

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

ZACHARY J. SMITH,

Plaintiff,

v.

JOSEPH FITZPATRICK, Commissioner of Maine
Department of Corrections, *et al.*,

Defendants.

CIVIL NO. 18-cv-00288-NT

DECLARATION OF EDMOND HAYES

Pursuant to 28 U.S.C. § 1746, I, Edmond Hayes, declare as follows:

1. I am an expert in corrections, and, more specifically, in safely implementing medication-assisted treatment (“MAT”) in a correctional setting. I currently serve as the Assistant Superintendent at the Franklin County Sheriff’s Office in Greenfield, Massachusetts. In that role, I am the Director of Treatment and Programming, which incorporates supervision and administration of the medication-assisted treatment program in the Franklin County House of Correction and Jail.

2. Among other duties, I manage and develop the MAT program, supervise employees who are part of the MAT program, and provide policy advice. Part of my job is to consider and address security risks to staff and inmates, and to administer treatment programs in ways that minimize those risks. My curriculum vitae is attached as **Exhibit 1**.

3. The opioid treatment program in Franklin County jails provides medication-assisted treatment to inmates with opioid use disorder. Franklin County jail’s treatment program is recognized as a demonstration site by the United States Substance Abuse and Mental Health

Services Administration (“SAMHSA”) and the National Reentry Resource Center.¹ The current protocol for medically-assisted treatment is attached as **Exhibit 2**. I have overseen the opioid treatment program in the Franklin County jails since 2015.

4. I am aware that the Maine Department of Corrections and the Aroostook County Jail have policies prohibiting the use of medication-assisted treatment in their prisons and jails because of security concerns with providing opioid agonists in the correctional setting.

5. Based on my experience overseeing the administration and implementation of a medication-assisted treatment program in the Franklin County jail, agonist medication can be safely and effectively administered in the correctional setting.

6. Since 2016, Franklin County jail has offered MAT to inmates entering the jail to maintain their active, pre-incarceration prescriptions of buprenorphine. In 2018, Franklin County jail expanded to an induction program, in which incoming inmates are evaluated for opioid use disorder and treated with MAT as appropriate. From the inception of the program in 2016 until the present, I have overseen the administration, implementation, and security of the MAT program. In that role, I have seen the transformative effect that medical treatment through MAT can have on the lives of inmates afflicted with opioid use disorder.

7. Since implementing the MAT program in Franklin County jail, there have been reduced opioid overdoses in Franklin County as a whole. In 2016, we were 1 of 2 counties that had a decline in overdose deaths, and in 2017 Franklin County had greatest decrease in deaths by opioid overdose. Specifically, Franklin County saw a decrease in opioid-related overdose deaths between 2015 and 2016, from 18 to 14. The number of opioid-related overdose deaths decreased further in 2017, to only 9. By contrast, 12 of the 13 other Massachusetts counties saw *increases*

¹ *Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide*, SAMHSA (2017), available at <https://store.samhsa.gov/shin/content//SMA16-4998/SMA16-4998.pdf> (**Exhibit 4**); *see also* Lead Case Planner Profile: Correctional Agency, *Franklin County, Massachusetts*, <https://csgjusticecenter.org/nrrc/correctional-agency/> (**Exhibit 5**).

in opioid-related overdose deaths between 2015 and 2016, and the vast majority saw a net increase from 2015 to 2017.²

8. I am aware that the Maine Department of Corrections and Aroostook County Jail cite the risk of diversion and related security concerns as reasons not to provide MAT to inmates. However, in my opinion, the risk of diversion does not justify withholding MAT in jails and prisons because there are many different ways to reduce the risk of diversion.

9. Franklin County jail has developed effective procedures to address the risk of diversion. The procedure that we use at Franklin County jail is described in **Exhibit 3**, titled “Dispensing Protocol for Medically Assisted Treatment (MAT) of Opioid Use Disorder,” and could be replicated in other facilities.

