

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
AURORA HEALTH CARE
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ# 202-85-105

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Aurora Health Care, Inc. ("Aurora").
2. This matter is based upon two complaints filed with the United States Department of Justice, in which the Complainants allege that Aurora discriminated against them on the basis of disability in violation of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189. Specifically, the Complainants allege that Aurora refused to provide medical treatment to them because they have the human immunodeficiency virus ("HIV").
3. The parties have reached agreement, which the United States believes is in the public interest, to resolve this dispute. The parties therefore voluntarily enter into the following Agreement:

TITLE III COVERAGE AND DETERMINATIONS

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. Complainants No. 1 and No. 2 have HIV. They therefore have 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, they have a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.

6. Aurora is a not-for-profit health care system headquartered in Milwaukee, Wisconsin and serving more than 90 communities throughout eastern Wisconsin as well as areas in northern Illinois. The system employs over 30,000 caregivers who serve more than 1.2 million patients every year via a comprehensive network of facilities, services and providers, including 15 hospitals, more than 150 medical clinics, an extensive laboratory system, and 70 pharmacies.
7. Aurora is a private entity within the meaning of 42 U.S.C. § 12181(6) and is a public accommodation within the meaning of 42 U.S.C. § 12182(a), because its operations affect commerce and it owns, leases (or leases to), or operates places of public accommodation, including professional offices of health care providers, 42 U.S.C. § 12181(7)(F). 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); 28 C.F.R. § 36.201(a).
9. 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 an issue of general public importance. 42 U.S.C. § 12188(b).
10. 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. 28 C.F.R. § 36.302(b). See Questions and Answers: The

Americans with Disabilities Act and Persons with HIV/AIDS, available at www.ada.gov/hiv/ada_q&a_aids.htm.

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

Complainant No. 1

- a. In August 2015, Aurora employed an orthopedic surgeon at a small medical facility owned and operated by Aurora.
- b. For several years, Complainant No. 1 suffered from hip problems. In August 2015, his Aurora primary care physician referred him to an Aurora orthopedic surgeon employed at this facility.
- c. On August 6, 2015, Complainant No. 1 visited the orthopedic surgeon for evaluation and care. After examining Complainant No. 1, the orthopedic surgeon advised the complainant that he would need hip replacement surgery.
- d. In response to questions about his medical history, Complainant No. 1 advised the orthopedic surgeon that he has HIV. Upon learning this, the orthopedic surgeon stated he would not perform surgery on the complainant because he personally had chosen not to perform surgery on patients with HIV due to the risk of blood borne pathogen transmission. The orthopedic surgeon offered to write a letter to another physician on behalf of the complainant, but did not take any other steps to refer him to another Aurora orthopedic surgeon.
- e. After the surgeon refused to accept Complainant No. 1 as a surgical patient, the Aurora orthopedic surgeon did not inform Aurora management that he had declined to perform surgery. Neither Aurora management nor the Aurora orthopedic surgeon followed up with the complainant or arranged for him to be treated by another Aurora orthopedic surgeon. Instead, the complainant

searched for and found another surgeon on his own. In October 2015, the complainant was able to secure treatment at a different hospital not affiliated with Aurora.

- f. During the two-month period from August 2015, when the surgeon refused to accept Complainant No. 1 as a surgical patient until he located another orthopedic surgeon in October 2015, the complainant continued to suffer significant hip pain, as well as emotional distress because of the discrimination he faced.

Complainant No. 2

- g. In January 2016, Aurora employed a urologist at a medical facility located in Waukesha County owned and operated by Aurora.
- h. On the afternoon of Friday, January 22, 2016, Complainant No. 2 (who was a resident of a Waukesha area nursing home) and his daughter went to this medical facility for the removal of his catheter. The appointment was listed in Aurora's records as a catheter consult. On the admitting paperwork, complainant's daughter listed her father's infectious disease physician as his primary care doctor.
- i. When the Aurora urologist saw Complainant No. 2 in the examination room, he took a full medical history and asked questions about the infectious disease. In response to those questions, the complainant's daughter told the urologist that her father had HIV. After conducting a complete physical examination, the urologist advised against removing the catheter that day and provided a non-discriminatory justification for this recommendation. Specifically, the urologist advised that his usual practice was to remove catheters in the morning so that the patient could be monitored throughout the

