04/18/2024	231	Judge Mark G. Mastroianni: Electronic order entered granting in part and denying in part 170 Motion for Summary Judgment filed by the Hampden County Sheriff's Department ("HCSD") Defendants. The court grants HCSD's motion as to the § 1983 claim (Count III) against Defendant Barrett and the wrongful death claims (Count IV) against both Defendants Barrett and Couture. The court, however, denies the motion as to the § 1983 claim (Count III) against Couture and the ADA claim (Count II) against HCSD. With regard to Barrett, the correctional officer who performed the initial intake of Ms. Linsenmeir upon her arrival to the Western Massachusetts Regional Women's Correctional Center ("WCC") on September 30, 2018, the record contains the following. Barrett asked Linsenmeir a number of intake questions and recorded her responses in the Jail Management System ("JMS"). One of the questions was whether Linsenmeir was experiencing pain in different listed areas of her body. Linsenmeir answered that she had pain in her leg and in her "Torso (Chest, Back)." (Dkt. No. 172-13.) The HCSD Defendants concede that "a reasonable jury could conclude [Linsenmeir] did answer Barrett's inquiry by stating that the location of her pain was in the chest," in light of her recent history of chest pain complaints at the Springfield Police Department. (Dkt. No. 173 at 9.) However, there is no evidence that the Springfield police officers who transported Linsenmeir to WCC, or anyone else, communicated Linsenmeir's prior complaints of chest pain to Barrett or anyone else at WCC. Barrett also testified at her deposition that Linsenmeir did not request any assistance with regard to the pain she reported pursuant to the JMS, and Barrett did not ask any follow-up questions in that regard but, instead, simply recorded her responses in the JMS. (Dkt. No. 172-2 at 52-53.) Following this initial intake interview, Barrett provided Linsenmeir with a meal, a drink, a shower, and a change of clothes. After Linsenmeir completed the body scanner portion of the intake process, Barrett escorted her to the Medical Department for a medical intake with Registered Nurses Wisnaskas and Defendant Couture. There is no evidence that Barrett relayed Linsenmeir's chest pain report to Wisnaskas or Couture (or anyone else), other than to input the information in the JMS. There is also no evidence that medical staff reviewed the responses recorded in the JMS. Rather, the practice at the time was that booking staff would call the Medical Department if the inmate was in medical distress or experiencing a medical emergency. Barrett later completed an incident report regarding the booking process which omitted Linsenmeirs report of chest pain. The court concludes that the record does not support Plaintiff's § 1983 claim against Barrett. "The Eighth Amendment, applied to the states through the Fourteenth Amendment, protects incarcerated people from state corrections officials' deliberate indifference to serious medical needs." Zingg v. Groblewski, 907 F.3d 630, 63435 (1st Cir. 2018) (internal quotation marks omitted); see also Leavitt v. Corr. Med. Servs.

