No. 24-2673

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JONATHAN DIFRAIA,

Plaintiff-Appellant,

v.

KEVIN RANSOM ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
No. 1:23-cv-01187-JPW-EW
Hon. Jennifer P. Wilson

OPENING BRIEF OF PLAINTIFF-APPELLANT AND VOLUME I OF THE APPENDIX (JA001–JA022)

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit Local Appellate Rule 26.1, Plaintiff-Appellant Jonathan DiFraia states that he is an individual and not a publicly held corporation, other publicly held entity, or trade association; that he does not issue shares to the public and has no parent companies, subsidiaries, or affiliates that have issued shares to the public in the United States or abroad; that no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of the litigation; and that the case does not arise out of a bankruptcy proceeding.

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INTRODUCTION

Plaintiff-Appellant Jonathan DiFraia was forced to stop taking life-saving medication while he was incarcerated because he received two disciplinary charges. This forced withdrawal had nothing to do with Mr. DiFraia's medical needs. Rather, it was based entirely on a non-medical rationale. After officials refused to provide his medication for opioid use disorder ("MOUD"), Mr. DiFraia suffered painful withdrawal symptoms, his mental and physical health deteriorated, and he relapsed.

It would be unimaginable to forcibly remove someone from insulin—used to treat diabetes—because of a prison rule violation. But, because Defendants treat people with opioid use disorder ("OUD") differently from people with other chronic diseases, Mr. DiFraia was forced to go without his crucial medication.

After being taken off of his MOUD, Mr. DiFraia asked for his medication to be reinstated. This request was denied. He then sued *pro se*, asking the lower court to enforce his rights under the Americans with Disabilities Act ("ADA") and the Eighth Amendment, as well as bringing a medical malpractice claim. Mr. DiFraia's complaint was

dismissed by the District Court. In doing so, the District Court failed to credit Mr. DiFraia's recitation of plausible facts, as it was required to do; ignored this Court's binding precedent allowing government officials to be sued in their official capacity under the ADA where Congress has validly abrogated sovereign immunity; applied an incorrect legal standard in assessing his Eighth Amendment claim; and improperly dismissed his medical malpractice claim under Rule 12.

JURISDICTIONAL STATEMENT

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as Mr. DiFraia's complaint asserted claims under 42 U.S.C. § 1983 and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq*. The District Court had subject matter jurisdiction over Mr. DiFraia's medical malpractice claim pursuant to 28 U.S.C. § 1367. The District Court entered a final judgment of dismissal on August 26, 2024. JA022. Mr. DiFraia filed a timely notice of appeal on September 6, 2024. JA001. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Whether Mr. DiFraia's *pro se* complaint plausibly alleged an Americans with Disabilities Act claim when he was stripped of his medication for opioid use disorder for an alleged disciplinary violation, rather than a medical reason, denying him equal access to the prison's medical services and discriminating against him on the basis of his disability. *See* JA011–13.

2. Whether Mr. DiFraia's *pro se* complaint plausibly alleged that Defendants were deliberately indifferent to his serious medical needs under the Eighth Amendment when they knew of his need for medication yet denied him this critical medical care for disciplinary, rather than medical, reasons. *See* JA008–11.

3. Whether the District Court improperly applied Pennsylvania's certificate-of-merit requirement to dismiss Mr. DiFraia's state-law medical malpractice claim under Rule 12. *See* JA014–17.

STATEMENT OF RELATED CASES

Counsel are not aware of any related proceedings.

STATEMENT OF THE CASE

I. The Nature of the Case

The United States is in the midst of an overdose epidemic that took the lives of 80,000 people in the twelve months ending in November 2024, including 55,000 people who died of an opioid overdose. Nat'l Ctr. For Health Statistics, Ctrs. For Disease Control and Prevention, *Provisional Drug Overdose Death Counts* (Apr. 16, 2025).[1, 2] On average, 150 people die of an opioid overdose each day. *Id.* At the root of this crisis is a disease: opioid use disorder ("OUD"). OUD is a form of drug addiction, which changes "brain circuits involved in reward, stress, and self-control," sometimes for a long time after someone stops using drugs. *See* Nat'l Inst. on Drug Abuse, *Drugs,*

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[1] https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm [https://perma.cc/43QR-7CSV].

[2] Mr. DiFraia respectfully requests that this Court take judicial notice of the publicly available information from government and professional association websites cited in this brief. *See* Fed. R. Evid. 201(c)(2) ("The court . . . must take judicial notice if a party requests it and the court is supplied with the necessary information."). This Court may take judicial notice at any point during the proceeding of a fact that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2), (d); *see Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017).

Brains, and Behavior: The Science of Addiction (July 2018).[3] OUD is "a disorder characterized by loss of control of opioid use, risky opioid use, impaired social functioning, tolerance, and withdrawal." Substance Abuse and Mental Health Servs. Admin., *Medications for Opioid Use Disorder Treatment Improvement Protocol (TIP) 63* at 1–2 (2021).[4]

OUD is especially life-threatening for recently incarcerated people, as courts have recognized. *See, e.g.*, *Pesce v. Coppinger*, 355 F. Supp. 3d 35, 48 (D. Mass. 2018) (describing the "alarming" statistics showing that the "opioid-related overdose death rate is 120 times higher for people released from jails and prisons compared to the rest of the adult population.").

Medication for opioid use disorder ("MOUD"),[5] in combination with appropriate psychosocial services, is the standard of care to treat

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[3] https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction [https://perma.cc/J8TJ-23BA].
[4] https://library.samhsa.gov/sites/default/files/pep21-02-01-002.pdf [https://perma.cc/RG2Z-D2N9].

[5] The Complaint and opinion below use the term "MAT" (medication-assisted treatment or medications for addiction treatment). The term MOUD is often used interchangeably with MAT. This brief uses the term "MOUD" because it refers specifically to medications that treat opioid use disorder, whereas MAT is a broader term referring to both

OUD. Am. Soc'y of Addiction Med., *National Practice Guideline for the Treatment of Opioid Use Disorder* at 27 (2020).[6]

There are three FDA-approved MOUDs: methadone, naltrexone, and buprenorphine. U.S. Food & Drug Admin., *Information about Medications for Opioid Use Disorder (MOUD)*, (Dec. 26, 2024).[7]

For people who are incarcerated, access to MOUD reduces the risk of in-custody deaths by overdose or suicide. *See, e.g.*, *Smith v. Aroostook Cnty.*, 376 F. Supp. 3d 146, 150 (D. Me. 2019) (finding that MOUD is "associated with a reduced likelihood of in-custody deaths by overdose or suicide and an overall 75 percent reduction in all-cause in-custody mortality."), *aff'd*, 922 F.3d 41 (1st Cir. 2019).

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medications that treat opioid use disorder as well as medications that treat other substance use disorders, such as alcohol use disorder.

[6] https://sitefinitystorage.blob.core.windows.net/sitefinity-production-blobs/docs/default-source/guidelines/npg-jam-supplement.pdf?sfvrsn=a00a52c2_2 [https://perma.cc/L3JT-KXHP].

[7] https://www.fda.gov/drugs/information-drug-class/information-about-medications-opioid-use-disorder-moud [https://perma.cc/Q3JJ-E5HU]. There are various brand name versions of buprenorphine, including sublingual Suboxone and injectable Sublocade. *Id.*

The American Society of Addiction Medicine,[8] the National Commission on Correctional Healthcare,[9] and the White House[10] all recognize the importance of MOUD access.

II. Factual Background

A. Mr. DiFraia receives two misconduct reports.

During Mr. DiFraia's incarceration in the Pennsylvania Department of Corrections, he received MOUD (specifically Suboxone, a brand name for buprenorphine) to treat his OUD. JA031. On January

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[8] Am. Soc'y of Addiction Med., *Public Policy Statement on Treatment of Opioid Use Disorder in Correctional Settings* (revised January 23, 2025), https://downloads.asam.org/sitefinity-production-blobs/docs/default-source/public-policy-statements/2025-final-pps-on-treatment-of-oud-in-correctional-settings.pdf?sfvrsn=74b3ae0_1 [https://perma.cc/VD8U-NFSY].

[9] Nat'l Comm'n on Corr. Healthcare, *Jail Guidelines for the Medical Treatment of Substance Use Disorders 2025* (Mar. 6, 2025), https://www.ncchc.org/wp-content/uploads/2025-MAT-Guidelines-for-Substance-Use-Disorders-3-6-25.pdf [https://perma.cc/ANV2-FTVG] ("People receiving prescribed MAT should be allowed to continue their medication when this is the patient's wish and is clinically appropriate.").

[10] White House Off. of Nat'l Drug Control Pol'y, *Statement of Drug Policy Priorities* (Apr. 1, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/04/2025-Trump-Administration-Drug-Policy-Priorities.pdf [https://perma.cc/L9T2-2QFL] (Trump White House document calling for "expanding access to medications for opioid use disorder").

15, 2023, officers strip-searched Mr. DiFraia while he was waiting in line to receive his MOUD and located an e-cigarette with its cap in his jacket pocket. *Id.* He was issued a misconduct report for contraband for having an e-cigarette with a cap in his possession while standing in the medication line. *Id.* One week later, Mr. DiFraia was again in line to receive his MOUD. *Id.* After Mr. DiFraia put the medication in his mouth, Officer Osmulski accused him of having an e-cigarette cap. *Id.* Mr. DiFraia did not have an e-cigarette cap in his possession at that time. *Id.* Nevertheless, Mr. DiFraia received a second misconduct report for possession of contraband. *Id.*

B. Mr. DiFraia is denied necessary medical treatment—MOUD—due to the misconduct reports.

On January 25, 2023, Defendant Dr. Timothy Kross informed Mr. DiFraia he would be removed from his MOUD "for diversion." JA031. He received a seven-day taper off of his Suboxone and thereafter received no MOUD. *Id.*

Mr. DiFraia contacted and wrote to Defendants Deputy Superintendent for Centralized Services Kevin Ransom, Deputy Jasen Bohinski, Corrections Classification Program Manager Wayne Innis, Drug and Alcohol Treatment Specialist Rawlings, and Dr. Kross

explaining the situation and asking to be put back on the medication. *Id.* The officials refused to reinstate his MOUD, telling Mr. DiFraia that he "did not have to actually be caught diverting to be considered a diverter." *Id.*

After being forced off of his MOUD, Mr. DiFraia suffered painful withdrawal symptoms and relapsed. JA032, JA035. He experienced severe anxiety and depression, picking at his arms causing sores and scars, and a deterioration of his physical and mental health including physical pain and "a reversion of [his] thought process and coping skills." JA032, JA035.

