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05 ORIGINAL

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RANDALL GAMMETT,

Plaintiff,

vs.

IDAHO STATE BOARD OF CORRECTIONS;
CAROLYN MELINE, RALPH TOWNSEND,
DWIGHT BOARD, JIM TIBBS and JAY
NIELSEN, individually and in their official capacity)
as members of the Idaho State Board of Corrections;)
IDAHO DEPARTMENT OF CORRECTIONS;)
THOMAS BEAUCLAIR, individually and in his)
official capacity as Director of Idaho Department of)
Corrections [IDOC]; DAVID HAAS, individually)
and in his official capacity as Medical Services)
Manager for IDOC; KEVIN KEMPH, individually)
and in his official capacity as Warden of Idaho)
Correctional Institute at Orofino [ICIO];)
KRUZICH, M.D., individually and in his official)
capacity as Treating Physician at ICIO;)
FLERCHINGER, M.D., individually and in his)
official capacity as Treating Physician at ICIO;)
EDWARD CHEENEY, M.S., individually and in)

CIV 05-257-S-MHW

Case No.

COMPLAINT AND DEMAND

FOR JURY TRIAL

his official capacity as Social Worker at ICIO;)
DEBI TITUS, R.N., individually and in her official)
capacity as Inmate Nurse at ICIO; GREGORY)
FISHER, individually and in his official capacity)
as Warden of Idaho Maximum Security Institute)
[IMSI]; K. G. KHATAIN, M.D., individually and)
in his official capacity as Chief Psychiatrist at IMSI)
and Member of the Management and Treatment)
Committee [MTC] for evaluation and treatment of)
inmates with Gender Identity Disorder [GID];)
CHAD SOMBKE, PhD., individually and in his)
official capacity as Chief Psychologist at IMSI and)
Member of the MTC; JAY A. GREEN, individually)
and in his official capacity as Sargeant in charge of)
C-Block Medical Unit at IMSI and Member of the)
MTC; JOSLYN PATCHETTE, individually and in)
her official capacity as Nurse at IMSI and Member)
of the MTC; PRISON HEALTH SERVICES [PHS],)
a corporation doing business in the State of Idaho,)
)
Defendants.)
_____)

Plaintiff Randall Gammett, by counsel, brings this action to obtain redress for the deprivation of his federally and state protected rights, as hereafter alleged.

I. PARTIES AND JURISDICTION

1. Plaintiff Randall Gammett is a citizen of the United States of America. He is currently a resident of the Idaho Correctional Institute at Orofino, Idaho [ICIO].

2. Defendant Idaho State Board of Corrections is a political subdivision of the state of Idaho, as defined in Idaho Code Section 20-201.

3. Defendants Meline, Townsend, Board, Tibbs and Nielsen were at all times material hereto or are currently duly appointed members of the Idaho State Board of Correction, and were acting within the course and scope of their duties as members and as the agents, servants and employees of the State of Idaho.

4. Defendant Idaho State Board of Corrections is responsible pursuant to Idaho Code Section 20-209 for the control, direction and management of correctional facilities and for the provision of care and maintenance for all prisoners in state custody.

5. Defendant Idaho State Board of Corrections is responsible pursuant to Idaho Code Section 20-214 for the training, employment, and fixing of duties for all assistants, officers and other persons necessary for the proper and efficient administration of IDOC.

6. Defendant IDOC is a political subdivision of the State of Idaho, as defined in Idaho Code Section 20-201.

7. Defendant Thomas Beauclair was at all times material hereto the duly appointed Director of IDOC as well as chief administrative officer and business manager of the state penitentiary pursuant to Idaho Code Section 20-217A, and was employed by IDOC and was acting within the course and scope of his duties as director, chief administrative officer and business manager and as the agent, servant and employee of the State of Idaho.

8. Defendant David Haas was at all times material hereto the Medical Services Manager at IDOC, and was employed by IDOC and was acting within the course and scope of his duties as manager and as the agent, servant and employee of the State of Idaho.

9. Defendant Kevin Kempf was at all times material hereto the Warden of ICIO, and employed by IDOC, and was acting within the course and scope of his duties as warden and as the agent, servant and employee of the State of Idaho.

