

VOLUNTARY RESOLUTION AGREEMENT

BETWEEN THE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS

AND

WINDSOR ROSEWOOD CARE CENTER, LLC
COMPLAINT NO. 06-45479**I. Introduction**

This Voluntary Resolution Agreement (the "Agreement") resolves OCR Complaint No. 06-45479, a complaint filed by the Hawkins Center¹ (the "Complainant"), on behalf of an individual with HIV/AIDS ("the Affected Party"). The Complainant alleged that on October 27, 2005, Rosewood Care Center, a skilled nursing facility (the "Facility") then owned and operated by Helios Healthcare, LLC, denied admission to the Affected Party because he had HIV/AIDS and thereby discriminated against him on the basis of his disability, in violation of Section 504 of the Rehabilitation Act of 1973. On January 13, 2006, the Affected Party died at the age of forty-five.

The parties to this Agreement are the United States Department of Health and Human Services, Office for Civil Rights ("OCR"), and Windsor Rosewood Care Center, LLC ("WRCC"). WRCC became the owner and operator of the Rosewood Care Center ("the Facility") on April 28, 2007, approximately eighteen months after the Affected Party was denied admission. The Facility is located in Pleasant Hill, California.

A. Parties to the Agreement:

1. United States Department of Health and Human Services, Office for Civil Rights; and
2. Windsor Rosewood Care Center, LLC.

B. Jurisdiction: WRCC receives Federal financial assistance through its participation in the Medicare program and the Medicaid program and is subject to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulations, 45 C.F.R. Part 84 ("Section 504"). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

¹ The Hawkins Center provides free civil legal services to people living with HIV/AIDS in Contra Costa County, California, through its Contra Costa HIV Legal Services Project. The Hawkins Center has merged with Rubicon Programs, Inc., and is now known as the Hawkins Center of Rubicon Programs.

- C. **Purpose of the Agreement:** To resolve these matters without further burden or the expense of litigation, WRCC affirms, to the best of its knowledge, that since it became the owner and operator of the Facility on April 28, 2007, it has complied, and will continue to comply, with all provisions of Section 504. WRCC agrees to the terms stipulated in this Agreement. WRCC's willingness to enter into this Agreement with OCR in no way constitutes an admission of liability for the events that occurred in October 2005. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between WRCC and OCR. The actions described in this Agreement fully address the issues described in the complaint.

II. **Definitions**

For purposes of this Agreement, the terms listed below shall have the following meaning:

- A. **"Patient"** means: any individual who is seeking or receiving health care or other services from WRCC or the employees and/or contractors under its supervision or control.
- B. **"WRCC" and/or "WRCC staff"** means: employees and/or contractors under WRCC's supervision or control, including but not limited to physicians, the administrator, the admissions and marketing director, the director of nursing, registered nurses, licensed vocational nurses, and certified nursing assistants.
- C. **Having "HIV disease"** means: (1) having tested positive for antibodies to the Human Immunodeficiency Virus (HIV); (2) being infected with HIV; (3) having Acquired Immune Deficiency Syndrome (AIDS); or (4) having any AIDS-related opportunistic infection. For purposes of this Agreement, having HIV disease also means having a record of being in one of the four categories listed above; or being perceived or regarded as being in one of the four categories listed above.
- D. **"Universal Precautions"** mean: the consistent use, in health care settings, of blood and certain body fluid precautions for all patients regardless of their blood borne infection status. Under universal precautions, blood and certain body fluids of all patients are considered potentially infectious for HIV; and health care workers use protective barriers to reduce the risk of infection. Examples of protective barriers include (but are not limited to) gloves, shoe covers, gowns, masks, protective eyewear, and head covers.
- E. **"Qualified individual with a disability"** means: an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by a recipient of Federal financial assistance.

