

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

ELIZABETH FUST, et al.

PLAINTIFFS,

v.

FIRST UROLOGY, P.S.C.

DEFENDANT.

CIVIL ACTION NO. 3:20-CV-00562-CHB

**SETTLEMENT AGREEMENT**

**I. Introduction**

1. This Settlement Agreement (“**Agreement**”) is entered into by Plaintiffs Elizabeth Fust, David Allgood, Marcus Gray, and the Center for Accessible Living, Inc. (collectively referred to as “**Plaintiffs**”) and Defendant First Urology, P.S.C. (collectively referred to as “**Defendant**” or Plaintiffs and Defendant both collectively referred to as the “**Parties**”).

2. Plaintiff filed a putative class complaint against Defendant in the federal Western District of Kentucky on August 12, 2020 including claims under Title III of the Americans with Disabilities Act, the Rehabilitation Act, and the Kentucky Civil Rights Act (hereinafter “the Lawsuit”). The Lawsuit was assigned to United States District Judge Claria Horn Boom.

3. Defendant maintains that there is no substance to the allegations and charges made against it in the Lawsuit and further maintains that it has valid defenses to all such charges and allegations, and that it has denied and continues to deny all allegations of wrongdoing asserted against it in connection with these allegations, and has disclaimed any liability with respect thereto.

4. The Parties have retained Evan Terry Associates, LLC (“**ETA**”) to perform physical barrier access and accessible medical equipment surveys at the Subject Facilities for compliance with applicable accessibility laws. The Parties agree to retain ETA for continued work as described below in connection with the Subject Facilities, with fees to be paid directly by Defendant.

5. The Parties now wish to effectuate a complete resolution of all claims, disputes, and controversies relating to Plaintiffs’ allegations against Defendant, and to resolve the litigation as follows.

## II. Definitions.

In addition to the terms defined elsewhere in the Agreement, the following terms shall have the meanings set forth below:

7. “**Access**” and “**Accessible**” mean and refer to conditions that comply with the relevant and applicable standards set forth in the disability rights laws, including the Americans with Disabilities Act as codified at 42 U.S.C. §§ 12101, *et seq.*; and the ADA Standards for Accessible Design, commonly referred to as the Americans with Disabilities Act Access Guidelines, as codified at Appendix A to 28 C.F.R. Part 36.

8. “**Accessible Medical Equipment**” means and refers to medical equipment that is accessible to and useable by patients with disabilities under the Department of Justice technical assistance guide *Americans with Disabilities Act: Access To Medical Care For Individuals With Mobility Disabilities* (2010), available at [https://www.ada.gov/medcare\\_ta.htm](https://www.ada.gov/medcare_ta.htm), and U.S. Access Board Standards for Accessible Medical Diagnostic Equipment, 82 Fed. Reg. 2810 (Jan. 9, 2017, effective Feb. 8, 2017).

9. “**Compliance Period**” shall mean six months from the date of this Agreement, or whenever all remediations under section III of this Agreement are complete to the satisfaction of ETA, whichever is later.

10. “**Effective Date**” shall mean the date this Agreement is signed by all Parties.

11. “**Subject Facilities**” shall mean the facilities located at Audubon Medical Plaza East, 3 Audubon Plaza Drive, #L10, Louisville, KY 40217; Baptist Eastpoint, 2400 Eastpoint Parkway, Suite 560, Louisville, KY 40223; Carrollton, KY, 309 11th Street, Carrollton, KY 41008; Corydon, IN, 313 Federal Drive NW, Suite 140, Corydon, IN 47112; Dupont Square South, 3920 Dupont Square South, Suite C, Louisville, KY 40207; Jeffersonville Main Office, 101 Hospital Blvd., Jeffersonville, IN 47130; La Grange, KY, 1023 New Moody Lane, Suite 202, La Grange, KY 40031; Madison, IN, King’s Daughters’ Hospital, 1373 E. SR 62, Madison, IN 47250; Mt. Washington, KY, 300 High Point Court, Mt. Washington, KY 40047; New Albany, IN, 1919 State Street, Suite 205, New Albany, IN 47150; Scottsburg, IN, 1473 N. Gardiner Street, Scottsburg, IN 47170; Seymour, IN, Schneck Medical Center, 225 S. Pine Street, Suite 130, Seymour, IN 47274; Shelbyville, KY, Jewish Hospital Shelbyville, 515 Hospital Drive, Suite 3, Shelbyville, KY 40065; Southend Office at Dixie Medical, 5120 Dixie Highway, Suite 105, Louisville, KY 40216, and any new facilities Defendant begins operations at for six months following the Effective Date.

12. “**Technical Assistance Guide**” shall mean the Department of Justice Technical Assistance Guide *Americans with Disabilities Act: Access To Medical Care For Individuals With Mobility Disabilities* (2010), available at [https://www.ada.gov/medcare\\_ta.htm](https://www.ada.gov/medcare_ta.htm).

13. “**Attachment A**” shall mean the list of facilities appended to this Agreement and the equipment, architectural, and policy changes designated for each one. Except as specified below, any conflicts between this Agreement and Attachment A are accidental, and the Agreement controls in the event of a difference.

### **III. Design and Construction of Accessible Features at the Stations**

#### **A. Accessible Medical Equipment**

14. Within 4 months of the Effective Date, Defendant shall ensure that all Subject Locations have Accessible Medical Equipment as follows.

