

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND ADVANCED
ENT & ALLERGY**

**USAO # 2023V00611
DJ # 202-48-401**

PARTIES TO THE AGREEMENT

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the U.S. Department of Justice (“DOJ”), through the U.S. Attorney’s Office for the District of New Jersey (“U.S. Attorney’s Office”) (collectively, “the United States”) and Regional Otolaryngology Head and Neck Associates, LLC d/b/a Advanced ENT & Allergy (“Advanced ENT & Allergy”), a Limited Liability company organized as a private medical practice.

2. Advanced ENT & Allergy provides ENT, allergy, and hearing related health care services at eleven offices in New Jersey, as such are listed on Attachment A, attached hereto and incorporated herein by this reference (the “Offices”). This agreement applies to each Office, whether it continues to do business as “Advanced ENT & Allergy,” or by any other name, including but not limited to, if those Offices are owned or operated by another entity. Unless otherwise stated in a specific paragraph below, this agreement will also apply to all acquiring, successor or purchasing entities. This agreement shall only apply to Offices located in the state of New Jersey.

BACKGROUND

3. This matter was initiated by a complaint filed with the United States against Advanced ENT & Allergy, alleging a violation of Title III of the Americans with Disabilities Act (the “ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36.

4. The Complainant is deaf and has low vision. According to the complaint, she is not able to effectively communicate using screen-based Virtual Remote Interpreting (“VRI”), and she requires in-person interpretation for effective communication during medical appointments. She alleges that Advanced ENT & Allergy refused to provide in-person interpretation or another means of effective communication.

5. The U.S. Attorney’s Office initiated an investigation of Advanced ENT & Allergy’s compliance with Title III of the ADA, as related to the Complainant’s allegations.

JURISDICTION

6. The U.S. Attorney's Office is authorized under 42 U.S.C. § 12188 and 28 C.F.R. Part 36, Subpart E, to investigate the allegations in the complaint. This includes authority to negotiate and secure voluntary compliance agreements, and to bring civil actions enforcing Title III of the ADA should they fail to secure voluntary compliance.

7. The Complainant is an individual with a "disability" within the meaning of the ADA, 42 U.S.C. § 12102; 28 C.F.R. § 36.104.

8. Advanced Allergy & ENT is a medical practice licensed by the State of New Jersey. It is a "public accommodation" within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(F), and its implementing regulation at 28 C.F.R. § 36.104.

9. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations by a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

INVESTIGATION AND FINDINGS

10. The United States Attorney's Office investigated the complaint and determined that Advanced ENT & Allergy has denied on-site interpretative services, even when required to ensure effective communication with a deaf or hard-of-hearing patient, in violation of 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

11. On April 5, 2023, the Complainant and her social worker called Advanced ENT & Allergy regarding an upcoming appointment. She reportedly requested in-person interpretation during that appointment and explained that she cannot use VRI because she has low vision and cannot see an interpreter on a screen. An Advanced ENT & Allergy employee allegedly responded that the practice does not provide in-person interpreters, only virtual, screenbased interpreters. When the Complainant tried to explain the ADA's requirements, the employee allegedly ended the call.

12. On May 17, 2024, Advanced ENT & Allergy provided a written response to this office's Notice of Investigation. The written response included information regarding an unidentified patient who repeatedly requested and was denied in-person interpretation services during an appointment on March 25, 2024.

13. Advanced ENT & Allergy's response included employee statements that, "we provide online interpreter services only," and "we do not offer" in-person interpretation.

14. This Agreement is not an admission by Advanced ENT & Allergy. Rather, Advanced ENT & Allergy believes it is in its best interests to amicably resolve the investigation without litigation, and the United States believes it is in the public interest to do so. The parties agree to enter voluntarily into this Agreement based on the terms set forth below. Advanced ENT & Allergy anticipates being acquired by ENT and Allergy Associates, LLP effective

January 1, 2025, and will do business under that new name. ENT and Allergy Associates had no role in conduct at issue in the complaint.

DEFINITIONS

15. The term “auxiliary aids and services” includes: qualified interpreters, provided on-site or through VRI; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices or 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 who are deaf or hard-of-hearing. 28 C.F.R. § 36.303(b)(1).

16. “Personnel” means employees, both full and part-time, and independent contractors who work for Advanced ENT & Allergy.

17. “Qualified interpreter” means an interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, including, for example, sign language interpreters, oral transliterators, and cued language transliterators. 28 C.F.R. § 36.104.

