STATE OF NEW JERSEY OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF LAW & PUBLIC SAFETY DIVISION ON CIVIL RIGHTS

THOMAS SNYDER and DIRECTOR OF THE NEW JERSEY DIVISION ON CIVIL RIGHTS,

DCR DOCKET NO. PG06HB-64646

ADMINISTRATIVE CONSENT ORDER

Complainants,

v.

PARK CRESCENT HEALTHCARE & REHABILITATION CENTER,

Respondent.

WHEREAS, Thomas Snyder ("Complainant" or "Snyder") filed a verified complaint with the New Jersey Division on Civil Rights ("Division") on June 13, 2014, alleging that Respondent Park Crescent Healthcare and Rehabilitation Center ("Respondent" or "Park Crescent") discriminated against him based on his disability in violation of the New Jersey Law Against Discrimination when it failed to provide him with an American Sign Language interpreter to communicate with medical personnel during his 39-day stay at Respondent's facility; and

WHEREAS, the Division conducted an investigation into the allegations of the June 13, 2014 complaint and, following that investigation, the Director of the Division issued a Finding of Probable Cause on November 26, 2014; and

WHEREAS, in the public interest, the Director was added as a complainant in the matter; and

WHEREAS, Respondent denies the allegations in the June 13, 2014 verified complaint; and WHEREAS, the parties now desire to amicably resolve the matter without the necessity of a public hearing;

IT IS, THEREFORE, on this 16 day of NOV, , 2015, ORDERED and AGREED as follows:

BACKGROUND

1. Respondent operates a licensed long-term care facility with 190 beds, located in East Orange, New Jersey. Respondent acknowledges that the facility is a place of public accommodation governed by the New Jersey Law Against Discrimination, <u>N.J.S.A.</u> 10:5-1 et seq. (the "LAD").

2. Complainant is deaf and uses American Sign Language ("ASL") as his primary means of communication.

3. After a hospital stay, Complainant was transferred to Respondent's facility on March 28, 2014, for continuing care prior to returning home. Complainant stayed in Respondent's facility for 39 days, until his discharge on May 5, 2014.

4. Complainant informed Respondent's staff that he required an ASL interpreter to effectively communicate. Respondent's staff also was informed by representatives from the hospital and from the New Jersey Division of Deaf and Hard of Hearing that Complainant requires an ASL interpreter to effectively communicate.

5. Respondent did not provide an ASL interpreter during Complainant's stay until May 5, 2014, when it did provide an ASL interpreter to review Complainant's discharge instructions. Prior to May 5, Complainant had received medical care without use of an ASL interpreter.

6. Respondent denies that it discriminated against Complainant because of his disability, and takes the position that its staff was able to effectively communicate with Complainant through

the use of hand-written notes and a communication board.

DEFINITIONS

7. The term "auxiliary aids and services" includes but is not limited to qualified interpreters on-site or through video remote interpreting (VRI) services, which may include the use of a cell phone, laptop or tablet computer; notetakers; real-time computer-aided transcription services; written materials; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or disabled by hearing loss.

8. The term "Park Crescent Personnel" means all employees, both full and part-time, and independent contractors with contracts to work on a substantially full-time basis for Park Crescent, or on a part-time basis exclusively for Park Crescent, including, without limitation, nurses, physicians, social workers, technicians, admitting personnel, billing staff, security staff, therapists, and volunteers, who have or are likely to have direct contact with Patients or Companions as defined herein.

9. The term "qualified interpreter" means an interpreter who, via an on-site appearance or through VRI service, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

10. The term "Patient" shall be broadly construed to include any individual who is seeking or receiving the goods, services, facilities, privileges, advantages, or accommodation of Park Crescent.

11. The term "Companion" means a person who is deaf and is a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.

12. "Effective Date of this Settlement Agreement" means the date of the last signature below.

EQUITABLE RELIEF

A. Prohibition of Discrimination

13. <u>Nondiscrimination</u>. Park Crescent shall provide appropriate auxiliary aids and services, including qualified interpreters, where such aids and services are necessary to ensure effective communication with Patients and Companions who are deaf. Park Crescent shall also provide Patients and Companions, who are deaf, with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of the skilled nursing facility as required by this Agreement, the LAD and the Americans with Disabilities Act ("ADA").

