

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI,

*Plaintiff,*

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,  
INC.; ST. JOSEPH'S HOSPITAL AND  
MEDICAL CENTER D/B/A ST. JOSEPH'S  
REGIONAL MEDICAL CENTER; and  
FATHER MARTIN D. ROONEY,

*Defendants.*

Case No. 2:17-cv-00050-JLL-JAD

Hon. Jose L. Linares

**JOINT DISCOVERY PLAN**

1. Set forth the name of each attorney appearing, the firm name, address and telephone number and facsimile number of each, designating the party represented.

**For Plaintiff:**

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**For Defendants:**

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2. Set forth a factual description of the case. Include the causes of action and affirmative defenses asserted.

**Plaintiff's Statement:** Plaintiff, a man who is transgender, sought and was denied medically necessary access to treatment, services, and facilities by Defendants because of his sex, non-conformity with sex stereotypes, and gender identity. Plaintiff asserts causes of action against Defendants St. Joseph's Healthcare System, Inc. and St. Joseph's Hospital and Medical Center for discrimination on the basis of sex in violation of Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116 (the "ACA"), and against all Defendants for discrimination because of sex and gender identity in violation of the New Jersey Law Against Discrimination, N.J. Stat. Ann. §§ 10:5-1, *et seq.* (the "NJLAD").

**Defendants' Statement:** In June of 2015, Plaintiff – who was then known as “Kris Conforth” – contacted St. Joseph's Hospital and Medical Center, a Catholic hospital, to ask whether he could schedule “a total hysterectomy to remove all female parts based on the medical necessity . . . for (GID) Gender Reassignment Surgery” at St. Joseph's hospital in Paterson. Defendants, including St. Joseph's Director of Mission Services Father Martin D. Rooney (who is also a Defendant in this action), reviewed this request for a sterilization procedure in light of the Ethical and Religious Directives for Catholic Health Care Services promulgated by the United States Conference of Catholic Bishops. Defendants made the valid decision to deny Mr. Conforti a hysterectomy based on the Catholic directives with which St. Joseph's must comply, consistent with its mission as a Catholic institution, and not as a result of any discrimination related to Plaintiff's gender identity.

Defendants raise the following additional defenses, among others, to Plaintiff's Section 1557 claim: (1) Section 1557 of the ACA does not expressly state that “gender identity” is a protected characteristic and the United States Department of Health and Human Services' Final Rule in May 2016 (which was not in effect when Plaintiff contacted St. Joseph's in June 2015) was enjoined by Order of a Texas federal court on December 31, 2016; (2) the Section 1557 claim is barred by the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000 bb, which prohibits the Federal Government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling government interest; and (3) Plaintiff's Section 1557 and state law claims violate the Establishment Clause of the First Amendment of the United States Constitution and the corresponding protections of the New Jersey Constitution. In addition, Plaintiff's NJLAD claim is barred by N.J.S.A. 2A:65A-1, 2A:65A-2 and 2A:65A-3, which state that “[n]o person shall be required to perform or assist in the performance of . . . sterilization”; “[n]o hospital or other health care facility shall be required to provide . . . sterilization services or procedures”; and “[t]he refusal to perform, assist in the performance of, or provide . . . sterilization procedures shall not constitute grounds for civil or criminal liability, disciplinary action or discriminatory treatment.”

3. Have settlement discussions taken place? **No.**
4. The parties **have** met pursuant to Fed. R. Civ. P. 26(f).
5. The parties **have** exchanged the information required by Fed. R. Civ. P. 26(a)(1).
6. Describe any discovery conducted other than the above disclosures. **N/A**
7. Generally, dispositive Motions cannot be filed until the completion of discovery. Describe any Motions any party may seek to make prior to the completion of discovery. Include any jurisdictional Motions and Motions to Amend.

**Defendants anticipate filing a motion for judgment on the pleadings or a summary judgment motion at the completion of discovery.**

**Plaintiff anticipates filing a motion for summary judgment at the completion of discovery.**

8. The parties propose the following:

- a. Discovery is needed on the following subjects:

**While reserving his right to seek discovery on additional subjects, Plaintiff requires discovery on the following:**

- **Defendants' decision to deny Plaintiff access to treatment, services, and facilities, and the decision-making process related thereto.**
- **Defendants' policies and practices related to the provision or denial of gender confirmation or gender dysphoria-related medical care, treatment, and services to transgender patients.**
- **Defendants' policies and practices related to the provision of medical care, treatment, and services, including any medical care, treatment, and services typically associated with a particular sex, to transgender or gender-nonconforming patients.**
- **Defendants' policies and practices related to the provision of medical care, treatment, and services, regardless of nature, to transgender or gender-nonconforming patients.**
- **Defendants' policies and practices related to the performance of sterilization, abortion, and contraceptive procedures at their facilities.**
- **Defendants' history of performing sterilization procedures.**

- **Defendants' receipt of federal and state financial assistance, revenue, and funding, such as reimbursement, credits, subsidies, or contracts of insurance.**
- **Defendants' adherence to the Fifth Edition Ethical and Religious Directives for Catholic Health Care Services issued by the United States Conference of Catholic Bishops on November 17, 2009.**

