

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

ELIZABETH GILLESPIE, et al.,

Plaintiffs

and

THE UNITED STATES OF AMERICA

Plaintiff-Intervenor,

v.

DIMENSIONS HEALTH CORPORATION  
d/b/a Laurel Regional Hospital,

Defendant.

Civil Action No.: DKC-05-CV-73

**CONSENT DECREE**

Plaintiffs Elizabeth Gillespie, David Irvine, Erin Whitney, Cary Barbin, Kathryn Vadakin, Brian Leffler, and Xiomara Porras (collectively referred to as “private plaintiffs”), Defendant Dimensions Health Corporation d/b/a Laurel Regional Hospital (“Laurel” or the “Hospital”), and the United States Department of Justice (the “United States”) have consented to entry of the following Order:

**I. BACKGROUND**

A. On January 11, 2005, private plaintiffs filed a lawsuit pursuant to title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189; the United States’ implementing regulation, 28 C.F.R. Part 36; section 504 of the Rehabilitation Act (“the

Rehabilitation Act"), 29 U.S.C. § 794; and the United States Department of Health and Human Services' implementing regulation, 45 C.F.R. Part 84. Private plaintiffs, all deaf, alleged that the Hospital violated title III of the ADA and the Rehabilitation Act by discriminating on the basis of disability against persons who are deaf. Gillespie v. Dimensions Health Corporation, No. DKC-05-73 (D. Maryland). The complaint alleged, inter alia, that the Hospital did not provide qualified sign language interpreters and/or other appropriate aids and services to the private plaintiffs either in the Emergency Department or during their hospitalization. Two of the plaintiffs, David Irvine and Xiomara Porrás, allegedly did not seek treatment at the Hospital but accompanied family members treated in the Emergency Department. The Hospital has denied the allegations.

B. The United States Department of Justice ("the United States") received a complaint from the Gillespie plaintiffs mirroring the allegations in that case and initiated its own investigation, pursuant to its authority under the ADA, see 42 U.S.C. § 12188(b), in March 2005. The United States also received a complaint from Janette Pokorski, another deaf patient who allegedly was not provided interpreting services and other auxiliary aids and services during her surgery, hospitalization, and recovery from surgery. According to the allegations in the private plaintiffs' Amended Complaint filed in this action and/or the facts elicited during the United States' investigation, the plaintiffs and Ms. Pokorski were unable to understand the purpose of certain tests, were unclear and confused about their diagnoses, were unable to ask sufficient questions concerning their medical conditions, did not understand their discharge instructions and, in certain instances, allegedly were discharged without realizing that they had life-

threatening illnesses or conditions. In addition, Hospital personnel and physicians allegedly refused multiple requests for qualified sign language interpreters, and instead elected to use paper and pen, gestures, and lipreading to communicate or used family members/companions to act as communication conduits, despite the various individuals' inability to effectively communicate with Hospital personnel and physicians. See e.g., Amended Complaint, ¶¶ 3-4, 22, 28. Also, only two of the private plaintiffs, Elizabeth Gillespie and Erin Whitney, allegedly were provided any access to either an on-site interpreter or video interpreting services (where a sign language interpreter appears via video on a videophone) during the delivery of medical treatment at the Hospital. Ms. Pokorski, a complainant in the United States' investigation, was offered the use of video interpreting services but declined. Ms. Vadakin (formerly Hale) also was offered the use of video interpreting services but the Hospital was unable to operate its video interpreting equipment. Those plaintiffs who used or attempted to use the Hospital's video interpreting service allege that it was generally ineffective. For example, plaintiffs alleged, and the United States observed during its site visit, that Hospital personnel were, at times, unable to set up and/or operate the videophone; the image on the monitor was too blurry for the patient to clearly distinguish the arms and hands of the video interpreter; and the camera on the videophone could not be adjusted for a prone patient so that the patient and the video interpreter could clearly see each other's hands, arms and head. In addition, in one instance, a plaintiff was offered the use of video interpreting services by the Hospital but when the video interpreter vendor was unable to provide a video interpreter, no on-site interpreter was offered in its stead. Hospital personnel allegedly informed certain other plaintiffs that no interpreters were available, or otherwise

refused to respond to repeated requests for interpreters and declined to offer access to video interpreting services. Some Hospital personnel and Emergency Department physicians allegedly refused to communicate in writing with the plaintiffs and Ms. Pokorski, insisting that these plaintiffs attempt to communicate by lipreading.

C. The United States is authorized to investigate alleged violations of title III of the ADA and to bring a civil action in federal court if it is unable to secure voluntary compliance 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).

D. The United States, which was not an original party to the Gillespie litigation, has filed a Complaint in Intervention against the Hospital alleging that the Hospital has engaged in a pattern or practice of discrimination and discriminated against persons who are deaf by excluding them from or denying them the benefit of the Hospital's services by failing to take appropriate steps whenever necessary to ensure effective communication.

E. The Hospital is a place of public accommodation covered by title III of the ADA, 42 U.S.C. § 12181(7)(F), and its implementing regulation, 28 C.F.R. § 36.104. The Hospital is committed to satisfy its statutory requirements and fulfill its responsibilities to provide medical services to members of the community without discrimination on the basis of disability.

