

**VOLUNTARY RESOLUTION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA,
THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
OFFICE FOR CIVIL RIGHTS
AND
North End Rehabilitation & Healthcare Center
DJ # 202-36-341
OCR # 01-22-474566**

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. NEB Operator LLC d/b/a North End Rehabilitation & Healthcare Center (“North End Rehab”).
2. North End Rehab is a skilled nursing facility located at 70 Fulton Street, Boston, MA 20109, which provides skilled nursing services, post-acute medical services, and rehabilitation programs.
3. This matter was initiated upon information provided to DOJ and OCR, alleging that North End Rehab has engaged in unlawful discrimination based on disability. Specifically, the information received alleged that North End Rehab has a policy or practice of denying admission to individuals, or classes of individuals, with Opioid Use Disorder (“OUD”) because the individuals are taking prescription medication to treat OUD, when they are otherwise eligible for admission.
4. As a result of information received, DOJ and OCR initiated respective reviews of North End Rehab’s compliance with Title III of the ADA, Section 504, and Section 1557.

5. During the course of the compliance review, DOJ and OCR identified several instances from December 2020 to April 2022, where DOJ and OCR allege that North End Rehab expressly declined admission to individuals with OUD because they were taking Suboxone or methadone to treat OUD. Consistent with paragraphs 12 and 13, DOJ and OCR's investigation alleges that North End Rehab had a practice of refusing to admit individuals with OUD because those individuals are taking medication to treat OUD that excludes individuals with disabilities from North End Rehab's services, denies such individuals the opportunity to participate in or benefit from North End Rehab's services on the basis of disability, and imposes eligibility criteria that screens out individuals with disabilities, or classes of individuals with disabilities, on the basis of their disabilities. North End Rehab denies these allegations.
6. This Agreement is not an admission of liability by North End Rehab and is entered into to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation and is not admissible in any action other than to enforce the terms of the Agreement.

II. JURISDICTION

7. 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.
8. 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.
9. 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 any of the grounds prohibited under Section 504 (disability), 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 (including credits, subsidies, or contracts of insurance) provided by HHS, or under any program or activity administered by HHS under Title I; or under any program or activity administered by any entity established under Title I.
10. North End Rehab 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). North End Rehab 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.

11. North End Rehab 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, North End Rehab is subject to Section 1557. 45 C.F.R. § 92.3.
12. 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).
13. 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(b)(4).
14. An individual with OUD is 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)(B) (adopting ADA definition of “disability” at 42 U.S.C. § 12102); 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).

15. 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)(B).
16. 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. § 12210(b); 29 U.S.C. § 705(20)(C)(ii).
17. An entity covered by the ADA, Section 504, and Section 1557 is required to make reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination on the basis of disability, unless the entity can demonstrate that making a modification would fundamentally alter the nature of the service, program, or activity. *See* 28 C.F.R. § 36.302(a); 45 C.F.R. § 92.105 (incorporating 28 C.F.R. § 35.130(b)(7)). A covered entity is permitted to refer an individual with a disability to another covered entity that provides treatment or services outside of the covered entity’s legitimate area of specialization. *See* 28 C.F.R. § 36.302(b). A covered entity is not required to permit an individual to participate in or benefit from its services, programs, or activities, if that individual poses a direct threat to the health or safety of others. In determining whether an individual poses a direct threat, a covered entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of its policies, practices, or procedures will mitigate the risk. *See* 28 C.F.R. § 36.208; 45 C.F.R. §§ 84.4(a), (b)(1), (b)(4).
18. 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.

19. 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.
20. The Parties have determined that this matter can be resolved promptly and without further burden or the expense of additional investigation, enforcement proceedings, or litigation. 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 NORTH END REHAB

21. North End Rehab 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 North End Rehab's 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.
22. Within 45 days of the effective date of this Agreement, North End Rehab 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 North End Rehab 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 North End Rehab regarding those issues. Within 21 days of approval by DOJ and OCR, North End Rehab will adopt and implement the non-discrimination policy, and North End Rehab will maintain and enforce the non-discrimination policy. North End Rehab will conspicuously post the non-discrimination policy in the reception area of North End Rehab and as a link on the North End Rehab's main webpage, currently located at <https://northendrehab.com>, as well as on the homepage of any current or future website of North End Rehab.
23. Within 45 days of the effective date of this Agreement, North End Rehab 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: North End Rehab will not deny admission to individuals with disabilities on the basis of OUD or taking medication to treat OUD. The admissions policy will contain and implement the following requirements: (a) North End Rehab will determine whether an individual with OUD is qualified for the services provided at North End Rehab with or without reasonable accommodations,, and (b) Before excluding from admission any individual with OUD on the basis that he or she poses a safety risk to

others, North End Rehab will conduct an individualized assessment of the individual, 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. North End Rehab is not required to modify its current admissions policies and practices with respect to bed availability and payor source any other lawful basis to deny admission. Within 21 days of approval by DOJ and OCR, North End Rehab will adopt and implement the revised admissions policy, and North End Rehab will maintain and enforce the policy for the duration of this Agreement.