III. General Provisions

- A. **Recipient Covered by the Agreement:** This Agreement covers WRCC, a certified and state-licensed skilled nursing facility located in Pleasant Hill, California.
- B. **Suspension of Administrative Actions:** Subject to the continued performance by WRCC of the stated obligations and required actions contained in this Agreement and in conformity with Section III-D, Failure to Comply with the Agreement, OCR shall suspend administrative action on OCR Complaint No. 06-45479.
- C. **Effective Date and Term of the Agreement:** This Agreement shall become effective on the date it is signed by all parties (the "Effective Date") and will remain in effect for eighteen (18) months after the Effective Date, at which point if OCR determines that WRCC has substantially complied with this Agreement, then OCR's review and monitoring of this Agreement shall terminate. Notwithstanding the Term of this Agreement, WRCC acknowledges that it will comply with Section 504 and other applicable Federal nondiscrimination statutes and their implementing regulations, for so long as it continues to receive Federal financial assistance.
- D. **Failure to Comply with the Agreement:** If OCR determines that WRCC has failed to substantially comply with any provision of this Agreement, the parties will confer and attempt to reach agreement as to what steps may be necessary to resolve the compliance issues to both parties' satisfaction. If an agreement is not reached, OCR may terminate this Agreement with thirty (30) calendar days notice and take appropriate measures to effectuate WRCC's compliance with Section 504. Such measures may include the initiation of enforcement proceedings to terminate Federal financial assistance to WRCC, referral of the matter to the U.S. Department of Justice, or by other means authorized by law.
- E. **Effect on Other Compliance Matters:** The terms of this Agreement do not apply to any other issues, reviews, investigations or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal agency. Any unrelated compliance matter arising from subsequent reviews or investigations shall be addressed and resolved separately. Nothing in this Agreement shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to WRCC and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action

under Federal laws by other Federal Agencies, including any action or investigation under Section 504.

- F. **Prohibition Against Retaliation and Intimidation:** WRCC shall not retaliate, intimidate, threaten, coerce or discriminate against any person who has filed a complaint or who has assisted or participated in the investigation of any matter addressed in this Agreement.
- G. **OCR's Review of WRCC's Compliance with the Agreement:** OCR may review WRCC's compliance with this Agreement at any time while the Agreement is in effect. As part of such review, OCR may require written reports, access to witnesses, copies of documents, and/or inspection of WRCC. Throughout the duration of this Agreement, WRCC agrees to retain the records required by OCR to assess its compliance.
- H. **Non-Waiver Provision:** Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines or any provisions of this Agreement.
- I. **Entire Agreement:** This Agreement constitutes the entire understanding between WRCC and OCR in resolution of OCR Complaint No. 06-45479. Any statement, promise or agreement not contained herein shall not be enforceable through this Agreement.
- J. **Modification of Agreement:** This Agreement may be modified by mutual agreement of the parties in writing.
- K. **Publication or Release of Agreement:** OCR places no restrictions on the publication of this Agreement or its terms. In addition, OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulation, 45 C.F.R. Part 5.
- L. **Third Party Rights:** This Agreement can be enforced only by the parties specified in this Agreement, their legal representatives and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.
- M. **Technical Assistance:** OCR will provide appropriate technical assistance to WRCC regarding compliance with this Agreement, as requested and as reasonably necessary.

- N. **Miscellaneous:** When OCR verifies that WRCC has completed all actions contained in this Agreement, OCR shall consider all matters related to this investigation resolved and so notify WRCC in writing.

IV. **Obligations**

- A. **Non-Discrimination Policy:** Within fifteen (15) calendar days of the Effective Date of this Agreement, WRCC shall adopt the Non-Discrimination Policy set forth in Appendix A. WRCC shall ensure that each member of its staff, including physicians, the administrator, the admissions and marketing director, the director of nursing, registered nurses, licensed vocational nurses, certified nursing assistants, other employees and/or contractors, complies with Section 504 and the Non-Discrimination Policy.
- B. **Universal Precautions:** WRCC shall adhere to "universal precautions," as outlined in the guidelines for the prevention and management of exposures to blood and certain body fluids published by the Centers for Disease Control and Prevention (CDC) (<http://www.cdc.gov>). WRCC shall ensure that each member of its staff adheres to universal precautions, which are designed to address real or perceived risks of surgery or other medical procedures for patients with HIV/AIDS or other infectious diseases.
- C. **Notice:** Within fifteen (15) calendar days of the Effective Date of this Agreement, WRCC shall prominently display the Non-Discrimination Policy, attached as Appendix A, in its waiting area or lobby. Within thirty (30) calendar days of the Effective Date of this Agreement, WRCC shall convene mandatory staff meetings for all WRCC staff to explain the circumstances of the complaint filed against the Facility for the events that occurred in October 2005. During the staff meetings, WRCC will reaffirm its obligations to comply with the requirements of Section 504 and will reaffirm its adherence to the Non-Discrimination Policy set forth in Appendix A. Each WRCC staff member will be provided with an executed copy of the Agreement, including Appendix A.

