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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 RANDY
PUMPHREY, D.MIN., LPC, BCC,
SENIOR DIRECTOR OF
BEHAVIORAL HEALTH,
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, Randy Pumphrey, declare:

2 1. I am the Senior Director of Behavioral Health at Whitman-Walker Clinic, Inc., d/b/a
3 Whitman-Walker Health (Whitman-Walker). After earning a B.S. in American Studies, I received
4 Masters of Divinity and Doctor of Ministry degrees from Wesley Theological Seminary. I initially
5 worked as a Board Certified Chaplain at St. Elizabeth's Hospital (which became the Commission
6 on Mental Health Services for the District of Columbia and the Psychiatric Institute of
7 Washington), and subsequently received my Professional Counselor Licensure in 1997. I have
8 worked in mental-health and substance-use-disorder treatment since 1984, initially as an intern at
9 Washington Hospital Center, then with St. Elizabeth's Hospital. In 1998 I became the Clinical
10 Director of the Lambda Center, a joint partnership between the Psychiatric Institute of Washington
11 and Whitman-Walker Clinic. I joined Whitman-Walker's staff in 2007 as the Manager of Mental
12 Health Services, and became Senior Director of Behavioral Health in 2015. In addition to
13 managing Whitman-Walker's behavioral-health services, I maintain a panel of patients for whom
14 I provide direct care. I submit this declaration in support of Plaintiffs' Motion for Summary
15 Judgment and in support of their opposition to Defendants' Motion to Dismiss or, in the alternative,
16 for Summary Judgment

17 2. As the Senior Director of Behavioral Health, I oversee Whitman-Walker's robust
18 portfolio of mental-health services, and substance-use-disorder-treatment services. Our mental-
19 health services include individual and group psychotherapy, psychiatry, and peer counseling. For
20 individuals struggling with substance misuse, we offer individual and group counseling and
21 support, and Medically-Assisted Treatment (MAT). In 2018, we provided mental-health or
22 substance-use-disorder-treatment services to 2,342 patients. Our psychiatrists, psychologists,
23 licensed psychotherapists, and trained peer counselors have a special mission to the lesbian, gay,
24 bisexual and transgender (LGBT) community, and also to individuals living with HIV and their
25 families and caregivers.

26 3. Many if not most of the individuals in our very diverse behavioral-health-patient
27 population face considerable stigma and discrimination—as people living with HIV, as sexual or
28 gender minority people, as people of color—and many of them struggle with internalized stigma

1 and with acute or lower-level but persistent trauma. Many of them have experienced difficulty in
2 finding therapists or other mental-health or substance-use-disorder professionals who are
3 understanding and welcoming of their sexual orientation, gender identity, or struggles with HIV.
4 We frequently receive phone calls and other inquiries from people seeking non-discriminatory,
5 welcoming assistance with their substance use, depression, anxiety, or other challenges. Many of
6 these individuals have suffered from traumatizing encounters with hostile or disapproving
7 healthcare professionals.

8 4. All Whitman-Walker employees, and all volunteers who serve as peer counselors or
9 otherwise are involved in any way with our behavioral-health services, are asked to commit to our
10 mission, which is to be welcoming to and understanding of every patient, regardless of sexual
11 orientation, gender identity, race or ethnicity, income or educational background, or life experience.
12 We welcome staff and volunteers from a wide range of religious, spiritual, cultural, and
13 philosophical perspectives, but patient needs must always be paramount. The message of the
14 Denial-of-Care Rule, that the personal beliefs or feelings of a provider or other healthcare staff
15 member can justify refusal to participate in any aspect of their job or of the care of any patient,
16 threatens to substantially harm patients who already are vulnerable to stigma and discrimination.
17 The message that healthcare staff members' personal preferences or beliefs take priority over
18 patient needs also violates fundamental professional ethical standards that apply to all licensed
19 therapists, psychologists, psychiatrists, and substance-use-disorder-treatment professionals,
20 including myself.

21 5. Behavioral-health treatment assumes, and requires, trust between the patient and
22 provider, and full and frank disclosure by the patient of all potentially relevant information about
23 their life, including their sexual orientation, sexual and affectional experiences, and gender identity.
24 I, and the providers that I supervise at Whitman-Walker, frequently work with patients who have
25 concealed some or all aspects of their sexual and affectional orientation or history, or gender
26 identity, from non-Whitman-Walker therapists or other behavioral health providers, often to the
27 patients' harm. The Denial-of-Care Rule will very likely discourage LGBT people and others
28 needing treatment from fully disclosing relevant information to their therapists or counselors, or to

1 those helping them with substance-use issues, which will likely increase their distress and undercut
2 the effectiveness of their treatment.

