

Jennifer A. Giuttari
Elizabeth L. Griffing
ACLU of Montana
P.O. Box 9138
Missoula, MT 59802
T: 406-830-3009
jeng@aclumontana.org
betsyg@aclumontana.org

Diana Kasdan (Pro Hac Vice Pending)
Talcott Camp (Pro Hac Vice Pending)
ACLU Foundation
125 Broad Street, 18th Floor
New York, NY 10004
T: 212-549-2633
F: 212-549-2652
dkasdan@aclu.org
tcamp@aclu.org
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

BETHANY CAJUNE,

Plaintiff,

vs.

LAKE COUNTY, a political subdivision
of the State of Montana; LEONARD L.
“LUCKY” LARSON, Sheriff of Lake
County, in his official and individual
capacities; STEPHEN IRWIN, M.D.,
Medical Doctor of Lake County Detention
Facility, in his official and individual
capacities; LUKE MATHIAS, Captain
and Chief Detention Officer of Lake
County Detention Facility, in his official
and individual capacities,

Defendants.

Case No. CV:

COMPLAINT

INTRODUCTION

1. Plaintiff Bethany Cajúne self-reported to Lake County Detention Facility in March 2009, to complete an outstanding short-term sentence for traffic violations. At that time she was approximately four to five months pregnant, raising five small children at home, and attending GED classes four days a week. She was also nearing a year of successful participation in a medication-treatment program for a diagnosed addiction to opioid drugs. Her medication, Suboxone, enabled Ms. Cajúne to remain drug-free while she participated in a comprehensive counseling program. Ms. Cajúne responded extremely well to this form of treatment and was doing very well in the program overall.

2. Upon her admission to Lake County Detention Facility, and throughout her entire time there, Defendants denied Ms. Cajúne her Suboxone even though her treating physician repeatedly informed Defendants of the significant health risks of cutting her off from her medication, and even though the federal government and the National Commission on Correctional Health Care both recommend continued treatment during pregnancy. The denial resulted in precipitous withdrawal symptoms that directly threatened the survival of her fetus and placed Ms.

Cajúne at serious risk of physical and mental harm, and required emergency hospital care.

3. Defendants' treatment of Ms. Cajúne inflicted unnecessary and substantial physical pain and emotional suffering, ignored her serious medical needs during pregnancy, and threatened her health and safety. By this Complaint, Plaintiff Bethany Cajúne, through her counsel, seeks compensation for the harms resulting from Defendants' unconstitutional denial of medically necessary care. Plaintiff also seeks a declaratory judgment and punitive damages to deter Defendants from maintaining their unconstitutional policies, practices, and customs of denying medically necessary care, and so that other inmates in the custody of Lake County Detention Facility do not face similar risks to their health and safety.

Plaintiff alleges as follows:

JURISDICTION AND VENUE

4. This action arises under 42 U.S.C. §1983, the laws and Constitution of the United States, and the laws and Constitution of the State of Montana.

5. This Court has federal question subject matter jurisdiction under 28 U.S.C. §1331 and §1343(a), and directly under the United States Constitution. Pursuant to 28 U.S.C. §1367(a), this Court has supplemental

jurisdiction over Plaintiff's state claims arising under the Montana Constitution.

6. This Court has jurisdiction to issue the declaratory relief requested pursuant to 28 U.S.C. §§ 2201(a), 2202, and Rule 57 of the Federal Rules of Civil Procedure.

7. Venue is proper under 28 U.S.C. §1391(b) and LR 1.11 because all of the individual Defendants reside in, and the events giving rise to these claims occurred in, Lake County, Montana located in the District of Montana.

PARTIES

8. Plaintiff Bethany Cajúne is twenty-five years old, a United States citizen, and resident of Lake County, Montana. On the dates of the events at issue in this Complaint, Ms. Cajúne was pregnant and in the custody of Lake County Detention Facility.