10. Defendants Kruzich, Flerchinger, Cheeney, Titus, Khatain and Sombke are either under contract to provide medical services for inmates at IDOC or are employed directly by IDOC to provide medical services to inmates or are employed by PHS, and were acting within the course and scope of their duties as medical service providers and as the agents, servants and employees of the State of Idaho.

11. Defendant Gregory Fisher was at all times material hereto the Warden of IMSI and employed by IDOC, and was acting within the course and scope of his duties as warden and as the agent, servant and employee of the State of Idaho.

12. Defendant Jay Green was at all times material hereto the Correctional Sargeant of C-Block Medical Unit at IMSI, employed by IDOC, and a member of the MTC for evaluation and treatment of inmates suffering from GID, and was acting within the course and scope of his duties as correctional sargeant and MTC member and as the agent, servant and employee of the State of Idaho.

13. Defendant Joslyn Patchette was at all times material hereto an inmate nurse either contracted to provide services for inmates at IMSI or employed by IDOC or PHS, and a member of the MTC for evaluation and treatment of inmates suffering from GID, and was acting within the course and scope of her duties as nurse and MTC member and as the agent, servant and employee of the State of Idaho.

14. Defendant Prison Health Services is a corporation doing business in the State of Idaho. Prison Health Services provides medical services for IDOC.

15. Each and all of the acts of Defendants alleged herein were done by Defendants not just as individuals, but under the color of law and pretense of the statutes, ordinances, regulations, customs, practices and usages of the State of Idaho, and under the authority of Defendants as public officials for said state.

16. This action arises under the Constitution of the United States, particularly under the provisions of the Eighth and Fourteenth Amendments to the Constitution of the United States, and under federal law, particularly Title 42 of the United States Code, Sections 1983 and 1988.

17. This Court has jurisdiction of this cause under and by virtue of Title 28 of the United States Code, Section 1331, because the case arises under the Constitution and laws of the United States, and Section 1343, because this action seeks redress and damages for violation of Title 42 U.S.C. Sections 1983 and 1988, and the federal claim is not insubstantial.

18. This Court has jurisdiction of Plaintiff's pendent state claims by virtue of Title 28 of the United States Code, Section 1367.

19. Plaintiff has complied with the statutory notice provisions of Section 6-906, Idaho Code, regarding the state law claims.

20. Defendant Idaho Department of Correction denied Plaintiff's Tort Claim through their agent, Idaho Risk Management Program.

II. FACTUAL ALLEGATIONS

21. Plaintiff incorporates paragraphs 1 through 20 above.

22. In September of 2003, Plaintiff Randall Gammatt was in state custody at the Idaho Department of Corrections facility at Orofino [ICIO].

23. On September 11, 2003, Plaintiff submitted an Inmate Request Form (hereinafter "kite") requesting copies of the policies relating to Gender Identity Disorder [GID]. The response from Defendant Titus was that Plaintiff would need to fill out an "Access to Courts Request" in order to be allowed to read the policies, as they were not available to the public. Plaintiff was charged for copies of the policies.

24. On September 11, 2003, Plaintiff submitted an Inmate Concern (hereinafter "kite") asking "what I am susposto [sic] do about my gender identity issue."

25. On September 13, 2003, Plaintiff submitted a Health Services Request Form

(hereinafter “kite”) stating “I have GID problem”.

26. On September 14, 2003, Plaintiff submitted a kite stating “I feel that I have a Gender Identity Disorder.”, and further describing the need and desire to become a woman.

27. On September 16, 2003, Plaintiff submitted a kite asking “how my body is going to change... what are the side effects... How long does this treatment last?... will there be any surgical transformation done?”

28. On September 23, 2003, Plaintiff was given a physical examination by a doctor.

29. On September 26, 2003, Plaintiff’s file was reviewed by Edward Cheeney, M.S., for indications of GID. Defendant Cheeney found no indication of GID.

30. On September 30, 2003, Plaintiff requested to be seen regarding a list of 19 questions relating to GID. Plaintiff was seen by Defendant Titus who could not answer many of the questions, but educated Plaintiff on how a person develops values.