18. “On-site” or “in-person” interpreter means an interpreter who is physically located in the same room as the individual who requires interpretation.

19. “Patient” shall be broadly construed for the purpose of this Agreement to include any deaf or hard-of-hearing individual seeking or receiving health care services.

20. “Companion” means a person who is deaf or hard-of-hearing and is a family member, friend, or associate of a Patient who, along with the Patient, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 36.303(c)(1)(i).

21. “Effective Date of this Agreement” means the date of the last signature.

REMEDIAL ACTIONS

A. Prohibition of Discrimination

22. Non-Discrimination. Advanced ENT & Allergy shall provide appropriate auxiliary aids and services, including on-site interpreters, where necessary to ensure effective communication with Patients and Companions. Advanced ENT & Allergy shall provide Patients

and Companions with full and equal enjoyment of services, privileges, facilities, advantages, and accommodations as required by the ADA. 42 U.S.C. § 12182(a).

23. Retaliation and Coercion. Advanced ENT & Allergy shall not retaliate against or coerce in any way any person who made, or is making, a complaint related to this Agreement or to his or her rights under the ADA. 42 U.S.C. § 12203.

B. Effective Communication

24. Appropriate Auxiliary Aids and Services. Advanced ENT & Allergy will provide to deaf or hard-of-hearing Patients and Companions any appropriate auxiliary aids and services, including on-site interpretation, necessary for effective communication, and will do so for the entirety of the relationship with any Patient. 42 U.S.C. § 12182(b)(2)(A)(iii).

25. Assessment of the Need for Auxiliary Aids and Services. Advanced ENT & Allergy will determine if auxiliary aids or services are necessary to ensure effective communication, doing so in consultation with the Patient or Companion. A Communication Assessment Form, attached here as Exhibit A, will be completed during each Communication Assessment.

a. Criteria. The Communication Assessment will consider all relevant facts, including, for example, the Patient's or Companion's disability, communication skills, and knowledge, and the nature and complexity of the communication at issue.

b. Timing of Assessment. The Communication Assessment will be conducted: (a) at the time an appointment is scheduled; (b) immediately after a Patient or Companion makes a request for relevant auxiliary aids or services; and/or (c) when any Personnel becomes aware that communication with a Patient or Companion is not, or may not be, effective. Thereafter, Advanced ENT & Allergy will provide appropriate auxiliary aids or services as per this Agreement.

c. Documenting Communications Assessment. Advanced ENT & Allergy will ensure Personnel are made aware of any auxiliary aid and service needed, including by documenting this information in the Patient's electronic medical chart.

26. Scheduling Auxiliary Aids and Services. Advanced ENT & Allergy shall arrange for and schedule all auxiliary aids and services necessary for effective communication, and it shall not require Patients or Companions to identify a source for such services.

27. Prohibition of Surcharges. All appropriate auxiliary aids and services will be provided free of charge to the Patient and/or Companion.

C. Qualified Interpreters

28. Qualified Interpreters. When required to provide effective communication, Advanced ENT & Allergy shall provide qualified sign language interpreters to Patients and Companions who are deaf or hard-of-hearing and whose primary means of communication is sign language, and qualified oral interpreters to Patients and Companions who rely primarily on lip reading. Examples of circumstances that require an interpreter include: (a) discussions of any medical issue; (b) for the purpose of obtaining informed consent for treatment; (c) discussions of powers of attorney or guardianship; or (e) discussions about billing or insurance matters.

29. Video Remote Interpreting. VRI services must provide: (a) real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (b) a sharply delineated image large enough to display the interpreter's face, arms, hands, and fingers, and the face, arms, hands, and fingers of the individual needing interpretation; (c) clear, audible transmission of voices; and (d) training to users of the technology. 28 C.F.R. § 36.303(f). VRI shall not be used as a substitute for an onsite interpreter, and VRI is inappropriate if it would not provide effective communication due,

for example, to a Patient's vision or cognitive issues, limited ability to move his or her head, hands, or arms, or significant pain.

30. On-Site Interpretation: If a Patient or Companion cannot effectively communicate using screen-based interpretation, an on-site interpretative service must be provided consistent with the terms of this Agreement. Advanced ENT & Allergy has identified one or more inperson interpretation services and has made arrangements with said services to provide qualified on-site interpreters upon request.

