

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

CIVIL DIVISION

FOURTH JUDICIAL DISTRICT

Douglas Decker,

Plaintiff,

v.

Target Corporation,

Defendant.

Case No. _____

Type: MHRA Discrimination

COMPLAINT

(JURY TRIAL DEMANDED)

“Today’s generation must know about the struggles that came before, that got us here. Without knowledge of history, there is a lack of substance, dignity, and nobility that rightly belong to the victories we have won. I lost 300 friends, 29 out of 30 close friends. I delivered 90 eulogies in two years.”

–David Mixner¹

1. The HIV/AIDS crisis of the 1980–90’s was a grim era for gay men in America. The government dismissed the epidemic as a “gay plague” unworthy of care,² and so few people knew *of* the disease, much less its symptoms, methods of transmission, and possible treatments. As a result, infection overwhelmed the gay community and led to the slow and agonizing deaths of thousands of men. Today, the still-incurable ailment has killed more than 35 million people. Although belated public education helped raised awareness and spur medical advances, those early years were traumatic for anyone with a diagnosis. Douglas Decker was one such person. His 1986 diagnosis was seen as an almost-certain death sentence. It forced Mr. Decker to prepare for his own untimely end while the government and others cast him and those dying from the virus as pariahs. He

¹<https://www.thedailybeast.com/gay-activist-david-mixner-i-mercy-killed-8-people> (7/6/18).

²http://www.slate.com/blogs/outward/2015/12/01/reagan_press_secretaryLaughs_about_gay_people_dying_of_aids.html (7/6/18).

was denied healthcare services, lost his job, lost a long-term relationship, and lost his long-time home. Thankfully, he persisted. For 32 years, he has waged a daily battle with one of the world's most ruthless afflictions. He has watched as HIV/AIDS has spread across the globe and society has sluggishly grappled with its impact. While there has certainly been progress towards public understanding, stigma regarding HIV/AIDS persists—even in the most progressive of places, and among the most educated of people.

2. On September 22, 2015, Mr. Decker walked into a Target in St. Paul's Midway neighborhood. He had visited the store's pharmacy for more than a decade, and had recently retired from the company. Minutes later, in front of the pharmacy desk for all to see, a Target employee told him to leave. As if it was 1986 again, Target refused to vaccinate Mr. Decker for the flu simply because he is HIV-positive. The progress of 32 years was gone in an instant, and Mr. Decker was hit with a flood of painful memories.

There is no legitimate medical and/or legal justification for such discrimination, which is now illegal in every state in America. Yet, Target initially doubled (and tripled) down on its refusal to vaccinate Mr. Decker—twice stating that its employees were allowed to deny services for any reason they wished. Target's policies and practices allow for discrimination based on subjective and unfounded fears and stereotypes. Paradoxically, Target is a self-proclaimed champion of diversity and inclusion.³ As a national retailer with stores in every U.S. state, Target can—and must—do better. This suit seeks to hold the company responsible to both the law and its word, and to prevent this conduct from reoccurring.

³ <https://corporate.target.com/corporate-responsibility/diversity-inclusion> (7/6/18).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter, as Mr. Decker bases his claims on Minnesota state law—specifically Minn. Stat. § 363A et seq., commonly known as the Minnesota Human Rights Act (“MHRA”). Further, the parties are both residents of this County and State, and the unlawful practices alleged herein occurred within this State.

4. Venue in this Court is proper because the parties are both residents of this County and State, and Target is principally located in this County and State.

5. On August 19, 2016, Mr. Decker filed Complaint No. 2016v00659 with the United States Department of Justice, alleging that Target violated the Americans with Disabilities Act of 1990.⁴ The Department of Justice began investigating the complaint on August 25, 2016, but subsequently dropped its investigation after the election of U.S. President Donald Trump and the appointment of U.S. Attorney General Jeff Sessions.

6. On August 19, 2016, Mr. Decker also filed Charge of Discrimination No. 66878 with the Minnesota Department of Human Rights.⁵ Target failed to respond, and on September 30, 2016, the Department issued a warning pursuant to Danz v. Jones, 263 N.W.2d 395 (Minn. 1978) and Sigurdson v. Isanti County, 386 N.W.2d 715 (Minn. 1986).⁶ Target then responded, and the Department investigated the matter for more than a year. On November 6, 2017, the Department found that probable cause existed to believe that Target committed an unfair discriminatory practice.⁷ The Department briefly

⁴ Ex. 1 (U.S. Dept. of Justice letter to Attorney Joshua A. Newville).

⁵ Ex. 2 (MDHR Charge and Supplement).

⁶ Ex. 3 (MDHR letter to Target Corporation).

⁷ Ex. 4 (MDHR letter to Douglas Decker w/ Probable Cause Memorandum).

conciliated the matter on January 9, 2018; there was no resolution. Mr. Decker waited more than six months for the Department to decide whether it would file an enforcement action, but it did not issue a decision during that time. On June 29, 2018, Mr. Decker requested the Department close its file so that he could initiate such an action.⁸

7. Prior to the filing of this Complaint, Mr. Decker served a copy of it on the both the MN Dept. of Human Rights and the U.S. Dept. of Justice, along with invitations to intervene and assist in enforcing the state and federal laws that prohibit the sort of discrimination levied against HIV/AIDS victims in the 80's and 90's.⁹

PARTIES

8. Plaintiff Douglas Decker is an individual person and a seasonal resident of both Minnesota and Florida. Mr. Decker is a 64-year-old gay man who is also HIV-positive. Mr. Decker is a “person” and “individual,” with a “disability” as those terms are used by the MHRA.

9. Defendant Target Corporation is a Minnesota business corporation with a registered address and principal place of business of 1000 Nicollet Mall, Minneapolis, Minnesota 55403. Defendant is a “person,” “business,” “entity,” and “place of public accommodation” as those terms are used by the MHRA.

FURTHER FACTUAL ALLEGATIONS

10. As discussed above, Douglas Decker is a retired Target employee. He is a 64-year-old gay man and is HIV-positive. He incorporates the allegations and exhibits

⁸ Ex. 5 (Newville email to MDHR).

⁹ Ex. 6 (Newville email to MDHR and U.S. DOJ).

from each of the preceding paragraphs as if fully set forth herein.

11. On September 22, 2015, Mr. Decker visited Target Store No. 2229 (St. Paul Midway).

12. Mr. Decker went to the store's pharmacy, where he had been going for over a decade, and had a prescription refilled.

13. While there, Mr. Decker inquired about getting a flu vaccination, noting that the pharmacy was offering them.

14. The pharmacy technician asked Mr. Decker which specific type of flu vaccination he wanted.

15. Mr. Decker responded by informing the technician that he was uncertain which was best, and then told the technician his age and that he was HIV-positive.

16. What happened next shocks the conscience; and, particularly against the explained backdrop, is precisely the sort of conduct and harm that our anti-discrimination laws are meant to deter.

17. The technician physically backed away and told Mr. Decker that he would need to speak to the pharmacist. She spoke to the pharmacist and returned shortly thereafter.

18. Then, in front of the pharmacy desk and other guests, she told Mr. Decker that Target would not give him a flu shot and that he should go to his medical doctor or a clinic.¹⁰

¹⁰ While Target has since admitted that it refused to provide Mr. Decker a vaccination at the pharmacy, it later asserted that it directed Mr. Decker to a "minute-clinic" at the other side of its

19. Mr. Decker asked if the reason Target would not give him a vaccination was his HIV status, and the technician confirmed that it was.

20. Target, which prides itself on minority inclusion and awareness, should have known better. There is no medical or legal justification for the company's conduct. The Department of Justice and the Center for Disease Control have made it extremely clear to pharmacies, medical providers, and flu vaccination providers that denying an HIV-positive person services is both legally and medically wrong, absent extenuating circumstances not present in this situation.¹¹

21. Studies have shown that HIV-positive persons who are victims of the sort of discriminatory conduct suffered by Mr. Decker: 1) progress faster to an AIDS diagnosis and opportunistic infections; 2) are less likely to utilize critical healthcare services; and, 3) are more likely to suffer severe mental health conditions, such as Post Traumatic Stress Disorder.

22. Indeed, Mr. Decker himself has suffered emotional trauma as a result of Target's conduct. In that moment, and in the time since, Mr. Decker suffered a re-traumatization of the discrimination of the 1980's. A flood of painful memories overwhelmed him as he again felt the sting of stigmatization and rejection. While he had the experience and wherewithal to seek alternative healthcare, many might not.

store. Not only is that after-the-fact assertion a bald-faced lie (and thinly-veiled effort to save face), it is also legally irrelevant to its discriminatory denial of services.

¹¹ See, e.g., Ex. 7 (a collection of seven settlement agreements between the United States and private parties for HIV discrimination, including, most notably, a case against Rite-Aid Pharmacy for the same conduct present in this case).

23. Mr. Decker reached out to Target in an effort to address the matter. Rather than pursuing litigation or money, he had hoped to work with the company to ensure that he and others would not again be victim to such discriminatory treatment.

24. On September 25, 2015, he called Target's national Pharmacy/Clinic customer service phone line. He reached a representative and explained his experience.

25. After some research, the representative told him that—per Target policy—the pharmacist and staff in the store were complete justified in refusing to give him a flu shot. The representative told Mr. Decker that the decision of whether or not to provide or deny any product or service is left to each individual employee.

26. Mr. Decker was stunned. He asked the representative if she and Target were aware that denying that type of service based on his disability was illegal. The Target representative reconfirmed that Mr. Decker's situation fit within Target's policy.

27. Mr. Decker asked the representative if the conversation was being recorded, and she confirmed that it was. He said, "I respectfully request that this recording be preserved." The representative said that it would be, and gave him Case No. 06893065.

28. Mr. Decker called the customer service phone line again a few days later to confirm that the recording has been saved. The representative he spoke to did not have access to the information on the files of recordings, but after hearing Mr. Decker's story said, "Sir, I hate to inform you of this, but the [previous representative] was absolutely correct; this pharmacist was within his right by Target policy to refuse to give you the shot." She added, "I am sorry about your situation, but the pharmacist acted according to our policies."

29. Mr. Decker was horrified by Target's repeated insistence that the denial of services based on HIV status was within its policy. So, he retained the help of Lynn Mickelson, an attorney at the Minnesota AIDS Project (now known as, "JustUs Health"¹²). Ms. Mickelson repeatedly attempted to engage Target in substantive discussion regarding Mr. Decker's situation, but that also proved fruitless. First, Target ignored her altogether. Eventually, Target simply referred her to its claims-management company, Sedgewick. That company also swatted away Ms. Mickelson by stating that CVS had recently acquired Target's pharmacy business, rendering the issue moot.

30. Mr. Decker, who is extremely offended by Target's response, vehemently disagrees that the matter is moot. First, Target's subsequent sale of its pharmacies to CVS does not in any way erase its abhorrent and discriminatory treatment of Mr. Decker—nor the corresponding liability. Target operated pharmacies for many years, and its pharmacists were some of the most-educated and highest-paid employees in its stores. Target failed to adequately train them and to implement policies of nondiscrimination. The company must account for those failures and the discriminatory actions of Sept. 22, 2015. Second, whether Target owns them or not, it still has pharmacies in its stores, and therefore still has a responsibility to ensure that its employees, vendors, and in-store partners (pharmacies and otherwise) are abiding by state and federal antidiscrimination law. Third, in-store partners aside, Target itself is still a place of public accommodation, with stores all across the nation. As such, the opportunity is ripe for its employees to unlawfully discriminate against persons with HIV/AIDS in numerous non-pharmacy

¹² <https://www.justushealth.mn> (7/6/18).

contexts. Target must take accountability for its actions and step up to ensure that nothing like them will happen again.

31. Target's treatment of Mr. Decker is against the backdrop of a loud anti-gay animus that has resurfaced throughout the country amidst a continued quest for equal rights. It is imperative that we do not allow businesses in our state and nation—much less those who are self-proclaimed champions of diversity and inclusion—to return our places of public accommodation to the 1980's. Target must be held accountable for its conduct.

COUNT 1:

UNLAWFUL ACTS CONTRARY TO THE MINNESOTA HUMAN RIGHTS ACT

MINN. STAT. § 363A, et seq.

