treatment" is, of course, not the same as indefinite maintenance of their pre-incarceration dose of methadone. Plaintiff has identified no case that supports such an extrapolation.

As for *Parish*, the procedural posture alone belies Plaintiffs' claim that "Defendants were on notice about the flaws in the Jail's methadone tapering policy." Dkt. 301 at 26. As Plaintiffs note, *Parish* plaintiffs' cross motion for summary judgment was denied and the case settled. No dispositive opinion was issued by the court in *Parish*, let alone any controlling authority. The *Parish*

plaintiffs alleged a 21-day mandatory tapering policy, as well as systemic delays in receiving their initial doses of prescription medications including methadone. 2019 U.S. Dist. LEXIS 90844 at **13-14. Indeed, methadone was only a small portion of *Parish*, which included allegations on a host of other medication issues. *Id.* at **3-13. Those are not the same policies and practices at issue here. At most, *Parish* gives notice of ***Plaintiffs' allegations***, not of unconstitutional conduct or a finding of harm by any court.

E. Plaintiffs fail to engage with Defendant Dart's argument on the deliberate indifference standard required for *Monell* liability.

Plaintiffs ignore Sheriff Dart's argument regarding municipal liability, Dkt. 275 at 10-11, using two sentences to say that the custodian of the jail cannot disclaim his duty to provide health care. Dkt. 301 at 22. That is not Sheriff Dart's argument. Rather, the Sheriff argued that it is Plaintiffs' burden to show his deliberate indifference in order to establish municipal liability. Plaintiffs cannot meet that burden when Sheriff Dart relied on medical professionals to provide medical care, which was better than the care provided by 95-99% of other correctional institutions at the time, and which was accredited by multiple governing bodies. Dkt. 285 at 10-11; *Johnson v. Doughty*, 433 F.3d 1001, 1010-12 (7th Cir. 2006) (no deliberate indifference where non-medical professionals reasonably rely on the judgment of medical professionals). Far from deliberate indifference, the CCDOC under Sheriff Dart was on the cutting edge of correctional healthcare with the OTP.

F. Summary judgment should be granted in favor of Defendants on the Individual Plaintiffs' claims because none of the asserted causes of action allow recovery and Plaintiff Hollins is not a proper Plaintiff.

In the case of each Individual Plaintiff, their Section 1983 claims suffer from the same problems as the class claims. Plaintiffs are unable to demonstrate with any admissible evidence that Defendants had the requisite mental state in crafting the OTP policies for liability to attach. Further, Plaintiffs impermissibly shift the burden to Defendants throughout their argument. The statutory claims additionally fail for the reasons articulated in the initial briefing, which Plaintiffs do not engage with in their response, and because the relief suggested by Plaintiffs is in no way the "reasonable modification" that Plaintiffs suggest it is. Plaintiff Hollins is also not a proper plaintiff in this suit because her claims arise outside the class period.

1. Plaintiff Hollins

Plaintiff Wanda Hollins is not a proper Plaintiff in this case and should be dismissed outright. The class definition specifies that this case relates only to those individuals "who (1) entered the jail between December 23, 2013 and July 1, 2017, inclusive . . ." Dkt. 243 at 14-15. It is uncontested that Plaintiff Hollins was incarcerated in the CCDOC between September 12, 2013 and October 5, 2013. Dkt. 300 at ¶¶ 36, 39. She is categorically not a member of the class, and therefore cannot be a class representative. *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1027 (7th Cir.

2018) ("A named plaintiff must be a member of the putative class . . ."). She should be dismissed from this lawsuit.

Even if Plaintiff Hollins could bring her claims in this suit, they still fail because she did not experience a delay in the provision of her methadone. Defs. Resp. to PSOF at ¶ 38. The claims additionally fail for all the reasons enumerated in the cases of Plaintiffs Hill and Rogers.

