
Nos. 19-35017 and 19-35019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADREE EDMO, (a/k/a MASON EDMO),
Plaintiff-Appellee,

vs.

IDAHO DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellants.
and
CORIZON, INC., et al.,
Defendants-Appellants.

On Appeal from Orders of the United States District Court
For the District of Idaho
Case No. 1:17-cv-00151-BLW

**SUPPLEMENTAL EXCERPTS OF RECORD OF
PLAINTIFF-APPELLEE ADREE EDMO
VOLUME 1 OF 2**

Lori Rifkin, Esq. [S.B. #244081]
Hadsell Stormer & Renick LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. [S.B. #101967]
Shaleen Shanbhag, Esq. [S.B. #301047]
Hadsell Stormer & Renick LLP
128 North Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshnanbhag@hadsellstormer.com

(Counsel continued on next page)
Attorneys for Plaintiff-Appellee, ADREE EDMO

Counsel continued from previous page:

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
Julie Wilensky, Esq. (CA # 271765)
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Emails: awhelan@NCLRights.org
jwilensky@NCLRights.org

Attorneys for Plaintiff-Appellee, ADREE EDMO

Adree Edmo v. IDOC, et al.

Court of Appeals Nos. 19-35017 and 19-35019

SUPPLEMENTAL EXCERPTS OF RECORD OF APPELLEE

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Case Name: Edmo v. Corizon Incorporated et al

Case Number: [1:17-cv-00151-BLW](#)

Filer:

Document Number: 186(No document attached)

Docket Text:

DOCKET ENTRY ORDER: The Court is in receipt of Plaintiff's expedited motion for indicative ruling (Dkt. 185). Good cause appearing, pursuant to District of Idaho Local Civil Rule 6.1, the Court hereby **ORDERS** expedited briefing on this issue. Defendants will file their response no later than April 3, 2019. Plaintiff will file her reply no later than April 5, 2019. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (jc)

1:17-cv-00151-BLW Notice has been electronically mailed to:

Alexander Chen achen@nclrights.org

Amy Whelan awhelan@nclrights.org, drobedeaux@nclrights.org, ldun@nclrights.org

Brady James Hall brady@melawfirm.net, deann@melawfirm.net, krista@melawfirm.net,
marisa@melawfirm.net, shawna@melawfirm.net

Bryce C Jensen bjensen@parsonsbehle.com, boisedocket@parsonsbehle.com,
ecf@parsonsbehle.com, ptrunnell@parsonsbehle.com

Christine Gealy England christine.england@usdoj.gov, Anjali.Motgi@usdoj.gov,

SER 001

CaseView.ECF@usdoj.gov, Danielle.Haws@usdoj.gov, Peter.Bryce@usdoj.gov

Craig Durham chd@fergusondurham.com, durhamlaw@outlook.com

Dan Stormer dstormer@hadsellstormer.com, tgalindo@hadsellstormer.com

Deborah A Ferguson daf@fergusondurham.com

Dylan Alexander Eaton deaton@parsonsbehle.com, boisedocket@parsonsbehle.com,
fax@parsonsbehle.com, lehredt@parsonsbehle.com

J Kevin West kwest@parsonsbehle.com, boisedocket@parsonsbehle.com,
fax@parsonsbehle.com, jcafferty@parsonsbehle.com, jpaulson@parsonsbehle.com

Julie Wilensky jwilensky@nclrights.org, drobedeaux@nclrights.org, ldun@nclrights.org

Lori E Rifkin lrifkin@hadsellstormer.com, jessicav@hadsellstormer.com

Marisa Swank Crecelius marisa@melawfirm.net

Shaleen Shanbhag sshanbhag@hadsellstormer.com, nmolina@hadsellstormer.com

1:17-cv-00151-BLW Notice will be served by other means to:

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (415) 685-3591
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. (CA # 101967)
(*pro hac vice*)
Shaleen Shanbhag, Esq. (CA # 301047)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshahbhag@hadsellstormer.com

Attorneys for Plaintiff

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
Julie Wilensky, Esq. (CA # 271765)
(*pro hac vice*)
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org
jwilensky@NCLRights.org

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S MOTION FOR INDICATIVE
RULING UNDER FEDERAL RULE OF CIVIL
PROCEDURE 62.1 & 60(a) AND REQUEST FOR
EXPEDITED CONSIDERATION UNDER
LOCAL RULE 6.1**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	August 31, 2019
Motion Cut-Off:	January 31, 2020
Trial Date:	None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff Adree Edmo, through her counsel of record, hereby moves this Court for an indicative ruling under Federal Rule of Civil Procedure 62.1 that it would grant a motion under Federal Rule of Civil Procedure 60(a) to modify its December 13, 2018 Order, Dkt. No. 149, to expressly state pursuant to the Prison Litigation Reform Act that the injunctive relief ordered therein is narrowly drawn, extends no further than necessary to correct the violation of the federal right, is the least intrusive means necessary to correct the violation of the Federal right, and that there is no evidence that granting this relief will have any adverse impact on public safety or the operation of the criminal justice system. 18 U.S.C. § 3626(a)(1)(A).

Plaintiff further requests that this Court consider this motion on an expedited basis pursuant to Local Rule 6.1. There is good cause for the Court to expedite consideration of this motion because this Court has already found that times is of the essence in this matter, and, based on this Court's finding of urgency, the Ninth Circuit expedited its consideration of Defendants' appeal when it granted Defendants' motion for a stay of this Court's December 13, 2018 Order. *See* No. 19-3501, Dkt. No. 19 (invoking 9th Cir. Gen. Ord. 3.3(g) regarding "Urgent Cases"). Plaintiff's answering brief is due on April 3, 2019, Defendants' optional reply is due April 17, 2019, and the Ninth Circuit will hear oral argument on May 16, 2019. *Id.*; No. 19-3501, Dkt. Notice--Oral Argument Schedule.

This motion is based on this Motion, the memorandum of points and authorities filed herewith, the record in this action, and argument and evidence at any hearing on this motion.

Dated: March 28, 2019

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Lori Rifkin
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of March, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm.net

Marisa S. Crecelius
marisa@melawfirm.net

Attorney for IDOC Defendants

/s/ - Lori Rifkin

Lori Rifkin

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (415) 685-3591
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. (CA # 101967)
(*pro hac vice*)
Shaleen Shanbhag, Esq. (CA # 301047)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshahbhag@hadsellstormer.com

Attorneys for Plaintiff

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
Julie Wilensky, Esq. (CA # 271765)
(*pro hac vice*)
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org
jwilensky@NCLRights.org

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

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IDAHO DEPARTMENT OF
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WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORTIES IN SUPPORT OF MOTION
FOR INDICATIVE RULING UNDER FEDERAL
RULES OF CIVIL PROCEDURE 62.1 & 60(a)
AND REQUEST FOR EXPEDITED
CONSIDERATION UNDER LOCAL RULE 6.1**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	August 31, 2019
Motion Cut-Off:	January 31, 2020
Trial Date:	None Set

INTRODUCTION

On January 9, 2019, Defendants noticed their appeal of this Court’s December 13, 2018, Order granting in part Plaintiff’s Motion for Preliminary Injunction and directing Defendants to provide Plaintiff with gender confirmation surgery within six months. Dkt. Nos. 154, 155, 149. Defendants filed their Joint Opening Brief in the Ninth Circuit on March 6, 2019, arguing, *inter alia*, that this Court’s Order must be reversed because it does not expressly include findings pursuant to the Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626(a)(1)(A), “that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” No. 19-35017, Dkt. No. 11-1 at 60-61.

This Court’s Order satisfies the injunctive relief requirements of the PLRA. However, in an abundance of caution, Plaintiff seeks an indicative ruling from this Court under Federal Rule of Civil Procedure 62.1 that the Court would grant a motion to modify its Order pursuant to Federal Rule of Civil Procedure 60(a) to expressly find that the ordered relief is narrowly drawn, extends no further than necessary, is the least intrusive means of correcting the violation of Plaintiff’s Eighth Amendment right to adequate medical treatment, and there is no evidence that granting the relief will have any adverse impact on public safety or the operation of the criminal justice system.

Because the appeal has been docketed and is pending, this Court currently lacks the authority to modify its Order. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). However, Federal Rule of Civil Procedure 62.1 provides that “[i]f a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may . . . state . . . that it would grant the motion if the court of appeals remands for that purpose.”¹ An indicative ruling from this Court under Rule 62.1 that it

¹ Similarly, Federal Rule of Appellate Procedure 12.1 provides that “[i]f a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending,” the court of appeals may make a limited remand to the district court

would grant a Rule 60(a) motion to modify its Order to expressly include the PLRA findings would provide a basis for the court of appeals to make a limited remand for this Court to modify its Order while retaining jurisdiction over the appeal.

I. The Court Should Consider This Motion on an Expedited Basis Pursuant to Local Rule 6.1

There is good cause for the Court to consider this motion on an expedited basis pursuant to Local Civil Rule 6.1 because, as this Court has already found, time is of the essence in this matter. Based on this Court's findings of urgency, the Ninth Circuit expedited its consideration of Defendants' appeal when it granted Defendants' motion for a stay of this Court's Order. *See* No. 19-3501, Dkt. No. 19 (invoking 9th Cir. Gen. Ord. 3.3(g) regarding "Urgent Cases" that involve "extraordinary circumstances" warranting "that a case be heard within a specified time period and ordered onto a specific calendar, even though the panels sitting for that calendar have already been assigned their cases."). Plaintiff's answering brief is due on April 3, 2019, Defendants' optional reply is due April 17, 2019, and the Ninth Circuit will hear oral argument on May 16, 2019. *Id*; No. 19-3501, Dkt. Notice--Oral Argument Schedule. Expedited action from this Court would "promot[e] judicial efficiency" by allowing this Court to correct an inadvertent omission in its Order without delaying resolution of the appeal. *See Mendia v. Garcia*, 874 F.3d 1118, 1122 (9th Cir. 2017).

II. This Court May Modify Its Order Under Fed. R. Civ. P. 60(a) to Include Express Language Reflecting the Contemporaneous Intent of the Court Finding That the Injunctive Relief Ordered Satisfies the PLRA Requirements

This Court's substantive findings in its December 13, 2018 Order make clear that the preliminary injunctive relief ordered meets the PLRA requirement that a court "shall not grant or approve any prospective relief [with respect to prison conditions] unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal

while retaining jurisdiction over the appeal where the district court has made an indicative ruling that it would grant the motion for relief.

right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1)(A). Plaintiff therefore requests that the Court use its authority under Federal Rule of Civil Procedure 60(a) to modify its Order to include an express finding to this effect. *See* Fed. R. Civ. P. 60(a) (“The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.”); *Garamendi v. Henin*, 683 F.3d 1069, 1079, 1081 (9th Cir. 2012) (observing that Rule 60(a) permits “explanations and clarifications of the district court’s original intent” and correction of “a failure to memorialize part of its decision” (internal quotation marks omitted)).

This Court’s Order already contains the Court’s reasoning that it fully satisfies the PLRA. The Court included the PLRA standard in the Order, and specifically ruled that the relief ordered is limited to Ms. Edmo, and the particular circumstances of her case. The Court made extensive findings reflecting its determination that gender confirmation surgery is necessary to correct the violation of Ms. Edmo’s Eighth Amendment right to adequate medical treatment, and limited its order to the care necessary to obtain gender confirmation surgery as the least intrusive means to correct this violation. The Court also found that the injunction is in the public interest, and Defendants presented no evidence that the relief ordered would harm their operation of the criminal justice system. *See Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1194 (N.D. Cal. 2015); *Fields v. Smith*, 712 F. Supp. 2d 830, 869 (E.D. Wis. 2010), *supplemented* (July 9, 2010), *aff’d*, 653 F.3d 550 (7th Cir. 2011).

Although the Court’s December 13, 2018 Order meets the PLRA requirements and is well-supported by the record, Plaintiff asks the Court to make an indicative ruling under Rule 62.1 that it would grant a Rule 60(a) motion to modify its Order to specifically state that the relief afforded is narrowly drawn, extends no further than necessary to correct the violation of the federal right, is the least intrusive means necessary to correct the violation of the Federal right, and that there is no evidence that granting this relief will have any adverse impact on public safety or the operation of the criminal justice system. Such modification is appropriate under Rule 60(a) because it would not alter the substantive terms of the Order; instead, it would

include additional language that “reflect[s] the contemporaneous intent of the district court as evidenced by the record.” *Garamendi*, 683 F.3d at 1080 (internal quotation marks and citation omitted).

Dated: March 28, 2019

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Lori Rifkin
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiff

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Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm.net

Marisa S. Crecelius
marisa@melawfirm.net

Attorney for IDOC Defendants

/s/ - Lori Rifkin
Lori Rifkin

UNITED STATES DISTRICT COURT
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IDAHO DEPARTMENT OF
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Case No. 1:17-cv-00151-BLW

MEMORANDUM DECISION AND
ORDER

INTRODUCTION

Before the Court is Defendants' Joint Motion to Stay Order [Dkt. 149] Pending Appeal. Dkt. 156. For the reasons set forth below, Defendants' motion is denied.

BACKGROUND

The Court issued its Findings of Fact, Conclusion of Law, and Order in this case after a three-day evidentiary hearing. Dkt. 149. During that hearing, Ms. Adree Edmo established that she was entitled to gender confirmation surgery by June 13, 2019. The Court will not repeat all the factual and legal conclusions that led to its decision, but will highlight the following portion of the Court's order:

The risks of not providing gender confirmation surgery to Ms. Edmo include surgical self-treatment, emotional decompensation, and risk of suicide given her high degree of suicide ideation. Tr. 80:24:81:8, 264:13-22. If she is not provided

MEMORANDUM DECISION AND ORDER - 1

SER 012

with surgery, Ms. Edmo has indicated that she will try self-surgery again to deal with her extreme episodes of gender dysphoria. Tr. 199:24-200:5. *Given that Ms. Edmo made increasing progress on her first two self-surgery attempts, it is likely that Ms. Edmo will be successful if she attempts self-surgery again.* Tr. 264:13-22.

Edmo v. Idaho Dep't of Correction, No. 1:17-CV-00151-BLW, 2018 WL 6571203, at *12 (D. Idaho Dec. 13, 2018) (emphasis added).

LEGAL STANDARD

Granting a stay is “an exercise of judicial discretion” that is “dependent upon the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433, (2009). The Supreme Court suggested in *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) that the trial court, in exercising its discretion, should consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”

The Ninth Circuit has suggested that the *Hilton* factors should be applied using a “sliding scale” approach in which a stronger showing of one element may offset a weaker showing of another. *Peck Ormsby Const. Co. v. City of Rigby*, No. CIV. 1:10-545 WBS, 2012 WL 914915, at *3 (D. Idaho Mar. 15, 2012). The moving party bears the burden of showing that the circumstances justify an exercise of the court’s discretion and must show at least a minimum threshold for each factor. *Nken*, 556 U.S. at 434. However, the “first two factors ... are the most critical.” *Id.*

ANALYSIS

MEMORANDUM DECISION AND ORDER - 2

Defendants, in seeking a stay, rehash the arguments they presented during the three-day evidentiary hearing in this case. The Court was unpersuaded by the arguments then, and remains so now. Applying the *Hilton* factors to the findings of fact contained in the Court's prior decision, Defendants have failed to carry their burden to show that a stay is appropriate.

While there is no certainty as to how this case will be viewed on appeal, the Court is firmly convinced that its decision is supported by the facts and law presented during the hearing. I must, therefore conclude that the Defendants have not made a strong showing that they are likely to succeed on appeal.

The Court is not persuaded that the Defendants will be irreparably injured absent a stay. Indeed, it is difficult to see how providing medical treatment to an inmate could ever constitute an irreparable injury.

By comparison, the Court is convinced that issuing the stay will substantially injure Ms. Edmo for the reasons identified in that portion of the Court's decision quoted above. Indeed, given Edmo's past actions, time is of the essence.

Finally, I am also persuaded that there is a strong public interest in ensuring that our prisons are not deliberately indifferent to the serious medical needs of its inmates.

The Court will offer just one more thought: Ms. Edmo's testimony and that of her experts conclusively established, in the Court's opinion, that there is a substantial risk that Ms. Edmo will make a *third* attempt to self-castrate if the Defendants continue to deny her gender confirmation surgery. In short, her medical needs are urgent. The Constitution requires Defendants to act accordingly.

MEMORANDUM DECISION AND ORDER - 3

SER 014

ORDER

IT IS ORDERED:

1. Defendants' Joint Motion to Stay Order [Dkt. 149] Pending Appeal (Dkt. 156) is **DENIED.**



DATED: March 4, 2019

A handwritten signature in black ink, reading "B. Lynn Winmill". The signature is written in a cursive, flowing style.

B. Lynn Winmill
U.S. District Court Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTIONS,

Defendants.

Case No. 1:17-cv-00151-BLW

SCHEDULING ORDER
TRACK: (Standard)

In accordance with the agreements reached in the telephone scheduling conference held between counsel and the Court on **January 30, 2019**, and to further the just, speedy, and inexpensive determination of this matter,

NOW THEREFORE IT IS HEREBY ORDERED that the following recitation of deadlines and procedures will govern this litigation:

1. **Dispositive Motion Deadline:** All dispositive motions, including motions for punitive damages, must be filed by **January 31, 2020**.¹

¹ It is this Court's policy to accept only one (1) motion to dismiss and one summary judgment motion per party. If it appears, due to the complexity or numerosity of issues presented, that counsel is unable to address all issues within the twenty-page (20) limit for briefs, Dist. Idaho Loc. R. 7.1(b)(1), then it is appropriate to file a motion for permission to file an overlength brief, rather than filing separate motions for each issue. The Court prefers reviewing one over-length brief in support, one over-length brief in response, and one 10-page reply brief, if any, rather than the panoply of briefs that are generated when multiple motions are filed.

(Continued)

CASE MANAGEMENT ORDER - 1

SER 016

2. Amendment of Pleadings and Joinder of Parties: Motions to amend pleadings and join parties, except for allegations of punitive damages, must be filed on **January 31, 2019**. Defendants shall provide Answers to the Third Amended Complaint on or before **March 15, 2019**. This deadline will only be extended for good cause shown.²
3. Alternative Dispute Resolution: The parties have chosen to participate in a **judicially supervised settlement conference**. ADR must be held by **within one month after the United States Court of Appeals for the Ninth Circuit issues an opinion on this Court's decision to grant a preliminary injunction**. Within seven (7) days of this Order, the parties are directed to contact Emily Donnellan, the ADR Administrator, at adr@id.uscourts.gov, so that she may assign a settlement conference judge and schedule a date for the settlement conference. Please ensure that all emails directed to adr@id.uscourts.gov contain the case number and title in the email subject line.
4. Discovery Plan: All discovery must be in accordance with the Federal Rules of Civil Procedure, the Local Rules for the District of Idaho, and the parties' joint discovery plan which is incorporated herein by reference.

² The Ninth Circuit has held that motions to amend filed after the Scheduling Order deadline are governed, not by the liberal provisions of Fed. R. Civ. P. 15(a), but instead, by the more restrictive provisions of Fed. R. Civ. P. 16(b) requiring a showing of "good cause." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

5. Clawback: Pursuant to Fed. R. Evid. 502(d), and Section [Click or tap here to enter text.](#)
of the parties' stipulated discovery plan, it is hereby ORDERED that production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding.
6. Completion of Fact Discovery: All fact discovery must be completed by **August 15, 2019**. This is a deadline for the completion of all fact discovery; it is not a deadline for discovery requests. Discovery requests must be made far enough in advance of this deadline to allow completion of the discovery by the deadline date.
7. Disclosure of Experts:
 - a. The **Plaintiff** must disclose the experts intended to be called at trial on or before **September 16, 2019**.
 - b. The **Defendant** must disclose the experts intended to be called at trial on or before **November 1, 2019**.
 - c. **Plaintiff's** rebuttal experts must be identified on or before **November 26, 2019**.
 - d. **ALL** discovery relevant to experts must be completed by: **December 31, 2019**.

8. Scheduling of Trial and Pretrial Conference. Plaintiff's counsel must contact courtroom deputy **Jamie Bracke** within one week following the entry of a decision on all pending dispositive motions to make arrangements for a telephonic trial setting conference with the Court to set pre-trial and trial deadlines. If no dispositive motion is filed, Plaintiff's counsel must immediately contact the courtroom deputy within one week of the dispositive motion filing deadline to set a telephonic trial setting conference.
9. Law Clerk: The law clerk assigned to this case is **Kyle Cole**. He may be reached at (208) 334-9363.
10. Discovery Disputes:
 - a. The I will **not** refer this case to a magistrate judge for resolution of discovery disputes and non-dispositive motions. I will keep these motions on my own docket.
 - b. The parties will strictly comply with the meet and confer requirements of [Local Rule 37.1](#) prior to filing any discovery motions.
 - c. Prior to filing any discovery motions, counsel must certify, not only that they have complied with [Local Rule 37.1](#), but that they have complied with the Judge's discovery dispute procedures.
 - d. In addition, I will not entertain any written discovery motions until the Court has been provided with an opportunity to informally mediate the parties' dispute. To facilitate that mediation, the attorneys will first contact Mr. Cole, the law clerk assigned to this case, and shall provide him with a

brief written summary of the dispute and the parties' respective positions.

Mr. Cole may be able to offer suggestions that will resolve the dispute without the need of my involvement. If necessary, an off-the-record telephonic conference with me will then be scheduled as soon as possible. I will seek to resolve the dispute during that conference and may enter appropriate orders on the basis of the conference. I will only authorize the filing of a discovery motion and written briefing if we are unable to resolve the dispute during the conference.

- e. Prior to filing any discovery motions, counsel must certify, not only that they have complied with Local Rule 37.1, but that they have complied with the foregoing procedures.
- 11. The Court will conduct **telephonic status conferences** with the parties. The Court will set those status conferences in a separate notice.
- 12. Calendaring Clerk: Scheduling matters and calendar issues may be directed to **Jamie Bracke**, who may be reached at (208) 334-9021. If reassigned, consult [Judges' web](#) page for staff directory.
- 13. Docketing Clerk: If you have a docketing question, please contact a [docket clerk](#)³ at (208) 334-1361.

³ The Clerk's office staff directory may be found on the Court's webpage: http://id.uscourts.gov/district/attorneys/DocketingCourtroom_Dep.cfm



DATED: January 31, 2019

B. Lynn Winmill

B. Lynn Winmill
United States District Judge

J. Kevin West (ISB No. 3337)
KWest@parsonsbehle.com
Dylan A. Eaton (ISB No. 7686)
DEaton@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901
(Counsel for Defendants Corizon Inc., Scott
Eliason, Murray Young, and Catherine
Whinnery)

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031
(Counsel for Defendants Kevin Kempf,
Richard Craig, Rona Siegert, and Howard
Keith Yordy)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; AND DOES 1-15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**DEFENDANTS' JOINT MOTION TO
STAY ORDER [DKT. 149] PENDING
APPEAL**

Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery, by and through their counsel of record, Parsons Behle & Latimer, and the Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP, hereby move this Court, pursuant to Federal Rule of Civil Procedure 62(d), and the authority and argument cited in the supporting memorandum, to issue an order staying this Court's order, issued on December 13, 2018, in part, granting Plaintiff's Motion for Preliminary Injunction, including the Court's order that Defendants are to provide Plaintiff with adequate medical care, including gender confirmation surgery (Dkt. 149, p. 45, Order 1.) pending resolution of Defendants' appeal of said order.

This Motion is supported by a Memorandum in support filed contemporaneously herewith.

DATED this 9th day of January, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

DATED this 9th day of January, 2019.

MOORE ELIA KRAFT & HALL, LLP

By: /s/ Brady J. Hall

Brady J. Hall
Counsel for Defendants Kevin Kempf, Richard
Craig, Rona Siegert, and Howard Keith Yordy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(Counsel for Plaintiff)

Amy Whelan
Julie Wilensky
Alexander Chen
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
(Counsel for Plaintiff)

Brady J. Hall
Marisa S. Crecelius
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
marisa@melawfirm.net
(Counsel for Defendants Kevin Kempf,
Richard Craig, Rona Siegert, and Howard
Keith Yordy)

Lori E. Rifkin
Dan Stormer
Shaleen Shanbhag
HADSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com
(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton

Dylan A. Eaton

J. Kevin West (ISB No. 3337)
KWest@parsonsbehle.com
Dylan A. Eaton (ISB No. 7686)
DEaton@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901
(Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery)

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

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IDAHO DEPARTMENT OF
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ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; AND DOES 1-15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO
STAY ORDER [DKT. 149] PENDING
APPEAL**

COME NOW, Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery, by and through their counsel of record, Parsons Behle & Latimer, and the Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP (collectively referred to as “Defendants”), and file this Memorandum in Support of their Motion to Stay Order [Dkt. 149] Pending Appeal.

I. INTRODUCTION

The Court should grant a stay pending Defendants’ appeal of the Court’s order granting a preliminary injunction mandating gender confirmation surgery (GCS) for Plaintiff Adree Edmo (“Edmo”) (Dkt. 149), pending Defendants’ appeal. As the Court has already recognized, this case involves difficult issues of first impression in the Ninth Circuit. Further and importantly, if the Court does not grant a stay, there is a serious risk that Defendants’ appeal will become moot. If Defendants’ appeal becomes moot, it will cause Defendants irreparable injury and deprive the Court of Appeals of the opportunity to clarify the law regarding the important issues in this case. Recognizing the weight of these concerns, the Ninth Circuit granted a stay of a similar preliminary injunction that required the California Department of Corrections to provide GCS to an inmate suffering from gender dysphoria. *See Norsworthy v. Beard*, 802 F.3d 1090, 1091 (9th Cir. 2015). Thus, Defendants respectfully submit that this Court should do the same.

II. ARGUMENT

The Rules of Civil Procedure specifically authorize a district court to suspend a preliminary injunction pending appeal. Fed. R. Civ. P 62(d). When considering whether to issue a stay pending appeal, a court considers four factors:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 426 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The Court must “balance the relative equities of the[se] factors.” *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011) (per curiam). However, “[t]he first two factors of th[is] standard are the most critical.” *Nken*, 556 U.S. at 426.

Importantly, this standard is more lenient than the preliminary injunction standard. The standard is less demanding because “stays are typically less coercive and less disruptive than are injunctions.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). “[I]nstead of directing the conduct of a particular actor, a stay operates upon the judicial proceeding itself.” *Nken*, 556 U.S. at 428. “A stay ‘simply suspend[s] judicial alteration of the status quo,’ while injunctive relief ‘grants judicial intervention’” *Id.* at 429 (alteration in original) (quoting *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm’n*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers)). Thus, although the factors are similar, the Court should grant a stay even though the Court previously determined Edmo is entitled to a preliminary injunction. Each of these factors are addressed in turn.

A. Defendants Satisfy the First Nken Factor, Because Their Appeal Raises Serious Legal Questions.

Regarding the first Nken factor, “[t]he standard does not require [parties] to show that ‘it is more likely than not that they will win on the merits.’” *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012) (quoting *Leiva-Perez*, 640 F.3d at 966). Rather, a party satisfies the first Nken factor if “serious legal questions are raised.” *Leiva-Perez*, 640 F.3d at 968; *see also Lair*, 697 F.3d

MEMORANDUM IN SUPPORT OF DEFENDANTS’ JOINT MOTION TO STAY ORDER [DKT. 149] PENDING APPEAL - 3

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at 1204. As the Ninth Circuit recognized in granting the stay in *Norsworthy*, “[a] stay is appropriate when an appeal presents ‘serious legal questions,’ even if it may be more likely than not that those legal questions will be resolved against the party seeking a stay.” *Order Granting Stay* (Dkt. 25), *Norsworthy v. Beard*, No. 15-15712 (9th Cir. May 21, 2015) (quoting *Leiva-Perez*, 640 F.3d at 968). In this case, Defendants’ appeal presents serious legal questions.

First, as the Court recognized the Ninth Circuit has not yet determined when an inmate is constitutionally entitled to GCS. The Court’s Order seems to establish a legal principle that defendants are likely deliberately indifferent to an inmate’s gender dysphoria if the inmate satisfies the six WPATH medical necessity criteria and the defendants do not provide the inmate with GCS. *Order Granting Preliminary Injunction* (Dkt. 144) at 35-41 (finding that Defendants were likely deliberately indifferent because they “misapplied the recognized standards of care . . .”). The Court relied on the WPATH criteria in concluding that Defendants were likely deliberately indifferent “by failing to provide [Edmo] with available treatment that is generally accepted in the field as safe and effective, despite her actual harm and ongoing risk of future harm including self-castration attempts, cutting, and suicidal ideation.” *Id.* at 40.

In contrast, Defendants argued that a different legal standard should govern. Defendants asserted that because the WPATH standards are “flexible . . . guidelines,” there is room for reasonable disagreement regarding their interpretation and application. *Corizon’s Response to Motion for Preliminary Injunction* (Dkt. 100) at 12. And, “Eighth Amendment doctrine makes clear that a difference of opinion between a physician and the prisoner—or between medical professionals—concerning what medical care is appropriate does not amount to deliberate indifference.” *Hamby v. Hammond*, 821 F.3d 1085, 1092 (9th Cir. 2016) (citation and alteration omitted). The evidence presented at the evidentiary hearing showed that Defendants have been

treating Edmo's gender dysphoria for several years, including providing hormone therapy, counseling, and medical management. There has been no refusal of care and no "indifference" to Edmo's gender dysphoria. Rather, there is a disagreement as to the interpretation and application of the WPATH criteria and consequently, which of the available medical options are most appropriate to treat Edmo's gender dysphoria.

Other courts have determined the WPATH standards are subject to interpretation and that failing to follow the WPATH standards does not constitute deliberate indifference. In considering a claim of deliberate indifference, the Tenth Circuit rejected "the conclusory assertion that [the inmate] demonstrated her constitutional rights would be violated if she did not receive the hormone levels suggested by WPATH." *Druley v. Patton*, 601 F. App'x 632, 635 (10th Cir. 2015). "*Druley* reflects the reality that the treatment of gender dysphoria is a highly controversial issue for which there are differing opinions." *Lamb v. Norwood*, 262 F. Supp. 3d 1151, 1158 (D. Kan. 2017), *aff'd*, 895 F.3d 756 (10th Cir. 2018), *aff'd*, 899 F.3d 1159 (10th Cir. 2018). Thus, the district court in *Lamb* held that the defendants were entitled to summary judgment even though the plaintiff "assert[ed] that her treatment falls short of the standard set forth by various experts as well as the WPATH standard of care." *Id.* Sitting en banc, the First Circuit similarly determined that even if expert testimony established that GCS "was the only medically adequate treatment" for the prisoner's gender dysphoria, "[t]he choice of a medical option that, although disfavored by some in the field, is presented by competent professionals does not exhibit a level of inattention or callousness to a prisoner's needs rising to a constitutional violation." *Kosilek v. Spencer*, 774 F.3d 63, 91-92 (1st Cir. 2014) (en banc). The Ninth Circuit has not yet addressed whether failing to follow the WPATH guidelines constitutes deliberate indifference. Moreover, the Ninth Circuit has not addressed in detail the complicated issues presented in this case. Thus, this case presents a

“serious legal question.” See *Order Granting Stay* (Dkt. 25), *Norsworthy v. Beard*, No. 15-15712 (9th Cir. May 21, 2015).

Moreover, the Ninth Circuit has not yet addressed what standard a court should apply when a preliminary injunction will grant the final relief requested by the plaintiff. A vaginoplasty, the surgery apparently sought by Edmo, is permanent and irreversible.¹ Thus, the “preliminary” injunction is, in effect, a permanent injunction, and Defendants urged the Court to “be extremely careful and hesitant to order [a vaginoplasty].” *Corizon’s Response to Motion for Preliminary Injunction* (Dkt. 100) at 13. The Court recognized this procedural difficulty but found that Edmo was entitled to an injunction under either the preliminary injunction standard or the permanent injunction standard. *Order Granting Preliminary Injunction* (Dkt. 144) at 31 n.1. Defendants are unaware of any Ninth Circuit case specifically addressing what standard the court should apply when the preliminary injunction will irreversibly grant a part of the final relief requested. The uncertainty regarding the appropriate legal standard further demonstrates that Defendants’ appeal presents serious legal questions.

To state the obvious, if Edmo has GCS, there is no “do over” available here. While the undersigned respect the Court’s decision-making abilities, this Court itself has recognized the difficulty of the issues in play, and with that, the possibility that the Court’s decision could be in error. Accordingly, judicial prudence suggests that irreversible action, if such can be avoided, should be avoided at this preliminary stage.

¹ In their briefing, the Defendants noted that “it is not entirely clear what [GCS Edmo] wants.” *Corizon’s Response to Motion for Preliminary Injunction* (Dkt. 100) at 13. This confusion arises, because GCS is a generic term referring to a variety of surgical procedures. *Id.*

B. Defendants will be Irreparably Injured Absent a Stay.

A party is irreparably injured if the party's appeal becomes moot. *See Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers). Indeed, in *Norsworthy*, the Ninth Circuit found that the risk the litigation “would become moot before receiving full appellate consideration” justified issuing a stay of the preliminary injunction. *Order Granting Stay* (Dkt. 25), *Norsworthy v. Beard*, No. 15-15712 (9th Cir. May 21, 2015). That precise reasoning applies here, because the preliminary injunction grants Edmo part of the final relief requested, and that relief is permanent. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 398 (1981) (“[T]he question whether a preliminary injunction should have been issued here is moot, because the terms of the injunction, as modified by the Court of Appeals, have been fully and irrevocably carried out.”).

C. A Stay Will Not Substantially Increase the Risk of Irreparable Injury to Edmo.

The Court has already determined that Edmo is likely to suffer irreparable harm if Defendants do not provide GCS within six months of the Court's Order. *Order Granting Preliminary Injunction* (Dkt. 144) at 45. While Defendants appreciate that the Court is unlikely to change its mind at this time, three issues warrant the Court's attention.

First, the standard for granting a stay pending appeal is less demanding than the standard for granting a preliminary injunction, because “stays are typically less coercive and less disruptive than are injunctions.” *Leiva-Perez*, 640 F.3d at 966. “A stay ‘simply suspend[s] judicial alteration of the status quo,’ while injunctive relief ‘grants judicial intervention’” *Nken*, 556 U.S. at 429 (alteration in original) (quoting *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm’n*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers)). That difference is particularly acute in this case where the preliminary injunction is mandatory.

Second, whether Edmo will suffer irreparable injury during the stay is not a critical factor. *Nken*, 556 U.S. at 426. Instead, the most important factors are whether Defendants have demonstrated a likelihood of success on the merits and whether Defendants will be irreparably harmed absent a stay. *Lair*, 697 F.3d at 1203-04. Having satisfied these “most critical factors,” the scale tips in favor of granting a stay even if there is a risk of irreparable harm to Edmo.

Third, the question in this case is whether Edmo’s treatment is constitutionally adequate, not whether Edmo is entitled to treatment. Defendants agree that Edmo is suffering from a serious psychological condition, gender dysphoria. Consequently, Defendants are treating Edmo’s gender dysphoria, but they and their expert witnesses do not believe GCS is an appropriate treatment option at this time. Edmo’s expert witness disagrees with Defendants’ experts. Nevertheless, even Edmo’s own experts did not claim that GCS needs to be performed immediately. *See Decl. of Lori Rifkin* (Dkt. 62-1) at 87. Instead, one of Edmo’s experts, Dr. Gorton, indicated that Edmo should be “referred to an appropriate surgeon . . . within the next six months.”² *Id.* (emphasis added). The Court seemingly adopted that argument and ordered Defendants to provide Edmo with GCS “as promptly as possible and no later than six months from the date of [its] order.” *Order Granting Preliminary Injunction* (Dkt. 144) at 45. Defendants merely request that the Court extend that timeframe so that they can provide less invasive treatment to Edmo while the appeal in this case is pending.

² It has now been more well over six months since Dr. Gorton signed his declaration, averring that Edmo would be at a substantial risk of “self-surgery or suicide” if immediate relief were not granted. *Decl. of Lori Rifkin* (Dkt. 62-1) at 87. Such predictions were proven wrong; there is no evidence that Edmo has attempted self-surgery or suicide during the intervening time-period, possibly because her current treatment has been effective. Consequently, allowing a stay will not result in greater harm, if any.

D. The Public Interest Weighs in Favor of a Stay.

As the Supreme Court has recognized “[r]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government.” *Turner v. Safley*, 482 U.S. 78, 84–85 (1987). Because prison administration “has been committed to the responsibility of those branches,” courts should exercise “a policy of judicial restraint” when addressing constitutional claims challenging a prisoner’s conditions of confinement. *Id.* at 85. Thus, where, as here, “[a] preliminary injunction to direct [Defendants’] medical and/or mental health providers to take a specific course of treatment . . . weighs against the public interest . . .” *Oakleaf v. Martinez*, 297 F. Supp. 3d 1221, 1233 (D.N.M. 2018).

In addition, “the public policy favoring disposition of cases on their merits . . . ‘is particularly important in civil rights cases.’” *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (quoting *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987)). As discussed above, the preliminary injunction grants part of the final relief requested without an adjudication on the merits of Edmo’s claim. Thus, public policy favors a stay of the preliminary injunction ordering Defendants to provide GCS to Edmo.

III. CONCLUSION

The Court should grant a stay of the preliminary injunction ordering Defendants to provide GCS to Edmo, pending Defendants’ appeal to the Ninth Circuit. This case presents important issues of first impression in the Ninth Circuit. And, absent a stay, the appeal will likely become moot. Although the Court previously found Edmo may suffer irreparable harm, that factor is less important when considering whether to issue a stay. Moreover, the risk of irreparable harm is at least somewhat mitigated by the fact Defendants are providing treatment for Edmo’s gender

dysphoria and Edmo has not attempted self-surgery during the pendency of this litigation. Finally, the public interest favors a stay or is at best neutral. Even though the public interest may weigh against the continuation of a possible constitutional violation, the Supreme Court has cautioned the judicial branch against interfering with debatable decisions made by prison administrators. In addition, public policy favors the adjudication of Edmo's claims on the merits. Thus, the risk this litigation may become moot if a stay is not granted weighs in favor of the Court issuing a stay. As a result, the Court should grant a stay pending Defendants' appeal to the Ninth Circuit.

DATED this 9th day of January, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

DATED this 9th day of January, 2019.

MOORE ELIA KRAFT & HALL, LLP

By: /s/ Brady J. Hall

Brady J. Hall
Counsel for Defendants Kevin Kempf, Richard
Craig, Rona Siegert, and Howard Keith Yordy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(Counsel for Plaintiff)

Amy Whelan
Julie Wilensky
Alexander Chen
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
(Counsel for Plaintiff)

Brady J. Hall
Marisa S. Crecelius
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
marisa@melawfirm.net
(Counsel for Defendants Kevin Kempf,
Richard Craig, Rona Siegert, and Howard
Keith Yordy)

Lori E. Rifkin
Dan Stormer
Shaleen Shanbhag
HADSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com
(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031

Attorneys for Defendants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,	)	Case No. 1:17-cv-151-BLW
	)	
Plaintiff,	)	IDOC DEFENDANTS' RESPONSE TO
vs.	)	PLAINTIFF'S SUBMISSION OF
	)	DEPOSITION TESTIMONY [DKT. 141 &
IDAHO DEPARTMENT OF	)	DKT. 142]
CORRECTION; HENRY ATENCIO, in	)	
his official capacity; JEFF ZMUDA, in	)	
his official capacity; HOWARD KEITH	)	
YORDY, in his official and individual	)	
capacities; CORIZON, INC.; SCOTT	)	
ELIASON; MURRAY YOUNG;	)	
RICHARD CRAIG; RONA SIEGERT;	)	
CATHERINE WHINNERY; AND	)	
DOES 1-15;	)	
	)	
Defendants.	)	
_____	)	

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (415) 685-3591
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. (CA # 101967)
(*pro hac vice*)
Shaleen Shanbhag, Esq. (CA # 301047)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshshanbhag@hadsellstormer.com

Attorneys for Plaintiff

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
Julie Wilensky, Esq. (CA # 271765)
(*pro hac vice*)
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org
jwilensky@NCLRights.org

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S [PROPOSED] FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	None Set
Motion Cut-Off:	None Set
Trial Date:	None Set

Pursuant to the Court’s September 28, 2018 Order, Plaintiff Adree Edmo hereby submits her Proposed Findings of Fact and Conclusions of Law regarding the evidentiary hearing on Plaintiff’s Motion for Preliminary Injunction. ECF No. 110.

FINDINGS OF FACT

Introduction

1. Ms. Edmo identifies as a woman. Preliminary Injunction Hr’g Tr. (“Tr.”) 193:4-5.
2. Ms. Edmo first felt different from the male sex assigned her at birth around the age of 5 or 6, although she did not have words for that feeling. Tr. 193:6-14; *see also* Declaration of Adree Edmo in Support of Plaintiff’s Motion for a Preliminary Injunction (“Edmo Decl.”) ¶ 3.
3. Prior to learning about and being diagnosed with gender dysphoria, Ms. Edmo used identifiers including effeminate and gay, but she did not feel these were the right words to describe the feeling of her gender identity. Tr. 193:18-23.
4. Ms. Edmo has been incarcerated at Idaho State Correctional Institute (“ISCI”) since April 2012. Tr. 192:19-20; *see also* Edmo Decl. ¶ 12. Based on the Parole Board’s determination that Ms. Edmo is no longer eligible to parole due to her disciplinary record, Ms. Edmo expects to be released from prison at the conclusion of her full term in 2021. Tr. 201:14-15, 230:3-10.
5. Before she was incarcerated, Ms. Edmo expressed her female gender identity by wearing makeup, women’s clothing, and styling her hair in a feminine fashion. Tr. 211:1-7; *see also* Edmo Decl. ¶ 7.
6. On June 25, 2012, Ms. Edmo was first diagnosed with gender identity disorder¹ by Corizon psychiatrist Dr. Scott Eliason. Exh. 1 at 321. On July 19, 2012, Corizon psychologist Claudia Lake confirmed Ms. Edmo’s diagnosis of gender identity disorder. Exh. 1 at 323-27.

Gender Dysphoria, Treatment, and Standards of Care

7. A person’s gender identity is their sense of being either male or female. Every person has a gender identity. Tr. 48:21-49:3.

¹ Gender identity disorder was reclassified as gender dysphoria in 2013 with the release of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-5”). Exh. 1001 at 2.

8. “Transgender” is an umbrella term for a person whose gender identity is not congruent with their assigned gender, but not every person who identifies as transgender is diagnosed with gender dysphoria. Tr. 50:5-11. Gender dysphoria is the incongruity between an individual’s assigned gender and gender identity so severe that it impairs the individual’s ability to function. Tr. 50:12-14.

9. The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (“DSM-5”) defines gender dysphoria as:

- A. A marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 month’s duration, as manifested by at least two of the following:
 - 1. A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics.
 - 2. A strong desire to be rid of one’s primary and/or secondary sex characteristics because of a marked incongruence with one’s experienced/expressed gender.
 - 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
 - 4. A strong desire to be of the other gender.
 - 5. A strong desire to be treated as the other gender.
 - 6. A strong conviction that one has the typical feelings and reactions of the other gender.
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Exh. 1001 at 3-4.

10. “Clinically significant distress” means that the distress impairs or severely limits the person’s ability to function in some way and has reached a threshold that requires either medical or surgical interventions, or both. Tr. 51:3-8.

11. Gender dysphoria is a serious, but treatable, medical condition that intensifies over time. Tr. 48:14-20, 51:20-8; *see also* Declaration of Randi Ettner in Support of Plaintiff’s Motion for a Preliminary Injunction (“Ettner Decl.”) ¶ 39.

12. The risks of not adequately treating gender dysphoria are serious and include surgical self-treatment, suicide, and severe emotional decompensation. Tr. 52:9-16; *see also* Ettner Decl. ¶ 37.

13. It is common for individuals with gender dysphoria to experience depression or anxiety as a symptom of their gender dysphoria. Tr. 50:15-24. In individuals with both major depressive disorder and gender dysphoria, it is typically difficult to separate the depressive symptoms from

the gender dysphoric symptoms. Tr. 601:18-25.

14. The World Professional Association of Transgender Health (“WPATH”) Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People were first promulgated in 1979 and are the internationally recognized guidelines for the treatment of individuals with gender dysphoria. Tr. 42:6-20; Exh. 15. The WPATH Standards of Care are supported by evidence-based medicine. Tr. 258:8-10. The WPATH Standards of Care are the only developed standards for treating patients with gender dysphoria. Tr. 572:2-9.

15. The WPATH Standards of Care have discussed treatments for incarcerated individuals since 1998, apply equally to all individuals “irrespective of their housing situation” and explicitly state that health care for transgender people “living in an institutional environment should mirror that which would be available to them if they were living in a non-institutional setting within the same community.” Tr. 54:11-21; Exh. 15 at 73. The next update to the WPATH Standards of Care will also apply regardless of where a person is housed, including in prison. Tr. 54:25-55:12.

16. Reference to the Standards of Care as “flexible clinical guidelines” means that for most patients in most situations, the WPATH criteria determine who should be given certain types of treatment and are appropriate to follow, but, in some situations, experienced providers can provide treatment to a patient who has not completely met all those criteria, if there is a good reason. Tr. 241:9-242:16. This is intended to address situations where experienced providers may need to deviate from the criteria due to individual patient circumstances, but is not to be used to bar treatment options to groups or classes of patients such as prisoners. Tr. 244:5-245:12.

17. The National Commission on Correctional Healthcare (“NCCHC”) endorses the WPATH Standards of Care as the accepted standards for the treatment of transgender prisoners. Exh. 1041 at 2 & 4, n.1; Tr. 477:14-478:22, 571:4-10.

18. The NCCHC recognizes that patients with gender dysphoria may try to remove their genitals or engage in genital self-harm in an attempt to self-treat their gender dysphoria. Tr. 479:9-25; Exh. 1041 at 16.

19. Treatment modalities for gender dysphoria include psychotherapy, social role transition,

cross-sex hormonal therapy, and gender confirmation surgery. Exh. 15 at 15-16; Tr. 53:25-54:10. Treatment options are selected based on the severity of the condition, which is evaluated based on the patient's present clinical situation. Tr. 56:23-57:12, 168:10-22.

20. The Standards of Care provide that the purposes of psychotherapy include "exploring gender identity, role, and expression; addressing the negative impact of gender dysphoria and stigma on mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; or promoting resilience." Exh. 15 at 16. Psychotherapy is not a precondition for gender confirmation surgery. Tr. 98:23-99:2.

21. Social role transition, previously known as the "real life experience," is a critical component of treatment to consolidate the individual's identity and attenuate gender dysphoria. This requires dressing, grooming, and otherwise conveying, via social signifiers, a public face and role consistent with one's gender identity. Tr. 61:6-25; Ettner Decl. ¶ 45.

22. Cross-sex hormone therapy results in development of secondary sex characteristics of the other sex and provides an increase in the overall level of wellbeing of a person with gender dysphoria. Tr. 60:8-22. For a transgender woman, hormone treatment has physical effects such as breast growth, thinning of facial hair, redistribution of fat and muscle, and shrinkage of the testicles. Tr. 246:7-20. The maximum physical effects of hormone therapy will typically be achieved within two to three years. Exh. 15 at 42; Tr. 60:23-61:5, 246:7-247:1.

23. Sex reassignment surgery, now generally referred to as gender confirmation surgery, is a well-established, safe, and effective treatment for gender dysphoria. Exh. 15 at 60. There are decades of scientific research supporting the efficacy of gender confirmation surgery for individuals who have severe gender dysphoria. Tr. 74:4-18. For individuals with severe gender dysphoria, where hormone therapy is inadequate to eliminate the gender dysphoria, gender confirmation surgery is the only effective treatment for gender dysphoria and is medically necessary. Tr. 168:23-169:15; *see also* Ettner Decl. ¶ 51.

24. Gender confirmation surgery is the cure for gender dysphoria. Tr. 81:13-19. The primary therapeutic goal of genital reconstruction surgery is to treat gender dysphoria. Secondary effects

include simplifying hormone treatment, diminishing other mental health diagnoses such as depression and anxiety, and allowing patients to focus on other parts of their lives. Tr. 248:8-23, 250:4-24.

25. The WPATH criteria for genital reconstruction surgery in male-to-female patients are:
1. Persistent, well documented gender dysphoria;
 2. Capacity to make a fully informed decision and to consent for treatment;
 3. Age of majority in a given country;
 4. If significant medical or mental health concerns are present, they must be well controlled;
 5. 12 continuous months of hormone therapy as appropriate to the patient's gender goals; and
 6. 12 continuous months of living in a gender role that is congruent with their gender identity.

Exh. 15 at 66.

26. "Persistent, well documented gender dysphoria" means that the person has a well-established diagnosis of gender dysphoria that persisted beyond six months. Tr. 55:21-56:3.

27. The presence of mental health conditions does not negate or obviate an individual's ability to undergo gender confirmation surgery and is not a reason to deny gender confirmation surgery to people for whom surgery is medically necessary. Tr. 59:9-23, 169:16-170:22.

28. An individual's mental health issues that are related to their gender dysphoria should not be considered in assessing whether an individual meets the fourth WPATH criterion that significant medical or mental health concerns must be well controlled. Tr. 387:20-388:6.

29. Plaintiff's expert Dr. Gorton testified that it would be unethical to base a patient's medical necessity for gender confirming surgery on the patient's disciplinary record or criminal actions. Tr. 257:4-23.

30. With respect to the 12-month experience of living in an identity-congruent role, the Standards of Care provide:

The duration of 12 months allows for a range of different life experiences and events that may occur throughout the year (e.g., family events, holidays, vacations, season-specific work or school experiences). During this time, patients should present consistently, on a day-to-day basis and across all settings of life, in their desired gender role. This includes coming out to partners, family, friends, and community members (e.g., at school, work, other settings).

Exh. 15 at 67.

31. An individual in prison can satisfy the criterion of living in a gender role congruent with their gender identity. Living in one's affirmed gender role takes place wherever the individual's "real life" occurs and the individual is living in the gender role to the extent that one can in that context. Tr. 62:16-63:4, 584:16-25.

32. A patient's gender presentation six or more years prior to their evaluation for gender confirmation surgery is not relevant to whether surgery is medically necessary at the time of evaluation. Tr. 97:5-19.

Plaintiff's Experts

33. Dr. Ettner is one of the authors of the WPATH Standards of Care, version 7. Tr. 42:21-24.

34. Dr. Ettner has been a WPATH member since 1993 and chairs its Committee for Institutionalized Persons. Tr. 43:2-16; Exh. 1003.

35. Dr. Ettner has treated approximately 3000 individuals with gender dysphoria, including evaluating whether gender confirmation surgery is necessary for certain patients, and has referred approximately 300 patients for gender confirmation surgery, and assessed approximately 30 incarcerated individuals with gender dysphoria. Tr. 43:17-44:1, 44:9-13. Dr. Ettner has extensive experience treating patients who have undergone gender confirmation surgery. Tr. 44:2-8.

36. Dr. Ettner is an author or editor of numerous peer-reviewed publications on treatment of gender dysphoria and transgender healthcare. Dr. Ettner is an editor for the textbook, "Principles of Transgender Medicine and Surgery," which was revised in 2017 and is the textbook used in medical schools. Tr. 44:14-45:1; Exh. 1003.

37. Dr. Ettner also trains medical and mental health providers on treating people with gender dysphoria, including assessment of whether gender confirmation surgery is appropriate, through the global education initiative of WPATH and other presentations. Tr. 41:8:16, 45:17-46:18.

38. Dr. Ettner has been appointed by a federal court as an independent expert related to evaluation of an incarcerated patient for gender confirmation surgery. Tr. 46:19-22.

39. Dr. Gorton is an emergency medicine physician and also practices at a federally qualified

healthcare center that primarily services uninsured patients or those with Medicare or Medicaid. Exh. 1004; Tr. 234:24-235:2. Dr. Gorton also works with Project Health, which has trained numerous clinics regarding provision of transgender health care in California. Tr. 233:5-21.

40. Dr. Gorton is a member of WPATH and is on WPATH's Transgender Medicine and Research Committee and its Institutionalized Persons Committee. Tr. 238:4-6; Exh. 1004.

41. Dr. Gorton has been the primary care physician for approximately 400 patients with gender dysphoria and is currently the primary care physician for approximately 100 patients with gender dysphoria. Exh. 1004; Tr. 237:4-12. Dr. Gorton currently provides follow-up care for about thirty patients who have had vaginoplasty. Exh. 1004; Tr. 249:20-250:3.

42. Dr. Gorton has published peer-reviewed articles regarding treatment of gender dysphoria. 239:16-18, Exh. 1004.

43. Dr. Gorton has been qualified as an expert in multiple cases involving transgender healthcare. Tr. 239:19-240:19; Exh. 1004.

Defendants' Experts

44. Prior to evaluating Ms. Edmo, Defendants' expert Dr. Garvey had never personally evaluated a single patient for gender confirmation surgery. Tr. 558:10-14.

45. Dr. Garvey has never recommended that a patient with gender dysphoria receive gender confirmation surgery or done long-term follow-up care with a patient who has had gender confirmation surgery. Tr. 556:20-557:9.

46. Dr. Garvey has never previously been qualified as an expert in any case regarding treatment of gender dysphoria. Tr. 550:16-24.

47. Dr. Andrade is a licensed independent clinical social worker who would not qualify under IDOC's former gender dysphoria policy as a "gender identity disorder evaluator" who could assess someone for surgery. Tr. 660:11-17; Exh. 8 at 3.

48. Dr. Andrade has never provided direct treatment for patients with gender dysphoria and has never been a treating clinician for a patient who has had gender confirmation surgery. Tr. 647:8-14, 651:10-12.

49. As part of a committee, Dr. Andrade recommended gender confirmation surgery for two Massachusetts prisoners contingent upon the requirement that they first live in a women's prison for approximately twelve months. Tr. 647:19-648:25. This requirement is not part of the WPATH criteria for surgery. Exh. 15 at 66. Dr. Andrade made this recommendation despite knowing that the Massachusetts Department of Corrections houses prisoners according to their genitals. The prisoners were not allowed to move to a women's prison, and, at least seven months after the recommendation, had not received surgery. Tr. 649:1-650:11.

50. The majority of Dr. Garvey and Dr. Andrade's training and experience with gender dysphoria is from their participation on the Massachusetts Department of Corrections Gender Dysphoria Treatment Committee, which consisted of four or five individuals, including Dr. Garvey and Dr. Andrade. Tr. 560:7-21, 562:7-12, 644:16-645:18. A third member of the Committee was Dr. Steven Levine, an outside consultant. Tr. 562:13-17, 563:8-24.

51. Dr. Garvey and Dr. Andrade gave a joint presentation they titled, "Tax Dollars at Work: Treating Inmates with Gender Dysphoria," and summarized with the following description:

Advocacy groups call for gender dysphoric inmates to receive treatment that mirrors the community. These advocates emphasize inmate patients' rights and deemphasize important distinctions between community-dwelling gender dysphoric individuals and those serving life sentences for violent crimes. Minimizing the unique context of the correctional setting, they fail to provide correctional clinicians with strategies to determine whether certain irreversible forms of treatment are likely to lead to more benefit or harm.

Exh. 1029 at 2; Exh. 1030.

52. Neither Dr. Garvey nor Dr. Andrade has ever published in any peer-reviewed journal relating to treatment of gender dysphoria or completed peer-reviewed research relating to treatment of gender dysphoria. Tr. 551:7-12, 552:2-6, 658:22-659:2.

53. Dr. Garvey's reliance on a statistic that individuals who undergo gender confirmation surgery have a suicide rate 19 times higher as compared with the general population is not evidence about the effects of surgery on the transgender population. It compares post-surgery suicide rates for transgender individuals against the general population, rather than comparing suicide rates before and after surgery within the transgender population. Tr. 596:22-597:6, 598:13-22.

Corizon's Policies and Practices Regarding Gender Dysphoria

54. Corizon is a private corporation that contracts to provide health care to prisons and jails throughout the country. Corizon providers have never recommended gender confirmation surgery to a patient at any of the prisons it contracts with to provide medical services. Tr. 489:20-23.

55. Corizon's only written policy regarding gender dysphoria treatment does not include gender confirmation surgery as a form of treatment. Tr. 482:25-483:9; Exh. 14.

IDOC's Policies and Practices Regarding Gender Dysphoria

56. The IDOC Management and Treatment Committee (MTC) is a multiple-disciplinary team that addresses treatment, planning, and security issues associated with IDOC inmates who have gender dysphoria. Tr. 322:12-20. The MTC reviews the treatment of all inmates with gender dysphoria but does not make medical decisions. Tr. 323:4-13, 324:9-14.

57. There are currently 30 prisoners with gender dysphoria in IDOC custody. Tr. 322:21-323:3. No individuals in IDOC custody have ever been recommended for or received gender confirmation surgery. Tr. 376:23-377:4.

58. IDOC's operative gender dysphoria policy when Ms. Edmo was assessed for surgery defined a "qualified gender identity disorder (GID) evaluator as "A Doctor of Philosophy (PhD) level practitioner licensed by an appropriate state licensing authority as a psychologist, or a physician licensed by a state Board of Medicine, who has demonstrated an indicia of basic competence related to the diagnosis and treatment of GID and related mental or emotional disorders through their licensure, training, continuing education, and clinical experience." Exh. 8 at 3; Tr. 388:16-389:1. This policy stated that gender confirmation surgery "will not be considered for individuals within the Idaho Department of Correction (IDOC), unless determined medically necessary by the treating physician." Exh. 8 at 8.

59. On October 5, 2018, IDOC implemented a new gender dysphoria policy that would allow prisoners at ISCI diagnosed with gender dysphoria to order and possess female commissary items and present in a manner consistent with their gender identity. Tr. 347:18-348:23; Exh. 9. The new policy also states that "to avoid a sexually charged atmosphere in IDOC facilities [n]o

provocative or sexually charged clothing or behavior will be permitted.” Exh. 9 at 6.

60. IDOC’s new gender dysphoria policy continues to state that gender confirmation surgery “will not be considered for individuals within the Idaho Department of Correction (IDOC), unless determined medically necessary by the treating physician.” Exh. 9 at 8-9. The new policy does not elaborate on determination of medical necessity. *See id.* The policy states that prisoners will be housed “based upon the inmate’s primary physical sexual characteristics.” Exh. 9 at 4.

61. Warden Keith Yordy testified that IDOC’s Prison Rape and Elimination Act (“PREA”) policy operative until 2018 prohibited prisoners from “dressing or displaying feminine or effeminate appearance,” which included hairstyles, shaping eyebrows, face makeup, undergarments, jewelry, and gender opposite clothing. Deposition of Keith Yordy (“Yordy Dep.”) 20:17-21:25, 28:10-15, 42:14-43:2, 48:2-5; Exh. 12 at 6. Yordy testified that this policy prohibited hairstyles considered feminine or effeminate for persons housed at a male prison in Idaho. Yordy Dep. 28:10-15. There was no written definition of feminine or effeminate hairstyles. Yordy provided guidance to staff “using good correctional practice of when you see it, you know it” and specifically, “[t]hat if hairstyles are above and beyond what you believe is appropriate, and it’s an effeminate hairstyle, correct it with the offender.” *Id.* 50:14-51:2. Yordy testified that in 2014, correctional officers were “trying to control the effeminate hairstyles” and were not distinguishing between effeminate hairstyles and sexually provocative hairstyles. *Id.* 27:17-28:1. IDOC’s PREA policy that took effect on April 2, 2018 does not address effeminate or feminine appearance. Yordy Dep. 28:16-30:14; Exh. 13.

Defendants’ Training on Gender Confirmation Surgery

62. In 2016, Dr. Eliason contacted Dr. Steven Levine to lead a training for IDOC and Corizon providers on medical necessity for gender confirmation surgery. Tr. 433:23-434:24. Dr. Levine’s training presentation was titled “Medical Necessity of Transgender Inmates: In Search of Clarity When Paradox, Complexity, and Uncertainty Abound.” Exh. 17 at 1. Dr. Levine trained Corizon and IDOC staff that gender confirmation surgery is “not conceived as lifesaving as is repairing a potentially leaking aortic aneurysm but as life enhancing as is providing augmentation for women

distressed about their small breasts.” Exh. 17 at 43; Exh. 16.

63. Dr. Levine is considered an outlier in the field of treating gender dysphoria and does not ascribe to the WPATH Standards of Care. Tr. 176:14-21. His training materials do not reflect opinions that are generally accepted in the field of gender dysphoria. Tr. 176:22-179:1. His training materials also contain multiple statements evidencing hostility to the WPATH Standards of Care and provision of gender confirmation surgery to incarcerated persons, and negatively characterize providers and courts that rely on these standards. *E.g.*, Exh. 17 at 30 (“[WPATH Standards of Care], which claims to be a scientific and a minority rights document, ignores the profound differences between science and advocacy”); *id.* at 30 (“Judges, who are schooled in civil rights, look to professional societies like WPATH, for guidance. It is an uphill battle to convince them that a professional society is wrong and a dissenting expert in the courtroom is right.”).

64. Dr. Levine’s training includes additional criteria that Cynthia Osborne and Anne Lawrence propose that incarcerated individuals must meet in order to receive gender confirmation surgery. Exh. 17 at 39-41, 51; Exh. 19. These requirements are not part of the WPATH criteria and are in opposition to the WPATH Standards of Care. Tr. 101:15-22, 103:14-20. There are no scientific studies that support these additional requirements and no professional associations or organizations have endorsed Osborne and Lawrence’s proposed requirements for prisoners. Tr. 103:4-13. The NCCHC has not adopted the additional requirements proposed by Osborne and Lawrence. Tr. 480:12-16.. Like Levine, Osborne and Lawrence are considered outliers in the field of gender dysphoria treatment, are not WPATH members, and do not ascribe to the WPATH Standards of Care. Tr. 101:2-14.

65. Dr. Levine was retained as a defense expert by the California Department of Corrections and Rehabilitation in a suit filed by a transgender plaintiff. *Norsworthy v. Beard*, 87 F. Supp. 3d 1164 (N.D. Cal. 2015). In ordering the prison to provide the plaintiff gender confirmation surgery, the *Norsworthy* court afforded Dr. Levine’s opinions “very little weight,” stating: “To the extent that Levine’s apparent opinion that no inmate should ever receive SRS predetermined his conclusion with respect to Norsworthy, his conclusions are unhelpful in assessing whether she has

established a serious medical need for SRS.” *Norsworthy*, 87 F. Supp. 3d at 1188. The court also determined that Dr. Levine’s opinion was not credible because of illogical inferences, inconsistencies, and inaccuracies,” including misrepresentations of the WPATH Standards of Care, overwhelming “generalizations about gender dysphoric prisoners” and Dr. Levine’s fabrication of a prisoner anecdote. *Id.*

66. The two witnesses Defendants called to testify other than their experts, Dr. Eliason, and Mr. Clark, both attended Dr. Levine’s 2016 training and subsequently incorporated substantial material from Dr. Levine’s PowerPoint into trainings they then gave on gender dysphoria. The respective portions of Dr. Levine’s PowerPoint that Dr. Eliason and Mr. Clark chose to use in their own PowerPoints included Dr. Levine’s personal theories about gender confirmation surgery that have not been generally accepted in the field of gender dysphoria treatment and evidence hostility to the idea of providing gender confirmation surgery to incarcerated individuals. Tr. 473:8-475:7; Exh. 20 at 1,-2, 27-29; Tr. 369:25-370:16; Exh. 1025 at 5.

Ms. Edmo’s Gender Identity and Presentation

67. Ms. Edmo legally changed her name to Adree Edmo in September 2013. Tr. 192:6-9. Ms. Edmo has also changed her sex to “female” on her birth certificate to further affirm her gender identity. Tr. 203:13-22; Exh. 1002.

68. Ms. Edmo has consistently presented as feminine throughout her incarceration by wearing her hair in traditionally feminine hairstyles, wearing makeup, and acting in a feminine demeanor. Tr. 194:24-195:5, 411:1-7, 463:11-464:21. Ms. Edmo’s feminine presentation has been documented by Defendants’ medical providers since 2012. *E.g.*, Exh. 1 at 321, 347, 425, 452, 538.

69. Ms. Edmo has also held two jobs while in prison and has presented as feminine at her places of employment. Tr. 201:24-202:10.

70. Ms. Edmo has continually sought to present herself as feminine despite receiving multiple disciplinary offense reports related to wearing makeup, styling her hair in a feminine manner, and altering her male-issued undergarments into female panties. Tr. 195:11-20; Exh. 5 at 8, 9, 21-22, 25, 27-28, 33-34, 41-43, 48-57, 62-65; Yordy Dep. 47:4-49:15, 85:22-87:11; Edmo Decl. ¶ 19.

71. IDOC's new policy would still appear to permit the type of discipline Ms. Edmo has received for her gender presentation based on characterizing her feminine appearance as sexualized. For example, Warden Yordy testified that when an officer gave Ms. Edmo a DOR for having her hair in a bun over the ear line in 2015, this was based on a hairstyle that was "over the top," "creating a sexually charged environment, creating a hairstyle that was not appropriate." Yordy Dep. 50:6-13 & Yordy Dep. Ex. 3 at IDOC_C_pg. 27-28.

72. Ms. Edmo feels prepared to live in the community as a woman. She would continue to wear makeup and female clothing, and request surgery even if she lived in the community. Tr. 201:16-23, 202:11-15.

73. Ms. Edmo does not expect gender confirmation surgery to solve all her problems, but believes it will help her better handle the stressors of everyday life and alleviate some of her depression. Tr. 200:21-201:13; Deposition of Krina Stewart ("Stewart Dep.") 78:22-79:25.

Defendants' Treatment of Ms. Edmo for Gender Dysphoria

74. All of the experts in this case testified that Ms. Edmo meets the DSM-5 definition of gender dysphoria. Tr. 69:20-70:3, 251:23-252:3, 518:16-18, 635:1-7.

75. Dr. Ettner testified that Ms. Edmo's treatment providers at ISCI are not qualified to provide her appropriate treatment for gender dysphoria. Tr. 90:22-25.

76. The only treatment Ms. Edmo has received at ISCI for gender dysphoria is hormone replacement therapy and some gender dysphoria process groups. Tr. 196:8-14; Stewart Dep. 84:10-18. Ms. Edmo has received hormone therapy since late 2012, which consists of estrogen and spironolactone, a testosterone suppressant. Tr. 227:19-228:3.

77. Ms. Edmo has been compliant with her prescribed hormone treatment regimen and depression medication since 2012. Tr. 99:9-12, 369:14-19. There is no evidence that Ms. Edmo has refused to meet with members of her treatment team other than her current assigned primary clinician, Krina Stewart, whom she believes to be unknowledgeable about gender dysphoria. Tr. 609:8-12; Stewart Dep. 91:15-18.

78. Ms. Edmo testified that the hormone therapy helped treat her gender dysphoria to some

extent. Tr. 223:9-14. The hormones “cleared her mind,” and resulted in breast growth, body fat redistribution, and changes in her skin consistency. Tr. 196:15-25. As a result of hormone therapy, Ms. Edmo is hormonally confirmed, which means she has the same circulating sex hormones and secondary sex characteristics as a typical adult female. Tr. 72:14-21; Ettner Decl. ¶ 59. Ms. Edmo has achieved the maximum physical changes associated with hormone treatment. Tr. 602:1-603:4.

79. Ms. Edmo continues to experience distress related to gender incongruence, which is mostly focused on her male genitalia. She testified she feels “depressed, embarrassed, and disgusted” by her male genitalia and that this is an “everyday reoccurring thought.” Tr. 197:7-24. This is consistent with reports Ms. Edmo has made to her providers at ISCI. Tr. 460:18-24.

80. Ms. Edmo has repeatedly requested gender confirmation surgery. Ms. Edmo first requested gender confirmation surgery in February 2014. Her request was denied by Defendants at that time, and consistently thereafter. Exh. 1 at 63-64, 195, 538; Exh. 6 at 65-66, 169-70, 187-88.

81. Ms. Edmo first attempted self surgery to remove her testicles in September 2015 using a disposable razor blade. She wrote a note to let the officers know she was not trying to commit suicide and was only trying to help herself. She attempted to cut her testicle sac open but was unsuccessful. Edmo Decl. ¶ 31; Tr. 197:25-198:8. Ms. Edmo was placed on suicide watch after she was found, which exacerbated her depression and gender dysphoria because she was stripped of all clothing and continually confronted with her male anatomy. Prison staff told her she would be sent to maximum security if she tried to self-castrate again. Edmo Decl. ¶ 32.

82. In January 2016, Ms. Edmo reported to Dr. Eliason that she was having difficulty sleeping due to thoughts of self-castration. In response, Dr. Eliason prescribed Ms. Edmo sleeping medication. Tr. 458:5-10, 461:18-24. Ms. Edmo also reported her frequent thoughts of self-castration to her assigned clinician, Krina Stewart, in November 2016. Ms. Stewart testified that none of the interventions she identified for Ms. Edmo at that visit would alleviate her gender dysphoria or desire to self-castrate. Stewart Dep. 58:15-59:16; Exh. 1 at 584-85.