15. At a minimum, every Subject Facility will ensure that at least 10% of the examination rooms used by First Urology are accessible in their medical equipment, policies, and architecture. Attachment A controls in the event that it identifies more than 10% of examination rooms to be made accessible.

16. Every identified accessible examination room in Attachment A (except for imaging tables, provided for below in paragraph 17) will be provided with a) an accessible examination table with removable rails and b) one set of elements to stabilize and support a person during transfer and while on the table, to include the following: security straps; a wedge; pillows and/or rolled up towels/sheets.

17. All imaging tables will be accessible either as built, or accessible with the use of a patient lift as determined through examination by ETA. Rails and stability materials will be provided to the extent they are available and can be used with the imaging equipment without altering or interfering with the imaging services being provided.

a. The CT and x-ray equipment at the Dupont Square South, Jeffersonville, and 5120 Dixie Highway locations have been examined by an expert and found to be either sufficiently accessible on their own, or sufficiently accessible when paired with an existing portable patient lift on site.

i. Defendant will continue to provide portable patient lifts and associated training (see below) at these sites so long as this equipment is used.

A. Defendant will instruct employees who will be using the portable patient lift for transfers at the Dupont Square South, Jeffersonville, and 5120 Dixie Highway locations that a transfer to the supine position on imaging equipment is safer than placing the patient in a seated position on the side of the imaging table.

B. Defendant will instruct employees who will be using the portable patient lift for transfers to CT tables that it may be necessary to raise the CT table to a higher position and to approach the table from the end so that the base of the portable patient lift can wrap around the end of the CT table.

ii. The existing ultrasound equipment at these locations is portable and will be used in accessible rooms with accessible exam tables and related equipment.

b. If additional imaging equipment is provided by Defendant to its patients at these or any other locations, Defendant will ensure that this equipment is accessible, as per

the U.S. Access Board Standards for Accessible Medical Diagnostic Equipment, 82 Fed. Reg. 2810 (Jan. 9, 2017, effective Feb. 8, 2017); however:

- i. If no such accessible equipment is available or creates a fundamental alteration or undue burden per 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii), Defendant will ensure that a patient lift is available to provide accessibility.
- ii. Defendant will replace existing equipment that is not height-adjustable at the end of its usable life with accessible equipment that is height-adjustable, to the extent such equipment is available and does not create a fundamental alteration or undue burden per 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii), fits First Urology's existing imaging rooms, and is compliant with then-existing ADA standards. In the event such equipment cannot be found, Defendant will continue to ensure that patient lifts are available and that use of such lifts ensures adequate accessibility.

18. To assist in transfers to examination equipment, every Subject Facility will make available to patients who need them for exam table access a) a transfer board, and b) except as provided above in paragraph 17 for imaging equipment, a patient lift. The patient lift may be made available through ownership, borrowing from a co-located facility, moving an existing lift from one location to another, or renting a lift, so long as appointments for patients with disabilities are scheduled in an equivalent time frame as other comparable appointments at that location.

19. Every Subject Facility with any commode chairs will make available a bariatric commode chair. Any future commode chairs purchased must be accessible bariatric commode chairs.

20. Every Subject Facility with any urological chairs will make available an accessible urological chair. Any future urological chairs purchased must be accessible urological chairs.

## **B. Architectural Access**

21. Within 4 months of the Effective Date, Defendant shall ensure that all examination spaces in the Subject Locations comply in their architecture, room layouts, and clear floor space with the Access Laws and Technical Assistance Guide. Specific architectural access problems identified by ETA are listed in Attachment A.

22. After completion of any and all work done in connection with accessible features at the Subject Facilities, Defendant shall maintain in the Subject Facilities (or require that any related owners, operators, lessors, and lessees of the Subject Facilities maintain) those accessible features in operable working condition in accordance with 28 CFR § 35.133 during the Compliance Period. First Urology will retain ultimate responsibility to ensure accessible features at all facilities where it does business.

### C. Policies and Training

23. Within 3 months of the Effective Date, Defendant shall ensure that all Subject Locations are covered by appropriate policies as follows. To the extent that any policy document conflicts with any of the terms negotiated by the parties as to the subject matter in the agreement, the terms of the settlement agreement and Attachment A will control.

