

# SETTLEMENT AGREEMENT

## BETWEEN THE

### U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE FOR CIVIL RIGHTS

## AND

[RECIPIENT'S NAME REDACTED]

#### I. Introduction

The parties to this Settlement Agreement (the "Agreement") are the United States Department of Health and Human Services, Office for Civil Rights ("OCR"), and [RECIPIENT'S NAME REDACTED] [hereinafter, the "Recipient"], a board certified orthopaedic surgeon practicing in Austin, Texas. This Agreement resolves OCR transaction numbers 00-00834 and 05-34892, which constitute a complaint and a request for reconsideration filed by an individual (the "Complainant"), who alleged that the Recipient discriminated against him on the basis of his disability (HIV disease), in violation of Section 504 of the Rehabilitation Act of 1973. Specifically, the Complainant alleged that the Recipient refused to perform surgery on his knee to repair his anterior cruciate ligament ("ACL") because the Complainant is HIV-positive and the Recipient instead referred him to another surgeon in a different city.

#### A. Parties to the Agreement:

1. United States Department of Health and Human Services, Office for Civil Rights; and
2. the Recipient.

**B. Jurisdiction:** The Recipient has received Federal financial assistance through his participation in the Medicaid program and is subject to Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 794, and its implementing regulations, 45 C.F.R. Part 84 ("Section 504"). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

**C. Purpose of the Agreement:** To resolve these matters without further burden or the expense of litigation, the Recipient agrees to the terms stipulated in this Agreement and affirms that he will comply with all provisions of Section 504. The Recipient's willingness to enter into this Agreement with OCR in no way constitutes an admission of liability. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between the Recipient and OCR. The actions described in

this Agreement fully address the issues described in the complaint and the request for reconsideration.

## **II. Definitions**

For purposes of this Agreement, the terms listed below shall have the following meaning:

- A. “Patient”** means: any individual who is seeking or receiving health care services from the Recipient or the physicians, physician assistants, nurses, physical therapists, employees and/or contractors under his supervision or control.
  
- B. “The Recipient and/or his staff”** means: The Recipient and/or any of the physicians, physician assistants, nurses, physical therapists, employees and/or contractors under the Recipient’s supervision or control.
  
- C. Having “HIV disease”** means: (1) having tested positive for antibodies to the Human Immunodeficiency Virus (HIV); (2) being infected with HIV; (3) having Acquired Immune Deficiency Syndrome (AIDS); or (4) having any AIDS-related opportunistic infection. For purposes of this Agreement, having HIV disease also means having a record of being in one of the four categories listed above; or being perceived or regarded as being in one of the four categories listed above.
  
- D. “Universal Precautions”** mean: the consistent use, in health care settings, of blood and certain body fluid precautions for all patients regardless of their bloodborne infection status. Under universal precautions, blood and certain body fluids of all patients are considered potentially infectious for HIV; and health care workers use protective barriers to reduce the risk of infection. Examples of protective barriers include (but are not limited to) gloves, shoe covers, gowns, masks, protective eyewear, and head covers.
  
- E. “Qualified individual with a disability”** means: an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a recipient of Federal financial assistance.

## **III. General Provisions**

- A. Recipient Covered by Agreement:** This Agreement covers the Recipient, a board certified orthopaedic surgeon practicing in Austin, Texas.
  
- B. Suspension of Administrative Actions:** Subject to the continued performance by the Recipient of the stated obligations and required actions contained in this Agreement and in conformity with Section III-H, Failure to Comply with the Terms of this Agreement, OCR shall suspend administrative actions on OCR transaction numbers 00-00834 and 05-34892.
  
- C. Effective Date and Term of the Agreement:** This Agreement shall become effective as of the date that both Parties have signed it (the “Effective Date”). This Agreement shall

remain in effect for eighteen (18) months following the Effective Date of this Agreement (the "Term"). At such time, the Agreement shall terminate, provided that OCR determines that the Recipient has complied with the Agreement. Notwithstanding the Term of this Agreement, the Recipient acknowledges that he shall comply with Section 504 for so long as he continues to receive Federal financial assistance.

**D. The Recipient's Continuing Obligation:** Nothing in this Agreement is intended to relieve the Recipient of his continuing obligation to comply with other applicable nondiscrimination statutes and their implementing regulations, including Section 504.

**E. Effect on Other Compliance Matters:** The terms of this Agreement do not apply to any other issues, reviews, investigations or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal agency. Any unrelated compliance matter arising from subsequent reviews or investigations shall be addressed and resolved separately. Nothing in this Agreement will be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to the Recipient and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal Agencies, including any action or investigation under Section 504.

**F. Prohibition Against Retaliation and Intimidation:** The Recipient shall not retaliate, intimidate, threaten, coerce or discriminate against any person who has filed a complaint or who has assisted or participated in the investigation of any matter addressed in this Agreement.