24. After North End Rehab receives written approval by counsel for DOJ and OCR under paragraph 2323 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 North End Rehab employees and contractors who are involved with admissions to its nursing facility, including training about OUD, medications used to treat OUD, and discrimination in general.
25. North End Rehab will provide the training referenced in paragraph 2424 to all new employees and new contractors who are involved with admissions as a component of new employee training and orientation through the duration of this Agreement.
26. All training manuals or written or electronic materials that address North End Rehab's policies and practices and that are used in the trainings required in paragraphs 24 and 25 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.
27. North End Rehab shall create and maintain a record of each individual who participates in the trainings required in paragraphs 24 and 25. Such records may be kept in electronic format and copies shall be provided to DOJ and OCR within 30 days of any written request.
28. North End Rehab will notify DOJ and OCR in writing that it has completed the training described in paragraphs 24 and 25 within 60 days of the training.
29. For the duration of this Agreement, North End Rehab shall create and maintain a log that documents each inquiry or referral for admission to North End Rehab that involves a prospective resident who North End Rehab 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 North End Rehab, 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.

30. For the duration of this Agreement, North End Rehab will, within 30 days of receipt of any written complaint made to North End Rehab 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 North End Rehab's response.
31. If any issues arise that affect the anticipated completion dates set forth in paragraphs 22 through 30, North End Rehab will immediately notify DOJ and OCR of the issue(s), and the Parties will attempt to resolve those issues in good faith.
32. Within 30 days of the effective date of this Agreement, North End Rehab shall pay a civil penalty to DOJ in the amount of \$111,614.00 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. The payment shall be made as follows:
 - a. North End shall pay \$10,000.00 to the United States within 30 days of the effective date of this agreement;
 - b. Payment of \$101,614.00 (the "Suspended Payment") shall be suspended and forgiven if North End materially complies with the terms of this Agreement for the duration of this agreement;
 - c. If, at any time, DOJ determines that North End has failed to materially comply with the terms of this Agreement, it shall provide written notice reasonably describing the noncompliance and demanding payment of the Suspended Payment, or of some portion of the Suspended Payment. North End will then have 30 days to make the payment or cure the non-compliance if it is possible to do so. Alternatively, within the 30-day time period, North End may contest or explain the alleged non-compliance or by asserting that the non-compliance has already been cured or does not need to be cured. If, after the 30-day period, and after fully considering North End's explanations, proposals, and attempts to cure, as applicable, the United States determines there has been material non-compliance that has not or cannot be cured and notifies North End of such determination, and North End fails to make the Suspended Payment within five (5) business days of being so notified, the United States may file a civil action in federal court to enforce the payment obligation and take any other action it determines is necessary and appropriate. Nothing contained herein shall constitute a waiver of any defenses to any such civil action.

IV. OTHER PROVISIONS

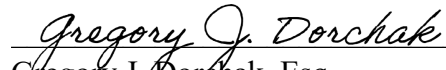
33. In consideration of the terms of this Agreement, DOJ and OCR will close the investigation of DJ #202-36-341, and OCR #01-22-474566, and will not institute a civil action at this time alleging discrimination based on the allegations lodged against North End Rehab, except as provided in this Agreement. DOJ or OCR, however, may review North End Rehab's 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 complaint, nothing contained in this Agreement shall be construed as a waiver by DOJ or OCR of any right to institute enforcement proceedings against North End Rehab 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.
34. If DOJ and/or OCR believe that this Agreement or any portion of it has been violated, the agencies will raise its concerns with North End Rehab, 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 North End Rehab, DOJ may institute a civil action in the United States District Court to enforce this Agreement or Title III of the ADA against North End Rehab 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. North End retains all defenses to any such action.
35. 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.
36. 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.
37. This Agreement is binding on North End Rehab, including all principals, agents, executors, administrators, representatives, employees, beneficiaries, successors, and assigns. In the event that North End Rehab seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in North End Rehab during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, North End Rehab 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.
38. The signatory for North End Rehab represents that he or she is authorized to bind North End Rehab to this Agreement. This Agreement may be executed in counterparts.

39. This Agreement constitutes the entire agreement between the Parties 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.
40. 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 North End Rehab of its obligation to comply fully with the requirements of the ADA, Section 504, and Section 1557, including the requirement to provide meaningful access to limited English proficient individuals pursuant to Section 1557 and also Title VI of the Civil Rights Act of 1964. *See* 45 C.F.R. §§ 92.101, 80.3(b)(2).
41. North End Rehab shall not discriminate or retaliate against any person because of his or her participation in this matter.
42. 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.
43. 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.
- All notifications to North End Rehab shall be sent to 70 Fulton Street, Boston, MA 20109 Attn: Administrator with a copy to Jonathan Bardavid at [REDACTED]
44. The Effective Date of this Agreement is the date of the last signature below.
45. The duration of this Agreement will be two (2) years from the Effective Date.


AGREED AND CONSENTED TO:

FOR THE UNITED STATES:


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



Gregory J. Dorchak, Esq
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Melanie Fontes Rainer
Director of Office for Civil Rights



Susan Pezzullo Rhodes
Regional Manager, New England Region
Office for Civil Rights, Room 1875
JFK Federal Building
Boston, MA 02203

Dated: _____

Dated: 11/09/2023

FOR NORTH END REHABILITATION & HEALTHCARE CENTER:



Dated: 11/08/2023