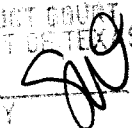


FILED

2017 FEB -8 PM 3:03

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY 

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
and)
)
MICHAEL JANSSEN,)
)
Plaintiff-Intervenor,)
)
v.)
)
GRANITE MESA HEALTH CENTER LTD.,)
GRANITE MESA HEALTH CENTER GP,)
INC., ASISTA CORPORATON, LEGEND)
HEALTHCARE, LLC, LEGEND OAKS -)
GRANITE MESA, LLC, THE ENSIGN)
GROUP, INC., AND COPELAND)
HEALTHCARE, INC.,)
)
Defendants.)

CIVIL ACTION NO. 1:16-
cv-01113-LY

CONSENT DECREE

This action was instituted by Plaintiff, the U.S. Equal Employment Opportunity Commission (the "EEOC" or the "Commission"), against Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., Asista Corporation, Legend Healthcare, LLC, Legend Oaks Granite Mesa, LLC, The Ensign Group, Inc. and Copeland Healthcare, Inc. (hereinafter "Defendants"). The Commission alleged violation of Sections 102 of Title I and V of the Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C. §§ 12112 et seq and 12203. The complaint alleges that Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., and Asista Corporation, unlawfully required a medical examination and thereafter terminated Mr. Michael Janssen because of his disability, testing positive for Human Immunodeficiency Virus (HIV).

Furthermore, Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., and Asista Corporation discharged Mr. Janssen in retaliation for asserting his rights under the ADA by his requesting a copy of the written HIV test policy to review before deciding to submit his HIV test results. Subsequent to these alleged discriminatory acts, Legend Healthcare, LLC, and Legend Oaks - Granite Mesa, LLC, purchased the nursing facility at which Mr. Janssen worked and later the Ensign Group, Inc. and Copeland Healthcare, Inc. purchased the subject facility from Legend Healthcare, LLC and Legend Oaks - Granite Mesa, LLC. The EEOC alleges all four corporate entities are also liable for the alleged violations of the ADA as successors. Michael Janssen ("Plaintiff-Intervenor") intervened in the EEOC's lawsuit and asserted the same causes of action as alleged by the EEOC. The EEOC, Plaintiff-Intervenor and Legend Healthcare, LLC, Legend Oaks - Granite Mesa, LLC, The Ensign Group, Inc. and Copeland Healthcare, Inc. (four defendants hereinafter "Settling Defendants") wish to settle without the necessity of further litigation, pursuant to the terms delineated in this Decree. NOW, THEREFORE, in consideration of the mutual promises and agreements between the EEOC and Plaintiff-Intervenor and the Settling Defendants, (hereinafter the "Parties"), as set forth herein, the sufficiency of which is hereby acknowledged, the Parties request and the Court agrees to ORDER, ADJUDGE AND DECREE as follows:

1. The Parties agree that this Court has jurisdiction of the subject matter of the claims and causes of action asserted by the EEOC and Plaintiff-Intervenor against the Settling Defendants, venue is proper, and all administrative prerequisites to the EEOC's filing have been met. The Parties acknowledge the Settling Defendants did not own the facility at the time of the alleged unlawful actions and Settling Defendants deny that they or any officer, manager or employee engaged in any unlawful action.
2. The Parties agree that this Decree resolves all issues raised by the EEOC and Plaintiff-Intervenor regarding liability of Settling Defendants in this civil action. The EEOC and

Plaintiff-Intervenor waive further litigation of the claims raised in this civil action concerning Michael Janssen regarding the Settling Defendants. The EEOC and Plaintiff-Intervenor expressly reserve the right, however, to process and litigate its claims against Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., and Asista Corporation, or any other charges which may currently be pending or in the future may be filed against all Defendants.

3. During the term of this Decree, Settling Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are enjoined from discriminating against any qualified employees, because of their disability, by: (1) basing any termination decision on an employee's disability status; and (2) engaging in any other employment practice which discriminates on the basis of disability.

4. Settling Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are enjoined from engaging in any form of retaliation 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 any rights under this Decree.

5. Within fourteen (14) days of the entry of this Decree, and after receiving a copy of the release signed by Michael Janssen, Settling Defendants, in settlement of this dispute, shall pay to Michael Janssen, the sum total of \$70,000 (Seventy Thousand Dollars) of which Thirty Five Thousand Dollars (\$35,000) will be paid as wages subject to applicable legal deductions and withholding. Mr. Janssen would need to provide the Settling Defendants with current IRS forms W-9 and W-4.

Payment to Michael Janssen shall be mailed by certified mail to Michael Janssen, c/o Paul D. Castillo, Lambda Legal, South Central Regional Office, 3500 Oak Lawn Avenue, Suite

500, Dallas, Texas 78219-6722. A copy of the settlement checks and any accompanying transmittal documents shall be forwarded to the EEOC to the attention of Eduardo Juarez, Supervisory Trial Attorney, at 5410 Fredericksburg Rd., Suite 200, San Antonio, Texas 78229.

