

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA**

AND

FEDERATION OF STATE BOARDS OF PHYSICAL THERAPY

**UNDER THE AMERICANS WITH DISABILITIES ACT
DJ# 202-79-412**

BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and the Federation of State Boards of Physical Therapy (“FSBPT”).
2. This matter was initiated by a complaint filed with the United States, alleging violations of 42 U.S.C. § 12189, found in title III of the Americans with Disabilities Act of 1990, as amended (the “ADA”) (42 U.S.C. § 12181, *et seq.*) and its implementing regulations, 28 C.F.R. Part 36. The United States Attorney’s Office received a complaint alleging that FSBPT failed to grant a testing accommodation for the National Physical Therapy Examination (“NPTE”).

TITLE III COVERAGE

3. The United States Attorney for the Eastern District of Virginia (“U.S. Attorney’s Office”) is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, .503, .506.
4. FSBPT is a Section 501(c)(6) membership corporation that develops, owns and administers the NPTE. FSBPT’s offices and principal place of business are located in Alexandria, Virginia, and its members include 53 state and jurisdictional licensing boards for physical therapy. FSBPT administers licensing examinations for physical therapists and physical therapist assistants and, as such, FSBPT is a “person” that offers examinations related to applications for licensing for professional purposes within the meaning of 42 U.S.C. § 12189 and a “private entity” that offers an examination related to licensing for professional purposes within the meaning of 28 C.F.R. § 36.309.

5. FSBPT currently processes, reviews and decides whether to grant disability-based testing accommodation requests for 28 of the 53 state and jurisdictional licensing boards for physical therapy.¹ Through mid-2022, FSBPT contracted with and relied on Paradigm Testing (“Paradigm”), a third-party consulting firm, to review requests for disability-based testing accommodations and make recommendations on accommodation requests that FSBPT received.
6. As a private entity that offers examinations related to licensing for professional purposes, FSBPT is required to comply with the requirements of 42 U.S.C. § 12189 and its implementing regulations at 28 C.F.R. § 36.309, including, *inter alia*, the obligation to offer the NPTE in a place and manner accessible to persons with disabilities.
 - a. Pursuant to 28 C.F.R. § 36.309(b)(1)(i), FSBPT is required to administer the NPTE so as to best ensure that, when the NPTE is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the NPTE results accurately reflect the individual’s aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual’s impaired sensory, manual, or speaking skills (except where those skills are the factors that the NPTE purports to measure). To meet this obligation, FSBPT may be required to provide modifications, commonly known as testing accommodations,² to the manner in which the examination is given.
 - b. Pursuant to 28 C.F.R. § 36.309(b)(1)(iv)-(vi), FSBPT is required to:
 1. Limit its requests for documentation to documentation that is “reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested”;
 2. Give “considerable weight to documentation of past modifications, accommodations, or auxiliary aids or services received in similar testing situations, as well as such modifications, accommodations, or related aids and services provided in response to an Individualized Education Program (IEP) provided under the Individuals with Disabilities Education Act or a plan describing services provided pursuant to section 504 of the Rehabilitation Act of 1973”; and
 3. Respond “in a timely manner to requests for modifications, accommodations, or aids to ensure equal opportunity for individuals with disabilities.”

¹ The other 25 member licensing boards for physical therapy review disability testing accommodation requests for applicants seeking licensure in those jurisdictions.

² Testing accommodations include required modifications, appropriate auxiliary aids and services and other alternative accessible arrangements for individuals with disabilities.

THE DEPARTMENT’S INVESTIGATION AND DETERMINATIONS

7. The United States Department of Justice (the “Department”) received a complaint alleging that FSBPT violated the ADA by denying testing accommodations that a testing candidate had requested on the NPTE. The Department concluded that the testing candidate has a learning disability and is an individual with a “disability” within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.104.
8. FSBPT reported that, out of 716 disability-based testing accommodation requests that it received between the beginning of 2018 and the middle of 2021, it fully approved the requests of 123, or 17 percent, of its testing candidates requesting disability-based accommodations.
9. In the course of its investigation, the United States reviewed the accommodation request files for hundreds of testing candidates. Based on its investigation, the United States provides descriptions (below) of four testing accommodation request files that the United States determined are examples of FSBPT’s pattern and practice of failing to comply with the ADA between 2018 and mid-2021:³
 - a. Test taker S.K.⁴ submitted documentation drafted by a qualified professional who at the time of the documentation provided mental health services to S.K. The qualified professional explained that S.K. had post-traumatic stress disorder (“PTSD”) and attention deficit disorder (“ADD”) that negatively impact his concentration. The qualified professional also explained that S.K. needed extended time due to longer processing time as he must frequently re-read test questions to ensure that he understands the content correctly. S.K.’s accommodation request also included a statement from the Director of the Accessibility Resource Center at the university where S.K. had earned his undergraduate and doctorate degrees that explained that, since the fall of 2005, S.K. had received extended exam time and a private room for test taking, including for his undergraduate and graduate courses. FSBPT denied S.K.’s request for testing accommodations as “incomplete.” Despite the fact that the Paradigm consultant who reviewed accommodation requests for FSBPT has no expertise in PTSD and had never met S.K., he concluded that S.K. had not documented that he had a disability. S.K. went through the expense of supplementing his accommodation request multiple times with additional reports and documentation from his mental health clinician. Based upon the consultant’s finding and recommendation, FSBPT declined to provide the requested accommodations.
 - b. Test taker A.B. submitted documentation from a qualified professional, who is a treating medical professional, stating that A.B. had experienced tremors since she

