



**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES ATTORNEY'S OFFICE  
FOR THE EASTERN DISTRICT OF NEW YORK  
AND  
DR. WILLIAM SHER  
UNDER THE AMERICANS WITH DISABILITIES ACT**

**BACKGROUND**

1. The parties to this Settlement Agreement are the United States Attorney's Office for the Eastern District of New York (USAO-EDNY) and Dr. William Sher.
2. This matter is based upon a complaint filed with the United States Department of Justice, of which the USAO-EDNY is a part. The complainant, Jeffrey Pacheco, alleged that Dr. Sher discriminated against Mr. Pacheco on the basis of his disability in violation of title III of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181-12189, when he refused to operate on Mr. Pacheco, who is HIV positive.
3. Dr. Sher denies that he discriminated against Mr. Pacheco and does not admit Mr. Pacheco's allegations. Dr. Sher maintains that he did not refuse to treat Mr. Pacheco.
4. The parties have reached agreement that it is in their best interests, and the USAO-EDNY believes that it is in the public interest, to resolve this dispute. The parties therefore voluntarily enter into this Settlement Agreement.

**TITLE III COVERAGE AND FINDINGS**

5. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the relevant regulation implementing title III, 28 C.F.R. Part 36.
6. At the time of the events described herein, Dr. Sher leased or operated a place of public accommodation within the meaning of 42 U.S.C. § 12182(a); is a private entity within the meaning of 42 U.S.C. § 12181(6); and is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7), because he affected commerce and operated a professional office of a health care provider. *See also* 28 C.F.R. § 36.104.
7. Under title III of the ADA, no person who owns, leases, or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R.



§ 36.201(a). Pursuant to these sections, a healthcare provider cannot deny its services to an individual with HIV simply because the individual has HIV.

8. Ensuring that medical care providers do not discriminate on the basis of disability is an issue of general public importance. The USAO-EDNY is authorized to investigate alleged violations of title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises issues of general public importance. 42 U.S.C. § 12188(b).
9. As a result of its investigation of Mr. Pacheco's complaint, the USAO-EDNY has determined:
  - a. Mr. Pacheco has been diagnosed with HIV. He began to experience neck pain and went to see his primary care physician. An MRI revealed significant lymphadenopathy on the left side of his neck. Mr. Pacheco's primary care physician referred Mr. Pacheco to Dr. Sher.
  - b. Mr. Pacheco, an individual with HIV, has a physical impairment that substantially limits one or more major life activities, including the functions of the immune system, which is a major bodily function. Accordingly, he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
  - c. Dr. Sher is an otolaryngologist.
  - d. After examining Mr. Pacheco and performing a needle biopsy, Dr. Sher determined that a full biopsy was appropriate.
  - e. On the day that the surgery was scheduled, a few minutes before the procedure was to begin, Dr. Sher indicated that he would not operate on Mr. Pacheco because Mr. Pacheco was HIV positive. Dr. Sher claims that he did so because he believed that Mr. Pacheco might not need surgery.
  - f. Dr. Sher did not have any further contact with Mr. Pacheco. Approximately three weeks later, another surgeon performed the biopsy on Mr. Pacheco, which confirmed that Mr. Pacheco had Hodgkins' Lymphoma.
10. Accordingly, the USAO-EDNY has determined that Dr. Sher unlawfully denied Mr. Pacheco medical services, including surgery, because Mr. Pacheco is HIV positive, in violation of 42 U.S.C. § 12182 and C.F.R. § 36.201 *et seq.*
11. Mr. Pacheco is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).





### **ACTIONS TO BE TAKEN BY DR. SHER**

12. Dr. Sher will not discriminate against any individual on the basis of disability, including HIV or AIDS, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations he offers, consistent with title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
13. Within 60 days of the effective date of this Agreement, Dr. Sher will attend training on title III of the ADA, including training about HIV/AIDS and discrimination, and will submit evidence to the USAO-EDNY that he has successfully completed the training within thirty days of completion. Dr. Sher will seek and obtain prior approval from the USAO-EDNY before taking the training. If Dr. Sher has already taken such training as of the effective date of this Agreement, he will submit evidence of that training within the sixty day period, which will satisfy the requirements of this section if the USAO-EDNY approves the training.
14. Within 30 days of the effective date of this Agreement, Dr. Sher will pay Mr. Pacheco \$75,000 to compensate him for the harm he alleges that he has endured (including, but not limited to, emotional distress, pain, and suffering) as a result of Dr. Sher's alleged conduct.

### **OTHER PROVISIONS**

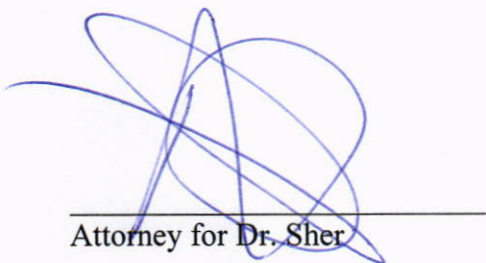
15. In consideration for the agreement set forth above, the USAO-EDNY will close its investigation alleging discrimination based on the findings set forth in paragraph 8. However, the USAO-EDNY may review Dr. Sher's compliance with this Agreement or title III of the ADA at any time. If the USAO-EDNY believes that Dr. Sher has violated title III of the ADA, this Agreement, or any portion of it, the USAO-EDNY may institute a civil action in the appropriate U.S. District Court to enforce this Agreement and/or title III of the ADA.
16. Failure by the USAO-EDNY to enforce any provision of this Agreement is not a waiver of its right to enforce any provisions of this Agreement.
17. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the USAO-EDNY and Dr. Sher shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
18. This Agreement is binding on Dr. Sher, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees.



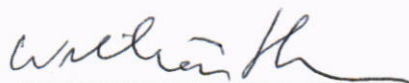
19. This Agreement constitutes the entire agreement between the USAO-EDNY and Dr. Sher on the matters raised herein, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.
20. This Agreement does not constitute a finding by the USAO-EDNY that Dr. Sher is in full compliance with the ADA. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of HIV or AIDS. Nothing in this Agreement relieves Dr. Sher of his obligation to fully comply with the requirements of the ADA.
21. The effective date of this Agreement is the date of the last signature below.
22. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

February 25 2016



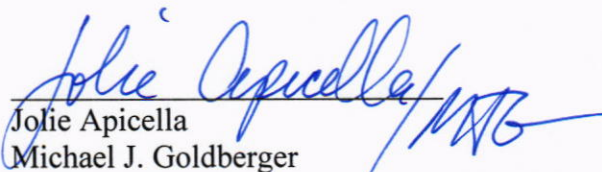
Attorney for Dr. Sher



Dr. William Sher

*March*  
February 9 2016

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