III. Proceedings Below

Mr. DiFraia filed suit in July 2023, asserting claims under the Eighth Amendment and the Americans with Disabilities Act, as well as medical malpractice.[11] *See generally* JA028–35. He sought to be put back on his medication, changes to the prison's MOUD policy, and punitive and compensatory damages. *See generally id*. The state defendants (Ransom, Bohinski, Inniss, Rawlings, Bower, and Osmulski)

[11] Mr. DiFraia's complaint also included other claims, the dismissal of which is not being challenged on appeal.

and former medical provider Dr. Kross separately moved to dismiss Mr. DiFraia's complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. *See* JA037, JA053. Dr. Kross also moved for summary judgment alleging that Mr. DiFraia failed to exhaust his administrative remedies. JA066–69. On July 9, 2024, the District Court entered an order granting Defendants' motions to dismiss all claims without prejudice. JA020–21. The Court did not reach Dr. Kross's motion for summary judgment. JA005 n.3. On August 26, 2024, the District Court dismissed Mr. DiFraia's claims with prejudice because he elected to stand on his original complaint. JA022.

STANDARD OF REVIEW

This Court exercises plenary review over an order granting a Rule 12(b)(6) motion to dismiss. *Mariotti v. Mariotti Bldg. Prods., Inc.*, 714 F.3d 761, 765 (3d Cir. 2013). The Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Rivera v. Monko*, 37 F.4th 909, 914 (3d Cir. 2022) (quoting *Black v. Montgomery Cnty.*, 835 F.3d 358, 364 (3d Cir. 2016)). When a plaintiff is proceeding

pro se, as Mr. DiFraia was before the District Court, the Court has a "well-established" obligation to liberally construe the pleadings, *Higgs v. Atty. Gen. of the U.S.*, 655 F.3d 333, 339 (3d Cir. 2011), particularly when the *pro se* plaintiff is also incarcerated. *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–45 (3d Cir. 2013).

SUMMARY OF ARGUMENT

Opioid use disorder ("OUD") is a life-threatening, but treatable, chronic disease. Effective medication—medication for opioid use disorder ("MOUD")—has proven to dramatically reduce the risk of fatal overdose, especially among currently and recently incarcerated individuals. But when these medications are denied, the consequences can be deadly, with an overdose rate for recently incarcerated people dozens of times higher than for the general population.

Jonathan DiFraia received MOUD to treat his OUD while he was incarcerated in the Pennsylvania Department of Corrections. JA031. But after being accused of two disciplinary violations, he was forced to go off of this lifesaving treatment—putting his life, health, and sobriety at risk. *Id.*

Had Mr. DiFraia been receiving medication to treat another chronic disease, like insulin for diabetes, it would be unimaginable for him to be forcibly removed from this necessary care because of disciplinary violations. But because he has OUD, he was forced off of his medication and endured painful withdrawal symptoms, relapse, and a deterioration in his mental and physical health. The District Court therefore erred when it dismissed Mr. DiFraia's Americans with Disabilities Act ("ADA"), Eighth Amendment, and medical malpractice claims.

First, Mr. DiFraia adequately alleged that Defendants violated the ADA when they discriminated against him on the basis of his disability by removing him from MOUD for non-medical reasons. To state a claim under Title II of the ADA, a plaintiff must allege that she or he is a qualified individual with a disability who was subject to discrimination or denied the benefits of services provided by a public entity because of their disability. 42 U.S.C. § 12132. Disability-based discrimination can be shown through disparate treatment or the failure to make reasonable accommodations.

Mr. DiFraia's allegations easily meet this standard. As a prisoner, he was qualified for prison health services, and he had OUD, a disability. Defendants engaged in unlawful disability discrimination when they treated him differently from other patients on the basis of his OUD and denied him the benefits of the prison's health services due to a disciplinary violation, rather than an evaluation of his medical needs. *See C.G. v. Pa. Dep't of Educ.*, 734 F.3d 229, 236 (3d Cir. 2013).

It is no defense that Mr. DiFraia was accused—or even found guilty—of two disciplinary violations. This Court has held that disciplinary violations do not nullify an individual's rights under the ADA. *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 291 (3d Cir. 2019). Instead of providing reasonable accommodations and administering a punishment that would not impact access to his medication, Defendants forced Mr. DiFraia off of his lifesaving medication.

The District Court therefore erred when it dismissed Mr. DiFraia's ADA claims. The District Court did not address the substance of the claims or the law. Rather, it erroneously concluded that Mr. DiFraia had only named Defendants in their individual capacities and therefore his claims must be dismissed because there is no individual

liability under the ADA. JA011–13. In doing so, the court failed to liberally construe Mr. DiFraia's *pro se* complaint, which, in light of the relief he sought, demonstrates that he brought claims against Defendants in both their individual and official capacities. Where, as here, a plaintiff plausibly alleges conduct that violates both the Eighth Amendment and the Americans with Disabilities Act, state officers may be sued for damages in their official capacity. *Durham v. Kelley*, 82 F.4th 217, 224 (3d Cir. 2023).

Second, Mr. DiFraia adequately alleged that Defendants violated the Eighth Amendment when they denied him necessary medical care for non-medical reasons. A defendant's deliberate indifference to an incarcerated patient's serious medical needs violates the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Mr. DiFraia sufficiently alleged a serious medical need—OUD. Neither Defendants nor the District Court disputed that below. Mr. DiFraia also sufficiently alleged Defendants' deliberate indifference because they denied him necessary medical treatment for non-medical reasons rather than based on his individual medical needs. *See Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999).

In dismissing Mr. DiFraia's Eighth Amendment claim, the District Court applied an incorrect legal standard. The District Court suggested that plaintiffs must prove a defendant withheld medical treatment in order to inflict pain or harm—which is directly contrary to longstanding Supreme Court precedent. *See Whitley v. Albers*, 475 U.S. 312, 319 (1986). Further, the District Court asserted this was simply a disagreement about the type of care provided. But where, as here, the allegations demonstrate that all medical care was denied based on non-medical reasons, not individualized medical judgment, the claim should proceed to discovery. *See Durmer v. O'Carroll*, 991 F.2d 64, 69 (3d Cir. 1993).

Third, Mr. DiFraia adequately stated a medical malpractice claim, and the District Court procedurally erred when it applied Pennsylvania's certificate-of-merit requirement to dismiss his complaint under Rule 12. This Court's precedent regarding the applicability of state-law certificate-of-merit requirements in federal court is currently under review by the Supreme Court due to a significant circuit split on this issue. And, regardless, this Court's case law is clear that failure to file a certificate of merit is not a valid basis for a Rule 12 dismissal

since it requires looking at documents beyond the pleadings. *Talley v. Pillai*, 116 F.4th 200, 207 (3d Cir. 2024).

Accordingly, this Court should reverse the District Court's decision and remand the case for further proceedings.

ARGUMENT

I. Mr. DiFraia adequately alleged an ADA violation because Defendants discriminated against him on the basis of his disability by denying him lifesaving medication for non-medical reasons.

Mr. DiFraia plausibly alleged that Defendants violated the ADA when they removed him from critical medication for reasons unrelated to his medical needs and deprived him of access to the prison's medical services.

To state a claim under Title II of the ADA, a plaintiff must adequately allege he is (1) a qualified individual; (2) with a disability; (3) who was precluded from participating in or denied the benefits of a program, service, or activity, or otherwise was subject to discrimination, by reason of his disability. 42 U.S.C. § 12132; *see also Furgess*, 933 F.3d at 288–89. "Where compensatory damages are sought, a plaintiff must also show intentional discrimination under a deliberate indifference

standard." *Durham*, 82 F.4th at 225. The ADA is meant to be read to "comport with [its] broad remedial purposes," *Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 123 (3d Cir. 2018) (quoting *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 263 (3d Cir. 2006)), and to provide a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

A. Mr. DiFraia adequately alleged he is qualified for prison healthcare as an incarcerated person.

Mr. DiFraia is a qualified individual under the ADA. A qualified individual with a disability is an individual who can meet the essential eligibility requirements for receipt of services with or without reasonable accommodation. 42 U.S.C. § 12131(2). All activities, medical services, and other programs provided by state prisons are "services" for the purpose of the ADA. *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) (recognizing Title II of the ADA "squarely" covers state prisons, including their medical services); 28 C.F.R. pt. 35, app. B (2023) (discussing § 35.102) ("[T]itle II applies to anything a public entity does."). Like all other incarcerated individuals, Mr. DiFraia was qualified to receive prison healthcare, to which he is constitutionally

entitled. *Estelle*, 429 U.S. at 104 (holding incarcerated patients have a constitutional right to adequate medical care); *see also Durham*, 82 F.4th at 225 (holding incarcerated patient with a disability was a "qualified individual" for prison services within the meaning of the ADA).