Within ninety (90) calendar days of the Effective Date of this Agreement, WRCC shall:

- (1) publish the Non-Discrimination Policy in WRCC's pamphlets, brochures, website and/or other existing promotional materials, and in all future promotional materials, including journal, periodical or newspaper advertising purchased during the term of this Agreement;²

² For pamphlets, brochures and purchased advertising where space is limited, WRCC may use the following short-form Non-Discrimination Policy:

Windsor Rosewood Care Center, LLC (WRCC), does not exclude, deny benefits to, or otherwise discriminate against any person on the basis of race, color, national origin, age, or disability (including but not limited to HIV disease), in admission to, participation in, or receipt of services

- (2) mail a cover letter and a copy of the Non-Discrimination Policy to the HIV/AIDS care providers located in Contra Costa County and listed in Appendix B; and
- (3) mail a cover letter and a copy of the Non-Discrimination Policy to the hospitals located in Contra Costa County and listed in Appendix C;

D. Training: Within sixty (60) calendar days of the Effective Date of this Agreement, WRCC shall ensure that the Facility's Administrator, Director of Staff Development, Managers, Supervisors and Department Heads receive six hours of comprehensive training, on items (1) through (6) below, from the Pacific AIDS Education and Training Center (the Center) (<http://centerforhealthtraining.org>), which is funded by the HIV/AIDS Bureau of the Health Resources and Services Administration, U.S. Department of Health and Human Services. In the event that WRCC is unable to arrange to have the Center provide this training to the Facility's Administrator, Managers, Supervisors and Department Heads, WRCC shall propose another training provider to OCR. If OCR has any concerns regarding the proposed training provider, OCR shall so notify WRCC no later than fifteen (15) calendar days after OCR's receipt of the proposed training provider's name, address and telephone number.

Within ninety (90) calendar days of the Effective Date of this Agreement, WRCC shall ensure that WRCC non-management employees and/or contractors receive comprehensive training, on the subject matter listed in items (1) through (6) below, from the Facility's Director of Staff Development. The Facility's Director of Staff Development must have completed the six hours of comprehensive training as described in Section IV (D) above, prior to providing this required training to WRCC staff. WRCC shall submit a copy of the staff training materials to OCR for review. If OCR has any concerns regarding the proposed staff training materials, OCR shall so notify WRCC no later than fifteen (15) calendar days after OCR's receipt of the proposed training materials.

The comprehensive training shall include, but not be limited to:

- (1) a general overview of HIV disease;
- (2) the health professional's ethical obligation to provide health care and other services to patients with HIV disease;

or benefits under any of its programs or activities. For further information about this policy, contact the WRCC Section 504 Coordinator at 925-935-6630 (voice), 877-735-2929 (TTY to telephone) (English), or 888-877-5381 (TTY to telephone) (Spanish).

- (3) prevention of HIV transmission, during medical procedures, from the patient to the physician or staff member and prevention of HIV transmission from the physician or staff member to the patient;
- (4) infection control procedures, including but not limited to the appropriate disposal of contaminated materials and the sterilization of equipment;
- (5) universal precautions, including but not limited to, the appropriate use of gloves, shoe covers, gowns, masks, protective eyewear, head covers, and other personal protective equipment; and
- (6) the use of post-exposure prophylaxis.

Within one hundred and twenty (120) calendar days of the Effective Date of this Agreement, WRCC shall provide comprehensive training for any member of its staff who was unable to attend the comprehensive training program due to illness or other exigent circumstances, or who was hired subsequent to the date that the initial comprehensive training was held.

E. Recordkeeping: Within ninety (90) calendar days of the Effective Date of this Agreement, WRCC shall develop and implement a log to maintain a record of all patients referred for admission to its skilled nursing facility. This log shall include but not be limited to:

- (1) the applicant's name;
- (2) the applicant's age;
- (3) the applicant's HIV status, if provided in the applicant's medical records, or by the applicant, the referring entity, or an individual inquiring on behalf of the applicant;
- (4) the applicant's diagnoses and medical needs;
- (5) the applicant's payment source;
- (6) the applicant's referral source;
- (7) the date of the referral;
- (8) the name and the title of the individual(s) receiving the referral;
- (9) the admissions decision;

- (10) the name and title of the individual(s) making the admissions decision;
- (11) the date of the admissions decision;
- (12) for those who were not admitted, the reason for the decision and whether or not the individual's name will be maintained on a waiting list; and
- (13) the names and title of the individual(s) making entries into the log.

