REDACTED

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

MIDDLESEX COUNTY NO. SJC-12279

COMMONWEALTH

V.

JULIE ELDRED

REPLY BRIEF OF THE PROBATIONER

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Introduction

"Addiction is not a choice, addiction is a disease."

Charlie Baker, Governor.[1/]

"I think about addiction as a disease in the same way we think about diabetes as a disease or heart disease as a disease, and for far too long we haven't treated addiction as a disease. We punish people."

Maura Healey, Attorney General.[2/]

"Addictions are a chronically relapsing medical condition, not a lack of willpower. Our efforts must open the doors to treatment, rather than incarceration."

Marylou Sudders, Secretary of the Executive Office of Health and Human Services.[3/]

"We have to start thinking about substance use disorder as the medical disease it is, and a state without stigma will help us break down the barriers for everybody who needs treatment to get the right treatment and to be in recovery."

Monica Bharel, MD, Commissioner, Department of Public Health.[4/]

[1/]Governor's Office, Governor Baker: "Addiction is Not a Choice, Addiction is A Disease" (Nov. 4, 2015) (press release announcing goal of "making Massachusetts a '#StateWithoutStigMA'").

[2/]Steve LeBlanc, Q & A: Healey looking forward to her second year in office, Washington Times (Jan. 10, 2016).

[3/]Marylou Sudders: 'Zip Code Should Not Predict Health Status,' Boston University School of Public Health (May 11, 2016).

[4/]Shira Shoenberg, Baker administration fights stigma of drug addiction, MassLive (Nov. 4, 2015).

* * *

Since November 4, 2015, see n.1, ante, it has been the policy of the Commonwealth of Massachusetts to address the opioid crisis by seeking to "de-stigmatize" what Governor Baker and other executive branch leaders have accurately described as the chronic relapsing medical disease of drug addiction. The Commonwealth has nonetheless submitted a brief in this case which falsely asserts that the medical science is confused and unsettled, which offers the Court an array of baseless reasons to avoid reaching the merits of the issues raised in and reported by the District Court, and which accuses Julie Eldred of wilfully violating her probation by "choosing" to continue using opioids -- all in an effort to justify the decisions of the criminal justice system to jail Eldred for relapsing and label her a probation violator.

ARGUMENT

I.

Eldred did not "waive" her right to appellate review of the District Court's finding that her alleged failure to remain drug free was "wilful."

The Commonwealth claims that Eldred had a legal obligation to "alert" the sentencing judge to the fact that her substance use disorder was active and to inform the judge that she would not be able to comply

with the condition of probation that she remain drug free. CB 24-25. Because she did not so notify the sentencing judge, the Commonwealth urges the Court to rule that Eldred has "waived" her right to now argue that her alleged failure to remain drug free was not wilful. CB 24-25.

As an initial matter, Eldred did in fact inform the sentencing judge (through counsel) that she (a) had "relapsed," (b) "realized . . . she wasn't receiving the kind of support" she needed, and (c) was "actively trying to work on her" recovery by accessing more effective treatment. Add. 6. More to the point, the Commonwealth's waiver argument is foreclosed by Commonwealth v. LaFrance, 402 Mass. 789 (1988), where the Court stated that a probationer cannot be deemed to have "assented to any unconstitutional condition of her probation" by pleading guilty, because the "coercive quality of the circumstance in which a defendant seeks to avoid incarceration by obtaining probation on certain conditions makes principles of voluntary waiver and consent generally inapplicable." Id. at 791 n.3.[5/]

[5/]The Commonwealth supports its waiver argument with the following out-of-context quote from Commonwealth v. Vargas, 475 Mass. 86 (2016): "In agreeing to the condition of no marijuana use, the defendant explicitly waived his right not to be prosecuted for the use or possession of marijuana, and he agreed to be subject to punishment for noncompliance." CB 24, quoting Vargas, 475 Mass. at 93 (footnote omitted). The quoted

(FOOTNOTE CONTINUED ON NEXT PAGE)

II.

The Commonwealth did not meet its burden of proving that Eldred's use of fentanyl was "wilful" -- i.e., voluntary, unexcused, and morally blameworthy.

