

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
ELMHURST REHABILITATION & HEALTHCARE CENTER
USAO #2022V00038; DJ #202-66-83**

BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Elmhurst Operator, LLC, d/b/a Elmhurst Rehabilitation & Healthcare Center (“Elmhurst”).
2. Elmhurst is a private medical practice that provides skilled nursing services, post-acute medical services, and rehabilitation programs in Providence, Rhode Island.
3. This matter was initiated by a complaint filed with the U.S. Attorney’s Office for the District of Rhode Island (“U.S. Attorney’s Office”), alleging violations of Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. Specifically, the Complainant suffered a heart attack and stayed at Elmhurst, receiving skilled nursing and rehabilitation services, from September 10, 2021, until her discharge on October 15, 2021. The Complainant, who is deaf and uses American Sign Language and lip-reading as her primary means of communication, alleged that Elmhurst failed to provide her with a sign language interpreter or any other means of effective communication during the entire period in which she received care there.

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. Elmhurst 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.
7. 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).

8. Elmhurst fully cooperated with the United States' investigation in this matter. In the course of the investigation, the United States determined that Elmhurst failed to provide the aggrieved individual with auxiliary aids and services necessary to provide effective communication for the individual's five-week stay. Elmhurst was on notice that the individual was deaf and that her primary language was American Sign Language. While Elmhurst had a legitimate safety requirement that personnel wear N-95 masks, prohibiting lip-reading, Elmhurst did not take any measures to provide a qualified sign language interpreter or video-remote interpretation when necessary to ensure effective communication with the aggrieved individual.

9. On the basis of these determinations, the U.S. Attorney's Office concluded that Elmhurst 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.

10. Elmhurst denies that it failed to furnish appropriate auxiliary aids and services to ensure effective communication and states that it provided aids. This Settlement Agreement is not an admission of liability by Elmhurst and is entered into to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation and may not be used in any further matter for any purpose.

DEFINITIONS

11. 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.

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 "resident" shall be broadly construed to include any individual who is receiving health care services from Elmhurst.

EQUITABLE RELIEF

A. Prohibition of Discrimination

14. Nondiscrimination. Elmhurst 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 Elmhurst 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), Elmhurst shall also provide residents who are deaf or hard of hearing with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of Elmhurst as required by this Agreement and the ADA.

15. Discrimination by Association. Elmhurst 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. Elmhurst 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), Elmhurst will provide to residents 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 Elmhurst in consultation with the resident 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. Elmhurst will use the Minimum Data Set- Version 3.0 Resident Assessment and Care Screening Nursing Home Comprehensive Item Set as provided by the Centers for Medicare & Medicaid Services.

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 Elmhurst learns that a resident who is deaf or hard of hearing will be using its services.

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

uses. Additionally, Elmhurst will inform any/all contractors who are working for or with Elmhurst and who are providing care to the resident pursuant to an independent medical provider-patient relationship, when auxiliary aid(s) or service(s) may be necessary for a resident who is deaf or hard of hearing, to the extent such contractors do not have access to the resident's medical chart.

21. Auxiliary Aid and Service Log. Elmhurst 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 resident who is deaf or hard of hearing, the nature of the auxiliary aid or service requested, the 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 Elmhurst 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 resident.

C. Qualified Interpreters

23. Circumstances Under Which Interpreters May be Required. Although the determination of whether and what auxiliary aids and services are appropriate for a given situation is generally to be made on a case by case basis (as informed by its assessment pursuant to Paragraph 18), some circumstances typically require that Elmhurst provide a qualified interpreter to residents 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, when a resident's informed consent is required at admission, discharge, and/or during treatment of care; discussing discharge planning and discharge instructions; and discussing powers of attorney, living wills, and/or complex billing and insurance matters. In such circumstances, Elmhurst will presume that a qualified interpreter is necessary for effective communication with the resident. To the extent any of the services a resident receives at Elmhurst are provided by a contractor who bills under their own provider agreement and has an independent medical provider-patient relationship with the resident, Elmhurst will obligate all contractors to comply with the relevant requirements of Title III of the ADA in all contracts or other arrangements for services received at Elmhurst and comply with Paragraph 20 to this Agreement.

24. Chosen Method for Obtaining Interpreters. Throughout the duration of this Agreement, Elmhurst 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. Elmhurst will establish internal procedures for ordering interpreting services that are consistent with the interpreter or interpreter agencies' procedure. Elmhurst 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 resident's medical chart, as well as the Auxiliary Aid and Service Log discussed in Paragraph 21.