B. Mr. DiFraia adequately alleged his opioid use disorder is a disability.

Mr. DiFraia sufficiently alleged he is a person with a disability: OUD. Under the ADA, a disability is "a physical or mental impairment that substantially limits one or more major life activities," 42 U.S.C. § 12102(1). The term "physical or mental impairment" includes "drug addiction." 28 C.F.R § 35.108(b)(2); 28 C.F.R § 36.105(b)(2). "Major life activities" include sleeping, learning, reading, concentrating, thinking, communicating, and working. 42 U.S.C. § 12102(2)(A). The determination of a disability is to be made without considering the ameliorative effects of medication. 42 U.S.C. § 12102(4)(E). Through the ADA Amendments Act of 2008, Congress made clear that the term "disability" is to be construed broadly, 42 U.S.C. § 12102(4)(A), and "should not demand extensive analysis." 28 C.F.R. § 35.101(b).

As a form of drug addiction that substantially limits one's ability to concentrate, think, and care for oneself, OUD falls squarely under the ADA's definition of disability. *See* 42 U.S.C. § 12102(2)(A); 28 C.F.R § 35.108(b)(2); 28 C.F.R § 36.105(b)(2). Indeed, drug addiction, including OUD, is commonly recognized as a disability. *See New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 308 (3d Cir. 2007) (noting it was undisputed that someone in recovery from a heroin addiction had a disability); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 48 (2d Cir. 1997) (holding that drug-free clients of an alcohol and drug rehabilitation center are disabled under the ADA).[12]

Defendants were well aware of Mr. DiFraia's OUD. Prison medical professionals prescribed and provided Mr. DiFraia with MOUD to treat his OUD while he was incarcerated. JA031. Likewise, when he was forcibly withdrawn from his lifesaving medication, the impact of his

[12] District courts in this circuit have also frequently held OUD to be a disability under the ADA. *See, e.g.*, *Happel v. Bishop*, No. 23-CV-13, 2024 WL 1508561, at *5 (W.D. Pa. Feb. 22, 2024), *R. and R. adopted*, 2024 WL 1003902 (W.D. Pa. Mar. 8, 2024) (holding that OUD is a disability); *see also Miller v. Chester Cnty. Comm'rs*, No. CV 23-4192, 2024 WL 3606334, at *7 (E.D. Pa. July 31, 2024) (collecting cases).

disability on major life activities was clear: he relapsed and experienced severe anxiety and depression, pain, itching and picking at his scars, and a deterioration of his physical and mental health. JA032, JA035.

C. Mr. DiFraia adequately alleged Defendants discriminated against him on the basis of his disability by denying him equal access to medical care.

Mr. DiFraia sufficiently alleged that Defendants discriminated against him on the basis of his disability when they denied him access to MOUD. In enacting the ADA, Congress viewed disability discrimination not only to be the product of "invidious animus, but rather of thoughtlessness and indifference—of benign neglect." *Alexander v. Choate*, 469 U.S. 287, 295 (1985). A showing of direct animus is not required because "the ADA [is] targeted to address 'more subtle forms of discrimination' than merely 'obviously exclusionary conduct.'" *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 264 (3d Cir. 2013). Disability-based discrimination can be shown by several methods, including disparate treatment and failure to make reasonable accommodations. 28 C.F.R. § 35.130(b); *see Haberle v. Troxell*, 885 F.3d 170, 180 (3d Cir. 2018). Both are applicable here.

First, Defendants discriminated against Mr. DiFraia by treating him differently from people without disabilities or patients with other disabilities when they denied him necessary medication for disciplinary reasons. Treating a group of people differently based on their disability amounts to disability discrimination. *See* 42 U.S.C. § 12132. The ADA prohibits denying people with disabilities the benefits or opportunities provided to people without disabilities, as well as "discrimination against one 'subgroup' of disabled people as compared to another subgroup if the characteristic distinguishing the two subgroups is the nature of their respective disability." *C.G.*, 734 F.3d at 236.

Further, failure to provide medical care can amount to denial of equal opportunity to benefit from a prison's services, in violation of the ADA. *See Furgess*, 933 F.3d at 290 (listing "medical care, and virtually all other prison programs" among the services, programs, and activities covered under Title II of the ADA (quoting *United States v. Georgia*, 546 U.S. 151, 157 (2006))). As such, the failure to provide medical care on the basis of disability "deprives" incarcerated people with disabilities "of a benefit that non-disabled" incarcerated people receive "in the normal course"—medical services. *See C.G.*, 734 F.3d at 235.

Courts throughout the nation have thus held that prisons and jails are obligated under the ADA to provide equal access to effective medical care for incarcerated people with OUD. *See, e.g.*, *Smith v. Aroostook Cnty.*, 376 F. Supp. 3d 146, 160 (D. Me. 2019) (holding that the "denial of the Plaintiff's request for her prescribed, necessary medication . . . is so unreasonable as to raise an inference that the Defendants denied the Plaintiff's request because of her disability."), *aff'd*, 922 F.3d 41 (1st Cir. 2019); *Strickland v. Delaware Cnty.*, No. CV 21-4141, 2022 WL 1157485, at *4 (E.D. Pa. Apr. 19, 2022) (holding that denial of an incarcerated person's MOUD states a claim under the ADA); *Taylor v. Wexford Health Sources, Inc.*, No. 23-CV-00475, 2024 WL 2978782, at *13 (S.D. W. Va. June 13, 2024) (denying defendant's motion for summary judgment because "[i]f a jury finds that there was a policy not to provide MOUD to patients for whom it was medically appropriate, in violation of the standard of care for treatment of OUD, with barriers to care not applied to patients with other diagnoses, the jury could conclude that DCR's failure to properly treat OUD was based on bias or discrimination toward patients with OUD."); *P.G. v. Jefferson Cnty.*, No. 21-CV-388, 2021 WL 4059409, at *5 (N.D.N.Y. Sept. 7, 2021)

("[A] refusal to guarantee access to [MOUD] treatment likely violates the ADA.").

Like the plaintiffs in these cases, Mr. DiFraia had a medical need for MOUD, yet Defendants facially discriminated against him by treating him differently from patients without disabilities and patients with other disabilities by denying him access to his medication for disciplinary reasons unrelated to his medical needs.

Viewing the facts in the Complaint in the light most favorable to Mr. DiFraia, he was falsely assumed to be attempting to divert his MOUD because of his possession of an e-cigarette cap, and was arbitrarily taken off of his medication on the basis of this false charge. JA031. Indeed, Mr. DiFraia was told by prison officials that he "did not have to actually be caught diverting [Suboxone] to be considered a diverter." *Id.*

But even assuming that the disciplinary charges against Mr. DiFraia were meritorious, Defendants' actions amounted to a disability-based denial of the benefit of prison healthcare. Mr. DiFraia received an involuntary seven-day taper off of his medication and then *no* further medical treatment for his OUD. *Id.* Defendants took these actions not in

response to Mr. DiFraia's medical needs, but rather as a disciplinary sanction that resulted in an outright denial of necessary medical services. *Cf. Kiman v. N.H. Dep't of Corr.*, 451 F.3d 274, 287 (1st Cir. 2006) (holding that officials' withholding of plaintiff's prescribed medications was not "a medical 'judgment' subject to differing opinion[, but] an outright denial of medical services" that could constitute an ADA violation).

Indeed, Defendants' decision to strip Mr. DiFraia of his lifesaving medication because of a disciplinary violation would be unthinkable in any other medical context. If Mr. DiFraia's disability were diabetes, surely the prison would not refuse to provide his necessary insulin because of an alleged disciplinary violation. This disparate treatment between the way people with OUD receive (or lose access to) medical care versus the way other patients receive (or lose access to) medical care violates the ADA. *See C.G.*, 734 F.3d at 236; *see also Postawko v. Mo. Dep't of Corr.*, No. 16-CV-04219, 2017 WL 1968317, at *13 (W.D. Mo. May 11, 2017) (holding that incarcerated person who was denied lifesaving medication for Hepatitis C, but who would have received lifesaving medication for other diseases, stated an ADA claim); *McNally*

v. Prison Health Servs., 46 F. Supp. 2d 49, 58 (D. Me. 1999) (holding that prison's delay in granting access to HIV-medication to an incarcerated person could amount to an ADA violation, where there is a speedier process for medications for other disabilities).

Second, Defendants discriminated against Mr. DiFraia by denying him reasonable accommodations for his disability when they stripped him of his medication and refused to reinstate it. They also failed to take any pro-active steps to ensure that the outcome of their disciplinary process would not result in discrimination against Mr. DiFraia because of his disability. The failure to provide reasonable accommodations to ensure "effective" access to programs and services can amount to disability-based discrimination. *Chisolm v. McManimon*, 275 F.3d 315, 325 (3d Cir. 2001); *see Haberle*, 885 F.3d at 180. Public entities must therefore "take certain pro-active measures to avoid the discrimination proscribed by Title II." *Chisolm*, 275 F.3d at 324–25. A "person with a disability may be the victim of discrimination precisely because she did not receive disparate treatment when she needed accommodation." *Williams v. Sec'y Pa. Dep't of Corr.*, 117 F.4th 503, 529 (3d Cir. 2024) (quoting *Presta v. Peninsula Corridor Joint Powers Bd.*,

16 F. Supp. 2d 1134, 1136 (N.D. Cal. 1998)). Further, public entities may not provide a service "that is not as effective in affording equal opportunity to . . . gain the same benefit . . . as that provided to others." 28 C.F.R. § 35.130(b)(1)(iii).

Other courts have found that providing MOUD to an incarcerated person is a reasonable accommodation to allow meaningful access to carceral healthcare. *Smith*, 376 F. Supp. 3d at 160 (holding that without MOUD, "the Plaintiff will be deprived of the only form of treatment shown to be effective at managing her disability and therefore will be denied 'meaningful access' to the Jail's health care services.") (quoting *Nunes v. Mass. Dep't of Corr.*, 766 F.3d 136, 145 (1st Cir. 2014)); *Strickland*, 2022 WL 1157485, at *3 (holding plaintiff denied MOUD plausibly alleged that defendants failed to accommodate his disability); *P.G.*, 2021 WL 4059409, at *5 (holding that refusal to provide MOUD, even if providing other medications to limit withdrawal symptoms, likely violates the ADA because "a reasonable accommodation must be effective"). Likewise, here, Mr. DiFraia's request for accommodations to retain access to his medically-necessary MOUD was refused, *see* JA031, denying him access to the prison's

healthcare services and equal participation in prison life more generally, and stating a claim under the ADA.