2. Plaintiff Hill

Plaintiff James Hill does not have a claim based on a delay in providing his methadone. Plaintiff Hill received his first dose of methadone only a day and a half after arriving at CCDOC. Dkt. 302 at 553, PSOF Ex. 20, Dep. of Hill, 20:21-24 ("I seen medical that night. It was that night. During that day I got processed through, but it was the last that I seen the medical."); *Id.* at 559, PSOF Ex. 20, Dep. of Hill, 26:2-3 ("About a day and a half I didn't get my dose."). He did not receive a dose the first full day of his incarceration because the pharmacy was unable to verify his prior dosage on December 24, 2013--Christmas Eve. He received his first dose on December 25, 2013. Dkt. 300 at ¶ 31. Plaintiffs' experts Dr. Fatoki and Dr. Mangat both stated that holidays slow the process of verifying prior dosage from outside methadone clinics. Dkt. 302 at 270, PSOF Ex. 12, Dep. of Dr. Fatoki at 94:16-22 (stating that doses could be verified quickly "unless it's on a Sunday when the OTP is closed, or it's a holiday"); *Id.* at 66, PSOF Ex. 11, Dep. of Dr. Mangat at 39:14-

18 (responding when asked what slowed down the verification of doses, "The biggest one would be Sundays and holidays when those clinics were closed.")

Further, Plaintiff Hill's ADA and RA claims fail. Operating a methadone maintenance program is not, as Plaintiffs contend, a "reasonable modification." Dkt. 301 at 23. The time, resources, and manpower required to successfully operate a maintenance program are significantly different than operating only a detoxification program, evidenced by Dr. Richardson's direct testimony that resources and grant money were what allowed the CCDOC OTP to transition "to start more patients, to keep – maintain patients on methadone and to start patients on buprenorphine." Dkt. 290, PSOF Ex. 13, Dep. of Dr. Richardson at 38:23-39:7. Such a modification would "fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7)(i). Defendants are not required to make unreasonable modifications. Plaintiff Hill's ADA and RA claims fail, and summary judgment should be granted in favor of Defendants.

3. Plaintiff Rogers

Defendants are entitled to summary judgment on Plaintiff Keith Rogers' claims as well. His ADA and RA claims fail for the same reasons Plaintiff Hills' do. The faults in the constitutional claims are analogous to the class claims.

Plaintiff Rogers cannot tie the delay in his methadone to any express policy of the CCDOC. Instead, he alleges that it was common in practice to experience delays in receiving methadone. Dkt. 133 at ¶ 29. Because this is a *Monell* claim and Plaintiff Rogers was a post-sentencing inmate at the relevant time, the applicable

standards for both the implementation and execution of this alleged practice are deliberate indifference. The evidence simply cannot support this.

As discussed above in the context of the class claims, Plaintiff Rogers cannot demonstrate that Defendants "acted 'purposefully, knowingly, or perhaps even recklessly,'" in creating relevant policies. Dkt. 178 at 11 (citing *Miranda*, 900 F.3d at 353-54). Nor can he show that Defendants had a "sufficiently culpable state of mind," to meet the Eighth Amendment analysis required. *Miranda*, 900 F.3d at 350. In his case, there was an error that caused a delay in his receipt of methadone. Dkt. 300 at ¶ 26. This mistake meets neither threshold.

The delay experienced by Plaintiff Rogers is not indicative of deliberate indifference where there were clearly documented efforts to get him his methadone in a timely fashion. This is evidenced by the fact that the pharmacy verified his dosage and issued a prescription within one day of his arrival. Dkt. 300 at ¶ 26. Any delay may have been an unfortunate error, but it was not deliberate indifference. "[A]n inadvertent failure to provide adequate medical care" is insufficient to state a constitutional claim. *Estelle*, 429 U.S. at 105.

None of the individual Plaintiffs can adequately prove either constitutional or statutory claims, and—like the class claims—summary judgment in favor of Defendants is appropriate.

III. None of the Evidence Brought Forth by Plaintiffs Creates an Issue of Fact Sufficient to Undermine Defendants' Case for Summary Judgment.

Many of the disputes or objections to Defendants' statement of facts that Plaintiffs raise are merely semantic in nature. For others, if there is a substantive difference in the two versions of events, it is not material to the determination of the case. In those cases where Plaintiffs actually have identified factual discrepancies in the record or introduced new evidence, Defendants still prevail when Plaintiffs' version is taken as true for purposes of summary judgment. *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 415 (7th Cir. 2019) (clarifying that parties may specify where certain facts are admitted for this limited purpose).

A. Discrepancies in the evidentiary record introduced by Plaintiffs are either immaterial or cut in favor of summary judgment for Defendants.

