

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE INDIANA STATE BOARD OF NURSING
DJ 204-26S-205**

I. INTRODUCTION

1. This Settlement Agreement (Agreement) is made and entered into by and among the United States of America and the Indiana State Board of Nursing (Nursing Board), to resolve a claim under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§12131-34, and its implementing regulation, 28 C.F.R. Part 35.

2. This matter is based on a complaint filed with the Department, and a finding by the Department, that the Nursing Board violated Title II of the ADA by prohibiting the Complainant, an individual with Opioid Use Disorder, from participating in the Indiana State Nursing Assistance Program (ISNAP) while using prescribed disability-related medication. The United States provided notice to the Nursing Board of its findings on March 25, 2022.

3. The Nursing Board established ISNAP in 2006 to fulfill its statutory mandate to “assist in the rehabilitation of an impaired registered nurse or licensed practical nurse.”¹ ISNAP is defined as “an abstinence based program for the rehabilitation and monitoring of: (A) impaired registered nurses; or (B) licensed practical nurses; that have been affected by the personal use or abuse of alcohol or other drugs.”² In order to participate in ISNAP, a nurse “must sign an abstinence based [Recovery Monitoring Agreement].”³

4. Complainant was unable to participate in ISNAP because the prior “abstinence based” program prohibited the use of controlled substances or other mood-altering substances, including prescribed medication used to treat OUD. As of April 21, 2022, however, the Nursing

¹ Ind. Code § 25-23-1-31(b).

² *Id.*

³ *Id.* at § 7-1-2(b).

Board allows participants to participate in ISNAP while taking “addictive or mind-altering substances” that are “prescribed by a licensed practitioner as part of a medically necessary treatment plan that is reviewed by the Board and incorporated into a [Recovery Monitoring Agreement].”

5. The Nursing Board denies that it violated the ADA.

6. The United States and the Nursing Board agree that it is in the parties’ best interests, and the United States believes that it is in the public interest, to resolve this matter on mutually agreeable terms.

Accordingly, the parties enter into this Agreement, as set forth below.

II. THE PARTIES

7. Plaintiff is the United States of America.

8. Defendant Nursing Board is the State of Indiana’s professional board that regulates registered nurses and licensed practical nurses practicing in Indiana, and consists of nine members appointed by the governor. Ind. Code § 25-23-1-2(a). The Nursing Board, through its umbrella agency, the Indiana Professional Licensing Agency, has contracted with Parkdale Aftercare LLC, under the name Indiana Professionals Recovery Program (IPRP), since July 2018 to administer ISNAP.

9. The United States has authority to seek a remedy for violations of Title II of the ADA. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, Subpart F.

10. The Nursing Board is a “public entity” within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and therefore is subject to Title II of the ADA and its implementing regulation.

III. ACTIONS TO BE TAKEN BY THE NURSING BOARD

11. General Nondiscrimination Obligation. The Nursing Board, directly and through contractual or other arrangements, shall comply with the requirements of Title II of the ADA and its implementing regulation by, inter alia, ensuring that individuals with disabilities have equal opportunities to benefit from ISNAP. Among other things:

- a. ISNAP shall not, on the basis of disability, exclude qualified individuals with disabilities from participation in or deny them the benefits of its services, programs, or activities, or otherwise subject them to discrimination. *See* 28 C.F.R. § 35.130(a).
- b. ISNAP shall not, on the basis of disability, deny qualified individuals with disabilities the opportunity to participate in or benefit from ISNAP's aids, benefits, services, or programs. Nor shall it, on the basis of disability, provide qualified individuals with disabilities opportunities that are unequal to those afforded to individuals who do not have disabilities. *See id.* § 35.130(b)(1).
- c. ISNAP shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Nursing Board can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. *See id.* § 35.130(b)(7)(i).
- d. ISNAP shall not impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities from fully and equally enjoying ISNAP's services, programs, or activities, unless it can show that such criteria are

necessary for its provision of those services, programs, or activities. *See id.* § 35.130(b)(8).

- e. ISNAP shall not retaliate against any individual because such individual has exercised or enjoyed any right granted or protected by Title II of the ADA or this Agreement. *See id.* § 35.134.

12. Policies, Practices & Procedures: The Nursing Board shall allow individuals to participate in ISNAP while taking medication, including medication to treat OUD, when the medication is prescribed by a licensed practitioner as part of a medically necessary treatment plan and incorporated into a Recovery Monitoring Agreement. An individual approved to take medication for OUD shall not be subject to conditions or terms more onerous than those imposed on otherwise similarly situated individuals who are not taking medication for OUD.