F. It is the position of the private plaintiffs and the United States that the facts show that the Hospital has engaged in a pattern or practice of discrimination and has discriminated against persons who are deaf or hard of hearing by excluding them from or denying them the benefit of the Hospital's services by failing to provide qualified interpreters and/or other

appropriate aids and services necessary for effective communication. Such failure constitutes discrimination on the basis of disability within the meaning of section 302 of the ADA, 42 U.S.C. § 12182. The private plaintiffs and the United States also allege that the Hospital discriminated against David Irvine by imposing communication responsibilities on him and against Xiomara Porras for refusing to communicate with her, in violation of the ADA. In addition, it is the position of the private plaintiffs that the facts show a violation of section 504 of the Rehabilitation Act, 29 U.S.C. § 794. The Hospital denies these allegations.

G. The private plaintiffs, the United States, and the Hospital (collectively “the Parties”), after good-faith negotiations, have determined that the Gillespie litigation and the United States’ investigation and litigation should be resolved through this Consent Decree. In addition, the private plaintiffs and defendant have entered into a confidential settlement agreement to resolve all remaining issues between them.

H. The United States, having participated in the negotiations among the Parties in the Gillespie litigation, and having conducted its own investigation of the matters addressed by this Consent Decree, asserts that the public interest will be served by entering this Consent Decree.

I. Therefore, the parties and the United States have consented to this Consent Decree, as indicated by the signatures appearing below. Although the Hospital disputes the allegations, the Parties agree to resolve this matter as set forth below.

J. In consideration of the terms of this Consent Decree, and in particular the provisions in Sections III-XI, the Attorney General of the United States agrees to refrain from undertaking further action in this case, except as provided in Section X (B) and Section XI (A).

In order to secure compliance by voluntary means and avoid the costs of litigation, the Parties hereby agree as follows:

## **II. JURISDICTION AND VENUE**

This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345. Venue is proper in this District pursuant to 28 U.S.C. § 1391 in that all claims alleged herein arose within this District. Declaratory relief is appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

## **III. DEFINITIONS**

A. The term "appropriate auxiliary aids and services" includes, for example, qualified sign language, oral, or relay interpreters (either appearing in person or through video interpreting services), note takers, computer-assisted real time transcription services, written materials, the exchange of handwritten notes, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, TTY's (see definition *infra*), acquisition or modification of equipment or devices, video interpreting services, and other methods of delivering effective communication to individuals with hearing impairments.

B. The term "Companion" means a person who is (1) deaf or hard of hearing and who accompanies a deaf or hard of hearing Patient, or (2) deaf or hard of hearing and who accompanies a hearing Patient, or (3) hearing and who accompanies a deaf or hard of hearing Patient; and who is (i) legally authorized to make health care decisions on behalf of the Patient, or (ii) designated by the Patient to communicate, or circumstances otherwise indicate should

communicate, with Hospital personnel about the Patient, the Patient's needs, condition, history, or symptoms, or (iii) authorized to help the Patient act on information or instructions by Hospital personnel, or (iv) the Patient's next of kin or health care surrogate or such person with whom the Hospital personnel ordinarily and regularly communicate concerning the Patient's medical condition and medical advice.

C. The term "date of this [Consent] Decree" means the date on which this Consent Decree is entered by the Court.

D. The term "Hospital Personnel" means all employees and independent contractors with contracts to work on a substantially full-time basis for Laurel (or on a part-time basis exclusively for Laurel), including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, billing staff, security staff, therapists, and volunteers, who have or are likely to have direct contact with "Patients" or "Companions," as defined herein.

E. The term "Patient" means a person who is seeking and/or receiving medical services at Laurel.

F. The term "Qualified Interpreter" shall include "sign language interpreters," "oral interpreter," or other "interpreters" who are able to interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in a Hospital setting to a Patient or a Companion. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language is not necessarily qualified to interpret orally. Also, someone who has only a rudimentary familiarity with sign language or finger spelling is not a "qualified sign

language interpreter." Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone signing and translate their signed or finger-spelled communication into spoken words is not a qualified sign language interpreter. A "Qualified Interpreter" may include a "relay interpreter" who has special skill and training in acting as an intermediary between a Patient or Companion and a sign language interpreter in instances when the interpreter cannot otherwise independently understand the consumer's primary mode of communication.

G. The term "TTY's" means devices that are used with a telephone to communicate with persons who are deaf or hard of hearing by typing and reading communications.

H. The term "VIS" means video interpreting services using video conference technology over high speed Internet lines.

#### **IV. INJUNCTIVE RELIEF**

##### **A. General Obligations**

1. Program to Provide Appropriate Auxiliary Aids and Services. Within sixty days of the date of this Consent Decree, the Hospital shall modify, publish, and describe its program for providing auxiliary aids and services ("Program") to implement effectively the provisions of this Consent Decree, including, without limitation:
  - a. Developing and/or revising and coordinating specific procedures to implement fully this Consent Decree, including the revised policies attached as Exhibit 1 to this Consent Decree;

- b. Scheduling, announcing and promoting all training required by this Consent Decree;
- c. Developing a plan for drafting, maintaining and providing all reports required by this Consent Decree;
- d. Within sixty (60) to ninety (90) days, modifying or adapting medical and intake forms as necessary to ensure that once a deaf or hard of hearing Patient or Companion enters the Hospital, the Hospital makes the communication assessment consistent with this Consent Decree. The Hospital will use Exhibit 2 or a form substantively similar to Exhibit 2 attached to this Consent Decree;
- e. Designating an individual or office at the Hospital that will maintain full information about access to, and the operation of, the Program ("Information Office");
- f. Designating (i) a Communications Director(s) on call and responsible twenty-four hours a day, seven days a week, for assuring access to, and locating, auxiliary aids throughout the Hospital, to answer questions and provide assistance for proper use of the auxiliary aids, and to maintain, repair, replace, and distribute auxiliary aids; and (ii) a Nurse Supervisor(s) (by position or title) present twenty-four hours a day, seven days a week, within the Emergency Department who will be responsible for securing

appropriate auxiliary aids throughout the Hospital.