Plaintiffs include assertions in their statement of facts that are unsupported by the record. Plaintiffs also take issue with many of the facts stated by Defendants in support of their opening brief. Neither, however, defeat summary judgment in favor of Defendants because the factual disputes are not genuine or material to the summary judgment analysis. *See* Fed. R. Civ. P. 56 (requiring "no genuine dispute as to any material fact" in order to grant summary judgment). In the case of purported evidence in support of Plaintiffs' claims, those facts support summary judgment for Defendants, not Plaintiffs.

Several facts put forth by Plaintiffs are contradicted by the record. For example, Plaintiffs state "The Sheriff of Cook County has refused to share with Dr.

Richardson information about how long persons are expected to spend at the Jail." Dkt. 300 at ¶ 50. This is directly contradicted by Dr. Richardson's testimony where she stated, "they have not ***been able*** to give us good data on that," and "No, he has not ignored me. They have not ***been able*** to say, oh, this type of crime always has or mostly likely will do this or enough of a percentage to say what's going to happen to each patient. ***So we've tried.***" Dkt. 290, PSOF Ex. 13, Dep. of Dr. Richardson 86:24-87:1; 87:15-19 (emphasis added). In other words, it's not that the Sheriff refused to share data, but that good data did not exist to be shared. Despite Plaintiffs' inaccuracies, this statement is not material to the question of liability. Whether the Sheriff's Office did not have such data or could not share it is not relevant to the claims in this case, as this line of questioning was related to the change in procedure ***after the end of the class period***. *Id.* at 84:18-85:3 (asking about differences before and after the July 2017 policy changes that led to the current class end date). It is not material to the claims of this lawsuit.

Plaintiffs also repeatedly falsely claim that the tapering policy at issue includes "a linear taper designed to reduce their methadone dosage to zero over 21 days." Dkt. 301 at 1. This is a misrepresentation based on a willful misreading of the relevant policies. The policy that was in effect until early February 2016 stated that doses below 120mg/day should be tapered over 10-21 days, but suggested a longer taper for higher dosages. Dkt. 302 at 398, PSOF Ex. 16, p. 4, § B.6.h. The policy also sets a maximum decrease in dosage of 7mg per day. *Id.* at § A.4.g. Mathematics dictates that anyone with a starting dose greater than 147mg

could not be tapered within 21 days. While a patient with a starting dose between 147mg and 120mg could be tapered in 21 days or less based on the 7mg/day guideline, these individuals would fall into the category where medical professionals should "confer with program medical director and consider a taper longer than 21 days." *Id.* There is no mention of 21 days even as a guideline for the policies in place beginning in February 2016 and onward. Dkt 303 at 190, PSOF Ex. 33 at 3; *Id.* at 194, PSOF Ex. 34. Indeed, two out of the three named Plaintiffs (Rogers and Hollins) were put on tapering schedules that would have taken more than 21 days to reach a dose of zero.[1] Dkt. 300 at ¶¶ 26, 38.

While an accurate reading of the policies would change the calculus of some of Plaintiffs' arbitrary cutoffs for data analysis, it does not have a material effect on the outcome of this litigation. There is no dispute that the policies set a maximum rate of taper, the rate for each individual patient was determined by a physician, and the policies gave clinicians latitude to adjust the initial taper rate if a patient was experiencing significant withdrawal symptoms. Dkt. 302 at 395, PSOF Ex. 16; Dkt. 303 at 188, PSOF Ex. 33; *Id.* at 194, PSOF Ex. 34. Plaintiffs' data supports this. Defs. Resp. to PSOF at ¶ 44.

[1] Plaintiff Rogers had an initial dose of 200mg that was tapered at a rate of 7mg per day, which would have taken 29 days to reach a dose of zero. Dkt. 300 at ¶ 26. Plaintiff Hollins had an initial dose of 120mg that was tapered at a rate of 5mg per day for one week before being slowed to 3mg per day, which would have taken 36 days total to reach a dose of zero. Defs. Resp. to PSOF at ¶ 38. All the named Plaintiffs were released before completing a taper and consequently never reached a final dose of zero.