³ The United States reviewed hundreds of accommodation files, and these four files provide representative examples of what it discovered during that review.

⁴ This agreement uses two-letter identifiers to protect the privacy of the test takers.

was four years old and was diagnosed with cervical dystonia when she was 17. Because of the impact of A.B.'s disability on her motor functioning, she had a history of receiving extended time for examinations and requested FSBPT to permit her double time on the NPTE "to type, write, and read based upon her cervical postural changes, neck pain, head tremor, and hand tremor." A.B.'s treating clinician also explained that "anxiety exacerbates her symptoms and if not allotted adequate time, her pain and motor symptoms will become notably worse." The Coordinator of the Disability Resources Office for A.B.'s university wrote a letter in support of A.B.'s accommodation request in which she explained that A.B. had been approved for double time for quizzes and exams and a reduced distraction room for testing. Based upon the review of FSBPT's consultant, who has no expertise in movement disorders, such as cervical dystonia, FSBPT stated to A.B. that cervical dystonia "is not known to impact reading, writing, or typing per se." Instead of providing double time and a private testing room, and based upon the recommendation of its consultant, FSBPT offered an extra 30 minutes and unscheduled breaks. A.B. supplemented her request and appealed FSBPT decision, which included a detailed discussion from her treating clinician explaining why, in his clinical judgment, she needed double time. In response to each submission, FSBPT declined to provide more than 30 minutes extra time. In a private note to FSBPT, its consultant asserted that A.B.'s previous success as a small businessperson supposedly demonstrated that she is not a person with a disability.

- c. Test taker C.J., who was diagnosed with Type 1 diabetes at age 11, submitted documentation from a qualified professional, her treating physician, with her accommodation request seeking time-and-a-half to take the NPTE. C.J.'s treating physician explained that her blood sugar can sometimes fluctuate from very high to very low without much warning and that she takes insulin injections about 6-8 times a day to regulate her blood sugar. When C.J.'s glucose levels are low, she is unable to focus and is disoriented and needs to immediately intake sugar or carbohydrates to increase glucose, a process that can take up to 20 minutes. C.J.'s treating physician explained that, since she was diagnosed with type 1 diabetes, C.J. had received accommodations on standardized tests so that she could manage her diabetes and regulate her blood glucose without being penalized. FSBPT denied C.J.'s request for time-and-a-half and instead granted 30 additional minutes, which is the amount of extra time that it afforded to all test takers with diabetes who requested extended time. C.J. supplemented her request and appealed FSBPT's decision. She explained that her blood sugar can fluctuate from very high to very low without much warning and that during the NPTE, which is five hours long, it is likely that she would experience such fluctuations. She also explained that among other symptoms that she experiences from both high and low blood glucose are difficulty concentrating, cloudiness and trouble focusing. She also explained that her experience is that insulin takes about 30 minutes to start working and that sometimes it takes multiple injections to find the right balance. FSBPT responded that a claimed "medical expert" had reviewed her accommodation request, when in fact a Paradigm consultant with no medical

expertise had reviewed the accommodation request and incorrectly claimed that insulin starts to work immediately. Ultimately, FSBPT denied C.J.'s accommodation request for time-and-a-half, based on the recommendation of its consultant.