**While reserving their right to seek discovery on additional subjects, Defendants require discovery on the following:**

- **Plaintiff's treatment for gender dysphoria, including any hysterectomy or other medical procedures relating to his gender transition.**
  - **Plaintiff's efforts to schedule a hysterectomy at St. Joseph's Hospital and Medical Center and any other medical facility, including communications with the health insurer.**
  - **Plaintiff's non-privileged communications with any non-parties and any non-lawyer advocacy organizations, regarding this dispute and his gender transition process.**
  - **Plaintiff's communications and records regarding any instances where he allegedly sought medical treatment at a hospital other than St. Joseph's Hospital and Medical Center because of his supposed fear of not being treated at St. Joseph's due to the declination of performing a hysterectomy.**
  - **Plaintiff's communications with any co-author, ghost writer or publisher about any book that plaintiff contemplated or started writing (or being interviewed for) regarding the gender transition process, including any drafts of a book or chapters thereof.**
- b. **Should discovery be conducted in phases? No.**
- c. **Maximum of 25 Interrogatories to be served by each side.**
- Plaintiff reserves his right to seek additional interrogatories should Defendants maintain the 22 affirmative defenses asserted in their Answer.**
- d. **Maximum of 25 Requests for Admission to be served by each side.**
- e. **Maximum of 10 depositions to be taken by each side.**
- f. **Motions to amend or to add parties to be filed by August 18, 2017.**

- g. Factual discovery to be completed by **September 22, 2017**.
  - h. Affirmative expert reports due on **October 27, 2017**.
  - i. Rebuttal expert reports due on **November 17, 2017**.
  - j. Expert discovery to be completed by **January 8, 2018**.
  - k. Dispositive motions to be served within **30 days** of completion of discovery.
  - l. Set forth any special discovery mechanism or procedure requested.
  - m. A pretrial conference may take place on **April 23, 2018**.
  - n. Trial date: **May 7, 2018** ( **Jury Trial**;  Non-Jury Trial).
9. Do you anticipate any special discovery needs (i.e., videotape/telephone depositions, problems with out-of-state witnesses or documents, etc)?
- Yes  No

10. Do you anticipate any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced?
- Yes  No

If so, how will electronic discovery or data be disclosed or produced? Describe any agreements reached by the parties regarding same, including costs of discovery, production, related software, licensing agreements, etc.

**The Parties have met and conferred regarding electronic discovery, and agree as follows:**

- **The parties will each bear their own costs regarding the preservation, collection, and production of electronically stored information.**
- **Excel files and PowerPoint presentations will be produced in native format, as that term is commonly understood, and must include related searchable text, metadata (to the extent it exists), and bibliographic information.**
- **Word documents will be produced in such a manner that comments and tracked changes, including, where available, the identity of the person making that change or comment, will be visible.**
- **Email**
  - **Parent-child relationships (the association between an attachment and its parent document or between embedded documents and their parent) must be preserved. Therefore, if a parent or any of its attachments are**

**responsive to a discovery request, the entire family of documents must be produced or logged appropriately.**

- **All metadata contained in or associated with each such email will be produced to the extent technologically possible.**

11. Any issues about claims of privilege or of protection as trial-preparation materials.

**Privilege and Privilege Logs**

- **The parties agree that neither side is required to list on any privilege log any discovery material protected by any privilege, immunity, or protection that was/is created on or after the filing date of this litigation, provided that the subject matter of the discovery material concerns the claims and defenses at issue in this litigation.**
  - **The parties agree that neither side is required to list on any privilege log any communications with litigation counsel, regardless of timing, provided that the subject matter of the communication concerns the claims and defenses at issue in this litigation.**
  - **The parties agree that issues regarding the inadvertent production of discovery material protected by any privilege, immunity, or protection shall be addressed as provided in the Federal Rules of Civil Procedure and as set forth in any protective order entered in this case.**
12. Do you anticipate entry of a Discovery Confidentiality Order? See L.Civ.R. 5.3(b) and Appendix S.

Yes  No

13. Do you anticipate any discovery problem(s) not listed above? Describe.

Yes  No

**During the parties' conference pursuant to Fed. R. Civ. P. 26(f), Defendants reserved the right to request a physical and/or mental examination of Plaintiff pursuant to Fed. R. Civ. P. 35. Plaintiff objects to any such examination.**

14. State whether this case is appropriate for voluntary arbitration (pursuant to Local Civil Rule 201.1 or otherwise) or mediation (pursuant to Local Civil Rule 301.1 or otherwise).

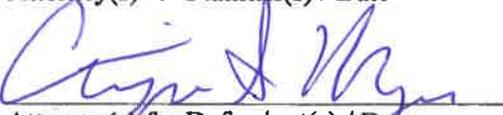
**This case is not appropriate for arbitration or mediation at the current time.**

15. Is this case appropriate for bifurcation? Yes  No

16. We **do not** consent to the trial being conducted by a Magistrate Judge.

17. Identify any other issues to address at the Rule 16 Scheduling Conference. **N/A**

 4/19/2017  
Attorney(s) for Plaintiff(s) / Date

 4/19/17  
Attorney(s) for Defendant(s) / Date