2. Provision of Appropriate Auxiliary Aids and Services.

- a. During the term of this Decree, the Hospital shall continue to provide on-site interpreters and shall comply with Section IV (B), Section V, and
  - i. Provide to Patients and Companions any appropriate auxiliary aids and services that may be necessary for effective communication after making the assessment described below, including, but not limited to, access to Qualified Interpreters appearing either in person at the Hospital or through video interpreting services, assistive listening devices, assistive listening systems, pictograph forms and flash cards, and computer-assisted real time transcription;
  - ii. Ensure that televisions with built-in captioning capability are available to deaf or hard or hearing Patients and Companions at no additional cost; and that the directions for use of the closed caption capability are clearly stated in the Patient Handbook (or equivalent publication) or otherwise available in each Patient room and public area containing a television with captioning capability.

- b. Within ninety (90) days after the date of this Consent Decree, the Hospital shall ensure that all videos or DVDs purchased, obtained, or created by the Hospital and all pre-recorded programs produced by the Hospital for the purpose of providing educational or training information to Patients are closed captioned, whenever closed captioning is available as an option with such product. If closed captioning is not available with such product, the Hospital will provide written program material that conveys the same information as contained on the video or DVD product for which closed captioning is not available.

B. Communication Assessment. The Hospital will consult with individual Patients who are deaf or hard of hearing and Companions wherever possible to determine what type of auxiliary aid or interpretive service is needed to ensure effective communication. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the Hospital, provided that the method chosen results in effective communication.

1. General Assessment Criteria. The assessment shall take into account all relevant facts and circumstances, including without limitation the following:
  - a. The nature, length and importance of the communication at issue;
  - b. The individual's communication skills and knowledge;

- c. The Patient's health status or changes thereto;
- d. The Patient's and/or Companion's request for or statement of need for an interpreter, including the Patient's or Companion's request for the provision of interpreting services through a video interpreting service or through an on-site interpreter; and
- e. The reasonably foreseeable health care activities of the Patient (e.g., group therapy sessions, medical tests or procedures, rehabilitation services, meetings with health care professionals or social workers or discussions concerning billing, insurance, self-care, prognoses, diagnoses, history and discharge).

2. Time for Assessment. The determination of which appropriate auxiliary aids and services are necessary for effective communication, and the timing, duration and frequency with which they shall be provided, will begin at the time an appointment is scheduled or on the arrival of the Patient or Companion at the Hospital, whichever is earlier. Hospital Personnel will perform communication assessments and reassessments and will detail such information in the Patient's medical chart, including the use of forms designed for that purpose. Hospital personnel will reassess the effectiveness of communication as necessary throughout the course of the Patient or Companion's visit. In the event that communication is not effective, Hospital Personnel will reassess which appropriate auxiliary aids

and interpretive services are necessary, in consultation with the Patient or Companion where possible.

C. Successive Patient Visits. The Hospital will implement policies and procedures to expedite arrangements for the provision of auxiliary aids and interpretive services when a Patient or Companion requests appropriate auxiliary aids or services for successive visits to the Hospital. Hospital Personnel will keep appropriate records that reflect the provision of auxiliary aids and services to Patients and Companions, such as notations in Patients' medical charts. During a Patient or Companion's successive visit, Hospital Personnel will reference the individual's prior medical records, where available, as part of the Communication Assessment required by Section IV (B).

D. Medical Equipment. Nothing in this Consent Decree shall require that an electronic device or equipment constituting an appropriate auxiliary aid be used when or where its use may interfere with medical or monitoring equipment or may otherwise constitute a threat to a Patient's medical condition. In such an event, the Hospital will continue to comply with Sections IV.A.2 and IV.B.

E. Determination Not to Provide Auxiliary Aid or Service. If, after conducting a Communication Assessment required by Section IV (B), Hospital Personnel determine (i) that the circumstances do not warrant provision of an auxiliary aid or service; (ii) to provide a different auxiliary aid or service from that preferred by the Patient or Companion; or (iii) to provide an auxiliary aid or service at a time, or for a duration or frequency, different from that preferred by the Patient or Companion, then Hospital Personnel will so advise the person

requesting the auxiliary aid or service and shall document (a) the date and time of the denial; (b) the name and title of the Hospital Personnel who made the determination; and (c) the basis for the determination. A copy of this documentation will be made available to the Patient or Companion when the circumstances allow or upon request, will be maintained with the log described in Section IV (F), infra, and contained in the Patient's medical chart.

F. Maintenance of Log. The Hospital will maintain a log of (i) each request for an auxiliary aid or service; (ii) the type of auxiliary aid requested by the Patient or Companion; (iii) the type of auxiliary aid provided by the Hospital; (iv) the time and date the request is made; (v) the identity of the Patient and Companion in a manner that appropriately protects the confidentiality of the Patient; (vi) the name of the Hospital Personnel who performed any communication assessment or reassessment under Section IV (B); (vii) the name of the Hospital Personnel responsible for the determination of the auxiliary aid(s) or service(s) to be provided; (viii) the time and date of the scheduled appointment (if a scheduled appointment was made); (ix) the time and date the auxiliary aid and service was provided, or a statement that the auxiliary aid and service was not provided and the basis for such determination.

G. Telephones.

1. Public Telephones. As soon as practicable but no later than 90 days after the date of this Consent Decree, the Hospital will provide the following:

a. TTY's in public areas. The Hospital will make a TTY device available wherever a telephone is made available to the public.

