

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into between the American Association of Colleges of Podiatric Medicine (“AACPM”) and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (“Office of Special Counsel”).

WHEREAS, on November 17, 2015, the Office of Special Counsel received a charge filed by [REDACTED] (“Charging Party”) against Respondent, DJ# 197-35-436, (the “OSC Charge”) alleging citizenship status discrimination in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the “Act”).

WHEREAS, the Office of Special Counsel found, based upon its investigation of the OSC Charge, that there is reasonable cause to believe that Respondent committed citizenship status discrimination in violation of the Act against the Charging Party and other non-U.S. citizens from at least April 2013 until at least December 28, 2015. Specifically, the Office of Special Counsel’s investigation found that Respondent, as a paid referrer, violated 8 U.S.C. 1324b(a)(1) through its operation of the Central Application Service for Podiatric Residencies (“CASPR”) by helping to create and publishing job postings that discriminated against non-U.S. citizens because of their citizenship status.

WHEREAS, the Office of Special Counsel’s investigation of the OSC Charge revealed evidence that Respondent also maintains the AACPM Online Clerkship Application, including a directory of available podiatry clerkships and an application portal for podiatry clerkships; that performing a podiatry clerkship with a particular employer may lead to a podiatry residency with that same employer; and that the directory of available clerkships includes postings that discriminated against non-U.S. citizens because of their citizenship status.

WHEREAS, because AACPM is committed to full compliance with the Act, AACPM engaged with the Office of Special Counsel in open dialogue about the allegations and worked with the attorneys at the Office of Special Counsel to reopen the 2016 matching process to allow non-citizen applicants to apply to certain programs AACPM identified and that agreed to participate. AACPM vigorously disputes that it was a paid referrer and states that AACPM maintains a directory wherein programs enter job postings and applicants apply to those postings, with AACPM making no recommendations or referrals of candidates to programs. By entering into this Agreement, AACPM does not admit to the truth or validity of any claim made against it by the Office of Special Counsel.

WHEREAS, the Office of Special Counsel and Respondent wish to resolve the OSC Charge and investigation without further delay or expense or the risks and uncertainties of litigation and hereby acknowledge that they are voluntarily entering into this Agreement.

WHEREAS, any penalties sought by OSC during the course of its investigation, in settlement negotiations, or in this Agreement, shall not be construed as any allocation of liability or fault-based apportionment between AACPM and any other entity, nor shall payment of such penalties be construed as an admission of liability by AACPM.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and to fully and finally resolve the OSC Charge and concomitant investigation as of the date of this Agreement, it is agreed as follows:

1. This Agreement becomes effective as of the date of the latest signature on the Agreement, which date is referenced herein as the "Effective Date." The "term of this Agreement" shall be three years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of \$65,000.00.
3. Respondent shall pay the monies referenced in paragraph two via the FedWire electronic fund transfer system within ten (10) business days from the date the Office of Special Counsel provides Respondent with fund transfer instructions. On the day of payment, Respondent shall confirm via email to Gloria Yi at Gloria.Yi@usdoj.gov that payment was made.
4. Respondent shall refund to the Charging Party five-hundred and fifty dollars (\$550) as reimbursement for all fees he paid to Respondent to participate in CASPR. This money shall be paid by cashier's check payable to the Charging Party and mailed via express delivery service, either within five (5) business days from the date Respondent receives a fully signed copy of this Agreement (the "Effective Date") or within five (5) business days of receiving a signed copy of any release it may require under paragraph 5, whichever is later. Within two (2) business day of mailing the check, a copy of such check and the express delivery service tracking number for the mailing shall be sent to Gloria Yi at Gloria.Yi@usdoj.gov.
5. Any release of claims Respondent may require the Charging Party to sign as a condition of the payment of monies discussed in paragraph 4 shall be submitted to the Office of Special Counsel for approval no later than fourteen (14) business days after the final execution of this Agreement. Any such release of claims must be limited to the allegations contained in the OSC Charge, and the Charging Party must be allowed at least 14 days to consider and execute any required release.
6. Respondent shall not discriminate on the basis of citizenship, immigration status or national origin in violation of 8 U.S.C. § 1324b in hiring, firing, or recruitment or referral for a fee.
7. Respondent shall not intimidate, threaten, coerce, or retaliate against any person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
8. Except as set forth in 8 U.S.C. § 1324b(a)(2)(C), Respondent shall treat all individuals equally, without regard to citizenship, immigration status, or national origin, in the management and administration of CASPR and its associated website, CASPRweb, and in the clerkship application process. Within thirty (30) days from the Effective Date, Respondent shall:

- a. Revise CASPRweb, the AACPM Online Clerkship Application, and any other system or website AACPM operates to process or facilitate applications for podiatry training or employment to remove any language or menu option that asks a participating residency or clerkship program whether it restricts its program to U.S. citizens or whether it accepts green cards. If Respondent includes language that asks or allows a participating residency or clerkship program to indicate whether it is willing to sponsor a podiatric clerk or resident for an employment-based visa, Respondent shall highlight that lawful permanent residents, U.S. nationals, asylees and refugees are among the categories of non-U.S. citizens who do not require sponsorship;
 - b. Revise CASPRweb, the AACPM Online Clerkship Application, and any other system or website AACPM operates to process or facilitate applications for podiatry training or employment to remove any language or menu option that asks podiatric residency or clerkship applicants about their citizenship status or place of birth;
 - c. Review, modify and reissue all CASPR, CASPRweb, and clerkship application policies, procedures, and manuals, including but not limited to, the “Welcome to CASPR” document made available to residency programs, the “Residency Program CASPRweb User Guide,” the “Applicant CASPRweb Guide,” the “Clerkship Student User Guide,” and the “Clerkship Program User Guide,” to reflect the changes described in subparagraphs 8(a) and 8(b) above. Respondent shall provide the proposed revisions to the Office of Special Counsel for review and approval prior to the reissuance of such documents. The Office of Special Counsel shall complete its review of revisions within thirty (30) days of receipt thereof;
 - d. Provide the Office of Special Counsel with temporary electronic access to CASPRweb and the AACPM Online Clerkship Application after the revisions discussed in subparagraphs 8(a) through 8(c) above are implemented, which shall allow the Office of Special Counsel the ability to review the content and functionality of CASPRweb and the AACPM Online Clerkship Application from the same perspective as residency or clerkship applicants and programs. The Office of Special Counsel shall provide notice at least one week in advance of any request for temporary access, and the temporary access is not to exceed four weeks; and
 - e. For three years from the Effective Date of this Agreement (the “Reporting Period”), provide any changes to CASPR, CASPRweb or the AACPM Online Clerkship Application which relate to citizenship, immigration status, or national origin, to the Office of Special Counsel for review at least thirty (30) days prior to the effective date of such change. Respondent shall not make any changes to CASPR, CASPRweb or the AACPM Online Clerkship Application which the Office of Special Counsel determines are likely to result in unlawful citizenship status or national origin discrimination.
9. Within thirty (30) days of the Effective Date of this Agreement, Respondent will provide the “Notice Regarding Citizenship Status Discrimination,” attached as Exhibit A, to all residency programs that participate in CASPR and all clerkship programs

that participate in the AACPM Online Clerkship Application. During the Reporting Period, Respondent shall include the “Notice Regarding Citizenship Status Discrimination” in all CASPR and clerkship orientations, training, or information provided to applicants or residency programs about CASPR, clerkships, or the match process, including, but not limited to, the AACPM website, CASPRweb and the AACPM Online Clerkship Application. Respondent will provide the “Notice Regarding Citizenship Status Discrimination,” attached as Exhibit A, to all CASPR or clerkship applicants within thirty (30) days of such persons registering as an applicant.

10. Within ninety (90) days from the Effective Date of this Agreement, Respondent and the Office of Special Counsel will jointly create an electronic training program that will address citizenship status discrimination, including an overview of employment-based visas available to podiatric residents and the revisions to CASPRweb and the AACPM Online Clerkship Application identified in paragraph 8 above. The training program shall include the hotline and website information for the Office of Special Counsel, and be subject to the approval of the Office of Special Counsel.
 - a. Within fourteen (14) days after the Office of Special Counsel approves the training, Respondent shall require its employees who are responsible for the programming, administration, or management of CASPR, CASPRweb, and/or the AACPM Online Clerkship Application, who facilitate the processing of residency or clerkship applications, or who facilitate scheduling of residency interviews, to complete this training in person or electronically and certify they have done so. Respondent shall require all future employees to complete such training in person or electronically prior to their assumption of such duties and responsibilities.
 - b. Beginning not more than fourteen (14) days after the Office of Special Counsel approves the training, Respondent shall require all individuals who use CASPRweb on behalf of residency programs or the AACPM Online Clerkship Application on behalf of clerkship programs, currently or in the future, to certify that they have completed this training before information concerning the program is published on CASPR or in the clerkship handbook.
11. For the duration of the Reporting Period, Respondent shall provide to the Office of Special Counsel a copy of any complaints, whether informal or formal, relating to potential citizenship or immigration status discrimination that Respondent receives from residency and clerkship applicants or residency and clerkship programs within fourteen (14) days of receiving the complaint.
12. During the Reporting Period, the Office of Special Counsel shall have the right to make reasonable inquiries or document requests to Respondent that are necessary to monitor Respondent’s compliance with this Agreement. The Office of Special Counsel may require written reports concerning compliance, inspect Respondent’s premises, interview witnesses, and examine and copy Respondent’s documents at the expense of the Office of Special Counsel. Unless otherwise provided by law, the Office of Special Counsel shall require no less than 21 days to respond to any inquiry under this paragraph.