- d. Test taker T.K. received a reading disability diagnosis from a qualified professional in the seventh grade and consistently received testing accommodations, including in high school, when she took the International Baccalaureate exam, the ACT, undergraduate courses, the GRE and exams during her doctorate degree program in physical therapy. Due to FSBPT's written policy that evaluations had to be "current," T.K. was required to go to the expense of being reassessed. T.K. submitted two reports with her accommodation request. A licensed educational diagnostician explained that, due to T.K.'s reading disability, she needed extended time and a quiet, private testing room so that she could read aloud to herself. Further, the Director of the Accessibility Resource Center at her undergraduate and graduate school submitted a report explaining that T.K. had a long history of receiving testing accommodations, including the two that she requested for the NPTE: extended time and a quiet, private testing room. FSBPT denied T.K.'s accommodation request, concluding per its consultant's findings that T.K. did not have a disability, despite the fact that its consultant had never met or evaluated T.K. T.K. appealed FSBPT's decision and advocated for FSBPT to follow current federal regulations and guidance regarding testing accommodations, including giving considerable weight to the fact that she had received the requested accommodations in the past and a qualified professional, who had personally evaluated T.K., recommended the requested accommodations. Further, she submitted letters demonstrating that she had received the requested accommodation on previous standardized tests, including the GRE and ACT. Likewise, the qualified professional who had evaluated T.K. urged FSBPT to following DOJ's regulations and guidance. Rather than granting the accommodations that T.K. sought, and using too narrow a view of what constitutes a disability pursuant to the ADA, FSBPT concluded on the basis of its consultant's findings that T.K. was not disabled. Thereafter, T.K. moved to Arizona, whose State Board of Physical Therapy did not use FSBPT's disability testing accommodations process; however, because her accommodation request was not filed in a timely manner, the Arizona State Board of Physical Therapy was unable to grant her accommodation. T.K. took the NPTE without accommodations and did not pass. T.K. then took the NPTE the next time that it was offered with the requested accommodations and passed.

Based upon its investigation, the United States concluded, specifically:

- aa. FSBPT failed to construe the word "disability" "in favor of broad coverage" as it was reviewing candidate testing accommodation requests. 42 U.S.C. § 12102(4)(A); 28 C.F.R § 36.105(a)(2)(i).

- bb. FSBPT’s testing accommodations consultant sought documentation beyond what is reasonable. 28 C.F.R. § 36.309(b)(1)(iv). For example, FSBPT made multiple requests from candidates with disabilities for information, including when candidates provided documentation of accommodations granted in the past under similar testing conditions. It also asked for additional documentation after receiving reports from qualified professionals.
- cc. FSBPT’s method for reviewing requests for test accommodations resulted in candidates expending money on unnecessary professional services and going through the potentially stressful experience of not knowing whether they would receive requested accommodations for an examination that is vital to launching their professional life.
- dd. FSBPT failed to give “considerable weight” to past accommodations that candidates have received. 28 C.F.R. § 36.309(b)(1)(v). Emblematic of this issue, during the time period in question FSBPT provided instructions to candidates on the documents that they need to submit with test accommodation requests, and it did not request test candidates to provide information regarding past testing accommodations. The investigation also showed that if a candidate submitted evidence of past accommodations, FSBPT (through its consultant) discounted or ignored such information.
- ee. FSBPT’s consultant disregarded documentation provided by qualified professionals who have made an individualized assessment of an applicant that supports the need for the testing accommodation. 28 C.F.R. pt. 36, Appendix A (Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities with Section-By-Section Analysis). For example, FSBPT’s consultant disregarded qualified professional assessments that were based upon clinical judgment that include evaluations beyond diagnostic assessments. 28 C.F.R. § 36.105(d)(3)(i).
- ff. FSBPT did not rely on reviewers with the requisite qualifications to consider the documentation of a candidate’s qualified professionals (*e.g.*, post-traumatic stress disorder, traumatic brain injury, anxiety, and physical disabilities, such as, dystonia, tremors and diabetes). 28 C.F.R. pt. 36, Appendix A.
- gg. FSBPT’s consultant rejected accommodation requests from individuals with disabilities who have been successful in other endeavors, based upon the conclusion of the consultant that the individual’s other successes were inconsistent with a finding that the candidate’s impairment substantially limited the candidate’s ability to perform one or more major life activities, thereby making the individual ineligible for the ADA’s protections. 28 C.F.R. § 36.309(d)(3)(iii).
- hh. FSBPT denied requests for testing accommodations made by individuals with disabilities whose “inherent nature” will “virtually always” impose a substantial

limitation on a major life activity, including post-traumatic stress disorder. 28 C.F.R. § 36.105(d)(2)(iv)(K).

Accordingly, DOJ has determined that as a result of FSBPT's pattern and practice of failing to comply with the ADA, it failed to administer the NPTE during the time period in question "so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level." 28 C.F.R. § 36.309(b)(1)(i). Ensuring that testing entities offering licensing examinations do not discriminate on the basis of disability is an issue of general public importance.

