

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is entered into, effective as of the 14th day of September, 2010 (the "Effective Date"), by, between, and among Virginia Commonwealth University Health System Authority (hereafter "VCUHSA"), the Medical College of Virginia Hospitals (hereafter "MCVH"), Sheldon Retchin, M.D., CEO, VCUHSA, John Duval, CEO, MCVH, Deborah Davis, COO, MCVH; and Amanda Dodd, Manager of Guest Services, MCVH (collectively the "Davis Defendants" or "Defendants") and Gary Minnis, Larry More, David Richardson, Ronald Roman, Delonte Tinsley, Wolfjunge Wolfsburger and the individuals identified on Schedule A attached hereto (collectively, "Plaintiffs"). The Davis Defendants and Plaintiffs are hereinafter collectively referred to as the "Parties."

WHEREAS, Plaintiffs have asserted claims against the Davis Defendants in the case styled *Gary Minnis, et al. v. Gene Johnson, et al.*, Case No. 1:10cv96, pending in the United States District Court for the Eastern District of Virginia, Alexandria Division ("the Lawsuit");

WHEREAS, the Davis Defendants have contested those claims and deny that Plaintiffs have any legitimate claim against them or that they have any liability whatsoever to the Plaintiffs;

WHEREAS, the Parties desire to amicably resolve their dispute without further legal proceedings.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Within thirty (30) days of the Effective Date, the Davis Defendants shall pay to Plaintiffs the sum of \$2,500.00 (Two Thousand Five Hundred United States Dollars), which

payment shall be solely for purposes of amicably resolving the Lawsuit and not constitute an admission or acknowledgement of any wrongdoing or liability by any of the Davis Defendants.

2. Within thirty (30) days of the Effective Date, the Davis Defendants shall pay to Plaintiffs' attorneys the sum of \$35,000.00 (Thirty-Five Thousand United States Dollars), which payment shall be solely for purposes of reimbursing attorneys' fees and in order to amicably resolve the Lawsuit and shall not constitute an admission or acknowledgement of any wrongdoing or liability by any of the Davis Defendants.

3. Immediately upon receipt of the payments set forth herein under paragraphs 1 and 2 of this Agreement, Plaintiffs shall dismiss the Defendants from the Lawsuit with prejudice. Neither Plaintiffs nor any of their attorneys or agents shall seek to obtain any further reimbursement of attorneys' fees or costs from the Davis Defendants whether by petition under statutory authority or otherwise.

4. The Davis Defendants shall:

a. Amend the VCUHSA policy addressing Communications and Language Access Services for Patients and/or Their Companions (Policy No. 1302.01) to provide for the translation of vital documents related to the health care of a deaf or hearing-impaired patient by a Qualified Interpreter;

b. Amend the VCUHSA policy addressing Communications and Language Access Services for Patients and/or Their Companions (Policy No. 1302.01) to address the use of video interpreting services (VIS), such provisions to include, without limitation, that VIS should be used as the first alternative to an in-person Qualified Interpreter, the conditions under which VIS should not be utilized and that the VIS used by VCUHSA shall use qualified interpreters (Policy No. 1302.01, as amended, is attached to this Agreement as Attachment 1);

c. Distribute the amended policy by email notification to managers, directors and vice-presidents with an instruction to inform all staff members of the change in policy;

d. Provide a resource trained in the technology and the appropriate use of VIS to assist VCUHSA and MCVH staff utilizing VIS services, such resource to be available on a 24 hour/7 day per week basis;

e. Provide training for staff in the use of VIS services, including, without limitation, training for staff providing health care services in the Secure Care Unit (“SCU”) (the “Orange room”), such training to occur as often as necessary to maintain staff competence in the use of VIS, but not less than annually;

f. Identify a point of contact (“POC”) for complaints regarding accommodations made for deaf and hearing-impaired inmate patients, such POC to be identified in written materials available in the SCU and trained in the VCUHSA policy addressing Communications and Language Access Services for Patients and/or Their Companions (Policy No. 1302.01);

g. Publish information concerning the accommodations available for deaf or hearing-impaired inmate patients in written materials (the “publications”), such information to include the identification of the POC for complaints concerning such accommodations or lack thereof, the phone number for contacting the POC, such publications to be available in the SCU and to be reviewed and revised by VCUHSA and MCVH staff as often as necessary to keep them up to date, and;

h. Review the information and records concerning the provision of medical services to deaf and hearing-impaired inmate patients at MCVH in the last 5 years (More, Roman, Richardson and Branch (aka Wolfsburger)) and identify, if applicable, and address, if necessary, any systemic issues attendant to the accommodations provided to such patients and to certify, by letter to counsel for plaintiffs, completion of such process within 60 days of the Effective Date.

