



4. Mr. Doust was referred to Dr. [REDACTED] by [REDACTED].

5. On July 21, 2000, after Mr. Doust had appeared for an appointment with Dr. [REDACTED] for repair of a broken tooth, Mr. Doust completed a form on which he revealed that he is HIV positive. Solely on the basis of this information, and in response to Dr. [REDACTED]'s staff members' apparent unwillingness to have contact with Mr. Doust because of his HIV infection, Dr. [REDACTED] informed Mr. Doust that Mr. Doust should seek treatment elsewhere. Dr. [REDACTED] suggested two reasons for his unwillingness to provide Mr. Doust normal treatment. First, Dr. [REDACTED] explained that none of his staff felt safe around Mr. Doust. Second, Dr. [REDACTED] stated that he believed that repairing Mr. Doust's tooth would require special equipment and cleaning practices that Dr. [REDACTED] did not have.

6. Acting on the uninformed fear of others toward persons with HIV rather than on a reasoned medical assessment of Mr. Doust's condition, Dr. [REDACTED] indicated that he might be willing to provide Mr. Doust with treatment if he came back after hours when the office was closed and the remaining staff gone, but that such treatment would take longer and would be less comfortable. Giving effect to and endorsing the unwarranted fear of his staff, Dr. [REDACTED] advised Mr. Doust that he would be treated better in a clinic for people like him. Although Mr. Doust was in significant discomfort, Dr. [REDACTED] never inquired about or showed interest in Mr. Doust's dental needs.

7. At the end of this conversation, as Mr. Doust was leaving Dr. [REDACTED]'s office, Dr. [REDACTED] announced loudly to several staff members that Mr. Doust would be going elsewhere for treatment. This public announcement caused Mr. Doust additional humiliation.

8. This action stems from Dr. [REDACTED]'s unwarranted and discriminatory refusal to

provide routine dental treatment in a manner afforded to other of Dr. [REDACTED]'s patients solely on the basis of Mr. Doust's disclosure that he is infected with HIV. Defendants' withholding of treatment and humiliation of Mr. Doust constitute discrimination on the basis of disability within the meaning of the New Jersey LAD. In addition, by referring Mr. Doust to Dr. [REDACTED] for treatment despite his discriminatory practices, the [REDACTED] referral service failed to provide Mr. Doust equal access to the services of a public accommodation and aided, abetted, accommodated and encouraged Dr. [REDACTED]'s discriminatory provision of services. Plaintiff Doust seeks injunctive relief, declaratory judgment and compensation for the significant discomfort, distress, humiliation and stigmatization to which he was subjected, punitive damages for the willful or reckless disregard of Mr. Doust's rights under the New Jersey LAD, and the costs of this action, together with reasonable attorneys' fees.

9. Defendants' policies and practices as described herein constitute a pattern or practice of discrimination that raises an issue of genuine public importance.

### **PARTIES**

10. Plaintiff Richard Doust is, and at all times relevant herein was, a citizen of the United States and of the State of New Jersey. He is a resident of Monmouth County, New Jersey.

11. Defendant [REDACTED] maintains a dental practice at [REDACTED], also in Middlesex County, New Jersey. Upon information and belief, Dr. [REDACTED] operates that dental practice as Defendant [REDACTED]. As providers of dental services open to the public, Dr. [REDACTED] and his dental practice constitute public accommodations as defined under the LAD, N.J.S.A. § 10:5-5(1).

12. Defendant [REDACTED] operates a telephone referral service for members of the public in need of dental care in New Jersey. Upon information and belief, [REDACTED] is owned and operated by Defendant [REDACTED]. As a service providing referrals to dental services to the public, [REDACTED] and [REDACTED] are public accommodations as defined under LAD, N.J.S.A. § 10:5-5.

13. John Doe and John Roe are additional participants in the discrimination alleged in this complaint whose identities and capacities are not yet known to Plaintiff. Upon learning the identities of these individuals, Plaintiff will seek leave to amend to add them as defendants.

### FACTS

14. Plaintiff Richard Doust is infected with HIV, and was infected with HIV at the time he sought dental treatment from Dr. [REDACTED], and is therefore “handicapped” pursuant to N.J.S.A. § 10:5-5.

15. In July 2000, Richard Doust called a publicly-advertised dentist referral service, [REDACTED], and requested a dentist in Middlesex County, New Jersey, for treatment of a broken tooth. In response to this call, he was provided with the name and contact information of Dr. [REDACTED].