		Inc., 645 F.3d 484, 497 n.21 (1st Cir. 2011); Est. of Sacco v. Hillsborough Cnty House of Corr., 561 F. Supp. 3d 71, 81-82 (D.N.H. 2021). This deliberate indifference standard includes an objective component and a subjective component. Zingg, 907 F.3d at 635. "The objective component requires the plaintiff to prove that she ha[d] a medical need that has been diagnosed by a physician as mandating treatment, or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Id. (internal quotation marks omitted). The HCSD Defendants concede that "[i]n light of [Linsenmeir's] later diagnosis, a jury could find [her chest pain] constituted a serious medical need." (Dkt. No. 173 at 9.) "The subjective component requires the plaintiff to show that prison officials, in treating the plaintiff's medical needs, possessed a sufficiently culpable state of mind" -- that is, "deliberate indifference to the claimant's health or safety." Zingg, 907 F.3d at 635. "To show such a state of mind, the plaintiff must provide evidence that the defendant had actual knowledge of impending harm, easily preventable,... and yet failed to take the steps that would have easily prevented that harm." Id. (internal citation and quotation marks omitted); see also Leavitt, 645 F.3d at 497 ("[D]eliberate indifference requires that the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [s]he must also draw the inference." (internal quotation marks omitted)). This "showing may be made by demonstrating that the defendant provided medical care that was so inadequate as to shock the conscience," or "that was so clearly inadequate as to amount to a refusal to provide essential care." Zingg, 907 F.3d at 635 (internal quotation marks omitted). The deliberate indifference "standard encompasses a narrow band of conduct: subpar care amounting to negligence or even malpractice does not give rise to a constitutional claim." Leavitt, 645 F.3d at 497. In this case, the record does not support the subjective prong of the deliberate indifference standard as to Barrett, as there is simply no evidence from which a jury could infer that she "had actual knowledge of impending harm." Zingg, 907 F.3d at 635. The video evidence from WCC, which does not include audio, shows Linsenmeir somewhat disheveled at intake but not displaying the type of obvious signs of serious medical risk which can be inferred from the videos from later days at WCC (or the video evidence from the Springfield Police Department, which largely did include audio). Barrett's deposition testimony is also unhelpful to Plaintiff, in that she testified Linsenmeir made no request and Barrett asked no follow-up questions regarding Linsenmeir's "Torso (Chest, Back)" response to the JMS question. Moreover, the fact that Barrett did not immediately call the Medical Department or inform nurses Wisnaskas or Couture about the reported torso pain when she escorted Linsenmeir to the Medical Department supports the inference that Barrett (a non-

		medical professional) did not perceive a substantial risk of serious harm. Barrett is entitled to judgment as a matter of law as to Count III. The same cannot be said as to Defendant Couture. Although there is no evidence that Linsenmeir reported any chest pain to Couture or Wisnaskas (or was asked about it by them) during the medical intake on September 30, 2018, that was not the only interaction between Linsenmeir and Couture (or the Medical Department). On October 2, 2018, correctional officer Walters escorted Linsenmeir to the Medical Department for a routine STD screening. Video evidence shows Linsenmeir was disoriented and unable to walk in a straight line. Walters directed Linsenmeir to walk up a single flight of stairs which Linsenmeir struggled to do, ultimately collapsing and taking a break before eventually reaching the Medical Department (with Walters' physical support). The HCSD Defendants concede that, "viewing the facts in the light favorable to the plaintiff," a jury could find that Walters told Defendant Couture about Linsenmeir's fall on the stairs upon entering the Medical Department. (Dkt. No. 173 at 4.) Thereafter, as shown in the video evidence, Linsenmeir and Couture engage in conversation for approximately five minutes before Linsenmeir uses the bathroom to provide a urine sample. While Linsenmeir is in the restroom, Couture can be seen speaking with someone off camera and at one point makes a brief gesture that could be interpreted (in the light most favorable to Plaintiff) as pointing to Couture's chest area. Other facts and circumstances also support this inference, including Linsenmeir's prior complaints to others and worsening condition. The record contains evidence that Linsenmeir complained about chest pain to WCC staff in unit 1B on