5. The Davis Defendants acknowledge and agree that the VCUHSA policy addressing Communications and Language Access Services for Patients and/or Their Companions (Policy No. 1302.01) (including, without limitation, that portion of the policy requiring that “All identified [Limited English Proficiency] patients will have their preferred language entered in the VCUHS registration system and in their medical record.”) applies to patients who are incarcerated with the Virginia Department of Corrections and they shall endeavor to apply the policy to such patients to its fullest extent, consistent with any security constraints imposed by the Department of Corrections or necessitated by each such patient’s status as an incarcerated person.

6. Nothing in this Agreement shall constitute an admission that any of the plaintiffs executing this Agreement is a person with a disability.

7. Plaintiffs agree that, should litigation of this Lawsuit continue against other defendants after the Effective Date, they will not take and will not seek to take any deposition of the senior executive leadership of VCUHSA or MCVH, including without limitation, Sheldon Retchin, M.D., Deborah Davis, and John Duval. Defendants agree that depositions of non-senior executive employees of VCUHSA and MCVH, including without limitation, any employees directly involved in providing care for or making arrangements to accommodate Plaintiffs, are not covered by this Agreement.

8. As of the Effective Date of this Agreement, Plaintiffs, each on his own behalf and on behalf of his agents, heirs, successors, executors, administrators, and assigns, unconditionally and irrevocably releases and forever discharges the Davis Defendants and each of their present and former parents, subsidiaries, affiliates, and related entities, and their officers, directors, shareholders, partners, employees, agents, servants, representatives, insurers, and attorneys, together with the heirs, agents, predecessors, successors, executors, administrators, assigns and transferees of each of them, of and from any and all claims and causes of action of any kind or nature whatsoever, whether known or unknown, complete or incomplete, absolute or contingent, and whether arising under the common law, equity, statute, or otherwise, that arise out of or relate in any way to any transaction, occurrence, event, act, omission, business relationship, agreement, understanding or statement occurring up to and including the Effective Date, that arise out of or relate in any way to the subject matter of the Lawsuit. This release does not apply to any claims that arise from or relate to events occurring after the Effective Date, including, but not limited to, a claim for breach of this Agreement.

9. No action to enforce this Agreement may be prosecuted unless the Defendant or Defendants in breach have been provided with written notice of the breach and have failed to

cure such breach within forty-five (45) days after receipt of such notice. Should Plaintiff or Plaintiffs secure a judgment of breach of this Agreement by a Defendant or Defendants, such judgment shall also include, in addition to any other relief or damages awarded, the costs of such action, including reasonable attorneys' fees.

10. This Agreement contains the entire agreement among the Parties with respect to the settlement described herein. There are no other understandings, representations, or agreements, oral or otherwise, between the Parties. The Parties acknowledge that this Agreement is made to resolve disputed legal and factual issues, and that they have not relied upon any statements or representations by any other party or its employees, agents, representatives, or attorneys, other than those contained in this Agreement, in accepting this Agreement.

11. This Agreement is a compromise of disputed claims and neither the existence of this Agreement nor any its terms and conditions, nor any obligation of any Party, should be construed as an admission of liability on the part of any Party.

12. By signing this Agreement, each Party represents and warrants that this Agreement is authorized, that the Agreement has been read and understood by that Party, and that the Agreement is being entered into by that Party of its own free will. Each Party also waives any claim that any Party did not understand, duly approve, or authorize this Agreement.

13. This Agreement cannot be amended or changed except by a written agreement executed by the Parties.

14. If any part of this Agreement is deemed to be invalid in any court of law, the remaining provisions shall remain in full force and effect and may be enforced in accordance with the provisions hereof, provided, however, that if the severance of any part of this

Agreement materially alters the rights or obligation of the Parties hereunder, the Parties will, through reasonable, good faith negotiations, agree upon such other amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

15. This Agreement was jointly negotiated and drafted by the Parties and their respective counsel and shall not be construed against any Party as the drafter.

16. This Agreement shall bind and inure to the benefit of each Party, its successors, heirs, executors, assigns, transferees, parents, affiliates, stockholders, agents, directors, officers, attorneys, insurers, employees and agents.

17. No failure or delay by any Party in exercising any rights under this Agreement shall result in a waiver of the Agreement or of any rights under this Agreement. Moreover, no single or partial exercise or waiver of any rights under this Agreement shall preclude any other or further exercise of any other rights, powers or privileges under this Agreement.