83. Ms. Edmo attempted a second time to perform self surgery in December 2016. She prepared for weeks by studying the anatomy of the scrotum and took steps to diminish the chance

of infection by boiling the razor blade and scrubbing her hands with soap. Ms. Edmo made more surgical headway on this attempt and was able to cut open the testicle sac and remove the testicle. Declaration of Ryan Nicholas Gorton in Support of Plaintiff's Motion for a Preliminary Injunction ("Gorton Decl.") ¶ 74. Because there was too much blood, Ms. Edmo abandoned her attempt and sought medical assistance. Tr. 198:9-16. She was transported to a hospital where her testicle was repaired. Tr. 198:25-199:13. After the procedure, Ms. Edmo felt disappointed in herself because she felt she had come so close to removing her testicle but had not succeeded. Tr. 199:17-23.

84. Ms. Edmo was receiving hormone therapy both times she attempted to self-castrate. Tr. 228:20-25.

85. Ms. Stewart met with Ms. Edmo two days after her second self-castration attempt but did not formulate a new treatment plan for Ms. Edmo or add any additional treatments to her plan. Stewart Dep. 65:5-25; Exh. 1 at 597.

86. Ms. Edmo continues to actively experience thoughts of self-castration. In an effort to avoid acting on them, when she has experienced extreme episodes of gender dysphoria in the past year, Ms. Edmo "self-medicate[s]" by using a razor to cut her arm. The physical pain she feels from cutting helps her release the emotional torment and mental anguish she feels at the time. Tr. 199:24-200:15.

Defendants' April 2016 Assessment of Ms. Edmo's Medical Necessity for Surgery

87. IDOC and Corizon evaluated Ms. Edmo for gender confirmation surgery one time prior to this lawsuit. Corizon psychiatrist Scott Eliason conducted this evaluation on April 20, 2016 by Exh. 1 at 538; Tr. 419:1-10.

88. Dr. Eliason's progress note documenting his assessment of Ms. Edmo stated:
Medical Necessity for Sexual Reassignment Surgery is not very well defined and is constantly shifting but the following situations could meet medical necessity: 1) Congenital malformations or ambiguous genitalia would likely required sexual reassignment or reparative surgery. 2) Severe and devastating dysphoria that is primarily due to genitals could potentially meet criteria for gender reassignment surgery as well. 3) Some type of medical problem in which endogenous sexual hormones were causing severe physiological damage. There may also be other situation which could be determine as medically necessary as more information

becomes available. This inmate does not meet any of those above criteria.

Exh. 1 at 538. Dr. Eliason's progress note also stated: "For the time being, it is my opinion that the combination of hormone treatment and supportive counseling is sufficient for her gender dysphoria." Exh. 1 at 538.

89. Dr. Eliason's statement that "[m]edical necessity for sex reassignment surgery is not very well defined and is constantly shifting" is inconsistent with the recognized standard of care and supporting scientific literature which sets forth criteria for gender confirmation surgery and confirms that surgery is an effective treatment for the medical condition of gender dysphoria. Tr. 263:4-17, 74:4-18, 168:23-169:15.

90. Dr. Eliason's three examples of "medical necessity" are not the WPATH criteria. Dr. Eliason was not able to identify any source for these three examples, and neither Plaintiff's nor Defendants' experts identified Dr. Eliason's examples of medical necessity as consistent with the standard of care. Tr. 470:18-20, 470:24-471:2. Nonetheless, Dr. Eliason admitted that attempted self-castration could meet his second example of medical necessity. Tr. 471:3-6.

91. In his April 20, 2016 assessment and at his deposition, Dr. Eliason did not identify uncontrolled mental health concerns or Ms. Edmo's compliance with the 12 continuous months of living in a congruent gender role as bases for finding gender confirmation surgery not medically necessary. Tr. 462:3-463:10.

92. In concluding that surgery was not medically necessary for Ms. Edmo, Dr. Eliason did not review her prior criminal record, disciplinary history, or her presentence investigation reports. Tr. 468:4-18. The only information Dr. Eliason relied upon was Ms. Edmo's medical record, staff observations, her therapist and her therapist's notes. Tr. 469:16-25.

93. Dr. Eliason testified that when he assessed her for surgery, he was aware of Ms. Edmo's prior self-surgery attempt and he believed Ms. Edmo's gender dysphoria had risen to another level, but he made no change to her treatment plan. Tr. 471:7-22.

94. Plaintiff's expert Dr. Gorton found Dr. Eliason's evaluation of Ms. Edmo inconsistent with and far below the standard of care. Tr. 261:15-263:3.

95. While Dr. Eliason testified that he “staffed” his assessment of Ms. Edmo with other providers including Jeremy Clark, a licensed counselor and WPATH member, Mr. Clark testified that the consultation was an informal conversation that happened when they ran into each other in passing at ISCI and lasted no more than 15 to 20 minutes. Mr. Clark did not document the informal consultation, nor did he provide Dr. Eliason with an opinion of what “medically necessary” meant. Tr. 354:25-355:21. Mr. Clark was also not qualified to assess the medical necessity of gender confirmation surgery under IDOC policy. Tr. 391:1-6; Exh. 8 at 3.

96. Although Mr. Clark testified that the MTC should have reviewed Dr. Eliason’s assessment of the medical necessity of surgery for Ms. Edmo, the MTC minutes do not document any such review taking place. Tr. 358:8-361:4; Exh. 7 at 78-80, 86.

Ms. Edmo’s Medical Necessity for Gender Confirmation Surgery

97. Despite six years of hormone therapy, Ms. Edmo continues to have persistent well-documented gender dysphoria. Tr. 72:1-10, 75:11-25, 252:16-22, 668:24-669:15.

98. Plaintiff’s experts agree that Ms. Edmo meets and exceeds the six WPATH criteria for genital reconstruction surgery. Tr. 75:9-78:3; 252:13-254:11. Defendants’ experts dispute that Ms. Edmo meets the fourth and sixth WPATH criteria. Tr. 607:2-10, 639:14-640:25. Dr. Eliason did not cite any of the WPATH criteria as a reason Ms. Edmo did not require surgery in his April 2016 assessment or during his deposition, but stated for the first time during the hearing that she does not meet the fourth and sixth WPATH criteria. Tr. 462:3-463:10. Mr. Clark testified that he does not believe Ms. Edmo meets the fourth WPATH criterion. Tr. 386:19-24.

99. With respect to the fourth criterion, Dr. Ettner testified that Ms. Edmo has no unresolved mental health issues that would prevent her from receiving gender confirmation surgery. Tr. 98:3-10. While at ISCI, Ms. Edmo has been diagnosed with Major Depressive Disorder, Alcohol Use Disorder, and Gender Dysphoria. *E.g.*, Exh. 1 at 538. These diagnoses were generally confirmed by all of the experts, with observation that any substance use disorder has been in remission while Ms. Edmo has been incarcerated. Tr. 67:16-18, 253:3-9, 518:16-219:6, 603:22-604:5. Plaintiff’s experts testified that Ms. Edmo’s depression and anxiety are as controlled as they can be and do

not impair her ability to undergo surgery. Tr. 76:13-25, 123:14-124:11, 253:3-9; Exh. 15 at 30.

100. Dr. Ettner assessed Ms. Edmo's depression as primarily somatic and vegetative, not cognitive, which means that it is not the type of depression that someone can resolve through talk therapy or processing groups. This type of depression is treated with antidepressant medication. Ms. Edmo is prescribed the maximum dose of antidepressant medication and is compliant with her prescription. The fact that these medications have not fully attenuated her depression is an indication that Ms. Edmo's depression is attendant to her gender dysphoria rather than a comorbid or co-occurring disorder on its own. Tr. 67:19-69:16; 76:22-77:4.

101. Dr. Garvey assessed Ms. Edmo with major depressive disorder at the moderate level, did not attribute her gender dysphoria to hysteria, psychosis, malingering, or exaggeration, and believed that Ms. Edmo's substance use disorder is in full sustained remission in a controlled environment. Tr. 603:22-604:5. Dr. Garvey testified that when she evaluated Ms. Edmo, she found no evidence of psychosis or obsessional thinking, found no evidence of psychosis in her records, or any evidence that Ms. Edmo was being uncooperative. Rather, Dr. Garvey found that Ms. Edmo's insight appeared fair and her judgment appeared reasonably intact. Tr. 603:8-21.

102. The clinical significance of Ms. Edmo's self-surgery attempts and recent cutting of her arm is that she has severe genital-focused gender dysphoria and is not getting medically necessary treatment to alleviate it. Tr. 254:15-19, 98:11-22. Ms. Edmo's self-surgery attempts are not acts of mutilation or self-harm but are attempts to remove her target organ that produces testosterone, which is the cure for gender dysphoria. Tr. 80:3-13. Ms. Edmo's gender dysphoria, not her depression and anxiety, is the driving force behind her self-surgery attempts. Tr. 254:20-255:8. Ms. Edmo's self-surgery attempts and cutting do not indicate she has mental health concerns that are not well controlled. Tr. 98:11-22. Rather, Ms. Edmo's recent cutting is attention-reduction behavior that she uses to prevent herself from cutting her genitals. Tr. 98:16-22.

103. Ms. Edmo has demonstrated the capacity to follow through with the postsurgical care she would require. Tr. 99:3-8, 169:23-170:25.

104. In the more than six years she has spent in IDOC custody, no Corizon or IDOC provider

has ever diagnosed Ms. Edmo with borderline personality disorder by any Corizon or IDOC provider. Tr. 361:18-362:3, 470:4-6. Defense expert Dr. Andrade is the first person to ever diagnose Ms. Edmo with borderline personality disorder, and he was unable to identify his criteria for this diagnosis for Ms. Edmo during his testimony. Tr. 652:21-24, 638:16-22. None of the other experts, including Defense expert Dr. Garvey, diagnosed Ms. Edmo with borderline personality disorder. Tr. 131:24-132:3, 139:19-24.

105. With respect to the sixth criterion, both Plaintiff's experts testified that Ms. Edmo meets and exceeds the condition of social role transition by living as a woman to the best of her ability in a male prison. For the six-plus years she has lived in prison, Ms. Edmo has consistently sought to present as feminine, despite living in an environment hostile to her efforts and despite the disciplinary consequences she faces. Tr. 77:9-78:3, 254:4-11.

106. Dr. Ettner testified that gender confirmation surgery would eliminate Ms. Edmo's gender dysphoria and significantly attenuate much of the attendant depression and symptoms that she is experiencing. Tr. 104:24-105:9. She testified that gender confirmation surgery is the cure for gender dysphoria, and will therefore result in therapeutic and beneficial effects for Ms. Edmo. Tr. 81:13-19. Dr. Gorton testified that it is highly unlikely that Ms. Edmo's severe gender dysphoria will improve without gender confirmation surgery. Tr. 267:19-22.

107. The risks of not providing gender confirmation surgery to Ms. Edmo include surgical self-treatment, emotional decompensation, and risk of suicide given her high degree of suicide ideation. Tr. 80:24-81:8, 264:13-22.

108. If she is not provided surgery, Ms. Edmo does not doubt that she will try self surgery to deal with her extreme episodes of gender dysphoria in the future. Tr. 199:24-200:5. Given that Ms. Edmo made increasing progress on her first two self-surgery attempts, it is likely that Ms. Edmo will be successful if she attempts self-surgery again. Tr. 264:13-22.

109. Scientific studies indicate that the regret rate for individuals who have had gender confirmation surgery is very low and generally in the range of 1 percent of patients. Tr. 103:25-12, 165:16-166:4. Ms. Edmo does not have any of the risk factors that primarily contribute to

regret. Tr. 266:1-267:1.

CONCLUSIONS OF LAW

I. Legal Standard

110. “A plaintiff seeking a preliminary injunction must establish that [s]he is likely to succeed on the merits, that [s]he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2009); *Pimentel v. Dreyfus*, 670 F. 3d 1096, 1105 (9th Cir. 2012) (applying *Winter* to claim under 42 U.S.C. § 1983). Under Ninth Circuit law, likelihood of success on the merits is the most important factor. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). “[S]erious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1135 (9th Cir. 2011) (internal quotation marks omitted).

111. Injunctive relief is treated as a mandatory injunction when “it orders a responsible party to take action.” *Garcia*, 786 F.3d at 740. A plaintiff seeking a mandatory injunction “ must establish that the law and facts clearly favor her position, not simply that she is likely to succeed.” *Id.* at 740. “Mandatory injunctions are most likely to be appropriate when ‘the status quo . . . is exactly what will inflict the irreparable injury upon complainant.’” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (quoting *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816, 830 n.21 (D.C. Cir. 1984)).

112. The Prison Litigation Reform Act requires any preliminary injunction to be “narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

113. Plaintiff’s request for a preliminary injunction ordering Defendants to provide her medical care is, unfortunately, not an unusual procedural posture, nor does it seek procedurally inappropriate relief. Courts have authority to grant mandatory preliminary injunctions directing

prisons and medical providers to provide incarcerated plaintiffs medical care where the factors supporting such relief are present. *See, e.g., Mason v. Ryan*, 2018 U.S. Dist. LEXIS 77688 (D. Ariz. May 8, 2018) (granting in part preliminary injunction and ordering Corizon to provide specialist-recommended treatment and medication); *Hicklin v. Precynthe*, 2018 U.S. Dist. LEXIS 21516, at *49-50 (E.D. Mo. Feb. 9, 2018) (“*Hicklin I*”) (granting in part preliminary injunction requesting that defendants provide plaintiff medically necessary treatment for gender dysphoria, including hormone therapy, access to permanent body hair removal, and access to gender-affirming canteen items); *Norsworthy*, 87 F. Supp. 3d at 1195 (ordering defendants to “take all of the actions reasonably necessary to provide [plaintiff] sex reassignment surgery as promptly as possible”); *Hamby v. Hammond*, 2014 U.S. Dist. LEXIS 117346, at *1-2 (W.D. Wash. July 7, 2014) (applying *Winter* factors to plaintiff’s motion for preliminary injunction seeking surgical repair for hernia); *McNearney v. Wash. Dep’t of Corr.*, 2012 U.S. Dist. LEXIS 115802, at *38 (W.D. Wash. June 15, 2012) (granting preliminary injunction and ordering defendant to arrange for plaintiff to be examined by outside specialists and authorize recommended treatment); *Miller v. Bannister*, 2011 U.S. Dist. LEXIS 14858, at *2 (D. Nev. Feb. 14, 2011) (ordering defendants to arrange for plaintiff, who suffered from end-stage liver disease, to be evaluated by a liver transplant specialist); *Rhea v. Wash. State Dep’t of Corr.*, 2010 U.S. Dist. LEXIS 97784, at *5 (W.D. Wash. Sept. 27, 2010) (granting preliminary injunction requiring defendants to arrange for plaintiff to be examined by an outside specialist and to “authorize, perform and/or facilitate any treatment” recommended by the specialist to treat plaintiff’s neuroma).

114. District courts faced with motions for injunctive relief requesting surgery or other forms of irreversible treatment have evaluated these requests under the preliminary injunction standard. *See, e.g., Norsworthy*, 87 F. Supp. 3d at 1184-95 (plaintiff’s motion for preliminary injunction requesting gender confirmation surgery evaluated under preliminary injunction standard); *Hamby*, 2014 U.S. Dist. LEXIS 117346, at *1-2 (applying *Winter* factors to plaintiff’s motion for preliminary injunction seeking surgical repair for hernia). A ruling on a motion for a preliminary injunction “leaves open the final determination of the merits of the case.” *Ranchers Cattlemen*

Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agric., 499 F.3d 1108, 1114 (9th Cir. 2007). “This rule acknowledges that decisions on preliminary injunctions are just that—preliminary—and must often be made hastily and on less than a full record.” *Id.* (internal quotations omitted). While the Court recognizes that an order granting Ms. Edmo’s motion for preliminary injunction may have the effect of granting ultimate relief on some of her claims, the mere fact that Ms. Edmo’s requested relief is surgical and therefore irreversible does not convert her request for urgent relief to a motion for permanent injunction that would result in a final judgment on the merits of her claims.² Accordingly, the Court evaluates Ms. Edmo’s motion under the preliminary injunction standard.

II. Analysis

A. The Law Clearly Favors Plaintiff’s Position on Her Claims

1. Eighth Amendment Claim

115. It is well-established that “[d]eliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (internal citation omitted). Prison officials are liable for violations under the Eighth Amendment when they are deliberately indifferent to a substantial risk of serious harm to a prisoner, which the Supreme Court has described as “the equivalent of recklessly disregarding that risk.” *Farmer v. Brennan*, 511 U.S. 825, 836 (1994); *see also id.* (“Deliberate indifference lies somewhere between the poles of negligence at one end and purpose or knowledge at the other.”). “Much like recklessness in criminal law, deliberate indifference to

² While one district court in the Ninth Circuit reached the opposite conclusion in *Boldon v. Humana Ins. Co.*, 466 F. Supp. 2d 1199 (D. Ariz. 2006), this case is distinguishable. In *Boldon*, the court granted an injunction to an employee seeking a determination that his medical plan should provide him medical treatment coverage. The court concluded that the standard for a final rather than preliminary injunction applied because “the requested injunction . . . is final in substance, with the opportunity for full presentation of material evidence attendant to a final injunction after trial on the merits.” *Id.* at 1208. In the instant case, however, the parties have thus far conducted only limited discovery because of the balance necessary between time for initial discovery and a timely decision on the requested preliminary injunction due to the nature of the medical need alleged. The record before the Court that does not represent all the evidence that would be presented at a full trial on the merits. However, as set forth *infra*, this evidence is more than sufficient for the Court to rule on Plaintiff’s motion for preliminary injunction.

medical needs may be shown by circumstantial evidence when the facts are sufficient to demonstrate that a defendant actually knew of a risk of harm.” *Lolli v. Cnty. of Orange*, 351 F. 3d 410, 421 (9th Cir. 2003); *see also Farmer*, 511 U.S. at 837.

116. A plaintiff establishes deliberate indifference by showing a serious medical need such that failure to treat the condition could result in further significant injury or the unnecessary and wanton infliction of pain, and showing that a defendant engaged in a purposeful act or failure to respond to this medical need such that the plaintiff was harmed. *Jett v. Penner*, 439 F. 3d 1091, 1096 (9th Cir. 2006). Deliberate indifference may be demonstrated “when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison officials provide medical care.” *Id.* (internal quotations and citations omitted).

117. The parties do not dispute that gender dysphoria is a serious medical condition for the purposes of the Eighth Amendment and that Ms. Edmo continues to meet the DSM-5 criteria for gender dysphoria even after provision of cross-sex hormone therapy for the past six years. By definition, the condition of gender dysphoria results in ongoing clinically significant distress and/or impairment of functioning. At issue is whether gender confirmation surgery is the medically necessary or appropriate treatment for Ms. Edmo’s ongoing gender dysphoria such that Defendants’ refusal to provide it amounts to deliberate indifference to her serious medical need.

a. Medical need for gender confirmation surgery

118. The Court finds that the law clearly supports that gender confirmation surgery is the medically appropriate and necessary treatment for Ms. Edmo’s ongoing and severe gender dysphoria. She has presented extensive evidence that she continues to experience severe emotional and psychological symptoms of gender dysphoria, despite six years of hormone therapy for gender dysphoria and mental health treatment for her depressive disorder. *See Norsworthy*, 87 F. Supp. 3d at 1186 (plaintiff demonstrated serious medical need where years of hormone therapy and mental health treatment did not alleviate her severe symptoms of gender dysphoria). Ms. Edmo has also presented evidence that her two self-castration attempts, recurring thoughts of self-castration, and recent cutting of her arm to keep from again attempting self-surgery demonstrate

that her gender dysphoria is not being adequately treated.

119. Defendants do not dispute that the WPATH Standards of Care are the accepted standards of care for treatment of transgender patients, that these standards have been endorsed by the NCCHC as applying to incarcerated persons, and that there are no other competing sets of evidence-based standards that are accepted by any nationally or internationally recognized medical professional groups.

120. The Court finds credible the testimony of Plaintiff's experts Drs. Ettner and Gorton, who have extensive personal experience treating individuals with gender dysphoria both before and after receiving gender confirmation surgery, and who found that Ms. Edmo has satisfied all of WPATH six medical necessity criteria for surgery.

121. Defendants' experts, by contrast, have opined that surgery is not medically necessary for Ms. Edmo. The Court lends little weight to these experts' opinions, as neither Dr. Garvey nor Dr. Andrade has any direct experience with patients receiving gender confirmation surgery or assessing patients for the medical necessity of gender confirmation surgery. Defendants' experts also have very little experience treating any patients with gender dysphoria other than assessing them for the existence of the condition.

122. Defendants' experts appear to misrepresent the WPATH Standards of Care by concluding that Ms. Edmo, despite presenting as female since her incarceration in 2012, cannot satisfy the WPATH criteria because she has not presented as female in free society. But there is no requirement in the Standards of Care that a "patient live for twelve months in his or her gender role outside of prison before becoming eligible for SRS." *Norsworthy*, 87 F. Supp. 3d at 1193-1194. Indeed, Plaintiff's experts opine that Ms. Edmo exceeds this criterion not only because she has presented as female for far longer than twelve months, but has done so in an environment arguably more hostile to these efforts than the community and despite the disciplinary consequences. Nor is there any evidence that the Standards of Care do not apply to incarcerated individuals. In fact, the Standards of Care explicitly provide that "in their entirety [they] apply to all transsexual, transgender, and gender-nonconforming people, irrespective of their housing

situation,” and “including institutional environments such as prisons.” Exh. 15 at 73. The Standards of Care make clear that “[d]enial of needed changes in gender role or access to treatments, including sex reassignment surgery, on the basis of residence in an institution are not reasonable accommodations.” Exh. 15 at 74.

123. The Court also finds that Defendants’ experts lack credibility because their education and training regarding gender dysphoria is largely based on their work with Dr. Levine at the Massachusetts Department of Corrections. Plaintiff’s expert Dr. Ettner testified that Dr. Levine is an outlier in the gender dysphoria field whose ideas about gender confirmation surgery are not generally accepted. This opinion is consistent with the other evidence before this Court, which includes a PowerPoint authored by Dr. Levine that is inconsistent with and in opposition to the WPATH Standards of Care, and the finding by another district court in this Circuit that Dr. Levine’s report and opinions in that case were not credible, relied on generalizations about gender dysphoric prisoners, included a fabricated anecdote, and were based on his “apparent opinion that no inmate should ever receive SRS.” *Norsworthy*, 87 F. Supp. 3d at 1188-89; *see also id.* at 1192. *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 235 (D. Mass. 2012) (finding Dr. Levine’s opinion regarding sex reassignment surgery contrary to the evidence and Standards of Care showing generally positive outcomes for most patients who have sex reassignment surgery). Consistent with Dr. Levine’s approach that gender confirmation surgery should not be provided for incarcerated individuals, no prisoner in the Massachusetts Department of Corrections, including those whose treatment was overseen by Dr. Garvey and Dr. Andrade, has ever received gender confirmation surgery.

124. Remarkably, both of the witnesses Defendants called at the preliminary injunction hearing, Dr. Eliason and Mr. Clark, were also trained by Dr. Levine, whom Dr. Eliason brought in to do a one-day training for Corizon and IDOC providers. Following this training, both Dr. Eliason and Mr. Clark used Dr. Levine’s training materials—which undermine the medical necessity of gender confirmation surgery in contrast to the WPATH Standards of Care and the opinions of every major medical and mental health organization—in their own trainings on gender dysphoria. Dr. Eliason

testified that Corizon has never recommended gender confirmation surgery to any patient in any of the correctional systems or institutions for which the company is the contracted medical provider. Nor has IDOC ever recommended or provided gender confirmation surgery to any patient in IDOC custody.

Defendants' reasons for denying Ms. Edmo gender confirmation surgery are pretextual

125. With these findings about the parties' experts' credibility in mind, the Court turns to the reasons Defendants have proffered for denying Ms. Edmo surgery—that she cannot meet the fourth and sixth WPATH criteria for surgery—and concludes that these are pretextual.

126. The fourth WPATH criterion states: “If significant medical or mental health concerns are present, they must be well controlled.” Ms. Edmo’s only documented active, significant mental health concern other than gender dysphoria itself is major depressive disorder. It is undisputed that Ms. Edmo is prescribed and compliant with the maximum dosage of anti-depressant medication. None of the experts were able to conclusively opine about the degree to which Ms. Edmo’s depressive symptoms are related to or distinct from her gender dysphoria, but, based on their extensive experience treating patients with gender dysphoria, the Court credits Drs. Ettner and Gorton’s testimony that appropriate treatment of Ms. Edmo’s gender dysphoria is likely to alleviate, if not eliminate, Ms. Edmo’s depression and anxiety.

127. Defendant’s expert Dr. Andrade also posited during the course of this litigation that Ms. Edmo has borderline personality disorder, which he suggested precludes surgery at this time under the fourth criterion. Defendants also filed various declarations from their internal providers suggesting that Ms. Edmo may have borderline personality disorder or traits thereof. Plaintiff’s experts both opined that they did not find Ms. Edmo to have borderline personality disorder, and Defendant’s psychiatrist expert, Dr. Garvey, also did not find this diagnosis appropriate for Ms. Edmo. The evidence is undisputed that, in more than six years of treating Ms. Edmo, at no time prior to Ms. Edmo’s motion for a preliminary injunction did any of Defendants’ own providers diagnose Ms. Edmo with borderline personality disorder or prescribe treatment for this diagnosis.

128. Post hoc rationalizations for the purposes of litigation, unsupported by evidence, cannot be

used retroactively as justification for a medical decision. See *Layton v. Bannister*, 2012 U.S. Dist. LEXIS 158359, at *6 (D. Nev. Nov. 5, 2012) (whether defendant’s decision to deny plaintiff surgery violated the Eighth Amendment should be evaluated based solely on facts available to defendant at the time); *Funderburke v. Canfield*, 2016 U.S. Dist. LEXIS 25456, at *21 (W.D.N.Y. Feb. 29, 2016) (“[A]lthough Defendants now argue that Voltaren and Indocin were sufficient to treat Plaintiff’s nerve pain, a reasonable jury could easily conclude that this argument is simply a post hoc rationalization . . .”). The Court therefore affords no weight to Defendants’ contention that a borderline personality disorder diagnosis—which has never actually been made for Ms. Edmo—must be considered under the Standards of Care.

129. Similarly, Defendants argue that Ms. Edmo’s behavior while incarcerated demonstrates uncontrolled mental health issues, citing to her disciplinary record. However, Defendants’ own documentation of these disciplinary incidents concludes that such behavior was generally not related to mental illness. Tr. 366:1-369:13. Moreover, Defendants’ assertions that Ms. Edmo’s behaviors or refusals to attend various counseling groups demonstrate that she cannot cooperate with post-surgical care requirements are belied by the undisputed evidence showing that Ms. Edmo has complied with hormone therapy and depression treatment for six years and that Ms. Edmo complied with all medical care requirements following her two attempted self-castrations. Accordingly, the Court concludes that Defendants’ assertion that Ms. Edmo cannot receive surgery due to her uncontrolled mental health concerns is pretextual.

130. The sixth WPATH criterion requires “12 continuous months of living in a gender role that is congruent with their gender identity.” Defendants argue that Ms. Edmo has not met this criterion because they do not find corroborating evidence that she presented as a woman prior to her incarceration. However, Defendants’ own records show that Ms. Edmo has consistently presented in her female gender identity for more than six years. Defendants’ witnesses and experts testified on the one hand that it is possible for a transgender patient to satisfy this requirement while living in prison, but on the other hand, asserted that Ms. Edmo cannot meet this criterion despite six years of consistent female gender presentation because she is incarcerated. This conflicting testimony is

not credible and is inconsistent with the WPATH Standards of Care. The Court thus finds that this reason for denying Ms. Edmo surgery is also pretextual.

131. In the absence of any credible evidence offered by Defendants to dispute Ms. Edmo's evidence that gender confirmation surgery is the medically appropriate and necessary treatment for her gender dysphoria, the Court concludes that she has demonstrated that current medical standards require such treatment be provided given her ongoing serious medical need.

b. Deliberate indifference

132. Having established what treatment is medically necessary, the Court turns to the question of whether the law clearly favors Ms. Edmo's claim that Defendants' failure to provide such treatment constitutes deliberate indifference. "Refusing to provide effective treatment for a serious medical condition serves no valid penological purpose and amounts to torture." *Fields v. Smith*, 653 F. 3d 550, 556 (7th Cir. 2011) (holding statute barring Wisconsin corrections officials from providing transgender inmates hormone therapy and sex-reassignment surgery unconstitutional under the Eighth Amendment). Provision of partial treatment for a medical condition does not foreclose a finding of deliberate indifference if there is additional treatment required and available to avoid further substantial risk of serious harm. *See Ortiz v. City of Imperial*, 884 F. 2d 1312, 1314 (9th Cir. 1989) (a plaintiff alleging deliberate medical indifference "need not prove complete failure to treat"); *Keohane v. Jones*, 2018 U.S. Dist. LEXIS 142640, at *57 (N.D. Fla. August 22, 2018) ("[J]ust because Defendant provides some care, like counseling and hormones, doesn't mean this suffices as constitutionally adequate treatment."); *Hicklin v. Precynthe*, No. 4-16-cv-01357-NCC, Dkt. No. 176, at 6 (E.D. Mo. May 22, 2018) ("providing [only] counseling and/or psychotropic medication to a severely gender dysphoric patient whose condition warrants medical intervention is a departure from the [WPATH] standards of care . . . [and] puts a person at serious risk of psychological and physical harm" in violation of the Eighth Amendment); *Norsworthy*, F. Supp. 3d at 1187 ("Just because defendants have provided a prisoner with some treatment consistent with the Standards of Care, it does not follow that they have necessarily provided her with *constitutionally adequate* treatment.") (internal alterations omitted) (quoting *De'lonta v.*

Johnson, 708 F. 3d 520, 526 (4th Cir. 2013)).

133. Ms. Edmo has presented overwhelming evidence that Defendants' refusal to provide her surgery is not merely a reasonable difference of opinion among medical providers. Rather, the evidence demonstrates that Defendants not only knowingly ignored but also affirmatively rejected the recognized standards of care in treating her gender dysphoria; adopted written policies that provide insufficient guidance on assessing medical necessity for surgery; and insufficiently trained their staff with materials that discourage referrals for surgery and represent the opinions of a single person who rejects the WPATH Standards of Care and is an outlier in the field of transgender medicine.

134. The Court also finds that Corizon and IDOC have a *de facto* policy or practice against providing gender confirmation surgery for transgender inmates. Their written policies do not consider genital surgery as a form of care and no person with gender dysphoria has ever been referred for surgery either in IDOC or any prison where Corizon operates. Defendants' sole evaluation of Ms. Edmo for surgery prior to this lawsuit failed to utilize the WPATH criteria and their post-hoc rationalizations for denying surgery are inconsistent with Ms. Edmo's medical records and ignore Ms. Edmo's serious and ongoing harms that result from this denial of medically necessary care.

Defendants' treatment of Ms. Edmo's gender dysphoria is an unacceptable course of treatment

135. The Court finds that Dr. Eliason's assessment that Ms. Edmo did not meet medical necessity for surgery did not utilize the WPATH criteria and therefore did not meet the standard of care. There is also no evidence that the MTC, which exists to review treatment decisions by providers, reviewed his assessment, or re-evaluated Ms. Edmo for surgery after her second self-surgery attempt just a few months later. Ms. Edmo has set forth sufficient evidence to show that Defendants' initial and continued reliance on Dr. Eliason's medically unacceptable course of treatment can establish Eighth Amendment liability. *See, e.g., Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (summary judgment improper where jury could find course of treatment was

medically unacceptable under the circumstances and was chosen in conscious disregard of excessive risk to plaintiff); *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992) (“By choosing to rely upon a medical opinion which a reasonable person would likely determine to be inferior, the prison officials took actions which may have amounted to the denial of medical treatment, and the ‘unnecessary and wanton infliction of pain.’”), *overruled in part on other grounds as recognized in Colwell v. Bannister*, 763 F.3d 1060, 1069 (9th Cir. 2014). Nor is the Court persuaded that Dr. Eliason’s informal consult with Jeremy Clark, a WPATH member who was not qualified to assess Ms. Edmo under IDOC’s operative policy, meets the standard of care.

136. Defendants have continually denied Ms. Edmo access to a treatment proven to effectively treat gender dysphoria, while at the same time failing to identify or offer her any alternative treatment to adequately alleviate her severe gender dysphoria. *See Fields*, 653 F.3d at 556 (“More importantly here, defendants did not produce any evidence that another treatment could be an adequate replacement for hormone therapy.”); *Rosado v. Alameida*, 349 F. Supp. 2d 1340, 1346 (S.D. Cal. 2004) (strong likelihood of proving that a liver transplant was medically necessary where prison officials failed to “identify an alternative treatment that may save Plaintiff’s life”).

137. Defendants’ treatment providers have asserted without any supporting evidence that counseling and hormone therapy is sufficient to treat Ms. Edmo’s serious medical condition, despite the undisputed evidence showing that it is not. *See Fields*, 653 F.3d at 556 (“Although DOC can provide psychotherapy as well as antipsychotics and antidepressants, defendants failed to present evidence rebutting the testimony that these treatments do nothing to treat the underlying [gender dysphoria].”); *Hicklin I*, 2018 U.S. Dist. LEXIS 21516, at *41 (“[P]sychiatric care and counseling alone are constitutionally inadequate to address Ms. Hicklin’s gender dysphoria.”); *McNearney*, 2012 U.S. Dist. LEXIS 115802, at *38 (by offering plaintiff treatment “shown to be ineffective . . . Defendants have chosen a course of treatment that is medically unacceptable under the circumstances, and have done so in conscious disregard of an excessive risk to Plaintiff’s health”); *Miller*, 2011 U.S. Dist. LEXIS 15116, at *10 (“Plaintiff has shown a likelihood of proving that a liver transplant will save his life, and as such, is medically necessary”); *see*

also *Snow v. McDaniel*, 681 F.3d 978, 987-89 (9th Cir. 2012) (reversing summary judgment on plaintiff's Eighth Amendment claim because a jury could find that the defendants' decision to treat plaintiff "pharmacologically rather than surgically" over a period of years was medically unacceptable), *overruled on other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014); *Konitzer v. Frank*, 711 F. Supp. 2d 874, 908 (E.D. Wis. May 10, 2010) (summary judgment inappropriate where plaintiff's repeated self-castration attempts was evidence that "what the defendants were doing to treat [plaintiff's gender dysphoria] was not working").

138. Plaintiff's experts explained why group counseling or psychotherapy is not a medically reasonable alternative to gender confirmation surgery, and none of Defendants' experts or treaters denied that gender confirmation surgery would, in fact, remediate Ms. Edmo's underlying condition of gender dysphoria. Defendants' purposeful and knowing refusal to provide Ms. Edmo available treatment that is generally accepted in the field as safe and effective, despite her actual harm and ongoing risk of future harm including self-castration attempts, cutting, and suicidal ideation, demonstrates deliberate indifference.

Defendants have a de facto ban against gender confirmation surgery

139. The evidence also suggests that Ms. Edmo has not been provided gender confirmation surgery because Corizon and IDOC have a *de facto* policy or practice of refusing this treatment for gender dysphoria to prisoners. Such a ban conflicts with the requirement that medical care be individualized based on a particular patient's needs. *Hicklin I*, 2018 U.S. Dist. LEXIS 21516, at *38 ("The denial of [treatment] based on a blanket rule, rather than an individualized medical determination, constitutes deliberate indifference in violation of the Eighth Amendment."); *Norsworthy*, 87 F. Supp. 3d at 1191.

140. In *Norsworthy*, the court found that the prison had a blanket policy barring surgery in light of evidence that the prison's "guidelines for treating transgender inmates, which do not mention SRS as a treatment option, and the 2012 training provided to CDCR staff by Levine, which indicated that SRS should never be provided to incarcerated patients." *Norsworthy*, 87 F. Supp. 3d at 1191. Similarly, here, the only guidelines Corizon issued to assist its providers in treating gender

dysphoria do not include surgery as a treatment option. Moreover, Dr. Levine's training provided to Corizon and IDOC staff, and incorporated into further Corizon and IDOC training, discourages providing surgery to incarcerated persons with gender dysphoria.

141. Consistent with their training, no Corizon or IDOC provider has ever recommended that gender confirmation surgery is medically necessary for a patient in IDOC custody and, in fact, Corizon has never provided this surgery at any facility anywhere in the United States.

142. Here, as in *Norsworthy*, "[t]he weight of the evidence demonstrates that for [Ms. Edmo], the only adequate medical treatment for her gender dysphoria is SRS, that the decision not to address her persistent symptoms was medically unacceptable under the circumstances, and that [Defendants] denied her the necessary treatment for reasons unrelated to her medical need." *Norsworthy*, 87 F. Supp. 3d at 1192.

2. Fourteenth Amendment Claim

143. Plaintiff also moved for a preliminary injunction under the Fourteenth Amendment, arguing that Defendants' refusal to provide medically necessary care and improper discipline of Plaintiff impermissibly discriminates on the basis of sex, including gender identity and transgender status, in violation of the Equal Protection Clause.

144. Discrimination against transgender people, whether described as being on the basis of sex or gender identity, is subject to heightened scrutiny under the Fourteenth Amendment. *See United States v. Virginia*, 518 U.S. 515, 533 (1996).); *Martin v. Barron*, 286 F. Supp. 3d 1131, 1144-45 (D. Idaho 2018); *see also Whitaker v. Kenosha Unified Sch. Dist. No. 1*, 858 F. 3d 1034, 1051 (7th Cir. 2017); *Glenn v. Brumby*, 663 F. 3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F. 3d 566, 572-73 (6th Cir. 2004); *Stockman v. Trump*, No. 5:17-cv-01799-JGB-KK, Dkt. No. 79, at 19 (C.D. Cal. Dec. 22, 2017); *A.H. v Minersville Area School District*, 2017 U.S. Dist. LEXIS 193622 (M.D. Pa. Nov. 22, 2017); *Stone v. Trump*, 280 F. Supp. 3d 747, 768 (D. Md. 2017); *Doe v. Trump*, 275 F. Supp. 3d 167, 208 (D.D.C. 2017); *Evancho v. Pine-Richland Sch. Dist.*, 237 F.

Supp. 3d 267, 288 (W.D. Pa. 2017); *Olive v. Harrington*, No. 1:15-cv-01276, 2016 WL 4899177, at *5 (E.D. Cal. Sept. 14, 2016); *Marlett v. Harrington*, No. 1:15-cv-01382, 2015 WL 6123613, at *4 (E.D. Cal. Oct. 16, 2015); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 140 (S.D.N.Y. 2015); *Norsworthy*, 87 F. Supp. 3d at 1119; *cf. Schwenk v. Hartford*, 204 F. 3d 1187, 1201-02 (9th Cir. 2000) (discrimination against transgender people constitutes sex discrimination).

145. Heightened scrutiny requires Defendants to demonstrate that any policy or practice of assessing or responding differently to the medical needs of transgender persons based on their sex or gender identity is substantially related to an important government interest. *See, e.g., Martin*, 286 F. Supp. 3d at 1142. The asserted governmental justification must be “exceedingly persuasive” and “genuine, not hypothesized or invented *post hoc* in response to litigation.” *Virginia*, 518 U.S. at 533.

146. Here, Plaintiff has demonstrated that she will succeed on her claim that Defendants’ denial of gender confirmation surgery violates the Fourteenth Amendment. Defendants treat medical necessity for gender confirmation surgery differently than they treat medical necessity for other medical conditions not associated with suspect or quasi-suspect groups. Defendants’ briefing and the declarations they submitted in lieu of testimony from the Warden at the prison where Ms. Edmo is housed and other IDOC staff contended that Ms. Edmo should not receive gender confirmation surgery because of, for example, “maladaptive behaviors” that they describe as “unresolved mental health concerns.” Defendants have pointed to no other medical condition for which they deny medically necessary treatment on such a basis.

147. Dr. Levine’s training PowerPoint, which was then embraced by IDOC and Corizon through Dr. Eliason’s and Mr. Clark’s own training materials, equates gender confirmation surgery with elective breast enhancement surgery for women who do not have any associated medical diagnosis. This suggests a belief that gender dysphoria is not a legitimate medical condition and that a prison

should never provide a transgender person gender confirmation surgery, in contrast to the DSM-V and other accepted medical standards.

148. Plaintiff has also presented evidence of discrimination based on sex and gender identity through Defendants’ repeated discipline of her for refusing to follow orders when IDOC officers instructed her to change her appearance because it was effeminate or feminine. The declaration and deposition testimony of Warden Yordy, which was submitted as evidence to the Court, confirmed that IDOC policy prohibited persons incarcerated in a male prison from appearing “feminine,” including wearing any hairstyle deemed a “women’s style” and any makeup whatsoever, which Plaintiff’s experts explained to be important elements of treatment for gender dysphoria. IDOC has characterized Ms. Edmo’s efforts to feminize her appearance by, for example, wearing her hair in a “high ponytail” or “bun,” as “repeated attempts to sexualize her appearance in a male facility.” IDOC’s equating any display of feminine appearance with being sexually provocative, sexually charged, or an attempt to sexualize appearance—and especially without any consideration of whether the individual has gender dysphoria—strongly suggests impermissible sex stereotyping.

149. The evidence in the record contains admissions by IDOC that these conclusions are not grounded in legitimate penological interests. IDOC’s claimed reasons for disciplining Ms. Edmo are further belied by the fact that IDOC’s just-adopted policy now seemingly permits the very behaviors for which Ms. Edmo was previously disciplined. There is no legitimate, much less important, governmental interest in denying medically necessary care to a prisoner based on sex or gender identity, or in denying medically necessary treatment to a socially disfavored group of people based on sex stereotyping.

150. This evidence, considered together, demonstrates that Plaintiff is very likely to succeed in demonstrating that Defendants have violated the Fourteenth Amendment by denying her medical

treatment and impermissibly discriminating against her on the basis of sex and gender identity, including sex stereotyping or an impermissible belief about underlying sex and gender roles.

151. Despite IDOC's adoption of a new gender dysphoria policy on the eve of the hearing, Plaintiff's requested relief related to Plaintiff's discipline for wearing gender-appropriate underwear and clothing, and adhering to female grooming standards with regards to makeup and hair styling, are not moot. There is no evidence that IDOC's new policy, which prohibits "provocative or sexually charged clothing or behavior," Exh. 9 at 6, will not be used by Defendants to continue to discipline and retaliate against Plaintiff for expressing her gender identity. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (in order to show a claim is moot, defendants "bear[] the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur").

3. Affordable Care Act Claim

152. Section 1557 of the Affordable Care Act prohibits covered entities from discriminating based on sex in the provision of health care services. 42 U.S.C. § 18116. As a health program or activity that receives federal financial assistance, IDOC is a covered entity subject to the nondiscrimination requirement. *See* 45 C.F.R. § 92.4. The anti-discrimination provisions of the ACA are construed consistently with those of other federal sex discrimination laws; accordingly, the ACA's prohibition of discrimination based on sex prevents differential treatment of transgender patients. *See, e.g., Prescott v. Rady Children's Hospital-San Diego*, 265 F. Supp. 3d 1090, 1099 (S.D. Cal. 2017). For the same reasons as articulated in the Court's analysis of Ms. Edmo's Fourteenth Amendment claim, Plaintiff has demonstrated the law is clearly in her favor on the merits of her ACA discrimination claim.

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B. Irreparable Harm in the Absence of Relief

153. The Ninth Circuit has repeatedly held that serious psychological harm, in addition to physical harm and suffering, constitutes irreparable injury. *See, e.g., Chalk v. U.S. Dist. Ct. Cent. Dist. of California*, 840 F. 2d 701, 709 (9th Cir. 1988) (plaintiff’s “emotional stress, depression and reduced sense of well-being” constituted irreparable harm); *Thomas v. Cnty. of Los Angeles*, 978 F. 2d 504, 512 (9th Cir. 1992) (“Plaintiffs have also established irreparable harm, based on this Court’s finding that the deputies’ actions have resulted in irreparable physical and emotional injuries to plaintiffs and the violation of plaintiffs’ civil rights.”); *see also Hernandez v. Cnty. of Monterey*, 110 F. Supp. 3d 929, 956 (N.D. Cal. 2015) (“[P]ain, suffering and the risk of death constitute irreparable harm sufficient to support a preliminary injunction in prison cases.”) (internal quotations omitted); *Wood v. Cnty. of Alameda*, 1995 U.S. Dist. LEXIS 17514, at *46 (N.D. Cal. Nov. 17, 1995) (finding irreparable injury where plaintiff’s “declaration ma[de] clear that she has suffered feelings of guilt, depression, anxiety, and loss of self-esteem . . .”). It is also well established “that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F. 3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Doe v. Harris*, 772 F. 3d 563, 583 (9th Cir. 2014).

154. By definition, Ms. Edmo’s gender dysphoria results in clinically significant distress or impairment of functioning. Indeed, both Plaintiff’s and Defendants’ experts agree that Ms. Edmo is properly diagnosed with gender dysphoria and continues to experience serious distress from this condition. While Ms. Edmo has received hormone treatment, she experienced the maximum feminizing effects years ago. As other district courts have recognized, the significant emotional pain, suffering, anxiety, and depression caused by prison officials’ failure to provide adequate treatment for gender dysphoria constitute irreparable harm warranting a preliminary injunction. *See, e.g., Hicklin I*, 2018 U.S. Dist. LEXIS 21516, at *29 (concluding that plaintiff would suffer “irreparable harm in the absence of a preliminary injunction because she suffers from depression, anxiety, and intrusive thoughts of self-castration as a result of Defendants’ conduct”); *Hicklin*, No. 4:16-cv-02357-NCC, Dkt. No. 176 (granting permanent injunction); *Norsworthy*, 87 F. Supp. 3d

at 1192 (irreparable injury where plaintiff testified that “she suffers continued and ‘excruciating’ ‘psychological and emotional pain’ as a result of her gender dysphoria”).

155. Evidence that an incarcerated person is at “severe risk of self-harm” through self-castration also supports a finding of irreparable injury. *See Hicklin I*, 2018 U.S. Dist. LEXIS 21516, at *31 (irreparable injury where plaintiff was at “severe risk of self-harm” in light of evidence that “she has a history of suicide ideation and has indicated on more than one occasion the inclination to remove her own testicles”). As a result of Defendants’ denial of care, Ms. Edmo has twice risked her life in attempts to self-castrate, resulting in significant pain and suffering.

156. The Court credits the testimony of Plaintiff’s experts that, without surgery, Ms. Edmo is at grave risk of serious and life-threatening self-harm. Indeed, it appears that the only thing assisting Ms. Edmo to hold such harm at bay since her last self-surgery attempt may be the instant lawsuit.

157. Moreover, the fact that Ms. Edmo’s need for this surgery has been ongoing for years does not alter the nature of the irreparable harm analysis for the purposes of a preliminary injunction. *See Norsworthy*, 87 F. Supp. 3d at 1193 (evidence that a plaintiff’s gender dysphoria has not been “properly treated over a period of years,” and that the plaintiff’s need for gender confirmation surgery is “a matter of long-standing, not sudden, urgency . . . constitutes irreparable injury, whether this is the first month she has suffered it or the hundredth.”); *see also McNearney*, 2012 U.S. Dist. LEXIS 115802, at *14.

158. Ms. Edmo has established that she will suffer serious psychological harm and will be at high risk of self-castration and suicide in the absence of gender confirmation surgery. These satisfy the irreparable harm standard for granting a mandatory injunction.

C. Balance of Equities

159. “Courts ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.’” *Winter*, 555 U.S. at 24 (quoting *Amoco Production Co.*, 480 U.S. 531, 542 (1987)). The balance of equities tips in a plaintiff’s favor where the plaintiff has established irreparable harm in the form of unnecessary physical and emotional suffering and denial of her constitutional rights. *See, e. g., Hicklin I*, 2018 U.S. Dist.

LEXIS 21516, at *44 (finding the “balance of harms substantially weighs in favor of granting injunctive relief” because plaintiff demonstrated “she continues to face irreparable injury absent relief . . . including the denial of her constitutional rights”); *Norsworthy*, 87 F. Supp. 3d at 1193 (“The balance of the equities favors [plaintiff’s] requested relief. She has established that she is suffering and is likely to continue to suffer unnecessary pain if she is denied SRS.”); *Rhea*, 2010 U.S. Dist. LEXIS 97705, at *37 (“In light of the medical findings of these physicians that [plaintiff] is suffering and will continue to suffer unnecessary pain, the undersigned finds that the balance of hardships is greater for Ms. Rhea if the injunction were not granted.”).

160. Ms. Edmo has more than adequately established that Defendants’ refusal to provide her with medically necessary treatment for her gender dysphoria, specifically gender confirmation surgery, causes her ongoing irreparable harm.

161. Defendants’ claim of injury, on the other hand, is that an order directing them to provide a “potentially harmful procedure” interferes with their ability to provide medical necessary care on an individualized basis. ECF No. 99 at 19. Defendants have made no showing that this statement is based in anything other than unsupported conjecture. They have offered no credible evidence that surgery for Ms. Edmo is a potentially harmful procedure, nor that an order requiring them to provide treatment that accords with the recognized standard of care impedes their ability to provide medical care on an individualized basis. *See Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (defendant “cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations”).

162. The irreparable physical and emotional harm facing Ms. Edmo in the absence of surgery outweighs any hypothetical hardship to Defendants, which are a state entity and its private medical provider. *See Rodde v. Bonta*, 357 F. 3d 988, 999 (9th Cir. 2004) (balance of hardships favored disabled plaintiffs, who would be deprived of necessary treatment and suffer increased pain and medical complications without relief); *Hernandez*, 110 F. Supp. 3d at 957 (balance of equities favored inmates given Ninth Circuit law holding “that the interest in protecting individuals from physical harm outweighs monetary costs to government entities”).

D. The Public Interest

163. The Court finds that a mandatory preliminary injunction is in the public interest. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” See *Melendres*, 695 F. 3d at 1002 (citations and internal quotations omitted)); see also *United States v. Raines*, 362 U.S. 17, 27 (1960) (“[T]here is the highest public interest in the due observance of all constitutional guarantees.”).

164. “In addition, ‘the public has a strong interest in the provision of constitutionally adequate health care to prisoners.’” *McNearney*, 2012 U.S. Dist. LEXIS 115802, at *44 (quoting *Flynn v. Doyle*, 630 F. Supp. 2d 987, 993 (E.D. Wis. 2009)). There is no public interest in forcing Ms. Edmo to continue to suffer unnecessary and life-threatening harms during this litigation. See *Fields*, 653 F. 3d at 556; *Norsworthy*, 87 F. Supp. 3d at 1194.

CONCLUSION

165. For the foregoing reasons, Plaintiff’s motion for a preliminary injunction is granted in part.³ Defendants are ordered to provide Plaintiff with adequate medical care, including gender confirmation surgery. Defendants shall take all actions reasonably necessary to provide Ms. Edmo gender confirmation surgery as promptly as possible and no later than six months from the date of this order. Defendants are further enjoined from disciplining or punishing Plaintiff for expressions of her gender identity that are reasonably related to her diagnosis of gender dysphoria, including hairstyle and wearing of makeup that are generally permitted in IDOC’s women’s prisons.

166. The Court has considered the mandates of the Prison Litigation Reform Act requiring that a court “shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the federal right,” and “shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice

³ Given IDOC’s implementation of an updated gender dysphoria policy on October 5, 2018 that appears to provide Plaintiff’s requested injunctive relief related to accessing gender-appropriate underwear, clothing, and commissary items, the Court will not address this relief at this time. This is without prejudice should IDOC implementation of the policy result in ongoing violations.

system.” 18 U.S.C. § 3626(a)(2). The Court concludes that its order for injunctive relief satisfies the PLRA requirements. It is narrowly drawn, extends no further than necessary, and is the least intrusive means of correcting the violations. Further, there is no evidence that granting this relief will have any adverse impact on public safety or the operation of the criminal justice system. *See Norsworthy*, 87 F. Supp. 3d at 1195; *Fields*, 653 F. 3d at 556.

Dated: October 26, 2018

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Shaleen Shanbhag
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of October, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm.net

Marisa S. Crecelius
marisa@melawfirm.net

Attorney for IDOC Defendants

/s/ - Shaleen Shanbhag
Shaleen Shanbhag

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (415) 685-3591
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. (CA # 101967)
(*pro hac vice*)
Shaleen Shanbhag, Esq. (CA # 301047)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshshanbhag@hadsellstormer.com

Attorneys for Plaintiff

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
Julie Wilensky, Esq. (CA # 271765)
(*pro hac vice*)
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org
jwilensky@NCLRights.org

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

PLAINTIFF'S POST-HEARING BRIEF

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	None Set
Motion Cut-Off:	None Set
Trial Date:	None Set

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INTRODUCTION

Dignity is “[t]he basic concept underlying the Eighth Amendment. . . [T]he words of the Amendment are not precise and [] their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958). It is irrelevant whether one person or one hundred have previously been provided gender confirmation surgery in prison: in 2018, as in 2016, as in 2014, when Ms. Edmo first requested it, gender confirmation surgery remains the well-established treatment meeting the medical standard of care for a patient with severe gender dysphoria for whom other treatments have been insufficient. Indeed, Ms. Edmo continues to experience such profound distress even after receiving cross-sex hormone therapy that she attempted—twice—to castrate herself. A prison that fails to provide a human being within its custody and care the medical treatment they need “is incompatible with the concept of human dignity and has no place in a civilized society.” *Brown v. Plata*, 563 U.S. 493, 510-11 (2011). If a prison and its medical contractor turn their backs on a person they know to be in need of medical treatment in violation of established medical standards, and when such treatment is safe, effective, and available, “the courts have a responsibility to remedy the resulting Eighth Amendment violation.” *Plata*, 563 U.S. at 511.

Ms. Edmo has established that she has a serious medical need that is being inadequately treated: the evidence is undisputed that she continues to experience the clinically significant distress that defines the medical condition of gender dysphoria, even after six years of cross-sex hormone therapy. The severity of this distress has twice resulted in her cutting her own testicles with a razor in an attempt to remove them, and, more recently, cutting her arm to try to distract herself enough to avoid another attempt. Ms. Edmo has also conclusively established that there is an available medical treatment—gender confirmation surgery—to alleviate her gender dysphoria, and that this surgery is safe, effective, and regularly provided to patients in accordance with the medical standard of care.

Defendants IDOC and Corizon have not challenged Ms. Edmo’s medical condition—

indeed, they diagnosed her with gender dysphoria. They also do not challenge that gender confirmation surgery would be appropriate for an incarcerated person who required such treatment, claiming they would willingly provide such treatment to the “right patient” in their prison. Defendants’ deliberate indifference in this case is their refusal to apply the medical standard of care in the face of Ms. Edmo’s ongoing suffering. Instead, Defendants attempt to distort the definition of “right patient” with ever-shifting qualifiers and “litigation diagnoses” to deny gender confirmation surgery to Ms. Edmo, and create a *de facto* ban of such surgery to people in IDOC custody.

I. DEFENDANTS’ SHIFTING RATIONALES FOR DENYING MS. EDMO GENDER CONFIRMATION SURGERY

Throughout this case, Defendants have offered a continually shifting set of rationales for denying Ms. Edmo gender confirmation surgery:

- In April 2016, Corizon psychiatrist Dr. Eliason evaluated Ms. Edmo for gender confirmation surgery and concluded surgery was not appropriate for her based on his own formulation of medical necessity, and criteria for surgery, that are untethered to the WPATH Standards of Care and the medical consensus on this issue. PI Hr’g Tr. (“Tr.”) 261:15-263:3, 470:18-20, 470:24-471:2. He did this because, in his words, the “inmate population is a very different population and it’s a very strange environment.” Tr. 428:19-20. Dr. Eliason documented three examples he believed might require gender confirmation surgery—which he admitted were not the WPATH criteria, but, rather, examples he made up—and concluded that Ms. Edmo did not meet these three criteria. Tr. 470:18-20, 470:24-471:2; Exh. 1 at 538. Dr. Eliason did not base this assessment of surgery on Ms. Edmo’s criminal record, disciplinary record, or any review of her presentence investigation reports. Tr. 468:4-18. Dr. Eliason did not document any consideration of mental health concerns he felt rendered Ms. Edmo unfit for the surgery. Tr. 462:3-463:10; Exh. 1 at 538. Dr. Eliason also did not document any concern that Ms. Edmo failed to present in a

female gender role in prison or over the prior twelve months.¹ Exh. 1 at 538. In fact, he repeatedly documented her feminine presentation between 2012 to 2016. *Id.* at 321, 347, 425, 452, 538.

- In September 2018, IDOC and Corizon filed briefs in opposition to Plaintiff's motion for a preliminary injunction, in which they set forth a host of reasons why gender confirmation surgery was purportedly inappropriate for Ms. Edmo, which they lumped together as "uncontrolled mental health concerns":

- o Ms. Edmo's history of being a victim of prior sexual abuse, emotional abuse, and domestic violence (ECF No. 99 at 3, 8);
- o suicide attempts more than six years prior (*id.*);
- o "maladaptive behaviors" such as "cutting, co-dependency, disobedient behaviors, and sexually acting-out" (*id.* at 3, 9, 10);
- o Failure to complete mandated sex offender treatment programming (*id.* at 3);
- o PTSD and borderline personality disorder (*id.* at 9);
- o Poor self-worth, poor self-esteem, dependency issues, sexually-charged behaviors, and unhealthy relationships (*id.*).
- o In addition to these "uncontrolled mental health concerns," Corizon's brief also identified its expert Dr. Garvey's opinion that Ms. Edmo did not have persistent well-documented gender dysphoria and had not presented in a gender role congruent with her gender identity for twelve months (ECF No. 100 at 13).

Dr. Eliason did not identify a single one of these rationales when he denied Ms. Edmo surgery in April 2016. *See* Exh. 1 at 538. Indeed, not a single IDOC or Corizon treater has diagnosed Ms. Edmo with border personality disorder, nor identified borderline personality traits as a serious concern in the entire time she has been in IDOC custody. Tr. 361:18-362:3, 470:4-6. Defendants' allegation now that Ms. Edmo has borderline personality disorder or displays various "traits"

¹ Dr. Eliason confirmed all of this information at his deposition in August 2018. Tr. 462:3-463:10.

thereof is a pretextual litigation diagnosis created post hoc to justify Defendants' denial of surgery.

Defendants also claimed that Ms. Edmo needs to "develop healthy tools" and "coping strategies" to manage depression, anxiety, and gender dysphoria that do not involve "maladaptive behaviors" such as cutting. ECF No. 99 at 10. But Ms. Edmo's own treaters admit the ineffectiveness of such "tools" and "coping strategies." For example, her clinician, Ms. Stewart, responded to Ms. Edmo's report in November 2016 that she was "struggling with attempts/desire to self-castrate on average four days per week," by providing the "goal" in a treatment plan that "Edmo will report a decrease in average frequency of thoughts of self-castration from four days per week to three days per week," to be achieved by "identify[ing] four warning signs of depression/dysphoria that lead to the desire to self-castrate," "attend[ing] mental health groups per client's request as scheduled," and continuing to take her psychiatric medication. Deposition of Krina Stewart ("Stewart Dep.") 57:4-59:6; Exh. 1 at 584-85. In deposition, Ms. Stewart admitted that none of these "coping" interventions would be able to alleviate Ms. Edmo's gender dysphoria or desire to self-castrate. Stewart Dep 59:7-16. When Ms. Edmo subsequently attempted to castrate herself on December 31, 2016, and Ms. Stewart met with her two days later, on January 2, 2017, Ms. Stewart made no changes to Ms. Edmo's treatment plan. Stewart Dep. 65:18-25; Exh. 1 at 597.

- In the October 2018 evidentiary hearing, IDOC clinician Jeremy Clark testified that he believed surgery was not appropriate in 2016 because he and the Management and Treatment Committee ("MTC") applied WPATH criteria to Dr. Eliason's decision denying Ms. Edmo gender confirmation surgery, even though not a single clinician or the MTC documented doing so. Tr. 340:24-342:5, 358:8-361:4; Exh. 7 at 78-80, 86. Nevertheless, two years later, Clark testified that he determined Ms. Edmo's mental health concerns were not well controlled because she had depression, anxiety, borderline personality traits, antisocial traits, DORs for various infractions, had engaged in self-harming behaviors, and was not attending therapy groups consistently.² Tr.

² Under the IDOC policy regarding gender dysphoria operative until October 5, 2018, IDOC did

356:11-13. However, Clark did agree that, other than these purported “uncontrolled mental health concerns,” Ms. Edmo presently meets the WPATH criteria for genital reconstruction surgery. Tr. 386:19-24.

- In the October 2018 hearing, Dr. Eliason testified for the first time that he concluded that Ms. Edmo did not meet the criteria for medical necessity for surgery in April 2016. Tr. 430:19-23. His new rationales included: (1) her mental health concerns were not fully in adequate control, and (2) he did not feel like it was doing Ms. Edmo any service to rush her through getting gender reassignment surgery in her current social situation, which he then claimed meant that she had not fulfilled the sixth WPATH criterion of living in her identified gender role. Tr. 430:24-431:0. Dr. Eliason never documented these reasons in his April 2016 progress note or at any other time, nor did he mention them during his August 2018 deposition in this case. Tr. 462:3-463:10. In fact, as of April 2016, Dr. Eliason had documented Ms. Edmo’s presentation for years as feminine in demeanor, appearance, and interaction style. Tr. 463:11-464:20; Exh. 1 at 321, 347, 425, 452, 538.

II. DEFENDANTS’ STRATEGIC CONTORTION OF WPATH STANDARDS

In concert with their shifting rationales for denying Ms. Edmo surgery, Defendants have also presented a moving target on their position as to whether they actually used the WPATH standards to assess Ms. Edmo’s need for gender confirmation surgery, and whether the WPATH criteria should even be used at all:

- Dr. Eliason’s April 2016 progress note evaluating Ms. Edmo for gender confirmation surgery did not analyze the WPATH criteria, and specifically stated that “Medical Necessity for Sexual Reassignment Surgery is not very well defined and is constantly shifting,” before describing his own fabricated and medically unsupported examples of situations that “could meet medical necessity.” Exh. 1 at 538.

- After Dr. Levine’s 2016 training to IDOC and Corizon staff, Dr. Eliason conducted

not consider Mr. Clark qualified to assess the medical necessity of gender confirmation surgery. Tr. 391:1-6; Exh. 8 at 3.

his own training that incorporated Levine's slides undermining the WPATH Standards of Care. Tr. 473:8-475:7; Exh. 20 at 1, 27-29.

- In September 2017, IDOC clinician Clark trained other IDOC providers that the WPATH Standards of Care, "which claims to be a scientific and minority rights document, ignores the profound differences between science and advocacy." Tr. 369:25-370:16; Exh. 1025 at 5.

- In September 2018, IDOC Defendants explicitly stated in their opposition to Plaintiff's motion for preliminary injunction that "IDOC Defendants do not acknowledge that WPATH is the legal standard of care for the treatment of GD offenders, nor is WPATH the only reference which provides guidance regarding the treatment of GD inmates." ECF No. 99 at 7 n.2.

- In September 2018, Corizon Defendants explicitly stated in their opposition to Plaintiff's motion for preliminary injunction that "WPATH does not establish the applicable standard of care. Indeed, some providers consult with WPATH guidelines and others have created their own criteria and requirements for surgery, which they think are best suited for patients." ECF No. 100 at 12.

- In the October 2018 hearing, Mr. Clark and Dr. Eliason claimed for the first time to have applied the WPATH criteria to assess medical necessity of surgery for Ms. Edmo in 2016. Tr. 354:20-355:2, 430:22-432:11.

- Also in the October 2018 hearing, Defendants' expert Dr. Garvey admitted that the WPATH Standards of Care are the only accepted medical standard of care for treatment of gender dysphoria. Tr. 572:2-9. Drs. Garvey and Eliason acknowledged that the National Commission on Correctional Health Care ("NCCHC"), through which they obtained certifications as "Correctional Health Care Providers," expressly endorses the WPATH Standards of Care for the treatment of transgender people in prisons. Exh. 1041 at 2, 4; Tr. 477:14-478:22, 571:4-10.

In short, despite previously disclaiming the WPATH Standards of Care, Defendants now contend that they actually affirmatively applied those standards. This is not credible. Defendants' ever-shifting positions are a Hail Mary in the midst of litigation to establish they were not deliberately indifferent, despite their refusal to properly apply the appropriate standard of care for

treating gender dysphoria. Even during the hearing, Defendants repeatedly distorted the WPATH Standards of Care such that no patient would ever qualify for surgery. For example, Defendants and their experts would subject Ms. Edmo to a catch-22 where she must somehow eliminate or cope with her symptoms of gender dysphoria (without surgical intervention) in order to qualify for the surgery that will actually alleviate these symptoms. Similarly, Dr. Eliason and Defendants' experts testified that prisoners cannot meet the WPATH's sixth criterion of social transition unless they are serving life without parole, despite also professing to agree, in accordance with WPATH, that an incarcerated person can meet this sixth criterion, regardless of their sentence or being housed in a prison. Tr. 465:25-466:22, 529:17-530:6, 584:16-25.

III. DEFENDANTS' REFUSAL TO PROVIDE GENDER CONFIRMATION SURGERY

The clear evidence in this case and Defendants' strategy for litigating it show that, by training and practice, Defendants refuse to provide gender confirmation surgery:

- In 2016, Defendants hired Dr. Levine to train their providers on gender dysphoria. At that time, Defendants knew that he was the consultant working with another correctional system that had been sued by prisoners seeking gender confirmation surgery. Tr. 433:23-434:4; Exh. 16.

- After Dr. Levine's training, IDOC and Corizon providers chose to adopt Dr. Levine's training materials when providing their own trainings on gender dysphoria. Those trainings taught that gender confirmation surgery is a cosmetic procedure akin to elective breast augmentation; that prisoners are in prison to be punished and not to receive gender confirmation surgery at taxpayers' expense, and that the WPATH Standards of Care are advocacy tools rather than evidence-based medical standards. Exh. 17 at 1, 43; Tr. 473:8-475:7; Exh. 20 at 1, 27-29; Tr. 369:25-370:16; Exh. 1025 at 5.

- Defendants chose to hire *both* of their experts in this case from within Dr. Levine's inner circle. Drs. Garvey and Andrade worked with Dr. Levine in the Massachusetts Department of Corrections, comprising the majority of that correctional system's gender dysphoria treatment committee. Tr. 560:7-562:17, 563:8-24, 644:16-645:18. Drs. Garvey and Andrade worked closely

together, and regularly present together at correctional conferences, presenting the same viewpoint as Dr. Levine that gender confirmation surgery should be discouraged for incarcerated persons and the WPATH Standards of Care should not be utilized in correctional systems. Tr. 562:13-563-7, 564:25-566:15; Exh. 1029 at 2; Exh. 1030.

- Although IDOC has, at present, approximately 30 patients with gender dysphoria, none of those patients have been approved for or provided gender confirmation surgery. Tr. 322:21-323:3. IDOC has never recommended gender confirmation surgery for a patient within its custody. Tr. 376:23-377:4.

- Although Corizon is the medical contractor for prison and jails systems through the United States, Corizon has never referred an incarcerated patient for gender confirmation surgery. Tr. 489:20-23.

Defendants knew in April 2016, as they know today, that Ms. Edmo is acutely suffering from severe gender dysphoria. They knew in 2016, after her first self-castration attempt, that, in Dr. Eliason's words, her gender dysphoria had risen to a new level. Tr. 471:7-10. Despite this knowledge, Defendants hired experts who are wholly unqualified to opine on these issues, and have adopted the same biases towards prisoners and WPATH as Dr. Levine. Defendants have repeatedly demonstrated that, unless ordered to do so, they will continue to deny all prisoners, including Ms. Edmo, access to gender confirmation surgery.

IV. DEFENDANTS' DISCRIMINATORY TREATMENT OF GENDER DYSPHORIA AND GENDER IDENTITY

Defendants' refusal to provide Ms. Edmo gender confirmation surgery violates the Eighth Amendment, and it is driven by a violation of the Fourteenth Amendment: Defendants treat the diagnosis of gender dysphoria and assessment of medically necessary treatment for gender dysphoria differently than they treat any other medical diagnosis and treatment. Defendants have pointed to no other medical treatment that they deny based on "maladaptive behaviors" such as sexual activity or disciplinary record, refusal to attend groups, or "poor coping mechanisms." Refusing medical treatment to a prisoner who broke their arm in a fight, or who contracted HIV

through having sex with another prisoner, would be unthinkable. So, too, would withholding insulin from a diabetic and then refusing to provide further treatment because she is not adequately controlling her sugar levels. Yet, this is the precise logic Defendants use to deny Ms. Edmo medically necessary and life-saving treatment. The reason they do so is evident from Ms. Edmo's disciplinary record and the ways Defendants have referred to such discipline in this litigation.

Defendants' discipline of Ms. Edmo includes numerous offenses called "disobedience to orders," in which the underlying offense was, for example, wearing a "feminine hair style," having her hair "in a high pony tail and styled in a feminine fashion," not changing her hair "to a style that appeared less feminine gender specific," having her hair "in a bun that was above ear line," "wearing makeup," and having "eyeliner on." Exh. 5 at 8, 21, 25, 27, 41-42. Warden Yordy testified in his deposition that these disciplinary actions were based on IDOC policy in effect until April 2018 prohibiting feminine or effeminate appearance in male prisons. Deposition of Keith Yordy ("Yordy Dep.") 20:17-21:25, 28:10-15, 42:14-43:2, 48:2-5; Exh. 12 at 6. He testified that any hairstyle that was a "woman's style" was prohibited under this policy. Yordy Dep. 28:10-15. Female underwear was also prohibited in male prisons, as was makeup.³ Exh. 12 at 6.

