

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action Number:
 v.) 00-CV-0026-E(M)
)
 NEUROLOGICAL SURGERY, INC.,)
)
 Defendant.)
 _____)

CONSENT DECREE

On January 10, 2000, the United States filed its Complaint against the Defendant, Neurological Surgery, Inc. ("NSI"), alleging, in sum, that NSI had discriminated against Mr. John J. McCarthy on the basis of his disability in connection with the provision of medical services in violation of Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12181 et seq. NSI denies all material allegations in the Complaint.

The United States and NSI desire to settle the action between them without the burden of prolonged litigation. This Consent Decree resolves all allegations raised by the United States in its Complaint. The parties agree that this Court has jurisdiction over them and over the subject-matter of this action. The parties waive, for the purpose of this Decree only, a hearing and findings of fact and conclusions of law on all

issues raised by the United States in its Complaint.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

A. PROSPECTIVE RELIEF

1. NSI, by and through its physicians, agents and employees, is enjoined from engaging in any act or practice that has the purpose or effect of unlawfully discriminating against any person on the basis of disability, including any person with Human Immunodeficiency Virus ("HIV") disease or Acquired Immune Deficiency Syndrome ("AIDS"), in violation of the ADA.

2. NSI, and its physicians, agents and employees, shall treat persons who have a disability, including those who have HIV disease or AIDS, in a manner equal to that in which they treat persons who are not disabled. Thus, NSI shall provide medical services to persons who have a disability, including those who have HIV disease or AIDS, and shall only refer such persons to other physicians when the service(s) being sought or provided is outside the physician's area of expertise, rather than referring to another physician solely on the basis of the person having a disability, including HIV disease or AIDS.

B. INDIVIDUAL REMEDIAL RELIEF

3. NSI shall pay Mr. McCarthy the total of \$40,000.00 in compensatory damages relating to the claims contained in the United States' Complaint.

4. Pursuant to 42 U.S.C. § 12188(b)(2)(c), a civil penalty

is assessed against NSI in the amount of \$10,000.00, to vindicate the public interest for a first violation. This amount shall be forwarded to the undersigned counsel for the United States within thirty days of the date of entry of this Consent Decree by the Court, and shall be in the form of a check made payable to "United States Treasury."

C. POLICY

5. Within sixty days of the entry of this Consent Decree by the Court, NSI as a corporate body formally shall amend its manual titled "Policy and Procedure" by adopting a policy specifically relating to nondiscrimination against persons who have a disability, including those who have HIV disease or AIDS. NSI shall communicate this policy, attached as Appendix A to this Decree, to all of its physicians and employees, both orally and in writing. NSI shall require compliance with this policy as a condition of employment.

6. In any office operated by NSI, NSI shall prominently display the following non-discrimination notice in the waiting room:

This office does not discriminate against any person on the basis of disability, including persons who have HIV disease or AIDS. Our staff provides services and treatment to persons with a disability, including those with HIV disease and AIDS, on the same terms and conditions that such services are provided to patients who do not have a disability.

The Americans with Disabilities Act of 1990 is a federal law that protects persons with disabilities, including

individuals who have HIV disease or AIDS, from discrimination in the provision of medical services. If you believe that you have been discriminated against in the provision of medical services because of your having a disability, including HIV disease or AIDS, you should contact the United States Department of Justice in Washington, D.C. at 1-800-514-0301.

D. TRAINING

7. Within six months of the entry of this Consent Decree by the Court, Dr. Karl Detwiler and his nurse/administrator shall undergo at least six (6) hours of training concerning:

- (1) medical treatment of persons with HIV disease or AIDS;
- (2) infection control in the workplace; and (3) the ethical duty to treat persons with HIV disease or AIDS. Such training shall be subject to reasonable review by the Department of Justice.

E. IMPLEMENTATION

8. Within thirty days of the entry of this Consent Decree by the Court, Mr. McCarthy shall provide to the undersigned counsel for NSI an executed Release Form in the form attached as Appendix B to this Decree.