- a) Defendant avows that it already does, and will continue to, provide reasonable assistance to enable people with disabilities to receive medical care, including that, unless the patient lacks decisional capacity, no patient with a disability must bring in outside help, regardless of degree of disability.
- b) Draft and implement new policies or revise existing policies to ensure to make Defendant compliant with 2010 DOJ/HHS Guidance Access to Medical Care For Individuals With Mobility Disabilities, including provisions which will:
  - i) reflect ADA standards regarding non-discrimination and include a grievance procedure;
  - ii) require posting a copy of the non-discrimination policy in each location's patient waiting room/lobby and provide copies to current or prospective patients upon request or upon any current or prospective patient, patients' family members, and patients' caregivers' inquiry about disability accommodations;
  - iii) require that the scheduling of patients needing accessible rooms or medical equipment, and the attendant training of scheduling staff, include a script for use by its schedulers to ask patients about their accessibility needs when scheduling appointments in person or over the telephone (if Defendant offers online appointment scheduling in the future, it will do so via a website that complies with the Web Accessibility Guidelines (WCAG) then in force, and will ensure that appointments can be scheduled in accessible rooms with accessible equipment in the same way that patients without disabilities are able to schedule);
  - iv) require that while waiting times at Defendant's facilities vary by location, each location will schedule appointments for patients with disabilities in a similar time frame as appointments for non-disabled patients at that location;
  - v) require that Defendant indicate in individual patient records whether the individual is someone who has accessibility needs;
  - vi) require the use of ADA-compliant exam rooms and equipment for patients with mobility disabilities, designated by a sticker or symbol on the door and/or door signs; and
  - vii) address maintenance of accessible equipment and ADA-compliant spaces (both condition and placement in the room, including how to measure a room and a path of travel for clear floor space) through policies, training, and a written list of room-specific requirements for each location regarding placement of exam tables and removal of moveable equipment in the room which obstructs clear floor space.

24. Within 4 months of the Effective Date, Defendant shall ensure that all affected staff at all Subject Locations are trained upon hire and annually thereafter as to:

- a. Patient scheduling and recordkeeping as described in the policy section above;
- b. Maintenance of accessible equipment and ADA-compliant spaces as described in the policy section above;
- c. In-person, hands-on patient lifting and transferring performed by Brad Krueer of Southern Indiana Rehabilitative Hospital (“SIRH”), or another SIRH employee with verifiable expertise in safe patient handling. After the close of the Compliance Period, Defendant may have an internal staff member trained, and verified as competent, by an SIRH staff person, or other person with expertise in safe patient handling so that Defendant’s staff person may conduct future training. Defendant will consult with Plaintiffs about an appropriate training for this role.

25. Defendant will designate each of its four Area Managers, each of whom has responsibility for managing approximately 4-5 locations, as a point person responsible for implementing and overseeing policies/training and being available to answer employee questions. Defendant will also designate an appropriate individual from its administration to assist with these items.

#### **D. Compliance**

26. Defendant shall provide proof of compliance with all terms above via copies of equipment receipts, inventory lists, policies, and sign-in sheets for trainings. Where this proof consists of documents, such may be provided in a single packet within 6 months of the effective date of the agreement.

27. All policies developed pursuant to this agreement shall be submitted to ETA for review and comment, with final approval by the Parties during the Compliance Period, which approval shall not be unreasonably withheld by Plaintiffs. At a minimum, the policy shall contain the provisions required in the draft policy in Attachment B.

28. ETA shall assess compliance with the architectural changes required in Attachment A (except moving very small moveable equipment like trash cans) via a virtual re-review. The parties may agree to substitute in-person review by a mutually agreeable party with sufficient expertise. Proof of performance by third parties will be provided by Defendant during times it operates out of facilities that it co-ops/does not own.

29. Defendant may comply with the provisions of this agreement either directly or by renting, leasing, or borrowing qualifying equipment and architecture as applicable. First Urology will provide memoranda of understanding for any equipment it plans to use but does not own.

30. In the event a third-party owner, operator, lessor, or lessee fails to remediate equipment, architecture, or policies at a co-opted facility where First Urology owns neither the space nor equipment, First Urology will cease its operations at that facility.

31. In the event First Urology opens a new location during Compliance Period, all conditions there shall comply with this Agreement, consistent with applicable ADA requirements at the time.

32. Defendant will notify Plaintiffs' counsel of any accessibility complaints received from patients and potential patients/visitors during the Compliance Period.

33. The sentence "First Urology failed to correct its unlawful policy even after receiving three letters from Ms. Fust and her attorney, asking for the policy to be changed" will be removed from the websites/posts at the following links:

- a. [First Urology Sued for Discriminatory Policy | CALKY \(iglouhost.com\)](http://iglouhost.com)
- b. [Medical Practice Sued for Discriminatory Policy That Jeopardizes Patients with Disabilities - Disability Rights Advocates \(dralegal.org\)](http://dralegal.org)
- c. [Fust v. First Urology - Disability Rights Advocates \(dralegal.org\)](http://dralegal.org)

#### **E. Dispute Resolution**

34. Any disputes arising from this Agreement shall be resolved according to the following procedure:

- a. Notification in Writing: Counsel for each Party shall notify counsel for the other Party in writing of any perceived non-compliance by either Party.
- b. Meet and Confer: Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith, within ten (10) business days after a written notification of a dispute is raised by either Party to discuss and try to resolve such dispute.

35. If the dispute is not resolved after sixty (60) days of meet and confer efforts between the Parties, any Party may take any action to enforce the terms of the settlement in accordance with applicable law.

#### **F. Dismissal**

36. The Parties hereby agree to enter into a Stipulation of Dismissal of the lawsuit, in accordance with Federal Rule of Civil Procedure 41(a)(1)(A)(ii), within five (5) days of the signing of the Agreement by all Parties. Plaintiffs shall file the stipulation with the Court immediately after.

37. The District Court shall retain jurisdiction over this matter to enforce this Agreement as provided above and for determination and award of attorneys' fees and costs, if necessary.

