IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MARK ANDREWS, Plaintiff, vs. JENNIFER WINKELMAN, ROBERT LAWRENCE, and JAMES MILBURN in their official capacities, Defendants.	)	Case No. 3AN-23-05725 CI

ORDER REGARDING CASE MOTIONS ##19 AND 24

I. Introduction

Plaintiff Mark Andrews has filed *Plaintiff's Revised Motion for Summary Judgment* (Case Motion #19), asking the court to grant him summary judgment on his claim against Defendants Jennifer Winkelman, Robert Lawrence, and James Milburn in their official capacities at the Department of Corrections ("the DOC"). Mr. Andrews seeks declaratory relief to the effect that the DOC's involuntary medication procedures violate his right to procedural due process, and he asks the court for injunctive relief mandating a judicial hearing before the DOC can involuntarily medicate him.

Mr. Andrews' complaint arises out of his involuntary medication at Spring Creek Correctional Center ("SCCC"): he alleges one claim – that the DOC violated his procedural due process rights under Alaska's Constitution. The parties dispute the extent of these rights and whether the DOC's procedures violate them.

While Mr. Andrews argues that the court should afford him the same protections as civilly committed mental patients, the DOC disagrees, asking the court to recognize that Mr. Andrews has the same due process as inmates in disciplinary proceedings. Both parties assert that the *Mathews v. Eldridge*[1] balancing test weighs in their favor.

The parties also dispute whether: (1) due process requires the court to recognize that Mr. Andrews is entitled to greater protections because other states and certain criminal proceedings require a judicial determination before involuntary medication; and (2) the DOC's procedures violate federal due process.

Having considered the parties' filings, the court finds that summary judgment for the DOC is appropriate for the reasons described below.

II. Factual Background

The DOC manages the prisons in Alaska. Defendant Jennifer Winkelman is the Commissioner-Designee of the DOC overseeing all Alaska prisons and their policies. The Chief Medical Officer for the DOC is Defendant Robert Lawrence; he manages medical staff, policies, and practices for prisons. Defendant James Milburn is the Superintendent of SCCC, and he supervises staff and has custody of inmates.

Mr. Andrews is an inmate at SCCC. He has been incarcerated since 2001 and housed at SCCC since 2003, where he is serving life. During his incarceration, the DOC diagnosed Mr. Andrews with schizoaffective disorder. He voluntarily took antipsychotic medication for 15 years. However, in 2017, Mr. Andrews began refusing medication due

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[1] 424 U.S. 319 (1976).

to abdominal pain. He remained unmedicated and stable until 2018, when correctional staff began reporting that Mr. Andrews was not eating, showering, or communicating with staff. In October 2018, the DOC started involuntarily medicating Mr. Andrews under their involuntary medication policy that was in effect from July 9, 1995, to July 21, 2022.

Under the policy, if involuntary medication appeared necessary, the inmate was referred to and evaluated by a psychiatrist. If the psychiatrist believed forced medication was necessary, he or she requested a due process hearing that was required to take place within 72 hours. The Mental Health Review Committee ("MHRC") was tasked with conducting the hearing and approving or denying the involuntary medication request.

In Mr. Andrews' case, a correctional psychiatrist requested a forced medication order; the MHRC held a hearing and approved it. The DOC commenced administering psychotropic medication. Per the policy, the MHRC was required to review the order every six months. However, it conducted only one review hearing for Mr. Andrews between 2018 and 2022.

The DOC adopted a new involuntary medication policy that went into effect on July 22, 2022. The second policy is similar to the first. It requires a treating psychiatric provider to request an involuntary medication hearing. Instead of the MHRC, the Involuntary Medication Committee ("IMC") presides over the hearing. The IMC is comprised of a Chair who is a licensed mental health professional, a non-treating psychiatrist, and a non-treating mental health clinician. Inmates can appeal the IMC's

decisions to the Medical Advisory Committee ("MAC") within 48 hours, and the MAC must meet within five business days to review the decision. The MAC's decision to uphold or reject the IMC's conclusion is final. The IMC conducts involuntary medication hearings every six months to determine whether to continue administering involuntary medication.