18. Each Party has performed its own independent investigation of the facts of this case and executed this Agreement after the opportunity to consult with counsel.

19. This Agreement may be executed in counterparts, all of which, taken together, shall constitute one agreement binding on all the Parties, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

20. This Agreement, and any construction thereof, shall be governed by Virginia law without resort to principles of conflicts of law. Venue for any action to enforce the terms of this Agreement shall be in a state or federal court of appropriate subject-matter jurisdiction in or for the Commonwealth of Virginia or any of its political subdivisions.

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WHEREFORE, the Parties have executed this Agreement effective as of the date set forth above.

**VIRGINIA COMMONWEALTH
UNIVERSITY HEALTH SYSTEM
AUTHORITY**

Sheldon Retchin

BY: Sheldon Retchin

ITS: CEO

DATE: 9/14/10

GARY MINNIS

DATE: _____

**MEDICAL COLLEGE OF VIRGINIA
HOSPITALS**

John Duval

BY: [Signature]

ITS: CEO

DATE: 9/14/10

LARRY MORE

DATE: _____

SHELDON RETCHIN, M.D.

Sheldon Retchin

DATE: 9/14/10

DAVID RICHARDSON

DATE: _____

JOHN DUVAL



DATE: 9/14/10

RONALD ROMAN

DATE: _____

DEBORAH DAVIS

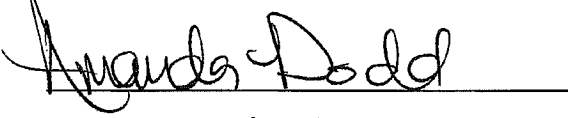


DATE: 9-14-10

DELONTE TINSLEY

DATE: _____

AMANDA DODD



DATE: 9/14/10

WOLFJUNGE WOLFSBURGER

DATE: _____

DATE: _____

DATE: _____

WHEREFORE, the Parties have executed this Agreement effective as of the date set forth above.

**VIRGINIA COMMONWEALTH
UNIVERSITY HEALTH SYSTEM
AUTHORITY**

GARY MINNIS

Gary Minnis

BY: _____

DATE: *Sept 1 2010*

ITS: _____

DATE: _____

**MEDICAL COLLEGE OF VIRGINIA
HOSPITALS**

LARRY MORE

Larry More

BY: _____

DATE: *Sept, 1, 2010*

ITS: _____

DATE: _____

SHELDON RETCHIN, M.D.

DAVID RICHARDSON

David O. Richardson

DATE: _____

DATE: *09-01-10*

JOHN DUVAL

DATE: _____

DEBORAH DAVIS

DATE: _____

AMANDA DODD

DATE: _____

RONALD ROMAN

Ronald Roman

DATE: *Sept 1, 2010*

DELONTE TINSLEY

Delonte Tinsley

DATE: *Sept 1, 2010*

**WOLFJUNGE WOLFSBURGER a/k/a
TONY BRANCH**

DATE: _____

DATE: _____

DATE: _____

JOHN DUVAL

RONALD ROMAN

DATE: _____

DATE: _____

DEBORAH DAVIS

DELONTE TINSLEY

DATE: _____

DATE: _____

AMANDA DODD

WOLFJUNGE WOLFSBURGER a/k/a
TONY BRANCH

DATE: _____

x *Wolfjunge Wolfsburger (AKA) Tony Branch*
DATE: Sept 1st 2010

DATE: _____

DATE: _____

SCHEDULE A

Inmate:

Confinement Facility

Michael Branham

Powhatan Correctional Center (PCC)

Vernon Buggs

Powhatan Correctional Center (PCC)

Francis K. Cuffy

Powhatan Correctional Center (PCC)

John C. Farley

Powhatan Correctional Center (PCC)

Russell Grimsley

Powhatan Correctional Center (PCC)

Anthony Neal Person

Powhatan Correctional Center (PCC)

Derrick White

Powhatan Correctional Center (PCC)

Wesley Chase

Powhatan Correctional Center (PCC)

Jerry Owens

Powhatan Correctional Center (PCC)

Jason P. Smith

Powhatan Correctional Center (PCC)

Daniel Otten

Powhatan Correctional Center (PCC)

ATTACHMENT

1

Interpretation and Communication Assistance

Procedure Policy

Document Number: 1302

Document Owner: Larry Little

Author: Vilma Seymour

Revision #:

Date Last Updated: 08/06/2010

Status: In Development

General Description

Scope: Patients, their family members or *personal representatives* who need assistance communicating with staff members regarding health care issues due to vision, speech, hearing or cognitive impairments.

Purpose: To provide instructions for staff on how to access communication assistance services.