The Commonwealth had the burden of proof in this case to demonstrate -- by a preponderance of the evidence admitted at the violation hearing, see Commonwealth v. Patton, 458 Mass. 119, 130-131 (2010), and cases cited -- that Eldred's use of fentanyl was "wilful." Commonwealth v. Henry, 475 Mass. 117, 121 (2016). The Commonwealth's brief does not acknowledge this burden. To the contrary, it minimizes it by seeking to equate "wilful" with "voluntary." See,

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[5/](FOOTNOTE CONTINUED FROM PREVIOUS PAGE) language refers to the facts of Vargas, in which Vargas, having personally assured the sentencing judge that he would not use marijuana on probation, see id. at 88, argued for the first time on appeal that his use of marijuana was immunized because he had procured a medical marijuana certificate. Id. at 92-94. The Court rejected the argument, pointing to Vargas's own words at sentencing and to the fact that he obtained the certificate only after testing positive. Id. Notably, however, the Court went on to hold that the lawyers who represented Vargas at his probation violation proceedings provided ineffective assistance because they failed to cite the certificate as grounds for seeking modification of the "no marijuana" condition of Vargas's probation and indeed stipulated to the allegation that he had wilfully failed to remain marijuana-free. Id. at 95-96. Here, Eldred did move to modify the terms of her probation, and vigorously opposed the allegation that her use of fentanyl was wilful. In other words, Eldred did everything that was not done in Vargas to preserve the claim that her alleged failure to remain drug free was not a wilful violation of probation.

e.g., CB 34, 42. But the element of wilfulness is not established unless it has been shown that the act constituting the alleged violation was not merely voluntary but also unexcused and morally blameworthy. See Henry, 475 Mass. at 121 (probationer may not be found in violation where he or she is not "at fault"), quoting Bearden v. Georgia, 461 U.S. 660, 668 (1983); Commonwealth v. Canadyan, 458 Mass. 574, 578 (2010) (probationer may not be found in violation where "there was a justifiable excuse for any violation"), quoting Commonwealth v. Marvin, 417 Mass. 291, 297 (1994) (Liacos, C.J., dissenting). Contrary to the burden-shifting premise of the Commonwealth's brief, the issue in this case is not whether Eldred established that substance use disorder destroyed her "free will," CB 17, but whether the evidence at the hearing proved that her alleged "failure" to remain drug free was voluntary, unexcused, and morally blameworthy.

The evidence did not so establish. It is undisputed that, at the time she tested positive for fentanyl, Eldred:

- was suffering from the medical condition of severe opioid use disorder, the essential feature of which is the continued use of opioids "despite significant substance-related problems" (RA 21 [Wakeman Aff. ¶9], quoting DSM-5);
- had recently initiated (1) intensive outpatient treatment and

(2) medication-assisted therapy, and;

- had fully complied with the condition that she submit to drug testing.

The Commonwealth has not contested the sincerity of Eldred's claim that she wanted nothing more than to achieve and maintain a life without opioids. That claim was fully supported by the undisputed evidence at the hearing. Accordingly, the Commonwealth did not meet its burden of proving that her alleged failure to remain drug free was "wilful," i.e., voluntary, unexcused, and morally blameworthy.

III.

Eldred does not challenge the condition of drug testing.

The Commonwealth devotes much of its brief to a defense of the proposition that drug "testing conditions [of probation] are constitutional." CB 43, citing CB 16-43. Eldred does not claim otherwise. Nor does the reported question ask whether Eldred could permissibly be required to submit to drug testing as a condition of probation.[6/]

[6/]Although Eldred does not contest the condition of drug screening itself, the manner in which she was required to comply with that condition [redacted] In view of the Commonwealth's emphasis on the utility of drug testing as a

(FOOTNOTE CONTINUED ON NEXT PAGE)

IV.

Eldred was jailed for testing positive, not for committing larceny. Probation is punishment, not a program of civil sanctions. Jailing Eldred for her own good was an abuse of discretion under the rules permitting detention pending a final hearing. If the Commonwealth was concerned about Eldred's health and safety, it should have filed a petition pursuant to G.L. c.123A, §35.

The Commonwealth defends the decision to jail Eldred for testing positive by labeling the sanction as punishment for the underlying larceny for which she was on probation, and "not punish[ment] for her substance use." CB 23, citing Commonwealth v. Odoardi, 397 Mass. 28, 30 (1986). The argument does not withstand scrutiny.