Additional disputes that Plaintiffs raise in response to Defendants' statement of facts are primarily semantic rather than genuine disputes of fact. For example, Plaintiffs take issue with the statement that no other jail in Illinois provides methadone maintenance treatment. Dkt. 284 at ¶ 22. The basis for this disagreement is that both of Plaintiffs experts testified that this was true ***to the best of their knowledge***. *Id.* This is not a good faith objection where Plaintiffs' experts do not actually dispute the facts. Plaintiffs also cite a study from after the close of the class period which specifies, "Three jails specifically mentioned offering methadone to pregnant women . . . ." Dkt. 302 at 353, PSOF Ex. 14 at 7. This is an irrelevant position because the provision of methadone to pregnant detainees is specifically excluded from the claims in this suit. Dkt. 243 at 14-15 (defining both subclasses as individuals "who were not pregnant").

Plaintiffs similarly dispute the difference between submitting written policies during an accreditation process and having policies approved by an accrediting body. Dkt. 284 at ¶ 26. Plaintiffs contend that Dr. Fatoki did not know the answer to the question of whether patients can request to see a doctor, yet cite his unequivocal testimony stating verbatim, "I know they can request an appointment." Dkt. 284 at ¶ 34. In several other instances, Plaintiffs dispute the statement of fact based on the phrasing, but then repeat the substance of the statement. *See, e.g.*, Dkt. 284 at ¶¶ 1, 29, 31, 41. These quibbles fail to create a genuine dispute of material fact.

Finally, the additional material facts introduced by Plaintiffs support summary judgment for Defendants, not Plaintiffs. In particular, Plaintiffs state that there were 1,797 admissions of non-pregnant detainees to the OTP during the class period, between December 23, 2013 and July 1, 2017. Dkt. 300 at ¶¶ 42, 43. As noted in greater detail in Defendants' response to Plaintiffs' statement of facts, the exhibits to which Plaintiffs cite in support of these numbers are substantially flawed, including many booking numbers from outside of the class period. However, that dispute is not material to the outcome here, because even assuming Plaintiffs are correct, the numbers illustrate significant points about the OTP that support Defendants' case.

By Plaintiffs' count, out of 1,797 patients admitted to the OTP during the class period who experienced some tapering, 1,619 were tapered at a "linear taper at a constant reducing dosage." Dkt. 300 at ¶ 44. This means that 178 patients—roughly one in ten of the patients—did not have a constant reducing dosage. In 9.9% of cases, therefore, the rate of taper was paused or adjusted at some point during the process. This aligns with Defendants' policies encouraging providers to consider adjusting dosages if patients experienced severe symptoms and demonstrates that providers did in fact exercise discretion rather than strictly adhering to a mathematical formula in every case. Many of the remaining 1,619 patients who did not receive an adjustment to their rate of taper were discharged from CCDOC after a relatively short time, but it is likely that a meaningful

percentage of them would also have had adjustments made had they stayed longer. Defs. Resp. to PSOF at ¶ 44.

B. Plaintiffs' complaints about the admissibility, materiality, or relevance of Defendants evidence are misplaced and misconstrue the purposes for which it is offered.

Plaintiffs, in both their response to Defendants' statement of facts and in their memorandum, make several comments suggesting that various facts offered by Defendants are inadmissible or immaterial. *See, e.g.*, Dkt. 301 at 10-12, 15, 18; Dkt. 284 at ¶¶ 26-28, 44-45, 61. Those assertions are wrong. [2]

Plaintiffs repeatedly conflate a fact not being dispositive with that fact not being material. For example, Plaintiffs suggest that evidence of standards of care, complying with oversight guidelines, and comparison with other practitioners during the time period is not material. Dkt. 284 at ¶¶ 46, 49-50; Dkt. 301 at 11, 12, 15. However, these facts are relevant to the question of whether the OTP policies were reasonable or excessive in relation to legitimate governmental purposes. *See Petties*, 836 F.3d at 728 (discussing evidence from which a jury could infer deliberate indifference as material on summary judgment). Each of these is material and probative of the reasonableness of the policies in question; because the OTP policies were in line with all relevant accrediting standards and met or