Further, "[a] prisoner's misconduct does not strip him of his right to reasonable accommodations." *Furgess*, 933 F.3d at 291. While prison officials are free to impose legitimate sanctions as discipline, the ADA requires them to continue to provide reasonable accommodations—such as essential medications.

In *Furgess*, for example, an incarcerated person with a disability received an accessible shower stall in general population, but when he was placed in a restrictive housing unit because of a disciplinary violation, he no longer had access to an accessible shower stall. *Id.* The court rejected the Department of Corrections' contention that the plaintiff's lack of access to the shower stall was because of his disciplinary violation, rather than his disability. *Id.* ("[A] prison's obligation to comply with the ADA and the RA does not disappear when inmates are placed in a segregated housing unit, regardless of the reason for which they are housed there.").

Likewise, administrative or security concerns cannot justify a failure to accommodate. For example, in *Williams*, an incarcerated

person with a mental health disability was placed in solitary confinement for twenty-six years. *Williams*, 117 F.4th at 508. The Department, again, asserted that Mr. Williams was not in solitary confinement because of his disability, but rather because of his death sentence. *Id.* at 523. The court rejected this argument, emphasizing that the Department's "obligation to comply with the ADA did not disappear because of [plaintiff's] death sentence" and holding that the Department was obligated to "modify its practices to ameliorate the harms of prolonged solitary confinement[.]" *Id.* at 528–29.

Here, like in *Furgess*, Mr. DiFraia adequately alleged that Defendants violated the ADA when they denied his accommodation request and inappropriately relied on disciplinary violations to remove him from his necessary medication. And, despite this Court's admonition in *Williams*, Defendants did nothing to "modify" their disciplinary practices or ensure that Mr. DiFraia had meaningful access to the prison's health services to "ameliorate the harms" of removing

him from lifesaving medication.[13] Instead, Mr. DiFraia went without *any* treatment for his OUD.

D. Mr. DiFraia stated a claim for compensatory damages because Defendants acted with deliberate indifference when they knowingly stripped him of his necessary medication.

Mr. DiFraia adequately alleged that Defendants acted with deliberate indifference when they knew that he needed MOUD to obtain equal access to prison health services but refused to provide that medication. To plausibly allege intentional discrimination and be entitled to compensatory damages, an ADA plaintiff must allege deliberate indifference. *See S.H. ex rel. Durrell*, 729 F.3d at 263. The plaintiff must allege "knowledge that a federally protected right is substantially likely to be violated [and] failure to act despite that knowledge." *Haberle*, 885 F.3d at 181.

Denial of a prescription combined with awareness of the denial can amount to deliberate indifference. *Durham*, 82 F.4th at 226

[13] Other reasonable accommodations could include administering Mr. DiFraia's MOUD in his cell, requiring Mr. DiFraia to wait at medication line longer and requiring him to do a mouth check to ensure his MOUD has dissolved, offering Mr. DiFraia injectable buprenorphine (Sublocade), or imposing a disciplinary sanction unrelated to his access to MOUD.

(holding that incarcerated patient who had prescription for a cane and made numerous officials aware that he needed a cane sufficiently alleged deliberate indifference under the ADA). Here, where Defendants themselves provided MOUD to Mr. DiFraia, there is no question that they were aware of his need for this medical care, yet they still forcibly withdrew him from this care for non-medical reasons—demonstrating deliberate indifference. *See Furgess*, 933 F.3d at 292 (holding that failure to provide an accessible shower stall after once providing an accessible shower constituted deliberate indifference).

Indeed, as further discussed in the Eighth Amendment section *infra*, defendants knew of and failed to act to protect Mr. DiFraia's right to be free of disability discrimination in the provision of the prison's health services. *Cf. Durham*, 82 F.4th at 229 (noting that the Eighth Amendment deliberate indifference standard is higher than the ADA deliberate indifference standard, which "does not require knowledge of a substantial risk of serious harm, but only that a federally protected right is substantially likely to be violated.").

E. The District Court improperly dismissed Mr. DiFraia's ADA claims because it erroneously construed his complaint to name defendants only in their individual capacities.

The court below dismissed Mr. DiFraia's disability discrimination claim solely because it found that there is no individual liability under the ADA. JA011–13. But the court erred by failing to construe Mr. DiFraia's *pro se* complaint liberally and failing to consider whether Mr. DiFraia brought claims against Defendants in their official capacities. Indeed, "state officers can be sued for damages in their official capacities for purposes of the ADA . . . , unless barred by the Eleventh Amendment." *Durham*, 82 F.4th at 224.

Mr. DiFraia's complaint, as is typical of a *pro se* complaint, did not specify if he was suing Defendants in their individual or official capacities. *See Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985) (noting that complaints frequently do not specify if an official is being sued in their personal or official capacity).[14] The Court must therefore look to the "course of proceedings" to determine "the nature of the

[14] Notably, the court-provided complaint form used by Mr. DiFraia does not ask the plaintiff to specify whether named defendants are being sued in their individual or official capacities. *See generally* JA028–33.

liability sought to be imposed." *Id.* Moreover, *pro se* pleadings must be construed liberally. *Higgs*, 655 F.3d at 339. "This practice is driven by an understanding that a court must make reasonable allowances to protect *pro se* litigants from the inadvertent forfeiture of important rights due merely to their lack of legal training." *Garrett v. Wexford Health*, 938 F.3d 69, 92 (3d Cir. 2019).

The context of Mr. DiFraia's *pro se* complaint makes clear that he intended to sue Defendants in their individual and official capacities. In his complaint, Mr. DiFraia sought both money damages and injunctive relief, including policy changes, JA032, which is only available if officials are sued in their official capacities. Particularly in light of the liberal construction that must be afforded *pro se* pleadings, Mr. DiFraia's complaint must therefore be read as naming officials in their individual and official capacities.

Where conduct violates both Title II of the ADA and the Eighth Amendment (through incorporation against the states via the Fourteenth Amendment), Congress has validly abrogated state sovereign immunity. *United States v. Georgia*, 546 U.S. 151, 157–59 (2006) (holding that the ADA validly abrogates state sovereign

immunity where the conduct at issue violates the Eighth Amendment); *Durham*, 82 F.4th at 228–29. Here, Mr. DiFraia has properly stated an Eighth Amendment claim arising from the same conduct that violates Title II of the ADA, and thus his damages claim against state officials in their official capacities is likewise proper.

The cases the District Court cited in dismissing Mr. DiFraia's claims offer no support. Six of the cited cases deal with Title I or Title III of the ADA, which apply to disability discrimination in employment and public accommodations, not—as here—a public entity like the prison. JA011–13.[15]

The District Court also cited two out-of-circuit opinions for the proposition that there is no individual liability under Title II of the ADA. *Garcia v. S.U.N.Y. Health Scis. Ctr. of Brooklyn*, 280 F.3d 98, 107 (2d Cir. 2001); *Alsbrook v. City of Maumelle*, 184 F.3d 999, 1005 n.8 (8th Cir. 1999) (en banc). But both opinions predate the Supreme Court's

[15] *Williams v. Pa. Hum. Rels. Comm'n*, 870 F.3d 294, 299 & n.27 (3d Cir. 2017) (Title I); *Fasano v. Fed. Rsrv. Bank of N.Y.*, 457 F.3d 274, 289 (3d Cir. 2006) (Title I); *Koslow v. Pennsylvania*, 302 F.3d 161, 178 (3d Cir. 2002) (Title I); *Emerson v. Thiel Coll.*, 296 F.3d 184, 189 (3d Cir. 2002) (Title III); *N'Jai v. Floyd*, 386 F. App'x 141, 144 (3d Cir. 2010) (Title I); *Wardlaw v. Phila. Street's Dep't*, 378 F. App'x 222, 225 (3d Cir. 2010) (Title I).

holding that the ADA validly abrogates state sovereign immunity where the conduct at issue violates the Eighth Amendment. *See United States v. Georgia*, 546 U.S. 151, 157–59 (2006).

II. Mr. DiFraia adequately alleged an Eighth Amendment violation because Defendants denied him medical care for non-medical reasons, exhibiting deliberate indifference to his serious medical needs.

Deliberate indifference to an incarcerated patient's serious medical needs violates the Eighth Amendment. *Estelle*, 429 U.S. at 104. To state an Eighth Amendment claim, a plaintiff must sufficiently allege (1) a serious medical need, and (2) that defendants were deliberately indifferent to that medical need. *Rouse*, 182 F.3d at 197. Mr. DiFraia's allegations that he has OUD, a serious medical need, and that Defendants were deliberately indifferent to his medical needs when they forcibly removed him from his lifesaving MOUD for non-medical reasons, sufficiently state an Eighth Amendment claim.

A. Mr. DiFraia adequately alleged he has opioid use disorder, which is a serious medical need.

Mr. DiFraia has sufficiently alleged a serious medical need. A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would

recognize the necessity for a doctor's attention." *Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987). The effects of denying treatment can also demonstrate that a medical need is serious. *Id.* For example, "if unnecessary and wanton infliction of pain results as a consequence of denial or delay in the provision of adequate medical care," the medical need is serious. *Id.* (citation omitted).

Neither Defendants nor the court below suggested that Mr. DiFraia does not have a serious medical need. Nor could they. By any measure, Mr. DiFraia's OUD is a serious medical need.

