

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE**

Tri-Cities Holdings LLC, Jane Doe Nos. 1-2, and John Doe Nos. 1-6.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	<b>Case No.</b> _____
	)	
	)	
Tennessee Health Services and Development Agency, City of Johnson City, Tennessee, Johnson City Board of Commissioners, and Johnson City Board of Zoning Appeals,	)	Action for Violations of the Rehabilitation Act, 29 U.S.C. § 701 et seq. and the Americans with Disabilities Act 42 U.S.C. § 12101 et seq.
Defendants.	)	

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**COMPLAINT**

Plaintiff Tri-Cities Holdings LLC ("TCH"), and Plaintiffs Jane Doe Nos. 1-2 and John Doe Nos. 1-6 ("Individual Plaintiffs"), file this action seeking declaratory and injunctive relief and damages against Defendant Tennessee Health Services and Development Agency ("HSDA"), Defendant City of Johnson City, Tennessee ("City of Johnson City"), Defendant Board of Commissioners of Johnson City, Tennessee ("Board of Commissioners"), and Defendant Board of Zoning Appeals of Johnson City, Tennessee ("Board of Zoning Appeals")(all Johnson City Defendants hereinafter collectively referred to "Johnson City" and all Defendants collectively "Defendants") under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 793 and the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"), and, as follows:

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## INTRODUCTION

1. Plaintiffs bring this action to seek a judicial remedy under the Rehabilitation Act and the ADA arising from HSDA's unlawful refusal to issue TCH a Certificate of Need ("CON"), and Johnson City's unlawful refusal to grant TCH necessary zoning variances, and business and use permits to allow TCH to establish an Opioid Treatment Program ("OTP")<sup>1</sup> that will, among other treatment options, offer standard of care<sup>2</sup> Methadone Maintenance Treatment ("MMT") in the Johnson City, Tennessee area for the first time. This will allow at least 400-500 disabled persons in the Johnson City, Tennessee area, including pregnant women, to avoid having to drive 100 miles or more roundtrip, as often as daily (and up to 9,000 miles during the first 90 days of treatment for new patients), for doctor-prescribed, life-saving, standard of care MMT that they are presently forced to undertake because no such treatment exists within 50 miles of Johnson City, Tennessee.

2. Presently, the Individual Plaintiffs, and at least 400-500 more opiate-addicted persons in the Johnson City area (and likely well over 1,000), are unlawfully forced to drive more than 100 miles roundtrip--as often as daily--to distant OTP clinics in North Carolina and elsewhere, to receive doctor-prescribed, life-saving, standard of care MMT to treat their disability and that is not available anywhere in the Johnson City area.

3. This daily "forced march" of at least 400-500 people (and likely well over a 1,000 people), who are clearly disabled under federal law, is causing death and human misery on a vast

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<sup>1</sup> Opioid treatment program or "OTP" means a program or practitioner engaged in opioid substitution treatment of individuals with an opioid agonist medication [i.e., methadone]." 42 C.F.R. 1 Subpart A Sec. 8.2.

<sup>2</sup> The term "standard of care" treatment is generally recognized as treatment that is accepted by medical experts as a proper treatment for a certain type of disease and that is widely used by healthcare professionals. Standard of care is also called "best practice," "standard medical care," and "standard therapy. National Cancer Institute at the National Institute of Health (<http://www.cancer.gov/dictionary?cdrid=346525>).

scale in clear violation of the ADA and the Rehabilitation Act. In fact, new patients seeking to save their lives from deadly opiate addiction--including pregnant women--are now being forced to drive more than 100 miles each day for the first 90 days of treatment (amounting to 9,000 miles of driving in the first 90 days of treatment), to obtain doctor-prescribed, life-saving, standard of care MMT treatment that is nowhere within a 50-mile radius of Johnson City, Tennessee. This amounts to a denial of reasonable access to medical care in clear violation of the ADA and the Rehabilitation Act.

4. Plaintiffs also bring this action to seek a judicial remedy under the Rehabilitation Act and the ADA from the Johnson City zoning ordinance which unlawfully discriminates against disabled persons facially and as applied.

5. Plaintiffs also bring this action to seek a judicial remedy under the Rehabilitation Act and the ADA arising from the Defendants' unlawful refusal to grant Plaintiffs a reasonable accommodation to allow TCH to obtain a Certificate of Need from HSDA, and necessary zoning variances, and business and use permits from Johnson City, to allow TCH to open an OTP that will offer standard of care Methadone Maintenance Treatment ("MMT") in the Johnson City, Tennessee area for the first time.

6. Federal law prohibits public entities from excluding persons with disabilities or discriminating against them in the provision of benefits, programs or activities. These protections extend to persons participating in supervised drug rehabilitation programs, such as the program TCH proposed to locate in Johnson City.

7. This action challenges discrimination by HSDA and Johnson City and seeks injunctive relief and damages against both facially invalid Tennessee statutes, and zoning ordinance restrictions, as set forth herein, and the Defendants' actions and failures to issue a

CON, zoning variances, and business permits to TCH, and Defendants' failures to offer Plaintiffs a reasonable accommodation for the same, as required under the ADA and the Rehabilitation Act.

### **JURISDICTION AND VENUE**

8. This action is brought pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, 1343(a) and 1391(b)(2), 29 U.S.C. § 794(a), 42 U.S.C. § 12182(a), and pursuant to the Court's pendant claim jurisdiction of state law claims under 28 U.S.C. § 1367(a).

10. Venue lies in the Middle District of Tennessee pursuant to 28 U.S.C. § 1391 as this is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

### **PARTIES**

11. Plaintiff Tri-Cities Holdings LLC is a Georgia limited liability company with its principal place of business at 6555 Sugarloaf Parkway, Suite 307-137, Duluth, Georgia 30097.

12. TCH intends to meet the standards to establish an OTP in Johnson City in accordance with applicable federal and state law and regulations.

13. TCH sues on its own behalf and on behalf of its prospective patients.

14. Plaintiff Jane Doe Nos. 1-2 are opiate-addicted residents of the greater Johnson City area and are prospective patients of TCH.

15. Plaintiffs John Doe Nos. 1-6 are opiate-addicted residents of the greater Johnson City area and are prospective patients of TCH.

16. HSDA is state agency created by the Tennessee legislature in 2002.<sup>3</sup>

17. HSDA is responsible for regulating the health care industry in Tennessee through the CON Program. A CON is a permit for the establishment or modification of a health care institution, facility or service, purchase of major medical equipment, or establishment of certain services at a designated location.

18. HSDA heard and considered TCH's CON application at its principal office located at The Frost Building, 3rd Floor, 161 Rosa L. Parks Boulevard, Nashville, TN 37243.

19. A copy of TCH's CON application and supplemental evidence that was provided in support at the CON hearing is attached hereto as Exhibit A and is incorporated herein by reference.

20. Johnson City is a municipal corporation organized under the laws of the State of Tennessee.

21. Johnson City's principal place of business at 601 E. Main Street, Johnson City, Tennessee 37601.

22. Johnson City receives federal financial assistance for its programs and activities and has the capacity to sue and be sued under the federal anti-discrimination statutes relied upon by Plaintiffs.

23. The legislative powers of the Johnson City are delegated to and vested in the Johnson City Board of Commissioners. Johnson City Board of Commissioners' principal place of business at 601 E. Main Street, Johnson City, Tennessee 37601.

24. The Board of Zoning Appeals is an entity created by Johnson City to hear applications, appeals, and other business regarding business permitting and zoning for Johnson

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<sup>3</sup> Tenn. Code § 68-11-1604.



City. The Board of Zoning Appeals is located at 601 E. Main Street, Johnson City, Tennessee 37601.

## BACKGROUND

### A. The Rehabilitation Act

25. The Rehabilitation Act, 29 U.S.C. § 701 et seq., applies to federal government agencies as well as organizations that receive federal funds. Much of the Rehabilitation Act focuses on employment, but section 504 broadly covers other types of programs and activities as well. Section 504(a) provides that "[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...."<sup>4</sup>

26. The Rehabilitation Act defines "program or activity" as "all of the operations of a department, agency, special purpose district, or other instrumentality of a State or a local government...."<sup>5</sup>

27. In implementing the Rehabilitation Act,<sup>6</sup> the Department of Health and Human Services ("HHS") promulgated several regulations that specifically require reasonable accommodations.<sup>7</sup> The most pertinent of these regulations requires recipients of federal funds to "make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the

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<sup>4</sup> 29 U.S.C. § 794(a).

<sup>5</sup> 29 U.S.C. §§ 794(b)(1)(A)–(B) (2006).

<sup>6</sup> Courts look to the Rehabilitation Act's implementing regulations in interpreting other disability laws such as the ADA. See, e.g., *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998); see also 42 U.S.C. § 12201.

<sup>7</sup> See *Traynor v. Turnage*, 485 U.S. 535, 550 n. 10 (1988).

accommodation would impose an undue hardship on the operation of its program."<sup>8</sup> The Supreme Court has located a duty to accommodate in the statute generally.<sup>9</sup>

## B. Title II of the Americans with Disabilities Act

28. The ADA was built on the Rehabilitation Act, but extends its reach substantially. Invoking "the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce," the ADA was designed "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."<sup>10</sup> It forbids discrimination against persons with disabilities in three major areas of public life: (1) employment, which is covered by Title I of the statute<sup>11</sup>; (2) public services, programs and activities, which are the subjects of Title II<sup>12</sup>; and (3) public and private lodging, which is covered by Title III.<sup>13</sup>

29. Title II is commonly referred to as the public services portion of the ADA. Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity."<sup>14</sup>

30. The ADA defines "public entity" as "any department, agency, special purpose

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<sup>8</sup> 28 C.F.R. § 41.53.

<sup>9</sup> *Alexander v. Choate*, 469 U.S. 287 (1985).

<sup>10</sup> 42 U.S.C. § 12101(b)(1), (b)(4).

<sup>11</sup> *id.* § 12111-12117.

<sup>12</sup> *id.* § 12131-12165.

<sup>13</sup> *id.* § 12181-12189. See generally, *Tennessee v. Lane*, 541 U.S. 509, 516-17 (2004).

<sup>14</sup> 42 U.S.C. § 12132. Title II's use of the term "reasonable modifications" is essentially equivalent to Title I's use of the term "reasonable accommodation." See, e.g., *Robertson v. Las Animas County Sheriff's Dept.*, 500 F.3d 1185, 1195 n. 8 (10th Cir.2007); *McGary v. City of Portland*, 386 F.3d 1259, 1266 n. 3 (9th Cir.2004) ("Although Title II of the ADA uses the term 'reasonable modification,' rather than 'reasonable accommodation,' these terms create identical standards.").

district, or other instrumentality of a State or States or local government.”<sup>15</sup>

31. As courts have held, state agency activity and municipal zoning qualifies as a public "program" or "service," as those terms is employed in the ADA, and the enforcement of those rules is an "activity" of a state agency or local government.<sup>16</sup>

32. The Attorney General of the United States, at the instruction of Congress,<sup>17</sup> has issued an implementing regulation that outlines the duty of a public entity to accommodate reasonably the needs of the disabled. The Title II regulation reads:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.<sup>18</sup>

33. Accordingly, federal courts provide that a Title II cause of action under the ADA "may be established by evidence that (1) the defendant intentionally acted on the basis of the

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<sup>15</sup> 42 U.S.C. § 12131(1)(B) (2006).

<sup>16</sup> See, e.g., *Wisconsin Community Services v. City of Milwaukee*, 465 F.3d 737, 750 (7th Cir., 2006)(citations). Section 12131(2) goes on to define "qualified individual with a disability" as an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. In the opening provisions of the ADA, Congress made the following finding, applicable to the statute in all parts:

individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, [and] failure to make modifications to existing facilities and practices.

42 U.S.C. § 12101(a)(5).

<sup>17</sup> See 42 U.S.C. § 12134(a) ("[T]he Attorney General shall promulgate regulations in an accessible format that implement this part."). The Attorney General's regulations, Congress further directed, "shall be consistent with this chapter and with the coordination regulations ... applicable to recipients of Federal financial assistance under [§ 504 of the Rehabilitation Act]." Id. § 12134(b).

<sup>18</sup> 28 C.F.R. § 35.130(b)(7).

disability, (2) the defendant refused to provide a reasonable modification, or (3) the Defendants' rule disproportionately impacts disabled people."<sup>19</sup>

34. Federal courts also prohibit facially discriminatory zoning laws. A zoning law is facially discriminatory under the ADA if it subjects drug treatment programs to more restrictive standards than other comparable facilities.<sup>20</sup> Such a zoning law violates the ADA unless the treatment program can be shown to pose a direct threat or significant risk to the health or safety of others.<sup>21</sup> Three different circuits have held that zoning restrictions on Opioid Treatment Programs were facially discriminatory because they did not apply equally to comparable programs for people without disabilities.<sup>22</sup>

35. Federal courts routinely invoke the ADA to invalidate legislation that, like the Zoning Ordinance here, prohibits drug treatment clinics from locating within certain distance of a school, playground, park, residential area, child-care facility, or place of worship.<sup>23</sup> For example, in *New Directions Treatment Servs. v. City of Reading*, the Third Circuit held that a Pennsylvania statute "facially singles out methadone clinics, and thereby methadone patients, for different treatment, thereby rendering the statute facially discriminatory" under the ADA.<sup>24</sup>

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<sup>19</sup> *Wisconsin Community Services v. City of Milwaukee*, 465 F.3d 737, 753 (7th Cir. 2006).

<sup>20</sup> *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 304-05 (3d Cir. 2007); *MX Group, Inc. v. City of Covington*, 293 F.3d at 344-45 (6th Cir. 2002); *Bay Area*, 179 F.3d at 733-34; see also *First Step, Inc. v. City of New London*, 247 F. Supp. 2d 135 (D. Conn. 2003); *Habit Mgmt. v. City of Lynn*, 235 F. Supp. 2d 28, 29 (D. Mass. 2002); *Larkin v. Mich. Dep't of Social Servs.*, 89 F.3d 285, 289 (6th Cir. 1996)(facial discrimination is a type of intentional discrimination claim and can serve as proof of discriminatory intent).

<sup>21</sup> *New Directions*, 490 F.3d at 306-07; *Bay Area*, 179 F.3d at 737; *Habit*, 235 F.Supp.2d at 29; 28 C.F.R. pt. 35 app. A, Section 35.104 (2009); 28 C.F.R. § 35.139 (eff. Mar. 15, 2011).