9. Defendant Lake County is a political subdivision organized and existing under the laws of the State of Montana.

10. Defendant Sheriff Leonard L. "Lucky" Larson is the duly elected Sheriff of Lake County, Montana. The Sheriff's Office is a department within Defendant Lake County. The Sheriff's Office controls Lake County Detention Facility. As Sheriff, Defendant Larson has final

authority over the policies, practices, customs, training, and supervision of Lake County Detention Facility staff, employees, and contractors. He is responsible for the care and custody of all inmates housed in Lake County Detention Facility. In all actions and at all times relevant to this Complaint, Defendant Larson and his agents were acting under color of state law. Defendant Larson is sued in his official and individual capacities.

11. Defendant Luke Mathias is the Captain of Lake County Sheriff's Office and the chief detention officer of Lake County Detention Facility. As Captain, he is responsible for the daily functioning and administration of the Lake County Detention Facility and has responsibility over all staff and employees, including medical employees and contractors. Defendant Mathias is responsible for establishing standards and practices for the administration of medical and mental health care to all inmates detained in Lake County Detention Facility. In all actions and at all times relevant to this Complaint, Defendant Mathias and his agents were acting under color of state law. Defendant Mathias is sued in his official and individual capacities.

12. Stephen Irwin, M.D., is the Medical Doctor for Lake County Detention Facility. As the Medical Doctor, he is responsible for the administration and provision of medical care and services to inmates at Lake

County Detention Facility, including the administration of prescription medications. He is responsible for overseeing the quality and adequacy of medical care and services provided to prisoners at Lake County Detention Facility. In all actions and at all times relevant to this Complaint, Defendant Irwin was acting under color of state law. He is sued in his official and individual capacities.

FACTUAL ALLEGATIONS

Plaintiff's Medical Condition and Treatment **Prior to Incarceration**

13. In 2008, Ms. Cajúne was evaluated for chemical dependency by the Confederated Salish and Kootenai Tribal Health Clinic Behavioral Health Program. She was diagnosed as meeting the criteria for opioid addiction, and was placed in the Medically Assisted Treatment (MAT) program.

14. Opioid addiction is an illness that requires medical and psychosocial treatment.

15. Starting in April 2008, as part of her MAT program, Ms. Cajúne was prescribed Suboxone to treat her opioid addiction and she attended weekly psychosocial counseling. Plaintiff was prescribed Suboxone under the direction of her treating physician in the MAT program,

Dr. Kenneth Cairns. Dr. Cairns is a board certified physician employed by the Confederated Salish and Kootenai Tribal Health Clinic.

16. The primary active ingredient in Suboxone is buprenorphine. Buprenorphine, similar to methadone, suppresses withdrawal symptoms and blocks the effects of short-acting opioid drugs. Unlike methadone, which can only be dispensed to patients at approved treatment centers, Suboxone is approved by the federal government for office-based treatment. This means a physician, once trained and federally qualified to provide Suboxone, can prescribe it to a patient with directions for independent, at-home, use, just like other prescriptions for medical conditions.

17. Throughout her enrollment in the MAT program, Ms. Cajúne experienced great success in recovering from past drug use and positively moving her life forward. She began attending GED classes, strengthened her relationship with her family, and achieved improvements in her emotional and physical health.

18. Some time between the end of 2008 and the beginning of 2009, Ms. Cajúne learned she was pregnant. Under the recommendation and supervision of Dr. Cairns, and to achieve a healthy pregnancy outcome, Ms. Cajúne continued her Suboxone treatment and participation in the MAT program while pregnant.

19. For opioid-dependent women who are pregnant, abrupt withdrawal is contraindicated. Specifically, when a pregnant woman is abruptly taken off her medication-assisted treatment, her fetus may go into withdrawal and suffer from a lack of oxygen, possibly causing fetal stress. Also, there is an increased risk of preterm labor, low birth weight, and fetal death.

20. Abrupt withdrawal is also very harmful to a pregnant woman's health. Withdrawal causes decreased blood flow through the placenta, and it also typically causes diarrhea, vomiting, and dehydration (which also threaten the fetus). For these and other reasons, precipitous withdrawal is medically dangerous for pregnant women.

