

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
MIDWEST PLASTIC SURGERY
UNDER THE AMERICANS WITH DISABILITIES ACT**

I. BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Midwest Plastic Surgery.
2. This matter was initiated by a prospective patient, who filed a complaint with the United States Department of Justice, alleging that Midwest Plastic Surgery discriminated against her on the basis of her disability in violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. Specifically, the Complainant alleges that a plastic surgeon at Midwest Plastic Surgery declined to operate on her to perform a breast reduction surgery based on her disability because she has HIV.
3. The parties agree that it is in their best interest, and the United States believes that it is in the public interest, to resolve this dispute. The parties have therefore voluntarily entered into this Settlement, agreeing as follows:

II. TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for 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.
5. The Complainant, 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, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.
6. Midwest Plastic Surgery employs a board certified plastic surgeon, who is licensed to practice in Illinois, with an office located at 718 N. York Rd., Hinsdale, IL 60521.
7. Midwest Plastic Surgery owns, leases or operates 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, individually and through his business, affects commerce and operates a professional office of a health care provider. *See also* 28 C.F.R. § 36.104.
8. 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).

9. Ensuring that medical care providers do not discriminate on the basis of disability is an issue of general public importance. The United States 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 an issue of general public importance. 42 U.S.C. § 12188(b).
10. As a result of its investigation, the United States has determined the following:
 - a. The Complainant is a 47-year old woman who is HIV positive. She alleged that she was diagnosed in 1994 and has been living with HIV for over 25 years. The Complainant stated that she began experiencing significant back pain, and her primary doctor recommended that she undergo breast reduction surgery to reduce her back pain.
 - b. Midwest Plastic Surgery employs a plastic surgeon, George Kouris, MD, S.C., who is licensed to practice in Illinois and who works as a sole practitioner at Midwest Plastic Surgery. Dr. Kouris performed and continues to perform cosmetic and reconstructive surgery, including breast reduction surgery.
 - c. The Complainant alleged that she called to schedule a consultation for a breast reduction surgery at Midwest Plastic Surgery on or around November 7, 2018. The receptionist scheduled the Complainant's appointment for November 13, 2018.
 - d. On November 13, 2018, the Complainant arrived at Midwest Plastic Surgery for her consultation. She was given intake paperwork that she proceeded to fill out, including a medical history sheet. On the medical history sheet, she indicated that she was HIV positive. She returned her completed paperwork to the receptionist and an assistant took the Complainant back to a patient room.
 - e. Dr. Kouris met the Complainant in the patient room with a nurse. During the course of the ensuing discussion, Dr. Kouris explained to the Complainant that he would not perform the elective surgery because of the possible risk to her, himself, and the surgical team due to her HIV status. Dr. Kouris apologized to Complainant for not being able to help her and then asked his medical assistant to walk the Complainant out and to make sure that she was not charged for the consultation.
 - f. The Complainant left Midwest Plastic Surgery distraught and angered by what she believes was discriminatory treatment on the basis of her HIV status.

- g. After the consultation, Dr. Kouris wrote the following treatment note in the Complainant's electronic medical file: "The patient is HIV positive and has been so for 25 years according to her. She is interested in bilateral breast reduction. Given the nature of the breast reduction surgery, degree of exposure to blood and bodily fluids for myself and the surgical team, I explained to the patient that I will not take on her elective case."
 - h. After Dr. Kouris refused to accept Complainant as a surgical patient, Complainant continued to suffer significant back pain, as well as serious emotional distress because of the discrimination she faced.
 - i. The Complainant visited another plastic surgeon at a different location regarding a breast reduction surgery. The new plastic surgeon examined the Complainant and explained the treatment options, including surgery. The plastic surgeon expressed no reservations or hesitation about performing the surgery due to a risk of HIV transmission to the surgeon or his medical team.
11. The United States has determined that Midwest Plastic Surgery discriminated against the Complainant by denying her medical services, including surgery, because the Complainant is HIV positive, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201 *et seq.*
12. The Complainant is an aggrieved person pursuant to 42 U.S.C. § 12188(b)(2)(B).

III. ACTIONS TO BE TAKEN BY MIDWEST PLASTIC SURGERY

13. Midwest Plastic Surgery 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 it offers at any of its current or future locations, consistent with Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
14. Within 60 days of the effective date of this Agreement, Dr. Kouris will attend training, online or in-person, on title III of the ADA, including training about HIV/AIDS and discrimination, and will submit evidence to the U.S. Attorney's Office of the Northern District of Illinois ("counsel for the United States") that he has successfully completed the training within thirty days of completion. Dr. Kouris will seek and obtain prior approval from the USAO-NDIL before taking the training.
15. The parties acknowledge that Midwest Plastic Surgery has submitted a copy of its current non-discrimination policy to the United States for its review and approval. The non-discrimination policy states that Midwest Plastic Surgery does not discriminate in the provision of services to persons with disabilities, including persons who have HIV or

AIDS. Once it has been approved by the United States, Midwest Plastic Surgery will continue to adopt, maintain, and enforce the non-discrimination policy for the duration of this Agreement. This policy statement has been and will continue to be conspicuously posted in the reception area of each current and future facility, outpatient health care center, and ambulatory care facility, and on the company's main webpage or "homepage," currently located at www.MidwestPlasticSurgery.org, as well as on the homepage of any current or future Midwest Plastic Surgery website, for the duration of this Agreement.

