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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 SARAH HENN,
MD, MPH, CHIEF HEALTH
OFFICER, WHITMAN-WALKER
HEALTH, 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
Dept: 12
Judge: Hon. William H. Alsup
Trial Date: None Set
Action Filed: 5/2/2019

1 I, Sarah Henn, declare:

2 1. I am Chief Health Officer of Whitman-Walker Clinic, Inc., d/b/a Whitman-Walker
3 Health (Whitman-Walker). I received my medical degree from the University of Virginia; interned
4 at Emory University; was a resident in Internal Medicine at the University of Virginia; and
5 completed an Infectious Disease Fellowship at the University of Maryland. I earned a Masters of
6 Public Health degree at The Johns Hopkins Bloomberg School of Public Health. I maintain active
7 board certifications in Infectious Disease and Internal Medicine. I have been a physician at
8 Whitman-Walker since 2007, and became Chief Health Officer in May 2018. I oversee all
9 healthcare-related services at Whitman-Walker, as well as maintain a panel of patients for whom I
10 provide direct care. In addition, I oversee Whitman-Walker's Research Department, am the
11 primary investigator for multiple HIV and Hepatitis C treatment and prevention trials, and am the
12 Leader of our Clinical Research Site for the AIDS Clinical Trials Group funded by the National
13 Institutes of Health. I submit this declaration in support of Plaintiffs' Motion for Summary
14 Judgment and in support of their opposition to Defendants' Motion to Dismiss or, in the alternative,
15 for Summary Judgment.

16 2. Whitman-Walker provides a range of services, including medical and community
17 healthcare, transgender care and services, behavioral-health services, dental-health services, legal
18 services, insurance-navigation services, and youth and family support. Whitman-Walker provides
19 primary medical care, HIV and Hepatitis C specialty care, and gender-affirming care to transgender
20 and gender non-binary persons within the diverse community of the greater Washington, DC
21 metropolitan area. In calendar year 2018, our medical, dental, behavioral-health and community-
22 health professionals provided health services to 20,797 patients—including medical care to 11,471
23 individuals, dental care to 2,354 patients, and walk-in sexually-transmitted-infection testing and
24 treatment to 1,719 persons. In 2018, 3,573 of our patients were individuals living with HIV; 1,837
25 identified as transgender; and 9,990 identified as gay, lesbian, bisexual or otherwise non-
26 heterosexual.

27 3. Whitman-Walker's patient population, including patients to whom I provide direct care
28 and whose care I oversee, includes many persons who have experienced refusals of healthcare or

1 who have been subjected to disapproval, disrespect, or hostility from medical providers and staff
2 in hospitals, medical clinics, doctor's offices, or Emergency Medical Services personnel because
3 of their actual or perceived sexual orientation, gender identity, gender presentation, ethnicity or
4 race, religious affiliation, poverty, substance use history, or for other reasons. My patients and
5 those whose care I oversee tell us that they are apprehensive or fearful of encountering stigma and
6 discrimination in healthcare settings because of their past experiences. Many of our patients have
7 delayed medical visits or postponed recommended screenings or treatment because of such fears.
8 Frequently, persons living with HIV, diagnosed with sexually transmitted infections, struggling
9 with substance use disorders, or whose gender identity is different from the sex that they were
10 assigned at birth, face heightened stigma and discrimination and are particularly apprehensive in
11 medical encounters. Our patients' concerns have been magnified by their belief that the federal
12 government is permitting, if not encouraging, healthcare personnel to discriminate against them
13 because of personal moral or religious beliefs in accordance with the Denial-of-Care Rule.

