

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

and)

D.B.,)

Intervenor-Plaintiff,)

v.)

CAPITAL HEALTHCARE SOLUTIONS,)
INC.,)

Defendant.)

CIVIL ACTION NO. 11-1249

Judge Mark R. Hornak

CONSENT DECREE

THE LITIGATION

1. This action was instituted by the United States Equal Employment Opportunity Commission ("the EEOC") on September 29, 2011, against Capital Healthcare Solutions, Inc. ("Defendant"), to enforce provisions of Title I of the Americans with Disabilities Act of 1990, as amended through the ADA Amendments Act of 2008, Pub. L. 110-325, and Title I of the Civil Rights Act of 1991. The EEOC alleged that Defendant subjected Charging Party, D.B., to discrimination on the basis of his disability.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally resolves any and all claims stated in the Complaint filed by the EEOC.

FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

- (a) This Court has jurisdiction of the subject matter of this action and of the parties.
- (b) The terms of this Decree are adequate, fair, reasonable, equitable, and just. The interests of the parties, D.B., and the public are adequately protected by this Decree.
- (c) This Decree conforms with the Federal Rules of Civil Procedure and the ADA, and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties, D.B., and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

DEFINITIONS

A. As used in this Consent Decree, the term "employee" shall include, in addition to its ordinary meaning, individuals to whom Defendant has extended a conditional offer of employment or placement.

B. As used in subsequent paragraphs of this Consent Decree, the term "complaint" shall mean any allegation or report made by any person, whether or not substantiated by evidence, whether or not made in conformity with Defendant's established procedures (so long as knowledge of the complaint may be imputed to Defendant), or made by any means of communication, regarding potential harassment

or discrimination committed against any Capital Healthcare Solutions, Inc. employee, whether the Capital Healthcare Solutions, Inc. employee is the complainant or not.

INJUNCTION

4. Capital Healthcare Solutions, Inc., its officers, agents, employees, successors, assigns and all persons acting in concert with it are enjoined from engaging in any employment practice that discriminates because of disability, including but not limited to hiring, firing, and promoting.

5. Capital Healthcare Solutions, Inc., its officers, agents, employees, successors, assigns and all persons acting in concert with it are enjoined from engaging in any form of retaliation, coercion, intimidation, or interference against any person because such person has opposed any practice made unlawful under the ADA, filed a Charge of Discrimination under the ADA, testified or participated in any manner in any investigation, proceeding, or hearing under the ADA, or asserted or refused to refrain from asserting any rights under this Decree.

6. Defendant shall not discharge, refuse to hire/place, or otherwise exclude or disqualify any job applicant or employee with a disability (which is inclusive of actual disabilities, records of disability, or being regarded as having a disability) from employment based on any perceived health or safety risk related to the disability without first (a) performing an assessment of whether the applicant or employee poses a direct threat; (b) evaluating whether there are reasonable accommodations available to more accurately assess the potential for direct threat or to reduce or eliminate any direct threat believed to exist in determining the applicant's eligibility for placement. Defendant shall exercise reasonable care in performing these functions.

MONETARY RELIEF

7. Within fifteen (15) business days of entry of this Decree, the Defendant shall pay monetary relief to D.B. in the total amount of twelve thousand dollars (\$12,000), of which \$2,000 shall constitute back pay and \$10,000 shall constitute compensatory and punitive damages. Within ninety (90) calendar days of entry of the Decree, the Defendant shall pay monetary relief to D.B. in the total amount of \$10,000, all of which shall constitute compensatory and punitive damages. The check will be made out to D.B. using his full name, which is known to all parties. The amount treated as back pay shall be paid less the employee's share of applicable tax withholding which includes and is limited to federal income tax withholdings, state income tax withholdings, local income tax withholdings, and the payee's share of federal Social Security and Medicare withholdings (i.e., FICA and any other related tax). Defendant's obligation to pay D.B. the agreed upon monetary benefit set forth in this paragraph is not dependent upon or related to, in any manner, the possibility that he may become an employee of Capital Healthcare Solutions, Inc., Ltd.

