

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA AND  
JACK F. DITTY, M.D., P.S.C.  
USAO #2022V00030; DJ #202-30-63**

**I. BACKGROUND**

1. The parties to this Settlement Agreement (the Agreement) are Jack F. Ditty, M.D., P.S.C. and the United States of America (collectively, the parties). The parties hereby agree as follows:

2. Jack F. Ditty, M.D., P.S.C. (hereafter Jack F. Ditty, M.D., or the practice) is an Ashland, Kentucky-based dermatology practice owned and operated by Dr. Jack Ditty.

3. The United States Attorney's Office for the Eastern District of Kentucky, a component of the United States Department of Justice (United States), initiated this matter pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. §§12181–12189, and the Department of Justice's implementing regulation, 28 C.F.R. Part 36, after receiving a report of potential violations of Title III of the ADA by the practice. Specifically, the United States initiated the review upon receipt of a complaint from an individual who is hard-of-hearing and uses American Sign Language alleging that the practice failed to provide her with an interpreter or other appropriate auxiliary aids during a medical appointment. It was further alleged that staff at Jack F. Ditty, M.D. informed the complainant that she would need to bring someone to help interpret as the practice did not provide interpreters for patients.

**II. INVESTIGATION AND DETERMINATIONS**

4. The United States 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. Jack F. Ditty, M.D. 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 a professional office of health care providers.

6. 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).

7. Through its investigation, the United States determined that Jack F. Ditty, M.D. failed to take necessary steps to ensure effective communication with deaf or hard-of-hearing patients. For example, although the practice routinely treated patients who were deaf or hard-of-hearing, office staff had a practice of encouraging deaf or hard-of-hearing patients to bring someone with them to facilitate communication rather than offering such patients an interpreter or otherwise inquiring about their communication needs.

8. On the basis of these determinations, the United States concluded that, through its policies and practices, Jack F. Ditty, M.D. failed to furnish appropriate auxiliary aids and services to ensure effective communication with patients, in violation of 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. § 36.303.

### III. DEFINITIONS

9. 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.

10. 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).

11. 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.

12. Patient shall be broadly construed to include any individual who is seeking or receiving health care services from Jack F. Ditty, M.D.

### IV. EQUITABLE RELIEF

#### A. Prohibition of Discrimination

13. Nondiscrimination. Jack F. Ditty, M.D. 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 Jack F. Ditty, M.D. 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), Jack F. Ditty, M.D. 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 Jack F. Ditty, M.D. as required by this Agreement and the ADA.

14. Discrimination by Association. Jack F. Ditty, M.D. 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).

15. Retaliation and Coercion. Jack F. Ditty, M.D. 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**

16. Appropriate Auxiliary Aids and Services. Consistent with 42 U.S.C. § 12182(b)(2)(A)(iii), Jack F. Ditty, M.D. 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 17 of this Agreement.

17. 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 Jack F. Ditty, M.D. 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. Jack F. Ditty, M.D. 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**.

18. 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 Jack F. Ditty, M.D. learns that a patient or companion who is deaf or hard-of-hearing will be using its services.

19. 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) they use.

20. Auxiliary Aid and Service Log. Jack F. Ditty, M.D. 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 Jack F. Ditty, M.D. 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 33 of this Agreement.

21. 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**

22. 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 17), some circumstances typically require that Jack F. Ditty, M.D. 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 conditions, 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, Jack F. Ditty, M.D. will presume that a qualified interpreter is necessary for effective communication with the patient or companion.

23. Chosen Method for Obtaining Interpreters. Throughout the duration of this Agreement, Jack F. Ditty, M.D. 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. Jack F. Ditty, M.D. will establish internal procedures for ordering interpreting services that are consistent with the qualified interpreter or interpreter agencies' procedure. Jack F. Ditty, M.D. will consider an order for interpreting services to be complete only after receiving written confirmation from the interpreting service that a qualified 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 20.