V. Reporting Requirements

WRCC agrees to provide OCR with the following:

- A. No later than thirty (30) calendar days after the Effective Date of this Agreement, copies of:
 - (1) the Non-Discrimination Policy printed as displayed in WRCC's reception area and/or lobby, as described in Section IV(C); and
 - (2) a list of each member of WRCC's staff, by name and title.
- B. No later than ninety (90) calendar days after the Effective Date of this Agreement, copies of:
 - (1) the Non-Discrimination Policy published in WRCC's pamphlets, brochures, website and/or other existing promotional materials, including journal, periodical or newspaper advertising;
 - (2) the cover letters and Non-Discrimination Policy mailed to the HIV/AIDS care providers located in Contra Costa County and listed in Appendix B;
 - (3) the cover letters and Notice of Nondiscrimination mailed to the hospitals located in Contra Costa County and listed in Appendix C;
 - (4) a list of individuals, by name and title, who have received an executed copy of this Agreement and Appendix A; and
 - (5) a list of individuals, by name and title, who have attended the comprehensive training program, indicating which individuals received training from: (a) the Center; (b) another OCR-approved training provider; or (c) the Facility's Director of Staff Development.
- C. At one hundred eighty (180) calendar days and fifteen (15) months after the Effective Date of this Agreement, letters describing:

- (1) the number and type of grievances filed by, or on behalf of, individuals with disabilities, including but not limited to HIV disease, against WRCC and/or a member of its staff;
- (2) the status and/or outcome of each such grievance; and
- (3) the number and type of grievances and complaints filed by, or on behalf of, individuals with disabilities, including but not limited to HIV disease, against WRCC and/or a member of its staff, with any Federal, state or local agency, medical board or licensing entity;
- (4) the status and/or outcome of each such grievance/complaint;
- (5) copies of (a) WRCC's website, pamphlets, brochures and/or other promotional materials; (b) WRCC's purchased journal, periodical or newspaper advertising; and (c) the log established and maintained by WRCC, pursuant to Section IV(E).

VI. Signatures

The individuals signing represent that they are authorized to execute this Agreement and legally bind the parties to this Agreement.

/s/

Lawrence E. Feigen, ~~Chief~~ Operating Officer
 Windsor Rosewood ~~Care~~ Center, LLC

3/10/2010

Date

Michael F. Kruley, Regional Manager
 Office for Civil Rights, Region IX
 U.S. Department of Health and Human Services

3/__/2010

Date

Appendix A: Notice of Nondiscrimination

Windsor Rosewood Care Center, LLC (WRCC), does not exclude, deny benefits to, or otherwise discriminate against any person on the basis of race, color, national origin, age, or disability (including but not limited to HIV disease), in admission to, participation in, or receipt of services or benefits under any of its programs or activities.

WRCC does not deny admission to its facility, continued residence in its facility or medically appropriate treatment (as determined by reasonable medical judgment given the current state of medical knowledge) on the basis of an applicant's or resident's HIV disease status. If WRCC staff have a question of whether admission, continued residence, or a medical procedure would benefit an applicant or resident with HIV disease, and if the admission, continued residence, or medical procedure would be indicated in the absence of such condition, WRCC staff shall consult with an infectious disease specialist or other appropriate specialist as time and circumstances permit, before making a final decision regarding, or recommendation to, the applicant or resident.

WRCC shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability (including but not limited to HIV disease), unless WRCC can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity, or would result in undue financial and administrative burdens.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Regulations of the U.S. Department of Health and Human Services issued pursuant to these statutes at 45 C.F.R. Parts 80, 84, and 91.