10. The dispensing protocol includes safeguards such as:

- a. Using multiple security staff to support the medical personnel in administering the medication; the security staff must follow the direction of the medical personnel;
- b. Instructing the inmates to sit on their hands for the duration of the medication distribution;
- c. Using a medication formulation of crushed buprenorphine or buprenorphine / naloxone tablets with a powder-like consistency, which is administered sublingually (under the tongue);
- d. Completing a first mouth check, with the nurse using a flashlight to visually check that the crushed medication remains under the tongue;
- e. Waiting 15-18 minutes after administration to ensure there is sufficient time for the medication to dissolve and absorb;

² *Number of Opioid-Related Overdose Deaths, All Intents by County, MA Residents: 2000 – 2017*, Massachusetts Department of Public Health (Aug. 2018), available at <https://www.mass.gov/files/documents/2018/08/24/Opioid-related%20Overdose%20Deaths%20by%20County%20->

- f. Completing a second mouth check with a flashlight 15-18 minutes after the inmates receive the medication;
- g. After the second mouth check, requiring inmates to rinse their mouths with water and spit, eat one package of saltine crackers, then repeat the rinse and spit.
- h. Finally, before returning the inmates to the unit, completing a final mouth and hand check.

11. I communicate with the nurse and the correctional officers who administer the medication, and they report that they are able to effectively perform the procedures listed in Exhibit 3.

12. In addition to these procedures, Franklin County jail also implements urinalysis tests to test compliance with the MAT program.

13. These procedures are effective to prevent many of the diversion techniques mentioned in the declarations of Gary LaPlante at ¶ 11, ECF No. 24-2 (Aug. 28, 2018) (cutting “pouches into the inside of their cheeks to hide pills,” hiding pills in dental cavities or gaps in teeth, sticking Suboxone strips to the roof of the mouth, vomiting up pills), and Craig Clossey at ¶ 10, ECF No. 21-5 (Aug. 23, 2018) (“cheeking” the medication).

14. Using appropriate procedures can greatly reduce instances of diversion. For example, Franklin County previously used a formulation of buprenorphine in buccal strips (*i.e.*, Bunavail), in which a strip of buprenorphine/naloxone dissolves on the inside of the patient’s cheek. Using that formulation, we saw some instances of inmates diverting the medication by hiding part of the film. However, using the new formulation of crushed generic buprenorphine/naloxone tablets (a combination of buprenorphine and naloxone), the diversion rate has dropped dramatically.

15. Although I am aware of instances where patients attempted to divert the medication by spitting some of the medication onto their clothes, it has been very easy for medical and corrections personnel to catch these attempts. These attempts happen infrequently and are generally unsuccessful. Part of the protocol described in Exhibit 3 instructs officers to check each inmate before returning them to their unit, and, “[i]f the inmate salivates onto any part of their jumpsuit, that piece of clothing will be removed and replaced.” Exhibit 3 ¶ 6.

16. Using the procedures described in Exhibit 3, there has been very little diversion of medication from the MAT program in Franklin County jail. Additionally, based on knowledge of practices in other correctional facilities, I believe that these procedures would be effective in preventing diversion in other correctional facilities.

17. In short, it is my opinion that the above procedures can effectively prevent diversion of Suboxone and other agonist medications used in MAT.

18. I understand that drug trafficking is a problem in Maine correctional facilities, LaPlante Decl. at ¶ 4, ECF No. 24-2, as it is in many jails and prisons. However, implementing the MAT program in Franklin County jail has actually decreased trafficking in buprenorphine, Suboxone, and equivalent substances. Instead, drugs that are not part of prison medical programs—such as cocaine and marijuana—are more prevalent than contraband buprenorphine. **Exhibit 7** (Random Drug Screens – January 1, 2018 to September 14, 2018). This supports that providing buprenorphine as part of MAT in prison does not increase trafficking in buprenorphine.

19. Based on my experience in implementing the MAT program, I believe that providing MAT to inmates decreases trafficking by treating opioid use disorder and thereby lessening the demand for contraband.

20. I am providing this declaration in my personal capacity, not as a representative of Franklin County jail.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 17, 2018

/s/ Edmond Hayes
Edmond Hayes