- day in case voiding problems arise. Aurora's written medical record states that the urologist suggested they could plan for a voiding trial on another day.
- j. Despite the offer to schedule a voiding trial for another day, the urologist also stated that he was concerned he did not know more about the complainant's HIV status and that he wished to speak with the complainant's infectious disease doctor in order to minimize any transmission risks to the staff during the procedure. In response to the urologist 's concerns, the complainant's daughter advised the urologist that standard precautions—a medically accepted approach to infection control that treats all human blood and certain human body fluids as if they were known to be infectious for HIV and other blood borne pathogens—should eliminate any risk of transmission to the urologist or his staff, but the urologist said that he could not be sure that blood was not in the urine.
 - k. The catheter was not removed that day. The following week, Complainant No. 2 had his catheter removed at another medical facility.

EVIDENCE OF AURORA'S COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

- 12. Aurora has reviewed and revised as appropriate, and the United States has approved, all existing non-discrimination and infectious disease policies, programming and training that are relevant to the complaints.
- 13. The role of Aurora's Civil Rights Officer has been expanded to better coordinate handling of any future discrimination complaints. Prior to receiving notice of the Department's investigation in early December 2015, the role of Aurora's Civil Rights Officer was expanded to better coordinate handling of any future discrimination complaints. The Civil Rights Officer

position was moved from Interpreter Services as a part-time position and made into a separate and distinct position under Aurora's Diversity and Inclusion department. The Civil Rights Officer now works directly in collaboration with Aurora's Legal, Risk and Compliance departments to appropriately respond to civil rights complaints as well as perform proactive services that increase civil rights awareness and compliance within the Aurora community. In October 2016, the Civil Rights Officer position was made into a full-time position.

14. Aurora requires the completion of annual compliance training as a condition of employment for all Aurora employees, including those who are directly involved with the admissions or treatment of patients. This annual training has been supplemented to include additional instruction on civil rights, protected classes, HIV/AIDS and discrimination in general. In addition, all licensed independent practitioners (physicians, podiatrists, etc.) and advanced practice professionals are required to complete annual compliance training as a condition of Medical Staff membership.
15. Aurora requires the completion of annual safety training, including instruction on standard precautions—recommended by the Centers for Disease Control for the care of all patients, regardless of their diagnosis or presumed infection, and inclusive of universal precautions—as a condition of employment for all Aurora employees, including those who are directly involved with the admissions or treatment of patients.
16. Appropriate employment-related disciplinary actions were taken with respect to the orthopedic surgeon who encountered Complainant No. 1, which included supplemental trainings relating to non-discrimination and standard precautions, and a donation of \$9,680 was made to the AIDS Resource Center. This supplemental training also was rolled out to all Aurora

physicians, including the urologist who examined Complainant No. 2, and advanced practice providers as mandatory education intended to supplement the 2017 annual compliance course.

17. Aurora electronically maintains an attendance log that monitors mandatory compliance, civil rights, and safety training of all Aurora employees who are involved with the admissions or treatment of patients.

ACTIONS TO BE TAKEN BY AURORA

18. Aurora, including its hospitals, physicians, outpatient health care centers, and other medical facilities, agrees that it 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.
19. For the duration of this Agreement, within fourteen days from the date of resolution of any complaint related to any alleged violations of title III of the ADA, Aurora shall send written notification 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 a complete copy of Aurora's response.
20. Aurora will maintain and enforce its non-discrimination policy for the duration of this Agreement. This policy statement will be conspicuously posted in the reception area of each current and future Aurora hospital, outpatient health care center, and other medical facility, on "Caregiver Connect" for all of its employees, and on Aurora's main webpage, or

"homepage," currently located at www.aurorahealthcare.org, for the duration of this Agreement.