Who Performs: All VCUHS staff

When to Perform: Once a staff member becomes aware that a patient, their family member or personal representative is in need of communication assistance.

Requirements

Definitions: **Communication Aid**

Anything which assists with facilitating communication to include foreign or sign language interpretation, as well as devices such as magnifiers or hearing aid compatible phones.

OCL

Office of Communication and Language Services

Off-Hours

Monday-Friday before 8:00 a.m. and after 4:00 p.m., Weekends, Federal and State Holidays.

Personal Representative

An individual who has the legal authority to exercise a patient's rights with respect to health care including, but not limited to, health care decision-making or access to the patient's health information.

Vital Documents

Informed Consent, Discharge Instructions and Advance Directives

Forms/Documents Request Forms for on-site foreign language or American Sign Language interpreters, document translation or Video Interpreter Service are available on the Office of Communication and Language Service website.

OCL will submit an annual report to the Director of Regulatory Affairs detailing the hospital's use of interpreters and communication aids.

Other Items Staff responsible for providing health care services will be trained on the use of the Video Interpreter Service at orientation and annually thereafter.

Warnings and Precautions

- Attention:**
- A. It is not a violation of HIPAA to provide patient information to certified interpreters.
 - B. On-site foreign language interpreter requests must be made at least 24 hours in advance to ensure greater availability.
 - C. On-site sign language interpreter requests must be made at least three (3) days in advance to ensure greater availability.

Please be aware:

- A. All hospital provided on-site foreign language interpreters must have a certificate of completion of Medical Interpreter Competency training (MIC) on file with OCL.
- B. All hospital provided on-site sign language interpreters must have certification on file with the Virginia Department of Deaf and Hard of Hearing (VDDHH).
- C. Staff will not translate health care information while on duty unless they have successfully completed MIC training. (See Attachment-MIC Certification Information)
- D. Staff who have a MIC certificate on file with OCL do not need to have another interpreter present when discussing or translating health care information with someone who speaks their target language.

Detailed Steps

A. Identification of Need

1. All patients will be asked/assessed as to any communication needs during registration/admission and the answer entered into the appropriate field in IDX or Cerner.
2. Communication needs which develop or are discovered during treatment will also be entered into the patient's medical record.
3. If *Communication Aids* are needed/requested, staff will provide notification that:
 - a. Communication Aids are provided at no cost and
 - b. VCUHS discourages the use of family members or friends as interpreters.
4. If a patient does not want to use a trained interpreter and/or other *Communication Aid*, staff will document refusal in the medical record.

NOTE: Staff should offer communication assistance for each new visit/admission as a refusal of a communication aid for one visit does not necessarily mean refusal for all future visits or admissions.

5. Staff may insist upon the use of a hospital interpreter or *Communication Aid* if it is determined by the provider to be in the best interest of the patient. It is suggested that staff use Communication Aids when:
 - discussing *Vital Documents*, "Do Not Resuscitate" orders, end of life care, treatment options, diagnosis or prognosis
 - obtaining a History and Physical or medication reconciliation
 - staff determine that it is appropriate due to the sensitive or complex nature of the information

B. Non-English Speaking

1. How to request a hospital interpreter

- a. Less than 24 hours notice of need for interpreter
 - 1) Between 8 a.m. and 4 p.m. call OCL at 628-1116
 - 2) During *Off Hours* call one of the PRN On-Site Foreign Language Interpreters listed on "Communication and Language Services" intranet site.
- b. 24 hours or greater notice of need for interpreter
 - 1) Go to "Communication and Language Services" intranet site.
 - 2) Click on "Request Forms" on the Left side of the screen.
 - 3) Submit request form for "On-Site Foreign Language Interpreter".

2. If an on-site hospital interpreter is not available

- a. Staff will use the blue dual hand-set Cyacom interpreter phone or other similar system, approved for their area.
 - 1) Every clinic and unit will have at least one interpreter phone available for use.
 - 2) To obtain an interpreter phone system go to the "Request Forms" link on the "Communication and Language" site and click on "Request Forms".
- b. Staff will use their best efforts to provide the most effective communication possible until an appropriate interpreter is available.

3. Required Documentation

- a. Staff will document their attempts to obtain an interpreter and the results.
- b. When using an on-site or telephone interpreter, staff will note in the medical record:
 - 1) interpreter's name,
 - 2) identification number, if phone, and
 - 3) nature of the communication
- c. All consent forms must contain the signature, printed name and contact information of the interpreter providing sight translation. By signing the interpreter is stating that they have translated this document to the best of their ability.

