

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
DR. MARK A. NOWACKI, M.D.**

D.J. No. 202-17M-649
USAO No. 2024V00565

I. BACKGROUND

1. The Parties to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Dr. Mark A. Nowacki, M.D., the owner and operator of Mark Nowacki, M.D., P.A. (“Dr. Nowacki”), located in St. Petersburg, Florida.
2. This matter was initiated by a complaint filed with the United States Department of Justice (DOJ) against Dr. Nowacki, D.J. No. 202-17M-649/USAO No. 2024V00565, alleging violations of Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulation, 28 C.F.R. Part 36.
3. The Complainant, who is deaf and uses American Sign Language (ASL), alleges that, on or about October 12, 2021, Dr. Nowacki, an internal medicine specialist, denied her request for an ASL interpreter when she called to schedule a new patient appointment.

II. INVESTIGATION AND DETERMINATIONS

4. The Attorney General is authorized to investigate alleged violations of Title III of the ADA and to bring a civil action in federal court if the United States 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); 28 C.F.R. § 36.503. Ensuring that professional offices of health care providers do not discriminate against individuals with disabilities is an issue of general public importance. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503(b).
5. An “individual with a disability” within the meaning of the ADA is an individual who: has a physical or mental impairment that substantially limits one or more major life activities of such individual; has a record of such an impairment; or is regarded as having such an impairment. 42 U.S.C. § 12102; 28 C.F.R. §§ 36.104, 36.105. The Complainant, who is deaf, is an “individual with a disability” because she has a hearing impairment that substantially limits her ability to hear, a major life activity under the ADA. *Id.*
6. The office of Mark Nowacki, M.D., P.A. is a place of public accommodation covered by Title III of the ADA because it is a professional office of a health care provider. 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104. Accordingly, Dr. Nowacki is a public accommodation subject to the requirements of the ADA because he owns, leases, leases to, or operates a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.

7. Title III of the ADA prohibits public accommodations from discriminating against an individual on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations (“goods or services”). 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201. Title III prohibits public accommodations from subjecting an individual on the basis of disability to a denial of the opportunity to participate in or benefit from its goods or services. 42 U.S.C. § 12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a).
8. Specifically, a public accommodation shall 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 (i.e., significant difficulty or expense). 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(a). A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. 28 C.F.R. § 36.303(c)(1). This includes an obligation to provide effective communication to companions who are individuals with disabilities. *Id.* Further, a public accommodation shall not require an individual with a disability to bring another individual to interpret for them nor rely on an adult accompanying an individual with a disability to interpret or facilitate communication, with limited exceptions. *Id.* § 36.303(c)(2)-(3). Finally, a public accommodation shall not rely on a minor child to interpret or facilitate communication, with limited exceptions. *Id.* § 36.303(c)(4).
9. Title III also generally prohibits public accommodations from excluding or otherwise denying equal goods or services, or other opportunities, to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.
10. After careful review of the information obtained during the investigation, the United States has determined that Dr. Nowacki violated Title III of the ADA and its implementing regulation. 42 U.S.C. §§ 12181-12189; 28 C.F.R. pt. 36. Specifically, the United States has concluded that Dr. Nowacki discriminated against the Complainant in the full and equal enjoyment of his goods or services on the basis of the Complainant’s disability by failing to take such steps as may be necessary to ensure that she was not excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services. 42 U.S.C. §§ 12182(a), 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(a). Dr. Nowacki did so by failing to furnish appropriate auxiliary aids and services, which were necessary to ensure effective communication with the Complainant. 28 C.F.R. § 36.303(c)(1).
11. Dr. Nowacki fully cooperated with the United States during its investigation in this matter. In consideration of Dr. Nowacki’s cooperation, the terms of this Settlement Agreement, and to avoid the time and expense of litigation, the parties agree to resolve

this matter as set forth below. The Attorney General agrees to refrain from undertaking further action in this matter, except as provided in Sections IV-VI.