25. List of Interpreters. Within 30 days after the effective date of this Agreement, Elmhurst 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 Elmhurst ends or alters its contracts with this entity or adds additional contracts during the term of this Agreement, Elmhurst will notify the U.S. Attorney's Office of the change within **thirty (30) days**.

26. Video Remote Interpreting ("VRI"). When using VRI services, Elmhurst 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 resident'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 resident who is deaf or hard of hearing, VRI shall not be used as a substitute for an on-site qualified interpreter or other effective means of communication, and an on-site qualified interpreter or other means shall be requested and provided in a timely manner.

27. Restricted Use of Certain Persons to Facilitate Communication. Elmhurst 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. Elmhurst will not rely on a minor child or a resident 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).

D. Notice to the Community and Personnel

28. Policy Statement. Within **thirty (30) days** of the entry of this Agreement, Elmhurst shall post and maintain signs of conspicuous size and print at Elmhurst's facility, on its website, and wherever a Resident'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, Elmhurst will provide a notice containing the language found above to all residents when they are admitted and in its Patient Handbook.

29. Notice to Personnel. Elmhurst 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 resident is deaf or hard-of-hearing, you must direct that person to the appropriate ADA Administrator(s) at _____ and reachable at _____, in order to ensure that appropriate auxiliary aids and services will be provided free of the charge to the resident when appropriate.

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

E. Training

30. Training of Medical Personnel. Within **forty-five (45) days** after the effective date of this Agreement, Elmhurst will provide mandatory in-service training to all staff who have contact with residents. 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 including review of the Minimum Data Set- Version 3.0 Resident Assessment and Care Screening Nursing Home Comprehensive Item Set as provided by the Centers for Medicare & Medicaid Services;
- c) procedures for documenting requests for and provision of auxiliary aids and services in resident 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.

31. Training Attendance Records. Elmhurst will maintain for the duration of this Agreement, confirmation of training conducted pursuant to Paragraph 33 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

32. Training Materials. Within **sixty (60) days** after the effective date of this Agreement, Elmhurst will provide the United States with a copy of all training materials used to train its staff, training attendance sheets required in Paragraph 31, above, and photographs of the notices posted in the medical office locations pursuant to this Agreement.

33. 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, Elmhurst 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 Elmhurst from deaf and hard of hearing residents and companions regarding auxiliary aids and services and/or effective communication, and the resolution of such complaints, including any supporting documentation; and
- c) information regarding training compliance as described in Paragraph 30.

Elmhurst 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.

34. Complaints. During the term of this Agreement, Elmhurst 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 Elmhurst failed to provide auxiliary aids and services to residents or companions who are deaf or hard of hearing or otherwise failed to provide effective communication with such residents or companions. Such notification must be provided in writing via certified mail within **twenty (20) days** of the date Elmhurst 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

35. Payment to the United States in Lieu of Civil Penalty. Within **thirty (30) days** of the Effective Date of this Agreement, Elmhurst will pay the United States FIVE THOUSAND DOLLARS (\$5,000) to vindicate the public interest for the alleged violations of Title III of the ADA contained herein. Full payment will be made by electronic funds transfer pursuant to instructions to be provided by the United States Attorney's Office for the District of Rhode Island.

36. 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 A), Elmhurst will send by FedEx, a check in the amount of THIRTY THOUSAND DOLLARS (\$30,000) 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 and shall be tendered in exchange for a general release, as provided in Exhibit A. 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
One Financial Plaza, 17th Floor
Providence, RI 02903

VI. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

37. 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.

38. 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 Elmhurst 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.

39. 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 Elmhurst, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow Elmhurst **thirty (30) days** from the date it notifies Elmhurst in writing 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.

40. 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.

41. 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.

42. 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.

43. 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:

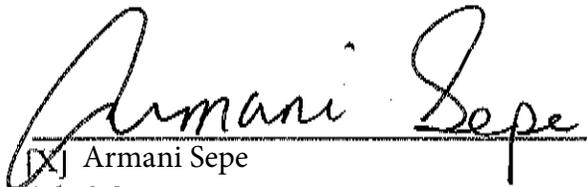


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Apr. 27, 2023

Date

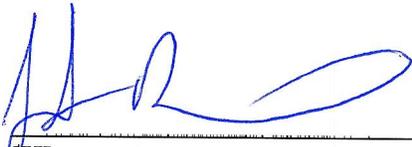
FOR Elmhurst:



Armani Sepe
Administrator
Elmhurst Rehabilitation & Healthcare Center

Date

4/26/2023



Jonathan Bardavid
Counsel for Elmhurst

4/26/23

Date

EXHIBIT A:
RELEASE OF CLAIMS

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

I, _____, hereby release and forever discharge Elmhurst 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 Elmhurst 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 Elmhurst 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 _____

