

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
MODERN DENTAL PROFESSIONAL, INDIANA, P. C.
DJ # No. 202-26S-114**

A. BACKGROUND

Parties:

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America and Modern Dental Professional, Indiana, P.C., d/b/a Monarch Dental Associates (“Modern”).
2. Modern is incorporated under the laws of the state of Indiana. Modern owns 10 dental offices and each office provides general dentistry services to its patients.
3. This matter was initiated by a complaint filed by [REDACTED] with the United States Department of Justice (“Department”) or (“United States”) on behalf of [REDACTED] who is deaf, against Modern. The complaint alleges that [REDACTED] called the Modern dental office located at 9820 E. 38th Street, Indianapolis, IN to schedule a dental appointment for [REDACTED] who needed complex and extensive dental services. After [REDACTED] informed the Modern employee that [REDACTED] was deaf, the employee informed [REDACTED] that writing would be an effective method of communication. After [REDACTED] explained to the employee that writing would not be an effective form of communication, [REDACTED] was informed that Modern could not afford to pay for a qualified sign language interpreter for [REDACTED]. The complaint also alleges that Modern’s refusal to pay for a qualified sign language interpreter for [REDACTED] violated [REDACTED] rights under title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36.
4. Modern’s position is that it did not violate the complainant’s rights, Title III of the ADA or its implementing regulation and that its willingness to enter into this Settlement Agreement is not to be construed as an admission of wrongdoing or liability, which it expressly denies.
5. The Department is authorized to investigate alleged violations of title III of the ADA, and to bring a civil action in federal court if the Department is unable to secure voluntary compliance in any case that involves a pattern or practice of discrimination or that raises issues of general public importance, 42 U.S.C. § 12188(b).
6. The parties enter into this Agreement in order to avoid unnecessary and costly litigation and hereby agree as follows:
7. The United States asserts that Modern is a private entity that owns 10 dental offices and

is therefore a public accommodation pursuant to 42 U.S.C. § 12181(7)(F) and its implementing regulation, 28 C.F.R. § 36.104.

8. [REDACTED] is deaf and is therefore a person with a disability within the meaning of 42 U.S.C. § 12102(2)(A) and 28 C.F.R. § 36.104.

B. LEGAL STANDARDS

9. The ADA provides that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.” 42 U.S.C. § 12182(a).
10. The ADA and its implementing regulations require that public accommodations “. . . furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.” 28 C.F.R. § 36.303(c).
11. Under the ADA, it is discriminatory for public accommodations to fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182 (b)(2)(A)(iii); 28 C.F.R. § 36.303(a).

C. TERMS OF AGREEMENT

In order to take steps to make sure that qualified individuals with disabilities, including those who are deaf or hard of hearing, are not discriminated against, Modern agrees to the following:

12. Within thirty (30) days of the effective date of this Agreement, Modern agrees to adopt Appendix A as its new policy on Effective Communication. Also, Modern agrees to post a copy of its new policy on Effective Communication in all of its dental offices. In addition, Modern agrees to distribute a copy of its new policy on Effective Communication to its employees and patients, upon request. Modern further agrees not to modify its Effective Communication Policy without the consent of the Department.
13. Within thirty (30) days of the effective date of this Agreement, Modern will adopt the Effective Communication Assessment Form, attached to this Settlement as Appendix B, which will allow its employees to make an assessment as to whether a patient who is deaf or hard of hearing requires appropriate auxiliary aids and services, such as interpreters, for effective communication. In addition, Modern will keep a copy of each Communication Assessment Form that they fill out in each patient’s dental records.

14. Within thirty (30) days of the effective date of this Agreement, Modern will post a sign in a conspicuous location, in each of its offices, where it can be seen by both patients and staff, stating:

In compliance with the Americans with Disabilities Act of 1990, Modern Dental Associates, P.C. d/b/a Monarch Dental Associates will provide qualified sign language interpreters, or other auxiliary aids or services, free of charge, when they are necessary for effective communication with patients. For assistance, please contact Modern's Administrative Office at (812) 689-7461.

15. Within sixty (60) days of the effective date of this Agreement, Modern agrees to provide mandatory training to all of its employees on the ADA, the provision of providing qualified sign language interpreters, and its new Effective Communication Policy. Thereafter, Modern agrees to train its employees, annually, on the ADA and on Modern's requirement to provide appropriate auxiliary aides and services, such as qualified sign language interpreters when they are necessary for effective communication.

D. REPORTING AND MONITORING

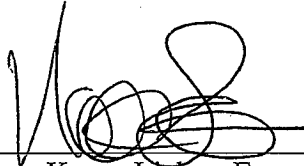
16. In order to assess whether the modifications to Modern's practices are effective, six months after this Agreement is executed, and continuing once a year for the two years this agreement is in effect, Modern will provide to the Department of Justice copies of written or e-mail complaints that Modern received from patients who are deaf or hard of hearing seeking qualified sign language interpreters, and documentation that reflects whether and how the complaint was resolved.