There will be at least one TTY available for each bank of four

public telephones, but never less than one. To satisfy this provision, the Hospital may permanently install the required TTY's or make available a sufficient number of portable TTY's.

- b. TTY's required in specific locations. The Hospital will provide a TTY at each public telephone location in or adjacent to the emergency department, recovery room, or waiting room. To satisfy this provision, the Hospital can permanently install the required TTY's or make available a sufficient number of portable TTY's.
- c. Shelves and outlets. Wherever portable TTY's are made available as an alternative to installed TTY's, and wherever there is a bank of three or more public telephones, the Hospital will provide ADA-compliant shelves and electrical outlets.
- d. Signs indicating the location of TTY's. Wherever public telephones are available but TTY's are not permanently installed, the Hospital will post ADA-compliant signs indicating the location of the nearest portable or permanently installed TTY's; and wherever TTY's are permanently installed, the Hospital will post ADA-compliant signs identifying them to indicate their location.
- e. Volume control telephones. The Hospital will ensure that no less than 25 percent of all of its public telephones are equipped with volume control mechanisms, plus at least one public telephone at

each of the following locations: in or adjacent to the emergency department, recovery rooms, or waiting rooms. The Hospital will ensure that volume control phones are dispersed among all public telephones throughout the Hospital and that ADA-compliant signs are displayed at each volume control telephone.

- f. Hearing aid compatible telephones. The Hospital will ensure that no less than 25 percent of all of its public telephones are hearing aid compatible, plus at least one public telephone at each of the following locations: in or adjacent to the emergency department, recovery rooms, or waiting rooms. The Hospital will ensure that hearing aid compatible telephones are dispersed among all public telephones throughout the Hospital.
- g. Storage and availability of equipment. Portable equipment for use by persons with hearing impairments in public areas shall be stored in places that are readily accessible to all Hospital Personnel who have client contact at all times of the day and night. All Hospital Personnel will be notified of the storage location that is closest to their work area(s). The equipment is to be stored at the appropriate supervised location (e.g., nurses' station, admission desk, etc.) closest to the public phone for which the equipment is to be made available. Such equipment will be made available to Patients or

Companions generally within 10 minutes from the time of the Patient's or Companion's request, or as soon as practicable thereafter.

2. Telephones in Patient Rooms. Within 90 days of the date of this Consent

Decree:

- a. Timeliness. The Hospital will make the equipment required by this section available within 30 to 60 minutes of a Patient's arrival in a Patient room, or as expeditiously as possible thereafter. The Hospital will notify all relevant Hospital Personnel of the availability and location of this equipment.
- b. Portable access technology - General Obligations. The Hospital will make available portable access technology<sup>1</sup> for use in rooms of Patients who are deaf or hard of hearing in a manner that is equivalent to telephones provided to hearing Patients. In units of the Hospital where Patients normally do not have telephones in their rooms, if hearing Patients are given access to common area telephones other than the public phones identified in this Consent Decree, the Hospital will maintain in each such unit appropriate

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<sup>1</sup>Portable access technology includes TTY's with printout capability, visual notification devices for incoming telephone calls, volume control telephones, and telephones that are hearing aid compatible.

portable access technology that can be used by deaf or hard of hearing Patients and Companions so that such persons have equal access to outgoing calls and incoming calls as that of hearing persons. The Hospital shall ensure that each volume control telephone and each visual notification device for incoming telephone calls complies with the ADA.

H. Complaint Resolution/Grievance Procedure. The Hospital shall maintain a written complaint resolution/grievance procedure regarding the provision, or lack thereof, of auxiliary aids and services to Patients and Companions. The Hospital shall maintain records of all complaints/grievances, whether oral or written, made to the Hospital and actions taken with respect thereto. The Hospital will post and continue to post at appropriate places, including but not limited to, the Emergency Department waiting room, the Emergency Department triage center, and the Registration room, its Patient Bill of Rights and Responsibilities, which notifies persons who are deaf or hard of hearing of the Hospital's complaint resolution/grievance procedure mechanism, to whom complaints should be made, and the right to receive a written response to the complaint if requested. Copies of all complaints/grievances or notes reflecting oral complaints/grievances and the responses thereto shall be maintained by the Hospital. Within four weeks of receipt of the complaint/grievance the Hospital shall provide a written response to the complaint/grievance, and shall provide a copy of both the complaint/grievance and the response to the United States.

I. Prohibition of Surcharges. All appropriate auxiliary aids and services required by this Consent Decree shall be provided free of charge to the Patient or Companion.

J. Individual Notice In Absence of Request. If a Patient or a Companion does not request appropriate auxiliary aids or services but Hospital Personnel, following the communication assessment required by Section IV (B), have reason to believe or conclude that such person would benefit from appropriate auxiliary aids or services for effective communication, the Hospital shall inform the person that appropriate auxiliary aids and services are available free of charge.

K. Communication with Inpatients and Companions. The Hospital shall take appropriate steps to ensure that all Hospital Personnel having contact with a Patient or Companion are made aware of such person's disability so that effective communication with such person is achieved. The Hospital shall take appropriate steps to ensure that all Hospital Personnel having contact with a Patient or Companion are aware of the Hospital's Program and policies.