**G. OCR's Review of the Recipient's Compliance with Agreement:** OCR may, at any time, review the Recipient's compliance with this Agreement. Throughout the term of this Agreement, the Recipient agrees to retain the records required by OCR to assess his compliance with this Agreement and to submit the requested reports to OCR.

**H. Failure to Comply with the Terms of Agreement:** During the Term of this Agreement, if at any time OCR determines that the Recipient has failed to comply with any provision of this Agreement, OCR shall notify the Recipient in writing. The notice shall include a statement of the basis for OCR's determination and shall allow the Recipient fifteen (15) days to either explain in writing the reasons for his actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement or provide information that would cause OCR to review or change its determination. If the Recipient does not respond to the notice or, if upon review of the Recipient's response, OCR finds that the Recipient has not complied with any provision of this Agreement, OCR may, upon notice to the Recipient, take steps to suspend, terminate, or refuse to grant or continue Federal financial assistance; refer the matter to the U.S. Department of Justice; or, as it deems appropriate, take any other action authorized by law.

**I. Non-Waiver Provision:** Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as

a waiver of OCR's right to enforce other deadlines or any provisions of this Agreement.

**J. Entire Agreement:** This Agreement constitutes the entire understanding between the Recipient and OCR in resolution of OCR transaction numbers 00-00834 and 05-34892. Any statement, promise or agreement not contained herein shall not be enforceable through this Agreement.

**K. Modification of Agreement:** This Agreement may be modified by mutual agreement of the parties in writing.

**L. Publication or Release of Agreement:** OCR places no restrictions on the publication of this Agreement or its terms. In addition, OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulation, 45 C.F.R. Part 5.

**M. Third Party Rights:** This Agreement can be enforced only by the parties specified in this Agreement, their legal representatives and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.

**N. Technical Assistance:** OCR will provide appropriate technical assistance to the Recipient regarding compliance with this Agreement, as requested and as reasonably necessary.

**O. Miscellaneous:** When OCR verifies that the Recipient has completed all actions contained in this Agreement, OCR shall consider all matters related to this investigation resolved and so notify the Recipient in writing.

#### **IV. Obligations**

**A. Non-Discrimination Policy:** Pursuant to Section 504, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of the Recipient, or otherwise be subjected to discrimination by the Recipient. The Recipient shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Recipient can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity, or would result in undue financial and administrative burdens. The Recipient shall ensure that each member of his staff complies with Section 504 and this Non-Discrimination Policy.

**B. Policy on the Treatment of Patients with HIV Disease:** The Recipient shall not deny or withhold medically appropriate treatment (as determined by reasonable medical judgment given the current state of medical knowledge) on the basis of a patient's HIV disease status. If the Recipient has a question whether surgery or another medical procedure would benefit a patient with HIV disease, and if the procedure would be indicated in the absence of such

condition, then there shall be a consultation with an infectious disease specialist or other appropriate specialist as time and circumstances permit, before making a final decision or recommendation to the patient. The Recipient shall ensure that each member of his staff complies with this Policy on the Treatment of Patients with HIV Disease.

**C. Universal Precautions:** The Recipient shall adhere to “universal precautions,” as outlined in the guidelines for the prevention and management of exposures to blood and certain body fluids published by the Centers for Disease Control and Prevention (CDC).<sup>1</sup> The Recipient shall ensure that each member of his staff adheres to universal precautions, which are designed to address real or perceived risks of surgery or other medical procedures for patients with HIV or other infectious diseases.

**D. Notice:** Within fifteen (15) calendar days of the Effective Date of this Agreement, the Recipient shall prominently display the Notice of Nondiscrimination, attached as Appendix A, in his waiting room; and meet with each member of his staff to personally provide each with an executed copy of this Agreement, including Appendix A. Within sixty (60) calendar days of the Effective Date of this Agreement, the Recipient shall publish the Notice of Nondiscrimination on his website.

**E. Training:** Within one-hundred-twenty (120) calendar days of the Effective Date of this Agreement, the Recipient shall make arrangements to complete six hours of comprehensive training provided by the Texas/Oklahoma AIDS Education and Training Center (the Center),<sup>2</sup> which is funded by the HIV/AIDS Bureau of the Health Resources and Services Administration (HRSA), U.S. Department of Health and Human Services. In the event that the Recipient is unable to arrange to have the Center provide the training, the Recipient shall propose another training provider to OCR. If OCR has any concerns regarding the proposed training provider, OCR shall so notify the Recipient no later than fifteen (15) calendar days after OCR’s receipt of the proposed training provider’s name, address and telephone number. The comprehensive training shall be provided by the Center (or another OCR-approved training provider) on a date and at a time when the Recipient can make a commitment to attend. The comprehensive training shall include, but not be limited to:

- (1) a general overview of HIV disease;
- (2) the physician’s ethical obligation to provide health care to patients with HIV disease;
- (3) prevention of HIV transmission, during surgery and other medical procedures, from the patient to the physician or staff member and prevention of HIV transmission from the physician or staff member to the patient;<sup>3</sup>
- (4) infection control procedures, including but not limited to the appropriate disposal of contaminated materials and the sterilization of equipment;
- (5) universal precautions, including but not limited to the appropriate use of gloves, shoe covers, gowns, masks, protective eyewear, head covers, and other personal protective equipment; and

- (6) the use of post-exposure prophylaxis.