38. The Agreement shall, for all purposes, be governed by, construed, and enforced in accordance with federal law.

**G. Attorneys' Fees and Costs**

39. Plaintiffs have not yet provided Defendant a fee demand. However, in an effort to resolve this case and as part of this Agreement, Defendant has agreed to pay Plaintiffs' reasonable attorneys' fees. Upon the execution of this agreement, the Parties agree to make reasonable, good faith efforts to negotiate the amount of Plaintiffs' reasonable attorneys' fees, litigation expenses, and costs relating to the federal litigation to which Plaintiffs' counsel seeks reimbursement by Defendant, subject to Defendant's right to litigate any question as to the amount of those fees after said negotiation efforts.

40. Plaintiffs' fee demand will not include any time spent on *ex parte* communications with Evan Terry Associates in January and February 2021. Plaintiffs, not Defendant, will pay ETA for that time.

41. If agreement has not been reached within 90 days of Plaintiffs' counsel submitting the time records to support their claim for fees and costs, the fee matter may, upon agreement of the Parties, be submitted to a mutually agreeable private mediator. In the event the Parties retain a mediator, the mediator's fees will be equally split between the Parties. If the Parties still cannot reach an agreement, Plaintiffs can thereafter apply to the District Court for determination and award of attorneys' fees and costs pursuant to 42 § U.S.C. 12205.

**H. Entire Agreement**

42. This Agreement contains all the agreements, conditions, promises, and covenants among Plaintiffs and Defendant regarding matters set forth in it. No representations, warranties, or promises have been made or relied upon by any party hereto, other than those contained herein. It supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

**I. Amendment or Modification**

43. The Agreement may be modified only by means of a superseding written agreement, signed by the Parties.

**J. Execution**

44. The Agreement may be executed in counterparts. All such counterparts taken together shall be deemed to constitute one and the same Agreement.

45. The Agreement shall become effective when signed by all Parties.

**K. Miscellaneous**

46. This Agreement shall be binding upon, and inure to the benefit of the Parties, their respective heirs, executors, representatives, successors, and assigns.



47. In the event that any portion of the Agreement is determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect, and such invalid or unenforceable provision shall automatically be deemed rewritten to the minimal extent necessary to eliminate such invalidity or unenforceability.

48. The delay or failure to enforce or seek enforcement of any right under this Agreement shall not constitute or be construed as: (a) a waiver of such rights or any other rights; (b) a waiver of any remedy to enforce such rights or any other rights; or (c) acquiescence in any default.

**L. Communications to Plaintiffs and Defendant.**

49. Unless otherwise indicated in the Agreement, all notices or communications required by this Agreement shall be in writing by email and certified mail addressed as follows, unless counsel for other Party notifies counsel for the other Party in writing of any change:

a. To Plaintiffs' Counsel:

Rebecca Serbin  
Disability Rights Advocates  
655 Third Ave., 14<sup>th</sup> Floor  
New York, NY 10017  
Office: (212) 644-8644  
rserbin@dralegal.org

Michele Henry  
Craig Henry PLC  
401 West Main Street, Suite 1900  
Louisville, Kentucky 40202  
Office: (502) 614-5962  
mhenry@craighenrylaw.com

b. To Defendant's Counsel:

Caitlyn M. Barnes, Esq.  
Stites & Harbison PLLC  
400 West Market Street, 18th Floor  
Louisville, KY 40202-3352  
Office: (502) 681-0372  
cbarnes@stites.com

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

CENTER FOR ACCESSIBLE LIVING, INC.

DATED: July 20, 2022

By: <sup>DocuSigned by:</sup>  
Melanie Piazza  
2A700D113259489...  
Name: Melanie Piazza  
Title: Executive Director

DATED: July 20, 2022

By: <sup>DocuSigned by:</sup>  
Elizabeth Fust  
A149E3FEC9DF433...  
Name: Elizabeth Fust

DATED: July 20, 2022

By: <sup>DocuSigned by:</sup>  
David . Y. Allgood  
9182D2DDE1554D3...  
Name: David Allgood

DATED: July 20, 2022

By: <sup>DocuSigned by:</sup>  
Marcus Gray  
B656804FEDF04A6...  
Name: Marcus Gray

FIRST UROLOGY, P.S.C.

DATED: July 21, 2022

By: <sup>DocuSigned by:</sup>  
Michael Shannon  
3810338F0B2D400...  
Name: Michael Shannon  
Title: CEO

Attorneys for Plaintiffs:

DATED: July 21, 2022 \_\_\_\_\_

DocuSigned by:  
By: Rebecca Serbin  
111222FBACAE4F6...  
Rebecca Serbin  
Disability Rights Advocates  
655 Third Ave., 14<sup>th</sup> Floor  
New York, NY 10017

DATED: July 25, 2022 \_\_\_\_\_

DocuSigned by:  
By: Michele Henry  
5E939E548046483...  
Michele Henry  
Craig Henry PLC  
401 West Main Street, Suite 1900  
Louisville, Kentucky 40202

Attorneys for Defendant:

DATED: July 21, 2022 \_\_\_\_\_

DocuSigned by:  
By: Caitlyn M. Barnes  
3A3DAB9470314FE...  
Caitlyn M. Barnes, Esq.  
Stites & Harbison PLLC  
400 West Market Street, 18th Floor  
Louisville, KY 40202-3352