## **V. QUALIFIED INTERPRETERS**

A. Circumstances Under Which Interpreters Shall Be Provided. The Hospital shall provide Qualified Interpreters to Patients and Companions as necessary for effective communication for its programs, services, and activities. The determination of when such interpreters shall be provided to Patients or Companions shall be made as set forth in Section IV (B) (Communication Assessment) above. Examples of circumstances when it may be necessary to provide interpreters include, but are not limited to, the following:

1. Determination of a Patient's medical history or description of ailment or injury;
2. Provision of Patients' rights, informed consent, or permission for treatment;
3. Diagnosis or prognosis of ailments or injuries;
4. Explanation of procedures, tests, treatment, treatment options, or surgery;
5. Explanation of medications prescribed (such as dosage, instructions for how and when the medication is to be taken and side effects or food or drug interactions);
6. Explanation regarding follow-up treatments, therapies, test results, or recovery;
7. Blood donations or apheresis (removal of blood components);
8. Discharge planning and discharge instructions;
9. Provision of mental health evaluations, group and individual therapy, counseling and other therapeutic activities, including grief counseling and crisis intervention;
10. Explanation of complex billing or insurance issues;
11. Educational presentations, such as classes concerning birthing, nutrition, CPR, and weight management;
12. Explanation of living wills or powers of attorney (or their availability);
13. Filing of administrative complaints or grievances against the Hospital or

Hospital Personnel; and

14. Any other circumstance in which a qualified interpreter is necessary to ensure a Patient's privacy, confidentiality, or other rights provided by Federal, state, or local law.

The foregoing list does not imply that an interpreter must always be provided in these circumstances. Nor does it suggest that there are not other circumstances when it may be appropriate to provide interpreters for effective communication.

B. Method for Obtaining Qualified Interpreters.

1. The Hospital shall continue to maintain one or more contracts with an interpreter service provider(s) ("the IS Provider") to provide Qualified Interpreters at the request of the Hospital.
2. The Hospital shall ensure that its IS Provider(s) will (i) provide Qualified Interpreters when requested by authorized personnel at the Hospital for a variety of situations, including but not limited to, Emergency Department visits, Patient/doctor consultations, admissions, outpatient visits, surgeries, Patient education programs, staff meetings and conferences; (ii) maintain a staff of nationally certified "on-call" interpreters who will be ready and able to respond to emergency and non-emergency requests 24 hours a day; (iii) maintain detailed records regarding each assignment placed against the contract; (iv) provide one general contract orientation meeting for Hospital personnel in order that they may learn about the contract with the

IS Provider and become more familiar with how to ensure communication access with deaf Patients and employees; (v) work with Hospital representatives on procedures and periodic reviews of the system and its effectiveness; (vi) ensure an adequate level of staffing for each assignment, considering type and duration of interpreting services needed, as determined by the Hospital and the IS Provider; and (vii) ensure that interpreters adhere to strict professional standards of confidentiality with respect to Patient, facility and assignment related information, as required by the Hospital, HIPAA, the IS Provider and the Code of Ethics of the Registry of Interpreters for the Deaf, Inc. (RID).

3. The Hospital will provide on-site interpreter services in those situations where the use of video interpreting services is otherwise not feasible or does not result in effective communication.
4. In lieu of contracting with an IS provider, the Hospital may hire one or more Qualified Interpreters to be available 24 hours per day.
5. The Hospital may also provide VIS, as set forth in Section V (C) below, as a means of providing a Qualified Interpreter.

C. Video Interpreting Services.

1. Video interpreting services can provide immediate, effective access to interpreting services seven days per week, twenty-four hours a day in a variety of situations including emergencies and unplanned incidents. The

Hospital will maintain a contract with a VIS provider with the capability of providing VIS and technical assistance 24 hours a day, seven days a week, 365 days a year, with interpreters promptly available on this basis who are qualified to interpret in medical situations, and who are familiar with medical terminology.

2. The Hospital's VIS shall meet the following performance standards:
  - a. high quality, clear, delay-free full-motion video and audio over a dedicated high-speed Internet connection;
  - b. a clear, sufficiently large, and sharply delineated picture of the interpreter's and the Patient/Companion's heads, arms, hands, and fingers, regardless of the body position of the Patient/Companion;
  - c. clear and easily understood transmission of voices; and
  - d. non-technicians will be trained to accomplish efficient set-up and operation.
  
3. The Hospital shall ensure that appropriate Hospital Personnel shall be trained, available, and able to operate and connect the VIS system quickly and efficiently at the Hospital at all times. Training shall include attention to the limitations of VIS technology, such as with respect to (i) Patients who have limited ability to move their heads, hands, or arms; vision problems; cognitive or consciousness issues; or pain issues; (ii) Patients who may be moved to areas of the Hospital that do not have a designated high speed Internet line;

and (iii) Patients who will be treated in rooms where space considerations mitigate against using the service. In circumstances where the limitations of VIS technology mitigate against its use, Hospital Personnel shall conduct another Communication Assessment as required by Section IV (B), in order to reassess the need for an alternative auxiliary aid or interpretive service to ensure effective communication.

D. Provision of Interpreters in a Timely Manner

1. Scheduled Appointments. For scheduled appointments (appointments scheduled two or more hours in advance, or four or more hours in advance if a request is made between the hours of 8 p.m. and 8 a.m. or a weekend or holiday), the Hospital shall make an interpreter available at the time of the scheduled appointment, if necessary for effective communication.
2. Non-scheduled incidents. “Non-scheduled incidents” refer to all situations not covered by the definition of “scheduled appointment.” For “non-scheduled incidents,” the Hospital shall make an interpreter available as soon as practicable. However, the time within which the interpreter is provided shall be no more than (a) two hours from the time the request is made if the service is provided through a contract interpreting service or a staff interpreter (see subparagraph G, infra) who is located off-site at the time the need arises or (b) 30 minutes from the time the Patient’s or Companion’s request is made if the service is provided through VIS or a staff interpreter who is on-site at

the time of the request or need for an interpreter.