10. The United States and FSBPT have voluntarily entered into this Agreement in order to address and resolve the investigation. FSBPT disputes DOJ's determinations and denies that it has violated the ADA. The United States and FSBPT agree that it is in the best interests of each, and the United States concludes that it is in the public interest, to resolve this matter on the mutually agreeable terms set forth below.

ACTIONS FSBPT HAS AGREED TO TAKE

11. FSBPT will comply with the requirements of the ADA, 42 U.S.C. § 12189, and its implementing regulations, 28 C.F.R. § 36.309, including but not limited to the following requirements:
 - a. FSBPT agrees that when it administers examinations related to licensing for professional purposes to an individual with a disability that impairs sensory, manual or speaking skills, it will do so in a manner that best ensures that the examination results will "accurately reflect the individual's aptitude or achievement level . . . rather than reflecting the individual's impaired sensory, manual, or speaking skills," 28 C.F.R. § 36.309(b)(1)(i); and
 - b. FSBPT will ensure that any request for documentation of a need for a testing accommodation, including a required modification, accommodation, or auxiliary aid or service, will be "reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested," *id.* at 36.309(b)(1)(iv); and
 - c. FSBPT will respond in a timely manner to requests for modifications, accommodations, or aids to ensure equal opportunity for individuals with disabilities. *Id.* at 36.309(b)(1)(vi).
12. For those candidates who have asserted that they previously were approved to receive testing accommodation(s) in a similar testing situation, FSBPT shall require no more documentation than proof of the previous approval for such testing accommodation(s) when considering what accommodations are warranted for a given candidate with a disability, which proof may be in the form of one of the following:
 - Documentation from an institution of higher education outlining the accommodations that the candidate received while at that institution.

- Documentation of accommodations received for another standardized test (*e.g.*, SAT, ACT, GRE, etc.).
 - Personal sworn statement identifying the applicable examination(s) and describing the testing accommodations that the candidate received.
13. As provided in 28 C.F.R. § 36.309(b)(1)(iv)-(vi), when considering requests for modifications, accommodations or auxiliary aids or services, FSBPT will give considerable weight to documentation of past modifications, accommodations, or auxiliary aids or services received in similar testing situations, as well as pursuant to an Individualized Education Program (IEP) provided under the Individuals with Disabilities Education Act or a plan describing services provided pursuant to Section 504 of the Rehabilitation Act of 1973, as amended (often referred to as a Section 504 Plan).
 14. FSBPT will generally accept the recommendation of qualified professionals who have personally observed the candidate in a clinical setting and have determined—in their clinical judgment and in accordance with generally accepted diagnostic criteria, as supported by reasonable documentation—that the individual is substantially limited in one or more major life activities within the meaning of the ADA and needs the requested test accommodations in order to demonstrate his or her ability and achievement. An applicant’s failure to provide results from a specific test or evaluation instrument should not of itself preclude approval of requests for modifications, accommodations, or aids if the documentation provided by the applicant, in its entirety, is sufficient to demonstrate that the individual has a disability that warrants a requested modification, accommodation, or aid on the relevant examination. *See* 28 C.F.R. pt. 36, Appendix A.
 15. Provided that the request is consistent with the requirements of Paragraph 11(b) and 21 of this Agreement, FSBPT may make a timely request for supplemental information regarding a test taker’s disability or requested accommodation. FSBPT also has the right to have the information submitted by or on behalf of a candidate reviewed by one or more qualified professionals of FSBPT’s choosing at FSBPT’s request and expense. If FSBPT declines to accept the conclusions or recommendations of a candidate’s qualified professional, it must provide an explanation. Although it may be appropriate for FSBPT to request that an applicant provide documentation supporting the existence of a disability and the need for a modification, accommodation, or auxiliary aid or service, the request for such documentation must be reasonable and limited to those topics.
 16. FSBPT is not required to provide those testing accommodations that it can demonstrate would fundamentally alter the measurement of the skills or knowledge the NPTE is intended to test or would result in an undue burden. Nothing in this Agreement is intended to waive FSBPT’s right to argue or assert that an accommodation that jeopardizes the security or validity of the NPTE would fundamentally alter the NPTE or what the NPTE is intended to test or would result in an undue burden.
 17. For candidates who have not previously received testing accommodations or are requesting accommodation(s) that they have not previously received, FSBPT will