14 4. Whitman-Walker's mission and fundamental principles of medical ethics that I adhere
15 to in overseeing and providing care to patients dictate that all patients are deserving of the best and
16 most respectful care available to them. All healthcare professionals are taught that their personal
17 beliefs about a patient's actions, identity or beliefs cannot compromise the care that they provide
18 to that patient in any way. Whitman-Walker and I, in my role as Chief Health Officer for Whitman-
19 Walker, communicate that message to all healthcare staff from the beginning of the recruitment
20 process to the first day of employment, and reinforce the message regularly. The possibility that
21 individual providers or other healthcare staff at Whitman-Walker could invoke the Denial-of-Care
22 Rule to opt out of any aspect of care would fundamentally disrupt our care model and operations,
23 violate basic tenets of medical ethics, and could not be accommodated without lasting damage to
24 the health center, patient morale, and our reputation in the community. It would be very difficult,
25 if not impossible, for Whitman-Walker to accommodate individual healthcare staff who object to,
26 for example, providing treatment for gender dysphoria, counseling pregnant clients with their
27 pregnancy termination options, assisting with harm-reduction care for substance abusers, or
28 providing healthcare services to lesbian, gay, or bisexual patients. Any such effort to accommodate

1 individual employees at the expense of patients would fundamentally compromise Whitman-
2 Walker's mission and the quality of patient care, and would harm patients, including my own.

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

19 6. Furthermore, there is every reason to believe that the Denial-of-Care Rule's message
20 that healthcare providers and staff have the legal right to refuse care or opt out of serving patients
21 with particular needs, based on personal beliefs, will result in more discrimination against LGBT
22 patients and patients living with HIV at other clinics, doctors' offices, hospitals, pharmacies, and
23 other healthcare facilities outside Whitman-Walker. Even before the Rule was issued, I and other
24 Whitman Walker healthcare providers, including referral coordinators, behavioral-health providers,
25 and other staff, have learned of many instances of discrimination, from our patients and from
26 communications with outside providers and staff. Examples include the following:

- 27 a. Whitman-Walker was recently contacted by a transgender woman suffering
28 from tonsillitis. She wanted treatment but knew of no hospital or facility

1 other than Whitman-Walker where she could go. The caller reported that in
2 her suburban area, she and other transgender individuals she knows are
3 routinely disrespected and poorly treated when they seek medical care, and
4 asked for advice on where transgender patients can receive good care.

5 b. A gay man reported that he consulted a cardiologist for a heart issue. The
6 cardiologist reviewed his medications and saw that one was Truvada – an
7 antiretroviral medication that is used for “Pre-Exposure Prophylaxis” or
8 “PrEP” – taken by persons who are not HIV-infected to avoid contracting
9 HIV during sex. The cardiologist was startled and disapproving, and began
10 lecturing the patient about what the cardiologist considered his inappropriate
11 sex life.

12 c. A transgender man, together with his girlfriend, consulted a fertility clinic
13 about their pregnancy options. Clinic staff told them that they would not
14 help people like them.

15 d. A transgender patient of Whitman-Walker attempted to fill a prescription at
16 a non-Whitman-Walker pharmacy for a hormone prescribed to assist in their
17 gender transition, and was refused by the pharmacist.

18 e. Our patients seeking to fill prescriptions for Truvada for PrEP have also been
19 refused by some pharmacies.

20 f. A gay man who is a long-term HIV survivor went to a local hospital
21 emergency room after an accident that occurred during sex. He was treated
22 with contempt by ER staff and was lectured about his sex life.

23 g. A transgender individual went to a local hospital emergency room suffering
24 from acute abdominal pain. The individual was subjected to intrusive,
25 hostile questioning by ER personnel, loudly and in public, about their
26 anatomy and gender identity.

27 h. One of our physicians, while in residency at a hospital in a major Midwestern
28 city, heard other residents refuse to refer to transgender patients by pronouns

1 conforming to their gender identity, citing their religious beliefs. They
2 continued to refuse even when informed that they were violating hospital
3 policy.

4 i. A transgender woman was scheduled to receive an ultrasound for cancer.
5 The first radiological technician she encountered refused to perform the
6 ultrasound. When she protested, a second technician performed the
7 procedure, but mocked her openly.

8 j. Transgender patients have reported to us that they have been in medical or
9 mental-health crisis and called for an ambulance, and that the Emergency
10 Medical Service personnel who have arrived on the scene have intentionally
11 used pronouns inconsistent with their gender identity, even when the patients
12 have asked them to stop and told them that their language was increasing
13 their distress.

14 k. A gay man who was engaged in sex, while under the influence of drugs,
15 experienced a physical episode and was fearful he was having a heart attack.
16 He called an ambulance, but the Emergency Medical Service personnel who
17 arrived belittled him and his situation and refused to take him to an
18 emergency room.