It is true that, if a probationer is found to have wilfully violated probation, and if probation is then

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[6/](FOOTNOTE CONTINUED FROM PREVIOUS PAGE) therapeutic tool, it should be noted that Department of Public Health guidelines specify that "best practices" call for urine specimens to be collected "in ways that preserve dignity of individuals" and "are sensitive to trauma." Department of Public Health, Bureau of Substance Abuse Services, Practice Guidance: Drug Screening as a Treatment Tool 1, 4 (2013). The guidelines further state that courts and state agencies should be "educat[ed] . . . about the limitations of drug screens" for treating substance use disorder. Id. at 4. "[A] positive drug screen may not be the sole basis for any treatment decision, but must be considered in the context of the individual's strengths and needs in relations to treatment, abstinence and recovery." Id. at 3 (available at http://www.mass.gov/eohhs/docs/dph/substance-abuse/care-principles/care-principles-guidance-drug-screening-tx-tool.pdf).

revoked and a sentence of incarceration imposed, that sentence is viewed as "punish[ment] for the underlying offense for which a probationary sentence originally was imposed," and not for the act "that prompted revocation." Odoardi, 397 Mass. at 30. For this reason, the law affords "no double jeopardy protection against revocation of probation and the imposition of imprisonment." Id. (citation omitted). But Eldred's probation was not revoked, and (as the Commonwealth concedes) "[n]o additional sanctions were imposed after the finding of violation." CB 22 n.35. Nor does Eldred claim that her double jeopardy rights were violated.

Eldred was not jailed because her probation was revoked. She was jailed following a "probation detention hearing," see Rule 5 of the District/Municipal Courts Rules for Probation Violation Proceedings (2015), at which probable cause was found that she had violated the "remain drug free" condition of her probation. The Commonwealth says Eldred's "brief ten-day detention" at M.C.I. Framingham "may have helped to save her life." CB 34, 41. But detention of any duration in this case was an abuse of discretion under Rule 5, even assuming arguendo that the positive drug screen established probable cause for a wilful violation of probation, and even granting that the District Court had reasonable concerns for Eldred's health

and safety.

Rule 5(c) provides in relevant part as follows:

> If probable cause is found, the court may order the probationer to be held in custody pending the conduct and completion of the violation hearing. The court's decision whether to order such custody shall include, but not necessarily be limited to, consideration of the following:
>
> i. the probationer's criminal record;
>
> ii. the nature of the offense for which the probationer is on probation;
>
> iii. the nature of the offense or offenses with which the probationer is newly charged, if any;
>
> iv. the nature of any other pending alleged probation violations;
>
> v. the likelihood of probationer's appearance at the probation violation hearing if not held in custody; and
>
> vi. the likelihood of incarceration if a violation is found following the probation violation hearing.

Rule 5(c) of the District/Municipal Courts Rules for Probation Violation Proceedings.

The listed considerations all weighed decisively against detention. Detaining Eldred for her own good [redacted] was an abuse of the discretion accorded to a District Court judge considering detention under Rule 5(c): As Henry makes clear, probation is itself punishment -- "it is not a civil program or sanction." Henry, 475 Mass. at 123

(citation omitted). See also id. at 123-124 (describing how even the allegation that a probationer has violated probation carries punitive consequences independent of any sentence that may be imposed upon the finding of a violation).

If the Commonwealth was concerned about Eldred's health and safety, it should have filed a petition pursuant to G.L. c.123A, §35, which would have required it to show by clear and convincing evidence that there was "a likelihood of serious harm directly resulting from" Eldred's substance use disorder. Matter of G.P., 473 Mass. 112, 118 (2015). Instead, presuming without adequate information that it understood her treatment needs better than her own providers, the Commonwealth relied on Eldred's status as a probationer to initiate a summary criminal process that peremptorily interrupted Eldred's treatment for substance use disorder while warehousing her for as long as it took her attorney to find her a bed in a treatment program.[7/]

The jailing of Eldred was not punishment for

[7/]Interrupting treatment hurts recovery. See Dennis and Scott, Managing Addiction as a Chronic Condition, 4 Addict. Sci. Clin. Prac. 45, 49 (2007) (describing "larg[e] scale" initiative by the Network for the Improvement of Addiction Treatment measuring significant improvements in treatment outcomes based on assumption that "addiction is a chronic and progressive condition and that interruptions and delays in the continuity of care can seriously exacerbate consequences").

larceny. Nor was it civil commitment to protect her from herself. It was the criminalizing of relapse, which it is the stated policy of the Commonwealth of Massachusetts to abolish.[8/]

V.

A ruling in favor of Eldred is not a slippery slope to legalizing crimes committed under the influence, or to immunizing individuals suffering from substance use disorder from liability for criminal behavior.

