

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
BROWN DERMATOLOGY
USAO #2021V00060; DJ #202-66-77**

I. BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Brown Dermatology.
2. Brown Dermatology is a private medical practice that provides clinical services at 10 locations across Rhode Island.
3. This matter was initiated by the U.S. Attorney’s Office for the District of Rhode Island (“U.S. Attorney’s Office”), a component of the Department of Justice, after receiving complaints in 2021 from an individual who is deaf, alleging that Brown Dermatology violated Title III of the Americans with Disabilities Act of 1990 (“ADA”) by failing to provide the individual with effective communication, including sign language interpreters during medical appointments or care and surgical consultations. It was also alleged that as a result of Brown Dermatology’s failure to furnish sign language interpreting services, Brown Dermatology frequently enlisted the individual’s grandmother to facilitate communication with the individual.

II. INVESTIGATION AND DETERMINATIONS

4. The U.S. Attorney’s Office is authorized to investigate alleged violations of Title III of the ADA. 42 U.S.C. § 12188(b)(1)(A); 28 C.F.R. § 36.502. It also has the authority to, where appropriate, negotiate voluntary settlements, and to bring civil actions enforcing Title III of the ADA should the terms of the settlement be breached. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.
5. The aggrieved individual is deaf, and, as such, is an individual with a “disability” within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.104.
6. The individual’s grandmother has a known relationship or association with an individual with a disability. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.
7. Brown Dermatology is a “public accommodation” within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(F) and its implementing regulations, 28 C.F.R. § 36.104, as it owns and operates professional offices of health care providers.
8. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Discrimination includes failing to take such steps as necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than any other individual because of the absence of auxiliary aids and services. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her. 28 C.F.R. § 36.303(c)(2).

9. Brown Dermatology fully cooperated with the United States' investigation in this matter. In the course of the investigation, the United States determined that Brown Dermatology failed to provide the aggrieved individual with a qualified sign language interpreter necessary to provide effective communication for medical appointments on at least twelve occasions between 2018 and 2021. In addition, Brown Dermatology's reliance on the aggrieved individual's grandmother for interpretation was improper and placed the individual's grandmother in the difficult position of serving as both a supportive family member and medical interpreter, a position for which she is not qualified. In the course of investigation, the United States also determined that Brown Dermatology failed to provide at least seven other deaf patients with a qualified American Sign Language ("ASL") interpreter necessary to ensure effective communication during their medical appointments.

10. On the basis of these determinations, the U.S. Attorney's Office concluded that Brown Dermatology failed to furnish appropriate auxiliary aids and services to ensure effective communication with the aggrieved individual, in violation of 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303. The U.S. Attorney's Office also concluded that Brown Dermatology engaged in associational discrimination against the aggrieved individual's grandmother in forcing her, on several occasions, to choose between serving as a medical interpreter for her granddaughter or allowing her granddaughter to struggle with communications with her medical providers. *See* 42 U.S.C. § 12182(b)(1)(E).

III. DEFINITIONS

10. The term "auxiliary aids and services" includes qualified interpreters provided either on-site or through video remote interpreting ("VRI") services; note takers; 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, 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.

11. The term "companion" means a person who is deaf or hard of hearing and is 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)(i).

12. The term "qualified interpreter" means an interpreter who, via 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, tactile interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 36.104.

13. The term “patient” shall be broadly construed to include any individual who is seeking or receiving health care services from Brown Dermatology.

IV. EQUITABLE RELIEF

A. Prohibition of Discrimination

14. Nondiscrimination. Brown Dermatology shall take those steps that 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 Brown Dermatology can demonstrate that taking such steps would fundamentally alter the nature of the good, services, facility, privilege, advantage, or accommodation being offered or would result in an undue burden, as defined in 42 U.S.C. § 12182(b)(2)(A)(iii). Pursuant to 42 U.S.C. § 12182(a), Brown Dermatology shall also provide patients and companions who are deaf or hard of hearing with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of Brown Dermatology as required by this Agreement and the ADA.

15. Discrimination by Association. Brown Dermatology shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of that person with someone who has a disability. 42 U.S.C. § 12182(b)(1)(E).

16. Retaliation and Coercion. Brown Dermatology shall not retaliate, interfere with or coerce any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, his or her rights under this Agreement or the ADA. 42 U.S.C. § 12203.