However—just as their rationales for denying surgery have changed during the course of litigation—Defendants argued during this motion that Ms. Edmo was not disciplined for feminine appearance, but, rather, for "sexualizing" her appearance, or appearing "sexually provocative" or "sexually charged." ECF No. 99 at 12-13. Defendants' punishment of Ms. Edmo for having a "woman's hairstyle," and then equating that hairstyle with being sexually provocative, stems from Defendants' sex-based stereotypes that people assigned male at birth should act and appear as men, doing otherwise transgresses acceptable behavior and is "sexually deviant," or that people should not transition. Defendants have identified no penological interest in regulating the height of Ms. Edmo's ponytail or her wearing of makeup. Indeed, the only security concern Warden Yordy mentioned during his deposition regarding Ms. Edmo's requests for feminine hygiene products,

³ There were and are no similar restrictions on hairstyles or makeup for the IDOC women's prison. Yordy Dep. 101:18-102:2.

cosmetics, or women's underwear was a concern that if a prisoner went into the dayroom wearing *only* women's underwear (i.e. without clothes over them), that would be a security risk. He testified that they could handle anything else. Yordy Dep. 69:22-73:4.

Defendants' refusal to treat Ms. Edmo's gender presentation as a way to alleviate her gender dysphoria, and repeated insistence that she alter her appearance to be less "feminine" by, for example, taking her hair out of a ponytail or not wearing makeup, constitutes impermissible sex discrimination and sex stereotyping. Defendants treat Ms. Edmo's medical condition differently from other medical conditions because gender dysphoria itself transgresses traditional notions of sex and gender. This violates the Fourteenth Amendment's prohibition on sex discrimination, as well as the Section 1557 of the Affordable Care Act.

CONCLUSION

Ms. Edmo has established all the legal elements for the Court to issue a mandatory injunction:

- She has a serious medical condition that, if inadequately treated, results in pain and suffering and puts her at serious risk of substantial harm, including self-surgery and suicide.
- The medical standard of care sets forth gender confirmation surgery as the medically necessary and appropriate treatment for Ms. Edmo.
- Defendants have been and continue to be aware of Ms. Edmo's serious medical need and the established and widely accepted medical standard of care,
- Defendants have not provided Ms. Edmo with any medically reasonable and effective treatment alternative, nor does one exist.
- Defendants' treatment of Ms. Edmo's medical condition as different from other medical conditions, and corollary discipline of her for her gender presentation, constitutes impermissible discrimination based on sex and gender identity.
- Without gender confirmation surgery, Ms. Edmo will continue to suffer needlessly and grievously, including being at risk for life-threatening harm;
- There is no public nor penological interest in denying Ms. Edmo necessary medical

treatment, nor does provision of gender confirmation surgery impose undue hardship on Defendants.

As a federal court recently recognized in another prison case about treatment for gender dysphoria, “[u]ltimately, this case is about whether the law, and this Court by extension, recognizes Ms. Keohane’s humanity as a transgender woman. The answer is simple. It does, and I do.” *Keohane v. Jones*, 2018 U.S. Dist. LEXIS 142640, at *4 (N.D. Fla. August 22, 2018). Federal court decisions over the past five decades have established that, as science, medicine, and our understanding of the human condition progresses, so, too, must the care provided to those incarcerated within our prisons. Medical care in prisons must comport with contemporary medical knowledge and social understanding. Denying Ms. Edmo medically necessary care results in her ongoing and needless pain and suffering, serves no penological purpose, and is inconsistent with contemporary standards of decency. *See Estelle v. Gamble*, 429 U.S. 97, 103-104 (1976).

For these reasons, and those in the accompanying Findings of Fact and Conclusions of Law, this Court should order Defendants to provide Ms. Edmo gender confirmation surgery as soon as possible. The Court should also enjoin Defendants from punishing Ms. Edmo for any conduct or appearance that is reasonable related to her gender identity, status as a transgender woman, or her gender dysphoria.

Dated: October 26, 2018

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Lori Rifkin
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of October, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm.net

Marisa S. Crecelius
marisa@melawfirm.net

Attorney for IDOC Defendants

/s/ - Lori Rifkin
Lori Rifkin

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. (CA # 101967)
(*pro hac vice*)
Shaleen Shanbhag, Esq. (CA # 301047)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshshbhag@hadsellstormer.com

Attorneys for Plaintiff

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
Julie Wilensky, Esq. (CA # 271765)
(*pro hac vice*)
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org
jwilensky@NCLRights.org

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S SUBMISSION OF
IMPEACHMENT OR CONTRADICTIONARY
EVIDENCE FOR THE DECLARATION OF
KEITH YORDY**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	August 31, 2018
Motion Cut-Off:	None Set
Trial Date:	None Set

Per the Court's direction (PI Hr'g Tr. at 446:12-14), Plaintiff hereby submits the following impeachment or contradictory evidence for the Declaration of Keith Yordy, ECF No. 101-12:

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
¶ 6	Since Edmo's diagnosis of Gender Dysphoria, IDOC has permitted and supported Edmo's transition into Edmo's preferred gender in multiple different ways.	Warden Yordy testified IDOC policy trained its custody officers to use gender-neutral terms for persons with a GID or GD diagnosis. 52:13-17. Warden Yordy did not consider officer's repeated use of male pronouns to violate policy if he did not think it was intentional, and did not follow up or take corrective action with respect to officer's repeated use of male pronouns for Ms. Edmo in DOR reports. 52:18-53:22, 55:3-56:18, 64:2-17. Warden Yordy testified that he could recall only one instance in which he directed supervisors to address a correctional officer whom he believed was careless in using gender-neutral terms. 64:18-65:13.
¶ 6	Edmo has also been provided with women's bras and underwear (referred to as "panties") that are available to female offenders at PWCC and IDOC's other women's institutions.	Yordy clarified he believed Ms. Edmo "had panties at times. I don't know if it's been continually since 2012." 32:10-23. He further testified that the basis for the statement in his declaration was "I knew at least at one time she had them." 39:1-6. Yordy testified he was referring to an inventory on July 25, 2018 and did not know whether there were periods of time from 2012 until July 25, 2018 when Ms. Edmo was not provided with panties. 40:17-42:7. Yordy affirmed that he had received Concern Forms from Ms. Edmo regarding panties and told her she needed to work with mental health staff. 34:19-37:3, Yordy Dep. Ex.

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		7. Yordy testified that IDOC policy between 2012 and 2018 “does not allow female underwear.” 37:20-38:19. For a DOR on July 26, 2016, in which Ms. Edmo was disciplined for altering men’s underwear, Yordy was the appellate authority. In response to Ms. Edmo’s appeal that if female panties were provided, she would not have to modify her undergarments for additional support for tucking her testicles, Yordy testified that he did not do anything to follow up to ensure that Ms. Edmo had access to undergarments that allowed her support for tucking her testicles. 75:12-78:8, Yordy Dep. Ex. 3 at IDOC C pg. 48-49.
¶ 7	I am also not aware of any actions taken by IDOC or its employees preventing Edmo from feminizing in an appropriate manner while incarcerated.	Warden Yordy testified that IDOC enforced a policy forbidding effeminate hairstyles. 16:16-17:4, Ex. 2 at 4,5, 6. IDOC’s policy in effect as of 2014 stated “offenders are prohibited from dressing or displaying feminine or effeminate appearance and female offenders displaying masculine appearance to include, but not limited to, the following hairstyles” and Yordy testified that this policy prohibited any hairstyle that is considered feminine or effeminate for a person housed at a male prison in Idaho. 20:17-21:25, 28:10-15, Yordy Dep. Ex. 5. Warden Yordy testified that between 2012 and 2018 ISCI policy did not allow any makeup whatsoever. 42:14-43:2. This meant that “there was no appropriate wearing of makeup.” 44:4-13.

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		Warden Yordy testified that the guidance he provided to staff “using good correctional practice as a standard of when you see it, you know it” and specifically “[t]hat if hairstyles are above and beyond what you believe is appropriate, and it’s an effeminate hairstyle, correct it with the offender.” 50:14-51:2. Warden Yordy responded to a Concern Form from Ms. Edmo raising the issue of whether she could have her hair in a bun or higher than ear level, stating “Policy does support not allowing effeminate hairstyles.” 90:25-91:11, Yordy Dep. Ex. 7 at AE 0111. In contrast, Yordy testified that when he worked at the women’s prison, PWCC, there was no policy regarding how women prisoners could wear their hair and they were allowed to wear makeup. There was no policy as far as how much makeup they could wear. 101:18-102:2.
¶ 8	While Edmo has been permitted to feminize, the IDOC has firmly and consistently prohibited Edmo from sexualizing Edmo’s feminine appearance and behavior in a manner that may create a sexually charged environment.	Warden Yordy testified that there was no written document that defined what feminine or effeminate hairstyles were and the guidance Yordy provided was “try to use their best judgment, common sense of the hairstyle, the intent of the hairstyle.” 22:1-23:14. Yordy testified that if it was “over the top” or “too grandiose” correctional officers would intervene and defined these terms various to mean “big hair,” “curls that have been put in,” “a woman’s hair,” and “a woman’s styled

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		hair.” 23:15-24:8. Yordy also testified that “a hairstyle alone wouldn’t be sexually provocative” and “I don’t know if there is a hairstyle that is sexually charged.” 24:17-25:2. Warden Yordy testified that in 2014, COs were “trying to control the effeminate hairstyles” and were not distinguishing between effeminate hairstyles and sexually provocative hairstyles. 27:17-28:1.
¶ 8	There also exists security concerns with offenders having access to underwear traditionally worn by the opposite gender, especially when the possibility exists for an offender who has a fetish with women’s panties or bras obtaining such undergarments.	Warden Yordy testified regarding this sentence that not all women’s underwear is sexual in nature and was able to identify a specific security concern only as someone is wearing only women’s underwear without clothes on top. 69:22-73:4.
¶ 9	Notwithstanding, and despite officers providing Edmo with many verbal warnings that have been well documented, Edmo has repeatedly allowed Edmo’s feminine appearance to cross the line into what officers have determined to be inappropriate and at risk of creating a sexually charged environment.	Warden Yordy testified that any hairstyle that is feminine or effeminate violates IDOC policy. 48:2-5. He testified that he affirmed a DOR for Ms. Edmo that was given to her after an officer instructed her to take her hair out of a bun and she “then came out to the A-tier dayroom with his hair back in a high ponytail above the hair line which still violates policy.” 47:4-49:15, Yordy Dep. Ex. 3 at IDOC_C_pg. 27-28. Yordy testified that he believed that the officer believed Ms. Edmo having her hair in a bun above the ear line was “over the top,” “creating a sexually charged environment, creating a hairstyle that was not appropriate.” 50:6-13. Warden Yordy also testified that he does not think “you could define a ponytail up or down as one constitutes sexually charged

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		and the other one doesn't." 75:6-11.
¶ 9	While what one officer perceives as inappropriate or provocative is admittedly somewhat subjective, correctional officers and staff need to be afforded the discretion and independent judgment to recognize and remedy quickly the offending behavior in order to maintain order and prevent an offender from creating a sexually charged environment that could lead to the victimization of themselves or others.	Warden Yordy testified that although he does not believe officers are correct in their subjective beliefs 100 percent of the time about what constitutes an over-the-top hairstyle, he did not recall any DORs from Ms. Edmo relating to hairstyle that he dismissed. 51:12-52:12. Yordy testified that IDOC policy that took effect on April 2, 2018 no longer addressed effeminate or feminine hairstyles. 28:16-30:14, Yordy Dep. Ex. 5.
¶ 10	Thirty-two DORs is an exceptionally high number of DORs for an offender who has been incarcerated for only six years. In my experience, the vast majority of offenders will receive only 3 or 4 DORs, if any, over six years.	Warden Yordy testified that he did not compare the number of DORs Ms. Edmo has received to other IDOC prisoners with a gender dysphoria diagnosis and does not know whether she has more or less than the others. 78:10-20. Warden Yordy testified that he based his statement of an average of 3 or 4 DORs I 6 years on an average of 20-25 offenders in Ms. Edmo's housing unit, but did not look at the history of those offenders as to whether they had at any point been classified at a segregation or higher custody level or BHU placement. 79:21-82:3.
¶ 10	To my knowledge, Edmo has not been disciplined for appearing feminine <i>per se</i> . Instead, Edmo has been disciplined repeatedly for being openly disobedient to correctional officers' direct orders to remedy Edmo's inappropriate or sexually provocative appearance.	Warden Yordy testified that he affirmed a DOR for Ms. Edmo that was given to her after an officer instructed her to take her hair out of a bun and she "then came out to the A-tier dayroom with his hair back in a high ponytail above the hear line which still violates policy." 47:4-49:15, Yordy Dep. Ex. 3 at IDOC_C_pg. 27-28. Yordy testified that he believed that the officer believed

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		Ms. Edmo having her hair in a bun above the ear line was “over the top,” “creating a sexually changed environment, creating a hairstyle that was not appropriate.” 50:6-13. In contrast, Yordy testified that the rule for female officers at ISCI was until recently that “hard had to be up. We had what was called a yoke of the collar, which is a seam that was across the shoulder blades, that the hair had to be up above that yoke.” 99:10-21. Warden Yordy testified that he was the appellate authority for a grievance submitted by Ms. Edmo on June 20, 2018 grieving an May 25, 2018 incident where a correctional officer told her, “You will not be allowed another visit with your attorneys because you appear too feminine with you hair all done up, boobs, and makeup, per your unit sergeant.” 85:22-87:11, Yordy Dep. Ex. 7 at AE 0082-83.

Dated: October 26, 2018

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ Lori Rifkin
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm.net

Marisa S. Crecelius
marisa@melawfirm.net

Attorney for IDOC Defendants

/s/ - Lori Rifkin
Lori Rifkin

Yordy Dep.

SER 102

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO (a/k/a MASON EDMO),)
Plaintiff,)
vs.) Case No.
IDAHO DEPARTMENT OF CORRECTION;) 1:17-cv-00151-BLW
HENRY ATENCIO, in his official)
capacity; JEFF ZMUDA, in his)
official capacity; HOWARD KEITH)
YORDY, in his official and)
individual capacities; CORIZON,)
INC.; SCOTT ELIASON; MURRAY YOUNG;)
RICHARD CRAIG; RONA SIEGERT;)
CATHERINE WHINNERY; AND DOES 1-15;)
Defendants.)
)

DEPOSITION OF KEITH YORDY

OCTOBER 1, 2018

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

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16

1 BHU Unit 16 were harassing her on a daily basis?

2 A. I would have taken action based upon what
3 she brought up at the meeting.

4 Q. And do you recall what action you took?

5 A. Well, I answered her questions that she
6 brought forth as stated above.

7 Q. Any other actions that you recall you took
8 in response to her complaint that she was being
9 harassed on a daily basis by staff in the BHU Unit 16?

10 A. From this meeting, this was the action that
11 we took.

12 Q. Okay. So the part under "Warden," does
13 that represent Ms. Koch's notes of your responses to
14 Ms. Edmo?

15 A. Correct.

16 Q. Okay. So the first bullet point says,
17 "Concerning hairstyle and PREA - policy states required
18 to lower tension in a prison and keeping safe."

19 What does that mean? Or can you more fully
20 describe what that indicates about your response?

21 A. So Ms. Edmo's had disagreement with the
22 effeminate hairstyles at the facility. So my
23 comment -- my statement to her is that policy states in
24 effort to lower tension in a prison and keep people
25 safe is why we have hairstyle regulations.

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1 Q. The hairstyle regulations you're referring
2 to, were those written anywhere?

3 A. It says in the policy effeminate hairstyles
4 are forbidden.

5 Q. That's in the PREA policy?

6 A. Correct.

7 MR. HALL: Object to form.

8 MS. RIFKIN: Can we mark this as 4 and this as
9 5, please.

10 (Exhibit 4 and Exhibit 5 marked.)

11 Q. (BY MS. RIFKIN): All right. So you've
12 been handed what has been marked as Exhibit 4 and
13 Exhibit 5. Exhibit 4, I'm just going to identify the
14 Bates stamps so it's clear for the record. Exhibit 4
15 is labeled IDOC_W, and it's pages 29 through 44. And
16 Exhibit 5 is IDOC_W 1 through 26. These were both
17 produced as standard operating procedures titled
18 "Prison Rape Elimination."

19 Are you familiar with these?

20 A. I am.

21 Q. Okay. Can you identify which of these was
22 in effect in 2014?

23 MR. HALL: Is this a test, or can I maybe show
24 the witness the dates that are relevant here?

25 MS. RIFKIN: Well, let me ask another question.

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1 stop coaching the witness now. This is a deposition to
2 get the warden's testimony. You are coaching the
3 witness, and I really do not want to have to take that
4 to the Court.

5 MR. HALL: That was not coaching the witness,
6 Counsel.

7 MS. RIFKIN: You can make an objection. That's
8 a speaking objection. You're coaching the witness
9 about what your opinion of the content in the document
10 is. That is absolutely inappropriate. And if you
11 can't stop that, I will stop the deposition, because
12 that is not an appropriate way to get testimony.

13 MR. HALL: Okay. I very much disagree with what
14 you're saying. But me coaching the witness by making
15 an objection, okay.

16 MS. RIFKIN: You're entitled to disagree.

17 Q. Warden Yordy, are you able to identify what
18 you were referring to about hairstyle regulations in
19 the policy?

20 A. I am.

21 Q. Okay. And which document are you referring
22 to?

23 A. The prison rape elimination SOP, reviewed
24 May 20th, 2009, from Pam Sonnen.

25 Q. Okay. And where is the hairstyle

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1 regulation?

2 A. Section 4.

3 Q. What page?

4 MR. EATON: Which is Exhibit 4, for the record.

5 THE WITNESS: Page 6 of 16 of the SOP. At the
6 bottom is IDOC page 34.

7 Q. (BY MS. RIFKIN): Okay. And this you said
8 section 4, "Gender Appropriate Clothing and Hygiene";
9 is that right?

10 A. That's correct.

11 Q. And can you read for the record the
12 specific language that you are referring to when you
13 reference a hairstyle regulation?

14 A. What I used was the paragraph "To foster an
15 environment safe from sexual misconduct, offenders are
16 prohibited from dressing or displaying the appearance
17 of the opposite gender. Specifically, male offenders
18 displaying feminine or effeminate appearance and female
19 offenders displaying masculine appearance to include,
20 but not limited to, the following hairstyles."

21 Q. Okay. Was it your understanding or is it
22 your understanding that this policy prohibits any
23 hairstyle that is considered feminine or effeminate for
24 a person housed at a male prison in Idaho?

25 A. That is true.

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22

1 Q. And what definition -- well, does the
2 policy define what "feminine" or "effeminate" means as
3 related to hairstyles?

4 A. I don't believe it does.

5 Q. Was there any written document that defined
6 feminine or effeminate with respect to hairstyles that
7 you would utilize?

8 A. Could you repeat that? I thought it was
9 the same question.

10 Q. Sure. Was there any document, other than
11 this, that you would utilize to define what feminine or
12 effeminate hairstyles were?

13 A. No.

14 Q. So what was your understanding of what
15 feminine or effeminate hairstyles were?

16 A. It's a subjective call on staff's
17 perspective of what that would be.

18 Q. Were there any guidelines that you provided
19 to staff at your institution about what constituted a
20 feminine or effeminate hairstyle?

21 A. There had been discussions over the years.

22 Q. Discussions that you participated in?

23 A. Yes.

24 Q. And what were the content of those
25 discussions?

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1 A. Staff meetings, management meetings, shift
2 briefings, BHU training.

3 Q. And what was the substance or what
4 conclusions, if any, were drawn about what defined or
5 constituted a feminine or effeminate hairstyle?

6 A. Trying to give more clarification to our
7 staff of when to intervene and when not.

8 Q. And did you provide any clarification to
9 your staff about when to intervene and when not to?

10 A. I did.

11 Q. And what clarification did you provide to
12 staff regarding feminine or effeminate hairstyles?

13 A. Try to use their best judgment, common
14 sense of the hairstyle, the intent of the hairstyle.

15 Q. What do you mean by the "intent of the
16 hairstyle"?

17 A. If it was over the top, too grandiose, then
18 our correctional officers would typically intervene and
19 ask them to tone it down.

20 Q. Can you give me examples of hairstyles that
21 were over the top or too grandiose?

22 A. Different staff have different -- what's
23 the word I'm looking for? -- different beliefs of what
24 an effeminate hairstyle is. Most of them would -- you
25 know, big hair, curls that have been put in, a woman's

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24

1 hair. That's...

2 Q. And did you have any beliefs about what
3 constituted a woman's hair that you shared with staff
4 to guide them about this policy that we've been
5 referring to here?

6 A. Just as I stated.

7 Q. Big hair, curls put in, or a woman's hair?

8 A. A woman's styled hair.

9 Q. Is it your opinion that any woman's styled
10 hair is automatically sexually provocative?

11 MR. HALL: Object to form.

12 THE WITNESS: Repeat that, please.

13 Q. (BY MS. RIFKIN): Is it your belief that
14 any woman's styled hair is automatically sexually
15 provocative?

16 A. No.

17 Q. Is it your belief that any woman's styled
18 hair is automatically sexually charged?

19 A. No.

20 Q. What, in your opinion, constitutes a
21 hairstyle that is sexually provocative?

22 A. I would say a hairstyle alone wouldn't be
23 sexually provocative.

24 Q. And what, in your opinion, constitutes a
25 hairstyle that is sexually charged?

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25

1 A. I don't know if there is a hairstyle that's
2 sexually charged.

3 Q. Looking back at what's been marked as
4 Exhibit 2. This is the notes from the April 17th, 2014
5 meeting that we've been looking at on page 6. The
6 second bullet point states, "Behavior can put offender
7 at risk and we are liable."

8 Do you recall what you said to Ms. Edmo
9 that this bullet point reflects?

10 A. That we're responsible for keeping
11 offenders safe.

12 Q. And do you recall what kind of behavior you
13 were referring to about "Behavior can put an offender
14 at risk"?

15 A. Well, any behavior that puts an offender at
16 risk. I believe with Ms. Edmo we were talking about
17 her effeminate demeanor and behavior.

18 Q. And what do you mean when you say
19 Ms. Edmo's effeminate demeanor?

20 A. Her combination of the way she fixed her
21 hair, makeup, tight clothing, sexy undergarments.

22 Q. Is it your opinion that the combination you
23 just described, the way Ms. Edmo fixed her hair, tight
24 clothing, sexy undergarments, that is behavior that put
25 her at risk?

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1 written down here, Ms. Edmo suggested that offenders be
2 isolated in their cells to wear makeup?

3 A. That's what she suggested.

4 Q. Okay. Did you provide Ms. Edmo during this
5 meeting with specific guidance about what kind of
6 hairstyle for her would be considered feminine or
7 effeminate versus not?

8 A. No, I did not.

9 Q. Did you ever provide specific guidance to
10 Ms. Edmo regarding what hairstyle for her would be
11 considered feminine or effeminate versus not?

12 MR. HALL: Object to form.

13 THE WITNESS: I told her I believed she knew
14 which hairstyles the COs were taking issue with and
15 which hairstyles they weren't taking issue with, and
16 that she needed to adhere to those hairstyles.

17 Q. (BY MS. RIFKIN): Was it your understanding
18 that COs in 2014 were distinguishing between effeminate
19 hairstyles and sexually provocative hairstyles?

20 A. Could you repeat that, please.

21 Q. Sure. Was it your understanding in 2014
22 that COs were distinguishing between effeminate
23 hairstyles and sexually provocative hairstyles?

24 A. I don't -- I don't know if that's true. I
25 know COs were trying to control the effeminate

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1 hairstyles.

2 MR. HALL: Counsel, when it's a good time for a
3 break, we need to get the lunch menu in or we're not
4 going to get lunch. So if you could just look at it
5 when you have an opportunity, identify what you want,
6 we'll have the others do it, and then we can get it in.
7 But they're asking for it now.

8 MS. RIFKIN: Sure. Let me just ask a couple
9 more questions, and then we'll break before I forget.

10 Q. Do you believe, based on what you
11 identified in what we've been calling Exhibit 4, the
12 2009 revision of the prison rape elimination policy,
13 that that's what was in effect when you met with
14 Ms. Edmo in 2014?

15 A. I do.

16 Q. And do you have knowledge about whether
17 what has been marked Exhibit 5, which states it was
18 approved on April 2nd, 2018, do you have knowledge
19 about whether that reflects that date, April 2018 is
20 when this version of the policy was implemented?

21 A. I'm sorry. I got lost on that.

22 Q. Sure. Do you have knowledge about whether
23 the April 2nd, 2018 date on this document, Exhibit 5,
24 means that that's when it was implemented?

25 A. I believe the April 2nd, 2018, is the date

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1 that this goes into effect or went into effect
2 [indicating].

3 Q. Okay. And so my final question before we
4 break is whether you know if what appears to me that
5 the April 2018 version, Exhibit 5, no longer talks
6 about effeminate hairstyles, do you know if that's
7 correct?

8 A. I'd have to go through the policy.

9 Q. Okay. So why don't we take a break to do
10 the lunch menu. And then I'm just going to ask you to
11 see -- to let me know whether you -- whether this
12 policy continues to talk about effeminate hairstyles or
13 not.

14 Okay?

15 A. Okay.

16 (Recess.)

17 Q. (BY MS. RIFKIN): All right. Thanks,
18 Warden.

19 So while we were off the record, we were
20 doing lunch orders, but also looking through the
21 policy.

22 Do you know if the 2018 version of the
23 policy, Exhibit 5, continues to talk about effeminate
24 hairstyles or feminine hairstyles?

25 A. I do not believe it addresses that.

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1 Q. Were you involved in any way in the
2 revision of the prison rape elimination policy for the
3 2018 version, Exhibit 5?

4 A. As a warden, we reviewed at least one of
5 the drafts, maybe a couple of them.

6 Q. And did you provide any feedback regarding
7 the drafts of the policy you reviewed?

8 A. Probably did as the other wardens did.

9 Q. Do you recall whether you provided feedback
10 one way or the other as to whether discussion of
11 feminine or effeminate hairstyles should be in the
12 revised version of the prison rape elimination policy?

13 A. I don't remember giving any input one way
14 or the other.

15 Q. So if we can go back to your declaration,
16 which is what was marked as Exhibit 3. Yeah, you can
17 put the others aside, except to the extent you need
18 them later. We were looking at the second page of your
19 declaration, paragraph 4.

20 Do you recall any scheduled meetings with
21 Ms. Edmo, other than the one in April of 2014 that
22 we've just been discussing?

23 A. I don't remember any others.

24 Q. Okay. And can you give me a general idea
25 of what other types of in-person interactions you had

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1 A. I am.

2 Q. Okay. Do you recall whether during any of
3 your face-to-face interactions with Ms. Edmo she had
4 her hair in a bun?

5 A. I don't recall one.

6 Q. Okay. Do you recall if any of your
7 face-to-face interactions with Ms. Edmo her hair was
8 curly or she had curls in her hair?

9 A. Yes.

10 Q. If you look at paragraph 6 of your
11 declaration. Now we're on to page 3. In the middle of
12 that paragraph there's a sentence, "In addition to
13 having been provided female hormone treatments and
14 access to mental health counseling and gender dysphoria
15 groups since 2012, Edmo has also been provided with
16 women's bras and underwear (referred to as 'panties')
17 that are available to female offenders at PWCC and
18 IDOC's other women's institutions."

19 Is it your testimony that Ms. Edmo has been
20 provided with women's underwear or panties since 2012?

21 MR. HALL: Object to form. Vague.

22 THE WITNESS: I know she's had panties at times.
23 I don't know if it's been continually since 2012.

24 Q. (BY MS. RIFKIN): When you were drafting
25 this declaration or reviewing this declaration to sign

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1 permitted per IDOC so will not be ordered at this
2 time." This document's dated January 16th, 2018.

3 Are you aware if the statement that the
4 panties are not permitted per IDOC was accurate for
5 January 16th, 2018?

6 MR. HALL: Object to form.

7 MR. EATON: Join.

8 THE WITNESS: I know what I see on this form.

9 Q. (BY MS. RIFKIN): Do you know what IDOC
10 policy permitted as to whether individuals at men's
11 prisons could have panties on January 16th, 2018?

12 MR. HALL: Object to form. Asked and answered.

13 MR. EATON: Join.

14 THE WITNESS: I know if it was a -- a medically
15 needed item, Corizon could order it.

16 MS. RIFKIN: Could we mark this as the next
17 exhibit, please.

18 (Exhibit 7 marked.)

19 Q. (BY MS. RIFKIN): All right. You've been
20 handed what's been marked Exhibit 7.

21 Are you familiar generally with IDOC
22 Offender Concern Forms?

23 A. I am.

24 Q. And can you describe the purpose of the
25 Offender Concern Form.

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1 A. They are a way for offenders to reach out
2 to staff and ask questions.

3 Q. As warden at ISCI, were you involved in
4 reviewing Offender Concern Forms?

5 A. That were sent to me, yes.

6 Q. Do you recall receiving Offender Concern
7 Forms from Ms. Edmo over the years?

8 A. I do.

9 Q. Did you review any of those Offender
10 Concern Forms prior to drafting -- prior to signing
11 your declaration that's in Exhibit 3?

12 MR. HALL: Object to form.

13 THE WITNESS: The Concern Form she sent to me,
14 yes.

15 Q. (BY MS. RIFKIN): Okay. Do you recall
16 whether Ms. Edmo sent you any Concern Forms regarding a
17 request to receive panties?

18 A. I'd have to look at my Concern Forms.

19 Q. Can you turn to what's Bates stamped
20 AE 0090 in this.

21 MR. HALL: "This" being Exhibit 7?

22 MS. RIFKIN: "This" being -- thank you.

23 Q. All right. Turning your attention to the
24 Offender Concern Form on the bottom half of this page
25 dated October 13th, 2015, this is an Offender Concern

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1 Form directed to you from Ms. Edmo; is that right?

2 A. That is correct.

3 Q. If you can take a moment to review the
4 Concern Form and let me know when you've had a chance
5 to review it.

6 MR. EATON: Sorry, what page is it?

7 MS. RIFKIN: 90.

8 MR. EATON: Thanks.

9 THE WITNESS: Okay.

10 Q. (BY MS. RIFKIN): Part of what Ms. Edmo
11 wrote for "Issue/Concern" here is "The standard of care
12 for adequate treatment of my GID is to allow me to wear
13 female clothing, including panties"; correct?

14 A. Correct.

15 Q. And was this your handwriting on the
16 response?

17 A. It is.

18 Q. Okay. And that's your signature?

19 A. It is.

20 Q. Okay. And you wrote to Ms. Edmo, "You will
21 need to work with mental health staff in this"; is that
22 correct?

23 A. I think I -- on this, but --

24 Q. Oh, thank you.

25 And what did you mean by that?

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1 A. That she needed to reach out to her
2 clinician, clinical supervisor, or chief psychologist
3 on this issue.

4 Q. Is it your understanding that at any time
5 from 2012 to present if Corizon providers had written a
6 medical memo that panties were medically necessary for
7 Ms. Edmo they would have been provided?

8 MR. HALL: Object to form.

9 MR. EATON: Join. It's compound and vague.

10 THE WITNESS: Your question's a bit too black
11 and white for an answer.

12 Q. (BY MS. RIFKIN): Okay. Can you explain
13 why?

14 MR. EATON: Same objections. Also incomplete
15 hypothetical.

16 MR. HALL: Join.

17 THE WITNESS: Corizon doesn't establish policy
18 with a medical memo. So it still has to be appropriate
19 and safe to be inside the prison.

20 Q. (BY MS. RIFKIN): And did IDOC or ISCI have
21 a policy or a standard operating procedure about
22 whether panties were appropriate and safe to have
23 inside ISCI during the time frame from 2012 to 2018?

24 A. Do we have a standard that says they're not
25 allowed?

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1 Q. Did IDOC or ISCI have a policy, written or
2 unwritten, I'm really asking for?

3 A. We have a policy.

4 MR. EATON: Sorry. I'll state an objection.
5 Vague as to "ISCI."

6 MR. HALL: Join.

7 MR. EATON: Go ahead.

8 MS. RIFKIN: Did I get their name wrong?

9 MR. EATON: I think it's overbroad and vague.

10 MS. RIFKIN: Oh, okay.

11 Q. Go ahead.

12 A. IDOC has a property policy on allowable
13 property items.

14 Q. And does that property policy have a
15 determination about whether panties were allowed for
16 offenders at ISCI between 2012 and 2018?

17 MR. HALL: Object to form.

18 THE WITNESS: They -- their policy does not
19 allow female underwear.

20 Q. (BY MS. RIFKIN): Are you aware one way or
21 the other as to whether Ms. Edmo made numerous requests
22 for panties in the years between 2012 and 2018, both to
23 Corizon and IDOC staff?

24 A. I know the requests she made to me, and I
25 don't know if it's numerous.

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1 Q. What was the basis for your statement in
2 paragraph 6 of Exhibit 3 that Ms. Edmo has been
3 provided with underwear, referred to as panties?

4 MR. HALL: Object to form. Asked and answered.

5 THE WITNESS: I knew at least at one time she
6 had them.

7 Q. (BY MS. RIFKIN): And what was the one time
8 you knew she had them?

9 A. I'd have to look at the property inventory
10 sheet. It's got the date there that's...

11 Q. Did you bring the property inventory sheet
12 with you today?

13 A. I did not bring it today.

14 MR. HALL: It was previously produced, Counsel.

15 MS. RIFKIN: As I understood, one of the reasons
16 that IDOC requested to have the depositions here was to
17 facilitate any documents that needed to be retrieved.

18 So given that Warden Yordy has testified he
19 looked at that for his declaration and that's his
20 basis, is it possible to get a copy of that?

21 MR. HALL: I've got them all here.

22 MS. RIFKIN: Great. Can I see a copy of that?

23 MR. HALL: I'll represent to you, Counsel, that
24 that is what the witness is referring to.

25 Is it okay if I show the witness --

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1 MS. RIFKIN: Absolutely.

2 MR. HALL: -- the exhibit?

3 MS. RIFKIN: Absolutely.

4 THE WITNESS: Okay.

5 MR. HALL: That's Exhibit O. It's been marked
6 IDOC_O_page 1 through 28.

7 MS. RIFKIN: Thank you.

8 Q. So I'm going to put this in front of you.
9 And I'll leave it in Counsel's binder because I don't
10 know that we need to introduce all of it.

11 For Exhibit O when you were referring to
12 the property sheet, was it all of the documents in
13 Exhibit O, or were there specific pages that you were
14 referring to as the basis for your knowledge that
15 Ms. Edmo had panties?

16 A. And we're going through how far?

17 Q. Well, I just want to know which of those
18 documents you were looking at for the basis of your
19 report?

20 A. So page 6 of 6 here.

21 Q. Can I grab that back from you for a minute,
22 then.

23 All right. So that page is dated
24 July 25th, 2018, there at the top; is that correct?

25 A. That is correct.

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1 Q. Does that represent Ms. Edmo's property for
2 July 25th, 2018?

3 MR. HALL: Object to form.

4 MR. EATON: Also, can we, for the record,
5 clarify what the Bates number is on that page?

6 THE WITNESS: IDOC zero, page 6.

7 MS. RIFKIN: And that's an O. O, page 6.

8 Q. There's a date on there, July 25th, 2018.

9 Do you know what that date reflects?

10 MR. HALL: Object to form. Vague.

11 THE WITNESS: I would assume that it reflects
12 the date the inventory was done.

13 Q. (BY MS. RIFKIN): Okay. Did you look at
14 inventories for Ms. Edmo's property for any other dates
15 besides July 25th, 2018, when preparing or providing
16 the information for your declaration?

17 MR. HALL: Object to form.

18 THE WITNESS: For the documents, you mean?

19 Q. (BY MS. RIFKIN): Yes.

20 A. This was it.

21 Q. Okay. Do you know, sitting here today, one
22 way or the other, as to whether there were periods of
23 time from 2012 until July 25th, 2018, when Ms. Edmo was
24 not provided with panties?

25 A. I do not know that.

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1 Q. You don't know one way or the other?

2 A. Repeat the question, please.

3 Q. Sure. Sitting here today, do you know one
4 way or the other as to whether there were times between
5 2012 and July 25th, 2018, when Ms. Edmo was not
6 provided panties?

7 A. I do not know that.

8 Q. Okay. You can give that back to Mr. Hall.
9 Thank you.

10 All right. Do you want to take -- we've
11 been going for a while. Do you want to take a quick
12 break?

13 (Recess.)

14 Q. (BY MS. RIFKIN): All right. Do you know
15 what IDOC policy is regarding whether offenders in a
16 male facility are permitted to wear makeup? Let me
17 actually ask you more narrowly, just to ISCI.

18 Do you know what the policy is about
19 whether people incarcerated at ISCI are permitted to
20 wear makeup?

21 A. From the dates we're talking here, '12 to
22 '18?

23 Q. Yeah.

24 A. They are not allowed to wear makeup.

25 Q. And is that no makeup whatsoever? Is that

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1 what that means?

2 A. Correct.

3 Q. All right. Looking back at your
4 declaration, Exhibit 3, paragraph 7. The last sentence
5 of that paragraph states, "I am also not aware of any
6 actions taken by IDOC or its employees preventing Edmo
7 from feminizing in an appropriate manner while
8 incarcerated."

9 What did you mean by "feminizing in an
10 appropriate manner"?

11 A. When the offender didn't take it over the
12 top, used makeup that is not authorized by policy,
13 whether homemade or otherwise, to refer to themselves
14 as effeminate or feminine, shaving of eyebrows, just an
15 overall feminine appearance.

16 Q. That is feminizing in an appropriate manner
17 or an inappropriate manner?

18 A. In an appropriate manner.

19 Q. Still. What you just described, is that
20 appropriate or inappropriate?

21 MR. HALL: Object to form.

22 THE WITNESS: Described feminizing in an
23 appropriate manner.

24 Q. (BY MS. RIFKIN): Okay. And so too many
25 words sound like each other in this particular

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1 sentence, I realize.

2 So you said when an inmate takes it over
3 the top and then you talked about makeup.

4 Are you saying that -- I guess I'm a little
5 confused, given the policy, as you said, didn't allow
6 makeup. Was any wearing of makeup inappropriate
7 feminization, or are you saying there was some makeup
8 wearing that was allowed and seen as appropriate?

9 MR. HALL: Object to form. Vague.

10 THE WITNESS: Makeup was not allowed by policy.

11 Q. (BY MS. RIFKIN): Okay.

12 A. So there was no appropriate wearing of
13 makeup.

14 Q. Thank you for clarifying. That's helpful.
15 Okay.

16 All right. If you look at what is -- it's
17 part of the same document, Exhibit 3. At the bottom
18 right-hand page it says "IDOC_C_page 27."

19 A. Okay.

20 Q. Do you see where I am?

21 A. I think so.

22 Q. This is a Disciplinary Offense Report with
23 a report date February 7th, 2015; is that where you
24 are?

25 A. February 7, 2015.

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1 THE COURT REPORTER: "Correct" is what I heard,
2 yeah.

3 MR. HALL: I didn't hear that.

4 Q. (BY MS. RIFKIN): All right. So for this
5 DOR that we're looking at here, 150824, the description
6 of the offense states, "On February 7th, 2015 at 0754,
7 I noticed Offender Edmo have his hair in a bun that was
8 above ear line." And then after some additional
9 sentences, it states, "After returning to the tier,
10 Edmo went back to his cell, and then came out to the
11 A-tier dayroom with his hair back in a high ponytail
12 above the ear line which still violates policy."

13 Do you have an understanding of why the
14 officer here believed that Ms. Edmo, having her hair in
15 a bun above ear line, violated policy?

16 A. So going based on the DOR, I have not had a
17 conversation with Mr. Bollman, that he felt Edmo's
18 style was over the top and attempted to correct it with
19 her.

20 Q. And on what basis is it your understanding
21 that Mr. Bollman felt her hairstyle to be over the top?

22 A. You're asking me to speak for Bollman here.
23 I'm going on what he saw here. It's a subjective
24 assessment for our correctional officers.

25 Q. What policy does 325.02.01.002 refer to?

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1 A. Prison rape elimination.

2 Q. And we talked earlier, I believe you said
3 that any hairstyle that is feminine or effeminate
4 violates the policy; correct?

5 A. Correct.

6 Q. So this DOR, you affirmed the DOR; correct?

7 A. Correct.

8 Q. And you understood at the time you affirmed
9 the DOR that Mr. Bollman thought that hair in a bun
10 violated the policy because it was over the top?

11 A. Right. I believe that what Bollman saw, as
12 I've referenced before, the total package. The -- our
13 correctional officers know it when they see it, that if
14 it's over the top, they need to intervene. Bollman
15 tried to do that, told her her hair was over the top.
16 She argued. She went back into the tier. Bollman
17 believed that she went back to fix it. She comes back
18 out a few minutes later with the hair exactly the same
19 way.

20 Q. Well, the hair wasn't in the exact the same
21 way; right? It had been in a bun above the ear line
22 and she came back with it in a high ponytail above the
23 ear line; right? Is that the same thing?

24 A. Well, it's -- Bollman took it as still
25 openly defiant. She knew what he was asking. She went

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1 back, adjusted it some, came back out, and Bollman
2 believed that that was the disobedience.

3 Q. When you say "she knew what he was asking,"
4 what's your understanding of what he was asking?

5 MR. HALL: Object to form.

6 THE WITNESS: So having worked 30 years in
7 prison, I know that for the most -- for most of the
8 time, Bollman's been 10, 11 years at the facility.
9 He's not the kind of officer that will just throw
10 out -- he's very consistent. They had a discussion.
11 She didn't like it. I believe Bollman told her to go
12 back, "Fix your hair in an appropriate manner."

13 She went back, adjusted it slightly, came
14 back out, and Bollman took it as open defiance. That's
15 why he wrote the DOR.

16 Q. (BY MS. RIFKIN): Did Officer Bollman -- is
17 it Officer? Sergeant? I don't know.

18 A. He's a corporal.

19 Q. Did Corporal Bollman describe whether
20 Ms. Edmo was wearing any makeup at this time?

21 MR. HALL: Object to form. Foundation.

22 THE WITNESS: I know what's written in the DOR.

23 Q. (BY MS. RIFKIN): And the DOR doesn't have
24 any description about whether she was wearing makeup or
25 not; correct?

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1 A. She may have been. She may not have been.

2 Q. And does the DOR give you information about
3 whether Ms. Edmo at that time was wearing sexy
4 undergarments or not?

5 A. It does not.

6 Q. Is it your understanding that Ms. Edmo
7 having her hair in a bun above the ear line on this
8 date, February 7th, 2015, was sexually provocative?

9 A. I believe Bollman believed it was over the
10 top.

11 Q. And what does "over the top" mean?

12 A. Creating a sexually charged environment,
13 creating a hairstyle that was not appropriate.

14 Q. And how do you understand that Ms. Edmo
15 having her hair in a bun above the ear line created a
16 sexually charged environment?

17 A. As I said earlier, it's a subjective call
18 on staff using good correctional practice as a standard
19 of when you see it, you know it.

20 Q. And did you provide any guidelines to staff
21 about what that means, good correctional practice and
22 when they see it they know it?

23 A. I have at times.

24 Q. And what guidance did you provide to staff?

25 A. That if hairstyles are above and beyond

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1 what you believe is appropriate, and it's an effeminate
2 hairstyle, correct it with the offender.

3 Q. Have any DORs that Ms. Edmo was charged
4 with for hairstyle been overturned or dismissed?

5 MR. HALL: Object to form. Misstates the
6 record, assumes facts not in evidence.

7 MR. EATON: Join.

8 THE WITNESS: I don't know if there have been.

9 Q. (BY MS. RIFKIN): You said that it's a
10 subjective belief by the officer; is that correct?

11 A. Correct.

12 Q. And do you expect that officers then are
13 correct in their subjective beliefs 100 percent of the
14 time about what constitutes an over-the-top hairstyle?

15 A. No, I don't believe they're 100 percent
16 correct all the time.

17 Q. Are you aware of any DORs that Ms. Edmo
18 received relating to her hairstyle that were dismissed
19 or overturned by the hearing officer or either of the
20 review authorities?

21 MR. HALL: Object to form. Misstates the
22 record, assumes facts not in evidence, vague.

23 THE WITNESS: I do not know if any have been
24 dismissed.

25 Q. (BY MS. RIFKIN): Have you dismissed any

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1 DORs Ms. Edmo received relating to hairstyle?

2 MR. HALL: Same objection.

3 THE WITNESS: I may have. I don't -- I don't
4 recall any. They're expunged from the system. So if
5 they are dismissed, there's no record of them.

6 Q. (BY MS. RIFKIN): And do you affirmatively
7 remember that you dismissed any DORs from Ms. Edmo
8 relating to hairstyle that would have been expunged
9 from the system?

10 MR. HALL: Object to form. Vague, assumes facts
11 not in evidence, misstates the record.

12 THE WITNESS: I do not recall any.

13 Q. (BY MS. RIFKIN): Was it IDOC policy in
14 February of 2015 not to refer to offenders with a GID
15 diagnosis or a GD diagnosis with male pronouns?

16 A. We were -- we were trained to use
17 gender-neutral terms.

18 Q. In this DOR that we're looking at, 150824,
19 the description of the offense uses male pronouns;
20 correct?

21 A. That is true.

22 Q. Did that violate IDOC policy?

23 MR. HALL: Object to form.

24 THE WITNESS: I'm not going to say it violates
25 policy, because I don't -- our staff are directed to

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1 use gender-neutral terms. And I don't think Bollman
2 intentionally did it here. Staff will do that if -- I
3 don't think he was intentional by it. He shouldn't put
4 it in there, but he did.

5 Q. (BY MS. RIFKIN): You said you didn't have
6 any follow-up conversation with Bollman about this DOR;
7 correct?

8 A. I did not.

9 Q. Do you know one way or the other as to
10 whether Bollman's use of "his" and "him" at least six
11 times in his description of the offense was
12 intentional?

13 A. I don't believe it was.

14 Q. And what's that based on, your belief?

15 A. I've known Bollman for 10, 12 years. He's
16 a good officer, good intentions. Ms. Edmo wasn't
17 complaining of that in her -- in her appellate
18 comments.

19 Q. Did you take any corrective action with
20 respect to Bollman's use of "his" and "him" with
21 respect to Ms. Edmo in this DOR?

22 A. I did not.

23 Q. If you turn to what is page No.
24 IDOC_C_page 22 in this same document.

25 A. Yeah, I may have got these.

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1 page 22?

2 A. I'm on page 22.

3 Q. Okay. This is Disciplinary Offense Report
4 No. 141153; correct?

5 A. 114153, correct.

6 Q. 141153?

7 A. 141153.

8 Q. Okay. And the reporting staff for this DOR
9 was also Officer Bollman; correct? Or Corporal
10 Bollman. I'm sorry.

11 A. Correct.

12 Q. And this was February 24th, 2014?

13 A. Yes.

14 Q. And that was about a year earlier than the
15 DOR we were just looking at?

16 A. I believe the other one was February 7th of
17 '15, yes.

18 Q. Yeah. Can you take a moment to review the
19 "Description of Offense."

20 A. [Reviews.]

21 Okay.

22 Q. Corporal Bollman uses male pronouns to
23 refer to Ms. Edmo in the Description of Offense in this
24 DOR; is that right?

25 A. That is correct.

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1 Q. Did that violate IDOC policy,
2 Corporal Bollman's use of male pronouns for Ms. Edmo,
3 in this DOR?

4 MR. HALL: Object to form.

5 THE WITNESS: You know, I'd have to check when
6 the direction of using gender-neutral terms came down.
7 I'm assuming it was prior to 2014. It may not have
8 been.

9 Q. (BY MS. RIFKIN): Did Corporal Bollman
10 using male pronouns to refer to Ms. Edmo in 2015, a
11 year after using male pronouns to refer to her in 2014,
12 does that change your belief about whether or not
13 Corporal Bollman's use of male pronouns was
14 intentional?

15 A. I --

16 MR. HALL: Object to form.

17 THE WITNESS: I'd really need to check when that
18 direction came down of gender-neutral terms.

19 Q. (BY MS. RIFKIN): All right. If you can
20 turn to -- it's IDOC_C_page 33. And you can take a
21 moment to review and let me know when you've had a
22 chance.

23 A. DOR 156084?

24 Q. Yes. Thank you.

25 A. [Reviews.]

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1 was the direction given in '13.

2 Q. And so we can go back to I guess it's
3 IDOC_C_page 22. This is DOR 141153 by Corporal Bollman
4 in February of 2014 for Ms. Edmo.

5 Are you able to answer the question now of
6 whether Corporal Bollman's use of male pronouns with
7 respect to Ms. Edmo in February 2014 violated IDOC
8 policy?

9 A. Although not intentional, I believe it
10 probably did.

11 Q. And how do you know that it's not
12 intentional by Corporal Bollman in 2014?

13 MR. HALL: Object to form. Asked and answered.

14 THE WITNESS: Because my experience in
15 corrections, when staff act intentionally, inmates
16 typically -- typically bring it up. They want it
17 addressed. Edmo did not.

18 Q. (BY MS. RIFKIN): During your time as
19 warden at ISCI, did you take or direct to be taken any
20 corrective actions with respect to staff using male
21 pronouns for Ms. Edmo?

22 A. Could you repeat that, please.

23 Q. Sure. During your time as warden at ISCI,
24 did you take or direct to be taken any corrective
25 action for staff using male pronouns for Ms. Edmo?

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1 A. I have.

2 Q. And what corrective action did you take or
3 direct to be taken?

4 A. I directed supervisors to address a
5 correctional officer who I believe was careless in
6 their using gender-neutral terms. I directed, I
7 believe it was a lieutenant, to address that with a
8 staff member.

9 Q. Was that a single occasion or multiple
10 occasions?

11 A. I recall one for sure. There may have been
12 others, but there was one that I remember that comes to
13 mind.

14 Q. Can you give me an estimate of the date of
15 that in terms of at least year?

16 MR. HALL: Object to form. Calls for
17 speculation.

18 THE WITNESS: I was warden. It would be '14,
19 '15.

20 Q. (BY MS. RIFKIN): And if you can turn
21 back -- sorry, back to IDOC_C_pages 8 and 9, the DOR
22 No. 134217.

23 A. Okay.

24 Q. Under "Offender Appeal Details No. 1,"
25 Ms. Edmo wrote, "Sergeant Ramirez personally humiliated

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1 being promiscuous or sexual in behavior, conduct,
2 attitudes.

3 Q. And so is this, the "appear or act sexual
4 in prison," is that referring to behaviors and conduct?

5 A. It can be behaviors, conduct, and
6 appearance.

7 Q. So what kind of appearance would be what
8 you mean by this phrase, "allowing offenders to appear
9 sexual in prison"?

10 A. Just appearance.

11 Q. Well, yeah, you said it could be behaviors,
12 conduct, or appearance; right?

13 A. Right.

14 Q. So I'm just trying to break those down.
15 So in terms of appearance, what would that
16 be?

17 A. Coming out in the dayroom wearing nothing
18 but a bra and panties, to thong underwear, tight
19 clothes, short shorts. You know, hairstyle can come
20 into play there. Makeup. Again, that total package.
21 People know it when they see it, inmates and staff.

22 Q. The next sentence you wrote, "There also
23 exists security concerns with offenders having access
24 to underwear traditionally worn by the opposite gender,
25 especially when the possibility exists for an offender

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1 who has a fetish with women's bras or panties obtaining
2 such undergarments."

3 What security concerns were you referencing
4 here?

5 A. Well, I think when you say "women's
6 undergarments," there are all sorts of different
7 undergarments that could come into play there.

8 Q. Okay. Well, I'm asking you what you were
9 referring to here about security concerns in your
10 declaration.

11 A. Well, again, when you just say "women's
12 underwear," there's a broad spectrum of what that
13 implies.

14 Q. Okay. Can you give me any examples of
15 security concerns that you're referencing in this
16 sentence?

17 A. Well, if you're talking Victoria's Secret
18 panties or a thong underwear, that's different than
19 just -- I don't know how to put it, just a normal pair
20 of underwear that I would suspect most women, some
21 women, a lot of women would wear. My wife wears. How
22 about I put it that way. My wife wears.

23 Q. I'm going to ask you not to. No, I'm just
24 kidding.

25 MR. HALL: You may be sleeping on the couch if

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1 it goes any further here, Warden.

2 THE WITNESS: I'll keep my deposition from my
3 wife.

4 Q. (BY MS. RIFKIN): So I guess would it be
5 accurate to say that you see a difference between kind
6 of the general category of women's underwear and
7 certain specific kinds of women's underwear? For
8 example, Victoria's Secret or thongs are two examples
9 you've given; is that fair?

10 A. Yes, that's fair.

11 Q. Okay. And so is it also fair that the
12 security concerns you're referencing -- please let me
13 know if I'm not understanding this correctly. The
14 security concerns you're referencing in this sentence
15 go towards the thong/Victoria's Secret category, not
16 towards the sort of more generic women's underwear
17 category?

18 A. Part of the concerns would be that, yes.

19 Q. What are the security concerns for -- let's
20 just focus on the Victoria's Secret/thong category of
21 underwear. What are the security concerns that you're
22 talking about with that?

23 A. Well, they're sexual in nature. They're
24 designed to be sexual in nature.

25 Q. Would you agree that all women's underwear

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1 categorically is not designed to be sexual in nature,
2 as in by -- well, let me ask a better question.

3 Do you believe that by definition women's
4 underwear, any women's underwear, is designed to be
5 sexual in nature?

6 MR. HALL: Object to form. Asked and answered.

7 THE WITNESS: Not by design, no.

8 Q. (BY MS. RIFKIN): There are distinctions, I
9 guess, you'd agree, between categories of women's
10 underwear with respect to the sexual nature of them?

11 A. Well, I think if all they were wearing were
12 women's underwear, acceptable women's underwear, it
13 would create a stir in a prison.

14 Q. I got it. And so you're saying if someone
15 wasn't wearing clothes on top?

16 A. Right.

17 Q. Got it. Okay. So besides security
18 concerns in this sentence with someone in prison
19 wearing only a bra and underwear or only underwear and
20 nothing else, I understand that security concern.

21 Are there other security concerns you're
22 referring to in this sentence?

23 MR. HALL: Object to form. Misstates the
24 testimony, compound.

25 THE WITNESS: I think they would create an

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1 issue, but we could manage it. I think we'd have to --
2 there are inmates there that would want the panties
3 because they're panties, and -- but not like the
4 Victoria's Secrets and the thong underwear, certainly.

5 Q. (BY MS. RIFKIN): Are you familiar with a
6 draft gender dysphoria policy drafted by Dr. Campbell?

7 A. Well, you say "draft," so I'm going to say
8 no. Because it doesn't sound like it was ever
9 approved.

10 Q. Let me just show you what I'm talking
11 about. For the record, this is a document
12 IDOC_EE_page 1 through 35. I'm going to ask you to
13 look through it and just let me know whether you're
14 familiar with it or not so we can move on, if not.

15 A. [Reviews.]

16 I do not believe I have seen this.

17 Q. Okay. You can give it back to me. Thank
18 you.

19 All right. So going back to Exhibit 3,
20 your declaration. Still on page 4, looking now at
21 paragraph 9. Looking at the bottom of the page,
22 there's a sentence that begins "Notwithstanding."

23 Do you see that?

24 A. 9. Notwithstanding.

25 Q. On page 4, it's about five lines up from

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1 altering clothing to -- altering underwear or creating
2 or making the underwear thongs. Her demeanor, conduct,
3 behavior around other offenders. Conversations I've
4 had with her. Conversations I've had with staff over
5 their concern of Edmo's appearance, her defiance.

6 Q. Do you have an opinion about whether a high
7 ponytail above the ear versus a ponytail below the ears
8 is sexually charged?

9 A. I don't think you could define a ponytail
10 up or down as one constitutes sexually charged and the
11 other one doesn't.

12 Q. If you can turn to again, we're going to
13 stay in the same exhibit, IDOC_C_page 48 and 49.

14 MR. HALL: Again, we're in Exhibit 3?

15 MS. RIFKIN: Correct.

16 MR. HALL: Okay.

17 Q. (BY MS. RIFKIN): It's DOR No. 164886.

18 A. Okay.

19 Q. And just if you can take a minute to review
20 that and let me know.

21 A. [Reviews.]

22 Okay.

23 Q. All right. This is a DOR for Ms. Edmo that
24 you were the appellate authority on; correct?

25 A. Correct.

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1 Q. Okay. And would it be fair to say that
2 this was a DOR given to Ms. Edmo for altering underwear
3 and bras, so undergarments, that were State issued, she
4 was alleged to have altered men's underwear into a
5 thong?

6 A. Correct.

7 Q. And a sports bra into a different kind of
8 bra?

9 A. Correct.

10 Q. Okay. So if you look at -- I'm looking at
11 page 49, which has the "Offender Appeal Details."
12 Ms. Edmo wrote, "IDOC/Warden Yordy is deliberately
13 indifferent to my serious medical condition of gender
14 dysphoria by denying my me female panties, which are
15 necessary and appropriate for my gender dysphoria
16 symptoms. I would not have to modify my undergarments
17 for additional support for tucking my testicles."

18 Do you see that?

19 A. I do.

20 Q. Do you know whether at this time in 2016 --
21 the original DOR is dated July 26th, 2016. Do you know
22 whether Ms. Edmo had access to female panties?

23 A. I don't know if she had on this date.

24 Q. Did you take any action to find out whether
25 at this time Ms. Edmo had access to any female panties?

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1 A. I knew prior to this date she had access to
2 panties.

3 Q. How did you know that?

4 A. The property inventory sheets.

5 Q. The ones we looked at before?

6 A. Well, I don't know if it was that one, but
7 there were other property inventory sheets where she
8 had women's underwear.

9 Q. Prior to July of 2016?

10 A. Yes.

11 Q. Was it your understanding at the time that
12 Ms. Edmo appealed this DOR that she in fact was not
13 denied non-thong female panties?

14 A. I don't know what she may have --

15 MR. HALL: Object to form.

16 THE WITNESS: I don't know what she had been
17 given.

18 Q. (BY MS. RIFKIN): So you didn't know one
19 way or the other as far as whether she had access to
20 non-thong female panties at that time?

21 MR. HALL: Object to form. Misstates testimony.

22 THE WITNESS: I don't know what she had at the
23 time when she did this.

24 Q. (BY MS. RIFKIN): Did you do anything to
25 follow up to ensure that Ms. Edmo did have access to

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1 non-thong female panties at the time, August 2016?

2 MR. HALL: Object to the form.

3 THE WITNESS: I did not.

4 Q. (BY MS. RIFKIN): Did you do anything to
5 follow up to ensure that Ms. Edmo had access to
6 undergarments that allowed her support for tucking her
7 testicles in August 2016?

8 A. I did not.

9 Q. All right. Turning back to the beginning
10 of this document, Exhibit 3, back to your declaration.
11 We're on page 5 and looking at paragraph 11.

12 You wrote, "32 DORs is an exceptionally
13 high number of DORs for an offender who's been
14 incarcerated for only six years"; correct?

15 A. Correct.

16 Q. And what did you base that statement on?

17 A. 30-plus years of correctional experience.

18 Q. Are you aware of approximately how many
19 people are incarcerated in the IDOC system who have a
20 diagnosis of gender dysphoria presently?

21 A. I do not.

22 Q. Are you able to give an estimate?

23 A. I could give a guess.

24 MR. HALL: Object.

25 Q. (BY MS. RIFKIN): Do you have any basis for

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1 knowing whether it's more than ten?

2 A. I would say it's approximately that number.

3 Q. Do you know the DOR history for any of
4 those other individuals with a diagnosis of gender
5 dysphoria in the IDOC system?

6 A. A couple of them.

7 Q. Do you know how many DORs they've received?

8 A. All of them?

9 MR. EATON: Object to form.

10 Q. (BY MS. RIFKIN): Let me ask you this: Did
11 you compare the number of DORs Ms. Edmo has received to
12 other offenders with a gender dysphoria diagnosis in
13 the IDOC system?

14 A. Not all of them.

15 Q. Do you know, sitting here, whether she has
16 more or less DORs than the other offenders with a GD
17 diagnosis?

18 MR. HALL: Object to form. Foundation.

19 THE WITNESS: I do not know if she has more or
20 less than the other ten.

21 Q. (BY MS. RIFKIN): You wrote, "In my
22 experience, the vast majority of offenders will receive
23 only three or four DORs, if any, over six years."

24 Did you review any documents in making this
25 statement?

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1 A. I did.

2 Q. What documents did you review?

3 A. Our CIS system.

4 Q. And can you explain what you looked at in
5 the CIS system as the basis in order to make the
6 statement?

7 A. So I looked up Ms. Edmo's location, which
8 was Unit 10, and went through and looked at probably
9 20, 25 offenders who had a number close to Ms. Edmo's
10 90 -- 9 number. She's 94. But I looked at other
11 inmates with a number in the 9s, 8s, and a couple into
12 the 100 number, which would give an indication that
13 they at least came into the system roughly same time,
14 and looked at their DOR history.

15 Q. And did you say you looked at those for
16 people who were on Unit 10?

17 A. Uh-huh, yes.

18 Q. What kind of unit is Unit 10?

19 A. It's a medium-custody housing unit. It
20 holds 108 offenders.

21 Q. Is it general population?

22 A. It is.

23 Q. And for the 20 to 25 people that you looked
24 at from Unit 10, did you note how many of them had a
25 history of placements in the BHU, I believe it's

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1 called?

2 A. I did not.

3 Q. Did you look at whether any of them had a
4 diagnosis of gender dysphoria?

5 A. I did not.

6 Q. Did you look at whether any of them had at
7 any point during their incarceration not been
8 classified as GP, but been classified at a segregation
9 or other kind of higher custody level?

10 MR. HALL: I'm sorry. Did you say "GD" or "GP"?

11 MS. RIFKIN: "GP."

12 MR. HALL: Okay. As in general population.
13 Okay.

14 Q. (BY MS. RIFKIN): Should I ask the question
15 again?

16 A. Please.

17 Q. See if I remember it.

18 A. Okay.

19 Q. For the 20 to 25 GP offenders that you
20 looked at from Unit 10, did you look at whether any had
21 a history of placements in a higher custody level than
22 GP, for example, segregation?

23 A. No, I did not.

24 Q. Did you look at any other data or documents
25 in making this statement, "In my experience the vast

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1 majority of offenders will receive only three or four
2 DORs, if any, over six years"?

3 A. No, I did not.

4 Q. Based on your experience, is it your
5 opinion that sexual contact between offenders in a male
6 prison is highly unusual?

7 MR. HALL: Object to form. Vague.

8 THE WITNESS: I'm not sure what your standard of
9 "highly unusual" is.

10 Q. (BY MS. RIFKIN): That's fair. How would
11 you characterize, based on your experience, how often
12 sexual contact between inmates in a male prison occurs?

13 A. My standard, I'd say not often.

14 Q. And what does that mean to you, "not
15 often"?

16 A. Well, based on my correctional experience,
17 we don't write a lot of DORs for sexual activity.
18 We're not catching it.

19 Q. And do you have a sense, based on your
20 experience, on how much sexual activity there is that
21 you don't catch or you're not writing DORs for? By
22 "you," I mean the correctional staff, not you
23 personally.

24 MR. HALL: Object to form. Foundation.

25 THE WITNESS: You know, we certainly don't catch

Keith Yordy - October 1, 2018

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1 allegation?

2 A. I don't have an exact number.

3 Q. Would it be fair to say in your opinion
4 that this was not an allegation that was unique to
5 Ms. Edmo for this time at ISCI?

6 MR. HALL: Object to form. Vague.

7 THE WITNESS: Well, there was quite a few number
8 of inmates that did something similar, yes, if that's
9 your question.

10 Q. (BY MS. RIFKIN): Are you aware of whether
11 Ms. Edmo was alleged to have been involved with
12 planning the theft of JPay funds that happened around
13 this time in the summer of 2018?

14 MR. HALL: Object to form. Vague.

15 THE WITNESS: I did not hear that she was
16 involved in the planning.

17 MS. RIFKIN: All right. Why don't we take
18 another few-minute break, and we'll go back on and
19 hopefully we won't be too much longer.

20 MR. HALL: Great.

21 (Recess.)

22 Q. (BY MS. RIFKIN): So if you can turn to
23 Exhibit 7, which is this document right here
24 [indicating].

25 A. Okay.

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1 Q. So if you can turn to -- and I'm going to
2 reference the numbers at the bottom -- AE 82.

3 A. Okay.

4 Q. All right. So 82 and 83, AE 82 and 83 are
5 a grievance form for Ms. Edmo.

6 Do you see that?

7 A. I do.

8 Q. Okay. So if you can just take a couple
9 minutes and review just these two pages and let me know
10 when you're done.

11 A. [Reviews.]

12 Okay.

13 Q. All right. So for this grievance form, for
14 this grievance submitted by Ms. Edmo, you were the
15 appellate authority response; is that correct?

16 A. That is correct.

17 Q. Okay. And Ms. Edmo's grievance that she
18 described on June 20th, 2018, she referenced a
19 May 25th, 2018, incident or interaction where she says,
20 "At visiting correctional officer stated to me, 'You
21 will not be allowed another visit with your attorneys
22 because you appear too feminine with your hair all done
23 up, boobs, and makeup, per your unit sergeant.'"

24 Is that accurate?

25 MR. HALL: Object to form.

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1 THE WITNESS: That's what she's alleging, yes.

2 Q. (BY MS. RIFKIN): Okay. Is it your
3 understanding that the unit sergeant determined that
4 when Ms. Edmo went for her attorney visit on May 25th,
5 2018, she had an inappropriate or sexually provocative
6 appearance?

7 A. That's what --

8 MR. HALL: Object to form. Foundation.

9 THE WITNESS: As I recall, that's what he said
10 was he felt it was over the top, and he told her to go
11 back and change her appearance.

12 Q. (BY MS. RIFKIN): Did you see Ms. Edmo's
13 appearance? Did you personally see Ms. Edmo's
14 appearance on that date?

15 A. I did not.

16 Q. And this grievance references a past
17 allegation Ms. Edmo had made that Sergeant Gould had
18 grabbed or groped her breast during a pat-down;
19 correct?

20 A. Correct.

21 Q. And that allegation was determined to be
22 unfounded by IDOC?

23 A. I'd have to look at the documentation.

24 Q. Okay. I'm just referencing what it says in
25 the initial response, level one, by Lieutenant Aiello.

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1 staff's direction. If they tell you to do something
2 different with your hair, you need to do something
3 different with your hair." And then I asked staff to
4 photograph and send me so I could look at it, because
5 she was asking my opinion of the hairstyle.

6 Q. And did you have staff photograph her
7 hairstyle?

8 A. Well, I said that. I do know I have in the
9 past. I don't recall Edmo specifically. But I've had
10 other offender's hair photographed and sent to me.

11 Q. And are those pictures saved somewhere?

12 A. From '14? I doubt it. There's -- I doubt
13 they're still on our U-drive.

14 Q. Would they be in the inmate's file?

15 MR. HALL: Object to form. Foundation.

16 THE WITNESS: No. I doubt we would have reason
17 to put it in there.

18 Q. (BY MS. RIFKIN): If they did still exist,
19 do you have a sense of where on the system they'd be?

20 A. It would be under the -- the U-drive
21 archive, if they're still there. If it's not in her
22 C-file, then there's really no other place that we
23 would put a hard copy. I didn't have a picture of her
24 photograph in my -- my Concern Forms for the offender.

25 Q. And if you turn to the next page in this

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1 packet, AE 0111, the Concern Form on the top half of
2 this page, that is also your signature in the response;
3 is that right?

4 A. My signature, yes.

5 Q. And Ms. Edmo was raising again the issue of
6 whether she could have her hair in a bun or higher than
7 ear level in this Concern Form; is that fair?

8 A. Yes.

9 Q. And you wrote, "Policy does support not
10 allowing effeminate hairstyles"; correct?

11 A. Correct.

12 Q. And were you referring to the policy that
13 we've previously looked at, the PREA policy?

14 MR. HALL: Object to form. Vague.

15 THE WITNESS: Yes.

16 MR. HALL: Compound.

17 Q. (BY MS. RIFKIN): Okay. All right. The
18 disciplinary procedure that's used in ISCI, there's a
19 mandatory consideration for inmates who have a mental
20 health status of CMHS-1.

21 There's a mandatory mental health
22 consideration as part of the DOR process; isn't that
23 correct?

24 MR. HALL: Object to form. Vague.

25 THE WITNESS: That is correct, as I understand

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1 check the mental health status on the CIS. And if the
2 inmate had it, make sure it was done and that it was
3 commented on. And I was confident that she was very
4 proficient and could do that.

5 Q. Have you ever seen, that you recall, a
6 Mental Health DOR Recommendation that identified gender
7 dysphoria as a contributing factor in an incident?

8 MR. HALL: Object to form. Vague, overbroad.

9 THE WITNESS: I don't recall one.

10 Q. (BY MS. RIFKIN): Are there rules at ISCI
11 about the hairstyles that female officers can wear in
12 the prison?

13 A. For uniform or nonuniform staff?

14 Q. Let's start with uniform staff.

15 A. There was. I believe it's just recently
16 been changed.

17 Q. What was it? Do you recall?

18 A. That hair had to be up. We had what was
19 called a yoke of the collar, which is a seam that was
20 across the shoulder blades, that the hair had to be up
21 above that yoke.

