

1 STATE OF ARIZONA

2 OFFICE OF THE ATTORNEY GENERAL

3 CIVIL RIGHTS DIVISION

|   |                                    |                        |
|---|------------------------------------|------------------------|
| 4 | Joanna Maung obo Sonny Maung and ) |                        |
| 5 | Isabela Choi, )                    | CRD NO. PCRD-2018-0346 |
|   | )                                  |                        |
| 6 | Complainant, )                     | CONCILIATION AGREEMENT |
| 7 | v. )                               | (Pre-finding)          |
|   | )                                  |                        |
| 8 | Bayless Health Care, )             |                        |
|   | )                                  |                        |
| 9 | Respondent. )                      |                        |
|   | )                                  |                        |

10 This Agreement is made between the Civil Rights  
 11 Division of the Arizona Attorney General's Office, (hereinafter  
 12 "the Division"); Joanna Maung, Sonny Maung and Isabela Choi,  
 13 (hereinafter "Complainants"); and Bayless Health Care, an  
 14 Arizona corporation, d/b/a Bayless Integrated Healthcare,  
 15 (hereinafter "Respondent"). A complaint of discrimination (CRD  
 16 Case Number PCRD-2018-0346), based on disability by a public  
 17 accommodation, having been filed by Complainants against  
 18 Respondent with the Division pursuant to the Arizonans with  
 19 Disabilities Act (AzDA), A.R.S. § 41-1492 et seq., the parties  
 20 have conferred and hereby voluntarily agree to and do resolve  
 21 the issues in the complaint on the following terms:

22 I

23 This Agreement will not constitute or evidence an  
 24 admission by the parties that an act or practice made unlawful  
 25 by A.R.S. § 41-1492 et seq. occurred, nor should any such  
 26 inference be drawn.

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II

Subject to the fulfillment by Respondent of each of the obligations set forth in this Agreement, the Division agrees to close complaint CRD No. PCRD-2018-0346 and Complainants agree to waive or release all claims against Respondent in any forum with respect to the matters that were alleged in the charge of discrimination numbered CRD No. PCRD-2018-0346.

III

The Division's participation in this Agreement does not reflect any judgment by the Division as to the merits of complaint CRD No. PCRD-02018-0346. The Division does not waive its right to process any other complaint against Respondent. Except as otherwise provided in this Agreement, the Division does waive its right to file a Divisional complaint against Respondent relating to the matters which were alleged in the complaint in CRD No. PCRD-2018-0346. The Division also has the right to make reasonable inquiry and investigation regarding compliance with this Agreement. The Division further has the right to enforce the Agreement through all available means, including but not limited to, the institution of litigation in any court with jurisdiction should Respondent fail to comply with any of the terms of this Agreement.

IV

1. Examples of "Auxiliary Aids and Services" include Qualified Interpreters provided either in-person or through

1 Video Remote Interpreting ("VRI") services; note takers; real-  
2 time computer-aided transcription services; written materials;  
3 exchange of written notes; telephone handset amplifiers;  
4 assistive listening devices; assistive listening systems;  
5 telephones compatible with hearing aids; closed caption  
6 decoders; open and closed captioning, including real-time  
7 captioning; voice, text, and video-based telecommunications  
8 products and systems, including text telephones ("TTYs"),  
9 videophones, and captioned telephones, or equally effective  
10 telecommunications devices; videotext displays; accessible  
11 electronic and information technology; or other effective  
12 methods of making aurally delivered information available to  
13 individuals who are Deaf or Hard of Hearing.

14 2. The term "Qualified Interpreter" means an interpreter  
15 who, via VRI service or an in-person appearance, is able to  
16 interpret effectively, accurately, and impartially, both  
17 receptively and expressively, using any necessary specialized  
18 vocabulary. Qualified Interpreters include, for example, sign  
19 language interpreters, oral transliterators, and cued-language  
20 transliterators. For purposes of this Agreement, a Qualified  
21 Interpreter must be knowledgeable with medical terminology.