Mr. DiFraia had been prescribed and was receiving MOUD to treat his OUD while in the custody of Defendants—indicating he had received a diagnosis from physicians working for the Department of Corrections and that those physicians had determined his condition required treatment. *See* JA031; *Lanzaro*, 834 F.2d at 347. In addition, once Defendants denied Mr. DiFraia his MOUD, he experienced "unnecessary and wanton infliction of pain," including serious withdrawal symptoms, picking and causing sores on his arms, severe anxiety, depression, relapse, and physical and mental pain. JA032, JA035; *Lanzaro*, 834 F.2d at 347.

Indeed, lower courts in this circuit have routinely acknowledged that OUD is a serious medical need. *See, e.g.*, *Smith v. Fed. Bureau of Prisons*, No. 24-CV-10269, 2024 WL 5197196, at *4 (D.N.J. Dec. 20, 2024) (allegations that plaintiff had been diagnosed with OUD and treated with MOUD sufficiently demonstrated a serious medical need); *Miller v. Chester Cnty. Comm'rs*, No. CV 23-4192, 2024 WL 3606334, at *5 (E.D. Pa. July 31, 2024) (allegations that plaintiff had OUD, had been "approved for MAT," and suffered "unpleasant symptoms" when treatment was denied sufficiently demonstrated a serious medical need); *Schiavone v. Luzerne Cnty.*, No. 21-CV-01686, 2022 WL 3142615, at *3 n.3 (M.D. Pa. Aug. 5, 2022) (allegations that plaintiff suffered withdrawal symptoms as a result of OUD sufficiently demonstrated a serious medical need).

B. Mr. DiFraia adequately alleged Defendants were deliberately indifferent to his opioid use disorder when they denied him MOUD for non-medical reasons.

Mr. DiFraia has also sufficiently alleged that Defendants acted with deliberate indifference when they refused him lifesaving MOUD for non-medical reasons. This Court has found deliberate indifference in a range of circumstances, "including where the prison official (1) knows

of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse*, 182 F.3d at 197.

Each scenario is relevant here. Mr. DiFraia's allegations demonstrate that Defendants knew of his need for MOUD but intentionally refused to provide it based on non-medical reasons. As noted previously, Mr. DiFraia had been prescribed and was receiving MOUD while in Defendants' custody. JA031. But Defendants cut off his medication after he received two misconduct citations—a non-medical reason. *Id.* And even after Mr. DiFraia contacted each of the Defendants, informing them of his need for the medication and requesting it be reinstated, they refused, asserting that Mr. DiFraia "did not have to actually be caught diverting to be considered a diverter." *Id.*

Indeed, this Court has held in other circumstances that the denial of medical care for non-medical reasons states a claim for deliberate indifference. In *White v. Napoleon*, 897 F.2d 103 (3d Cir. 1990), this Court held that deliberate indifference may be established by

allegations that a prison doctor "withheld medication needed to control a prisoner's blood pressure for no medical reason." *Id.* at 109. Similarly, in *Durham*, the Court held that allegations that officials refused to provide necessary care "for non-medical reasons," including the plaintiff's penchant for complaining, were sufficient to state an Eighth Amendment claim. 82 F.4th at 230; *see also Durmer*, 991 F.2d at 69 (holding that, if failure to provide medical care was "motivated by non-medical factors," the plaintiff has a viable Eighth Amendment claim).

This precedent is in accord with courts around the country, which hold that the denial of medical care for non-medical reasons violates the Eighth Amendment. *See, e.g.*, *Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014) (holding that the "denial of medically indicated surgery solely on the basis of an administrative policy . . . is the paradigm of deliberate indifference"); *Roe v. Elyea*, 631 F.3d 843, 861–63 (7th Cir. 2011) (holding that doctor who implemented blanket policy basing hepatitis C treatment on sentence length rather than a patient's individual condition was deliberately indifferent); *Hartsfield v. Colburn*, 371 F.3d 454, 457 (8th Cir. 2004) (holding there was a question of material fact precluding summary judgment as to whether defendants

were deliberately indifferent when they failed to provide dental treatment for behavioral rather than medical reasons); *De'Lonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003) (holding plaintiff had adequately stated a claim for unconstitutional medical care when treatment was denied "based solely on the Policy rather than on a medical judgment concerning De'Lonta's specific circumstances").

C. The District Court applied an incorrect legal standard when it dismissed Mr. DiFraia's Eighth Amendment claim.

The District Court concluded that Mr. DiFraia raised "a mere disagreement with treatment" that did not rise to the level of an Eighth Amendment violation. JA011. In reaching this conclusion, the District Court relied on a series of misstatements of law and fact.

First, the District Court asserted that Mr. DiFraia did not allege that Defendants "intentionally withheld medical treatment . . . in order to inflict pain or harm" and therefore did not state a claim. JA010–11. But plaintiffs need not allege that a defendant intended to inflict pain to state an Eighth Amendment claim. Rather, black letter law provides that an "express intent to inflict unnecessary pain is *not required*" to allege an Eighth Amendment violation. *Whitley*, 475 U.S. at 319

(emphasis added). And while "deliberate indifference entails something more than mere negligence," it is "satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). The District Court therefore erred by applying a higher intentionality standard.[16]

Second, to support its conclusion that the allegations amount to nothing more than a disagreement about treatment, the District Court asserted that Mr. DiFraia did not allege that "all medical treatment was withheld." JA011. This assertion misapprehends both the facts and the law. Nothing in the complaint suggests that Defendants replaced Mr. DiFraia's Suboxone with a different form of treatment for his OUD. Indeed, this is not a case where Mr. DiFraia received one form of care but preferred another. Here, Defendants removed Mr. DiFraia from his

[16] The District Court relied heavily on a different lower court opinion, which made the same error. *See* JA010 (citing *Hymer v. Kross*, No. 22-1531, 2022 WL 17978265, at *6 (M.D. Pa. Dec. 28, 2022), *rev'd on other grounds* No. 23-2374, 2024 WL 3026781 (3d Cir. June 17, 2024)). It thus appears that the lower courts in this Circuit would benefit from a reaffirmation of the Supreme Court's long-standing Eighth Amendment standards.

prescribed medical care for OUD and thereafter provided *no other care* for his OUD, effective or otherwise.

Moreover, even though courts afford "considerable latitude" to prison medical providers and their professional judgment, "[i]mplicit in this deference . . . is the assumption that such an informed judgment has, in fact, been made." *Inmates of Allegheny Cnty. Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979). Thus where, as here, a plaintiff alleges care was denied not based on medical judgment but on non-medical factors, the claims must proceed to a jury. For example, in *Durmer*, this Court held that an Eighth Amendment claim must survive summary judgment where the plaintiff had received some medical care following a stroke but had not received the recommended physical therapy. 991 F.2d at 68. In cases of inadequate medical care, the Court held, "intent becomes critical: if the inadequate care was the result of an error in medical judgment," the claim will fail. *Id.* at 69. But if the failure to provide adequate care is "deliberate, and motivated by non-medical factors," as Mr. DiFraia alleges, then a plaintiff "has a viable claim" that must be sent to a fact-finder. *Id. See also White*, 897 F.2d at 111 (holding that allegations that doctor treated plaintiff with "an

inappropriate drug for no valid reason" were sufficient to state an Eighth Amendment claim).

III. The District Court procedurally erred when it dismissed Mr. DiFraia's medical malpractice claim under Rule 12 for failure to file a certificate of merit.

The District Court dismissed Mr. DiFraia's medical malpractice claim solely for failure to file a certificate of merit ("COM"), without any consideration of whether he stated a claim. But the COM requirement should not apply in federal court, and even if it does, dismissal under Rule 12 was still inappropriate.

A. Pennsylvania's certificate-of-merit requirement should not apply in federal court because it conflicts with several Federal Rules of Civil Procedure.

Pennsylvania's COM requirement conflicts with several Federal Rules of Civil Procedure and therefore should not apply in federal court. Dismissal of Mr. DiFraia's medical malpractice claim for failure to file a COM was thus improper.[17]

[17] Appellant acknowledges that this Court has previously held that Pennsylvania's certificate-of-merit requirement applies in federal court. *See Schmigel v. Uchal*, 800 F.3d 113, 124 (3d Cir. 2015); *Liggon-Redding v. Estate of Sugarman*, 659 F.3d 258, 264–65 (3d Cir. 2011). Appellant presents this argument to preserve the issue in light of the

Rule 1042.3 of the Pennsylvania Rules of Civil Procedure requires that within sixty days of filing a professional negligence claim, a plaintiff must file a COM that states either: (1) a licensed professional has provided a statement that the defendant's actions fell below the standard of care; (2) the claim is based solely on allegations that the defendant's supervisees acted below the standard of care; or (3) expert testimony is unnecessary. Pa. R. Civ. P. 1042.3(a)(1)–(3). If the COM is not signed by an attorney, *i.e.*, if the plaintiff is *pro se*, the plaintiff must attach a written statement from a licensed professional that the defendant's actions fell below the standard of care (unless the plaintiff indicates no expert testimony will be needed). Pa. R. Civ. P. 1042.3(e). If a plaintiff does not file a COM, the claim will be dismissed. *See* Pa. R. Civ. P. 1042.6, 1042.7; *Liggon-Redding, v. Estate of Sugarman*, 659 F.3d 258, 263 (3d Cir. 2011).

When considering whether a state rule applies in federal court, courts apply a two-pronged inquiry. The first question is whether a

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Supreme Court's grant of a writ of certiorari to review this Court's decision in *Berk v. Choy*, No. 23-1620, 2024 WL 3534482 (3d Cir. July 25, 2024), regarding Delaware's similar affidavit-of-merit requirement. *See Berk v. Choy*, No. 24-440, -- S. Ct. --, 2025 WL 746311 (U.S. Mar. 10, 2025).

federal rule "answers the question in dispute." *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). "If it does, it governs"—notwithstanding state law. *Id.* Second, the court asks whether the federal rule is valid. *Id.* A court need "not wade into *Erie*'s murky waters unless the Federal Rule is inapplicable or invalid." *Id.*

First, Pennsylvania's COM rule should not apply in Federal Court because it answers the same question as Federal Rules of Civil Procedure 11, 26, and 37. Several of this Court's sister circuits have held just that, applying *Shady Grove* to bar application of state COM rules in federal court because they "answer the same question" as the federal rules. *See Albright v. Christensen*, 24 F.4th 1039, 1045–46 (6th Cir. 2022); *Martin v. Pierce Cnty.*, 34 F.4th 1125, 1132 (9th Cir. 2022); *Pledger v. Lynch*, 5 F.4th 511, 518–20 (4th Cir. 2021); *Corley v. United States*, 11 F.4th 79, 82 (2d Cir. 2021); *Gallivan v. United States*, 943 F.3d 291, 297 (6th Cir. 2019); *Passmore v. Baylor Health Care System*, 823 F.3d 292, 293 (5th Cir. 2016).