16. Because he was in discomfort and was concerned that the condition of his tooth could worsen quickly, Mr. Doust immediately contacted the office of Dr. [REDACTED] and requested an appointment as soon as possible. At the time of making his appointment, Mr. Doust was not asked any questions by Dr. [REDACTED]’s staff person about his HIV status, nor was he advised that Dr. [REDACTED] did not treat individuals with HIV or any other disability or medical condition.

17. When Mr. Doust arrived at Dr. [REDACTED]’s office for his appointment, Mr. Doust

was given an intake form that requested multiple pieces of information about his health, which Mr. Doust completed in full, including providing the information regarding his HIV status.

18. Within approximately ten minutes of Mr. Doust's completion of the form, Dr. [REDACTED] approached Mr. Doust in the office reception area and asked him to step into his office.

19. Once they were alone inside Dr. [REDACTED]'s office, Dr. [REDACTED] told Mr. Doust that "we have a problem" and that his staff did not feel safe working with Mr. Doust because of health concerns.

20. During the same conversation, Dr. [REDACTED] also informed Mr. Doust that he believed repairing Mr. Doust's tooth would require special equipment and sterilization practices that Dr. [REDACTED] did not have.

21. Dr. [REDACTED] further explained that he had consulted his wife, who is an attorney, and that she had advised him that he could not simply refuse to treat Mr. Doust because of his HIV status. Accordingly, Dr. [REDACTED] suggested that Mr. Doust should seek care elsewhere and offered to provide him with contact information for a clinic that he indicated would provide treatment to individuals with HIV. Dr. [REDACTED] also volunteered that the clinic would be a better place for Mr. Doust because it was much less costly, although he knew nothing about Mr. Doust's financial means.

22. Dr. [REDACTED] further indicated that he might be willing to provide Mr. Doust with treatment if he came back after hours when the office was closed and the remaining staff gone, but Dr. [REDACTED] added that this treatment would take longer and would be less comfortable.

23. Even though Mr. Doust was in significant discomfort at the time of the conversation, Dr. [REDACTED] never inquired about or showed interest in Mr. Doust's condition.

24. When Mr. Doust was on his way out of Dr. [REDACTED]'s office, Dr. [REDACTED] announced to several staff members that Mr. Doust was going to seek treatment elsewhere, causing Mr. Doust additional humiliation.

25. Defendants' conduct is in direct conflict with the position of the American Dental Association, which has issued public statements confirming that routine sterilization of equipment and universal precautions employed with all patients, as prescribed by the federal Centers for Disease Control and Prevention ("CDC"), are completely adequate to protect dentists and dental workers from risk of HIV infection through patient contact. It also is the position of the American Dental Association that it is medically and scientifically unwarranted and unethical for dentists to refuse to treat individuals solely because of their HIV status. Dr. [REDACTED]'s failure to act in accordance with the long-established standard of infection control and treatment for all patients, including those with HIV, harms both the interests of Mr. Doust and the larger interests of the public through perpetuation of fear and stigma, the creation of a false sense of security, and the denial of basic services for affected individuals.

26. Those who are infected with HIV, including Mr. Doust, have been and continue to be subjected to intense stigma and societal discrimination. As a 2001 survey and report by the CDC demonstrated, the level of ignorance and stigma surrounding HIV remains high. The conduct of Dr. [REDACTED] serves to perpetuate and reinforce stigma and discrimination that harms those individuals like Mr. Doust who seek equal access to services and undermines public health efforts to ensure that individuals with HIV know their health status and obtain treatment of their disease.

27. Defendants' actions caused significant delay in securing the dental treatment that

Mr. Doust needed and caused Mr. Doust prolonged discomfort and suffering. Because of the actions of defendants, Mr. Doust also suffered extreme humiliation, emotional distress, and anxiety.

28. Upon information and belief, Dr. [REDACTED]'s actions were motivated because of his perception that Mr. Doust had a handicap. Additionally, upon information and belief, at all times relevant to this action, Dr. [REDACTED] and his staff acted intentionally and maliciously, with an improper motive. Defendants acted with intentional or reckless disregard of Mr. Doust's welfare and rights.

### **CLAIMS FOR RELIEF**

#### **Count One**

29. Plaintiff realleges and incorporates by reference the foregoing paragraphs of his Complaint as if fully set forth herein.