32. Mr. Decker incorporates the allegations set forth in each of the preceding and subsequent paragraphs as if fully set forth herein and throughout.

33. Minn. Stat. § 363A.11 makes it unlawful for a person or entity providing a place of public accommodation to:

- a. deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of disability;
- b. not to make reasonable accommodation to a person's known disabilities;
- c. subject an individual or class of individuals on the basis of a disability of that individual or class, directly or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to

participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity;

- d. afford an individual or class of individuals on the basis of the disability of that individual or class, directly or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations that are not equal to those afforded to other individuals;
- e. provide an individual or class of individuals, on the basis of a disability of that individual or class, directly or through contractual, licensing, or other arrangements, with goods, services, facilities, privileges, advantages, or accommodations that are different or separate from those provided to other individuals, unless the action is necessary to provide the individual or class of individuals with goods, services, facilities, privileges, advantages, or accommodations, or other opportunities that are as effective as those provided to others;
- f. fail to afford an individual with a disability the goods, services, facilities, privileges, advantages, and accommodations must be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual;
- g. deny an individual with a disability the opportunity to participate in the programs or activities that are not separate or different from those offered to other individuals;

- h. directly or through contractual or other arrangements, use standards or criteria and methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control.
- i. impose the application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations;
- j. fail to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to afford the goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations; and
- k. fail to take all necessary steps to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking the steps would fundamentally alter the nature of the goods, services, facilities, privileges,

advantages, or accommodations being offered and would result in an undue burden.

34. Minn. Stat. § 363A.14 makes it unlawful for a person or business to intentionally aid, abet, incite, compel, or coerce (and/or *attempt* to aid, abet, incite, compel, or coerce) a person to engage in any of the practices forbidden by the MHRA;

35. Minn. Stat. § 363A.17 makes it unlawful for a person or business to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person's disability, unless the refusal or discrimination is because of a legitimate business purpose.

36. Target violated each of the foregoing provisions of the Minnesota Human Rights Act when it engaged in the actions alleged above, .

37. As a direct and proximate result of Target's actions, Mr. Decker has been injured, suffering economic, emotional, and dignitary harm, and other damages.

38. Target, as a result of its unlawful behavior, is liable to Mr. Decker for the above-mentioned injuries, as well as treble and punitive damages.

39. Total damages suffered by Mr. Decker are to be further determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

Enter a judgment in favor of Plaintiff and against Defendant, as follows:

1. An order granting Plaintiff judgment against Defendant;
2. An order granting Plaintiff compensatory damages, as the jury determines;
3. An order granting Plaintiff punitive damages, as the jury determines;

4. An order granting Plaintiff treble damages;
5. An order granting Plaintiff liquidated damages;
6. An order granting Plaintiff injunctive and declaratory relief against Defendant, whereby the Defendant is temporarily and permanently enjoined and restrained from any further discrimination, reprisal or retaliation of Plaintiff or similarly situated persons with disabilities;
7. An order for Defendant to pay Plaintiff's costs, interest, and attorneys' fees;
8. An order for Defendant to pay any and all further relief available, such as any relief this Court may consider equitable or appropriate.

Plaintiff demands a jury trial.

Dated: July 11, 2018

MADIA LAW LLC

/s/Joshua A. Newville
Joshua A. Newville, MN # 395221
323 Washington Avenue N., #200
Minneapolis, Minnesota 55401
Ph: 612.349.2743 | F: 612.235.3357
newville@madialaw.com

JUSTUS HEALTH

****formerly MN AIDS Project***

Lynn Mickelson, MN # 151178
1000 University Avenue W.
St. Paul, Minnesota 55104
Ph: 612.373.2428 | F: 612.373.9178
lynn.mickelson@justushealth.mn

Attorneys for Plaintiff Douglas Decker

ACKNOWLEDGMENT

The undersigned hereby acknowledges that, pursuant to Minn. Stat. § 549.211, sanctions may be awarded to the parties against whom the allegations in the pleadings are asserted.

/s/Joshua A. Newville

Joshua A. Newville



U.S. Department of Justice

United States Attorney
District of Minnesota

600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Telephone: (612) 664-5600
Fax: (612) 664-5787

Joshua A. Newville
Madia Law LLC
333 Washington Avenue North, 345
Minneapolis, MN 55401

August 25, 2016

RE: Douglas Decker complaint against *Target Corporation*
USAO No. 2016v00659

Dear Mr. Newville

The United States Attorney's Office for the District of Minnesota is opening an investigation into your client Douglas Decker's complaint alleging that Target Corporation has violated the Americans with Disabilities Act of 1990 (ADA). Mr. Decker's complaint has been assigned the number shown above. Please include this number in any correspondence, and send us any additional information you have or obtain in the future that is relevant to Mr. Decker's complaint. Please also let us know the status of the similar complaint you have filed with the Minnesota Department of Human Rights and of any related private litigation you have commenced or will commence.

The U.S. Attorney's Office does not represent Mr. Decker as his attorney and it can conduct and resolve this matter without his approval. The U.S. Attorney's Office represents the interests of the United States and does not act as an attorney for private individuals. Mr. Decker is free to continue to retain his own counsel for this matter.

Please also be advised that we may need to disclose Mr. Decker's identity and other information provided during the course of our investigation but we will not do so unless it is necessary for our enforcement activities or otherwise necessary and allowed by law. To further the Department's enforcement activities, information we have about Mr. Decker may be given to appropriate federal, state, or local agencies. Additional disclosures of information may be made to members of Congress or their staff; volunteer student workers within the Department of Justice so that they may perform their duties; the news media; and the National Archives and Records Administration and General Services Administration to perform records management inspection functions in accordance with their statutory responsibilities. If, in light of this information, Mr. Decker wishes to withdraw his complaint, please notify me immediately.


Ex. 1

August 25, 2016
Page 2

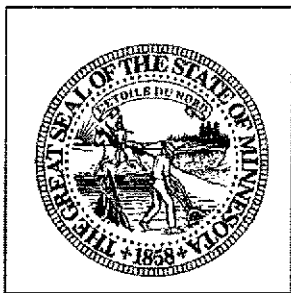
Please remember to keep us informed of any change in address and/or telephone number. If you or Mr. Decker have any questions or additional relevant information, you may either write to me at the address listed above or call me at (612) 664-5734.

Sincerely,

ANDREW M. LUGER
United States Attorney



By: Craig Baune
Assistant United States Attorney



CHARGE OF DISCRIMINATION

Department of Human Rights
Freeman Building
625 Robert St N
St. Paul, MN 55155
651/539-1100
Toll-Free 1-800/657-3704
TTY 651/296-1283

PREPARED BY LEGAL COUNSEL

DEPARTMENT OF HUMAN RIGHTS USE ONLY

Case Number:

Acknowledged by:

Date Filed:

Date Docketed:

Any person claiming to have been discriminated against because of race, color, creed, religion, national origin, sex, sexual orientation, marital status, disability, age, public assistance status or familial status, as provided for in Chapter §363A of the Minnesota Statutes in the areas of employment, real property, public accommodations, public services, education, credit or business contracts may file a charge within one year after the alleged discriminatory act with the Minnesota Department of Human Rights at the above address.

1. CHARGING PARTY:

Douglas Decker

9625 City Rd. 121
Wichita, FL 34785

2. RESPONDENT:

Target Corporation

1300 University Ave W
St Paul, MN
55104

3. The discrimination was because of:

Disability (HIV/AIDS)

4. The discrimination was in the area of:

Public Accommodations

5. Describe the discriminatory act, setting forth in statutory language the violation of Minnesota Statutes, Section §363A.

I am a 62-year-old HIV-positive gay man who made an unsuccessful attempt to use the services of the above-named Respondent in St. Paul, Minnesota. The Respondent's services are purportedly available to the general public.

On September 22, ²⁰¹⁵~~2005~~ I went to the Target Pharmacy located in the Midway Target store on University Avenue in St. Paul, MN (Store 2229). As I was picking up a prescription, I noticed a sign on the cash register advertising flu vaccinations. I requested a vaccination. The pharmacy tech asked me step down to the area of the counter where people submit new prescriptions. She asked if I wanted the regular flu shot or the quadrivalent type. My response was, "I don't know, I am 62 years old and am HIV positive, which do you recommend?" She told me she would need to speak with the pharmacist and immediately stepped away from me. She then spoke with the pharmacist, a gentleman who I was not on a first name basis with. When she came back to the window, she said, "we won't give you the shot here, you need to go to your doctor, or a clinic." I asked if the reason was because of my HIV status, and she said, "yes, we just aren't able to give you the shot here."

(OVER)

Ex. 2

On September 25, 2015, I called Respondent's national Pharmacy/Clinic customer service phone line. I reached a representative and explained my experience. After some research, the Representative told me that, per Respondent's policy, the pharmacist and staff in the store were completely justified in refusing to give me a flu shot. She said that the decision is left to each individual pharmacist to choose whether to provide, or whether to deny, any product or service in the pharmacy in which they work.

I was stunned. I asked the Representative if she and Respondent were aware that denying this type of service was illegal. She reconfirmed that this situation fit within Respondent's policy. I asked the Respondent if our conversation was being recorded, and she confirmed that it was. I told her "I respectfully request that this recording be preserved." She said it would. The case number of this complaint in Respondent's system is #06893065. I telephone back a couple of days later to try to confirm that the recording of this incident had been saved. The representative who I spoke to did not have access to information on the files of recordings, but after hearing the story said, "Sir, I hate to inform you of this, but [the previous Representative] was absolutely correct; this pharmacist was within his right by Target policy to refuse to give you the shot." She added, "I am sorry about your situation, but the pharmacist acted according to our policies."

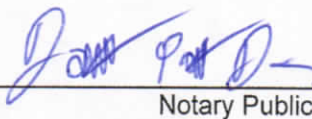
Based on Respondent's representations and actions, I believe that my disability was a factor—if not the sole factor—in Respondent's actions of denying me a flu shot.

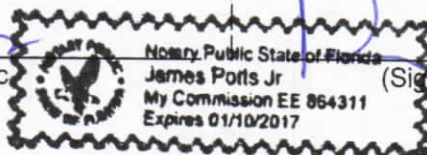
I therefore allege that the above-named Respondent has discriminated against me in the area of public accommodations on the basis of disability in violation of Minnesota Statutes, Section §363A. 11.

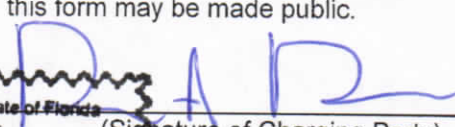
Subscribed and sworn to before me this

15 day of August 20 16

I swear or affirm that I have read this charge and that it is true to the best of my knowledge, information, and belief. I understand that the data contained on this form may be made public.


Notary Public




(Signature of Charging Party)

THIS FORM WAS COMPLETED BY:

Joshua A. Newville

395221

PRINTED NAME

ATTORNEY REGISTRATION #

333 Washington Ave. N. #345

ADDRESS

Minneapolis, MN 55401

612.349.2743 / 612.235.3357

CITY, STATE, ZIP

TELEPHONE NUMBER / FAX NUMBER


ATTORNEY SIGNATURE

Supplement to MDHR Public Accommodation Questionnaire

On September 22, 2105 I went to the Target Pharmacy located in the Midway Target store on University Avenue in St. Paul, MN (Store 2229). This pharmacy had been my pharmacy for several years and sold me 10's of thousands of dollars of medications a year. Due to my frequent visits to this store I was on a first name basis with a few of the Pharmacists and Pharmacy Techs in this store. This day I picked up an order of Lisinopril (blood pressure medication) and Cialis (a medication for erectile dysfunction) the co-pay for my total order was \$200.77. As I was paying I noticed a sign on the cash register encouraging pharmacy guests to get their flu shot there. I decided if the vaccine was there I just as well get it out of the way.

I requested a vaccination. The pharmacy tech asked me step down to the area of the counter where people submit new prescriptions. She asked if I wanted the regular flu shot or the quadrivalent type. My response was "I don't know, I am 62 years old and am HIV positive" which do you recommend. She stepped away from the window and consulted with the pharmacist on duty, a gentleman who I was not on a first name basis with. When she came back to the window she said we won't give you the shot here, you need to go to your doctor, or a clinic. I asked if the reason was because of my HIV status, and she said yes, we just aren't able to give you the shot here.