generally accept documentation provided by a qualified professional who has made an individualized assessment of the applicant that provides the bases for the professional's conclusions and supports the need for the modification, accommodation, or aid requested and provide the requested accommodation. To the extent that FSBPT conducts a review of a candidate's supportive documentation for accommodations, such a review will be conducted by a qualified professional: (a) who has expertise that is relevant to the disability and the requested accommodation(s); and (b) is aware of the ADA's mandate that the definition of "disability" shall be construed broadly in favor of expansive coverage (42 U.S.C. § 12102 and 28 C.F.R. § 36.105) and has an accurate understanding the ADA's provisions and its implementing regulations for test accommodations (42 U.S.C. § 12189 & 28 C.F.R. § 36.309). An applicant's failure to provide results from a specific test or evaluation instrument should not of itself preclude approval of requests for modifications, accommodations, or aids if the documentation provided by the applicant, in its entirety, is sufficient to demonstrate that the individual has a disability that warrants a requested modification, accommodation, or aid on the relevant examination. *See* 28 C.F.R. pt. 36, Appendix A.

18. FSBPT will not decline to consider, or otherwise undervalue, documentation that meets the criteria set out in paragraph 20 below solely based on the "recency" of the documentation. If, after considering all provided documentation, FSBPT determines that additional documentation nonetheless is needed to support the specific request for a testing accommodation, FSBPT may request additional specific documentation with an explanation of the rationale for the request and the specific documentation that would meet its requirements.
19. If FSBPT requests additional documentation to support a diagnosis of disability or a recommended accommodation, as set out in the limited circumstance described in paragraph 21 below, its analysis shall be consistent with the broad protections guaranteed by the ADA's coverage of disability, *e.g.*, that the threshold issue for whether an impairment substantially limits a major life activity should not require extensive analysis. 28 C.F.R. § 36.105. The comparison of an individual's performance of a major life activity to performance of the same major life activity by most people in the general population usually will not require scientific, medical or statistical evidence. 28 C.F.R. § 36.105(d)(vii). Instead, other types of evidence that are less onerous to collect, such as sworn statements or affidavits from the affected individual, or sworn statements from individuals with first-hand knowledge of their functional limitations, school records, records relating to their performance on other standardized tests, or determinations of disability status under other statutes that define disability in the same manner as the ADA should in most cases be considered adequate to establish that an impairment is substantially limiting. But nothing in this Agreement is intended to prohibit or limit the presentation or consideration of scientific, medical or statistical evidence in making such a comparison where appropriate. 28 C.F.R. § 36.105(d)(vii).
20. In reviewing requests for disability-based test accommodation request, FSBPT will evaluate such requests in such a way that comports to the ADA's broad construction of the word "disability." 42 U.S.C. § 12102(4); *see also* 28 C.F.R. 36.105(a)(2), (c)(2) &

(d)(1). Thus, FSBPT will recognize that physical or mental impairments include, but are not limited to, emotional and mental illness, dyslexia, other specific learning disabilities, and Attention Deficit Hyperactivity Disorder. 28 C.F.R. 36.105(b)(2). Additionally, in determining whether an individual has a disability under the “actual disability” prong of the definition of “disability,” FSBPT’s focus will be on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. 28 C.F.R. § 36.105(d)(3)(iii). For example, FSBPT will recognize that someone with a learning disability might have achieved a high level of academic success, but might nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population. *Id.* Likewise, FSBPT shall not consider the ameliorative effects of mitigating measures, as defined in the ADA, when determining substantial limitation. 42 U.S.C. § 12102(4)(E).

21. In making requests for additional documentation from candidates requesting testing accommodations on the basis of one or more claimed disabilities, FSBPT:
 - a. Shall consider all facts and explanations offered by the candidate (or a qualified professional) regarding his or her history or the need for the requested testing accommodations, including factors such as late-in-life diagnosis of disability, recent onset of a disability, progression of a disability, lack of resources that prevented earlier diagnosis of an impairment, or having a non-traditional educational background; and
 - b. Shall not reject or deny a candidate’s application for a particular testing accommodation (including a request for a different or additional testing accommodation than previously received) solely because the candidate has no formal history of receiving that testing accommodation.
22. FSBPT shall develop revised policies, practices, and procedures to implement the requirements set out in paragraphs 11 - 21 above, for review and approval by the United States. Such policies, practices, and procedures will be submitted to the United States within sixty (60) days of the effective date of this Agreement, whose approval will not be unreasonably withheld.
23. FSBPT’s revised policies and procedures will continue to ensure that requests for testing accommodations are responded to in a timely manner so that test takers do not experience unreasonable delays in receiving decisions from FSBPT on requests for accommodation, and will continue to inform test takers that they may seek review of denials of accommodations requests. To implement the provisions of this paragraph, FSBPT’s policies will include standard timelines within which accommodations decisions will generally be made, as well as any deadlines that candidates must meet in order to request accommodations or to appeal the denial of any accommodation, and the standard timelines for receiving a decision when candidates make a timely appeal.