21. To avoid the adverse outcomes associated with abrupt withdrawal, physicians urge pregnant women with opioid dependencies to remain on medication-assisted programs throughout their pregnancies. For over thirty years, medication-assisted treatment has been the standard of care for pregnant women with opioid dependencies.

22. The Substance Abuse and Mental Health Services Administration, the federal agency that issues guidelines and policies on substance abuse addiction and treatment, recommends medication-assisted

treatment to avoid the adverse effects associated with withdrawal, including for pregnant women.

Plaintiff's Incarceration at Lake County Detention Facility and Defendants' Denial of Medically Necessary Care During Her Pregnancy

23. On February 2, 2009, Ms. Cajúne was arrested and charged with traffic offenses, and was booked into Lake County Detention Facility (Lake County Jail). At that time, a booking officer at Lake County Jail documented that she was pregnant and was taking “Buprenorphine/Naloxone” (Suboxone). She was released later that same day.

24. The next day a bench warrant was served on Ms. Cajúne because of her failure to complete a 24-day sentence for previous traffic violations to which she had pled guilty in January 2008. In 2008, Ms. Cajúne was then pregnant with her fifth child and had begun to serve the 24-day sentence on the earlier traffic offenses. Because she started experiencing early labor symptoms within a few days of that incarceration, the sentencing court ordered Ms. Cajúne released. The court's order further indicated that the court would make a later determination about when she should complete her sentence. Thus, she only served 5 days of the 24 day sentence at Lake County Jail, leaving 19 days to complete.

25. Ms. Cajúne started making arrangements to complete her outstanding 19 days, while awaiting a hearing on the 2009 charges. She advised her MAT counselor that she would need to report to jail soon and called Lake County Jail several times to check if a bed was available.

26. On or around March 10, 2009, Ms. Cajúne's MAT drug treatment counselor, Kathy Ross, spoke with Defendant Mathias. Ms. Ross explained that for Ms. Cajúne to avoid the serious harms of withdrawal to her and her fetus, it was medically necessary that she continue to receive her Suboxone while serving her sentence.

27. On March 18, 2009, Ms. Cajúne self-reported to Lake County Jail to serve her outstanding 19 days. She reported to Lake County Jail with her Suboxone in hand, as well as Promethazine for pregnancy-related nausea. During her health intake screening she informed Booking Officer Trogden that she took the Suboxone for her opioid dependency and that she was pregnant.

28. Once in her cell on March 18, 2009, Plaintiff requested her medications, but jail staff refused her treatment. They informed her that she needed to speak with a doctor before receiving any treatment.

29. Plaintiff again requested her Suboxone on March 19, 2009. Defendants gave her Promethazine on that day but denied her Suboxone.

30. On March 20, 2009, Ms. Cajúne submitted a written medical complaint asking why she was being denied her medication and stating that she was already feeling sick and would get worse without it.

31. On March 20, 2009, Ms. Cajúne's treating physician, Dr. Kenneth Cairns, called at least two times to speak with Dr. Irwin. Both times he was only able to speak with Dr. Irwin's nurse. In at least two calls he explained that discontinuing Ms. Cajúne's Suboxone would cause physical and emotional suffering. He also stressed that this was contraindicated during pregnancy because of the substantial risk of harm, including possible death of the fetus.

32. That same day, Dr. Cairns followed up his phone calls with a faxed letter to Defendants Sheriff Larson and Dr. Irwin. The letter contained the same information he had relayed by phone and additional supportive data. This March 20, 2009 letter from Dr. Cairns specifically explained that he was Ms. Cajúne's treating physician and had prescribed her Suboxone to treat her addiction. He also explicitly warned Defendants that the longer they withheld Ms. Cajúne's Suboxone, the greater the risk of causing permanent harm to the fetus, or even fetal death. He urged Defendants to call him at any time for further information about properly treating Ms. Cajúne.

33. On or about March 20, 2009, Dr. Irwin saw Ms. Cajúne. He did not ask her any questions about her condition, or provide a physical exam. He simply told her she could not have her Suboxone.

