



**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
DENTEX DENTAL MOBILE, INC.  
UNDER THE AMERICANS WITH DISABILITIES ACT**

**BACKGROUND**

1. The parties to this Settlement Agreement are the United States of America and Dentex Dental Mobile, Inc. (hereinafter referred to as "DDMI").
2. This matter is based upon a complaint filed with the United States Department of Justice, in which Complainant alleged that DDMI discriminated against him on the basis of his disability in violation of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189. Specifically, the Complainant alleges that DDMI refused to perform a dental procedure on him based on his HIV status.
3. The parties have reached agreement that it is in the parties' best interests, and the United States believes that it is in the public interest, to resolve this dispute. 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 regulation implementing title III, 28 C.F.R. Part 36.
5. The Complainant, an individual with HIV, has 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, he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
6. DDMI is a Pennsylvania corporation with its principal location at 3035 Franks Road, Huntington Valley, Pa. 19006-4216. As part of its business, DDMI owns and operates several dental clinics, both fixed and mobile, throughout the Philadelphia area. DDMI provides the facilities, staffing, accounting, billing and other support services to contracting dentists who pay a percentage of their fee for these administrative services. The evaluation of each patient and all treatment decisions are the exclusive responsibility of each contracting dentist.

7. DDMI owns and operates a dental clinic located at 1111 Avenue of the States, Chester, Pennsylvania ("Chester Clinic"). Dentex Dental Group, Ltd., a related corporation, owns and operates a clinic at 1701 Moyamensing Avenue, Philadelphia, Pennsylvania ("Moyamensing Clinic").
8. DDMI owns, leases (or leases to), or operates places of public accommodation within the meaning of 42 U.S.C. § 12182(a); is a private entity within the meaning of 42 U.S.C. § 12181(6); and is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7), because it affects commerce and operates a professional office of a health care provider. *See also* 28 C.F.R. § 36.104.
9. 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).
10. 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 issues of general public importance. 42 U.S.C. § 12188(b).
11. As a result of its investigation, the United States has determined:
  - a. On October 12, 2012, Complainant had an appointment at a DDMI mobile clinic stationed in Chester. He disclosed his HIV status in the patient paperwork, and he proceeded to have his teeth cleaned and five cavities filled by the contracting dentist on duty that day without incident.
  - b. On July 17, 2013, Complainant arrived for an appointment at the Chester Clinic in order to have a tooth extracted. Complainant experienced such pain in the tooth that he had previously visited Taylor Hospital's Emergency Room on two occasions to be treated for the pain.
  - c. After disclosing his HIV status in the patient paperwork at the Chester Clinic, Complainant was informed by the Office Manager that the extraction could not be performed. Complainant was never evaluated or examined by the contracting dentist on duty that day. After informing the Complainant that the contracting dentist could not extract his tooth due to his HIV status, the Office Manager gave Complainant a piece of paper with a referral to an AIDS clinic for further assistance. It is a matter of dispute whether the contracting dentist on duty that day refused to treat Complainant or whether the Office Manager turned Complainant away on his own prompting.

- d. Later that day, the General Manager of DDMI called Complainant to apologize for what happened and suggested that Complainant visit the Moyamensing Clinic the following day.
  - e. The following day, July 18, 2013, Complainant presented at the Moyamensing Clinic, and the contracting dentist on duty that day performed the tooth extraction without incident.
  - f. After receipt of Complainant's grievance, DDMI and its counsel requested that the contracting dentist working on July 17, 2013 at the Chester Clinic prepare a statement of facts concerning what happened with regard to Complainant. The dentist, although initially cooperative, eventually refused to prepare the statement of facts. Therefore, DDMI and the dentist terminated their relationship.
12. 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. *See Questions and Answers: The Americans with Disabilities Act and Persons with HIV/AIDS*, available at [http://www.ada.gov/aids/ada\\_q&a\\_aids.htm](http://www.ada.gov/aids/ada_q&a_aids.htm).
13. The United States has determined that DDMI discriminated against the Complainant on July 17, 2013 by initially denying Complainant the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of DDMI on the basis of HIV, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. However, DDMI did attempt to immediately remedy the violation by apologizing to Complainant and by treating Complainant for his medical emergency the following day on July 18, 2013 at a DDMI-related facility.

#### **ACTIONS TO BE TAKEN BY DDMI**

14. DDMI, including its facilities, contracting dentists, and employees, 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.
15. Within seven days of receipt of any complaint related to any alleged violations of the ADA, DDMI 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 DDMI's response.



16. Within 30 days of the effective date of this Agreement, DDMI will submit a draft non-discrimination policy to the United States for its review and approval. The non-discrimination policy will state that it does not discriminate in the provision of services to persons with disabilities, including persons who have HIV or AIDS. Once it has been approved by the United States, DDMI will adopt, maintain, and enforce the 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 DDMI facility, and on the company's main webpage or "homepage," currently located at <http://www.dentexgroup.com>, as well as on the homepage of any current or future DDMI website, for the duration of this Agreement.
17. Starting immediately, DDMI will make a change to its contracts executed with all employees and with all dentists affiliated with DDMI. The change will include a clause that states that the Employee or Independent Contractor "agrees to insure full compliance with the American with Disabilities Act by rendering dental services to the public without discriminating, in any manner, against any individual on the basis of any disability, including, but not limited to, infectious diseases such as AIDS, HIV, or any form of hepatitis."
18. All training manuals or written materials dealing with DDMI's policies and practices used in any future training of employees will include the policy statement referenced in paragraph 16 of this agreement.
19. DDMI will notify the United States in writing when it has completed the actions described in paragraph 16. This notification need only be provided when all of DDMI's facilities have completed the action required in paragraph 16. If any issues arise that affect the anticipated completion dates set forth in paragraph 16, DDMI will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

#### **OTHER PROVISIONS**

20. In consideration for the Agreement set forth above, the United States will close its investigation and will not institute a civil action at this time alleging discrimination based on the allegations set forth above. However, the United States may review DDMI's compliance with this Agreement or title III of the ADA at any time. If the United States believes that title III of the ADA, this Agreement, or any portion of it has been violated, it may institute a civil action in the appropriate U.S. District Court to enforce this Agreement and/or title III of the ADA.
21. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce other provisions of this Agreement.

22. 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 DDMI 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.
23. This Agreement is binding on DDMI, including all principals, agents, executors, administrators, representatives, employees, contractors, successors in interest, beneficiaries, and assignees. In the event that DDMI 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, DDMI 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.
24. The signatory for DDMI represents that he or she is authorized to bind DDMI to this Agreement.
25. This Agreement constitutes the entire agreement between the United States and DDMI 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.
26. This Agreement does not constitute a finding by the United States that DDMI 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 DDMI of its obligation to fully comply with the requirements of the ADA.
27. The paragraph 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.
28. DDMI shall not discriminate or retaliate against any person because of his or her participation in this matter.

#### **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 two years from the effective date.

AGREED AND CONSENTED TO:



ALBERT ALOIAN  
President and CEO  
Dentex Dental Mobile, Inc.  
10108 Bustleton Avenue  
Philadelphia, PA 19116

1/13/2015  
Date



ZANE DAVID MEMEGER,  
United States Attorney



MARGARET L. HUTCHINSON  
Chief, Civil Division



JACQUELINE C. ROMERO  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
215-861-8200

2/19/15  
Date