B. Effective Communication

17. Appropriate Auxiliary Aids and Services. Consistent with 42 U.S.C. § 12182(b)(2)(A)(iii), Brown Dermatology will provide to patients and companions who are deaf or hard of hearing any appropriate auxiliary aids and services necessary for effective communication after making the assessment described in Paragraph 18 of this Agreement.

18. Method of Assessment for Effective Communication. The determination of appropriate auxiliary aids and services, and the timing, duration, and frequency with which they will be provided, will be made by Brown Dermatology in consultation with the patient or companion who is deaf or hard of hearing. The determination will take into account all relevant facts and circumstances, including, for example, the individual’s communication skills and knowledge, and the nature and complexity of the communication at issue. Brown Dermatology will use the attached Communication Assessment Form as a part of this assessment process, providing assistance in completing the Form at the patient or companion’s request. Exhibit A.

19. Timing of Assessment for Effective Communication. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, must be made at the time Brown Dermatology learns that a patient or companion who is deaf or hard of hearing will be using its services.

20. Record of Need for Auxiliary Aid or Service. The patient's medical chart shall note whether the patient and/or companion is deaf or hard of hearing and what auxiliary aid(s) or service(s) she uses.

21. Auxiliary Aid and Service Log. Brown Dermatology will maintain a log in which requests for auxiliary aids or services will be documented. The log will indicate the time and date the request was made, the name of the patient or companion who is deaf or hard of hearing, the time and date of the scheduled appointment, the nature of the auxiliary aid or service requested, the time and date 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 the Brown Dermatology staff who conducted the assessment and made the request. Such logs will be maintained for the entire duration of the Agreement and will be incorporated into the semi-annual compliance reports as described in Paragraph 34 of this Agreement.

22. Prohibition of Surcharges. All appropriate auxiliary aids and services required by this Agreement will be provided free of charge to the deaf or hard of hearing patient or companion.

C. Qualified Interpreters

23. Circumstances Under Which Interpreters May be Required. Although the determination of whether and what auxiliary aids and services are appropriate to a given situation is generally to be made on a case by case basis (as informed by its assessment pursuant to Paragraph 19), some circumstances typically require that Brown Dermatology provide a qualified interpreter to patients or companions who rely upon such types of communications. Such circumstances generally arise when the communication is particularly complex or lengthy. For example, such circumstances include, but are not limited to:

- a. Discussing a patient's symptoms for diagnostic purposes, and discussing 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
- e. Reviewing, explaining or obtaining informed consent for treatment;

- f. Providing instructions for medications, post-treatment activities, and follow-up treatments; or
- i. Discussing powers of attorney, living wills and/or complex billing and insurance matters.

In such circumstances, Brown Dermatology will presume that a qualified interpreter is necessary for effective communication with the patient or companion.

24. Chosen Method for Obtaining Interpreters. Throughout the duration of this Agreement, Brown Dermatology will establish and maintain a list of qualified interpreters or interpreter agencies that employ or arrange the services of qualified interpreters to ensure that qualified interpreter services are available. Brown Dermatology will establish internal procedures for ordering interpreting services that are consistent with the interpreter or interpreter agencies' procedure. Brown Dermatology will consider an order for interpreting services to be complete only after receiving written confirmation from the interpreting service that an interpreter will be provided at the time and date requested. All written correspondence with interpreting services will be filed in the patient's medical chart, as well as the Auxiliary Aid and Service Log discussed in Paragraph 34.

25. List of Interpreters. Within 30 days after the effective date of this Agreement, Brown Dermatology will submit to the U.S. Attorney's Office its list of qualified sign language interpreter providers and a copy of its contract(s) with one or more qualified sign language interpreters or sign language interpreter agencies. If Brown Dermatology ends or alters its contracts with this entity or adds additional contracts during the term of this Agreement, Brown Dermatology will notify the U.S. Attorney's Office of the change within **thirty (30) days**.

26. Video Remote Interpreting ("VRI"). When using VRI services, Brown Dermatology shall ensure that it 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 his or her 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). VRI shall not be used when it is not effective, for example, due to a patient's limited ability to move his or her 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 is deaf or hard of hearing, 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.

27. Restricted Use of Certain Persons to Facilitate Communication. Brown Dermatology will not rely on an adult friend or family member of the individual with a disability

to interpret except in an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available; or where the individual with a disability specifically requests that the adult friend or family member interpret, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. Brown Dermatology will not rely on a minor child or a patient to interpret except in an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available. 28 C.F.R. §§ 36.303 (2), (3), (4).

