


UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SANDY J. BATTISTA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action
)	No.
HAROLD W. CLARKE,)	05-11456-DPW
MICHAEL CORSINI, in their official)	
capacities;)	
)	
Defendants.)	
)	
_____)	


~~PROPOSED~~ MODIFIED PRELIMINARY INJUNCTION ORDER

It is hereby ORDERED that:

1. The DOC, its agents, servants and/or employees, shall ensure that the GID Treatment Plan set forth herein for Battista is implemented by the DOC's mental health services provider, MHM, and that parallel medical treatment will be provided by the DOC's medical service provider. Treatment may not be materially altered without prior permission of the Court, and any failure of the DOC to comply with the directives contained herein may result in contempt proceedings or other sanctions.
2. Pursuant to the GID Treatment Plan Supplement, Battista will receive psychotherapy at least once every other week, with sessions lasting at least forty-five minutes; therapy sessions shall be conducted in a private conference room or private office at the Massachusetts Treatment Center.
3. Therapy sessions must be conducted by Mr. Neil Norcliffe, the Mental Health Director for the Treatment Center. Should MHM seek to change the treatment plan by using a different therapist for Battista, the DOC shall notify this Court and Battista's counsel of such change at least two weeks in advance.

4. During these therapy sessions, Mr. Norcliffe will provide psychotherapy focusing on the specific areas of exploration detailed in Dr. Levine's June 18, 2008 report and the GID Treatment Plan Supplement dated July 30, 2008, e.g., Battista's psychosexual development, masochism, interplay of GID with co-morbid mental disorders including pedophilia, and Battista's understanding of her gender mosaic.
5. In addition to conducting biweekly therapy sessions with Battista, Mr. Norcliffe will meet in regular monthly supervision sessions with Dr. Deiner, Dr. Levine and other MHM clinicians with whom Dr. Deiner chooses to consult. Monthly supervision reports shall be signed by Dr. Deiner, Mr. Norcliffe, Dr. Levine, and any other MHM clinician consulted by Dr. Deiner. The monthly reports shall be provided to the Court under seal and to counsel for the DOC and counsel for Battista. The monthly supervision reports must provide an update on the progress of therapy, with specific reference to the criteria set forth in this Order. The reports must also include opinions as to other potential feminizing intervention that may be requested by Battista and discussed in therapy. The DOC, its agents, servants, and/or employees are prohibited from dictating, directly or indirectly, the manner, format, or substance in which the monthly report is prepared by the clinicians. The monthly report shall specifically address the following:
 - A. When will the feminizing effects of Ms. Battista's hormone therapy likely begin to materialize? What effects is Ms. Battista likely to experience and when?
 - B. Is she continuing to cooperate in therapy and actively participating in discussing issues related to her comprehensive mental health?
 - C. How is she adjusting psychologically to her feminization, i.e., the physical changes brought about by hormone therapy?
 - D. What is her ongoing perspective on the efficacy of the hormone therapy and how that compares with her expectations prior to receiving the therapy?

- E. How has the hormone therapy affected her interactions with other residents at the Treatment Center?
 - F. How has the hormone therapy affected her perception of the quality of her life at the Treatment Center?
 - G. An update on the GID Clinical Supervision Group's impression of Ms. Battista's progress in therapy.
 - H. What, if any, additional feminizing interventions has Ms. Battista requested? Does the GID team recommend such interventions? Why or why not?
6. The DOC, its agents, servants and/or employees are prohibited from taking any actions, directly or indirectly, to coerce, or otherwise improperly influence recommendations or conclusions concerning any aspect of Battista's GID Treatment. The DOC is prohibited from interfering in any manner with any medical or mental health decisions made by the contractual medical or mental health care providers. The DOC shall notify the medical and mental health care providers of this Order forthwith by providing them with a copy of this Order, and shall advise these providers that any behavior which any provider deems to be in violation of this Order shall be documented in writing and reported to this Court forthwith.
7. Neither the DOC or any of its prison staff may obtain any medical or mental health information generated from the evaluation or treatment of Battista from its contractual health care providers without a prior Order of this Court.
- (a) This paragraph shall not restrict the DOC or any prison staff from obtaining any medical or mental health information generated by its contractual health care providers where there exists an immediate threat of serious bodily harm to Battista or to others, when the information sought by the DOC pertains to legitimate concerns by the DOC for the safety and security of Battista or others. In obtaining such medical or mental health information pursuant to this harm exception, the DOC is not restricted to instances

where the contractual health care providers make the determination that there is an imminent threat of serious bodily harm to Battista or others; rather, the DOC may consider other sources of information (i.e., intelligence from non-health care providers) in determining whether there exists an imminent threat of serious bodily harm to Battista or others, and whether the medical and mental health information is necessary for the DOC to carry out its mandate to protect the safety and security of Battista and others.

(b) In any instance where the DOC seeks disclosure of medical or mental health information from the evaluation or treatment of Battista based on the perceived existence of an imminent threat of serious bodily harm to Battista or others, such disclosure shall be limited to the information necessary to address the safety and security threat and may not be used for any reason other than to secure Battista's safety or the safety of others. In the event the contractual health care providers make any such disclosure of Battista's medical or mental health information, the DOC shall, within five (5) days of receipt of the information, provide a Notice to this Court reporting the type and nature of the information obtained, and the specific basis on which the DOC sought disclosure with respect to security and safety concerns. Additionally, the Superintendent of the Massachusetts Treatment Center shall file an Affidavit representing to the Court that the medical or mental health information obtained pursuant to this harm exception will not be used for any reason other than to secure Battista's safety or the safety of others, and further, that all reasonable and necessary steps shall be taken to ensure that this information will not be placed within the DOC in a manner which would make it accessible to others not concerned with safety issues. The Notice and Affidavit filed by the DOC pursuant to this provision may be filed under seal, and must be disclosed to Battista's counsel.

(c) Should the DOC or any of its prison staff seek to obtain medical or mental health information, for reasons that do not involve any immediate threat

of serious harm to Battista or others, the DOC must provide a specific and particularized evidentiary demonstration of good cause for such disclosure.

8. Within seven (7) business days of the entry of this Order, the DOC shall provide hormone therapy to Battista in accordance with the recommendation of Dr. Levine, Dr. Zakai, and Ruth Khowais, Psy.D. on June 19, 2009, and the prescription by endocrinologist Dr. Mohammed Saad dated August 4, 2009 and August 14, 2009.
9. Battista shall be allowed to purchase any and all items pursuant to Addendum E to the DOC's Policy for the Identification, Treatment and Correctional Management of Inmates Diagnosed with Gender Identity Disorder (GID) 103 DOC 652. The purchase of a bra and for the implementation of hair removal are matters which should be addressed as part of the therapy and specific recommendations as to these two matters must be made by Mr. Norcliffe, Dr. Deiner and Dr. Levine in connection with the supervision reports to be submitted to the Court, consistent with the obligation that "[d]uring therapy, an ongoing assessment and evaluation will be done to determine appropriateness of further feminization." The DOC shall ensure that Battista is provided with sufficient blank order forms for purchase of the approved clothing and canteen items identified above, as well as postings of new items, deleted items, and price changes.
10. Battista shall also be made part of any appropriate group therapy if such therapy becomes available.
11. The DOC shall provide copies of this Preliminary Injunction Order and the contemporaneous Memorandum to Dr. Deiner, Mr. Norcliffe, Dr. Levine, and to legal counsel or other authorized representative for the contractual health care service providers.

SO ORDERED.



DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