The Commonwealth states that Eldred "offers no limiting principle for her proposition that probationers with [substance use disorder] cannot be held accountable for their drug use," and expresses concern that a ruling in her favor will "naturally be

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[8/]The Commonwealth touts Hawaii's Opportunity Probation with Enforcement (HOPE) as offering "some of the best science available" to show that punishing relapse works. CB 32. The Commonwealth's confidence in the HOPE model is undercut by the limitations of the very evaluation it cites. See CB 33, n.47, citing Hawken, et al., HOPE II: A Follow Up to Hawaii's HOPE's Evaluation (2016). The Hawken evaluation acknowledges its "several methodological limitations." Id. at 8. Most notably, an unknown percentage of HOPE probationers do not suffer from substance use disorder. See id. at 19 ("Probationers who are able to remain drug free on their own are not required to enter a drug-treatment program"). Further, "HOPE-style supervision is relatively new [with] only a handful of studies (of varying quality) assess[ing] the effectiveness of its approach." Id. at 27. Finally, there have been "several major modifications" to the program that have not yet been tested, including "no longer escalating sanctions for . . . positive drug screens" because the practice was proving ineffective. See Hawkens at 43.

extended" to excuse all drug-related criminal behavior. CB 48-49. The concern is unwarranted.

As an initial matter, Eldred does not argue or suggest that a probationer with substance use disorder is not accountable for criminal behavior triggered by addiction: Eldred herself admitted to sufficient facts, took responsibility for the larceny she committed, and does not contest the voluntariness of her plea. Instead, Eldred contends that, in light of her medical condition, it was unfair to (1) mandate that she remain drug free, (2) jail her because she was not in remission, and (3) find, in light of the undisputed evidence presented at the violation hearing, that she had wilfully chosen to continue using opioids.

It is of course true that a ruling in Eldred's favor will be relevant for a similarly situated probationer who, like Eldred, presents credible evidence that he or she had a medical diagnosis of substance use disorder, was authentically engaged in treatment for that disorder, and was otherwise in compliance with probation. It would not, however, benefit a probationer who had not been diagnosed with substance use disorder, or a probationer whose misuse of substances played a role in the crime but for whom immediate and complete abstention was achievable (even if unwanted). Nor would it benefit a probationer suffering from substance use disorder who wilfully

refused, for example, to submit to drug testing or engage in treatment.

The limits of a fact-based ruling in Eldred's favor are thus self-evident, and a decision that excused Eldred's relapse on the basis of the facts presented could not, realistically, become a slippery slope to excusing drug-related criminal behavior generally.

VI.

There is virtual unanimity in the scientific and medical community that substance use disorder is a complex, chronic, relapsing brain disease characterized by the continuing use of substances despite negative consequences.

Seeking to create an appearance of confusion, the Commonwealth asserts that there is no consensus in the scientific and medical community that substance use disorder is a chronic, relapsing brain disease, as described by, inter alia, (a) the unrebutted affidavit and evaluation submitted by Eldred's renowned experts, Dr. Sarah Wakeman (RA 32-49 [Wakeman curriculum vitae]),[9/] and Martha Kane, Ph.D. (RA 61-71 [Kane curriculum vitae]); (b) decades of peer-reviewed

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[9/]Dr. Wakeman is a member of Governor Baker's Opioid Addiction Working Group (RA 20), whose "key strategies" for addressing the opioid crisis include "acknowledg[ing] that punishment is not the appropriate response to a substance use disorder." Recommendations of the Opioid Working Group 8 (June 11, 2015).

research results collected, evaluated, and synthesized by the Surgeon General in his landmark 2016 report, Facing Addiction in America,[10] and; (c) the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.[11]

Bypassing all this, the Commonwealth asserts that the "'brain disease' model" of addiction is "unfounded," "uncertain," and "controversial," CB 6, 48, and urges the Court for this reason to discount all of the science presented by Eldred when assessing whether her use of fentanyl may appropriately be deemed wilful as a matter of law. In support of its characterizations of the state of the medical science, the Commonwealth relies on two articles by a law professor, Add. 11, 21, an opinion piece by a resident scholar at a conservative think

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[10]The Office of the Surgeon General is the federal office responsible for "provid[ing] Americans with the best scientific information available on how to improve their health and reduce the risk of illness and injury." https://www.surgeongeneral.gov/about/index.html.

