

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

United States of America

v.

Aticha Jittaphol

No. 21-CR-10270-MLW

DEFENDANT'S MEMORANDUM RE DISCHARGE NOTE & 4/8/22 ORDER

Ms. Jittaphol withdraws her objection to admission of the discharge summary into evidence, largely because it does not say anything different than parts of her record. However, if the document had been offered into evidence during the government's examination of Ms. Wertz, the defendant would have been able to pursue questioning concerning the document and discuss it in argument. The defendant wishes to make a few points regarding the document.

It was not produced as part of counsel's request for Ms. Jittaphol's complete record, and it was not produced to Probation prior to Ms. Wertz's 1/11/22 email requesting such a document. Counsel is very skeptical that it was prepared by January 3rd, but then not provided to Ms. Wertz until sometime after January 11th and not provided to counsel until January 20th.

The document is not germane to the alleged violation concerning a failure to follow **Probation's** instruction to go to long-term in-patient residential care. There is no evidence that Probation ever communicated with Ms. Jittaphol while she was at the Hope Center. Whatever reluctance she expressed to anyone at the Hope Center about continuing treatment, whether in-patient or out-patient, does not establish what happened when Probation talked to her after her discharge.

After discharge, Ms. Curran and Ms. Wertz both told Ms. Jittaphol and counsel that the Hope Center had made a clinical recommendation requiring long-term in-patient residential treatment. The discharge summary provides further evidence that this was untrue. There was no such recommendation, clinical or otherwise. The discharge summary states that Ms. Jittaphol was resistant to continuing care, whether in-patient or IOP, but the assertion that the Hope Center had determined that in-patient treatment was needed was false, there never was any such recommendation. Whatever the discharge summary says, her treatment record has numerous notes in which she spoke to counsellors about out-patient treatment that she was interested in, and there is nothing in her record, and nothing in the discharge summary, about a recommendation for in-patient care rather than out-patient. *See* Ex. 12, Hope Center Record, pp. 7, 12, 14, 15.

Whatever reluctance Ms. Jittaphol expressed while at the Hope Center about out-patient care, it did not persist after discharge. This is confirmed in email communications between Ms. Wertz and counsel, including a January 11th email in which counsel wrote that Ms. Jittaphol had no objection to long-term out-patient treatment. There is no evidence that Ms. Jittaphol ever told Probation that she declined to participate in any out-patient treatment. And she has participated in the various out-patient treatment modalities urged by Probation.

What she did not do, after discharge from the Hope Center, was follow Probation's instruction that she go to long-term in-patient residential care because the Hope Center had made a clinical recommendation for it. She declined to

follow an instruction that was knowingly premised on a false claim that the Hope Center had determined that in-patient care was needed, and which was inconsistent with the standard of care. *See* Dr. Gitlow Report, Ex. 13. On January 4th, counsellor Colleen Fenton told Ms. Wertz that she believed out-patient treatment “is sufficient.” Ex. 7, Chronology, p. 24. After that call, Probation continued to tell Ms. Jittaphol and counsel that the Hope Center had determined that in-patient treatment was needed. As soon as Probation told counsel about the issue, there was a plan agreed upon to raise the matter with the Court.

Lastly, it should be noted that Probation subsequently concluded that in-patient treatment was not needed after several negative drug tests. Later, when Ms. Jittaphol tested positive on a sweat patch for the first time, and Probation again recommended in-patient treatment, Probation then changed its position again, concluding that subsequent negative tests established that Ms. Jittaphol was not appropriate for in-patient treatment.

ATICHA JITTAPHOL
By her Attorney,

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 9, 2022.

/s/ Keith Halpern