<sup>22</sup> *New Directions*, 490 F.3d 293; *Bay Area*, 179 F.3d 725; *MX Group*, 293 F.3d 326.

<sup>23</sup> *Id.* at 298-99.

<sup>24</sup> *Id.* at 304.

## FACTS

36. Opioid addiction as a life threatening disease, which, if left untreated, poses a serious risk to the health, safety and well-being of the victim, his/her family and the community in which he/she resides.

37. Plaintiffs Jane Doe Nos. 1-2 and John Doe Nos. 1-6 are opiate-addicted residents of the Johnson City area (including Bluff City and Bristol, Tennessee) who are prospective clients of TCH (collectively "Individual Plaintiffs") and contend their rights to reasonable access to standard of care MMT treatment for their disability under the Rehabilitation Act and the ADA are being violated by the Defendants.

38. The Individual Plaintiffs are addicted to opiates. This is an impairment that substantially limits a major life activity.

39. The Individual Plaintiffs are not engaging in current illegal use of drugs.

40. The Individual Plaintiffs are presently participating in a supervised rehabilitation program as defined under the ADA.

41. The Individual Plaintiffs are disabled as defined under both the Rehabilitation Act and the ADA.

42. The Individual Plaintiffs are qualified individuals with disabilities within the meaning of the ADA and the Rehabilitation Act.<sup>25</sup>

43. TCH seeks to provide treatment to patients with a primary dependence on opiates.

44. TCH will use the latest medical technologies, including methadone maintenance treatment, to address the physical symptoms of the addiction in combination with the psychotherapeutic interventions proven most effective to address the emotional, cognitive and

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<sup>25</sup> 42 U.S.C. § 12101.

behavioral symptoms of its patients.

45. TCH's programs will be "supervised rehabilitation programs" for persons with disabilities as described under federal law.

46. For more than forty years, MMT has been considered the standard of care in the treatment of opioid addiction.

47. Presently, MMT is the standard of care for treatment of opiate-addicted pregnant women.

48. Presently, there are approximately 1,300 OTP clinics offering MMT treatment across the United States.

49. Presently, there are at least twelve OTP clinics offering MMT treatment in Tennessee as far east as Knoxville, Tennessee.

50. Presently, MMT treatment is not available anywhere within a 50 radius of Johnson City, Tennessee.

51. Presently, MMT treatment is not available in Johnson City, Tennessee and a person requiring MMT treatment must drive more than 100 miles roundtrip to an OTP clinic in North Carolina.

52. Presently, MMT treatment is not available in Johnson City, Tennessee and a person requiring MMT treatment in Tennessee must drive more than 200 miles roundtrip to an OTP clinic in Knoxville, Tennessee.

53. Presently, the Individual Plaintiffs must drive hundred-mile-plus round trips to the nearest OTP clinic in North Carolina as often as daily.

54. A person required to drive 100 miles roundtrip daily for medical treatment is not be considered to have reasonable access to treatment.

55. The lack of any OTP clinic within fifty (50) miles in any direction from Johnson City denies them reasonable access to treatment for their disability.

56. TCH is seeking a permit to provide comprehensive, medically supervised and licensed outpatient MMT directed at rehabilitating persons living in the Johnson City area who require treatment to alleviate their opiate dependency.

57. Prescription drug abuse is a national problem, and particularly acute in Tennessee.

58. Numerous studies have found that addiction to heroin and other opiates is a chronic medical illness that produces significant and lasting changes in brain chemistry and function.<sup>26</sup>

59. Numerous studies have also found that this medical illness can be effectively treated in a program offering MMT. For example, in 1997, an expert panel convened at a National Institutes of Health (NIH) Consensus Development Conference on Effective Medical Treatment of Heroin Addiction concluded that opiate addiction is a medical disorder that can be effectively treated in a MMT program.<sup>27</sup> Methadone, by acting on opiate receptors in the brain that are implicated in the changes in brain chemistry and function associated with drug dependence, reduces patients' cravings for opiates and blocks its effects, thereby enabling patients to lead productive lives.<sup>28</sup> Some patients stay on methadone indefinitely, while others move from methadone to abstinence.

60. Opioid maintenance treatment of opiate addiction, including methadone

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<sup>26</sup> National Institute of Drug Abuse, International Program (2013)(<http://international.drugabuse.gov/educational-opportunities/certificate-programs/methadone-research-web-guide/part-a>.)

<sup>27</sup> National Institutes of Health (NIH) Consensus Development Conference on Effective Medical Treatment of Heroin Addiction (1997)(<http://consensus.nih.gov/1997/1998treatopiateaddiction108html.htm>.)

<sup>28</sup> <http://international.drugabuse.gov/educational-opportunities/certificate-programs/methadone-research-web-guide/part-b/question-1-methad>).

maintenance, has been found to be effective in curtailing drug use, reducing crime, enhancing social productivity, and preventing both overdose deaths and the spread of infectious diseases, including HIV.<sup>29</sup>

61. Individual Plaintiffs, like hundreds of other opiate-addicted residents of the Johnson City area, currently must drive between 100 miles and 200 miles roundtrip for treatment to an Opioid Treatment Program located in either Weaverville, North Carolina, Boone, North Carolina, or Knoxville, Tennessee because there is not an Opioid Treatment Program in or near Johnson City.

62. The Individual Plaintiffs' drive must be made as often as daily to avoid serious withdrawal symptoms common to opiate-addicted persons: tremors; cramps; muscle and bone pain; chills; perspiration (sweating); tachycardia (rapid heartbeat); itching; Restless Legs Syndrome; flu-like symptoms; Rhinitis (runny, inflamed nose); yawning; sneezing; vomiting; Diarrhea; weakness; Akathisia (a profoundly uncomfortable feeling of inner restlessness).

63. The Individual Plaintiffs' drive to and from an Opioid Treatment Program outside the Tri-Cities Area must be done in all weather and under dangerous driving conditions on mountain roads during rain, sleet or snow.

**I. TCH seeks to bring standard of care MMT treatment to the Proposed Service Area for the first time.**

64. TCH seeks to treat clients with a primary dependence on opiates.

65. TCH will use the latest medical technologies, including methadone maintenance treatment, to address the physical symptoms of the addiction in combination with the

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<sup>29</sup> *National Consensus Development Panel on Effective Medical Treatment of Opiate Addiction. Effective medical treatment of opiate addiction. JAMA. 1998; 280:1936–43, cited in Policy Progress for Physician Treatment of Opiate Addiction, J. Gen. Intern. Med. 2002 May; 17(5): 361–368.*

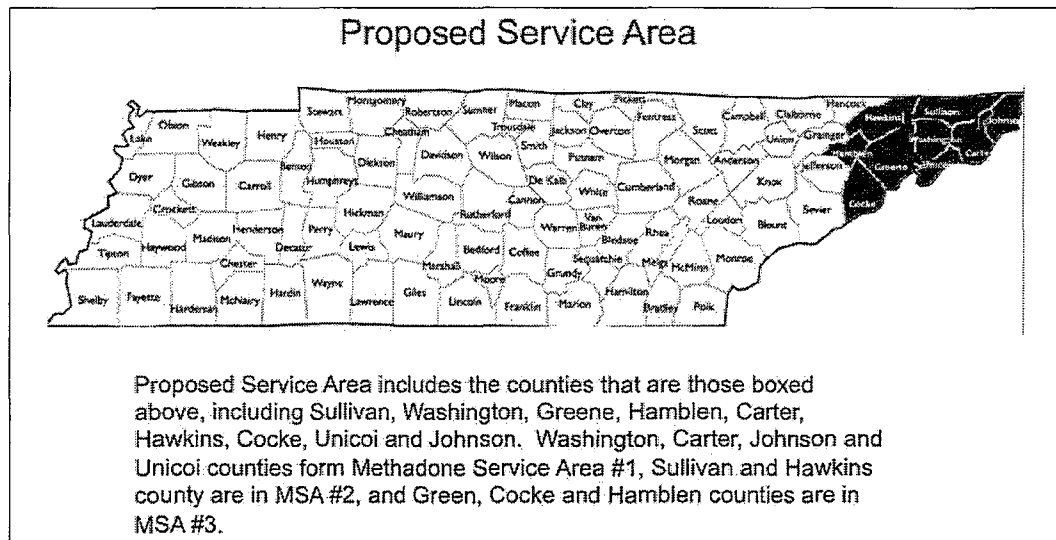


psychotherapeutic interventions proven most effective to address the emotional, cognitive and behavioral symptoms of its patients.

66. TCH's programs will be "supervised rehabilitation programs" for persons with disabilities as described under federal law which, importantly, would introduce standard of care MMT into the Proposed Service Area for the first time.

67. TCH's CON application indicated a Proposed Service Area is shown in the darkened areas of the map below ("Proposed Service Area").

68. The nine counties comprising the Proposed Service Area are the northeastern counties of Tennessee: Sullivan, Washington, Greene, Hamblen, Carter, Hawkins, Cocke, Unicoi, and Johnson counties.



69. These counties comprises not one, but three "Methadone Service Areas" that the State of Tennessee's "Methadone Task Force" in 2001 declared that every resident of Tennessee should have reasonable access to MMT and established pre-defined areas that should have at least one OTP.<sup>30</sup> Again, a present there are no OTPs and no access to MMT treatment in the Proposed

<sup>30</sup> The report designated 23 distinct Methadone Service Areas (MSA) within Tennessee to

Service Area.

70. Numerous studies have found that addiction to heroin and other opiates is a chronic medical illness that produces significant and lasting changes in brain chemistry and function. Numerous studies have also found that this medical illness can be effectively treated in a MMT program. For example, in 1997, an expert panel convened at a National Institutes of Health (NIH) Consensus Development Conference on Effective Medical Treatment of Heroin Addiction concluded that opiate addiction is a medical disorder that can be effectively treated in employing standard of care methadone maintenance treatment (“MMT”).

71. Presently, there is no OTP clinic offering MMT in the Proposed Service Area.

72. In any other field of medicine, bringing standard of care treatment into a community is met with open arms. But for some reason, standard of care for opiate-addiction is not welcome in Northeast Tennessee.

73. After this Court compels Defendants to issue TCH a CON, and all necessary zoning and local business permits to operate its OTP clinic in Johnson City, TCH is prepared to open its proposed OTP clinic with all deliberate speed, including TCH obtaining a license from the Tennessee Department of Mental Health and Substance Abuse Services for operation of its OTP.

**II. Northeast Tennessee is in the midst of a human catastrophe caused by opiate addiction which is exacerbated by the lack of available standard of care treatment options.**

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assure reasonable patient access to a methadone program. MSA was defined as a county or constellation of contiguous counties in the state that comprise a sufficient general population making it likely that a minimum number of opiate dependent persons reside in the MSA who seek treatment could support a program. The minimum population foundation was balanced with the need to establish geographic boundaries such that patients living within the MSA would reside within an hour drive one-way to a treatment program if the program were established in the heart of the MSA.

74. More than 1,700,000 Americans are opioid dependent according to the 2007 National Survey on Drug Use and Health Report.<sup>31</sup>

75. At the CON hearing, TCH presented grim statistics on the unfolding catastrophe from opioid addiction in Tennessee:

- a. Tennessee has one of the highest rates of prescription drug abuse in the nation.
- b. Drug overdose deaths in 2010 represent an increase of 250% over the 10 year time period.
- c. Fifty-one (51) pills of hydrocodone are prescribed each year for every Tennessean above the age of twelve.
- d. Twenty-one (21) pills of oxycodone are prescribed each year for every Tennessean above the age of twelve.
- e. Per-capita oxycodone sales increased five- or six-fold in most of Tennessee during the decade.
- f. Opioid abuse in Tennessee is greater than abuse of marijuana or crack/cocaine.
- g. Prescription drug abuse hits every profession and every socioeconomic level.
- h. Percentage of Tennessee children entering custody with related substance abuse problem increased from 19% to 33%.
- i. Estimated costs of caring for these children increased from \$29 million to

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<sup>31</sup> 2007 *National Survey on Drug Use and Health: National Findings*. DHHS Publication No. (SMA) 08-4343. Rockville, MD: HHS, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, September 2008, p. 71.

over \$52 million.

76. Every year in Tennessee, opioid dependence causes 2,000 new people to seek MMT treatment at OTP clinics.

77. In 2003, a CON was granted for the proposed area when the death rate was less than half its current rate, but it was ultimately derailed on a procedural technicality<sup>32</sup> in part by efforts of Johnson City community leaders.

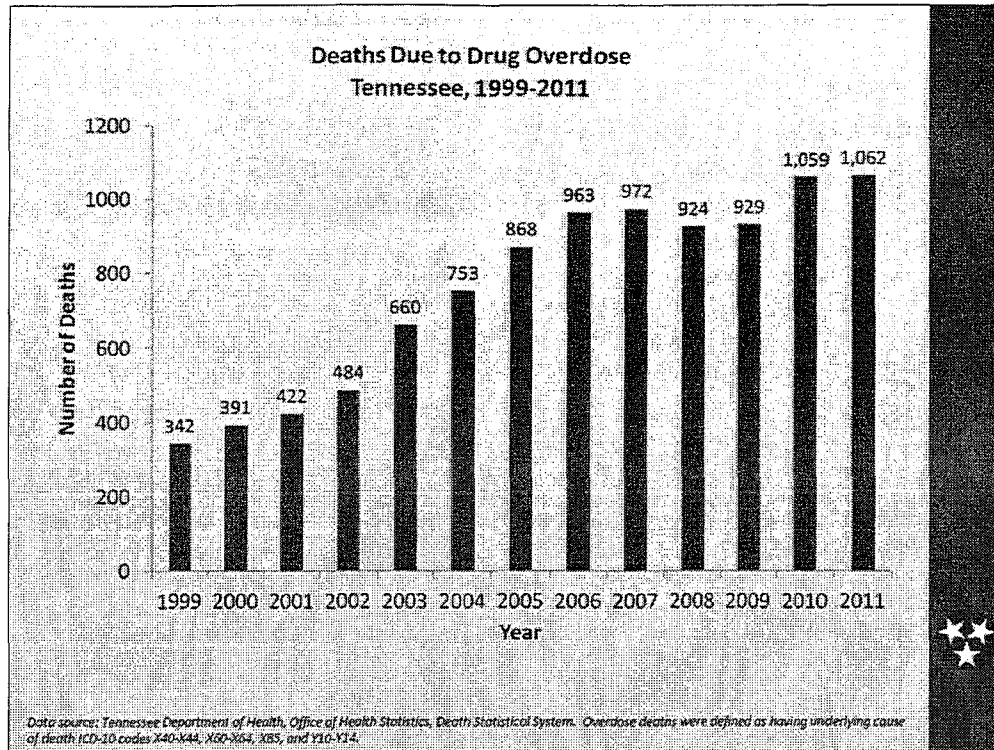
**A. Over the next ten years (as in the last decade), more than 10,000 drug overdose deaths will occur in Tennessee, and 1,000 drug overdose deaths will occur in Northeast Tennessee.**

78. Since 2003, approximately 1,000 people have died of drug overdoses in the Proposed Service Area.

79. The death toll rate is on course to soon double at present growth rates.

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<sup>32</sup>On appeal, an administrative law judge found the unanimous vote to approve the CON was void because the panel lacked of a quorum due to a panel member recusing himself instead of abstaining.