E. Force Majeure Events. Any response time that is delayed from the times set forth above because of a force majeure event, is excluded from the determination of whether the prescribed response criteria have been met. Force majeure events are events outside the reasonable control of the Hospital, the IS Provider, or the interpreter called to respond, such as severe weather problems and other Acts of God, unanticipated illness or injury of the interpreter while en route to the Hospital, and unanticipated transportation problems (including, without limitation, mechanical failure of the interpreter's automobile, automobile accidents and roadway obstructions, other than routine traffic or congestion).

F. Modification of Performance Standards. In the event that the response time performance standards set forth above cannot be maintained despite the Hospital's good faith efforts, the Hospital may propose to the United States such modifications as may be reasonable under the circumstances. The United States will consider any such request reasonably and in good faith, and any such modification that is agreed to shall be presented to the Court for approval and, once approved, deemed an amendment to this Consent Decree.

G. Staff Interpreters. The Hospital may, but has no obligation to, satisfy its obligations under this Consent Decree by hiring qualified staff and/or contract interpreters. Staff interpreters and contract interpreters must meet the definition of Qualified Interpreters. Patients and Companions who are provided with staff/contract interpreters must have the same level of coverage (for both duration and frequency) as the Hospital is otherwise obligated to provide under this Consent Decree. The Hospital may assign other duties to staff interpreters, but the staff interpreters'

performance of those other duties shall not interfere with interpreter coverage responsibilities under this Consent Decree.

H. Notice to Patients and Companions. As soon as Hospital Personnel have determined that an interpreter is necessary for effective communication with a Patient or a Companion, the Hospital shall inform such a person (or a family member or friend, if such Patient/Companion is not available) of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. Additional updates shall be provided periodically thereafter until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen the Hospital's obligation to provide qualified interpreters in a timely manner as required by this Consent Decree.

I. Other Means of Communication. Between the time when an interpreter is requested and when an interpreter is made available, Hospital Personnel shall continue to try to communicate with the Patient or Companion for such purposes and to the same extent as they would have communicated with the person but for the disability, using the most effective means of communication, particularly written notes, or sign language pictographs. This provision in no way lessens the Hospital's obligation to provide qualified interpreters in a timely manner as required by this Consent Decree.

J. Restricted Use of Certain Persons to Facilitate Communication. Due to considerations of confidentiality, potential emotional involvement, and other factors that may adversely affect the ability to facilitate communication, the Hospital will not require, coerce, or rely upon a family member, companion, caregiver, case manager, advocate, or friend of a deaf or hard of

hearing Patient or Companion to interpret or facilitate communications between Hospital Personnel and such Patient or Companion, except that such person may provide such assistance if (i) he or she wishes to do so and (ii) if the Patient or Companion provides written agreement to the use of such person to interpret or facilitate communication, and (iii) if such use is necessary or appropriate under the circumstances, giving appropriate consideration to any privacy issues that may arise; provided, however, that in time-sensitive life-threatening situations, the Hospital may rely upon communications through a Companion until a Qualified Interpreter is obtained.

## **VI. NOTICE TO COMMUNITY**

A. Policy Statement. The Hospital will continue to post and maintain signs of conspicuous size and print at all Hospital admitting stations, the Emergency Department, and wherever a Patient's Bill of Rights and Responsibilities is required by law to be posted. Such signs shall be to the following effect:

Qualified Interpreters, TTY's, 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 Hospital Personnel or the Information Office at \_\_\_\_\_ (voice/TTY), room \_\_\_\_\_.

These signs shall include the international symbols for "interpreters" and "TTY's."

B. Patient Handbook. The Hospital shall include in all future printings of its Patient Handbook (or equivalent) and all similar publications a statement to the following effect:

To ensure effective communication with patients and their companions who are deaf or hard of hearing, we provide appropriate auxiliary aids and services free of charge, such as: sign language and oral interpreters, TTY's, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders, and open and closed captioning of most Hospital programs.

Please ask your nurse or other Hospital personnel for assistance, or contact the Information Office at \_\_\_\_\_ (voice or TTY), room \_\_\_\_.

The Hospital shall also include in the Patient Handbook a description of the Hospital's complaint resolution mechanism. The Hospital shall provide all Patients who seek treatment at the Hospital's Emergency Department and all Companions a copy of the Patient Handbook when they are evaluated in triage or when they register, whichever occurs first.

C. Website. The Hospital shall include in its website the statement referenced in Section VI (B), supra.

#### **VII. NOTICE TO HOSPITAL PERSONNEL AND PHYSICIANS**

A. Within thirty (30) days of entry of this Consent Decree, the Hospital shall publish its revised policies, attached as Exhibit 1 to this Consent Decree. The Hospital will print and maintain copies of these policies in a central location, in written form, provide these policies to any interested entity or individual requesting them, and incorporate the policies into its standard operating procedures.

B. The Hospital shall publish, in appropriate form, the following notice regarding the Hospital's provision for providing effective communication with persons who are deaf or hard of hearing. The notice should include, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a patient or companion of a patient is deaf or hard of hearing, you must advise the person that appropriate auxiliary aids and services such as sign language and oral interpreters, video interpreting services, TTY's, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders, and open and closed captioning of most

Hospital programs shall be provided free of charge. 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 [responsible] Administrator, located at \_\_\_\_\_, and available at telephone extension\_\_\_\_\_. This offer and advice must likewise be made in response to any overt request for appropriate auxiliary aids or services.