19 l. Local hospitals and surgeons have refused to perform gender-transition-
20 related surgeries on Whitman-Walker transgender patients, even when they
21 routinely perform the procedures in question on non-transgender patients,
22 including in situations where the patient's insurance would cover the
23 procedure or when the patient was able to pay for the procedure. This has
24 happened with orchiectomies, breast augmentations, and breast reductions -
25 procedures which are all routinely performed for treatment of cancer or for
26 other reasons, not related to gender identity.

27 m. A number of primary care physicians in our area have refused to prescribe
28 hormone therapy for transgender patients seeking to transition from the sex

1 they were assigned at birth to their actual gender identity. Many of these
2 doctors have stated that they are not “comfortable” with such hormone
3 therapy.

4 n. Our providers have seen situations in which a teenager who is transgender
5 or gender-nonconforming has presented at a local hospital with symptoms
6 for which hospitalization was indicated, but their hospitalization was
7 delayed and even denied because hospital personnel took them less seriously
8 than they took other young people with similar presentations who were not
9 transgender.

10 o. Our transgender patients frequently report instances of being treated with
11 disrespect and hostility by staff in doctors’ offices, hospitals, and clinics.
12 Frequently, staff at these facilities will refuse to address patients by their
13 chosen names and gender pronouns, if these are not the same as the patients’
14 legal names and sex assigned at birth, or if patients appear to be transgender.
15 The persistent use of names and pronouns other than what the patients have
16 requested appears intentional and intended to communicate strong
17 disapproval of the patients. I and my staff who frequently consult with
18 transgender patients hear of such experiences from as many as four out of
19 every five transgender patients.

20 7. Such experiences are not only insulting and demoralizing for the patient, but can
21 jeopardize the patient’s health, when a screening or treatment is denied or postponed, or the patient
22 is discouraged from seeking medical care out of fear of repeated discrimination. Many if not most
23 of my and Whitman-Walker’s transgender patients express strong distrust of the healthcare system
24 generally, and a demonstrative reluctance to seek care outside Whitman-Walker unless they are in
25 a crisis or in physical or mental stress. This is because they want to avoid discrimination or
26 belittlement. Such incentives to avoid regular check-ups and other medical care can result in
27 disease processes that are more advanced at diagnosis, less responsive to treatment, or even no
28 longer curable in the case of some cancers.

1 8. These and many other experiences reveal that many medical providers and other staff
2 continue to harbor explicit or implicit biases against LGBT people. Many providers and staff who
3 harbor such feelings or beliefs nonetheless have provided care to LGBT patients, and kept their
4 personal beliefs in check, because of anti-discrimination laws; non-discrimination policies at many
5 hospitals, clinics, and other healthcare facilities; and professional norms. The Denial-of-Care Rule
6 counteracts such non-discrimination policies and norms, and encourages healthcare providers and
7 staff to act on their personal beliefs. The result will likely be a significant increase in discriminatory
8 incidents, denials of care, and the attendant harms to patients' health and well-being.

9 9. In addition to instances of discrimination against LGBT patients, I and the providers
10 who I supervise have been informed of many examples of discrimination against patients based on
11 other personal biases, especially personal disapproval of persons who use illegal drugs and persons
12 who are not proficient in English—particularly Spanish speakers who are (correctly or incorrectly)
13 thought to be immigrants. For example:

14 a. Whitman-Walker has a robust and very successful substance-use-disorder
15 treatment program. Many of our patients are on Medically-Assisted Therapy
16 or MAT, for opioid use disorders. A patient of ours was denied an opioid
17 antagonist, Narcan, in a crisis situation because the EMS personnel available
18 expressed disapproval of the patient in question. This was witnessed outside
19 of our own clinic where we had to use our own clinic stock of the medication
20 to reverse the life threatening overdose. The Denial-of-Care Rule encourages
21 healthcare providers to deny patients life-saving medications.