80. These death figures reveal an unprecedented disaster both in the state as a whole and the Proposed Service Area in particular. Even now, more than 1,000 die each year from drug overdose in Tennessee (1,062 in 2011).

81. TCH’s Proposed Service Area population is approximately 9.3% of the state population.

82. Approximately 100 people in the Proposed Service Area are projected to die from drug overdose each year into indefinite future (one death every 2.9 days).

83. Approximately 1,000 will die in the Proposed Service Area from drug overdose over the next ten years.

84. Assuming growth rate of drug overdose deaths continues, deaths in Proposed Service Area will exceed 1,500 over the next ten years.

**B. Drug overdose death rates in Northeast Tennessee exceed “War-Zone” levels.**

85. In fact, the opiate-addiction epidemic in Tennessee, and in Northeast Tennessee in particular, is so bad that it's killing residents at a pace exceeding that of deaths of American service personnel in the Iraq and Afghanistan wars.

<b>Tennessee Drug Overdose Death Toll Exceeds Iraq and Afghanistan Wars</b>		
	<b>Total Deaths Since 2003</b>	<b>Deaths Most Recent Year</b>
<b>Tennessee (2003-2011)</b>	<b>8,193</b>	<b>1,065</b>
<b>Proposed Service Area</b>	<b>762</b>	<b>99</b>
<b>Iraq (2003-2013)</b>	<b>4,486</b>	<b>54</b>
<b>Afghanistan (2003-2013)</b>	<b>2,243</b>	<b>93</b>

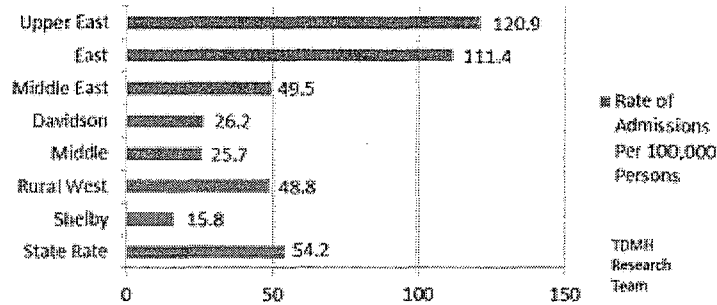
Source: Tennessee Statistics through 2011—Comm. D. Varney Presentation, Dec. 2012. Iraq and Afghanistan through 2013, U.S. casualties, from [www.icasualties.org](http://www.icasualties.org); Proposed service area is approx. 600,000 which is 9.3% of total Tennessee population of 5,450,000.

86. Presently, there appears no end in sight to these “war zone” levels of death from drug overdoses in Tennessee in general and Northeast Tennessee in particular.

87. As presented by TCH at the CON hearing, the drug abuse problem in Northeast Tennessee is more than twice as severe as the rest of the state:

## Abuse Rates in East Tennessee are Double the Rest of the State.

Persons Admitted to State-Funded Treatment for Opioid Abuse in Tennessee (Rate Per 100,000 Persons): Fiscal Year 2011

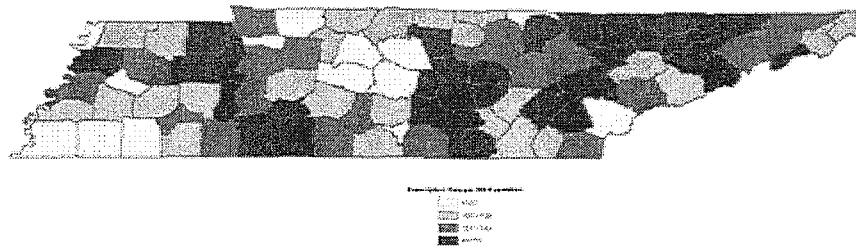


Source: TDMHSAS Commissioner E. Douglas Varney, Governor's Safety Forum Presentation, Governor's Action Plan with Concentration on Prescription Drug Abuse, December 6, 2012.

88. As presented by TCH at the CON hearing, some of the highest rates of prescription opioid abuse in the state are in Northeast Tennessee:

## Service Area Among Highest Rates of Prescription Opioids

Opioid Prescription Rates by County TN, 2011



Source: TDMHSAS Commissioner E. Douglas Varney, Governor's Safety Forum Presentation, Governor's Action Plan with Concentration on Prescription Drug Abuse, December 6, 2012.

89. Projecting state-wide data, an estimated 24,000 people over 12 years old abuse

opiates in the Proposed Service Area.<sup>33</sup>

**C. Northeast Tennessee is experiencing a catastrophe of large numbers of opiate-addicted pregnant women in the midst of a complete absence of standard of care MMT treatment in the Proposed Service Area.**

90. Nearly 48,000 women died of prescription painkiller overdoses between 1999 and 2010 in the United States.<sup>34</sup>

91. More than five (5) times as many women died from prescription painkiller overdoses in 2010 as in 1999.<sup>35</sup>

92. Deaths from prescription painkiller overdoses among women have increased more than 400% since 1999, compared to 265% among men.<sup>36</sup>

93. For every woman who dies of a prescription painkiller overdose, thirty (30) go to the emergency room for painkiller misuse or abuse.<sup>37</sup>

94. Opiate addiction among pregnant women in Tennessee is exploding as it is nationwide.<sup>38</sup>

95. Northeast Tennessee has more than 50% higher rates of opiate-addicted pregnant

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<sup>33</sup> Almost 5% of all Tennessee residents over 12 abused opiates in the last year. State of Tennessee Health Plan 2012; TDMHSAS Commissioner E. Douglas Varney, Governor's Safety Forum Presentation, Governor's Action Plan with Concentration on Prescription Drug Abuse, December 6, 2012. The proposed service area is approximately 600,000 people representing 9.3% of total state population of 6,450,000. Over 12 equals 80% of total population (approx) ([http://www.censusscope.org/us/s47/chart\\_age.html](http://www.censusscope.org/us/s47/chart_age.html)). 80% of 5% of 6,450,000 equals 258,000. 80% of 5% of 600,000 service area equals 24,000

<sup>34</sup> Center for Disease Control (2013)(<http://www.cdc.gov/vitalsigns/PrescriptionPainkillerOverdoses/>)

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> New York Times, May 1, 2012 "Prescription Drug Abuse Soars Among Pregnant Women." [http://www.nytimes.com/2012/05/01/health/research/prescription-drug-abuse-soars-among-pregnant-women.html?\\_r=0](http://www.nytimes.com/2012/05/01/health/research/prescription-drug-abuse-soars-among-pregnant-women.html?_r=0)



women that in the rest of the state.<sup>39</sup>

96. In fact, in one recent seven month period, one hundred and thirty (130) opiate-addicted pregnant women presented themselves at medical offices and emergency rooms in the Johnson City, Tennessee area seeking treatment to save their and their lives and the lives of their babies.<sup>40</sup>

97. One large hospital group in Tennessee, Mountain States Health Alliance (“MSHA”), has seen a 31.3 percent increase in babies born addicted to drugs comparing a seven-month period from July 10, 2010, to Feb. 11, 2011, to the period of July 11 to Feb. 23, 2012.<sup>41</sup> The seven-month 2010-11 total was 99, versus 130 in the seven months of 2011-12.<sup>42</sup> The numbers are from Johnson City Medical Center, Indian Path Medical Center, Franklin Woods Community Hospital, the former Johnson City Specialty Hospital and Sycamore Shoals Hospital.<sup>43</sup>

98. Mountain States Health Alliance has launched an initiative targeting about 100 greater Tri-Cities physicians approved by federal authorities to dispense the drugs.<sup>44</sup>

99. In 2012, Wellmont Healthcare, a large hospital group in the Johnson City area, reported that 20 percent of the infants in Kingsport’s Holston Valley Medical Center’s Neonatal Intensive Care Unit were there for neonatal abstinence syndrome (from opiate addiction or treatment), and that the longest treatment for those has been 45 days.<sup>45</sup>

100. Even in the face of this human catastrophe that has been unfolding for more than

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<sup>39</sup>Varney, D., Governor’s Safety Forum Presentation.

<sup>40</sup> *Johnson City Press*, “Women Warned Not To Use Two Drugs Around Pregnancy” March 22nd, 2012.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

ten years, standard of care MMT exists nowhere in the Proposed Service Area.

**III. For more than 40 years, MMT has been recognized as the standard of care treatment for opiate addiction by health authorities in the United States and around the world.**

101. Almost all health authorities in the United States and around the world who have spoken on the issue have declared that MMT is the standard of care treatment for opiate addiction with a record of safety and effectiveness unmatched by any other treatment.

102. Doctors in the United States, and around world, prescribe MMT for more than 1,000,000 patients every day.

103. At the CON hearing, TCH presented uncontroverted evidence that MMT has been recognized as “effective” and/or the standard of care treatment for opiate addiction for 40 years or more by numerous United States and world health authorities. Accordingly, TCH presented the following slide at the CON hearing:

**The Standard of Care for Opiate Addiction  
is Methadone Maintenance Treatment**

METHADONE HAS BEEN ENDORSED AS THE “STANDARD OF CARE” FOR  
OPIATE ADDICTION – AND ESPECIALLY FOR PREGNANT WOMEN – BY:

- NATIONAL INSTITUTE OF HEALTH (NIH)
- NATIONAL INSTITUTE ON DRUG ABUSE (NIDA)
- U.S. SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA)
- AMERICAN SOCIETY OF ADDICTION MEDICINE
- CENTER FOR DISEASE CONTROL (CDC)
- WORLD HEALTH ORGANIZATION (WHO)
- U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
- AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS
- NEW ENGLAND JOURNAL OF MEDICINE
- JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION (AMA)

Source: National Institute of Health (NIH.gov); National Institute on Drug Abuse (NIDA.gov); U.S. Substance Abuse & Mental Health Services Administration (SAMHSA.gov); Center for Disease Control (www.cdc.gov); The World Health Organization (WHO.org); The New England Journal of Medicine (JAMA-network.org); Journal of the American Medical Association (JAMA-association.org); American College of Obstetricians and Gynecologists (acog.org); HHS.gov.

104. Specifically, the following health organizations have described MMT as either

“the standard of care,” “the most effective treatment,” or “an effective treatment” for opiate addiction:<sup>46</sup>

NATIONAL INSTITUTE OF HEALTH (NIH)<sup>47</sup>

NATIONAL INSTITUTE ON DRUG ABUSE (NIDA)<sup>48</sup>

U.S. SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION  
(SAMHSA)<sup>49</sup>

AMERICAN SOCIETY OF ADDICTION MEDICINE<sup>50</sup>

CENTER FOR DISEASE CONTROL (CDC)<sup>51</sup>

WORLD HEALTH ORGANIZATION (WHO)<sup>52</sup>

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<sup>46</sup> National Institute of Health (NIH.gov); National Institute on Drug Abuse (NIDA.gov). 2; U.S. Substance Abuse & Mental Health Services Administration (SAMHSA.gov); Center for Disease Control (www.cdc.gov); The World Health Organization (WHO.org); The New England Journal of Medicine (JAMAnetwork.org); Journal of the American Medical Association (AMA-assn.org); American College of Obstetricians and Gynecologists (acog.org); HHS.gov.

<sup>47</sup> “Methadone maintenance treatment has the longest successful track record in patients addicted to opioids for more than a year and has been shown to control withdrawal symptoms, stabilize physiologic processes, and improve functionality.” Medication-Assisted Treatment for Opioid Addiction in Opioid Treatment Programs. Treatment Improvement Protocol (TIP) Series, No. 43, National Institute of Health (2013)( <http://www.ncbi.nlm.nih.gov/books/NBK64152/>).

<sup>48</sup> “An overview of 5 meta-analyses and systematic reviews, summarizing results from 52 studies and 12,075 opioid-dependent participants, found that when methadone maintenance treatment was compared with methadone detoxification treatment, no treatment, different dosages of methadone, buprenorphine maintenance treatment, heroin maintenance treatment, and L-acetylmethadol (LAAM) maintenance treatment, methadone maintenance treatment (MMT) was more effective than detoxification, no treatment, buprenorphine, LAAM, and heroin plus methadone. High doses of methadone are more effective than medium and low doses (Amato, Davoli, Perucci, et al., 2005)” National Institute on Drug Abuse, Methadone Research Web Guide, <http://international.drugabuse.gov/sites/default/files/pdf/partb.pdf>; “Methadone treatment has been used for more than 30 years to effectively and safely treat opioid addiction.” National Institute on Drug Abuse (2012), <http://www.drugabuse.gov/publications/research-reports/heroin-abuse-addiction/what-are-treatments-heroin-addiction>).

<sup>49</sup> Medication Assisted Recovery Treatment for the 21<sup>st</sup> Century: A Community Education Kit (2003).

<sup>50</sup> Public Policy Statement on Methadone Treatment of Addiction, ASAM.org, April 1, 1990; rev. October 1, 2006.

<sup>51</sup> Methadone Maintenance Treatment, Center for Disease Control (2002)( “Methadone maintenance treatment is the most effective treatment for opioid addiction.”), <http://www.cdc.gov/idu/facts/methadonefin.pdf>

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)<sup>53</sup>  
AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS<sup>54</sup>  
NEW ENGLAND JOURNAL OF MEDICINE<sup>55</sup>  
JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION (AMA)<sup>56</sup>

**A. MMT is the unquestioned standard of care for opiate-addicted pregnant women.**

105. At the CON hearing, TCH presented the panel with undisputed evidence that MMT is unquestionably the standard of care for opiate addicted pregnant women.