# **ATTACHMENT A**

**APPENDIX A- SETTLEMENT TABLE**

<b>Facility Name (asterisks denote “co-opted, shared space”; infinity signs denote locations with imaging)</b>	<b>Equipment to be Purchased or Relocated from Excess Equipment at other First Urology Facilities (lifts addressed by main Settlement Agreement)</b>	<b>Architectural Notes/accessibility needs noted in ETA reports</b>
Audubon Medical Plaza East (9 examination rooms; 5 rooms surveyed)	<ul style="list-style-type: none"> <li>Relocate accessible examination table to Exam 9</li> </ul>	<ul style="list-style-type: none"> <li>Use Exams 5 and 9; relocate accessible table to Exam 9</li> <li>Remove moveable equipment from Exam Room 5 to ensure clear transfer space</li> </ul>
Baptist Eastpoint Hospital* (3 examination rooms; 1 room surveyed)		<ul style="list-style-type: none"> <li>Identify another compliant exam room</li> </ul>
Carrollton, KY* (3 examination rooms; 3 rooms surveyed)	<ul style="list-style-type: none"> <li>One accessible examination table per accessible examination room</li> <li>One portable transfer board with gait belt</li> </ul>	<ul style="list-style-type: none"> <li>Use Exam 4; remove biohazard container and trash can from room</li> </ul>
Corydon, IN (4 examination rooms)		<ul style="list-style-type: none"> <li>Use Exam 1 with the accessibility modifications noted in the ETA report: moveable equipment to be removed to ensure clear space next to table for transfer</li> <li>Use larger side door to enter Exam 1 when accessible entrance needed</li> </ul>

<b>Facility Name</b> <b>(asterisks denote “co-opted, shared space”;</b> <b>infinity signs denote</b> <b>locations with imaging)</b>	<b>Equipment to be</b> <b>Purchased or Relocated from Excess Equipment at</b> <b>other First Urology Facilities (lifts addressed by</b> <b>main Settlement Agreement)</b>	<b>Architectural Notes/accessibility needs noted</b> <b>in ETA reports</b>
Dupont Square South <sup>∞</sup> (33 examination rooms in 3 pods, 3 separate imaging rooms; 16 rooms surveyed)	<ul style="list-style-type: none"> <li>• When existing X-ray and CT tables are replaced, accessible equipment will be used as per main Settlement Agreement; until then, a portable patient lift will be kept on site to make this equipment accessible</li> <li>• Bariatric commode chair</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exams 21, 24, 25, and 26; move an accessible table into Exam 25</li> <li>• Remeasure for table moved against wall in Exam Room 24</li> </ul>
Jeffersonville Main Office <sup>∞</sup> (21 examination rooms, 3 imaging rooms; 9 rooms surveyed)	<ul style="list-style-type: none"> <li>• When existing X-ray and CT tables are replaced, accessible equipment will be used as per main Settlement Agreement; until then, a portable patient lift will be kept on site to make this equipment accessible</li> <li>• One accessible table for continence center</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exams 5 and 10, Procedure Room 3, Ultrasound Room 1, CT Room 2 (remove moveable items and equipment to ensure adequate transfer and turning space)</li> </ul>
King’s Daughters Hospital, Madison, IN (5 examination rooms; 4 rooms surveyed)	<ul style="list-style-type: none"> <li>• One portable transfer board with gait belt</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exam 3</li> </ul>
La Grange, KY (4 examination rooms; 1 room surveyed)	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exam 3</li> </ul>
Mt. Washington, KY* (4 examination rooms; 4 rooms surveyed)	<ul style="list-style-type: none"> <li>• One accessible examination table</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exam 12; remove trash can to ensure adequate floor space</li> </ul>

<b>Facility Name</b> <b>(asterisks denote “co-opted, shared space”;</b> <b>infinity signs denote</b> <b>locations with imaging)</b>	<b>Equipment to be</b> <b>Purchased or Relocated from Excess Equipment at</b> <b>other First Urology Facilities (lifts addressed by</b> <b>main Settlement Agreement)</b>	<b>Architectural Notes/accessibility needs noted</b> <b>in ETA reports</b>
New Albany, IN (8 examination rooms; 2 rooms surveyed)	<ul style="list-style-type: none"> <li>• Replace door hardware for Exams 2 and 3</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exams 2 and 3: push exam tables sideways against back wall; remove moveable equipment</li> <li>• Exchange door hardware in both rooms</li> </ul>
Schneck Med. Ctr., Seymour, IN* (6 examination rooms, one procedure room; 4 rooms surveyed)	<ul style="list-style-type: none"> <li>• One portable transfer board with gait belt</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exams 1 and 5; remove moveable equipment from Exam 1; Exam 5: push adjustable height table against wall and remove moveable equipment</li> </ul>
Scottsburg, IN* (7 examination rooms; 4 rooms surveyed)	<ul style="list-style-type: none"> <li>• One accessible examination table</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exam 3; confirm removal of fixed shelf and moveable cabinet</li> </ul>
Shelbyville, KY* (2 examination rooms; 1 room surveyed)	<ul style="list-style-type: none"> <li>• One accessible examination table (either through repair or purchase)</li> </ul>	<ul style="list-style-type: none"> <li>• Identify another compliant exam room</li> </ul>
Southend Office at Dixie Medical, 5120 Dixie Highway, Suite 105, Louisville, KY 40216 (10 examination rooms; 3 rooms surveyed;)	<ul style="list-style-type: none"> <li>• When existing X-ray and CT tables are replaced, accessible equipment will be used as per main Settlement Agreement; until then, a portable patient lift will be kept on site to make this equipment accessible</li> </ul>	<ul style="list-style-type: none"> <li>• Use Exam Room 3, Procedure Room 4, or Procedure Room 8</li> <li>• Relocate trash can in pull side door maneuvering clearance of Exam Room 3</li> <li>• Patients with disabilities who require an ultrasound will be seen in Exam Room 3 or Procedure Rooms 4 or 8, and ultrasound equipment will be taken into that room</li> </ul>