I tested positive in the spring of 1986. It was a time when this virus was still new and the panic surrounding it very wide-spread. In my first year of being positive due to sharing my status with others, I lost my job, a long-term relationship, my home of 8 years, and had an incident of denied dental treatment. All on top of dealing with the concept of almost certain death. It was a very rough time in my life.

I have seen psychologists off and on since 1986 as sometimes my status and the stigmatizing nature of the illness on life have been a challenge for me. In Feb. March of 2014 I spent 6 weeks at The Meadows of Wickenburg, one of the most highly recognized treatment centers in the US for intensive work on disorders related to trauma, my individualized treatment has special emphasis on shame, trauma and interpersonal relationships. The work done at this hospital surfaced problems causing life-limiting factors and traced much of their cause to trauma related to this time of my life when I tested positive and the fall-out of my status.

In the post-Ryan White years life of the HIV positive became a bit safer. From the harsh treatment of this young HIV positive boy stemmed the passage of needed legislation to protect us, the HIV positive from then wide-spread stigmatizing and discrimination.

This experience at my before safe Target environment brought a decade of discrimination and shame crashing back upon me. On September 25th I reached out to Target's national Pharmacy/Clinic customer service phone line. I reached a representative named Yvonne, I explained my experience and expected that my refusal of service at the Midway St. Paul Target would probably put up flags in Target's policy world to protect others who may be faced with the same refusal of service. However, I was very surprised that after a very brief moment of research Yvonne came back to me and said that the pharmacist in this store was completely justified according to Target Policy to refuse giving this flu shot. She said it is left to each individual pharmacist to choose to either provide, or deny any product or service in the pharmacy in which they work.

I was somewhat stunned and asked Yvonne if she and Target were aware that denying this type of service was illegal? She was sympathetic and kind, but reconfirmed that this situation fit within Target's policy. At this point I asked Yvonne if our conversation was being recorded, she confirmed that it was. I told her "I respectfully request that this recording be preserved" She said it would. The case number of this complaint in Target's system is case #06893065. I phoned back a couple of days later to try to confirm that the recording of this incident had been saved. The representative who I spoke to did not have access to information on the files of recordings, but after hearing the story said, sir, I hate to inform you of this but Yvonne was absolutely correct, this pharmacist was within his right by Target policy to refuse to give you the shot. I tried to point out to her that refusing to fill a prescription and refusal to provide medical services due to HIV status were very different things, but she said, I am sorry about your situation, but the pharmacist acted according to our policies.

This experience continued to haunt me, and I could imagine it happening to persons all across the US being "called out" and a Target pharmacy counter and refused treatment. So, I scheduled an appointment with Lynn Mickelson, an attorney with The Minnesota AIDS Project. Ms Mickelson sent letters to Target on my behalf asking for conversation about changing their policy. Target did not respond to Ms Mickelson or me until late January 2016 when we were both contacted by a representative of Sedgewick Claims Management, Target's risk insurance company. Lynn M. contacted them on my behalf and the gist of the conversation was that Target had sold all pharmacy operations to CVS so my complaint and requests were a moot point.

Douglas A. Dacker
D A D

8-15-16



Minnesota Department of
HUMAN RIGHTS

September 30, 2016

REF: 66878
Douglas Decker
v.
Target Corp Guest Relations

Target Corp Guest Relations
MS: TCW 2A-B PO Box 9350
Minneapolis, MN 55440
ATTN: Target Executive Offices ,

On August 19, 2016, the department sent you a letter notifying you that the above-referenced charge had been filed alleging Target Corp Guest Relations has committed an unfair discriminatory practice in violation of the Minnesota Human Rights Act (MHRA), Minnesota Statute §363A.

The MHRA requires a respondent to answer a charge within 20 days. An Answer is defined as a "written summary of respondent's position relative to the charge" and contains information sufficient to explain the respondent's defense. Minnesota Statute §363A.28, subd. 1; Minnesota Rules part 5000.0050, subp. 5. To date, the department has not received your Answer.

The Minnesota Supreme Court has stated that the party charged with unlawful discriminatory conduct must produce a legitimate, nondiscriminatory reason for its action. Danz vs. Jones, 263 N.W. 2d 395 (Minn. 1978); Sigurdson vs. Isanti County, §386 N.W. 2d 715 (Minn. 1986). You have not articulated a legitimate, nondiscriminatory reason in defense of the allegations and therefore have not met your burden. Your failure to submit answers to the charges may be deemed an admission of the allegations made by the charging party. If your Answer is not received within 10 days from the date of this letter the department will base its determination on information from other sources. If a determination is made that there is Probable Cause to believe discrimination occurred, the department will attempt to resolve by conciliation. The department will not consider an appeal based on information the respondent failed to provide prior to a determination being issued.

Sincerely,

Kevin M. Lindsey, Commissioner
Minnesota Department of Human Rights

SENT BY CERTIFIED MAIL

Enclosure(s): Respondent Service Packet

c: Douglas Decker
Joshua Newville

Ex. 3

AN EQUAL OPPORTUNITY EMPLOYER

DEPARTMENT OF HUMAN RIGHTS

November 6, 2017

REF: 66878
Douglas Decker
v.
Target Corp Guest Relations

Douglas Decker
9675 County Rd 121
Wildwood FL 34785

The Minnesota Department of Human Rights (Department) has completed its investigation of the above-referenced charge with a determination that Probable Cause exists to believe that an unfair discriminatory practice was committed.

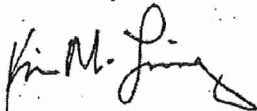
In accordance with Minnesota Rule 5000.0800 (Conciliation and Settlement), when the Commissioner has determined after investigation that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the Commissioner shall serve upon the respondent, by registered or certified mail, a written notice of such determination.

The Department will attempt to conciliate this matter for the purpose of attempting to eliminate the unfair discriminatory practice by informal means.

In the coming weeks, a representative from the Department will contact you in order to schedule a conciliation conference.

If you have any questions, you may contact Peg Exley at 651-539-1096 or Peg.Exley@state.mn.us.

Sincerely,



Kevin M. Lindsey, Commissioner
Minnesota Department of Human Rights

Enclosure(s)

c: Joshua A Newville

Ex. 4

AN EQUAL OPPORTUNITY EMPLOYER

Freeman Building • 625 Robert Street North • Saint Paul, MN 55155 • Tel 651.539.1100
MN Relay 711 or 1.800.627.3529 • Toll Free 1.800.657.3704 • Fax 651.296.9042 • mn.gov/mdhr

MEMORANDUM

The Minnesota Department of Human Rights has completed its investigation of the above-referenced matter. Based upon the results of that investigation, the Commissioner makes the following determination:

1. Evidence is sufficient to conclude there is **PROBABLE CAUSE** to credit the charging party's allegation of an unfair discriminatory practice by the respondent, as prohibited by Minn. Stat. §363A.11, subd. 1(a)(1).

Background

2. The charging party alleged being discriminated against in the area of public accommodations, on the basis of disability, as prohibited by the Minnesota Human Rights Act. The charging party alleged the respondent pharmacy refused to provide him an influenza immunization because of his disability.
3. The respondent argued that its policies prohibit denial of services based on the charging party's disability, and a pharmacist misinterpreted the respondent policies when he refused to provide the charging party an influenza immunization.

Facts

4. The charging party has a disability.
5. The respondent has a store on University Avenue in Saint Paul, Minnesota. This location, hereafter "Midway," had a pharmacy that offered a variety of immunizations, in addition to healthcare services offered at the store's walk-in clinic.
6. At that time, the pharmacy and walk-in clinic were both owned and operated by the respondent.
7. On September 22, 2015, the charging party went to the Midway pharmacy and inquired about the various types of influenza immunizations it offered.
8. The charging party disclosed his disability to a pharmacy technician and asked which immunization was medically recommended for individuals with his disability. In response to this disclosure, the pharmacy technician consulted with the pharmacist.
9. The pharmacist confirmed he told the charging party he would not provide him with the requested immunization because of his disability, due to an admitted misunderstanding of the pharmacy policy.
10. The pharmacist indicated that he mistakenly believed the respondent's policy was to not immunize individuals with the charging party's disability at the pharmacy, but rather refer them to the separate walk-clinic within the Midway store. No such policy existed.

11. The actual pharmacy policy stated:

[Respondent] pharmacists may vaccinate any guest meeting state requirements, including guests with chronic illnesses such as [the charging party's disability]...

12. Per the pharmacy's written policies, the charging party's disability does not preclude him from receiving an inactive influenza vaccination by the Midway pharmacy.
13. After the charging party learned he could not receive the requested vaccination at the pharmacy, the charging party was instructed to go to a different location for immunization.
14. There is conflicting evidence as to where the pharmacist directed the charging party. The pharmacist indicated he directed the charging party to the Midway walk-in clinic. The charging party denied he was directed to the walk-in clinic, but instead was directed to his primary care clinic, which is not within the Midway store.
15. The respondent did not provide any written policy indicating the existence of a referral relationship between the pharmacy and clinic with regards to vaccinations. The written pharmacy policies, however, outline some situations in which the pharmacist should refer the guest to his or her primary care physician.
16. The charging party ultimately did not go to the walk-in clinic for immunization, but rather left the Midway store.
17. The charging party stated he lodged a complaint with the respondent's national pharmacy customer service line that day, and again several days later.
18. On December 16, 2015, a third party completed its acquisition of all respondent pharmacies and clinic businesses.
19. Following these circumstances, the charging party and the respondent exchanged correspondence. In a March 10, 2016 letter to the charging party's counsel, the respondent wrote:

The pharmacist involved in this matter misunderstood the policy at [the respondent]. That policy specifically mandated that anyone who requests a flu shot, including folks who [share the charging party's disability], shall receive one. Unfortunately, the pharmacist failed to follow the policy in this case and instructed [the charging party] to have the flu shot at the [respondent] Clinic, also within the [respondent] store.

Discussion

20. The Minnesota Human Rights Act states: "It is an unfair discriminatory practice: to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of ... disability." Minn. Stat. § 363A.11, subd. 1(a)(1).

21. To establish a discriminatory denial of public accommodations under the Minnesota Human Rights Act, a charging party must establish: (1) membership in a protected class; (2) denial of services or accommodations; and (3) that the denial occurred because of the plaintiff's membership in the protected class. *Monson v. Rochester Athletic Club*, 759 N.W.2d 60, at 63 (Minn. Ct. App., 2009).
22. There is sufficient evidence to establish the charging party's disability motivated the denial of public accommodations at issue here.
23. The first *prima facie* element is not in dispute. The charging party has a disability.
24. The second *prima facie* element is also satisfied.
25. It is undisputed that although the Midway pharmacy administered a variety of immunizations, the respondent refused to provide a requested immunization to the charging party at its pharmacy on September 22, 2015.
26. The respondent argued it did not engage in a discriminatory denial of services because the charging party was directed to its walk-in clinic after it refused to vaccinate the charging party at its pharmacy. The charging party disputed that he was ever referred to the walk-in clinic.
27. A review of the respondent's written policies do not establish any referral relationship between the pharmacy and clinic with regards to vaccinations, while it does permit pharmacists to refer guests to a primary care physician in certain situations, such as pediatric immunizations.
28. Even if the Department were to assume that the pharmacist did refer the charging party to its clinic, this does not amount to "full and equal enjoyment" of the respondent services.
29. In general, the respondent offers its Midway guests access to vaccination at the pharmacy and the walk-in clinic. Guests at the Midway store may receive vaccination at either location.
30. Denying the charging party vaccination at the pharmacy amounts of denying the charging party full and equal access to a service provided by the respondent.
31. With regards to the third element, there is sufficient evidence to establish that the denial of the immunization occurred because of the charging party's disability.
32. First, the charging party was eligible to receive an influenza vaccine. The applicable pharmacy policy states:

[Respondent] pharmacists may vaccinate any guest meeting state requirements, **including guests with chronic illnesses such as [the charging party's disability]** and cancer, which do not have a contraindication provided on the Vaccine Registration Form for the given vaccine. **(emphasis added)**.
33. Per the pharmacy's written policies, the charging party's disability is not a contraindication for the vaccine at issue here.