31. Provision of Interpreters in a Timely Manner.

a. Scheduled Interpreter Requests. When a request is made forty-eight (48) or more hours before the scheduled time of the service (it being understood that appointments shall be scheduled in the ordinary course based on appointment availability), Advanced ENT & Allergy will complete the Assessment described in paragraph 25 and shall provide a qualified interpreter at the time of the scheduled appointment. If the interpreter is scheduled but fails to arrive, Advanced ENT & Allergy will take all reasonable steps to identify an alternative qualified in-person interpreter.

b. Non-scheduled Interpreter Requests for Urgent Appointments. Only urgent appointments and services will require the provision of on-site interpreters with less than forty-eight (48) hours' notice. When a request for an on-site interpreter is made less than forty-eight (48) hours before an urgent service is required, Advanced ENT & Allergy will, at the time the appointment is requested or, if not possible, within the same business day on which the appointment request is made, complete the Communication Assessment described in paragraph 25, and then will take all reasonable steps to provide an interpreter at the time the service is needed, or as soon as possible thereafter.

i. The term "Urgent" is understood to mean any medical condition that can be treated in the physician office setting and if left untreated longer than 72 hours, could produce a higher likelihood of severe illness or injury. Reasonable efforts will be made to schedule the patient at a location and with a provider of his/her choice; provided that, depending on the urgency of the circumstances and the then-current appointment availability at the Offices, Advanced ENT may be limited in the providers and locations at which the patient can be seen.

c. VRI Service. Where VRI service is determined to be appropriate based on the Assessment conducted pursuant to paragraph 25, Advanced ENT & Allergy will provide an interpreter within 30 minutes after the Communication Assessment is complete or at the time of the scheduled visit, as applicable.

d. Status. Once Advanced ENT & Allergy determines that a qualified

interpreter is needed, it will inform the Patient or Companion of the status of efforts to secure a qualified interpreter, until an interpreter is secured.

e. Missed Appointments.

i. If a Patient cannot proceed with a scheduled appointment because an appropriate interpretation service is unavailable, Advanced ENT & Allergy will provide another appointment, to occur within five (5) business days of the original appointment, and within one (1) business day for Urgent appointments. The Patient shall not be charged for the original appointment.

32. Other Method of Communication. While a Patient is waiting for a qualified interpreter, Advanced ENT & Allergy Personnel will take all reasonable steps to communicate with the Patient or Companion to the same extent as they would have communicated with the person but for the disability, using all other available methods of communication, including sign language pictographs and any auxiliary aid or service identified in paragraph 15, above. This provision in no way lessens the obligation to provide qualified interpreters in a timely manner as required by paragraph 31 of this Agreement.

D. Compliance and Oversight

33. ADA Administrator. Within fourteen (14) days of the execution of this Agreement, at least one employee of Advanced ENT & Allergy (or employee of any purchasing, acquiring or successor entity), to serve as an ADA Administrator, who will: (a) be available by phone during business hours to answer questions and provide assistance regarding auxiliary aids and services and effective communication, including the completion of any Assessment; (b) know how to arrange for interpretation; (c) know where auxiliary aids are stored in each office and how to operate them; (d) oversee the maintenance, repair, replacement, and distribution of auxiliary aids in each office; (d) oversee the Auxiliary Aid and Service Log described in paragraphs 35 to 37, below; (e) oversee the complaint resolution process and address concerns as described in paragraphs 36 and 37, below; (f) ensure compliance with this Agreement, including coordinating trainings, maintaining records, providing compliance reports, and distributing policies relevant to this Agreement. A new employee must be so designated within five (5) business days of the departure of the ADA Administrator.

34. Notice of ADA Administrator. No later than fourteen (14) days following execution of this Agreement, Advanced ENT & Allergy will post in each office, the name, telephone number, title of the ADA Administrator, and a TTY telephone number at which the ADA Administrator can be contacted during business hours.

35. Auxiliary Aid and Service Log. The ADA Administrator will maintain an Auxiliary Aid and Service Log (the “Log”) that identifies the following: (a) the date of any request for a qualified interpreter; (b) Patient’s name; (c) appointment date; (d) type of auxiliary aid or service requested; (e) date of the Communication Assessment completed pursuant to paragraph 25, (f) type of auxiliary aid or service and date provided, or the reason it was not; (g) summary of all complaints made by any Patient or Companion related to effective communication, consistent with paragraph 36 below; and (h) summary of concerns regarding the timeliness or effectiveness of interpretation services, as required by paragraph 37 below.