3 6. For persons with a minority, traditionally stigmatized sexual orientation—such as gay,
4 lesbian, or bisexual—or whose gender identity is transgender or gender-nonconforming, competent
5 mental-health services, or services for treatment of substance-use disorders, require an accepting—
6 indeed, an affirming—attitude towards their sexual orientation or gender identity by their provider.
7 Discriminatory behavior, statements, or attitudes expressed by a provider are a tremendous barrier
8 to effective care. It is critical that a patient feel empowered and supported in fully disclosing their
9 sexuality and gender identity to their counselor, therapist, psychologist, or psychiatrist. Without a
10 trusting patient-provider relationship and full disclosure of all possibly relevant feelings and facts
11 by the patient, effective treatment is unlikely to be possible. This is critical for good medical care
12 as well. In my work with patients as a behavioral-healthcare provider, I have counseled patients
13 about the importance of full disclosure of their sexuality and gender identity to their doctor and
14 other medical personnel.

15 7. Even before the Denial-of-Care Rule was proposed or issued, I and the providers and
16 other behavioral-health staff that I supervise at Whitman-Walker have learned from patients about
17 many incidents of discrimination or mistreatment in other behavioral-health settings that were
18 motivated by the personal beliefs of providers or other staff. For instance:

19 a. A transgender teenager was hospitalized after a suicide attempt. Hospital
20 staff refused to address the teenager by the young person's preferred
21 pronouns and gender throughout the teenager's hospital stay. This was
22 experienced by the teenager as disapproval and contempt for the young
23 person's gender identity. This discrimination exacerbated the teenager's
24 acutely fragile state when the teenager was so desperately in need of
25 healthcare providers' support and healthcare services that were free of
26 judgment.

27 b. A facility that specializes in inpatient mental health and substance-use-
28 disorder treatment, and which has explicit non-discrimination policies,

1 nonetheless has significant trouble from nurses on weekend shifts (when the
2 facility uses pool nurses rather than regular employees), who express strong
3 disapproval of LGBT patients based on their religious beliefs or cultural
4 upbringing. Despite the facility's non-discrimination policies, LGBT
5 patients encounter hostility, expressions of disapproval, and lack of
6 responsiveness to their needs or requests from these nurses. For patients
7 hospitalized for mental or substance-use disorders, these experiences can
8 activate their disorders.

9 c. A Muslim woman patient who also identifies as Lesbian was hospitalized
10 for suicidal ideation based on depression and anxiety from PTSD at an
11 inpatient facility. While processing her discharge, a nurse at the facility,
12 who identified herself as Christian, stated that she believed that 911 was a
13 blessing since it woke up Christians about how bad Muslims are. The client
14 reported feeling very exposed and vulnerable and told the nurse that not only
15 was she Muslim, but she herself had been the victim of terrorism. The
16 encounter with the nurse exacerbated the patient's depression and anxiety.

17 d. As I previously noted, behavioral health staff that I supervise often receive
18 calls or other communications from LGBT persons expressing desperation
19 about finding a therapist or substance use professional who will not
20 discriminate against them because of their sexual orientation or gender
21 identity.

22 e. Our behavioral-health providers who regularly interview our transgender
23 patients to assess their stage of gender transition and readiness for gender-
24 affirming surgical procedures, or who provide psychotherapy for these
25 patients, report that the large majority of the patients they meet with—as
26 many as four out of every five—report incidents of mistreatment or
27 discrimination by healthcare providers and staff at hospitals, other clinics,
28 doctor's offices, and other facilities.

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

9 9. I and Whitman-Walker provide referral services for patients who need specialist care
10 that we do not provide—including inpatient behavioral healthcare as well as specialist medical care.
11 We also receive many outside requests for recommendations for LGBT-welcoming, non-
12 discriminatory therapists and substance-use professionals in the community. The Denial-of-Care
13 Rule will make it significantly more difficult for us locate and monitor appropriate referrals, and
14 patients will suffer as a result. Even more concerning, our behavioral-health patients who may
15 need hospitalization for a mental-health or substance-use crisis, or may need specialist medical
16 care, will be in greater danger of encountering discrimination at inpatient behavioral health facilities
17 or when they seek medical care outside Whitman-Walker—which may make their care at Whitman-
18 Walker more difficult and perhaps less successful.

19 10. Whitman-Walker is a certified healthcare provider under the Medicare program and also
20 under the District of Columbia’s Medicaid program. Healthcare providers with Whitman-Walker,
21 are credentialed under the Medicare program and also under the District of Columbia’s Medicaid
22 program. Both programs are overseen by HHS’s Center for Medicare and Medicaid Services
23 (CMS). These funds and related benefits account for a significant portion of my work and the
24 healthcare services that I, and those that I supervise, provide to patients. Without such funding, we
25 could not provide proper treatment to our patients, especially because a large portion of the
26 population that we serve relies heavily on Medicaid and Medicare for its healthcare needs. A loss
27 of Medicare or Medicaid funding as a possible sanction under the Denial-of-Care Rule resulting
28 from enforcement of Whitman-Walker’s nondiscrimination mandate, which applies to all of our

1 healthcare providers and staff, would result in service reductions if not closure of our programs in
2 their entirety. As a clinician who provides care under these programs, I have a reasonable fear not
3 only that Whitman-Walker's continued certification under these vital programs might be
4 endangered, but also that I could individually be sanctioned for enforcing Whitman-Walker's
5 mission with respect to the providers and other staff that I supervise.

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

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9 Executed on September 9, 2019, in Washington, D.C.

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12 Randy Pumphrey, D.MIN., LPC, BCC

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