8. At the conclusion of the calendar year in which payment is made to D.B., Defendant shall promptly issue to him an IRS Form W-2 for the monetary relief amount constituting back pay and an IRS Form 1099-MISC for any monetary relief amount constituting compensatory and punitive damages.

9. Defendant will mail the checks for monetary relief to D.B., at an address to be provided by the EEOC. Defendant will mail photocopies of the check to the EEOC, to the attention of Lisa H. Hernandez, Senior Trial Attorney, Equal Employment Opportunity Commission, 1000 Liberty Avenue, Suite 1112, Pittsburgh, PA 15222, and to the AIDS Law Project of Pennsylvania, to the attention of Ronda L. Goldfein,

Executive Director, 1211 Chestnut Street, Suite 600, Philadelphia, PA 19107, within five days of the date of mailing of the checks to D.B.

POSTING OF NOTICE

10. Within five (5) business days following entry of this Decree, Capital Healthcare Solutions, Inc. shall post a copy of the Notice, attached hereto as Exhibit A, at each of its facilities. Defendant shall post this Notice on the bulletin boards usually used by it for communicating with employees and applicants. The Notices shall remain posted for two (2) years from the date of entry of this Decree. Capital Healthcare Solutions, Inc. shall take all reasonable steps to ensure that the postings are not altered, defaced or covered by any other material. Defendant shall certify to the EEOC in writing within ten (10) business days after entry of the Decree that the Notices have been properly posted. Capital Healthcare Solutions, Inc. shall permit a representative of the EEOC to enter its premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

EEO POLICIES AND PROCEDURES

11. Defendant shall create and implement a policy or policies that explain, define, and prohibit disability discrimination in the terms and conditions of employment including but not limited to hiring, firing, and promoting employees, and harassment on the basis of disability, as well as retaliation, and which contain related complaint procedures. These policies and procedures shall be drafted using language that can be reasonably understood by the ordinary reader. Defendant shall ensure that its policy against discrimination and related complaint procedures meet the following minimum criteria:

- (a) state that Defendant: (i) prohibits discrimination against employees on the basis of disability in violation of the ADA; (ii) prohibits retaliation against employees for opposing employment practices they reasonably believe are discriminatory or for participating in any investigation, whether internal or external, of a charge or claim of discrimination under the ADA; (iii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of disability in violation of the ADA; and (iv) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to employees through acts such as, but not limited to, physical or verbal abuse and/or derogatory comments based on disability in violation of the ADA;
- (b) include a complaint procedure designed to encourage employees and applicants to come forward with complaints regarding violations of its policy against discrimination, harassment and retaliation, which shall meet the following minimum criteria: (i) provides effective mechanism(s) for reporting incidents of discrimination, harassment and retaliation; (ii) provides that the complaints of discrimination, harassment and/or retaliation can be made either in writing or verbally; (iii) identifies individuals to whom an employee can make a complaint, including permitting employees to report a claim of discrimination, harassment or retaliation directly to his or her supervisor or manager; (iv) encourages prompt reporting by employees; and (v) provides assurances that

complainants shall not be subjected to retaliation and that complaints will be kept confidential to the extent practicable under the circumstances;

- (c) provide for prompt investigation of complaints of discrimination, harassment and/or retaliation;
- (d) provide for prompt communication to the complaining party of the results of the investigation and any remedial actions taken or proposed;
- (e) provide for discipline up to and including immediate discharge of any employee who violates Defendant's policy or policies against discrimination, harassment and retaliation; and,
- (f) ensure that the explanation of retaliation: (i) includes information that employees are protected against retaliation because he or she "participated in or cooperated with the investigation of a charge or complaint"; (ii) advises that prohibited retaliation may include conduct by supervisors, managers, or co-workers; and, (iii) advises employees to report retaliatory conduct in the same way that harassment is to be reported.