If Settling Defendants fail to tender payment or otherwise fail to timely comply with the terms of this paragraph 5, Settling Defendants shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. § 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC and Plaintiff-Intervenor caused by the non-compliance or delay of Defendant.

6. Within thirty (30) days of the entry of this Decree, Settling Defendants shall provide EEO training to all of its managerial and non-managerial employees at the Marble Falls, Texas facility that include a focus on Title I of the ADA, as amended. The duration of Settling Defendants' training shall be at least two (2) hours.

- a. Settling Defendants will bear all costs associated with this training session;
- b. The training shall explain that employment discrimination on the basis of disability or perceived disability is illegal under the ADA, and it will address the following:
 1. Settling Defendants' obligation not to discriminate or retaliate against any employee because of his or her HIV status or because he or she has a disability;
 2. The requirement that Settling Defendants shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature and severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity;
 3. The requirement that Settling Defendants conduct an individualized assessment of an employee or prospective employee's disability based upon current, objective scientific knowledge before taking any adverse employment action based on the disability in question;
 4. Settling Defendants' obligation to provide a reasonable accommodation to disabled employees so that they may perform the essential functions of the job;
 5. The requirement that where Settling Defendants assert that an employee poses a direct threat to the health or safety of the individual him/herself or to the safety of others, Settling Defendants may not

simply assume that a threat exists and, instead, must establish through objective, medically supportable methods that there is a significant risk that substantial harm could occur in the workplace;

6. HIV and a relevant discussion of the ways in which it is and is not transmitted; and
7. Sensitivity training about interacting with people with HIV and other disabilities.

c. The training shall be conducted by an attorney and/or otherwise qualified individual. Settling Defendants shall send a copy of the training presentation outline(s) to the EEOC at least twenty (20) days before any training session occurs. The EEOC shall have the right to approve of the trainer and the training materials used in conjunction with such training; and

d. Within ten (10) days after the completion of the required training session, Settling Defendants shall certify to EEOC, in writing, that the required training has taken place and that required personnel attended. Such certification shall include: (i) The date, location and duration of the training; and (ii) A copy of the registry of attendance which shall include the name and position or title of each person in attendance.

7. Within ten (10) days from the entry of this Decree, Settling Defendants shall post copies of the Notice attached as Exhibit "A" to this Decree at the Marble Falls, Texas facility, in conspicuous locations easily accessible to and commonly frequented by employees. The Notice shall remain posted for the duration of this Decree. Settling Defendants shall ensure that the postings are not altered, defaced or covered by any other material.

8. Settling Defendants shall bear the costs associated with administering and implementing the provisions of this Decree.


9. The terms of this Decree shall be binding upon the EEOC and Plaintiff-Intervenor and Settling Defendants, their respective agents, officers, employees, servants, successors, and assigns, as to the issues resolved in this civil action.

10. The duration of this Decree shall be two (2) years from the date of its entry with the Court. The Parties agree that the Court shall retain jurisdiction of this case during the term of this Decree to enforce compliance and to take any action necessary and/or appropriate for its interpretation, execution, modification and/or adjudication of disputes.

11. The parties to this Decree shall bear their own costs and attorney's fees incurred in this action.

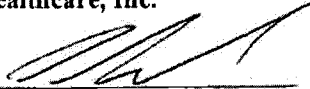
12. When this Decree requires the submission by Settling Defendants of documents or other materials to the EEOC, such documents or other materials shall be mailed to Eduardo Juarez, Supervisory Trial Attorney, United States Equal Employment Opportunity Commission, San Antonio Field Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

SO ORDERED [REDACTED] this 8th day of Feb. 2017.


HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE

AGREED TO AS TO FORM AND SUBSTANCE:

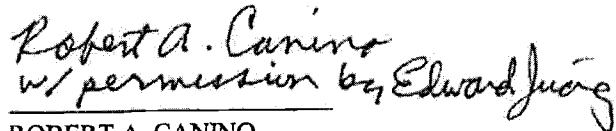
ATTORNEYS FOR DEFENDANTS
Legend Healthcare, LLC, Legend
Oaks - Granite Mesa, LLC, The
Ensign Group, Inc. and Copeland
Healthcare, Inc.