22 Q. And what about for a nonuniform staff, was
23 there or is there a policy about hairstyles?

24 A. Not hairstyles, just dress in general.

25 Q. What were those rules?

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1 A. That's correct.

2 Q. For eight years?

3 A. That's correct.

4 Q. And that's where you were sort of a more
5 frontline correctional officer and other staff rather
6 than a topline administrator; is that fair?

7 A. I went down as a shift commander, and then
8 became an employment coordinator at the work center.
9 And then I was the chief of security, basically a
10 captain's role.

11 Q. Okay. So were you ever a correctional
12 officer at PWCC?

13 A. I was not.

14 Q. So you were a shift commander, employment
15 coordinator, and acting chief of security, which is
16 equivalent to captain kind of role?

17 A. Correct.

18 Q. Okay. And in your experience at PWCC, was
19 there a policy at PWCC as far as how women at PWCC,
20 women prisoners, could wear their hair?

21 A. No.

22 Q. And in your experience, were women at PWCC
23 allowed to wear makeup?

24 A. They were.

25 Q. Was there a policy as far as how much

Keith Yordy - October 1, 2018

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1 makeup or what kind of makeup?

2 A. No. Just had to be theirs.

3 Q. And in your experience, was there any
4 sexual activity between prisoners at PWCC?

5 A. There was.

6 Q. Are you able to make a comparison as to the
7 amount of sexual activity at PWCC versus ISCI based on
8 your experience as a supervisor?

9 MR. HALL: Object to form. Vague.

10 MR. EATON: Join.

11 THE WITNESS: Well, I would say the -- sexual
12 activity was different between the two facilities.

13 Q. (BY MS. RIFKIN): What do you mean by that?

14 A. Women at PWCC, it was more relationship
15 based, handholding, hugging, kissing, which created the
16 problem in the facility.

17 And then at a men's facility, it's a sexual
18 act, gratification of intercourse, basically.

19 Q. And in your experience, if this would have
20 been part of your experience at PWCC, were you aware of
21 any women housed at PWCC getting DORs for sexual
22 activity or sexual contact?

23 A. There was.

24 MS. RIFKIN: All right. Let me just take a
25 minute to figure out if I've got anything.

1 REPORTER'S CERTIFICATE

2 I, JEFF LaMAR, CSR No. 640, Certified Shorthand
3 Reporter, certify:

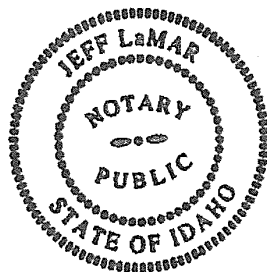
4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which
6 time the witness was put under oath by me.

7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me
9 or under my direction.

10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability.

12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this
16 5th day of October, 2018.



23 JEFF LaMAR, CSR NO. 640

24 Notary Public

25 Post Office Box 2636

Boise, Idaho 83701-2636

My commission expires December 30, 2023

Yordy Dep.
Exh. 2

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

RECEIVED

Offender Name: Adree Mason Edmo IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISCI 110A0513 APR 02 2014 Date: 4-02-14
 To: ISCI Warden Yordy
 (Address to appropriate staff. Person most directly responsible for this issue or concern.)

Issue/Concern: Per policy 316, Section #5: Offender
Concern Forms, etc., I am submitting this
concern and letter in a sealed envelope regarding
a confidential issue.
 (Description of the issue must be written only on the lines provided above.)

Offender signature: Adree Mason Edmo

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID # AY40 Collected/Received: 4-2-14
 (Date collected or Received)

Reply: I will ask my assistant to schedule you for a
meeting in a couple of weeks

Responding Staff Signature: KDY-S Associate ID # WARDEN'S OFFICE Date: 4-7-14

Pink copy to offender (after receiving staff's signature),
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender).
 Appendix A 316.02.01.001
 (Appendix last updated 2/14/12)

PRT3NCRCF

offender Adree Mason Edmo for the sexual inappropriate remarks made towards
 and my first hand witness to the statement made.

Offender Adree Mason Edmo is also a Gender Dysphoric offender housed
 with me in the behavioral health unit.

Since my arrival back from Idaho Correctional Institution-Orofino
 I have been discriminated against, as well as Adree Mason Edmo for being
 a gender of female.

I am prospecting legal action against you and subsidiary
 officials for this specific discrimination, as well as other
 officials acting in concert with you and Idaho Department of
 Corrections.

I believe this to be an important matter for you to address
 with me before litigation occurs.

I am willing to discuss the specific incidents that are ongoing
 and causing me intense psychological problems detrimental to
 my ability of rehabilitation.

Offender Adree Mason Edmo is also willing to submit a statement of the
 incident of March 01, 2014.

Very Respectfully,

Adree Mason Edmo

MASON DEAN EDMO N.K.A. ADREE MASON EDMO

DATE: April 02, 2014
TO: Idaho State Correctional Institution; Warden Yordy
FROM: MASON DEAN EDMO N.K.A. ADREE MASON EDMO IDOC# 94691
RE: Gender Discrimination, sexual harassment and retaliation

Idaho State Correctional Warden Yordy,

I am a offender housed in the behavioral health unit # 16 here at ISCI,

I am diagnosed with Gender Identity Disorder, or Gender Dysphoria which causes me serious dysfunction in my life of normal activities.

On March 02, 2014, I was taken to unit 8, segregated housing unit for allegations of threatening correctional officer Johnson.

No disciplinary action was taken. I was in unit 8 for approximately 14 days as pre-hearing segregation (PHS) status.

On March 01, 2014, Correctional Officer Johnson made sexual remarks towards another offender housed within the same cell as me, Offender

The allegation of a threat towards an officer was merely retaliation for the sexual inappropriate remarks made towards offender and my first hand witness to the statement made.

Offender is also a Gender Dysphoric offender housed with me in the behavioral health unit.

Since my arrival back from Idaho Correctional Institution-Orofino I have been discriminated against, as well as for being a gender of female.

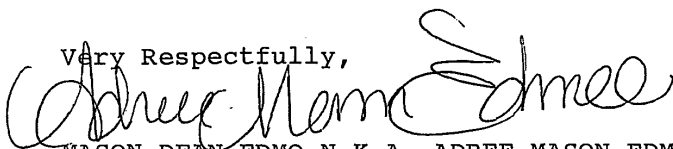
I am prospecting legal action against you and subsidiary officials for this specific discrimination, as well as other officials acting in concert with you and Idaho Department of Corrections.

I believe this to be an important matter for you to address with me before litigation occurs.

I am willing to discuss the specific incidents that are ongoing and causing me intense psychological problems detrimental to my ability of rehabilitation.

Offender is also willing to submit a statement of the incident of March 01, 2014.

Very Respectfully,



MASON DEAN EDMO N.K.A. ADREE MASON EDMO

Warden's Weekly Appointments

April 17, 2014

Friday, 1:00 PM to 2:00

Visiting Courtroom

Edmo #946917 1:35

- Staff concerns in BHU unit 16 – states being harassed on daily basis by staff in the unit
- States as a GID offenders it is behaviorism that cannot be helped or stopped
- Asked what is the difference between noticeable breast and style of hair
- States not allowed to wear hair in a ponytail and see not harm
- States Co's making inappropriate comments (Creale)

Warden

- Concerning hair style and PREA – policy states required to lower tension in a prison and keeping safe
- Behavior can put offender at risk and we are liable
- No constitutional right to wear hair the way offender wants, need to assist in helping to keep safe from harm
- Asked how he would run things to house GID offenders
 - Response – to allow offenders to present themselves they naturally felt comfortable to do so, yet house them where safe
 - Explained at ISCI that would have to be Ad Seg – doesn't want to do that, need to assist in helping (total package is the concern) wearing makeup, feminine hair styles put offenders at risk unnecessarily

NOTES: Nothing would resolve – accusation of offender being singled out by staff, meeting concluded. The offender had stated a law suit was being filed.

Yordy Dep.
Exh. 3

EXHIBIT 5



IDAHO DEPARTMENT OF CORRECTION

Disciplinary Offense Report

Offender Name: EDMO, MASON DEAN	Offender Number: 94691	DOR #: 150824
Offense Facility: ISCI	Report Date: 02/07/2015	Reporting Staff: BOLLMAN, ROBERT G. #4208
Offense: DISOBEDIENCE TO ORDERS 2	Class: CLASS B	Enhancement: NONE
Date/Time of Offense: 02/07/2015 07:54	Place of Offense: UNIT 9	
Description of Offense: On 02/07/15 at 0754 I noticed Offender Edmo #94691, have his hair in a bun that was above ear line which violates policy 325.02.01.002. I had Edmo called out to the foyer so I could address the issue. I gave Edmo a direct order to stay within policy with his hair style. Edmo did fix the issue but became upset and stating that I was threatening him. After returning to the tier Edmo went back to his cell then came out to the A-tier dayroom with his hair back in a high pony tail above the ear line which still violates policy 325.02.01.002 and openly disobeyed the orders that I gave him less than 15 minutes prior. End of report.		
Description of Evidence:		
Reviewing Supervisor: HOUSE, STAN #2003	Date/Time Reviewed: 02/08/2015 06:00	
Delivering Staff: BIGELOW, MICHAEL #1778	Date/Time Delivered: 02/08/2015 08:38	
Staff Hearing Assistant:	Assistance:	
Witness statements were received for this hearing:	Yes [] No []	
Scheduled Hearing Date: 02/11/2015	Final Hearing Date: 02/11/2015	Disciplinary Hearing Officer: LEE, BENJAMIN K. #6103
Offense: DISOBEDIENCE TO ORDERS 2	Offender Plea: ADMIT	Finding: CONFIRM
Sanctions: DETENTION	Amount: 5 day(s)	End Date: 02/12/2015
Interventions: NO RECORDS FOUND	End/Due Date:	
Administrative Review Authority: ROSENTHAL, TERRIE #3931	Review Date: 02/12/2015	Review Finding: AFFIRM
Appellate Authority: YORDY, HOWARD KEITH #3879	Appeal Date: 02/14/2015	Finding Date: 03/04/2015
Appellate Finding: AFFIRM		
Offender Appeal Details: Appeal processed on 2/19/15. I am appealing this DOR's sanctions of five days, plus additional four days, total of 9 days of segregation for behaviors associated with my mental illness of gender dysphoria. I believe sanctions of segregation is quite		

Date: 04/24/2017 10:33

Created By: kosorio

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CIS/Facilities/Main/Discipline/Disciplinary Offense Report

IDOC_C_pg.27

EXHIBIT 5

disproportionate for the offense of disobedience to orders of not having my hair below ear level.
Appellate Comments: Staff gave you direction you refused to follow. Such open defiance of staff's orders are a serious infraction in our facility. You may challenge staff's orders but you don't have the option not to follow them because you don't agree with them. The sanctions remain. Warden Yordy

Case 1:17-cv-00151-BLW Document 142-1 Filed 10/26/18 Page 67 of 119

Case 1:17-cv-00151-BLW Document 101-15 Filed 09/17/18 Page 2 of 11

EXHIBIT 5



IDAHO DEPARTMENT OF CORRECTION

RECEIVED BY

Disciplinary Offense Report

JUL 24 2016
ISCI RECORDS

Offender Name: EDMO, MASON DEAN	Offender Number: 94691	DOR #: 164886
Offense Facility: ISCI	Report Date: 07/26/2016	Reporting Staff: SHERFEY, TYLER #A848
Offense: DESTRUCTION OF PROPERTY UNDER \$25	Class: CLASS C	Enhancement: NONE
Date/Time of Offense: 07/26/2016 06:34	Place of Offense: LAUNDRY	
Description of Offense: On 7/26/16 two bras and one pair of briefs came to laundry. All items had been altered by the cutting and removal of material and sewing to create patterns in the bra straps and to turn the briefs into thong underwear. The bra was tagged with Inmate Edmo's name and IDOC # and the sizes of all of the altered items matched clothing that Inmate Edmo was issued. It is apparent that these actions are deliberate because the cuts are clean as if a pair of scissors or another sharp instrument was used to cut the fabric. Also, the area and shape of the cuts are similar to a "V" neck and the back straps sewn together in a specific pattern. All of the items listed above are completely separate from the bra that was found on 7/14/16 also altered and tagged with Edmo's name and IDOC #. Because of the alteration of these items they are no longer suitable for use and will be discarded. The cost of two new bras is \$7.14 and the cost of a pair of briefs is \$1.02, therefore, \$8.16 is being requested as restitution.		
Description of Evidence: Picture of damaged bras and briefs attached.		
Reviewing Supervisor: HOUSE, STAN #2003	Date/Time Reviewed: 07/27/2016 06:00	
Delivering Staff: ROMAN, RODOLFO NMI #1736	Date/Time Delivered: 07/27/2016 07:32	
Staff Hearing Assistant:	Assistance:	
Witness statements were received for this hearing:		Yes [] No [X]
Scheduled Hearing Date: 08/02/2016	Final Hearing Date: 08/02/2016	Disciplinary Hearing Officer: CHRISTON, BICK A #1379
Offense: DESTRUCTION OF PROPERTY UNDER \$25	Offender Plea: DENY	Finding: CONFIRM
Sanctions: RESTITUTION	Amount: \$8.16	End Date:
Interventions: NO RECORDS FOUND	End/Due Date:	
Administrative Review Authority: ROSENTHAL, TERRIE #3931	Review Date: 08/04/2016	Review Finding: AFFIRM

Date: 08/24/2016 07:31

Created By: jwhittin

Page 1 of 2

CIS/Facilities/Main/Discipline/Disciplinary Offense Report

Jm

IDOC_C_pg.48

EXHIBIT 5

Appellate Authority: YORDY, HOWARD KEITH #3879	Appeal Date: 08/09/2016	Finding Date: 08/22/2016	Appellate Finding: AFFIRM
Offender Appeal Details: This DOR should be dismissed and purged from my record because IDOC / Warden Yordy is deliberately indifferent to my serious medical condition of gender dysphoria by denying me female panties which are necessary and appropriate for my gender dysphoria symptoms. I would not have to modify my undergarments for additional support for tucking my testicles. I don't believe I should not have to pay the restitution of \$8.16 without verifying that amount to receipts IDOC pays for such items. The receipt for such items was not in the DOR, therefore the restitution should be dismissed because no physical documentation was submitted.			
Appellate Comments: You clearly destroyed undergarments that had to be replaced. The cost of the items are what we pay for them and is reasonable restitution. Warden Yordy			

Yordy Dep.
Exh. 5

Idaho Department of Correction 	Standard Operating Procedure	Title: Prison Rape Elimination		Page: 1 of 26
		Control Number: 325.02.01.001	Version: 4.0	Adopted: 08-17-2004

Jeff Zmuda, deputy director, approved this document on 04/02/2018.

Open to the public: ☒ Yes

SCOPE

This standard operating procedure applies to Idaho Department of Correction (IDOC) employees, inmates, contractors, and volunteers, and any person who is involved directly or indirectly in the care and custody of inmates.

Revision Summary
Revision date (04/02/2018) version 4.0: Rewritten to meet federal PREA standards. Extensive changes include new sexual abuse and sexual harassment definitions, updated training and education requirements, a new sexual abuse or contact checklist, new procedures for opposite gender announcements, unannounced rounds, reporting to inmates, incident reviews and retaliation checks.

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BOARD OF CORRECTION IDAPA RULE NUMBER

None

POLICY CONTROL NUMBER

325

PURPOSE

This document outlines the department's approach to preventing, detecting, and responding to sexual abuse and sexual harassment to support the IDOC zero-tolerance standard.

RESPONSIBILITY***Director***

The director is responsible for:

- Selecting a Prison Rape Elimination Act (PREA) coordinator to develop, implement, and oversee the department PREA program to reduce and prevent sexual abuse and sexual harassment in prisons and community reentry centers
- Reviewing and signing the annual reporting document

PREA Coordinator

The PREA coordinator is responsible for:

- Coordinating and leading department PREA compliance efforts
- Ensuring consistency in staff training and inmate education by approving all materials
- Updating PREA informational materials including posters, pamphlets, and videos
- Developing and maintaining memorandums of understanding (MOUs) and other resources to support facilities
- Acting as liaison between the department and PREA auditors
- Conducting an annual review of the [PREA Facility Staffing and Post Plan Review](#) form with PREA compliance managers

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- Developing data collection, reporting, and trend evaluation processes
- Reviewing facility processes and field memorandums to ensure consistency and compliance in PREA practices
- Maintaining statewide PREA reporting options, and ensuring PREA hotline calls are directed to prisons leadership, facility leadership, the PREA coordinator, and PREA compliance managers
- Maintaining a confidential folder on the internal server (PREA File) for retention of PREA investigations, notifications, tracking, and training and education materials. The folder is accessible to all facility PREA compliance managers and other select staff approved by PREA coordinator

Facility Heads

Facility heads are responsible for:

- Assigning a second in command to serve as the PREA compliance manager to oversee facility PREA compliance efforts
- Coordinating required sexual abuse incident reviews
- Implementing the [Prison Rape Elimination Field Memorandum–Prisons](#) or [Prison Rape Field Memorandum–CRC](#)
- Reporting alleged sexual abuse at other facilities to facility leadership

PREA Compliance Managers

PREA compliance managers are responsible for:

- Maintaining contact with the PREA coordinator
- Coordinating facility PREA compliance efforts and compiling audit files
- Coordinating facility housing efforts to ensure vulnerable inmates are not housed with potentially abusive inmates
- Coordinating the investigative, reporting to inmate, and retaliation-monitoring processes
- Leading the administrative sexual assault response team (SART)
- Reviewing PREA information posted in inmate units and provided to inmates to ensure it is current, adequate, and documenting the quarterly check in the facility PREA audit file
- Testing the PREA hotline from an inmate phone quarterly to ensure the line is working properly and triggering alerts to facility and prisons leadership

Human Resource Director

- Ensuring PREA training is included in new employee pre-service and support service academies and maintaining training records of the new employee trainings
- Notifying appropriate licensing bodies of staff sexual misconduct
- Responding to reference checks required by PREA standards

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Prisons Training Manager

- Ensuring that annual IDOC-approved PREA training is completed
- Maintaining training records for in-service PREA training

Volunteer Program Coordinator

- Ensuring IDOC-approved PREA training is completed for all volunteers entering prisons and maintaining training verification

Management Services Chief

- Ensuring all contractors providing services to, or housing inmates, comply with PREA standards
- Ensuring IDOC-approved PREA training is provided and documented by the contractor or IDOC
- Monitoring contracts for compliance to PREA standards

Medical Provider

- Stabilizing patient and sending the PREA nursing encounter form and medical history to hospital for off-site forensic exams
- Following evidence protocol to protect forensic evidence
- Ensuring appropriate medical treatment is provided, and medical follow-ups are completed

Clinical Supervisor

- Providing crisis intervention services as needed
- Ensuring mental health evaluation is completed, and appropriate treatment provided
- Providing access to outside care when deemed appropriate

STANDARD PROCEDURES**1. General Statement**

The department aggressively responds to, investigates, and supports the prosecution of incidents of sexual abuse and sexual harassment in all department facilities. The department uses internal administrative disciplinary processes and external partnerships with law enforcement and prosecutors to support and enforce the zero-tolerance standard for sexual abuse and sexual harassment.

The department cooperates with outside investigators, requests updates on progress in the cases, and requests that outside law enforcement responding to PREA investigations follow PREA requirements.

When the department conducts its own investigations into allegations of sexual abuse and sexual harassment, it is done promptly, thoroughly, and objectively for all allegations, including third party and anonymous reports.

The department increases awareness of safe reporting mechanisms through education of staff, inmates, volunteers, vendors, and contractors, to create institutional cultures that discourage sexual abuse and sexual harassment.

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The department separates, where appropriate, and carefully monitors both sexually abusive inmates and vulnerable inmates to reduce the incidence of sexual abuse and sexual harassment through classification, housing assignment, review of new technologies, and improvements to institution architecture where feasible.

Sexual contact between staff and inmates, or volunteers, contractors and vendors and inmates, regardless of consensual status, is prohibited and subject to administrative disciplinary sanctions and criminal prosecution. (See *Sexual Misconduct with Offenders*, Policy 219.)

The department collects data to track accurately sexual abuse, and uses the information to improve operations, employee training, inmate orientation, and services toward a sustainable zero-tolerance standard.

The department protects the confidentiality of the victim of sexual abuse and provides available services necessary to help with recovery.

2. Inmate on Inmate Consensual Contact

Before an investigation, it is often unknown if sexual contact between inmates is sexual abuse or consensual sexual activity. When it is determined inmate on inmate sexual contact is consensual, the procedure converts to disciplinary action based on *Disciplinary Procedures for Inmates*, SOP 318.02.01.001. Consensual activity between inmates is a rule violation, not sexual abuse.

3. Prevention

Preventing sexual abuse includes many core correctional practices such as direct supervision, camera surveillance and an expectation of professional behavior for staff and appropriate behavior for inmates.

Unhealthy dynamics that require staff intervention include verbal harassment, protection offers, gifts, favors, rule violations, signs of coercion, or other attempts to establish power and dominance over others.

Organizational Structure

IDOC administrative prevention efforts include designating a PREA coordinator and PREA compliance managers with sufficient authority to oversee changes required to enhance prison safety.

Staffing and Post Plan

The department ensures that each facility develops and documents a staffing and post plan that provides for adequate levels of staffing to protect inmates against sexual abuse. Any deviations from the plan must be documented in staffing logs. The PREA coordinator and PREA compliance managers review staffing annually.

Unannounced Supervisory Rounds

Institutional leadership, including lieutenants, program managers, and above, must conduct and document in unit logs random, unannounced rounds to deter staff sexual abuse and sexual harassment. Unannounced rounds will be conducted randomly on all shifts and units to enforce the IDOC's zero tolerance standard. Staff is prohibited from alerting other staff members that the supervisory rounds are occurring. Community reentry centers and work camps are not required to perform and log unannounced supervisory rounds.

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Presence of Opposite Gender Staff, Contractors, and Volunteers

Opposite gender staff, contractors, and volunteers must announce their presence when entering a living area. A living area is an area where inmates are likely to be showering, performing bodily functions, or changing clothes. In secure facilities, this is the entry point into a distinctive living area, sometimes described as the entry door. At community confinement facilities, community reentry centers and the St. Anthony Work Camp, this is the entry threshold into the restroom area. Such an announcement must be made every time a staff member or visitor of the opposite gender enters the living area, unless another opposite-gender staff member or visitor is visibly present in the living area at the time of entry.

Opposite gender staff must verbally announce “male on tier,” “female on tier,” or similar professional language. The announcement will be made in a normal voice, appropriate to the level of activity in the living area.

- Standardized signs outside living areas remind opposite gender staff members to announce their presence when entering.
- Inmates with disabilities will be advised of the announce procedures in a method appropriate to their disability.

Inmates must be given an opportunity to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in emergency circumstances or when such viewing is incidental to routine cell checks. This includes viewing via surveillance systems.

Physical Plant and Technology

The IDOC must consider how design and technology enhance the department’s ability to protect inmates from sexual abuse:

- When designing or acquiring any new facility
- When planning any substantial expansion or modification of existing facilities
- When installing or updating a video monitoring, or other monitoring technology

4. Training

To be most effective in providing a safe environment, IDOC staff members must recognize the signs of sexual abuse and sexual harassment and understand their responsibility in the detection, prevention, response and reporting of alleged sexual abuse or sexual harassment of inmates.

The PREA coordinator ensures that all IDOC PREA training meets PREA standards and approves all PREA training materials. The facility training coordinator ensures training is properly delivered and documented.

Staff, volunteers, and contractors must verify by signature, or electronic confirmation, that they have received and understand the PREA training.

Training records for IDOC-delivered pre-service and in-service training for IDOC staff are stored in the electronic Relias training system. Contractors maintain records of all contractor-delivered PREA training in their employees’ training files. The volunteer coordinator maintains training records.

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Staff and Facility-assigned Contractor Training

All department staff and facility-assigned contractors who may have contact with inmates receive mandatory face-to-face PREA training on the department's zero-tolerance standard for sexual abuse and sexual harassment every two years. The department provides refresher PREA information in years when trainings are not provided.

Required training includes:

- IDOC's zero-tolerance policy on sexual abuse and sexual harassment
- How to fulfill their responsibilities to prevent, detect, report, and respond to sexual abuse and sexual harassment
- Inmates' right to be free from sexual abuse and sexual harassment
- The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment
- The dynamics of sexual abuse and sexual harassment in correctional facilities
- The common reactions of sexual abuse and sexual harassment victims
- How to detect and respond to signs of threatened and actual sexual abuse
- How to avoid inappropriate relationships with inmates
- How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, and gender non-conforming inmates
- How to comply with laws that require mandatory reporting of sexual abuse to outside authorities

Volunteers, Contractors

The department trains volunteers and contractors on their PREA responsibilities based on the services they provide and level of contact they have with inmates. All volunteers and contractors are notified of the zero-tolerance standard for sexual abuse and sexual harassment and informed on how to respond if they observe or receive a report of sexual abuse or sexual harassment.

Limited service contractors and non-facility staff who will be unescorted while in facilities and have not received PREA training in the past year, must verify understanding of PREA information by reading and signing the [PREA Limited Services Training](#) form. A signed copy of the form must be kept in the facility's PREA training file.

Specialized Training

The department requires specialized training for medical and mental health professionals, and department investigators.

Medical and mental health care

Full and part-time medical and mental health care providers who regularly work in facilities must receive the following specialized training:

- How to detect and assess signs of sexual abuse and sexual harassment
- How to preserve physical evidence of sexual abuse

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- How to respond effectively and professionally to victims of sexual abuse and sexual harassment
- How and to whom to report allegations or suspicions of sexual abuse and sexual harassment

The medical contractor provides the necessary specialized medical training for its employees and maintains training records in the employee file. The medical contractor also provides PREA training rosters annually during compliance audits and sends them to the PREA coordinator when PREA trainings are completed.

Clinical Supervisors

Clinical supervisors ensure mental health care staff receive the specialized training and maintains training records on Relias.

Investigations

Staff investigating sexual abuse must receive the following specialized training:

- Techniques for interviewing sexual abuse victims
- Proper use of Miranda and Garrity warnings
- Sexual abuse evidence collection in confinement settings
- Criteria and evidence required to substantiate a case

The intelligence and investigations coordinator ensures investigators receive the training and maintains training records.

5. Inmate Education

During the reception and diagnostic unit (RDU) process, inmates receive initial information on PREA, followed by comprehensive education within 30 days. Inmates receive written and verbal information regarding:

- The department's zero-tolerance policy on sexual abuse and sexual harassment, and the inmates' right to be free from sexual abuse, sexual harassment, and retaliation for reporting such incidents
- How to avoid sexual contact in prison
- The risks and consequences of engaging in sexual activity
- How to report sexual abuse and sexual harassment
- What defines a false accusation and the consequences of making a false accusation
- How to obtain counseling services and medical assistance if victimized
- Outside emotional support services and confidentiality offered

Inmate education is available in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as those with limited reading skills. Only materials reviewed and approved by the PREA coordinator may be used. Approved education materials are on the internal server in the PREA folder that is accessed and managed by the PREA coordinator.

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Inmates must sign a training sheet confirming that they have received the training. The RDU manager logs a training verification in the offender management system (OMS) c-notes that states the following: Attended PREA orientation, watched video, discussed reporting methods, services available, expectations, and how to stay safe. The signed training sheets must be filed and retained for three years.

All inmates receive education when transferred to a different facility if facility-specific resources are different. Inmates must verify by signature that they have received PREA education and facility-specific PREA information.

6. Placement of Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Inmates

The department does not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely based on such identification or status.

The IDOC individually considers the management and placement of transgender or intersex inmates. Considerations on a case-by-case basis include the inmate's health and safety, operational management, security, and mental health needs. Serious consideration is given to the inmate's own views regarding safety.

Placement and programming assignments for each transgender or intersex inmate must be reassessed using processes outlined in *Gender Dysphoria*, SOP [401.06.03.501](#), and, where relevant, in accordance with the inmate's treatment plan.

Hygiene

Transgender and intersex inmates must be given the opportunity to shower separately from other inmates.

7. Youthful Inmates

Inmates under the age of 18, also known as youthful inmates, must not be placed in a housing unit in which they have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.

In areas outside of housing units, the department must maintain sight and sound separation between youthful inmates and adult inmates, or provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact. Direct staff supervision means that security staff are in the same room with, and within reasonable hearing distance of, the inmate.

The IDOC manages youthful inmates on a case-by-case basis at the direction of the chief of prisons or designee. When needed, the facility head will develop a written plan for short-term housing of a youthful inmate until permanent placement is located.

State law requires agencies notify the Idaho Department of Health and Welfare of any reported abuse involving a juvenile.

8. Reporting

Inmate Reporting

The department provides multiple methods for inmates to report sexual abuse, sexual harassment, retaliation by inmates or staff, staff neglect, or staff violation of responsibilities that may have contributed to such incidents.

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All reports of sexual abuse and sexual harassment must be investigated. Incidents involving potentially criminal acts are referred to law enforcement for investigation and potential prosecution.

The department does not rely on inmate interpreters to help inmates who are disabled, or have limited English proficiency report sexual abuse, unless a delay would compromise the inmate's safety. Whenever possible the department uses a staff member, or an alternative source such as the AT&T Language Translation Service: Language Line Service.

The best method of reporting is the quickest and safest method available to the inmate at the time. Generally, the best methods are:

- Verbal report to any staff member
- Written report to any staff member
- Voicemail report to the PREA hotline
- Concern form report to any staff member
- Grievance process

Confidential Reporting

Inmates can report sexual abuse or sexual harassment to the Idaho Sheriffs' Association (ISA). Mail to this reporting option is confidential in accordance with *Mail Handling in Correctional Facilities*, SOP 402.02.01.001. The inmate can request that the ISA remove identifying information, and keep the source of the information anonymous.

**Idaho Sheriffs' Association
3100 Vista Ave., Suite 203
Boise, ID 83705**

Family and Community Reporting

The department accepts and investigates reports of sexual abuse or sexual harassment made on behalf of an inmate.

The department website, www.idoc.idaho.gov, provides a telephone number and e-mail address for third party reporting outside of facilities.

The Helpline is 1-800-361-6286.

The email option is victimservices@idoc.idaho.gov.

The Helpline and email are checked during normal business hours.

9. Staff Reporting

All staff, volunteers, and contractors must immediately report verbally and in writing any knowledge, suspicion, or information received from any source regarding an allegation or incident of sexual abuse and sexual harassment to the shift commander. When the department learns that an inmate is at risk of imminent sexual abuse, immediate action is required by the shift commander to protect the inmate.

Staff, volunteers, and contractors must keep the report and its contents confidential, except as necessary to facilitate investigation of the allegation and administrative or criminal proceedings.

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The reporting staff, contractor, or volunteer must write an incident report before leaving the facility and forward it to the shift commander. If the allegation involves the shift commander or someone above the shift commander, or if staff require a private reporting method for any reason, the report must be directed to the department PREA coordinator or the special investigations unit (SIU).

Failure to Report

Any staff member, contractor, or volunteer found to have failed to report sexual abuse or sexual harassment of an inmate, retaliation by inmates or staff, staff neglect, or staff violation of responsibilities that may have contributed to such incidents is subject to disciplinary or other appropriate action, up to and including termination. Volunteers and contractors may be denied access to the facility for failure to report.

Reporting to Other Confinement Facilities

If an inmate reports being sexually abused while confined in another facility, either within or outside IDOC's jurisdiction, the shift commander must report the information directly to the facility head.

The facility head will notify the agency or facility head where the alleged abuse occurred. All notifications must be made within 72 hours and copied to the PREA coordinator. The PREA coordinator will log and file notifications in the PREA folder.

10. Response and Investigation

Sexual abuse and sexual harassment are considered a major incident and require immediate response in accordance with *Reporting and Investigation of Major Incidents*, SOP [105.02.01.001](#).

An investigator who has received PREA-required investigation training must interview all inmates involved in an allegation of sexual abuse. If an investigator cannot respond, the shift commander may conduct the initial interviews and take appropriate action based on the information available at the time. However, an investigator must conduct follow up interviews with the inmates involved as soon as possible. If the investigator finds additional or conflicting information, the investigator must initiate steps in accordance with this section.

Response Based on When the Incident Occurred

The amount of time that has lapsed between the abuse and the discovery or report affects specific steps of the response. If the alleged sexual abuse occurred within five calendar days, then forensic evidence can be obtained from the victim and the perpetrator.

If the alleged sexual abuse did not occur within five days, the basic response detailed in this section remains the same.

First Responder

When the department receives an allegation that an inmate was sexually abused, the first staff member to respond must:

- Separate the alleged victim and abuser, if they have not already been separated.
- Immediately contact the shift commander.
- Preserve and protect any crime scene until evidence is collected.

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- Request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating if the abuse occurred within five calendar days.
- Ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating if the abuse occurred within five calendar days.

If the first staff responder is not a security staff member, request that the alleged victim take no actions that could destroy physical evidence, and notify security staff.

The *PREA Sexual Abuse or Contact Checklist* provides step-by-step guidance for sexual abuse incidents.

Functional Roles and Responsibilities	Step	Tasks
Staff Member	1	Detects or learns of an alleged sexual abuse, or an alleged consensual sexual contact.
First Responder, Security	2	Ensure that the alleged victim is safe and separated from the alleged abuser. Notify the shift commander. Request that the alleged victim and ensure the alleged abuser do not take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, drinking or eating.
First Responder, Non-Security	3	Ensure that the alleged victim is safe. Request that the alleged victim not take any actions that could destroy physical evidence. Notify security staff immediately.
Shift Commander	4	Obtain the <i>PREA Sexual Abuse or Contact Checklist</i> , and begin the required documentation.
Shift Commander	5	Notify investigator.
Shift Commander	6	When inmates claim sexual activity is consensual, interview both inmates separately. If the interviews support possible sexual abuse, continue to step 7. If the interviews and evidence support that the allegation is unfounded, • Complete the applicable sections of the <i>PREA Sexual Abuse or Contact Checklist</i>, and forward the original checklist with all reports and documentation to the investigator, and copies to

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Functional Roles and Responsibilities	Step	Tasks
		the PREA compliance manager, facility duty officer, and PREA coordinator. If interviews and evidence support consensual activity between the two inmates, • Ensure that disciplinary procedures are followed in compliance with <i>Disciplinary Procedures: Inmate</i>, SOP 318.02 01.001. • Complete the applicable sections of the <i>PREA Sexual Abuse or Contact Checklist</i>, and forward the original of the checklist with all reports and documentation to investigator, and copies to the PREA compliance manager, facility duty officer, and PREA coordinator. If the interviews support that the allegation was unfounded or that the activity was consensual, the process ends here.
Shift Commander	7	If sexual abuse occurred within five calendar days, and a sexual assault forensic exam should be completed, the victim must be escorted to medical for immediate care in preparation for transport to the hospital. • Secure the alleged abuser in a cell with water turned off to preserve evidence • Collect the alleged abuser's clothing to maintaining a chain of custody in accordance with <i>Custody of Evidence</i>, SOP 116.02.01.001, until it can be turned over to the law enforcement agency with jurisdiction. • Ensure that the victim's clothing is collected before leaving the facility to maintain a chain of custody. • Contact local law enforcement and request an immediate investigation. • Notify the hospital that a possible rape victim is being transported and request that the hospital sexual assault response team (SART) be activated. (Transport in accordance with <i>Transports: Medical, Court, Family Emergency, and State</i>, SOP 322.02.01.001.)
Shift Commander	8	Activate the facility SART to coordinate response and ensure that victim receives timely on-site medical care for emergency needs, and is assigned a staff person for

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Functional Roles and Responsibilities	Step	Tasks
		mental health support.
Shift Commander	9	Request medical prepare all required documents for hospital transport.
Shift Commander	10	If the abuse did not occur within the last five calendar days, base the response on the following steps applicable to the situation.
Shift Commander	11	Secure the alleged abuser in a different unit than where the victim is housed.
Shift Commander	12	Notify the facility head or facility duty officer.
Facility Head or Facility Duty Officer	13	Provide guidance if required. When an allegation or circumstances require it, call the administrative duty officer to ensure department resources are deployed.
Shift Commander	14	Document the facility head contact on the <i>PREA Sexual Abuse or Contact Checklist</i> and implement guidance.
Shift Commander	15	Ensure that evidence is gathered for law enforcement investigation, based on guidance in <i>Custody of Evidence</i> , SOP 116.02.01.001 and as requested by law enforcement. Maintain the custody of evidence, until it is turned over to the law enforcement agency with jurisdiction.
Shift Commander	16	Notify the facility clinician or mental health professional (if not a member of SART).
Shift Commander	17	Complete and transmit a 105 incident report .
Shift Commander	18	Ensure that involved staff members, contractors, and volunteers, complete reports before they leave the facility.
Shift Commander	19	Ensure that medical discharge instructions from the hospital are delivered directly to facility medical staff and copies of the forensic exam summary are delivered to medical and investigations.
Shift Commander	20	Forward completed checklists to the facility PREA compliance manager, the facility duty officer, facility investigations, and PREA coordinator usually immediately, but within 72 hours.
PREA Compliance Manager	21	Create PREA incident action plan with administrative SART to best support the victim and investigation.
PREA Compliance Manager	22	Verify that a qualified mental health professional performed a risk and needs assessment within 24 hours in

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Functional Roles and Responsibilities	Step	Tasks
		accordance with this SOP.
PREA Compliance Manager	23	Update the PREA coordinator within 72 hours.

11. Staff Sexual Misconduct Allegations

Some Evidence

In sexual abuse cases involving a staff member, contractor, or volunteer, additional steps are required. If the initial review finds some evidence that staff-inmate abuse may have occurred or law enforcement is contacted, the shift commander must contact the warden or facility duty officer, the administrative duty officer (ADO) and special investigations unit (SIU).

SIU must accept the investigation and perform the staff and contractor interviews, or provide input to trained facility investigators on how to proceed with staff or contractor interviews in conformance with *Administrative Investigations*, SOP 150.01.01.006. The ADO will involve human resources staff as needed to ensure proper procedures are followed if a staff or contractor must be removed from the facility.

In SIU cases referred to law enforcement, SIU will request law enforcement updates on progress in open staff-inmate cases, and inform department leadership, facility leadership, and the PREA coordinator of key developments including case dismissal, referral for prosecution, indictments, convictions, and acquittals.

In sexual misconduct cases involving staff or contractors, SIU must send finding notifications to HR, the contractor, when relevant, and the PREA coordinator. Notifications to licensing boards will be sent by the employer and copied to SIU and the PREA coordinator.

SART and administrative SART actions supporting the victim must be completed according to policy guidance below.

Functional Roles and Responsibilities	Step	Tasks
Shift Commander	1	If the allegation involves a staff member or agent of the department and includes some evidence contact: - The facility head or facility duty officer (The facility head may notify the administrative duty officer) - The administrative duty officer - The special investigations unit
Shift Commander	2	Based on leadership input: - Contact local law enforcement <i>If staff, remove from facility, only after conferring with the facility head, ADO, and SIU</i>

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		If volunteer, remove from facility after conferring with facility head
Shift Commander	3	Forward completed checklists to the facility PREA compliance manager, the facility duty officer, facility investigations, SIU, PREA coordinator usually immediately, but within 72 hours.
Administrative Duty Officer	4	Make notifications required at department leadership level to include human resources.
Special Investigations Unit Chief	5	Monitor or oversee all staff and contractor interviews in sexual misconduct cases
Special Investigations Unit Chief	6	Seek updates, and provide timely updates on staff sexual misconduct cases to department leadership, facility leadership, and the PREA coordinator.
PREA Compliance Manager	7	Ensure administrative SART actions are completed after consultation with SIU.

No Evidence

When a staff-inmate sexual abuse allegation is made, but the initial review finds no evidence supporting the allegation, the shift commander will complete and forward the PREA checklist, and reports to investigations and the PREA compliance manager for prioritization and assignment. The shift commander will consult facility leadership on how to separate the alleged victim and accused staff member until the investigation is completed. Temporarily reassigning a staff member to another unit or another facility is usually appropriate.

The shift commander will forward PREA checklists for all staff-inmate allegations of sexual abuse and sexual harassment to SIU in addition to the other required distribution.

Functional Roles and Responsibilities	Step	Tasks
Shift Commander	1	If the allegation involves a staff member or agent of the department but no immediate threat exists, contact the facility head or facility duty officer.
Shift Commander	2	Assign an investigator to collect information and evidence.
Shift Commander	3	Ask the facility head or duty officer if the staff member or contractor should to be reassigned to a different unit than where the victim is housed, or removed from the facility. If volunteer or visitor, remove from facility after conferring with facility head
Shift Commander	4	Forward completed checklists to the facility PREA compliance manager, the facility duty officer, facility investigations, SIU, and PREA coordinator usually immediately, but within 72 hours.

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Investigator	5	Gather initial evidence and information reports. Keep SIU informed of process.

12. Sexual Assault Response Team (SART)

The facility leader must detail a facility-specific coordinated response in the standardized *Prison Rape Elimination FM*. The FM must name a PREA compliance manager; identify resources to support the initial response and administrative SART, and community SART. When a facility does not have the required response team members on staff, the FM must identify how those duties will be covered. The FM will be updated annually or in a timely manner when changes occur. The initial response SART usually includes:

- Shift commander
- Medical staff
- Mental health staff
- Investigator

The initial response SART is responsible to work with the shift commander or duty officer for the immediate management of the victim to include medical evaluation, crisis intervention, and temporary housing decisions.

Alleged sexual abuse victims should not be housed on the same unit as the alleged abusers. Sexual abuse victims should be housed in the least restrictive environment possible and should be allowed to retain personal property that does not present a legitimate security concern. After a sexual abuse exam has been completed (or refused), victims should be given access to a shower, food, and drink. Telephone calls to family, visits from clergy, community victim services coordinators, etc., should be allowed whenever possible.

If initial response SART members cannot agree on a housing assignment, the shift commander must notify the facility duty officer. The facility duty officer then decides the sexual abuse victim's housing assignment.

The administrative SART assumes responsibility after the initial response, and establishes the PREA incident action plan to ensure a victim-focused response. The administrative SART usually includes:

- PREA compliance manager
- Investigator
- Clinical supervisor, or mental health professional
- Medical representative

The *PREA Incident Action Plan* should be completed within 72 hours of the initial response. The action plan ensures the victim is supported and after-incident processes are completed in a timely manner. For sexual abuse incidents, the plan requires medical and mental health follow-up, inmate reporting, retaliation checks, and an incident review.

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SART ensures a balanced multi-disciplinary team approach is used when making decisions regarding a sexual abuse victim in the immediate crisis and in providing follow-up support services.

13. Medical and Mental Health Services

Victims of sexual abuse receive prompt access to emergency medical treatment and crisis intervention based on the nature and scope of the abuse as determined by a medical or mental health professional. These services are provided to the victim without cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

Forensic Services

Facility medical staff must stabilize and provide emergency medical care prior to transport for a forensic exam. Medical staff must send the victim's medical history and the PREA Nursing Encounter (medical records form) to the receiving hospital, but no forensic evidence should be collected by facility medical staff.

The forensic medical exam will be performed by a sexual assault forensic examiner (SAFE) or sexual assault nurse examiner (SANE) at a local hospital. A forensic exam can be completed by qualified medical practitioners at the local hospital if a SAFE or SANE provider is unavailable. The victim may refuse the forensic exam.

A community victim services advocate provides emotional support, and explains the forensic exam process.

Facility Forensic Follow-up

Hospitals send sealed medical discharge instructions with the patient. The facility medical staff ensure medical follow-up is completed. The nurse must notify the on-call facility medical provider in a timely manner as needed and ensure the provider is aware a forensic exam was completed.

Medical Services

When sexual abuse is reported five calendar days or more after the incident, facility medical staff provide appropriate treatment to include a medical assessment, mental health referral, treatment of all injuries, appropriate baseline labs, and prophylaxis for sexually transmitted diseases as described in A National Protocol for Sexual Assault Medical Forensic Examinations and the Centers for Disease Control (CDC) Treatment Guidelines.

All appropriate follow-up exams and booster vaccines must be scheduled and completed based on the CDC treatment guidelines. Referrals for continued care must be provided upon release from custody as needed.

Victims of sexually abusive vaginal penetration must be offered pregnancy tests. If a sexual abuse results in pregnancy, sexual abuse victims must receive comprehensive information about, and timely access to pregnancy-related medical services.

When a reportable infectious disease, such as HIV, is detected, the medical provider is responsible for reporting it to the state health authority as required by law.

Functional Roles and Responsibilities	Step	Tasks

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Functional Roles and Responsibilities	Step	Tasks
Medical provider	1	Stabilize and assess the victim using the <i>PREA Nursing Encounter Form</i>. If no off-site treatment and no forensic exam is required complete: • Medical assessment • Treat all injuries • Perform appropriate baseline labs • Administer prophylaxis for sexually transmitted diseases • Perform pregnancy testing when appropriate
Medical provider	2	When hospital transport is required, send the <i>PREA Nursing Encounter Form</i> and victim's medical history to the hospital with the transport officer.
Medical provider	3	Ensure the medical discharge instructions and a copy of the forensic exam summary are received and required follow-up scheduled and completed.
Medical provider (if nurse)	4	Ensure on-call medical provider is informed in a timely manner that an inmate was sent for a forensic exam.
Medical provider	5	Schedule and complete appropriate medical follow-ups.

Mental Health Services

Facility mental health providers must provide a mental health evaluation and appropriate treatment to inmates who have been victimized by sexual abuse while incarcerated. Services provided must be based on the inmate's identified clinical need.

Immediate Crisis Intervention

When a SART member is notified of a report of sexual abuse, that individual will notify the facility clinical supervisor. The clinical supervisor assigns a mental health professional to conduct a screening and complete a *PREA Mental Health Progress Report* as quickly as possible, but no later than within 24 hours of receiving a sexual abuse report.

Ongoing Response

A follow-up mental status assessment will be performed within 30 days to monitor for delayed trauma reaction. The same standards as the first assessment apply.

If the inmate is suffering from an acute stress reaction as the result of sexual abuse or victimization, the clinician will determine the level of need for services. In most cases, the inmate will be referred to current facility mental health services. If a mental health professional determines an inmate's mental health needs cannot be met by the facility services, the clinical supervisor is to consult with the Chief of Psychology, who may

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determine that a service provider outside the employment of IDOC is to be contracted to provide assessment and stabilization services for individual therapy to last approximately six sessions. The therapeutic goal of such care is preparation to participate in longer term mental health services at the facility.

Confidentiality and Mandatory Reporting

Information gathered in the mental health assessment must be managed according to laws and policies regarding confidentiality of protected health information.

All staff and contractors, including medical and mental health professionals, are required to report immediately in-custody sexual abuse. State law requires agencies notify the Idaho Department of Health and Welfare of any reported abuse involving a juvenile or vulnerable adult.

Functional Roles and Responsibilities	Step	Tasks
Mental health professional	1	Provide immediate crisis intervention to help stabilize the victim. - When indicated, follow 315, <i>Suicide Risk Management</i> - Participate in SART consultation on housing options to ensure the safety of the inmate.
Mental Health Professional	2	Within 24-hours after an allegation, complete mental health status examination. The encounter should be entered into the medical record as a subjective, objective assessment plan (SOAP) charting format note.
Mental Health Professional	3	Submit a <i>PREA Mental Health Progress Report</i> to the clinical supervisor, chief psychologist, and PREA compliance manager to verify the evaluation is complete.
Mental Health Professional	4	Provide mental health services at level of care identified. Or When indicated, submit an outside counseling request to the clinical supervisor.
Clinical Supervisor	5	Review outside counseling request and consult with the chief psychologist
Mental Health Professional	6	When treatment is completed, the responsible treatment professional submits a final <i>PREA Mental Health Progress Report</i> to the chief psychologist for final review, with copies to the facility clinical supervisor, and PREA compliance manager to confirm PREA treatment is complete.
Chief Psychologist	7	Reviews termination summary on all outside counseling services. Approves additional services if indicated.

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14. Confidential Support Services

Inmates are provided with access to outside victim advocates for emotional support services related to sexual abuse. The department allows reasonable communication between inmates and support organizations in as confidential a manner as possible.

Staff must inform inmates the extent to which communications are monitored before giving inmates access to outside victim advocates and the extent to which reports of abuse are forwarded to authorities in accordance with reporting laws.

The PREA coordinator will develop support service agreements with community providers willing to participate, maintain memorandums of understanding for services available, and maintain updated support service provider lists for inmate and staff access, and document contact with providers unable to participate.

15. Protection against Retaliation

The department strictly prohibits retaliation against any person for reporting or cooperating in an investigation of sexual abuse or sexual harassment. Any inmate or staff member who reports sexual abuse or sexual harassment, or who cooperates with any such relative investigation(s), or, who fears retaliation, must be protected.

The facility PREA compliance manager must assign facility staff to monitor the conduct and treatment of inmates or staff who reported the sexual abuse of inmates to determine if any activities suggest retaliation by inmates or staff and act promptly to remedy any such retaliation. The *PREA Retaliation Monitoring Form* is used for 90 days to track for retaliation. Completed forms are filed at the facility in the PREA compliance manager audit file.

If a sexual abuse or sexual harassment allegation is unfounded, retaliation monitoring can end, unless the facility head determines that further monitoring is warranted. Potential protective measures for inmates who fear retaliation include:

- Monitoring disciplinary offense reports
- Direct monitoring for unusual or abnormal behavior
- Housing reassignment or transfers
- Program changes

Possible retaliation by inmates must be reported to the facility head for further investigation and possible disciplinary action.

Protective measures for staff who fear retaliation include:

- Monitoring for unwarranted and apparent retaliatory performance reviews
- Monitor job reassignments that appear retaliatory

Suspected retaliation must be reported to the facility head and human resources director for further investigation and possible disciplinary action, based on procedures in *Corrective and Disciplinary Action*, SOP 205.07.01.001. Retaliation, in and of itself, is grounds for disciplinary action up to and including termination.

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16. Findings and Notifications

Findings

When the sexual abuse investigation is completed, facility leadership will determine findings based on the evidence.

- **Substantiated** means an allegation was investigated and determined to have occurred based on a preponderance of evidence.
- **Unsubstantiated** means an allegation was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- **Unfounded** means an allegation was investigated and determined not to have occurred.

In unfounded cases, sanctions for false reporting will be considered. A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred must not constitute a false allegation, even if the evidence does not substantiate the allegation.

Notifications

The PREA compliance manager must ensure the victim is notified of key events, as noted below, **during** and **after** a sexual abuse investigation. All notifications will be documented on the [PREA Reporting to Inmate Form](#). The *PREA Reporting to Inmate Form* must be signed by the staff delivering the notification. The signed *PREA Reporting to Inmate Form* is then filed in the PREA folder.

For all allegations, the victim is notified of the investigation findings, and when criminal indictments or convictions occur. Findings for investigations involving outside agencies or SIU must be delivered in the same manner with the PREA coordinator providing the information for delivery to the victim.

For investigations involving allegations against **staff**, the victim is also notified when the following occurs:

- The accused staff member is no longer posted within the victim's unit.
- The accused staff member is no longer employed at the facility.

Notifications are no longer required after the inmate is released from the custody of the department.

The PREA coordinator must review open PREA cases monthly, and notify PREA compliance managers of victims who have been transferred between facilities to ensure the victim continues to receive required services and notifications, unless the victim has requested otherwise.

17. Sexual Abuse Incident Reviews

The facility head or designee must conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation usually within 30 calendar days after the investigation ends, unless the allegation was unfounded.

For substantiated and unsubstantiated incidents, the facility head must assemble a review team comprised of upper-level facility management, which will seek input from:

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- Line supervisors
- Investigations
- Medical and mental health staff

The team must assess all factors outlined in the [PREA Sexual Abuse Incident Review](#), provide recommendations for improvement, and submit the report to the facility head and PREA compliance manager. The facility head must implement the recommendations for improvement, or document the reasons for not doing so and forward the completed incident review form to the PREA coordinator.

The PREA coordinator will compile a summary of incident reviews, address any departmental changes needed, and provide an annual review to the department's leadership team.

The PREA compliance manager ensures the *PREA Sexual Abuse Incident Review* and investigation file are filed in the PREA folder.

18. Sanctions

All substantiated sexual abuse incidents are referred to law enforcement for possible prosecution.

Staff

Staff members are subject to disciplinary sanctions, up to and including termination, pursuant to *Sexual Misconduct with Offenders*, Policy 219, for:

- Engaging in sexual abuse of an inmate
- Failing to report to a supervisor any suspected or known sexual abuse of an inmate by another inmate, or by a staff, contractor, or a volunteer
- Engaging in retaliatory conduct against a party involved in a sexual abuse or sexual harassment complaint

A staff member who has engaged in sexual misconduct with an inmate may be subject to criminal prosecution. Information regarding termination of staff for sexual misconduct or sexual harassment is also reported to relevant licensing bodies.

Contractors and Volunteers

Any contractor or volunteer who engages in sexual abuse must be prohibited from contact with inmates and must be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

Sanctions for Inmates

Inmates involved in sexual abuse of other inmates can face criminal charges and IDOC administrative disciplinary action. Inmates are subject to IDOC disciplinary actions for false reports, sexual abuse, sexual harassment, and consensual sexual activity in accordance with *Disciplinary Procedures: Inmates*, SOP 318.02.01.001. Disciplinary actions may be taken even if an inmate is not criminally charged, criminal charges are dismissed, or the inmate is not convicted of the criminal charge.

If the sexual abuse was a staff member and an inmate, the inmate can face criminal charges if evidence indicates that a staff member did not consent to sexual contact.

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19. Data Collection and Review

The department must collect and review data on all incidents of sexual abuse occurring in correctional facilities. Annually, the data is used to assess and improve the effectiveness of sexual abuse prevention, detection, response policies, practices, and training.

The PREA coordinator aggregates the data to respond to the Survey of Sexual Violence conducted by the Department of Justice. The PREA coordinator also prepares an annual report that identifies problem areas, and corrective action or changes were implemented. The report, when approved by the director, is posted on the IDOC website, www.idoc.idaho.gov.

The data collected is securely retained and maintained for 10 years after the date of the initial collection.

DEFINITIONS

Community confinement facility: A correctional facility in which inmates reside while participating in gainful employment or employment search efforts. This definition includes St. Anthony Work Camp and community reentry centers, and is only used for SOP 325.02.01.001 and PREA-related purposes.

Inmate-Inmate Sexual Abuse, Level 1: Occurs if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse and includes any of the following acts:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
- Contact between the mouth and the penis, vulva, or anus.
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.

Inmate-Inmate Sexual Abuse, Level 2: Occurs if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse. Any other intentional touching either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Inmate-Inmate Sexual Harassment: Is repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another inmate.

Staff Sexual Misconduct, Staff-Inmate Sexual Abuse: Inmates cannot consent to sexual contact with staff. Sexual abuse of an inmate by a staff member, contractor, or volunteer includes the following categories of staff sexual misconduct and occurs with or without consent of the inmate:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
- Contact between the mouth and the penis, vulva, or anus.
- Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.

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- Penetration of the anal or genital opening, however, slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- Any other intentional contact, either directly or through the clothing of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in bullets above in this section.
- Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.
- Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate by staff **for reasons unrelated to official duties**, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Staff-Inmate Sexual Harassment: Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Intersex: Means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sexual development.

Transgender: Means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

REFERENCES

[PREA Field Memorandum-Prisons](#)

[PREA Field Memorandum-CRCs](#)

[PREA Incident Action Plan](#)

[PREA Limited Services Training](#)

[PREA Mental Health Progress Report](#)

[PREA Retaliation Monitoring Form](#)

[PREA Reporting to Inmate Form](#)

[PREA Sexual Abuse Incident Review](#)

[PREA Sexual Abuse or Contact Checklist](#)

[PREA Staffing and Post Plan Review](#)

Prison Rape Elimination Act, Prison and Jail Standards, 28 C.F.R. Part 115

Policy 210, *Sexual Misconduct with Offenders*

Standard Operating Procedure 105.01.01.006, *Administrative Investigations*

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Standard Operating Procedure [105.02.01.001](#), *Reporting and Investigation of Major Incidents*

Standard Operating Procedure [116.02.01.001](#), *Custody of Evidence*

Standard Operating Procedure [205.02.01.001](#), *Corrective and Disciplinary Action*

Standard Operating Procedure [318.02.01.001](#), *Disciplinary Procedures: Inmate*

Standard Operating Procedure [322.02.01.001](#) *Transports: Medical, Court, Family Emergency, and State*

Standard Operating Procedure [401.06.03.501](#), *Gender Dysphoria*

Standard Operating Procedure [402.02.01.001](#), *Mail Handling in Correctional Facilities*

– End of Document –

Yordy Dep.
Exh. 7

IDOC Offender Concern Form

Offender Name: M. Edmo aka. Adree Edmo IDOC Number: 12/20/2016
 Institution, Housing Unit, & Cell: ISCI 13A5813 Date: 9/4/18
 To: ISCI H.S.A
 (Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: 12/14/18 I seen Dr. Alvise for Provider's Clinic. Dr. Alvise had ordered medication changes. When can I expect those changes in my medications?

(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

Staff signature: _____ Associate ID #: _____
 (Staff member acknowledging receipt)

Reply: NO REPLY

Responding staff signature _____ Associate ID # _____ Date _____

Distribution: Pink part returned to offender after receiving staff's signature. Original (white) and yellow forwarded to appropriate responding staff.
 Appropriate responding staff will complete reply field and return yellow part to offender. IDOC-ICF-3/07

Exh. No. 7
 Date 10/1/18
 Name Vorber
 M & M Court Reporting

**IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form**

EXHIBIT A.2

Offender Name: Mason Edmo IDOC Number: 941611
 Institution, Housing Unit, & Cell: ISCI 110P-344 Date: 6-20-13
 To: Deputy Warden Coburn
 (Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: Today @ 1pm Cpl. Payne-recreation pulled me into his office and told me my hair was too feminine and took a picture of my hair per your request. I feel ISCI-IDOC is harassing me because of my mental disorder - Gender Identity Dysphoria

(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

Collected/Received: _____ (Date collected or Received)

(Signature of Staff Member Acknowledging receipt) / Associate ID # _____

Reply: We have requested photos be sent to Administration at attention to have photos that may be in question and printing to determine what the proper plan of state and concerned what your hairstyle may be. We do not a security risk.

Responding Staff Signature: _____ Associate ID #: 6/21/13 Date: 6/21/13

Pink copy to offender (after receiving staff's signature).
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)

PRT3NCRCF

AE 0023

IDAHO DEPARTMENT OF CORRECTION Offender Concern Form	
Offender Name: <u>Edmo, Aaron</u>	IDOC Number: <u>94691</u>
Institution, Housing Unit, & Cell: <u>ISCI HSA Aaron Hofer</u>	Date: <u>07/10/16</u>
To: <u>ISCI HSA Aaron Hofer</u> (Address to appropriate staff. Person most directly responsible for this issue or concern)	
Issue/Concern: <u>You responded to my concern dated 6/24/16 re: panties that "Per IDOC" Jinx Stamps can be provided. Why is IDOC determining what is or isn't medically necessary - this directly violates Balla McP Access to Care/medical autonomy</u> (Description of the issue must be written only on the lines provided above.)	
Offender signature: <u>A. Edmo</u>	RECEIVED JUL 11 2016
Staff Section	
(Signature of Staff Member Acknowledging receipt) / Associate ID # <u>B702</u>	Collected/Received: <u>7-10-16</u> (Date collected or Received)
Reply: <u>Per grievance response from R Siegert - medical providers have determined that panties are not medically necessary.</u>	
Responding Staff Signature: <u>Aaron Hofer, HSA</u>	Associate ID #: <u>B702</u> Date: <u>7/10/16</u>
Pink copy to offender (after receiving staff's signature). Original and yellow to responding staff (after completing reply, yellow copy returned to offender). Appendix A 316.02.01.001 (Appendix last updated 2/14/12)	
PRT3NCRCF	

IDAHO DEPARTMENT OF CORRECTION Offender Concern Form	
Offender Name: <u>Adree Edmo</u>	IDOC Number: <u>94691</u>
Institution, Housing Unit, & Cell: <u>ISCI B335B</u>	Date: <u>07/10/16</u>
To: <u>Clinician Dunder</u> (Address to appropriate staff. Person most directly responsible for this issue or concern)	
Issue/Concern: <u>Dunder I had given you some paper for a gender change about 2 wks ago. Have you had time to get those to Dr Eliason?</u> (Description of the issue must be written only on the lines provided above.)	
Offender signature: <u>A. Edmo</u>	
Staff Section	
(Signature of Staff Member Acknowledging receipt) / Associate ID # <u>B992</u>	Collected/Received: <u>7/9/16</u> (Date collected or Received)
Reply: <u>Inmate Edmo I directed the paperwork to Dr. Eliason and Deputy Chief Hines. This is a local matter and beyond the scope of my practice. They will handle this issue for you.</u>	
Responding Staff Signature: <u>[Signature]</u>	Associate ID #: <u>C102</u> Date: <u>07-12-16</u>
Pink copy to offender (after receiving staff's signature). Original and yellow to responding staff (after completing reply, yellow copy returned to offender). Appendix A 316.02.01.001 (Appendix last updated 2/14/12)	
PRT3NCRCF	

AE 0026

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Edmo, aka Masam Edmo IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISC1 H1B3515 Date: 06/24/16
 To: ISC1 Health Service Administrator
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: I submitted HSR# 867832 on 06/23/16.
What is the disposition on my medical memo
for parties.

(Description of the issue must be written only on the lines provided above.)

Offender signature: Edmo

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID #: COT9 Collected/Received: 6/24/16
 (Date collected or Received)

Reply: Per IDOC - Conzon has been informed that
lock straps can be issued by medical

Responding Staff Signature: Aaron Hofer, HSA Associate ID #: 2621 Date: 6/22/16

Pink copy to offender (after receiving staff's signature),
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender).
 Appendix A 316.02.01.001
 (Appendix last updated 2/14/12)

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IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Edmo, aka Masam Edmo IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISC1 H1B3515 Date: 6/27/16
 To: IDOC Director Kemp
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Pursuant to the revised offender mailing procedures
I would like to send the attached letter to IDOC
Director Kemp via interdepartment mail.

(Description of the issue must be written only on the lines provided above.)

Offender signature: Edmo

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID #: 1/11 Collected/Received: 7/1/16
 (Date collected or Received)

Reply: The Director can't approve / deny the ARC's recommendation
until they've met & made their recommendation. Please be
patient they won't meeting until the 14th. And just to be clear,
the Director only approves / denies the ARC's decision. He doesn't make a recommendation.

Responding Staff Signature: 1/11 Associate ID #: 9833 Date: 7-1-16

Pink copy to offender (after receiving staff's signature),
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender).
 Appendix A 316.02.01.001
 (Appendix last updated 2/14/12)

PRT3NCRCF

AE 0027

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

B35

Offender Name: Edmo Ara Adree Edmo IDOC Number: 94691
Institution, Housing Unit, & Cell: ISC1 110335B Date: 05/01/16

To: OS Clark ISC1/ BHU
(Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: I am diagnosed with EMD/ID. NoHC standard MH-A-06: Behavioral consultation compliance indicators # 1-4 indicate mental staff "provide consultation of disciplinary proceedings. My full symptom include my persistent desire to appear the opposite gender and be treated as the opposite gender. No mental health DOR recommendation or consultation was provided to the DOR for my DOR # 1103032, or to the warden about these particular DORS. What next?
(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID #: [Signature] 17669 Collected/Received: 5-22-16
(Date collected or Received)

Reply: A DOR recommendation was completed for this DOR

Responding Staff Signature: [Signature] Associate ID #: 0390 Date: 05/24/16

Pink copy to offender (after receiving staff's signature),
Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

14665C

Offender Name: Edmo Ara Adree Edmo IDOC Number: 94691
Institution, Housing Unit, & Cell: ISC1 110335B Date: 06/08/16

To: Deputy Chief of Divisions JUN 17 2016
(Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: Warden Vordy affirmed DOR # 1103032 I received on 05/12/16. The DOR was "Disobedience to Orders-3". The DOR states that the officer told me not to wear makeup. I followed the officers order and removed makeup. I am diagnosed with EMD. Part of this condition is a persistent desire to be other gender, which includes behaviors that most women partake in, e.g. wearing makeup. As such, I followed the officers directive in this particular incident and did not disobey his order to fix the issue. What is it still affirmed?
(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID #: Roe 1761 Collected/Received: 6/8/16
(Date collected or Received)

Reply: Regardless of your diagnosis, you have been advised on several occasions formally and informally not to wear make-up. DOR will remain.

Responding Staff Signature: [Signature] Associate ID #: 1401 Date: 6.7.16

Pink copy to offender (after receiving staff's signature),
Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

AE 0028

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: M. Edmo
Institution, Housing Unit, & Cell: RETHC B35B
To: Dr. Eliason
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: I need a medical memo for panties. I was allowed
washes in ICFD from 09/2013-02/2014. ICFD will only allow me to
have one if a medical memo is provided. R. S. S. instructed me
to address this with IDA. CS only had indicated I should be
provided the same clothing as female offenders. I can't use
my IDA with this issue. Because I am in a men's prison this not
represent anything & denial.
 (Description of the issue must be written only on the lines provided above.)

Offender signature: M. Edmo

Staff Section: B35B

Collected/Received: 5-20-16
 (Date collected or Received)

Reply: I'll bring this issue up at our next committee meet
(Next week)

Responding Staff Signature: Scott Eliason, MD
Associate ID #: 04125
Date: 5/25/16

Pink copy to offender (after receiving staff's signature),
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
 Appendix A 316.02.01.001
 (Appendix last updated 2/19/12)

PRT3NCRCF

SER 202

SER 203

DAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Masme Edmo akacashie Edmo IDOC Number: 94691
Institution, Housing Unit, & Cell: 1-M 110353 Date: 03/10/16
To: Corizon Scott Eliason, M.D.
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: I would like to see you about a medical evaluation for the purpose of a eval. for sex mismanagement surgery. This is pursuant to the MTC on 03/02/16, and C.S. 41-1-12.
Thank you.
(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature] Received in Mental Health
DATE: 3/21/16 PC

Staff Section

For 1-B702 Collected/Received: 3/16/16
(Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)
Reply: Dr Eliason will visit with you about this on your next scheduled appt. Please watch cell out.
Responding Staff Signature: Patricia Cash, RN Associate ID #: 6025 Date: 3/16/16

Pink copy to offender (after receiving staff's signature).
Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

DAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Masme Edmo akacashie Edmo IDOC Number: 94691
Institution, Housing Unit, & Cell: 1-B 110353 Date: 04/01/16
To: 1-B1 Warden Yordan
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Per conversation with my clinicians, they are not allowed to create treatment plans for use of maximum stimulants pursuant to sex. vii. under your control. This is a violation of the Balla Injunction Order. MCPB-NACHC MHA-ASPLACUS to Cave. NACHC D-A-05 Policy and Procedure, particularly NACHC D-A-03 Medical Autonomy. I believe this is contempt of the most recent Balla Injunction Order. How can this be taken care of?
(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

For 1-B669 Collected/Received: 4/1/16
(Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)
Reply: You need to address this with the clinicians supervisor not at the warden's level
Responding Staff Signature: [Signature] Associate ID # WARDEN'S OFFICE Date: 4.4.16

Pink copy to offender (after receiving staff's signature).
Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

AE 0035



Idaho Department of Correction Grievance Form

Offender Name: EDMO, MASON DEAN

Location: ISCI

Offender Number: 94691

Number: II 180000495

Category: COMPLAINT AGAINST

Offender Grievance Information

Date Received: 06/20/2018

The problem is:

5/25/18 1600 recall at visiting a C/O stated to me, "you will not be allowed another visit w/your attorneys because you appear too feminine w/your hair all done up, boobs and makeup, per your unit Sgt." Once at Unit 11, Sgt. Gould restated this to me. This is against IDOC's current PREA policies/procedures including federal law.

I have tried to solve this problem informally by:

Reminding Sgt Gould I am a trans-woman on HRT' his referring to me in that matter is not acceptable' calling PREA hotline #, sending Sgt. Gould a concern form 5/26

I suggest the following solution for the problem:

This incident reviewed by the appropriate authority along w/Sgt. Gould's past behavior of grabbing/groping my breast; griev. #140000666, dated 6/4/14; up to and/or termination from IDOC

Level 1 - Initial Response

Date Forwarded: 06/20/2018

Date Returned:

06/21/2018

Date Due Back: 07/04/2018

Level 1 Responder:

AIELLO, MARC

The response from the staff member or person in charge of the area/operation being grieved:

Inmate Edmo,

I have reviewed your grievance and suggested solution regarding grievance # II 180000495. The incident that you are referring to from May 25, 2018 was reviewed along with the PREA call that was made in part due to your claims. The appropriate steps were taken per SOP325.02.01.001 Prison Rape Elimination for any claim presented by an inmate. The appropriate authority were notified also as part of the PREA claim. ISCI Investigative staff also met with you and reviewed the incident in its entirety, and the claims were unfounded. In reference to grievance # 140000666, that you submitted as part of your suggested solution, the grievance was denied at both the reviewing authority level as well as Appellate Authority level and present no relevance as part of your requested solution.