34. Second, the respondent admitted its policy is to allow persons with the charging party's condition to receive the vaccination. A March 10, 2016 respondent letter stated:

That policy specifically mandated that anyone who requests a flu shot, including folks who [share the charging party's disability], shall receive one.

35. The respondent stated that pharmacist error was the reason the charging party was not provided a vaccine. In that same March 10, 2016 letter, the respondent also wrote:

The pharmacist involved in this matter misunderstood the policy at [the respondent]. ... Unfortunately, the pharmacist failed to follow the policy in this case.

36. The pharmacist acknowledged he was mistaken in his understanding of the respondent policy as it applied to persons who share the charging party's disability.

37. There is no evidence that the respondent provided the pharmacist with any written reprimand or advisory after his misinterpretation of the pharmacist policy resulting in a denial of services to the charging party.

38. Once a charging party establishes a *prima facie* case of discrimination, the evidentiary burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its actions. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

39. The respondent argued that its policies prohibit denial of services based on the charging party's disability, and a pharmacist merely misinterpreted the respondent policies when he refused to provide the charging party an influenza immunization.

40. An error committed by a pharmacist, in light of the clearly-documented and available respondent policy, is not a legitimate reason for the denial of the immunization at issue here.

41. Because the respondent did not meet its burden in articulating a legitimate, non-discriminatory reason for its actions, there is sufficient evidence to establish the charging party's disability motivated the denial of public accommodations at issue here.

Conclusion

42. On the basis of the foregoing analysis, the Department finds that there is **PROBABLE CAUSE** to find the respondent engaged in conduct that would constitute a violation of the Act.

MADIA LAW LLC

Sara Ion <seion@madialaw.com>

Decker v. Target (MDHR File No. 66878)1 message

Joshua A. Newville <joshuanewville@madialaw.com>

Fri, Jun 29, 2018 at 3:11 PM

To: peter.zuniga@state.mn.us, "Senske, Eric (MDHR)" <eric.senske@state.mn.us>

Cc: Lynn Mickelson <lynn.mickelson@mnaidproject.org>, Sara Ion <seion@madialaw.com>, Brian Wood <Brian.Wood@lindjensen.com>

Dear Mr. Senske and Mr. Zuniga,

On behalf of Complainant Douglas Decker, I request that the above-referenced charge be withdrawn so that Mr. Decker may privately take this matter to court and enforce Minnesota law prohibiting disability discrimination by businesses offering public accommodation.

Best,

Joshua A. Newville | Attorney.....
Madia Law LLC

323 Washington Ave. N. #200 Minneapolis, Minnesota 55401

Office: 612.349.2743 Cell: 651.210.7135 Fax: 612.235.3357

www.madialaw.com | joshuanewville@madialaw.com | vCardLegal Assistant: Sara Ion 612.349.2721 seion@madialaw.com
.....

Confidential Communication: This message is from a law firm and may contain information that is privileged, confidential, or prohibited from use or disclosure under applicable law. If you think you've received this message in error, please immediately delete it from your systems and records and promptly notify the sender.

Ex. 5

Decker v. Target Corporation (MDHR # 66878 and DOJ # 2016v00659)

1 message

Joshua A. Newville <joshuanewville@madialaw.com>

Wed, Jul 11, 2018 at 10:03 AM

To: Craig.Baune@usdoj.gov, Brett.Bugielski@usdoj.gov, peter.zuniga@state.mn.us, "Senske, Eric (MDHR)" <eric.senske@state.mn.us>, kevin.lindsey@state.mn.us

Cc: Lynn Mickelson <lynn.mickelson@mnaidsproject.org>, Sara Ion <seion@madialaw.com>, David Mayhall <dgmayhall@madialaw.com>, Doug Decker <ddmpls@yahoo.com>

Dear MDHR and D. Minn. DOJ:

Attached, please find a Hennepin County court complaint in the matter of Decker v. Target Corporation. I intend to serve Target Corporation with this later today.

On behalf of Mr. Decker, my office and JustUs Health (formerly the Minnesota AIDS Project), invite you to join us in enforcing the state and federal laws that prohibit this blatantly discriminatory conduct--which harks back to the height of the HIV/AIDS crisis of the 1980's and 1990's.

Our government ignored the crisis as gay men across America perished by the thousands. Our society treated people who were positively diagnosed with disease during those years--such as Mr. Decker--as pariahs. Mr. Decker himself was denied healthcare services during those years. He also lost his job, his home of more than eight years, and a long-term relationship.

It is incumbent upon all of us who enforce our anti-discrimination laws to ensure that our places of public accommodation do not return us to that era. Yet, contrary to its self-proclaimed status as a "champion of diversity and inclusion," Target has done just that. Furthermore, it is not taking its conduct in this matter seriously. I ask that you help them do so by intervening in this matter on behalf of your respective offices.

Sincerely,

Joshua A. Newville | Attorney

.....
Madia Law LLC

323 Washington Ave. N. #200 Minneapolis, Minnesota 55401

Office: 612.349.2743 Cell: 651.210.7135 Fax: 612.235.3357

www.madialaw.com | joshuanewville@madialaw.com | vCard

Legal Assistant: Sara Ion 612.349.2721 seion@madialaw.com

.....
Confidential Communication: This message is from a law firm and may contain information that is privileged, confidential, or prohibited from use or disclosure under applicable law. If you think you've received this message in error, please immediately delete it from your systems and records and promptly notify the sender.



2018.07.11. Decker v. Target. Complaint w:Exhibits.pdf
 12449K

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
RITE AID OF MICHIGAN, INC.,
UNDER THE AMERICANS WITH DISABILITIES ACT**

DJ# 202-38-56

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Rite Aid of Michigan, Inc. (“Rite Aid of Michigan”).
2. This matter is based upon a complaint filed with the United States Department of Justice that alleged that an on-duty pharmacist with Rite Aid of Michigan, Store #1609 discriminated against an individual with a disability in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181, *et seq.* Specifically, the Complainant alleged that an on-duty pharmacist at Rite Aid Pharmacy Store #1609 refused to administer a flu shot to him because he has HIV.
3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing title III, 28 C.F.R. pt. 36.
5. The United States has determined that Complainant, an individual who has HIV, has a physical impairment that substantially limits one or more major life activities, including the functions of his immune system, which is a major bodily function. Accordingly, the United

States has determined that he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.

6. Rite Aid Pharmacy Store #1609 is a pharmacy owned by Rite Aid of Michigan, Inc., that, among other things, administers flu shots. It is located at 1664 West Grand River Avenue, Okemos, Michigan, 48864.
7. Rite Aid of Michigan owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a). Rite Aid Pharmacy Store #1609 is a private entity within the meaning of 42 U.S.C. § 12181(6), and is considered a place of public accommodation because it affects commerce and is a service establishment within the meaning of 42 U.S.C. § 12181(7) and 28 C.F.R. § 36.104.
8. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a).
9. As a result of its investigation, the United States has determined that:
 - a. The Complainant entered Rite Aid Store #1609 on September 12, 2012, to receive a flu shot.
 - b. The on-duty pharmacist refused to administer the shot to the Complainant. Even though the pharmacist had surgical gloves available to her, the pharmacist stated that she needed “special gloves” to administer the flu shot to the Complainant because of his HIV and she stated that she did not have those gloves at the store.

The pharmacist asked the Complainant to return on another day after the store had ordered the “special gloves.” Rite Aid Pharmacy #1609 continued to administer flu shots to others on September 12, 2012.

- c. An employee from the Rite Aid Pharmacy #1609 called the Complainant the following day to schedule a flu shot for him at a time when the pharmacist who insisted on needing “special gloves” was not working. Unlike other customers, the Complainant

was asked to schedule an appointment at a specific time for his flu shot.

- d. The Complainant complained about this treatment to Rite Aid and decided to go to a different Rite Aid location to receive his flu shot, where he received his flu shot.

10. The United States has determined that Rite Aid of Michigan discriminated against the Complainant by denying him the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Rite Aid Pharmacy #1609, on the basis of disability, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Specifically, the United States has determined that the on-duty pharmacist's refusal to administer the flu shot to the Complainant and requiring him to schedule an appointment for a flu shot when such requirement is not imposed on others violated title III of the ADA.

ACTIONS TO BE TAKEN BY RITE AID OF MICHIGAN

11. Rite Aid of Michigan shall not discriminate against any individual on the basis of disability, including HIV, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Rite Aid Pharmacy Store #1609, in violation of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. pt. 36.
12. Within 90 days of the effective date of this Agreement, Rite Aid of Michigan shall draft and implement a policy stating that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV. Once it has been approved by counsel for the United States, this policy shall be conspicuously posted in the waiting area of Store #1609 and shall be made available to any customer at Store #1609 upon request.
13. Within 90 days of the effective date of this Agreement, and on the second anniversary of the effective date of this Agreement, Rite Aid of Michigan shall provide training on title III of the ADA to all employees with pharmacy-related responsibilities and any managers or supervisors at Store #1609, including training about HIV discrimination and the requirements of this Agreement. In addition, Rite Aid Pharmacy Store #1609 shall ensure that all new employees with pharmacy-related responsibilities and all new managers or supervisors receive the training as a component of new employee training and orientation within 30 days of being

hired.

14. All training manuals or written materials concerning Rite Aid Pharmacy Store #1609's policies and practices used in the training required in paragraph 13, or revised or created during the term of this Agreement, shall be consistent with the provisions of this Agreement, and approved in advance by counsel for the United States.
15. Rite Aid of Michigan will notify counsel for the United States when it has completed the actions described in paragraphs 12 and 14. Store #1609 shall create and maintain an attendance log that documents the name of each individual who attends the trainings required in paragraph 13, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within 10 days of any request for them.
16. Within 30 days of the effective date of this Agreement, Rite Aid of Michigan shall pay \$10,000 to the Complainant.
17. Within 30 days of the effective date of this Agreement, Rite Aid of Michigan shall pay a civil penalty in the amount of \$5,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.
18. Rite Aid of Michigan shall not discriminate or retaliate against any person because of his or her participation in this matter.
19. During the duration of this Agreement, within 30 days of receipt of any complaint related to discrimination on the basis of HIV at any store owned or operated by Rite Aid of Michigan, Rite Aid of Michigan shall send an electronic message to counsel for the United States with a copy of any such complaint or, if an oral complaint was made, a description of the complaint, and Rite Aid of Michigan's response.

OTHER PROVISIONS

20. In consideration for the Agreement set forth above, the United States will not institute any civil action based on the determinations made in paragraph 9, except as provided in paragraph 21 below.

21. The United States may review Rite Aid of Michigan's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Rite Aid of Michigan and the parties will attempt to resolve the concerns in good faith. The United States will give Rite Aid of Michigan 30 days from the date it notifies it of any breach of this Agreement to cure that breach. If the United States is unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that it provides notice to Rite Aid of Michigan, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA after the notice and cure periods have expired.
22. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
23. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Rite Aid of Michigan shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
24. This Agreement shall be binding on Rite Aid of Michigan, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that Rite Aid of Michigan seeks to sell, transfer, or assign all or part of its interest in Store #1609 during the term of this Agreement, as a condition of sale, transfer, or assignment, Rite Aid of Michigan shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
25. A signatory to this document in a representative capacity for Rite Aid of Michigan represents that he or she is authorized to bind Rite Aid of Michigan to this Agreement. Neither this Agreement nor compliance with its terms shall be construed as an admission by Rite Aid of Michigan of a violation of any statutory or common law provision or requirement.

26. This Agreement constitutes the entire agreement between the United States and Rite Aid of Michigan on the matters raised herein, and no other prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable. This Agreement can only be modified or amended by mutual written agreement of the parties.
27. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV. Nothing in this Agreement changes Rite Aid of Michigan's obligation to otherwise comply with the requirements of the ADA.
28. A copy of this Agreement or any information contained in it may be made available to any person by the United States.