36. Complaint Resolution Process. Advanced ENT & Allergy will maintain a complaint resolution process for investigating Patient and Companion complaints regarding auxiliary aids and services and/or effective communication issues, whether oral or written. An investigation shall be conducted, and a written reply provided to the complaining individual, within thirty (30) days after the complaint was received. The ADA Administrator shall ensure the Log required by paragraph 35, includes the following: (a) the name of the complaining individual; (b) the employee who received the complaint and date received; (c) the office involved; (d) a summary of the complaint; (e) date of the reply, and; (f) any action taken in response. The ADA Administrator will maintain copies of all related documents for the duration of the Agreement.

37. Concerns about Effectiveness or Timeliness of Interpretation. Advanced ENT & Allergy Personnel shall report to the ADA Coordinator any concerns about the effectiveness or timeliness of interpretation. The ADA Administrator will review each reported concern, including any related complaint made by a Patient or Companion pursuant to paragraph 36, above, and take immediate steps to replace any interpretation service or individual interpreter that fails to provide qualified interpreters, and/or repeatedly fails to do so on a timely basis. The ADA Coordinator shall ensure that the Log contains information about each reported concern, including any action taken in response.

D. Notice to Patients and Companions

38. Policy Statement. Within thirty (30) days of execution of this Agreement, Advanced ENT & Allergy shall post signs of conspicuous size and print in the waiting room at each of its offices, as well as a statement on its website, advising Patients and Companions that:

Sign language and oral interpreters, TTYs, and other auxiliary aids and services are available free of charge to people who are deaf or hard-of-hearing. For assistance, please contact any Advanced ENT & Allergy Personnel or the ADA Administrator at _____(voice/TTY).

The statement shall include the international symbols for “interpreters” and “TTYs.” Advanced ENT & Allergy shall ensure that the statement is programmed on its website such that it is accessible to screen reader technology.

E. Notice to Advanced ENT & Allergy Personnel

39. Advanced ENT & Allergy shall, within thirty (30) days following execution of this Agreement, publish on its intranet or in its internal ShareFile and provide to all Personnel a policy regarding effective communication. New Personnel will be provided a copy of the policy within five (5) business days of their start date. The policy shall include language to the following effect:

If you recognize or have any reason to believe that a Patient or Prospective Patient is deaf or hard-of-hearing, you must advise the person that appropriate auxiliary aids and services, such as in-person sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning, will be provided free of charge when appropriate. If you are communicating with a deaf or hard-of-hearing Patient, you must ensure that such aids and services are provided when appropriate. The same obligations apply to any Patient's deaf or hard-of-hearing "Companion," meaning a family member, friend, or associate of a Patient who, along with the Patient, is an appropriate person with whom Advanced ENT & Allergy should communicate.

Questions or concerns related to effective communication with a deaf or hard-of-hearing Patient, Prospective Patient, or Companion, including any concerns about the effectiveness or timeliness of interpretation provided to a Patient or Companion, should be directed to the ADA Administrator at _____.

F. Training

40. Training of ADA Administrator. Advanced ENT & Allergy will provide training for the ADA Administrator within thirty (30) days of designation, as provided in paragraph 33, above. Such training will be sufficient in duration and content to train the ADA Administrator to oversee compliance with the terms of this Agreement. Training must be provided to any new ADA Administrator within ten (10) days of designation.

41. Training of Personnel. Within ninety (90) days of the execution of this Agreement, all Personnel will receive mandatory training of sufficient duration and content to address the needs of deaf and hard-of-hearing Patients and Companions and all obligations created by this Agreement, including: (a) how to promptly identify and assess communication needs of Patients and Companions; (b) how to provide auxiliary aids and services necessary to ensure effective communication, including but not limited to how to secure on-site interpreter services and VRI as quickly as possible; (c) how to use other available auxiliary aids, such as flash cards and

pictographs, and any other available aids that will augment the effectiveness of the communication; and (d) how to handle complaints and concerns consistent with paragraphs 36 and 37 above. New employees must be trained within ten (10) days of their start date, and screening a video of the original live training will suffice to meet this obligation.

42. Training Materials. Within sixty (60) days of the execution of this Agreement, Advanced ENT & Allergy shall submit proposed training materials to the U.S. Attorney's Office for review and written approval, which shall be timely and not unreasonably withheld. Training materials shall be distributed to attendees within twenty-four (24) hours after each training.

43. Training Attendance Sheets. Advanced ENT & Allergy will maintain in electronic format attendance sheets for any training conducted pursuant to paragraphs 40 and 41 of this Agreement, to include the names and titles of all attendees, and the date of the training. Advanced ENT & Allergy will provide the U.S. Attorney's Office with copies of the attendance sheets within seven (7) days of the completion of any training, except that attendance sheets for new employee trainings need only be provided within thirty (30) days of any written request. This paragraph shall only apply to the 11 Offices identified in Attachment A, and shall not apply to any other offices to the extent that those offices are owned or operated by any successor entity.