34. On March 22, 2009, Ms. Cajúne submitted another request for medical care specifying numerous physical symptoms she had been experiencing for approximately three days as a result of withdrawal, including pain during urination, vomiting, diarrhea, dehydration and dizziness and faintness. She also submitted an inmate grievance asking to appear before Justice Wall in order to discuss her concerns.

35. On or about March 22 to 23, 2009, instead of providing appropriate medical treatment for her extreme diarrhea, vomiting, and other withdrawal symptoms, Defendants placed Ms. Cajúne in a solitary confinement cell. The solitary cell had no windows, a dirty toilet, a sink, a mattress on a cement floor, and a bright light that Ms. Cajúne could not turn off at any time.

36. Defendants referred Ms. Cajúne to the jail psychiatrist for evaluation. She told the psychiatrist that she was suffering anxiety and continual waves of panic attacks, and that she needed to go to a hospital. The psychiatrist did not prescribe any medical treatment to address her

withdrawal. Ms. Cajúne never received any follow-up visits with the psychiatrist.

37. On March 23, 2009, Dr. Cairns again called Dr. Irwin and spoke with him directly. He again explained to Dr. Irwin the medical necessity of continuing Ms. Cajúne's Suboxone prescription and that forced withdrawal was contraindicated during pregnancy. Dr. Irwin was unwilling to consider this information and insisted that he would continue to withhold Ms. Cajúne's Suboxone medication.

38. On or about March 23, 2009, Dr. Irwin saw Ms. Cajúne. Despite, having been informed multiple times by Dr. Cairns of the substantial health risks to Ms. Cajúne and her fetus, and despite Ms. Cajúne's obvious pain, suffering, and signs of withdrawal, Dr. Irwin once again refused to authorize provision of Ms. Cajúne's Suboxone medication.

39. On March 25, 2009, Dr. Cairns visited Ms. Cajúne at Lake County Jail. She appeared visibly sick and underweight, and visibly suffering from the effects of withdrawal, including muscular pain, nausea, vomiting, diarrhea, dehydration, and anxiety — all extremely dangerous during pregnancy.

40. On March 26, 2009, Dr. Cairns again phoned Dr. Irwin and faxed a letter to Lake County Jail, to the attention of Sheriff Larson. When

he spoke to Dr. Irwin, Dr. Cairns again expressed his concerns about the medical risks to Ms. Cajúne caused by the ongoing denial of her Suboxone. Likewise, the letter to Sheriff Larson warned, as did the letter of March 20, 2009, that refusing to provide Ms. Cajúne with her Suboxone medication could cause substantial and permanent harm to her and her fetus, including fetal death.

41. On March 26, 2009, Defendants took Ms. Cajúne to St. Joseph Hospital for an ultrasound, during which both her wrists and ankles remained shackled. The ultrasound dated her pregnancy at approximately sixteen weeks and five days. The ultrasound analysis indicated that her amniotic fluid index measured at the lower limits of the normal range.

42 In sum, from approximately March 18 to March 27, 2009, despite repeated oral and written requests for medical assistance, Ms. Cajúne was forced unnecessarily to suffer the effects of complete and abrupt withdrawal. Eventually the symptoms became consuming. Ms. Cajúne could not sleep and feared that her constant vomiting, diarrhea and the resulting dehydration and inability to keep any nutrients in her system would harm her baby. At one point, Ms. Cajúne was so ill that she fainted in her cell. Her cellmates called for assistance from the jail guards. When a jail

guard arrived, he told Ms. Cajúne she would not be able to get any medical care and that she needed to “tough it out.”

43. Toward the end of the day on March 27, 2009, a public defender filed a “Motion to Authorize Administration of Medication While Incarcerated” on behalf of Ms. Cajúne. The motion was supported by a notarized affidavit from Dr. Cairns. The affidavit provided the court with the same medical information that Dr. Cairns and Kathy Ross had previously provided to Defendants Dr. Irwin, Sheriff Larson, and Captain Mathias. Specifically, the affidavit explained that the abrupt withdrawal of Ms. Cajúne’s Suboxone treatment posed serious risks to Ms. Cajúne’s health, and was putting her fetus at risk of serious injury, including death. The affidavit attested that denying Ms. Cajúne Suboxone was contrary to the standard of care for pregnant women receiving medical treatment for opioid addiction.