## **V. Reporting Requirements**

The Recipient agrees to provide OCR with the following:

**A.** No later than thirty (30) calendar days after the Effective Date of this Agreement, advance copies of the Recipient's revised web site displaying the Notice of Nondiscrimination.

If OCR has any concerns regarding the revised website, OCR shall so notify the Recipient no later than fifteen (15) calendar days after OCR's receipt of the materials.

**B.** No later than one-hundred-fifty (150) calendar days after the Effective Date of this Agreement, documentation of the Recipient's completion of the comprehensive training provided by the Center (or another OCR-approved training provider).

**C.** At ninety (90) calendar days and (15) months after the Effective Date of this Agreement, letters describing:

- (1) the number and type of grievances filed by, or on behalf of, individuals with disabilities, including but not limited to HIV disease, against the Recipient and/or a member of his staff;
- (2) the status and/or outcome of each such grievance;
- (3) the number and type of complaints filed by, or on behalf of, individuals with disabilities, including but not limited to HIV disease, against the Recipient and/or a member of his staff, with any Federal, state or local agency, medical board or licensing entity; and
- (4) the status and/or outcome of each such complaint.

Footnotes:

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- 1. Recommendations for prevention of HIV transmission in health-care settings. MMWR Morb Mortal Wkly Rep 1987:36 Suppl 2:1S-18S <http://www.cdc.gov/mmwr/preview/mmwrhtml/00023587.htm> ; Update: universal precautions for prevention of transmission of human immunodeficiency virus, hepatitis B virus, and other bloodborne pathogens in health-care settings. MMWR Morb Mortal Wkly Rep 1988:37:377-382, 387-378 <http://www.cdc.gov/mmwr/preview/mmwrhtml/00000039.htm> ; Updated U.S. Public Health Service

Guidelines for the Management of Occupational Exposures to HBV, HCV, and HIV and Recommendations for Postexposure Prophylaxis. MMWR Recomm Rep 2001:50:1-52 <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5011a1.htm> ; and Panlilio AL, Cardo DM, Grohskopf LA, Heneine W, Ross CS: Updated U.S. Public Health Service

guidelines for the management of occupational exposures to HIV and recommendations for postexposure prophylaxis. MMWR Recomm Rep 2005:54:1-17 <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5409a1.htm> .

2. The Texas/Oklahoma AIDS Education and Training Center, Amelia Court Professional Building, 1936 Amelia Court, Dallas, TX 75235, may be reached at 214-590-2181 or [www.aids-ed.org](http://www.aids-ed.org) .
3. American Academy of Orthopaedic Surgeons: Information Statement: Preventing the Transmission of Bloodborne Pathogens 2008 <http://www.aaos.org/about/papers/advistmt/1018.asp>

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## VI. Signatures

The individuals signing represent that they are authorized to execute this Agreement and legally bind the parties to this Agreement.

/s/

9-30-2009

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[RECIPIENT'S NAME REDACTED]

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Date

/s/

9-30-2009

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Ralph Rouse, Regional Manager

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Date

Office for Civil Rights, Region VI

U.S. Department of Health and Human Services

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**APPENDIX A**

**NOTICE OF NONDISCRIMINATION**

[NAME REDACTED] [RECIPIENT] does not exclude, deny benefits to, or otherwise discriminate against any person on the basis of race, color, national origin, age, or disability (including but not limited to HIV disease), in admission to, participation in, or receipt of services or benefits under any of his programs or activities.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Regulations of the U.S. Department of Health and Human Services issued pursuant to these statutes at Title 45 Code of Federal Regulations Parts 80, 91, and 84.

If you believe that you have been discriminated against on the basis of race, color, national origin, age, or disability (including but not limited to HIV disease), you may file a grievance against [RECIPIENT] and/or a member of his staff with:

**[RECIPIENT'S NAME, ADDRESS AND TELEPHONE NUMBERS]**

Filing a grievance with [RECIPIENT] will not prevent you from filing a discrimination complaint with the:

Office for Civil Rights, Region VI  
U.S. Department of Health and Human Services  
1301 Young Street, Suite 1169  
Dallas, TX 75202  
Voice: 214-767-4056  
Fax: 214-767-0432

TDD: 214-767-8940

\* In this Notice, the reference to [RECIPIENT] shall include the Recipient, himself, and any physician, physician assistant, nurse, physical therapist, employee and/or contractor under his supervision or control.