Since the second policy went into effect, the DOC has properly held four six-month hearings for Mr. Andrews from 2022 to 2024. However, the DOC has now discontinued Mr. Andrews' involuntary medication because the MAC failed to respond to his latest appeal within five days, as required by the policy. The DOC will not continue Mr. Andrews' involuntarily medication unless and until a new petition is filed.

III. Procedural Background

On February 4, 2020, Mr. Andrews filed a pro se motion[2] to enforce the Cleary Final Settlement Agreement ("CFSA") in front of Judge Matthews.[3] He argued that the DOC violated his state and federal rights, as well as the CFSA, because they did not order six-month review hearings before continuing to forcibly medicate Mr. Andrews. In March 2022, Judge Matthews held that Mr. Andrews sufficiently alleged violations of the CFSA and a state or federal right to proceed with the matter. The American Civil Liberties Union entered an appearance for Mr. Andrews the following year and

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2 3AN-81-05274 CI.

3 *Smith v. Cleary*, 24 P.3d 1245, 1246-47 (Alaska 2001). In 1981, Alaska inmates brought a class action suit against the State to challenge prison conditions. The CFSA applies to the DOC and all inmates (with some exceptions) who will be or are incarcerated. It allows inmates to bring compliance actions in the superior court.

successfully requested severance of his claim from *Cleary*, resulting in the present lawsuit.

IV. Legal Standards

There are two legal standards applicable to Case Motions ##19 and 24. They are described below.

A. Summary Judgment Standard

Summary judgment is appropriate when "'there is no genuine issue as to any material fact'" and "'the moving party is entitled to judgment as a matter of law.'"[4] The burden begins with the moving party, who must make a prima facie showing that he is entitled to judgment on the established facts as a matter of law.[5] Upon such a showing, the non-moving party must demonstrate that there is a genuine issue of fact by showing that he can produce admissible evidence reasonably tending to dispute the movant's evidence.[6] All reasonable inferences—or inferences that a reasonable fact finder could draw from the evidence—are drawn in favor of the non-movant.[7]

B. Procedural Due Process Standard

Procedural due process requires "adequate and fair procedures [to] be employed when state action threatens protected life, liberty, or property interests."[8] Alaska has

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4 *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 517 (Alaska 2014) (quoting Alaska R. Civ. P. 56(c)).

5 *Broderick v. King's Way Assembly of God,* 808 P.2d 1211, 1215 (Alaska 1991).

6 *Id.*

7 *Alakayak v. British Columbia Packers, Ltd.*, 48 P.3d 432, 449 (Alaska 2002).

8 *Doe v. Dep't of Pub. Safety*, 444 P.3d 116, 124-25 (Alaska 2019).

adopted the *Mathews* three-part balancing test[9] that determines the necessary extent of procedural due process. The court balances three factors: (1) the private interest affected; (2) "the risk of an erroneous deprivation of such interest through the procedures used" and the value of "additional or substitute" procedures; and (3) the government's interest including "the fiscal and administrative burdens" of "additional or substitute" procedures.[10]

To prevail on his motion, Mr. Andrews must show that the *Mathews* factors favor holding a judicial hearing prior to involuntary medication. For the DOC to prevail, they must show that the *Mathews* factors support maintaining the current involuntary medication policy.

V. Discussion

As described above, the parties dispute what procedural due process the DOC owes Mr. Andrews and whether the DOC's procedures violate those rights.

A. The due process protections of inmates at disciplinary hearings offer the best guidance to determine the extent of Mr. Andrews' procedural due process rights.

Mr. Andrews argues that Alaska's Constitution requires rigorous due process protections for inmates and involuntarily medicated patients, and that the court should find that he has the same procedural due process protections as the civilly committed

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9 *Bigley v. Alaska Psychiatric Inst.*, 208 P.3d 168, 181 (Alaska 2009) (citing *Mathews*, 424 U.S. at 335).

10 *Id.* (citing *Mathews*, 424 U.S. at 335).

plaintiff in *Myers v. Alaska Psychiatric Institute*. [11] The DOC, on the other hand, contends that the level of due process afforded to inmates for disciplinary proceedings offers the best comparison when considering Mr. Andrews' due process rights here: inmates at major disciplinary proceedings are not entitled to "the full panoply of rights due an accused in a criminal proceeding."[12]

There is no Alaska caselaw that establishes what procedural due process inmates have when the DOC involuntarily medicates them. However, Alaska's limited caselaw indicates that inmates have diminished liberty interests in comparison to civilly committed patients.[13]

In *Myers*, Faith Myers appealed from a superior court order approving her involuntary medication at the Alaska Psychiatric Institute ("API").[14] On appeal, API relied on United States Supreme Court cases discussing inmates' due process rights when being involuntarily medicated.[15] The Alaska Supreme Court vacated the lower court's decision, holding that courts cannot authorize involuntary medication unless it is in the patients' best interests and there is no less intrusive alternative treatment.[16] In rejecting API's arguments, the Court stated that "prisoners' rights differ markedly from the rights

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11 138 P.3d 238 (Alaska 2006).

12 *McGinnis v. Stevens*, 543 P.2d 1221, 1225 (Alaska 1975) (citing *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974)).

13 *Myers*, 138 P.3d at 246 n.56.

14 *Id.* at 239.

15 *Id.* at 246 n.56.

16 *Id.* at 254.

of civilly committed mental patients."[17] It reasoned that inmates have "diminished liberty interests because they had been convicted and incarcerated for criminal offenses, not because they were mentally ill."[18]

Following the same reasoning as *Myers*, Mr. Andrews is not entitled to the same procedural due process as civilly committed patients. Rather, the court agrees with the DOC that the due process afforded to inmates at disciplinary hearings provides the best guidance in this matter.

B. The DOC's procedures provide Mr. Andrews with sufficient due process.

When applying the *Mathews* factors, the court must balance: (1) Mr. Andrews' private interests with; (2) the risk that the DOC's current procedures will erroneously deprive Mr. Andrews of those interests and the value of a substitute judicial hearing; and (3) the DOC's interests in maintaining its current policy including the burdens of the substitute hearing.

As to the first *Mathews* factor, it is well established that the right to refuse psychotropic medication is a strong private interest.[19] This factor favors Mr. Andrews.

Turning to the second *Mathews* factor, the court disagrees with most of Mr. Andrews' arguments regarding the risk of erroneous deprivation. First, while he contends that correctional staff are not neutral, Alaska caselaw suggests that the court presumes

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17 *Id.* at 246 n.56.
18 *Id.*
19 *Bigley,* 208 P.3d at 182.

neutrality absent a showing of a pattern of bias, which is missing here.[20] Second, legal representation could be helpful to Mr. Andrews, but the DOC's policy does allow him to effectively advocate for himself before the IMC by making statements, presenting evidence, and calling witnesses. It also provides inmates with a Staff Advisor.[21] Moreover, Mr. Andrews' more limited due process rights as an inmate dictate against providing counsel in these circumstances.[22]

Third, Mr. Andrews argues that neither of the DOC's policies afford him true notice and opportunity to be heard because: (1) under the first policy, he received no six-month review hearings; and (2) under the second policy, the DOC failed to comply with their own procedures.[23] However, issues under the first policy are moot because Mr.

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20 *McGinnis*, 543 P.2d at 1228. Mr. Andrews specifically argues that correctional staff may not be neutral because they may be incentivized to subdue long-term inmates or to agree with their colleagues' medical decisions.