22 3. The term "Patient" shall be broadly construed to  
23 include any individual who is seeking access to, or  
24 participating in, the goods, services, facilities, privileges,  
25 advantages, or accommodations of Respondent.  
26



1 Complainants or against any other person because he/she has  
2 opposed any practice reasonably believed by him/her to be  
3 unlawful under the Arizonans with Disabilities Act (AzDA),  
4 A.R.S. §41-1492 et seq., or because he/she has filed a  
5 complaint, given testimony or assistance, or participated in  
6 any manner in any investigation or proceeding under the  
7 Arizonans with Disabilities Act.

8 VIII

9 1. Within thirty (30) days of the effective date of this  
10 Agreement, Respondent shall modify its existing policy  
11 prohibiting discrimination based on an individual's disability.

12 2. Consistent with A.R.S. § 41-1492.02(G)(3), Respondent  
13 shall provide Patients and their Companions who are Deaf or  
14 Hard of Hearing any appropriate Auxiliary Aids and Services  
15 that are necessary for effective communication after making the  
16 assessment described in paragraphs VIII(3), VIII(4), VIII(5)  
17 and VIII(6) of this Agreement. Appropriate Auxiliary Aids and  
18 Services shall be provided as soon as practicable without  
19 compromising patient care.

20 3. The determination of appropriate Auxiliary Aids and  
21 Services, and the timing, duration, and frequency with which  
22 they will be provided, shall be made by Respondent in  
23 consultation with the Patient or Companion with a disability.  
24 The assessment made by Respondent shall be made regardless of  
25 how a Patient or their Companion is paying for Respondent's  
26 care and will take into account all relevant facts and

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1 circumstances, including the individual's communication skills  
2 and knowledge, and the nature and complexity of the  
3 communication at issue.

4 4. The determination of which appropriate Auxiliary Aids  
5 and Services are necessary, and the timing, duration, and  
6 frequency with which they will be provided, must be made (a) at  
7 the time an appointment is scheduled for the Patient or  
8 Companion who is Deaf or Hard of Hearing or, (b) on the arrival  
9 of the Patient or Companion who is Deaf or Hard of Hearing at  
10 Respondent's place of business, whichever is the first  
11 identified need for Auxiliary Aids and Services. In the event  
12 that the initial form of communication is not effective or  
13 circumstances change, Respondent's personnel shall reassess  
14 which appropriate Auxiliary Aids and Services, in consultation  
15 with the person with a disability, are necessary for effective  
16 communication, and provide such appropriate Auxiliary Aids or  
17 Services based on the reassessment.

18 5. In-person Qualified Interpreters.

19 A. Although the determination of whether and what  
20 Auxiliary Aids and Service is appropriate to a  
21 given situation is generally up to Respondent as  
22 informed by its assessment and the input or  
23 request of the Patient or Companion as part of a  
24 thorough evaluation of the Patient or  
25 Companion's communication needs, some  
26 circumstances may raise a rebuttable presumption

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1 that Respondent is required to provide an in-  
2 person Qualified Interpreter to Patients or  
3 Companions who rely upon such types of  
4 communications, in order to effectively  
5 communicate with those Patients or Companions.  
6 Such circumstances typically arise when the  
7 information to be communicated is particularly  
8 complex or lengthy. Such circumstances may  
9 include, but are not limited to:

- 10 i. Discussing a patient's symptoms for any  
11 diagnostic purpose, and discussing medical  
12 and psychological conditions, medications,  
13 and medical and psychological history;
- 14 ii. Explaining medical and psychological  
15 conditions, treatment options, tests,  
16 medications, surgery, and other procedures;
- 17 iii. Providing a diagnosis or recommendation for  
18 treatment;
- 19 iv. Communications immediately preceding,  
20 during, and immediately after complex  
21 medical or psychological procedures;
- 22 v. Obtaining informed consent for treatment;
- 23 vi. Providing instructions for medications,  
24 post-treatment activities, and follow-up  
25 treatments;
- 26

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1           vii. Providing mental health services, including  
2           group or individual counseling for patients  
3           and family members; or

4           viii. Discussing powers of attorney , living  
5           wills and/or complex billing, and insurance  
6           matters.