24. An appeal of FSBPT's decision to deny or partially deny an accommodation shall be reviewed by a third-party neutral of FSBPT's choosing who has the requisite qualification in the specific disability.
25. To ensure effective management of testing accommodations requests for individuals with disabilities, FSBPT agrees to conduct training for FSBPT management and employees who are involved in the handling, managing and implementation of requests for accommodations on the NPTE. Within one hundred twenty (120) days of the effective date of this Agreement, FSBPT will submit for approval by the United States, not to be unreasonably withheld, a proposed ADA training course and the identity of the proposed trainer(s).
- a. Such training will address the requirements of Title III of the ADA including the requirements of 42 U.S.C. § 12189 and 28 C.F.R. § 36.309. Such training will also address the terms and obligations of this Agreement.
 - b. Such training will be conducted by a trainer or trainers with substantive legal knowledge of the relevant portions of the ADA and its implementing regulations.
 - c. For each session of such training conducted under this Agreement, FSBPT will maintain attendance logs that include the date of the training and the names and titles of participants/attendees. Once annually during each year of the term of this Agreement, FSBPT will provide the United States with (1) confirmation that the required training has occurred; (2) the attendance records for such trainings, and (3) a description of any material changes made to the training program, if applicable, as part of the final report due for that calendar year, as set forth in paragraph 30(d) below.
 - d. For any person who otherwise would qualify to attend such training, but who is hired by FSBPT within the first year after the final training session conducted under this Agreement, FSBPT shall ensure that such person receives the training, whether by video or an additional live session of such training.
26. FSBPT will request that any third-party vendor that administers any FSBPT examination ensure that its test center employees and proctors are adequately trained regarding approved testing accommodations, the obligation to provide such approved accommodations, and how to administer each available testing accommodation. If requested by the vendor, FSBPT will also provide to that vendor the identity and contact information for the training provider referenced in paragraph 25. Further, FSBPT will assist test candidates to resolve any issues that arise with regard to its proctor's implementation of disability-based test accommodations. This includes issues that arise prior to, during, or after a candidate takes the NPTE.

MONETARY RELIEF

27. FSBPT will pay a total of \$295,000.00 to individuals who the United States believes have been aggrieved by the actions described in this Agreement. *See* 42 U.S.C. § 12133. The United States will identify to FSBPT each aggrieved individual and the amount that the United States has determined that the individual will receive. This amount will not be subject to withholding deductions, and FSBPT will issue an IRS Form 1099 to each aggrieved person that receives a payment. The parties agree to follow the procedure outlined below:

- a. The United States will identify to FSBPT the names of the individuals the United States believes should be offered payments, along with the amounts.
- b. Within thirty (30) days of FSBPT receiving the names and amounts, it will send the identified individuals by certified mail and e-mail (to the last known address and e-mail address reflected in FSBPT's records) a copy of this signed Agreement (or link to a publicly available web site where the Agreement may be viewed), the Notice Letter (Exhibit 1 to this Agreement) and the Release of ADA Claims form (Exhibit 2 to this Agreement), and an offer of payment. FSBPT will use its best efforts to locate the individuals included on the list provided by the United States but, if it is unable to do so within the 30-day deadline to deliver the notice required by this paragraph, it will notify the United States of that fact. FSBPT will send the United States electronic copies of each Notice Letter via SFTP transfer, after the letters have been sent to each individual, to:

Steven Gordon
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, VA 22314
Steve.gordon@usdoj.gov

- c. In order to receive the payment offered by FSBPT, each individual must execute and return the Release of Claims form to FSBPT within sixty (60) days of receiving the Notice Letter.
- d. For each individual who accepts payment described in this paragraph, FSBPT must pay the designated amount within fifteen (15) days of receiving that individual's signed Release of Claims Form. FSBPT will send the payment by certified mail to the same physical address to which the original Notice Letter was sent, unless an alternative delivery address is requested by the individual on the Release of ADA Claims form. For each payment made, FSBPT will send the United States proof of payment and a copy of each individual's signed Release of Claims Form, electronically, to:

Steven Gordon
Assistant United States Attorney

2100 Jamieson Avenue
Alexandria, VA 22314
Steve.gordon@usdoj.gov

- e. In the event that an individual who is entitled to receive payment loses a check or does not receive a check issued to that individual by FSBPT, FSBPT shall, on a one-time basis and upon written verification that the check was not presented for payment, re-issue the payment as a check within fifteen (15) days after the receiving notice that the check has not been transacted.
- f. If an individual identified by the United States on the list that it provides to FSBPT (i) cannot be located by FSBPT within a reasonable amount of time using reasonable efforts, or (ii) neglects to cash the check that he/she receives from FSBPT within one hundred eighty (180) days of its issuance, the payment for that individual shall revert to FSBPT, and FSBPT shall have no further obligation to make any payment under this Agreement to that individual.

