

*Filed 12-12-00
in accordance
w/ Order No. 3*

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Signature]
Deputy Clerk

MICHELLE LYNNE KOSILEK,)
Plaintiff)
v.)
MASSACHUSETTS DEPARTMENT OF)
CORRECTIONS; MICHAEL T. MALONEY;)
CORRECTIONAL MEDICAL SERVICES,)
INC.; U/MASS MEDICAL SCHOOL; DR.)
ARTHUR BREWER; DR. HARRISON)
O'CONNOR; DR. KENNETH APPLEBAUM;))
KAREN DEWEES,)
Defendants))

CIVIL ACTION #
00-12455 *MLW*

COMPLAINT AND DEMAND FOR JURY TRIAL

Introduction

1. This is an action for damages and injunctive relief against the Massachusetts Department of Correction, Michael T. Maloney, Correctional Medical Services, Inc. (CMS), U/Mass. Medical School (UMMS), Dr. Arthur Brewer, Dr. Harrison O'Connor, Dr. Kenneth Applebaum, and Karen DeWees! Mr. Maloney is Commissioner of Massachusetts Department of Correction; all other personally named Defendants are employees of the CMS/UMMS contract with Defendant Department of Corrections, a subcontract to provide mental health services to inmates. During Plaintiff's seven years in their custody, Defendant s have engaged in a pattern of illegal denial of medical and mental health services. Defendant Maloney has been dismissed for personal liability on a related civil action based on perjury he submitted to the Court (Exhibit 1) in

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which he denied responsibility for denial of treatment. Sworn testimony of at least three defendants later revealed treatment exclusion was added to CMS/UMMS contract by order of Mr. Maloney. ^{Ex 1B} Conversely, while Defendant Maloney has decided to arbitrarily refuse to treat Plaintiff's medical condition, he ^{Ex 1C} has signed another contract with Justice Resource Institute to provide very specific treatment such as aversion therapy and electrical monitoring of genital responses, a contract that employs a number of specialists in the field of sex-offender treatment at a yearly rate of over three-million dollars, while admitting that 75% of these patients are non-compliant. ^{*} Additionally, this special psychiatric treatment for sex offenders only is mandatory with built-in sanctions for non-compliance. "The primary goal . . . is to facilitate the eventual involvement of offenders in community living . . ." Plaintiff deserves the same dedication by Defendant Maloney and DOC to treatment of her condition (Exhibit 1C.) In addition to being denied treatment for Gender Identity Disorder, Plaintiff is also being denied vegetarian diet for an animal protein allergy and was not informed of being infected with a fatal illness she has and Defendants have known about for seven years--Hepatitis C. ^{Ex 1D} Defendants have also attempted to make Plaintiff pay for prescribed medication for chronic cervical spine arthritis and for ^{Ex 1E} the price of drawing, analyzing and storing blood for a state-mandated DNA database.

These actions violated Plaintiff's First Amendment right to freedom of expression; Fourth Amendment right to freedom from seizure of her assets; Fifth

^{*} Ex 1C (3) paragraph 7 also admits they are not mentally ill.

Amendment right to Due Process; Eighth Amendment right to Freedom from cruel and unusual punishment, and Fourteenth Amendment guarantee of Equal Protection under the law. These actions also constitute medical malpractice.

JURISDICTION

2. The Plaintiff's claims for relief are filed under 42 USC 1983 to redress injuries suffered by Plaintiff for deprivation under color of state law of rights secured by the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. The Plaintiff's claims also arise directly under the First, Fourth, Fifth, Eighth, and Fourteenth Amendments. Accordingly the Court has jurisdiction over the claims pursuant to 28 USC 1331 and 1343 (3).

3. Venue in the District of Massachusetts is proper, because each of the Defendants resides and/or does business in the District of Massachusetts and each of the claims for relief arose in this District.

PARTIES

4. The Plaintiff is presently incarcerated at MCI-Norfolk, a prison operated by the Massachusetts Department of Corrections.

5. Defendant Massachusetts Department of Corrections is charged with the administration of medical care to prisoners in its custody, as well as pre-trial detainees.