31. On October 18, 2003, Plaintiff submitted a kite asking, “what is going on with my issue.”

32. On November 11, 2003, Plaintiff submitted a kite which stated, “I would like to know when I will be starting my treatment!”

33. On November 28, 2003, Plaintiff submitted a kite stating, “I would like to know what it is that I’m susposto [sic] do. Should I put a request in to see the

psychologist about my issue or what should I do?"

34. On December 2, 2003, Plaintiff was informed by Defendant Titus that the "Treatment team may be here the 2-3rd week of December to see you."

35. On January 5, 2004, Plaintiff submitted a kite asking why the Treatment Team was taking so long to come to Orofino and asking whether the medical department knew when they would visit.

36. On January 9, 2004, Plaintiff was informed by Defendant Titus that the December meetings had been cancelled and that she had no further information for him.

37. On January 20, 2004, Plaintiff submitted a kite stating that "I was susposto [sic] see the Treatment Team today and it was canceld [sic]. I was told it was rescheduled, could you tell me when please? Thank you."

38. On January 22, 2004, Defendant Titus informed Plaintiff "You are not sch. for the treatment team, you are sch. to see our new psycvhiatrist on 01-22-04 for an interview."

39. On January 27, 2004, Plaintiff was seen by Dr. Flerchinger at ICIO. Defendant Flerchinger interviewed Plaintiff regarding GID and concluded that Plaintiff was confused but not convincing regarding GID.

40. On April 24, 2004, Plaintiff submitted a request asking again about the Treatment Committee.

41. On May 15, 2004, Plaintiff submitted a request asking, "Do you know

what the hold up is? It's been almost a year well 8 months since I started this process.”.

The kite asked further whether it was appropriate for Plaintiff to shave body hair and pluck eyebrows and stated, “it is very frustrating. I feel like they are just brushing me off.”

42. On May 21, 2004, Plaintiff submitted a kite asking about the GID Policy Directives, MTC composition and recommendations, informed consent for treatment, GID services available and stated, “I feel at the end of my ‘rope’ so to speak. I don’t know what to do. I don’t like the way I feel! I hate my self. I don’t feel I’m being taken serious at all. All I want is help so that I don’t have to feel the way I do.”

43. On May 26, 2004, Defendant Titus informed Plaintiff that to the best of her knowledge “there has been no recommendation for your case to date. The committee has not been picked yet.” Defendant Titus further informed Plaintiff “I am sorry you feel at the end of you [sic] rope... Please remember this is not a life threatening [sic] illness and I am sure it will be handled as soon as they are able. May I suggest you visit with Ms. Stammer to help you cope with this situation.”

44. On June 16, 2004, Plaintiff submitted a kite to Mrs. Whimble [sic] stating “I was told to write you regaring [sic] my case. I would like to know if they have created a [sic] Administrative Treatment Team yet. I want to know when treatment might be possible. I’ve been waiting 9 months for information. I need to know!”

45. On June 22, 2004, Plaintiff was informed by S. Whipple that “Medical

has done the required steps to assist you. We have no way to know when the treatment team will come to our facility. This would be IDOC policy – contact IDOC for more information.”

46. On June 26, 2004, Plaintiff submitted a letter to David Haas, IDOC Medical Services Manager in Boise stating “I was told by a Mrs. Whipple to contact you about my concerns. I want to know what is going on with my case. I was told that you would be able to help me out. I’m also wanting to know who is on the Administrative Treatment Team. This regards my Gender Identity issue. Thank you.”

47. On July 2, 2004, Defendant Haas responded to Plaintiff, “Your complaint is being addressed in accordance with IDOC policy.”

48. On or about July 13, 2004, Plaintiff was transferred to Idaho Maximum Security Institution [IMSI] in Boise. Plaintiff was not informed of the reason for transfer until after his arrival at IMSI.

49. On July 19, 2004, Plaintiff was interviewed by Chad Sombke, PhD., regarding GID. Defendant Sombke concluded that Plaintiff was confused sexually yet did not appear to have GID.