7           B. In the circumstances outlined in paragraphs  
8           VIII(5)(A)(i)-(viii) above, in order to comply  
9           with the provisions of this Agreement,  
10          Respondent must complete a thorough evaluation  
11          of the Patient or Companion's communication  
12          needs and provide an appropriate Auxiliary Aid  
13          or Service which allows for effective  
14          communication between the Patient or Companion  
15          and Respondent. The extent of the evaluation  
16          necessary to comply with the terms of this  
17          Agreement shall be based on the communication  
18          needs and methods of the individual Patient or  
19          Companion. In order to effectively evaluate the  
20          needs of the Patient or Companion who is Deaf or  
21          Hard of Hearing, Respondent shall engage in an  
22          interactive process and consult with the Patient  
23          or Companion who is Deaf or Hard of Hearing to  
24          determine what type of Auxiliary Aid or Service  
25          is needed to ensure effective communication.  
26          However, the ultimate decision as to what

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1 appropriate Auxiliary Aids and Services to  
2 provide rests with Respondent, provided the  
3 Auxiliary Aid or Service chosen results in  
4 effective communication with the Patient or  
5 Companion.

6 6. In the circumstances outlined in paragraphs  
7 VIII(5)(A)-(B) above, Respondent shall presume that an in-  
8 person Qualified Interpreter is necessary for effective  
9 communication with a Patient or Companion who relies upon such  
10 Auxiliary Aids or Services. The presumption requiring an in-  
11 person Qualified Interpreter in the above and similar  
12 situations may be overcome when as part of the thorough  
13 evaluation process undertaken with the Patient or Companion,  
14 Respondent makes the determination as required by this  
15 Agreement that another Auxiliary Aid or Service, including VRI,  
16 is appropriate and effective to communicate with the Patient or  
17 Companion.

18 7. Video Remote Interpreting ("VRI").

19 A. When using VRI services, Respondent shall ensure  
20 the VRI service used provides:

- 21 i. Real-time, full-motion video and audio over  
22 a high-speed, wide-bandwidth video  
23 connection or wireless connection that  
24 delivers high-quality video images that do  
25 not produce lags, choppy, blurry, or grainy  
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1 images, or irregular pauses in  
2 communication;

3 ii. A sharply delineated image that is large  
4 enough to display the interpreter's face,  
5 arms, hands, and fingers, and the  
6 participating individual's face, arms,  
7 hands, and fingers, regardless of his or  
8 her body position;

9 iii. A clear, audible transmission of voices;  
10 and

11 iv. Adequate training to users of the  
12 technology and other involved individuals  
13 so that they may quickly and efficiently  
14 set up and operate the VRI.

15 B. VRI shall not be used when it is not effective,  
16 for example, due to: (1) a patient's limited  
17 ability to move his or her head, hands or arms;  
18 vision or cognitive issues; or significant pain;  
19 (2) space limitations in the room; (3) the  
20 complexity of the medical or psychological issue  
21 or issues; or (4) any other time when there are  
22 indicators that VRI is not providing effective  
23 communication with a Patient or Companion.  
24 Whenever, based on the circumstances, VRI does  
25 not provide effective communication with a  
26 Patient or Companion who is Deaf or Hard of

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1 Hearing (after VRI has been provided or is not  
2 available), VRI shall not be used as a  
3 substitute for an in-person Qualified  
4 Interpreter, and an in-person Qualified  
5 Interpreter shall be provided by Respondent.  
6 When determined to be necessary by Respondent as  
7 a result of the thorough evaluation of the  
8 Patient or Companion's communication needs as  
9 part of the interactive process with the Patient  
10 or Companion, an in-person Qualified Interpreter  
11 shall be requested and provided in a timely  
12 manner as required by the provisions of this  
13 Agreement; timeliness being considered from the  
14 time it becomes evident that VRI cannot provide  
15 effective communication.

