

JAMIE A. GLIKSBERG*
CAMILLA B. TAYLOR*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
105 West Adams, 26th Floor
Chicago, IL 60603-6208
Tel: (312) 663-4413

*Counsel for Plaintiffs Other Than
Santa Clara County*

* Admitted pro hac vice

LEE H. RUBIN (SBN 141331)
MAYER BROWN LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, CA 94306-2112
Tel: (650) 331-2000
Fax: (650) 331-2060
lrubin@mayerbrown.com

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff,

vs.

ALEX M. AZAR II, et al.,
Defendants.

STATE OF CALIFORNIA, by and through
ATTORNEY GENERAL XAVIER BECERRA,
Plaintiff,

vs.

ALEX M. AZAR, et al.,
Defendants.

COUNTY OF SANTA CLARA et al,
Plaintiffs,

vs.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,
Defendants.

No. C 19-02405 WHA
Related to
No. C 19-02769 WHA
No. C 19-02916 WHA

**DECLARATION OF ROBERT
BOLAN, MD, CHIEF MEDICAL
OFFICER, LA LGBT CENTER, IN
SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT AND IN SUPPORT OF
THEIR OPPOSITION TO
DEFENDANTS’ MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT**

Date: October 30, 2019
Time: 8:00 AM
Courtroom: 12
Judge: Hon. William H. Alsup
Action Filed: 5/2/2019

1 I, Robert Bolan, declare as follows:

2 1. I am the Chief Medical Officer and Director of Clinical Research for the LA
3 LGBT Center. I oversee all medical care related services at the LA LGBT Center, as well as
4 maintain a panel of patients for whom I provide direct care. In addition, I oversee the LA LGBT
5 Center's Research Department, am the principal investigator for multiple HIV treatment and
6 prevention trials, and have written and presented extensively on various matters related to the care
7 and treatment of people living with or at risk of acquiring HIV and other sexually transmitted
8 infections (STIs). I am also Clinical Associate Professor of Family Medicine at the University of
9 Southern California (USC) – Keck School of Medicine, and an Adjunct Clinical Professor of
10 Pharmacy Practice at the Western University of Health Sciences. I received my medical degree
11 from the University of Michigan Medical School, interned at St. Mary's Hospital Medical Center,
12 and completed my residency at St. Michael Family Practice Residency. I was the Director of HIV
13 Services in the Department of Family Medicine at the USC Keck School of Medicine, and I have
14 been honored with the Leadership Award from the San Francisco AIDS Foundation. I maintain
15 active board certification with the American Board of Family Physicians and specialty
16 certification with the American Academy of HIV Medicine. I submit this declaration in support
17 of Plaintiffs' Motion for Summary Judgment and in support of their opposition to Defendants'
18 Motion to Dismiss or, in the alternative, for Summary Judgment.

19 2. As the Chief Medical Officer, I oversee the delivery of healthcare for
20 approximately 9000 patients who come to the LA LGBT Center and have a panel of
21 approximately 300 patients for whom I personally provide medical care. Over 90% of my
22 patients identify within the LGBTQ communities. My patient population is also
23 disproportionately low-income and experiences high rates of chronic conditions, homelessness,
24 unstable housing, trauma history, and discrimination and stigmatization in healthcare services.
25 Many of these patients come to me from different areas of California, other states, and even other
26 nations to seek services in a safe and affirming environment.

27 3. Our healthcare services span the full spectrum of primary healthcare services,
28 including, but not limited to, HIV treatment and testing, treatment and prevention of sexually

1 transmitted infections, as well as treatment for gender dysphoria, mental-health disorders, and
2 substance-use disorders.

3 4. Many if not most of the individuals in our very diverse patient population face
4 considerable stigma and discrimination – as people living with HIV, as sexual or gender minority
5 people, as people of color. In addition, there is a very high incidence of other social determinants
6 of poor health outcomes among our population. These include homelessness, food insecurity, lack
7 of access to transportation, and lack of employment opportunities.