44. That evening, the Lake County Justice Court ordered Ms. Cajúne to be released from Lake County Jail because of medical complications.

45. During her nine days at Lake County Jail, Ms. Cajúne lost approximately ten pounds, which is extremely dangerous during pregnancy.

46. The day after her release, March 28, 2009, Ms. Cajúne saw Dr. Cairns and immediately resumed her Suboxone treatment. However, Dr. Cairns remained extremely concerned that Ms. Cajúne was still vomiting, looked thin, weak, and dehydrated. He referred her to the emergency room for immediate evaluation and treatment.

47. On March 28, 2009, Ms. Cajúne went to the emergency room at St. Luke's Community Hospital. Doctors there determined that her vomiting and dehydration were effects of her withdrawal. She was given three liters of intravenous fluid to rehydrate, and it was recommended that she resume her Suboxone treatment per the instructions of Dr. Cairns.

48. During all times that Ms. Cajúne was detained in Lake County Jail while pregnant she was forced to sleep on a single thin mattress, she was not provided the opportunity for daily exercise or movement outside her windowless cell, she was not provided food adequate to meet dietary needs during pregnancy, and she was placed in the solitary cell at times when she should have received medical attention.

49. But for the emergency legal intervention on her behalf, which led to her release from Lake County Jail for the remainder of pregnancy, Ms. Cajúne would not have timely regained her health and normal weight and resumed her Suboxone treatment and MAT program counseling.

50. Upon information and belief, each of the Defendants authorized or implemented a policy, practice, standard operating procedure, or custom of denying any and all prescription medications that are registered as a controlled substance, regardless of the medical necessity of that medication to an individual inmate, and regardless of the excessive risks created by denying such medication to a particular inmate.

51. During the time that Ms. Cajúne was in Defendants' custody, each of the Defendants personally knew of and disregarded Ms. Cajúne's pain and suffering, and knew of and disregarded the excessive risks to the health and safety of Ms. Cajúne and her fetus.

52. Defendant Irwin directly authorized the withholding of Ms. Cajúne's Suboxone, failed to provide any other treatment for her opioid addiction, and failed to otherwise mitigate or prevent the known serious risks that forced withdrawal posed to her and her fetus

53. Upon information and belief, Defendants Larson, Mathias, and Irwin each ignored Dr. Cairn's professional recommendation regarding Ms. Cajúne's care, and never sought other recommendations from a physician with expertise or experience in treating pregnant patients recovering from opioid dependency.

54. Defendants' treatment of Ms. Cajúne was outside of, and directly contrary to, the established standard of care for the treatment of pregnant women who have an opioid dependency, or who are receiving medication treatment for an opioid dependency.

55. Defendants' treatment of Ms. Cajúne was also contrary to the National Commission on Correctional Health Care (NCCHC) *Standards for Health Services in Jails*. The NCCHC *Standards* require that accredited jail facilities have policies consistent with nationally accepted guidelines to address the management of inmates on methadone or other similar substances. The NCCHC *Standards* specifically discuss that the medical standard for pregnant patients is that they not be withdrawn from opioid treatment.

56. Defendants had no acceptable medical basis, or other legitimate justification, for denying Ms. Cajúne her medically necessary Suboxone.

57. Defendants Larson and Mathias personally participated in the deprivation of Ms. Cajúne's constitutional rights by enacting and ratifying policies, practices, and decisions of subordinates and contractors, including Defendant Irwin, that permitted the denial of medically necessary care, safe living conditions, and adequate nutrition for Ms. Cajúne.

58. Defendants Larson and Mathias personally participated in the deprivation of Ms. Cajúne's constitutional rights by failing to properly train, supervise, retain, and/or control the employees, contractors, and agents of Lake County Jail, including Defendant Irwin, who refused to provide Ms. Cajúne with appropriate medical care.

59. Upon information and belief, Defendants Larson and Mathias failed to properly investigate and punish prior denials of medically necessary care and were deliberately indifferent to the obvious need to train, supervise, and discipline employees, contractors, and agents relative to their conduct in responding to inmates' medical needs, all of which encouraged a practice within Lake County Jail of deliberate indifference to the medical needs of inmates.