16 8. Respondent shall not rely on an adult friend or  
17 family member of the Patient or Companion who is Deaf or Hard  
18 of Hearing to interpret except: (a) in an emergency involving  
19 an imminent threat to the safety of an individual or the public  
20 where there is no interpreter available; or (b) where the  
21 Patient or Companion who is Deaf or Hard of Hearing  
22 specifically requests that the adult friend or adult family  
23 member interpret, the accompanying adult agrees to provide such  
24 assistance, and reliance on that adult for such assistance is  
25 appropriate under the circumstances. Respondent shall not rely  
26 on a minor child to interpret except in an emergency involving

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1 an imminent threat to the safety of an individual or the public  
2 where there is no interpreter available.

3 9. All appropriate Auxiliary Aids and Services required  
4 by this Agreement will be provided free of charge to Patients  
5 and Companions who are Deaf or Hard of Hearing.

6 IX

7 1. Within sixty (60) days of the effective date of this  
8 Agreement and for all new hire managers and staff members who  
9 have contact with patients, Respondent agrees that each of  
10 their owners, managers, and staff members who have contact with  
11 patients shall receive training regarding Respondent's policy,  
12 as outlined in this Agreement, for providing appropriate  
13 Auxiliary Aids and Services that are necessary for effective  
14 communication as well as requirements of the Arizonans with  
15 Disabilities Act and Americans with Disabilities Act.

16 2. The training will address the needs of Patients and  
17 Companions who are Deaf or Hard of Hearing and will include the  
18 following objectives: (a) how to promptly identify  
19 communication needs of Patients and Companions who are Deaf or  
20 Hard of Hearing, including when an in-person Qualified  
21 Interpreter is necessary and when VRI or other Auxiliary Aids  
22 and Services are appropriate and effective; (b) how to secure  
23 Qualified Interpreter services or VRI services as quickly as  
24 possible when necessary; (c) how to use, when appropriate,  
25 flash cards and/or pictographs in conjunction with any other  
26 available means of communication that will augment the

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1 effectiveness of the communication; (d) how and when to use VRI  
2 services, including how to make and receive calls; and (e) the  
3 requirements of this Agreement including, but not limited to,  
4 the requirements as outlined in section VIII.

5 3. Such training may be held at the Respondent's typical  
6 place of business or any other location, including online or  
7 computer based training. A Qualified Trainer shall conduct the  
8 training. For purposes of this Agreement, a Qualified Trainer  
9 is a person or agency that is knowledgeable about the legal  
10 requirements under state and federal disability laws and was  
11 not one of Respondent's employees involved in the acts alleged  
12 as discriminatory by the Complainants. The training shall  
13 consist of at least one hour of instruction. If there are  
14 costs associated with training, Respondent shall pay those  
15 costs. Within ten (10) days of the completion of the training,  
16 Respondent agrees to provide written notice to the Division  
17 that it has complied with the terms of this paragraph.  
18 Respondent agrees that the written notice will contain at a  
19 minimum the following: (1) confirmation that the training  
20 occurred; (2) the date, time and location of the training(s);  
21 (3) a list of the names and positions of those persons who  
22 attended the training(s); and (4) a plan to train new personnel  
23 in the future. Respondent may satisfy the requirement of  
24 identifying the attendees by attaching a copy of a registration  
25 list that includes the printed name and position of the person  
26 registering his/her attendance.

