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ATTORNEYS FOR PLAINTIFF UNITED STATES

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

**BAKERSFIELD DIVISION**

THE UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
DR. CHIBUIKE ANUCHA, MD, PC  
  
Defendant.

COMPLAINT PURSUANT TO THE AMERICANS  
WITH DISABILITIES ACT, 42 U.S.C. §§ 12181 –  
12189  
  
DEMAND FOR JURY TRIAL

## **COMPLAINT**

Plaintiff United States of America respectfully alleges:

### **INTRODUCTION**

1. This action is brought by the United States against Defendant Dr. Chibuike Anucha, MD, PC, to enforce Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181-89, as amended, and its implementing regulation, 28 C.F.R. Part 36.

2. Defendant, an obstetrician-gynecologist (“OB/GYN”) doctor, discriminated against the Complainant, an individual with Human Immunodeficiency Virus (“HIV”), when Defendant refused to provide a Pap smear to Complainant because of her HIV, in violation of Title III of the ADA and its implementing regulation.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action under 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345.

4. This Court may grant declaratory relief and further necessary or proper relief pursuant to 28 U.S.C. §§ 2201 and 2202 and may grant equitable relief, monetary damages, and a civil penalty pursuant to 42 U.S.C. § 12188(b)(2).

5. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 1391(b)(1) because Defendant’s office is located in this district. Venue is further proper in the Eastern District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in this district.

### **PARTIES**

6. Plaintiff is the United States of America.

7. Defendant is Dr. Chibuike Anucha, MD, PC, an OB/GYN doctor who owns, leases, or operates a professional corporation located at relevant times at either 608 34th Street, Bakersfield, California 93301, or 3941 San Dimas Street, Building #104, Bakersfield, California 93301, where he provides health care services to patients.

8. Defendant's office is a place of public accommodation under 42 U.S.C. § 12181(7)(F) and 28 C.F.R. § 36.104 because it is a professional office of a health care provider and its operations affect interstate commerce.

9. Complainant is a 58-year-old woman with HIV.

10. Complainant is an individual with a disability within the meaning of the ADA because she has HIV, a physical impairment that substantially limits one or more major life activities, including the function of the immune system, a major bodily function. 42 U.S.C. § 12102; 28 C.F.R. § 36.105(b)(2), § 36.105(d)(2)(iii)(J).

### **FACTUAL ALLEGATIONS**

11. On or about November 7, 2017, Complainant's primary care physician referred her to Defendant for evaluation and treatment of uterine fibroids.

12. The referral documentation Complainant's primary care physician sent to Defendant listed Complainant's medical conditions, including HIV that is "well controlled" on medication.

13. On or about December 11, 2017, Complainant had an appointment with Defendant.

14. During the appointment, Defendant told Complainant that based on the information in her file, surgical management of her fibroids was not necessary at this time.

15. During the appointment, Defendant advised Complainant that she needed a Pap smear soon.

16. Complainant asked if Defendant could do the Pap smear.

17. Defendant stated that he would not provide Complainant with a Pap smear because he does not provide care for patients with HIV.

18. Defendant also wrote in his patient notes that he told Complainant that he would not provide her with a Pap smear because he does not manage high risk patients.

19. Defendant offered to refer Complainant to Kern Medical Center for the necessary Pap smear.

20. A Pap smear is a routine medical procedure that is not affected by most medical conditions and does not need to be performed by a specialist in the majority of circumstances.

21. An individual with HIV is not high-risk for a Pap smear such that referral to a specialist would be necessary.

22. Complainant subsequently received a Pap smear from a nurse at her primary care physician's office.

23. Complainant experienced anxiety, embarrassment, and emotional distress as a result of Defendant's refusal to treat her based on her HIV.

### **CAUSE OF ACTION**

#### **Title III of the Americans with Disabilities Act**

24. The allegations of the foregoing paragraphs are hereby re-alleged and incorporated by reference as if fully stated herein.

25. Complainant is an individual with a disability because she has HIV, a physical impairment that limits one or more major life activities, including the function of the immune system, a major bodily function. 28 C.F.R. § 36.105(b)(2), 28 C.F.R. § 36.105(d)(2)(iii)(J).

26. Defendant discriminated against Complainant on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations in violation of Title III of the ADA, 42 U.S.C. § 12182(a), and the Title III implementing regulation at 28 C.F.R. Part 36, by denying an individual or class of individuals, on the basis of disability, the ability to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of his office by refusing to provide preventative and gynecological care, in violation of 42 U.S.C. § 12182(b)(1)(A)(i) and 28 C.F.R. § 36.202(a).

27. Defendant has discriminated against a person or group of persons in the provision of health care and that raises an issue of general public importance under 42 U.S.C. § 12188(b)(1)(B)(ii).

28. As a result of Defendant's discriminatory conduct, Complainant suffered emotional distress. Complainant and other persons who may have been the victims of Defendant's discriminatory practices are aggrieved persons under 42 U.S.C. §12188(b)(2)(B).

### **PRAYER FOR RELIEF**

WHEREFORE, the United States prays that this Court:

29. Grant judgment in favor of the United States and declare that Defendant violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36;

30. Enjoin Defendant, its officers, agents, employees, and all others in concert or participation with it, from engaging in discrimination against individuals with disabilities, and specifically from failing to comply with Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36;

31. Order Defendant, its officers, agents, employees, and all others in concert or participation with it, to:

a. Comply with the requirements of Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36;

b. Revise its policies, practices, and procedures to bring it into compliance with Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36;

c. Take such affirmative steps as may be necessary to restore, as nearly as practicable, Complainant, and other aggrieved persons to the position that they would have been in but for Defendant's conduct;

d. Award compensatory damages, including damages for pain, suffering, and emotional distress, to aggrieved persons under 42 U.S.C. § 12188(b)(2)(B), for injuries suffered as the result of Defendant's conduct in violation of Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulation, 28 C.F.R. Part 36;

32. Assess a civil penalty against Defendant in the maximum amount authorized by 42 U.S.C. § 12188(b)(2)(C), to vindicate the public interest; and

33. Order such other appropriate relief as the interests of justice may require.

DATED: 1/14/21

Respectfully submitted,

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