**Methadone is the Standard of Care with Opiate-Addicted Pregnant Women**

"Opioid use is not uncommon in pregnancy. The current standard of care for pregnant women with opioid dependence is referral for opioid-assisted therapy with methadone."  
American College of Obstetricians and Gynecologists [2012].

"Abrupt discontinuation of opioids in an opioid-dependent pregnant woman can result in preterm labor, fetal distress, or fetal [death]."  
American College of Obstetricians and Gynecologists [2012].

"Methadone is the recommended treatment for opioid dependence during pregnancy."  
Journal of the American Medical Association, April 30, 2012.

"The standard of care for opiate addiction during pregnancy is methadone maintenance and psychiatric care."  
New England Journal of Medicine 363:24 (nejm.org) December 9, 2010.

"Methadone is the standard of care in pregnant women with opioid addiction."  
National Institute of Health (NIH) Consensus Panel [1993]

"Methadone has been the standard of care for the past 40 years for opioid-dependent pregnant women."  
National Institute on Drug Abuse [2012].

106. In 2012, the American College of Obstetricians and Gynecologists declared in a

<sup>52</sup> Bulletin of the World Health Organization Past issues Volume 86: 2008 Volume 86, Number 3, March 2008, 161-240 ("[M]ethadone maintenance treatment – a treatment that has been around for over 40 years – is still regarded as the most effective.").

<sup>53</sup> Medication Assisted Recovery Treatment for the 21<sup>st</sup> Century: A Community Education Kit (2003).

<sup>54</sup> ACOG, Committee on Health Care for Underserved Women and the American Society of Addiction Medicine, Opinion Number 524, May 2012.

<sup>55</sup> N Engl J Med 2010; 363:2320-2331 (buprenorphine is an "alternative treatment" to methadone).

<sup>56</sup> JAMA, March 8, 2000, Vol 283, No. 10 ("Our results confirm the usefulness of [Methadone Maintenance Treatment] in reducing heroin use and HIV risk behaviors.").

formal published opinion that MMT is the standard of care for opiate addicted pregnant women:

“Opioid use is not uncommon in pregnancy.... The current standard of care for pregnant women with opioid dependence is referral for opioid-assisted therapy with methadone.... Abrupt discontinuation of opioids in an opioid-dependent pregnant woman can result in preterm labor, fetal distress, or fetal [death].”

“Opioid Abuse, Dependence, And Addiction In Pregnancy,” American College of Obstetricians and Gynecologists Committee Opinion No. 524 (2012)(emphasis added).

107. On or about April 30, 2012, the Journal of the American Medical Association declared: “[M]ethadone is the recommended treatment for opioid dependence during pregnancy.”

108. On December 9, 2010, New England Journal of Medicine declared: “[T]he standard of care for opiate addiction during pregnancy is methadone maintenance and psychiatric care.”<sup>57</sup>

109. In 1998, a National Institute of Health (NIH) Consensus Panel declared: “[M]ethadone is the standard of care in pregnant women with opioid addiction.”

110. In 2012, the National Institute on Drug Abuse declared: “[M]ethadone has been the standard of care for the past 40 years for opioid dependent pregnant women.”

111. Even Johnson City’s own large hospital group, MSHA, declared in a 2012 to more than 100 doctors in the area that “Methadone is the recommended medication used for detoxification during pregnancy.”<sup>58</sup>

112. Thus, MMT is the standard of care for opiate-addicted pregnant women.

113. Furthermore, MMT is the standard of care for opiate-addicted pregnant women

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<sup>57</sup> New England Journal of Medicine, Vol. 363:24 (2010)(nejm.org).

<sup>58</sup> “Women Warned Not to Take Two Drugs Around Pregnancy,” *Johnson City Press*, March 22, 2012. (<http://www.johnsoncitypress.com/article/99175>)

because, among other reasons, it offers a generally higher treatment retention rate – and a generally lower relapse rate—than other treatment methods, including buprenorphine/Suboxone/Subutex.

114. Opiate-addicted mothers treated with non-MMT treatments, such as buprenorphine (Subutex and Suboxone), generally have a lower rate of retention in treatment and a higher rate of relapse.

115. Opiate addiction relapse is associated with increased risk of withdrawal and fetal death.

116. MMT for pregnant women, methadone is so crucial for protection of the mother and baby that the U.S. Department of Health and Human Services issued a special pamphlet alerting doctors and their pregnant patients that “Methadone Can Save Your Baby’s Life.”<sup>59</sup> This message was shown to the CON panel.

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<sup>59</sup> U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment (2013)([www.samhsa.gov](http://www.samhsa.gov)).

**United States Dept. of Health and Human Services:  
"Methadone Can Save Your Baby's Life"**

- "Methadone Maintenance Treatment can prevent the withdrawal symptoms many drug users experience."
- "Withdrawal for pregnant women is especially dangerous because it causes the uterus to contract and may bring on miscarriage or premature birth."
- "By blocking withdrawal symptoms, Methadone Maintenance Treatment can save your baby's life."
- "Additionally, Methadone Maintenance Treatment can help you stop using needles, which is a primary route of infection for drug users."
- "More importantly, it can allow you to regain your quality of life."

Source: U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Substance Abuse and Mental Health Services Administration  
Center for Substance Abuse Treatment  
[www.samhsa.gov](http://www.samhsa.gov)

117. Opioid withdrawal symptoms drive the addiction to opiates.<sup>60</sup>

118. Relapse and withdrawal in an opiate-addicted pregnant woman can cause

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<sup>60</sup> The U.N. Human Rights Council has even gone so far as to describe denial of opiate replacement therapy as "possibly torture:"

"A particular form of ill-treatment and possibly torture of drug users is the denial of opiate substitution treatment, including as a way of eliciting criminal confessions through inducing painful withdrawal symptoms (A/HRC/10/44 and Corr.1, para. 57). The denial of methadone treatment in custodial settings has been declared to be a violation of the right to be free from torture and ill-treatment in certain circumstances (ibid., para. 71). Similar reasoning should apply to the non-custodial context, particularly in instances where Governments impose a complete ban on substitution treatment and harm reduction measures."

See HRW, *Lessons Not Learned: Human Rights Abuses and HIV/AIDS in the Russian Federation* (2004). United Nations Human Rights Council, Twenty-second session, Agenda item 3, "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez," A/HRC/22/53 (2013).

miscarriage and fetal death.

119. MMT provides mothers with a lower risk of fetal death due to relapse or withdrawal than alternative treatments, such as buprenorphine and its branded formulations Subutex (buprenorphine) or Subxone (buprenorphine/naloxone).<sup>61</sup>

120. Buprenorphine and Suboxone (buprenorphine/naloxone) can precipitate the opioid withdrawal syndrome.

121. Opiate withdrawal syndrome can be precipitated in individuals maintained on buprenorphine.

122. Use of buprenorphine on persons physically dependent on full-agonist opioids, while not already in withdrawal, may trigger an extremely intense form of opioid withdrawal – called "precipitated withdrawal" or "precipitated withdrawal syndrome."

123. Precipitated withdrawal syndrome does not occur in all persons tolerant to full-agonist opioids, but rather depends on the severity of dependence and time elapsed from their last dose. For example, a hardcore heroin addict has a higher risk of precipitated withdrawal syndrome if given buprenorphine than a less severe case.

124. Precipitated withdrawal syndrome in opioid addicted pregnant women can result in premature birth or miscarriage.

125. Side effects of buprenorphine can include nausea, vomiting, and constipation.

126. Because of possible negative interaction with other medications a patient may already be taking, buprenorphine (including Subxone and Subutex) is an inappropriate treatment

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<sup>61</sup> In October 2002, the Food and Drug Administration (FDA) of the United States also approved Suboxone and Subutex, buprenorphine's high-dose sublingual tablet preparations indicated for detoxification and long-term replacement therapy in opioid dependency, and the drug is now used predominantly for this purpose. Subutex contains only buprenorphine hydrochloride. Suboxone contains an additional ingredient called naloxone to guard against misuse, but this can induce potentially dangerous opioid withdrawal syndrome.



option for some opiate addicted patients who may be better suited for MMT.

127. Because of certain medical conditions in some patients, buprenorphine (including Subxone and Subutex) is an inappropriate treatment option for some opiate addicted patients who may be better suited for MMT.

128. Because of its generally lower retention rate than MMT, buprenorphine (including Subxone and Subutex) is an inappropriate treatment option for some opiate addicted patients who may be better suited for MMT.

129. Because of its generally higher relapse rate than MMT, buprenorphine (including Subxone and Subutex) is an inappropriate treatment option for some opiate addicted patients who may be better suited for MMT.

130. Because of a significant possibility of opioid withdrawal syndrome in some patients, buprenorphine (including Subxone and Subutex) is an inappropriate treatment option for some opiate addicted patients who may be better suited for MMT.

131. Because of its possible negative side effects in some patients, buprenorphine (including Subxone and Subutex) is an inappropriate treatment for some opiate addicted patients who may be better suited for MMT.

132. Because of the risk of opioid withdrawal syndrome, buprenorphine (including Subxone and Subutex) is an inappropriate treatment for a significant number of opiate addicted patients, particularly those patients with a more severe dependence and history of opioid use (i.e., a hardcore heroin user) who are better suited for MMT.

**B. Methadone Maintenance Treatment (MMT) is a life-saving treatment that is proven to reduce deaths from drug overdoses.**

133. In 2012, the World Health Organization issued a bulletin that “[MMT]

dramatically reduces deaths from drug overdoses....”<sup>62</sup>

134. In 2013, the Journal of Addiction reported an apparent ten-fold decrease in chance of death for those patients in MMT treatment versus those on the waiting list for MMT treatment.<sup>63</sup>

135. In 2010, the British Medical Journal reported that MMT has been demonstrated to improve the survival chances of drug users and prevents addiction-related deaths.<sup>64</sup>

136. In 2010, the British Medical Journal reported that patients in MMT tended to use heroin less frequently, and that the treatment was associated with a 13 per cent reduced risk of death each year.<sup>65</sup>

137. In 2004, a U.S. Health and Human Services Department study found that OTPs were not a significant factor in increases in methadone-related deaths, those deaths being caused by increased use of a methadone as an analgesic (i.e., pain management) and not in MMT.<sup>66</sup>

138. A recovering opiate addict, stabilized in MMT treatment, faces a substantially lower chance of death, compared to an opiate addict continuing to use illegal sources of opiates-- such as heroin.

#### **IV. Standard of Care MMT Clinics are nowhere in the Proposed Service Area.**

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<sup>62</sup> World Health Organization (<http://www.who.int/bulletin/volumes/91/2/12-109132/en/index.html>), Hedrich D, Alves P, Farrell M, Stöver H, Møller L, Mayet S. The Effectiveness of Opioid Maintenance Treatment in Prison Settings: A Systematic Review. *Addiction* 2012; 107:501–17.

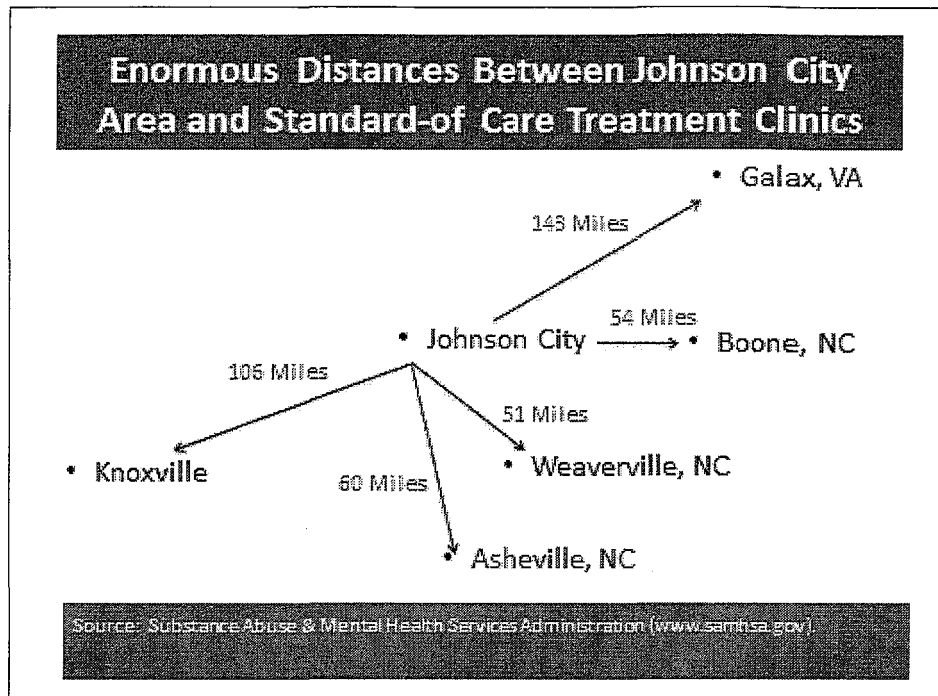
<sup>63</sup> *J Addict Med.* 2013 May-Jun 7(3):177-82.

<sup>64</sup> Research: Risk Of Death During And After Opiate Substitution Treatment In Primary Care: Prospective Observational Study In UK General Practice Research Database, *BMJ* 341: c5475 (2010).

<sup>65</sup> 4. Survival and Cessation In Injecting Drug Users: Prospective Observational Study of Outcomes and Effect of Opiate Substitution Treatment, *BMJ* 341 (2010).

<sup>66</sup> Methadone-Associated Mortality: Report of a National Assessment, U.S. Dept. Health Humans Services (2004)(Part 4)

139. Undisputed evidence at the CON hearing showed that all MMT clinics are more than 100 miles away roundtrip from large parts of the Proposed Service Area as shown by the slide below.



**A. Distance is a barrier to opiate addiction treatment.**

140. Forcing someone to drive more than 100 miles a day for more than a few days, much less 90 straight days or more, is a denial of reasonable access to medical treatment.

141. Due to the overwhelming costs and time of driving over 100 miles per day for treatment, recovering addicts in Northeast Tennessee are largely unable to remain in MMT programs. Distance is a barrier to opiate addiction treatment.