28. Notice to Patients and Companions Who are Deaf or Hard of Hearing. As soon as Brown Dermatology staff has determined that a qualified interpreter is necessary for effective communication with a patient or companion who is deaf or hard of hearing, Brown Dermatology will inform the patient or companion (or a family member or friend, if the patient or companion is not available) of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. Brown Dermatology will provide additional updates to the patient or companion as necessary until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen Brown Dermatology's obligation to provide qualified interpreters in a timely manner.

D. Notice to the Community and Personnel

29. Policy Statement. Within **thirty (30) days** of the entry of this Agreement, Brown Dermatology shall post and maintain signs of conspicuous size and print at all Brown Dermatology medical office waiting areas, on its website, and wherever a Patient's Bill of Rights is required by law to be posted. Such signs shall be to the following effect:

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 medical office staff at _____ (voice/TTY). These signs will include the international symbol for "interpreters."

Additionally, Brown Dermatology will provide a notice containing the language found above to all patients when they check in for appointments.

30. Notice to Personnel. Brown Dermatology will revise its policies to be consistent with ADA requirements regarding effective communication and the terms of this Agreement. Such revisions must be provided to the United States within **thirty (30) days** of this Agreement for review. This policy statement includes, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a patient or a relative, close friend, or companion of a patient is deaf or hard-of-hearing, you must advise the person that appropriate auxiliary aids and services will be provided free of charge to the patient or companion. If you are the responsible health care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate ADA Administrator(s) at _____ and reachable at _____.

Once approved by the United States, Brown Dermatology will distribute its policy/policies relating to effective communication with individuals who are deaf or hard of hearing to all staff.

E. Training

31. Training of Medical Personnel. Within 60 days after the effective date of this Agreement, Brown Dermatology will provide mandatory in-service training to all staff who have contact with patients. Such training will be sufficient in duration and content to train the individual in:

- a) the various degrees of hearing impairment, language, and cultural diversity in the deaf community;
- b) identification of communication needs of persons who are deaf or hard of hearing;
- c) procedures for documenting requests for and provision of auxiliary aids and services in patient charts;
- d) types of auxiliary aids and services available and how to secure them in a timely manner;
- e) the proper use and role of qualified interpreters;
- f) criteria to be used in order to select an interpreter who is qualified;
- g) the proper use and role of video remote interpreting services; and
- h) any other applicable requirements of this Agreement

32. Training Attendance Records. Brown Dermatology will maintain for the duration of this Agreement, confirmation of training conducted pursuant to Paragraph 31 of this Agreement, which will include the names and respective job titles of the attendees, as well as the date and time of the training session.

F. Reporting, Monitoring, and Violations

33. Training Materials. Within 60 days after the effective date of this Agreement, Brown Dermatology will provide the United States with a copy of all training materials used to train its staff, training attendance sheets required in Paragraph 32, above, and photographs of the notices posted in the medical office locations pursuant to this Agreement.

34. Compliance Reports. Beginning **six (6) months** after the Effective Date of this Agreement and **every six (6) months** thereafter for the entire duration of the Agreement, Brown Dermatology will provide a written report ("Compliance Report") to the U.S. Attorney's Office regarding the status of its compliance with this Agreement. The Compliance Report will include data relevant to the Agreement, including but not limited to:

- a. information required in the Auxiliary Aid and Service Log as described in Paragraph 21;
- b. the number of complaints received by Brown Dermatology from deaf and hard of hearing patients and companions regarding auxiliary aids and services and/or effective communication, and the resolution of such complaints, including any supporting documentation.
- c. information regarding training compliance as described in Paragraph 31.

Brown Dermatology 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.

35. Complaints. During the term of this Agreement, Brown Dermatology will notify the U.S. Attorney's Office if any person files a lawsuit, complaint, or formal charge with a state or federal agency, alleging that Brown Dermatology failed to provide auxiliary aids and services to patients or companions who are deaf or hard of hearing or otherwise failed to provide effective communication with such patients or companions. Such notification must be provided in writing via certified mail within **twenty (20) days** of the date Brown Dermatology received notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation of the allegation provided by the complainant.