III. DEFINITIONS

12. “Auxiliary aids and services” include: (A) qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals with hearing impairments; (B) qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions. 42 U.S.C. § 12103(1); 28 C.F.R. § 36.303(b).
13. “Companion” means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 36.303(c)(1).
14. “Qualified interpreter” means an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. § 36.104. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. *Id.*
15. “Qualified reader” means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary. 28 C.F.R. § 36.104.
16. The term “patient” shall be broadly construed to include any individual, or their companion, who is seeking to receive or receiving health care services from Dr. Nowacki, as well as those seeking to use any other goods or services being offered by Dr. Nowacki. This term also includes, but is not limited to, individuals seeking to communicate with representatives of Dr. Nowacki regarding past, present, or future health care services, such as scheduling appointments, obtaining test results, and discussing billing issues.

17. The terms “employee” and “staff” shall include all employees, whether full-time or part-time, as well as contractors and volunteers who work for Dr. Nowacki.

IV. EQUITABLE RELIEF

18. The ADA authorizes the Attorney General to seek equitable relief on behalf of individuals aggrieved as the result of violations of the ADA, including, but not limited to, providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method. 42 U.S.C. § 12188(b)(2)(A)(ii); 28 C.F.R. § 36.504(a)(1)(ii).

19. **Nondiscrimination:** Effective immediately, Dr. Nowacki shall not:

- a. discriminate against any individual on the basis of disability in the full and equal enjoyment of his goods, services, privileges, advantages, or accommodations;
- b. subject any individual on the basis of disability to a denial of the opportunity to participate in or benefit from his goods or services;
- c. discriminate against any individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association;
- d. 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;
- e. fail to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, including companions who are individuals with disabilities;
- f. require an individual with a disability to bring another individual to interpret for them;
- g. rely on an adult accompanying an individual with a disability to interpret or facilitate communication, with limited exceptions; or
- h. rely on a minor child to interpret or facilitate communication, with limited exceptions.

20. **Effective Communication Policy:** Within sixty (60) days of the date of this Agreement, Dr. Nowacki shall submit to the United States, for review and approval, written nondiscrimination policies and procedures regarding his obligations under Title III of the ADA, 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulation, 28 C.F.R. Part 36. Such written policies and procedures shall be consistent with 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303, and include, at minimum:

- a. The nondiscrimination agreement as set forth in Paragraph 19 of this Agreement;
- b. Notice to all of Dr. Nowacki’s employees and staff that Dr. Nowacki’s practice must and shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with patients or companions with disabilities, and that the provision of such services must and shall be provided as soon as practicable—without compromising patient care—and free of charge to patients

or companions with disabilities, unless Dr. Nowacki 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 (i.e., significant difficulty or expense);

- c. Definitions for “auxiliary aids and services,” “companion,” “qualified interpreter,” and “qualified reader” under the ADA, as well as the definitions for “patient,” “employee,” and “staff” as set forth in Paragraphs 16 and 17 of this Agreement;
- d. Procedures for receiving and documenting a request or stated need for the provision of auxiliary aids and services by a patient or companion with disabilities, or by their representative(s). Such procedures shall also include, but are not limited to, the process for notifying patients, companions, or their representative(s) of the availability of auxiliary aids and services and the proper procedures for requesting them;
- e. Procedures for the individual assessment and determination of which, if any, auxiliary aids and services are appropriate for the patient or companion with disabilities in need of the same. Such assessment and determination procedures shall include, but are not limited to:
 - i. Consultation with the patient, companion, or representative(s) requesting or stating a need for auxiliary aids and services;
 - ii. Use of a communication assessment form, a model of which is attached to this Agreement at Exhibit A; and
 - iii. Consideration of all relevant facts and circumstances, including, but not limited to:
 - 1. The individual’s request or stated need for auxiliary aids and services;
 - 2. The method of communication used by the individual and the individual’s communication skills;
 - 3. The nature, length, frequency, and complexity of the communication involved;
 - 4. The context in which the communication is taking place; and
 - 5. The individual’s health status or changes thereto, including, but not limited to, any other disability(s) that could affect the individual’s ability to articulate a request for, stated need for, or use of an auxiliary aid or service; and
 - 6. Whether a qualified interpreter is necessary for effective communication, to be determined in accordance with Section IV, Paragraph 21 of this Agreement.
- f. Procedures for ensuring the provision of appropriate auxiliary aids and services where necessary to ensure effective communication with patients or companions