16. As it represents was provided to all its employees and staff in 2019, within sixty (60) days of the effective date of this Agreement, and every year thereafter for the duration of the Agreement, Midwest Plastic Surgery will provide training on Title III of the ADA to all of its employees; contractors; staff; and agents, including training about HIV/AIDS and disability discrimination in general.
17. In addition, Midwest Plastic Surgery will ensure that all new employees, contractors and agents who are involved with admissions or treatment of patients receive the training referenced in paragraph 16 as a component of new employee training and orientation. Midwest Plastic Surgery shall provide the training to new employees, agents and contractors within thirty (30) days of their start date.
18. All training manuals or written materials concerning Midwest Plastic Surgery's policies and practices used in the training required in paragraph 16 or revised or created after the effective date of this Agreement shall be consistent with the provisions of this Agreement, and approved in advance by counsel for the United States.
19. Midwest Plastic Surgery shall create and maintain an attendance log that documents the name of each individual who attends the trainings required in paragraphs 16 and 17, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within ten (10) days of any request for them.
20. Within thirty (30) days of the effective date of this Agreement, Midwest Plastic Surgery will place a framed sign (the sign being a minimum size of 8 by 11 inches) in a prominent, noticeable position in the waiting area of Midwest Plastic Surgery. The sign will state, in large, readable font: "Midwest Plastic Surgery welcomes patients with disabilities" or another sentence with similar meaning proposed by Midwest Plastic Surgery and approved by counsel for the United States.
21. Within ten (10) days after receiving the Complainant's signed release (a blank release form is attached as Exhibit A), Midwest Plastic Surgery will send a check as for \$25,000 made out to the Complainant for damages caused by its ADA violation. This check is compensation to the Complainant pursuant to 42 U.S.C. § 12188(b)(2)(B) for the effects of the discrimination and the harm she has endured (including emotional distress and pain

and suffering) as a result of Midwest Plastic Surgery's failure to accept her as a new patient and perform surgical procedures.

22. The check shall be mailed or hand-delivered to:

Valerie R. Raedy, Esq.
Assistant United States Attorney
219 S. Dearborn St., Fifth Floor
Chicago, Illinois 60604

23. Midwest Plastic Surgery will not withhold taxes from the monetary award and the Complainant will accept responsibility for taxes due and owing, if any, on the monetary award. Midwest Plastic Surgery will issue to the Complainant an IRS form 1099 reflecting the amount paid to her.

24. Within seven (7) days of receipt of any complaint related to any alleged violations of the ADA or related to an action which, if substantiated, would be disability-based discrimination, Midwest Plastic Surgery shall send written notification to counsel for the United States with a copy of any such complaint (or, if an oral complaint was made, a description of the complaint) and a complete copy of Midwest Plastic Surgery's response, if any.

25. For each potential client who is not accepted as a patient, Midwest Plastic Surgery will create a written file and will maintain the written file for at least two years from the date the potential client is not accepted. Each file must identify all persons involved in the determination to not accept the patient and must include written documentation supporting the basis for the determination. Copies of such files shall be provided to the United States within ten (10) days of any request for them.

26. Employees whose duties will involve the record-keeping provisions set forth in paragraph 25 shall be trained on how to implement those provisions.

27. Midwest Plastic Surgery will notify the United States in writing when it has completed the actions described in paragraphs 15-26. This notification need only be provided when Midwest Plastic Surgery and all of its staff, employees, and other agents have completed the action required in the relevant paragraph(s). If any issues arise that affect the anticipated completion dates set forth in those paragraphs, Midwest Plastic Surgery will immediately notify the United States of the issue(s), and the parties will attempt to resolve those issues in good faith.

IV. OTHER PROVISIONS

28. In consideration for the Agreement set forth above, the United States will close its investigation of Midwest Plastic Surgery and its employees and will not institute a civil action at this time alleging discrimination based on the determinations set forth in paragraph 10. However, the United States may review Midwest Plastic Surgery's compliance with this Agreement or Title III of the ADA at any time. If the United States believes that Title III of the ADA, this Agreement, or any portion of it has been violated, it may commence a civil action in the appropriate U.S. District Court to enforce this Agreement and/or Title III of the ADA.
29. Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provisions of this Agreement.
30. 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 United States and Midwest Plastic Surgery 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.
31. This Agreement is binding on Midwest Plastic Surgery, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees.
32. This Agreement constitutes the entire agreement between the United States and Midwest Plastic Surgery 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.
33. This Agreement does not constitute a finding by the United States that Midwest Plastic Surgery 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 Midwest Plastic Surgery of his obligation to fully comply with the requirements of the ADA.
34. Midwest Plastic Surgery shall not discriminate or retaliate against any person because of his or her participation in this matter.

V. EFFECTIVE DATE/TERMINATION DATE

35. The effective date of this Agreement is the date of the last signature below.

36. The duration of this Agreement will be three years from the effective date.

FOR MIDWEST PLASTIC SURGERY

FOR THE UNITED STATES OF AMERICA

Valerie R. Raedy
United States Attorney
Northern District of Illinois

Dr. George Kouris
Midwest Plastic Surgery
718 N. York Rd.
Hinsdale, IL. 60521

Valerie R. Raedy
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U.S. Attorney's Office
219 S. Dearborn St., Fifth Fl.
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Date

Date