

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND BARIX CLINICS
UNDER THE AMERICANS WITH DISABILITIES ACT**

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Barix Clinics, which comprises the two public accommodations identified in paragraph 7.
2. This matter is based upon a complaint filed with the United States Department of Justice that alleged that Barix Clinics 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 Barix Clinics of Pennsylvania refused to treat the complainant because he has HIV.
3. After the United States completed its investigation of this complaint, a second complaint was received from another individual, Frank Hill, alleging that Barix Clinics cancelled his surgery because he has HIV. Ultimately, Mr. Hill’s surgery was rescheduled.
4. 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

5. 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.

6. Each of the two complainants, both individuals with HIV, has a physical impairment that substantially limits one or more major life activities, including the operation of the immune system, which is a major bodily function. Accordingly, they both have a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
7. Barix Clinics of Pennsylvania, LLC, d/b/a Forest Health Medical Center of Bucks County (“BCP”), is a limited surgical facility that provides, among other services, bariatric surgery, and its principal place of business is 280 Middletown Boulevard, Langhorne, Pennsylvania, 19047. Forest Health Medical Center, LLC, (“FHMC”) is a limited surgical facility that provides, among other services, bariatric surgery, and its principal place of business is 135 South Prospect, Ypsilanti, Michigan, 48198. BCP and FHMC are limited surgical facilities that provide bariatric surgery under the “Barix Clinics” servicemark.
8. BCP and FHMC are public accommodations because they affect commerce and are service establishments within the meaning of 42 U.S.C. § 12181(7)(F) and 28 C.F.R. § 36.104. 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. After completing its investigation the United States alleges the following regarding the first complainant:
 - a. The complainant is a person with HIV whose primary physician recommended that he undergo bariatric surgery in order to help him lose weight.
 - b. In September 2008, the complainant went to BCP, met with a bariatric surgeon

who was on the medical staff of BCP, and filled out paperwork indicating his intent to undergo bariatric surgery. In response, a Barix Clinics insurance coordinator contacted the complainant and advised him that she would assist him through his insurer's surgical pre-approval process.

- c. In August 2009, the complainant was pre-approved for bariatric surgery by his insurer. The complainant then contacted Barix Clinics, and Barix Clinics scheduled a pre-operative physical examination for September 18, 2009. Barix Clinics scheduled the complainant's surgery for October 13, 2009.
 - d. The day before the pre-operative physical examination, however, the Pre-Admission Coordinator at BCP reviewed some of the complainant's medical records and noticed that the complainant has HIV. This was communicated to the surgeon, whose understanding of Barix Clinics' policy was that Barix Clinics did not perform bariatric surgery under any circumstances on individuals who have HIV. Accordingly, the surgeon contacted the complainant and told him that she could not perform the surgery due to his HIV and cancelled the surgery.
 - e. Because the surgeon did not admit the patient to BCP, no physician at BCP conducted a physical examination of the complainant.
 - f. The complainant was subsequently treated at another hospital, and the surgery was successfully completed on December 18, 2009.
10. After completing its investigation, the United States alleges the following regarding Frank Hill:
- a. Mr. Hill is a person with HIV who was referred by a doctor for bariatric surgery. In February 2012, Mr. Hill went to FHMC and met with a bariatric surgeon who has privileges at FHMC, and filled out paperwork indicating his intent to undergo bariatric surgery. Mr. Hill disclosed his HIV to the bariatric surgeon.

- b. Barix Clinics scheduled a pre-operative physical examination for April 10, 2012. Thereafter, Barix Clinics scheduled Mr. Hill's surgery for April 23, 2012.
 - c. Mr. Hill reported to FHMC for his pre-admission testing on April 10, 2012. When the physician conducting his physical exam became aware of his HIV, she noted in her report: "Due to the patient's HIV status, he may not be a candidate at this hospital. I will discuss this with [the bariatric surgeon who would operate on Mr. Hill]."
 - d. On April 19, 2012, the bariatric surgeon called Mr. Hill to inform him that his surgery at FHMC had been cancelled. Several days later, the surgeon informed Mr. Hill that he had scheduled his surgery at another hospital. However, that second hospital is a significant distance from Mr. Hill's home, and he told the surgeon that he preferred to have the surgery at FHMC.
 - e. The bariatric surgeon continued to communicate with Barix Clinics in an effort to obtain authorization to conduct Mr. Hill's surgery at the FHMC facility, and the Barix Clinics' Medical Director agreed that Mr. Hill's surgery could go forward if the bariatric surgeon added an infectious disease doctor as a consultant.
 - f. The bariatric surgeon then contacted Mr. Hill and informed him that the surgery could move forward at FHMC with the consultation of an infectious disease specialist.
 - g. The surgery was successfully completed at FHMC on May 7, 2012.
11. Based upon its investigation, the United States has determined that Barix Clinics discriminated against the complainants on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Barix Clinics, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Barix Clinics denies many of the United States' allegations and denies that it has violated the

ADA. Barix Clinics is entering into this Agreement solely to avoid further expense and uncertainty.

