

VOLUNTARY RESOLUTION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA,
THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
OFFICE FOR CIVIL RIGHTS
AND
THE OAKS
USAO # 2019V00349
OCR # 01-19-351990

I. BACKGROUND

1. The Parties to this Voluntary Resolution Agreement (“Agreement”) are:
 - a. the United States Department of Justice through the U.S. Attorney’s Office for the District of Massachusetts (“DOJ”), pursuant to its jurisdictional authority under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36, and the U.S. Department of Health and Human Services (“HHS”), Office for Civil Rights (“OCR”), pursuant to its jurisdictional authority under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, and its implementing regulation, 45 C.F.R. Part 84 (“Section 504”) and Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 and its implementing regulation, 45 C.F.R. Part 92 (“Section 1557”), and
 - b. New Bedford Medical Investors, LLC, d/b/a The Oaks, a subsidiary of Life Care Centers of America, Inc. (“LCCA”).
2. The Oaks is nursing facility located at 4525 Acushnet Ave, New Bedford, MA, which provides skilled nursing services, post-acute medical services, and rehabilitation programs.
3. This matter was initiated upon a Complaint filed with DOJ and OCR, in which a Complainant alleged that The Oaks discriminated against an individual on the basis of disability in violation of Title III of the ADA. Specifically, the Complainant alleges that The Oaks does not accept for admission to its facility individuals being treated with Suboxone® (buprenorphine and naloxone), a medication approved by the Food and Drug Administration to treat opioid use disorder (“OUD”). In February 2019, when a hospital requested an available bed for its patient who needed skilled nursing services, The Oaks staff said that they were unable to take the individual due to his prescription of Suboxone

to treat his OUD. The Oaks admitted the individual in April 2019 after he discontinued his Suboxone treatment.

4. As a result of this complaint, DOJ and OCR initiated respective reviews of The Oaks' compliance with Title III of the ADA, Section 504, and Section 1557 with regard to The Oaks' practice of denying admission to individuals who take medication prescribed to treat OUD.
5. The Oaks denies that it violated any of the statutes cited herein, including but not limited to Title III of the ADA. The Oaks further contends that it at all times has operated consistent with and in compliance with its legal obligations with respect to admission of patients who take medication prescribed to treat OUD and otherwise. The Oaks further submits that this resolution is the product of a lone complaint by a patient who ultimately was offered admission to The Oaks and that any allegation of discrimination or unlawful conduct by The Oaks or its personnel in connection with such complaint are without merit.

II. JURISDICTION

6. The Attorney General of the United States is responsible for administering and enforcing Title III of the ADA, 42 U.S.C. §§ 12101-12213, and the relevant regulations implementing Title III, 28 C.F.R. Part 36.
7. OCR is responsible for enforcing Section 504, 29 U.S.C. § 794(a), and its implementing regulation, 45 C.F.R. Part 84, which prohibit discrimination on the basis of disability in any program or activity receiving financial assistance from HHS.
8. OCR is also responsible for enforcing Section 1557, 42 U.S.C. § 18116, and its implementing regulation, 45 C.F.R. Part 92. The Section 1557 implementing regulation provides that, except as provided in Title I of the Patient Protection and Affordable Care Act (ACA), an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving federal financial assistance from HHS, or under any program or activity that is administered by HHS under Title I of the ACA or by any entity established under Title I of the ACA. 45 C.F.R. § 92.2.
9. The Oaks is a place of public accommodation because it is a facility that is a health care provider, hospital, or other service establishment. 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104(6) (definition of place of public accommodation). The Oaks is a private entity that "owns, leases (or leases to), or operates a place of public accommodation" within the meaning of 42 U.S.C. § 12182(a) and is thus subject to the requirements of Title III of the ADA.