14. <u>Retaliation and Coercion.</u> Park Crescent shall not retaliate against or coerce in any way any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, his or her rights under this Agreement, the LAD or the ADA.

B. Effective Communication

15. <u>Appropriate Auxiliary Aids and Services.</u> Park Crescent will provide to Patients and Companions who are deaf, any appropriate auxiliary aids and services that are necessary for effective communication after making the assessment described in paragraphs 17 and 18 of this Agreement.

16. <u>General Assessment Criteria.</u> The determination of appropriate auxiliary aids or services, and the timing, duration, and frequency with which they will be provided, will be made by Park Crescent Staff in consultation with the Patient and/or Companion with a disability. The assessment made by Park Crescent Staff will take into account all relevant facts and circumstances, including, for example, the individual's communication skills and knowledge, and the nature and complexity of the communication needs at issue.

17. <u>Time for Assessment.</u> The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, must be made at the time Park Crescent learns that a deaf Patient will be using its services or on the arrival of the deaf Patient or Companion at Park Crescent, whichever is earlier. Park Crescent Personnel will perform an assessment (see paragraph 16) as part of each initial inpatient assessment and document the results in the Patient's medical chart. In the event that communication is not effective, Park Crescent Personnel will reassess which appropriate auxiliary aids and services are necessary, in consultation with the person with a disability, where possible, and provide such aid or service based on the reassessment.

18. <u>Medical Chart Label.</u> The patient's medical chart shall be conspicuously labeled (such as with a sticker, indicator, or label on the cover) to alert Park Crescent Personnel to the fact that the Patient and/or Companion is deaf or hard of hearing. The chart shall indicate the mode of communication requested by and provided to the Patient and/or Companion.

19. <u>Accommodations Liaison</u>. Park Crescent will designate at least one employee as an accommodations liaison to answer questions and provide appropriate assistance regarding immediate access to, and proper use of, the appropriate auxiliary aids and services, including qualified interpreters. The accommodations liaison will know where the appropriate auxiliary aids are stored and how to operate them and will be responsible for their maintenance, repair, replacement, and distribution. Park Crescent will circulate and post broadly within Park Crescent the name, telephone number, function, and office location of the accommodations liaison. The accommodations liaison will be designated by Park Crescent no later than 30 days following execution of this Agreement.

20. <u>Prohibition of Surcharges.</u> All appropriate auxiliary aids and services required by this Agreement will be provided free of charge to the deaf Patient and/or Companion.

21. <u>Record of Need for Auxiliary Aid or Service.</u> Park Crescent will take appropriate steps to ensure that all Park Crescent Personnel are made aware of a Patient or Companion's disability and auxiliary aid and services needed so that effective communication with such person will be achieved.

C. Qualified Interpreters

22. <u>Circumstances Under Which Interpreters Will Be Provided</u>. Depending on the complexity and nature of the communication, a qualified interpreter may be necessary to ensure effective means of communication for patients and visitors. When an interpreter is needed, the Park Crescent shall provide qualified sign language interpreters to Patients and Companions who are deaf and whose primary means of communication is sign language, and qualified oral interpreters to such Patients and Companions who rely primarily on lip reading as necessary for effective communication. Examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an interpreter include the following:

a. Discussing a patient's symptoms and medical condition, medications, and medical history upon admission to Park Crescent, which will take place within 48 hours of admission;

b. Discussing a patient's symptoms and medical condition whenever there is a significant change in the patient's medical condition, or upon request of the patient for an interpreter to assist in understanding the patient's medical condition;

c. Explaining medical conditions, treatment options, tests, medications, surgery and other procedures;

d. Providing a diagnosis and recommendation for treatment;

e. Communicating with a patient during treatment, including physical and occupational therapies, testing procedures, and during physician's rounds;

f. Obtaining informed consent for treatment;

g. Providing instructions for medications, post-treatment activities and follow-up treatments;

h. Providing mental health services, including group or individual counseling for patients and family members;

i. Providing information about blood or organ donations;

j. Discussing powers of attorney, living wills and/or complex billing and insurance matters; and

k. During educational presentations, such as nutrition and weight management programs, and CPR and first-aid training.

