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

13
14 CITY AND COUNTY OF SAN FRANCISCO,
15 Plaintiff,
16 vs.
17 ALEX M. AZAR II, et al.,
18 Defendants.

19 STATE OF CALIFORNIA, by and through
20 ATTORNEY GENERAL XAVIER BECERRA,
21 Plaintiff,
22 vs.

23 ALEX M. AZAR, et al.,
24 Defendants.

25 COUNTY OF SANTA CLARA et al,
26 Plaintiffs,
27 vs.

28 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 AGLP: THE
ASSOCIATION OF LGBTQ+
PSYCHIATRISTS 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, Roy Harker, declare:

2 1. AGLP: The Association of LGBTQ+ Psychiatrists is a 501(c)(3) non-profit
3 organization based in Philadelphia, Pennsylvania, and incorporated in Pennsylvania. AGLP is a
4 community of psychiatrists that educates and advocates on Lesbian Gay Bisexual and Transgender
5 mental-health issues. AGLP's goals are to foster a fuller understanding of LGBTQ mental-health
6 issues; research and advocate for the best mental healthcare for the LGBTQ community; develop
7 resources to promote LGBTQ mental health; create a welcoming, safe, nurturing, and accepting
8 environment for members; and provide valuable and accessible services to our members. AGLP
9 strives to be a community for the personal and professional growth of all LGBTQ psychiatrists, and
10 to be the recognized expert on LGBTQ mental health issues.

11 2. AGLP (formerly known as the Association of Gay and Lesbian Psychiatrists) represents
12 the interests of 450 LGBTQ+ psychiatrists who are members of the Association and who reside
13 and work across the United States. AGLP was founded in the 1970s when gay and lesbian members
14 of the American Psychiatric Association (APA) met secretly at the annual meetings. At that time,
15 in most states, homosexuality could be used as cause to rescind someone's license to practice
16 psychiatry. In 1973, the APA removed homosexuality from their diagnostic manual (DSM). This
17 allowed a more open association of lesbian and gay psychiatrists who could be a little less fearful
18 for their jobs if they were found out to be gay. Even today, the mission of providing support and a
19 safe space for LGBTQ psychiatrists to meet continues to be important to many of AGLP's
20 members. AGLP is the oldest organized association of LGBTQ professionals in the country.

21 3. AGLP is an independent organization from APA, but works closely with APA through
22 many projects, including but not limited to, LGBTQ representation on the APA Assembly (the
23 Minority Caucus of the APA and AGLP's own representative), APA position statements, LGBTQ
24 Committees of the DSM, the creation and staffing of an AIDS Committee, and research and
25 advocacy of particular interest to the LGBTQ+ Community through their quarterly *Journal of Gay*
26 *and Lesbian Mental Health*, and seminars and discussion groups that are conducted concurrently
27 with the APA's annual meeting. AGLP works within the APA to influence policies relevant to the
28 LGBTQ community, including issuing position statements that bring awareness to and advocate

1 against the misuse of religion to discriminate against the LGBTQ community as well as educating
2 about how discrimination and stigmatization of LGBTQ people adversely affects their mental
3 health and right to happiness.

4 4. AGLP continues to work with the APA and independently to support our members and
5 advocate for LGBTQ patients. AGLP also assists medical students and residents throughout the
6 country in their professional development, encourages and facilitates the presentation of programs
7 and publications relevant to gay and lesbian concerns at professional meetings; and serves as liaison
8 with other minority and advocacy groups within the psychiatric community nationwide.

9 5. I have been the sole staff person for AGLP for over twenty-five years, first as National
10 Office Director for five years, then as Executive Director since 1999. I am an alumnus of Drexel
11 and Temple Universities in Philadelphia, and completed the American Society of Association
12 Executives (“ASAE”) Association Executive Certification in February of 2018, the highest
13 professional credential in the association industry. I submit this declaration in support of Plaintiffs’
14 Motion for Summary Judgment and in support of their opposition to Defendants’ Motion to Dismiss
15 or, in the alternative, for Summary Judgment.

16 6. The Denial-of-Care Rule fosters greater discrimination against LGBTQ patients, who
17 already experience widespread discrimination in obtaining healthcare and hence suffer significant
18 health disparities in comparison to the general population. Research documents the history of this
19 discrimination and the negative health outcomes that result. AGLP’s members report that their
20 LGBTQ patients and patients living with HIV report having experienced frequent discrimination
21 by other healthcare providers and suffer from more acute medical conditions resulting from such
22 discrimination and fear of seeking medically-necessary healthcare services. A large percentage of
23 AGLP members’ transgender patients anecdotally report having negative experiences related to
24 their gender identity when seeking medical care, including being exposed to verbal harassment or
25 refusals of care. In comparison to other populations, LGBTQ patients face significant health
26 disparities—higher risk factors for poor physical and mental health, higher rates of HIV, decreased
27 access to appropriate health insurance, insufficient access to preventative medicine, and higher risk
28 of poor treatment by healthcare providers.