6. Defendant Maloney is the Commissioner of the Massachusetts Department of Corrections. His duties and powers include the duty to institute and supervise policies for the provision of medical services to prisoners in the care and custody of the Massachusetts Department of Corrections, and county jails, 103932CMA

7. Correctional Medical Services is a corporation contracted to provide medical services to prisoners held by the Massachusetts Department of Corrections.
8. U/Mass Medical School is a state-funded educational entity that has entered into a sub-contractual agreement to provide the mental health services component of the CMS/Department of Corrections contract for medical services.
9. Dr. Arthur Brewer is the Medical Director of CMS.
10. Dr. Harrison O'Connor is an Orthopedic Surgeon who is employed by UMMS. Dr O'Connor was employed as a psychiatrist by CMS, by the previous contract vendor, EMSA, and by the Department of Corrections despite the fact that he is not now, nor has he ever been certified as a psychiatrist, and has never served a psychiatric internship (Exhibit 2).
11. Dr. Kenneth Applebaum is the Director of the UMMS component of the CMS/UMMS contract.
12. Karen DeWees, LICSW, is the Director of Mental Health Services at MCI-Norfolk. She is employed by UMMS.

FACTUAL ALLEGATIONS

a. Plaintiff's Transsexualism

13. Plaintiff suffers from a medical condition known as transsexualism, a severe form of Gender Identity Disorder. Although Plaintiff is anatomically male, she identifies psychologically as female, and always has. Gender Identity Disorder is a diagnostic medical term used to describe a number of disturbances

related to having a gender identity that is incongruous to one's anatomy.

Transsexualism is used to describe the most extreme manifestation of this disorder, named so because the suffering caused by an incongruous anatomy compels the patient to seek hormonal and surgical intervention to ease the suffering. Plaintiff has described this otherness as a feeling of biological claustrophobia. Medical treatment of this condition is directed at correcting the incongruity between the afflicted person's assigned sex (anatomical) and the person's psychological identity (opposite sex). The universal prescribed treatment involves psychotherapy, hormone therapy, and surgical correction of the offending genitalia. The only treatment modality that is deemed appropriate and curative for this serious condition is the regimen described above, as mandated by the "Standards of Care for Gender Identity Disorder" (Exhibit 3).

14. Plaintiff has suffered from Gender Identity Disorder. As a child she was beaten and sexually abused by her caretakers as a result of expressing her female identity. As a result, Plaintiff began an on again/off again hiding process in which she would pretend to be male to avoid further abuse. Two subsequent attempts to live as a female after achieving breast development through the use of estrogen resulted in other beatings and a gang rape.

15. Plaintiff first sought psychiatric treatment for Gender Identity Disorder in 1970 with Dr. Terry B. Brelje, PhD while incarcerated for possession of marijuana.

16. After being released in 1972, Plaintiff resumed living as a female and taking estrogen. A severe beating by two men outside of a bar resulted in Plaintiff fleeing into a false male identity.

b. Plaintiff's Incarceration

17. In 1990, Plaintiff was placed in pre-trial detention in the Bristol County Jail. As a pre-trial detainee Plaintiff had the right to treatment for Gender Identity Disorder, and even offered to self-pay. Sheriff David Nelson refused to allow Plaintiff to complete her transition and she was denied this right until she left his custody. State D.O.C. Commissioner responsible for this denial.*

18. On January 25, 1993 Plaintiff was placed in the custody of the Massachusetts Department of Corrections. As a prisoner, Plaintiff retains the right to be free from Cruel and Unusual Punishment under the Eighth Amendment of the United States Constitution. Deliberate indifference to the serious medical needs of a prisoner constitutes cruel and unusual punishment.

19. Plaintiff repeatedly informed the Department of Corrections of her transsexualism over the course of the next seven (7) years, including Defendant Maloney. Despite documentation by medical staff during intake interview at MCI-Cedar Junction that Plaintiff was a transsexual with breasts who was requesting treatment, Defendants have refused to provide and/or pay for any Gender Identity Disorder-related treatment. The only exception has been a Federal court-ordered evaluation by Dr. Marshall Forstein, an expert the Department of Corrections identified and hired. Defendants have refused to

* Comm. of Corr. was proper party in view of duties under M.G.L.C. 124 § 1.
Dimarzo v Cahill (C.A. 1978) 575 F.2d; Inmates v Eisenstadt (C.A. 1974) 494 F.2d
Certiorari denied by S.Ct. in both cases

comply with Dr. Forstein's recommendations (Exhibit 4) because of Mr. Maloney's personal belief that taxpayer money should not be spent for this medical condition. Ex 1B page 59

