

SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES
AND
THE MASSACHUSETTS TRIAL COURT

BACKGROUND

1. This Agreement (the “Agreement”) is made between the Massachusetts Trial Court (the “Trial Court”) and the United States of America (“United States”) (collectively the “Parties”).

2. After receiving a complaint, the United States Department of Justice, through the United States Attorney’s Office for the District of Massachusetts, opened an investigation into whether a drug court in the Massachusetts Trial Court system had a practice of requiring drug court participants to abstain from taking buprenorphine or methadone, medications used to treat opioid use disorder (OUD), as a condition of participating in the drug court, and also, whether participants were either pressured or required to undergo treatment with injectable naltrexone, another medication used to treat OUD, without a medical assessment as to whether that medication was, in fact, appropriate, in violation of Title II of the Americans with Disabilities Act (“ADA”), 42 U.S. C. §§ 12131-12134, and Title II’s implementing regulation, 28 C.F.R. pt. 35. Title II provides that no qualified individual shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity. 42 U.S.C. § 12132, 28 C.F.R. § 35.130(a).

3. The United States of America, through the United States Department of Justice, United States Attorney’s Office, District of Massachusetts has the duty to enforce Title II of the ADA, 42 U.S.C. §§ 12131-12134, and the regulations implementing Title II, 28 C.F.R. pt. 35.

4. The Trial Court operates 25 drug courts, which are a form of heightened supervised probation of defendants who have been convicted of crimes involving, or motivated by, the illegal use of drugs. These probationary programs provide case management and coordinate health care services for participants.

5. The Trial Court is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation 28 C.F.R. pt. 35.

6. OUD is a disability under the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 35.108. OUD is a physical or mental impairment that substantially limits one or more major life activities, which includes the operation of major bodily functions. 28 C.F.R. § 35.108(b)(2) (defining physical or mental impairment to include “drug addiction”). OUD substantially limits major life

activities, such as caring for oneself, learning, concentrating, thinking, and communicating. 42 U.S.C. § 12102(2)(A); 28 C.F.R. § 35.108(c)(1)(i). OUD also limits the operation of major bodily functions, such as neurological and brain functions. 42 U.S.C. § 12102(2)(B); 28 C.F.R. § 35.108(c)(1)(ii). The determination whether an impairment substantially limits a major life activity is made without regard to the effect that ameliorating measures—including medication—may have on the impairment. 42U.S.C. § 12102(4)(E)(i); 28 C.F.R. § 35.108(d)(1)(viii).

7. The term “individual with a disability” excludes individuals “currently engaged in the illegal use of drugs, when the covered entity acts on the basis of such use.” 42 U.S.C. § 12210(a); 28 C.F.R. §§ 35.104; 35.131(a). This exclusion does not apply to individuals who are no longer using illegal drugs and who have (1) successfully completed drug rehabilitation, (2) are participating in a supervised rehabilitation program, or (3) are erroneously regarded as using illegal drugs. 42 U.S.C. § 12210(b); 28 C.F.R. § 35.131(a)(2).

8. A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual’s current illegal use of drugs, if the individual is otherwise entitled to such services. 42 U.S.C. § 12210(c); 28 C.F.R. § 35.131(b)(1).

THE UNITED STATES’ REVIEW AND THE TRIAL COURT’S RESPONSE

9. Based on our review of one drug court, the United States verified the allegations from the complaint, and identified issues with the Trial Court’s compliance with the ADA’s non-discrimination requirements, including:

- a. Requiring drug court participants to cease taking lawfully prescribed buprenorphine without prior drug court approval as a condition of participation in the drug court without an individualized medical assessment conducted to determine the medical appropriateness of requiring the individual to cease taking the prescribed medication.
- b. Non-medical personnel recommending drug court participants take injectable naltrexone to the exclusion or non-consideration of other treatment, including buprenorphine and methadone, as a condition of participating in the drug court, without an individualized medical assessment as to its medical appropriateness.

10. The Trial Court denies that it has failed to comply with the requirements of the ADA, and this agreement is not an admission of wrongdoing by the Trial Court. Further, the Trial Court contends that the United States investigation, while identifying some issues at a single drug court, did not find widespread violations.

11. In response to the United States’ investigation described in Paragraph 2, *supra*, the Trial Court enacted the “Policy Concerning the Use of Medications by Individuals

Participating in Medication-Assisted Treatment” (“Policy”), effective January 28, 2020. Trial Court counsel provided the United States with a copy of the Policy on October 25, 2019, which invited the United States’ comments. On November 6, 2019, before the Policy’s implementation, the United States, through its counsel, commented upon the policy. Trial Court counsel duly responded to the U.S. Attorney’s comments on December 31, 2019. On January 28, 2020, the Policy was adopted based upon the Trial Court’s and the U.S. Attorney’s Office’s correspondence concerning its terms.