4. Translation of Documents

- a. Free translated *Vital Documents* are available from OCL with advance notice, and will be offered to individuals who need them. To have documents translated:
 - 1) Go to "Communication and Language Services" intranet site.
 - 2) Click on "Request Forms" on the Left side of the screen.
 - 3) Submit request form for "Document Translation".
- b. OCL coordinates the translation of all *Vital Documents* as well as the following:
 - Medical Record Forms
 - VCUHS required signage
 - Marketing materials
 - any document intended for patient information or education

Trained interpreters may directly translate simple instructions such as those for discharge or patient care.

C. Deaf or Hearing Impaired using sign language

Please Note: VCUHS is only able to access interpreters for American Sign Language and Cued Speech.

Dial 711 to call and speak with patients who have a TTY or similar device.

1. How to request a hospital interpreter

- a. Three (3) days notice or greater of need for an interpreter
 - 1) Go to "Communication and Language Services" intranet site.
 - 2) Click on "Request Forms" on the Left side of the screen.
 - 3) Submit request form for "Sign Language Interpreter".
- b. Less than Three (3) days notice of need for an interpreter
 - 1) Between 8 a.m. and 4 p.m., call OCL at 628-1116.
 - 2) During *Off Hours* staff need to call a sign language interpreter directly. Contact information for interpreters is on the "Communication and Language Service" intranet site under "Sign Language Interpreters".
- c. If an interpreter is scheduled but has not yet arrived, staff may use the Video Interpreter Service, but only until the interpreter is available.

2. If an on-site hospital interpreter is not available

- a. After best efforts have been made to obtain an on-site interpreter and no one is available, staff will then use the Video Interpreter Service (VIS) for sign language interpretation.
- b. Video Interpreter Service is not appropriate in some circumstances. An on-site interpreter should be used if at all possible for individuals:
 - who have limited ability to move their heads, hands or arms
 - who have cognitive or consciousness issues
 - who are to be treated in rooms where space issues preclude use of Video Interpreter Service
- c. How to request a Video Interpreter Service monitor.
 - 1) Video Interpreter Service is available seven (7) days a week, twenty-four (24) hours a day and is available for use on short notice for emergency situations.
 - a) Between 8 a.m. and 4 p.m.
 - i. Go to "Communication and Language Services" intranet site.
 - ii. Click on "Request Forms" on the Left side of the screen.
 - iii. Submit request form for "Sign Language Video Conferencing"
 - iv. The video unit should be delivered within the hour.
 - b) During *Off Hours* call Service Response at 628-4772. The video unit should be delivered within 90 minutes and a Biomedical Engineering employee will set up the device.
 - 2) For technical problems with the unit call Biomedical Engineering at 628-4772.
 - 3) Biomedical Engineering and the vendor will maintain the system to ensure that the device provides a clear picture of the interpreter and deaf individual's head, arms, hands and fingers and that voices being transmitted are clear and easily understood.

3. **If an on-site hospital interpreter and a video conferencing monitor are not available**
 - If after best efforts have been made and staff are unable to provide an on-site interpreter and VIS is inappropriate or unavailable, ONLY THEN is communication through note writing appropriate.
4. **Required Documentation**
 - a. Staff will document their attempts to obtain an interpreter and the results.
 - b. When using an on-site or video interpreter, staff will note in the medical record:
 - 1) interpreters name and
 - 2) nature of the communication.
 - c. All consent forms must contain the signature, printed name and contact information of the interpreter. By signing the interpreter is stating that they have translated this document to the best of their ability.
5. **Translation of Documents**
 - Free American Sign Language or Cued speech translation of *vital documents* is available through on-site interpreters. See #1 above, "How to request a hospital interpreter".

D. Deaf or Hearing Impaired not using sign language

1. TTY devices and hearing aid compatible amplified telephones are available from the Service Response Center, call 628-2447.
2. Call 711 to call and speak with patients who have a TTY or similar device.
3. All patient televisions should have a Closed Caption option available, for assistance contact the Service Response Center.

E. Blind or Vision Impaired

F. Speech Impaired

G. Cognitively Impaired

Troubleshooting

Common Problems: Patient's who need language assistance when making clinic appointments should contact the Call Center at 828-7069.

For Clinics which do not use the Call Center access to a telephone interpreter can be set up by OCL, please contact them at 628-1116.

How to get help: For problems with Video Interpreter Service call the Service Response Center at 628-4772.

Attachments

MCI Certification Information

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VCU Health System Office of Language Services offers two interpreter training programs.

For more information go to the Office of Communication and Language Services intranet site and click on "Education" on the Left of the screen.