Pennsylvania's COM rule conflicts with Rule 11 of the Federal Rules of Civil Procedure. Rule 11 requires that "every pleading, written motion, and other paper" be signed by an attorney. Fed. R. Civ. P. 11(a).

In signing, the attorney is certifying that the pleading is legally sufficient and "the factual contentions have evidentiary support." Fed. R. Civ. P. 11(b)(2)–(3). Rule 11 and Pennsylvania's COM rule "address[] the same issue" and both "seek[] to limit frivolous malpractice suits." *Pledger*, 5 F.4th at 520; *see also Albright*, 24 F.4th at 1046 n.3 (holding that Michigan's affidavit requirement "obviously conflicts" with Rule 11). Rule 11's requirement for individuals like Mr. DiFraia, who are not represented by an attorney, even more obviously conflicts with Rule 11 because Rule 11 specifically disclaims the need for an expert affidavit to accompany a complaint. *See Pledger*, 5 F.4th at 520.

Pennsylvania's COM Rule also conflicts with Rule 26, which governs the timing and disclosure of the identities and opinions of both testifying and non-testifying experts. *See* Fed. R. Civ. P. 26. Rule 26 provides an answer to the questions of who must provide a written report, what that report must include, and the timing for submission of a report. *See* Fed. R. Civ. P. 26(a)(2). Rule 26 also protects from disclosure opinions provided by non-testifying experts retained in preparation for trial. Fed. R. Civ. P. 26(b)(4)(D). In contrast, Pennsylvania's COM rule requires anyone without an attorney to

disclose the name and opinion of the expert providing them with an opinion at an early stage of litigation. Pa. R. Civ. P. 1042.3(e). Pennsylvania's rule answers the same questions as Rule 26 regarding whose opinions must be disclosed and when.

For similar reasons, Pennsylvania's COM rule also conflicts with Rule 37. Under Rule 37(c), if a party fails to disclose an expert report or identify a witness as required by Rule 26(a), the default penalty is exclusion of that witness from the trial. Fed. R. Civ. P. 37(c). Rule 37 entrusts trial courts with discretion to modify that sanction as appropriate. *Id.* In contrast, the COM rule provides no discretion and requires the dismissal of the suit for failure to comply with its provisions. *See* Pa. R. Civ. P. 1042.7.

Second, Rules 11, 26, and 37 are valid and accordingly bar application of the Pennsylvania COM rule in federal court. *See Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 6 (1987) (explaining that the Federal Rules are presumptively valid under the Constitution and Rules Enabling Act); *Pledger*, 5 F.4th at 521 (finding Rule 11 to be valid); *Passmore*, 823 F.3d at 299 (holding the same with respect to Rules 26 and 37). Therefore, this Court should reverse the District

Court's dismissal of Mr. DiFraia's medical malpractice claim for failure to file a COM.

B. Dismissal pursuant to Rule 12 based on Mr. DiFraia's failure to file a certificate of merit was improper because it considered materials outside the pleadings.

Even if Pennsylvania's COM requirement does apply in federal court, the District Court's decision below should still be reversed. Dismissal of a claim based on failure to file a COM requires "look[ing] beyond the factual allegations" in the complaint. *Talley*, 116 F.4th at 207. Therefore, "failing to file a COM 'can form the basis for a motion for summary judgment' but it cannot form the basis for a Rule 12(b)(6) motion to dismiss for failure to state a claim." *Id.* (quoting *Schmigel v. Uchal*, 800 F.3d 113, 122 (3d Cir. 2015)). While Dr. Kross did style his motion as seeking dismissal under Rule 12 or, in the alternative, Rule 56, the only basis he asserted for summary judgment was that Mr. DiFraia had failed to exhaust administrative remedies. JA066–69. The District Court here dismissed Appellant's medical malpractice claim under Rule 12. This was at odds with this Court's decision in *Talley*. The District Court's decision should be reversed.

CONCLUSION

For the foregoing reasons, the Court should reverse the lower court's dismissal of Mr. DiFraia's Americans with Disabilities Act, Eighth Amendment, and medical malpractice claims, and remand for further proceedings.

Dated: May 6, 2025

Respectfully submitted,

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CERTIFICATES OF COMPLIANCE

In accordance with Fed. R. App. P. 32(g) and L.A.R. 31.1.(c), I certify that this brief:

(i) complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because it contains 9,125 words, excluding the parts exempted by Fed. R. App. P. 32(f);

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface with 14-pt Century Schoolbook font.

(iii) was scanned for viruses prior to submission using Cortex XDR, agent version 8.7.0, and no virus was detected; and

(iv) is identical to the paper copies that I will cause to be delivered to the Court within the required time.

Pursuant to L.A.R. 28.3(d), I certify that I am a member in good standing of the bar of the Third Circuit.

Dated: May 6, 2025

/s/ Joseph K. Longley
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CERTIFICATE OF SERVICE

I certify that on May 6, 2025, this brief and accompanying appendix was served on counsel for Appellees, Christine C. Einerson, Kathleen A. Wilde LaBay, Samuel H. Foreman, and Benjamin M. Lombard, using the Court's CM/ECF system.

/s/ Joseph K. Longley
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AMERICAN CIVIL LIBERTIES UNION FOUNDATION

APPENDIX

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Volume II

Notice Of Appeal

8-29-24

Jonathan DiFraia,
Plaintiff
v.
Irwin Ransom, et al.,
Defendants

Civil No. 1:23-CV-01187

Judge Jennifer P. Wilson

I wish to appeal the District Courts dismissal of my complaint (ECF No. 28) to the U.S. Court of Appeals for the Third Circuit.

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U.S. District Court
Middle District of Pennsylvania
Sylvia H. Rambo U.S. Courthouse
1501 North 6th Street
Harrisburg PA, 17102

09/03

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHON DIFRAIA,	:	Civil No. 1:23-CV-01187
Plaintiff,	:	
v.	:	
KEVIN RANSOM, *et al.*,	:	
Defendants.	:	Judge Jennifer P. Wilson

MEMORANDUM

Before the court are Defendants' motions to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. 22.) For the following reasons, Defendants' motions to dismiss will be granted and Plaintiff's complaint will be dismissed without prejudice. Plaintiff will be given an opportunity to file an amended complaint curing the defects identified herein.

PROCEDURAL HISTORY

Plaintiff, an inmate currently housed at the State Correctional Institute Rockview ("SCI-Rockview") in Bellefonte, Pennsylvania, initiated this action in July of 2023 by filing a complaint pursuant to 42 U.S.C. § 1983 naming eight defendants: (1) Kevin Ransom ("Ransom"), Superintendent at SCI-Dallas; (2) Jasen Bohinski ("Bohinski"), Deputy Superintendent for Centralized Services; (3) Timothy Kross ("Kross"), Doctor at SCI-Dallas; (4) Wayne Inniss ("Inniss"),

Corrections Classification Program Manager; (5) Rawlings, Drug and Alcohol Treatment Specialist; (6) Bower; (7) John Doe; and (8) Osmulski. (Doc. 1.)

The complaint alleges that on January 15, 2023, Plaintiff was strip searched and Defendants Bower and "C/O" found an e-cigarette with the cap on it in his jacket pocket. (*Id*., p. 4.)[1] He was issued a DC-141 misconduct report for contraband during the "MAT"[2] line. (*Id*.) Plaintiff further alleges that on January 22, 2023, "during MAT line I got my medication [and] after putting it in my mouth C/O Osmulski made me stand up and demanded I give him the E-cig cap, I did not have one nor did I ingest one." (*Id*.) Plaintiff alleges that he received a misconduct for possession of contraband. (*Id*.) On January 25, 2023, he saw Defendant Kross who told him that he was being removed from MAT suboxone for diversion. (*Id*.) Plaintiff alleges that he contacted and wrote to Defendants Ransom, Bohinski, Innis, Rawlings, and Kross "asking to be placed back on MAT and explained the issue and was refused and told I did not have to actually be caught diverting to be considered a diverter." (*Id*.)

Plaintiff raises an Eighth Amendment deliberate indifference to medical needs claim, a Fourteenth Amendment equal protection claim, a "Tort Acts" claim,

[1] For ease of reference, the court utilizes the page numbers from the CM/ECF header.

[2] According to the DOC website, "MAT" stands for Medication Assisted Treatment. *See* https://www.cor.pa.gov/About%20Us/Initiatives/Pages/Medication-Assisted-Treatment.aspx (last accessed June 5, 2024).

an American with Disabilities Act ("ADA") claim, criminal claims of lying on the misconduct reports, and a slander claim. (*Id*., at 5.)

Defendants Ransom, Bohinski, Inniss, Rawlings, Bower, Doe, and Osmulski, collectively known as the "DOC Defendants", filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) and a brief in support on September 22, 2023. (Docs. 19, 20.) Defendant Kross filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) or, in the alternative a motion for summary judgment pursuant to Fed. R. Civ. P. 56[3], and a brief in support on September 25, 2023. (Docs. 21, 22.) On November 6, 2023, Plaintiff filed a brief in opposition to the two motions to dismiss. (Doc. 25.) Defendants did not file a reply. The court will now address the pending motions.