142. The 2001 Tennessee Methadone Task Force confirmed this common sense notion of “distance is a barrier to treatment” with hard data in that “[g]enerally, the closer one lives to a treatment program, the greater likelihood of participation....The rate of participation is nearly twice as high for persons living in or close to one of the five counties that house programs,

59.0/100,000, than the rate for those that live 60 miles or more from a program, 32.2/100,000.”.

143. Medical experts presented by TCH and Johnson City on May 24, 2013 both testified that making an opiate-addicted person drive 100 miles round trip to receive doctor prescribed, lifesaving MMT treatment is equivalent to a denial of medical treatment.<sup>67</sup>

144. The Individual Plaintiffs’ drive to out-of-state OTP clinics must be made as often as daily to avoid serious withdrawal symptoms common to opiate-addicted persons.<sup>68</sup>

145. The Individual Plaintiffs—and hundreds like them—are expending enormous amounts time and expense in gasoline, wear on their automobiles, exhaustion from having to wake up as early as 1-4AM to get up, dress themselves and their children, place their children into car seats, and drive these enormous distances as often daily.

146. All this driving consumes time and money that clearly could be devoted to family and work—all for treatment of a disability unquestionably recognized under the ADA and the RA.

**B. At least 400-500 ADA-disabled persons are being denied reasonable access to standard of care MMT treatment in the Proposed Service Area.**

147. At least 400-500 Northeast Tennessee residents in the Proposed Service Area are having to wake up between 1AM-4AM, as often as daily, and then drive to distant OTP clinics in North Carolina, then drive home and prepare for work.

148. These persons, disabled under federal law, presently endure a driving marathon of 100 miles or more roundtrip to out-of-state OTP clinics offering the closest standard of care

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<sup>67</sup> *Tri-Cities Holdings et al. v. Johnson City et al.*, Case No. 13-cv-108 (E.D. Tenn. 2013)(case dismissed without prejudice on ripeness grounds), Testimony of Dr. Robert Newman, May 24, 2013, at p. 32; Testimony of Dr. Stephen Loyd, May 24, 2013, p. 30, l. 9-13.

<sup>68</sup> National Institute of Drug Abuse at the National Institute of Health (<http://www.drugabuse.gov/drugs-abuse>).

MMT as often as every day.

149. In an email, HSDA staff dubbed this daily mass movement of humans as a “migration.”

150. In a June 24, 2013, Spencer Clark, Director of the North Carolina Opioid Treatment Authority, confirmed in writing of the existence of the 400-500 person “migration” and that the number “may be higher.” This so-called “migration” occurs every day, in the wee hours of the morning, on mountain roads, in all weather conditions, and certainly including instances of dangerous driving conditions during rain, sleet or snow.

151. TCH presented testimony at the CON hearing that this number is likely underreported and probably closer between 1,000 and 1,500.

152. Therefore, at least 400-500 ADA-disabled persons--and possibly 1,000 to 1,500--are being forced, often as daily, as to drive more than 100 miles roundtrip for doctor-prescribed, life-saving, standard of care treatment that is available nowhere in the Proposed Service Area.

153. State and federal regulations require that new MMT patients, including pregnant women, are required to obtain medication in person at an MMT clinic for at least the first 90 days straight with no ability to take home any medication—even one day’s worth.

154. Therefore, new MMT patients in the Proposed Service Area, including pregnant women, who are seeking treatment for first time to break their potentially deadly opiate addiction, are required to drive up to 9,000 miles, or more, in the first 90 days of treatment to obtain doctor-prescribed MMT treatment.

155. The Individual Plaintiffs, and certainly 400-500 disabled persons--and possibly over 1,000--people like them—are effectively being denied access by HSDA and Johnson City to doctor-prescribed, life-saving standard of care MMT medication for their disability.

156. There exist significant risks when driving on Northeast Tennessee mountain roads during inclement weather such as rain, sleet or snow.

157. The lack of reasonable access to MMT treatment risks of severe physical injury or death including the risk of withdrawal, relapse, and the risks of traveling on potentially dangerous mountain roads to distant MMT clinics in North Carolina in all weather conditions including rain and snow.

158. The lack of reasonable access to MMT treatment presents a clear and present danger to the Individual Plaintiffs and others, including pregnant women and their unborn babies.

**C. Highway deaths are occurring on Northeast Tennessee roads because disabled people are being forced to make grueling 100-plus roundtrip journeys, as often as daily, to OTP clinics in North Carolina for the closest standard of care MMT.**

159. Drivers face significant increased risks of an accident when they are significantly deprived of sleep, such as having to wake up at between 1AM and 4AM and drive 50+ miles from Johnson City to a distant OTP clinic in North Carolina to enable them to obtain their MMT medication, then drive 50+ miles back to Johnson City, and then go to work.<sup>69</sup>

160. It is undisputed that 400-500 disabled people in Northeast Tennessee (and probably over 1,000) being forced to seek doctor-prescribed, standard of care MMT treatment in distant out-of-state OTPs are causing traffic deaths.

161. For example, in 2009, one opiate-addicted Johnson City woman, after visiting an OTP clinic offering standard of care MMT in Asheville, North Carolina, fell asleep at the wheel and killed a 22-year old Jonesborough girl.

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<sup>69</sup> The Tennessee State Governor's Highway Safety Office reported that in 2010 there were 1031 fatalities and 6,294 "serious injuries" on Tennessee roads. <http://tntrafficsafety.org/sites/default/files/FFY2012HSPP.pdf>.

162. This Johnson City woman fell asleep from exhaustion after having to wake up that morning at 4AM, drive 60 miles from Johnson City to a OTP clinic in Asheville, then drive back 60 miles to Johnson City, then drive to take her husband to work, then drive back to her home. Toxicology reports indicated that simple exhaustion--not methadone--caused the deadly collision. The *Johnson City Press* reported on this traffic death on May 29, 2013 in part as follows:

Rachel M. Proffitt, 26, is charged with vehicular homicide by reckless operation of a vehicle that stems from a two-vehicle crash on Conklin Road on July 7, 2009. The collision killed Misty M. Briggs, 22, of Jonesborough, who was a passenger in her husband Thomas' car.

According to Assistant District Attorney General Robin Ray, Proffitt fell asleep at the wheel, drifted into the oncoming lane and woke up just before her car hit Briggs'. Thomas Briggs survived the crash. Ray said he agreed with the reduced plea for Proffitt.

"The only thing we would be able to show at trial is she dozed off, woke up and realized she was in someone else's lane and tried to correct," Ray told Cupp.

Proffitt's attorney, Don Spurrell, said his client had been up since 4 a.m. to go to Asheville, N.C., for methadone treatments, then drove back to Johnson City, took her husband to work and was on her way home when the crash happened. Ray also said there were no impairing drugs detected in Proffitt's system, so the methadone had no affect on her ability to drive.

"There's no evidence that anything related to the methadone affected her driving," Ray said.

"Somebody lost a life. They were doing what they were supposed to be doing and they were on their side of the road," Cupp said.

"Judge Wants To Look Up Law Before Accepting Plea In Vehicular Homicide Case," Johnson City Press, March 29, 2013 (emphasis added).

163. Therefore, it is undisputed that people are dying because 400-500 recovering opioid addicts are being forced to exhaust themselves driving hundreds of miles, sometimes at all hours of the morning, as often as every day, to reach distant out-of-state OTP clinics.

164. Tragically, some people just give up trying to get better in the face of this

astronomical driving burden required of disabled persons in Johnson City to stay in standard of care MMT treatment.

165. Instead, these recovering addicts may simply go back to what is certainly much more convenient legal supplies of opiates from pain clinics (so-called "pill mills")--that permeate the Johnson City area, or the increasing supplies of illegal opiates such as heroin.

166. Dropping out of MMT and returning to pain pills or heroin can lead to horrible results and huge costs for people individually and for society as a whole.

167. TCH's proposed clinic in this area will be a life-saver to the Individual Plaintiffs --and hundreds like them-- in that it will reduce the astronomical distances they must drive as often as daily for doctor-prescribed MMT and the enormous toll such driving takes.

168. The HSDA panel was clearly made aware of the fact that a recovering opiate-addicted persons, including pregnant women, must drive 100 miles per day for doctor-prescribed, standard-of-care, life-saving treatment during up to the first three months (90 days) of MMT treatment because it is nowhere available in the Proposed Service Area.

169. Requiring any person, without reason, to drive more than 100 miles roundtrip daily for medication that best offers to save their life imposes a sadistic, unnecessary burden on that person. Imposing this unnecessary burden on a disabled opiate addicted person, and on disabled pregnant woman at that, is outrageous.

170. As such, HSDA and Johnson City's refusal to allow life-saving, doctor-prescribed, standard of care MMT medication to be available in the Proposed Service Area to the Individual Plaintiffs and hundreds like them, is a clear violation of the ADA and RA.

171. During the CON hearing, the opponents of TCH's CON application--led by officials of the Johnson City government, introduced evidence that the relatively new and



untested methadone substitute – buprenorphine -- and its branded formulations Subutex and Suboxone, were somehow equivalent in every way to MMT in safety and effectiveness. This is unquestionably false as these relatively risky, untested, and non-standard of care drugs are shown, at the very minimum, to be inferior to MMT for retaining patients in treatment which reduces the risk of potentially deadly relapses.

172. On average, more than 80% of OTP patients are prescribed methadone rather than less effective, and more costly, non-standard of care medications such as buprenorphine/Subutex/Suboxone.

173. Studies have shown that another MMT alternative, so-called “abstinence-based therapy” incurs potentially deadly relapse rates running up to 75-90% or more.<sup>70</sup>

174. Abstinence-based therapy is definitely not the standard of care for pregnant women because it carries an extremely high chance of relapse and withdrawal (opioid withdrawal syndrome) which is associated with fetal death.<sup>71</sup>

175. In fact, in 2012, Mountain States Health Alliance, a large multi-hospital health provider in the Johnson City area, specifically warned doctors not to employ buprenorphine/Subutex/Suboxone with opiate-addicted pregnant women.<sup>72</sup>

176. Details of the Mountain States Health Alliance warning were presented to the panel at the CON hearing.

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<sup>70</sup> “Lapse And Relapse Following Inpatient Treatment of Opiate Dependence” 2010, 103 (6):176-9 *Irish Med J.* (Follow-up interviews were conducted with 109 patients, of whom, 99 (91%) reported a relapse.). A US follow-up study of 10 000 opiate addicts (the Drug Abuse Reporting Program; Simpson & Friend, 1988) found 88% relapse rate for abstinence-based treatment. *Advances in Psychiatric Treatment* (2003), vol. 9, 280–288.

<sup>71</sup> American College of Obstetricians and Gynecologists (2012).

<sup>72</sup> “Women Warned Not to Take Two Drugs Around Pregnancy,” *Johnson City Press*, March 22, 2012. (<http://www.johnsoncitypress.com/article/99175>).

## Mountain States Warned of Risks of Methadone Substitutes in 2012

"If you are pregnant, trying to get pregnant or not using birth control, don't take Subutex or Suboxone, for the sake of your unborn child."

"And if you are a physician, don't continue to prescribe those drugs containing buprenorphine to anyone who is pregnant."

"Dr. Joy Anderson, a Mountain States Medical Group obstetrician and gynecologist practicing in Kingsport, said pregnant women are being told by physicians prescribing the two drugs 'it's a safe drug in pregnancy' when it is not."

**"Methadone is the recommended medication used for detoxification during pregnancy, the MSHA literature says."**

Source: "Women Warned Not to Take Two Drugs Around Pregnancy", *Johnson City Press*, March 22, 2012. (<http://www.johnsoncitypress.com/article/99175>)

177. The Mountain States Health Alliance warning to area doctors not to employ buprenorphine (Suboxone or Subutex) was covered in the *Johnson City Press* newspaper on March 22, 2012 and read in part as follows:

"If you are pregnant, trying to get pregnant or not using birth control, don't take Subutex or Suboxone, for the sake of your unborn child."

\* \* \*

"And if you are a physician, don't continue to prescribe those drugs containing buprenorphine to anyone who is pregnant."

\* \* \*

"Dr. Joy Anderson, a Mountain States Medical Group obstetrician and gynecologist practicing in Kingsport, said pregnant women are being told by physicians prescribing the two drugs 'it's a safe drug in pregnancy' when it is not."

\* \* \*

"Methadone is the recommended medication used for detoxification during pregnancy, the MSHA literature says."

“Women Warned Not to Take Two Drugs Around Pregnancy,” *Johnson City Press*, March 22, 2012. (<http://www.johnsoncitypress.com/article/99175>)(emphasis added).

178. HSDA should have approved TCH’s CON application because it satisfied all criteria required by Tennessee law to empower HSDA to grant the CON, including satisfying the criteria of need, economic feasibility, and orderly development.

179. However, on June 26, 2013, HSDA denied TCH’s CON application.

180. In doing so, the HSDA panel did not comply with Plaintiffs’ request for a reasonable accommodation to grant the Certificate of Need (“CON”) under the ADA and the RA.

181. The following facts were undisputed at the CON hearing:

- a. MMT is the standard of care for treatment of opiate addiction.
- b. MMT is the standard of care for opiate addicted pregnant women by offering the lowest risk of relapse, withdrawal, and fetal death, among other reasons.
- c. MMT is not available anywhere in the Proposed Service Area.

**V. HSDA intentionally violates the ADA and the Rehabilitation Act.**

182. The “Tennessee Health Services and Planning Act of 2002,” Tenn. Code Ann. § 68- 11-1601 et seq., requires a CON granted by the state agency before a person/entity may initiate certain health care services, or construct, develop or establish certain health care institutions , including opiate addiction treatment provided through a nonresidential substitution-based treatment center for opiate addiction. Tenn. Code Ann. §§ 68-11-1607(a)(1) and (4), 1602(2) and (7)(A).

183. A CON may be granted where the action proposed in the application is shown to

be “necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care facilities or services.” Tenn. Code Ann. § 68-11- 609(b). In making its determinations, the state agency uses “as guidelines the goals, objectives, criteria and standards in the state health plan.” Id.

184. HSDA receives federal funding either directly or through the State of Tennessee.

**A. HSDA statutory procedures are facially invalid under the ADA and the Rehabilitation Act.**

185. The Tennessee legislature has enacted the overtly discriminatory—and therefore facially invalid – Tennessee Code Section 68-11-1607(c)(3) which requires an OTP Certificate of Need applicant to go through cumbersome requirements to provide notice to local politicians of a OTP’s CON application, requirements not imposed on any similar medical facility.<sup>73</sup>

186. Tennessee Code Section 68-11-1607(c)(3)’s notice provision encourages widespread, well-organized opposition to confront any attempt to locate an OTP which reduces the chance that a disabled resident will get reasonable access to standard of care MMT treatment.