Respectfully,

Lt. M. Aiello 7844

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II 180000495

EDMO, MASON DEAN

94691

Level 2 - Reviewing Authority Response

Date Forwarded:	06/21/2018	Grievance Disposition:	DENIED
Date Due Back:	07/07/2018	Level 2 Responder:	RICHARDSON,
Date Returned:	06/22/2018	Response sent to offender:	06/22/2018

Your grievance has been reviewed and I find:

Inmate Edmo,

I have reviewed your grievance as well as your past grievance # II 140000666. I see that in June of 2014 your complaints against Sgt. Gould were unfounded and as such your grievance and appeal were denied. The incident you are grieving now that took place May 25, 2018, I see that appropriate steps were taken per SOP 325.02.01.001. The proper authority has reviewed this incident and you also met with our ISCI investigative staff to review the incident. I find no evidence to terminate Sgt. Gould. Your grievance is denied.

Offender Appeal

Offender Comments:

Grievance # 140000666 was "not" unfounded as Richardson states but denied because of an aggressive pat search from Sgt. Gould using his open hand on my breasts, Richardson clearly did not read this grievance the appropriate steps were not taken seriously because of the nature of this claim against an IDOC staff member specifically a sergeant of staff, which this claim against Sgt. Gould is covertly found "unfounded" I attempted to submit offender witnesses but denied by IDOC staff, namely Cpl Crawford states "This won't go anywhere, I'm just telling you what will happen" I request an outside investigation not by IDOC staff.

Level 3 - Appellate Authority Response

Date Appealed:	07/09/2018	Grievance Disposition:	MODIFIED
Date Forwarded:	07/09/2018	Level 3 Responder:	YORDY, HOWARD
Date Due Back:	07/25/2018	Response sent to offender:	07/23/2018
Date Returned:	07/23/2018		

Your appeal has been reviewed and I find:

Edmo, I have looked into the grievance you are referencing to #140000666, this grievance was denied due to the fact that we were within policy when you were pat searched by Sgt. Gould. Your incident was reviewed and I looked into your past grievance from 2014 regarding the same issue. Although the PREA policy did change, it did not change the way we do pat searches in our facility. I am sorry but your grievance is denied and staff issues, as always, will not be discussed with inmates.

Warden Yordy

Date: 07/23/2018 10:28

Created By: gperez

Page 2 of 2

CIS/Facilities/Main/Misc/Grievance Detail

AE 0083

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Due 7-25-18

U-13 01
A-1IDAHO DEPARTMENT OF CORRECTION
Grievance/Appeal Form

☒ **Grievance** aka M. Edmo
 Offender's Name: Adree Edmo-Retzer IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISC Unit 11A213 Date: 6/3/18

For Administrative Use		
Facility: <u>ISC</u>	Grievance Number: <u>IF8000495</u>	
Date Collected: <u>6-20-18</u>	Grievance Category: <u>Compl. Against Staff</u>	
Date Forwarded to Offender's Previous Facility: _____		
Name of Previous Facility: _____		
Date Forwarded to Responder: _____		
Level 1 Responder's Name: <u>Aiello</u>	Date Due: <u>7-4-18</u>	Received: <u>6-21-18</u>
Level 2 Responder's Name: <u>Richards</u>	Date Due: <u>7-7-18</u>	Received: <u>6-22-18</u>
Final Grievance Decision: <u>Denied</u>	Date Sent to Offender: <u>6-22-18</u>	
Offender Section		
The problem is: <u>5/25/18 I do recall at visiting a 40 statel to me, "You will not be allowed another visit w/ your attorney because you appear too feminine w/ your hair all done up, brows and make up. per your unit Sgt." Once at Unit 11, Sgt. Gould testate this to me "this is against IDOC's current PREA policies/Procedures including Federal Law.</u>		
I have tried to solve this problem informally by: <u>Reminding Sgt. Gould I am a trans-woman on HRT; his referring to me in that matter is not acceptable; calling PREA hotline #, sending Sgt. Gould a Corron brochure.</u>		
I suggest the following solution for the problem: <u>This incident reviewed by the appropriate authority along w/ Sgt. Gould's past behavior of searching/groping my breasts; griev. # 140000610 dated 6/4/14; up to and/or termination from IDOC.</u>		
Offender's signature: <u>Adree Edmo - Retzer</u>		

☒ **Appeal** Date: 7/2/18 rcvd 7-9-18

I am appealing the grievance for the following reason(s):

Grievance # 140000610 was "not" unfounded as Richardson states but denied because of an aggressive pat search from Sgt. Gould using his open hand on my breasts. Richardson ~~also~~ clearly did not read this grievance ~~about~~ The appropriate steps were not taken seriously because of the nature of this claim against an IDOC staff member, specifically a Sergeant of staff, which this claim against Sgt. Gould is covertly found "unfounded." I attempted to submit offender witnesses but denied by IDOC staff, namely Cpl. Crawford stating, "this won't go anywhere, I'm just telling you what will happen." I request an outside investigation not by IDOC staff.
Offender's signature: <u>Edmo</u>

Appendix B
 316.02.01.001
 (Appendix last updated 2/14/12)

AE 0084

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Walter Edna aka Walter Edna IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISCI 10740B Date: 10-05-15

To: Clintian Watson BNU
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: 1/15. Watson can I please schedule an
appt. w/you & find my previous appt. I have
nothing to thank.

(Description of the issue must be written only on the lines provided above.)

Offender signature: Walter Edna

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID # ASST Collected/Received: 10/13/15
 (Date collected or Received)

Reply: attempted to see you 10/13/15 at 0930/1235/1450.
discussed when we met 10/13/15

Responding Staff Signature: [Signature] Associate ID #: 0367 Date: 10/13/15

Pink copy to offender (after receiving staff's signature),
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
 Appendix A 316.02.01.001
 (Appendix last updated 2/14/12)

PRT3NCRCF

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Walter Edna aka Walter Edna IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISCI 10740B Date: 10/13/15

To: ISCI Warden Howard Keith Vorchy
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: 10/13/15 attempted self-harm by cutting my testicles due to my
severe mental disorder due to the effects of 30+ years of my mental health
or major depressive disorder or anxiety disorder. The staff
or caregiver adequate treatment of my condition is to allow me to wear
male clothing, including pants and present my female gender. Denying
the pants and female cosmetics is exacerbating my gender dysphoria.
Now I please ask you to allow these items be returned to me at ISCI.

(Description of the issue must be written only on the lines provided above.)

Offender signature: Walter Edna

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID # B702 Collected/Received: 10/13/15
 (Date collected or Received)

Reply: You will need to work with mental health staff on this.

Responding Staff Signature: [Signature] Associate ID #: WARDEN'S OFFICE Date: 10-15-15

Pink copy to offender (after receiving staff's signature),
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
 Appendix A 316.02.01.001
 (Appendix last updated 2/14/12)

PRT3NCRCF

AE 0090

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: _____ IDOC Number: 15-268
Institution, Housing Unit, & Cell: _____ Date: 09/13/15

To: _____
(Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: _____

(Description of the issue must be written only on the lines provided above.)

Offender signature: _____

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID #: _____ Collected/Received: _____
(Date collected or Received)

Reply: _____

Responding Staff Signature: _____ Associate ID #: _____ Date: _____

Pink copy to offender (after receiving staff's signature).
Original and yellow to responding staff (after completing reply, yellow copy returned to offender).
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: MASIT Edmoaka Adree Edmo IDOC Number: 15-27
Institution, Housing Unit, & Cell: 1511103101B **RECEIVED** 09/14/15
To: IDOC Director Kevin Kernet **OCT 02 2015**
(Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: I am a transgender woman housed at 1511103101B. Warden Vukich increases my KREAR policy on me as being over the feminine. The Oregon medical providers describe me as being a trans woman for removing objects for FLD. Warden Vukich refuses to provide a clear explanation on what "exaggerate hairstyles" and "exaggerate behavior" consist of while clearly being clearly subordinate to Policy Directive 2.25, Section 4 last paragraph of referring to offenders -ment men and Policy Directive 401.06.03.501 please explain what exaggerate is.
(Description of the issue must be written only on the lines provided above.)

Offender signature: Edmoaka

Staff Section

(Signature of Staff Member Acknowledging receipt) / Associate ID #: 15197 Collected/Received: 09/15/15
(Date collected or Received)

Reply: This issue has been addressed through the grievance process. You have exhausted all departmental options in regards to this issue.

Responding Staff Signature: [Signature] Associate ID #: 1401 Date: 10/16/15

Pink copy to offender (after receiving staff's signature).
Original and yellow to responding staff (after completing reply, yellow copy returned to offender).
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

AE 0092

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Mason Edmo JVA Adree Edmo IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISCI 15H48B Date: 06-10-15
 To: Kona Siegfert - ISCI Health Services Director
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Re: your response in a previous IT 1400021305 of denial of female commissary for me. I am an identifiable transgender individual and I am failing to remove the use of a serious facility that is harmful to my health. I am also requesting this is also part of WPATH standards; Dr Craig/IDOC uses for care of transgenders as myself.

(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

[Signature] / A652 Collected/Received: 6-17-15
 (Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)

Reply: This issue has been addressed in previous communications and you have received a final disposition on grievance appeal.

Responding Staff Signature: [Signature] Associate ID #: 5117 Date: 6-24-15

Pink copy to offender (after receiving staff's signature).

Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)

Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Mason Edmo JVA Adree Edmo IDOC Number: 94691
 Institution, Housing Unit, & Cell: ISCI 15H48B Date: 06-24-15
 To: ISCI yard warden
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Staff are aware of my ED symptoms & I am struggling with ED/ED. Denying me access to female commissary items such as hairbrush, nail clippers, etc. I am self-harm. My female gender expression is my ED symptoms beyond emotional pain. This is deliberate indifference to a serious medical problem and violates the 8th amendment of there's no additional risk of not having these items. I am already in general violation, having female wares and have visible breasts. Please allow me to have those.

(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

[Signature] / 1712 Collected/Received: 6-21-15
 (Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)

Reply: We are not going to allow you to purchase items from women's commissary.

Responding Staff Signature: [Signature] Associate ID #: WARDEN'S OFFICE Date: 6-28-15

Pink copy to offender (after receiving staff's signature).

Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)

Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

AE 0096

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Kirk Edward K. Yancy IDOC Number: 146011
Institution, Housing Unit, & Cell: B-101 Warden K. Yancy Date: 2-19-15
To: _____
(Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: Warden Yancy: I am once again requesting your guidance in what
my next move should be. I am an inmate who has been in the system since
1985. I have a minor American woman as my wife. We have two
children. My wife is pregnant with our third child. I am currently at
level 1. I want to know if there are any programs or services available
that would help me get back on track. I am currently at level 1 and
want to know if there are any programs or services available that
would help me get back on track. I am currently at level 1 and
want to know if there are any programs or services available that
would help me get back on track.

(Description of the issue must be written only on the lines provided above.)

Offender signature: E. S. [Signature]

Staff Section

Inmate: W. Gorman, Associate ID #: 4785 Collected/Received: 2/19/15
(Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)

Reply: If your intent in any way to make it look female
that would be in violation you'll have to show me on the
yard.
Thanks

Responding Staff Signature: [Signature] Associate ID #: _____ Date: 2-24-15

WARDEN'S OFFICE

Pink copy to offender (after receiving staff's signature).
Original and yellow to responding staff (after completing reply. yellow copy returned to offender.)
Appendix A 316.02 01 001
(Appendix last updated 2/14/12)

PRT3NCRCF

SER 211

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Adrian Edmundo AKA Masmin Edmundo IDOC Number: 94691
 Institution, Housing Unit, & Cell: BSC1 107102A Date: 07-09-14

To: 1381 Warden Yordy
 (Address to appropriate staff. Person most directly responsible for this issue or concern)

Issue/Concern: This is a Confidential Matter
entered is a letter dated 07-08-14
Re: Incident w/ c/o White BHA

(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

S. Erbe, A073 Collected/Received: 7-9-14
 (Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)

Reply: You should follow staff's direction. I'm going to
ask staff to photograph the style they have concern with
show me

Responding Staff Signature: [Signature] Associate ID #: WARDEN'S OFFICE Date: 7-12-14

Pink copy to offender (after receiving staff's signature).
 Original and yellow to responding staff (after completing reply, yellow copy returned to offender).
 Appendix A 216.02.01.001
 (Appendix last updated 2/15/12)

PRT3NCRCF

Balla Class Member Authorization to Discuss
Personal Health Information

Offender Name: Adrian Edmundo AKA Masmin Edmundo IDOC No. 94691

I have submitted a Health Services Request, Concern and/or Grievance concerning the medical issues identified below. ☒ Yes ☐ No

Brief Description of Medical Issue: not being allowed to seek further mental
health care concerning my gender identity disorder because Dr.
Murray Young denies further medical care is not medically
necessary, such as gender reassignment surgery to increase of estrogen.

IDOC Response: Per review of your medical file, you routinely see both medical and
mental health care providers. You are welcome to request continued mental health
and/or medical care by submitting an HSR. There will be no charge for these visits.

I hereby give permission for Offender VEENSTAN, Balla Class Representative, to discuss my above-described medical problem with employees of the Idaho Department of Correction and its contract medical provider; and for employees of the Idaho Department of Correction and its contract medical provider to discuss my above-described medical problem with the Balla Class Representatives. I understand that this form is not a substitute for a Health Services Request form, concern form or grievance form. In order to see a medical professional I must submit a Health Services Request form. I am also still required to follow the concern/grievance process if I want to grieve this issue. I further authorize a copy of this form to be provided to Balla Class Counsel.

Offender signature: [Signature] Date: 09-05-14

Original copy to IDOC - Yellow copy to Balla Representative - Pink to Plaintiff's counsel - Goldenrod copy to offender

AE 0107

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Alonso, NKA Alvaro Alonso IDOC Number: 94691
Institution, Housing Unit, & Cell: ISCI 10A-05B Date: 05-18-14

To: ISCI Warden Cordy
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: This is a ongoing problem of FUD appearances. I have
received a call with a woman who said I am a FUD offender. I am a feminine
person having feminization medications. If you disagree with this please
tell to Dr. Whitten. She would provide there is no policy within IDOC
that states offenders hair cannot be in a bun or higher than ear
level. If so where I need to sign a consent form to be in this ward.
While noting me, she would have previously stated I am a risk concern for you.
(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

[Signature] / A074 Collected/Received: 5-18-14
(Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)

Reply: I'm not going to allow you to sign a consent form
and then act in a way that puts you at increased risk.
Policy does support not allowing extreme hair styles.

Responding Staff Signature: [Signature] Associate ID #: WARDEN'S OFFICE Date: 5-21-14

Pink copy to offender (after receiving staff's signature),
Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Alonso, NKA Alvaro Alonso IDOC Number: 94691
Institution, Housing Unit, & Cell: ISCI 10A-05B Date: 05-19-14

To: Sgt. Gould ISCI Recreation
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: SA Gould on 05-18-14 was performed a clothing pat
search on the outside of the upper set 2000 yard movement.
I am a FUD offender undergoing sex reassignment
treatment e.g. growing breasts. I am upset my chest is searched.
Please understand there are FUD offenders on this institution
similarly situated as me. Are you not trained to handle FUD pat
searches or cross-gender pat searches?
(Description of the issue must be written only on the lines provided above.)

Offender signature: [Signature]

Staff Section

[Signature] / 1736 Collected/Received: 05/19/14
(Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)

Reply: We make reasonable accommodations to try to reduce the stress of the
searches without compromising security. At no time have I aggressive during
the search.

Responding Staff Signature: [Signature] Associate ID #: 0111 Date: 5-22-14

Pink copy to offender (after receiving staff's signature),
Original and yellow to responding staff (after completing reply, yellow copy returned to offender.)
Appendix A 316.02.01.001
(Appendix last updated 2/14/12)

PRT3NCRCF

AE 0111

B-34

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: Wason Edna IDOC Number: 94691
 Institution, Housing Unit, & Cell: 1501 116B-34A Date: 4-8-13

To: Dr. Craig, Chief Psychologist
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: Am I able to receive a medical memo to my female undergarments/underwear, bras, etc. I have been already back approved for bras to it possible to be approved for women's underwear.
 (Description of the issue must be written only on the lines provided above.)

Offender signature: Wason Edna

Staff Section

Staff signature: T. Henson Associate ID #: 0994 Collected/Received: 4/8/13
 (Signature of Staff Member Acknowledging receipt) / Associate ID # (Date collected or Received)

Reply: Female underwear must go through process

Responding Staff Signature: _____ Associate ID #: _____ Date: 4/16/13

Pink copy to offender (after receiving staff's signature),
 Original and yellow to responding staff. (after completing reply, yellow copy returned to offender.)

PRT3NCRCF

IDOC Offender Concern Form

Offender Name: Wason Edna IDOC Number: 94691
 Institution, Housing Unit, & Cell: 1501 116B-34A Date: Jun 01 2012

To: Dr. Craig, IDOC Chief Psychologist
 (Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: I am a transgender person with BPD (border identity disorder) which I have recognized at very young age but have yet accepted which has caused my suicidal attempts & would like to speak with you about the possibility of starting hormone cross gender hormone medications to feel very uncomfortable having to dress and shower around other males which I don't feel in place which causes stress and anxiety and would like to speak to you about this and have placed around the other transgenderers. Thank you very much.
 (Description of the issue must be written only on the lines provided above.)

Offender signature: Wason Edna

Staff Section

Staff signature: Col Crawford Associate ID #: 7674 Date: 6-2-12
 (Staff member acknowledging receipt)

Reply: You will be asked for consent in the future

Responding staff signature: _____ Associate ID #: _____ Date: 6/2/12

Distribution: Pink part returned to offender after receiving staff's signature. Original (white) and yellow forwarded to appropriate responding staff.
 Appropriate responding staff will complete reply field and return yellow part to offender.

PRT3NCRCF

AE 0133



Idaho Department of Correction Grievance Form

Offender Name: EDMO, MASON DEAN

Location: ISCI

Offender Number: 94691

Number: II 180000155

Category: COMPLAINT AGAINST

Offender Grievance Information

Date Received: 02/22/2018

The problem is:

Sgt. Biladeaux gave direct orders for me to remove my makeup. More recently on 01/31/2018. I told her about current legal actions for my use of makeup due to gender dysphoria I have. She states, "she [knows] about my law suits" knows there's "no final judgment or orders ... in a male prison and she will continue to do so." Sgt. Biladeaux along with ISCI C/O's continue to engage in a campaign of harassment.

I have tried to solve this problem informally by:

Speaking directly with Sgt. Biladeaux on 01/31/18; sent concern form to Sgt. Biladeaux on 02/08/18; she refused to reply within time limit.

I suggest the following solution for the problem:

Not to be continually harassed by staff's arbitrary decisions on my gender identity expression and my decision to use courts.

Level 1 - Initial Response

Date Forwarded: 02/22/2018

Date Returned: 03/12/2018

Date Due Back: 03/08/2018

Level 1 Responder: WOODLAND,

The response from the staff member or person in charge of the area/operation being grieved:

Offender Edmo,
Makeup is not authorized at ISCI therefore you are not to possess makeup or wear it. When staff ask that you remove your makeup they are enforcing Policy.

Thank you
Cpt. Woodland

Level 2 - Reviewing Authority Response

Date Forwarded:	03/12/2018	Grievance Disposition:	DENIED
Date Due Back:	03/28/2018	Level 2 Responder:	VALLEY III,
Date Returned:	03/13/2018	Response sent to offender:	03/13/2018

Your grievance has been reviewed and I find:

Inmate Edmo, as explained by Cpt. Woodland, makeup is not authorized at ISCI, as such, you are not to wear it or have any in your personal effects. Staff's enforcement of these rules does not constitute harrasment

Offender Appeal

Offender Comments:

There is no present IDOC policy rule or directive that explicitly prohibits makeup; IDOC female inmates are allowed to purchase and use makeup. Also, there is no present IDOC policy rule or directive that explicitly pro-hibits a "ISCI" inmate with gender dysphoria ("GD") including me from wearing make up to express my female gender identity. Such arbitrary nonexistent rules and directives Woodland and Valley refer to, can be and are harassment, when used against GD inmates, including myself as punishment for expressing my female gender identity. Knowingly enforcing a unlawful nonexistent rule against me concurrently with my active legal action addressing those exact actions along with other actions by the State of Idaho, including IDOC and all of it's officers and representatives and/or employees is retaliation for filing civil suit against the State of Idaho and/or IDOC

Level 3 - Appellate Authority Response

Date Appealed:	03/21/2018	Grievance Disposition:	DENIED
Date Forwarded:	03/21/2018	Level 3 Responder:	YORDY, HOWARD
Date Due Back:	04/06/2018	Response sent to offender:	04/17/2018
Date Returned:	04/17/2018		

Your appeal has been reviewed and I find:

Inmate Edmo I am sorry but as stated by level one and level two responders, makeup is not allowed per policy at all in a male facility which ISCI is, therefore your grievance is denied.

Warden Yordy

IDAHO DEPARTMENT OF CORRECTION
Grievance/Appeal Formdelay R/S
Ship 213☒ GrievanceOffender's Name: Mason Edms aka Adree Edms DOC Number: 94691
Institution, Housing Unit, & Cell: ISCI 15A31A 11B35B Date: 02-16-18

For Administrative Use		
Facility: <u>SCI</u>	Grievance Number: <u>#180090155</u>	
Date Collected: <u>2-22-18</u>	Grievance Category: <u>Compl. Against Staff</u>	
Date Forwarded to Offender's Previous Facility: _____		
Name of Previous Facility: _____		
Date Forwarded to Responder: _____		
Level 1 Responder's Name: <u>Arietta Woodland</u>	Date Due: <u>3-8-18</u>	Received: <u>3-12-18</u>
Level 2 Responder's Name: <u>Valley</u>	Date Due: <u>3-28-18</u>	Received: <u>3-12-18</u>
Final Grievance Decision: <u>Denied</u>	Date Sent to Offender: <u>3-13-18</u>	
Offender Section		
The problem is: <u>Sgt. Biladeaux gave direct orders for me to remove my makeup, more recently on 01/31/2018. I told her about current legal actions for my use of makeup due to gender dysphoria I have. She states, "she [knows] about my lawsuits," knows there's "no final judgment or orders... in a male prison and she will continue to do so." Sgt. Biladeaux along with ISCI C/O's continue to engage in a campaign of harassment.</u> I have tried to solve this problem informally by: <u>speaking directly with Sgt. Biladeaux on 01/31/18; sent concern form to Sgt. Biladeaux on 02/09/18; she refused to reply within time limit.</u> I suggest the following solution for the problem: <u>Not to be continually harassed by staff's arbitrary decisions on my gender identity expression and my decision to use courts.</u>		
Offender's signature: <u>A Edms</u>		

☒ Appeal Date: 03/18/18 rCvd 3-21-18

I am appealing the grievance for the following reason(s):

There is no present IDOC policy, rule or directive that explicitly prohibits makeup; IDOC female inmates are allowed to purchase and use makeup. Also, there is no present IDOC policy, rule or directive that explicitly prohibits a "ISCI" inmate with gender dysphoria ("GD"), including me from wearing makeup to express my female gender identity. Such arbitrary, nonexistent rules and directives Woodland and Valley refer to, can be and are harassment, when used against GD inmates, including myself as punishment for expressing my female gender identity. Knowingly enforcing a unlawful, nonexistent rule against me concurrently with my active legal action addressing those exact actions along with other actions by the state of Idaho, including IDOC and all of its officers and representatives and/or employees is retaliation for filing civil suit against the state of Idaho and/or IDOC.

Offender's signature: A EdmsAppendix B
316.02.01.001
(Appendix last updated 2/14/12)

AE 0140



Idaho Department of Correction Grievance Form

Offender Name: EDMO, MASON DEAN

Location: ISCI

Offender Number: 94691

Number: II 140000666

Category: SECURITY

Offender Grievance Information

Date Received: 06/04/2014

The problem is:

On 05-19-14 Sgt. Gould stopped me outside of ISCI Chapel and performed a clothed pat search. Sgt. Gould patted me down briskly grabbing / groping my chest. Sgt. Gould does know that I am a G.I.D. offender, and I have been sexually abused by men in my life, I did not feel comfortable being grabbed / groped disrespectfully.

I have tried to solve this problem informally by:

Sending concern form to Sgt. Gould about pat search on 05-19-14.

I suggest the following solution for the problem:

Staff be directed to perform pat searches on GID offenders, as would be done to female offenders (cross searchers) and be directed to write a incident report when searching GID offenders.

Level 1 - Initial Response

Date Forwarded: 06/05/2014

Date Returned: 06/12/2014

Date Due Back: 06/19/2014

Level 1 Responder: CLARK, EUGENE L

The response from the staff member or person in charge of the area/operation being grieved:

After review of your issue, along with discussion with Sergeant Gould, review of the initial concern form from Sergeant Gould and review of policies and procedures, ISCI Field Memorandum the following explanation, determination and resolution was compiled.

Sergeant Gould stated emphatically and assured me during our meeting that he was in no way aggressive or disrespectful towards you during his clothed body search (Pat-Down) that he performed on you. He also stated this in his concern form reply to you dated 05/19/14.

Department Policy 317.02.01.001 and ISCI Field Memorandum 317 does not differentiate ANY offenders from security procedures and protocols. It does state "Whenever possible, searches should be conducted in a manner that minimizes embarrassment and maintains the offender's dignity." "All correctional staff members are responsible to conduct searches in a professional manner, to respect offender's property and to treat offenders with dignity."

Being a GID offender does not detach, exclude or exempt you from security procedures and protocols. These protocols were established for the protection and safety of staff and the general offender population. Notification of your situation should be given to the officer conducting the search, as the staff has been instructed on the variance of procedure for this particular situation. This in no way will exempt you from the search, but will help in the performance being a tolerable experience.

Lieutenant Eugene L. Clark

II 140000666

EDMO, MASON DEAN

94691

(Recreation Oversight)

Level 2 - Reviewing Authority Response

Date Forwarded:	06/12/2014	Grievance Disposition:	DENIED
Date Due Back:	06/28/2014	Level 2 Responder:	PENEKU, LEROY
Date Returned:	06/19/2014	Response sent to offender:	06/19/2014

Your grievance has been reviewed and I find:

Offender Edmo - I concur with the lieutenants response.

Offender Appeal

Offender Comments:

Response to Lt. Clark and Dep. Warden Peneku; I had not stated in any way of form that being a transsexual, (G.I.D.) offender, exempted, excluded, or detached me from security procedures and protocols. I had simply concerned Sgt. Gould that his "pat down", consisted of him, aggressively (as I perceived the pat-down), groping the area of my breast. I had not asked for an exemption of any security procedure or protocol. I had addressed Sgt. Gould's unnecessary "frisking" of my breasts; and offered a solution that GID offenders be treated with respect, as "our" condition is known as a serious medical issue, especially those of us abused by males in the past, which creates a "not so tolerable experience".

Level 3 - Appellate Authority Response

Date Appealed:	06/27/2014	Grievance Disposition:	DENIED
Date Forwarded:	06/27/2014	Level 3 Responder:	YORDY, HOWARD
Date Due Back:	07/13/2014	Response sent to offender:	07/14/2014
Date Returned:	07/13/2014		

Your appeal has been reviewed and I find:

Sgt. Gould followed proper pat search procedures with you. We do not have one set of pat down procedures for GID and another for non-GID offenders. We can't hold staff to a standard that does not exist in policy. As with all areas of Gender Identity Dysphoria offenders, our process and procedures are ever changing to the changing needs. I will present the question as to whether there should be a difference in our practices. As of now, I believe staff acted reasonably and within policy.

Warden Yordy

Date: 07/14/2014 12:40

Created By: jwhittin

Page 2 of 2

CIS/Facilities/Main/Misc/Grievance Detail

AE 0142

MENTAL HEALTH DOR RECOMMENDATION		
IDOC NUMBER 94691	OFFENDER NAME Edmo, Mason	OFFENSE FACILITY ISCI
OFFENSE DATE 03/30/2017	OFFENSE DESCRIPTION Assault	CLINICIAN J. Linder, LMSW 7605
Documented history of significant mental illness that would/could impair decision making and/or reality testing.		Yes ☒ No ☐
Presently prescribed medication for mental health issues.		Yes ☒ No ☐
**If yes, is offender compliant?		Yes ☒ No ☐
Experienced significant increase in stressors prior to incident?		Yes ☐ No ☒
Documented increase in mental health symptoms prior to incident?		Yes ☐ No ☒
Mental illness contributing factor in incident?		Yes ☐ No ☒
Recommendations: 		
Mental illness a mitigating factor?		Yes ☐ No ☒
Recommendations: 		
Assignment of staff assistant recommended?		Yes ☐ No ☒
Mental illness not a factor in incident - no restrictions on proceedings are recommended.		Yes ☒ No ☐
Additional Recommendations: Exh. No. 8 Date 10/1/18 Name Yordy M & M Court Reporting		
CLINICIAN SIGNATURE J. Linder, LMSW 7605 <i>J. Linder, LMSW</i>		DATE OF REPORT 04/04/2017

AE 1093

Nos. 19-35017 and 19-35019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADREE EDMO, (a/k/a MASON EDMO),
Plaintiff-Appellee,

vs.

IDAHO DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellants.
and
CORIZON, INC., et al.,
Defendants-Appellants.

On Appeal from Orders of the United States District Court
For the District of Idaho
Case No. 1:17-cv-00151-BLW

**SUPPLEMENTAL EXCERPTS OF RECORD OF
PLAINTIFF-APPELLEE ADREE EDMO
VOLUME 2 OF 2**

Lori Rifkin, Esq. [S.B. #244081]
Hadsell Stormer & Renick LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. [S.B. #101967]
Shaleen Shanbhag, Esq. [S.B. #301047]
Hadsell Stormer & Renick LLP
128 North Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshnanbhag@hadsellstormer.com

(Counsel continued on next page)
Attorneys for Plaintiff-Appellee, ADREE EDMO

Counsel continued from previous page:

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
Julie Wilensky, Esq. (CA # 271765)
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Emails: awhelan@NCLRights.org
jwilensky@NCLRights.org

Attorneys for Plaintiff-Appellee, ADREE EDMO

Adree Edmo v. IDOC, et al.

Court of Appeals Nos. 19-35017 and 19-35019

SUPPLEMENTAL EXCERPTS OF RECORD OF APPELLEE

Docket	Description	Date	Vol	Page(s)
VOLUME I				
186	Docket Entry Order re Plaintiff's Request for Expedited Consideration Under Local Rule 6.1	03/29/19	1	SER 001-SER 002
185; 185-1	Plaintiff's Motion for Indicative Ruling Under Federal Rule of Civil Procedure 62.1 & 60(a) and Request for Expedited Consideration Under Local Rule 6.1	03/28/19	1	SER 003-SER 011
175	Memorandum Decision and Order re Defendants' Joint Motion to Stay Order [Dkt. 149]	03/04/19	1	SER 012-SER 015
171	Scheduling Order	01/31/19	1	SER 016-SER 021
156; 156-1	Defendants' Joint Motion to Stay Order [Dkt. 149] Pending Appeal	01/09/19	1	SER 022-SER 035
147	IDOC Defendants' Response to Plaintiff's Submission of Deposition Testimony (Excerpted cover page)	10/26/18	1	SER 036
144	Plaintiff's [Proposed] Findings of Fact and Conclusions of Law	10/26/18	1	SER 037-SER 078
143	Plaintiff's Post-Hearing Brief	10/26/18	1	SER 079-SER 093
142; 142-1	Plaintiff's Submission of Impeachment or Contradictory Evidence for the Declaration of Keith Yordy	10/26/18	1	SER 094-SER 220
VOLUME II				
141; 141-1	Plaintiff's Submission of Impeachment or Contradictory	10/26/18	2	SER 221-SER 281

Docket	Description	Date	Vol	Page(s)
	Evidence for the Second Declaration of Krina Stewart			
n/a	Hearing Exhibit 1002 - Certificate of Live Birth, date issued August 7, 2018	10/11/18	2	SER 282
n/a	Hearing Exhibit 1004 - Curriculum Vitae of Ryan Nicholas Gorton, M.D.	10/11/18	2	SER 283-SER 292
n/a	Hearing Exhibit 1025 - Presentation entitled "Gender Dysphoria Assessment", by Walter Campbell, PhD and Jeremy Clark, LCPC (Excerpted pgs. 1, 3-6)	10/11/18	2	SER 293-SER 297
n/a	Hearing Exhibit 16 - Document entitled "Attendance for Lecture with Dr. Levine"	10/10/18	2	SER 298
n/a	Hearing Exhibit 17 - Presentation entitled "Medical Necessity for Transgender Inmate: In Search of Clarity when Paradox, Complexity and Uncertainty Abound", by Stephen B. Levine, M.D. (Excerpted pgs. 1, 16-43)	10/10/18	2	SER 299-SER 327.1
n/a	Hearing Exhibit 1003 - Curriculum Vitae of Randi Ettner, PhD	10/10/18	2	SER 328-SER 336
100	Corizon Defendants' Response to Plaintiff's Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof	09/14/18	2	SER 337-SER 353
99	IDOC Defendants' Response to Plaintiff's Motion for Preliminary Injunction	09/14/18	2	SER 354-SER 374
64	Defendants Corizon Inc., Scott Eliassen [sic], Murray Young, and Catherine Whinnery's Joinder in IDOC Defendants' Motion for Extension of Time to Respond to Plaintiff's Motion for Preliminary	06/05/18	2	SER 375-SER 378

Docket	Description	Date	Vol	Page(s)
	Injunction and Request for Status Conference			
63; 63-1	IDOC Defendants' Motion for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction and Request for Status Conference	06/04/18	2	SER 379- SER 391
62	Plaintiff's Notice of Motion and Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof	06/01/18	2	SER 392- SER 419
34	Application for Admission Pro Hac Vice re Dan Stormer	08/31/17	2	SER 420- SER 421
32	Application for Admission Pro Hac Vice re Lori Rifkin	08/30/17	2	SER 422- SER 423
31	Application for Admission Pro Hac Vice re Amy Whelan	08/30/17	2	SER 424- SER 425
5; 5-1	Motion for Appointment of Counsel	04/06/17	2	SER 426- SER 434

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. (CA # 101967)
(*pro hac vice*)
Shaleen Shanbhag, Esq. (CA # 301047)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshshanbhag@hadsellstormer.com

Attorneys for Plaintiff

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
Julie Wilensky, Esq. (CA # 271765)
(*pro hac vice*)
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org
jwilensky@NCLRights.org

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S SUBMISSION OF
IMPEACHMENT OR CONTRADICTIONARY
EVIDENCE FOR THE SECOND
DECLARATION OF KRINA STEWART**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	August 31, 2018
Motion Cut-Off:	None Set
Trial Date:	None Set

Per the Court's direction (PI Hr'g Tr. at 446:12-14), Plaintiff hereby submits the following impeachment or contradictory evidence for the Second Declaration of Krina Stewart, ECF No. 101-1:

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
¶ 5	My duties include, but are not limited to, providing individual and group therapy to inmates diagnosed with Gender Dysphoria.	Ms. Stewart testified that her reference to "individual therapy" "is an individualized clinical contact, which isn't necessarily the same thing as individual like psychotherapy. It's primarily check-ins with support for what they're going through." 15:25-16:15. Ms. Stewart further testified that, "[d]epending on the individual and their treatment plan, they may be seen once monthly or once over two months. Where is my opinion, regular kind of in-depth psychotherapy would probably be more frequent than that" and the "primary treatment modality that we use with most clients is group treatment. So the curriculum, the topics, is developed by the—by the group facilitator, which is not necessarily the assigned clinician. So rather than having two or more clinicians working on the same symptoms in different ways, then that's left to the group facilitator rather than the assigned clinician." 17:11-18:4.
¶ 6	I have received training in the clinical treatment of inmates diagnosed with GD.	Ms. Stewart testified that prior to her work at IDOC (beginning in 2015) she had never received any specific training on treating patients with gender identity disorder or gender dysphoria. 27:8-12. In 2017 and 2018, she attended IDOC all-clinician trainings that spent approximately 2 hours and 3-4 hours on gender dysphoria, respectively. 27:18-

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		28:7, 28:23-29:23. At the 2018 IDOC all-clinician training, the presenters provided an article by Dr. Steven Levine. 31:3-15. The presenters also provided a document called “On Regret of Gender Transition.” 37:8-20, Stewart Dep. Ex. 2 at IDOC_Stewart_ pg. 40-41. Ms. Stewart testified that in March 2017 she considered herself “becoming familiar with gender dysphoria.” 91:15-18.
¶ 9	Edmo cycles through depressive episodes, although Edmo does not or cannot separate Edmo’s feelings of depression from Edmo’s GD.	Ms. Stewart testified that it can be difficult to distinguish between dysphoria arising from depression and dysphoria arising from gender dysphoria and there can be some overlap. 72:22-73:3. Ms. Stewart is “not aware of the specific research” regarding whether alleviating gender dysphoria can help alleviate dysphoria from depression. 73:4-10.
¶ 14	While SRS may reduce Edmo’s dysphoria, Edmo’s depression will still be present and Edmo will still have dependency and other issues that may be made worse by undergoing a serious surgery.	
¶ 9	Edmo is very focused on Edmo’s GD as the main cause of Edmo’s depression and attempts at self-castration.	Ms. Stewart testified that Ms. Edmo reported to her on November 2, 2016 that she was “experiencing frequent depression and thoughts of self-castration related to Edmo’s gender dysphoria and limited ability to feminize...Edmo inquired about one-on-one therapy due to being unable to participate in the GD group.” 52:10-53:3, Stewart Dep. Ex. 4 at CORIZON 0584. Ms. Stewart testified that Ms. Edmo reported “Struggling with attempts/desire to self-castrate on average four days per week” and that she worked with Ms. Edmo to set a treatment goal over the next six months that “Edmo will report a decrease in average frequency of

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		thoughts of self-castration from four days per week to three days per week.” 56:9-57:20, Stewart Dep. Ex. 4 at CORIZON 0585. Ms. Stewart testified that none of the interventions she identified for Ms. Edmo in her treatment plan of November 2016 would be able to alleviate Ms. Edmo’s gender dysphoria or her desire to self-castrate. 58:15-59:16, Stewart Dep. Ex. 4 at CORIZON 0585 When Ms. Stewart saw Ms. Edmo on January 2, 2017, a couple of days after her attempt to castrate herself, Ms. Stewart did not formulate a new treatment plan for Ms. Edmo or add any additional treatments to that plan. 65:5-25, Stewart Dep. Ex. 4 at CORIZON 0597.
¶ 9	Edmo chooses to focus solely on Edmo’s GD and typically insists that Edmo has no other underlying mental health concerns.	Ms. Stewart testified that she recorded in a progress note that Ms. Edmo told her that “Edmo reported expecting [surgery] to decrease Edmo’s dysphoria/depression by about 80 percent. Edmo reported feeling that the [surgery] will address a significant piece of Edmo’s dysphoria, allowing Edmo to manage stressors and depression more effectively.” 78:22-79:25, Stewart Dep. Ex. 4 at CORIZON 1305-1306.
¶ 12	Edmo is placing every expectation on SRS relieving Edmo’s depression, anxiety, and relationship issues.	
¶ 14	I am also concerned about Edmo’s belief that SRS will solve all Edmo’s issues with depression, anxiety, low sense-of-self, and problems in relationships.	
¶ 10	Edmo has also demonstrated traits consistent with borderline personality disorder, including unstable relationships, self-harm, and poor sense-of-self. Edmo’s cutting of other body parts is not self-surgery. Rather, cutting of other body parts is an unhealthy way to process feelings of emotional pain and depression and is common in people	Ms. Stewart testified that two weeks prior to her deposition, she reviewed the DSM criteria for borderline personality disorder and circled criteria she felt Ms. Edmo met. 31:20-32:12. She testified that she did not remember whether she had documented Ms. Edmo meeting potential criteria for

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
¶ 13	diagnosed with borderline personality disorder. One of my biggest concerns about Edmo receiving SRS at this time is Edmo's borderline traits.	borderline personality disorder prior to that, and that "putting together documentation for this declaration" is what prompted her to consider and document criteria for borderline personality disorder. 33:2-16.
¶ 12 ¶ 13	While SRS could be very helpful in relieving Edmo's GD at some point, it is not appropriate for Edmo at this time. SRS is an irreversible procedure that will be stressful for Edmo. I do not believe that Edmo has the tools to manage the stress of the procedure itself and the life changes that will come afterward. Edmo needs to address Edmo's underlying mental health issues and have those well controlled before undergoing such a serious, life-altering procedure	Ms. Stewart testified that she has never treated a patient who has had gender confirmation surgery to treat gender dysphoria. 36:23-37:7. Ms. Stewart testified that she has never personally assessed a patient with gender dysphoria for gender confirmation surgery. 46:4-7. Ms. Stewart testified that she has been part of discussion in the MTC about whether surgery is medically necessary for approximately two or three patients with gender dysphoria. While she has been on the Management and Treatment Committee, the MTC has never recommended gender confirmation surgery for any patient. 46:8-47:2.
¶ 12	First, Edmo has not addressed, and at times refuses to recognize, that Edmo has other serious mental health issues that would not be resolved by receiving SRS.	Ms. Stewart testified that her own assessment of Ms. Edmo's mental health on November 2, 2016 was that Ms. Edmo "appears to be managing Edmo's mental health in general population at this time with the assistance of psych meds and accessing clinical services." 55:1-8, Stewart Dep. Ex. 4 at CORIZON 0584.
¶ 12	However, Edmo's failure to work through Edmo's other mental health problems by refusing to attend groups and recognize Edmo's other serious mental health issues means that Edmo will certainly have those same issues with depression, anxiety, and low self-esteem after receiving SRS.	Ms. Stewart testified that she is aware of times when Ms. Edmo did accept referral to mental health groups but was placed on the wait list for those groups. 83:3-6. Ms. Stewart believed that happened at least twice, for the health

Par. No.	Declaration Cite	Impeachment or Contradictory Evidence
		relationships group and the mood management group. 84:10-18.
¶ 14	Edmo should work through and manage Edmo's underlying mental health issues before receiving SRS.	Ms. Stewart testified that she agrees there is a group of individuals whose gender dysphoria cannot be fully alleviated without surgical treatment, and for that group, there is a limit to how much psychotherapy or processing can alleviate their gender dysphoria. 76:2-14. She testified that it is not her opinion that group of individuals is obligated to participated in psychotherapy and processing prior to receive surgery to treat gender dysphoria. 76:15-21.
¶ 17	Edmo lost Edmo's job after a DOR for theft and was moved to Unit 10.	Ms. Stewart testified that it is her understanding that potentially hundreds of inmates at ISCI were disciplined for theft related to alleged theft of JPay funds. 102:13-21.

Dated: October 26, 2018

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ Lori Rifkin
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm.net

Marisa S. Crecelius
marisa@melawfirm.net

Attorney for IDOC Defendants

/s/ - Lori Rifkin
Lori Rifkin

Stewart Dep.

SER 228

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO (a/k/a MASON EDMO),)
Plaintiff,)
vs.) Case No.
IDAHO DEPARTMENT OF CORRECTION;) 1:17-cv-00151-BLW
HENRY ATENCIO, in his official)
capacity; JEFF ZMUDA, in his)
official capacity; HOWARD KEITH)
YORDY, in his official and)
individual capacities; CORIZON,)
INC.; SCOTT ELIASON; MURRAY YOUNG;)
RICHARD CRAIG; RONA SIEGERT;)
CATHERINE WHINNERY; AND DOES 1-15;)
Defendants.)
)

DEPOSITION OF KRINA STEWART

OCTOBER 2, 2018

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

Krina Stewart - October 2, 2018

15

1 Ms. Edmo?

2 A. Yes.

3 Q. And for how many of those approximately ten
4 patients have you been their -- well, let me back up.

5 My understanding from other folks who have
6 testified and reviewing the records is that patients at
7 ISCI have an assigned primary clinician; is that
8 correct?

9 A. Correct.

10 Q. Okay. So for how many of these
11 approximately ten patients with gender dysphoria who
12 you've provided treatment to were you their assigned
13 primary clinician?

14 A. Approximately five.

15 Q. As a lead clinician do you carry a
16 caseload?

17 A. Yes.

18 Q. And so what were your general
19 responsibilities as a clinician at ISCI?

20 A. Responsibilities are the same as the lead
21 clinician, with the exception of the addition of some
22 administrative and supervisory role as a lead
23 clinician. Otherwise, it's similar to what's written
24 on my resumé.

25 Q. Okay. Okay. So on your resumé, one of the

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1 bullet points under your current, I guess, job
2 description is "Provide mental health assessment,
3 treatment, and referrals for individuals incarcerated
4 in an Idaho state prison facility."

5 Can you describe to me what is encompassed
6 by the treatment that you provide.

7 A. Yes. Treatment is an individualized
8 clinical contacts, which isn't necessarily the same
9 thing as individual like psychotherapy. It's primarily
10 check-ins with support for what they're going through.
11 It's referrals to group treatment. And then depending
12 on their treatment plan and the goals that they're
13 working towards, we can process, you know, recent
14 stressors or symptoms that they're dealing with,
15 provide homework assignments.

16 Q. And do you also provide any group
17 treatment?

18 A. Yes.

19 Q. What group treatment do you individually
20 provide?

21 A. Currently I run one of the gender dysphoria
22 process groups.

23 Q. Any other groups that you run?

24 A. Not currently. In the past I've run PTSD
25 groups, mood management groups, self-care groups.

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1 Q. Any others?

2 A. I think that's all.

3 Q. Okay. If you think of any others as we go,
4 let me know.

5 So for the individual clinical contacts
6 that you described, how long do those tend to be,
7 either an average time or, if it's more appropriate,
8 the range of time that those tend to last?

9 A. Most often they last anywhere from 20 to 45
10 minutes.

11 Q. And you said that they're not necessarily
12 the same thing as individual psychotherapy. What would
13 you describe as the difference between the individual
14 clinical contacts and individual psychotherapy?

15 A. Some of it is the frequency. Depending on
16 the individual and their treatment plan, they may be
17 seen once monthly or once every two months. Whereas in
18 my opinion, regular kind of in-depth psychotherapy
19 would probably be more frequent than that. It also
20 changes the treatment plans.

21 Q. How does it change the treatment plans?

22 A. The primary treatment modality that we use
23 with most clients is group treatment. So the
24 curriculum, the topics, is developed by the -- by the
25 group facilitator, which is not necessarily the

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1 assigned clinician. So rather than having two or more
2 clinicians working on the same symptoms in different
3 ways, then that's left to the group facilitator, rather
4 than the assigned clinician.

5 Q. How long have you been running one of the
6 GD groups?

7 A. For approximately a year and a half.

8 Q. And how often does that group meet?

9 A. Weekly.

10 Q. For how long?

11 A. Two hours.

12 Q. And how many -- I'm sure it's varied over
13 time. Like I don't know that actually.

14 Has the number of people varied over time
15 that attend your group?

16 A. Yes.

17 Q. And what has the range been as far as how
18 many people are attending?

19 A. Between two and eight.

20 Q. And you mentioned the PTSD group as one of
21 the things you've facilitated in the past?

22 A. Yes.

23 Q. How long did you run a PTSD group for?

24 A. I don't know the exact time period. I
25 could estimate between six months to a year.

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1 Management and Treatment Committee?

2 A. I don't remember the exact time period.

3 Q. You're on it now; is that right?

4 A. Yes.

5 Q. Can you estimate about how long you think
6 you've been attending those meetings.

7 A. Approximately a year and a half.

8 Q. Prior to your work with the Idaho
9 Department of Correction, had you received any specific
10 training on treating patients with gender identity
11 disorder or gender dysphoria?

12 A. No.

13 Q. And since you began your work at Idaho
14 Department of Correction, have you received specific
15 training on treating patients with gender identity
16 disorder or gender dysphoria?

17 A. Yes.

18 Q. And can you describe what kinds of
19 trainings you've received.

20 A. There has been training in our
21 all-clinician training sponsored by IDOC for the last
22 two years, including -- so 2017 and 2018.

23 Q. Anything else?

24 A. I've also been supervised by Jeremy Clark,
25 who's a WPATH member. That supervision has included

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1 supervision based -- or for treatment for GD.

2 Q. Any other trainings? Again, I'm
3 specifically asking about gender identity disorder or
4 gender dysphoria.

5 A. No. I attended a lecture about working
6 with nonbinary and transgender youth. It was not
7 specific to treating GD.

8 Q. It looks like in the materials that you
9 provided there are some training materials included
10 here regarding treatment for gender dysphoria; is that
11 correct?

12 A. Yes.

13 Q. Are those training materials you received
14 through the IDOC annual trainings?

15 A. Yes.

16 Q. Okay. And the annual IDOC clinician
17 training, as you've got it listed on your resumé, is
18 that -- and it sort of breaks out different topics. Is
19 that all offered as kind of one training, one single
20 training unit?

21 MR. HALL: Object to form.

22 THE WITNESS: Can you clarify that?

23 Q. (BY MS. RIFKIN): So is there like you get
24 your annual IDOC training every year for a week or for
25 two days and it covers a bunch of topics, or is it

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1 something that's spread out throughout the year?

2 A. The first. It's an annual training once a
3 year covering multiple topics.

4 Q. Okay. So it's sort of a block training?

5 A. Yes.

6 Q. Okay. How long does the overall training
7 last?

8 A. Three days.

9 Q. And can you give me an estimate within that
10 how long the training regarding treating patients with
11 gender dysphoria lasted in 2017 and 2018?

12 A. I'm not sure. It's likely on my
13 certificates.

14 Q. Oh, okay. So if we look at page 5, for
15 example -- oh, that's 2015. I'll let you find it.

16 A. Page 6 includes two hours of gender
17 dysphoria. That would have been 2017. Although the
18 year didn't get marked on the certificate.

19 Q. Got it.

20 A. Page 10 doesn't specifically list the
21 number of hours in 2018. I believe it was between
22 three and four hours specifically for gender dysphoria.

23 Q. Okay. Thanks.

24 And who gave the training in 2017 regarding
25 gender dysphoria? Do you recall?

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1 A. From the 2018 gender dysphoria training
2 with IDOC.

3 Q. Okay. You also have an article beginning
4 on page 42 by Stephen Levine.

5 Have you reviewed this article?

6 A. I have not.

7 Q. Okay. Was it provided to you?

8 A. Yes.

9 Q. By whom?

10 A. By the presenters of the gender dysphoria
11 presentation at our all-clinician training in 2018.

12 Q. Was that the IDOC training we've been
13 talking about?

14 A. Yes.

15 Q. Okay.

16 MR. HALL: I'm sorry, did you say you had or
17 have not?

18 THE WITNESS: I have not.

19 MR. HALL: Not.

20 Q. (BY MS. RIFKIN): All right. Then on
21 page 66, what is this document?

22 A. This is a photocopy of the beginning of
23 borderline personality disorder in the Diagnostic and
24 Statistical Manual.

25 Q. Version?

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1 A. Version 5.

2 Q. And why is this included in the packet?

3 A. In response to your request for
4 documentation, I felt like it was relevant.

5 Q. Okay. And there are some circles.

6 Did you make those?

7 A. I did.

8 Q. Okay. And what do those represent or mean?

9 A. They indicate criteria that I believe
10 there's a possibility that Edmo meets those criteria.

11 Q. And when did you make those circles?

12 A. About two weeks ago.

13 Q. Was that during a treatment session with
14 her?

15 A. No.

16 Q. Okay. What were you doing, I guess, that
17 occasioned you to make those marks on the DSM
18 description?

19 A. I was reviewing documents after completing
20 a treatment plan with Edmo.

21 Q. Did anybody ask you to affirmatively
22 consider whether Ms. Edmo met or meets any of the
23 criteria for the borderline personality disorder?

24 MR. HALL: Object to form.

25 THE WITNESS: Did anybody ask me? I'm not sure

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1 what you're asking.

2 Q. (BY MS. RIFKIN): Did you have any
3 communication with anybody where they asked you to
4 consider whether Ms. Edmo met any of the criteria for
5 borderline personality disorder?

6 A. No.

7 Q. Had you, prior to two weeks ago, documented
8 potential criteria for Ms. Edmo meeting borderline
9 personality disorder?

10 A. I don't -- I don't remember. It may be in
11 some of my notes.

12 Q. What prompted you to consider and document
13 these criteria after your session with Ms. Edmo two
14 weeks ago?

15 A. I was putting together documentation for
16 this declaration.

17 Q. Okay.

18 MR. EATON: I know you're a little soft-spoken,
19 but if you could speak up just a little bit, I'd
20 appreciate it.

21 THE WITNESS: Okay. I'm sorry. I'll try.

22 MR. EATON: Thank you.

23 Q. (BY MS. RIFKIN): We remind a lot of
24 witnesses who haven't done depositions before.

25 MR. EATON: We all do it.

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1 now.

2 How did it occur that you began attending
3 MTC meetings?

4 A. I started running or facilitating one of
5 the gender dysphoria process groups.

6 Q. Okay. And are the facilitators of the GD
7 groups always part of the MTC, as far as you
8 understand?

9 A. That's been my experience.

10 Q. And what do you understand your role to be
11 as part of the MTC?

12 A. I am a mental health clinician working
13 directly with inmates with gender dysphoria and
14 providing treatment specific to gender dysphoria.

15 Q. Are you familiar with a document referred
16 to as the WPATH Standard of Care 7?

17 A. Yes.

18 Q. Have you ever read that document?

19 A. Yes.

20 Q. Is that document something you rely on in
21 your treatment of patients with gender dysphoria?

22 A. Yes.

23 Q. Have any of the patients that you've
24 treated with gender dysphoria had what's referred to as
25 sex reassignment surgery or gender confirmation

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1 surgery?

2 A. No.

3 Q. Have you ever treated a patient who has had
4 surgery to treat gender dysphoria?

5 MR. HALL: Object to form. Vague.

6 MR. EATON: Join.

7 THE WITNESS: No.

8 Q. (BY MS. RIFKIN): You know, sorry, I missed
9 one document I wanted to ask about back in this stack
10 before we go on in what's been marked as Exhibit 2. If
11 you could turn to page 40. There's a document titled
12 "On Regret of Gender Transition," pages 40 and 41.

13 Have you reviewed this document?

14 A. Yes.

15 Q. And how did you identify this document?

16 A. This was also provided to me as part of the
17 training, the all-clinician training.

18 Q. Okay. Do you recall whether this is
19 material from the 2017 or 2018 training?

20 A. 2018.

21 Q. As far as you are aware, are all of the
22 materials that were provided to you in the 2018
23 all-clinician training related to gender dysphoria
24 included in this packet?

25 A. I believe so, to the best of my knowledge,

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1 assessment that was provided to them. And as a team we
2 determine whether or not they meet the criteria for
3 that diagnosis.

4 Q. Have you ever personally assessed a patient
5 with gender dysphoria for sex reassignment surgery or
6 gender confirmation surgery?

7 A. No.

8 Q. Have you been part of discussions in the
9 MTC about a specific patient, whether surgery is
10 medically necessary for a specific patient with gender
11 dysphoria?

12 A. Yes.

13 MR. HALL: Object to form. Vague, foundation.

14 MR. EATON: Join.

15 Q. (BY MS. RIFKIN): For how many patients
16 have you been part of a discussion in the MTC regarding
17 medical necessity for surgery?

18 A. I don't know.

19 Q. Can you give an estimate.

20 A. Two or three.

21 Q. And while you've been on the MTC, has the
22 MTC ever recommended gender confirmation surgery for
23 any patient?

24 A. No.

25 Q. Have you ever recommended gender

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1 confirmation surgery for any patient?

2 A. No.

3 MR. HALL: Counsel, we've been going about an
4 hour.

5 Do you mind if we take a break?

6 MS. RIFKIN: No, that's great. Yeah.

7 (Recess.)

8 (Exhibit 4 marked.)

9 Q. (BY MS. RIFKIN): All right. So what's in
10 front of you now has been marked as Exhibit 4. And
11 these are excerpts from treatment records for Ms. Edmo
12 that we were provided. And if you need to, I know your
13 timeline that you made is also in the Exhibit 2, so if
14 you need to pull that out, let me know.

15 It looks like, based on my review of the
16 records -- I could be wrong -- that your first contact
17 with Ms. Edmo was during the suicide risk assessment
18 that is on Corizon 0559, page 1 of this exhibit; is
19 that correct?

20 A. Yes, that's correct.

21 Q. Okay. Were you Ms. Edmo's assigned
22 clinician at that point?

23 A. Yes.

24 Q. So you said that you had been her assigned
25 clinician since July 1st, 2016; is that right?

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1 fill out afterwards, after they've left.

2 Q. Okay. Got it. And is your practice to
3 fill out the Clinical Contact Note immediately after
4 you see each patient, or do you see kind of your
5 patients for that chunk of time and then fill out
6 Clinical Contact Notes for all of them?

7 A. It varies, depending on my schedule and how
8 long contacts go and how much time I have to do
9 paperwork in between contacts.

10 Q. Okay. So this contact with Ms. Edmo was
11 November 2nd, 2016; is that right?

12 A. Yes.

13 Q. Okay. And at that time she wasn't able to
14 attend GD group because of the assault that had
15 happened; is that correct?

16 A. Correct.

17 Q. So you wrote here, "Edmo reported
18 experiencing frequent depression and thoughts of
19 self-castration related to Edmo's gender dysphoria and
20 Edmo's limited ability to feminize."

21 And this is what she's telling you; right?

22 A. Yes.

23 Q. Okay. "Edmo inquired about one-on-one
24 therapy due to being unable to participate in the GD
25 group. Discussed treatment options and Edmo's ability

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1 to access Edmo's assigned clinician via Concern Forms
2 and open clinics in order to meet one on one as
3 needed."

4 When there's a reference in that sentence
5 to "assigned clinician," was that you?

6 A. Yes.

7 Q. Okay. That threw me off.

8 What treatment options do you recall that
9 you discussed with Ms. Edmo in response to her inquiry
10 about one-on-one therapy?

11 A. I don't recall exactly, but based on the
12 documentation that I'm looking at, we discussed my
13 recommendations for group referrals, aside from the GD
14 process group, specifically healthy relationships. We
15 discussed providing Edmo with handouts and the
16 information that was being provided in the GD process
17 group, and specifically using Concern Forms and open
18 clinics to request one-on-one support as needed.

19 Q. Did you refer Ms. Edmo at that time for
20 individual psychotherapy using the process we talked
21 about earlier in the deposition?

22 A. I did not.

23 Q. The next sentence says, "Edmo inquired
24 about being provided the handouts for the GD group,
25 which was previously discussed and approved by the

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1 Q. In terms of the assessment section of this
2 note, you wrote, "Edmo appears to be managing Edmo's
3 mental health in general population at this time with
4 the assistance of psych meds and accessing clinical
5 services."

6 That represents your own assessment of her
7 mental health?

8 A. At that time, yes.

9 Q. Okay. Your assessment notes don't include
10 any discussion or reference to her reports of thoughts
11 of self-castration.

12 Is there a particular reason for that?

13 A. It mentions that in the second sentence.

14 Q. Oh.

15 A. Not in my assessment, correct, there's not
16 a reason for that.

17 Q. No reason for that?

18 A. Not anything specific I can think of.

19 Q. In your opinion, was that a significant
20 mental health concern for her?

21 MR. HALL: Object to form.

22 THE WITNESS: Yes, she identified that as a
23 significant mental health problem for her.

24 Q. (BY MS. RIFKIN): And in your opinion, in
25 terms of your clinical opinion, did you believe

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1 thoughts of self-castration to represent a significant
2 clinical issue?

3 A. Yes.

4 Q. And so under "Plan," there's a treatment
5 plan that is the next page of this document.

6 Is that the treatment plan that goes along
7 with this clinical contact?

8 A. Yes.

9 Q. Okay. So turning to that page,
10 Corizon 0585, was this document something that you
11 would have filled out with Ms. Edmo?

12 A. Yes.

13 Q. All right. Can you just describe to me
14 what the "Problem" column and "Goal" columns mean or
15 how you use them in this treatment plan.

16 A. So the way that I do a treatment plan, and
17 the way that I have done it with Edmo, is the problem,
18 so the clinical problem which is identified by the
19 client -- this is a very collaborative process. It is
20 identified by the client, in this case identify by
21 Edmo. We discuss options for what the goal could
22 reasonably be within kind of the time period that this
23 treatment plan covers. Those are also discussed and
24 agreed to by the client.

25 And then we also discuss treatment

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1 interventions with the hope and the goal for the
2 treatment interventions to be that they help the client
3 reach the goals that were identified.

4 Q. Okay. So the first problem, problem No. 1,
5 states, "Edmo reports struggling with attempts/desire
6 to self-castrate on average four days per week."

7 And so my understanding, based on what you
8 just said, is that's a problem identified by Ms. Edmo?

9 A. Correct.

10 Q. Okay. And then the goal states, "Edmo will
11 report a decrease in average frequency of thoughts of
12 self-castration from four days per week to three days
13 per week."

14 How did you arrive at that goal?

15 A. So that would have been a discussion with
16 Edmo about what did Edmo feel was a reasonable
17 expectation within the six-month time period that this
18 treatment plan would have covered to kind of improve
19 the problem in this case to decrease those thoughts of
20 self-castration.

21 Q. So of the interventions listed below,
22 there's a first column that says "Interventions problem
23 number," does that represent which problem number those
24 interventions are designated to address?

25 A. Yes.

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1 Q. Okay. In this collaborative treatment plan
2 process, how are potential interventions for problems
3 identified?

4 A. So some of those interventions are kind of
5 just documenting the services that are available to all
6 clients. And then the rest are things that are
7 discussed with the client, just ideas for how to move
8 towards that goal.

9 Q. So which of these interventions listed
10 below are designed to address Ms. Edmo's reported
11 problem of struggling with attempts slash desire to
12 self-castrate on average four days per week?

13 A. Sorry. I wasn't paying attention. Can you
14 say that again?

15 Q. Sure. Which of the interventions listed
16 here are designed to address problem No. 1, that she
17 reported of struggling with attempts slash desire to
18 self-castrate on average four days per week?

19 A. So the interventions identified are, the
20 first one, "Edmo will identify four warning signs of
21 depression/dysphoria that lead to the desire to
22 self-castrate."

23 The next one is, "Edmo will attend mental
24 health groups per client's request as scheduled. Edmo
25 is not currently enrolled in groups. Referred to

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1 Healthy Relationships and GD support when able. Edmo
2 will take medication as prescribed by psychiatry or
3 designee, as indicated, reporting any changes,
4 concerns, or side effects. Edmo will utilize open
5 clinic Concern Forms to report unsuccesses/struggles of
6 utilizing provided handouts and/or homework."

7 Q. And was it your clinical opinion that by
8 using these interventions you've just identified
9 Ms. Edmo would be able to alleviate her gender
10 dysphoria?

11 A. No.

12 Q. Was it your clinical opinion that by using
13 these interventions you just identified Ms. Edmo would
14 be able to alleviate her desire to self-castrate?

15 MR. HALL: Object to form. Vague.

16 THE WITNESS: No, not exactly.

17 Q. (BY MS. RIFKIN): How in your clinical
18 opinion would these interventions you just identified
19 address the problem Ms. Edmo reported of struggling
20 with attempts slash desire to self-castrate?

21 A. So the goal, as written, was not to like
22 get rid of thoughts of self-castration. It was to
23 decrease them from four days a week to three days a
24 week. My thought process and the interventions that
25 were listed was that Edmo struggled to identify

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1 A. It depends on the moment.

2 Q. And what about Ms. Edmo's tone of voice, do
3 you think that's feminine or masculine?

4 A. I feel like it is more neutral.

5 Q. All right. If you turn to what's page
6 number Corizon 0597.

7 This is another Clinical Contact Note for
8 your contact with Ms. Edmo; is that right?

9 A. Yes.

10 Q. And did you see her January 2nd, 2017.

11 A. Yes.

12 Q. And this was a couple days after Ms. Edmo
13 attempted to castrate herself; is that correct?

14 A. Yes.

15 Q. Did you formulate a new treatment plan for
16 Ms. Edmo during this contact?

17 A. No, I did not.

18 Q. Was the treatment plan we just talked about
19 from November 2nd, 2016, was that the treatment plan,
20 then, that was still in effect for her going forward
21 from January 2nd, 2017?

22 A. Yes.

23 Q. Did you add any additional treatments to
24 that plan on January 2nd, 2017?

25 A. No.

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1 management group? Or why did you refer her to attend
2 the mood management group?

3 A. Edmo was and is diagnosed with major
4 depressive disorder, which also comes with feelings of
5 dysphoria. It's not specifically related to gender.
6 But there are feelings of dysphoria, and because that
7 clinical significant distress and impairment can have
8 similar presentations, there would be some overlap in
9 dealing with the feelings of dysphoria and finding ways
10 to cope with and process those feelings.

11 Q. Do you believe that you are able to
12 distinguish between Ms. Edmo's dysphoria that arises
13 from depression versus dysphoria that arises from
14 gender dysphoria?

15 A. Sometimes.

16 Q. And what determines whether you're able to
17 distinguish between those or not?

18 A. A lot of it determines -- or a lot of it is
19 whether or not Edmo is sharing what Edmo's experienced,
20 and whether or not Edmo can identify those differences
21 as well.

22 Q. Based on your experience and training, can
23 it be difficult to distinguish between dysphoria
24 arising from depression and dysphoria arising from
25 gender dysphoria?

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1 A. Yes.

2 Q. Can those be related?

3 A. Yes, there can be some overlap.

4 Q. Are you aware, based on your experience and
5 training, of whether alleviating gender dysphoria can
6 help alleviate dysphoria from depression?

7 MR. EATON: Object to form.

8 MR. HALL: Join.

9 THE WITNESS: I'm not aware of the specific
10 research.

11 Q. (BY MS. RIFKIN): So if you can turn back
12 to the -- I guess you might want to keep the other in
13 front of you so you've got your timeline. But if you
14 can turn back to what we've marked as Exhibit 4, which
15 is that, to Corizon 1307.

16 MR. HALL: Are you done with this one?

17 MS. RIFKIN: You can put it sort of back
18 together, I think. We might refer to it again.

19 MR. HALL: Yeah. I'll just leave it there.

20 Q. (BY MS. RIFKIN): All right. Are you on
21 1307?

22 A. Yes.

23 Q. The first part of this page is notes from a
24 clinical session you had with Ms. Edmo on May 3rd,
25 2017; is that accurate?

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1 A. Restate.

2 Q. Do you agree that there are some
3 individuals with gender dysphoria whose gender
4 dysphoria cannot be fully alleviated without surgical
5 treatment?

6 MR. HALL: Same objection.

7 MR. EATON: Join.

8 THE WITNESS: Yes.

9 Q. (BY MS. RIFKIN): For that group of
10 individuals whose gender dysphoria cannot be fully
11 alleviated without surgical treatment, would you agree
12 that there's a limit to how much psychotherapy or
13 processing can alleviate their gender dysphoria?

14 A. Yes.

15 Q. Is it your opinion that that group of
16 individuals is obligated to participate in
17 psychotherapy and processing prior to receiving surgery
18 to treat gender dysphoria?

19 A. Is required to? Was that the question?

20 Q. Yes.

21 A. That is not my opinion.

22 Q. If you can turn to page -- let's see, it's
23 Corizon 1306. But the encounter note begins on 1305.
24 So the encounter note, I guess, for June 21st, 2017,
25 begins at the bottom of 1305.

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1 Do you see that?

2 A. Yes.

3 Q. Okay. And then this is a clinical
4 appointment that Ms. Edmo had with you; is that right?

5 A. Yes.

6 Q. Okay. So I'm going to ask you about
7 something that's on part of the subjective, the "S"
8 section, but it's on 1306. It says, "Edmo reported
9 expecting GRS to decrease Edmo's dysphoria/depression
10 by about 80 percent. Edmo reported feeling that the
11 GRS will address a significant piece of Edmo's
12 dysphoria, allowing Edmo to manage stressors and
13 depression more effectively."

14 And that's the subjective, that represents
15 what Ms. Edmo told you; correct?

16 A. Correct.

17 Q. Was that in response to questions that you
18 asked her?

19 MR. HALL: Object to form. Foundation.

20 THE WITNESS: Most likely.

21 MR. HALL: Don't guess.

22 Q. (BY MS. RIFKIN): Based on your
23 recollection, were those statements most likely in
24 response to questions that you asked Ms. Edmo?

25 A. Yes.

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1 Is that mental health groups?

2 A. Yes.

3 Q. Okay. Were there times that you're aware
4 of when Ms. Edmo did accept referrals to mental health
5 groups but was placed on the wait list for those?

6 A. Yes.

7 Q. Do you know about how many times that
8 happened?

9 A. I don't know.

10 Q. Okay. Were there times that Ms. Edmo
11 started to attend any mental health groups besides the
12 GD group that you're aware of?

13 A. Not in the time that I have been treating
14 Ms. Edmo.

15 Q. You were her primary clinician at
16 November 7th, 2016; correct?

17 A. Yes.

18 Q. Okay. And I think what you said is that
19 you're not aware, sitting here today, whether there
20 were times or not that she was on the wait list or what
21 those times were?

22 A. That's not what I said.

23 Q. Okay. So sitting here today, were there
24 times that you're aware of that she accepted referrals
25 for mental health groups but was on the wait list?

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1 A. Yes.