ACTIONS TO BE TAKEN BY THE TRIAL COURT

12. Within 30 days the Trial Court will ensure that the Policy is in effect in all Massachusetts drug courts for the duration of this agreement. Accordingly, the Policy adopted voluntarily by the Trial Court on January 28, 2020 provides that:

- a. Decisions regarding a participant’s medication type and dosage shall be made only by a licensed prescriber¹ or an opioid treatment program (“OTP”). Drug court personnel will not interfere with the licensed prescriber’s or OTP’s individualized assessment.
- b. Drug court personnel shall not express a preference for, or mandate, one medication over another.
- c. Drug court personnel may require that participants with OUD comply with the treatment recommendations of a licensed prescriber or OTP.
- d. No court shall have a policy or practice of requiring that a party be prescribed any one form of medication over another. No court shall have a policy or practice of requiring that a party be prescribed any one form of medication over another.

13. Within 30 days of the effective date of this agreement, the Trial Court will make the appropriate changes to provide for the following

- a. The Trial Court will monitor drug courts for compliance with this Policy and will ensure that corrective actions are implemented if drug court personnel deviate from this Policy.
- b. Any drug court participant who complains to a drug court judge or any Trial Court judge or employee about a decision related to a medication used to treat opioid use disorder will be referred to the Office of Workplace Rights and Compliance (“OWRC”). OWRC will forward a copy of the participant’s complaint to the appropriate departmental chief justice. All complaints

¹ Per the Policy, “licensed prescriber” “shall refer to a licensed medical professional, including a physician’s assistant, nurse practitioner, or dentist, who is legally authorized by the jurisdiction in which the medical professional is licensed to practice to prescribe controlled substances.”

regarding an alleged violation of the ADA in a drug court, irrespective of how or from whom the Trial Court first learns of them, will be referred to the OWRC. The OWRC will then follow its standard procedure of investigation and fact finding as specified in Trial Court Personnel Policies and Procedures Manual (“Manual”), Section 5.000: Policy Prohibiting Discrimination, Harassment, Retaliation, and Complaint Resolution Procedure and Section 6.000: Complaint and Investigation Procedure *et seq.* with the exception of Section 5.609: Complaints Against Judges.

- c. As part of the monitoring of the Trial Court’s Policy provided for in paragraph (a) above, the Departmental Chief Justice shall submit an annual report regarding the number of such complaints and their resolution to the Chief Justice of the Trial Court. The first report, which will be issued one-year from the date of this agreement will be provided to the United States.

14. If any issues arise affecting any anticipated effective dates set forth in the policy in paragraphs 12 and 13, the Trial Court will immediately, and in any case no later than three business days, notify the United States and the parties will attempt to resolve those issues in good faith.

15. The Trial Court has provided a copy of the Policy to all drug court participants and will notify them of the complaint procedure described in paragraph 13(b). Additionally, any new drug court participant will be provided with a copy of the Policy during that participant’s orientation to the drug court and the orientation will also explain the complaint procedure described in paragraph 13(b).

16. Six months after the date of this Settlement Agreement, the Trial Court will meet with the United States to discuss implementation of the Policy. The United States may request an additional meeting after an additional six months.

OTHER PROVISIONS

17. In consideration for entering into this agreement, the United States will close its investigations, designated USAO#2018V00152 and DJ# 204-36-255, and will not institute a civil action based on the issues set forth in paragraph 10. The United States may review the Trial Court’s compliance with this agreement during its one-year term or with Title II of the ADA at any time and take appropriate action.

18. Failure by the United States to enforce any provision of this agreement is not a waiver of its right to enforce any provision of this agreement.

19. If any term of this agreement is determined by any court to be unenforceable, the other terms of this agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and the Trial Court shall engage in good faith negotiations to adopt

mutually agreeable amendments to this agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

20. The signatory for the Trial Court represents that he or she is authorized to bind the Trial Court to this agreement.

21. This agreement constitutes the entire agreement between the United States and the Trial Court on the matters raised herein, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This agreement can only be modified by mutual written agreement of the parties.

22. This agreement does not constitute a finding by the United States regarding the Trial Court's compliance with the ADA. This agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this agreement, including any other potential claims regarding discrimination on the basis of disability. Nothing in this agreement relieves the Trial Court of its obligation to comply with the requirements of the ADA.

23. The duration of this agreement will be one year from its effective date.

24. The Trial Court shall not discriminate or retaliate against any person because of his or her participation in this matter.

FOR THE UNITED STATES

/s/

Gregory J. Dorchak, Esq
Assistant U.S. Attorney
John Joseph Moakley
United States Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210

Dated: 3/24/22

FOR THE TRIAL COURT

/s/

John A. Bello
Court Administrator
Executive Office of the Trial Court
John Adams Courthouse, Floor 1M
One Pemberton Square
Boston, MA 02108

Dated: 3/16/22