1 7. AGLP firmly believes that gender identity is part of the natural spectrum of human
2 experience and expression, as is the position of the APA. The transgender and gender non-
3 conforming community has been marginalized and continues to fight for basic civil rights.
4 Discrimination and harassment are especially significant sources of stress for transgender youth
5 who are navigating an especially challenging period of their lives and are vulnerable to depression
6 and suicide when not supported by family and schools. This is especially true when even their
7 healthcare providers, the people whom they turn to in their most vulnerable times of need,
8 discriminate against them or deny them care. Religious objections by healthcare providers have
9 been detrimental to the health of LGBTQ patients, and these harms would be exacerbated by the
10 Denial-of-Care Rule. As an organization of psychiatrists who often serve and care for patients from
11 the LGBTQ community, AGLP knows that discrimination against LGBTQ individuals in
12 healthcare access and coverage remains a pervasive problem and that too often this discrimination
13 is based in religious objections.

14 8. AGLP has long strongly held and publicly asserted that all people, whether LGBTQ or
15 not, deserve the equal protections provided by the Fifth and Fourteenth Amendments to the
16 Constitution; that religious liberty justifications for denying healthcare are thinly disguised efforts
17 to return to marginalization and stigmatization of same-sex and transgender orientations and
18 identities; that the principle cited behind such religious-liberty arguments would threaten the equal
19 protection of vast numbers of other minority citizens; that virtually every major mental-health
20 organization has concluded that there is no credible scientific evidence that LGBTQ citizens are
21 psychologically impaired *per se* or need to change their orientations or identities; that LGBTQ
22 citizens represent no more burden on American society than any other minority group, and, in fact,
23 have made substantive contributions to the arts, sciences, and businesses in America; and that
24 discrimination and stigmatization of LGBTQ citizens adversely affects their mental health and right
25 to happiness. Therefore: AGLP steadfastly condemns all legislative and administrative efforts,
26 including the Denial-of-Care Rule, to stigmatize and discriminate against LGBTQ citizens.

27 9. The Denial-of-Care Rule will result in greater discrimination against LGBTQ patients
28 and in increased denials of services based not just on the medical services that patients seek, but on

1 the basis of the patients' LGBTQ identities in violation of the law, medical ethics, and standards of
2 care. The Denial-of-Care Rule presents a direct conflict with nondiscrimination standards adopted
3 by all the major health-professional associations, who have already recognized the need to ensure
4 LGBTQ patients are treated with respect and without bias or discrimination in hospitals, clinics,
5 and other healthcare settings. All the leading health-professional associations—including the
6 American Medical Association, American Osteopathic Association, American Academy of
7 Physician Assistants, American Nurses Association, American Academy of Nursing, American
8 College of Physicians, American College of Obstetricians and Gynecologists, American
9 Psychiatric Association, American Academy of Pediatricians, American Academy of Family
10 Physicians, American Public Health Association, American Psychological Association, National
11 Association of Social Workers, and many more—have adopted policies articulating that healthcare
12 providers should not discriminate in providing care for patients and clients because of their sexual
13 orientation or gender identity. By allowing discrimination against patients on the grounds of moral
14 and religious freedom, the Denial-of-Care Rule obviates the ethical standards that healthcare
15 professionals are charged to uphold.

16 10. If not enjoined, the Denial-of-Care Rule will harm AGLP members, LGBTQ patients
17 whose interests AGLP also represents, and the patients who AGLP members treat nationwide. The
18 Rule invites healthcare facilities to discriminate against LGBTQ employees and patients without
19 concern about the impact that a complaint for non-compliance with purported conscience
20 protections would have on ensuring the provision of medically-necessary care for patients,
21 adherence with medical standards of care, ethical requirements, accreditation requirements, and
22 nondiscrimination requirements in employment and in the provision of patient care. The Rule,
23 therefore, frustrates AGLP's mission of achieving and enforcing safe workspaces for LGBTQ
24 psychiatrists and nondiscriminatory healthcare services to AGLP members' LGBTQ patients. The
25 Denial-of-Care Rule frustrates AGLP's mission of advocating for nondiscrimination standards of
26 care for patients and nondiscriminatory work environments for its members that protect against
27 discrimination on the basis of sexual orientation and gender identity and advocating for cultural
28 competency standards of care for treatment of LGBTQ patients.

1 11. Some members of AGLP are employed by religiously-affiliated healthcare
2 organizations. AGLP has members who are Medical Directors and administrators in Hospitals and
3 Clinics all over the Country and, in the course of their employment, these healthcare providers treat
4 LGBTQ patients. Members of AGLP employed by religiously-affiliated hospitals will experience
5 employment discrimination for adhering to their medical and ethical obligations to treat all patients
6 in a nondiscriminatory manner, including providing all medically-necessary care that is in the
7 patient's best interest. The Rule impinges on and conflicts with AGLP members' legal obligations
8 as healthcare providers and harms the patients that they serve.