[2] However, if Plaintiffs will stipulate that methadone is the only MOUD relevant to this lawsuit, Defendants do not contest that. Defendants suggest altering each sub-class definition to specify individuals who "were, at the time of entry into the Jail, lawfully taking methadone" as opposed to "an opioid antagonist." Defendants have no issue with the modification suggested by Plaintiffs to the class definition to further clarify the violation of parole issue. Dkt. 301 at 9, n. 5.

exceeded the standard of other similarly situated institutions, the policies were not excessive in relation to their purposes. *Jones v. Lopez*, 21 F. App'x 479, 481 (7th Cir. 2001) (holding that evidence that defendant followed the medical standard of care was dispositive of a Section 1983 claim because "it would be impossible to find that the doctor had engaged in behavior that could qualify as deliberate indifference . . . if her treatment did not even amount to malpractice."); *Balla v. Idaho*, 29 F.4th 1019, 1026 (9th Cir. 2022) ("'The NCCHC accreditation,' and defendants' completion of the modified compliance plan, 'while not determinative, constitute substantial evidence of adequate medical care.'").

Plaintiffs also assert that "[t]he Court should not consider any of defendants' contentions based solely on the testimony of either of plaintiffs' experts unless that testimony is based on personal knowledge," which misstates the rules of admissibility for expert testimony. Dkt. 301 at 10. Expert testimony, unlike the testimony at issue in the case cited by Plaintiffs, *Widmar v. Sun Chemical Corp.*, 772 F.3d 457, 460 (7th Cir. 2014), is governed not by Federal Rule of Evidence 602, but rather by Rule 703. *See* Fed. R. Evid 602 ("This rule does not apply to a witness's expert testimony under Rule 703."). Unless Plaintiffs are asserting that their own expert witnesses are not qualified, the opinions are admissible. Fed. R. Evid. 702, 703.

Additionally, Plaintiffs contend that certain facts about the qualification and prior practices of Plaintiffs' own experts are inadmissible "as only relevant to credibility, which is not material on summary judgment." Dkt. 301 at 12. However,

this misunderstands the purpose for which those facts are offered. Evidence of the type of medical care provided by Plaintiffs' experts during the class period is relevant and admissible to show care offered at other correctional institutions during the timeframe, which again speaks to the reasonableness of the policies at issue here. Defendants are not impeaching Plaintiffs' experts' opinions here; Defendants are showing the landscape of correctional healthcare during the class period as it assists in determining what may be rationally related to a government objective and what is excessive.

Plaintiffs' citation to *Thompson v. City of Chicago*, 472 F.3d 444 (7th Cir. 2006) is equally inapposite. Dkt. 301 at 13. In *Thompson*, the Seventh Circuit was asked to consider the use of force policies of a police department in relation to a Fourth Amendment excessive force claim. *Thompson*, 472 F.3d at 453. The court excluded evidence of the policies based on the fact-specific nature of analyzing an ***excessive force claim***, and because "police rules, practices and regulations vary from place to place and from time to time, [so] they are an unreliable gauge by which to measure the objectivity and/or reasonableness of police conduct." *Id.* at 455 (citing *Whren v. United States*, 517 U.S. 806, 815 (1996)). So too with Plaintiffs' cited case *Gomez v. City of Chi.*, No. 13 C 05303, 2015 U.S. Dist. LEXIS 194095, at *33 (N.D. Ill. June 29, 2015), which states "general policies and procedures are generally inadmissible ***in excessive-force cases***." (emphasis added).

Notably, both these cases concern courts blocking ***plaintiffs'*** introduction of policy evidence, and neither relates to medical care. Here, Defendants cite

evidence of widespread practice and standard of care to support rational relation to legitimate governmental objectives without being excessive. This differs significantly from Plaintiffs' cited excessive force cases, and Defendants' evidence is both material and admissible.

C. Plaintiffs seek to support their argument with inadmissible evidence.

Somewhat curiously in light of Plaintiffs' many evidentiary objections, Plaintiffs offer a number of inadmissible evidentiary sources in support of some of their own propositions. Each of these is discussed in Defendants' response to Plaintiffs' statement of facts, but it bears a brief note here as well.