A qualified interpreter may not be required when generally inquiring into the patient's condition, or when discussing routine treatments or medication that have previously been explained to the patient's satisfaction.

23. Provision of Interpreters in a Timely Manner.

a. <u>Non-scheduled Interpreter Requests</u>: A "non-scheduled interpreter request" means a request for an interpreter made by a deaf Patient or Companion less than two (2) hours before the Patient's appearance at Park Crescent for examination or treatment. For non-scheduled interpreter requests, Park Crescent Personnel will complete the assessment described in paragraphs 16 and 17 above. All attempts to provide an interpreter will be made to provide an interpreter within a reasonable amount of time, from the time the request is made, provided an interpreter can be located. If no interpreter can be located, Park Crescent Personnel will take the following additional steps:

i. Park Crescent Personnel will exert reasonable efforts (which shall be deemed to require no fewer than five (5) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any interpreters or interpreting agencies already known to Park Crescent and request their services. Park Crescent shall also rely upon a list of agencies compiled by the New Jersey Division of Deaf and Hard of Hearing;

ii. Inform the accommodations liaison of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;

iii. Inform the Patient or Companion (or a family member or friend, if the Patient or Companion is unavailable) of the efforts taken to secure a qualified interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of qualified interpreters, such as contacting a qualified interpreter known to that person; and

iv. Document all of the above efforts.

b. <u>Scheduled Interpreter Requests.</u> A "scheduled interpreter request" is a request for an interpreter made two (2) or more hours before the services of the interpreter are required. For scheduled interpreter requests, Park Crescent will complete the assessment described in paragraphs 16 and 17 above in advance, and, when an interpreter is appropriate, Park Crescent will make a qualified interpreter available at the time of the scheduled appointment, provided an interpreter is available. If an interpreter fails to arrive for the scheduled appointment, upon notice that the interpreter failed to arrive, Park Crescent will immediately call the interpreter service for another qualified interpreter.

24. <u>Notice to Patients and Companions who are Deaf.</u> As soon as Park Crescent Personnel have determined that a qualified interpreter is necessary for effective communication with a deaf Patient or Companion, Park Crescent will inform the Patient or Companion (or a family member or friend, if the Patient or Companion is not available) of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. Park Crescent will provide additional updates to the Patient or Companion as necessary until an interpreter is secured.

25. <u>Other Means of Communication.</u> Park Crescent agrees that between the time an interpreter is requested and the interpreter is provided, Park Crescent Personnel will continue to try to communicate with the deaf Patient or Companion for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication.

26. <u>Restricted Use of Certain Persons to Facilitate Communication</u>. Park Crescent will not rely on an adult friend or family member of the individual with a disability to interpret except in an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available; or where the individual with a disability specifically requests that the adult friend or family member interpret, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. Park Crescent will not rely on a minor child or a patient to interpret except in an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available.

D. Telephones and Related Equipment

27. <u>Telephones in Patient Rooms.</u> Within ninety (90) days of the Effective Date of this Settlement Agreement, Park Crescent shall insure that patients who are deaf have access to appropriate communications devices in order to communicate from their rooms, which may include providing the patient with a cell phone or tablet computer.

28. <u>Televisions and Caption Decoders.</u> Within ninety (90) days of the Effective Date of this Settlement Agreement, Park Crescent will develop a policy to ensure that Patients and Companions with hearing impairments have priority use of televisions with closed captioning capabilities, or with another device (such as a laptop computer or tablet) that has the capability of viewing similar content as televisions provided in patient's rooms. Clearly stated directions for use of the closed caption capability shall be explained to the patient or included in the Patient Guide or otherwise made available in each patient room or public area containing a television with captioning capability. The directions for operating the closed caption function shall also accompany all closed caption decoders for standard television sets.