13. Revision of Documents: Within 60 days of the effective date of this Agreement, the Nursing Board shall revise, and submit to the United States, the Participant Handbook, Policy Manual, template Recovery Monitoring Agreement, and all other documents used or relied upon to administer ISNAP that address abstinence or the use of OUD medication, to ensure that they reflect the policy identified in paragraphs 4 and 12. The Nursing Board's policies shall also provide the following:

- a. The Nursing Board, directly and through contractual or other arrangements, will not discriminate against individuals with disabilities, including individuals who use medications to treat OUD, in the provision of ISNAP. The Nursing Board, directly and through contractual or other arrangements, will not refuse to enroll, limit the participation of, penalize, or otherwise discriminate against individuals with disabilities, including

individuals with OUD, because such individuals use medications prescribed by a licensed practitioner as part of a medically necessary treatment plan.

b. The Nursing Board will designate its Board Director to review all ADA-related complaints, including those alleging discrimination on the basis of disability, and ensure that all such complaints are promptly reviewed, investigated, and addressed by appropriate action and the results of the review are provided in a timely manner to the person who filed the complaint. The Board Director will be trained in and knowledgeable about the ADA and the terms of this Agreement, and will investigate any complaint received by the Nursing Board, or any other person under the authority or control of the Nursing Board, alleging discrimination against persons with disabilities in ISNAP.

c. Within 30 days of approval by the United States, the Nursing Board will disseminate a copy of all documents identified in Paragraph 13 to IPRP and will require IPRP to use and disseminate these documents to all current personnel and to future personnel within 30 days of hire or retention. If a new vendor is selected to administer ISNAP, the Nursing Board will disseminate these documents to the new vendor and require that vendor to use and disseminate these policies to all current personnel and to future personnel within 30 days of hire or retention.

d. Within 30 days of approval by the United States, the Nursing Board will conspicuously post these policies, practices, and procedures as a link on its website and will require IPRP to post these policies, practices, and procedures as a link on its website and to provide a copy of the revised Participant Handbook to all individuals who seek to enroll in ISNAP.

14. Reporting Requirements: Every six months, the Nursing Board shall submit written reports (including supporting documentation) to the United States, delineating all steps taken during the reporting period to comply with each substantive provision of this Agreement. Each report shall include the following for the preceding reporting period:

a. Applicant and Participant Data:

- i. Each individual who discloses that they are taking prescribed medication previously prohibited in ISNAP, including medication to treat OUD.
- ii. For each of the individuals referenced above, the name of the medication(s); whether the medication(s) are prescribed to treat a disability, including OUD; and whether the individual was admitted to the program, denied admittance to the program, did not enroll in the program, or discontinued participation in the program prior to completion.
- iii. For each individual referenced above that was admitted to the program, provide a copy of the individual's executed Recovery Monitoring Agreement.
- iv. For each individual referenced above who was denied admittance to the program, provide the reason for not enrolling the individual.
- v. For each individual referenced above who did not enroll in the program, or discontinued participation in the program prior to completion, the reason provided by the individual, if known.
- vi. Each individual who, while enrolled in the program, discloses their discontinuation of medication use, including the name of the medication(s); whether the medication(s) were prescribed to treat a

disability, including OUD; and the individual's reason for discontinuing use of the medication.

- b. Complaints: The Nursing Board will report to the United States any lawsuit, written or oral complaint, charge, or other allegation that the Nursing Board, or its contracted vendor administering ISNAP, has engaged in disability-based discrimination and/or violated the ADA with regard to a person with OUD. This includes allegedly failing to admit a participant to ISNAP on the basis of medications prescribed to treat OUD. The Nursing Board will send the United States written notification with a copy of any such written complaint (or, if an oral complaint was made, a description of the oral complaint) and a complete copy of the response made by the Nursing Board or its contracted vendor administering ISNAP. Such notification will include, at a minimum, a description of the nature of the allegation, the name(s) of the individual(s) bringing the allegation, and all documentation possessed by the Nursing Board or its contracted vendor relevant to the allegation.
- c. All Other Relevant Documents: All other documents requested by the United States relevant to this Agreement and to the United States' determination of the Nursing Board's ongoing compliance with this Agreement.
- d. Delivery of Reporting Materials: All materials sent to the United States pursuant to this Agreement shall be sent by e-mail to undersigned counsel. If the materials cannot be e-mailed, then the materials shall be sent to the following address by common carrier other than the U.S. Postal Service: Amanda Maisels, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution

Square, 150 M Street NE, Washington, D.C. 20002. The cover letter shall include a subject line referencing DJ No. 204-26S-205.