30. By failing to provide Mr. Doust full and equal access to dental treatment because of his HIV positive status and because of Defendants' perception of his HIV status and by adopting a policy of refusal to treat persons who have tested positive for HIV on the basis of unfounded fears of infectiousness, each defendant has unlawfully directly and/or indirectly denied Mr. Doust equal treatment in and access to a public accommodation on the basis of his actual and perceived disability. This discriminatory denial of equal treatment violates plaintiff's rights under the New Jersey Law Against Discrimination, N.J.S.A. §§ 10:5-4, 10:5-4.1, 10:5-12(f) & 10:5-12(l); N.J.A.C. § 13:13-4.3.

#### **Count Two**

31. Plaintiff realleges and incorporates by reference the foregoing paragraphs of his Complaint as if fully set forth herein.

32. Defendants have imposed unique eligibility criteria and treatment conditions on individuals who are known or perceived to be living with HIV for the receipt of dental services. These criteria and conditions deny such individuals the right to equal access to those services as are afforded others without the disability of HIV, and are intended to screen out the class of individuals who are known or perceived to be living with HIV, in violation of Mr. Doust's rights under the New Jersey Law Against Discrimination, N.J.S.A. §§ 10:5-4, 10:5-4.1, 10:5-12(f) and 10:5-12(l).

### **Count Three**

33. Plaintiff realleges and incorporates by reference the foregoing paragraphs of his Complaint as if fully set forth herein.

34. By knowingly aiding, abetting, accommodating or encouraging the refusal to provide services to Mr. Doust solely on the basis of his actual and perceived disability of infection with HIV, and by providing substantial assistance or encouragement to that refusal, Defendants Dr. [REDACTED], [REDACTED] and [REDACTED] acted in violation of the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-12(e).

### **Count Four**

35. Plaintiff realleges and incorporates by reference the foregoing paragraphs of his Complaint as if fully set forth herein.

36. On July 21, 2000, Dr. [REDACTED] possessed information about Mr. Doust, including

information that identified Mr. Doust and indicated that he was infected with or was suspected of being infected with HIV.

36. Upon information and belief, Dr. [REDACTED], without Mr. Doust's consent, disclosed the fact that Mr. Doust was infected with HIV to Dr. [REDACTED]'s wife, a person not authorized by law to hear the disclosure.

37. Additionally, upon information and belief, Dr. [REDACTED], without Mr. Doust's consent, disclosed the fact that Mr. Doust was infected with HIV to one or more members of Dr. [REDACTED]'s office staff who were not authorized by law to hear the disclosure.

38. The disclosures of Mr. Doust's HIV status were not necessary for his care.

39. Upon information and belief, these wrongful disclosures were wantonly reckless and/or intentionally malicious.

40. Dr. [REDACTED]'s actions violated the AIDS Assistance Act, N.J.S.A. § 26:5C-8.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court:

A. Declare that the discriminatory practices of the Defendants, as set forth above, discriminate against persons who have tested positive for HIV, in violation of N.J.S.A. § 10:1-1.

B. Enjoin the Defendants, their agents and employees, and all other persons in active concert or participation with any of them, from refusing to provide the same level and types of treatment afforded to other individuals to persons who have tested positive for HIV;

C. Award compensatory and punitive damages to Mr. Doust for his injuries resulting from such discrimination;

D. Award Mr. Doust costs of this suit, together with reasonable attorneys' fees; and

E. Order such other appropriate relief as the interests of justice may require.

Dated:

\_\_\_\_\_  
Kathleen Dunnigan  
DWYER & DUNNIGAN, L.L.C.  
17 Academy Street, Suite 10101  
Newark, New Jersey 07102  
(973) 242-3636

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all actions triable to a jury.

DWYER & DUNNIGAN, L.L.C.  
Attorneys for Plaintiff

By: \_\_\_\_\_  
Kathleen Dunnigan

**CERTIFICATION**

The undersigned hereby certifies that to the best of her knowledge and belief, there are no other parties who should be joined in this action and there are no other actions pending concerning the above claims.

\_\_\_\_\_  
Kathleen Dunnigan

Dated:

**DESIGNATION OF TRIAL COUNSEL**

PLEASE TAKE NOTICE that pursuant to Rule 4:25-4, Kathleen Dunnigan is hereby designated as trial counsel for plaintiff.

DWYER & DUNNIGAN, L.L.C.  
Attorneys for Plaintiff

By: \_\_\_\_\_  
Kathleen Dunnigan

Dated: