



**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
MERCY SUBURBAN HOSPITAL  
UNDER THE AMERICANS WITH DISABILITIES ACT**

**BACKGROUND**

1. The parties to this Settlement Agreement are the United States of America and Mercy Suburban Hospital ("Mercy").
2. This matter is based upon a complaint filed by the AIDS Law Project of Pennsylvania with the United States Department of Justice, in which a Complainant alleged that Mercy discriminated against her on the basis of her disability in violation of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189. Specifically, the Complainant alleges that a doctor and member of the medical staff at Mercy Suburban Hospital refused to accept her as a new bariatric patient because she has HIV.
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, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
6. Mercy Suburban Hospital, is a hospital that provides, among other services, bariatric surgery. Mercy Suburban Hospital is located in East Norriton, Pennsylvania.
7. Mercy 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 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.

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 issues of general public importance. 42 U.S.C. § 12188(b).
10. As a result of its investigation, the United States has determined:
  - a. The Complainant is a person with HIV whose primary physician recommended that she undergo bariatric surgery in order to help her lose weight.
  - b. In July 2013, the Complainant arrived for an initial appointment at the practice office of the bariatric surgeon. In the initial intake process, the Complainant revealed to a nurse that she has HIV.
  - c. The doctor who was scheduled to meet with the Complainant that day reviewed the medical chart given to him by the nurse and concluded, based on his medical understanding, that he could not perform bariatric surgery on the Complainant because she has HIV. In evaluating the Complainant as a potential new patient, the doctor never examined the Complainant or reviewed her past medical records.
  - d. The Complainant was told by the nurse, in essence, that the doctor could not perform bariatric surgery on her because she has HIV, and the Complainant was given a referral to another hospital that might treat her.
  - e. Extremely upset at this news, the Complainant left the office, and the Complainant has not had the bariatric surgery to date.
11. The Complainant is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).
12. Based upon its investigation, the United States has determined that Mercy discriminated against the Complainant by denying her the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Mercy on the basis

of HIV, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Mercy denies many of the United States' allegations and denies that it has violated the ADA. Mercy is entering into this Agreement solely to avoid further expense and uncertainty, and this Agreement is not to be construed as a finding or admission of wrongdoing or illegal conduct.

### **ACTIONS TO BE TAKEN BY MERCY**

13. Mercy is in the process of finalizing an assets-only sale to Prime Healthcare, Inc. The non-financial actions to be taken by Mercy in accordance with this Agreement will not extend beyond the date of closing of the sale to Prime Healthcare, Inc.
14. Mercy will not discriminate against any individual on the basis of HIV or AIDS, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at 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. Prior to the close of the sale of Mercy's assets to Prime Healthcare, Inc., if Mercy receives a complaint related to any alleged violation of the ADA by Mercy based upon an individual's HIV positive status, Mercy 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), a complete copy of Mercy's response.
16. The United States has reviewed and approved a revised non-discrimination policy submitted by Mercy, which states that it does not discriminate in the provision of services to persons with disabilities including persons who have HIV or AIDS. Mercy agrees to adopt, maintain, and enforce the non-discrimination policy for the duration of this Agreement (subject to paragraph 13, above). This policy statement will be conspicuously posted in the reception area of the practice office of the bariatric surgeon.
17. Within 30 days of the effective date of this Agreement, but prior to the close of the sale of Mercy's assets to Prime Healthcare, Inc., Mercy will provide training on title III of the ADA to all bariatric services practice office employees and bariatric services physicians at Mercy Suburban Hospital and Mercy Fitzgerald Hospital, including training about title III's application to HIV/AIDS.
18. If any new employees or physician contractors are hired in the bariatric services department at Mercy Suburban Hospital or Mercy Fitzgerald Hospital prior to the close of the sale to Prime Healthcare, Inc., Mercy will ensure that these employees and physician contractors receive the training referenced in paragraph 17 as a component of new employee training and orientation.

19. All training manuals or written materials dealing with Mercy's policies and practices used in the training required in paragraphs 17-18 or revised or created after the effective date of this Agreement shall be consistent with the provisions of this Agreement.
20. Mercy shall create and maintain an attendance log that documents the name of each individual who attends the trainings required in paragraphs 17-18, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within 10 days of any request for them.
21. Prior to the close of the sale of Mercy's assets to Prime Healthcare, Inc., but no later than twenty-one (21) business days after the date on which an executed general release of all claims and a completed Internal Revenue Service Form W-9 for Complainant are delivered to Mercy, Mercy will pay \$20,000 to the Complainant's legal representative, the AIDS Law Project of Pennsylvania, to compensate the Complainant for the harm she allegedly has endured (including, but not limited to, emotional distress, pain, and suffering). As part of this Agreement, the Complainant is executing a general release of all claims.
22. Prior to the close of the sale of Mercy's assets to Prime Healthcare, Inc., but no later than 30 days after the effective date of this Agreement, Mercy will pay a civil penalty in the amount of \$5,000 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.
23. Mercy will notify the United States in writing when it has completed the actions described in paragraphs 16-22. This notification need only be provided when Mercy has completed the action required in the relevant paragraph(s). If any issues arise that affect the anticipated completion dates set forth in those paragraphs, Mercy will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

#### **OTHER PROVISIONS**

24. In consideration for the Agreement set forth above, the United States will close its investigation of Mercy and will not institute a civil action at this time alleging discrimination based on the findings set forth in paragraph 10. However, the United States may review Mercy's compliance with this Agreement at any time prior to closing on any sale of Mercy Suburban Hospital, upon the provision of reasonable notice. If the United States believes that 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.
25. 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.
26. 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 Mercy 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.

27. The signatory for Mercy represents that he or she is authorized to bind Mercy to this Agreement.
28. This Agreement constitutes the entire agreement between the United States and Mercy 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.
29. This Agreement does not constitute a finding by the United States that Mercy 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 Mercy of its obligation to fully comply with the requirements of the ADA.
30. 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.
31. Mercy shall not discriminate or retaliate against any person because of his or her participation in this matter. The Complainant's name and participation in this Agreement may not be disclosed by Mercy without the written consent of the Complainant.

EFFECTIVE DATE

32. The effective date of this Agreement is the date of the last signature below.

AGREED AND CONSENTED TO:

Name: Kathryn Conalle  
Title: SVP of Behavioral Care Ops  
Mercy Suburban Hospital

Date:

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ZANE DAVID MEMEGER  
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Date: 9/23/15