# **ATTACHMENT B**



<b>PATIENTS WITH DISABILITIES: ADA ACCESSIBILITY POLICY</b>	
	Origination Date: _____, 2022

**I. Policy**

It is the policy of First Urology to provide equal access to safe and effective healthcare services for all patients in accordance with relevant and applicable standards under Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*, (ADA) and/or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*, the regulations promulgated thereto, and the 2010 DOJ/HHS Guidance Access to Medical Care For Individuals With Mobility Disabilities. This includes providing reasonable modifications that will enable with people with disabilities to receive medical care.

**II. Purpose and Scope**

This policy is designed to establish and maintain:

- Specific procedures and requirements for providing equal access to medical equipment including Accessible Medical Equipment and examination room access for patients with disabilities which are free from Access barriers; and
- Consistent practices in clinic and outpatient services for lifting, positioning, or transferring any patients with disabilities where medical procedures, examination, or treatment require it.

This policy addresses both existing conditions and new construction and is designed to comply with all applicable accessibility laws and regulations.

**III. Non-Discrimination**

First Urology is committed to providing services that are free of discrimination against individuals with disabilities. Accordingly, First Urology strictly prohibits discrimination against its patients with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations it provides.

**IV. Grievances and Complaint Resolution Procedure**

Current or prospective patients, patients' family members, and patients' caregivers may file a written complaint with First Urology regarding its provision of services and accessibility of facilities and equipment for individuals with disabilities. Current or prospective patients, patients' family members, and patients' caregivers making verbal complaints will be provided a copy of this policy explaining that a complaint must be filed in writing with any one of First Urology's ADA Coordinators, who include: Mike Shannon, CEO ([mshannon@1sturology.com](mailto:mshannon@1sturology.com)), [need to fill in other Area Manager names & email addresses]; or First Urology, Attn: ADA Coordinator, 101 Hospital Blvd., Jeffersonville, IN 47130. The complaint must include the complaining individual's name and contact information. The complaining individual shall not be retaliated against for making such a complaint.

Upon receipt of such a complaint, First Urology will promptly review and, if necessary, investigate the complaint within a reasonable timeframe. First Urology will then promptly notify the complaining individual about the outcome of its review and/or investigation. First Urology will provide written updates on the status of this review and/or investigation to the complaining individual every 30 days until it is complete. If an individual wishes to appeal First Urology's decision, it may do so in writing, and First Urology will provide its response within ten business days.

For individuals with disabilities who require it, alternative means for filing a complaint or appeal that is otherwise required to be made in writing under this procedure will be made available upon request to First Urology's ADA coordinators identified above.

First Urology will retain any documents and files related to such a complaint will be retained for at least one (1) year.

A copy of Sections I, II, III, and IV of this Policy shall be posted in plain sight in the reception area or other designated common area to inform patients and visitors of First Urology's anti-discrimination policy and grievance/complaint resolution procedure. A copy of this policy in its entirety shall be made available to patients upon request or upon any patient inquiry about disability accommodations.

Any copies required to be made available to patients under this policy will be made available in alternative formats, such as audio/large print, to individuals with disabilities who require it.

## V. Definitions

- “**Access**” and “**Accessible**” mean and refer to conditions that comply with the relevant and applicable standards set forth in applicable disability rights laws, including the Americans with Disabilities Act as codified at 42 U.S.C. §§ 12102, *et seq.*; and the ADA Standards for Accessible Design, commonly referred to as Americans with Disabilities Act Access Guidelines, as codified at Appendix A to 28 C.F.R. Part 36.
- “**Accessible Medical Equipment**” means and refers to medical equipment that is accessible to and useable by patients with disabilities under the Department of Justice Technical Assistance Guide *Americans with Disabilities Act: Access To Medical Care For Individuals With Mobility Disabilities* (2010), available at [https://www.ada.gov/medcare\\_ta.htm](https://www.ada.gov/medcare_ta.htm), and U.S. Access Board Standards for Accessible Medical Diagnostic Equipment, 82 Fed. Reg. 2810 (Jan. 9, 2017, effective Feb. 8, 2017).
- “**Technical Assistance Guide**” shall mean the Department of Justice Technical Assistance Guide *Americans with Disabilities Act: Access to Medical Care for Individuals with Mobility Disabilities* (2010), available at [https://www.ada.gov/medcare\\_ta.htm](https://www.ada.gov/medcare_ta.htm).

## VI. ADA Coordinators

First Urology's four Area Managers will each serve as one of the practice's designated ADA Coordinators. They are responsible for implementing and overseeing policies and employee training under this policy, as well as for answering any employee questions. First Urology's CEO is also a designated ADA Coordinator and available to assist with this policy and any ADA public accommodation items.