IV. INDIVIDUAL RELIEF

15. Complainant may submit an application to renew her nursing license by mail to: Attn: Alyssa Servies, Nursing Board Director, Indiana Professional Licensing Agency, 402 Washington Street, W072, Indianapolis IN, 46204. The Indiana Professional Licensing Agency will renew Complainant's license within five days of receipt, and it will be considered active on suspension, pursuant to the order from the Indiana State Board of Nursing, dated September 8, 2014. Once Complainant's license is active on suspension, she may contact ISNAP to set up an intake evaluation. The phone number is 219.707.8081 Ext. 1 or 844.687.7399 Ext. 1.

16. After an intake evaluation, the Nursing Board, through its contracted vendor, shall take all steps necessary to implement a Recovery Monitoring Agreement with Complainant pursuant to the requirements of the ADA and the policies, practices, and procedures established under Paragraph 12. If Complainant is denied enrollment, the Nursing Board will notify the United States within seven days and will provide the United States with the reason(s) for the denial.

17. Within 21 days of the Effective Date of this Agreement, the Nursing Board will offer Complainant a total monetary award of \$70,000 as compensatory damages, subject to the Complainant's execution of a release of claims form. Along with the offer, the Nursing Board will send Complainant the signed Agreement, and the Notice of Letter and Release of Claims attached as Exhibits 1 and 2. The Nursing Board will send the United States copies of the Notice Letter and the Release of Claims form when they are sent to Complainant.

18. Within 21 days after receiving Complainant's signed Release of Claims form, the Nursing Board shall send a check in the amount of \$70,000 to Complainant. The Nursing Board shall provide written notification to counsel for the United States, including a copy of the check, within seven days of completing the actions described in this paragraph.

V. IMPLEMENTATION AND ENFORCEMENT

19. Effective Date: The effective date of this Agreement is the date of the last signature on this the Agreement.

20. Term: The duration of this Agreement will be two years from the effective date. All durations specified in this Agreement run from the entry of this Agreement unless otherwise indicated.

21. Dates: All references to "days" shall mean calendar days, unless otherwise specified.

22. Reviewing Compliance: The United States may review compliance with this Agreement at any time. The Nursing Board will cooperate fully with the United States' efforts to monitor the Nursing Board's compliance with this Agreement. If the United States requests information or makes an inquiry related to the Nursing Board's compliance with this Agreement, the Nursing Board will respond and will provide the information reasonably requested in a timely manner and otherwise cooperate in good faith with the request or inquiry. If the United States believes that the Nursing Board has failed to comply in a timely manner with any requirement of this Agreement or that any requirement has been violated, the United States will notify the Nursing Board in writing. The Nursing Board must cure the alleged violation or otherwise respond to the notice within 14 days. For situations in which the United States asserts there is an immediate and serious threat to the life, health, or safety of an individual with a

disability, the Nursing Board must cure the violation or otherwise respond to the notice as soon as practicable but no later than 5 days after the date of notice. The Parties will negotiate in good faith to resolve any dispute. If the United States and the Nursing Board are unable to reach a mutually acceptable resolution, the United States may institute a civil action in the appropriate U.S. District Court to enforce this Agreement and/or Title II of the ADA. 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.

23. Binding Nature of Agreement & Successor Liability: This Agreement shall be binding upon the Nursing Board and its agents, employees, and successors, and its contractual provider of ISNAP, including IPRP and its agents, employees, and successors, including any future vendor contracted to administer ISNAP during the term of this Agreement.

24. Approval: The signatories to this document representing the Nursing Board represent that they have received approval by the Office of the Indiana Attorney General and the Office of the Governor of Indiana, respectively, as a condition precedent to the execution of this agreement by the Board.

25. Authority: The signatories to this document representing the Nursing Board are authorized to bind the Nursing Board to the terms of this Agreement.

26. Entire Agreement: This Agreement constitutes the entire agreement between the United States and the Nursing Board on this matter. No other 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 its attachments, is enforceable.

27. Extensions: Any time limits for performance imposed by this Agreement may be extended by the mutual written consent of the Parties.

28. Other Violations: 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 claims for discrimination on the basis of disability. Nothing in this Agreement relieves the Nursing Board of its obligation to comply with the requirements of the ADA.

29. Preservation of Documents: The Parties agree that as of the effective date of this Agreement, litigation is not “reasonably foreseeable” concerning the matters described in the complaint. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES OF AMERICA

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9/1/2022
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