2 Q. And then I asked you how many times that
3 happened.

4 A. Yes.

5 Q. Okay. And that's what you can't say
6 sitting here today?

7 A. Correct.

8 Q. Okay. Thank you for clarifying or allowing
9 me to clarify.

10 Can you give me an estimate of how many
11 times that happened.

12 A. During the time that I've been treating
13 Edmo, it has happened at least twice.

14 Q. Okay. Do you remember what groups that was
15 for?

16 A. The healthy relationships group and the
17 mood management group. I would have to verify the
18 healthy relationships group.

19 MS. RIFKIN: Fair. Okay. Let's mark this as
20 the next exhibit, please.

21 (Exhibit 6 marked.)

22 MS. RIFKIN: All right. So this document
23 actually does have a Bates stamp, which is GG_534. And
24 I don't know why it cut off in copying. But the record
25 example does have the Bates stamp on it.

Krina Stewart - October 2, 2018

91

1 saying what Edmo says that I did.

2 Q. (BY MS. RIFKIN): Do you recall saying
3 anything about your familiarity with gender dysphoria
4 to Ms. Edmo around March 2017?

5 A. I don't remember.

6 Q. Have you ever, as far as you recall, told
7 Ms. Edmo that you're not familiar with gender
8 dysphoria?

9 A. I don't recall using those words.

10 Q. Do you recall ever saying something that
11 had a similar meaning?

12 MR. HALL: Object to form.

13 THE WITNESS: I don't recall specifically saying
14 something like that to Edmo.

15 Q. (BY MS. RIFKIN): In March 2017 did you
16 consider yourself familiar with gender dysphoria?

17 A. I considered myself becoming familiar with
18 gender dysphoria.

19 Q. Do you recall ever expressing something
20 like that to Ms. Edmo, that you were in the process of
21 becoming familiar with gender dysphoria at that time?

22 A. Not specifically in my memory.

23 Q. What do you mean when you said a moment ago
24 that you were becoming familiar with gender dysphoria
25 at that time?

Krina Stewart - October 2, 2018

102

1 What kind of unit is Unit 10?

2 A. Unit 10 is also a general population unit.

3 Q. And is there a particular way that you
4 characterize or label that unit, Unit 10?

5 A. No. It's a general population unit.

6 Q. What do you believe is the significance of
7 that Ms. Edmo was moved from Unit 13 to Unit 10?

8 A. Significance of what?

9 Q. Why did you include that information in
10 your declaration?

11 A. Because it was a change from the previous
12 declaration that I had written.

13 Q. Do you have an understanding of whether the
14 DOR for theft that you mentioned was related to alleged
15 theft of JPay funds?

16 A. That's my understanding.

17 Q. And do you have an understanding of whether
18 potentially hundreds of inmates at ISCI were
19 disciplined for similar reasons?

20 MR. HALL: Objection. Form, relevance.

21 THE WITNESS: That's my understanding.

22 MR. EATON: Join.

23 MS. RIFKIN: All right. Well, let's just take a
24 minute break and I'll figure out if I have anything
25 else.

1 REPORTER'S CERTIFICATE

2 I, JEFF LaMAR, CSR No. 640, Certified Shorthand
3 Reporter, certify:

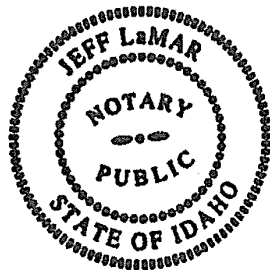
4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which
6 time the witness was put under oath by me.

7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me
9 or under my direction.

10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability.

12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this
16 5th day of October, 2018.



A handwritten signature of Jeff LaMar, consisting of a stylized "J" and "L" followed by a horizontal line.

23 JEFF LaMAR, CSR NO. 640

24 Notary Public

25 Post Office Box 2636

Boise, Idaho 83701-2636

My commission expires December 30, 2023

Stewart Dep.

Exh. 2

On Regret of Gender Transition

by Ami B. Kaplan, LCSW on June 18, 2011

There are some people who undergo a gender transition (either fully or to some extent) and then regret having done so and “de-transition”. This post attempts to explore this phenomenon.

Some reasons why this might occur include:

- **The person is not transsexual.** The person may have found by going through their transition that they are not in fact comfortable living in the other gender and that they feel either *gender queer* or more closely aligned with the natal gender. Certainly instances of transitions involving surgery might have been prevented if there were a greater attempt to determine this beforehand; however, just like with non-trans issues, we often go ahead with things we think are right for us only to discover that they aren't. Sometimes the discovery just isn't possible without trying it out. The ‘real life experience’ (see WPATH's standards of care) is an attempt to systematize this discovery process before any major surgeries.
- Regardless of whether the person is truly transsexual or not, it's possible that because of having lived so long with gender dysphoria and accompanying social and physical dissatisfaction, **one may think of a full gender transition as a magical ticket to happiness.** I have seen this (sometimes unconscious) wish accompanied by other unrealistic expectations such as: the idea that one will have a social community, better social skills, be more popular, etc. When this turns out not to be true, there can be confusion and uncertainty that tends to focus on one's gender transition. It may be that the gender transition *was* in the person's best interest, yet other causes of unhappiness and personal problems had not been sufficiently explored and worked through. Sometimes with gender variant people, work on other problems are delayed because the gender issues tend to take precedence.
- **The person encountered too many problems with transition** (i.e. dissatisfaction with their post-transition life). These problems could include lack of family support, loss of partner, problems with transition in the workplace, disappointment with the outcome of surgery and problems “passing” as the new gender. Additionally, **transitioning is hard.** There are many hoops to jump

through and one enters into a group of discriminated against people. This can be exceedingly disconcerting for some.

Levels of regret

Certainly a person who has made a gender transition can have certain regrets that are not extreme enough to cause them to wish to de-transition. The WPATH Standards of Care notes that “cases are known of persons who have received hormone therapy and sex reassignment surgery who later regretted their inability to parent genetically related children”. Other less extreme regrets can involve loss of certain benefits of privileges commonly associated with one gender or another.

Some research on regret:

Pfafflin F., Junge A. (1992) Sex Reassignment: 30 Years of International Follow-up Studies after SRS: A Comprehensive Review, 1961-1991 [publication online]. Translated from German into American English by Roberta B. Jacobson and Alf B. Meier. IJT Electronic Books.

This study looked at 70 previous studies and reviews on outcomes following sex reassignment surgery. These included 2000 individuals from 1961 to 1991. This doesn't take into account individuals who transition without surgery. About 70% of MTF individuals were satisfied and 90% of FTM individuals.

Krege S., Bex A., Lummen G., et al. (2001). Male-to-female transsexualism: a technique, results and long-term follow-up in 66 patients. BJU International. 88:396-402.

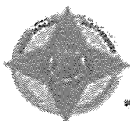
This study shows little or no regrets possibly due to surgical advances.

<https://tgmentalhealth.com/2011/06/18/on-regret-of-gender-transition/>

Stewart Dep.

Exh. 4

Print Form



IDAHO DEPARTMENT OF CORRECTION
"Protecting You and Your Community"

SUICIDE RISK ASSESSMENT

DATES OF WATCH/OBSERVATION				
DATE PLACED ON WATCH	08/31/2016	DATE PLACED ON OBSERVATION	09/01/2016	DATE REMOVED FROM WATCH/OBSERVATION

OFFENDER LAST NAME	OFFENDER FIRST NAME	IDOC#	DOB	DATE OF REPORT
EDMO	MASON	94691		09/01/2016
INSTITUTION	OFFENSE	REGULAR HOUSING UNIT	CURRENT HOUSING UNIT	
ISCI	SEXUAL ABUSE OF CHILD <16	UNIT 9	UNIT 16 HC	

CURRENT LEVEL OF CARE (LOC)	CMHS1 - Correctional MH Services
It should be noted that precise prediction of suicide and other self-injurious behavior is difficult, of limited reliability, and diminishes significantly over time. However, based upon the historical information, an individual interview, existing environmental conditions, and other information available at the time of the review, inmate's current level of risk probably of suicide is reflected below. This level of risk will change over time and should be modified as circumstances change.	
SRA REPORT TYPE	Incoming/Follow-up Concurrent
RISK LEVEL	Low

REASON FOR REFERRAL
 Edmo was placed in restrictive housing, SPI Status, due to stated sexual activity and stated possible PREA incident with no information given. Edmo placed on Suicide Watch in Unit-16 per Policy #315 due to making statements of suicidal ideation to restrictive housing staff.

MENTAL STATUS EXAM
 Edmo presented as alert and OX4. Edmo reported being "okay". Edmo's affect was flat. Edmo was soft spoken and eye contact was WNL. Edmo denied current SI/HI/SHB. Edmo's thought content was relevant and process was logical. Edmo was cooperative with the interview.

INTERVIEW
 Edmo reported doing "okay". Edmo stated Edmo reported a possible PREA incident and was placed in Unit 8 due to this. Edmo reported feeling overwhelmed last night and considered harming Edmo's self. Edmo reported having concerns about returning to Unit 8. Edmo stated, "The more I'm alone, the more pressure I feel from other inmates, the more I'm going to do something" indicating an expectation that Edmo may engage in self-injurious behaviors. Edmo reported no support system in the community. Edmo reported having a few friends on the yard that Edmo trusts and can be supportive. Edmo identified coping skills for managing stress. Edmo identified some hope that Edmo's future will be better than today. Edmo stated the Edmo is looking forward to "getting back to normal". Edmo defined this as "not feeling dirty anymore" and "not feeling targeted." Edmo requested information on dealing with sexual assault.

INTENT TO DIE
 Denied current intent

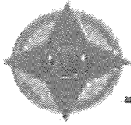
PLAN OR METHOD
 No plan/method identified

IDOC Suicide Risk Assessment PDF 8-13

Exh. No.	4
Date	10/2/18
Name	Stewart
M & M Court Reporting	

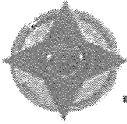
Page 1 of 4

CORIZON 0559



IDAHO DEPARTMENT OF CORRECTION
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OFFENDER LAST NAME	OFFENDER FIRST NAME	IDOC#	DOB	DATE OF REPORT
EDMO	MASON	94691		09/01/2016
ACCESS TO MEANS				
Access to means limited while on suicide watch/close observation				
HISTORICAL FACTORS (check all that apply)				
Family history of suicide	☐	First time prison term	☒	
Inmate history of suicide attempts	☒	Current Ad Seg	☐	
History of substance abuse	☒	Other (list below)	☐	
Edmo denied a family history of suicide. Edmo reported a history of suicide attempts, including two significant attempts - one in 2010 via overdose and one in 2011 via cutting. Edmo reported a history of substance abuse including alcohol, heroin, and methamphetamine. Edmo reported this is Edmo's first time in prison; Edmo has been in prison since 2011. Edmo is not currently Ad Seg.				
Per PSI: Edmo reported 3 suicide attempts (2010 cutting & 2010/11 overdose). Edmo reported a history of substance abuse including alcohol and marijuana.				
KNOWN STRESSORS/ DEMOGRAPHIC PREDICTORS (check all that apply)				
Sleeping difficulties or irregular sleeping hours	☒	Recent personal loss or crisis	☐	
Non-compliance with prescribed psych medications	☐	Neglect of personal hygiene	☐	
Weight loss or loss of appetite	☐	Long or life sentence	☐	
Progressive health problems (chronic or terminal illness)	☐	Poor compliance with treatment	☐	
DOR	☐	Conflict on tier	☐	
Family event	☐	Conflict with bunkmate	☐	
Gambling or other debt	☐	Parole/court hearing	☐	
Fearful for safety	☒	Other (list below)	☒	
Relationship	☐	Reported a possible PREA incident	☐	
PSYCHOLOGICAL FACTORS				
Edmo reported sleeping less than normal (4-5hrs per night). Edmo reported medication compliance and a decrease appetite, however Edmo reported eating regularly to avoid becoming nauseated. Edmo reported fear for Edmo's safety related to the reported PREA incident/threats that led Edmo to be placed in restrictive housing on SPI status. Edmo reported working with security to address safety issues.				
Edmo was last seen on 07/28/2016 by PNP Seys and diagnosed with GDD, Major Depressive Disorder, and Alcohol Use Disorder. Edmo was prescribed Effexor XR 225 mg. AM and is taking hormones for GDD. Edmo was recently discharged from the Behavioral Health Unit to general population after assaulting another inmate in Unit 16.				

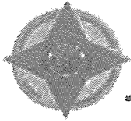


IDAHO DEPARTMENT OF CORRECTION
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OFFENDER LAST NAME	OFFENDER FIRST NAME	IDOC#	DOB	DATE OF REPORT
EDMO	MASON	94691		09/01/2016
PROTECTIVE FACTORS				
Edmo identified hope for improvements in Edmo's future. Edmo identified coping skills for managing stress including listening to music, reading books, and socializing with people. Edmo will have daily clinical contact while on close observation.				
EVALUATION OF RISK POTENTIAL <i>(It should be noted that precise prediction of suicide and other self-injurious behavior is difficult, of limited reliability, and diminishes significantly over time. However, based upon the historical information, an individual interview, existing environmental conditions, and other information available at the time of the review, inmate's current level of risk probably of suicide is indicated below. This level of risk will change over time and should be modified as circumstances change.)</i>				
The offender is currently a low risk for self harm				
RECOMMENDATIONS				
It is clinically recommended that Edmo be released from suicide watch to close observation.				

RISK REDUCTION/TREATMENT PLAN ADDENDUM

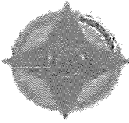
RISK REDUCTION PLAN		
PROBLEM <i>(The problem(s) should be specific to the offender's current reporting issues)</i>	GOAL <i>(There should be two (2) types of goals for each Problem: 1) Immediate goal(s) and 2) Short-term goal(s))</i>	INTERVENTION <i>(The interventions need to be specific and measurable to each of the two types of goals and relate to the presenting problem(s) of the offender)</i>
Edmo made self-injurious statements in response to becoming overwhelmed with Edmo's current situation	1) Edmo will refrain from harming self and others for the next 24 hours 2) Edmo will report a willingness to identify and use coping skills to manage current stress	1) Edmo will have daily clinical contact while on close observation 2) Edmo will work with clinical and security staff to address safety and mental health concerns related to current situation



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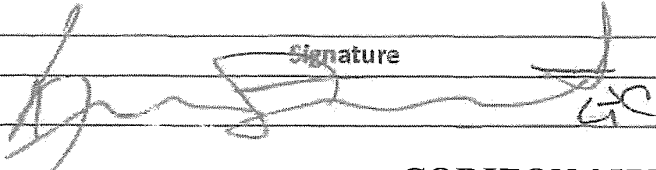
OFFENDER LAST NAME	OFFENDER FIRST NAME	IDOC#	DOB	DATE OF REPORT
EDMO	MASON	94691		09/01/2016
RISK REDUCTION PLAN CON'T				
CHANGE IN LOC REQUIRED?		NEW LOC IF APPLICABLE (enter in CIS if LOC has changed)		
No		Not Applicable		
NATURE OF INCIDENT		DEGREE OF MEDICAL INTERVENTION		
Verbal threat without action		None		
OFFENDER'S STATED INTENT		LAST SUICIDE WATCH		
Desire to speak with someone		6-12 months		
TREATMENT PLAN UPDATE				
The offender will return to their previous treatment plan upon stabilization				
ADDITIONAL COMMENTS				
REPORT COMPLETED BY	CREDENTIAL	DATE	SIGNATURE	
K. Stewart, B916	LPC	09/01/2016		

Print Form



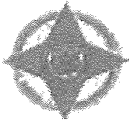
IDAHO DEPARTMENT OF CORRECTION
"Protecting You and Your Community"

CLINICAL CONTACT NOTE

INMATE NAME (Last, First, MI)		IDOC #	Date/Time	Problem number
EDMO, MASON D		94691	09/08/2016	
SUBJECTIVE	Met with inmate Edmo for clinical contact 3 of 3 following release from close observation. Edmo reported doing "better" now that Edmo is in Unit 16 instead of Unit 8. Edmo reported being unsure about the process that Edmo is going through; Edmo was informed that an RHPC hearing is likely next. Edmo reported sending a concern from to CS Watson to request to stay in Unit 16 if not granted PC. Edmo was given self-care focused handouts to help cope with the reported situation. Edmo inquired about possible individual counseling sessions in the future. Edmo reported significant anxiety, particularly when walking on the breezeway for a medical appointment today. Edmo reported med compliance and eating normally. Edmo reported sleeping a lot. Edmo denied SI/HI/SHB.			
	Orientation	Appearance	Behavior	Response to Interviewer
	X 4	Clean	Normal	Cooperative
	Mood (by report)	Affect (observed)	Thought Process	Thought Content
	"Good"	Appropriate	Logical	Relevant
	Delusions	Hallucinations	Self-Harm/Suicidal Ideation	Homicidal Ideation
	NO	NO	NO	NO
	Consciousness	Attention	Insight	Judgment
	Normal	Normal	Average	Intact
	LOC	Last MHE date	TX plan date	Date last saw provider
CMHS 1	Optional to add	Optional to add	Optional to add	
OBJECTIVE				
ASSESSMENT	Edmo appears to be maintaining stability in segregation in Unit 16 at this time. Edmo appears to be low risk for self-injurious behavior.			
PLAN	Follow-up according to LOC. Weekly seg checks on Wednesdays and Saturdays. Edmo can access additional services via concern forms as needed.			
Name		Credential(s)	Signature	
K. Stewart, B916		LPC		

CORIZON 0575

Print Form



IDAHO DEPARTMENT OF CORRECTION
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CLINICAL CONTACT NOTE

INMATE NAME (Last, First, MI)		IDOC #	Date/Time Problem number																																								
EDMO, MASON D		94691	11/02/2016																																								
SUBJECTIVE	Met with inmate Edmo for clinical contact and to review treatment plan per LOC. Edmo reported experiencing frequent depression and thoughts of self-castration related to Edmo's gender dysphoria and Edmo's limited ability to feminize. Edmo inquired about 1-on-1 therapy due to being unable to participate in the GD group. Discussed treatment options and Edmo's ability to access Edmo's assigned clinician via concern forms and open clinics in order to meet one-on-one as needed. Edmo inquired about being provided the handouts for the GD group, which was previously discussed and approved by the clinical team. Edmo was informed that Edmo can access those handouts via Edmo's assigned clinician. Edmo reported doing well and feeling comfortable in general population; Edmo reported feeling comfortable with Edmo's current cellie (a cousin). Discussed Edmo's mental health problems/goals/interventions. Edmo's updated treatment plan was completed, reviewed, and signed. Following the above interview, Edmo agreed to and participated in an interview to complete an evaluation requested by the parole commission.																																										
	<table border="1"> <thead> <tr> <th>Orientation</th> <th>Appearance</th> <th>Behavior</th> <th>Response to Interviewer</th> </tr> </thead> <tbody> <tr> <td>X 4</td> <td>Clean</td> <td>Normal</td> <td>Cooperative</td> </tr> <tr> <th>Mood (by report)</th> <th>Affect (observed)</th> <th>Thought Process</th> <th>Thought Content</th> </tr> <tr> <td>"Good"</td> <td>Flat</td> <td>Logical</td> <td>Relevant</td> </tr> <tr> <th>Delusions</th> <th>Hallucinations</th> <th>Self-Harm/Suicidal Ideation</th> <th>Homicidal Ideation</th> </tr> <tr> <td>NO</td> <td>NO</td> <td>NO</td> <td>NO</td> </tr> <tr> <th>Consciousness</th> <th>Attention</th> <th>Insight</th> <th>Judgment</th> </tr> <tr> <td>Normal</td> <td>Normal</td> <td>Average</td> <td>Intact</td> </tr> <tr> <th>LOC</th> <th>Last MHE date</th> <th>TX plan date</th> <th>Date last saw provider</th> </tr> <tr> <td>CMHS 1</td> <td>Optional to add</td> <td>Optional to add</td> <td>Optional to add</td> </tr> </tbody> </table>				Orientation	Appearance	Behavior	Response to Interviewer	X 4	Clean	Normal	Cooperative	Mood (by report)	Affect (observed)	Thought Process	Thought Content	"Good"	Flat	Logical	Relevant	Delusions	Hallucinations	Self-Harm/Suicidal Ideation	Homicidal Ideation	NO	NO	NO	NO	Consciousness	Attention	Insight	Judgment	Normal	Normal	Average	Intact	LOC	Last MHE date	TX plan date	Date last saw provider	CMHS 1	Optional to add	Optional to add
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LOC	Last MHE date	TX plan date	Date last saw provider																																								
CMHS 1	Optional to add	Optional to add	Optional to add																																								
ASSESSMENT	Edmo appears to be managing Edmo's mental health in general population at this time with the assistance of psych meds and accessing clinical services.																																										
	Edmo was provided with a copy of Edmo's treatment plan and with the handouts for the GD group (through page 57 of "The Transgender Workbook"). Follow-up according to LOC and current treatment plan. Edmo can access additional MH services via concern forms and open clinics as needed.																																										
PLAN																																											
Name		Credential(s)	Signature																																								
K. Stewart, B916		LPC																																									

CORIZON 0584

IDAHO DEPARTMENT OF CORRECTION
TREATMENT PLANOffender Name: EDMO, MASON D Date: 11/02/2016IDOC # 94691 LOC: CMHS-1Date of Birth: [REDACTED]

PROBLEM (in operational terms)		GOAL (short-term objective)	
1	Edmo reports struggling with attempts/desire to self-castrate on average 4 days per week	Edmo will report a decrease in average frequency of thoughts of self-castration from 4 days/wk to 3 days/wk.	
2	Edmo reports struggling with feelings of dysphoria related to gender identity, especially related to limitations of feminizing.	Edmo will identify at least two ways Edmo could feel more feminine within IDOC policy	
3			

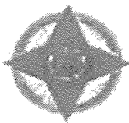
INTERVENTIONS Problem #	Treatment Intervention	Staff/Person Responsible	Frequency/Duration	Date Goal Closed
1	Edmo will identify 4 warning signs of depression/dysphoria that lead to the desire to self-castrate	Edmo	As needed	
2	Edmo will review GD handouts provided by clinical staff. Edmo meet with assigned clinician to discuss reactions to handouts and prosocial ideas for ways to feminize	Edmo/Clinician	As needed	
1, 2	Edmo will attend mental health groups per client's request as scheduled. Edmo is not currently enrolled in MH groups. Referred to Healthy Relationships & GD Support when able	Edmo	As scheduled	
1, 2	Edmo will take any medication prescribed by psychiatry or designee, as indicated, reporting any changes, concerns, or side effects.	Edmo/ Psychiatry	As prescribed	
1, 2	Edmo will utilize open clinics concern forms to report on successes/struggles of utilizing provided handouts and/or homework.	Edmo/Clinician	As needed	

Offender Signature: [Signature] Date: 11/2/16Signature: [Signature] Date: 11/2/16

Prepared by: K. Stewart, LPC B916

CORIZON 0585

Print Form



IDAHO DEPARTMENT OF CORRECTION

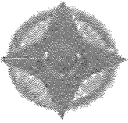
"Protecting You and Your Community"

CLINICAL CONTACT NOTE

INMATE NAME (Last, First, MI)		IDOC #	Date/Time Problem number	
EDMO, MASON D		94691	12/14/2016	
SUBJECTIVE	Met with Edmo for clinical contact per LOC and to provide Edmo with GD group materials. Edmo reported doing okay, although Edmo reported being depressed. Edmo reported being told to top Edmo's time by the parole commission, which was disappointing. Edmo reported having a cold right now, also. Edmo stated Edmo just wants to rest and feels doing so is helpful at this time. Discussed being aware of potential isolation and problems with doing so while depressed. Edmo reported awareness of how to use open clinic and concern forms to access MH services as needed. Edmo denied SI/HI/SHB.			
	Orientation	Appearance	Behavior	Response to Interviewer
	X 4	Clean	Normal	Cooperative
	Mood (by report)	Affect (observed)	Thought Process	Thought Content
	"Okay"	Depressed	Logical	Relevant
	Delusions	Hallucinations	Self-Harm/Suicidal Ideation	Homicidal Ideation
	NO	NO	NO	NO
	Consciousness	Attention	Insight	Judgment
	Normal	Normal	Average	Intact
	LOC	Last MHE date	TX plan date	Date last saw provider
CMHS 1	Optional to add	Optional to add	Optional to add	
ASSESSMENT	Edmo appears to be depressed at this time, but is managing symptoms with psych meds and coping skills at this time.			
	Follow-up per LOC. Edmo can access additional MH services via concern forms and open clinics as needed.			
PLAN	Name	Credential(s)	Signature	
	K. Stewart, B916	LPC		

CORIZON 0591

Print Form



IDAHO DEPARTMENT OF CORRECTION
"Protecting You and Your Community"

CLINICAL CONTACT NOTE

INMATE NAME (Last, First, MI)		IDOC #	Date/Time Problem number	
EDMO, MASON D		94891	01/02/2017	
SUBJECTIVE	Met with Edmo in the infirmary for clinical contact per primary passdown following engaging in self-injurious behaviors related to GD. Edmo reported being "tired." Edmo reported meeting with a clinician yesterday and being informed that she would communicate with the MTC concerning Edmo's GD concerns. Edmo reported having attended open clinic a couple of times recently. Edmo reported not being sure what treatment will be provided since Edmo is not currently allowed to attend GD group. Edmo denied current SI/SHB. Edmo agreed to attend open clinic on a Tuesday to meet with Edmo's assigned clinician to discuss support.			
	Orientation	Appearance	Behavior	Response to Interviewer
	X 4	Clean	Slow	Cooperative
	Mood (by report)	Affect (observed)	Thought Process	Thought Content
	"Tired"	Depressed	Logical	Relevant
	Delusions	Hallucinations	Self-Harm/Suicidal Ideation	Homicidal Ideation
	NO	NO	NO	NO
	Consciousness	Attention	Insight	Judgment
	Lethargic	Moderate Attention	Average	Intact
	LOC	Last MHE date	TX plan date	Date last saw provider
CMHS 1	Optional to add	Optional to add	Optional to add	
ASSESSMENT	Edmo appears to be struggling with depression and GD. Edmo appears to be low-risk for self-injurious behaviors at this time and is aware of how to access help as needed.			
PLAN	Follow-up according to LOC. Edmo agreed to attend open clinic on a Tuesday after being released from the infirmary in order to check in with assigned clinician.			
Name		Credential(s)	Signature	
K. Stewart, B916		LPC		

CORIZON 0597

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STAFF: Povar, Jared

IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/03/2017 TIME: 10:20:32(MT) DURATION: minutes TYPE: MH Clinician Individual Contact LOCATION: Idaho State Correctional Institution (ISCI) SETTING: Clinic																		
S NOTES: Met with inmate Edmo for clinical contact and to update Edmo's treatment plan per LOC. Edmo reported Edmo is attending the GD group and feels that it is going "okay." Edmo stated that Edmo doesn't feel that it is an "intervention," but that Edmo gets some new perspectives and feels that is helpful. Edmo stated Edmo informed the group clinician that Edmo is refusing to attend the Social Skills group and will appeal the MTC decisions to require it because it does not have anything to do with Edmo's gender dysphoria and does not treat the GD in any way. Edmo was reminded that we previously discussed the connection between the GD group, the requirement to attend the Social Skills group, and why that had been decided. Edmo acknowledged it was previously discussed; Edmo reported continued refusal to participate in the Social Skills group. Edmo reported attending open clinic previously and being told that Edmo's mental health transportation hold was removed. Edmo was informed that, per CIS, the MH transportation hold remains, as previously discussed, and is effective until July 2017. Edmo stated that Edmo doesn't care either way - that it can be removed or can remain and Edmo doesn't have a preference either way. Edmo reported meeting with the psychiatrist yesterday and discontinuing Remeron due to pharmacy not providing the dosage correctly; Edmo reported continuing to take Effexor. Edmo identified that Edmo's desire to self-castrate is often triggered by "depression" (hopelessness, lack of self-worth), which then triggers Edmo's gender dysphoria, which then feeds the depression. Edmo stated that, even though Edmo feminizes anyway, being unable to feminize increases Edmo's dysphoria and depression. This contradiction was challenged; Edmo agreed to identify self-worth and self-image as triggers for Edmo's dysphoria rather than the inability to feminize within IDOC policy. Edmo's treatment plan was reviewed and updated to reflect Edmo's current identified problems and goals for treatment. Edmo signed the treatment plan and was provided with a printed copy per Edmo's request.																		
O NOTES: None																		
<table border="1"> <tr> <td>Person ☒ Y ☐ N</td> <td>Place ☐ Y ☐ N</td> <td>Time ☐ Y ☐ N</td> </tr> <tr> <td>Situation ☐ Y ☐ N</td> <td>Insight: ☐ Poor ☒ Fair ☐ Good</td> <td>Judgment: ☐ Poor ☒ Fair ☐ Good</td> </tr> <tr> <td>Abnormal movements: ☐ N ☐ Y:</td> <td>Current Suicidal Ideation: ☐ N ☐ Y:</td> <td>Appearance/Behavior: ☒ Adequate grooming & hygiene</td> </tr> <tr> <td>☒ Guarded ☐ Flat</td> <td>Speech: ☒ Unremarkable</td> <td>Thought Form: ☒ Goal directed ☒ Perseverative</td> </tr> <tr> <td>Thought Content: ☒ No evident psychosis</td> <td>Cognitive functioning: ☒ No gross cognitive deficits apparent</td> <td></td> </tr> </table>				Person ☒ Y ☐ N	Place ☐ Y ☐ N	Time ☐ Y ☐ N	Situation ☐ Y ☐ N	Insight: ☐ Poor ☒ Fair ☐ Good	Judgment: ☐ Poor ☒ Fair ☐ Good	Abnormal movements: ☐ N ☐ Y:	Current Suicidal Ideation: ☐ N ☐ Y:	Appearance/Behavior: ☒ Adequate grooming & hygiene	☒ Guarded ☐ Flat	Speech: ☒ Unremarkable	Thought Form: ☒ Goal directed ☒ Perseverative	Thought Content: ☒ No evident psychosis	Cognitive functioning: ☒ No gross cognitive deficits apparent	
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Thought Content: ☒ No evident psychosis	Cognitive functioning: ☒ No gross cognitive deficits apparent																	
A NOTES: Edmo appears to continue to struggle with self-worth and gender dysphoria. Edmo tends to focus on external factors as causes of Edmo's dysphoria and is hesitant to explore intrinsic factors. Edmo was able to identify the internal/emotional cycle that often contributes to Edmo's desire to self-harm, which can be helpful in continued work on Edmo's triggers/warning signs. STANDARD FORM: MH Individualized Treatment Plan Provisional Diagnosis: N/A																		
P APPT SCHEDULED: MH - Clinician - Individual Contact WITH: Stewart, Krina ON: 07/03/2017 AT: 23:00:00(MT) APPT SCHEDULED: MH - Treatment Plan Review WITH: Stewart, Krina ON: 11/03/2017 AT: 23:00:00(MT) NOTES: Follow-up per LOC and current treatment plan. Consult with MTC regarding Edmo's refusal to complete Social Skills group. Edmo can access additional MH services via concern forms and open clinics as needed.																		
E NOTES:																		
TimeStamp: 3 May 2017 11:35:31 (MT) --- User: Krina Stewart (STEKR01)																		
ADDENDUM: 05/03/2017 14:51:15 Clark, Jeremy This clinician is writing in the review notes about the follow up during the MTC meeting in June forgot to time stamp when that note was made. The note was added just before this addendum. TimeStamp: 3 May 2017 15:51:54 (MT) --- User: Jeremy Clark (CLAJE01)																		
STAFF: Stewart, Krina																		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/02/2017 TIME: 09:45:53(MT) DURATION: minutes TYPE: MH Psychiatrist - Medication Renewal LOCATION: Idaho State Correctional Institution (ISCI) SETTING: Clinic																		
S NOTES: This encounter was system generated when the prescription drug below was reordered from the Drug Prescription Order screen CHSS037B.																		
O NOTES: None																		
A NOTES: None																		
STANDARD FORM: MH Individualized Treatment Plan P DRUG PRESCRIPTION: VENLAFAXINE HCL XR CP24 150 Mg Cp24 VERBAL BY: Stoddart, Jeremy EFFECTIVE DT: 05/02/2017 RT: PO DOSE: 2 STRENGTH: 150 MG METHOD: Daily Dose FREQ: QAM FOR: 210 DAYS EXPIRATION DATE: 11/27/2017 REFILLS: 3 STATUS: Discontinued - Other NOTES: None																		
E NOTES: None																		
STAFF: Stoddart, Jeremy																		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/02/2017 TIME: 09:26:49(MT) DURATION: minutes TYPE: MH - Psychiatrist - Scheduled LOCATION: Idaho State Correctional Institution (ISCI) SETTING: Clinic																		
S NOTES: Psychiatry follow up.																		
<table border="1"> <tr> <td>Current housing: ☒ General population ☐ Mental Health unit ☐ Medical observation/infirmiry ☐ Segregation ☐ Crisis cell ☐ Other:</td> <td>Follow-up exam: ☒ Routine ☐ Urgent ☐ Emergent ☐ Patient requested</td> <td>Exam conducted: ☒ On site ☐ Telemedicine</td> </tr> <tr> <td colspan="3"> Current symptoms: The inmate reported no change in clinical situation. Still perseverates a lot on gender dysphoria, feels frustrated that identity and anatomy differ from each other and has occasional thoughts of autocastration. Denied any intent and described intention to "just take it day by day and keep myself physically safe." Has no intention to parole because continues to get DORs for "looking too effeminate in violation of IDOC policy." Feels trapped between being true to self and obeying the rules. Did not take Remeron because nursing was dispensing a full 15mg pill instead of breaking it in half for 7.5mg dose. Described adequate sleep, appetite and energy. Reported good compliance with Effexor and denied side effects. "abandoned hope for future goals until I get out because of this gender dysphoria in the way." </td> </tr> </table>				Current housing: ☒ General population ☐ Mental Health unit ☐ Medical observation/infirmiry ☐ Segregation ☐ Crisis cell ☐ Other:	Follow-up exam: ☒ Routine ☐ Urgent ☐ Emergent ☐ Patient requested	Exam conducted: ☒ On site ☐ Telemedicine	Current symptoms: The inmate reported no change in clinical situation. Still perseverates a lot on gender dysphoria, feels frustrated that identity and anatomy differ from each other and has occasional thoughts of autocastration. Denied any intent and described intention to "just take it day by day and keep myself physically safe." Has no intention to parole because continues to get DORs for "looking too effeminate in violation of IDOC policy." Feels trapped between being true to self and obeying the rules. Did not take Remeron because nursing was dispensing a full 15mg pill instead of breaking it in half for 7.5mg dose. Described adequate sleep, appetite and energy. Reported good compliance with Effexor and denied side effects. "abandoned hope for future goals until I get out because of this gender dysphoria in the way."											
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CORIZON 1307

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IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 08/08/2017 TIME: 08:22:08(MT) DURATION: minutes TYPE: MH - Clinician - Individual Contact LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic																	
S	NOTES: Met with inmate Edmo in my office in the Education building for clinical contact per LOC and to follow-up on increased anxiety reported to the psych provider. Edmo reported doing well today, although tired because it is earlier than Edmo prefers. Edmo denied questions or concerns. Edmo reported the appointment with the psych provider went well and nothing was changed. I asked about the increase in anxiety; Edmo reported some increase in general anxiety and believes it is related to Edmo's gender dysphoria. Edmo was offered to be enrolled in Mood Management to address anxiety and depression symptoms, which would be helpful in addition to the support Edmo received in the gender dysphoria group. Edmo denied wanting to participate in a Mood Mgmt group. Edmo reported being able to manage the anxiety by secluding Edmo's self briefly in Edmo's cell in order to re-center Edmo's self; Edmo reported this works well. Edmo denied significant increases in gender dysphoria recently and stated Edmo feels some hope for the future due to Edmo's current lawsuit, which helps decrease Edmo's dysphoria. Edmo denied thoughts of self-castration at this time. Edmo denied SI/HT/SHB. Edmo reported having requesting to have Edmo's MH facility hold removed and is hoping that will be staffed at the next MTC meeting. Edmo reported trying to get a job and hoping to be able to move to SICI for a better chance at being able to work.																
O	NOTES: None																
<table border="1"> <tr> <td>Person ☒ Y ☐ N</td> <td>Place ☒ Y ☐ N</td> <td>Time ☒ Y ☐ N</td> </tr> <tr> <td>Situation ☒ Y ☐ N</td> <td>Insight: ☐ Poor ☒ Fair ☐ Good</td> <td>Judgment: ☐ Poor ☒ Fair ☐ Good</td> </tr> <tr> <td>Abnormal movements: ☐ N ☒ Y</td> <td>Current Suicidal Ideation: ☐ N ☒ Y</td> <td>Appearance/Behavior: ☒ Adequate grooming & hygiene</td> </tr> <tr> <td>☒ Calm & cooperative</td> <td>Mood/Affect: ☒ Stable affect/mood congruent</td> <td>Speech: ☒ Unremarkable</td> </tr> <tr> <td>Thought Form: ☒ Goal directed</td> <td>Thought Content: ☒ No evident psychosis</td> <td>Cognitive functioning: ☒ No gross cognitive deficits apparent</td> </tr> </table>			Person ☒ Y ☐ N	Place ☒ Y ☐ N	Time ☒ Y ☐ N	Situation ☒ Y ☐ N	Insight: ☐ Poor ☒ Fair ☐ Good	Judgment: ☐ Poor ☒ Fair ☐ Good	Abnormal movements: ☐ N ☒ Y	Current Suicidal Ideation: ☐ N ☒ Y	Appearance/Behavior: ☒ Adequate grooming & hygiene	☒ Calm & cooperative	Mood/Affect: ☒ Stable affect/mood congruent	Speech: ☒ Unremarkable	Thought Form: ☒ Goal directed	Thought Content: ☒ No evident psychosis	Cognitive functioning: ☒ No gross cognitive deficits apparent
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Thought Form: ☒ Goal directed	Thought Content: ☒ No evident psychosis	Cognitive functioning: ☒ No gross cognitive deficits apparent															
A	NOTES: Edmo is assessed as calm and stable at this time and managing Edmo's MH in GP. Edmo would benefit from attendance in a Mood Mgmt group to process anxiety/depressive symptoms and learn additional coping skills. STANDARD FORM: MH Individualized Treatment Plan																
Provisional Diagnosis: N/A																	
P	NOTES: It was recommended that Edmo participate in Mood Mgmt group; Edmo declined. CS Clark was emailed to request that Edmo's MH hold be added to the agenda at the next MTC meeting. Follow-up per LOC. Edmo can access additional MH services via HSRs and open clinics as needed.																
E	NOTES: TimeStamp: 8 August 2017 08:38:02 (MT) -- User: Krina Stewart (STEKR01)																
STAFF: Stewart, Krina																	

IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 07/26/2017 TIME: 10:56:23(MT) DURATION: minutes TYPE: Practitioner - Review LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S	NOTES: pt in to CDP to discuss changing Sublingual estradiol to transdermal.	
O	NOTES: pt AOX3 NAD, pt exam deferred for discussion. pt currently on recommended dose of estradiol by GD specialist 3mg BID.	
A	NOTES: None STANDARD FORM: MH Individualized Treatment Plan	
P	NOTES: cont POC, refer to GD specialist at next appointment.	
E	NOTES: pt edu on POC, pt states understanding and agrees to wait to speak with specialists in December.	
STAFF: Martin, Steve		

IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 07/25/2017 TIME: 07:25:58(MT) DURATION: minutes TYPE: MH - Psychiatrist - Scheduled LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic																		
S	NOTES: TimeStamp: 25 July 2017 07:27:27 (MT) -- User: Scott Eliason (ELISC01) Current symptoms: The inmate reported she is doing "alright." She said that her mood "still depressed- it is there. Sometimes it is bad and sometimes it is manageable." She complained about feeling anxious and constantly being watched. "It isn't anyone in particular but I just feel like everyone is watching me." She said that she thinks that maybe it has to do a little with her wanting to transition and not being able to do it. She is back in the gender dysphoria groups and feels more supported there. She denied suicidal thoughts. She reported good med compliance.																	
O	NOTES: None																	
<table border="1"> <tr> <td>☒ Alert, Oriented x 3</td> <td>☒ Calm/Cooperative</td> <td>☒ No Apparent Distress</td> <td>☒ Adequate Grooming/Hygiene</td> </tr> <tr> <td>Mood: ☒ Euthymic ☐ Labile ☐ Dysphoric</td> <td>Affect: ☒ Full ☐ Restricted</td> <td colspan="2">Suicidal Ideation: ☐ N ☒ Y</td> </tr> <tr> <td>Homicidal Ideation: ☐ N ☒ Y</td> <td>Speech: ☒ Normal Rate/Rhythm</td> <td colspan="2">Thought process: ☐ Unremarkable ☐ Remarkable:</td> </tr> <tr> <td>Thought Content: ☐ Unremarkable ☐ Remarkable:</td> <td>Cognitive Functioning: ☐ Unremarkable ☐ Remarkable:</td> <td colspan="2"></td> </tr> </table>			☒ Alert, Oriented x 3	☒ Calm/Cooperative	☒ No Apparent Distress	☒ Adequate Grooming/Hygiene	Mood: ☒ Euthymic ☐ Labile ☐ Dysphoric	Affect: ☒ Full ☐ Restricted	Suicidal Ideation: ☐ N ☒ Y		Homicidal Ideation: ☐ N ☒ Y	Speech: ☒ Normal Rate/Rhythm	Thought process: ☐ Unremarkable ☐ Remarkable:		Thought Content: ☐ Unremarkable ☐ Remarkable:	Cognitive Functioning: ☐ Unremarkable ☐ Remarkable:		
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Thought Content: ☐ Unremarkable ☐ Remarkable:	Cognitive Functioning: ☐ Unremarkable ☐ Remarkable:																	
A	NOTES: None STANDARD FORM: MH Individualized Treatment Plan Brief summary: The inmate reported she was doing "okay." Mood and anxiety appear fairly stable. She notes some continues anxiety and dysphoria about transitioning.																	
P	NOTES: None																	
E	NOTES: Gender dysphoria																	
STAFF: Eliason, Scott																		

IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 06/21/2017 TIME: 15:30:08(MT) DURATION: minutes TYPE: MH - Clinician - Individual Contact LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S	NOTES: Met with inmate Edmo in my office in the Education Bldg for clinical contact per LOC. Edmo reported not doing very well lately and experiencing an increase in gender dysphoria. Edmo reported staying busy and trying not to dwell on it too much. Edmo reported doing okay in Edmo's housing unit and has continued to take Effexor; Edmo reported having experienced significant withdrawal symptoms when trying to discontinue Effexor. Edmo has no plans to continue taking it at this time. Edmo reported maybe it helps. Edmo reported attending the GD group every week and getting some possible benefit from it. Edmo was informed the MTC is aware of Edmo's refusal to attend Social Skills group as an intervention and support Edmo's continued	

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attendance in the GD group. Edmo reported asking the group facilitator to request that the MTC provide an evaluation for gender reassignment surgery and was informed the request has been noted. Edmo reported expecting GRS to decrease Edmo's dysphoria/depression by about 80%. Edmo reported feeling that the GRS will address a significant piece of Edmo's dysphoria, allowing Edmo to manage stressors and depression more effectively. Edmo reported that the dysphoria often occurs without Edmo being aware of it until Edmo is experiencing it. Edmo identified some "touchy subjects" that often trigger Edmo's dysphoria, particularly subjects that are taken for granted by cisgender individuals (e.g. being able to carry a biological child). Edmo reported managing the dysphoria okay at this time, but it is constantly there. Edmo reported some struggles with trying to describe gender dysphoria to others because it is an indescribable feeling, which is difficult for Edmo. Edmo reported taking things one day at a time for now because having expectations/plans tends to lead to disappointment and depression, so staying in the present is more useful. Edmo inquired about when the MTC will meet again and confirmed that Edmo can send a concern form with questions Edmo would like addressed.		
O NOTES: None		
Person ☒ Y ☐ N	Place ☒ Y ☐ N	Time ☒ Y ☐ N
Situation ☒ Y ☐ N	Insight: ☐ Poor ☒ Fair ☐ Good	Judgment: ☐ Poor ☒ Fair ☐ Good
Abnormal movements: ☐ N ☒ Y:	Current Suicidal Ideation: ☐ N ☒ Y:	Appearance/Behavior: ☒ Adequate grooming & hygiene
☒ Calm & cooperative ☐ Flat	Speech: ☒ Unremarkable	☒ Logical
Thought Content: ☒ No evident psychosis	Cognitive functioning: ☒ No gross cognitive deficits apparent	
A NOTES: Edmo appears to continue to experience symptoms of gender dysphoria and is focused on gender reassignment surgery as the only effective treatment option. STANDARD FORM: MH Individualized Treatment Plan		
Provisional Diagnosis: N/A		
P APPT SCHEDULED: MH - Clinician - Individual Contact WITH: Stewart, Krina ON: 08/21/2017 AT: 23:00:00(MT) NOTES: Follow-up per LOC and Tx plan. Edmo can access additional MH services via concern form and open clinic as needed.		
E NOTES: TimeStamp: 21 June 2017 15:54:34 (MT) --- User: Krina Stewart (STEKR01)		
STAFF: Stewart, Krina		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/17/2017 TIME: 07:35:45(MT) DURATION: minutes TYPE: Nurse Verbal/Telephone Orders LOCATION: Idaho State Correctional Institution (ISCI) SETTING: Clinic		
S NOTES: Chronic Care medication renewal		
O NOTES: None		
A NOTES: None STANDARD FORM: MH Individualized Treatment Plan		
P DRUG PRESCRIPTION: ESTRADIOL TABS 1 Mg Tabs VERBAL BY: Povar, Jared EFFECTIVE DT: 05/17/2017 RT: PO DOSE: 3 STRENGTH: 1 Mg METHOD: Normal Dose FREQ: BID FOR: 365 DAYS EXPIRATION DATE: 05/16/2018 REFILLS: 11 STATUS: Order Discontinued at Pharmacy Vendor (DR)		
DRUG PRESCRIPTION: FINASTERIDE (UD) TABS 5 Mg Tabs VERBAL BY: Povar, Jared EFFECTIVE DT: 05/17/2017 RT: PO DOSE: 1 STRENGTH: 5 Mg METHOD: Normal Dose FREQ: QD FOR: 90 DAYS EXPIRATION DATE: 08/14/2017 REFILLS: 2 STATUS: Discontinued - Other		
NOTES: None		
E NOTES: TimeStamp: 17 May 2017 07:39:54 (MT) --- User: Ryan Douglas (DOURY01)		
STAFF: Douglas, Ryan		
NURSE SIGNATURE:		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/16/2017 TIME: 14:24:56(MT) DURATION: minutes TYPE: Practitioner - Chronic Care-Follow-up LOCATION: Idaho State Correctional Institution (ISCI) SETTING: Clinic		
S NOTES: CC - GD		
1. GD For all diseases since last visit, describe new symptoms: PT states "feels fine". Denies with hot flashes, chills, palpitations, weight gain or loss. with medications? ☒ Yes ☐ No ☐ N/A diet? ☒ Yes ☐ No ☐ N/A with exercise? ☒ Yes ☐ No ☐ N/A		
O NOTES: VSS. NAD.		
HEENT/neck: WNL	Heart: RRR	Lungs: CTA
Abdomen: bxs4	Extremities: WNL	GU/rectal: N/A
Other: N/A		
A RELATED PROBLEM: Other Diagnosis: Pt. Specific Chronic Condition Gender identity disorder, unspecified [F64.9] MEDICAL DIAGNOSIS: Gender identity disorder, unspecified [F64.9] NOTES: None STANDARD FORM: MH Individualized Treatment Plan		
1. ☒ G ☒ F ☐ C ☐ P ☐ NA ☐ I ☐ S ☐ W ☐ NA GD		
P APPT SCHEDULED: Practitioner - Chronic Care-Follow-up WITH: Rogers, William ON: 08/31/2017 AT: 08:00:00(MT) NOTES: Continue POC. Labs due in Dec.		
Reviewed Lab/Procedures/Reports with Patient: ☒ Yes ☐ No ☐ NA Indicated Treatment Plan changes discussed: ☐ Yes ☐ No ☒ NA		
E NOTES: TimeStamp: 16 May 2017 14:35:18 (MT) --- User: Jared Povar (POVJA01)		
Education Provided: ☒ Nutrition ☒ Exercise ☒ Test Results ☒ Medication Management		

CORIZON 1306

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IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 10/20/2017 TIME: 11:24:21(MT) DURATION: minutes TYPE: MH - Psychiatrist - Scheduled LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S NOTES: TimeStamp: 20 October 2017 11:26:18 (MT) --- User: Emily Hutchison (HUTEM02)		
Current symptoms: "Same, nothing new." Mood is "Stable." Some anxiety, with apprehension, hypervigilance which she accepts as 'normal' given her surroundings. Effexor has helped, and she has concerns about tolerance. Says "I haven't reached that point yet," meaning that she is still finding some efficacy, especially for depression. Denies SI/HI		
O NOTES: None		
☒ Alert, Oriented x 3 ☒ Calm/Cooperative ☒ No Apparent Distress ☒ Adequate Grooming/Hygiene Appearance/Behavior: Significant underbite Mood: ☒ Euthymic ☐ Labile ☐ Dysphoric Suicidal Ideation: ☐ N ☐ Y Homicidal Ideation: ☐ N ☐ Y Speech: ☒ Normal Rate/Rhythm Thought process: ☒ Unremarkable ☐ Remarkable: Thought Content: ☒ Unremarkable ☐ Remarkable: Cognitive Functioning: ☒ Unremarkable ☐ Remarkable:		
A NOTES: None STANDARD FORM: MH Individualized Treatment Plan Brief summary: Doing well, with no major complaints other than ongoing gender dysphoria concerns and transition while in prison.		
P NOTES: MEDICATION DISCONTINUED VIA THIS ENCOUNTER- Medication Name: 'VENLAFAXINE HCL XR CP24', Order Number: 0109419, Authorized By: Hutchison, Emily, Timestamp: 10/20/2017 10:33:29		
E NOTES: Med s/e, complications with discontinuation		
STAFF: Hutchison, Emily		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 10/04/2017 TIME: 09:42:57(MT) DURATION: minutes TYPE: MH - Clinician - Individual Contact LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S NOTES: Met with inmate Edmo in my office in the Education Bldg for clinical contact and to review Edmo's treatment plan per LOC. Edmo was not in the foyer when called for; I found Edmo in the computer lab after checking the call-out for conflicting appointments. Edmo agreed to meet with me. Edmo was informed the decision to remove Edmo's facility hold is pending the ARC's approval; Edmo was informed the ARC will hopefully meet this week or next to review the recommendation. We reviewed Edmo's treatment plan; Edmo reported the problems have not changed. Edmo reported requesting information on Gender Reassignment Surgery from another clinician and was told that it would need to be treatment planned. Edmo's treatment plan was updated to include Edmo working with clinical staff on becoming more informed of GRS and the impacts it could have. Edmo reported some housing concerns in Edmo's current unit and reported another clinician was going to speak with the DW regarding Edmo's request to move to Unit 15 with another transgender inmate. Edmo inquired about the ability to borrow books on transgender from clinical staff. Edmo denied further mental health concerns at this time.		
O NOTES: None		
Person ☒ Y ☐ N Place ☒ Y ☐ N Time ☒ Y ☐ N Situation ☒ Y ☐ N Insight: ☐ Poor ☒ Fair ☐ Good Judgment: ☐ Poor ☒ Fair ☐ Good Abnormal movements: ☐ N ☐ Y: Current Suicidal Ideation: ☐ N ☐ Y: Appearance/Behavior: ☒ Adequate grooming & hygiene ☒ Calm & cooperative Mood/Affect: ☒ Stable affect/mood congruent Speech: ☒ Unremarkable Thought Form: ☒ Goal directed ☒ Logical Thought Content: ☒ No evident psychosis Cognitive functioning: ☒ No gross cognitive deficits apparent		
A NOTES: Edmo appears to be maintaining Edmo's baseline level of functioning in GP at this time. STANDARD FORM: MH Individualized Treatment Plan Provisional Diagnosis: N/A		
P NOTES: Treatment plan updated. Follow-up per LOC. Edmo can access additional MH services via HSR and open clinics as needed. Will consult with Edmo's GD group facilitator regarding information on GRS and housing situation.		
E NOTES: TimeStamp: 4 October 2017 09:52:32 (MT) --- User: Krina Stewart (STEKR01)		
STAFF: Stewart, Krina		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 09/30/2017 TIME: 13:16:39(MT) DURATION: minutes TYPE: Nurse - Sick Call - Scheduled LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S H/S REQUEST RECEIVED: 09/30/2017 TYPE: Routine NOTES: Request Date: 09/30/2017 HSR 1046882 RED STREAKS/SWELLING IN GROIN AREA		
Chief Complaint: RED STREAKS/SWELLING IN GROIN AREA Onset Date: 3 DAYS AGO Have you had this problem before: ☐ Y ☐ N Describe: SAW POVAR, PA IN FEB 2017 FOR SAME ISSUE Associated Factors: ☒ Pain scale is 8 at worst 10 What makes it worse: ☒ Redness ☒ Itching ☒ Tenderness ☒ Fever ☒ Swelling ☒ Athlete's foot		
O CURR: 12:16:39 TEMP: 98.8 PULSE: 108 RP: 16 BP: 117/82 HT: 5 ft. 7 in. WT: 190 lb BLOOD SUGAR: NA WksGest: 0 LMP: 01/01/1000 EDD(Initial): 01/01/1000 EDD(Final): 01/01/1000 HT(Fundal): 0 WT(Cml): 0 FHR: 0 PRES: PROTEIN: GLUCOSE: NITRITES: LEUC: FETAL MOVEMENT: 02 SAT: 100.00% SOURCE: Room Air NOTES: BP WNL, HRRR ELEVATED, LCTA BILAT A&OX4		

CORIZON 1298

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STAFF: Wise, Nicholas NURSE SIGNATURE:		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 03/14/2018 TIME: 18:30:52(MT) DURATION: minutes TYPE: MH Clinician DOR Recommendation LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S NOTES: TimeStamp: 14 March 2018 18:34:55 (MT) — User: Bradley Raburn (RABBR01) Upload DOR Recommendation		
O SCANNED DOCUMENT/PHOTO TYPE: Mental Health TITLE: DOR Recommendation NOTES: N/A		
A NOTES: N/A STANDARD FORM: MH Individualized Treatment Plan		
P NOTES: N/A		
E NOTES: TimeStamp: 14 March 2018 18:35:18 (MT) — User: Bradley Raburn (RABBR01)		
STAFF: Raburn, Bradley		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 03/13/2018 TIME: 14:31:20(MT) DURATION: minutes TYPE: MH - Clinician - Assessment/Update LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S NOTES: Edmo was placed on the institutional call-out to complete clinical contact and an annual assessment update per LOC. Edmo did not show to the scheduled appointment. Edmo was confirmed on the institutional call out with no conflicts. Assessment update completed via records review. Failure to attend memo sent. Date of Initial MH Assessment: 04/26/2012 Current LOC: ☒ CMHS-1 Reason for Update: ☐ Change ☐ Referral Update ☒ Annual Review Change/Update due to legal situation or sentence: ☐ Y ☒ N Comment: FTRD: 07/03/2021 PED: 07/04/2014 Change/Update in Education: ☐ Y ☒ N Change/Update in Marital or Family Situation: ☐ Y ☒ N Change/Update in Current Medication: ☒ Y ☐ N Comment: Medication was recently increased Change/Update in Current Diagnosis: ☐ Y ☒ N		
O SCANNED DOCUMENT/PHOTO TYPE: Mental Health TITLE: 2018_03_13 NS Memo NOTES: Unable to assess due to inmate not attending appointment; assessment update completed via records review		
A NOTES: None STANDARD FORM: MH Individualized Treatment Plan Completed via records review: 30yo inmate with diagnoses of MDD, GAD, Alcohol UD, and Gender Dysphoria. Edmo is currently prescribed MH medications and has follow-up with the psych provider. Edmo was last seen by the psych provider in Jan 2018 and was assessed as follows: "30 yo with depression, anxiety and GD undergoing hormone treatment with ongoing mood and anxiety symptoms. Has somewhat of a resigned affect about her stint in prison, just waiting it out." Venlafaxine was increased at that time. Edmo is not currently attend the Gender Dysphoria group, but has during the past year. Edmo has recently begun to no-show to clinical appointments more frequently. Edmo is current working at CI (hired as of 3/2/2018). Edmo appears to lack motivation to work on Edmo's mental health outside of medication management at this time. Edmo has been provided with multiple opportunities to engage in mental health treatment to work on anxiety, depression, and social skills and has refused to do so. Edmo remains focused on Edmo's gender dysphoria being the only mental health issues that need to be treated.		
P NOTES: None Remain CMHS-1 for continued clinical follow-up. Follow-up per LOC. Edmo can access additional MH services via HSR and open clinic as needed.		
E NOTES: TimeStamp: 13 March 2018 14:58:09 (MT) — User: Krina Stewart (STEKR01)		
STAFF: Stewart, Krina		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 03/08/2018 TIME: 14:32:00(MT) DURATION: minutes TYPE: Practitioner - Chronic Care-Follow-up LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S NOTES: Pt in for CDP f/u for GID. Pt reports that she is doing OK overall, she states that she is frustrated that we have not replaced the Spironolactone with another medication yet. Otherwise she denies any problems or concerns at this time 1. GID with medications? ☒ Yes ☐ No ☐ N/A with diet? ☒ Yes ☐ No ☐ N/A with exercise? ☒ Yes ☐ No ☐ N/A		
O NOTES: A&O, NAD HEENT/neck: supple, no thyromegaly Heart: RRR, no MRG Lungs: CTAB with normal respiratory effort Extremities: no edema		
A NOTES: None STANDARD FORM: MH Individualized Treatment Plan 1. ☐ G ☒ F ☐ P ☐ NA ☐ I ☒ S ☐ W ☐ NA GID		
P NOTES: Reviewed that we will ensure her labs get to Dr. Alviso and plan to request further orders. LFT's greatly increased with Spironolactone, LFT's have returned to normal since discontinuing Spironolactone f/u with CDP in 90 days and with SC PRN - pt verbalized understanding of POC Reviewed Lab/Procedures/Reports with Patient: ☒ Yes ☐ No ☐ NA Indicated Treatment Plan changes discussed: ☐ Yes ☐ No ☒ NA		
E NOTES: see plan		
Education Provided: ☒ Nutrition ☒ Exercise ☒ Test Results ☒ Medication Management		

CORIZON 1288

CHS09173 - Condensed Health Services Encounter			
Name: EDMO, MASON D.		IDOC#: 94691	
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 03/30/2018 TIME: 15:08:54(MT) DURATION: minutes TYPE: MH - Clinician - Individual Contact LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic			
S	NOTES: Met with inmate Edmo in a private office in the Education Bldg for clinical contact and to update Edmo's treatment plan. Edmo reported doing "good." Edmo reported working in CI now, which Edmo enjoys. Edmo reported doing okay in Edmo's current housing unit. Edmo reported specifically not wanting to move to ICIO; however, Edmo reported being okay with moving to ISCC if it happens. Edmo denied feeling strongly about moving to ISCC or remaining at ISCI, but is okay with either option. Edmo initially denied MH concerns aside from previously reported gender dysphoria related to Edmo's anatomy not matching Edmo's gender identity. I brought up Edmo's treatment plan and Edmo said to just keep it the same as it has been, nothing has changed. I challenged Edmo on whether the recent treatment plan is appropriate due to Edmo no longer engaging in MH treatment aside from MH medication (not attending call-outs with assigned clinician, no longer attending GD group, etc.). After discussing LOC and treatment plan options, Edmo said it doesn't matter what LOC because Edmo is still not engaging in those services. We discussed the option to sign a refusal for clinical services, including that services were recommended and being refused; Edmo expressed concern about how that would reflect on Edmo. Edmo questioned which services were being recommended that Edmo would be refusing. We discussed the previous recommendation to participate in a Mood Management group to help process and learn skills to manage/reduce depressive symptoms; I also feel that some coping skills learned in that group may also assist Edmo in managing gender dysphoria mood-related symptoms. Edmo appeared to consider attending, likely to prove the recommendation wrong. Discussed the importance of attitude and being open to the possibility that the group may be beneficial; Edmo denied believing it would be helpful and felt that there's no point in attending. I informed Edmo that I am not placing Edmo on the waitlist for the group at this time, but I do clinically believe that it would be helpful if Edmo chose to give it a chance. I informed Edmo that one of my concerns with reducing Edmo's level of care is that I feel that it is helpful for Edmo to have opportunities for clinical follow-up due to Edmo's reluctance to ask for help if needed. Edmo participated in updating Edmo's treatment plan, including being honest about what goals/interventions Edmo would realistically participate in. Edmo reported feeling intense hatred for Edmo's penis and believing that is the primary source of clinical distress for Edmo. Edmo reported trying to not self-castrate due to wanting to have gender reassignment surgery and having been told that the genitals must remain intact for that surgery to be successful. Edmo reported one of Edmo's recent coping skills to manage Edmo's desire to self-castrate has been cutting on other places on Edmo's body. Edmo reported not wanting to tell staff when this occurs due to expecting to be put on suicide watch and feeling punished for doing "what works." We discussed the dangers and possible risks of cutting behaviors. Edmo denied current SI/HI/SHB. We also discussed Edmo's distrust of clinical and security staff; Edmo reports not wanting to reach out to staff when having trouble because Edmo doesn't feel that staff will do anything helpful.		
O	NOTES: None		
	Person ☒ Y ☐ N Situation ☒ Y ☐ N Abnormal movements: ☒ N ☐ Y ☒ Guarded Thought Form: ☒ Goal directed	Place ☒ Y ☐ N Insight: ☐ Poor ☒ Fair ☐ Good Current Suicidal Ideation: ☒ N ☐ Y Mood/Affect: ☒ Stable affect/mood congruent Thought Content: ☒ No evident psychosis	Time ☒ Y ☐ N Judgment: ☐ Poor ☒ Fair ☐ Good Appearance/Behavior: ☒ Adequate grooming & hygiene Speech: ☒ Unremarkable Cognitive functioning: ☒ No gross cognitive deficits apparent
A	NOTES: Edmo appears to continue to struggle with gender dysphoria and depressed mood regularly. Edmo is unwilling to approach recommended treatment options with an open-mind. Although a Mood Mgmt MH group is clinically recommended to assist in treatment of Edmo's depressed and dysphoric mood symptoms, Edmo is likely to get very little benefit from attending with Edmo's current attitude. Edmo continues to be guarded and uncooperative during clinical contacts with me, but often opens up more throughout the contact as Edmo is challenged on thinking errors. Edmo appears able to manage Edmo's symptoms in general population at this time. Edmo would benefit from continued clinical follow-up. STANDARD FORM: MH Individualized Treatment Plan Provisional Diagnosis: N/A		
P	NOTES: Tx plan updated. Follow-up per LOC. Edmo can access additional MH services via HSRs and open clinics as needed		
E	NOTES: TimeStamp: 30 March 2018 15:14:00 (MT) -- User: Krina Stewart (STEKR01)		
	STAFF: Stewart, Krina		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 03/17/2018 TIME: 15:54:45(MT) DURATION: minutes TYPE: MH - Clinician - DOR Recommendation LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic			
S	NOTES: DOR Rec completed and uploaded to encounter		
O	SCANNED DOCUMENT/PHOTO TYPE: Mental Health TITLE: DOR Rec Edmo 94691 NOTES: DOR Rec Edmo 94691		
A	NOTES: DOR Rec Edmo 94691 STANDARD FORM: MH Individualized Treatment Plan		
P	NOTES: DOR Rec Edmo 94691		
E	NOTES: DOR Rec Edmo 94691 STAFF: Clemens, Erica		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 03/15/2018 TIME: 09:43:25(MT) DURATION: minutes TYPE: Nurse - Verbal/Telephone Orders LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic			
S	NOTES: Order updates per Alviso. check EST and TEST. in 3 months		
O	NOTES: None		
A	NOTES: None STANDARD FORM: MH Individualized Treatment Plan		
P	LAB TEST ORDERED: ESTRADIOL LAB TEST ORDERED: COMP. METABOLIC (CMP) APPT SCHEDULED: Lab WITH: Wise, Nicholas ON: 06/16/2018 AT: 09:43:25(MT) APPT SCHEDULED: Lab WITH: Wise, Nicholas ON: 06/16/2018 AT: 10:53:00(MT) NOTES: None		
E	NOTES: admin only		

CORIZON 1287

CHSS0273 - Condensed Health Services Encounter	
Name: EDMO, MASON D. IDOC#: 94691	
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/18/2018 TIME: 11:26:15(MT) DURATION: minutes TYPE: MH - Psychiatrist - Medication Renewal LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic	
S	NOTES: This encounter was system generated when the prescription drug below was reordered from the Drug Prescription Order screen CHSS0378.
O	NOTES: None
A	NOTES: None
P	DRUG PRESCRIPTION: VENLAFAXINE HCL XR CP24 150 Mg Cp24 VERBAL BY: Hutchison, Emily EFFECTIVE DT: 05/18/2018 RT: PO DOSE: 2 STRENGTH: 150 MG METHOD: Daily Dose FREQ: QAM FOR: 210 DAYS EXPIRATION DATE: 12/13/2018 REFILLS: 6 STATUS: Received from Pharmacy NOTES: None
E	NOTES: None
STAFF: Hutchison, Emily	
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/18/2018 TIME: 11:06:17(MT) DURATION: minutes TYPE: MH - Psychiatrist - Scheduled LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic	
S	H/S REQUEST RECEIVED: 05/04/2018 TYPE: Routine NOTES: Request Date: 05/04/2018 2018_5_04_HSR_1087504 MH Meds HSR was dated on 5/02/18 and it was received on 5/04/18. Inmate states on HSR that he wants to change MH med "Effexorxr" level from 450 mg to 300 mg. Scheduled for Psych Nurse TimeStamp: 4 May 2018 11:57:55 (MT) --- User: Don Roe (ROEDA01)
Current symptoms: I'm doing "Alright," and mentions seeing a private consultant (Dr. Alviso- FMRI clinic who's treating her gender dysphoria/hormone tx) who brought up lowering Effexor dose given elevated LFTs (in Jan 2018, which resolved in Feb 2018, repeat labs ordered as well). Anxiety is worse than depressive symptoms. Describes a cycle of several day's long of having more energy then crashing for the next few days, and then repeating. When she's feeling more energy, she feels "On," with some racing thoughts, extra energy and she's more productive. She then "Crashes" for several days, with low mood, fatigue, and need for extra sleep. She cannot relate the above mood fluctuations to changes in her sleep, eating or work habits/behaviors; denies illicit drug use. Discussed at length medication options for her, since she believes the venlafaxine is helpful for her and yet doesn't want to harm her liver. Also discussed mood stabilizers for her description of cycling moods.	
O	NOTES: None
☒ Alert, Oriented x 3 ☒ Calm/Cooperative ☒ No Apparent Distress ☒ Adequate Grooming/Hygiene Mood: ☒ Euthymic ☐ Labile ☐ Dysphoric Affect: ☒ Full ☐ Restricted Suicidal Ideation: ☒ N ☐ Y Homicidal Ideation: ☒ N ☐ Y Speech: ☒ Normal Rate/Rhythm Thought process: ☒ Unremarkable ☐ Remarkable: Thought Content: ☒ Unremarkable ☐ Remarkable; Cognitive Functioning: ☒ Unremarkable ☐ Remarkable:	
A	NOTES: None
Brief summary: 30 yo bio male who identifies as female, undergoing hormone treatment, who also has depression and anxiety. Based on her report today, she likely has cyclothymia with infrequent episodes of severe major depression. She acknowledges her cutting behaviors and gender dysphoria as contributing to her moods. Will honor her wishes to decrease venlafaxine, however her LFTs were not elevated at last test, thus it's unlikely that the SNRI is damaging her liver. Discussed tapering venlafaxine anyway, and then adding lithium to see if that helps stabilize her mood cycling, which she is in agreement with. Labs will be redrawn 6/16, thus with that data we can make a more informed decision regarding her liver functioning, as well as renal and thyroid.	
P	NOTES: Reduce dose of venlafaxine to 300 mg po daily; will then try to reduce further to 150 mg po given her concerns over liver function tests (after follow up in mid-July) IF her mood and anxiety are stable. Will likely start lithium in 1.5 months, after evaluating how she dose with reduced venlafaxine. She wants to read up on and think about lithium for a while, thus it's not being started today. RTC ~ mid-July MEDICATION DISCONTINUED VIA THIS ENCOUNTER - Medication Name: 'VENLAFAXINE HCL XR CP24', Order Number: 0183016, Authorized By: Hutchison, Emily. Timestamp: 05/18/2018 10:26:14
E	NOTES: med effects: indications and s/e of lithium treatment; w/d aspects of venlafaxine
STAFF: Hutchison, Emily	
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/18/2018 TIME: 09:13:00(MT) DURATION: minutes TYPE: MH - Clinician - Individual Contact LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic	
S	NOTES: Met with inmate Edmo in a private office in the Education Bldg for clinical contact per LDC. Edmo reported being "okay today." Edmo reported not liking the inconsistency of the weather today, but otherwise doing alright. Edmo reported work is going well and getting along okay in Edmo's housing unit. Edmo reported requesting a single cell and is waiting for it to be approved. Edmo stated that Edmo has been feeling a little more down and decided that Edmo may benefit from a Mood Mgmt group, which is why Edmo sent a concern form reporting a change of mind and requesting to be referred to that group. Edmo was informed that Edmo was added to the group recently and is on the call-out. Edmo reported intent to watch the call-out to attend group. We discussed the new workbooks recently provided in the GD process groups and Edmo was offered one; Edmo expressed interest in the workbook and inquired about returning to group again. Edmo expressed concern about not being able to get off work for the group and was provided with a signed note to inform Edmo's supervisor of the day/time

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of the group and to request that Edmo be able to attend. Edmo was provided a copy of the workbook and signed the workbook agreement (see attached). Edmo reported an additional stressor of working to have communication with Edmo's husband (married in December) approved due to Edmo's husband being housed at ISCC. Edmo reports staying in touch with Edmo's mother-in-law, but is looking forward to being able to communicate with Edmo's husband directly. Edmo denied additional MH concerns at this time and reported that most things are "the same."		
O SCANNED DOCUMENT/PHOTO TYPE: Mental Health TITLE: 2018_05_18 MH Workbook Agreement NOTES: None		
Person ☒ Y ☐ N	Place ☒ Y ☐ N	Time ☒ Y ☐ N
Situation ☒ Y ☐ N	Insight: ☐ Poor ☒ Fair ☐ Good	Judgment: ☐ Poor ☒ Fair ☐ Good
Abnormal movements: ☐ N ☒ Y:	Current Suicidal Ideation: ☐ N ☒ Y:	Appearance/Behavior: ☒ Adequate grooming & hygiene
☒ Guarded ☒ Dysphoric	Speech: ☒ Unremarkable	Thought Form: ☒ Goal directed
☒ Logical	Thought Content: ☒ No evident psychosis	Cognitive functioning: ☒ No gross cognitive deficits apparent
A NOTES: Edmo continues to be very guarded when we are meeting; however, it appears that Edmo may be cautiously willing to start sharing more slowly. Edmo would benefit from continuing to work on building Edmo's resilience as a transgender individual and working through the workbook provided, particularly in a group setting to continue to encourage/support pro-social skills.		
Provisional Diagnosis: N/A		
P NOTES: Provided Transgender workbook. Signed agreement (see attached). Provided with note for work to attend GD process group. Emailed group facilitator to reenroll Edmo in the GD group. Follow-up per LOC. Edmo may access additional MH services via HSRs and open clinics as needed.		
E NOTES:		
TimeStamp: 18 May 2018 10:03:15 (MT) --- User: Krina Stewart (STEKR01)		
STAFF: Stewart, Krina		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 05/14/2018 TIME: 17:12:59(MT) DURATION: minutes TYPE: Practitioner - Medication Renewal LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S H/S REQUEST RECEIVED: 05/02/2018 TYPE: Routine NOTES: Request Date: 05/02/2018 HSR 1087506 need spironolactone renewed; dc'd was good until 1/29/19		
O NOTES: None		
A NOTES: None		
P NOTES: MRD to patient: Spironolactone cannot be renewed due to history of elevated liver function tests - Dr. Alviso's current order is not to restart the Spironolactone		
E NOTES: n/a		
STAFF: Eldredge, Summer		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 04/09/2018 TIME: 11:14:28(MT) DURATION: minutes TYPE: Practitioner - Medication Renewal LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S NOTES: This encounter was system generated when the prescription drug below was reordered from the Drug Prescription Order screen CHSS037B.		
O NOTES: None		
A NOTES: None		
P DRUG PRESCRIPTION: FINASTERIDE (UD) TABS 5 Mg Tabs VERBAL BY: Haggard, Rebekah EFFECTIVE DT: 04/09/2018 RT: PO DOSE: 1 STRENGTH: 5 Mg METHOD: Normal Dose FREQ: QD FOR: 90 DAYS EXPIRATION DATE: 07/07/2018 REFILLS: 1 STATUS: Received from Pharmacy DRUG COMMENTS: Why must this drug be used instead of one included on the formulary? Gender Dysphoria hormone regimen per Wellness Center specialist orders What formulary drugs have been tried? preferred agent Avodart not acceptable for this indication per Dr Alviso What was outcome? n/a		
NOTES: None		
E NOTES: None		
STAFF: Haggard, Rebekah		
IDOC#: 94691 Inmate Name: EDMO, MASON D. ENCOUNTER DATE: 04/05/2018 TIME: 08:41:59(MT) DURATION: minutes TYPE: Nurse - Verbal/Telephone Orders LOCATION: Idaho State Correctional Institution [ISCI] SETTING: Clinic		
S H/S REQUEST RECEIVED: 04/05/2018 TYPE: Routine H/S REQUEST RECEIVED: 04/05/2018 TYPE: Routine NOTES: Request Date: 04/05/2018 HSR 1105103 spironolactone renewal; order made 1/30/18 - 1/29/19 but was discontinued? Dr. Alviso D/C per related lab values. No order to restart spironolactone at this time.		
Request Date: 04/05/2018 HSR 1105104 Estradiol renewal; 1/4/18 - 4/3/18 Being renewed today.		
O NOTES: None		
A NOTES: None		
P DRUG PRESCRIPTION: ESTRADIOL TABS 2 Mg Tabs VERBAL BY: Eldredge, Summer EFFECTIVE DT: 04/05/2018 RT: PO DOSE: 2 STRENGTH: 2 Mg METHOD: Normal Dose		

CORIZON 1285

STATE OF IDAHO
CERTIFICATION OF VITAL RECORD

STATE OF IDAHO
IDAHO DEPARTMENT OF HEALTH AND WELFARE
BUREAU OF VITAL RECORDS AND HEALTH STATISTICS
CERTIFICATE OF LIVE BIRTH

Date Filed NOVEMBER 18, 1987State File No. 111 1987-13002

CHILD			
FIRST NAME ADREE		MIDDLE NAME MASON	
LAST NAME EDMO		SUFFIX	SEX / FEMALE
DATE OF BIRTH OCTOBER 29, 1987	TIME OF BIRTH 4:16 P.M.	CITY, TOWN, OR LOCATION OF BIRTH POCATELLO	COUNTY OF BIRTH BANNOCK
PLACE OF BIRTH BANNOCK REGIONAL MEDICAL CENTER			
CERTIFIER DONALD A. DYER, M.D.			
MOTHER			
FIRST NAME MICHAELINE		MIDDLE NAME DAWN	
MAIDEN LAST NAME EDMO		SUFFIX	
AGE 23		BIRTHPLACE IDAHO	
RESIDENCE - STATE IDAHO		RESIDENCE - CITY, TOWN OR LOCATION CHUBBUCK	
FATHER			
FIRST NAME EARLINGTON		MIDDLE NAME VEARL	
LAST NAME MECKS		SUFFIX	
AGE 24		BIRTHPLACE IDAHO	

This is a true and correct reproduction of the document officially registered and placed on file with the IDAHO BUREAU OF VITAL RECORDS AND HEALTH STATISTICS.