60. Each of the individual Defendants' actions and omissions conformed to, and were taken pursuant to, the official customs, practices, and policies of Defendant Lake County.

61. Defendants' treatment of Ms. Cajúne exhibited reckless and callous indifference to her constitutional rights, safety, and health.

62. As a direct and proximate result of Defendants' unconstitutional policies, practices, and customs, Ms. Cajúne endured physical and emotional pain and suffering, she suffered a deterioration in her

health, she was exposed to excessive health risks, including risks to her pregnancy, and she required emergency hospital treatment.

CLAIMS FOR RELIEF

First Claim for Relief

Eighth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §1983

63. Plaintiff incorporates all allegations in paragraphs 1 through 62 set forth above.

64. The Cruel and Unusual Punishments Clause of the Eighth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, protects inmates from treatment and conditions that exhibit deliberate indifference to their serious medical needs and that pose a serious risk of harm.

65. Defendants' policies, practices, acts, and omissions violated the Cruel and Unusual Punishments Clause of the Eighth Amendment, made applicable to the States through the Fourteenth Amendment to the United States Constitution.

Second Claim for Relief

Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. §1983

66. Plaintiff incorporates all allegations in paragraphs 1 through 65 set forth above.

67. The Fourteenth Amendment to the United States Constitution protects the rights of privacy, personal autonomy, and a woman's decision to continue her pregnancy to term. These fundamental privacy rights encompass a woman's decision to access medical care necessary to protect the health of her pregnancy.

68. Defendants' policies, practices, acts, and omissions violated the Fourteenth Amendment rights of procreative privacy and autonomy.

Third Claim For Relief
Article II, Section 22 of the Montana Constitution

69. Plaintiff incorporates all allegations in paragraphs 1 through 68, set forth above.

70. The protections against cruel and unusual punishment found in Article II, Section 22 of the Montana Constitution prohibit correctional practices that constitute an affront to an inmate's right of human dignity and ignore or exacerbate an inmate's serious health needs.

71. Defendants' policies, practices, acts, and omissions violated Plaintiff's rights under Article II, Section 22 of the Montana Constitution.

Fourth Claim For Relief
Article II, Section 10 of the Montana Constitution

72. Plaintiff incorporates all allegations in paragraphs 1 through 71, set forth above.

73. Article II, Section 10 of the Montana Constitution declares that “[t]he right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling interest.” This fundamental right to privacy and personal autonomy includes a pregnant woman’s right to access medical care necessary to protect her bodily integrity and health.

74. Defendants’ policies, practices, acts, and omissions violated Plaintiff’s rights under Article II, Section 10 of the Montana Constitution.

PRAYER FOR RELIEF

75. Plaintiff therefore respectfully requests that the Court enter a judgment, including but not limited to:

- a) A declaration that Defendants violated Plaintiff Bethany Cajúne’s rights under the Eighth and Fourteenth Amendments of the United States Constitution;
- b) A declaration that Defendants violated Plaintiff Bethany Cajúne’s rights under Article II, Sections 10 and 22 of the Montana Constitution;

- c) Nominal damages to remedy the constitutional violations;
- d) Compensatory damages in an amount to be proven at trial;
- e) Punitive damages in an amount to be proven at trial;
- f) Costs and reasonable attorneys' fees under 42 U.S.C. §1988; and
- g) Such additional and further relief as the Court deems just and equitable.

Dated: November 19th, 2009

BY:



Jennifer A. Giuttari
Elizabeth L. Griffing
ACLU of Montana
P.O. Box 9138
Missoula, MT 59802
T: 406-830-3009
jeng@aclumontana.org
betsyg@aclumontana.org

Diana Kasdan*
Talcott Camp*
ACLU Foundation
125 Broad Street, 18th Floor
New York, NY 10004

T: 212-549-2633
F: 212-549-2652
dkasdan@aclu.org
tcamp@aclu.org

* Pro Hac Vice Application pending