50. On July 20, 2004, Dr. Khatain, Chief Psychiatrist at IMSI, reviewed Plaintiff’s medical file, interviewed Plaintiff regarding GID and concluded that it was unclear whether Plaintiff fulfilled the criteria for GID.

51. Plaintiff was administered psychological tests and on July 21, 2004, it was

concluded by Defendant Sombke, with Defendant Khatain concurring, that Plaintiff did not meet the diagnostic criteria for GID but that Plaintiff might benefit from education and/or counseling regarding his sexual orientation.

52. Since July 21, 2004, Plaintiff has not received education and counseling regarding sexual orientation as recommended by Dr. Khatain.

53. On August 13, 2004, Plaintiff attempted suicide by hanging in his cell at IMSI.

54. On August 17, 2004, Plaintiff was provisionally diagnosed with bipolar disorder and medication with the psychotropic drug Lithium was initiated.

55. Plaintiff was hospitalized at Intermountain Hospital in Boise prior to incarceration, for mutilation of his genitals. Defendants were not only aware of this hospitalization but Defendant Kruzich, who treated Plaintiff at Intermountain Hospital, also saw Plaintiff for GID at Orofino.

56. Plaintiff informed Defendant Khatain about having lived as a woman prior to incarceration.

57. Plaintiff informed Defendants Khatain and Sombke about going out numerous times in public dressed as a woman.

58. Plaintiff described to Defendant Khatain the feeling of having been born in the wrong body.

59. Plaintiff informed Defendant Khatain about having dressed as a female since

being a small child.

60. Plaintiff took female hormones prior to incarceration.

61. Plaintiff represents to other inmates that she is transgendered.

62. On August 21, 2004, Plaintiff submitted a kite to Defendant Haas stating "I want to know why I was told I don't have GID when I do have it. I want to know why I was not seen by a GID specialist? I want to be seen by a GID specialist and given my treatment for it!" The kite was not responded to.

63. On August 22, 2004, Plaintiff submitted another kite to Defendant Haas stating "I want to know why you are not following policiys [sic] concerning people who clame [sic] they have GID. I want to know why you don't have a GID specialist employed by the state. The only person who can diagnose GID is a specialist. Why are you not following your own procedures and policies?" The kite was not responded to.

64. In November, 2004, Plaintiff was transferred back to Orofino and assessed for suicide risk by social worker Sandra McMichael.

65. On December 28, 2004, Plaintiff submitted a kite to Chad Sombke at IMSI, asking Defendant Sombke to explain why he does not think Plaintiff has GID.

66. On January 20, 2005, Defendant Sombke responded to Plaintiff that "It was the opinion of four mental health professionals that you do not have GID"

67. On January 28, 2005, Plaintiff submitted a kite to Defendant Haas referring to Haas' written statement to Plaintiff that "The MTC determined that you do not meet the

diagnostic criteria for Gender Identity Disorder.” Plaintiff’s kite asked, “Which criteria do I not meet? The DSM IVR or the HBGIDA? It seems to me that after I read both that my attitude, past and present behavior all point to my having GID. I also have proof from a hospital stating that I tried to mutilate myself because of emotional and mental problems. So I guess the question is how do I not meet the criteria for GID? And what criteria are you going by?”

68. On March 8, 2005, Plaintiff submitted a Grievance Form asking why he had not received a response from Defendant Haas so that he could proceed with legal recourse. The Grievance Form stated “This is a personal issue that I am trying to get help with and I am being eagnored [sic]. I’m tired of it.”

69. Plaintiff’s March 8, 2005 Grievance Form (designated as an “Appeal”) and the responses thereto was reviewed and replied to on April 5, 2005, by an unknown person apparently employed by Prison Health Services. The response recommended that Plaintiff see Dr. Fleurchinger with any additional concerns or problems.

70. On March 26, 2005, Plaintiff submitted a kite to “Grivance [sic] Coordonater [sic]” stating “I want to know why when I sent a grievance to David Haas that he did not answer it. It’s part of the grievance process. He needs to answer this grievance. I’m appealing it. I want his answer.”