[11]DSM-5 represents the cumulative expertise of thousands of "[a]dvisors and [c]ontributors," including psychiatrists and medical doctors, psychologists, social workers, and other mental health professionals, see DSM-5 at 897-916, and provides "the best available description of how mental disorders are expressed and can be recognized by trained clinicians" in the medical and psychiatric community. Moore v. Texas, 137 S. Ct. 1039, 1053 (2017), quoting DSM-5 at xli. See also Hall v. Florida, 134 S. Ct. 1986, 1995 (2014) (relying on DSM-5 to strike down Florida's definition of "intellectual disability" as incompatible with "established medical practice").

tank, Add. 15, and the ideas of a psychologist who thinks addiction is a "disorder of choice." CB 9, 10, 11, 19, 47. The authors of these publications are presumably the experts whom the Commonwealth would bring in to testify at the Daubert-Lanigan hearing it says is needed to resolve the "controvers[y]" allegedly underlying the science raised by Eldred's appeal.[12/]

The Commonwealth further asserts that Eldred embraces a "purely neurological view," CB 15, and that the record is inadequate because it supposedly rests upon "untested scientific assumptions." CB 19. These assertions are not supported by the record. Dr. Wakeman's and Dr. Kane's submissions detail the myriad

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[12/]The Commonwealth expresses concern that the science on which Eldred relies was not "subjected to adversarial argument or testing" below. CB 18. This is specious. It is true that the Commonwealth elected not to dispute Eldred's scientific evidence below. But even if it had, this Court may itself examine and evaluate the relevant peer-reviewed science in determining whether the probation violation proceedings in this case fairly considered and accounted for Eldred's substance use disorder. See and compare Roper v. Simmons, 543 U.S. 551, 616-617 (2005) (Scalia, J., dissenting) (disparaging majority opinion for relying on studies regarding adolescent brain development that were "[n]ever entered into evidence or tested in an adversarial proceeding" in concluding that death penalty unconstitutional as applied to juveniles); Commonwealth v. Gomes, 470 Mass. 352, 366-367 (2015) (looking to peer-reviewed studies regarding eyewitness identification collected and evaluated by SJC Study Group on Eyewitness Evidence in deciding whether there was "near consensus" in scientific community warranting changes to jury instructions regarding evaluation of eyewitness identification evidence).

biological, genetic, psychological, social, environmental, and behavioral components involved in the etiology and treatment of substance use disorder generally and in Eldred's case in particular (RA 21-23, 26, 50-60). Dr. Wakeman's affidavit -- unchallenged below -- details the diagnostic criteria for substance use disorder; changes in the brain of a person suffering from this condition; causes of drug addiction; appropriate standards of care; expected course of relapse, and; impact of criminal sanctions on the recovery process (RA 21-28 [Wakeman Aff. ¶¶8-69]). Dr. Wakeman's affidavit is in full accord with the medical consensus regarding the etiology, symptoms, and treatment of substance use disorder, beginning with its references to DSM-5 (RA 21, 24), see n.11, ante at 14, which states that "[a]n important characteristic of substance use disorders is an underlying change in brain circuits," DSM-5 at 483, resulting in "a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems." Id. at 487.

Applying both the science described in Dr. Wakeman's affidavit, as well as her own thirty years of clinical experience diagnosing and treating patients with substance use disorders, Dr. Kane's ten-page evaluation describes Eldred's psychiatric history;

explains that the recovery process for individuals like Eldred typically involves repeated relapse as the patient works towards sustained recovery; [redacted] and; details why the threat or imposition of criminal sanctions for relapse is clinically contraindicated in Eldred's case (RA 50-60).[13/]

The facts presented by Eldred's experts are consistent with the international consensus regarding the etiology and treatment of substance use disorder,

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[13/]The Commonwealth suggests that punishment works, referring repeatedly to "sanctions" found effective in some contingency management programs. CB 6, 7, 23. The suggestion is highly misleading. Contingency management uses positive reinforcement to encourage the desired behavior, here drug abstinence. If the desired behavior is exhibited, the patient receives a voucher, prize, or some other reinforcer. If the desired behavior is not exhibited, the patient does not earn the reinforcer. Thus, a patient who relapses will not receive a voucher or prize. What the Commonwealth refers to as "sanctions" is the non-receipt of a reinforcer for the relapsing patient. It can of course be disappointing not to receive a reward; that is why positive reinforcement works. But there is a world of difference between not getting a prize and going to jail, or even being threatened with jail, or scolded. In fact, as one of the articles on which the Commonwealth relies for its "sanctions work" argument states, see CB 7, "stress, social isolation, and reduced access to food, liquid, or opportunities for exercise all promote [alcohol and other drug] use in laboratory animals," and these findings "seem similar to those associated with excessive [alcohol and drug] use in humans." Higgins and Petry, Contingency Management: Incentives for Sobriety, 23 Alcohol Res. and Health 122, 123 (1999).

