Addendum ADA Policy for the 9th Judicial District

It is the policy of this judicial district to prohibit discrimination against all individuals—including those with substance use disorder—in accessing or participating in judicial proceedings or other Court services, programs, or activities.

The United States Department of Justice maintains that blanket or *per se* bans barring or otherwise limiting persons under court supervision (including pretrial probation and release, post-conviction probation and parole, and Problem-Solving Courts—including Adult, Juvenile, or Family Drug Court; DUI Court, Adult or Juvenile Mental Health Court; veterans Treatment Court; Domestic Violence Court) from accessing physician-prescribed medications and treatment is a violation of the Americans with Disabilities Act (ADA).

It is the policy of this judicial district to conform to the position of the United States Department of Justice in the following respects.

Absent an individualized determination, as more fully described below, no judge, unit, or member of this judicial district may prohibit or otherwise limit an individual's use of medication that they have been lawfully prescribed, and that they are taking as prescribed, to treat substance use disorder.

Decisions about whether a person should be prescribed medication, and about medication type and dosage, are to be made only by a licensed prescriber on an individualized basis.

No judge, unit, or member of this judicial district will interfere with a licensed prescriber's decisions about an individual's appropriate medication and treatment regimen.

No judge, unit, or member of this judicial district will express a preference for, or mandate, one medication over another nor in any way penalize or restrict an individual participating in a court proceeding or program from taking their medication as prescribed.

No judge, unit, or member of this judicial district will condition admission to, participation in, or successful completion of a Problem-Solving Court or other court program, service, or activity on reducing, weaning off, or abstaining from taking prescribed medication.

No judge, unit, or member of this judicial district will rely upon prior illicit use of medication for substance use disorder as grounds for prohibiting current use of medication for substance use disorder that comes from a licensed prescriber.

Individuals with substance use disorder who are participating in a court proceeding or program may be required to comply with the treatment recommendations of a licensed prescriber.

This Policy is not intended to interfere with appropriate exercises of judicial discretion in individual cases. To that end, nothing in this Policy limits a judge's discretion to order that an individual be evaluated for medical treatment or comply with a treatment plan as a condition of release, probation, supervision, or participation in a Problem-Solving Court or other court or probation program. In issuing such an order, a judge should make an individualized determination, based on the information available, which may include an individual's criminal, medical, and probation history. An individual's previous illicit use of a medication is not grounds for prohibiting their use of that medication going forward as directed by their licensed provider.

Judges have the authority to monitor medication compliance in the context of a term of probation, supervision, or condition of release and to further the court's public safety obligation. When a judge is concerned about an individual's use or misuse of medication, the judge may act to mitigate and reduce the risk of abuse, misuse, and diversion of medication. In many cases, appropriate action will include, among other things, communication with the prescriber by a probation officer or other UJS personnel as directed by the judge.

Compliance with the ADA does not require that a court allow an individual to participate in, or benefit from, its services or programs if the person poses a "direct threat to the health or safety of others." 28 C.F.R. § 35.139. A determination that an individual poses a direct threat must be grounded in current medical knowledge or the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. *Id*. A court may not conclude that an individual prescribed medication poses a "direct threat" based on generalizations or scientifically unsupported assumptions about medications or persons who are prescribed medication.

Individuals who believe there has been a violation of this Policy may file a grievance pursuant to the Grievance Procedure of the Cumberland County Court of Common Pleas.

https://www.cumberlandcountypa.gov/3012/Public-Access-Requests