21. Within 60 days of the effective date of this Agreement, and every year thereafter for the duration of the Agreement, Aurora will include in its annual compliance training specific instruction on title III of the ADA, including training about HIV/AIDS and disability discrimination in general.
22. In addition, Aurora will ensure that, for the duration of this Agreement, all new employees, including those who are directly involved with admissions or treatment of patients, receive the training referenced in paragraphs 14 and 15 as a component of new employee training and orientation. Aurora shall provide the training to new employees, including those who are directly involved with the admissions or treatment of patients, within 30 days of their start date.
23. All training manuals or written materials dealing with Aurora's policies and practices used in the training required in paragraphs 17 and 18 or revised or created after the effective date of this Agreement shall be consistent with the provisions of this Agreement.
24. Aurora will maintain an attendance log that documents the name of each individual who attends, either in person or via an electronic medium, the trainings required in paragraphs 17 and 18, his or her title, and the date he or she attended or viewed the training. Copies of such attendance logs shall be provided to the United States within ten days of any request for them and maintained for the duration of this Agreement.
25. Within the later of 30 days of the effective date of this Agreement and the date the Complainant No. 1 provides Aurora with an IRS Form W-9, Aurora will pay \$30,000 to Complainant No. 1 to compensate him for any harm he may have endured (including, but not limited to, emotional distress, pain, and

- suffering) as a result of Aurora's conduct. Aurora will issue an IRS Form 1099 to Complainant No. 1 for this payment.
26. Within the later of 30 days of the effective date of this Agreement and the date the spouse of Complainant No. 2 provides Aurora with an IRS Form W-9, Aurora will pay \$15,000 to the spouse of Complainant No. 2, who is now deceased. Aurora will issue an IRS Form 1099 to the spouse of Complainant No. 2 for this payment.
27. Within 30 days of the effective date of this Agreement, Aurora will pay a civil penalty to the United States in the amount of \$15,000, 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. This payment shall be made by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Wisconsin.
28. Aurora will notify the United States in writing when it has completed the actions described in paragraphs 18-27. This notification need only be provided when all of Aurora's hospitals, physicians, outpatient health care centers, and other medical facilities have completed the action required in the relevant paragraphs. If any issues arise that affect the anticipated completion dates set forth in those paragraphs, Aurora will immediately notify the United States of the issues, and the parties will attempt to resolve those issues in good faith.

OTHER PROVISIONS

29. In consideration for the Agreement set forth above, the United States will close its investigation of DJ# 202-85-105 and will not institute a civil action alleging discrimination based on the findings set forth in paragraph 11.

However, the United States may review Aurora's compliance with this Agreement or the ADA at any time. If the United States believes that the ADA, this Agreement, or any portion of it has been violated, it may institute a civil action in an appropriate United States District Court to enforce this Agreement and/or the ADA.

30. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provisions of this Agreement.
31. 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 Aurora 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.
32. This Agreement is binding on Aurora, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that Aurora 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, Aurora 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.
33. The signatory for Aurora represents that he or she is authorized to bind Aurora to this Agreement.
34. This Agreement constitutes the entire agreement between the United States and Aurora 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.

35. This Agreement does not constitute a finding by the United States that Aurora 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 Aurora of its obligation to fully comply with the requirements of the ADA.
36. The 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.
37. Aurora shall not discriminate or retaliate against any person because of his or her participation in this matter.
38. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

EFFECTIVE DATE/TERMINATION DATE

39. The effective date of this Agreement is the date of the last signature below.
40. The duration of this Agreement will be two years from the effective date.

FOR AURORA HEALTH CARE, INC.

/s/ Jane E. Appleby

Jane E. Appleby

Associate General Counsel, Litigation

/s/ Daniel H. Sanders

Daniel H. Sanders

Kohler, Hart, Powell, S.C.

FOR THE UNITED STATES

Gregory J. Haanstad

United States Attorney

By: /s/ Chris R. Larsen

Chris R. Larsen

Assistant United States Attorney

6/22/17

Date

7/11/17

Date

7/21/17

Date

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July 27, 2017