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1 X

2 The parties also agree to the following:

3 1. Respondent has agreed to pay Complainants the sum of  
4 forty thousand dollars (\$40,000) as a settlement for the  
5 matters that were alleged in the charge of discrimination  
6 numbered CRD No. PCRD-2018-0346. Respondent agrees to pay the  
7 settlement within ten (10) days of the effective date of this  
8 Agreement. Respondent will write one check to Isabela Choi for  
9 thirty-two thousand dollars (\$32,000) and one check to The  
10 Foster Group PLLC for (\$8,000), the amounts of the two checks  
11 in total being the agreed upon financial settlement of forty  
12 thousand dollars (\$40,000). The Complainants and Respondent  
13 have agreed to execute a Private Confidential Settlement  
14 Agreement and Release of which the Division is not a party. The  
15 terms of the Private Confidential Settlement Agreement and  
16 Release, other than the settlement amount of forty thousand  
17 dollars (\$40,000), are not known to the Division. The financial  
18 terms of the Private Settlement Agreement as far as they are  
19 reflected in this Agreement may be made public if the Attorney  
20 General determines that disclosure would further the purposes  
21 of the Arizona Civil Rights Act or the Arizonans with  
22 Disabilities Act. The parties acknowledge the Division does  
23 not agree to be responsible for enforcement of the Private  
24 Confidential Settlement Agreement and Release which the  
25 Division is not a party to.  
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1 This Agreement may be executed in two or more  
2 counterparts, each of which will be deemed an original and  
3 together form one Agreement. Facsimiles and pdf versions of  
4 this signed Agreement shall be deemed to be originals.

5 XVI

6 The parties represent that they have read this Agreement  
7 in its entirety, have had an opportunity to consult with  
8 counsel of their own choice, are satisfied that they understand  
9 and agree to all of its provisions, and have freely signed this  
10 Agreement without coercion.

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13 XVII

14 Each party (or person signing on behalf of a party)  
15 to this Agreement warrants and represents that they are duly  
16 and properly authorized to enter into this Agreement and that  
17 all necessary approvals have been obtained prior to the  
18 execution of this Agreement.

19 XVIII

20 This Agreement will be binding on the heirs, assigns,  
21 successors, successors-in-interest, receivers, trustees in  
22 bankruptcy, and personal representatives of the parties hereto.

23 XIX

24 This Agreement may be made public if the Attorney  
25 General determines that disclosure would further the purposes  
26

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1 of the Arizona Civil Rights Act or the Arizonans with  
2 Disabilities Act.

3  
4  
5 10/25/19  
6 Date

By Sonny Maung  
Sonny Maung  
Complainant

7  
8  
9 10/25/19  
10 Date

By Isabela Choi  
Isabela Choi  
Complainant

11  
12 Bayless Health Care, an Arizona  
13 Corporation d/b/a/ Bayless  
14 Integrated Healthcare

15 10/7/2019  
16 Date

By Justin Bayless  
Justin Bayless  
President and CEO  
Respondent

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19 STATE OF ARIZONA  
20 OFFICE OF THE ATTORNEY GENERAL  
21 CIVIL RIGHTS DIVISION

22 10/25/2019  
23 Date

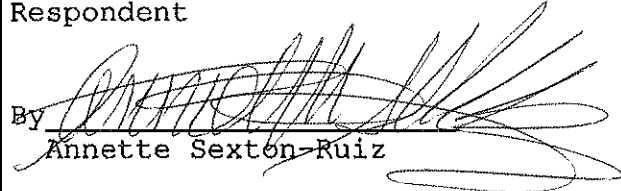
By Daniel E. Nies  
Daniel E. Nies  
Assistant Attorney General  
2005 N Central Ave.  
Phoenix, Arizona 85004

JMB

Executed copy mailed  
1 this 25 day of  
2 October, 2019, to:

3 Sonny Maung and Isabela Choi  
4 3905 East Wyatt Way  
5 Gilbert, AZ 85297  
6 Complainants

7 Justin Bayless  
8 President and CEO  
9 Bayless Health Care d/b/a Bayless Integrated Healthcare  
10 3101 N Central Ave Suite 550 Phoenix, AZ 85012  
11 Mesa, AZ 85202  
12 Respondent

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By   
Annette Sexton-Ruiz

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