September 30 and "asked multiple times to be taken to medical." (Dkt. No. 190-15.) Moreover, on the evening of October 1, 2018, a correctional officer on duty in unit 1A (where Linsenmeir was transferred) called the Medical Department for an unknown medical complaint of Linsenmeir, supporting the inference that Linsenmeir continued to seek medical care, likely related to her chest issue. (Dkt. No. 190-37 at 11; Dkt. No. 190-8 at 30-32.) Linsenmeir's condition also obviously deteriorated during her time at WCC, as shown by the video evidence. See Miranda-Rivera v. Toledo-Davila, 813 F.3d 64, 74 (1st Cir. 2016) ("A factfinder can conclude that a government official was aware of a substantial risk of serious harm based on the fact that the risk was obvious."). All of these circumstances -- Linsenmeir's fall on the stairs on the way to medical and its likely report to Couture, Linsenmeir's obviously deteriorating physical condition and prior complaints of chest pain, and Couture's hand gesture immediately after an extended conversation with Linsenmeir in the Medical Department on October 2, 2024 -- support a reasonable inference that Linsenmeir did report her chest pain (a serious medical condition) to Couture on that date. In addition, the court concludes a jury could find Couture's response, which included no physical examination or the taking of vital

		signs (which had not been taken since the original medical intake on September 30, 2018) and no record of their conversation, constituted deliberate indifference to Linsenmeir's serious medical needs. In the court's view, a jury could find, after weighing and interpreting all the evidence, making credibility determinations, and drawing legitimate inferences to fill gaps in the evidence (especially since Linsenmeir cannot tell her own story), that Couture provided medical care "that was so clearly inadequate as to amount to a refusal to provide essential care." Zingg, 907 F.3d at 635; Coscia v. Town of Pembroke, Mass., 659 F.3d 37, 39 (1st Cir. 2011) ("Proof of deliberate indifference requires a showing of greater culpability than negligence but less than a purpose to do harm,... and it may consist of showing a conscious failure to provide medical services where they would be reasonably appropriate." (internal citation omitted)); see also Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 150 (2000). The court also concludes Couture is not entitled to qualified immunity "because the law on denial of medical care has long been clear in the First Circuit," Miranda-Rivera, 813 F.3d at 75, and a reasonable nurse in Couture's position, after having been told of the stair collapse and (a jury could infer) Linsenmeir's serious chest-related issues, would have known that these were indications of a potentially serious medical condition and that the failure to provide any medical evaluation in the face of this medical risk was unconstitutional. The court, however, grants HCSD's motion as to the wrongful death claims against Couture and Barrett. Under the Massachusetts Tort Claims Act ("MTCA"), which applies here, "claims based on the negligent or wrongful conduct of public employees who acted within the scope of their employment may only be brought against the 'public employer'... and not against the individual employees; however, claims based on intentional torts may not be brought against the public employer, although they may be brought against the individual employees." Martini v. City of Pittsfield, 2015 WL 1476768, at *9 (D. Mass. Mar. 31, 2015) (citing Mass. Gen. Laws ch. 258, §§ 2, 10(c)); see Geigel v. Boston Police Dept, 2024 WL 68387, at *5 (D. Mass. Jan. 5, 2024). Under the MTCA, "recklessness is considered negligent, rather than intentional, conduct." Parker v. Chief Just. For Admin. & Mgmt. of Trial Ct., 852 N.E.2d 1097, 1103 (Mass. App. Ct. 2006); see Molinaro v. Town of Northbridge, 643 N.E.2d 1043, 1044 (Mass. 1995) ("Wanton conduct and reckless conduct, however, do not involve the intentional infliction of harm" for purposes of the MTCA); Forbush v. City of Lynn, 625 N.E. 2d 1370, 1372 (Mass. App. Ct. 1994) (explaining distinction "between the intention to commit an act which involves a high degree of likelihood that substantial harm may result to another (reckless misconduct) and the intention to cause that harm (intentional misconduct)" for purposes of MTCA). Here, while the facts support reckless misconduct as to Couture (but not Barrett), they do not support the type of "intentional wrongful act" which fits within the intentional