9. Within ten days of the receipt by NSI's counsel of Mr. McCarthy's executed Release Form, Mr. McCarthy shall be paid the amount described in paragraph three. Payment shall be forwarded to Mr. McCarthy via certified mail, return receipt requested, for receipt within the ten days described above. A copy of any check and any accompanying correspondence shall be mailed to the United States.

10. The parties shall attempt to resolve informally any disputes that may arise under this Consent Decree. If an informal resolution cannot be achieved, the party raising the issue(s) in dispute shall provide written notice to the others of the nature of the dispute(s) and the corrective action sought. If within fourteen days of such notice corrective action has not been taken to the satisfaction of the party raising the issue(s), the matter may be presented to this Court for resolution.

11. The Court shall retain jurisdiction over this Consent Decree for the purposes of resolving any disputes that may arise between the parties under this Decree and entering such orders as may be appropriate.

12. This Consent Decree shall terminate two (2) years from the date of its entry. Before its termination, any party may move, for good cause shown, to extend the duration of the Decree.

13. This Consent Decree shall be final and binding on the parties to this action, including all physicians, principals, agents, employees, and successors in interest of NSI.

14. Nothing in this Consent Decree shall preclude the United States from filing a separate action under the ADA for any future alleged violation occurring after the date of entry of this Decree. In any such action, the United States may seek any remedies provided under 42 U.S.C. § 12188.

F. RECORDS

15. Within thirty days after entry of this Consent Decree by the Court, NSI shall make available for inspection and copying, within fourteen days after notice of a request by the United States, all documents relevant to the NSI's compliance with and implementation of this Decree.

G. REPORTING

16. During the term of this Consent Decree, NSI shall notify the United States if any individual brings any lawsuit, complaint or allegation alleging discrimination on the basis of disability by NSI or any of its physicians. Such notification shall be provided in writing within ten days of when NSI has received notice of the allegation and shall include, at a minimum, information describing the nature of the allegation, the name of the individual bringing the allegation and any documentation possessed by NSI relevant to the allegation.

H. COSTS

17. The parties shall bear their own costs, including attorneys' fees, except that the parties retain the right to seek costs for any matter that, in the future, may arise from this Consent Decree and require resolution by the Court.

Respectfully Submitted,

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Acting Assistant Attorney General
Civil Rights Division
JOHN L. WODATCH
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Dated: _____

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Dated: _____

It is so ORDERED, this _____ day of _____, 2000.

UNITED STATES DISTRICT JUDGE

APPENDIX A

The Americans with Disabilities Act of 1990 prohibits discrimination in the provision of medical services against persons with disabilities, including those who have HIV disease or AIDS. Neurological Surgery, Inc. is fully committed to providing treatment to persons who have a disability, including those who have HIV disease or AIDS. Therefore, persons who have a disability, including those who have HIV disease or AIDS will be treated by NSI and its staff in the same manner as other patients. No physician or employee of NSI may refuse to treat or to refuse to provide any services to any person on the basis that such person has a disability, including those who have HIV disease or AIDS. Refusal to follow this policy is grounds for termination.

APPENDIX B

RELEASE FORM

United States v. Neurological Surgery, Inc.

STATE OF OKLAHOMA

For and in consideration of the payment of compensatory damages pursuant to the provisions of the Consent Decree entered by the Honorable [name], United States District Judge, on [date], 2000 in the above-styled case, I, John J. McCarthy, hereby release and forever discharge Neurological Surgery, Inc. and any of its physicians from those legal and equitable claims raised in the United States' Complaint in United States v. Neurological Surgery, Inc. (Civil Action Number 00-CV-0026-E(M)).

This Release constitutes the entire agreement between myself and the Neurological Surgery, Inc. without exception or exclusion. I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this _____ day of _____, 2000.

JOHN J. MCCARTHY

Sworn and subscribed to before me this _____ day of _____, 2000.

NOTARY PUBLIC

My commission expires: _____