FIRST CLAIM FOR RELIEF

Denial of Free Speech—All Defendants

20. One of the diagnostic criteria for identifying a patient with Gender Identity Disorder is a compelling need for the patient to express her true identity through the use of cross-gender expression, as exemplified by the use of makeup, jewelry, clothes, hairstyle, and body language. State Court in Massachusetts has recently ruled that this behavior is a protected form of expression under the First Amendment to the United States Constitution (Pat Doe vs. Brockton School Board). The Defendants have conspired to punish Plaintiff with Disciplinary Action including loss of job, canteen privileges, and Administrative Segregation for expressing herself, despite the fact that no rules exist under which Plaintiff could be punished. Defendant Maloney has admitted under oath that a policy allowing inmates to wear makeup and earrings does exist, and that it does not exclude anatomical males. A certified letter to MCI-Norfolk Superintendent Tim Hall requesting proof of any rule prohibiting me from displaying my symptoms went unanswered, yet CMS/UMMS staff drew up "Guidelines" agreeing that Department of Corrections can punish me for my symptoms, while refusing to treat my illness! (Exhibits 5 and 6). Defendants' actions violate First Amendment, causing Plaintiff continuous suffering.

SECOND CLAIM FOR RELIEF

Fourth Amendment Violation—Illegal Seizure

21. Defendants Maloney, Department of Corrections and CMS have begun to seize inmate funds (\$110.00 each) in accordance with a DNA Database, the creation of which is mandated by MGL Ch. 22 E Section 4 paragraph b. This is an illegal seizure of funds in that Plaintiff was not sentenced to any fines or fees when she was convicted four years before MGL Ch. 22 E Section 4 paragraph b was enacted. This also violates Eighth Amendment prohibition against Cruel and Unusual Punishment. Plaintiff requests an Injunction preventing Defendants from enforcing MGL Ch. 22 E Section 4 paragraph b (only this paragraph) until such time as the constitutionality of this paragraph can be determined.

THIRD CLAIM FOR RELIEF

Fifth Amendment Violation—Due Process

22. Defendants Maloney, Department of Corrections, and CMS are now depriving inmates of property without Due Process by means of an illegal \$110.00 DNA database fee. NO inmates have been sentenced to pay this fee.

FOURTH CLAIM FOR RELIEF

Eighth Amendment Violation—All Defendants

23. Plaintiff suffers from a serious medical condition known as transsexualism.

24. Plaintiff has repeatedly made this known to all Defendants over a seven-year period.

25. For the first five years (1993-1998) Defendants denied treatment, repeatedly, denying psychotherapy and hormones (Exhibit 7) on the premise (personal belief of Dr. O'Connor) that prisoners "come to prison to be held in custody, not to be treated for one ailment of another" and again denying estrogen therapy on the premise that the CMS contract excluded estrogen therapy when the exclusion wasn't added until three and ½ years later! (Exhibit 8).

26. In 1998, Defendants entered into a contractual agreement to exclude treatment for sex change, either surgery or related treatment. ^{Ex 8 B} Since transsexualism is a serious medical need, refusing to treat this condition is Deliberate Indifference and thus it is Cruel and Unusual Punishment, a violation of the Eighth Amendment to the United States Constitution.

27. As a result of these years of denial of medical treatment, Plaintiff has continuously suffered depression and anxiety, with a resultant constantly high level of stress—hormones which has contributed to a shortening of Plaintiff's life-expectancy. Plaintiff requests an assessment of her medical chart by a qualified endocrinologist to confirm this allegation.

28. Despite claiming that no one who works for Department of Correction or CMS/UMMS is qualified to treat Gender Identity Disorder, ^{Ex 9 page 2 paragraph 1} Defendants have promulgated "Guidelines" for treatment (Exhibit 6). This admission was included as part of a Discovery Request in CA 9212820MLW and it included an admission that CMS has been mostly responsible for over three hundred lawsuits based on

Eighth Amendment violations (Exhibit 9). Response number one on the same document failed to provide a specific treatment protocol, but referenced a Regulation 103 DOC 630, which requires CMS and all other treatment providers to provide healthcare services comparable in quality to that available in the community (Exhibit 10). Defendant CMS' refusal to pay for an allergy skin test and refusal to provide prescribed pain medication, as well as their failure to inform Plaintiff that she has a potentially fatal illness (Hepatitis C) (Exhibit 11) are all violations of Eighth Amendment and Department of Correction Regulation 103 DOC 630. CMS inability to obey the law and thereby limit litigation is best exemplified by their medical release form that includes a litigation waiver (Exhibit 12). All of Defendants' actions violate Eighth Amendment. As a result of Defendants' inaction, Plaintiff has continuously suffered for seven (7) years.