22 b. Whitman-Walker has a number of patients whose primary language is
23 Spanish and who lack English proficiency. I and the providers I supervise
24 have patients who, in hospital and medical-clinic settings, were refused
25 Spanish-language interpreters, even when such interpreters were available
26 in the facility, because the provider or other staff thought that the patient
27 ought to know English, or because of bias against immigrants. Patients in
28

1 these situations have had difficulty understanding their diagnosis and/or
2 treatment plan, greatly increasing risk of a negative result and harm.

3 10. The Denial-of-Care Rule encourages providers and other healthcare staff to think that
4 any personal belief, whether or not based in a religious faith, is sufficient grounds to deny or opt
5 out of care. Such an understanding could have disastrous impacts on the care that is available to
6 patients, resulting in significant harm to patients' health and well-being, including patients in my
7 care and those whose care I supervise.

8 11. Whitman-Walker is a certified healthcare provider under the Medicare program and also
9 under the District of Columbia's Medicaid program. As a healthcare provider with Whitman-
10 Walker, I am individually credentialed under Medicare and also under the District of Columbia's
11 Medicaid programs. Both programs are overseen by HHS' Center for Medicare and Medicaid
12 Services (CMS). These funds and related benefits account for the insurance of 70 percent of the
13 patients we serve. This represents a significant portion of my work and the healthcare services that
14 I, and those that I supervise, provide to patients. Without such funding, we could not provide proper
15 treatment to our patients. A large portion of the population that we serve rely heavily on Medicaid
16 and Medicare for their healthcare needs. A loss of Medicare or Medicaid funding, as a possible
17 sanction, under the Denial-of-Care Rule, resulting from enforcement of Whitman-Walker's
18 nondiscrimination mandate which applies to all of our healthcare providers and staff, would result
19 in service reductions, if not closure of our programs in their entirety. As a physician individually
20 credentialed under these programs, I have a reasonable fear not only that Whitman-Walker's
21 continued certification under these vital programs might be endangered, but also that I could
22 individually be sanctioned for enforcing Whitman-Walker's mission with respect to the providers
23 and other staff that I supervise.

24 12. In addition to overseeing medical care of patients, and working with my own patients, I
25 oversee Whitman-Walker's Research Department, and am personally involved in a number of
26 clinical research projects. Much of this research is funded by HHS or by institutions affiliated with
27 or themselves funded by HHS—for example, the National Institutes of Health and the Centers for
28 Disease Control and Prevention. In 2019, our federally-funded research contracts and grants total

1 more than \$2 million. My understanding is that such research could be at risk under the Denial-of-
2 Care Rule unless Whitman-Walker were to accommodate employees who might wish to opt out of
3 providing care because of their personal moral or religious beliefs. As I previously noted, such
4 accommodation would be impossible for Whitman-Walker: it would thwart our mission, be
5 inconsistent with fundamental professional standards, and could endanger patients. Research also
6 requires the following of strict protocols for patient safety and these would be jeopardized by the
7 rule. Important research could suffer as a result. Our current federally-funded research projects
8 that are of great public importance include a wide range of HIV-related studies, including research
9 as a Clinical Research Site of the AIDS Clinical Trials Group into novel treatments and HIV cure;
10 a longitudinal study over several decades into the health of HIV-positive and HIV-negative gay and
11 bisexual men; a study of less intrusive ways to diagnose anal cancer; the effects of stigma, stress,
12 and drug use on biomarkers in Black men; health-related behavioral coaching of young gay and
13 bisexual men of color; the first longitudinal cohort study of HIV-negative transgender women, to
14 determine causes of HIV acquisition; and the effects of stress on transgender women of color who
15 are HIV-positive and on hormone therapy.

16 1. I am designated as an Investigator or Principal Investigator on many of the federal
17 research grants and contracts described above. As Whitman-Walker's Chief Medical Officer and
18 as the acting director of our Research Department, my responsibility includes enforcing our
19 nondiscrimination mandate with respect to all of our providers and staff, including those working
20 on federally funded research. I, therefore, have a reasonable fear that the ability to conduct federally
21 funded research would could be severely impeded potentially putting research participants at risk
22 or that I might be subject to sanctions as an Investigator of federal research grants and contracts
23 under the Denial-of-Care Rule.

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

26 Executed on September ___, 2019, in Washington, D.C.

27 
28 _____
Sarah Henn, MD, MPH