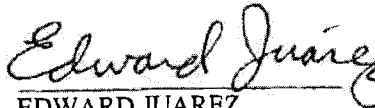
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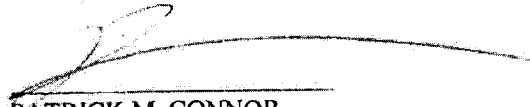
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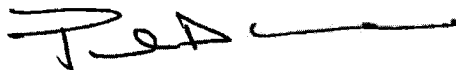
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COMMISSION**

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INTERVENOR**



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EXHIBIT A

NOTICE TO ALL EMPLOYEES

This NOTICE is being posted pursuant to a Consent Decree entered in *Equal Employment Opportunity Commission v. Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., Asista Corporation, Legend Healthcare, LLC, Legend Oaks - Granite Mesa, LLC, The Ensign Group, Inc. and Copeland Healthcare, Inc.* (“Defendants”), Civil Action No.:1-16-cv-01113-LY. The companies did not own the facility at the time of the alleged unlawful actions and they deny that they or any officer, manager or employee engaged in any unlawful action. This NOTICE will be conspicuously posted for a period of two (2) years at this facility and in all places where employment notices are posted. It must not be altered, defaced, or covered by any other material.

POLICY: Discrimination of any kind can and often will detract from an employee’s job performance, discourage employees from remaining on the job, keep employees from advancing in their careers and lowers overall employee morale and productivity. It is the policy of Legend Healthcare, LLC, and Legend Oaks - Granite Mesa, LLC, The Ensign Group, Inc. and Copeland Healthcare, Inc. (“Defendants”) that discrimination is unacceptable conduct and will not be condoned.

PURPOSE: It is the purpose of this policy to reaffirm and amplify the position of Title I of the Americans with Disabilities Act and the amendments thereto and the Equal Employment Opportunity Commission’s guidelines on discrimination and to reiterate Defendants’ policy against discrimination.

SCOPE: This policy extends to all employees of Defendants including management, non-management, temporary and/or probationary.

DEFINITION OF DISABILITY: Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning);

- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission); and
- A person may be disabled if he or she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

GENERAL:

Examples of disability discrimination include:

- Failing or refusing to hire an individual, or discriminating in any other manner against an individual in regard to job application procedures or hiring, and other terms, conditions, and privileges of employment;
- Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
- Utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability;
- Failing to make a proper, individualized assessment of the effect of a job applicant's or employee's disability or his or her ability to perform essential functions of the job at issue; and
- Requiring an employee to answer disability related questions and/or submit to a medical examination that is not both job related and consistent with business necessity.

Disability Related Inquiries and Medical Examinations of Employees:

- Disability-related inquiries and medical examinations of employees must be job-related and consistent with business necessity;
- A disability-related inquiry is a question or series of questions that is likely to elicit information about a disability;
- A medical examination is a procedure or test that seeks information about an individual's physical or mental impairments or health; and
- When a need arises to question the ability of an employee to do the essential functions of his or her job, it must be job related and consistent with business necessity for an employer to make disability-related inquiries or require a medical examination.

RESPONSIBILITY: Each level of management is responsible for ensuring that all personnel policies, procedures, and activities are in full compliance with applicable federal, state, and local equal employment laws, statute, rules, and regulations regarding discrimination. Employees are expected to read, understand, and follow the policies that Defendants have established to prevent discrimination.

REPORTING PROCEDURES: Any employee who believes that he or she has been subjected to discrimination is expected to report the alleged act as soon as possible to that person's immediate supervisor, any supervisor or manager with Defendants or the Human Resources Department. The Human Resources Department may be contacted at _____ or by

telephone at _____. Supervisors and managers who are informed of an alleged incident of discrimination must immediately notify the Human Resources Department.

In addition to reporting a complaint of discrimination to company officials, a person may also contact the U.S. Equal Employment Opportunity Commission, and file a charge of employment discrimination. The address and telephone number of the EEOC office is 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229; (866) 408-8075, (800) 669-4000 or (210) 281-7610 (TTY). Information about employment rights and the procedures dealing with how to file a charge is available on the Internet at www.eeoc.gov.

INVESTIGATION OF COMPLAINTS: A complete investigation of each complaint will be undertaken immediately by the Human Resources Department. The investigation may include interviewing employees and supervisors at the facility, and the inspection of documents, including personnel records, and a full inspection of the premises.

PUNISHMENT FOR VIOLATION: Employees who engage in discrimination can expect disciplinary action. After an appropriate investigation, any employee, whether management or non-management, who has been found to have engaged in discrimination against another employee will be subject to appropriate sanctions, depending on the circumstances, from a written warning placed in his/her personnel file up to and including termination of employment.

RETALIATION: There shall be no retaliation against any employee because that person has opposed what they believe to be unlawful employment practices, including discrimination; or has filed a charge of discrimination, or has given testimony, assistance, or has participated in any manner in any investigation, proceeding or hearing under the ADA as amended. Defendants will not punish you for reporting discrimination simply because you have made a complaint under the above guidelines.

EXCEPTIONS: There are no exceptions to this policy.

Signed this _____ day _____,

2017.

Legend Healthcare, LLC, Legend Oaks - Granite
Mesa, LLC, The Ensign Group, Inc. and Copeland
Healthcare, Inc.