EFFECTIVE DATE/TERMINATION DATE

29. The effective date of this Agreement is the date of the last signature below.
30. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

 /s/
Rite Aid of Michigan, Inc.
30 Hunter Lane
Camp Hill, PA 17011

JOCELYN SAMUELS
Acting Assistant Attorney General
EVE L. HILL
Deputy Assistant Attorney General
Civil Rights Division

 /s/ Jana Erickson
REBECCA B. BOND, Chief
SHEILA M. FORAN, Special Legal
Counsel
JANA L. ERICKSON, Deputy Chief
Disability Rights Section
Civil Rights Division

U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – NYA
Washington, D.C. 20530
(202) 307-0663

2/04/2014

Date

[Cases & Matters by ADA Title Coverage](#) | [Legal Documents by Type & Date](#) | [ADA Home Page](#)

February 5, 2014



**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
GENESIS HEALTHCARE SYSTEM
UNDER THE AMERICANS WITH DISABILITIES ACT**

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Genesis HealthCare System (“Genesis”).
2. This matter is based upon a complaint filed with the United States Department of Justice, in which a Complainant alleged that Genesis discriminated against her on the basis of her disability in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. Specifically, the Complainant alleges that Genesis refused to accept her as a new patient based on her HIV.
3. The parties have reached agreement that it is in the parties' best interests, and the United States believes that it is in the public interest, to resolve this dispute. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulation implementing title III, 28 C.F.R.

Part 36.

5. The Complainant, an individual with HIV, has a physical impairment that substantially limits one or more major life activities, including the functions of the immune system, which is a major bodily function. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
6. Genesis is an Ohio not-for-profit corporation, with its principal location at 2951 Maple Avenue, Zanesville, OH 43701. Genesis owns and operates an integrated health care system that includes a not-for-profit hospital that operates at two Zanesville sites, a network of more than 300 physicians (of which approximately 120 are employed by Genesis), and multiple outpatient health care centers throughout its six-county region of southeastern Ohio.
7. Among its approximately 47 locations in Ohio, Genesis has a medical facility that provides general family medicine services located at 1 East Main Street, Suite 200A, New Concord, OH 43762, known as the Genesis Health Center – New Concord or New Concord Family Practice (“New Concord”).
8. Genesis owns, leases (or leases to), or operates places of public accommodation within the meaning of 42 U.S.C. § 12182(a); is a private entity within the meaning of 42 U.S.C. § 12181(6); and is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7), because it affects commerce and operates a professional office of a health care provider. *See also* 28 C.F.R. § 36.104.
9. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

10. Ensuring that medical care providers do not discriminate on the basis of disability is an issue of general public importance. The United States is authorized to investigate alleged violations of title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises issues of general public importance. 42 U.S.C. § 12188(b).

11. As a result of its investigation, the United States has determined:

- a. In April 2013, Genesis employed one primary care physician at New Concord.
- b. On April 10, 2013, the Complainant called New Concord to obtain a primary care physician and spoke with the receptionist.
- c. During the initial call with the New Concord receptionist, the Complainant stated that she was currently taking medications for anxiety and HIV. The Complainant explained to the receptionist that the HIV medicine was prescribed by her HIV specialist.
- d. The Complainant was told by the receptionist that the receptionist did not believe that New Concord would accept her as a patient. The receptionist informed the Complainant that she would speak with the New Concord physician and would call her back.
- e. New Concord confirms that the receptionist recalls speaking with the New Concord physician about treating a patient with HIV, and that the physician indicated that she was not equipped to treat a patient with HIV and the patient should remain with her treating physician in Columbus, Ohio. New Concord further confirms that it is the physician's practice to refer any patient with HIV to an infectious disease specialist.
- f. In April 2013, the Complainant lived in Cambridge, Ohio. The commute between Cambridge and Columbus is approximately 80 miles. New Concord is

approximately 10 miles from the Complainant's Cambridge home.

- g. The Complainant did not receive a follow-up call after her initial conversation with the New Concord receptionist. On April 11, 2013, the Complainant called New Concord and the receptionist informed her that the physician would not accept her as a patient because of her HIV diagnosis. The Complainant reminded the receptionist that she only needed a general practitioner for medical care unrelated to HIV, and that she would continue to see an infectious disease practice for her HIV treatment. Nonetheless, the receptionist told the Complainant that the New Concord physician would not accept her as a patient because she had HIV.
- h. In evaluating the Complainant as a potential new patient, the New Concord physician never examined the Complainant, nor did she review any of the Complainant's medical records.
- i. After New Concord refused to accept her as a new patient in April 2013, the Complainant continued to search for a primary care physician for approximately five months, but was unable to find one who would accept her as a new patient in the local Cambridge area.
- j. In September 2013, the Complainant finally located a primary care physician at a medical practice over 25 miles away from her Cambridge, Ohio home. In addition to receiving treatment from this primary care physician, the Complainant continues to see her infectious disease doctor in Columbus for treatment of her HIV.
- k. During this five month period from April 2013, when New Concord refused to accept the Complainant as a new patient because of her HIV, until she located her current primary care physician in September 2013, the Complainant had to seek medical treatment at the local emergency room for non-emergent health issues because she did not have a primary care physician. Because the Complainant reports that she had to wait in the emergency room for several hours on some

occasions before seeing a doctor, she would only seek medical treatment from the emergency room when she was very ill or had immediate medical needs.

12. A healthcare provider cannot refer a patient with HIV or AIDS to another provider simply because the patient has HIV or AIDS. The referral must be based on the fact that the treatment the patient is seeking is outside the expertise of the provider, not the patient's HIV status alone. *See Questions and Answers: The Americans with Disabilities Act and Persons with HIV/AIDS*, available at http://www.ada.gov/aids/ada_q&a_aids.htm.
13. The United States has determined that Genesis discriminated against the Complainant by denying her the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Genesis on the basis of HIV, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Genesis disclaims any liability for any wrongdoing against Complainant and denies any wrongdoing against Complainant. Genesis agrees to enter into this Agreement solely in the interest of compromise.
14. The Complainant is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).

ACTIONS TO BE TAKEN BY GENESIS

15. Genesis, including its hospitals, employed physicians, outpatient health care centers, and other medical facilities in which Genesis has a controlling interest, will not discriminate against any individual on the basis of disability, including HIV or AIDS, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at any of its current or future locations, in violation of title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
16. For each person who is not accepted as a patient for any reason, and who (i) discloses to the Genesis provider a diagnosis of, (ii) is regarded by the Genesis provider as having, or (iii) is otherwise identified by the Genesis provider at or before the time of non-acceptance as potentially having HIV or AIDS, Genesis will create an electronic file and

will maintain the electronic file for at least two years from the date the final decision is made to not accept the person as a patient. Each file must include, at minimum: (i) the person's name if known or a unique identifier if the person's name is unknown (*i.e.*, date of call, time of call, person receiving call), (ii) the date of initial contact with the person, (iii) the date the final decision is made to not accept the person as a patient, (iv) the names and titles of all persons involved in the decision, (v) the reasons for the decision, and (vi) all written documentation supporting the reasons for the decision. The requirement does not apply if a person was not accepted as a patient because the Genesis provider was not accepting new patients at the time of the non-acceptance. Copies of such files shall be provided to counsel for the United States quarterly (*i.e.*, files created in calendar months January, February and March to be provided by April 30, and so on) throughout the duration of this Agreement and within 21 days of any written request for them.

17. For each person who is discharged from treatment for any reason other than the conclusion of treatment, and who (i) discloses to the Genesis provider a diagnosis of, (ii) is diagnosed by the Genesis provider as having, (iii) is regarded by the Genesis provider as having, or (iv) is otherwise identified by the Genesis provider at or before the time of discharge from treatment as potentially having HIV or AIDS, Genesis will create an electronic file and will maintain the electronic file for at least two years from the date the final decision is made to discharge the patient from treatment other than at the conclusion of the treatment. Each file must include, at minimum: (i) the patient's name if known or a unique identifier if the patient's name is unknown (*i.e.*, date of call, time of call, person receiving call), (ii) the date of initial contact with the patient, (iii) the date the final decision is made to discharge the patient, (iv) the names and titles of all persons involved in the decision, (v) the reasons for the decision, and (vi) all written documentation supporting the reasons for the decision. Copies of such files shall be provided to counsel for the United States quarterly (*i.e.*, files created in calendar months January, February and March to be provided by April 30, and so on) throughout the duration of this

Agreement and within 21 days of any written request for them.

18. Within 21 days of receipt of any written or oral complaint made to Genesis's Patient Experience department (*aka* customer service) or Corporate Integrity hotline related to any alleged violations of title III of the ADA arising from or relating to Genesis's (a) non-acceptance of a person as a patient for which Genesis must create a file under paragraph 16 above or (b) discharge of a patient from treatment other than at the conclusion of the treatment for which Genesis must create a file under paragraph 17 above, Genesis shall send written notification to counsel for the United States with a copy of any such written complaint (or, if an oral complaint was made in the manner described in this paragraph 18, a description of the oral complaint) and a complete copy of Genesis's response.
19. Within 30 days of the effective date of this Agreement, Genesis will submit a draft non-discrimination policy to the United States for its review and approval. The non-discrimination policy will state that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV or AIDS. The non-discrimination policy will also direct those with questions, concerns, or complaints about the provision of services to contact Genesis's Patient Experience department or Corporate Integrity hotline. Within 21 days of approval by the United States, Genesis will adopt and implement the non-discrimination policy, and Genesis will maintain and enforce the non-discrimination policy for the duration of this Agreement. Genesis will conspicuously post the non-discrimination policy in the reception area of each current and future Genesis hospital, outpatient health care center, and other medical facility in which Genesis has a controlling interest, and as a link on the company's main webpage or "homepage," currently located at <http://www.genesisishcs.org>, as well as on the homepage of any current or future Genesis website, for the duration of this Agreement.
20. Within 120 days of the date Genesis receives written approval by counsel for the United States under paragraph 23 of this Agreement, and in 2016 and 2017, Genesis will provide training on title III of the ADA to all Genesis employees and contractors who are

involved with admissions or treatment of patients, including training about HIV/AIDS and discrimination in general. Genesis is required to provide the training required by this Agreement only to such contractors who on the effective date of this Agreement are under a contract by which Genesis may require compliance with this training obligation. The format of such training may be provided by electronic means and must include an interactive component.

21. In addition, Genesis will ensure that all new employees and contractors who are involved with admissions or treatment of patients receive the training referenced in paragraph 20 as a component of new employee training and orientation through the duration of this Agreement. Genesis is required to provide the training required by this Agreement only to such contractors who on the effective date of this Agreement are under a contract by which Genesis may require compliance with this training obligation. Genesis will ensure that any new contracts executed with new contractors while this Agreement is in effect shall give Genesis authority to require all new contractors to comply with this training obligation. Genesis shall provide the training to such new employees and contractors within 45 days of their start date. The format of such training may be provided by electronic means and must include an interactive component.
22. Employees whose duties will involve the record-keeping provisions set forth in paragraphs 16 and 17 shall be trained on how to implement those provisions.
23. All training manuals or written or electronic materials dealing with Genesis's policies and practices used in the trainings required in paragraphs 20 and 21 or created or substantively revised after the effective date of this Agreement shall be consistent with the provisions of this Agreement, and approved in advance by counsel for the United States.
24. Genesis shall create and maintain a log that documents the name of each individual who participates in the trainings required in paragraphs 20 and 21, his or her title, and the date

he or she participated in the training(s). This log may be kept in electronic format.

Copies of such log shall be provided to the United States within 21 days of any written request for it.

25. Within the later of 30 days of the effective date of this Agreement and the date the Complainant provides Genesis with an IRS Form W-9, Genesis will pay \$25,000 to the Complainant to compensate her for the alleged harm she has endured (including, but not limited to, emotional distress, pain, and suffering) as a result of Genesis's failure to accept her as a new patient. Genesis will issue an IRS Form 1099 to Complainant for this payment. Genesis shall provide written notification to counsel for the United States, including a copy of the check, when it has completed the actions described in this paragraph.
26. Within 30 days of the effective date of this Agreement, Genesis will pay a civil penalty in the amount of \$9,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.
27. Genesis will notify the United States in writing when it has completed the actions described in paragraphs 19–22. This notification need only be provided when all of Genesis's hospitals, employed physicians, outpatient health care centers, and other medical facilities in which Genesis has a controlling interest, have completed the action required in the relevant paragraph(s). Notification of Genesis's completion of the training described in paragraph 21 will be provided to the United States on an annual basis within 60 days of the end of each calendar year covered by this Agreement. If any issues arise that affect the anticipated completion dates set forth in paragraphs 16-26, Genesis will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

OTHER PROVISIONS

28. In consideration for the Agreement set forth above, the United States will close its

investigation of DJ # 202-58-112 and will not institute a civil action at this time alleging discrimination based on the findings set forth in paragraph 11. However, the United States may review Genesis's compliance with this Agreement or title III of the ADA at any time. If the United States believes that title III of the ADA, this Agreement, or any portion of it has been violated, it may institute a civil action in the appropriate U.S. District Court to enforce this Agreement and/or title III of the ADA.

29. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provision of this Agreement.
30. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Genesis shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
31. This Agreement is binding on Genesis, including all principals, agents, executors, administrators, representatives, employees, and beneficiaries. In the event that Genesis seeks to sell, transfer, or assign substantially all of its assets or a controlling membership position in Genesis during the term of this Agreement, then, as a condition of such sale, transfer, or assignment, Genesis will obtain the written agreement of the successor, buyer, transferee, or assignee to all obligations remaining under this Agreement for the remaining term of this Agreement.
32. The signatory for Genesis represents that he or she is authorized to bind Genesis to this Agreement.
33. This Agreement constitutes the entire agreement between the United States and Genesis on the matters raised herein, and no prior or contemporaneous statement, promise, or

agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.

34. This Agreement does not constitute a finding by the United States that Genesis is in full compliance with the ADA. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV or AIDS. Nothing in this Agreement relieves Genesis of its obligation to fully comply with the requirements of the ADA.
35. The paragraph headings in this Agreement are for convenience only and will not be deemed to affect in any way the language or meaning of the provisions to which they refer.
36. Genesis shall not discriminate or retaliate against any person because of his or her participation in this matter.

EFFECTIVE DATE/TERMINATION DATE

37. The effective date of this Agreement is the date of the last signature below.
38. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

/s/ Matthew Perry
MATTHEW PERRY
President and CEO
Genesis Healthcare System
800 Forest Avenue
Zanesville, OH 43701

VANITA GUPTA
Acting Assistant Attorney General
EVE L. HILL
Deputy Assistant Attorney General
Civil Rights Division
REBECCA B. BOND, Chief
SHEILA M. FORAN, Special Legal

(740) 454-4638

Counsel

JANA L. ERICKSON, Deputy Chief

01/08/15

Date

/s/ Megan E. Schuller

MEGAN E. SCHULLER, Trial Attorney

DAVID W. KNIGHT, Trial Attorney

Disability Rights Section

Civil Rights Division

U.S. Department of Justice

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

(202) 307-0663

01/15/15

Date

[Cases & Matters by ADA Title Coverage](#) | [Legal Documents by Type & Date](#) | [ADA Home](#)
[Page](#)

January 15, 2015

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
WOODLAWN FAMILY DENTISTRY
UNDER THE AMERICANS WITH DISABILITIES ACT**

DJ# 202-79-262

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Woodlawn Family Dentistry.
2. This matter was initiated by and is based upon a complaint filed with the United States Department of Justice that alleges that Woodlawn Family Dentistry discriminated against an individual with a disability in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181, *et seq.* Specifically, the complainant alleges that Woodlawn Family Dentistry failed to treat him equally by requiring that he schedule all his future appointments for the last appointment of the day because he is a person with HIV.
3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulation implementing title III, 28 C.F.R.

Part 36.

5. The complainant, an individual who has HIV, has a physical impairment that substantially limits one or more major life activities, including the operation of his immune system, which is a major bodily function. Accordingly, he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
6. Woodlawn Family Dentistry is a dental office located at 9492 Richmond Highway, Wood Lawn Garden, # 104, Alexandria, Virginia 22309. Dr. Monique H. Nguyen is the sole practitioner and owner of Woodlawn Family Dentistry.
7. Dr. Nguyen owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a). Woodlawn Family Dentistry is a private entity within the meaning of 42 U.S.C. § 12181(6), and is considered a place of public accommodation because it affects commerce and is a service establishment within the meaning of 42 U.S.C. § 12181(7).
8. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a).
10. As a result of its investigation, the United States has determined that:
 - a. On December 1, 2011, the complainant went to Woodlawn Family Dentistry for a routine teeth cleaning. Because it was his first visit to the dental practice, the complainant completed the required paperwork, and in doing so, disclosed that he has HIV.
 - b. Shortly after, the hygienist brought the complainant to the dental chair and took x-rays of the complainant's teeth. After the complainant was x-rayed, the dentist entered the room with the complainant's completed paperwork and inquired about

the information contained in the paperwork, including the complainant's HIV. The dentist informed the complainant that all future appointments must be scheduled as the last appointment of the day because the complainant has HIV.

- c. The dentist subsequently performed a dental examination of the complainant. After informing the complainant of a potential developing cavity and some minor gum recession, the dentist provided the complainant with a referral to a specialist to treat his gum recession. The dentist then exited the room, and the hygienist informed the complainant that the examination was finished.
 - d. The complainant then approached the receptionist and was given an appointment card for June 7, 2012 at 4:30 p.m., which was the last appointment of the day.
 - e. The dental practice allows patients who do not have HIV to schedule appointments for times of their choosing without any restrictions so long as the desired appointment time does not conflict with an existing appointment.
11. The United States has determined that Woodlawn Family Dentistry discriminated against the complainant on the basis of disability when it failed to offer the complainant the same options and availability in scheduling future appointments as offered to other patients, in violation of 42 U.S.C. § 12182 and 28 C.F.R. §36.201.
12. The United States has further determined that Woodlawn Family Dentistry cannot show that treating the complainant at any time during normal business hours would have posed a direct threat to the health or safety of others. 42 U.S.C. § 12182(b)(3).
13. Woodlawn Family Dentistry and Dr. Nguyen specifically deny the allegations in paragraph 10(b) above and contend that the complainant was offered, but not required to accept, the last appointment of the day on his next visit as an accommodation to the complainant and in consideration of his condition. Woodlawn Family Dentistry and Dr. Nguyen do not agree with the United States' findings and deny that they discriminated against the

complainant in violation of the ADA or any other provisions of law.

ACTIONS TO BE TAKEN BY WOODLAWN FAMILY DENTISTRY

14. Woodlawn Family Dentistry shall not discriminate against any individual on the basis of disability, including HIV, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Woodlawn Family Dentistry in violation of the ADA, 42 U.S.C. § 12181, *et seq.*, and the relevant implementing regulation, 28 C.F.R. Part 36. Woodlawn Family Dentistry shall not discriminate against people with disabilities in identifying or scheduling future appointment times in violation of title III.
15. Within 30 days of the effective date of this Agreement, Woodlawn Family Dentistry shall draft and implement a policy stating that it does not discriminate in the provision of goods, services, privileges, advantages, or accommodations to persons with disabilities, including persons who have HIV. Once it has been approved by the United States, this policy statement shall be conspicuously posted in the waiting area of the Woodlawn Family Dentistry for the duration of this Agreement.
16. Within 60 days of the effective date of this Agreement, and every year thereafter for the duration of this Agreement, Woodlawn Family Dentistry shall conduct training on title III of the ADA to all Woodlawn Family Dentistry employees. The training shall also provide information on HIV discrimination under the ADA and on the policy statement adopted under paragraph 15.
17. All training manuals or written materials concerning the training required in paragraph 16, or revised or created after the effective date of this Agreement, shall be consistent with the provisions of this Agreement, and approved in advance by the United States.
18. Woodlawn Family Dentistry will notify the United States when it has completed the actions described in paragraphs 15 and 16.

19. Every 6 months for the first two years of this Agreement, Woodlawn Family Dentistry shall notify the United States in writing of any new or existing patients with HIV (via unique identifier, which identifier for each individual shall be consistent throughout all reports required under this Agreement), what services they were provided during the preceding 6 months (including the dates and times of services), and any scheduled appointments in the future (including the dates and times of the appointments). Woodlawn Family Dentistry shall also inform the United States of the details of any HIV-related complaint within 24 hours of receiving such complaint orally or in writing.
20. Within 30 days of receiving the attached release, signed by the complainant in favor of Woodlawn Family Dentistry and Monique Nguyen, D.D.S., Woodlawn Family Dentistry shall pay a total of \$7,000.00 to the complainant. A copy of such payment shall be sent to the United States within 10 days of issuance.
21. Within 30 days of the effective date of this Agreement, Woodlawn Family Dentistry shall pay a civil penalty in the amount of \$3,000.00 as authorized by 42 U.S.C. §12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.

OTHER PROVISIONS

22. In consideration for the Agreement set forth above, the United States will not institute any civil action alleging discrimination based on the allegations raised in DJ #202-79-262, except as provided in Paragraph 23, below.
23. During the term of this Agreement, the United States may review Woodlawn Family Dentistry's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Woodlawn Family Dentistry and the parties will attempt to resolve the concerns in good faith. The United States will provide 30 days from the date it notifies Woodlawn Family Dentistry of any breach of this Agreement to cure that breach. If the

United States is unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that it provides notice to Woodlawn Family Dentistry, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA.

24. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
25. A signatory to this document in a representative capacity for Woodlawn Family Dentistry represents that he or she is authorized to bind Woodlawn Family Dentistry to this Agreement.
26. This Agreement constitutes the entire agreement between the United States and Woodlawn Family Dentistry regarding the matters raised herein, and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable.
27. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement. Nothing in this Agreement changes Woodlawn Family Dentistry's obligation to otherwise comply with the requirements of the ADA.
28. This Agreement shall be binding on the Woodlawn Family Dentistry, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that the Woodlawn Family Dentistry seeks to sell, transfer, or assign all or part of its interest during the term of this Agreement, as a condition of sale, transfer, or assignment, the Woodlawn Family Dentistry shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.

29. All documents or communications to be provided to the United States and Woodlawn Family Dentistry pursuant to this Agreement shall be in writing and delivered by email or overnight mail to the following persons and addresses (or such other person as may be designated in writing):

Alberto Ruisanchez
Disability Rights Section
U.S. Department of Justice
1425 New York Avenue, NW
Suite 4039
Washington, DC 20005
(202) 305-1291
alberto.ruisanchez@usdoj.gov

Monique Nguyen, D.D.S.
Woodlawn Family Dentistry
8492 Richmond Highway
Wood Lawn Garden, # 104
Alexandria, VA 22309
Telephone: (703) 780-3482
Facsimile: (703) 799-9577

EFFECTIVE DATE/TERMINATION DATE

30. The effective date of this Agreement is the date of the last signature below.
31. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

THOMAS E. PEREZ

/s/Monique Nguyen
MONIQUE NGUYEN, D.D.S.
Woodlawn Family Dentistry
9492 Richmond Highway
Wood Lawn Garden, #104
Alexandria, VA 22309

February 6, 2013

Assistant Attorney General
EVE L. HILL
Senior Counselor to the
Assistant Attorney General

/s/ Alberto Ruisanchez
GREGORY B. FRIEL, Acting Chief
ALBERTO RUISANCHEZ, Deputy
Chief
KATHLEEN P. WOLFE, Special
Litigation Counsel
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 307-0663

February 12, 2013

[Barrier-Free Health Care Initiative](#) | [ADA Home Page](#)

February 12, 2013

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CASTLEWOOD TREATMENT CENTER, LLC
UNDER THE AMERICANS WITH DISABILITIES ACT**

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and the Castlewood Treatment Center, LLC.
2. This matter is based upon a complaint filed by Susan Gibson with the United States Department of Justice that alleged that Castlewood discriminated against her, an individual with a disability, in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181, *et seq.* Specifically, Ms. Gibson alleged that Castlewood refused to admit her on the basis of HIV.
3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing title III, 28 C.F.R. Part 36.
5. Ms. Gibson, an individual who has HIV, has a physical impairment that substantially limits one or more major life activities, including the functions of her immune system, which is a

major bodily function. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.

6. Castlewood is a Missouri-based facility that treats eating disorders, with its principal place of business at 800 Holland Road, Ballwin, Missouri, 63021, outside of St. Louis.

Castlewood includes a total of two facilities, with the second at 1260 St. Paul Road, Ballwin, Missouri, 63021.