21 In fact, Mr. Andrews made several statements during his hearings regarding his well-being and his medication preferences. Pl.'s Revised Mot. for Summ. J., at 14-22. With respect to Staff Advisors, Mr. Andrews asserts that his assigned Staff Advisors did not prepare or speak to him before, during, or after his hearing. While Mr. Andrews does not articulate how this impacted his ability to advocate for himself or the outcome of his hearings, it seems apparent that if the DOC policy provides a Staff Advisor to inmates for involuntary medication hearing purposes, the Advisor should take an active role.

22 *See, e.g., McGinnis*, 543 P.2d at 1235 (inmates in disciplinary proceedings are entitled to counsel only where the infraction has been referred to the local district attorney for possible prosecution – otherwise, they are not entitled to counsel).

23 He takes issue with only having one to two days' notice, never having the chance to review evidence in advance, and not being told the reason behind his forced medication. At one hearing Mr. Andrews alleges that he was given no opportunity to speak. However, the court reviewed the record and while the IMC did not ask Mr. Andrews for any statements in his defense, the Chair did ask Mr. Andrews if he had any questions twice. Mr. Andrews said "no" to both invitations. At another hearing, Mr. Andrews claims that the IMC reviewed some evidence on the record without Mr. Andrews present.

Andrews' claims are not present and live.[24] As for the current policy, the DOC's procedural mistakes did not prejudice Mr. Andrews because there is undisputed evidence of the danger Mr. Andrews posed when unmedicated.[25] Because a judicial hearing would have made little difference, the DOC's noncompliance amounts to harmless error.[26]

Under the third *Mathews* factor, the court assesses the government's interests including the function of the current procedures and the fiscal and administrative burdens of substitute or additional procedures.

The Alaska Supreme Court has recognized that there is a strong interest in preserving safe correctional facilities and often considers the importance of deferring to prison administrators when they are executing policies that uphold order and security.[27] The DOC's current policy works to preserve institutional safety for mentally ill inmates

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[24] "A claim is moot if it 'has lost its character as a present, live controversy.'" *Ahtna Tene Nene v. State, Dep't of Fish & Game*, 288 P.3d 452, 457 (Alaska 2012) (quoting *Kleven v. Yukon–Koyukuk Sch. Dist.*, 853 P.2d 518, 523 (Alaska 1993)).

[25] The IMC presented evaluations from correctional and non-correctional mental healthcare professionals. It also introduced Mr. Andrews' documented medical history including instances of when Mr. Andrews was unmedicated and a danger to himself and others.

[26] The Alaska Supreme Court has held that the DOC's procedural infirmities were harmless error when the facts on record were undisputed and made no difference in the DOC's final disciplinary decision. *Brandon v. State, Dep't of Corr.*, 73 P.3d 1230, 1236 (Alaska 2003); *Simmons v. State, Dep't of Corr.*, 426 P.3d 1011, 1020 (Alaska 2018).

[27] *Valoaga v. Dep't of Corr.*, 563 P.3d 42, 48 (Alaska 2025) (citing *Nordlund v. State, Dep't of Corr.*, 520 P.3d 1178, 1184 (Alaska 2022))(recognizing the importance of giving prison administrators wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security).

and the general prison population. It gives correctional providers the latitude to quickly intervene when an inmate poses a risk of harm to themselves or others.

Moreover, fiscal and administrative burdens would accompany judicial hearings. For example, the DOC's policy allows it to swiftly determine if an inmate needs to be involuntarily medicated. If a judicial hearing was required, it is not clear how quickly one could be held. In addition, while awaiting the judicial hearing, the DOC would likely need to ensure the unmedicated inmate's safety as well as others' safety in the facility by segregating that inmate – this would require allocating resources in a manner that could lower facility security.