187. No other similar medical service faces this requirement to notify opposition in this way.

188. Therefore, Tennessee Code Section 68-11-1607(c)(3) is discriminatory and

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<sup>73</sup> Tenn. Code § Section 68-11-1607(c)(3) provides: “Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the member of the house of representatives and the senator of the general assembly representing the district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential s facility has been filed with the agency by the applicant. All applications, original and simultaneous review, shall not enter the next review cycle, unless filed with the agency within such time as to assure that such application is deemed complete in accordance with the rules of the agency.”

facially invalid under the ADA and the Rehabilitation Act.

**B. HSDA failed to make a reasonable accommodation to allow TCH to obtain a CON and establish in OTP in Johnson City.**

189. On June 26, 2013, HSDA's board considered TCH's CON application at a public hearing held in Nashville, Tennessee ("CON hearing").

190. On or about June 17, 2013, TCH and the Individual Plaintiffs specifically requested by letter that HSDA provide TCH with a reasonable modification of HSDA rules under the ADA and RA to allow the granting of TCH's CON application.

191. At the CON hearing, TCH and the Individual Plaintiffs specifically requested that HSDA provide TCH with a reasonable modification of HSDA rules under the ADA and RA to allow the granting of TCH's CON application.

192. On or about June 28, 2013, TCH and the Individual Plaintiffs specifically requested by letter that HSDA provide TCH with a reasonable modification of HSDA rules under the ADA and RA to allow the granting of TCH's CON application.

193. At the conclusion of the CON hearing, the panel Chairman directed TCH and the Individual Plaintiffs' attorney to contact HSDA staff to pursue a request for a reasonable modification or accommodation under the ADA and the RA.

194. At present, HSDA has not granted TCH a reasonable accommodation under either the ADA or the RA to allow the CON to be granted.

195. TCH's proposed clinic will allow the Individual Plaintiffs--along with hundreds of other similarly disabled area residents which include pregnant women -- to finally have access to doctor-prescribed, life-saving, standard of care MMT for in the Proposed Service Area.

196. HSDA has not made a reasonable modification of its rules and regulations required under the ADA and RA to allow the CON to be granted.

197. HSDA making a reasonable accommodation and granting the CON will avoid the clear and present danger to my clients--and hundreds of other recovering opiate-addicts, including pregnant women---because standard of care, doctor-prescribed, life-saving treatment is effectively denied them by being a more than 100 miles away roundtrip over potentially dangerous mountain roads in all weather conditions.

198. HSDA could easily, and without undue burden, modify one or all of the criteria related to need, economic feasibility, and orderly development (and for that matter, any and all other rules, if any, presently stopping the CON from being issued) and allow the CON application to be approved.

199. The clear and undisputed lack of life-saving standard of care treatment in the Proposed Service Area should, per se, satisfy HSDA's criteria of need, economic feasibility, and orderly development,

200. HSDA has failed to offer TCH a modification of its rules if necessary to allow disabled reasonable access to standard of care MMT treatment in the Proposed Service Area.

**VI. Johnson City intentionally violates the ADA and the Rehabilitation Act.**

201. Johnson City's population is approximately 48,000 persons. Johnson City is a part of the approximately 250 square mile Johnson City--Kingsport--Bristol, TN-VA Combined Statistical Area -- commonly known as the "Tri-Cities" area ("Tri-Cities Area"). Census data from 2006--2008 for the Tri-Cities Combined Statistical Area estimates a population of 496,454. TCH estimates there are now approximately 600,000 people in the Proposed Service Area.

**A. Johnson City's zoning ordinance restricting OTP's is facially invalid under the ADA and the Rehabilitation Act.**

202. At all times herein, Johnson City has adopted and is operating under a Zoning

Ordinance (“Zoning Ordinance”) and Zoning Map (“Zoning Map”).

203. The *Johnson City Press* has succinctly recounted the history of Johnson City’s zoning ordinance that restricts OTP clinics:

Another methadone clinic was proposed for Johnson City in 2002. A certificate of need was originally granted but revoked in 2003 because of an issue with who was on the board that approved the original certificate.

This technicality may have resulted in the decision to overturn the certificate back in 2003, but a local coalition also formed in Johnson City in opposition of the clinic. This coalition included the city of Johnson City and Frontier Health, among other local entities.

*Johnson City Press*, “Johnson City Methadone Clinic Opposition Grows,” March 17, 2013.

204. Johnson City employee Steven Neilson testified he was employed by the City back in 2002-03 and that there was “substantial opposition” to the methadone clinic at that time. Testimony of Steven Neilson, May 24, 2013, p. 28, l. 9.

205. In 2003, then Johnson City Commissioner Steve Darden offered his view of the failed attempt to locate a methadone clinic in a *Johnson City Press* banner front page story entitled “Methadone Clinic Rejected:”

I think this is a tremendous victory.... My preference would be that the clinic get the very simple message here: that (we have) no desire for a methadone clinic to set up shop in Johnson City." Darden further stated, “If the clinic did reapply and were to be granted another CON, it would no longer be able to locate at the planned location or anywhere in the city’s downtown.... Any certificate of need filed today would be under our prevailing ordinances [which impose additional restrictions on locating OTP clinics].

*Johnson City Press*, “Methadone Clinic Rejected”, May 7, 2003.

206. Thus, due to public alarm at the perceived ease at which a methadone clinic could locate there, Johnson City specifically adopted its Zoning Ordinance -- with its myriad of multi-

layered restrictions that apply only to OTP clinics or addiction treatment facilities.<sup>74</sup>

207. Clearly, by enacting its Zoning Ordinance, Johnson City sent a forceful message to all opiate-addicted disabled persons, and those seeking to treat them, that it had “no desire for a methadone clinic to set up shop in Johnson City.”

208. The Zoning Ordinance provides the definition of a methadone clinic as follows: “Methadone Treatment Clinic: A licensed facility for the counseling of patients and the distribution of methadone for outpatient, non-residential purposes only.”<sup>75</sup>

209. Johnson City’s zoning ordinance prohibiting the location of MMT facilities in certain locations and with the following restrictions:

- a. The Zoning Ordinance limits methadone treatment clinics to areas zoned MS-1.<sup>76</sup>
- b. The facility shall be fully licensed/certified by the appropriate regulating state agency;
- c. A certificate of need shall be obtained from the appropriate state agency prior to review by the Board of Zoning Appeals;
- d. The facility shall not be located within two hundred (200) feet of a school, day-care facility, or park as measured from property line to property line;
- e. The facility shall not be located within two hundred (200) feet of any establishment that sells either on-premise or off-premise alcoholic beverages as measured from property line to property line;
- f. The hours of operation shall be between 7:00 a.m. and 8:00 p.m.;

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<sup>74</sup> *Ord. No. 3899*, Johnson City Commission (October 17, 2002). See Exhibit C.

<sup>75</sup> See Zoning Code, Art. II. Definition of Terms.

<sup>76</sup> See Zoning Code Section 6.13 - MS-1 Medical Service District.



- g. The facility shall be located on and primary access shall be from an arterial street.

See Zoning Ordinance Code Section 6.13.3.4

210. The Zoning Ordinance discriminates against TCH and the Individual Plaintiffs in several ways:

- a. No other non-drug treatment business faces arbitrary distance requirements from schools, parks, and day-care facilities;
- b. No other medical business faces such arbitrary restrictions to operate on arterial streets;
- c. No other medical business faces arbitrary operating hour limitations;
- d. No other medical business is required to obtain a Certificate of Need before having the Board of Zoning Appeals consider a zoning request.

**B. There is evidence of widespread current and historical community animus against clinics offering MMT in Johnson City.**

211. There is widespread community animus in Johnson City against TCH's proposed clinic. For example, community animus is clearly embodied in the March 8, 2013 house editorial of the Johnson City Press entitled "Johnson City Isn't a Good Location for Methadone Clinic," reading as follows:

We are adamantly opposed to efforts to locate a methadone clinic in Johnson City. It was a bad idea 10 years ago, and it's still a bad idea today. A decade ago, a company was granted a certificate of need to locate a methadone clinic at 4 Wesley Court. The state later revoked that permit after hearing complaints from local residents. Now, another company is asking the state to grant it a certificate of need so that it may proceed with establishing a methadone clinic. It's only reasonable that city officials, business owners and local residents would want to protect their neighborhoods from problems that might be associated with opiate abuse treatment centers. That's why methadone clinics have been unwelcome in the city for several years now.

*Johnson City Press*, March 8, 2013 (emphasis added).

212. Multiple public statements have alleged, without evidence, a multitude of “problems” inherent to TCH’s proposed clinic: For example, the *Johnson City Press* house editorial on March 8, 2013 read as follows:

It’s only reasonable that city officials, business owners and local residents would want to protect their neighborhoods from problems that might be associated with opiate abuse treatment centers. That’s why methadone clinics have been unwelcome in the city for several years now.

We understand that those struggling to break free of the chains of addiction should be given a chance to do so, but a methadone clinic in Johnson City is not the place to do it.

*Id.* (emphasis added).

213. On March 12, 2013, the Washington County (Tennessee) Commission’s Public Safety Committee unanimously approved a resolution opposing TCH’s clinic. Roger Nave, Committee Chairman, put the clinic on the agenda because he had “heard from many people who opposed the clinic ... from inside Johnson City.”

“I listened to the people that had a concern on this and there was no one that was in favor of it,” he said. “And I did what the wishes of the people (were), what they wanted.”

*Id.* (emphasis added).

214. On March 25, 2013, the Washington County Board of Commissioners unanimously approved an anti-TCH clinic resolution. The resolution reads in part:

WHEREAS, at its March 12, 2013, meeting, the Public Safety Committee voted to oppose the location of a methadone clinic in the city of Johnson City because of the questionable treatment that has been known to lead to methadone addiction and potential decreases in property values near and around methadone clinics; and

WHEREAS, the Washington County Board of County Commissioners, on behalf of the people of Washington County oppose the approval of the certificate of need for a methadone clinic in Johnson City; now therefore

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, TENNESSEE THAT:

SECTION 1. The Washington County Board of Commissioners hereby opposes the location of a methadone clinic in the city of Johnson City, and the Board of County Commissioners would further request the denial of the certificate of need filed by Tri-Cities Holding LLC.

SECTION 2. That a copy of this resolution shall be forwarded to our elected representatives encouraging those leaders to support our opposition to the approval of the certificate of need to locate a methadone clinic in the city of Johnson City.

May 24, 2013 Hearing Exhibit 15 (emphasis added).

**C. Johnson City unlawfully applied its Zoning Ordinance to deny TCH zoning and business permits to open an OTP in Johnson City in violation of the ADA and the Rehabilitation Act.**

215. Johnson City's decision to deny TCH's request for a zoning variance and business permit was made in the context of strong, discriminatory opposition. Specifically, local residents alleged, without any foundation, a plethora of maladies would descend upon Johnson City should a methadone clinic locate there. For example, Mr. Anthony Valk, a purported local property owner (but not a medical doctor) submitted a written statement offered analysis to the Board of Zoning Appeals touching the fields of real estate and medicine as follows:

"I believe it [a methadone clinic] would greatly devalue my property."

"In addition, I have serious concerns for the safety of our staff and customers. The methadone clinic will create a feeling of insecurity and an uncomfortable shopping environment for Evergreen customers."

"Evergreen employs a large number of young high school students, often only 16 years old, as well as a number of retired senior citizens. We also host a training environment for mentally challenged students from local school systems. Staff often arrives before sunset [sic] in the morning to water plants and unload trucks. With Evergreen's property directly connected to 4 Wesley Court and without security fencing, there would be nothing to prevent the possibility of confrontation between the above mentioned Evergreen staff and the clinic's addicts. Again, I plead that this methadone clinic is not allowed to open on the property."

Methadone is not an appropriate treatment for opiate addiction and is not welcome to operate in close proximity to reputable upstanding businesses."

Transcript of Board of Zoning Appeals Hearing, April 9, 2013, at p. 25-26 (no evidence presented of Mr. Valk having any qualifications to render an expert opinion on real estate markets or methadone as a treatment for opiate addiction) (emphasis added).

216. Finally, Johnson City's decision to deny TCH's request for zoning variances and a business permit was motivated by conscious indifference of the disabled status of individuals who would be affected by the decision. At the zoning hearing, Plaintiffs' counsel explained in detail how approximately 1,000 disabled persons, including pregnant women, have to drive – some as often as daily -- more than 100 miles round trip to receive doctor-prescribed, life-saving methadone maintenance treatment and how the Zoning Ordinance violated the ADA and the Rehabilitation Act. Johnson City Board of Zoning Appeals Hearing Transcript, April 9, 2013, p. 12-17, 27-28.

**D. Johnson City failed to attempt to make a reasonable accommodation with Plaintiffs to allow TCH to open an OTP in Johnson City.**

217. Despite receiving a detailed presentation from TCH on the application and effect of the ADA and the Rehabilitation Act and Johnson City's obligations to accommodate disabled persons, including evidence that Johnson City had the power to avoid such discrimination, Johnson City proceeded to deny TCH's requests for zoning variances and a business permit.

218. Indeed, Johnson City refused to speak with Plaintiffs – even one time -- to negotiate a possible reasonable accommodation.

219. Areas zoned MS-1 represent less than 1% of the total land area of Johnson City.

220. Therefore, the requirement that MMT clinics locate in MS-1 areas (Section 6.13) combined with restrictions to location on arterial streets (Section 6.13.3.4, para. F.) already limits the land available for OTP clinics to well below 1% of the total land area of Johnson City.

Johnson City offers no policy reason for doing this and restricts no other business in this way.

221. Further, after reducing the available area available to OTP clinics to less than 1% of available land, the Zoning Ordinance adds on additional restrictions which include, without limitation, prohibiting the clinic from locating within:

- a. two hundred (200) feet of a “school, day-care facility, or park as measured from property line to property line;” and
- b. two hundred (200) feet of “any establishment that sells either on-premise or off-premise alcoholic beverages as measured from property line to property line.”

222. The practical result of these and other restrictions is that it is impossible for TCH to locate a MMT clinic in Johnson City.