AUGUST 07, 2018

DATE ISSUED:

This copy not valid unless prepared on engraved border displaying state seal and signature of the Registrar.

James B. Aydelotte
JAMES B. AYDELOTTE
STATE REGISTRAR



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

PL Ex.
1002-1

SER 282

Ryan Nicholas Gorton, MD, DABEM

901 Douglass Ave, Davis CA 95616

(504) 261-8379 (mobile)

(530) 297-7880 (home)

nickgorton@gmail.com

Professional Practice

February 2005 – Current Emergency Medicine Physician
Sutter Davis Hospital
Davis, CA

July 2002 – February 2005 Emergency Medicine Physician
St Tammany Parish Hospital
Covington, LA

Professional Practice: Volunteer Activities

March 2005 – Current Primary Care Provider and Clinical Instructor
Lyon-Martin Health Services
San Francisco, CA.

August 2005 – February 2006 Acting Medical Director
Lyon-Martin Health Services
San Francisco, CA.

September 2008 – Current Executive Committee Member and Lecturer
Project HEALTH <http://www.project-health.org/>
San Francisco, CA.

January 2011 – Current Consultant TransLine National Clinical Consultation Line

Medical-Legal Consultant: Sylvia Rivera Law Project, New York, NY
Lambda Legal Defense and Education Fund, Inc., New York, NY
Transgender Law Center, San Francisco, CA
National Center for Lesbian Rights. San Francisco, CA
Northwest Justice Project, Seattle, WA
The Legal Aid Society, New York, NY
National Center for Transgender Equality, Washington, DC
TGI Justice Project, Oakland, CA.
ACLU Florida

Post Graduate Training

June 2001 – June 2002 Chief Resident, Department of Emergency Medicine
Kings County Hospital Center/SUNY Downstate
Brooklyn, NY

July 1998 – June 2002 Emergency Medicine Residency
Kings County Hospital Center/SUNY Downstate
Brooklyn, NY

Education

August 1994 – May 1998 Doctor of Medicine
University of North Carolina School of Medicine
Chapel Hill, NC

August 1988 – August 1991 Bachelor of Science in Biochemistry, Summa Cum Laude
North Carolina State University
Raleigh, NC

Professional Affiliations

World Professional Association for Transgender Health (formerly HBGDA)

- ◆ Transgender Medicine and Research Committee
- ◆ Institutionalized Persons Committee

University of California at San Francisco Center of Excellence for Transgender Health

- ◆ Medical Advisory Board 2010-2013 (during development of original Primary Care Protocols)

American Medical Association

- ◆ GLBT Advisory Committee 2009-2011

Gay and Lesbian Medical Association

- ◆ LGBT Medical Experts Panel

Licensure/Certification

Nov 2003 – Present Diplomate American Board of Emergency Medicine
Nov 2004 – Present CA State Medical License A89440
Feb 2002 – 2009 LA State Medical License 14466R
June 2001 – 2010 NY State Medical License 221808

Publications and Papers

Gorton, R, and Berdahl, C. *Improving the Quality of Emergency Care for Transgender Patients. Annals of emergency medicine.* 71(2): 189-192. 2018.

Gorton, R, and Erickson-Schroth, L. *Hormonal and Surgical Treatment Options for FTMs.* Psychiatric Clinics of North America. Psychiatric Clinics of North America. 40(1): 79-97. 2017.

Gorton, R, and Jaffe, J.M., *Transline Medical Consultation Service: Four Years of Clinician Support.* USPATH Poster Presentation: February, 2017.

Ingram, N., Pratt V., and Gorton, R. *Counting trans* patients: A Community Health Center Case Study.* TSQ: Transgender Studies Quarterly.

2(1): 136-147. 2015.

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Gorton R. Transgender as Mental Illness: Nosology, Social Justice, and the Tarnished Golden Mean. In Stryker S and Aizura A (Eds.), *The Transgender Studies Reader, Vol 2*. New York, NY Taylor and Francis. 2013.

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Selected Conference Presentations and Invited Talks

Gorton, R. Genital Gender Affirming Surgery for the Transgender Patient: A Didactic and Hands-on Fresh Cadaver-Based Course: "Hormone Replacement for Transgender Patients". American Urological Association 2018. San Francisco, CA. May, 2018.

Gorton, R, Jaffe, JM, Tescher, J, and Baker, K. "Mini-Symposium: As California Goes, So Goes the Nation (Hopefully)". USPATH. February, 2017.

Gorton, R. Sessuion Moderator. USPATH Symposium. San Francisco CA. February, 2017.

Gorton, R. "Acute and Long Term Complications of Silicone Pumping: Primary, Secondary, and Tertiary Prevention". WPATH Symposium. Amsterdam, The Netherlands. June, 2016.

Gorton, R, Ettner, R, Brown, G, Bermudez, F, Orthwein, J and Mazur, T. "Orange isn't the New Black (Yet)". WPATH Symposium. Amsterdam, The Netherlands. June, 2016.

Gorton R. "Transgender Patient Care in the Emergency Department". American

Academy of Emergency Medicine Scientific Assembly. Las Vegas, Nevada. February 2016.

Gorton R. "Transgender Patients in the Emergency Department". Stanford University Department of Emergency Medicine SimWars. Stanford, CA. February 2016.

Gorton R. "History of Transgender Medicine". UCSF School of Medicine Transgender Health elective. San Francisco, CA. February 2016.

Gorton R. "Free Silicone Complications and Management". National Transgender Health Summit. Oakland, CA. April 2015.

Gorton R. "History of Transgender Medicine". UCSF School of Medicine Transgender Health elective. San Francisco, CA. March 2015.

Gorton R. "Transgender Healthcare". UC Davis School of Medicine. Sacramento, CA. December 2015.

Gorton R. "Engaging and Retaining Transgender Patients in Ongoing Primary Care". National Association of Community Health Centers Health Institute and Expo. San Diego, CA. August 2014.

Gorton R. "Sexual and Reproductive Health: A Focus on Transgender Patients". California Family Health Council. Webinar. March 2014.

Gorton, R, Green, J and Tescher, J. "California Dreaming: Two Decades of Change in Health Insurance Law and Policy". WPATH Symposium. Bangkok, Thailand. February, 2014.

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Gorton, R and Tescher, J. "Minding the Gap: Development and Implementation of a Clinical Rotation in Transgender Health". WPATH Symposium. Bangkok, Thailand. February, 2014.

Gorton R and Keenan C. "LGBT Sexual and Reproductive Health Issues". California Family Health Council Women's Health Update. San Francisco, CA. April, 2013.

Gorton R. "Transgender Medicine". California AHEC Webinar. San Francisco, CA. April, 2013.

Gorton R. "Transgender Aging Issues". Institute on Aging Conference on LGBT

Aging. San Francisco, CA. November, 2012.

Gorton R and Branning N. "Transgender Primary Care". California Academy of Physician Assistants Annual Conference. Palm Springs, CA. October, 2012.

Gorton R. "Primary care and Hormonal Treatment for Transgender Clients". Samuel Merritt University. Oakland, CA. June 2012.

Gorton R. "Primary care and Hormonal Treatment for Transgender Clients" Grand Rounds for the VA Medical Center. San Francisco, CA. June 2012.

Gorton R and Wertz K. "Transgender Health Care" Webinar for the California Family Health Council. San Francisco, CA. June, 2012.

Eichenbaum J, Gorton R and May A. "Transgender Health, the VA, and Barriers to Care." San Francisco Veterans Administration Mental Health Services Grand Rounds. San Francisco, CA. May, 2012.

Gorton R and Wertz K. "Working With GLBT Clients" California Family Health Council Webinar. Los Angeles, CA. May, 2011.

Gorton R. "Improving Access to Transgender Health Care: Outcomes from Project HEALTH" World Professional Association for Transgender Health. Atlanta, GA. September, 2011.

Gorton R and Wertz K. "Trailblazing for Transgender Health" Southern Comfort Conference. Atlanta, GA. September, 2011.

Gorton R. "Nuts and Bolts of Transgender Primary Care" Gay and Lesbian Medical Association Annual Conference. Atlanta, GA. September, 2011.

Gorton R. "Transgender Medicine and Cultural Competency" Kaiser Department of OB/Gyn Grand Rounds. San Francisco, CA. April, 2011.

Gorton R. "Evidence Based Transgender Medicine" Opening Plenary UCSF National Transgender Health Summit. San Francisco, CA. January, 2011.

Green J and Members of the Center of Excellence for Transgender Health Medical Advisory Board. "Primary Care Protocols" Morning Plenary UCSF National Transgender Health Summit. San Francisco, CA. January, 2011.

Freshel K, Gorton R, Hansom C and Barnes A. "Communities Working Together to Become Culturally Competent" California State Rural Health

Association Conference. Sacramento, CA. November, 2010.

Gorton R, Spade D and Wilkinson W. "Transposium: Healthcare Access and Quality For Transgender Individuals" Shaking the Foundations: The West Coast Conference on Progressive Lawyering, Primary Care Associate Program, Stanford School of Law. Stanford CA. October, 2010.

Gorton R. "Improving Access to Transgender Healthcare: Outcomes from Project HEALTH (Harnessing Education, Advocacy, and Leadership for Transgender Health)" Gay and Lesbian Medical Association Annual Conference. San Diego, CA. September 2010.

Gorton R, Gould D and Wertz K. "Trailblazing for Transgender Health" National Gay and Lesbian Task Force Creating Change Conference. March 2010.

Gorton R. "Grand Rounds: Transgender Medicine" Highland General Hospital Department of Internal Medicine. Oakland, CA. January, 2010.

Gorton R. "Grand Rounds: Transgender Medicine" Kaiser Permanente Department of Internal Medicine. San Francisco, CA. December, 2009.

Keatley J and Gorton R. "Transgender Health Care Issues in California Today" Equality California and the California LGBT Legislative Caucus Briefing on LGBTI Health Care Issues. Sacramento, CA. December 2009.

Ehrbar R, Winters K, and Gorton R. "Revision Suggestions for Gender Related Diagnoses in the DSM and ICD" WPATH XXI Biennial Symposium. Oslo, Norway. June, 2009.

Gorton R. "A Place at the Table" American College Health Association Annual Meeting. San Francisco, CA. May, 2009.

Famula M, Hall A, Pardo S, Gorton R. "Providing Trans-Specific Health Care to Transgender Students in the College Setting." American College Health Association Annual Meeting. San Francisco, CA. May, 2009.

Gorton R. "Transgender Health" American Medical Student Association: Regional Conference. Lubbock, TX. March, 2009.

Gorton R. "Medical Ethics and Evidence Based Transgender Medicine" Equality and Parity II: A Statewide Action for Transgender HIV Prevention and Care. Los Angeles, CA, January 2009.

Gorton R. "Transgender Medicine 101" AMSA Regional Conference. Lubbock,

TX. December, 2008.

Gorton R, Djordjevic M, and Brownstein M. "Female to Male (FTM) Health Update" (Provider Session) The 7th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. May 2008.

Gorton R. "FTM Hormones 201." (Community Session) The 7th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. May 2008.

Green J, Gorton R, Razza R, and Tamar-Mattis A, "Healthcare and Access Issues Panel." University of California Hastings College of the Law Transposium Conference. April 2008.

Arkles G, Gorton R, Sanchez D, Suarez C. "Trans Issues in Health Care Panel." Harvard Law School Lambda Legal Advocacy Conference. February 2008.

Gorton N, Thaler C, and Keisling M. "Drawing the Curtain: An Overview of Medical Privacy Protections and Risks for Transgender Patients and Providers " WPATH Symposium, 2007, Chicago.

Gorton R. "Transgender Medicine 2007: A Medical Ethics and Evidence Based Paradigm Shift." (Provider Session) The 6th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. April 2007.

Gorton R. "FTM Hormones 201." (Community Session) The 6th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. April 2007.

Gorton R. "Medical Ethics and Evidence Based Transgender Medicine." FORGE Forward. Milwaukee WI. March 2007.

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Gorton R. "Transgender Healthcare in 2007: Its Time to Take it Seriously." Humboldt State University 13th Annual Diversity Conference and Education Summit. Arcata CA. March 2007.

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Professional Advocacy

Supported as physician member of the American Medical Association for adoption of inclusive language for transgender people within AMA policy. "Recommendations to Modify AMA Policy to Ensure Inclusion for Transgender Physicians, Medical Students and Patients." Accepted by the AMA Board of Delegates July 2007. See "AMA Meeting: Anti-discrimination policy extended to transgendered." AMA News July 16, 2007. <http://www.ama-assn.org/amednews/2007/07/16/prsk0716.htm>. Policy amendment available at:

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Awards

Claire Skiffington Vanguard Award. Transgender Law Center. San Francisco, CA. 2012.

September 2017

9/24/2018

GENDER DYSPHORIA ASSESSMENT

Walter Campbell, Ph.D.
IDOC Chief Psychologist

Jeremy Clark, LCPC
IDOC Clinical Supervisor

Part I. The Basics

Human Identity = Sense of Oneself Who am I?

1. Racial
 2. Sexual—gender, orientation, intention
 3. Familial
 4. Religious
 5. Class
 6. Political
 7. Vocational
 8. Spousal
 9. Cultural
 10. Dietary
 11. National
 12. Regional
 13. Recreational
 14. Illness bearer/survivor
- Each can be passionately held
 - Each can be the source of one's values/energy/preoccupations/developmental differentiation
 - Each can be:
 - Irrelevant
 - Life enhancing
 - Life limiting
 - Life destroying

Identities Change

- These 14 aspects of identity subtly evolve from youth to old age, predictably and unpredictably
- Some identities are more stable than others
- The declaration to oneself of a trans identity is the beginning phase of a life long evolution
- Its natural history is not well known

Levine SB. *Demystifying Love: Plain talk for the mental health professional*. New York, NY: Routledge; 2006.

Sexual Identity = Composite of Three Self-Reflections

- Gender identity: is based on the sense of self in terms of masculinity/femininity
- Orientation: is based on the inclination to create romantic attachments to and have sex with a class of gendered others
- Intention: is based on what one wants to do to a partner and have done to him during sexual activity; (Paraphilia= target error or unusual activity goal)

Each Sexual Identity Component Has an Erotic and a Behavioral Dimension

- Erotic: private, psychological, subjective
 - Fantasies
 - Attractions
 - Preoccupations-interests
- Behavioral, observable, objective
 - Countable events
 - "Scientific"

Levine SB. *Sexual Life: A clinician's guide*. New York, NY: Plenum; 1992.

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The World Is Rapidly Changing

1. When lifelong conventionality was a criterion of normality, trans phenomena were psychopathologies. This began to fade in the 1990s.
2. Six forces are shaping the change
 - A. The Internet has ended the isolation of individuals and created new relationships and new communities
 - B. 50 years of efforts for minority rights that have culminated in marriage equality (June 26, 2015) and antidiscrimination policies
 - C. Celebrity trans people
 - D. Positive national media coverage: "transition is an act of courage"
 - E. Feminism—sensitized the world to the idea that gender is political
 - F. Silence of professional dissent: only prominent dissent is from Paul McHugh who views trans phenomena as a psychopathology

The World is Changing

1. Dramatic increase (400%) in request for transition services worldwide in twenty years
2. Major educational and government institutions have made changes in policy, forms, terminology. APA (s) issue policy statements.
3. Some now argue that a young child who wants to change gender should be immediately supported and eventually given puberty blocking hormones, cross sex hormones and SRS by 18
4. Sissy boys and tomboys—have been long recognized to develop homosexual orientations (sissy boys at a far greater rate than tomboys)
 - Degrees of cross gender expression have always existed in the gay and lesbian communities—thus the "sexual configurations theory"

The World is Changing

1. Trans now appears in the media as a "fact of nature"
 - Widespread personal, social, media, medical and psychiatric recognition as a separate category of gender identity
 - If an idea is repeated enough in public, it tends to be viewed as true
2. Prevalence in male inmates greater than in non-incarcerated males
3. Estimates of 3000–4000 male GD inmates in US prisons.
 - ✓ California has the most—estimated to be 1/440 to 1/500 compared to 1/10,000 in the general population
 - ✓ We in corrections must try to answer why this might be

Making the hidden explicit when making clinical and legal judgments

Medical Illness Paradigm
Developmental Paradigm
Minority Rights Paradigm
Justice Paradigm

Medical Illness Paradigm: 4 Assumptions

1. *The DSM-5 diagnosis, Gender Dysphoria, should determine the treatment just as it does with illnesses such as prostate cancer or Graves Disease*
2. The physician is to employ what is best for the patient after considering the danger of untreated condition, the effectiveness of the treatment, its short-term and long-term side effects and economic cost.
3. All treatments—facial hair removal, hormones, name change, rhinoplasty, augmentation mammoplasty, bilateral mastectomies, liposuction, remodeling the chin, lips, forehead or cricoid cartilage—may lessen the incongruence of current gender identity with form of the body
4. SRS "cures" Gender Dysphoria.

Medical Illness Paradigm: 7 Limitations

1. Patient preference, not MD recommendation, is the primary determinant of SRS and cosmetic procedures. MHPs only cooperate with the patient's request for SRS or mastectomies. We are not involved in other surgeries.
2. There is no credible evidence of the genetic dictation or any biologic cause of Gender Dysphoria
 - Several fMRI studies suggest that the brains of transsexual persons are different from other males but such studies have many confounds and, like other brain imaging studies, the findings are "delicate and ephemeral"
 - Tane EB, Am. Psych. 172 (9):822-823, 2015, editorial
 - Rahman Q. Biological Basis of Orientation. In Handbook of Clinical Sexuality for Mental Health Professionals Routledge New York, 2017

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Medical Illness Paradigm: Limitations

3. Prevalence estimates vary: is this due to multifactorial influences, definition/methodological differences or political motivations
 - Two estimates among US military personnel
 - Belkin: 12,800 transgendered on active duty
 - Rand report: up to 129

Belkin A. Caring for our transgendered troops. NEJM 373(12):1089-1091, 2015
 Tone EB. High stakes in small mistakes: abused youth show hypochondria to Errors. Am.J. Psych. 172 (9):822-823, 2015 Editorial

Medical Illness Paradigm: Limitations

4. Gender Dysphoria is known to resolve spontaneously in response to life processes.
5. The majority of boys diagnosed with Gender Dysphoria become homosexual adolescents.
6. Treatments do not target any biological abnormality
7. If genital surgery cures anything, it eradicates distress over natal genitalia in relationship to current gender identity; does not help other anatomic inconsistencies

Musings on the Medical Paradigm

1. The nature of disease: Biological diseases occur within a social context that shapes outcome because of economic, cultural and familial influences. The growth of attention to Gender Dysphoria is an excellent example of how societal forces create concepts of illness and acceptable forms of treatment
2. The social-political need: to obtain insurance coverage. 12 states have mandated it; 90% of those who have SRS now have insurance coverage
3. Politics masquerading as science: WPATH explains the co-morbid psychiatric problems as a consequence of familial and societal minority stress—all suffering and limitations are due to the gender problem and all will be improved by hormones, transition and SRS.
4. What is a mental illness? WPATH asserts that Gender Dysphoria is not a symptom of an illness, despite the frequent symptomatic and functional accompaniments and despite its persistence in DSM-5.

The Developmental Paradigm: 4 Assumptions

1. *Gender Dysphoria is an adaptation to an evolving problem that was first manifested as a failure to establish a comfortable conventional sense of self in early childhood*
 - a. The source and the evolution of this uncomfortable and behaviorally problematic sense of self are explained by the interaction of changing biological, social, developmental psychological and cultural forces
 - b. The declaration of the self as transgendered is the latest solution
 - c. Thereafter, trans individuals view their life histories as containing elements that provide conviction that they have always been that way. They now see that they have had a feminine self, struggling for expression over their false but culturally approved of male gender roles. This metaphor, the typical narrative of the trans inmate, is likely a fallacy.

The Developmental Paradigm: 4 Assumptions

2. During adolescence these forces create other unstable identities involving gender, orientation, paraphilia and dysfunction in partner sexual intimacies.
3. Fluidity of the person's gender identity, as well as other aspects of identity, is noted before and after SRS—trans individuals may change their ethnicity, religion, religiosity, diet, or last name
4. The diagnosis of Gender Dysphoria, per se, does not mean that hormones and surgery are medically necessary

The Developmental Paradigm: Clinical Responses

1. Treatment is based on a compassionate understanding of the individual's history, co-morbidities and motivations for the transition. The challenge is to consider what can be done to ameliorate the patient's suffering in the cultural setting of the patient's life.
2. Clinicians urge hope, patience, and continued clarification of the forces that shape the individual's distress, current needs and behavior through ongoing psychotherapy.
3. They work with the environment to make life easier by addressing the person by her preferred name, meetings with family, environmental education and support groups.
4. Asserts that this intrapsychic problem dictates a thoughtful relationship-based process intervene between diagnosis and medical/surgical treatment

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The Developmental Paradigm: Clinical Responses

5. Ongoing psychotherapeutic investigation can in some circumstances help the person to face past dilemmas and recognize the underlying conflicts that are being avoided through transitioning.
6. Clinicians raise the question with the patient to what extent and in what ways anyone can start their life over, inside or outside of prison
7. Clinicians attempt two particularly difficult tasks:
 - a. Defining motivation for change—hard to conceptualize and admit overlapping motives
 - b. Recognize and own ambivalence about female body and invention of female role
8. Psychotherapy allows a clinician to recognize the reasonableness of hormones and SRS for some individuals

The Developmental Paradigm: 5 Limitations

1. It often conflicts with the patients' wishes. Many patients do not want to consider the impact of their past adversities, their convictions about the sources of their suffering and that they might not be correct about what is necessary to relieve their distress.
 - a. Some will not establish an alliance unless the therapist supports the permanence of the current gender identity and the unquestionable need for hormones and surgery. It is simple to ally with a inmate's belief in his feminine self and his need to evolving this way
 - b. This attitude is built on a pervasive distrust of others and a certainty about what would benefit them.
2. Pre-endocrine or pre-operative psychotherapy is no longer a SOC requirement

The Developmental Paradigm: 5 Limitations

3. Understanding a developmental process does not mean that the patient's ambitions can be changed
4. Change depends in part on patient capacity to use a therapeutic relationship to grow; many do not seem to have this capacity.
5. Many psychiatrists no longer conduct psychotherapy with anyone, let alone the transgendered! Many MHPs do not want to see these by claiming that they lack of training. (Psst...trans individuals are human beings)

Minority Rights Paradigm: 3 Assumptions

1. *The treatment of Gender Dysphoria should be determined by the patient's wishes because individuals have the right to express their gender as they see fit*
2. Psychiatry viewed homosexual persons as mentally ill until 1976. Homosexuality is now viewed as a developmental variation. This paradigm perceives trans people as similarly misunderstood, marginalized, diagnosed, stigmatized and cruelly ignored or inappropriately delayed in their medically necessary endocrine and surgical therapies.
3. Anyone who hesitates supporting transition and SRS is a dinosaur committed to an outgrown inherently discriminatory understanding of trans people and needs to be defeated in court or in the public arena.

The Minority Rights Paradigm: 5 Paradoxes

1. This legal political perspective borrows the medical paradigm to get patients their desired treatment but then denies that Gender Dysphoria is a form of illness.
2. SOC, which claims to be a scientific and a minority rights document, ignores the profound differences between science and advocacy.
3. WPATH assert that gender identity and orientation are two ever-distinct aspects of sexual identity denying the obvious overlap and two-way traffic between.

The Minority Rights Paradigm: 5 Paradoxes

4. WPATH aims to decrease stigmatization by declaring all trans individuals as normal and views trans individuals' anxiety states, suicidal preoccupations, suicide attempts, substance abuse and aggression to others as consequences of social rejection. Most MHPs find this a jarring position. APA has long fought against the stigmatization of the mentally ill without denying that patients have illnesses.
5. Judges, who are schooled in civil rights, look to professional societies like WPATH, for guidance. It is an uphill battle to convince them that a professional society is wrong and a dissenting expert in the courtroom is right.

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The Minority Rights Paradigm: 5 Paradoxes

6. Assumes that genital surgery will cure of the problem and withholding SRS constitutes a gross violation of the Eighth Amendment.
 7. Prisoners' right to SRS overrides the fact that in the community they might not qualify because of their problematic behaviors and co-morbidities. The argument is that they are well-enough because of maturation and institutional control. The crime for which they are incarcerated and their prior criminal career are irrelevant to the delivery of trans care. Is it irrelevant to their motivation for transitioning, however?
- This paradigm assumes SRS is a cure that if withheld, constitutes a gross violation of the Eighth Amendment.

Is there a fifth Hidden Paradigm—a Justice paradigm?

- ⊙ The justice paradigm reminds us that the inmate is in prison as a punishment for crime, for the protection of citizens and for an opportunity for civic rehabilitation.
 1. Most inmates do not have the resources, insurance coverage or cash, to personally pay for this surgical process and its post operative surgical interventions. Going to prison, ironically, presents an opportunity for SRS
 2. Most individuals—professional, governmental officials and laypersons—do not support this surgery and express bafflement and outrage when they learn of court decisions to mandate it for inmates at public expense.
 3. This paradigm might be alternatively labeled common sense paradigm or a citizens paradigm

Is there a fifth Hidden Paradigm—a Justice paradigm?

4. Judicial rulings mandating SRS are based on Gender Dysphoria being a "serious medical disorder" that has wide "consensus among professionals experienced with the condition" as the standard of care in the community. Since prisons are responsible for the medical care of its inmates, withholding SRS is viewed as cruel and unusual punishment, which is a violation of the inmates' Eighth Amendment rights.
 - a. The will of the people is insufficient to overcome rights guaranteed by the Constitution
 - b. Judges up for re-election are, however, mindful of the will of the people.
5. It is reasonable to assume that this paradigm is operative within corrections professionals and adds to their uncertainties and sense of confusion
6. It is reasonable to assume that this paradigm is operative within inmates and affords them this one chance in a lifetime
 - a. This may explain their motivation to exaggerate their distress (gender dysphoria).

Considerations for evaluation

1. Psychotic symptoms 2. Depressive symptoms 3. Dissociative symptoms 4. Body dysmorphic symptoms 5. Autistic spectrum symptoms 6. Suicidal ideation/past attempts 7. Substance abuse 8. Paraphilia past and current activities 9. Mutilation of genitals or breasts 10. Anorexia bulimia symptoms	1. Vocational and scholastic history 2. Complete criminal history including sex offenses 3. Quality of early life attachments within the family history 4. When did the current gender crystallization occur? 5. What experience and emotional state preceded it? 6. What is person's concept of its motivation? 7. What previous identities have been important? 8. Does inmate want to live among women in prison or stay among men? Why? 9. What worries does the person have about this new form of being? Do not accept "trans." 10. What is the quality of thinking from magical to realistic?

Can Co-exist with Gender Dysphoria

Other Vital Matters

WPATH-STANDARDS OF CARE

Mental Health Professionals-Competency

- ⊙ Master's degree or it's equivalent in clinical behavioral science
- ⊙ Competence with DSM-5
- ⊙ Ability to recognize and diagnose coexisting mental health concerns
- ⊙ Documented supervised training/competence in counseling
- ⊙ Knowledgeable about gender nonconforming identities/expressions
- ⊙ Knowledge of the assessment/treatment of GD
- ⊙ Continuing education in assessment/treatment of GD
- ⊙ Maintain cultural competencies

Attendance for Lecture with Dr. Levine:

Scott Eliason (Psychiatric Director)

Jeremy Stoddart (Psychiatrist)

April Dawson (Physician)

Connie Smock (Corizon nursing director)

Tom Dolan (Corizon)

Murray Young (Regional Medical Director)

Rona Seigert (IDOC)

Laura Watson (MH)

Deputy Warden Coburn

Mark Kubinski (Legal)

Clinician Hahn (MH)

Clinician Ponder (MH)

Jeremy Clark (MH)

Ashley Dowell (Deputy Chief IDOC)

David Agler (Physician)

James Barry (Psychologist)

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SER 298

MEDICAL NECESSITY FOR TRANSGENDER INMATES: IN SEARCH OF CLARITY WHEN PARADOX, COMPLEXITY AND UNCERTAINTY ABOUND

Stephen B. Levine, MD
Clinical Professor of Psychiatry
Case Western Reserve University School of Medicine

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PBL 1383

PART 3 HIDDEN ASSUMPTIONS FOR DETERMINING MEDICAL NECESSITY

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PBL 1398

SER 300

JT Ex.
17-16

MAKING THE HIDDEN EXPLICIT WHEN MAKING CLINICAL AND LEGAL JUDGMENTS

1. Medical Illness Paradigm
2. Developmental Paradigm
3. Minority Rights Paradigm

MEDICAL ILLNESS PARADIGM: 4 ASSUMPTIONS

1. *The DSM-5 diagnosis, Gender Dysphoria, should determine the treatment just as it does with illnesses such as prostate cancer or Graves Disease*
2. The physician is to employ what is best for the patient after considering the danger of untreated condition, the effectiveness of the treatment, its short-term and long-term side effects and economic cost.
3. All treatments--facial hair removal, hormones, name change, rhinoplasty, augmentation mammoplasty, bilateral mastectomies, liposuction, remodeling the chin, lips, forehead or cricoid cartilage--may lessen the incongruence of current gender identity with form of the body
4. SRS "cures" Gender Dysphoria.

MEDICAL ILLNESS PARADIGM: 7

LIMITATIONS

1. Patient preference, not MD recommendation, is the primary determinant of SRS and cosmetic procedures. MHPs only cooperate with the patient's request for SRS or mastectomies. We are not involved in other surgeries.
2. There is no credible evidence of the genetic dictation or any biologic cause of Gender Dysphoria
 - Several fMRI studies suggest that the brains of transsexual persons are different from other males but such studies have many confounds and, like other brain imaging studies, the findings are “delicate and ephemeral”

- Tone EB, Am.. Psych. 172 (9):822-823, 2015, editorial
- Rahman Q. Biological Basis of Orientation. In Handbook of Clinical Sexuality for Mental Health Professionals Routledge New York, 2016.

MEDICAL ILLNESS PARADIGM: LIMITATIONS

3. Prevalence estimates vary: is this due to multifactorial influences, definition/methodological differences or political motivations
 - Two estimates among US military personnel
 - Belkin: 12,800 transgendered on active duty
 - Rand report: up to 129

Belkin A. Caring for our transgendered troops. NEJM 373(12):1089-1091, 2015
Tone EB, High stakes in small mistakes: abused youth show hypersensitivity to Errors. Am.J. Psych. 172 (9):822-823, 2015, editorial

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MEDICAL ILLNESS PARADIGM: LIMITATIONS

4. Gender Dysphoria is known to resolve spontaneously in response to life processes.
5. The majority of boys diagnosed with Gender Dysphoria become homosexual adolescents.
6. Treatments do not target any biological abnormality
7. If genital surgery cures anything, it eradicates distress over natal genitalia in relationship to current gender identity; does not help other anatomic inconsistencies

MUSINGS ON THE MEDICAL PARADIGM

1. **The nature of disease:** Biological diseases occur within a social context that shapes outcome because of economic, cultural and familial influences. The growth of attention to Gender Dysphoria is an excellent example of how societal forces create concepts of illness and acceptable forms of treatment
2. **The social-political need:** to obtain insurance coverage. 12 states have mandated it; 90% of those who have SRS now have insurance coverage
3. **Politics masquerading as science:** WPATH explains the co-morbid psychiatric problems as a consequence of familial and societal minority stress— all suffering and limitations are due to the gender problem and all will be improved by hormones, transition and SRS.
4. **What is a mental illness?** WPATH asserts that Gender Dysphoria is not a symptom of an illness, despite the frequent symptomatic and functional accompaniments and despite its persistence in DSM-5

THE DEVELOPMENTAL PARADIGM: 4 ASSUMPTIONS

1. *Gender Dysphoria is an adaptation to an evolving problem that was first manifested as a failure to establish a comfortable conventional sense of self in early childhood*
 - a. The source and the evolution of this uncomfortable and behaviorally problematic sense of self are explained by the interaction of changing biological, social, developmental psychological and cultural forces
 - b. The declaration of the self as transgendered is the latest solution
 - c. Thereafter, trans individuals view their life histories as containing elements that provide conviction that they have always been that way. They now see that they have had a feminine self, struggling for expression over their false but culturally approved of male gender roles. This metaphor, the typical narrative of the trans inmate, is likely a fallacy.

THE DEVELOPMENTAL PARADIGM: 4 ASSUMPTIONS

2. During adolescence these forces create other unstable identities involving gender, orientation, paraphilia and dysfunction in partner sexual intimacies.
3. Fluidity of the person's gender identity, as well as other aspects of identity, is noted before and after SRS—trans individuals may change their ethnicity, religion, religiosity, diet, or last name
4. The diagnosis of Gender Dysphoria, per se, does not mean that hormones and surgery are medically necessary

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THE DEVELOPMENTAL PARADIGM: CLINICAL RESPONSES

1. Treatment is based on a compassionate understanding of the individual's history, co-morbidities and motivations for the transition. The challenge is to consider what can be done to ameliorate the patient's suffering in the cultural setting of the patient's life.
2. Clinicians urge hope, patience, and continued clarification of the forces that shape the individual's distress, current needs and behavior through ongoing psychotherapy.
3. They work with the environment to make life easier by addressing the person by her preferred name, meetings with family, environmental education and support groups.
4. Asserts that this intrapsychic **problem dictates a thoughtful relationship-based process** intervene between diagnosis and medical/surgical treatment

THE DEVELOPMENTAL PARADIGM: CLINICAL RESPONSES

5. Ongoing psychotherapeutic investigation can in some circumstances help the person to face past dilemmas and recognize the underlying conflicts that are being avoided through transitioning.
6. Clinicians raise the question with the patient to what extent and in what ways anyone can start their life over, inside or outside of prison
7. Clinicians attempt two particularly difficult tasks:
 - a. Defining motivation for change—hard to conceptualize and admit overlapping motives
 - b. Recognize and own ambivalence about female body and invention of female role
8. Psychotherapy allows a clinician to recognize the **reasonableness** of hormones and SRS for some individuals

THE DEVELOPMENTAL PARADIGM: 5 LIMITATIONS

1. It often conflicts with the patients' wishes. Many patients do not want to consider the impact of their past adversities, their convictions about the sources of their suffering and that they might not be correct about what is necessary to relieve their distress.
 - a. Some will not establish an alliance unless the therapist supports the permanence of the current gender identity and the unquestionable need for hormones and surgery. It is simple to ally with a inmate's belief in his feminine self and his need to evolving this way
 - b. This attitude is built on a pervasive distrust of others and a certainty about what would benefit them.
2. Pre-endocrine or pre-operative psychotherapy is no longer a SOC requirement

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THE DEVELOPMENTAL PARADIGM: 5 LIMITATIONS

3. Understanding a developmental process does not mean that the patient's ambitions can be changed
4. Change depends in part on patient capacity to use a therapeutic relationship to grow; many do not seem to have this capacity.
5. Many psychiatrists no longer conduct psychotherapy with anyone, let alone the transgendered! Many MHPs do not want to see these by claiming that they lack of training. (Psst...trans individuals are human beings)

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MINORITY RIGHTS PARADIGM: 3

ASSUMPTIONS

1. *The treatment of Gender Dysphoria should be determined by the patient's wishes because individuals have the right to express their gender as they see fit*
2. Psychiatry viewed homosexual persons as mentally ill until 1976. Homosexuality is now viewed as a developmental variation. This paradigm perceives trans people as similarly misunderstood, marginalized, diagnosed, stigmatized and cruelly ignored or inappropriately delayed in their medically necessary endocrine and surgical therapies.
3. Anyone who hesitates supporting transition and SRS is a dinosaur committed to an outgrown inherently discriminatory understanding of trans persons and needs to be defeated in court or in the public arena.

THE MINORITY RIGHTS PARADIGM: 5 PARADOXES

1. This legal political perspective borrows the medical paradigm to get patients their desired treatment but then denies that Gender Dysphoria is a form of illness.
2. SOC, which claims to be a scientific and a minority rights document, ignores the profound differences between science and advocacy.
3. WPATH assert that gender identity and orientation are two ever-distinct aspects of sexual identity denying the obvious overlap and two-way traffic between

THE MINORITY RIGHTS PARADIGM: 5 PARADOXES

4. WPATH aims to decrease stigmatization by declaring all trans individuals as normal and views trans individuals' anxiety states, suicidal preoccupations, suicide attempts, substance abuse and aggression to others as consequences of social rejection. Most MHPs find this a jarring position. APA has long fought against the stigmatization of the mentally ill without denying that patients have illnesses.
5. Judges, who are schooled in civil rights, look to professional societies like WPATH, for guidance. It is an uphill battle to convince them that a professional society is wrong and a dissenting expert in the courtroom is right.

THE MINORITY RIGHTS PARADIGM: 5 PARADOXES

6. Assumes that genital surgery will cure of the problem and withholding SRS constitutes a gross violation of the Eighth Amendment.
7. Prisoners' right to SRS overrides the fact that in the community they might not qualify because of their problematic behaviors and co-morbidities. The argument is that they are well-enough because of maturation and institutional control. The crime for which they are incarcerated and their prior criminal career are irrelevant to the delivery of trans care. Is it irrelevant to their motivation for transitioning, however?

Genital surgery is a cure that if withheld, constitutes a gross violation of the Eighth Amendment.

PART 4 MEANINGS OF MEDICAL NECESSITY

Hidden Ethical Dimensions

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17-33

CRASHING OF ETHICAL STANDARDS EXPLAIN NEGATIVE COUNTERTRANSFERENCE

1. Above all do no harm
2. Respect for patient autonomy
3. Honesty/Informed consent
4. Devotion to the patient's welfare—
beneficence
5. Care based on knowledge (vs. care based on
personal political belief)

Jones DS, Podolsky SH, Greene JA. The burden of disease and the changing task of medicine
N Engl J Med. 2012 Jun 21;366(25):2333-4

PBL 1416

THEN THERE ARE ROLE CONFLICTS

- ◆ Medical disease paradigm creates the conviction that the diagnosis of Gender Dysphoria = support for transition, hormones, and plastic and genital surgery ASAP—
"cheerleaders"
- ◆ Developmental paradigm creates the conviction Gender Dysphoria = understand the psychosocial pathways to this identity, appreciate the strengths and limitations of the patient, represent consequences of transition, and share the long term follow up information

McHugh PR, Slavney PR. Mental Illness-comprehensive evaluation or checklist? NEJM 366, 1853-1854

PBL 1417

SCIENCE VS. ADVOCACY

- A. Science provides a dispassionate view of what seem to be the facts. Science recognizes its own limitations
- B. Advocacy aims at attaining a specific goal. Advocacy musters the facts that support the goal; it is disinterested in emphasizing the limitations of its position.
- C. The fact that the post-operative suicide rate ten years after SRS is 19x general population is irrelevant to the minority rights paradigm

INSURANCE INDUSTRY'S CONCEPT OF MEDICAL NECESSITY

- Four elements
 - a licensed qualified health professional who evaluates and treats the patient;
 - an insurance company decides what interventions will be covered;
 - state and federal legislation that mandates specific coverage;
 - courts that rule on disputes between these parties.
- The attitude of government and insurance providers is evolving. An increasing number of plans and states are extending coverage to carefully diagnosed and prepared patients with Gender Dysphoria.
 - SRS is being covered because of the belief that it can meaningfully help the patient psychologically, if not cure the problem. Some companies have concluded SRS is a scientifically verified effective treatment
 - This represents one of the many recent gains in minority rights.
 - While patient belief alone is insufficient to justify medical necessity, patient belief in the early post operative years is one of the factors that creates the impression that SRS is effective.

TERM EASES ENDOCRINOLOGISTS' AND SURGEONS' ETHICAL DISTRESS

- The original use of “medically necessary” among gender specialists appeared in the 1970's within the Harry Benjamin International Gender Dysphoria Association (the initial name of WPATH) to assuage the concerns of endocrinologists and surgeons who recognized that their interventions went against the principle of nonmaleficence (do no harm).
- The employment of this term enabled surgeons to remove healthy tissues to improve the subjective quality of a person's life. They were asked to listen to the patients tell of their distress to convince themselves what the HBIGDA meant by being ethically acceptable.
- Today, if the phrase “psychologically beneficial” were substituted for medically necessary there may be considerably less confusion.

OSBORNE CS, LAWRENCE AA, MALE PRISON INMATES WITH GENDER
DYSPHORIA: WHEN IS SEX REASSIGNMENT SURGERY APPROPRIATE?

ARCH SEX BEHAVIOR E PUB MARCH 2016

1. Determination of medical necessity always reflects professional judgment exercised with respect to a particular patient; Although a judgment of medical necessity can be contested, the grounds for doing so are quite limited.
2. SRS is a safe, effective, and widely accepted treatment for GD, disputing the medical necessity of SRS based on assertions to the contrary is unsupportable.
3. SRS can be judged medically necessary for some persons with GD, especially males, when their GD reflects intense distress about the incongruence between their external genitalia and their gender identity because this incongruence that can only be corrected through genital surgery.
4. Other bases for asserting the medical necessity of SRS, such as treating suicidality or depression, are more problematic.

OSBORNE AND LAWRENCE: GENERAL MEANING OF MEDICAL NECESSITY

- “Medically Necessary” or “Medical Necessity” shall mean health care services that a physician, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:
 - a) in accordance with generally accepted standards of medical practice;
 - b) clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the patient's illness, injury or disease;
 - c) not primarily for the convenience of the patient, physician or other health care provider
 - d) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury or disease.

OSBORNE AND LAWRENCE

- We would caution, however, that these favorable conclusions (widespread support for SRS as effective over 30 years of study) are derived from experience with community-dwelling patients. Although it is reasonable to assume that they would also apply to prison inmates, empirical evidence to support this assumption is lacking.
- SRS remains untested in incarcerated persons, who differ in significant ways from community patients.

FOUR CRITERIA FOR MEDICAL NECESSITY THROUGHOUT MEDICINE

1. Does it prevent death?
2. Does it prevent complication?
3. Does it relieve pain?
4. Does it improve function?

PREVENTING DEATH AMONG INMATES WITH GENDER DYSPHORIA

- Individuals with Gender Dysphoria are well known to have suicidal ideation and to suicide before hormones, during hormonal treatment and after SRS
 - Suicide rate after SRS is far greater than the general population
 - Suicide rate is comparable with VA patients with chronic mental disorders
- SRS is not conceived as lifesaving as is repairing a potentially leaking aortic aneurysm but as **life enhancing** as is providing augmentation for women distressed about their small breasts.
- When inmates declare they will suicide without SRS, their desperation and manipulation are separately addressed.
- When experts declare a prisoner is likely to suicide without SRS, they overlook their profession's poor track record at prediction and what else can be done to deal with their depression.
- Our committee once refused SRS to a young man who had made 6 suicide attempts and told us he thought he would suicide after the operation

OSBORNE AND LAWRENCE'S CRITERIA FOR SRS FOR INMATES

1. Prominent genital anatomic GD;
2. A long period of expected incarceration after SRS;
3. A satisfactory disciplinary record and demonstrated capacity to cooperate with providers and comply with recommended treatment;
4. A period of psychotherapy, if recommended by the responsible practitioner;
5. Willingness to be assigned to a women's prison after SRS.

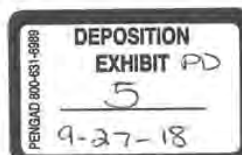
RANDI ETTNER, PHD
1214 Lake Street
Evanston, Illinois 60201
847-328-3433

POSITIONS HELD

Clinical Psychologist
Forensic Psychologist
Fellow and Diplomate in Clinical Evaluation, American Board of
Psychological Specialties
Fellow and Diplomate in Trauma/PTSD
President, New Health Foundation Worldwide
Secretary, World Professional Association of Transgender Healthcare
(WPATH)
Chair, Committee for Institutionalized Persons, WPATH
Global Education Initiative Committee
University of Minnesota Medical Foundation: Leadership Council
Psychologist, Center for Gender Confirmation Surgery, Weiss Memorial
Hospital
Adjunct Faculty, Prescott College
Editorial Board, *International Journal of Transgenderism*
Editorial Board, *Transgender Health*
Television and radio guest (more than 100 national and international
appearances)
Internationally syndicated columnist
Private practitioner
Medical staff Weiss Memorial Hospital, Chicago IL

EDUCATION

PhD, 1979	Northwestern University (with honors) Evanston, Illinois
MA, 1976	Roosevelt University (with honors) Chicago, Illinois
BA, 1969-73	Indiana University Bloomington, Indiana Cum Laude Major: Clinical Psychology; Minor: Sociology
1972	Moray College of Education Edinburgh, Scotland International Education Program
1970	Harvard University Cambridge, Massachusetts Social Relations Undergraduate Summer Study Program in Group Dynamics and Processes



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SER 328

CLINICAL AND PROFESSIONAL EXPERIENCE

2016-present	Psychologist: Chicago Gender Center Consultant: Walgreens; Tawani Enterprises Private practitioner
2011	Instructor, Prescott College: Gender-A multidimensional approach
2000	Instructor, Illinois Professional School of Psychology
1995-present	Supervision of clinicians in counseling gender non conforming clients
1993	Post-doctoral continuing education with Dr. James Butcher in MMPI-2 Interpretation, University of Minnesota
1992	Continuing advanced tutorial with Dr. Leah Schaefer in psychotherapy
1983-1984	Staff psychologist, Women's Health Center, St. Francis Hospital, Evanston, Illinois
1981-1984	Instructor, Roosevelt University, Department of Psychology: Psychology of Women, Tests and Measurements, Clinical Psychology, Personal Growth, Personality Theories, Abnormal Psychology
1976-1978	Research Associate, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
1975-1977	Clinical Internship, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
1971	Research Associate, Department of Psychology, Indiana University
1970-1972	Teaching Assistant in Experimental and Introductory Psychology Department of Psychology, Indiana University
1969-1971	Experimental Psychology Laboratory Assistant, Department of Psychology, Indiana University

LECTURES AND HOSPITAL GRAND ROUNDS PRESENTATIONS

The mental health professional in the multi-disciplinary team, pre-operative evaluation and assessment for gender confirmation surgery American Society of Plastic Surgeons, Chicago, IL, 2018

Navigating Transference and Countertransference Issues, WPATH global education initiative, Portland, OR; 2018

Psychological aspects of gender confirmation surgery International Continence Society, Philadelphia, PA 2018

The role of the mental health professional in gender confirmation surgeries, Mt. Sinai Hospital, New York City, NY, 2018

Mental health evaluation for gender confirmation surgery, Gender Confirmation Surgical Team, Weiss Memorial Hospital, Chicago, IL 2018

Transitioning: Bathrooms are only the beginning, American College of Legal Medicine, Charleston, SC, 2018

Gender Dysphoria: A medical perspective, Department of Health and Human Services, Office for Civil Rights, Washington, D.C, 2017

Multi-disciplinary health care for transgender patients, James A. Lovell Federal Health Care Center, North Chicago, IL, 2017

Psychological and Social Issues in the Aging Transgender Person, Weiss Memorial Hospital, Chicago, IL, 2017.

Psychiatric and Legal Issues for Transgender Inmates, USPATH, Los Angeles, CA, 2017

Transgender 101 for Surgeons, American Society of Plastic Surgeons, Chicago, IL, 2017.

Healthcare for transgender inmates in the US, Erasmus Medical Center, Rotterdam, Netherlands, 2016.

Tomboys Revisited: Replication and Implication; Models of Care; Orange Isn't the New Black Yet- WPATH symposium, Amsterdam, Netherlands, 2016.

Foundations in mental health; role of the mental health professional in legal and policy issues, healthcare for transgender inmates; children of transgender parents; transfeminine genital surgery assessment: WPATH global education initiative, Chicago, IL, 2015; Atlanta, GA, 2016; Ft. Lauderdale, FL, 2016; Washington, D.C., 2016, Los Angeles, CA, 2017, Minneapolis, MN, 2017, Chicago, IL, 2017; Columbus, Ohio, 2017; Portland, OR, 2018; Cincinnati, OH, 2018.

Pre-operative evaluation in gender-affirming surgery-American Society of Plastic Surgeons, Boston, MA, 2015

Gender affirming psychotherapy: Assessment and referrals for surgery-Standards of Care- Fenway Health Clinic, Boston, 2015
Gender reassignment surgery- Midwestern Association of Plastic Surgeons, 2015

Adult development and quality of life in transgender healthcare- Eunice Kennedy Shriver National Institute of Child Health and Human Development, 2015

Healthcare for transgender inmates- American Academy of Psychiatry and the Law, 2014

Supporting transgender students: best school practices for success- American Civil Liberties Union of Illinois and Illinois Safe School Alliance, 2014

Addressing the needs of transgender students on campus- Prescott College, 2014

The role of the behavioral psychologist in transgender healthcare – Gay and Lesbian Medical Association, 2013

Understanding transgender- Nielsen Corporation, Chicago, Illinois, 2013

Role of the forensic psychologist in transgender care; Care of the aging transgender patient- University of California San Francisco, Center for Excellence, 2013

Evidence-based care of transgendered patients- North Shore University Health Systems, University of Chicago, Illinois, 2011; Roosevelt-St. Vincent Hospital, New York; Columbia Presbyterian Hospital, Columbia University, New York, 2011

Children of Transsexuals- International Association of Sex Researchers, Ottawa, Canada, 2005; Chicago School of Professional Psychology, 2005

Gender and the Law- DePaul University College of Law, Chicago, Illinois, 2003; American Bar Association annual meeting, New York, 2000

Gender Identity, Gender Dysphoria and Clinical Issues – WPATH Symposium, Bangkok, Thailand, 2014; Argosy College, Chicago, Illinois, 2010; Cultural Impact Conference, Chicago, Illinois, 2005; Weiss Hospital, Department of Surgery, Chicago, Illinois, 2005; Resurrection Hospital Ethics Committee, Evanston, Illinois, 2005; Wisconsin Public Schools, Sheboygan, Wisconsin, 2004, 2006, 2009; Rush North Shore Hospital, Skokie, Illinois, 2004; Nine Circles Community Health Centre, University of Winnipeg, Winnipeg, Canada, 2003; James H. Quillen VA Medical Center, East Tennessee State University, Johnson City, Tennessee, 2002; Sixth European Federation of Sexology, Cyprus, 2002; Fifteenth World Congress of Sexology, Paris, France, 2001; Illinois School of Professional Psychology, Chicago, Illinois 2001; Lesbian Community Cancer Project, Chicago, Illinois 2000; Emory University Student Residence Hall, Atlanta, Georgia, 1999; Parents, Families and Friends of Lesbians and Gays National Convention, Chicago, Illinois, 1998; In the Family Psychotherapy Network National Convention, San Francisco, California, 1998; Evanston City Council, Evanston, Illinois 1997; Howard Brown Community Center, Chicago, Illinois, 1995;

YWCA Women's Shelter, Evanston, Illinois, 1995; Center for Addictive Problems, Chicago, 1994

Psychosocial Assessment of Risk and Intervention Strategies in Prenatal Patients- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984; Purdue University School of Nursing, West Layette, Indiana, 1980

Psychoneuroimmunology and Cancer Treatment- St. Francis Hospital, Evanston, Illinois, 1984

Psychosexual Factors in Women's Health- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984

Sexual Dysfunction in Medical Practice- St. Francis Hospital, Dept. of OB/GYN, Evanston, Illinois, 1980

Sleep Apnea - St. Francis Hospital, Evanston, Illinois, 1996; Lincolnwood Public Library, Lincolnwood, Illinois, 1996

The Role of Denial in Dialysis Patients - Cook County Hospital, Department of Psychiatry, Chicago, Illinois, 1977

PUBLICATIONS

Ettner, R., White, T., Ettner, F., Friese, T., Schechter, L. (2018) Tomboys revisited: A retrospective comparison of childhood behaviors in lesbians and transmen. *Journal of Child and Adolescent Psychiatry*.

Narayan, S., Danker, S Esmonde, N., Guerriero, J., Carter, A., Dugi III, D., Ettner, R., Radix A., Bluebond-Langner, R., Schechter, L., Berli, J. (2018) A survey study of surgeons' experience with regret and reversal of gender-confirmation surgeries as a basis for a multidisciplinary approach to a rare but significant clinical occurrence, submitted.

Ettner, R. Mental health evaluation. *Clinics in Plastic Surgery*. (2018) Elsevier, 45(3): 307-311.

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Ettner, R. Pre-operative evaluation in Schechter (Ed.) *Surgical Management of the Transgender Patient*. Elsevier, 2017.

Berli, J., Kudnson, G., Fraser, L., Tangpricha, V., Ettner, R., et al. Gender Confirmation Surgery: what surgeons need to know when providing care for transgender individuals. *JAMA Surgery*; 2017.

Ettner, R., Ettner, F. & White, T. Choosing a surgeon: an exploratory study of factors influencing the selection of a gender affirmation surgeon. *Transgender Health*, 1(1), 2016.

Ettner, R. & Guillamon, A. Theories of the etiology of transgender identity. In Principles of Transgender Medicine and Surgery. Ettner, Monstrey & Coleman (Eds.), 2nd edition; Routledge, June, 2016.

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Bockting, W., Coleman, E., Deutsch, M., Guillamon, A., Meyer, I., Meyer, W., Reisner, S., Sevelius, J. & Ettner, R. Adult development and quality of life of transgender and gender nonconforming people. *Current Opinion in Endocrinology and Diabetes*, 2016.

Ettner, R. Children with transgender parents in Sage Encyclopedia of Psychology and Gender. Nadal (Ed.) Sage Publications, 2017

Ettner, R. Surgical treatments for the transgender population in Lesbian, Gay, Bisexual, Transgender, and Intersex Healthcare: A Clinical Guide to Preventative, Primary, and Specialist Care. Ehrenfeld & Eckstrand, (Eds.) Springer: MA, 2016.

Ettner, R. Etiopathogenetic hypothesis on transsexualism in Management of Gender Identity Dysphoria: A Multidisciplinary Approach to Transsexualism. Trombetta, Liguori, Bertolotto, (Eds.) Springer: Italy, 2015.

Ettner, R. Care of the elderly transgender patient. *Current Opinion in Endocrinology and Diabetes*, 2013, Vol. 20(6), 580-584.

Ettner, R., and Wylie, K. Psychological and social adjustment in older transsexual people. *Maturitas*, March, 2013, Vol. 74, (3), 226-229.

Ettner, R., Ettner, F. and White, T. Secrecy and the pathophysiology of hypertension. *International Journal of Family Medicine* 2012, Vol. 2012.

Ettner, R. Psychotherapy in Voice and Communication Therapy for the Transgender/Transsexual Client: A Comprehensive Clinical Guide. Adler, Hirsch, Mordaunt, (Eds.) Plural Press, 2012.

Coleman, E., Bockting, W., Botzer, M., Cohen-Kettenis, P., DeCuypere, G., Feldman, J., Fraser, L., Green, J., Knudson, G., Meyer, W., Monstrey, S., Adler, R., Brown, G., Devor, A., Ehrbar, R., Ettner, R., et.al. Standards of Care for the health of transsexual, transgender, and gender-nonconforming people. World Professional Association for Transgender Health (WPATH). 2012.

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- White, T. and Ettner, R. Disclosure, risks, and protective factors for children whose parents are undergoing a gender transition. *Journal of Gay and Lesbian Psychotherapy*, Vol. 8, 2004.
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- Ettner, R. *Gender Loving Care: A Guide to Counseling Gender Variant Clients*. WW Norton, 2000.

"Social and Psychological Issues of Aging in Transsexuals," proceedings, Harry Benjamin International Gender Dysphoria Association, Bologna, Italy, 2005.

"The Role of Psychological Tests in Forensic Settings," *Chicago Daily Law Bulletin*, 1997.

Confessions of a Gender Defender: A Psychologist's Reflections on Life amongst the Transgendered. Chicago Spectrum Press. 1996.

"Post-traumatic Stress Disorder," *Chicago Daily Law Bulletin*, 1995.

"Compensation for Mental Injury," *Chicago Daily Law Bulletin*, 1994.

"Workshop Model for the Inclusion and Treatment of the Families of Transsexuals," Proceedings of the Harry Benjamin International Gender Dysphoria Symposium; Bavaria, Germany, 1995.

"Transsexualism- The Phenotypic Variable," Proceedings of the XV Harry Benjamin International Gender Dysphoria Association Symposium; Vancouver, Canada, 1997.

"The Work of Worrying: Emotional Preparation for Labor," Pregnancy as Healing. A Holistic Philosophy for Prenatal Care, Peterson, G. and Mehl, L. Vol. II. Chapter 13, Mindbody Press, 1985.

PROFESSIONAL AFFILIATIONS

University of Minnesota Medical School-Leadership Council
American College of Forensic Psychologists
World Professional Association for Transgender Health
World Health Organization (WHO) Global Access Practice Network
TransNet national network for transgender research
American Psychological Association
American College of Forensic Examiners
Society for the Scientific Study of Sexuality
Screenwriters and Actors Guild
Phi Beta Kappa

AWARDS AND HONORS

WPATH award for education, 2018
The Randi and Fred Ettner Transgender Health Fellowship-Program in Human Sexuality, University of Minnesota, 2016
Phi Beta Kappa, 1971
Indiana University Women's Honor Society, 1969-1972
Indiana University Honors Program, 9-1972
Merit Scholarship Recipient, 1970-1972

Indiana University Department of Psychology Outstanding Undergraduate Award
Recipient, 1970-1972
Representative, Student Governing Commission, Indiana University, 1970

LICENSE

Clinical Psychologist, State of Illinois, 1980

J. Kevin West, ISB #3337
Email: KWest@parsonsbehle.com
Dylan A. Eaton, ISB #7686
Email: DEaton@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901

Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; AND DOES 1-15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**CORIZON DEFENDANTS' RESPONSE
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

COME NOW Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery ("Corizon Defendants"), by and through their counsel of record, Parsons Behle &

CORIZON DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF - 1

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Latimer, and submit this response to Plaintiff's Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof (Dkt. 62).

I. INTRODUCTION

With respect to Corizon Defendants, this case primarily involves the treatment and care for Plaintiff who was diagnosed with Gender Dysphoria in 2012. At the end of the day, the evidence will clearly show that Plaintiff has and continues to receive appropriate care and treatment for her Gender Dysphoria (GD) and that there has been no deliberate indifference on the part of Corizon Defendants. Plaintiff's preliminary injunction should be denied because Plaintiff is not likely to succeed on the merits of the case, not likely to suffer irreparable harm in the absence of preliminary relief, the balance of the equities does not tip in Plaintiff's favor, and the injunction is not in the public interest.

Corizon Defendants are treating this brief similar to a trial brief in which to educate the Court on some of the anticipated facts and some of Corizon Defendants' positions and defenses in this case. Corizon Defendants do not waive the right to assert other facts, defenses and arguments, however. As of the time of filing this brief, most of the parties' experts have not been deposed. Further, the Court set an evidentiary hearing for October 10-12, 2018. Accordingly, Plaintiff's Motion for Preliminary Injunction cannot be fully briefed at this time because discovery is ongoing and the evidentiary hearing related to Plaintiff's Motion has not yet occurred. Corizon Defendants anticipate there will be an opportunity for closing arguments at the hearing and will likely request an opportunity for more briefing after the facts and testimony at the hearing have been established.

II. PROCEDURAL POSTURE OF THE CASE

On April 4, 2017, Plaintiff filed her Complaint pro se.

On June 8, 2017, Plaintiff filed her First Amended Complaint.

Plaintiff subsequently retained counsel and then, on September 1, 2017, Plaintiff filed her Second Amended Complaint.

In November 2017, Corizon Defendants filed a motion seeking to limit and bar some of Plaintiff's claims in her Complaint. In early June 6, 2018, the Court issued a decision dismissing some claims, but not all.

On June 1, 2018, before the Court had ruled on Corizon Defendants' motion, Plaintiff's filed a Motion for Preliminary Injunction.

With respect to Corizon and its medical providers, Plaintiff alleges that the World Professional Association for Transgender Health (WPATH) establishes the applicable standard of care for gender dysphoria. Plaintiff argues that treatment for GD can include hormone therapy, surgery to change primary and/or secondary characteristics, and/or psychotherapy addressing the negative impact of gender dysphoria and stigma on mental health. They claim that sex-reassignment surgery (aka SRA or "gender confirmation surgery") is medically necessary for some individuals with GD. Ultimately, Plaintiff claims that Corizon Defendants have refused to provide appropriate treatment and care for her GD, including allegedly refusing to provide a sex-reassignment surgery, not adequately monitoring and adjusting her feminizing hormones, and denying her access to other medically necessary treatments for reducing her GD.

Plaintiff's Motion concludes by requesting that the Court issue a preliminary injunction:

1. Ordering Defendants to provide Edmo immediate access to necessary medical treatment, including:
 - a. Sex-reassignment surgery;
 - b. Reinstatement of spironolactone, or an equivalent type of care;
 - c. Access to gender-appropriate underwear, clothing, and commissary items;

- d. Any other treatment a medical professional qualified to assess and treat gender dysphoria determines to be medical urgent.
- 2. Prohibiting Defendants from:
 - a. Implementing their policy and/or practice of blanket denial of access to such treatment for transgender persons incarcerated in the Idaho Department of Corrections; and
 - b. Disciplining or retaliating against Plaintiff for expressing her gender identity, including wearing gender-appropriate underwear and clothing and adhering to female grooming standards with regards to makeup and hair styling.

III. FACTS

A. General Overview of Plaintiff's Medical Care and Treatment History at IDOC Prisons.

The following is a brief summary of the medical and mental health care at issue in this case. This summary is not all inclusive, but is intended to give the Court an overview of the facts from Corizon Defendants. These and other facts will be supported by the medical and mental health care records as well as testimony at the evidentiary hearing.

This case involves Plaintiff Adree Edmo (a.k.a. Mason Dean Edmo, a.k.a. Mason Dean Meeks) who has been incarcerated since about April 2012 and who is currently an inmate at Idaho State Correctional Institution (ISCI). Plaintiff is incarcerated for sexual abuse of a child under 16 as well as for drawing checks without funds. Plaintiff's current "sentence satisfaction date" (date when she would complete her sentence, if no early parole) is listed as July 3, 2021.

At birth, Plaintiff was assigned the gender of male and had male characteristics, including a penis and testicles. Before incarceration, Plaintiff apparently first came out as a homosexual,

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but when she was incarcerated then felt that “I was not a gay man, but actually a woman.” (She has a prior history of suicide attempts.) While in prison, on or about July 19, 2012, she was diagnosed with Gender Dysphoria (formally Gender Identity Disorder (“GID”)) by Claudia Lake, a Corizon Psychologist, and also by Scott Eliason, M.D., Corizon’s Regional Psychiatrist Director. Plaintiff had numerous appointments with Dr. Eliason over the years regarding her mental health issues, such as anxiety, depression, and alcohol and substance abuse disorders.