71. On April 5, 2005, Platiff’s March 26, kite was responded to by L. Mechling. The reply stated “I don’t know why he did not answer. However, your appeal does not

go to Mr. Haas. Medical Grievance appeals go to PHS (Prison Health Services)”.

72. IDOC Directive No. 401.06.03.501, Section 05.01.00, attached hereto as Exhibit A, provides that “The diagnosis of GID will be based on the DSM IV criteria and the Harry Benjamin Standards, and must be assigned and/or approved by the Management and Treatment Committee.” In the Psychological Evaluation which concluded in a finding that Plaintiff does not suffer from GID, attached hereto as Exhibit B, there is no evidence that the MTC consulted the Harry Benjamin Standards.

73. IDOC Directive 401.06.03.501, Section 05.01.00, attached hereto as Exhibit A, provides that “The Management and Treatment Committee will be composed of the Medical Services Manager (chair), chief psychiatrist, chief psychologist, facility head and other mental health, human services and security staff...” While it is unclear who in fact comprised the MTC in Plaintiff’s case, or if in fact an MTC was used at all, the two signatures on the Psychological Evaluation which concluded in a finding that Plaintiff does not suffer from GID (Exhibit B) are those of Defendant Sombke, Chief Psychologist, and Defendant Khatain, Chief Psychiatrist.

74. Plaintiff made numerous attempts to discover who the members of the MTC were, but was never given their names.

75. Plaintiff’s attempted suicide after the Psychological Evaluation (Exhibit B) was a direct result of the conclusion reached therein by Defendants Sombke and Khatain.

76. Plaintiff informed Defendant Khatain and the IMSI medical staff that the

reason for the attempted suicide was because of the GID diagnosis.

77. After attempting suicide Plaintiff was locked down at IMSI for 23 hours a day in a single cell for 118 days, until transfer back to ICIO.

78. Defendants Sombke and Khatain have little or no expertise in diagnosing or treating persons suffering from GID.

79. None of the medical personnel who have been involved in Plaintiff's care, including Defendants named herein, have the experience, knowledge, credentials or expertise to diagnose or treat persons suffering from GID.

80. Several days following Plaintiff's diagnosis by Defendants Sombke and Khatain, Plaintiff heard from three corrections officers details of what had occurred during the evaluation.

81. Plaintiff continues to suffer from suicidal ideation, depression, anxiety, gender dysphoria, nightmares, insomnia, despair, hopelessness and thoughts of self-mutilation on a daily basis.

III. FEDERAL CLAIMS

First Cause of Action

(42 U.S.C. Section 1983)

81. Plaintiff incorporates paragraphs 1 through 80 above.

82. Defendants' above-described delay in evaluating Plaintiff for a serious medical

condition, their subsequent failure to follow policies in diagnosing and treating Plaintiff's condition which resulted in a misdiagnosis of Plaintiff's condition, and their ongoing failure to address Plaintiff's serious medical needs constitutes a deprivation of Plaintiff's constitutional rights, including the right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, and the right not to be subjected to cruel and unusual punishment guaranteed by the Eighth Amendment to the United States Constitution.

83. Defendants' aforementioned misconduct was a moving force and proximate cause of damages to Plaintiff as set forth hereinbelow.

Second Cause of Action

(42 U.S.C. Section 1983)

84. Plaintiff incorporates paragraphs 1 through 83 above.

85. Under Idaho law as described herein, Defendants Idaho Board of Correction, Carolyn Meline, Ralph Townsend, Dwight Board, Jim Tibbs and Jay Nielsen are responsible for the proper management and control of state correctional facilities and for the provision of care for all prisoners in state custody. Defendants know or should have known that medical care providers providing services to prisoners in IDOC custody are not qualified to diagnose or treat GID.

86. Under Idaho law as described herein, Defendants Idaho Board of Correction,

Carolyn Meline, Ralph Townsend, Dwight Board, Jim Tibbs and Jay Nielsen are responsible for the training and employment of all assistants, officers and other persons necessary for the proper administration of Defendant IDOC. Defendants know or should have known of a custom, practice or usage of providing delayed and/or inadequate medical care to prisoners, particularly mental health care and more particularly treatment for GID, and therefore created a custom, practice or usage of delivery of constitutionally inadequate medical care to prisoners.