7. Castlewood owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a). Castlewood is a private entity within the meaning of 42 U.S.C. § 12181(6), and is considered a place of public accommodation because it affects commerce and is a service establishment within the meaning of 42 U.S.C. § 12181(7). *See also* 28 C.F.R. § 36.104.
8. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a).
9. As a result of its investigation, the United States has determined that:
 - a. Ms. Gibson first contacted Castlewood on November 23, 2010, regarding enrollment in its treatment program. At the time Ms. Gibson sought admission into Castlewood's treatment program, Castlewood claims there was a waiting list for admission to the program, causing up to a three month wait before a client was admitted.
 - b. On January 7, 2011, when the Castlewood Vice President of Finance became aware that Ms. Gibson has HIV, he immediately brought this to the attention of medical and nursing staff who stated that Castlewood could care for Ms. Gibson.
 - c. Castlewood did not proceed with steps to admit Ms. Gibson between January 7 and

February 22, 2011. The Castlewood Vice President of Finance delayed negotiating a payment agreement for the Complainant because he believed that there was a question regarding treating Ms. Gibson due to her HIV.

- d. Castlewood then informed Ms. Gibson that she would be admitted and sent her the intake paperwork. However, beginning March 7, 2011, the Executive Director instructed her staff to delay Ms. Gibson's admission so that Ms. Gibson would go somewhere else, stating: "We hope to delay it long enough so she will go somewhere else." The Executive Director further instructed the Intake Coordinator to "be vague" when communicating with Ms. Gibson because "we want her to go somewhere else."
- e. Castlewood's Intake Coordinator was in frequent telephone and e-mail contact with Ms. Gibson between February 23 and April 18, 2011. These contacts identified the payment agreement as the cause of the delay and encouraged Ms. Gibson to seek treatment elsewhere, while simultaneously assuring her that she would be admitted as soon as her payment agreement was resolved.
- f. Castlewood delayed Ms. Gibson's enrollment by four months between January 7 and May 5, 2011, before staff finally informed Ms. Gibson that Castlewood would not take her "due to her HIV," and that it is Castlewood's policy not to "accept clients with high risk communicable diseases." Castlewood again provided Ms. Gibson with referrals to other facilities.
- g. When counsel for Ms. Gibson sent Castlewood a letter demanding that Ms. Gibson be offered a placement in its treatment program, Castlewood granted her admission, but required that all blood drawn from Ms. Gibson, including weekly lab tests required for her treatment, be done at an outside hospital instead of on-site at Castlewood as is the general practice for all other Castlewood patients.
- h. On July 22, 2011, Castlewood offered Ms. Gibson "immediate admission" into

Castlewood's treatment program without the requirement that she travel to a hospital to have her blood drawn. Ms. Gibson was required to accept this offer within five days. Ms. Gibson declined to accept Castlewood's offer of admission.

- i. On August 10, 2011, Ms. Gibson was admitted to a different treatment center in California.
 - j. Castlewood's delays in offering treatment to Ms. Gibson, Castlewood's stated policy of not accepting clients with high risk communicable diseases, and Castlewood's initial requirement that all blood drawn from Ms. Gibson be done at an outside hospital factored into Ms. Gibson's choosing to receive treatment for her eating disorder at a different treatment center.
 - k. Castlewood's failure to treat Ms. Gibson delayed her receiving appropriate treatment for her eating disorder by up to seven months. This delay caused Ms. Gibson's health to worsen. Ms. Gibson reports that this delay caused her rapid weight loss, which put her at high risk for a heart attack. She expressed to Castlewood that she felt like she was dying. Ms. Gibson reports that, as a result of Castlewood's actions, she suffered stress, anxiety, depression, and general emotional distress.
10. The United States has determined that Castlewood discriminated against Ms. Gibson by denying her the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Castlewood, on the basis of disability, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201.
11. Castlewood denies that it discriminated against Ms. Gibson and disputes Ms. Gibson's alleged damages. Further, Castlewood alleges that the July 22, 2011, offer of admission would have entitled Ms. Gibson to full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations offered by Castlewood. Castlewood's Executive Director states she believed that Ms. Gibson would receive more appropriate care in an in-patient facility due to her HIV.

ACTIONS TO BE TAKEN BY CASTLEWOOD

12. Castlewood shall not discriminate against any individual on the basis of disability, including HIV, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Castlewood in violation of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
13. Within 30 days of the effective date of this Agreement, Castlewood will draft and implement a policy stating that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV. Once it has been approved by counsel for the United States, this policy statement will be conspicuously posted in the waiting area of all its facilities and with a link on the main company webpage, currently hosted at <http://www.castlewoodtc.com>, for the duration of this Agreement.
14. Within 60 days of the effective date of this Agreement, and annually for the duration of this Agreement, Castlewood will provide training on title III of the ADA to all Castlewood employees and contractors who are involved with admissions or treatment of patients, including training about HIV discrimination. In addition, Castlewood will ensure that all new employees and contractors who are involved with admissions or treatment of patients receive the training as a component of new employee training and orientation.
15. All training manuals or written materials concerning Castlewood's policies and practices used in the training required in paragraph 14, or revised or created during the effective dates of this Agreement, shall be consistent with the provisions of this Agreement, and approved in advance by counsel for the United States.
16. Castlewood will notify counsel for the United States when it has completed the actions described in paragraphs 13, 14, and 15. Castlewood shall create and maintain an attendance log that documents the name of each individual who attends the trainings, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within 10 days of any request for them.

17. Within 30 days of the effective date of this Agreement, and in exchange for a Release of Claims signed by Ms. Gibson, Castlewood shall pay \$115,000 to Ms. Gibson, as authorized by 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2).
18. Within 30 days of the effective date of this Agreement, Castlewood shall pay a civil penalty in the amount of \$25,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.
19. Castlewood shall not discriminate or retaliate against any person because of his or her participation in this matter.
20. Within seven days of receipt of any complaint related to HIV or communicable diseases, Castlewood shall send an electronic message to counsel for the United States with a copy of any such complaint or, if an oral complaint was made, a description of the complaint, and Castlewood's response.

OTHER PROVISIONS

21. In consideration for the Agreement set forth above, the United States will not institute any civil action alleging discrimination under the ADA based on the allegations raised in DJ # 202-42-139, except as provided in paragraph 20 below.
22. The United States may review Castlewood's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Castlewood and the parties will attempt to resolve the concerns in good faith. The United States will give Castlewood 30 days from the date it notifies Castlewood of any breach of this Agreement to cure that breach. If the United States is unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that it provides notice to Castlewood, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA against the party or parties failing to comply with this Agreement after the notice and cure

periods have expired.

23. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
24. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Castlewood shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
25. This Agreement shall be binding on Castlewood, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that Castlewood seeks to sell, transfer, or assign all or part of its interest during the term of this Agreement, as a condition of sale, transfer, or assignment, Castlewood shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
26. A signatory to this document in a representative capacity for Castlewood represents that he or she is authorized to bind Castlewood to this Agreement.
27. This Agreement constitutes the entire agreement between the United States and Castlewood on the matters raised herein, and no other prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable. This Agreement can only be modified or amended by mutual written agreement of the parties.

28. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV. Nothing in this Agreement changes Castlewood's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

29. The effective date of this Agreement is the date of the last signature below.

30. The duration of this Agreement will be four years from the effective date.

AGREED AND CONSENTED TO:

/s/ Nancy Albus
NANCY ALBUS
Executive Director
Castlewood Treatment Center
800 Holland Road
Ballwin, Missouri 63021
(636) 386-6611

1 -29-2013
Date

THOMAS E. PEREZ
Assistant Attorney General
EVE L. HILL
Senior Counselor to the Assistant Attorney
General
Civil Rights Division
GREGORY B. FRIEL, Acting Chief
SHEILA M. FORAN, Special Legal
Counsel
ALBERTO RUISANCHEZ, Deputy Chief

/s/ David W. Knight
DAVID W. KNIGHT, Trial Attorney

/s/ Megan E. Schuller
MEGAN E. SCHULLER, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. "NYA

Washington, D.C. 20530
(202) 307-0663

2-6-2013

Date

[Barrier-Free Health Care Initiative](#) | [ADA Home Page](#)

February 6, 2013

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE FAYETTEVILLE PAIN CENTER
UNDER THE AMERICANS WITH DISABILITIES ACT**

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and the Fayetteville Pain Center.
2. This matter is based upon a complaint filed with the United States Department of Justice alleging that the Fayetteville Pain Center discriminated against an individual with a disability in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181, *et seq.* Specifically, the complainant alleges that the Fayetteville Pain Center refused to treat her on the basis of her HIV status.
3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulations implementing title III, 28 C.F.R. Part 36.
5. The complainant, an individual who has HIV, has a physical impairment that substantially limits one or more major life activities, including the operation of her immune system,

which is a major bodily function. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.

6. The Fayetteville Pain Center is a facility offering evaluation and treatment for acute and chronic pain syndromes, as well as cancer and spinal pain management, in Fayetteville, North Carolina. Its principal place of business is located at 2153 Valleygate Drive, Suite 102, Fayetteville, North Carolina 28304, and Dr. Viren Desai is the sole proprietor and owner of the Fayetteville Pain Center.
7. Dr. Viren Desai owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a). The Fayetteville Pain Center is a private entity within the meaning of 42 U.S.C. § 12181(6), and is considered a place of public accommodation because it affects commerce and is a service establishment within the meaning of 42 U.S.C. § 12181(7). *See also* 28 C.F.R. § 36.104.
8. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a).
9. As a result of its investigation, the United States concluded that:
 - a. In October 2011, the complainant was experiencing back pain from a vehicular accident that resulted in a slipped disk and that was exacerbated by the physical demands of caring for her elderly grandmother.
 - b. The complainant discussed this pain with her primary care physician and on October 27, 2011, the primary care physician issued a referral for the complainant to see a pain specialist at the Fayetteville Pain Center. When making the referral to Dr. Desai, the referring doctor determined that the referral was urgent due to the severity of the pain, checking "Emergency or ASAP" on the referral form.

- c. On November 10, 2011, the complainant went to her appointment at the Fayetteville Pain Center. She completed the preliminary paperwork, submitted her co-payment for the appointment, and provided a urine sample consistent with office policy. Her urine sample revealed no evidence of drug use in her system.
 - d. Dr. Desai entered the exam room and after a brief conversation about her back pain and prescription history, he abruptly declined to treat the complainant.
 - e. The complainant left the Fayetteville Pain Center distraught and angered by what she believes was discriminatory treatment on the basis of her HIV status.
 - f. On December 10, 2011, the complainant visited another pain specialist at a different location regarding her back pain. The new doctor examined the complainant, requested that she undergo an MRI, and identified that the source of her pain was an annular tear at the L4/L5 vertebral level, a form of spine degeneration. Upon proper diagnosis and treatment of her back pain, the complainant's condition improved.
10. The United States has determined that the Fayetteville Pain Center has discriminated against the complainant by denying her the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the Fayetteville Pain Center, on the basis of disability, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201.
11. The Fayetteville Pain Center disputes the United States' determinations and contends that it routinely treats patients with disabilities including, but not limited to, patients with HIV, and that the physician in this instance acted consistent with best practices. Neither the United States nor the Fayetteville Pain Center concedes the accuracy of the other parties' contentions, but nevertheless each has agreed to enter into this Agreement.

ACTIONS TO BE TAKEN BY THE FAYETTEVILLE PAIN CENTER

12. The Fayetteville Pain Center shall not discriminate against any individual on the basis of disability, including HIV, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Fayetteville Pain Center in violation of the ADA, 42 U.S.C. § 12182, and the relevant implementing regulations, 28 C.F.R. Part 36.
13. Within 30 days of the effective date of this Agreement, the Fayetteville Pain Center shall promulgate a policy stating that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV. Once it has been approved by the United States, this policy statement shall be conspicuously posted in the waiting area of its clinic and on the main company webpage (currently at <http://www.fayettevillepaincenter.com>) for the duration of this Agreement.
14. Within 60 days of the effective date of this Agreement, the Fayetteville Pain Center shall provide training on title III of the ADA to all of the Fayetteville Pain Center employees, including training about HIV discrimination and the ADA.
15. All training manuals or written materials concerning the Fayetteville Pain Center policies and practices used in the training required in paragraph 14, or revised or created after the effective date of this Agreement, shall be consistent with the provisions of this Agreement, and approved in advance by the United States.
16. The Fayetteville Pain Center shall notify the United States when it has completed the actions described in paragraphs 13 and 14 and shall provide documentation confirming that such actions were taken. Documentation shall include a copy of the final policy statement, a copy of training attendance sheets (identifying the name and title of the individuals trained, as well as the date of such training), and a copy of all the training materials used during the training.
17. Within 30 days of the effective date of this Agreement, the Fayetteville Pain Center shall pay \$10,000 to the Complainant to compensate her for the harm she has endured

(including, but not limited to, delayed medical treatment, emotional distress, pain and suffering, and other consequential injury) as a result of the Fayetteville Pain Center's actions.

