

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
KNOXVILLE CHIROPRACTIC CENTERS
UNDER THE AMERICANS WITH DISABILITIES ACT

[Press Release](#)

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Knoxville Chiropractic Centers.
2. This matter is based upon a complaint filed with the United States Department of Justice that alleged that Knoxville Chiropractic 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 Knoxville Chiropractic refused to treat him 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 relevant 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 functions 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. Knoxville Chiropractic is a Tennessee-based company, with its principal place of business at 1812 E. Lamar Alexander Parkway, Maryville, TN 37804. Knoxville Chiropractic includes a total of four clinics: Maryville, Madisonville, Knoxville North, and Knoxville West. Dr. Woodrow Gwinn, Jr. is the sole proprietor and owner of Knoxville Chiropractic.
7. Dr. Gwinn owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a). Knoxville Chiropractic 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. Following an April 28, 2011, automobile accident that displaced his neck, back, and hips, the complainant sought treatment from Knoxville Chiropractic. He was scheduled for the first available appointment on May 4, 2011, at the Knoxville North clinic, located at 1713 Dry Gap Pike, Knoxville, TN 37918.
 - b. When the complainant entered the office on May 4, he could barely walk or move

his neck. At this time, the complainant completed the required paperwork. On his intake forms, the complainant disclosed his HIV. He was seen by a doctor, had x-rays taken, and had several passive treatments (ultrasound, electric stimulation, and cold packs). The complainant's prospective treatment consisted of the application of a controlled force to specific areas of his body to relieve pain, decrease muscle spasm, restore normal mobility, and increase range of motion. All of these treatments are entirely external and non-invasive. Twenty-four subsequent appointments for the complainant were scheduled before he left the office.

- c. On May 6, 2011, the complainant returned for his follow-up visit and was again provided only passive treatments, which failed to provide him any relief from his injuries. He continued to suffer from severe headaches and loss of sleep.
- d. On May 9, 2011, the complainant returned to the Knoxville North clinic, at this point in significant pain. In front of another patient and child, the receptionist informed the complainant that his treatment had been cancelled because they could not treat people "like him." The receptionist stated that they did not have the proper equipment or safety precautions in place to "handle" the complainant's medical condition. When the other patient left the waiting room, the receptionist confirmed that the refusal to continue treatment was due to his HIV.
- e. The complainant immediately called Dr. Gwinn, and they spoke later that day. Dr. Gwinn confirmed that he had made the decision not to treat the complainant based on his HIV. Dr. Gwinn advised the complainant that he seek treatment from someone more qualified to treat a patient with HIV.
- f. The following day, the complainant met with a new chiropractor who began active treatments on the complainant without hesitation. These treatments provided the complainant with immediate relief from his injuries.
- g. It is Knoxville Chiropractic's policy not to treat patients who have HIV.

Accordingly the doctor who saw the complainant was trained by Dr. Gwinn to deny treatment to all patients who have HIV because they cannot handle such “special cases.”

10. The United States has determined that Knoxville Chiropractic discriminated against the complainant by denying him the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Knoxville Chiropractic, on the basis of disability, in violation of 42 U.S.C. § 12182 and 28 C.F.R. §36.201.
11. The United States has further determined that Knoxville Chiropractic 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). A determination that an individual poses a direct threat to the health or safety of others must be made through an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, not on generalization or stereotypes. 42 U.S.C. §12182(b)(3); 28 C.F.R. § 36.208(b). According to the Centers for Disease Control, medical evidence conclusively demonstrates that a person can only acquire HIV by a) having sex with an individual who has HIV, b) by direct exposure (such as through an injection or open wound, exposure of mucous membranes, or transplantation) to blood, blood products, organs, or other tissues of an individual with HIV, and c) through transmission from a mother with HIV to an infant during pregnancy, birth, or breast feeding. HIV cannot be transmitted through day-to-day, casual contact. Medical evidence further indicates that HIV has never been transmitted through saliva or sweat.

ACTIONS TO BE TAKEN BY KNOXVILLE CHIROPRACTIC

12. Knoxville Chiropractic 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 Knoxville Chiropractic 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, Knoxville Chiropractic 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 the United States, this policy statement will be conspicuously posted in the waiting area of all its clinics and on the main company webpage at <http://www.knoxchirocenters.com> for the duration of this Agreement.
14. Within 60 days of the effective date of this Agreement, Knoxville Chiropractic will provide training on title III of the ADA to all Knoxville Chiropractic employees, including training about HIV discrimination.
15. All training manuals or written materials concerning Knoxville Chiropractic's 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. Knoxville Chiropractic will notify the United States when it has completed the actions described in paragraphs 13, 14, and 15.
17. Within 30 days of the effective date of this Agreement, Knoxville Chiropractic 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

18. 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 # 202-70-75, except as provided in paragraph 19, below.
19. The United States may review Knoxville Chiropractic'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 Knoxville Chiropractic and the parties will attempt to resolve the concerns in good faith. The United States will give Knoxville Chiropractic 30 days from the date it notifies Knoxville Chiropractic of any breach of this Agreement to cure that breach. If the United States is unable to reach a satisfactory resolution of the raised within 30 days of the date that it provides notice to Knoxville Chiropractic, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA.

20. 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.
21. A signatory to this document in a representative capacity for Knoxville Chiropractic represents that he or she is authorized to bind Knoxville Chiropractic to this Agreement.
22. This Agreement constitutes the entire agreement between the United States and Knoxville Chiropractic 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.
23. 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 Knoxville Chiropractic's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

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

AGREED AND CONSENTED TO:

DR. WOODROW GWINN, JR.
Knoxville Chiropractic Centers
1812 E. Lamar Alexander Pkwy.
Maryville, Tennessee 37804
(865) 238-4387

4-20-2012
Date

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

ALLISON J. NICHOL, Chief
ALBERTO RUISANCHEZ, Deputy
Chief
KATHLEEN P. WOLFE, Special
Litigation Counsel
DAVID W. KNIGHT, Trial Attorney
MEGAN E. SCHULLER, 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

5-11-2012
Date

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

May 14, 2011