with disabilities. Such procedures shall include, but are not limited to, ensuring the auxiliary aids and services provided are an effective means of communication such that they are provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the patient or companion with disabilities. Moreover, such procedures shall include steps Dr. Nowacki must take in the event that a planned or provided auxiliary aid or service is or becomes ineffective, such that the provision of a different auxiliary aid or service, or provision of the same auxiliary aid or service at a different time, is necessary;

- g. Procedures for documenting and maintaining records of the provision and use of auxiliary aids and services for and by a patient or companion; and
- h. Procedures for receiving, investigating, and resolving any complaint, lawsuit, charge, or grievance, whether formal or informal, regarding alleged violations of Title III of the ADA, including, but not limited to, the denial of a request for or failure to provide appropriate auxiliary aids and services.

Within seven (7) days of the date the United States approves such written policies and procedures, Dr. Nowacki shall furnish such policies and procedures to all employees and ensure that copies are maintained at Dr. Nowacki's office such that they are readily available for all employees to review thereafter.

21. Provision of Qualified Interpreters: Although the assessment and determination of which, if any, auxiliary aids and services are appropriate for a patient or companion with disabilities should generally be made on a case-by-case basis, some circumstances will typically require that Dr. Nowacki provide a qualified interpreter. Such circumstances generally arise when the communication is particularly complex or lengthy. In such circumstances, including, but not limited to, the following list, Dr. Nowacki will presume that a qualified interpreter is necessary for effective communication with a patient or companion:

- a. Discussing a patient's symptoms for diagnostic purposes and discussing their medical condition, medications, and medical history;
- b. Explaining medical conditions, treatment options, tests, medications, surgery, and other procedures;
- c. Providing a diagnosis or recommendation for treatment;
- d. Communicating with a patient during treatment and testing procedures;
- e. Reviewing, explaining, or obtaining informed consent for treatment;
- f. Providing instructions for medications, post-treatment activities, and follow-up treatments;
- g. Discussing powers of attorney, living wills and/or complex billing and insurance matters; and
- h. Any other circumstances in which a qualified sign language interpreter is necessary to ensure a patient or companion's rights provided by law.

22. **Video Remote Interpreting (VRI) Services:** Should Dr. Nowacki choose to provide qualified interpreters via VRI services, he shall ensure that he provides: (1) real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of their body position; (3) a clear, audible transmission of voices; and (4) adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. § 36.303(f). However, VRI shall not be used when it is not effective, for example, due to a patient's limited ability to move their head, hands or arms; vision or cognitive issues; significant pain; or space limitations in the room. Whenever, based on the circumstances, VRI does not provide effective communication with a patient or companion who has a disability, VRI shall not be used as a substitute for an on-site qualified interpreter, and an on-site qualified interpreter shall be requested and provided in a timely manner.
23. **Effective Communication Training:** Within sixty (60) days of the date of this Agreement, Dr. Nowacki shall submit to the United States, for review and approval, a draft training plan to educate all employees and staff of Dr. Nowacki's practice, including Dr. Nowacki, of their obligations under Title III of the ADA, 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulation, 28 C.F.R. Part 36. Such training plan shall include, but not be limited to, participating in annual training regarding Title III of the ADA from a qualified entity, as well as training regarding the information, policies, and procedures set forth in Section IV of this Agreement. Within thirty (30) days of the date the United States approves Dr. Nowacki's training plan, Dr. Nowacki shall provide such training to all employees. Within seven (7) days of the date of such training(s), Dr. Nowacki shall provide written verification to the United States that this training has been completed, as well as the names and signatures of all employees who attended such training and the date upon which they received such training. Finally, for any employee hired after the date the United States approves Dr. Nowacki's training plan, Dr. Nowacki shall provide such training within seven (7) days of the new employee's start date.
24. **Auxiliary Aids and Services Log:** During the term of this Agreement, Dr. Nowacki will maintain a log in which requests for auxiliary aids and services will be documented. The log will indicate the date and time the request was made, the name of the patient or companion with a disability, the date and time of the scheduled appointment, the nature of the auxiliary aid or service requested, the date and time the request was fulfilled, and the auxiliary aid or service provided. If the requested auxiliary aid or service was not provided, the log shall contain a statement explaining why. The log should include the identity of Dr. Nowacki's employee or staff who received the request, conducted the assessment, and acted on the request. Dr. Nowacki shall produce a copy of this log to the United States every six (6) months throughout the term of this Agreement.
25. **Complaints.** During the term of this Agreement, Dr. Nowacki will notify the United States of any lawsuit, complaint, charge, or grievance, whether formal or informal,