		tort exception under section 10(c) of the MTCA. Foster v. McGrail, 844 F. Supp. 16, 25-26 (D. Mass. 1994). Following the summary judgment hearing, the court gave the parties an opportunity to file supplemental briefs regarding the level of intent required for a wrongful death claim under these circumstances. In the supplemental filing, Plaintiff strategically focuses on the intent to cause the act, rather than the intent to cause the harm. The court, however, rejects this attempt to narrow the requirements under the MTCA. As the Massachusetts Appeals Court explained in Forbush (the reasoning of which was adopted by the Supreme Judicial Court in Molinaro, 643 N.E.2d at 279): "Reckless misconduct differs from intentional wrongdoing in a very important particular. While an act to be reckless must be intended by the actor, the actor does not intend to cause the harm which results from it. It is enough that he realizes or, from facts which he knows, should realize that there is a strong probability that harm may result, even though he hopes or even expects that his conduct will prove harmless. However, a strong probability is a different thing from the substantial certainty without which he cannot be said to intend the harm in which his act results." Forbush, 625 N.E.2d at 1372 (quoting Restatement (Second) of Torts § 500 comment f); see also Lopes v. Riendeau, 2017 WL 1098812, at *7 (D. Mass. Mar. 23, 2017) ("[P]laintiff's allegation that defendants acted with deliberate indifference does not support an intentional tort claim that would fall outside the immunity provided by the MTCA."). Accordingly, for purposes of the MTCA, Plaintiff must show Defendants intended to cause harm, but the record, even viewed in a light most favorable to Plaintiff, does not support this contention. Although the court acknowledges the tragic circumstances of this case, it is compelled to conclude, given this stringent standard under the MTCA, that Couture and Barrett are entitled to summary judgment in their favor on the wrongful death claims. The court also denies HCSD's motion as to the ADA claim. HCSD argues, as it did at the motion to dismiss stage, that Eleventh Amendment state sovereign immunity bars this claim because (1) Plaintiff cannot demonstrate HCSD violated Title II of the ADA, (2) the alleged conduct does not violate the 14th Amendment, and (3) the alleged conduct is not the type which would validate the ADA's abrogation of sovereign immunity. The court again disagrees with HCSD's first two arguments and, therefore, does not consider the third. See United States v. Georgia, 546 U.S. 151, 159 (2006). The summary judgment record and applicable standard supports a jury finding that WCC staff denied Linsenmeir medical care because of her opioid use disorder. As Plaintiff argues, after Linsenmeir's "initial medical intake on September 30, the HCSD provided no medical treatment aside from dispensing medication and conducting routine PPD and STD testing," (Dkt. No. 188 a 15), despite evidence that Linsenmeir made repeated requests to be taken to the Medical Department on September 30, despite

		her obviously worsening medical condition (including her collapse on the stairs on October 2), and despite evidence of attempts by cell-mates in unit 1A to get "WCC staff members to get her medical attention" after Linsenmeir became increasingly lethargic. (Dkt. No. 190-15; Dkt. No. 190-16.) Linsenmeir's former cell-mates submitted declarations stating that WCC staff responded to the requests for medical attention by "telling [Linsenmeir] that it was her own fault she was there and that she shouldnt do drugs," and by "rolling their eyes" and other gestures of "disdain" indicating that they assumed Linsenmeir "was detoxing." (Id.) These statements evidence direct discriminatory animus. See Lesley v. Hee Man Chie, 250 F.3d 47, 55 (1st Cir. 2001); Smith v. Aroostook Cnty., 376 F. Supp. 3d 146, 160 (D. Me. 2019). There is also evidence that WCC staff were desensitized to withdrawal symptoms due to their repeated exposure to inmates undergoing withdrawal and the HCSD withdrawal policies at the time. In addition, a jury could find, based on the summary judgment record, that "the treatment decision was so unreasonable as to be arbitrary and capricious, raising an implication of pretext for some discriminatory motive." Buchanan v. Maine, 469 F.3d 158, 176 (1st Cir. 2006). Moreover, a jury could find that the alleged denial of medical care, in addition to violating Title II of the ADA, violated the Fourteenth Amendment under the deliberate indifference standard, thus validly abrogating Eleventh Amendment state sovereign immunity. See Georgia, 546 U.S. at 159. Accordingly, the court grants HCSD's motion for summary judgment as to the claims against Defendant Barrett (Counts III and IV) and as to the wrongful death claim against Defendant Couture (Count IV), but the court otherwise denies the motion. (Figueroa, Tamara) (Entered: 04/18/2024)