24. List of Qualified Interpreters. Within **thirty (30) days** after the effective date of this Agreement, Jack F. Ditty, M.D. will submit to the United States 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 Jack F. Ditty, M.D. ends or alters its contracts with this entity or adds additional contracts during the term of this Agreement, Jack F. Ditty, M.D. will notify the United States of the change within **thirty (30) days**.

25. Video Remote Interpreting (VRI). When using VRI services, Jack F. Ditty, M.D. 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 their 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.

26. Restricted Use of Certain Persons to Facilitate Communication. Jack F. Ditty, M.D. 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 qualified 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. Jack F. Ditty, M.D. 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 qualified interpreter available. 28 C.F.R. §§ 36.303 (2), (3), (4).

27. Notice to Patients and Companions Who are Deaf or Hard-of-hearing. As soon as Jack F. Ditty, M.D. staff has determined that a qualified interpreter is necessary for effective communication with a patient or companion who is deaf or hard-of-hearing, Jack F. Ditty, M.D.

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. Jack F. Ditty, M.D. will provide additional updates to the patient or companion as necessary until a qualified interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen Jack F. Ditty, M.D.'s obligation to provide qualified interpreters in a timely manner.

**D. Policy Revision; Notice to the Community and Personnel**

28. Notice to Public. Within **thirty (30) days** of the entry of this Agreement, Jack F. Ditty, M.D. shall post and maintain signs of conspicuous size and print at Jack F. Ditty, M.D. medical office's waiting area, 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 [Phone Number].

These signs will include the international symbol for "interpreters." Additionally, Jack F. Ditty, M.D. will provide a notice containing the language found above to all patients when they check in for appointments.

29. Policy Revision; Notice to Personnel. Jack F. Ditty, M.D. 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 [Contact Name] and reachable at [Contact Number].

Once approved by the United States, Jack F. Ditty, M.D. 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 **sixty (60) days** after the effective date of this Agreement and on a yearly basis for the duration of this Agreement, Jack F. Ditty, M.D. 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 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. Jack F. Ditty, M.D. will maintain for the duration of this Agreement confirmation of training conducted pursuant to Paragraph 30 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 **fourteen (14) days** after completion of the training requirements in Paragraph 30, Jack F. Ditty, M.D. will provide the United States with a copy of all training materials used to train its staff, training attendance sheets, 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, Jack F. Ditty, M.D. will provide a written report (“Compliance Report”) to the United States 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 20;
- b) the number of complaints received by Jack F. Ditty, M.D. 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 Paragraphs 30 and 31.

Jack F. Ditty, M.D. will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the United States.

34. Complaints. During the term of this Agreement, Jack F. Ditty, M.D. will notify the United States if any person files a lawsuit, complaint, or formal charge with a state or federal agency, alleging that Jack F. Ditty, M.D. 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 Jack F. Ditty, M.D. 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. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

35. Duration of the Agreement. This Agreement will be in effect for **three (3) years** from the Effective Date. The “Effective Date” of the Agreement shall be the date upon which the last signature hereto was executed.

36. 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 37. 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 Jack F. Ditty, M.D. 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.

37. Compliance Review. 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 Jack F. Ditty, M.D., and the parties will attempt to resolve the concern(s) in good faith. The United States will allow Jack F. Ditty, M.D. **thirty (30) days** from the date it notifies Jack F. Ditty, M.D. 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.

38. 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.

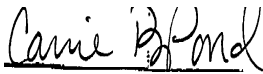
39. Binding. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. Each party has a duty to so inform any such successor in interest.



40. 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 regarding other instances or provisions.

41. 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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Carrie B. Pond  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Kentucky  
260 W. Vine Street, Suite 300  
Lexington, KY 40507-1612  
Email: carrie.pond@usdoj.gov

Date: 2-14-24

FOR JACK F. DITTY, M.D., P.S.C.



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Jack F. Ditty, M.D.  
100 St. Christopher Drive  
Ashland, KY 41101  
Email: jackfdittymd@gmail.com

Date: 2/13/2024

**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.