

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JESSICA HICKLIN,

Plaintiff,

v.

ANNE PRECYTHE,

et al.,

Defendants.

Case No. 4:16-CV-01357-NCC

**REPLY MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR DECLARATORY RELIEF AND A PERMANENT
INJUNCTION**

INTRODUCTION

Neither Missouri Department of Corrections (“MDOC”) nor Corizon LLC (“Corizon”) (collectively, “Defendants”) oppose Plaintiff Jessica Hicklin’s Motion for Declaratory Relief and a Permanent Injunction (Doc. 163) or offer any arguments against granting the motion and the relief sought therein. *See* Docs. 165, 167, 168. Moreover, the evidence shows that Defendants failed to provide Ms. Hicklin medically necessary gender dysphoria care despite knowing that doing so put her at substantial risk of serious harm.

Even though Ms. Hicklin’s psychiatrists recommended hormone therapy, permanent body hair removal, and access to gender-affirming canteen items for her, the evidence shows that MDOC and Corizon¹ repeatedly denied Ms. Hicklin these medically necessary treatments, in violation of her Eighth Amendment rights. Thus, to make clear that these actions violate the Eighth Amendment, and to prevent the irreparable harm that would result if Defendants continue to enforce the freeze-frame policy or withhold Ms. Hicklin’s medically necessary gender dysphoria treatment, this Court should grant Ms. Hicklin’s Motion for Declaratory Relief and a Permanent Injunction.

STATEMENT OF UNCONTROVERTED FACTS

Ms. Hicklin provides the following replies to Corizon’s Answer to her Statement of Uncontroverted Facts.² In the interest of brevity, Ms. Hicklin replies only to those paragraphs to which Corizon propounded a response other than an unqualified admission (that is, paragraphs 6, 10, 11, 15, and 16).

¹The parties have stipulated to the dismissal of the individual Corizon Defendants to streamline the case and facilitate an expeditious resolution of Ms. Hicklin’s Motion for Declaratory Relief and a Permanent Injunction. Doc. 169.

² MDOC Defendants have taken no position on Ms. Hicklin’s Statement of Uncontroverted Facts. Doc. 165.

6. While it is true that treatment of gender dysphoria is individualized, it is also true that, in order to receive the diagnosis of gender dysphoria, a person must experience clinically significant distress or impairment in an important area of functioning, which typically manifests as depression and/or anxiety, along with other mental and physical symptoms. *See* Doc. 64-1 at ¶¶ 12-15; Doc. 168-1 at 1-2 (45:18-46:18). Thus, a person who is not receiving treatment and does not exhibit any of these symptoms by definition does not have gender dysphoria. *See id.* Further, if left untreated, a person with gender dysphoria is likely to suffer additional serious medical problems including suicidality and compulsion to engage in self-castration and self-harm. *See* Ex. O to Second Declaration of Demoya R. Gordon (“2d Gordon Decl.”), “Recommended Revisions to the WPATH’s Standards of Care Section on Medical Care for Incarcerated Persons with Gender Identity Disorder” (2009), by Corizon’s Expert Dr. George Brown (“2009 Brown Article”), at 136; Ex. P to 2d Gordon Decl., “Autocastration and Autopenectomy as Surgical Self-Treatment in Incarcerated Persons with Gender Identity Disorder” (2010) by Corizon’s Expert, Dr. George Brown (“2010 Brown Article”), at 37-38; Doc. 64-1 at ¶16; Doc. 164-2, Corizon 30(b)(6) Depo. at 95:2-96:4; Doc. 164-3, Atterberry Depo. at 147:19-149:2. This is especially true for persons with severe gender dysphoria like Ms. Hicklin. *See* Ex. Q to 2d Gordon Decl., Excerpted Deposition of Corizon’s Expert Dr. George Brown (“Brown Depo.”) at 190:24-191:13.

10. The denial of medically necessary gender dysphoria treatment (which, for many people, includes hormone therapy) is likely to lead to significant deterioration and impairment, including depression, suicidal ideation, and surgical self-treatment by auto-castration or autopenectomy. *See* Ex. O to 2d Gordon Decl., 2009 Brown Article, at 136; Ex. P to 2d Gordon Decl., 2010 Brown Article, at 37-38; Ex. Q to 2d Gordon Decl., Brown Depo. at 288:3-5,

288:13; *see also* Doc. 64-1 at ¶¶ 28-33. Again, this is especially true for persons with severe gender dysphoria. *See* Ex. Q to 2d Gordon Decl., Brown Depo. at 190:24-191:13, 288:14-17, 288:19-20.

11. Counseling can provide support for some individuals with gender dysphoria, but it is not a substitute for medical intervention where such intervention is medically necessary. Ex. Q to 2d Gordon Decl., Brown Depo. at 82:5-9, 82:10-15, 82:22-83:3, 83:5-8; Doc. 64-1 at ¶ 35. Merely providing counseling and/or antianxiety or antidepressant medication to a severely gender dysphoric patient is a significant departure from medically accepted practice, and puts the person at serious risk of psychological and physical harm. *See* Doc. 64-1 at ¶ 36; Ex. R to 2d Gordon Decl., Excerpted 2006 Trial Testimony of Corizon's Expert, Dr. George Brown at 203:5-204:16; *see also* 168-1 at 11 (86:1-25).