E. Notice to Community

29. <u>Policy Statement.</u> Within ninety (90) days of the entry of this Agreement, Park Crescent shall post and maintain signs of conspicuous size and print at all Park Crescent admitting stations and wherever a Patient's Bill of Rights is required by law to be posted, that sign language and oral interpreters and other auxiliary aids and services are available free of charge to people who are deaf.

30. <u>Website</u>. Park Crescent will include on its website the policy statement described in paragraph 29, above.

31. <u>Patient Handbook.</u> Park Crescent will include in all future printings of its Patient Handbook (or equivalent) and all similar publications a statement to the effect that Park Crescent will provide appropriate auxiliary aids and services free of charge to ensure effective communication with Patients and their Companions who are deaf or disabled by hearing loss.

F. Notice to Park Crescent Personnel and Physicians

32. Park Crescent shall disseminate to all Park Crescent Personnel and all physicians associated with Park Crescent a statement regarding the Park Crescent's policy for effective communication with persons who are deaf or disabled by hearing loss. This policy statement shall provide that if any staff member or associated physician believes that a patient is deaf or disabled by hearing loss and may require accommodations in order to effectively communicate should contact the accommodations liaison.

G. Training

33. <u>Training of Accommodations Liaison</u>. Park Crescent will provide mandatory training for the accommodations liaison within thirty (30) days of designation as provided in paragraph 19 of this Agreement. Such training will be sufficient in duration and content to train the accommodations liaison in the following areas:

a. to promptly identify communication needs of Patients and Companions who are deaf or disabled from hearing loss and which auxiliary aids are effective in which situations;

b. to secure qualified interpreter services as quickly as possible when necessary;

c. to encourage clinical staff members to notify Park Crescent of Patients and Companions who are deaf and disabled from hearing loss as soon as Patients schedule admissions, tests, rehabilitation, or other health care services at Park Crescent;

d. to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication);

e. how and when to use video remote interpreting services;

f. making and receiving calls through the relay service.

34. <u>Training of Park Crescent Personnel.</u> Except for affiliated physicians, who are governed by paragraph 37 of this Agreement, Park Crescent will provide mandatory annual inservice training to all Park Crescent Personnel.

a. The training will address the needs of Patients and Companions who are deaf and disabled from hearing loss and will include the following objectives:

i. promptly identify communication needs of Patients and Companions who are deaf or disabled from hearing loss;

ii. to secure qualified interpreter services or other appropriate auxiliary aid or device as quickly as possible when necessary; and

iii. to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication).

b. Such training must be provided within ninety (90) days of the Effective Date of this Agreement.

c. New employees must be trained within thirty (30) days of their hire. A screening of a video of the original training will suffice to meet this obligation.

35. <u>Training of Telephone Operators.</u> All Park Crescent Personnel who receive incoming telephone calls from the public will receive instructions by Park Crescent on using relay services to make, receive, and transfer telephone calls and will receive training generally on the existence in Park Crescent of an accommodations liaison, as detailed in paragraph 19 of this Agreement. Such training must be provided within ninety (90) days of the Effective Date of this Agreement and will be conducted annually thereafter.

36. <u>Training Attendance Sheets.</u> Park Crescent will maintain for the duration of this Agreement, confirmation of training conducted pursuant to paragraphs 33-35 of this Agreement, which will include the names and respective job titles of the attendees, as well as the date and time of the training session.

37. <u>Training of Affiliated Physicians.</u> Park Crescent will advise all affiliated physicians of its policy on the communication needs of Patients or Companions who are deaf or disabled by hearing loss and will invite all physicians who are affiliated with Park Crescent (admitting or other privileges, etc.) to the staff training.