10. The Oaks is a recipient of financial assistance from HHS, including through its participation in Part A of the Medicare program, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.*, and the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, and, thus, subject to the requirements of Section 504. 45 C.F.R. § 84.2. As a health program or activity receiving financial assistance from HHS, The Oaks is subject to Section 1557. 45 C.F.R. § 92.3.
11. Under Title III of the ADA, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Specifically, discrimination includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i). While a public accommodation may impose legitimate safety requirements that are necessary for safe operation, such requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities. 28 C.F.R. § 36.301(b).
12. Under Section 504 and Section 1557, no qualified individual with a disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination by reason of disability in any health program or activity receiving financial assistance from HHS. 29 U.S.C. § 794; 42 U.S.C. § 18116; 45 C.F.R. §§ 84.4(a), 84.52(a)(1); 45 C.F.R. § 92.2. In providing health services or benefits, a recipient of HHS financial assistance may not, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from its services, or provide benefits or services in a manner that limits or has the effect of limiting the participation of a qualified individual with a disability. 45 C.F.R. §§ 84.4(b)(1)(i), (b)(4)(i), 84.52(a)(4); 45 C.F.R. § 92.2.
13. Individuals with OUD are protected as an “individual with a disability” within the meaning of the ADA, Section 504, and Section 1557, if the individual has a physical or mental impairment, including opioid addiction, that substantially limits one or more major life activities, which includes the operation of major bodily functions. 42 U.S.C. § 12102; 29 U.S.C. § 705(9) (adopting ADA definition of “disability” at 42 U.S.C. § 12102(1)); 45 C.F.R. § 92.102(c) (adopting the Section 504 definition of “disability” at 29 U.S.C. § 705(9)(B)). *See also* 28 C.F.R. § 36.105(b)(2) (defining physical or mental impairment to include “drug addiction”). Major life activities include caring for oneself, working, learning, concentrating, thinking, communicating, and the operation of a major bodily function, such as neurological and brain functions. 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. 42 U.S.C. § 12102(4)(E)(i).

14. Individuals with OUD and those perceived to have OUD, are also protected as an “individual with a disability” under the ADA, Section 504, and Section 1557, if they have been “subjected to discrimination because of an actual or perceived impairment, whether or not the impairment limits or is perceived to limit a major life activity.” 42 U.S.C. § 12102(3); 29 U.S.C. § 705(9) (adopting ADA definition of “regarded as having such impairment” at 42 U.S.C. § 12102(3)).
15. Under the ADA, Section 504, and Section 1557, the term “individual with a disability” does not include an individual who is “currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.” 42 U.S.C. § 12210(a). This exclusion does not apply to individuals who are no longer illegally using drugs and who (1) have successfully completed drug rehabilitation, (2) are participating in a supervised rehabilitation program, or (3) are erroneously regarded as illegally using drugs. 42 U.S.C. § 122210(b); 29 U.S.C. § 705(20)(C)(ii); 45 C.F.R. § 92.102(c).
16. Consistent with paragraphs 10 and 11, The Oaks’ policy or practice of refusing to admit any individual with OUD, because those individuals are taking medication to treat OUD, excludes individuals with disabilities from The Oaks’ services, denies such individuals the opportunity to participate in or benefit from The Oaks’ services on the basis of disability, and imposes eligibility criteria that screens out individuals with disabilities.
17. Ensuring that skilled nursing facilities do not discriminate on the basis of disability is an issue of general public importance. DOJ is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.
18. OCR is responsible for investigating complaints and conducting compliance reviews to determine if recipients of HHS funding operate their programs and activities in compliance with Section 504 and Section 1557. OCR has the authority, where appropriate, to negotiate and secure voluntary compliance agreements. If noncompliance cannot be corrected by informal means, OCR may take any action authorized by law, including, but not limited to, referrals to DOJ or initiation of administrative actions to suspend or terminate financial assistance from HHS.
19. The Parties have reached an agreement that it is in the Parties’ best interests, and DOJ and OCR believe that it is in the public interest, to resolve this dispute. The Parties have therefore voluntarily entered into this Agreement as follows:

III. ACTIONS TO BE TAKEN BY THE OAKS

20. The Oaks will not discriminate against any individual with a disability on the basis of OUD, including but not limited to, discrimination on the basis of taking medication to treat OUD, by denying such individuals the opportunity to participate in or benefit from The Oaks' services on the basis of disability or by imposing eligibility criteria that screen out individuals with disabilities on the basis of OUD in violation of Title III of the ADA, Section 504, and Section 1557.
21. Within 45 days of the effective date of this Agreement, The Oaks will submit a draft non-discrimination policy to DOJ and OCR for their review and approval, which approval shall not be unreasonably withheld. The non-discrimination policy will state that The Oaks does not discriminate in the provision of services to persons on the basis of OUD, including on the basis of taking medication to treat OUD. The non-discrimination policy will also direct those with questions, concerns, or complaints on how to make contact with The Oaks regarding those issues. Within 21 days of approval by DOJ and OCR, The Oaks will adopt and implement the non-discrimination policy, and The Oaks will maintain and enforce the non-discrimination policy. The Oaks will conspicuously post the non-discrimination policy in the reception area of The Oaks and as a link on The Oaks' main webpage, currently located at <https://lcca.com/locations/ma/the-oaks/services>, as well as on the homepage of any current or future website of The Oaks, or LCCA.
22. Within 45 days of the effective date of this Agreement, The Oaks will revise its admission policy and submit a draft to DOJ and OCR for their review and approval, which approval shall not be unreasonably withheld. The admissions policy will include the following statement that The Oaks: (a) will not deny admission to individuals with disabilities on the basis of OUD or taking medication to treat OUD; (b) will determine whether an individual with OUD is qualified for the services provided at The Oaks with or without reasonable accommodations; and (c) before excluding an individual with OUD on the basis that he or she poses a safety risk to others, will conduct an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain whether the individual poses a significant risk to the health or safety of others that cannot be reduced by reasonable modifications to its policies, practices, or procedures. The policy will not require The Oaks to modify current admissions policies and practices with respect to bed availability and payor source. Within 21 days of approval by DOJ and OCR, The Oaks will adopt and implement the revised admissions policy, and The Oaks will maintain and enforce the policy for the duration of this Agreement.
23. After The Oaks receives written approval by counsel for DOJ and OCR under paragraph 22 of this Agreement, it will within 45 days of receiving that approval, for the duration of this Agreement, provide training on Title III of the ADA, Sections 504, and Section 1557 to The Oaks employees and contractors who are involved with admissions to its nursing

facility, including training about OUD, including medications used to treat OUD, and discrimination in general.

24. The Oaks will ensure that all new employees and new contractors who are involved with admissions receive the training referenced in paragraph 23 as a component of new employee training and orientation through the duration of this Agreement. The Oaks shall provide the training to such new employees and new contractors as a part of their standard training for new employees and new contractors.
25. All training manuals or written or electronic materials that address The Oaks' policies and practices and that are used in the trainings required in paragraphs 23 and 24, or created or substantively revised after the effective date of this Agreement, shall be consistent with the provisions of this Agreement and approved in advance by DOJ and OCR, which approval shall be timely and not unreasonably withheld.
26. The Oaks shall create and maintain a record of each individual who participates in the trainings required in paragraphs 23 and 24. Such records may be kept in electronic format and copies shall be provided to DOJ and OCR within 30 days of any written request.
27. The Oaks will notify DOJ and OCR in writing that it has completed the training described in paragraphs 23 and 24 within 60 days of the training.
28. For the duration of this Agreement, The Oaks shall create and maintain a log that documents each referral by a hospital or other treating facility for admission to The Oaks that involves a prospective resident who The Oaks has been informed is taking medication to treat OUD. The log shall include the names of the entity and individual making the referral for admission, the date of the inquiry or referral, whether the prospective resident was taking medication to treat OUD at the time of the referral, and if so, the name of the medication, whether the prospective resident was denied admission, and, if so, a description of the reason for denial. This log should not include the name of the individual referred for admission, and should be maintained in accordance with privacy and security requirements applicable to health information received and maintained by The Oaks, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164. This log may be kept in electronic format. Copies of such log shall be provided to DOJ and OCR within 21 days of any written request for it.
29. For the duration of this Agreement, The Oaks will, within 30 days of receipt of any written complaint made to The Oaks alleging a failure to admit an individual on the basis of OUD or on the basis of taking medication to treat OUD, send written notification to counsel for DOJ and OCR with a copy of any such written complaint and a complete copy of The Oaks' response.
30. If any issues arise that affect the anticipated completion dates set forth in paragraphs 20 through 29, The Oaks will immediately notify DOJ and OCR of the issue(s), and the Parties will attempt to resolve those issues in good faith.