13. If the Office of Special Counsel has reason to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel shall promptly notify Respondent of the purported violation. Respondent will then be given thirty (30) days from the date it is notified by the Office of Special Counsel in which to cure the violation to the Office of Special Counsel's satisfaction before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.
14. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent with the Office of Special Counsel or the statutory obligation that the Office of Special Counsel has to investigate the charge under 8 U.S.C. § 1324b(d)(1). No person or entity other than as provided for in paragraph 4 of this Agreement is intended to be a third-party beneficiary of the provisions of this Settlement Agreement for purposes of any other civil, criminal, or administrative action, and, accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement in any separate action.
15. This Agreement resolves any and all differences between the parties relating to the OSC Charge and concomitant investigation through the date this Agreement is signed by both parties. During the pendency of the Agreement, the Office of Special Counsel shall not file a complaint for any claim or allegation arising under the Act relating to the conduct that is the subject of the Office of Special Counsel's investigation that occurred up until the Effective Date.
16. The Office of Special Counsel agrees to close its investigation of the OSC charge, and to dismiss the OSC Charge, within five (5) business days after the satisfaction of paragraphs 1-4 of this Agreement.
17. The provisions of paragraph 2 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for the pattern or practice of citizenship status discrimination in violation of 8 U.S.C. § 1324b that the Office of Special Counsel investigated in connection with the OSC Charge through the Effective Date of this Agreement.
18. This Agreement may be enforced in the United States District Court for the District of Columbia or any other court of competent jurisdiction.
19. The Office of Special Counsel and Respondent agree that, as of the Effective Date of this Agreement, litigation concerning the alleged violations of 8 U.S.C. § 1324b that the Office of Special Counsel has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Furthermore, no temporary electronic access needs to be provided as of the effective date of this Agreement other than if requested as provided under Paragraph 8d. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
20. Should any provision of this Agreement be declared or determined by any court to be

illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Respondent and the Office of Special Counsel agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.

21. The Office of Special Counsel and Respondent agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
22. This Agreement sets forth the entire agreement between the Respondent and the Office of Special Counsel and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. Any modification of this Agreement shall be executed in writing by the Parties.
23. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The parties agree to be bound by facsimile signatures.
24. "Notice" under this Agreement shall be provided to the following or their successors:

For the Office of Special Counsel:

Gloria Yi

Office of Special Counsel for Immigration-Related Unfair Employment Practices

Gloria.yi@usdoj.gov

For AACPM:

Joyce E. Smithey, Esq.

Rifkin, Weiner, Livingston, Levitan & Silver, LLC

225 Duke of Gloucester St.

Annapolis, Maryland 21401

The American Association of Colleges of Podiatric Medicine

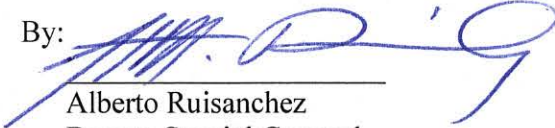
By:


Moraith G. North
Executive Director

Dated: 20 June 2016

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By:



Alberto Ruisanchez
Deputy Special Counsel

Dated: 6-20-16

Jodi Danis
Special Litigation Counsel

Gloria Yi
Jennifer Deines
Trial Attorneys

Janet Stump
Equal Opportunity Specialist

ATTACHMENT A



Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice Civil Rights Division

NOTICE REGARDING CITIZENSHIP STATUS DISCRIMINATION

Citizenship or Immigration Status Discrimination

- The anti-discrimination provision of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1324b, prohibits discrimination in hiring, firing, and recruitment or referral for a fee based on citizenship status or national origin.
- U.S. citizens, recent lawful permanent residents, asylees and refugees are protected from citizenship status discrimination.
- Employers **CANNOT** refuse to consider or hire these individuals because of their citizenship or immigration status unless a law, regulation, executive order, government contract, or Attorney General determination requires a preference for U.S. citizens.
- **DO NOT** specify that you hire only U.S. citizens unless you have reviewed the legal support for such a requirement.
- **DO NOT** refuse to consider or hire work-authorized non-U.S. citizens because of their citizenship or immigration status.
- **DO** ensure that all individuals involved in hiring and recruitment are familiar with equal employment opportunity laws, including the anti-discrimination provision of the INA.

Visa Sponsorship

- Many non-U.S. citizens, including lawful permanent residents (who are often referred to as having a “green card”), asylees, and refugees, are authorized to work without employer sponsorship.
- Other non-U.S. citizens, such as students on a temporary work or training visa, may need sponsorship by their employer to complete a residency. It is permissible for an employer to choose not to sponsor individuals for employment-based visas, such as H1-B visas.
- **DO NOT** assume that non-U.S. citizens require employer sponsorship. Consider each applicant individually. If you do not know, ask them whether they will require sponsorship.
- **DO NOT** specify immigration documents that individuals must have or present to be hired or to begin work. For example, do not specify that individuals must have a green card.

**Contact the Office of Special Counsel
for further information on immigration-related employment discrimination
Employer Hotline: 1-800-255-8155 (TTY 1-800-237-2515)**

www.justice.gov/crt/about/osc