It is also worth noting that, while Mr. Andrews contends that counsel could be appointed for involuntary medication hearings via Administrative Rule 12(e), there would be financial and administrative burdens associated with doing so. Specifically, the court system must pay for attorneys appointed under Rule 12(e).[28] In addition, an initial finding of indigency must be made before appointing counsel under the rule. Then, the court system must review its attorney list and appoint someone who has volunteered to accept the particular matter at a low hourly rate and, if there are no volunteers, then the court system appoints a member of the Alaska Bar Association. The entire process takes time. All of these factors would contribute to delays in holding a judicial hearing, which in turn increases the burden on the DOC and the risk to facility security.

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[28] The parties recognize that the Public Defender Agency could not be appointed to represent inmates in involuntary medication proceedings.

In conclusion, the first factor indisputably weighs in Mr. Andrews' favor. The second factor weighs in the DOC's favor: there is a low risk of the DOC's current procedures depriving Mr. Andrews of his right to refuse psychotropic medication, and a judicial hearing would probably not provide more value. The third factor also weighs in favor of the DOC because it has a strong interest in maintaining security, and there are significant administrative and financial burdens associated with judicial hearings. On balance, the court concludes that the current policy complies with procedural due process.

C. Mr. Andrews is not owed greater procedural protections based on the number of states that require a judicial hearing to involuntarily medicate inmates and because his case is distinguishable from his cited caselaw.

Mr. Andrews argues his position is supported by at least 18 states and the District of Columbia having found that due process requires judicial oversight before involuntarily administering psychotropic medication to an inmate. Mr. Andrews also claims that the DOC's policy creates an "absurd result," considering that other parts of the Alaska criminal justice system require judicial authorization for probationers and pretrial detainees before forced medication.

Even though other states and the District of Columbia require judicial determinations to involuntarily medicate inmates, many other states do not. More to the point, the *Mathews* analysis conducted above dictates against requiring judicial hearings in these circumstances.

Next, Mr. Andrews asks the court to reconcile the rights of pretrial detainees and probationers with his rights as a convicted inmate. Although judicial authorization is

required for the involuntary medication of probationers and pretrial detainees, denying Mr. Andrews a hearing aligns with Alaska's legal system because his case is distinguishable. He relies on *Kozevnikoff v. State*,[29] *Love v. State*,[30] and *R.A. v. State*[31] to assert his argument, but unlike the appellants in *Kozevnikoff* and *Love*,[32] the DOC's policy provides Mr. Andrews an opportunity to present testifying witnesses with very few restrictions,[33] and he cannot be afforded the judicial oversight that R.A. had as a civilly committed patient.[34]

D. The court will not review Mr. Andrews' federal due process argument.

Mr. Andrews claims that the DOC's procedures violate the minimal federal constitutional safeguards guaranteed under *Washington v. Harper*,[35] but it is unnecessary to determine whether the DOC's policy violates Mr. Andrews' right to federal due process because he has not plead a cause of action alleging a federal due process violation.

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29 433 P.3d 546 (Alaska Ct. App. 2018).

30 436 P.3d 1058 (Alaska Ct. App. 2018).

31 550 P.3d 594 (Alaska Ct. App. 2024).

32 In *Kozevnikoff* and *Love*, the Court vacated the trial courts' decisions and held that the records were insufficient to support involuntary medication. The Court found that both probationers had to have opportunities to present medically informed expert testimonies.

33 The restrictions are mostly related to safety or disruption concerns.

34 In *R.A*, the Court affirmed the lower court's order authorizing R.A.'s involuntary medication to restore him to competency for trial. However, the trial court judicially determined R.A.'s involuntary medication as per AS 12.47.110(b) because he was first committed to API before the State filed a petition to involuntarily medicate him.

35 494 U.S. 210 (1990).

VI. Conclusion

The court concludes that summary judgment for the DOC is appropriate.

Accordingly, Case Motion #19 is DENIED and Case Motion #24 is GRANTED.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 22 April 2025.

Dani Crosby
Superior Court Judge

I certify that on 4.22.25 a copy of the above was mailed to each of the following at their address of record:

CCt N. Cauley, C. Yandel, A. Marquez A. Pace

Judicial Assistant