15. Although Dr. Throop and Dr. Stephens recommended hormone therapy for Ms. Hicklin, the evidence shows that, for almost three years, MDOC and Corizon enforced and implemented the freeze-frame policy by failing to provide Ms. Hicklin hormone therapy based on the fact that she was not receiving such therapy before entering MDOC. *See* Doc. 64-6 at 17, 21, 30-31; Doc. 164-8 at GF 0107, 0127; Doc. 164-9 at Hicklin v. Lombardi 00911-912, 00941-945; Doc. 164-5, Sturm Depo. at 81:13-24, 99:7-21, 132:9-133:6, 145:4-149:1, 154:24-157:3, 160:10-164:25, 172:4-9, 173:15-175:11, 179:2-182:10; Doc. 164-6, MDOC 2d RFA Responses, Nos. 4-6.

16. Like all treatment for gender dysphoria, decisions regarding whether and when a person undertakes changes in gender expression—such as permanent facial/body hair removal or use of gender-affirming personal care items—must be guided by the particular patient's needs. *See* Ex. S to 2d Gordon Decl., Atterberry Depo. at 48:9-23, 49:20-23; Ex. Q to 2d Gordon Decl.,

Brown Depo. at 58:5-14, 58:18-59:5, 168:16-21. The medical records show that gender-incongruent facial and body hair, and lack of access to gender-affirming canteen items, are major contributors to Ms. Hicklin's gender dysphoria and to her recurring thoughts of self-treatment by auto-castration. Doc. 64-4 at 8, 10; Doc. 64-6 at 5, 6, 12, 13, 33-39; Doc. 68-8 at 10; Doc. 164-13 at 3, 5. Hormone therapy does not remove facial or body hair. Ex. T to 2d Gordon Decl., Corizon 30(b)(6) Depo. at 188:24-189:4; Ex. U to 2d Gordon Decl., Excerpted Deposition of Thomas Bredeman ("Bredeman Depo.") at 77:18-78:7.

Dr. Throop and Dr. Stephens are the only MDOC or Corizon employees who have conducted individualized gender dysphoria evaluations on Ms. Hicklin. *See, e.g.*, Ex. S to 2d Gordon Decl., Atterberry Depo. at 132:15-20, 139:3-10; Docs. 114-12, 114-16, 114-18, 114-20, 114-21, 114-22, 114-23, 114-30; Docs. 164-10, 164-11, 164-12. In fact, several of the individual defendants who made decisions regarding Ms. Hicklin's care have never met her. *See, e.g.*, Ex. S to 2d Gordon Decl., Atterberry Depo. at 54:24-55:3; Ex. U to 2d Gordon Decl., Bredeman Depo. at 23:2-3; Ex. V to 2d Gordon Decl., Excerpted Deposition of Glen Babich ("Babich Depo.") at 64:10-18. Neither has Corizon's expert, Dr. George Brown.³ Ex. Q to 2d Gordon Decl., Brown Depo. at 108:6-10; 156:9-10; 158:17-24; 189:16-25.

Based on her individualized assessment, Dr. Stephens recommended permanent body hair removal and access to gender-affirming canteen items for Ms. Hicklin. Doc. 64-6 at 6, 15, 35. Gender dysphoria expert Dr. Randi Ettner also recommended these items based on *her* individualized assessment of Ms. Hicklin. Doc. 64-1 at ¶ 77. By contrast, Corizon personnel who never individually assessed Ms. Hicklin asserted, baselessly, that these items were not medically necessary and that Ms. Hicklin had to wait until after hormone therapy before receiving access to

³ MDOC Defendants have disclosed no experts and the deadline for doing so has long passed.

these treatments. Doc. 164-8 at GF 0046, 0151, 0155; Doc. 64-6 at 31-32; Ex. T to 2d Gordon Decl., Corizon 30(b)(6) Depo. at 157:18-160:4, 188:2-14. They did this despite knowing that Ms. Hicklin's facial and body hair and lack of access to feminine underwear and other gender-affirming canteen items cause her great distress, and that the freeze-frame policy barred her from receiving hormone therapy. Doc. 64-4 at 8, 10; Doc. 64-6 at 5, 6, 12, 13, 33-39; Doc. 68-8 at 10; Doc. 164-13 at 3, 5; Ex. S to 2d Gordon Decl., Atterberry Depo. at 143:11-144:14; Doc. 164-2, Corizon 30(b)(6) Depo. at 108:5-23, 143:1-11; Doc. 164-3, Atterberry Depo. at 32:24-33:7; 105:14-106:5, 108:5-23, 113:1-16, 143:1-11; Doc. 164-9 at Hicklin v. Lombardi 00941-945; Ex. T to 2d Gordon Decl., Corizon 30(b)(6) Depo. at 157:18-160:4, 188:2-14; *see also* Ex. Q to 2d Gordon Decl., Brown Depo at 96:22-97:10, 288:22-289:4, 289:12-21.

ARGUMENT

Neither MDOC nor Corizon offered any arguments in opposition to Ms. Hicklin's Motion for Declaratory Relief and a Permanent Injunction. Thus, Ms. Hicklin points the Court to the arguments contained in her opening brief in support of this motion (Doc. 164) and the briefs submitted in support of her previous Motion for Preliminary Injunction (Docs. 64 and 70). Ms. Hicklin also points the Court to the findings of fact and conclusions of law contained in its February 9, 2018 Memorandum and Order. Doc. 145; *Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC, 2018 WL 806764 (E.D. Mo. Feb. 9, 2018).

CONCLUSION

For reasons stated herein and in her opening Memorandum of Law (Doc. 164), Ms. Hicklin respectfully requests that this Court grant her Motion for Declaratory Relief and a Permanent Injunction.

Respectfully submitted this 12th day of April 2018.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Reply Memorandum of Law in Support of Plaintiff's Motion for Declaratory Relief and a Permanent Injunction was made on April 12, 2018 via the Court's CM/ECF system to:

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