C. The Hospital will distribute the notice in subsection B and its revised policies, attached as Exhibit 1 to this Consent Decree, within forty-five days after entry of this Consent Decree, to all Hospital Personnel and affiliated physicians (physicians with practicing or admitting privileges), to all new Hospital Personnel and newly affiliated physicians upon their affiliation or employment with the Hospital, and to all Hospital Personnel on an annual basis.

#### **VIII. TRAINING OF HOSPITAL PERSONNEL**

A. Emergency Department Personnel. The Hospital shall ensure that mandatory in-service training<sup>2</sup> is provided to all Hospital Personnel with Patient responsibility who work or volunteer in the Emergency Department that addresses the special needs of deaf or hard of hearing Patients and Companions utilizing that department. This training will include the following objectives: to promptly identify communication needs and preferences of persons who are deaf or hard of hearing; to secure qualified interpreter services as quickly as possible when necessary, including how to operate any video interpreting services equipment; to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that shall

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<sup>2</sup> "In-service training" for purposes of this Consent Decree includes, without limitation, such means of training or familiarization used by the Hospital to inform Hospital Personnel of policies, procedures, expectations, etc. Examples of in-service training could include, without limitation, written policies and procedures, videotapes, training materials, training sessions, seminars, conferences and the like.

augment the effectiveness of the communication); and an explanation of all policies described and/or modified pursuant to this Consent Decree. The Hospital shall ensure that such training is provided to all Hospital Personnel with Patient responsibility who work or volunteer in the Emergency Department or, if already provided, updated, prior to the date on which the Hospital is scheduled to implement the modified Program and annually thereafter.

B. Psychiatric Personnel and Social Workers. The Hospital shall provide specialized mandatory in-service training to Hospital Personnel with Patient responsibility who work in the Department of Psychiatry (or its equivalent, if any) or are members of the Social Work Department (or its equivalent). This training shall include the following objectives: to promptly identify communication needs and preferences of deaf or hard of hearing Patients and Companions; to secure qualified interpreter services as quickly as possible when necessary, including training regarding how to operate any video interpreting services equipment; to facilitate appropriate interaction between deaf or hard of hearing Patients and other Patients, when appropriate (e.g., group therapy sessions and other times when interaction with persons other than Hospital Personnel is encouraged); and an explanation of all policies modified pursuant to this Consent Decree. The Hospital shall ensure that such training is provided, or if already provided, updated, prior to the date on which the Hospital is scheduled to implement the modified Program and annually thereafter.

C. Other Key Personnel. The Hospital shall provide training to other Hospital Personnel not otherwise trained as provided above who have direct contact with deaf or hard of hearing Patients, families of deaf or hard of hearing Patients, and Companions, to include all clinical directors and nursing supervisors; all senior-level administrators; personnel who staff the

Admission/Registration desk (or its equivalent for in-patient registration); all triage nurses and other triage professionals; and heads of each department in which communication with Patients occurs. The Hospital shall provide to personnel responsible for billing and insurance issues who routinely interact with Patients and Companions training on the availability of auxiliary aids and services and the existence in the Hospital of an Information Office and Administrator(s). The Hospital shall ensure that such training is provided, or if already provided, updated prior to the date on which the Hospital is scheduled to implement the modified Program and annually thereafter.

D. Operators. The Hospital shall provide to Hospital Personnel who receive telephone calls from the public, special instructions on using telecommunication relay services, including, but not limited to, TTY's and the Maryland Tele-Video Relay Service to make and receive telephone calls and training generally on the existence in the Hospital of an Information Office and Administrator(s) and complaint resolution processes. The Hospital shall ensure that such training is provided, or if already provided, updated prior to the date on which the Hospital is scheduled to implement the modified Program and annually thereafter.

E. Affiliated Physicians.

1. Training Sessions. The Hospital shall annually conduct one or more training sessions on the communication and psychological needs of persons who are deaf or hard of hearing, and shall invite all physicians who are affiliated in any way with the Hospital (admitting or surgical privileges, etc.) to attend. In addition, the Hospital shall provide training videotapes that contain substantially similar information to any affiliated physician upon request.

2. Written Materials. Within sixty (60) days of the entry of this Consent Decree, the Hospital shall distribute a set of materials to all affiliated physicians. These materials shall contain at least the following: the Hospital's policies revised pursuant to this Consent Decree; any relevant forms; a description of the Hospital's Program and a request that physicians' staff members notify the Hospital about deaf or hard of hearing Patients and Companions as soon as they schedule admissions, tests, surgeries or other health care services at the Hospital. In addition, if Hospital policies are further modified pursuant to this Consent Decree, the Hospital shall distribute the modified policies to all affiliated physicians within 21 days of such modification.

F. Other Personnel. The Hospital shall develop and implement an internal program that shall provide appropriate training to all Hospital Personnel not trained under the preceding sections who should be trained in order to meet the obligations under this Consent Decree. This training shall take place at such times as may be necessary to permit the Hospital to meet all of its obligations under this Consent Decree.

G. General Provisions. The Hospital will provide the training specified above to new Hospital Personnel (including without limitation Emergency Department, Psychiatric and Social Work personnel) as part of any Orientation. Such training will be comparable to training provided to specific departments as necessary. Watching the entire video of the original training shall suffice to meet this obligation. The Hospital shall maintain attendance sheets of all training conducted pursuant to Section VIII of this Consent Decree, which shall include the names and respective job

titles of the attendees, as well as the date, time, duration, and location of the training session.

#### **IX. MISCELLANEOUS INJUNCTIVE RELIEF**

A. Discrimination by Association. The Hospital shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of the person with someone who is deaf or hard of hearing.