G. Reporting

44. Compliance Reports. Six months after execution of this Agreement, and every six months thereafter for the duration of the Agreement, Advanced ENT & Allergy will provide a written Compliance Report to the U.S. Attorney's Office regarding the status of its compliance with this Agreement, including: (a) copies of all Communication Assessment Forms completed during the preceding six months, (b) a copy of the Log, as described in paragraphs 35 to 37, above, (c) copies of all complaints, related documents, and resolution of any complaints regarding auxiliary aids and services and/or effective communication. Advanced ENT & Allergy will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the U.S. Attorney's Office. This paragraph shall only apply to the 11 Offices identified in Attachment A, and shall not apply to any other offices to the extent that those offices are owned or operated by any successor entity.

J. Enforcement and Miscellaneous

45. Duration of the Agreement. This Agreement will be in effect for two (2) years from the Effective Date, except that the reporting obligations identified in paragraphs 43 and 44 will be in effect for eighteen (18) months.

46. Enforcement. In consideration of this Agreement, the U.S. Attorney's Office agrees to refrain from undertaking further investigation or from filing a civil suit under Title III of the ADA in this matter. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against Advanced ENT &

Allergy for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA.

47. Lawsuits/Formal Charges. Advanced ENT & Allergy shall notify the U.S. Attorney's Office of any lawsuit or formal charge with a state or federal agency, alleging that Advanced ENT & Allergy or its Personnel did not provide auxiliary aids and services or ensure effective communication to any Patient or Companion. Such notification must be provided in writing within thirty (30) days of the date Advanced ENT & Allergy received notice of the allegation and must include the nature of the allegation, the name of the person making the allegation, and any related documentation.

48. 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, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law.

49. Binding. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs and legal representatives thereof. Each party has a duty to so inform any such successor in interest.

50. Non-Waiver. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

51. All notifications under this Agreement shall be sent to the United States Attorney's Office, District of New Jersey, by email directed to Assistant U.S. Attorney Emily Goldberg at emily.goldberg@usdoj.gov.

AGREED TO BY THE PARTIES

Advanced ENT & Allergy

Mark Miller

By: _____ Dated Dec 20, 2024

Mark Miller
Chief Financial Officer

For the United States Attorney's Office, District of New Jersey

Philip R. Sellinger
United States Attorney

By: /s/ Emily Goldberg Dated: December 20, 2024
Emily B. Goldberg
Assistant United States Attorney

Attachment A

Advanced ENT & Allergy Office Locations

130 N Haddon Avenue
Haddonfield, NJ 08033

213 N Hadden Avenue #1
Haddonfield, NJ 08033

103 Old Marlton Pike
Suites 211 and 225
Medford, NJ 08055

204 Ark Road
Suite 102
Mt Laurel, NJ 08054

127 Ark Road #1
Mt Laurel, NJ 08054

239 Hurffville – Cross Keys Road
Suite 265
Sewell, NJ 08080

200 Bowman Drive
Suite D285
Voorhees, NJ 08043

100 White Horse Road
Suite 904
Voorhees, NJ 08043

600 Jessup Road
Suite 102
West Deptford, NJ 08086

1113 Hospital Drive
Suite 103
Willingboro, NJ 08046

620 N Broad Street
Woodbury, NJ 08096

Exhibit A
Communication Assessment Form

We ask this information so we can communicate effectively with Patients and/or Companions who are deaf or hard-of-hearing. **All necessary communication aids and services are free of charge.**

Date of Assessment: _____

Name of Patient or Companion: _____

Date of appointment: _____

Reason for appointment: _____

Nature of Disability (*circle all that apply*):

Hearing Impairment

Visual Impairment

Speech Impairment

Other: _____

Individual being assessed (*circle all that apply*):

Patient

Companion

Does the person with a disability require an interpreter? (*If yes, circle one*)

American Sign Language (ASL)

Signed English

In-person Oral Interpreter

Virtual Interpreter

Other (explain): _____

Which of the following would be helpful for the person with a disability?

(*circle any that apply*):

TTY/TDD (text telephone)

Assistive listening device (sound amplifier)

Qualified note-takers

Writing back and forth

Other (explain): _____

Advanced ENT & Allergy employee completing this form: _____

Advanced ENT & Allergy Office: _____