OTHER RELIEF

28. Renewed Requests For Testing Accommodations. FSBPT has agreed that individuals who requested testing accommodations from FSBPT between May 1, 2017, and the effective date of this Agreement, and who were denied their requested testing accommodations on a given examination in whole or in part, will not have failing test results from that examination count against any lifetime maximum number of NPTE testing attempts that may apply to that individual.

REPORTING REQUIREMENTS

29. For the term of this Agreement, FSBPT agrees to preserve all records necessary to demonstrate FSBPT's compliance with this Agreement. FSBPT also agrees that upon twenty (20) days' written notice representatives of the United States will be permitted to inspect and copy any of FSBPT's non-privileged records bearing on compliance with this Agreement, subject to FSBPT's good faith ability and efforts to obtain any necessary consents or disclosure authorizations from third parties whose records are requested, if required by law, FSBPT policy, or contract.
30. Within forty-five (45) days after each administration of the NPTE during the term of this Agreement, FSBPT will submit a summary, in written form, providing the following information regarding NPTE accommodation requests that FSBPT processed, reviewed and decided for that administration:
- a. (i) The number of applicants seeking accommodations; (ii) the number of such requests that were granted in whole by FSBPT and the number that were granted in part; (iii) the number of such requests that were denied in their entirety by FSBPT; (iv) the number of such requests for which a decision was deferred pending submission of more recent professional evaluations or other documentation; (v) the number of such requests withdrawn by the applicant; and

- (vi) the number of such requests that remained unresolved at the end of the reporting period;
- b. For each request that was denied or deferred pending submission of more recent professional evaluations or other documentation, the candidate number for the applicant, the requested testing accommodation and any other reason(s) for the denial or deferral of decision;
- c. Any court-filed or agency complaints (or requests for investigation) lodged by applicants for testing accommodations and related to FSBPT's denial (in whole or part) of a requested accommodation, whether or not resolved by FSBPT; and
- d. All substantive policy changes with respect to handling, management, and implementation of approved requests for accommodation, including the reasons for the policy change and the process for making the decision to change the policy.

ENFORCEMENT AND MISCELLANEOUS PROVISIONS

- 31. Effective date: The Effective Date of this Agreement is the date of the last signature affixed below. All time periods specified in this Agreement will run from that Effective Date unless otherwise specified.
- 32. Term: The duration of this Agreement is three (3) years from the Effective Date.
- 33. Consideration: In consideration for this Agreement, the United States will not institute a civil action alleging a violation of the ADA related to the facts alleged in paragraphs 7 - 9 of this Agreement (including fn. 3), or any of FSBPT's accommodation decisions made prior to the date of this Agreement that were or could have been the subject of the United States' investigation that is being resolved by way of this Agreement, except as provided below. The parties to this Agreement agree and acknowledge that this consideration is adequate and sufficient.
- 34. Enforcement: The United States may review compliance with this Agreement at any time. FSBPT will cooperate in good faith with the United States' efforts to monitor compliance with this Agreement, including, but not limited to, providing the United States with reasonably requested, relevant, non-privileged information. If the United States believes that FSBPT has failed to comply with any requirement of this Agreement or that any requirement has been violated, the United States will notify FSBPT in writing, and the parties will attempt to resolve the issue in good faith. If the parties are unable to reach a satisfactory conclusion within thirty (30) days of the date the United States notified FSBPT, the United States may file a civil action in federal district court to enforce the terms of this Agreement, and take any other action to enforce Title III of the ADA.
- 35. Non-Waiver: Failure by the United States to enforce any provision of this Agreement will not be construed as a waiver of its right to enforce any provision of this Agreement.