## VII. Determining Need for Accommodation; Scheduling and Wait Times

As part of the scheduling and registration process, First Urology employees who are responsible for patient scheduling and registration must ask patients whether any disability-related accommodations and/or any assistance may be needed by following the process in **Appendix A** to this policy. First Urology employees will collect this information as part of the scheduling process by consulting with each patient when scheduling an appointment to determine whether any disability-related accommodation(s) or assistance may be needed. First Urology will furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

First Urology will ensure that Accessible Medical Equipment and rooms are made available for patients who need them during their appointments. General accommodation categories may include, for example, use of a physically accessible patient room, accessible medical equipment such as an accessible exam table, use of a Hoyer lift, gait belt, or transfer board, or rails and other stabilizing equipment.

While waiting times at First Urology's facilities vary by location, each location will schedule appointments for patients with disabilities in a similar time frame as other appointments at that location.

If First Urology offers online appointment scheduling in the future, it will do so via an accessible website and will ensure that appointments can be scheduled in accessible rooms with accessible equipment in a similar way that patients without disabilities are able to schedule.

Employees responsible for scheduling and determining accommodation needs will receive training on these requirements at the time of hire and annually.

## **VIII. Recordkeeping**

Employees must document in each patient's paper and electronic health records the type of disability-related accommodation(s) and assistance needed and what disability-related accommodations were previously provided to patients. Charting and recordkeeping must be done so that disability-related accommodations can be determined throughout the visit and referred for purposes of scheduling and subsequent visits. Employees responsible for recordkeeping will receive training on these requirements at the time of hire and annually.

## **IX. Access and Accommodations**

### **A. Assistance with Transfers**

To assist in transfers to examination equipment, First Urology will train employees who may be tasked with assisting with patient transfers on use of Hoyer lifts and other transfer equipment. Training will be conducted at the time of hire and annually.

First Urology will also make the following equipment available to patients with disabilities who need it for exam table access: (a) a transfer board and gait belt; and (b) a Hoyer lift. The Hoyer lift for examination tables may be made available by First Urology through ownership, borrowing from a co-located facility, moving an existing lift from one location to another, or renting a lift.

### **B. Accessible Rooms and Equipment**

Accessible rooms are those that comply in their architecture, room layouts, and clear floor space with Access Laws, including the ADA Technical Assistance Guide. First Urology will ensure that at least 10% of the examination rooms it uses at each location where it operates are Accessible in their medical equipment, policies, and architecture during the periods it uses those examination rooms. These exam rooms will be designated at each location by a sticker or symbol on the door and/or door signs and reserved for patients with accessibility requirements. A list of First Urology's accessible exam rooms at the locations where it currently operates is attached to this Policy as **Appendix B**, along with requirements for preparing those exam rooms for patients with disabilities. First Urology employees are responsible for maintaining the accessibility of these rooms when used by patients with accessibility needs.

Accessible exam rooms must provide a compliant height-adjustable examination table with removable rails, as well as one set of elements to stabilize and support during transfer and while on the table, including: security straps, a wedge, and pillows/rolled up towels or sheets. Accessible exam rooms must also be free of movable equipment that may obstruct required clearances, such as interior door clearance, maneuvering clearance, wheelchair transfer clearance, wheelchair turning space, and wheelchair passage width. When in use by a patient with disabilities, movable equipment in Accessible rooms must be relocated to an assigned location or alcove. Examples of types of objects that can become barriers to accessibility include, but are not limited to: trash cans and carts; linen hampers; clinical & procedural carts; hallway stored items such as IT equipment; chairs and end tables; and cleaning equipment & supplies.

### **C. Imaging Equipment**

All imaging tables will either be accessible as built, or accessible with the use of a patient lift. Rails and stability materials will also be provided to the extent they are commercially available and can be used with the imaging equipment without altering or interfering with the imaging services being provided. The requirements for removal of barriers that apply to exam rooms also apply to imaging rooms.

### **D. Commode and Urological Chairs**

At any facility where First Urology provides or uses commode chairs, it will also make available a bariatric commode chair to its bariatric patients. At any facility where First Urology provides or uses urological chairs, it will also make available an accessible urological chair.

### **E. Maintenance of Accessible Features**

First Urology will maintain Accessible Medical Equipment in working order and maintain facility features required to provide Access to individuals with disabilities. Maintaining facility features will include arranging a room to be accessible for a patient visit as necessary, such as by temporarily removing movable objects to achieve clear floor space when needed and how to measure a room if needed. Isolated or temporary interruptions in access due to maintenance and/or repair of accessible features may occur, however, and alternative provisions shall be made to serve First Urology patients.

## **X. Employee Training**

Employees responsible for scheduling, providing accommodations, effective communication, and maintaining Accessibility will be trained upon hire and annually in accordance with this policy.

Additionally, employees responsible for assisting with patient transfers will receive training at the time of hire and annually about proper transfer techniques, including use of a Hoyer lift and other transfer equipment.

Regarding use of a Hoyer lift, training will include instruction that: a transfer to the supine position on imaging equipment is safer than placing the patient in a seated position on the side of the imaging table; and it may be necessary to raise an imaging table, if possible, to a higher position and to approach the table from the end so that the base of the Hoyer lift can wrap around the end of the CT table.