Plaintiffs rely on opinions provided in *Parish v. Sheriff of Cook Cty*. No. 07 C 4369, 2019 U.S. Dist. LEXIS 90844 (N.D. Ill. May 30, 2019). Dkt. 300 at ¶¶ 20-23; Dkt. 301 at 28-29. There are no grounds for relying on the expert reports generated from a different case, from experts not disclosed or deposed in this litigation, and who relied on data from a different time period.[3] The experts from *Parish* (Whitman, King and Steward) did not provide written reports in this case or base their opinions on information relevant to this case. As discussed in Defendants' Response to Plaintiff's Statement of Facts, these opinions are inadmissible. Defs. Resp. to PSOF at ¶¶ 20-23. Pursuant to Federal Rule of Civil Procedure 26(a)(2),

[3] The class period in *Parish* for claims regarding methadone begins more than 5 years before the class period in this case. *Parish v. Sheriff of Cook Cty.*, No. 07 C 4369, 2019 U.S. Dist. LEXIS 90844, at *48 (N.D. Ill. May 30, 2019) (identifying a start date for the methadone policy complaints of July 11, 2008).

there is no basis for the Court to consider the reports from any of these experts in this case.

Further, as mentioned above, the charts and statistics provided by Plaintiffs in support of their statement of facts are not limited to the defined class period. A review of the charts of booking numbers shows many entries for individuals predating the start of the class period.[4] For example, PSOF Exhibit 26, Dkt. 303 at 20, shows seventeen entries for booking numbers predating the class period. PSOF Exhibit 29, Dkt. 303 at 93, shows over four pages of entries for booking numbers prior to the beginning of the class. These charts and the extrapolations from them should not be considered admissible evidence because they lack foundational validity. Plaintiffs' charts are demonstrably unreliable, and the Court need not accept them. However, should the Court consider them, the fact remains that they demonstrate a substantial portion of the OTP participants had their rate of taper adjusted or paused, and that many more likely would have been adjusted had the tapers lasted longer than a few days. Even accepting the data that falls within the class period as true for the limited purpose of summary judgment, the charts support judgment in favor of Defendants. *See Kreg Therapeutics*, 919 F.3d at 415.

Despite incorrect burden shifting and significantly flawed evidence, Plaintiffs fail to mount the case for summary judgment in their favor. Not only

[4] The class is defined as including either pretrial or post-sentencing inmates "who (1) entered the Cook County Jail between December 23, 2013 and July 1, 2017, inclusive." Booking numbers at the Cook County Jail allow you to determine the date on which a person entered the Jail, in the format of YYYYMMDD###.

have Plaintiffs failed to prove their case for summary judgment, but the evidence shows that Defendants provided a level of methadone care above and beyond 95% of other correctional institutions during the relevant period. The CCDOC taper was approved by governing bodies, and designed to mitigate the withdrawal symptoms that prisoners would have faced from "cold turkey" cessation had they been arrested almost anywhere else in the country. Defendants provided exceptional care. There is no genuine dispute of material fact on the evidence required for this Court to enter judgment in favor of Defendants on all counts.

CONCLUSION

WHEREFORE, Defendants respectfully request that this Court grant judgment in favor of Defendants on all claims, and for any other relief that this Court deems just and proper.

Dated: September 16, 2025

Respectfully Submitted,
EILEEN O'NEILL BURKE
State's Attorney of Cook County

By: */s/ Oliver Kassenbrock*
Oliver Kassenbrock
Assistant State's Attorney
50 W. Washington, Ste. 2760
Chicago, IL 60602
(312) 603-1424
oliver.kassenbrock@cookcountysao.org
Attorney for Defendant Cook County

/s/ John M. Power
John M. Power
Assistant State's Attorney
500 Richard J. Daley Center

Chicago, IL 60602
(312) 603-4634
John.power@cookcountysao.org
Attorney for Sheriff of Cook County

CERTIFICATE OF WORD COUNT

I, Oliver Kassenbrock, Assistant State's Attorney, hereby certify that the body of the foregoing memorandum contains 6910 words, as counted by the word-processing software Microsoft Word.

/s/ Oliver Kassenbrock
Oliver Kassenbrock

CERTIFICATE OF SERVICE

I, Oliver Kassenbrock, Assistant State's Attorney, hereby certify that I served a copy of the attached document on the parties of record via the ECF electronic filing system on September 16, 2025.

/s/ Oliver Kassenbrock
Oliver Kassenbrock