FIFTH CLAIM FOR RELIEF

Fourteenth Amendment Violation—Denial of Equal Protection-All Defendants

29. Plaintiff suffers from a medical condition, Gender Identity Disorder; if untreated this condition can lead to self-mutilation and/or suicide. Despite being aware of these risks and admitting same under oath, Defendants have elected to deny treatment to Plaintiff for seven (7) years. Two years ago, Defendants codified this denial of treatment by becoming signatories to a multimillion-dollar contract. Of the thousands of medical and/or psychiatric conditions that affect human beings, Defendants voluntarily agreed to exclude treatment for only one condition—Gender Identity Disorder. Treatment for this disorder is quite

common nowadays (Plaintiff's surgeon of choice, Dr. Stanley Biber, has performed thousands of sex-reassignments). Ironically, it is one of the few psychiatric disorders that has a curative treatment. Intentionally refusing to treat Gender Identity Disorder while punishing the Plaintiff for exhibiting the very symptoms that define her illness is a blatant violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Additionally, Defendants' Guidelines (Exhibit 6) though frightfully inadequate, do recognize that transsexual prisoners who enter the system with evidence of hormone therapy, e.g. breast development, should be treated differently.

Plaintiff had breasts when she entered which have now diminished but

Defendants are still refusing estrogen to Plaintiff. Because of the increasing masculinization of Plaintiff's body, she continues to suffer depression,

exacerbated by recent loss of scalp hair. Defendants' actions violate Plaintiff's right to Equal Protection under the law guaranteed by the Fourteenth

Amendment to the United States Constitution. Ex 6 should read like Ex 6 B

30. As a result of this violation, Plaintiff has suffered and continues to suffer

substantial damages. Plaintiff had the right to treatment, including surgery, as a pre-trial detainee (Ex 13, 103 CMR 932.10(c)) and 103 CMR 932.10 confirm this. Commissioner DuBois and his Deputy Maloney refused to do their duty under M.G.L. c. 124 § 1, despite outside intervention. (Ex 14, Letter from D.P.H.) Defendants are still culpable. M.G.L. c. 125 § 20, "suit shall not abate". Since Defendant Maloney has illegally escaped prosecution through perjury in CA. 92-12820 (Ex 1) Plaintiff's claim accrues to pre-trial period, and she retains her right to treatment and is therefore exempt from the limitations of the Prisoner Litigation Reform Act. Plaintiff moves this Court to waive all fees.

PRAYERS FOR RELIEF

1. Plaintiff prays that this Honorable Court award Plaintiff damages, in an amount to be determined by the jury at trial, under each Claim for Relief as set forth above.
2. Plaintiff prays that the Court award interest on said damages.
3. Plaintiff prays that this Court award injunctive relief against Defendants Department of Correction, Michael T. Maloney, and CMS/UMMS requiring them to provide appropriate treatment for Plaintiff's medical condition in accordance with standards of care; Plaintiff further prays that the Court enjoin the Defendants Department of Corrections, Michael T. Maloney, and CMS from enforcing Section 4 paragraph b of MGL Chapter 22 E.
4. Plaintiff prays that this Court will appoint Counsel as the Court did in a related matter, CA9212820MLW. Defendant Department of Correction and Michael T. Maloney have perjured themselves to the Federal Court in an attempt to evade their obligations under First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Defendants have a large legal staff and unlimited funds; Plaintiff is indigent, and seriously disadvantaged by lack of a law degree.
5. Plaintiff prays that this Court award such other relief as is just and proper.

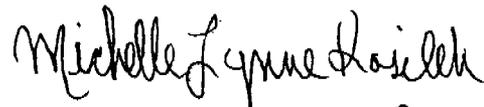
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DEMAND FOR JURY TRIAL

In accordance with Federal RC iv P 38(b), Plaintiff demands a trial by jury on all issues so triable!

Dated this 17th day of November, 2000.

Respectfully submitted,



Michelle Lynne Kosilek Pro-Se