Initially, annual training shall be provided by a representative of Southern Indiana Rehabilitative Hospital. Subsequently, First Urology will train an internal staff member to provide future training on all elements of this policy so that they can train other First Urology employees both at the time of hire and annually. First Urology will promulgate policies as necessary and training will include maintaining Accessible features, including measuring a room, arranging a room to be Accessible, and arranging a route to be Accessible.

## APPENDIX A

### Determining Needed Disability Related Accommodations

When determining whether or not a patient needs disability-related accommodations, employees should ask questions to get information about the patient's functional needs at the time of scheduling:

- “Do you need any disability-related accommodations or assistance?”
- “Do you need any accommodations or assistance related to a disability?”

Patients who have existing disabilities will generally understand this question. Most will be able to answer without an explanation. Many patients will not mention the accommodations they need if you ask only about the need for “assistance.”

Some patients who are newly disabled such as those who develop disabilities due to aging may not understand what an accommodation is. For these patients, it may be helpful to use examples such as:

- Will you need:
  - assistance getting onto the equipment?
  - an exam table that lowers?
  - assistance getting undressed?
  - assistance with hearing clearly?
  - assistance finding the department or doctor's office? or
  - assistance reading or filling out forms?
- Another approach is to use questions that relate to the functional limitations to identify the accommodation needs, such as:
  - “Do you have difficulty standing or walking?”
  - “Do you use a cane, scooter or wheelchair?”
  - “Do you have difficulty seeing printed materials or forms?”
  - “Do you use a hearing aid, or have difficulty hearing clearly?”
  - “Do you need an American Sign Language or other interpreter to communicate during your appointment?”

Various accommodations may be necessary for specific situations and it is important to understand what a person needs. To understand this, employees must communicate directly with the patient unless it is not possible to do so.

Employees who are responsible for scheduling and asking such questions must note accommodation needs at the time scheduling and coordinate with other First Urology staff and/or interpretation providers in advance of the appointment to prepare for and provide appropriate accommodations.

**APPENDIX B**

**Maintaining Designated Accessible Exam Rooms**

Accessible exam rooms will be designated and maintained as Accessible at First Urology’s locations as follows:

<b>FACILITY</b>	<b>EXAM ROOMS</b>	<b>ROOM-SPECIFIC REQUIREMENTS</b>
<b>Audubon Medical Plaza East</b> (3 Audubon Plaza Dr., #L10)	Exam 5 and Exam 9	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space.</li> <li>- Ensure accessible tables remain in each room.</li> </ul>
<b>Baptist Eastpoint</b> (2400 Eastpoint Pkwy., Suite 560)	<b>TBD</b>	<b>TBD</b>
<b>Carrollton, KY</b> (309 11 <sup>th</sup> St.)	Exam 4	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space.</li> </ul>
<b>Corydon, IN</b> (313 Federal Drive NW, Suite 140)	Exam 1	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space; use larger side door to enter Exam 1 when needed</li> </ul>
<b>Dupont Square South</b> (3920 Dupont Square South, Suite C)	Exam 21, Exam 24, Exam 25, Exam 26	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space.</li> </ul>
<b>Jeffersonville, IN</b> (101 Hospital Blvd.)	Exam 5, Exam 10, Procedure Room 3, Ultrasound Room 1, CT Room 2	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer and turning space.</li> </ul>
<b>La Grange, KY</b> (1023 New Moody Lane, Ste. 202)	Exam 3	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space.</li> </ul>
<b>Madison, IN</b> (King’s Daughters’ Hospital)	Exam 3	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space.</li> </ul>
<b>Mt. Washington, KY</b> (300 High Point Ct.)	Exam 12	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space.</li> </ul>
<b>New Albany, IN</b> (1919 State St.)	Exam 2, Exam 3	<ul style="list-style-type: none"> <li>- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space.</li> <li>- Push exam tables sideways against back wall to ensure</li> </ul>

		adequate transfer space next to table.
<b>Scottsburg, IN</b> (1473 N. Gardiner St.)	Exam 3	- Remove moveable equipment/moveable cabinet to ensure clear transfer space.
<b>Seymour, IN</b> (Schneck Medical Center)	Exam 1, Exam 5	- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space. - Exam 5: push exam table against wall to ensure adequate transfer space next to table.
<b>Shelbyville, KY</b> (Jewish Hospital Shelbyville)	<b>TBD</b>	<b>TBD</b>
<b>Southend Office</b> (5120 Dixie Hwy.)	Exam 3, Procedure Room 4, Procedure Room 8	- Remove moveable equipment (e.g. trash cans, biohazard containers, chairs, etc.) to ensure clear transfer space. - Patients with disabilities who require an ultrasound will be seen in Exam rooms noted in lieu of ultrasound rooms; ultrasound equipment will be taken into that room.

Designated Accessible spaces shall be clearly identified with a sticker or symbol on the door and/or door signs and reserved for patients with accessibility requirements. ***Prior to rooming a patient with a disability, the medical assistant will ensure the required exam room clearances are free of any barriers or obstructions.***

All staff involved in maintaining Accessible spaces and the Manager of each affected area of the facility will be trained on this policy upon initial hire and annually.