as described by the Surgeon General,[14] the National Health Institutes,[15] the American Medical Association,[16] the American Society of Addiction Medicine,[17] the American Psychiatric Association,[18] the World Health Organization,[19] and the United

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[14]See Facing Addiction at 2-1 (substance use disorders are "chronic illnesses [driven by changes in the brain and] characterized by clinically significant impairments in health, social function, and voluntary control over substance use").

[15]See Science of Addiction at 5 (defining "[a]ddiction" as "a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use, despite harmful consequences").

[16]See AMA Applauds Surgeon General Report on Substance Use Disorders (Nov. 16, 2016) (stating that Surgeon General's report "clearly explains how alcohol and certain other drugs affect people's brains and can develop into substance use disorders," and concluding that "addiction is a chronic disease and must be treated as such") (available at https://www.ama-assn.org/ama-applauds-surgeon-general-report-substance-use-disorders).

[17]See American Society of Addiction Medicine, Definition of Addiction (defining addiction as a "chronic disease of brain reward, motivation, memory and related circuitry," and noting that, "[l]ike other chronic diseases, addiction often involves cycles of relapse and remission") (available at https://www.asam.org/resources/definition-of-addiction).

[18]See American Psychiatric Association, What is Addiction? ("[a]ddiction is a complex condition, a brain disease that is manifested by compulsive substance use despite harmful consequences. . . . Changes in the brain's wiring are what cause people to have intense cravings for the drug and make it hard to stop using") (available at https://www.psychiatry.org/patients-families/addiction/what-is-addiction).

[19]See World Health Organization, Neuroscience of

(FOOTNOTE CONTINUED ON NEXT PAGE)

Nations,[20] all of which conclude on the basis of the science that substance use disorder is a chronic, complex brain disease and psychiatric condition that impairs voluntary control over substance use and is influenced by genetic, developmental, behavioral, social, and environmental factors.

Finally, the Commonwealth's assertion of a lack of consensus is belied by the public policy pronouncements of our executive branch leaders, who have unanimously recognized the disease of and treatment for drug addiction in the same medical terms relied upon by Eldred and established by the record. See nn. 1-4, ante at 1.[21]

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[19](FOOTNOTE CONTINUED FROM PREVIOUS PAGE) Psychoactive Substance Use and Dependence 14, 22 (2004) ("substance dependence is as much a disorder of the brain as any other neurological or psychiatric illness. . . . [T]he motivation to use psychoactive substances can be strongly activated by stimuli (environments, people, objects) associated with substance use, causing the desire or craving that can overwhelm people and cause relapse to substance use, even after long periods of abstinence").

[20]United Nations Office on Drugs and Crime, Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem 6 (2014) (unanimous statement of the 193 member nations of the United Nations "[r]ecogniz[ing] drug dependence as a complex, multifactorial health disorder characterized by a chronic and relapsing nature with social causes and consequences that can be prevented and treated through, inter alia, effective scientific evidence-based drug treatment").

[21]See also Massachusetts Department of Public Health, An Assessment of Opioid Related Deaths in Massachusetts (2013-2014) 12 (2016) (describing addiction as "a

(FOOTNOTE CONTINUED ON NEXT PAGE)

CONCLUSION

For these additional reasons, the Court should grant the requested relief.

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[21/](FOOTNOTE CONTINUED FROM PREVIOUS PAGE) complex chronic disease characterized by compulsive alcohol/drug use and/or behaviors, cravings, and continued use despite harmful consequences," and noting that, "[a]mong brain disorders, addiction incurs greater economic costs than Alzheimer's disease, stroke, Parkinson's disease, or head and neck injury") (available at http://www.mass.gov/eohhs/docs/dph/stop-addiction/dph-legislative-report-chapter-55-opioid-overdose-study-9-15-2016.pdf).

CERTIFICATE OF COMPLIANCE

I the undersigned, counsel to the defendant herein, certify that this reply brief complies with the rules of court that pertain to the filing of such briefs.

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