H. Compensatory Relief for Complainant

38. Within ten (10) days of the Effective Date of this Settlement Agreement, Park Crescent will send a check in the amount of thirty-rive thousand (\$35,000) dollars made out to Complainant Thomas Snyder, representing compensation to the Complainant for the effects of the alleged discrimination suffered. The check shall be mailed to:

Carlos Bellido, Chief of Staff Division on Civil Rights 31 Clinton Street, 3rd Floor Newark, New Jersey 07102

I. Enforcement and Miscellaneous

39. Unless otherwise specified, all reports or notices to the Division required by this Consent Order will be sent via mail, parcel delivery service, or hand delivery to: Lorraine LeSter, Manager, Special Investigations Unit, New Jersey Division on Civil Rights, 31 Clinton Street, 3rd Floor, Newark, New Jersey 07102.

40. The terms of this Consent Order shall remain in effect for a period of two (2) years following the Effective Date of this Settlement Agreement.

41. It is acknowledged that Complainant and Respondent have entered into a separate General Release Agreement as part of the resolution of this matter. The Division is not a party to the separate agreement, and makes no representations with respect to that agreement. The parties acknowledge and understand that the payment due pursuant to paragraph 38 of this Agreement shall not be due until the execution by Complainant of the General Release Agreement as well as this Agreement.

42. Complainant acknowledges that the Deputy Attorney General assigned to this matter represents the Division on Civil Rights only, and not Complainant individually, and that he has been

permitted to retain counsel to represent him individually. Complainant also acknowledges that a qualified sign language interpreter has been provided to review this agreement prior to its execution.

43. The parties to this Consent Order acknowledge that for the purpose of enforcement of this Consent Order, New Jersey law shall govern the terms and provisions herein.

44. As used in this Consent Order, the plural shall include the singular and the singular shall include the plural. In addition, "or" and "and" shall be interpreted conjunctively.

45. The parties to this Consent Order represent that a person authorized to sign a document legally binding each party to its terms has signed this Consent Order with full knowledge, understanding, and acceptance of its terms.

46. This Consent Order constitutes the entire agreement between the parties with respect to its subject matter. Any addition, deletion, or change to this Consent Order must be in writing and signed by all parties to be bound by such addition, deletion, or change.

47. The parties to this Consent Order have negotiated and fully reviewed its terms. Uncertainty or ambiguity shall not, therefore, be construed against the drafter.

48. This Consent Order is executed in settlement of the allegations and potential allegations against Respondent as described above, and shall not be construed to otherwise limit the authority of the New Jersey Attorney General or the Director of the New Jersey Division on Civil Rights to protect the interests of the State of New Jersey or the people of the State of New Jersey, or limit the authority of the New Jersey Attorney General or the Division on Civil Rights to accept and fully process any future complaints filed with the State.

49. If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

50. This Consent Order shall be binding upon the parties to this agreement and their successors. In no event shall assignment of any right, power, or authority avoid compliance with the terms of this Consent Order.

51. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

52. In the event Park Crescent materially fails to comply with any provision of this Consent Order, the parties shall attempt in good faith to resolve the dispute before seeking court intervention to enforce the agreement. In the event of noncompliance, the Division shall notify Park Crescent of the specific details of the alleged noncompliance, and Park Crescent shall be afforded a fifteen (15) day period within which to cure any such noncompliance. In the event of noncompliance after the fifteen (15) day period passes, upon notice to Park Crescent the Division may move to enforce the Consent Order in a summary manner in the Superior Court of New Jersey. Upon concluding there was a material act of non-compliance with this Consent Order, the Court may grant such relief as it deems appropriate to compensate the Division for such non-compliance, including costs (with attorney's fees) incurred by the Division associated with investigating and litigating that noncompliance.

CRAIG SASHIHARA DIRECTOR OF THE NEW JERSEY DIVISION ON CIVIL RIGHTS

By: Craig Sashihara, Director

DATED: //-16-15

Jointly Approved and Submitted for Entry:

For Complainants:

By: Thomas Snyder

DATED: 10/22/15

JOHN J. HOFFMAN ACTING ATTORNEY GENERAL OF NEW JERSEY Attorney for New Jersey Division on Civil Rights

By: Vames R. Michael, DAG

DATED: 10/22/15

For Respondent:

Respondent Park Crescent Healthcare & Rehabilitation Center

en By ne: Joseph Bernfeld

Title: Administrator

DATED: 10/27/15