V. MONETARY RELIEF

36. Payment of Civil Penalty to the United States. Within **thirty (30) days** of the Effective Date of this Agreement, Brown Dermatology will pay the United States TEN THOUSAND DOLLARS \$10,000 pursuant to 42 U.S.C. § 12188(b)(2)(C). The check shall be mailed to:

Amy R. Romero
Assistant United States Attorney
U.S. Attorney's Office for the District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

37. Compensatory Relief for Aggrieved Individual. Within **thirty (30) days** after receiving the executed Agreement and the aggrieved individual's signed release (a Blank Release Form is at Exhibit B), Brown Dermatology will send by FedEx, a check in the amount of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500) made out to the aggrieved individual. This check is compensation to the aggrieved individual pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in Paragraphs 8 and 9. The check shall be mailed to the address listed on the signed release. A copy of the check shall be concurrently mailed to:

Amy R. Romero
Assistant United States Attorney

U.S. Attorney's Office for the District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

38. Compensatory Relief for the Aggrieved Family Member. Within **thirty (30) days** after receiving the executed Agreement and the aggrieved individual's family member's signed release (a Blank Release Form is at Exhibit B), Brown Dermatology will send by FedEx, a check in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) made out to the aggrieved individual's family member. This check is compensation to the family member pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in Paragraphs 8 and 9. The check shall be mailed to the address listed on the signed release. A copy of the check shall be concurrently mailed to:

Amy R. Romero
Assistant United States Attorney
U.S. Attorney's Office for the District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

VI. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

39. Duration of the Agreement. This Agreement will be in effect for **two (2) years** from the Effective Date. The "Effective Date" of the Agreement shall be the date upon which the last signature hereto was executed.

40. Enforcement. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from undertaking further investigation or from filing a civil suit under Title III in this matter, except as provided in Paragraph 41. 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 Brown Dermatology 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 for violations unrelated to this matter.

41. Compliance Review and Enforcement. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or any requirement thereof has been violated by instituting a civil action in U.S. District Court. If the United States believes that this Agreement or any portion of it has been violated, it will raise its claim(s) in writing with Brown Dermatology, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow Brown Dermatology **thirty (30) days** from the date it notifies Brown Dermatology of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.

42. Entire Agreement. This Agreement and the attachments hereto constitute 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.

43. 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.

44. 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.

45. Execution. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES:



Amy R. Romero
Assistant United States Attorney
District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
Phone: 401-709-5010
Email: Amy.Romero@usdoj.gov

Date: January 20, 2022

FOR BROWN DERMATOLOGY



Abrar A. Qureshi, MD, MPH
President
Brown Dermatology, Inc.
593 Eddy Street, APC-10
Providence, RI 02903
Phone: 401-444-7415
Email: abrar.qureshi@brownphysicians.org

Date: January 18, 2022

**EXHIBIT A:
COMMUNICATION ASSESSMENT FORM**

Patient's Name _____

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

Date _____ Time _____

Nature of Disability:

- ☐ Deaf
- ☐ DeafBlind
- ☐ Hard of Hearing
- ☐ 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, please ask a member of our office staff.

Any questions? Please call our office, _____, or visit _____ during normal business hours.

EXHIBIT B:
RELEASE OF CLAIMS

For and in consideration of the relief offered to me by Brown Dermatology, pursuant to the Settlement Agreement between the United States of America and Brown Dermatology:

I, _____, hereby release and forever discharge Brown Dermatology and its current, past, and future officers, employees, agents, successors, and assigns, of and from any Americans with Disabilities Act-related legal and/or equitable claims arising out of the facts identified or allegations made in the Settlement Agreement. As a result, I agree and promise that I will not file any Americans with Disabilities Act-related suit, charge, complaint, proceeding or action at law, in equity, or otherwise (together, Action) or any other Action in any court, or any other judicial or administrative forum, against Brown Dermatology arising out of the facts identified or allegations made in the Settlement Agreement. Any rights and claims that cannot be waived by law are excluded from this Release.

This Release constitutes the entire agreement between Brown Dermatology and me, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement has been made available to me. By signing this Release, I acknowledge that I have been provided the opportunity to review the Settlement Agreement with an attorney of my choosing.

I have read this Release and understand the contents thereof and I execute this Release of my own free act and deed.

Aggrieved Person's Signature

Date

Aggrieved Person's Full Mailing Address