31. Within 30 days of the effective date of this Agreement, The Oaks shall pay a civil penalty to DOJ in the amount of \$5,000.00 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.

IV. OTHER PROVISIONS

32. In consideration of the terms of this Agreement, DOJ and OCR agree to refrain from undertaking further investigation of USAO#2019V00349, DJ#202-36-322, and OCR #01-19-351990, and will not institute a civil action at this time alleging discrimination based on the allegations lodged against The Oaks, except as provided in this Agreement. DOJ or OCR, however, may review The Oaks' compliance with this Agreement and/or Title III of the ADA, Section 504, and Section 1557 at any time. Except as related to the facts alleged in the above-mentioned complaints, nothing contained in this Agreement shall be construed as a waiver by DOJ or OCR of any right to institute enforcement proceedings against The Oaks for violations of any statutes, regulations, or rules administered by DOJ and OCR or to prevent or limit the right of DOJ and OCR to obtain relief under the ADA, Section 504, or Section 1557 for allegations not related to this Agreement.
33. If DOJ and/or OCR believe that this Agreement or any portion of it has been violated, the agencies will raise its concerns with The Oaks, and the parties will attempt to resolve the concerns in good faith. If the parties are unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that DOJ and OCR provide notice to The Oaks, DOJ may institute a civil action in the United States District Court to enforce this Agreement or Title III of the ADA against The Oaks and/or OCR may take steps to initiate proceedings to effect compliance with Section 504, as authorized by law, including administrative action to suspend or terminate financial assistance from HHS.
34. Failure by DOJ or OCR to seek enforcement of any provision of this Agreement is not a waiver of the agencies' respective right to enforce any provision of this Agreement.
35. 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 Parties 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. The Parties will not, individually or in combination with one another, seek to have any court declare or determine that any portion of this Agreement is invalid, illegal, or unenforceable.
36. This Agreement is binding on The Oaks, including all principals, agents, executors, administrators, representatives, employees, beneficiaries, successors, and assigns. In the event that The Oaks seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in The Oaks during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, The Oaks will obtain the written

agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.

37. The signatory for The Oaks represents that he or she is authorized to bind The Oaks to this Agreement. This Agreement may be executed in counterparts.
38. This Agreement constitutes the entire agreement between DOJ and OCR and The Oaks 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.
39. This Agreement does not constitute a finding by DOJ and OCR that The Oaks is in full compliance with the ADA, Section 504, and Section 1557. This Agreement is not intended to remedy any other potential violations of the ADA, Section 504, Section 1557, or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Agreement relieves The Oaks of its obligation to comply fully with the requirements of the ADA, Section 504, and Section 1557.
40. The Oaks shall not discriminate or retaliate against any person because of his or her participation in this matter.
41. DOJ and OCR place no restriction on the publication of the Agreement. In addition, DOJ and OCR may be required to disclose material related to this Agreement to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522.
42. All notifications under this Agreement shall be sent to the United States Attorney's Office, District of Massachusetts, John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 9200 Boston, MA 02210, Attn: AUSA Greg Dorchak, and to Susan Pezzullo Rhodes, Regional Manager, Office for Civil Rights, JFK Federal Building, Room 1875, Boston, MA 02203.
43. The effective date of this Agreement is the date of the last signature below.
44. The duration of this Agreement will be one (1) year from the effective date, at which point if DOJ and OCR determine that The Oaks substantially complied with this Agreement, then DOJ's and OCR's review and monitoring of this Agreement shall terminate.

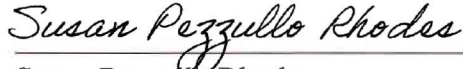
AGREED AND CONSENTED TO:

FOR THE UNITED STATES:

**FOR THE U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
OFFICE FOR CIVIL RIGHTS:**



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Dated: 12/22/2021

Dated: 12/22/2021

FOR THE OAKS:



Dated: 12/15/21