36. Modifications: Any modification of this Agreement requires the written consent of both FSBPT and the United States; provided that the United States and FSBPT may agree in writing to extend the applicable deadlines specified in this Agreement.
37. Counterparts: This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same Agreement. Electronic or similar signatures are acceptable and will bind the party so signing if conveyed to the other party.
38. Severability: If any provision of this Agreement is determined to be invalid, unenforceable, or otherwise contrary to applicable law, such provision will be deemed restated to reflect as nearly as possible and to the fullest extent permitted by applicable law its original intent and will not, in any event, affect any other provision, all of which will remain valid and enforceable to the fullest extent permitted by applicable law.
39. Other violations: This Agreement is not intended to remedy any potential violations of the ADA or any other law, other than those specifically addressed by this Agreement as described in paragraph 33 above. Nothing in this Agreement will preclude the United States from filing a separate action under the ADA for any alleged violation not covered by this Agreement.
40. Entire Agreement: This Agreement contains the entire agreement between the United States and FSBPT concerning the subject matter described in this Agreement, and no other statement, promise, or agreement concerning the subject matter hereof, either written or oral, made by any party or agent of any party, if not contained in this Agreement, will be enforceable as part of this Agreement.
41. Binding Nature of Agreement: This Agreement will be binding on FSBPT and its agents, employees, and officers. In the event that FSBPT transfers all of its assets to any successor entity that continues to offer and administer the NPTE, then as a condition of transfer or sale, FSBPT will obtain the written accession of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.
42. Publicity: This Agreement is a public document.
43. Authority: The signatories below for FSBPT represent that they have the authority to bind FSBPT and the United States to the terms of this Agreement.

* * * *

AND NOW, by their signatures below, the parties hereto enter into the Agreement and consent to the execution of all aspects thereof.

FOR FEDERATION OF STATE BOARDS
OF PHYSICAL THERAPY:

JESSICA D. ABER
United States Attorney

Name: William A. Hatherill
Title: Chief Executive Officer

STEVEN GORDON
Assistant United States Attorneys
Office of the United States Attorney
for the Eastern District of Virginia

Dated: _____

Dated: _____

Exhibit 1

**[On FSBPT Letterhead]
BY CERTIFIED MAIL**

[INSERT NAME AND ADDRESS]
[Insert FSBPT ID number]

Re: Americans with Disabilities Act Investigation of the Federation of State Boards of Physical Therapy

Dear [insert name of the aggrieved individual],

The United States Department of Justice and the Federation of State Boards of Physical Therapy (“FSBPT”) have entered into an Agreement to resolve the above-referenced investigation, which relates to FSBPT’s process for reviewing disability-based test accommodations. A copy of the Agreement can be reviewed at the following link: www.fsbpt.org/DOJsettlement. Pursuant to the Agreement, FSBPT is offering you a payment of \$[fill in amount for each aggrieved individual].

In order to accept FSBPT’s offer, you must sign the enclosed Release of Claims Form and return it within 60 days of your receipt of this letter. You may return the form by email, or by overnight carrier to:

[Name]
[Title]
[Address]
[Email address]

This monetary sum is offered to you on the following condition: if you accept it, you must sign the attached Release of Claims Form and, by doing so, you will be releasing FSBPT from all claims you may have against it, arising out of the facts alleged in the settlement agreement. Within 15 days of receipt of your release, FSBPT will send you a payment of \$[fill in amount for each aggrieved individual]. The payment will not be subject to withholding deductions, and FSBPT will send you an IRS Form 1099 for the amount paid. Please include your FSBPT ID number [insert number] on your signed release form.

If you have any questions about this letter or the Agreement, you may contact me at [appropriate FSBPT employee] or you may contact Steven Gordon (steve.gordon@usdoj.gov) at the United States Attorney’s Office for the Eastern District of Virginia.

Sincerely,
[FSBPT employee]

Enclosures: Release of Claims Form

cc: Steven Gordon, U.S. Attorney’s Office, Eastern District of Virginia

Exhibit 2

RELEASE OF ADA CLAIMS

For and in consideration of the acceptance of the payment offered to me by Federation of State Boards of Physical Therapy (“FSBPT”) pursuant to a Settlement Agreement between the United States and FSBPT: I, _____, hereby release and discharge FSBPT and its members, employees, officers, attorneys, and agents from all legal and equitable claims under, arising out of, or related in any way to any decision made on, or action taken by FSBPT, in response to any request that I made for testing accommodations on the National Physical Therapy Examination (“NPTE”), at any time prior to the date on which I sign this Release. This release includes but is not limited to claims that I might have that FSBPT failed to comply with the Americans with Disabilities Act when it reviewed my request(s) for a disability-based testing accommodation.

I request that FSBPT deliver the monetary payment being made to me pursuant to the Settlement Agreement and as consideration for this Release to the following address:

This Release will be considered null and void in the event that FSBPT fails to send the check made out to the signer of this Release in the amount described in the notice letter from FSBPT.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE WILL.

Signed this _____ day of _____, 2024.

Signature _____

Printed Name _____

FSBPT ID _____