8 5. Furthermore, there is every reason to believe that the Denial-of-Care Rule will
9 encourage healthcare providers and staff to claim the absolute right to refuse care or opt out of
10 serving patients with particular needs, based on personal beliefs, which will result in more
11 discrimination against LGBT patients and patients living with HIV at other clinics, doctors’
12 offices, hospitals, pharmacies, and other healthcare facilities outside the LA LGBT Center. I, and
13 the other providers that I supervise at the Los Angeles LGBT Center, have many patients who
14 have experienced traumatic stigma and discrimination – based on their sexual orientation, gender
15 identity, HIV status, and/or other factors – even before the Denial-of-Care Rule was proposed or
16 issued. Based on the stories that my patients have shared with me, this discrimination,
17 mistreatment, and denial of healthcare services has been motivated by the personal moral or
18 religious beliefs of other healthcare providers and staff outside of the LA LGBT Center.

19 6. Over the twenty years I have been at the Center I have listened to the stories of
20 countless individuals who have suffered overtly homophobic remarks from healthcare providers
21 and who were either refused care or given clearly inadequate and inappropriate care because of
22 their sexual orientation or gender identities. One of the most egregious examples was a
23 transgender woman who needed extensive surgery to repair diffuse damage done by silicone
24 injections into her breasts several years earlier. In 2009, she was turned away from an academic
25 plastic surgery center in Los Angeles after the surgeon said her problem was caused by her own
26 poor decision-making and she would therefore not be considered for treatment.

27 7. Incidents like this reveal that many healthcare providers and other staff harbor
28 explicit or implicit biases against LGBT people. Because of legal requirements, healthcare

1 facility non-discrimination policies, and professional norms, many of them have kept their
2 personal beliefs and feelings in check. By empowering healthcare staff to think that they have the
3 legal right to act on their personal beliefs, even at the expense of patient needs, the Denial-of-
4 Care Rule is very likely to result in many more incidents of discrimination and greater harm to
5 LGBT individuals struggling with mental-health or substance-use issues, including the patients
6 whom I treat and whose treatment I supervise.

7 8. Such experiences are not only insulting and demoralizing for the patient, but can
8 jeopardize the patient's health, when a screening or treatment is denied or postponed, or the
9 patient is discouraged from seeking medical care out of fear of repeated discrimination. Many if
10 not most of my and the LA LGBT Center's transgender patients express strong distrust of the
11 healthcare system generally and are reluctant to seek care outside the LA LGBT Center unless
12 they are in a crisis or in physical or mental stress. This is because they want to avoid
13 discrimination or belittlement. Such incentives to avoid regular check-ups and other medical care
14 can result in disease processes that are more advanced at diagnosis, less responsive to treatment,
15 or even no longer curable in the case of some cancers.

16 9. In the case of the transgender woman I described above, her general medical
17 condition gradually deteriorated over the several years it took for me to finally identify a surgeon
18 who would take her case. She was suffering from systemic metabolic complications from the
19 chronic inflammation and skin breakdown caused by the hardened subcutaneous silicone
20 injections. I feared for her survival. Fortunately, the surgeon who cared for her did so with
21 kindness, respect, and compassion, and the patient has had an excellent result. The surgeon saved
22 her life. Nevertheless, the ultimate tragedy in my patient's case was that after the humiliating and
23 callous abuse to which she was subjected by the academic center's specialists, she was
24 completely unwilling to even consider seeing another surgeon for the next six-and-a-half years.
25 Her suffering during that time was completely avoidable had she been treated with basic human
26 respect.

27 10. With existing health and healthcare disparities affecting the LGBTQ community –
28 particularly the shortage of LGBTQ/HIV culturally competent providers – the Denial-of-Care

1 Rule's vague and confusing language will further exacerbate existing barriers to healthcare and
2 result in negative community health outcomes. Good medical care is based on trust as well as
3 frank and full communication between the patient and their provider. In many, if not most
4 encounters, providers need patients to fully disclose all aspects of their health history, sexual
5 history, substance-use history, lifestyle, and gender identity in order to provide appropriate care
6 for the patients' health, both physical and mental. Incomplete communication, or
7 miscommunication, can have dangerous consequences. For instance, a patient who conceals or
8 fails to disclose a same-sex sexual history may not be screened for HIV or other relevant
9 infections or cancers; and a patient who fails to fully disclose their gender identity and sex
10 assigned at birth may not undergo medically-indicated tests or screenings (such as tests for
11 cervical or breast cancer for some transgender men, or testicular or prostate cancer for some
12 transgender women). Patients need to be encouraged to fully disclose all information relevant to
13 their healthcare and potential treatment, which can only be achieved when patients are assured
14 that the information they provide will be treated confidentially and with respect. The Denial-of-
15 Care Rule endangers the provider-patient relationship, and is likely to harm many patients' health,
16 by discouraging patients from full disclosure, and by encouraging providers to avoid topics that
17 may offend their personal moral or religious beliefs in their encounters with patients.