12. Defendant shall distribute to all of its employees its policy and procedures against disability-related discrimination within 90 days after entry of this Consent Decree. Defendant shall distribute a copy of its policy and procedures against disability-related discrimination to each subsequently hired/placed employee/applicant at the time of hire.

EEO INVESTIGATION AND CORRECTIVE ACTION TRAINING

13. Defendant shall retain, at its own expense, a qualified third-party to provide Defendant with not less than four (4) hours of training/provision of training

materials regarding exercising reasonable care when (l) addressing issues of direct threat, reasonable accommodation, and the law concerning discrimination based upon customer preference. All Defendant personnel whose job duties include making hiring and discharge decisions, evaluating direct threat or physical/medical qualification for employment, and/or acting on requests for reasonable accommodation shall be required to complete such training. This training shall be provided within sixty (60) days of entry of this Decree, and within fourteen (14) days of the start of employment for all new hires in such positions. The EEOC must be notified, in writing, as to the identity and qualifications of the trainer, all content of such training (including training manuals and handout materials), method of presentation, length of training course, and the name and job title of each attendee within one (1) month of such training.

14. Defendant shall ensure that the training required by Paragraph 13 above, shall include at least the following matters:

- (a) direct threat analytical standards and methods for determining direct threat;
- (b) employer's legal obligation to conduct an individualized assessment of employees and job applicants when considering disability status, direct threat, and reasonable accommodation issues;
- (c) employer's legal obligation to engage in the interactive process in reasonable accommodation analyses;
- (d) employer's legal obligation to evaluate whether there are reasonable accommodations to reduce or eliminate any direct threat, to enable performance of essential job functions, and to permit the employee to enjoy equal terms, conditions and privileges of employment, as well as

technical resources (e.g., Job Accommodation Network, professional rehabilitation counselors, state rehabilitation agencies) that are available to assist in identification of such reasonable accommodations;

- (e) the requirement that direct threat assessment be performed using reliable, objective scientific information, including but not limited to the best available medical information about diseases and other disabilities that can be obtained from public health authorities such as the Centers For Disease Control and Prevention, the National Institutes of Health, and related state governmental agencies; and
- (f) the legal prohibition of discrimination by employers based upon their customers' discriminatory preferences or their perceptions of such preferences.

DISPUTE RESOLUTION AND COMPLIANCE REVIEW

15. This Court shall retain jurisdiction to enforce the terms of this Decree and will have all available powers to enforce this Decree, including but not limited to monetary sanctions and injunctive relief.

16. Upon motion of the Commission, this Court may schedule a hearing for the purpose of reviewing compliance with this Consent Decree. Prior to such motion, the Commission shall notify the Defendant, in writing, of the alleged non-compliance. Upon receipt of written notice, Defendant shall have fifteen (15) days either to correct the alleged non-compliance, and so inform the other party, or deny the alleged non-compliance, in writing.

17. If the parties cannot in good faith resolve their dispute, the Commission may file with the Court a motion to correct and remedy the breach.

18. Jurisdiction to resolve any dispute arising under this Decree resides in the United States District Court for the Western District of Pennsylvania.

19. The Commission, its agents and employees shall in their discretion have the legal authority to enter Defendant's facilities, with reasonable prior notice to the Defendant and its counsel, and conduct an on-site inspection to ensure compliance with the ADA and any of the terms of this Decree. Such inspections may, at the discretion of the Commission, include access to any and all documents for the purposes of inspection and duplication; interviews or depositions of any persons; inspection of any area within the facility; and any other investigatory technique or procedure permitted by the ADA or the Commission's regulations. The Commission shall also have the legal authority to require appearance and testimony of Defendant's personnel (at reasonable times and locations) at interviews or depositions and the production of relevant documents to ensure compliance with the ADA and any of the terms of this Decree. The Commission may at any time move the Court for a hearing for the purpose of compelling Defendant to cooperate in any aspect of this Paragraph. Neither the Commission's authority under this Paragraph nor any other provisions of this Decree shall be construed to limit or impair in any manner any other Commission authority to conduct investigations of the Defendant that is provided by law, including, but not limited to, investigating charges of discrimination filed under Title VII of the Civil Rights Act of 1964 ("Title VII"), the Equal Pay Act ("EPA"), the Age Discrimination in Employment Act ("ADEA"), Titles I or V of the Americans with Disabilities Act ("ADA"), the Genetic Information Nondiscrimination Act of 2008 ("GINA"), and any statute over which the