87. Said Defendants failed to provide adequate recruitment, retention, supervision and discipline policies relating to the delivery of medical care to prisoners, thereby creating within IDOC a custom or practice of tolerance toward the delivery of constitutionally inadequate medical care.

88. Defendants' aforementioned actions and omissions constituted a state policy, custom or persistent practice, which actions and omissions amounted to reckless or deliberate indifference to the constitutional rights of prisoners.

89. Defendants' aforementioned state policy, custom, practice or usage, as well as their actions and omissions, deprived Plaintiff of constitutional rights, including the right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, and the right not to be subjected to cruel and unusual punishment guaranteed by the Eighth Amendment to the United States Constitution.

90. Defendants' aforementioned state policy, custom, practice or usage, as well as

their actions and omissions, were a moving force and proximate cause of damages to Plaintiff as set forth hereinbelow.

Third Cause of Action

(42 U.S.C. Section 1983)

91. Plaintiff incorporates paragraphs 1 through 90 above.

92. Said Defendants failed to provide adequate supervision of practices relating to the confidentiality of delivery of medical care to prisoners, specifically the GID evaluation performed upon Plaintiff at IMSI.

93. Defendants' aforementioned actions and omissions constituted a state policy, custom or persistent practice, which actions and omissions amounted to reckless or deliberate indifference to the constitutional rights of prisoners.

94. Defendants' aforementioned state policy, custom, practice or usage, as well as their actions and omissions, deprived Plaintiff of constitutional rights, including the right to privacy guaranteed by the United States Constitution

95. Defendants' aforementioned state policy, custom, practice or usage, as well as their actions and omissions, were a moving force and proximate cause of damages to Plaintiff as set forth hereinbelow.

IV DAMAGES ALLEGATIONS

96. Plaintiff incorporates paragraphs 1 through 95 above.

97. As a direct and proximate result of the actions and omissions of Defendants, Plaintiff was deprived of constitutional rights, including the right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, the right not to be subjected to cruel and unusual punishment guaranteed by the Eighth Amendment to the United States Constitution and the right to privacy guaranteed by the United States Constitution.

98. As a further direct and proximate result of the actions and omissions of Defendants, Plaintiff has suffered physical injuries from attempted suicide, severe emotional distress, mental pain and anguish, loss of enjoyment of life, depression, suicidal ideation, sleeplessness, and all to her general damage in an amount to be proved at trial.

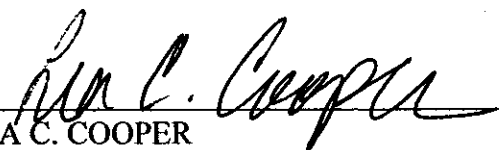
V. PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them as follows:

1. Compensatory and general damages against Defendants in an amount to be determined at trial;

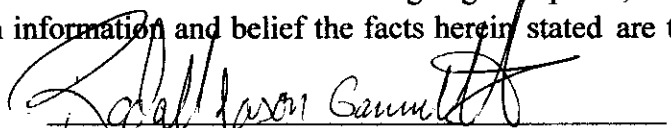
- 2. Punitive damages against Defendants in an amount to be determined at trial;
- 3. Reasonable attorney fees pursuant to Title 42 U.S.C. Section 1988, as well as costs of suit and interest;
- 4. An Order from this Court requiring the immediate evaluation, diagnosis and treatment of Plaintiff by a mental health professional with expertise in GID.
- 5. Such other and further relief as the Court deems just.

DATED this 23 day of June, 2005.


 LEA C. COOPER
 Attorney for Plaintiff

STATE OF IDAHO)
) ss.
 County of Clearwater)

I, Randall Jason Gammett, being first duly sworn on oath depose and say, that I am the Plaintiff in the above-entitled case, that I have read the within and foregoing Complaint, that I know the contents thereof and that upon information and belief the facts herein stated are true and correct.


 Randall Jason Gammett

Subscribed and sworn before me this 23 day of June, 2005.

darrell stammer
 Notary Public for the State of Idaho

Residing at Oronago, Idaho

My Commission Expires 12/19/09