If you believe that you have been discriminated against on the basis of race, color, national origin, age, or disability (including but not limited to HIV disease), you may file a grievance against WRCC, and/or a member of its staff with the:

Section 504 Coordinator
Windsor Rosewood Care Center, LLC
1911 Oak Park Boulevard
Pleasant Hill, CA 94523
Voice: 925-935-6630
Fax: 925-933-0583

State Relay Operator (English): 1-888-877-5379
State Relay Operator (Spanish): 1-888-877-5381
(telephone to TTY)
State Relay Operator (English): 1-877-735-2929
State Relay Operator (Spanish): 1-888-877-5381
(TTY to telephone)

Filing a grievance with WRCC will not prevent you from filing a discrimination complaint with the:

Office for Civil Rights, Region IX
U.S. Department of Health & Human Services
90 Seventh Street, Suite 4-100
San Francisco, CA 94103

Voice: 415-437-8310
Fax: 415-437-8329
TDD: 415-437-8311

Appendix B:

HIV/AIDS Care Providers Located in Contra Costa County, California

The following list of relevant HIV/AIDS care providers, located in Contra Costa County, was taken from the Oakland (California) Eligible Metropolitan Area 2006 – 2009 Comprehensive HIV Service Plan, submitted to the Health Resources and Services Administration on December 28, 2005, pursuant to the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act:

Bay Area Addiction Research and Treatment

1313 Cutting Boulevard
Richmond, CA 94804

Bi - Bett Corporation

Federic Ozanam Center

2931 Prospect Street
Concord, CA 94520

Brookside Community Health Center

2023 Vale Road, Suite 107
San Pablo, CA 94806

Center for Human Development

391 Taylor Boulevard, Suite 120
Pleasant Hill, CA 94523

AIDS Program

Contra Costa County Health Services

597 Center Ave., Suite 200
Martinez, CA 94553

Diablo Valley AIDS Center

4090 Nelson Ave., Suite F
Concord, CA 94520

Familias Unidas

205 39th Street
Richmond, CA 94805

Family Health Toll-Free Line

597 Center Ave., Suite 365
Martinez, CA 94553

Food Bank of Contra Costa & Solano
P.O. Box 271966
Concord, CA 94527

Fremont Mission AIDS Program
P.O. Box 1733
Fremont, CA 94538

Genard AIDS Foundation
1630 North Main Street, Suite 102
Walnut Creek, CA 94596

Health, Housing and Integrated Services Network
101 Broadway Ave.
Richmond, CA 94804

Independent Living Resource
3200 Clayton Road
Concord, CA 94520

La Clinica de la Raza
Pittsburg Medical Clinic
2240 Gladstone Ave., Suite 4
Pittsburg, CA 94565

Martinez Health Center
Immunodeficiency Disease Clinic
2500 Alhambra Ave.
Martinez, CA 94553

New Connections
3024 Willow Pass Road
Concord, CA 94519

Pittsburg Community Council
1760 Chester Drive
Pittsburg, CA 94565

Richmond Health Center
100 38th Street
Richmond, CA 94804

Shelter, Inc. HIV Housing Advocacy Program
1815 Arnold Drive
Martinez, CA 94553

Appendix C:

Hospitals Located in Contra Costa County, California

**Attn: Discharge Planning
Contra Costa Regional Medical Center
2500 Alhambra Ave.
Martinez, CA 94553**

**Attn: Discharge Planning
Doctors Medical Center
San Pablo Campus
2000 Vale Road
San Pablo, CA 94806**

**Attn: Discharge Planning
John Muir Medical Center
Concord Campus
2540 East Street
Concord, CA 94520**

**Attn: Discharge Planning
John Muir Medical Center
Walnut Creek Campus
1601 Ygnacio Valley Road
Walnut Creek, CA 94598**

**Attn: Discharge Planning
Kaiser Permanente
Antioch Medical Center
4501 Sand Creek Road
Antioch, CA 94531**

**Attn: Discharge Planning
Kaiser Permanente
Richmond Medical Center
901 Nevin Ave.
Richmond CA 94801**

Attn: Discharge Planning
Kaiser Permanente
Walnut Creek Medical Center
1425 South Main Street
Walnut Creek, CA 94596

Attn: Discharge Planning
Los Medanos Community Hospital
2311 Loveridge Road
Pittsburg, CA 94565

Attn: Discharge Planning
San Ramon Regional Medical Center
6001 Norris Canyon Road
San Ramon, CA 94583-5400

Attn: Discharge Planning
Sutter Delta Medical Center
3901 Lone Tree Way
Antioch, CA 94509