Commission is given jurisdiction in the future, and conducting directed investigations authorized under the EPA, the ADEA, and any future statute which authorizes directed investigations.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

20. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following entry of the Decree, provided, however, that if, at the end of the two (2) year period, any disputes under Paragraphs 15, 16 or 19, above, remain unresolved, the term of the Decree shall be automatically extended and the Court will retain jurisdiction of this matter to enforce the Decree by all available means, including but not limited to injunctive relief and monetary and other sanctions, until such time as all such disputes have been resolved. Should Defendant be late on either of the payments to D.B. referenced in paragraph 7, the term of this Consent Decree shall automatically extend for a period of time equal to the length of the delay.

MISCELLANEOUS PROVISIONS

21. Each party to this Decree shall bear its own expenses, attorney's fees and costs.

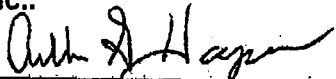
22. The terms of this Consent Decree shall be binding upon the present and future directors, officers, managers, agents, successors and assigns of Defendant. Defendant, and any successor(s) of Defendant, shall provide a copy of this Decree to any organization or person who proposes to acquire or merge with Defendant, or any successor of Defendant, prior to the effectiveness of any such acquisition or merger. This paragraph shall not be deemed to limit any remedies available in the event of any finding by the Court regarding a violation of this Decree.

23. If any provision(s) of the Decree are found to be unlawful, only such provision(s) shall be severed, and the remainder of the Decree shall remain in full force and effect.

24. When this Decree requires a certification by Capital Healthcare Solutions, Inc. of any fact(s), such certification shall be made by sworn declaration by an officer or management employee of Capital Healthcare Solutions, Inc. When this Decree requires the submission by Capital Healthcare Solutions, Inc. of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: Lisa H. Hernandez, Senior Trial Attorney, Equal Employment Opportunity Commission, 1000 Liberty Avenue, Suite 1112, Pittsburgh, PA 15222.

APPROVED BY:

**FOR CAPITAL HEALTHCARE SOLUTIONS,
INC.:**



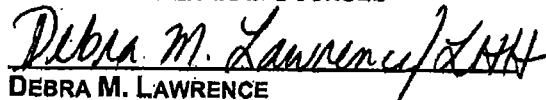
Arthur G. Hoopes, President of Capital
Healthcare Solutions, Inc.

**FOR THE EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION:**


**P. DAVID LOPEZ
GENERAL COUNSEL**

**JAMES L. LEE
DEPUTY GENERAL COUNSEL**

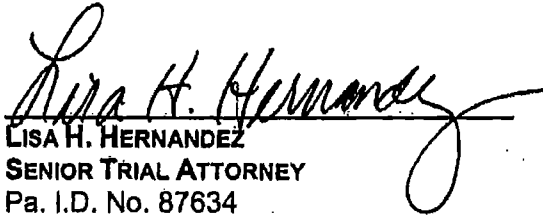
**GWENDOLYN YOUNG REAMS
ASSOCIATE GENERAL COUNSEL**



**DEBRA M. LAWRENCE
REGIONAL ATTORNEY**

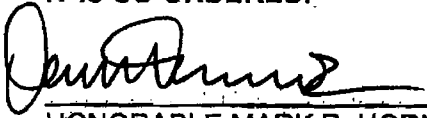


**RONALD L. PHILLIPS
SUPERVISORY TRIAL ATTORNEY**



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Email: lisa.hernandez@eedc.gov

IT IS SO ORDERED:



HONORABLE MARK R. HORNAK
United States District Judge

DATE:

March 21, 2012