18 11. The Denial-of-Care Rule will cause LGBT patients and patients living with HIV to
19 lose trust in their healthcare providers (either out of fear of discrimination or on account of being
20 denied care on religious grounds). The Rule will cause LGBT patients to attempt to hide their
21 LGBT identities to an even greater degree when seeking healthcare services, especially from
22 religiously-affiliated healthcare organizations, in order to avoid discrimination. The Denial-of-
23 Care Rule endangers the provider-patient relationship, and is likely to harm many patients' health,
24 by discouraging patients from full disclosure about their gender identity, sexual orientation, or
25 related medical histories. Patients will avoid raising any topics, questions, facts that they fear
26 could possibly offend their healthcare providers' personal beliefs, resulting in harm to patients.

1 12. The Denial-of-Care Rule is also likely to cause an increase in demand for my
2 healthcare services because I have seen a spike in behavioral and mental-health issues resulting
3 from religious or moral-based discrimination and denials of healthcare services.

4 13. The Denial-of-Care Rule is in direct conflict with the oath I swore as a doctor and
5 many of the federal, state, and insurance rules, regulations, and statutes that I am required to
6 follow. This has personally caused me great confusion and stress as it is unclear how I can work
7 collaboratively with my colleagues who discriminate against or deny care to my patients without
8 violating either current ethical and legal standards or the Denial-of-Care Rule.

9 14. As a healthcare provider with the LA LGBT Center, I receive various forms of
10 federal funding directly and indirectly via federal programs, including but not limited to those
11 governed by the Centers for Medicare and Medicaid Services through Medicaid and Medicare
12 reimbursements and the Ryan White Comprehensive AIDS Resources Emergency Act of 1990. I
13 may be, therefore, subject to the restrictions of HHS’s Denial-of-Care Rule. These funds and
14 related benefits account for a significant portion of my work and the healthcare services that I,
15 and those that I supervise, provide to patients. Without such funding, we could not provide
16 proper treatment to our patients, especially because a large portion of the population that we serve
17 relies heavily on Medicaid and Medicare for its healthcare needs. I, therefore, have a reasonable
18 fear that I could be sanctioned and lose federal funding for the work that I do as a result of
19 nondiscrimination policies that I enforce in my department and amongst the staff that I supervise
20 – policies that are vital to providing proper care to my patients and other patients whose care I
21 supervise. If such a loss of funding were to occur, it would result in service reductions if not
22 closure of our programs in their entirety.

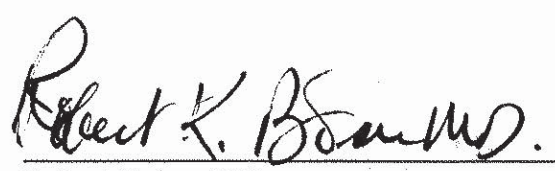
23 15. The “Denial-of-Care Rule” is inherently demeaning and codifies our government’s
24 belief that providers’ freedoms are the most important and that patients are supplicants when they
25 seek healthcare. This proposed rule is shameful.

26 16. As LA LGBT Center’s Chief Medical Officer and Director of Clinical Research,
27 my responsibility includes enforcing our nondiscrimination mandate with respect to all of our
28 providers and staff, including those working on federally funded research. I, therefore, have a

1 reasonable fear that the ability to provide federally funded healthcare services and conduct
2 federally funded research could be severely impeded potentially putting patients and research
3 participants at risk. I could also be subject to sanctions as the principal investigator for many
4 federally funded research programs at the LA LGBT Center.

5 I declare under penalty of perjury under the laws of the United States that the foregoing is
6 true and correct to the best of my knowledge.

7
8 Executed on September 10, 2019, in Los Angeles, California.

9
10 
11 _____
12 Robert Bolan, MD

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28