B. Retaliation and Coercion. The Hospital shall not retaliate against or coerce in any way any person who made or is making a complaint according to the provisions of this Consent Decree or exercised or is exercising his or her rights under this Decree or the ADA.

#### **X. REPORTING, MONITORING AND VIOLATIONS**

##### **A. Reports**

1. Compliance Reports. Three, nine, fifteen, twenty-one, and thirty-three months following the entry of this Consent Decree, the Hospital shall provide a written report ("Report") to the United States regarding its efforts to comply with this Consent Decree. Each Report must state the identity of each deaf or hard of hearing Patient or Companion in a manner that appropriately protects their confidentiality and the auxiliary aid(s) or service(s) provided to the individual(s), and whether VIS or on-site interpreters were used. In the event that the Hospital does not provide the particular auxiliary aid(s) or service(s) requested by a Patient or Companion, or provides no auxiliary aid(s) or service(s), the Report must state (a) the procedure followed by the Hospital in determining whether to provide auxiliary aids and services to the Patient or

Companion and (b) the Hospital's reasons for not providing the particular auxiliary aid(s) or service(s) requested by the Patient or Companion, including an explanation regarding which aid or service was requested and what, if any, aid or service was provided. The Hospital shall maintain appropriate records, including, but not limited to, those described in this Consent Decree, to document the information contained in the Report.

2. Complaints. During the term of this Consent Decree, the Hospital shall notify the undersigned counsel for the United States if any individual brings any lawsuit, complaint, charge, or grievance alleging that the Hospital failed to provide auxiliary aids and services to deaf or hard of hearing Patients or Companions. Such notification shall be provided in writing via certified mail within fifteen days of when the Hospital has received notice of the allegation and shall include, at a minimum, the nature of the allegation, the name of the individual bringing the allegation and any documentation possessed by the Hospital relevant to the allegation.

B. Violation of Consent Decree.

1. If the Hospital violates this Consent Decree, the United States will have such remedies as are allowed by law, provided that the first such violation by the Hospital shall be deemed a violation of the ADA for the purpose of assessing civil penalties.
2. Notwithstanding the provisions of Section X (B)(1), in the event that the

United States believes that the Hospital has violated any provision of this Consent Decree, the United States will give written notice (including reasonable particulars) of such violation to the Hospital's chief executive officer, and the Hospital shall then respond to such notice and/or cure such non-compliance as soon as practicable but no later than thirty days thereafter. Any event of non-compliance that prevents or restricts a Patient from receiving urgent health care services shall be cured without delay. The United States and the Hospital shall negotiate in good faith in an attempt to resolve any dispute relating thereto before the United States seeks relief under Section X (B)(1) above.

#### **XI. MISCELLANEOUS**

A. Duration of the Consent Decree. This Consent Decree shall remain in effect for three years from the date of this Consent Decree. Three years after the date of this Consent Decree, this Consent Decree shall terminate unless (i) the United States moves for cause for an extension, and (ii) the Court grants such motion. This Court retains jurisdiction over this case for the purpose of deciding any issue that may arise under this Consent Decree, and for purposes of enforcement of this Consent Decree. Any party may bring such issues before the Court by filing an appropriate motion.

B. Entire Consent Decree. This Consent Decree constitutes the entire agreement by the United States and the parties and no other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Consent Decree,

including its attachments, shall be enforceable.

C. Changing Circumstances. During the term of this Consent Decree, there may be a change in circumstances such as, for example and without limitation, an increased or decreased availability of qualified sign language, relay, or oral interpreters or developments in technology to assist or improve communications with persons who are deaf or hard of hearing. If the Hospital determines that such changes create opportunities for communicating with such persons more efficiently or effectively than is required under this Consent Decree, or create difficulties not presently contemplated in the provision of appropriate auxiliary aids and services, it may propose changes to this Consent Decree by presenting written notice to the United States. Such changes shall then only be presented to the Court for incorporation in this Consent Decree if the United States, upon review, grants its approval, which approval shall not be unreasonably withheld. The Hospital and the United States will negotiate in good faith prior to proposing any changes to the Court.

D. Binding Effect. This Consent Decree is final and has binding effect on the parties and the United States, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, assigns, heirs and legal representatives thereof. The Hospital has a duty to so inform any successor in interest and to timely notify all Parties and the United States of all such successors in writing. In the event the Hospital seeks to transfer or assign all or part of its interests in any facility covered by this Consent Decree, and the successors or assign intends on carrying on the same or similar use of the facility, as a condition of sale the Hospital shall obtain the written accession of the successor or assign to any obligations remaining under this Consent Decree for the remaining term of this Consent Decree.

E. Non-Waiver. Failure by the United States to seek enforcement of this Consent Decree pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

F. Severability. In the event that the Court determines that any provision of this Consent Decree is unenforceable, such provision shall be severed from this Consent Decree and all other provisions shall remain valid and enforceable, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties and the United States hereunder, they shall, through reasonable, good faith negotiations, agree upon such other amendments hereto as may be necessary to restore the Parties and the United States as closely as possible to the relative rights and obligations initially intended by them hereunder.

G. Compliance with Applicable Laws. Any modification or amendment of this Consent Decree does not affect the Hospital's independent responsibilities under any applicable Federal, state or local laws or regulations.

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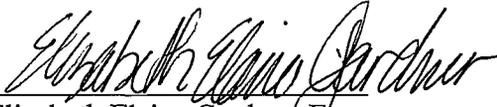
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July 12, 2006

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Attachments (Exhibits 1 and 2)