223. The comprehensive, multiple distance restrictions imposed on OTP clinics by the Zoning Ordinance are not imposed on any non-drug treatment-related businesses.<sup>77</sup>

224. Beginning in February 2013, TCH began its search for an appropriate site to operate an Opioid Treatment Program within Johnson City. TCH selected a site known as 4 Wesley Court. This location is zoned as “MS-1 Medical Services District” which the Zoning Ordinance states is intended for “medical facilities, services, and related support uses”. See Zoning Ordinance Section 6.13.1.

225. TCH has obtained an option to lease, use and operate a methadone clinic at the address known as 4 Wesley Court, inside the city limits of Johnson City (“4 Wesley Court”).

226. TCH’s Manager Steve Kester has surveyed all properties in Johnson City zoned both MS-1 and located on an arterial street and he unable to find any property that was both available and suitable.

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<sup>77</sup> A non-methadone “Substance Abuse Treatment Facility” faces certain restrictions similar to OTP clinics, but no distance restrictions. Zoning Ordinance Section 6.13.3.5.

227. TCH determined that the only available and suitable MS-1 zoned property for its clinic is 4 Wesley Court.

228. On March 5, 2013, TCH applied for a Certificate of Need (“CON”) for a “Non-Residential Methadone Treatment Facility” (“methadone clinic”) from the Tennessee Health Services and Development Agency (“HSDA”).

229. Although not part of HSDA’s criteria for granting an application for a CON, Johnson City’s unlawful refusal to grant zoning approval of TCH’s clinic at 4 Wesley Court is interfering with TCH’s application for a CON and causing TCH irreparable injury.

230. Johnson City’s unlawful refusal to grant TCH zoning approval interferes with TCH’s application for a license to TDH and causes TCH irreparable injury.

231. On March 12, 2013, Johnson City, through its Staff Attorney James Epps, took the extraordinary step of sending a letter to HSDA which clearly indicated Johnson City would refuse any reasonable accommodation to TCH’s regarding requests for a variance or accommodation under the ADA or the Rehabilitation Act. Indeed, Johnson City’s letter shows that Johnson City intended to disregard the ADA and the Rehabilitation Act before it even attempted any required modification to allow TCH’s clinic to locate in the city.

232. Johnson City claims in the letter that the city, through the Board of Zoning Appeals, had no power to grant a variance or special exception even if it wanted to:

To operate lawfully within Johnson City in accordance with its Zoning Code, the applicant will have to find another location that meets the MS-1 special exception criteria. As you may know, no Board of Zoning Appeals has any authority to grant a variance to special exceptions set forth in the Zoning Code. The Board of Zoning Appeals' only role is to ascertain that all of the criteria are either met or not. If the criteria are met, then the Board of Zoning Appeals grants the special exception as a ministerial act. If the criteria are not met, then the Board of Zoning Appeals must deny the application for a special exception.

I hope that this explanation, while lengthy, explains the reasons that neither 5 Wesley Court nor 4 Wesley Court can be used as a Methadone Treatment Clinic.

See Exhibit A-1 (emphasis added).

233. This is clearly untrue as Johnson City lawmakers clearly had authority to avoid discriminating against TCH and the Individual Plaintiffs and grant TCH the requested zoning variances and business permits under the Zoning Ordinance.<sup>78</sup>

234. Johnson City's letter to HSDA was dated before TCH filed its requests for variances and/or special exception permits to Johnson City and before TCH had a chance to even discuss a reasonable accommodation with Johnson City.

235. At all times, Johnson City has refused TCH's invitations to meet to discuss a reasonable accommodation regarding 4 Wesley Court or some other location in Johnson City.

236. On March 13, 2013, TCH filed an application for a special exception permit and a

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<sup>78</sup> The Board of Zoning Appeals, under Section 15.4.3 of the Johnson City Zoning Code, has the power to grant a variance where the "strict application of this Code would result in practical difficulties to or undue hardship upon the owner of such property." This provision was brought to the attention of the BZA at the time of the April 9, 2013 hearing by Plaintiff TCH's counsel. Exhibit 19, p. 6. The ordinance reads as follows:

15.4.3 VARIANCE: To hear and decide applications for variance from the terms of this Code, but only where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, which at the time of the adoption of this Code, was a lot of record; or where, by reason of exceptional topographic conditions or other extraordinary or exceptional situation or condition of a piece of property, **the strict application of the provisions of this Code would result in practical difficulties to or undue hardship upon the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Code.** In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purposes of this Code.

In addition, the Johnson City Commission also has authority to amend the Zoning Ordinance as it does any local ordinance.

variance permit to operate a methadone clinic at 4 Wesley Court, Johnson City, Tennessee.

237. At that time, TCH filed a request for a variance and/or special exception related to the Zoning Ordinance's requirement to limit operations after 7AM and, instead, allow TCH to open at 5AM Monday-Saturday because many of TCH's prospective patients work and have to visit TCH's clinic before work to get their medication.

238. At that time, TCH filed a request for a variance and/or special exception related to the Zoning Ordinance's requirement to limit OTP clinics to arterial streets because TCH was unable to find any acceptable location zoned MS-1 and also located on an arterial street.

239. At that time, TCH filed a request for a variance and/or special exception related to the Zoning Ordinance's requirement to prohibit the Board of Zoning Appeals from hearing requests for zoning of OTP clinics before the issuance of a Certificate of Need by the State of Tennessee because the restriction only applied to OTP clinics and no other business.

240. On March 21, 2013, TCH delivered a letter to Johnson City outlining TCH's requests for an accommodation under the ADA and the Rehabilitation Act. See Exhibit I. In this letter, TCH specifically offered to meet with officials of Johnson City, including the Mayor, City Manager, and other City leaders, to attempt to work out an accommodation to allow TCH to locate and open a methadone clinic.

241. In this March 21, 2013 letter, TCH informed Johnson City of its duty to accommodate TCH to allow it to open and operate an Opioid Treatment Program under the Americans with Disabilities Act and the Rehabilitation Act of 1973.

242. All Defendants rejected TCH's request in the letter to meet and attempt to work out an accommodation to allow TCH to locate and open a methadone clinic at 4 Wesley Court.

243. TCH made additional requests to Johnson City to meet and attempt to work out an



accommodation to allow TCH to locate and open a methadone clinic at 4 Wesley Court, but all Defendants rejected TCH's requests.

244. On April 9, 2013, a hearing was scheduled to consider TCH's variance and special exception requests until a later date.

245. Before the hearing began, TCH asked the Board of Zoning Appeals to continue the hearing set that day to a later date which would allow TCH Manager Steve Kester to appear—and effectively allowing more time to work out an accommodation.

246. The Board of Zoning Appeals denied TCH's request for a continuance -- despite the fact that under the Zoning Ordinance the Board of Zoning Appeals has no authority to review a special exception permit or variance request for a methadone clinic prior to the clinic obtaining a Certificate of Need by the State of Tennessee.<sup>79</sup>

247. On April 9, 2013, TCH presented to the Board of Zoning Appeals a request to grant the requests for a variance permit and/or special exception permit as a reasonable accommodation under the Americans with Disabilities Act and the Rehabilitation Act of 1973.

248. At the April 9, 2013 hearing, TCH asked the Board of Zoning Appeals for a reasonable accommodation for (a) a variance with regard to the arterial street requirement as there were no other locations zoned MS-1 on an arterial street available for lease with adequate parking; and, (b) a variance with regard to the hours of operation requirement to allow TCH patients who work to be able to obtain treatment before going to work; and (c) a variance related to the requirement to obtain a Certificate of Need prior to the board hearing the request.

249. At the April 9, 2013 hearing, the Individual Plaintiffs, through their attorney, explained that they were Johnson City area residents, that they were addicted to opiates, that

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<sup>79</sup>Zoning Ordinance Section 6.13.3.4 ("A certificate of need shall be obtained from the appropriate state agency prior to review by the Board of Zoning Appeals.").

they were disabled under the ADA and the RA, that they were presently required to drive more than 100 miles round trip to an Opioid Treatment Program in North Carolina because there was no treatment facility nearby, that the TCH clinic was required to provide the Individual Plaintiffs with reasonable access to treatment, and that by refusing to afford a reasonable accommodation to TCH's clinic, Johnson City would be violating both the ADA and the Rehabilitation Act.

250. At the April 9, 2013 hearing, the Individual Plaintiffs requested that Johnson City grant TCH's requests and reasonably accommodate TCH to allow it to open an Opioid Treatment Program which would provide the Individual Plaintiffs with reasonable access to treatment.

251. At the April 9, 2013 hearing, the Board of Zoning Appeals stated it had no authority to waive any of the zoning requirements although it proceeded to waive the requirement to hear a request for zoning a methadone clinic prior to issuance of a Certificate of Need.

252. On April 9, 2013, the Board of Zoning Appeals denied all of TCH's requests for zoning variance and/or special exception requests.

253. Furthermore, the Board of Zoning Appeals also denied TCH's and the Individual Plaintiffs' requests for a reasonable accommodation under the ADA and the Rehabilitation Act to allow TCH to locate its OTP clinic in Johnson City.

254. In denying TCH's request for a permit and zoning variances, Johnson City has demonstrated a conscious indifference to the rights of TCH and the Individual Plaintiffs under the ADA and the Rehabilitation Act of 1973, entitling TCH and the Individual Plaintiffs to actual and consequential damages in an amount to be proven at trial.

255. Johnson City has continued to intentionally discriminate against disabled persons

in refusing to grant TCH's application for use and occupancy permits.

256. Plaintiffs have exhausted their administrative remedies as to all claims against Johnson City.

**COUNT 1:  
CLAIMS UNDER THE REHABILITATION ACT:  
JOHNSON CITY'S FACIALLY INVALID ZONING ORDINANCE**

257. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 255.

258. Congress intended that individuals seeking to overcome their addiction would be protected by the Rehabilitation Act when seeking access to services, benefits, and employment provided by a federally-funded program. The Rehabilitation Act specifically recognizes as handicapped those individuals with drug-addiction who are "participating in a supervised rehabilitation program and [are] no longer engaging [in the illegal use of drugs]." <sup>80</sup>

259. Section 504 of the Rehabilitation Act prohibits discrimination against persons with disabilities by any entity that receives federal financial assistance: <sup>81</sup>

no otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...

260. Because the Rehabilitation Act broadly defines "program or activity" to include state agencies and "all of the operations of a local government receiving federal financial assistance, zoning--a normal function of a governmental entity--is a covered activity within the meaning of the Act. <sup>82</sup>

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<sup>80</sup> 29 U.S.C. §706 (8)(C)(ii)(II).

<sup>81</sup> 29 U.S.C. § 794(a).

<sup>82</sup> 29 U.S.C. § 794(b)(1)(A)(1999).

261. Johnson City's zoning ordinance imposes upon OTP clinics unreasonable and discriminatory requirements not imposed on similar businesses and violates Section 504 of the Rehabilitation Act and such intentional actions harmed and continue to harm TCH and the persons with disabilities who TCH intends to serve, including the Individual Plaintiffs.

262. Because of Johnson City's intentional discriminatory reaction and behavior, TCH has expended time and financial resources and has lost the opportunity to conduct its business and provide a much-needed service at the proposed clinic location.

263. TCH and the Individual Plaintiffs have suffered economic injury from Johnson City's violations of the Rehabilitation Act.

264. The Individual Plaintiffs have suffered economic injury from Johnson City's violations of the Rehabilitation Act solely because of their disability including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 2:  
CLAIMS UNDER TITLE II OF THE ADA:  
JOHNSON CITY'S FACIALLY INVALID ZONING ORDINANCE**

265. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 263.

266. TCH's prospective patients are qualified individuals with disabilities within the meaning of the ADA.<sup>83</sup>

267. Johnson City is a qualifying public entity within the meaning of the ADA.<sup>84</sup>

268. Section 12132 constitutes a general prohibition against discrimination on the basis

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<sup>83</sup> 42 U.S.C. § 12101.

<sup>84</sup> 42 U.S.C. § 12131(1)(A).

of disability by public entities:<sup>85</sup>

subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

269. Congress' stated broad goal in enacting the ADA was to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."<sup>86</sup>

270. Zoning is an activity covered under Title II of the ADA. In the preamble to the regulations implementing 42 U.S.C. § 12132, the Department of Justice notes that "title II applies to anything a public entity does,"<sup>87</sup> and, in the Technical Assistance Manual compiled to interpret the Act, expressly uses zoning as an example of a public entity's obligation to avoid discrimination.

271. Defendants' zoning ordinance restrictions on OTP facilities are facially invalid and violate Title II of the Americans with Disabilities Act and such actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs.

272. Because of Johnson City's intentional discriminatory reaction and behavior, TCH has expended time and financial resources, has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

273. TCH has suffered economic injury from Johnson City's violations of the ADA.

274. The Individual Plaintiffs have suffered economic injury from Johnson City's intentional violations of the ADA including, without limitation, their having to drive thousands

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<sup>85</sup> 42 U.S.C. § 12132.

<sup>86</sup> 42 U.S.C. § 12101(b)(1).

<sup>87</sup> 28 C.F.R. pt. 35, app. A at 438 (1998).

of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 3:  
CLAIMS UNDER THE REHABILITATION ACT:  
JOHNSON CITY'S DISCRIMINATION AGAINST DISABLED PERSONS**

275. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 273.

276. Congress intended that individuals seeking to overcome their addiction would be protected by the Rehabilitation Act when seeking access to services, benefits, and employment provided by a federally-funded program. The Rehabilitation Act specifically recognizes as handicapped those individuals with drug-addiction who are "participating in a supervised rehabilitation program and [are] no longer engaging [in the illegal use of drugs]."<sup>88</sup>

277. Section 504 of the Rehabilitation Act prohibits discrimination against persons with disabilities by any entity that receives federal financial assistance.<sup>89</sup>

no otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ....

278. Because the Rehabilitation Act broadly defines "program or activity" to include "all of the operations of" a local government receiving federal financial assistance,<sup>90</sup> zoning, a normal function of a governmental entity, is a covered activity within the meaning of the Act.

279. Johnson City's intentional actions violate Section 504 of the Rehabilitation Act and such actions harmed and continue to harm TCH and the persons with disabilities TCH

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<sup>88</sup> 29 U.S.C. §706 (8)(C)(ii)(II).

<sup>89</sup> 29 U.S.C. § 794(a).