9 12. Additionally, some members of AGLP are employed by the federal government. In the
10 course of their employment, these health professionals have benefited from, and have depended
11 upon, protections against discrimination in federal sector employment based on sexual orientation
12 and gender identity. These nondiscrimination policies have deterred anti-LGBTQ harassment and
13 other forms of discrimination, regardless of the motive for that discrimination. The Denial-of-Care
14 Rule is in direct conflict with those nondiscrimination policies.

15 13. The Denial-of-Care Rule invites harassment and discriminatory treatment of AGLP
16 members in the workforce by fellow employees who claim a right to accommodation for
17 discriminatory behavior empowered by the Rule. AGLP members and their LGBTQ patients are
18 stigmatized and demeaned by the message communicated by the Denial-of-Care Rule that their
19 government privileges beliefs that result in the disapproval and disparagement of LGBTQ people
20 in the healthcare context. The Denial-of-Care Rule invites religious-based discrimination against
21 AGLP members as well as their LGBTQ patients.

22 14. Based on their years of working with LGBTQ patients who have reported concealing
23 their identities out of fear of discrimination, AGLP members know that the Rule will cause LGBTQ
24 patients to attempt to hide their LGBTQ identities when seeking healthcare services, especially
25 from religiously-affiliated healthcare organizations, in order to avoid discrimination. When patients
26 are unwilling to disclose their sexual orientation and/or gender identity to healthcare providers out
27 of fear of discrimination and being refused treatment, their mental and physical health is critically
28 compromised.

1 15. AGLP will need to be a resource for patients who are in need of medical services but
2 do not know where to go for LGBTQ-affirming healthcare. The Rule will predictably result in more
3 denials of care, and, consequently, more requests for referrals. AGLP offers an online referral
4 service to patients seeking LGBTQ-affirming counselling, support, and psychiatric treatment. The
5 Denial-of-Care Rule adversely impacts AGLP by necessitating the diversion and reallocation of
6 resources in order to provide referrals to increasing numbers of members and their patients seeking
7 assistance with healthcare referrals as a result of the Rule. The Denial-of-Care Rule will make it
8 more difficult and resource-intensive for AGLP to locate and monitor appropriate referrals that will
9 not cause further harm to AGLP patients who have already been discriminated against or who fear
10 discrimination on the basis of religious objections to the patients' gender identities or sexual
11 orientation. AGLP will have to continuously update its online referral search engine, especially
12 because many healthcare providers currently listed on the website are affiliated with religious
13 hospitals and organization. As a result of the Denial-of-Care Rule, AGLP expects to see increased
14 use of its referral resources and assistance, which will require AGLP to allocate additional staff
15 time to support such requests.

16 16. As a result of the Denial-of-Care Rule, AGLP is required to expend its resources to
17 educate and assist its members and the LGBTQ patients its members serve to defend against the
18 harms that the Rule causes. AGLP has been working with other medical and health associations,
19 including the APA, to express disapproval of the Denial-of-Care. Such work has diverted resources
20 away from other proactive projects and outreach efforts that are core to AGLP's mission. AGLP
21 also spends resources answering AGLP members' inquiries about the Denial-of-Care Rule given
22 the pervasive concern that the Denial-of-Care Rule contradicts medical ethical requirements and
23 standards of care. AGLP must spend resources educating its members and the general healthcare
24 community about AGLP's position on the Denial-of-Care Rule and its negative effects on
25 healthcare practices and providers as well as their patients.

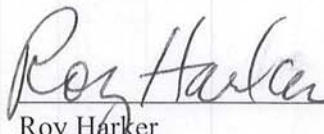
26 17. The Denial-of-Care Rule empowers and incites religious-based discrimination against
27 AGLP members and will create discriminatory work environments for AGLP members. AGLP, in
28 turn, sees and will continue seeing an increase in psychiatrists seeking its assistance with addressing

1 such discrimination. AGLP will need to help its members navigate through these hostile work
2 environments and may need to intervene on its members' behalves when necessary. The increased
3 demand for such services will further hamper AGLP's other work because AGLP already has a
4 very limited bandwidth for such services.

5 18. AGLP members receive various forms of federal funding directly and indirectly via
6 federal programs. AGLP's members may, therefore, be subject to the restrictions of the Denial-of-
7 Care Rule. Without such funding, AGLP members would not have the resources to provide proper
8 treatment to their patients or proceed with their medical research programs. AGLP's members,
9 therefore, have a reasonable fear that they could be sanctioned and lose federal funding for the work
10 that they do as a result of nondiscrimination policies, ethical requirements, and standards of care
11 that they enforce in their psychiatric practices, which are vital to providing proper care to their
12 patients.

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

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16 Executed on September 9, 2019, in Philadelphia, Pennsylvania.

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19 Roy Harker
20 Executive Director of AGLP
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