E. IMPLEMENTATION AND ENFORCEMENT OF THIS AGREEMENT

17. The United States is authorized, pursuant to 42 U.S.C. § 12188(b)(1)(B), to bring a civil action under Title III, enforcing the ADA in any situation where a pattern or practice of discrimination is believed to exist or a matter of general public importance is raised. In consideration of the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit under title III in this matter, except as provided in paragraph 18.
18. The United States may review compliance with this Agreement at any time and may enforce this Agreement if the United States believes that it or any requirement thereof has been violated. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concern(s) with Modern and the parties will attempt to resolve the concern(s) in good faith. The United States will give Modern 30 days from the date it notifies Modern of any breach of this Agreement to cure that breach, prior to instituting any court action to enforce this Agreement and/or the provisions of title III of the ADA.

19. Failure by the United States to enforce any provision or deadline of this Agreement shall not be construed as a waiver of its right to enforce other provisions or deadlines of this Agreement.
20. Copies of this Agreement, and any information contained in it, may be made available to any person at any time. The Department and Modern shall provide copies of this Settlement Agreement to any person upon request.
21. This Agreement shall be binding on Modern, its agents and employees. In the event Modern seeks to transfer or assign all or part of its interest in any facility covered by this Agreement, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale Modern shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of the Agreement.
22. This Agreement constitutes the entire Agreement between the parties relating to Department of Justice No. 202-26S-114 and no other statement, promise, or agreement, either written or oral, made by either party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.
23. This Agreement shall remain in effect for 2 years from the effective date. The effective date of this Agreement is the date of the last signature.
24. The individuals signing this Agreement represent that they are authorized to bind the parties 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.

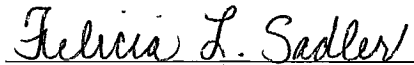
For MODERN DENTAL PROFESSIONALS



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Date: April 17, 2006

APPENDIX A
MONARCH DENTAL ASSOCIATES
EFFECTIVE COMMUNICATION POLICY

Patients who are deaf or hard of hearing are to be informed that Modern Dental Professionals, Indiana, P.C. d/b/a Monarch Dental Associates will arrange for appropriate auxiliary aids and services needed for effective communication at all dental appointments or when requested by the patient. Modern agrees to provide all appropriate auxiliary aids and services required by this Agreement free of charge to patients.

General Assessment Criteria. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration and frequency with which they will be provided, will be made by Modern Personnel who are otherwise primarily responsible for coordinating and/or providing patient care services, in consultation with the patient or companion where possible. The assessment will take into account all relevant facts and circumstances, including without limitation the following:

- (a) The nature, length and importance of the communication at issue;
- (b) The individual's communication skills and knowledge;
- (c) The patient's request for or statement of need for an interpreter;
- (d) The availability at the required times, of appropriate auxiliary aids and services, including qualified sign language interpreters.

Time for Assessment. The determination of which appropriate auxiliary aids and services are necessary, must be made at the time an appointment is scheduled. Modern Personnel will perform and document in the patient's dental chart a communication assessment as part of each initial inpatient assessment. The Modern Personnel shall reassess which appropriate auxiliary aids and services are necessary, in consultation with the patient or companion where possible, in the event that communication is not effective.

APPENDIX B

**MODERN DENTAL PROFESSIONALS d/b/a/ MONARCH DENTAL ASSOCIATES
MODEL COMMUNICATION ASSESSMENT FORM**

We ask this information so that we can communicate with patients who are deaf or hard of hearing or their companions effectively. All communication aids and services are provided FREE OF CHARGE. If you need further assistance, please ask one of our employees.

Date

Name of Person with Disability

Patient's Name or Name of Person Filling Out this Form

Name of Modern Dental Professional Personnel

Name of Dental Office

Address of Dental Office

Nature of Patient's Disability:

- Deaf
- Hard of Hearing
- Speech Impairment
- Other: _____

Relationship to Patient:

- Self
- Family member
- Friend
- Other: _____

Does the patient with a disability need/require a professional qualified sign language or oral interpreter (which will be provided free of charge) to communicate effectively with Modern personnel?

- No.** He/she does not use sign language and does not use interpreters to lip read.
- No.** He/she prefers to have family members/friends help with communication.
- No.** He/she prefers writing back and forth.
- Other.** Explain: _____

 Yes. Choose one (free of charge):

- American Sign Language (ASL)
- Signed English
- Oral Interpretater
- Other. Explain: _____