alleging discrimination by Dr. Nowacki on the basis of disability. Such notification must be provided in writing within fifteen (15) days of when Dr. Nowacki has received notice of the allegation and must include at a minimum, the nature of the allegation, the name of the individual(s) or entity(s) bringing the allegation, and any documentation possessed by Dr. Nowacki relating to the allegation.

26. **Retaliation.** Dr. Nowacki shall not retaliate against, coerce, intimidate, threaten, nor interfere with, in any way, any individual who has tried, is trying, has aided or encouraged another individual, or is aiding or encouraging another individual to exercise their rights under this Agreement or the ADA. 42 U.S.C. § 12203; 28 C.F.R. § 36.206.
27. Any notices or information provided to the United States related to this Agreement shall be sent by Dr. Nowacki via electronic mail or via overnight mail to:

Alexandra N. Karahalios
United States Attorney's Office
Middle District of Florida
35 S.E. 1st Avenue, Suite 300
Ocala, FL 34476
Alexandra.Karahalios@usdoj.gov

V. MONETARY RELIEF FOR COMPLAINANTS

28. The ADA authorizes the Attorney General to seek compensatory damages on behalf of individuals aggrieved as the result of violations of the ADA. 42 U.S.C. § 12188(b)(2)(B); 28 C.F.R. § 36.504(a)(2).
29. Dr. Nowacki agrees to pay the Complainant one thousand dollars (\$1,000.00) in damages ("Settlement Payment") to resolve all allegations of harm the Complainant is alleged to have endured as a result of Dr. Nowacki's failure to provide her with an ASL interpreter. As part of this Agreement, the Complainant agrees to sign a release of claims, incorporated into this agreement as Attachment A. Dr. Nowacki will, within sixty (60) days of the effective date of this Agreement, send the Complainant, by certified mail, return receipt requested, or by overnight delivery, a check for one thousand dollars (\$1,000.00) dollars. Dr. Nowacki will also provide to the United States a copy of the check and transmittal letter sent to the Complainant.

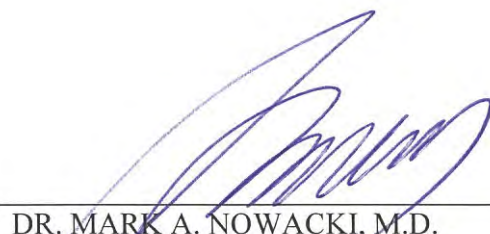
VI. ENFORCEMENT

30. **Enforcement Agreement.** The United States may review compliance with this Agreement at any time. If the United States believes Dr. Nowacki has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the United States for a modification of the relevant terms, the United States will so notify Dr. Nowacki in writing and will attempt to resolve the issue(s) in good faith. If the United States is unable to reach a satisfactory resolution of the issue(s) raised within thirty (30) days of the date it provides notice to Dr. Nowacki,

it may institute a civil action in the United States District Court for the Middle District of Florida to enforce the terms of this Agreement or the requirements of Title III of the ADA.