<sup>90</sup> 29 U.S.C. §794(b)(1)(A).

intends to serve, including the Individual Plaintiffs.

280. The Individual Plaintiffs have suffered economic injury from Johnson City's violations of the Rehabilitation Act solely because of their disability including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 4:  
CLAIMS UNDER TITLE II OF THE ADA:  
JOHNSON CITY'S DISCRIMINATION AGAINST DISABLED PERSONS**

281. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 279.

282. TCH's prospective patients are qualified individuals with disabilities within the meaning of the ADA.<sup>91</sup>

283. Johnson City is a qualifying public entity within the meaning of the ADA.<sup>92</sup>

284. Section 12132 constitutes a general prohibition against discrimination on the basis of disability by public entities:<sup>93</sup>

subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

285. Congress' stated broad goal in enacting the ADA was to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."<sup>94</sup>

286. Zoning is an activity covered under Title II of the ADA. In the preamble to the

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<sup>91</sup> 42 U.S.C. § 12101.

<sup>92</sup> 42 U.S.C. § 12131(1)(A).

<sup>93</sup> 42 U.S.C. § 12132.

<sup>94</sup> 42 U.S.C. § 12101(b)(1).

regulations implementing 42 U.S.C. § 12132, the Department of Justice notes that "title II applies to anything a public entity does," 28 C.F.R. pt. 35, app. A at 438 (1998), and, in the Technical Assistance Manual compiled to interpret the Act, expressly uses zoning as an example of a public entity's obligation to avoid discrimination.

287. Johnson City's intentional actions violate Title II of the Americans with Disabilities Act and such actions harmed and continue to harm TCH and the persons with disabilities TCH serves, including the Individual Plaintiffs.

288. Because of Johnson City's intentional discriminatory reaction and behavior, TCH has expended time and financial resources and has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

289. The Individual Plaintiffs have suffered economic injury from Johnson City's intentional violations of the ADA including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 5:  
CLAIMS UNDER THE REHABILITATION ACT:  
JOHNSON CITY'S FAILURE TO PROVIDE A  
REASONABLE ACCOMMODATION**

290. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 288.

291. Johnson City intentionally violated the RA by failing to provide TCH a reasonable accommodation to allow it to locate its proposed OTP clinic in Johnson City, Tennessee, and such actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs.



292. Because of Johnson City's intentional discriminatory reaction and behavior, TCH has expended time and financial resources, has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

293. TCH has suffered economic injury from Johnson City's violations of the RA.

294. The Individual Plaintiffs have suffered economic injury from Johnson City's intentional violations of the RA solely because of their disability including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 6:  
CLAIMS UNDER TITLE II OF THE ADA:  
JOHNSON CITY'S FAILURE TO PROVIDE A  
REASONABLE ACCMMODATION**

295. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 293.

296. Johnson City violated Title II of the Americans with Disabilities Act by failing to provide TCH a reasonable accommodation to allow it to locate its proposed OTP clinic in Johnson City, Tennessee, and such intentional actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs.

297. Because of Johnson City's intentional discriminatory reaction and behavior, TCH has expended time and financial resources, has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

298. TCH has suffered economic injury from Johnson City's violations of the ADA.

299. The Individual Plaintiffs have suffered economic injury from Johnson City's violations of the ADA including, without limitation, their having to drive thousands of additional

miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 7:  
CLAIMS UNDER THE REHABILITATION ACT:  
HSDA'S FACIALLY INVALID STATUTE AND REGULATIONS**

300. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 298.

301. TCH's prospective patients are qualified individuals with disabilities within the meaning of the RA.

302. HSDA is a qualifying public entity within the meaning of the RA in that it receives federal funds.

303. Tennessee Code Section 68-11-1607(c)(3)'s arbitrary and illegal restrictions on OTP facilities are facially invalid and violate the RA and such actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs solely because of their disability.

304. Because of HSDA's intentional discriminatory reaction and behavior, TCH has expended time and financial resources, has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

305. TCH has suffered economic injury from the HSDA's violations of the RA.

306. The Individual Plaintiffs have suffered economic injury from the HSDA's violations of the RA solely because of their disability including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 8:  
CLAIMS UNDER TITLE II OF THE ADA:  
HSDA'S FACIALLY INVALID STATUTE AND REGULATIONS**

307. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 305.

308. TCH's prospective patients are qualified individuals with disabilities within the meaning of the ADA.<sup>95</sup>

309. HSDA is a qualifying public entity within the meaning of the ADA.<sup>96</sup>

310. Tennessee Code Section 68-11-1607(c)(3)'s arbitrary and illegal restrictions on OTP facilities are facially invalid and violate Title II of the Americans with Disabilities Act and such actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs.

311. Because of HSDA's intentional discriminatory reaction and behavior, TCH has expended time and financial resources, has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

312. TCH has suffered economic injury from the HSDA's violations of the ADA.

313. The Individual Plaintiffs have suffered economic injury from the HSDA's violations of the ADA including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

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<sup>95</sup> 42 U.S.C. § 12101.

<sup>96</sup> 42 U.S.C. § 12131(1)(A).

**COUNT 9:  
CLAIMS UNDER THE REHABILITATION ACT:  
HSDA'S DISCRIMINATION AGAINST DISABLED PERSONS**

314. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 312.

315. Congress intended that individuals seeking to overcome their addiction would be protected by the Rehabilitation Act when seeking access to services, benefits, and employment provided by a federally-funded program. The Rehabilitation Act specifically recognizes as handicapped those individuals with drug-addiction who are "participating in a supervised rehabilitation program and [are] no longer engaging [in the illegal use of drugs]."

316. Section 504 of the Rehabilitation Act prohibits discrimination against persons with disabilities by any entity that receives federal financial assistance:

no otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ....

317. Because the Rehabilitation Act broadly defines "program or activity" to include "all of the operations of" a local government receiving federal financial assistance, zoning, a normal function of a governmental entity, is a covered activity within the meaning of the Act.

318. HSDA actions intentionally violate Section 504 of the Rehabilitation Act and such actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs.

319. The Individual Plaintiffs have suffered economic injury from the HSDA's violations of the Rehabilitation Act solely because of their disability including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 10:  
CLAIMS UNDER TITLE II OF THE ADA:  
HSDA'S DISCRIMINATION AGAINST DISABLED PERSONS**

320. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 318.

321. TCH's prospective patients are qualified individuals with disabilities within the meaning of the ADA.

322. HSDA is a qualifying public entity within the meaning of the ADA.

323. Section 12132 constitutes a general prohibition against discrimination on the basis of disability by public entities:

subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

324. Congress' stated broad goal in enacting the ADA was to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."

325. State agency activity is an activity covered under Title II of the ADA. In the preamble to the regulations implementing 42 U.S.C. § 12132, the Department of Justice notes that "title II applies to anything a public entity does," 28 C.F.R. pt. 35, app. A at 438 (1998), and, in the Technical Assistance Manual compiled to interpret the Act, expressly uses zoning as an example of a public entity's obligation to avoid discrimination.

326. HSDA's actions violate Title II of the Americans with Disabilities Act and such actions harmed and continue to harm TCH and the persons with disabilities TCH serves, including the Individual Plaintiffs.

327. Because of Defendants' discriminatory reaction and behavior, TCH has expended time and financial resources and has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

328. The Individual Plaintiffs have suffered economic injury from Johnson City's violations of the ADA including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive treatment at distant OTP clinics.

**COUNT 11**  
**CLAIMS UNDER THE REHABILITATION ACT:**  
**HSDA'S FAILURE TO MAKE A REASONABLE MODIFICATION**

329. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 327.

330. HSDA violated the RA by failing to provide TCH a reasonable accommodation to allow it to locate its proposed OTP clinic in Johnson City, Tennessee, and such actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs solely because of their disability.

331. Because of HSDA's intentional discriminatory reaction and behavior, TCH has expended time and financial resources, has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

332. TCH has suffered economic injury from the HSDA violations of the ADA.

333. The Individual Plaintiffs have suffered economic injury from HSDA's violations of the RA solely because of their disability including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive MMT treatment at distant OTP clinics.

**COUNT 12:  
CLAIMS UNDER TITLE II OF THE ADA:  
HSDA'S FAILURE TO MAKE A REASONABLE MODIFICATION**

334. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 332.

335. HSDA violated Title II of the Americans with Disabilities Act by failing to provide TCH a reasonable accommodation to allow it to locate its proposed OTP clinic in Johnson City, Tennessee, and such actions harmed and continue to harm TCH and the persons with disabilities TCH intends to serve, including the Individual Plaintiffs.

336. Because of HSDA intentional discriminatory reaction and behavior, TCH has expended time and financial resources, has lost the opportunity to conduct its business and provide a much-needed service at the proposed location.

337. TCH has suffered economic injury from the HSDA violations of the ADA.

338. The Individual Plaintiffs have suffered economic injury from HSDA's violations of the ADA including, without limitation, their having to drive thousands of additional miles and expend hundreds of additional hours of drive time to receive MMT treatment at distant OTP clinics.

**COUNT 13:  
TCH'S PENDANT CLAIMS UNDER TENNESSEE LAW:  
HSDA'S CLEARLY ERRONEOUS DECISION TO DENY TCH'S CON APPLICATION**

339. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 337.

340. In accordance with Tennessee law, including, without limitation, Tennessee Code Section 4-5-322, a court may reverse or modify an administrative agency decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions

or decisions are:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency;
- c. Made upon unlawful procedure;
- d. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- e. Unsupported by evidence that is both substantial and material in the light of the entire record.

341. In this case, the evidence clearly demonstrated that TCH's CON application satisfied the statutory requirements of Need, Economic Feasibility, and Orderly Development.

342. In this case, HSDA's denial of TCH's CON application was arbitrary and capricious.

343. In this case, HSDA's denial of TCH's CON application and characterized by an abuse of discretion.

344. In this case, HSDA's denial of TCH's CON application was a clearly unwarranted exercise of discretion.

345. In this case, HSDA's denial of TCH's CON application was unsupported by evidence that is both substantial and material in the light of the entire record.

**COUNT 14:  
TCH'S PENDANT CLAIMS UNDER TENNESSEE LAW:  
TCH'S RIGHT TO APPEAL UNDER THE TENNESSEE UNIFORM  
ADMINISTRATIVE PROCEDURES ACT**

346. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 344.



347. In accordance with Tennessee law, including Tenn. Code Section 4-5-301 et seq., TCH is entitled to an administrative appeal of HSDA's CON denial.

348. The administrative law judge may reverse or modify an administrative agency decision in accordance with Tennessee law, including, without limitation, if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency;
- c. Made upon unlawful procedure;
- d. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- e. Unsupported by evidence that is both substantial and material in the light of the entire record.

349. In this case, the evidence clearly demonstrated by TCH's CON application, and presentation of testimony and evidence at the June 26, 2013 hearing, that TCH CON application clearly satisfied the statutory requirements of Need, Economic Feasibility, and Orderly Development.

350. In this case, HSDA's denial of TCH's CON application was arbitrary and capricious.

351. In this case, HSDA's denial of TCH's CON application and characterized by an abuse of discretion.

352. In this case, HSDA's denial of TCH's CON application was a clearly an unwarranted exercise of discretion.

353. In this case, HSDA's denial of TCH's CON application was unsupported by evidence that is both substantial and material in the light of the entire record.

### **DAMAGES**

354. TCH has suffered lost profits as a direct and proximate result of Defendants' illegal conduct as alleged herein.

355. TCH has sustained damages in the form of costs and expenses related to opening its Clinic directly and proximately caused by Defendants' illegal conduct as alleged herein.

356. The Individual Plaintiffs have sustained damages in the form of unnecessary travel time and expenses required to travel to an Opioid Treatment Program much further than they would travel to TCH's clinic, proximately caused by Defendants' illegal conduct as alleged herein.

### **REQUESTED RELIEF**

WHEREFORE, Plaintiffs pray that this Court award them the following relief:

a. Find and declare Johnson City's zoning ordinance, and the identified illegal Tennessee state laws and regulations, which discriminate against OTP clinics, are facially invalid and violate Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

b. Find and declare the HSDA action and inaction in failing to issue a CON, and Johnson City's failure to issue zoning variances and business permits to TCH for an Opioid Treatment Program at 4 Wesley Court, or anywhere in Johnson City, violate Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

c. Issue a permanent injunction enjoining Defendants from continuing to violate Title II of the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

by denying TCH the ability to locate an OTP clinic in Johnson City, Tennessee.

d. Issue an injunction requiring Defendants, promptly and without delay, to issue TCH any and all necessary CON's, zoning variances, and occupancy and/or business permits for an Opioid Treatment Program at an accessible and appropriate site acceptable to TCH, including, without limitation, 4 Wesley Court, Johnson City, Tennessee.

e. Issue an injunction requiring Johnson City, promptly and without delay, to issue TCH any and all necessary occupancy and/or operation permits to allow TCH to conduct business from 5AM to 8PM Monday through Saturday.

f. Award Plaintiffs damages in an amount to proven at trial.

g. Award Plaintiffs their expenses of litigation, including reasonable attorney fees, expert witness fees, and costs.

h. Retaining jurisdiction of this case until all Defendants have fully complied with the order(s) of this Court and awarding such other, further or different relief, as the Court deems necessary, just and proper.

Date: July 8, 2013.

THE HIGGINS FIRM, PLLC



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Counsel for Plaintiffs

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

### I. (a) PLAINTIFFS

Tri-Cities Holdings LLC, Jane Doe No. 1, and John Doe Nos. 1-3.

(b) County of Residence of First Listed Plaintiff Gwinnett (Georgia)  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Rick Pilioponis, Esq./Higgins, Himmelberg & Pilioponis, PLLC  
116 Third Avenue, South, Nashville, Tennessee 37201  
(615) 353-0930

### DEFENDANTS

Tennessee Health Services and Development Agency, City of Johnson City, Tennessee; Johnson City Board of Commissioners and Johnson City Board of Zoning Appeals.

County of Residence of First Listed Defendant Davidson  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Herrin, Booze & McPeak  
515 E Unaka Ave  
Johnson City, TN 37601

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (Specify)
- 6 Multidistrict Litigation

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq and Americans with Disabilities Act 42 U.S.C. § 12101 et seq  
Brief description of cause:  
Violations of the ADA (and Rehabilitation Act) by denial of permits to open a methadone clinic in Johnson City.

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

#### FOR OFFICE USE ONLY

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.