ACTIONS TO BE TAKEN BY BARIX CLINICS

12. Barix Clinics 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 Barix Clinics in violation of the ADA, 42 U.S.C. § 12182, and the relevant implementing regulation, 28 C.F.R. Part 36.
13. Barix Clinics shall not deny, discourage, or withhold medical treatment on the basis of a patient's HIV status; provided, however, that this provision shall not preclude Barix Clinics from declining to provide medical treatment where the treating physician or surgeon determines in his or her reasonable medical judgment that, based on an individualized assessment of the patient, including pre-operative physical examination or other medical consults, the medical treatment would not be medically-appropriate based on current medical knowledge or could not be safely provided at Barix Clinics given Barix Clinics treatment capabilities. In each instance where Barix Clinics determines that it does not believe elective bariatric surgery would be appropriate due to a patient's HIV, it will notify the United States within 14 days with a written justification. Barix Clinics shall not be required to notify the United States in instances in which a surgeon or treating physician, who is not an employee of Barix Clinics or whose medical decisions are not under the control of Barix Clinics, makes the determination that elective bariatric surgery should not be performed due to a patient's HIV.
14. Within 45 days of the effective date of this Agreement, Barix Clinics shall draft a written policy statement that shall set forth the provisions of Paragraphs 12 and 13. This policy statement will be subject to the review and approval of the United States. Once it has been approved by the United States, this policy statement shall be conspicuously posted on the main company webpage (currently at <http://www.barixclinics.com>) for the

duration of this Agreement. Barix Clinics shall modify or discard any policy, and cease any practice or procedure that contradicts the newly-stated policy.

15. Within 30 days of the approval of the policy set forth in paragraph 14, Barix Clinics will provide training on title III of the ADA and Barix Clinics' policy statement to all of its employees and clinical staff who serve or interact with individuals seeking medical treatment at Barix Clinics. Barix Clinics will provide this training to new employees or clinical staff, who serve or interact with individuals seeking medical treatment at Barix Clinics, within 30 days of joining Barix Clinics.
16. All portions of the written materials used in the training required in Paragraph 15 shall be consistent with the provisions of this Agreement, and approved in advance by the United States. All portions of the written materials used in the training required in Paragraph 16 that are revised or created after the effective date of this Agreement shall be consistent with the provisions of this Agreement, and the United States shall be notified of those revisions prior to their use.
17. Barix Clinics shall notify the United States when it has completed the requirements set forth in Paragraph 16 and shall provide the United States with documentation verifying that such requirements have been completed.
18. Within 30 days of the effective date of this Agreement, Barix Clinics shall pay \$20,000 to the first complainant and \$15,000 to Mr. Hill, as authorized by 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2), to compensate them for the harm they have endured (including, but not limited to, emotional distress, pain and suffering, and other consequential injury) as a result of Barix Clinics' denial or delay of treatment.
19. Within 30 days of the effective date of this Agreement, Barix Clinics shall pay a civil penalty in the amount of \$10,000 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

20. 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 # 202-62-284, except as provided in Paragraph 21, below.
21. The United States may review Barix Clinics' 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 Barix Clinics and the parties will attempt to resolve the concerns in good faith. The United States will give Barix Clinics 30 days from the date it notifies Barix Clinics 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 Barix Clinics, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA.
22. 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.
23. This Agreement shall be binding on Barix Clinics, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees.
24. A signatory to this document in a representative capacity for Barix Clinics represents that he or she is authorized to bind Barix Clinics to this Agreement.
25. 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 Barix Clinics 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.

26. This Agreement constitutes the entire agreement between the United States and Barix Clinics 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.
27. Barix Clinics shall not discriminate or retaliate against any person because of his or her participation in this matter.
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 Barix Clinics' 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 three years from the effective date.

AGREED AND CONSENTED TO:

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

/s/ Trevor J. Dyksterhouse
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7/22/13
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7/26/2013
Date

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

July 26, 2013