JURISDICTION AND VENUE

The court has jurisdiction over Plaintiff's action pursuant to 28 U.S.C. § 1331, which allows a district court to exercise subject matter jurisdiction in civil cases arising under the Constitution, laws, or treaties of the United States. Venue is proper in this district because the alleged acts and omissions giving rise to the claims occurred at SCI-Dallas, in Luzerne County, Pennsylvania, which is located within this district. *See* 28 U.S.C. § 118(b).

[3] Because the claims will be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), the court will not convert this motion pursuant to Fed. R. Civ. P. 56 and address documents outside the complaint.

MOTION TO DISMISS STANDARD

In order "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (quoting *Twombly*, 550 U.S. at 556). "Conclusory allegations of liability are insufficient" to survive a motion to dismiss. *Garrett v. Wexford Health*, 938 F.3d 69, 92 (3d Cir. 2019) (quoting *Iqbal*, 556 U.S. at 678–79). To determine whether a complaint survives a motion to dismiss, a court identifies "the elements a plaintiff must plead to state a claim for relief," disregards the allegations "that are no more than conclusions and thus not entitled to the assumption of truth," and determines whether the remaining factual allegations "plausibly give rise to an entitlement to relief." *Bistrian v. Levi*, 696 F.3d 352, 365 (3d Cir. 2012) *abrogated on other grounds by Mack v. Yost*, 968 F.3d 311 (3d. Cir. 2020).

When ruling on a motion to dismiss under Rule 12(b)(6), the court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. County of*

Allegheny, 515 F.3d 224, 233 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)). In addition to reviewing the facts contained in the complaint, the court may also consider "exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents" attached to a defendant's motion to dismiss if the plaintiff's claims are based upon these documents. *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010) (citing *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc*., 998 F.2d 1192, 1196 (3d Cir. 1993)).

The pleadings of self-represented plaintiffs are to be liberally construed and held to a less stringent standard than formal pleadings drafted by attorneys. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Fantone v. Latini*, 780 F.3d 184, 193 (3d Cir. 2015), as amended (Mar. 24, 2015). Self-represented litigants are to be granted leave to file a curative amended complaint even when a plaintiff does not seek leave to amend, unless such an amendment would be inequitable or futile. *See Est. of Lagano v. Bergen Cnty. Prosecutor's Off.*, 769 F.3d 850, 861 (3d Cir. 2014); *see also Phillips*, 515 F.3d at 245. A complaint that sets forth facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 106 (3d Cir. 2002).

DISCUSSION

The compliant raises an Eighth Amendment claim, an ADA claim, a Fourteenth Amendment claim, a "Tort Act" claim, a defamation claim, and criminal claims. (Doc. 1.) The motions to dismiss did not challenge the potential criminal claims raised in the complaint. However, the court will address such claims pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

A. Defendants' Motions To Dismiss Will Be Granted.

1. Eighth Amendment Claim

Plaintiff brings an eighth amendment cruel and unusual punishment claim for being removed from medication for disciplinary sanctions *and* an unspecified "deliberat[e] indifference to my medical needs" assertion. (Doc. 1, p. 5.) The court views these as a single claim for deliberate indifference to a serious medical need and will address them as one.

Prison officials violate the Eighth Amendment when they act with deliberate indifference to a prisoner's serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976). To sustain a constitutional claim under the Eighth Amendment for inadequate medical treatment, a plaintiff must make (1) an objective showing that his medical needs were serious, and (2) a subjective showing that the defendants were deliberately indifferent to those medical needs. *See Pearson v. Prison Health Serv.*, 850 F.3d 526, 534 (3d Cir. 2017). A serious medical need is

"one that has been diagnosed by a physician as requiring treatment or is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cty. Corr. Inst'l Inmates v. Lanzaro*, 834 F.2d 326, 346–47 (3d Cir. 1987) (citation omitted). A prison official is deliberately indifferent when he or she "knows of and disregards an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

However, "[p]rison medical authorities are given considerable latitude in the diagnosis and treatment of medical problems of inmates and courts will 'disavow any attempt to second guess the propriety or adequacy of a particular course of treatment . . . which remains a question of sound professional judgment.'" *Byrd v. Shannon*, No. 1:09-CV-1551, 2010 WL 5889519, at *4 (M.D. Pa. Nov. 24, 2010) (quoting *Inmates of Allegheny County Jail v. Pierce,* 612 F.2d 754, 762 (3d Cir.1979)). Mere disagreement over proper treatment does not state a claim upon which relief can be granted. *White v. Napoleon*, 897 F.2d 103, 110 (3d Cir. 1990); *Monmouth Cty. Corr. Inst'l Inmates,* 834 F.2d at 346 ("Courts, determining what constitutes deliberate indifference, have consistently held that mere allegations of malpractice do not raise issues of constitutional import. . . Nor does mere disagreement as to the proper medical treatment support a claim of an eighth amendment violation.").

This court has previously found that a plaintiff being removed from the MAT program for diverting medication did not rise to the level of deliberate indifference:

> At best, Plaintiff's complaint demonstrates his disagreement with being removed from the program and taken off the Suboxone. Though he may have wished to remain in the program and on Suboxone, his disagreement with the course of action that Defendants took based on the diversion of mediation on November 9, 2020, is not enough to state a § 1983 claim. *Sample v. Diecks*, 885 F.2d 1099, 1109 (3d Cir. 1989). This is particularly so in light of the fact that there are no allegations in the complaint that any of the Defendants intentionally withheld medical treatment from Plaintiff in order to inflict pain or harm upon Plaintiff. *Farmer*, 511 U.S. at 837; *Rouse*, 12 F.3d at 197. Thus, the allegations in the Plaintiff's complaint amount to nothing more than Plaintiff's subjective disagreement with the treatment decisions and medical judgment of the medical staff at the prison.

Hymer v. Kross, No. 3:22-1531, 2022 WL 17978265, at *6 (M.D. Pa. Dec. 28, 2022).

The court finds that the allegations in this case are analogous to *Hymer*. Here, Plaintiff alleges that he was removed from the MAT program following a finding of diversion. (Doc. 1, p. 4.) Additionally, Plaintiff did not allege that Defendants intentionally withheld medical treatment from Plaintiff in order to inflict pain or harm. The court acknowledges that Plaintiff claims that harm occurred:

> I was forced to go through withdrawals due to them I picked my arms and have scars, my mental health and physical took a downward plunge causing severe anxiety, depression and relapse. As well as a return of

> pain I suffer from plates and screws in my ankle. It also caused a reversion of my thought process and coping skills.

(Doc. 1, pp. 5, 8.) However, he does not claim that all medical treatment was withheld. Instead, he alleges that the suboxone through the MAT program was withheld. (Doc. 1, p. 4.) Like in *Hymer*, the court finds that any alleged relapse is too tenuous of an allegation to amount to an Eighth Amendment claim. 2022 WL 17978265, at *6. Therefore, Plaintiff raises a mere disagreement with treatment and not an Eighth Amendment claim for deliberate indifference.

2. ADA Claim

Plaintiff brings an ADA claim stating that "I believe that even if I were a diverter the ADA claims I could not be removed from said medication." (Doc. 1, p. 5.) Plaintiff did not state under which title of the ADA he brings his claim. Regardless, the claim will be dismissed with prejudice because there is no individual liability under the ADA.

The court acknowledges that the Third Circuit has not directly answered the question of whether there can be individual liability under Title II. *See Brown v. Deparlos*, 492 F. App'x 211, 215 n.2 (3d Cir. 2012) (nonprecedential) ("This Court has yet to address individual liability under Title II of the ADA[.]"). However, nearly all of the Third Circuit's decisions regarding personal liability under the majority of the ADA's other titles point toward the absence of individual liability. *See Kokinda v. Pa. Dep't of Corr.*, 779 F. App'x 938, 942 (3d Cir. 2019)

(nonprecedential) (finding that plaintiff's claims "for individual damages liability under Title II of the ADA fail for the simple reason that there is no such liability"); *see also Williams v. Pa. Human Relations Comm'n*, 870 F.3d 294, 299 & n.27 (3d Cir. 2017) (holding that Title VII and ADA claims cannot be brought through a "back door to the federal courthouse" via 42 U.S.C. § 1983, and noting that Title VII and ADA claims are intended to impose liability on employers, not individuals); *Fasano v. Fed. Reserve Bank of N.Y.*, 457 F.3d 274, 289 (3d Cir. 2006) (noting in dicta that "neither the ADA nor 12 U.S.C. § 1831j permit individual damages liability on the part of employees"); *Koslow v. Pennsylvania*, 302 F.3d 161, 178 (3d Cir. 2002) (noting in dicta that "there appears to be no individual liability for damages under Title I of the ADA"); *Emerson v. Thiel Coll.*, 296 F.3d 184, 189 (3d Cir. 2002) (finding that individual defendants did not own, lease, or operate Thiel College and thus were "not subject to individual liability under Title III of the ADA"); *N'Jai v. Floyd*, 386 F. App'x 141, 144 (3d Cir. 2010) (nonprecedential) (noting individual defendant could not be held liable under ADA); *Wardlaw v. Phila. Street's Dep't*, 378 F. App'x 222, 225 (3d Cir. 2010) (nonprecedential) (explaining that plaintiff's ADA claims "were not actionable against the individual defendants"). Additionally, other circuit courts of appeals have found no individual liability under Title II. *See Garcia v. S.U.N.Y. Health Scis. Ctr. of Brooklyn*, 280 F.3d 98, 107 (2d Cir. 2001); *Alsbrook v. City of*

Maumelle, 184 F.3d 999, 1005 n.8 (8th Cir. 1999) (*en banc*). Therefore, the court dismiss Plaintiff's ADA claim against the individual defendants with prejudice.

3. Fourteenth Amendment Equal Protection Claim

Plaintiff brings an equal protection claim pursuant to the Fourteenth Amendment. (Doc. 1, p. 5.)

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Thus, to state a claim under the Equal Protection Clause, a plaintiff must allege that (1) he is a member of a protected class, and (2) he was treated differently from similarly situated inmates. *See id*.

Plaintiff fails to allege that he is the member of a protected class or that he was treated differently from similarly situated inmates. Instead, he alleges that "I believe if the medication was different the Prison would not have removed me." (Doc. 1, p. 5.) Since Plaintiff has failed to allege the required elements of an equal protection claim, the claim will be dismissed.

4. Tort Acts Claim

Plaintiff brings a "Tort Acts" claim against Defendants, which the court construes as a claim under the Federal Torts Claim Act ("FTCA").

The FTCA constitutes "a limited waiver of the United States's sovereign immunity." *White–Squire v. U.S. Postal Serv.*, 592 F.3d 453, 456 (3d Cir. 2010). The FTCA provides that the United States shall be liable, to the same extent as a private individual, "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. § 1346(b)(1); *see also* 28 U.S.C. § 2674.

The United States is the only proper defendant in an FTCA action. *See, e.g., Brownback v. King*, 141 S.Ct. 740, 746 (2021) (explaining that, when Congress passed the FTCA, it waived the sovereign immunity of the United States, so that parties can sue the United States directly for harms caused by its employees); *CNA v. United States*, 535 F.3d 132, 138 n.2 (3d Cir. 2008), as amended (Sept. 29, 2008), (noting that "[t]he Government is the only proper defendant in a case brought under the FTCA").

This claim is being raised against state actors, not federal actors, and it fails to name the United States as a defendant. Thus, the FTCA claim will be dismissed.

The court acknowledges that Plaintiff's reference to the "Tort Act" could be viewed as raising a medical negligence claim under state law: "Tort Acts I believe the Doctor and Prison officials were negligent." (Doc. 1, p. 5.) In Pennsylvania,

medical negligence, or medical malpractice, is defined as "the unwarranted departure from generally accepted standards of medical practice resulting in injury to a patient, including all liability-producing conduct arising from the rendition of professional medical services." *Toogood v. Owen J. Rogal*, D.D.S., P.C., 824 A.2d 1140, 1145 (Pa. 2003) (citing *Hodgson v. Bigelow*, 7 A.2d 338 (Pa. 1939)). To establish a cause of action for negligence under Pennsylvania law, a plaintiff must prove the following elements: (1) a duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages. *See Northwestern Mut. Life Ins. Co. v. Babayan*, 430 F.3d 121, 139 (3d Cir. 2005) (citing *In re TMI*, 67 F.3d 1103, 1117 (3d Cir. 1995)).

Pennsylvania Rule of Civil Procedure 1042.3 requires a plaintiff alleging professional negligence to file a certificate of merit within 60 days of filing the complaint. Pa. R. Civ. P. 1042.3. The certificate must include one of the following: a written attestation by "an appropriate licensed professional" that there is a "reasonable probability that the care, skill or knowledge exercised or exhibited" by the defendant "fell outside acceptable professional standards," and that this was the cause of the plaintiff's injuries; a statement that the claim against the defendant is based only on the professional negligence of those for whom the defendant is responsible; or a statement that expert testimony is unnecessary for

the plaintiff's claim to proceed. Pa. R. Civ. P. 1042.3(a)(1)-(3). Failure to file a certificate of merit is fatal to a plaintiff's claim. Pa. R. Civ. P. 1042.7.

The requirements of Rule 1042.3 are substantive in nature and, therefore, federal courts in Pennsylvania must apply these prerequisites of Pennsylvania law when assessing the merits of a medical malpractice claim. *See Liggon-Redding v. Estate of Sugarman*, 659 F.3d 258, 262-65 (3d Cir. 2011); *Iwanejko v. Cohen & Grigsby*, P.C., 249 F. App'x 938, 944 (3d Cir. 2007). This requirement applies with equal force to counseled complaints and to *pro se* medical malpractice actions brought under state law. *See Hodge v. Dep't of Justice*, 372 F. App'x 264, 267 (3d Cir. 2010) (affirming district court's dismissal of medical negligence claim for failure to file a certificate of merit).

The Pennsylvania Supreme Court has noted that "[b]ecause the negligence of a physician encompasses matters not within the ordinary knowledge and experience of laypersons[,] a medical malpractice plaintiff must present expert testimony to establish the applicable standard of care, the deviation from that standard, causation and the extent of the injury." *Toogood*, 824 A.2d at 1145. A very narrow exception applies "where the matter is so simple or the lack of skill or care is so obvious as to be within the range of experience and comprehension of even non-professional persons." *Hightower-Warren v. Silk*, 698 A.2d 52, 54 n.1 (Pa. 1997). The court acknowledges that the Third Circuit has found Pa.R.C.P.

1042.3 as procedural in Federal Tort Claims Act cases, but it has not been extended to cases with supplemental jurisdiction over state law claims. *See Wilson v. United States*, 79 F.4th 312, 316–20 (3d Cir. 2023).

Here, Plaintiff has failed to file the required certificate of merit within the 60-day time period provided by rule. Therefore, any medical negligence claim potentially raised in the complaint will be dismissed.

5. Defamation Claim

Plaintiff describes his defamation claim by stating "I believe they slandered my name by lying." (Doc. 1, p. 5.)

Under Pennsylvania law, a plaintiff must plead seven elements to state a claim for defamation: (1) the defamatory character of the communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion. 42 Pa. Cons. Stat. Ann. § 8343(a).

The DOC Defendants allege that truth is an absolute and complete defense to a defamation claim and a defendant need only show substantial, rather than complete, truth. (Doc. 20, p. 12.) This court has previously found that, the resolution of the substantial truth of the allegedly defamatory statements is "not

appropriate on a Rule 12(b) motion to dismiss because it takes the court beyond the pleadings." *Ansley v. Wetzel*, No. 1:21-CV-528, 2022 WL 676275, at *6 (M.D. Pa. Mar. 7, 2022).

However, the court finds that the complaint has failed to allege the required factors of a defamation claim. Instead, Plaintiff simply alleges that "they" were "lying." (Doc. 1, p. 5.) Therefore, without more specific allegations, the court will dismiss the defamation claim.

B. Plaintiff's Criminal Claims Will Be Dismissed.

Plaintiff included criminal claims against Defendants: "I believe the[y] broke the lay by being maliciously vague and lying in the misconduct reports." (Doc. 1, p. 5.) Defendants failed to address these claims in their motions to dismiss. (Docs. 20, 22.) However, the court relies on its authority in 28 U.S.C. § 1915(e)(2)(B)(ii), which states that a court "shall dismiss" an *in forma pauperis* case "at any time if the court determines that . . . the action . . . fails to state a claim upon which relief may be granted[.]"

To the extent that this vague claim can be viewed as raising criminal claims, such claims cannot succeed. Private citizens lack standing to initiate criminal proceedings. *United States v. Wegeler*, 941 F.3d 665, 668 (3d Cir. 2019) (citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). Therefore, any attempts to

raise criminal actions against Defendants in this civil complaint will be dismissed with prejudice.

CONCLUSION

For the reasons set forth above, the court will grant Defendants' motions to dismiss. The Eighth Amendment claim, Fourteenth Amendment claim, medical negligence claim, and defamation claim will be dismissed without prejudice. The ADA claim, FTCA claim, and any criminal claims raised against the eight individual Defendants named in this action will be dismissed with prejudice. Plaintiff will be granted leave to file an amended complaint curing the defects addressed above in the claims dismissed without prejudice. Such document shall be titled "amended complaint" and be filed under the same case number. Plaintiff is cautioned that any amended pleading stands alone pursuant to Local Rule 15.1. Therefore, the amended complaint must raise all claims for which Plaintiff seeks relief.

An appropriate order follows.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Judge
Middle District of Pennsylvania

Dated: July 8, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHON DIFRAIA,	:	Civil No. 1:23-CV-01187
Plaintiff,	:	
v.	:	
KEVIN RANSOM, *et al.*,	:	
Defendants.	:	Judge Jennifer P. Wilson

ORDER

AND NOW, on this 8th day of July, 2024, for the reasons set forth in the accompanying memorandum, **IT IS ORDERED THAT:**

1. Defendants' motions to dismiss, Docs. 19, 21, are **GRANTED**.

2. The Eighth Amendment claim is **DISMISSED** without prejudice.

3. The Americans with Disabilities Act claim is **DISMISSED** with prejudice as to the eight individual Defendants named in the complaint.

4. The Fourteenth Amendment claim is **DISMISSED** without prejudice.

5. The FTCA claim is **DISMISSED** with prejudice as to the eight individual Defendants named in the complaint.

6. The medical negligence claim is **DISMISSED** without prejudice.

7. The defamation claim is **DISMISSED** without prejudice.

8. Any criminal claims raised in the complaint are **DISMISSED** with prejudice.

9. Plaintiff is granted leave to file an amended complaint by **August 9, 2024**. Failure to timely file an amended complaint will result in the complaint being dismissed with prejudice and the case being closed.

10. The Clerk of Court shall forward to Plaintiff two (2) copies of this court's prison civil-rights complaint form, which Plaintiff shall use in preparing his third amended complaint.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Judge
Middle District of Pennsylvania

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHON DIFRAIA,	:	Civil No. 1:23-CV-01187
Plaintiff,	:	
v.	:	
KEVIN RANSOM, *et al.*,	:	
Defendants.	:	Judge Jennifer P. Wilson

ORDER

AND NOW, on this 26th day of August 2024, in consideration of the court's July 9, 2024 order, Doc. 27, and Plaintiff's failure to file an amended complaint, **IT IS ORDERED THAT** the complaint, Doc. 1, is **DISMISSED** with prejudice and the Clerk of Court is directed to **CLOSE** the case.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Judge
Middle District of Pennsylvania