18. Within 30 days of the effective date of this Agreement, the Fayetteville Pain Center shall pay a civil penalty in the amount of \$5,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.

OTHER PROVISIONS

19. In consideration for the Agreement set forth above, the United States will not institute any civil action alleging discrimination based on the allegations raised in DJ # 202-54-141, except as provided in paragraph 20, below.
20. The United States may review the Fayetteville Pain Center's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with the Fayetteville Pain Center, and the parties will attempt to resolve the concerns in good faith. The United States will give the Fayetteville Pain Center 30 days from the date it notifies the Fayetteville Pain Center of any breach of this Agreement to cure that breach. If the United States is unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that it provides notice to the Fayetteville Pain Center, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA.
21. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
22. A signatory to this document in a representative capacity for the Fayetteville Pain Center represents that he or she is authorized to bind the Fayetteville Pain Center to this

Agreement.

23. This Agreement constitutes the entire agreement between the United States and the Fayetteville Pain Center on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable.
24. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV status. Nothing in this Agreement changes the Fayetteville Pain Center's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

25. The effective date of this Agreement is the date of the last signature below.
26. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

/s/ H. Gerald Beaver
H. Gerald Beaver
Beaver, Holt, Sternlicht, & Connie, PA
230 Green Street
Fayetteville, NC 28301
(910) 323-4600

January 22, 2013
Date

THOMAS E. PEREZ
Assistant Attorney General
EVE L. HILL
Senior Counselor to the Assistant Attorney
General
Civil Rights Division

GREGORY B. FRIEL, Acting Chief
ALBERTO RUISANCHEZ, Deputy Chief
KATHLEEN P. WOLFE, Special Litigation
Counsel

/s/ Lisa M. Taylor

LISA M. TAYLOR, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 307-0663

January 30, 2013

Date

[Barrier-Free Health Care Initiative](#) | [ADA Home Page](#)

January 31, 2013

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
GLENBEIGH, ROCK CREEK, OHIO,
UNDER THE AMERICANS WITH DISABILITIES ACT**

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Glenbeigh, a non-profit corporation with its principle place of business in Rock Creek, Ohio. The term “Glenbeigh” includes Glenbeigh’s employees, directors, officers, and other agents.
2. This matter is based upon a complaint with the United States Department of Justice (“Department”), in which a complainant alleged that Glenbeigh discriminated against him on the basis of his disability in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181, *et seq.* Specifically, the complainant alleges that Glenbeigh refused to admit him for treatment based on his HIV and HIV-related medical conditions.
3. The parties have reached agreement that it is in the parties’ best interests, and that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDING

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulations implementing title III, 28 C.F.R. Part 36.

5. The complainant, an individual with HIV, has a physical impairment that substantially limits one or more major life activities, including the functions of the immune system, which is a major bodily function. Accordingly, he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
6. Glenbeigh is a hospital that provides addiction prevention, treatment, and recovery services, with its principal location at 2863 State Route 45, Rock Creek, Ohio, 44084. Glenbeigh is a wholly owned subsidiary of Ashtabula County Medical Center, with its principal location at 2420 Lake Avenue, Ashtabula, Ohio, 44004.
7. Glenbeigh owns and operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a); is a private entity within the meaning of 42 U.S.C. § 12181(6); and is considered a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because it affects commerce and operates a hospital. *See also* 28 C.F.R. § 36.104.
8. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a).
9. The United States has made the following factual determinations (not necessarily accepted or admitted by Glenbeigh):
 - a. In or about January 2010, the complainant sought admission to Glenbeigh for substance abuse treatment. He informed Glenbeigh staff that he has HIV, and requested a private room with private bathroom because he felt self-conscious about bruising on his arms. He informed Glenbeigh that this bruising is due to lipodystrophy/lipoatrophy, a side-effect of medication he takes in connection with his HIV.
 - b. Glenbeigh has only one private room, which is generally used for clients with

special needs during the first few days of detox. None of Glenbeigh's rooms, including its only private room, has private bathroom facilities. After Glenbeigh made the complainant aware of this, including during an in-person tour, he continued to seek admission and was advised by Glenbeigh that he was cleared for admission. Before he was admitted, the complainant advised Glenbeigh that an unrelated medical procedure would cause him to decline admission to Glenbeigh at that time.

- c. Several months later the complainant again sought admission to Glenbeigh.

Ultimately, Glenbeigh's Medical Director was called upon to determine whether the complainant could be medically cleared for admission. The Medical Director never examined the complainant, nor did he personally review any of his medical records. Based on what the United States contends was inaccurate factual information relayed verbally by a Glenbeigh nurse, the Medical Director declined to medically clear the complainant for admission. Through interviews conducted by the Department it was confirmed from staff that this was because of the complainant's HIV-related condition.

- d. The complainant was informed that he was denied admission through a telephone call from a Glenbeigh Intake Counselor. She informed him that the denial was based on medical grounds. After the call, the complainant requested a written explanation of why he was denied. A few days later, he received a letter cosigned by Glenbeigh's Medical Director and Director of Nursing, stating that Glenbeigh could not accommodate his request for private accommodations.

- e. After he received that letter, the complainant sent an email to the President of Ashtabula County Medical Center, with which Glenbeigh is affiliated, requesting copies of Glenbeigh's admissions and non-discrimination policies. In that email, the complainant indicated he believed his denial of admission to Glenbeigh was discriminatory. The President responded that he was transmitting the complainant's

request to Glenbeigh's CEO.

- f. A short time later, the Director of Nursing called the Complainant and asserted that he had never been denied admission to Glenbeigh, and could be admitted at that time. The complainant, confused and upset at what he felt were contradictory statements by Glenbeigh, declined to be admitted.
10. The United States has determined that Glenbeigh discriminated against the complainant by denying the complainant the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Glenbeigh in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. The United States has further determined that Glenbeigh cannot show that treating the complainant would have posed a direct threat to the health or safety of others, *see* 42 U.S.C. § 12182(b)(3).
11. Glenbeigh denies and in no way admits that it discriminated against the complainant in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201, or any other statute, rule, or regulation of similar import in any jurisdiction. By Glenbeigh entering this Agreement, it is understood by all parties that Glenbeigh does not admit any legal wrongdoing and is entering this Agreement in the interest of resolving all claims and issues relating to the complaint and the complainant to avoid the costly necessity of litigation.
12. Except to the extent necessary to enforce this Agreement it is agreed that neither this Agreement nor any part thereof will be used or admitted into evidence in any proceeding arising from the instant complaint unless otherwise ordered or as provided by law.

ACTIONS TO BE TAKEN BY GLENBEIGH

13. Glenbeigh will not discriminate against any individual on the basis of disability, including HIV, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Glenbeigh in violation of 42 U.S.C. § 12182, and the relevant implementing regulations, 28 C.F.R. Part 36.

14. Glenbeigh will not refuse to treat any potential client on the grounds that he or she poses a direct threat to the health or safety of others due to a disability without first performing an individualized assessment of that individual as required by 28 C.F.R. § 36.208. This individualized assessment must be based on a reasonable judgment that relies on current medical knowledge or on 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 will mitigate this risk.
15. For each person for whom Glenbeigh completes an Admissions Questionnaire and who is not medically admitted to Glenbeigh, Glenbeigh will document the reasons for non-admission with the names of those who participated in the decision. Such documentation will be maintained for at least two years from the date the person is not admitted.
16. For each potential client who discloses a diagnosis of HIV/AIDS, or who is diagnosed with HIV/AIDS during treatment at Glenbeigh, and who is denied admission or discharged from treatment for any reason, Glenbeigh shall maintain a written file for at least two years from the date a final decision on admission or discharge is made. Each file must identify all persons involved in the determination and must include written documentation supporting the basis for the determination.
17. Within 30 days of the effective date of this Agreement, Glenbeigh will draft a policy stating that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV. Once it has been approved by counsel for the United States, this policy statement will be conspicuously posted in the reception area at Glenbeigh and on the company webpage, currently at <http://www.glenbeigh.com>, for the duration of this Agreement.
18. Within 60 days of the effective date of this Agreement, and every year thereafter for the duration of the Agreement, Glenbeigh will provide training on title III of the ADA to all

Glenbeigh employees, including training about HIV discrimination in general. Employees whose duties will involve the record-keeping provisions set forth in Paragraph 15 and 16 will also be trained on how to implement those provisions.

19. All training manuals or written materials dealing with Glenbeigh's policies and practices used in the training required in Paragraph 18 or revised or created after the effective date of this Agreement shall be consistent with the provisions of this Agreement, and approved in advance by counsel for the United States, for the duration of this agreement.
20. Glenbeigh will notify the United States when it has completed the actions described in Paragraphs 17 and 18.
21. Within 30 days of the effective date of this Agreement, Glenbeigh will pay \$32,500 to the complainant to compensate him for the harm he claims he has endured (including, but not limited to, emotional distress, pain and suffering and other consequential injury) as a result of Glenbeigh's failure to treat him. In consideration therefore, and prior to execution of the Agreement, the Complainant shall execute a Release of All Claims.
22. Within 30 days of the effective date of this Agreement, Glenbeigh will pay a civil penalty in the amount of \$5,000 as authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), as amended, in order to vindicate the public interest.

OTHER PROVISIONS

23. In consideration for the Agreement set forth above, the United States will not institute any civil action alleging discrimination based on the allegations raised in DJ # 202-57-164, except as provided in Paragraph 24, below.
24. The United States may review Glenbeigh's compliance with this Agreement or title III of the ADA at any time. However, if a compliance review requires an on-site review by the United States, such on-site review shall be conducted only during Glenbeigh's normal

administrative business hours. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Glenbeigh and the parties will attempt to resolve the concerns in good faith. The United States will give Glenbeigh at least thirty days from the date it notifies Glenbeigh of any breach of this Agreement to cure that breach. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within that established time frame, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA.

25. Failure by the United States to enforce any provision of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
26. A signatory to this document in a representative capacity for Glenbeigh represents that he or she is authorized to bind Glenbeigh to this Agreement.
27. Nothing in this Agreement shall be construed to render any of the employees, directors, officers, or other agents personally liable for the corporate covenants contained herein or for any liability associated with the issues which this Agreement addresses.
28. This Agreement shall be binding on Glenbeigh, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that Glenbeigh seeks to sell, transfer, or assign all or part of its interest during the term of this Agreement, as a condition of sale, transfer, or assignment, Glenbeigh shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
29. Glenbeigh shall not discriminate or retaliate against any person because of his or her participation in this matter.
30. If any term of this Agreement is determined by any court to be unenforceable, the other

terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Glenbeigh shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

31. This Agreement constitutes the entire agreement between the United States and Glenbeigh on the matters raised herein and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable.
32. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV. Nothing in this Agreement changes Glenbeigh's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

33. The effective date of this Agreement is the date of the last signature below.
34. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

/s/ Pat Weston Hall
PAT WESTON-HALL
Chief Executive Officer
Glenbeigh
2863 Route 45
Rock Creek, OH 44084

March 12, 2013

THOMAS E. PEREZ
Assistant Attorney General
EVE L. HILL
Senior Counselor to the Assistant Attorney
General

/s/ David W. Knight
REBECCA B. BOND, Chief

Date

KATHLEEN P. WOLFE, Special Litigation
Counsel

ALBERTO RUISANCHEZ, Deputy Chief

DAVID W. KNIGHT, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 307-0663

March 13, 2013

Date

/s/ Michelle L. Heyer

STEVEN M. DETTELBACH
United States Attorney
MICHELLE L. HEYER
Assistant United States Attorney
801 West Superior Avenue, Suite 400
Cleveland, Ohio 4413
(216) 622-3686

March 13, 2013

Date

[Barrier-Free Health Care Initiative](#) | [ADA Home Page](#)

March 13, 2013