31. **Non-Waiver.** Failure by the United States to enforce this Agreement with regard to any deadline or any other provision herein will not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
32. **Deadlines.** Any deadlines listed in this Agreement that fall on a weekend or federal holiday will be extended to the next business day.
33. **Copies Available.** A copy of this Agreement may be made available by the United States or Dr. Nowacki to any person and will be provided by the United States in hard copy upon request.
34. **Resolution of Claims.** This Agreement fully and finally resolves any and all of the allegations of the complaint in this case. It does not purport to remedy any other potential violations of the ADA by Dr. Nowacki.
35. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement—including its Exhibit and Attachment, which are hereby incorporated by reference—will be enforceable. 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. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect Dr. Nowacki's continuing responsibility to comply with all aspects of the ADA.
36. **Binding Effect.** This Agreement shall be binding on Dr. Nowacki and his practice, agents, and employees. In the event Dr. Nowacki seeks to transfer or assign all or part of his interest in his professional office of a health care provider, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale, Dr. Nowacki shall obtain the written agreement of the successor or assign to comply with any obligations remaining under this Agreement for the remaining term of this Agreement.
37. **Term of the Agreement.** This Agreement will remain in effect for two (2) years.
38. **Effective Date and Signatory.** The effective date of this Agreement is the date of the last signature below. A signatory to this document in a representative capacity for Dr. Nowacki represents that they are authorized to bind that party to this Agreement.

FOR MARK A. NOWACKI, M.D.,
P.A.:



DR. MARK A. NOWACKI, M.D.
Owner and Operator
Mark A. Nowacki, M.D., P.A.
7011 1st Avenue South
St. Petersburg, Florida 33707

DATED:

10/4/24

R. Quincy Bird

R. QUINCY BIRD, ESQ.
Counsel for Mark A. Nowacki, M.D.,
P.A.
Weber, Crabb & Wein, P.A.
5453 Central Avenue
St. Petersburg, Florida 33710

DATED: 10/07/2024

FOR THE UNITED STATES OF
AMERICA:

ROGER B. HANDBERG
United States Attorney

Alexandra N. Karahalios

ALEXANDRA N. KARAHALIOS
Assistant United States Attorney
United States Attorney's Office
Middle District of Florida
35 S.E. 1st Avenue, Suite 300
Ocala, Florida 34471

DATED: 10/07/2024

EXHIBIT A: COMMUNICATION ASSESSMENT FORM

Patient's Name: _____

Name of Person with Disability (if other than patient): _____

Date: _____ Time: _____

Nature of Disability:

- ☐ Hearing Disability
- ☐ Vision Disability
- ☐ DeafBlind
- ☐ Speech Disability
- ☐ Other: _____

Relationship to Patient:

- ☐ Self
- ☐ Family Member
- ☐ Friend / Companion
- ☐ Other: _____

Do you want a professional sign language or oral interpreter for your visit?

- ☐ Yes. Choose one (free of charge):
 - ☐ American Sign Language (ASL) Interpreter
 - ☐ Tactile Interpreter
 - ☐ Signed English Interpreter
 - ☐ Oral Interpreter
 - ☐ Other. Explain: _____
- ☐ No. I do not use sign language.
- ☐ No. I do not feel an interpreter is necessary or do not want one for this visit.

Which of these would be helpful for you for effective communication (free of charge)?

- ☐ Assistive listening device (sound amplifier)
- ☐ Writing back and forth
- ☐ CART: Computer-assisted Real Time Transcription Service
- ☐ TTY/TDD (text telephone)
- ☐ Other. Explain: _____

We ask this information so we can communicate with you effectively. All communication aids and services are provided FREE OF CHARGE. If you need further assistance or have any questions, please ask a member of our office staff by calling our office at _____ or visit _____ during our normal business hours.