On August 23, 2012, a team of Corizon and IDOC employees/providers met at a Management and Treatment Committee (MTC) meeting and agreed Plaintiff could start hormone therapy, among other things. Dr. Eliason was often a part of these MTC meetings, as were clinicians, psychologists, and IDOC correctional staff.

Hormone therapy was started for Plaintiff. Cathy Whinnery, M.D., who was the ISCI Medical Director at the time and a defendant in this case, ordered hormone therapy and monitored and adjusted it as she deemed appropriate in her clinical judgment. Dr. Whinnery treated Plaintiff at various times from about August 20, 2012 to January 15, 2015, including about eight chronic care visits and numerous orders adjusting Plaintiff’s hormone medications over this time period. The hormone therapy caused Plaintiff to develop breasts and the testicles shrank over time.

Medical providers completed medical memos allowing Plaintiff to get a bra. She has had access to a bra soon after she was diagnosed with GD. Medical providers ordered a jock strap and pads to help Edmo tuck her penis as she wanted. Plaintiff currently has panties at the prison.

On November 6, 2013, an MTC meeting note indicates that Plaintiff had been moved to another facility (Idaho Correctional Institution-Orofino (ICI-O)) on August 12, 2013 as a precautionary measure after receiving a Disciplinary Offense Report for sexual activity and increased acting-out while housed at ISCI. Plaintiff was placed into the Sex Offender Treatment

Program at ICI-O, but signed a refusal to participate in the program. She has not completed this program to date.

On February 11, 2014, Plaintiff submitted a Health Services Request indicating that she wanted to see Dr. Craig, IDOC's psychologist, for gender reassignment surgery.

In February and March 2014, Plaintiff was put on suicide watch because she indicated she would harm herself.

On September 29, 2015, Plaintiff attempted to remove her scrotum with a razor blade. The attempt was unsuccessful, the bleeding was controlled with pressure, the area was irrigated, and steri-strips were applied. No stitches were needed. Plaintiff was given a tetanus shot. There were subsequently no signs of infection. Plaintiff was then placed on suicide watch.

On March 24, 2016, a social worker noted that Plaintiff was struggling to remain DOR-free (a.k.a. avoiding a disciplinary write-up) and had received eight since June 2015. Some of these DORs were for fighting or sexual activity.

On April 20, 2016, Dr. Eliason indicated that Plaintiff was doing alright, but had not been granted parole because she continued receiving DORs. Plaintiff also indicated that she wanted to discuss sexual reassignment surgery. Dr. Eliason assessed Plaintiff for Sexual Reassignment Surgery (SRS) and determined that SRS was not medically necessary at that time. She did not meet criteria for SRS at that time, including:

1. Congenital malformations or ambiguous genitalia would likely require sexual reassignment or reparative surgery;
2. Severe and devastating dysphoria that is primarily due to genitals could potentially meet criteria for gender reassignment surgery;
3. Some type of medical problem in which endogenous sexual hormones were causing severe physiological damage.

Dr. Eliason was also treating Plaintiff's underlying mental health issues, including Major Depressive Disorder (MDD). Dr. Eliason also noted that there may also be other situations which could be determined as medically necessary as more information becomes available. He also indicated that he staffed this issue with Murray Young, M.D., Jeremy Stoddart, M.D., and Jeremy Clark, LCPC (clinical supervisor and WPATH member), who agreed with Dr. Eliason's assessment. Dr. Eliason concluded that "for the time being, it is my opinion that the combination of hormonal treatment and supportive counseling is sufficient for her gender dysphoria."

On June 10, 2016, MTC meeting minutes documented that Plaintiff consistently had verbal confrontations with staff and a history of inappropriate sexual behaviors with other inmates who live in the general population.

On August 10, 2016, the MTC reconvened to provide more information on why Plaintiff should not be moved out of Unit 16 into the general population at ISCI. Additional details were provided, including that Plaintiff recently physically assaulted another inmate with GD who did not fight back.

On December 31, 2016, Plaintiff again attempted self-castration by lacerating her scrotum with a razor blade. She was transported to St. Alphonsus hospital to address the injury. The attempt at self-castration was unsuccessful.

On April 6, 2017, Plaintiff filed her Complaint in this lawsuit.

Plaintiff has continued to receive medical and mental health care and treatment at the prison facility.

Since about December 2016, Plaintiff has also been seen by an offsite Gender Dysphoria specialist, Dr. Alviso, who, among other things, has managed her hormone therapy.

As recent as this year, Plaintiff has not been cooperative with her providers and their recommended treatment, including refusing to meet with her assigned clinician and refusing to attend recommended mental health groups. (*See* Declaration of Dylan A. Eaton, Exhibit A, expert report of Keelin Garvey, M.D., CCHP (“Dr. Garvey Report”), p. 42.)

B. Plaintiff’s history before prison.

Plaintiff claims in her declaration and to her experts that she lived full time as a woman prior to being incarcerated. However, Plaintiff has presented no evidence that she was living full time as a female prior to incarceration and she did not disclose such in her Pre-Sentencing Investigation reports that were presented to the Court before she was sentenced on her current crime. Her medical and mental health care records prior to incarceration are also silent regarding any references to her appearing to live like a female. Plaintiff’s inconsistency regarding how she lived pre-incarceration is significant for many reasons. Among other reasons, living as a female for a significant period of time (such as a year) is often one of several important criteria or factors before SRS is indicated.

Plaintiff also has a long history of mental health disorders, including major depression, anxiety, alcohol use disorder, stimulant use disorder, and opioid use disorder. (Dr. Garvey Report, pp. 19-20.)

IV. PRELIMINARY INJUNCTION STANDARD

Under the Prison Litigation Reform Act (“PLRA”):

In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system.

18 U.S.C. § 3626(a)(2).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). “[S]erious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.2011) (internal quotation marks omitted).

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 24, 129 S.Ct. 365. It may take two forms. “A prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir.2009) (internal alterations and quotation marks omitted). A mandatory injunction orders a party to take action. *Id.* at 879. Because a mandatory injunction “goes well beyond simply maintaining the status quo pendente lite [it] is particularly disfavored.” *Id.* (internal alterations omitted). “In general, **mandatory injunctions ‘are not granted unless extreme or very serious damage will result and are not issued in doubtful cases** or where the injury complained of is capable of compensation in damages.’ ” *Id.* (quoting *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir.1979)) (emphasis added).

V. ANALYSIS

A. Plaintiff is Unlikely to Succeed on the Merits

i. Corizon Defendants are Not Deliberately Indifferent

1. Deliberate Indifference Standard

“[D]eliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (internal citation omitted). Such indifference may be “manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.” *Id.* In the Ninth Circuit, a plaintiff alleging deliberate indifference must first “show a serious medical need by demonstrating that failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.2006) (citing *Estelle*, 429 U.S. at 104, 97 S.Ct. 285) (internal quotation marks omitted). Second, she “must show the defendant’s response to the need was deliberately indifferent.” *1186 *Id.* This second prong “is satisfied by showing (a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.” *Id.* An inadvertent or negligent failure to provide adequate medical care does not suffice to state a claim under Section 1983. *Estelle*, 429 U.S. at 105–06, 97 S.Ct. 285. “Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.” *Id.* at 106, 97 S.Ct. 285. Moreover, mere indifference, medical malpractice, or negligence will not support a cause of action under the Eighth Amendment. *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir.1980) (per curiam).

Additionally, there is no vicarious liability in 1983 actions. *See Monell v. Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Bonner v. Lewis*, 857 F.2d 559, 565 (9th Cir.1988) (doctrine of *respondeat superior* is not applicable in prisoner's claim against Director of Arizona Department of Corrections). To assert a § 1983 claim against a private entity, such as Corizon, Plaintiff must meet the test articulated in *Monell v. Department of Social Services*, 436 U.S. 658, 690–94, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *see also Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012) (applying *Monell* to private entities). Under *Monell*, the requisite elements of a § 1983 claim against a municipality or private entity performing a state function are the following: (1) the plaintiff was deprived of a constitutional right; (2) the municipality or entity had a policy or custom; (3) the policy or custom amounted to deliberate indifference to the plaintiff's constitutional right; and (4) the policy or custom was the moving force behind the constitutional violation. *Mabe v. San Bernardino Cnty.*, 237 F.3d 1101, 1110–11 (9th Cir.2001).

To create liability, an unwritten policy or custom must be so “persistent and widespread” that it constitutes a “permanent and well settled” practice. *Monell*, 436 U.S. at 691, 98 S.Ct. 2018 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167–168, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)). “Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir.1996). Further, a municipality or private entity performing a state function “may be held liable under § 1983 when the individual who committed the constitutional tort was an official with final policy-making authority or such an official ratified a subordinate's unconstitutional decision or

action and the basis for it.” *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1250 (9th Cir.2010).

2. Analysis

Plaintiff focuses solely on the World Professional Association for Transgender Health (WPATH) manual in an attempt to establish the standards of care for treating individuals with Gender Dysphoria, including for SRS. While WPATH is one resource that practitioners can consider when treating GD patients, it does not establish the applicable standard of care. Indeed, some providers consult with WPATH guidelines and others have created their own criteria and requirements for surgery, which they think are best suited for their patients. WPATH even recognizes that its guidelines should be flexible. Further, as an example, the evidence, trials and peer reviews are low or non-existent in supporting WPATH guidelines, especially as to incarcerated individuals. (Dr. Garvey’s Report, pp. 27-30; 40-42.) The cases cited by Plaintiff’s counsel that relied on WPATH standards did not address these deficiencies. Accordingly, Corizon Defendants dispute that the WPATH establishes the applicable standard of care in treating GD patients and, more specifically, in treating Plaintiff. WPATH is no substitute for clinical judgment.

Corizon Defendants do not contest that Plaintiff has Gender Dysphoria. Corizon’s psychologist, Dr. Lake, and its psychiatrist, Defendant Dr. Eliason, appropriately evaluated Plaintiff and determined in 2012 that Plaintiff had Gender Identity Disorder (now called Gender Dysphoria). Corizon’s expert also opines that Plaintiff has Gender Dysphoria. (Dr. Garvey Report, pp. 17-18.)

Contrary to Plaintiff’s representations, however, Corizon Defendants provided appropriate care and treatment to Plaintiff for her Gender Dysphoria. Plaintiff was quickly assessed and diagnosed with GD and then timely started receiving hormone therapy. The hormone therapy

provided was appropriate and within the applicable standard of care. Further, Plaintiff has been satisfied with her hormone therapy. (Dr. Garvey Report, pp. 23-26.)

Additionally, her psychiatric treatment was appropriate and within the applicable standard of care. (Dr. Garvey Report, pp. 21-23.)

Plaintiff also apparently seeks Sex Reassignment Surgery, which can include a complete hysterectomy, bilateral mastectomy, chest reconstruction or augmentation ... including breast prostheses if necessary, genital reconstruction (by various techniques which must be appropriate to each patient ...) and certain facial plastic reconstruction. It is not entirely clear what SRS Plaintiff wants, but it appears she may want a vaginoplasty. **Such a surgery is permanent and irreversible.** Therefore, medical providers and the Court, for that matter, should be extremely careful and hesitant to order such a procedure. In this case, SRS is not indicated at this time for Plaintiff.

WPATH guidelines list the following criteria for vaginoplasty:

1. Persistent, well documented gender dysphoria
2. Capacity to make a fully informed decision and to consent to treatment
3. Age of majority in a given country
4. If significant medical or mental health concerns are present, they must be well controlled
5. 12 continuous months of hormone therapy as appropriate to the patient's gender goals
6. 12 continuous months of living in a gender role that is congruent with their gender identity

Even if WPATH guidelines are followed, Corizon Defendants' expert opines that Plaintiff does not meet criteria 1, 4 and 6 above. (Dr. Garvey Report, pp. 26-40.)

Additionally, because clinical experience with SRS in correctional setting is non-existent, there are other factors beyond those in WPATH that can be considered for SRS, such as:

1. Prominent genital anatomic GD
2. A long period of expected incarceration after SRS
3. A satisfactory disciplinary record and demonstrated capacity to cooperate with providers and comply with recommended treatment;
4. A period of psychotherapy, if recommended by the responsible practitioner; and
5. Willingness to be assigned to a women's prison after SRS

Corizon Defendants' expert also opines that Plaintiff meets criteria 5 above and may meet criteria 2, but does not meet the remainder of these criteria. (Dr. Garvey Report, pp. 40-42.)

Corizon does not have policies regarding treatment and care for GD. (It currently has some guidelines regarding hormone therapy.) Corizon providers are to work with the IDOC Standard Operating Procedure regarding Gender Identity Disorder and Gender Dysphoria and to exercise their medical judgment regarding the treatment and care of GD patients.

Corizon and its providers have not been negligent as to treatment and care of Plaintiff and their actions or inactions have not been deliberate indifference. (Dr. Garvey report, pp. 42-44.) Indeed, the medical providers diagnosed Plaintiff with GD and have provided appropriate treatment and care, including hormone therapy, ordering bras and types of underwear that could help her, and treating her mental health conditions, including Major Depressive Disorder.

Even if Plaintiff could show that Corizon Defendants violated the WPATH standards, it is still insufficient to prove deliberate indifference under the Eighth Amendment. Treatment and care for GD has been evolving over the years and there still are not clear and well-established guidelines (even with WPATH), especially regarding Sex Reassignment Surgery, which are supported by adequate medical evidence, trials and peer reviews. This is particularly true

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regarding treatment and care for inmates with GD. Therefore, it is not deliberate indifference for Corizon's medical providers to exercise their best medical judgment in treating Plaintiff. Moreover, Corizon and its providers were not negligent in treatment of Plaintiff, but even if they were, such is not enough to establish deliberate indifference. *Broughton*, 622 F.2d at 460.

Additionally, Plaintiff's experts do not establish deliberate indifference. At most, Plaintiff's experts disagree with Corizon's qualified treatment providers (and qualified expert) regarding the care provided. But, mere disagreement among providers is insufficient to establish deliberate indifference. *See Mintun v. Corizon Med. Servs.*, No. 1:16-CV-0037-DCN, 2018 WL 1040088 at *5.

At a minimum, there is clearly enough doubt about whether Corizon Defendants are deliberately indifferent and if SRS (a permanent and irreversible surgery) is appropriate for Plaintiff at this time and that Plaintiff's preliminary injunction should be denied. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 878 (holding mandatory injunctions – orders for a party to take action - should not be issued in doubtful cases).

ii. Corizon Defendants are Not Discriminating Against Plaintiff on the Basis of Sex.

Since Corizon Defendants provided appropriate care and treatment to Plaintiff within the applicable standard of care, they are not discriminating against Plaintiff. Corizon Defendants reserve for further briefing on this issue.

B. Plaintiff is Not likely to Suffer Irreparable harm in the absence of a Preliminary Injunction; the Balancing of Equities does Not Tip in Plaintiff's Favor; and Injunction is Not in the Public Interest.

Corizon Defendants join IDOC Defendants' briefing on this issue and incorporate it herein. (See Dkt. 99, pp. 17-20.) Corizon Defendants reserve further briefing on this issue.

VI. CONCLUSION

The facts and law will show that Corizon Defendants have properly treated and cared for Plaintiff and her Gender Dysphoria and that Plaintiff's Motion for Preliminary Injunction should be denied.

DATED this 14th day of September, 2018.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(Counsel for Plaintiff)

Amy Whelan
Julie Wilensky
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
(Counsel for Plaintiff)

Brady J. Hall
Marisa S. Crecelius
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
marisa@melawfirm.net
(Counsel for Defendants Kevin Kempf,
Richard Craig, Rona Siegert, and Howard
Keith Yordy)

Lori E. Rifkin
Dan Stormer
Shaleen Shanbhag
HADSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com
(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031

Attorneys for Defendants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,	)	Case No. 1:17-cv-151-BLW
	)	
Plaintiffs,	)	IDOC DEFENDANTS' RESPONSE TO
	)	PLAINTIFF'S MOTION FOR
vs.	)	PRELIMINARY INJUNCTION
	)	
IDAHO DEPARTMENT OF	)	
CORRECTION; HENRY ATENCIO, in	)	
his official capacity; JEFF ZMUDA, in	)	
his official capacity; HOWARD KEITH	)	
YORDY, in his official and individual	)	
capacities; CORIZON, INC.; SCOTT	)	
ELIASON; MURRAY YOUNG;	)	
RICHARD CRAIG; RONA SIEGERT;	)	
CATHERINE WHINNERY; AND	)	
DOES 1-15;	)	
	)	
Defendants.	)	
_____	)	

COME NOW Defendants Idaho Department of Correction (“IDOC”), Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert (collectively referred to as the “IDOC Defendants”), by and through their counsel of record, Moore Elia Kraft & Hall, LLP, and pursuant to District Local Rule Civ. 7.1(c), hereby submit this *Response to Plaintiff’s Motion for Preliminary Injunction*.

INTRODUCTION

On June 1, 2018, Plaintiff Adree Edmo filed *Plaintiff’s Notice of Motion and Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof* (hereinafter, “*Plaintiff’s Motion for Preliminary Injunction*”) (Dkt. 62). In the *Motion*, Plaintiff moved the Court for the issuance of a preliminary injunction 1) ordering the Defendants to provider with immediate access to sex reassignment surgery, female underwear and commissary items, and 2) prohibiting Defendants from implementing their policy and/or practice of blanket denial of access to treatment for transgendered inmates and discriminating and/or retaliating against Ms. Edmo for expressing her gender identity. (Dkt. 62, p. 2). For the reasons set forth in further detail below, the Plaintiff’s *Motion* should be denied.

STATEMENT OF FACTS

Plaintiff Adree Edmo entered IDOC custody on April 26, 2012, after pleading guilty to Sexual Abuse of a Child Under the Age of Sixteen Years. Within two months of her incarceration, Ms. Edmo requested and received an evaluation to be assessed for Gender Dysphoria (“GD”)¹. On June 25, 2012, Ms. Edmo underwent an evaluation with Corizon psychiatrist Dr. Scott Eliason, who diagnosed Ms. Edmo with GD. That diagnosis was confirmed less than one month later, on July 19, 2012, by Corizon psychologist Dr. Claudia Lake. By

¹ At the time of Ms. Edmo’s diagnosis in 2012, GD was known as Gender Identity Disorder, or GID. When it was published in 2013, the DSM-V renamed GID to Gender Dysphoria, or GD. For ease of reference, this brief will refer to Ms. Edmo as having been diagnosed with GD.

September, 2012, Ms. Edmo had begun Hormone Replacement Therapy (“HRT”) and to date has continued to receive female hormones. Soon after beginning HRT, Ms. Edmo was provided with a bra. She has also been permitted to feminize appropriately and since 2013, has maintained a demonstrably feminine appearance and presentation while housed in male facilities. See *Declaration of Walter Campbell* (“*Campbell Decl.*”), ¶ 21; *Declaration of Keith Yordy* (“*Yordy Decl.*”), ¶ 6.

After receiving her diagnosis of GD, Ms. Edmo was encouraged by IDOC mental health clinicians to attend group and individualized therapy specifically for inmates who have been diagnosed with GD. *Campbell Decl.*, ¶ 21; *Second Declaration of Krina Stewart*, (“*Stewart Decl.*”), ¶ 8. In addition, Ms. Edmo has obtained female underwear and will be permitted to order makeup and female grooming items from the prison commissary, pursuant to the revised IDOC policy concerning GD inmates. *Declaration of Marisa S. Crecelius* (“*Crecelius Decl.*”) Exh. B (“*Edmo Depo*”), pp.141-143; *Crecelius Decl.*, Exh. D (“*Dowell Depo*”), pp. 18-24, 93, Exh. 20, p. 8.

Despite several recommendations from her treating clinicians, Ms. Edmo has not regularly attended therapy to help her work through her serious underlying mental health issues and pre-incarceration history of trauma, abuse, and suicide attempts. *Campbell Decl.*, ¶¶ 24, 29; *Stewart Decl.*, ¶ 12. *Declaration of Laura Watson* (“*Watson Decl.*”), ¶18. Ms. Edmo continues to suffer from depression and anxiety and she currently exhibits maladaptive behaviors, such as cutting, co-dependency, disobedient behaviors, and sexually acting-out. *Campbell Decl.*, ¶ 25, *Stewart Decl.*, ¶¶ 9-13; *Watson Decl.*, ¶ 10, 17-19. Ms. Edmo also demonstrates symptoms of PTSD and borderline personality disorder. *Crecelius Decl.*, Exh A. (“*Andrade Report*”), Exh. 1, p. 6; *Campbell Decl.*, ¶ 25, *Stewart Decl.*, ¶ 10; *Watson Decl.*, ¶ 17. In addition, Ms. Edmo has also not completed her mandated sex offender treatment programming, making her ineligible for

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parole. *Watson Decl.*, ¶ 18; *Declaration of Sandy Jones* (“*Jones Decl.*”), ¶ 13.

On April 20, 2016, Ms. Edmo received an evaluation for sex reassignment surgery (“SRS”) by qualified GD evaluator, Dr. Eliason. *Creceus Decl.*, Exh. C (“*Eliason Depo.*”), p. 106-114. As part of that evaluation, Dr. Eliason consulted with IDOC Lead Clinician Jeremy Clark, who is a member of the World Professional Association for Transgender Health (“WPATH”), regarding whether Ms. Edmo met the criteria for SRS. *Eliason Depo.*, p. 106-114; *Declaration of Jeremy Clark* (“*Clark Decl.*”), ¶¶ 3, 10. After an in-person visit with Ms. Edmo and consultation with mental health staff, Dr. Eliason determined that Ms. Edmo did not meet the criteria for SRS and it was therefore not medically necessary. *Eliason Depo.*, p. 110.

LEGAL STANDARD

The IDOC Defendants incorporate the legal standard for deciding a preliminary injunction that is set forth in *Plaintiff’s Motion for Preliminary Injunction* (Dkt. p.16), with the following additions. First, the standard for granting a preliminary injunction requires Plaintiff “to demonstrate that irreparable injury is likely in the absence of an injunction (not just a possibility of harm).” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 375 (2008) (emphasis added). To issue a preliminary injunction based only on a possibility of irreparable harm would be “inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162 (1997) (per curiam).

Furthermore, mandatory injunctions ordering a party to take action—such as the type sought by Ms. Edmo in this case—are particularly disfavored and are generally not granted unless extreme or very serious damage will result. *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1185 (N.D. Cal.), *appeal dismissed and remanded*, 802 F.3d 1090 (9th Cir. 2015). Mandatory

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injunctions are not issued in doubtful cases “or where the injury complained of is capable of compensation in damages.” *Id.* Finally, the Prison Litigation Reform Act (“PLRA”) provides that, in any civil action regarding prison conditions, preliminary injunctive relief must be “narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct the harm...” 18 U.S.C.A. § 3626(a)(2). The PLRA further requires the Court to give “substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief.” *Id.*

ANALYSIS

Plaintiff moves for preliminary injunctive relief on the basis of her Eighth Amendment Claims alleging that the IDOC Defendants were deliberately indifferent to Ms. Edmo’s medical needs and on the basis of her sex discrimination claims under the Fourteenth Amendment and the Affordable Care Act. For the reasons argued below, Plaintiff’s *Motion for Preliminary Injunction* should be denied.

I. Plaintiff Cannot Establish That She Will Succeed on Her Claims

A. Eighth Amendment claims

Plaintiff asserts that the IDOC Defendants were deliberately indifferent to her medical needs in violation of the Eighth Amendment. Mere negligence alone does not establish a valid Eighth Amendment claim. *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976). Rather, in order to succeed on such a claim, a plaintiff must first establish that a prison official was “deliberately indifferent” to a prisoner’s serious medical need. *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014). A prison official is deliberately indifferent only if the official “knows of and disregards an excessive risk to inmate health and safety.” *Id.* (quoting *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004)) (emphasis added). “[T]he official must both be

aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

This Court has very recently articulated the deliberate indifference standard as it applies to cases involving mental health care as follows:

In the context of mental health care, courts have recognized that it is particularly difficult to establish deliberate indifference to a serious need for numerous reasons. “First, there is considerable room for disagreement and debate among psychiatrists and other mental health professionals as to what is a serious mental illness for which the denial of adequate treatment causes constitutionally cognizable pain.” *Capps v. Atiyeh*, 559 F. Supp. 894, 917 (D. Or. 1982). For instance, mere anxiety may not be a serious medical need, as opposed to a part of the “routine discomfort” that is an inevitable consequence of the penalty of imprisonment. See, e.g., *Long v. Nix*, 877 F. Supp. 1358, 1366 (S.D. Iowa 1995), *aff’d*, 86 F.3d 761 (8th Cir. 1996). Second, “[t]he diagnosis of mental illnesses is made tougher still because it is easy for inmates tired of their boring, restrictive and even harsh routines to feign the symptoms of mental illness to effect a change in their environment.” *Id.* (internal quotation marks omitted). Third, “psychiatrists themselves differ on the underlying theories and thus on the methods of treatment.” *Id.* “[T]he Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made.” *Id.* (internal quotation marks omitted) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 314 (1982)).

Mintun v. Corizon Med. Servs., No. 1:16-CV-00367-DCN, 2018 WL 1040088, at *5 (D. Idaho Feb. 22, 2018)(emphasis added).

Here, the IDOC Defendants recognize that Ms. Edmo’s GD is a “serious medical need” for purposes of her Eighth Amendment claim. Indeed, Ms. Edmo was first diagnosed with GD while in IDOC custody in 2012, less than three months after being incarcerated at ISCI. Her diagnosis has been treated with HRT and counseling and she has been provided the ability to feminize in prison, and is followed closely by a multi-disciplinary team. However, for the following reasons, Ms. Edmo cannot establish that the IDOC Defendants deliberately disregarded an excessive risk to Ms. Edmo’s health and safety.

First, with the exception of SRS, IDOC has provided Ms. Edmo with every type of treatment recommended by the WPATH, including changes in gender expression and role, hormone therapy, and psychotherapy. *See Declaration of Lori Rifkin*, Exh. 1 (“*Ettner Decl.*”), ¶ 41 (Dkt. 62-1).² Furthermore, IDOC policy expressly recognizes that SRS is an available treatment option for prisoners, so long as SRS is deemed medically necessary by a qualified GD evaluator. *Crecelius Decl.*, Exh. E, p. 3. In addition, Ms. Edmo’s needs related to her GD are regularly assessed by the IDOC’s Management and Treatment Committee (“MTC”). The MTC is a multi-disciplinary committee made up of treatment providers and other IDOC staff, who regularly address and make recommendations regarding GD inmates’ housing, discipline, and treatment, taking into consideration each inmate’s individualized GD needs. *Campbell Decl.*, ¶¶ 13-19 ; *Clark Decl.*, ¶¶ 7-8; *Stewart Decl.*, ¶ 5; *Watson Decl.*, ¶¶ 6-8.

As part of its assessment concerning Ms. Edmo’s GD, the MTC recommended that Ms. Edmo be provided with an assessment for SRS in 2016. *Campbell Decl.*, ¶ 26. That assessment was conducted by psychiatrist Dr. Eliason, in consultation with IDOC clinicians, including WPATH member and clinical supervisor Jeremy Clark. *Clark Decl.*, ¶¶ 10-15; *Eliason Depo.*, p. 108-114. Dr. Eliason had previously diagnosed Ms. Edmo with GD and was familiar with her mental health treatment and condition prior to her evaluation. *Eliason Depo.*, pp. 56, 57, 62, 63, 108, 113. After visiting with her and consulting with the MTC and other mental health staff, Dr. Eliason concluded that SRS was neither medically necessary nor appropriate for Ms. Edmo. *Eliason Depo.*, p. 108-114.

Dr. Eliason’s decision was based on his professional judgment, his understanding of Ms.

² In making treatment decisions for inmates diagnosed with GD, IDOC clinicians and other mental health care professionals rely on their education, experience, and training in their areas of expertise, along with various other resources. One of those resources includes the WPATH’s “Standards of Care,” Version 7. By citing and referring to the WPATH, the IDOC Defendants do not acknowledge that it is the legal standard of care for the treatment of GD offenders, nor is the WPATH the only reference which provides guidance regarding the treatment of GD inmates.

Edmo's mental health history, and in consultation with IDOC clinicians. *Eliason Depo.*, p. 108-114. Dr. Eliason did not base his decision on a "blanket" IDOC policy prohibiting SRS. Rather, Dr. Eliason performed an individual assessment of Ms. Edmo, and as a qualified evaluator, determined that SRS was not medically necessary. *Eliason Depo.*, p. 108-114.

Dr. Eliason's determination is consistent with the opinions held by Ms. Edmo's treating clinicians, IDOC's Chief Psychologist, members of the MTC, along with IDOC's retained expert witness, Dr. Joel Andrade, Ph.D. LISCW CCHP-MH, and the Corizon Defendants' retained expert witness, psychiatrist Dr. Keelin Garvey, all of whom agree that SRS is not appropriate for Ms. Edmo at this time, due to her significant uncontrolled mental health concerns. *See Clark Decl.; Campbell Decl.; Stewart Decl.; Watson Decl.; Andrade Report*, Exh. 1; *Crecelius Decl.*, Exh. F ("Garvey Report").

For example, prior to her incarceration, Ms. Edmo demonstrated a significant history of mental health issues and was diagnosed with Major Depressive Disorder, Anxiety, and Alcohol Dependence. *Andrade Report*, Exh. 1 pp. 1, 5-9; *Garvey Report*, pp. 5-10. Ms. Edmo was sexually abused repeatedly as a child and was a victim of domestic violence and emotional abuse by a domestic partner in her early twenties. *Edmo Depo.*, pp. 264-265; *Andrade Report*, Exh. 1 pp. 1, 5-9; *Garvey Report*, pp. 5-10. Also prior to her incarceration, Ms. Edmo attempted suicide several times. *Edmo Depo.*, pp. 79-86. On one occasion, Ms. Edmo cut her right arm in a suicide attempt after a dispute with a boyfriend and was hospitalized afterward in the Behavioral Health Unit at Porneuf Medical Center in Pocatello, Idaho. *Id.* In at least one other attempt, Ms. Edmo overdosed on pills and alcohol. *Id.*

Since entering prison, Ms. Edmo's serious underlying mental health conditions have remained uncontrolled. *See Clark Decl.; Campbell Decl.; Stewart Decl.; Watson Decl.; Andrade Report*, Exh. 1; *Garvey Report*. Ms. Edmo continues to experience depression and anxiety, and

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she exhibits maladaptive behaviors, such as cutting and co-dependency *Campbell Decl.*, ¶ 25, *Stewart Decl.*, ¶ 10; *Watson Decl.*, ¶¶ 10, 17-19. Ms. Edmo also currently exhibits symptoms of PTSD and borderline personality disorder. *Andrade Report*, Exh. 1, p. 6; *Campbell Decl.*, ¶ 25, *Stewart Decl.*, ¶ 10; *Watson Decl.*, ¶ 17. Ms. Edmo's mental health issues remain of grave concern to IDOC clinicians and mental health staff. Ms. Edmo persistently demonstrates poor self-worth, poor self-esteem, dependency issues, sexually-charged behaviors, and unhealthy relationships while incarcerated. *Campbell Decl.*, ¶¶ 28-33, *Stewart Decl.*, ¶¶ 19-14; *Watson Decl.*, ¶¶ 10-19. These underlying mental health issues have complicated Ms. Edmo's resolution of her GD and must be well-controlled before any surgical intervention is appropriate. *Ettner Decl.*, ¶ 63 (Dkt. 62-1); *Watson Decl.*, ¶ 19.

IDOC's retained expert, Dr. Joel Andrade, has over a decade of experience in providing and supervising the provision of correctional mental health care, including directing and overseeing the treatment of all inmates diagnosed with GD in the custody of the Massachusetts Department of Corrections. *See Andrade Report*, Exh. 3. Dr. Andrade conducted a clinical interview with Ms. Edmo on July 31, 2018, and has also reviewed Ms. Edmo's complete mental health treatment record, including her pre-incarceration records. *Andrade Report*, Exh. 1, p. 1. Based on his review of the relevant documents in this case, and his interview with Ms. Edmo in July, Dr. Andrade has concluded that Ms. Edmo is not clinically ready for SRS for several reasons. *Andrade Report*, Exh. 1.

First, while Ms. Edmo claims that she lived full-time as woman and was well accepted as such in her community for years prior to entering prison, Dr. Andrade could find no support for that claim in Ms. Edmo's pre-incarceration medical records and PSI Reports. *Andrade Report*, Exh. 1, p. 7. *See also Declaration of Cliff Cummings*. Accordingly, Dr. Andrade is concerned that Ms. Edmo may not appreciate and understand what it means to fully live in the gender role

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consistent with her identity prior to being released from prison in 2021. *Id.* In other words, Dr. Andrade believes that Ms. Edmo is at risk for increased harm if she enters the community after having received SRS without a real opportunity to assimilate to life full-time as a female outside of prison. *Id.*

Dr. Andrade also believes that, due to Ms. Edmo's unresolved mental health issues related to her early-life trauma and substance abuse, pursuing SRS at this time increases Ms. Edmo's risk for suicide post-surgery. *Id.*, p. 9. For instance, Ms. Edmo made representations to Dr. Andrade during the clinical interview that her feminine appearance enticed her abuser or led to her sexual abuse. *Id.*, pp. 4-5. It is apparent to Dr. Andrade that Ms. Edmo has not fully addressed in psychotherapy the relationship between her early childhood trauma and her mental health conditions; in particular, Ms. Edmo's GD. *Id.* Working through those issues with a mental health provider is something that Ms. Edmo must do before she can fully and meaningfully elect to proceed with SRS. *Id.*, pp. 7-10. Otherwise, Ms. Edmo will not be able to successfully cope with the stressors of surgery, which may increase her risk of harm. *Id.* At this time, Ms. Edmo had not developed healthy coping strategies and instead deals with her depression and gender dysphoria by cutting herself. *Id.*; *See also Campbell Decl.*, ¶ 25; *Stewart Decl.*, ¶¶ 9-10; *Edmo Depo.*, pp. 300-304. Ms. Edmo must develop healthy tools to manage her depression, anxiety, and GD that do not involve maladaptive behaviors such as cutting, sexual acting out, and codependency. *See Campbell Decl.*; *Stewart Decl.*; *Watson Decl.*; *Andrade Report*, Exh. 1; *Garvey Report*.

Based on the foregoing, Ms. Edmo is not likely to succeed on her claim that the IDOC Defendants were deliberately indifferent to her gender dysphoria by not recommending SRS. IDOC does not have a blanket practice or policy prohibiting SRS. Rather, each GD inmate is individually assessed and evaluation of their need for treatment is ongoing, through review by

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the MTC and in group and individual therapy with the inmate's individual treatment providers. Here, Ms. Edmo was evaluated for surgery by a qualified evaluator, who in his professional judgment determined that SRS was not medically necessary. The Defendants' retained experts, along with Ms. Edmo's treating clinicians and members of the MTC, believe that Ms. Edmo's other serious mental health concerns are not well-controlled, as required by the WPATH standards. See *Ettner Decl.*, ¶ 63 (Dkt. 62-1). Those well-documented uncontrolled mental health conditions should not be overlooked or ignored in any assessment of whether SRS is appropriate for Ms. Edmo.

While Ms. Edmo's retained experts may believe that her mental health concerns are well-controlled, a difference in professional opinion does not constitute deliberate indifference. As this Court has stated, "psychiatrists themselves differ on the underlying theories and thus on the methods of treatment" of mental health conditions. *Mintun*, No. 1:16-CV-00367-DCN, 2018 WL 1040088, at *5. The decision not to recommend SRS for Ms. Edmo was an exercise of professional judgment, supported by Ms. Edmo's current treatment providers, the MTC, at least two members of WPATH, and experts with years of experience treating and supervising inmates with GD. Accordingly, the IDOC Defendants have not been deliberately indifferent to Ms. Edmo's medical needs in concluding that SRS is inappropriate at this time. To the contrary, the IDOC Defendants and Ms. Edmo's IDOC treatment providers want to ensure that they do no harm to Ms. Edmo by authorizing such an invasive and permanent procedure prematurely and without consideration of her entire clinical picture.

The same is true for Ms. Edmo's claims that the IDOC Defendants have been deliberately indifferent by limiting Ms. Edmo's ability to wear makeup and female undergarments. First, prior to the time of the filing of Ms. Edmo's *Motion for Preliminary Injunction*, no medical

provider for Ms. Edmo had determined that makeup, a “gaff,”³ laser hair removal, or female underwear were medically necessary for the treatment of Ms. Edmo’s GD. *Declaration of Rona Siegert* (“*Siegert Decl.*”), ¶¶ 10-17; *Declaration of Yordy*, ¶ 7. Ms. Edmo has been allowed to appropriately feminize in many other ways. Second, as of June 6, 2017, female transgender inmates who had been diagnosed with GD were allowed to possess female underwear. *See Dowell Depo.*, Exh. 19, p. 16. In other words, IDOC does not have a policy prohibiting Ms. Edmo from possessing female underwear and she has done so at various times during her incarceration.

Still, Ms. Edmo’s inappropriate use of makeup and feminine hairstyles and her alteration of female undergarments raises serious security and safety concerns. *See Yordy Decl.*, ¶¶ 7-9, Exh. 5. Allowing offenders to appear or act sexual in prison increases the risk of inappropriate prisoner relationships, sexual harassment and assaults, and various other serious security concerns. *Id.* “The duty of prison officials to protect the safety of inmates and prison personnel is a factor that may properly be considered in prescribing medical care for a serious medical need.” *Kosilek v. Maloney*, 221 F. Supp. 2d 156, 161 (D. Mass. 2002).

Here, IDOC prohibits all offenders – regardless of their sex, gender, or housing – from appearing or behaving sexually while incarcerated under the custody of the IDOC. *Yordy Decl.*, ¶¶ 7-9. Accordingly, the IDOC has prohibited Ms. Edmo from sexualizing her feminine appearance and behavior in a manner that may create a sexually-charged environment. *Id.* The IDOC’s focus has not been with precluding Ms. Edmo from feminizing, but rather with her repeated attempts to sexualize her appearance in a male facility. There are also security concerns with providing offenders with access to underwear traditionally worn by the opposite gender,

³ Ms. Edmo has conceded that she has never actually requested a “gaff,” let alone exhausted the IDOC’s grievance process in regards to the need for such an item.

especially in regards to offenders with sexual fetishes. *Id.* It is also against IDOC policy to destroy or alter property, as Ms. Edmo did when she altered her underwear into thongs. See *Yordy Decl.*, Exh. 5, pp. IDOC_C_pg.62-65. In making such considerations to prohibit inmates, including Ms. Edmo, from appearing or acting sexual in prison, IDOC officials acted reasonably and in good faith to protect the safety and security of all inmates, including Ms. Edmo, and were thus not deliberately indifferent to her medical needs.

The IDOC policy concerning healthcare for GD inmates has recently been updated, as part of a two-year process involving the Chief of Prisons, the Chief Psychologist, and mental health staff at IDOC. *Dowell Depo.*, pp. 19-23. The updated policy specifically allows inmates with GD to wear appropriate makeup, style their hair in traditionally female hairstyles, and present as female. *Dowell Depo.*, Exh. 20, p. 8. Furthermore, the updated policy allows inmates who have been diagnosed with GD to access commissary items, such as bras, underwear, female makeup, and grooming items. *Id.* This updated policy does not relieve IDOC of its obligation to maintain a safe and secure environment. Rather, the updated policy specifically sets forth guidelines to avoid a sexually charged atmosphere in IDOC facilities, prohibiting provocative or sexually charged clothing and behavior, such as the type for which Ms. Edmo has previously received DORs. *Id.* See also *Yordy Decl.*, Exhs. 5 and 6.

The U.S. Supreme Court has held that prison administrators should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. See *Whitley v. Albers*, 475 U.S. 312, 321–22, 106 S. Ct. 1078, 1085, 89 L. Ed. 2d 251 (1986). Such deference extends to “prophylactic or preventive measures” intended to reduce the incidence of breaches of prison discipline. *Id.* “It does not insulate from review actions taken in bad faith and for no legitimate purpose, but it requires that neither judge nor jury freely substitute their

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judgment for that of officials who have made a considered choice.” Here, the IDOC Defendants have not been deliberately indifferent to Ms. Edmo’s needs by limiting her access to items that have not been deemed medically necessary by her medical providers. Furthermore, the IDOC Defendants have not been deliberately indifferent to Ms. Edmo’s GD by limited her from from appearing or acting sexual in prison. *See, for e.g., Yordy Decl.*, ¶ 11, Exh. 5. Accordingly, Ms. Edmo cannot establish that she will be successful on her claim that the IDOC Defendants were deliberately indifferent to any treatment aspect of her GD.

B. Fourteenth Amendment claims

Plaintiff asserts that the IDOC Defendants have refused to provide Ms. Edmo with SRS and access to female undergarments on the basis of her status as a transgender female, in violation of the Fourteenth Amendment to the United States Constitution. Specifically, Plaintiff argues that IDOC has a policy “denying sex-assignment surgery and other medically necessary care to transgender people...” *Plaintiff’s Motion for Preliminary Injunction*, p. 22. As an initial matter, the standard regarding the validity of a prison regulation that allegedly impinges on an inmate’s Constitutional rights is whether such a regulation is “reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261–62. However, in this case, the Court need not reach the question of whether the denial of SRS and access to female underwear serves some penological interest because IDOC simply does not have a policy, practice, or regulation that denies medically necessary care to Ms. Edmo based on her status as a transgender person.

To the contrary, since 2011, IDOC policy has specifically allowed for SRS when deemed medically necessary. *Crecelius Decl.*, Exh. E, p. 3. Pursuant to such policy, Ms. Edmo has received an evaluation in 2016 for SRS by psychiatrist Dr. Eliason, after which he determined that the surgery was not medically necessary. This determination was made in consultation with

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a member of WPATH and is supported by Ms. Edmo's current and former IDOC treating clinicians, the Chief Psychologist of IDOC, members of the MTC, and the Defendants' expert witnesses. In addition, despite the fact that no medical provider has deemed female underwear medically necessary, Ms. Edmo has access to female underwear and will soon have additional access to female commissary items, including female underwear, pursuant to the updated GD policy.

Ms. Edmo's claim that there is a policy prohibiting medically necessary care for transgender persons is further belied by the fact that Ms. Edmo has been provided with care for her GD that has been deemed medically necessary, including HRT, supportive undergarments, and bras. In addition, her individual care, housing, and disciplinary issues as they relate to Ms. Edmo's GD are regularly assessed by the MTC. Accordingly, there is no evidence that Ms. Edmo has been denied medical care on the basis of being a transgender person.

Despite the fact that no policy prohibiting SRS exists, IDOC has legitimate penological interests for not providing SRS to Ms. Edmo at this time. First, the IDOC Defendants have a legitimate interest in providing for the safety and well-being of all of the inmates in custody, including Ms. Edmo. Providing treatment that is neither medically necessary nor appropriate could cause significant harm to Ms. Edmo. IDOC administrators cannot overrule the valid treatment decisions of its medical providers and the recommendations of its clinical and mental health staff, particularly when there are serious concerns about the negative effects that SRS may have on Ms. Edmo's physical and mental well-being. For those reasons, Ms. Edmo cannot succeed on her Fourteenth Amendment claims.

C. Claims under the Affordable Care Act

Ms. Edmo also argues that the IDOC Defendants' "policy" discriminates against Ms. Edmo based on sex and therefore violates Section 1557 of the Affordable Care Act 42 U.S.C. §
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18116(a) (“ACA”). For the same reasons that Ms. Edmo cannot succeed on her Fourteenth Amendment discrimination claims (outlined in section **II D** above), Ms. Edmo is also not likely to succeed on her ACA claims. In her *Motion for Preliminary Injunction*, Ms. Edmo asserts that the ACA is applicable to the IDOC Defendants because the IDOC receives “federal financial assistance” and is therefore a covered entity subject to the ACA’s nondiscrimination requirement. However, the ACA is not applicable to Ms. Edmo, as she and IDOC do not meet the requirements for applicability, including Section 1557.

The ACA applies to an individual through either engaging with insurance companies on the free exchange or as an employee receiving insurance from an employer. The Federal Code specifically notes that incarceration is an eligibility disqualifier for a person to participate on the free exchange. 45 C.F.R. 155.305. Ms. Edmo is not employed by IDOC, nor does she receive health insurance from IDOC. Therefore, the ACA does not apply to Ms. Edmo as an individual.

Similarly, the ACA does not apply to IDOC as an entity. For the ACA to apply, IDOC would need to participate in a “health program or activity.” 42 USC §§ 18032(2)(A)&(B). According to the Department of Health and Human Services, an entity qualifies as participating in a “health program or activity” if it is principally engaged in the provision or administration of health-related services, health-related insurance coverage, or other health-related coverage, “such as a hospital, health clinic, community health center, group health plan, health insurance issuer, physician’s practice, nursing facility, or residential or community-based treatment facility.” 81 Fed. Reg. 31375, 31385. IDOC is not “principally engaged” in providing or administering health services. Rather, IDOC is principally engaged in managing felony offenders housed in prisons and supervised on probation and parole. Accordingly, Section 1557 of the ACA does not apply to the IDOC Defendants and Ms. Edmo’s claims on that basis are not likely to succeed.

II. Plaintiff is Not Likely to Suffer Irreparable Harm Absent Injunctive Relief

Ms. Edmo claims that her failure to receive SRS caused her to contemplate suicide on one occasion and risk her life in attempts to self-castrate. Ms. Edmo further claims that she is at risk of irreparable harm in the form of death, suicide, attempts to perform her own surgical care, extreme anguish, depression, and stress if she does not receive SRS and other “medically necessary care.” The evidence in this case tells a different story. Regarding Ms. Edmo’s current mental health condition, during her exam with her retained expert Dr. Gorton, she denied active suicidal ideations with “vague thoughts” of non-suicidal self-injury. *Declaration of Ryan Nicholas Gorton* (“*Gorton Decl.*”), ¶¶ 21, 77, 78 (Dkt. 62-1). She had similar reports in her clinical interviews with Drs. Andrade and Garvey. *See Andrade Report*, p. 9; *Garvey Report*, pp. 10, 16. Ms. Edmo also testified at her deposition that she has no plans to commit suicide. *Edmo Depo.*, p. 209.

In addition, Ms. Edmo is goal-oriented and functional and is not exhibiting symptoms of a person whose condition is so extreme that a mandatory injunction is required. *Stewart Decl.*, Ms. Edmo recently got married, has plans for her future after she is released from custody, and aims to finish her bachelor’s degree. *Stewart Decl.*, ¶¶ 15-17; *Edmo Depo.*, pp. 209-212; *Andrade Report*, pp. 3-4; *Garvey Report*, pp. 17. Ms. Edmo has not made any actual attempts at suicide since prior to her incarceration. *Edmo Depo.*, pp. 182-184.

Furthermore, the medical and mental health professionals in this case do not agree that Ms. Edmo is likely to suffer irreparable harm should she not have immediate access to SRS. First, Dr. Gorton opines that Ms. Edmo must be referred to an “appropriate surgeon” for sex re-assignment surgery “as soon as possible but at a minimum within the next 6 months.” *Gorton Decl.*), ¶ 88 (Dkt. 62-1) (emphasis added). Second, the Defendants’ retained experts and Ms. Edmo’s current and former treating clinicians have concerns that such a surgery will actually put

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Ms. Edmo at a greater risk for suicide because she has not yet developed the tools to cope with her serious uncontrolled mental health conditions, which are likely to be exacerbated or complicated should surgery not meet with Ms. Edmo's high expectations. *See Campbell Decl.; Stewart Decl.; Watson Decl.; Andrade Report*, Exh. 1; *Garvey Report*.

Finally, Ms. Edmo's underlying mental health conditions are contributing to her current mental state, including the anguish, anxiety, and depression that Ms. Edmo claims are solely caused by her failure to receive SRS. As described above, Ms. Edmo has not regularly attended the recommended individualized and group therapy for treating her other mental health conditions, including the Mood Management and Social Skills groups. *Campbell Decl.*, ¶¶ 24, 29; *Stewart Decl.*, ¶ 12. *Watson Decl.*, ¶18. Furthermore, Ms. Edmo has not completed her sex offender treatment programming. *Jones Decl.*, ¶ 13. Importantly, Ms. Edmo does not acknowledge and has not adequately addressed the existence of her other serious mental health conditions that contribute to her current feelings of anxiety and depression, such as her childhood trauma and prior abusive relationships. *See Campbell Decl.; Stewart Decl.; Watson Decl.; Andrade Report*, Exh. 1; *Garvey Report*. As a result, those feelings will remain and may in fact worsen should Ms. Edmo receive SRS before those issues are well-controlled. *See Ettner Decl.*, ¶ 63 (Dkt. 62-1).

Therefore, based on Ms. Edmo's current clinical condition and the professional judgment of several medical and mental health professionals regarding Ms. Edmo's uncontrolled depression, anxiety, and substance abuse problems, along with her symptoms of borderline personality disorder, PTSD, and her current cutting behaviors, whether Ms. Edmo will suffer irreparable harm as a result of not receiving immediate access to SRS is speculative. Therefore injunctive relief is not appropriate. To the contrary, injunctive relief ordering SRS presents a meaningful risk of future harm to Ms. Edmo, by increasing her risk of suicide, depression, and

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pg. 18

dysphoria, particularly if the outcome of the surgery does not meet Ms. Edmo's expectations as the solution to her severe depression, anxiety, and self-esteem issues.

III. The Balance of Equities Does Not Tip in Plaintiff's Favor and Granting Plaintiff Injunctive Relief is Not in the Public Interest

In deciding a motion for preliminary injunction, Courts must balance the competing claims of injury and consider the effect on each party, paying particular regard to the public consequences in employing the extraordinary remedy of an injunction. *Winter*, 555 U.S. at 24, 129 S. Ct. at 376–77 (2008). Here, in order to obtain the extraordinary relief that she seeks, Ms. Edmo must demonstrate that this balance tips in her favor and that such relief is in the public interest. For the following reasons, she cannot do so.

As mentioned in section **II B** above, the IDOC Defendants have an obligation to provide for the safety and well-being of all of the inmates in custody, including Ms. Edmo. This obligation includes providing medically necessary mental health care to treat all of Ms. Edmo's mental health concerns. To do so, the IDOC Defendants must have the discretion, autonomy, and authority to provide medically necessary treatment to prisoners in IDOC custody based on their individual needs and the individual professional judgment of the treatment providers. To order treatment that is not appropriate or medically necessary would inevitably interfere with IDOC's ability to provide medically necessary care. Furthermore, Ms. Edmo is an inmate with a complicated clinical picture and many mental health needs that must be addressed. To sacrifice the treatment of Ms. Edmo as a whole person to provide a potentially harmful procedure to treat her GD would impede IDOC's ability to provide medically necessary care to Ms. Edmo and other prisoners with GD.

Similarly, awarding injunctive relief to Ms. Edmo is not in the public interest. Running a prison system requires "expertise, planning, and the commitment of resources" that have been

committed to the responsibility of prison administrators in the executive branch of government. *Oakleaf v. Martinez*, 297 F. Supp. 3d 1221, 1233 (D.N.M. 2018). Ordering the IDOC Defendants to provide medical care that is not medically necessary and runs counter to the treatment prescribed by Ms. Edmo's mental health and medical treatment providers after exercising their professional judgment weighs against the public interest. *See id.* Ms. Edmo's medical and mental treatment must be viewed, as her Corizon and IDOC providers have done, in the context of her entire mental health and personal history. To address her needs in a vacuum, based on incomplete information and without evaluating her entire clinical picture, does not serve the public's interest, and it certainly does not serve Ms. Edmo.

CONCLUSION

For the foregoing reasons, the IDOC Defendants respectfully request that this Court deny the *Plaintiff's Motion for Preliminary Injunction*.

DATED this 14th day of September, 2018.

Moore Elia Kraft & Hall, LLP

/s/Brady J. Hall

*Attorneys for Defendants Idaho Department of
Correction, Henry Atencio, Jeff Zmuda, Howard
Keith Yordy, Richard Craig, and Rona Siegert*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dan Stormer
dstormer@hadsellstormer.com
Lori Rifkin
lrifkin@hadsellstormer.com
Shaleen Shanbhag
sshanbhag@hadsellstormer.com
HADSELL STORMER & RENICK, LLP
(Counsel for Plaintiff)

Craig Durham
chd@fergusondurham.com
Deborah Ferguson
daf@fergusondurham.com
FERGUSON DURHAM, PLLC
(Counsel for Plaintiff)

Amy Whelan
awhelan@nclrights.org
Julie Wilensky
jwilensky@nclrights.org
NATIONAL CENTER FOR LESBIAN
RIGHTS
(Counsel for Plaintiffs)

Dylan Eaton
deaton@parsonsbehle.com
J. Kevin West
kwest@parsonsbehle.com
PARSONS, BEHLE & LATIMER
(Counsel for

/s/Krista Zimmerman
Krista Zimmerman

J. Kevin West, ISB #3337
Email: KWest@parsonsbehle.com
Dylan A. Eaton, ISB #7686
Email: DEaton@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901

Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO STATE BOARD OF
CORRECTIONS; IDAHO DEPARTMENT
OF CORRECTIONS; CORIZON INC.;
KEVIN KEMPF; RICHARD CRAIG;
RONA SIEGERT; AARON HOFER;
HOWARD KEITH YORDY; SCOTT
ELIASON; MURRAY YOUNG; AND
CATHERINE WHINNERY

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**DEFENDANTS CORIZON INC., SCOTT
ELIASSEN, MURRAY YOUNG, AND
CATHERINE WHINNERY'S JOINDER
IN IDOC DEFENDANTS' MOTION
FOR EXTENSION OF TIME TO
RESPOND TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION
AND REQUEST FOR STATUS
CONFERENCE**

COME NOW Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery ("Corizon Defendants"), by and through their counsel of record, Parsons Behle &

DEFENDANTS CORIZON INC., SCOTT ELIASSEN, MURRAY YOUNG, AND CATHERINE WHINNERY'S
JOINDER IN IDOC DEFENDANTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR STATUS CONFERENCE - 1

4843-4851-8503v1

Latimer, and hereby submit this Joinder in IDOC's Defendants' Motion for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction and Request for Status Conference ("Motion for Extension of Time") filed June 4, 2018. [Dkt. No. 63].

The Corizon Defendants incorporate and adopt herein by reference the entirety of the IDOC Defendants' Motion for Extension of Time, as well as the Memorandum in Support. [Dkt. No. 63-1]. For the reasons the IDOC Defendants provide therein, there is good cause to provide the IDOC Defendants a minimum of six months in which to conduct discovery, retain expert witnesses, and prepare a full and complete response to Plaintiff Adree Edmo's Motion for Preliminary Injunctive Relief. [Dkt. No. 62]. Those same reasons provide good cause to grant the Corizon Defendants the same extension. As discussed by the IDOC Defendants, this litigation involves complicated factual and medical issues, as well as legal issues of first impression in Idaho. Plaintiff's Motion for Preliminary Injunction substantively addresses those issues, including with expert testimony. At this time, however, the parties have not yet exchanged initial disclosures, conducted any discovery, or taken any depositions. Both the Court and the parties, including Plaintiff, would benefit from informed and substantive briefing regarding Plaintiff's Motion for Preliminary Injunctive Relief.

For all of the reasons articulated by the IDOC Defendants, the Corizon Defendants join in the IDOC's Motion for Extension of Time, and request an extension of equal length in which to respond to Plaintiff's Motion for Preliminary Injunctive Relief.

DATED this 5th day of June, 2018.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(Counsel for Plaintiff)

Amy Whelan
Julie Wilensky
National Center for Lesbian Rights
870 Market Suite, Suite 370
San Francisco, CA 94102
awhelan@nclright.org
(Counsel for Plaintiff)

Brady J. Hall
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
(Counsel for Defendants Kevin Kempf,
Richard Craig, Rona Siegert, and Howard
Keith Yordy)

Lori E. Rifkin
Dan Stormer
HADSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

Brady J. Hall (ISB No. 7873)
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031

Attorneys for Defendants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO,	)	Case No. 1:17-cv-151-BLW
	)	
Plaintiffs,	)	IDOC DEFENDANTS’ MOTION FOR
	)	EXTENSION OF TIME TO RESPOND TO
vs.	)	PLAINTIFF’S MOTION FOR
	)	PRELIMINARY INJUNCTION AND
IDAHO DEPARTMENT OF	)	REQUEST FOR STATUS CONFERENCE
CORRECTION; HENRY ATENCIO, in	)	
his official capacity; JEFF ZMUDA, in	)	
his official capacity; HOWARD KEITH	)	
YORDY, in his official and individual	)	
capacities; CORIZON, INC.; SCOTT	)	
ELIASON; MURRAY YOUNG;	)	
RICHARD CRAIG; RONA SIEGERT;	)	
CATHERINE WHINNERY; AND	)	
DOES 1-15;	)	
	)	
Defendants.	)	
	)	

COME NOW Defendants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert (collectively referred to as the “IDOC Defendants”), by and through their counsel of record, Moore Elia Kraft & Hall, LLP, and pursuant to Rule 6 of the Federal Rules of Civil Procedure and Dist. Local Rule Civ. 6.1, hereby

respectfully move this Court for an Order extending the time to respond to Plaintiff's *Motion for Preliminary Injunction* (Dkt. 62).

The grounds upon which this motion is based are set forth in the *Memorandum of Support of the IDOC Defendants' Motion for Extension of Time and Declaration of Counsel Brady J. Hall*.

IDOC Defendants further request that this Court set an immediate status conference to schedule briefing deadlines for the Plaintiff's *Motion*, along with litigation and discovery plans, since no discovery has been undertaken in this case thus far.

DATED this 4th day of June, 2018.

Moore Elia Kraft & Hall, LLP

/s/Brady J. Hall

Attorneys for Defendants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Brady Hall
brady@melawfirm.net

Lori Rifkin
lrifkin@hadsellstormer.com

Dan Stormer
dstormer@hadsellstormer.com

Craig Durham
chd@fergusondurham.com

Deborah Ferguson
daf@fergusondurham.com

Amy Whelan
awhelan@nclrights.org

Julie Wilensky
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102

Shaleen Shanbhag
sshanbhag@hadsellerstormer.com

/s/Brady J. Hall

Brady J. Hall (ISB No. 7873)
brady@melawfirm.net
Marisa S. Crecelius (ISB No. 8011)
marisa@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031

Attorneys for Defendants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,	)	Case No. 1:17-cv-151-BLW
	)	
Plaintiffs,	)	MEMORANDUM IN SUPPORT OF IDOC
	)	DEFENDANTS' MOTION FOR
vs.	)	EXTENSION OF TIME TO RESPOND TO
	)	PLAINTIFF'S MOTION FOR
IDAHO DEPARTMENT OF	)	PRELIMINARY INJUNCTION AND
CORRECTION; HENRY ATENCIO, in	)	REQUEST FOR STATUS CONFERENCE
his official capacity; JEFF ZMUDA, in	)	
his official capacity; HOWARD KEITH	)	
YORDY, in his official and individual	)	
capacities; CORIZON, INC.; SCOTT	)	
ELIASON; MURRAY YOUNG;	)	
RICHARD CRAIG; RONA SIEGERT;	)	
CATHERINE WHINNERY; AND	)	
DOES 1-15;	)	
	)	
Defendants.	)	
_____	)	

COME NOW Defendants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert (collectively referred to as the "IDOC Defendants"), by and through their counsel of record, Moore Elia Kraft & Hall, LLP, and pursuant to District Local Rule Civ. 7.1(b)(1), hereby submit this separate memorandum in

MEMORANDUM IN SUPPORT OF IDOC DEFENDANTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR STATUS CONFERENCE – pg. 1

support containing all of the reasons and points and authorities in support of the *IDOC Defendants' Motion for Extension of Time*.

BACKGROUND AND FACTS

Ms. Edmo commenced this lawsuit on April 6, 2017, by filing a *Civil Rights Complaint* with the United States District Court in and for the District of Idaho. (Dkt. 3, p. 1). Also on April 6, 2017, Ms. Edmo filed a *Motion for Temporary Restraining Order and Preliminary Injunction Order* (Dkt. 7-1), seeking “an individualized medical examination, and a plan of treatment by a qualified, prudent, specialist with substantial experience and/or expertise in treating individuals with gender dysphoria, and to a [sic] preliminary injunction requiring the Defendants to carry out that plan of treatment by such specialist.” (Dkt. 7-1, pp. 3-4).

On April 14, 2017, the Hon. Ronald E. Bush, U.S. Magistrate Judge, entered an *Initial Review Order*, allowing Ms. Edmo to proceed on her Eighth Amendment medical treatment claims, her related negligence and medical malpractice claims, and her equal protection claims against the Corizon and IDOC Defendants. (Dkt. 12, p. 22). Judge Bush also granted Ms. Edmo’s *Motion for Appointment of Counsel*. (*Id.*, p. 23).

On June 8, 2017, Ms. Edmo filed an *Amended Complaint* and on June 19, 2017, counsel appeared for her in this lawsuit. (Dkt. 25, Dkt. 26, Dkt. 27). On June 22, 2017, Ms. Edmo withdrew her first *Motion for Temporary Restraining Order and Preliminary Injunction Order*. (Dkt. 29). She filed her *Second Amended Complaint* on September 1, 2017, which included a number of new claims not previously asserted in Ms. Edmo’s two prior Complaints. (Dkt. 36).

On September 22, 2017, the parties filed a *Joint Motion and Stipulation Re: Defendants' Answers/Responsive Pleadings*, wherein the parties agreed to reset the case management deadlines to allow Defendants to extend the deadline to file their responsive pleadings to Ms.

Edmo's *Second Amended Complaint* until November 1, 2017. (Dkt. 37). On that date, the IDOC Defendants filed their *First Motion for Dispositive Relief*, seeking dismissal of a number of Ms. Edmo's claims on the grounds that they had not been properly exhausted, or were not filed within the applicable statute of limitations. (Dkt. 39). These Defendants further moved for dismissal of Ms. Edmo's state negligence claims, along with her claims under the Americans with Disabilities Act and the Affordable Care Act. (*Id.*). Oral argument on the Defendants' *First Motion for Dispositive Relief* was heard on April 4, 2018, and the Court took the issue under advisement.

Less than two months later, on June 1, 2018, Ms. Edmo filed *Plaintiff's Notice of Motion and Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof*. (Dkt. 62). In the *Motion*, Ms. Edmo moved the Court for the issuance of a preliminary injunction:

1) ordering Defendants to provide her immediate access to necessary medical treatment, including (a) sex-reassignment surgery; (b) reinstatement of spironolactone, or an equivalent type of care; (c) access to gender-appropriate underwear, clothing, and commissary items; (d) any other treatment a medical professional qualified to assess and treat gender dysphoria determines to be medically urgent; and 2) prohibiting Defendants from (a) implementing their policy and/or practice of blanket denial of access to such treatment for transgender persons incarcerated in the Idaho Department of Corrections; and (b) disciplining or retaliating against Plaintiff for expressing her gender identity, including wearing gender-appropriate underwear and clothing, and adhering to female grooming standards with regards to makeup and hair styling.

(Dkt. 62, p. 2). These issues are very similar to the injunctive relief sought by Ms. Edmo in her *Second Amended Complaint*. (Dkt. 36, p. 24). The Docket text for the Plaintiff's *Motion* stated that the Defendants' responses are due within 21 days, by June 22, 2018. The parties have not yet been permitted to engage in discovery on any of Ms. Edmo's claims.

LEGAL STANDARDS

Federal Rule of Civil Procedure 6(b)(1) provides the procedure for a party seeking an extension of time for responding to motion:

(b) Extending Time.

- (1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:
 - (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
 - (B) on motion made after the time has expired if the party failed to act because of excusable neglect.
- (2) Exceptions. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

Fed. R. Civ. P. 6. Similarly, Dist. Local Rule Civ. 6.1 states that a request for time extension will be granted only upon a showing of good cause.

Federal Rule of Civil Procedure 6 “[is] to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258–59 (9th Cir. 2010) (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir.1983)). Furthermore, pursuant to Rule 1 of the Federal Rules of Civil Procedure, all Federal Rules should be “construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” As a result, requests for extensions of time made before the expiration of the applicable deadline should “normally ... be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.” 4B Fed. Prac. & Proc. Civ. § 1165 (4th ed. 2008). “Good cause” is a non-rigorous standard that has been construed broadly across procedural and statutory contexts. *Ahanchian*, 624 F.3d at 1259.

ANALYSIS

Good cause exists to grant the IDOC Defendants' *Motion for Extension of Time* for several reasons. First, the issues in this case are a matter of first impression in Idaho. Ms. Edmo raises a number of issues in her *Motion for Preliminary Injunction* which is supported by detailed testimony from two retained experts, along with testimony by Ms. Edmo herself. The issues presented in Ms. Edmo's *Motion* are important and complicated. Accordingly, Ms. Edmo's *Motion* is owed a complete response by the IDOC Defendants, in order to allow for the just determination of this action on the merits.

Second, this Court has yet to issue its decision on these Defendants' *First Motion for Dispositive Relief* (Dkt. 39-43). In their *First Motion for Dispositive Relief*, the IDOC Defendants sought the dismissal of a number of claims for which Plaintiff seeks relief in her *Motion for Preliminary Injunction*. For example, IDOC Defendants sought dismissal of Plaintiff's claims under 42 U.S.C. § 1983 challenging IDOC's policies prohibiting her from possessing or wearing women's makeup. (Dkt. 43, pp. 5-8). In addition, IDOC Defendants sought dismissal of Plaintiff's claims under the Affordable Care Act, 42 U.S.C. § 18116, another claim upon which Plaintiff has based her *Motion for Preliminary Injunction*.

Furthermore, at this early juncture, the parties have not engaged in any discovery. No scheduling conference has been ordered in this case, nor have the parties to this matter participated in the Rule 26(f) conference or exchanged initial disclosures. Presumably, a scheduling conference will not be set until this Court narrows the issues for trial and issues its decision on the IDOC Defendants' *First Motion for Dispositive Relief*. The Plaintiff's *Motion for Preliminary Injunction* provides testimony from Ms. Edmo and two of her retained experts in this case. Because discovery has not yet begun, the Declarations in support of Ms. Edmo's

Motion represent the first time that these Defendants have received any testimony regarding Ms. Edmo's condition, her need for sex re-assignment surgery, or the alleged inadequacies of the medical care provided to date. IDOC Defendants have not yet been afforded the opportunity to conduct any discovery, including the taking of depositions, to evaluate and assess such testimony. Such discovery is essential to the IDOC Defendants' response to Ms. Edmo's *Motion*.

In addition, IDOC Defendants need significant time to review the testimony of Ms. Edmo and the supporting Declarations of Dr. Ettner and Dr. Gorton. Again, because no discovery has been conducted in this case, the first time that these Defendants received these opinions was at the time of the filing of Plaintiff's *Motion for a Preliminary Injunction*. Accordingly, these Defendants need additional time to evaluate the testimony, identify the appropriate experts and witnesses to address and respond to such testimony, and provide the relevant evidence, testimony, and medical records to any defense experts for their review and analysis. Similarly, the IDOC Defendants need additional time to interview Ms. Edmo's treatment providers regarding the allegations set forth in Ms. Edmo's *Declaration*, the *Declaration* of her counsel, and the *Declarations* of her retained experts, Dr. Ettner and Dr. Gorton. As this Court is aware, IDOC contracts with Corizon to provide medical care for the inmates housed at its facilities. Corizon is a named Defendant in this lawsuit and the IDOC Defendants need to arrange any interviews regarding Ms. Edmo's care through counsel.

It appears that, at this time, Ms. Edmo's experts have not reviewed her complete medical history and records prior to providing their opinions regarding Ms. Edmo's need for sex-reassignment surgery, reinstatement of her spironolactone, and access to gender-appropriate clothing and other items. (*Declaration of Lori Rifkin*, Dkt. 62-1, ¶ 3). In compliance with Ms. Edmo's May 14, 2018, formal request for medical records, counsel for the Corizon Defendants

provided Ms. Edmo's counsel copies of her medical records just days before Ms. Edmo filed her *Motion for Preliminary Injunction*. As such, it is unclear whether Ms. Edmo's experts have reviewed those records or if their opinions will change after reviewing them. Certainly, this Court would benefit from complete opinions from Ms. Edmo's experts based on their review of Ms. Edmo's entire medical history.

This Court would further benefit from a complete and full response from the IDOC Defendants regarding Ms. Edmo's pre- and post-incarceration history, particularly in regards to her testimony that she was living as a woman prior to being incarcerated in 2012. Furthermore, IDOC Defendants request additional time to provide this Court with testimony and other evidentiary support regarding Ms. Edmo's behavior and treatment during her time as an inmate. The materials filed with this Court on the Plaintiff's *Motion for a Preliminary Injunction* do not show the complete picture of Ms. Edmo's history or the medical and mental health treatment she has received. As such, these Defendants request additional time to demonstrate the full context of Ms. Edmo's incarceration and treatment.

In addition, Ms. Edmo will not be prejudiced by an extension of time for these Defendants to respond to her *Motion for a Preliminary Injunction*. Ms. Edmo previously filed a *Motion for Temporary Restraining Order and Preliminary Injunction Order* on April 6, 2017 (Dkt. 7-1) and later withdrew that *Motion* on June 22, 2017, after appointment of counsel (Dkt. 29). Nearly one year later, Ms. Edmo has re-filed her *Motion*. In that time, Ms. Edmo has remained in the custody of IDOC, where she continues to receive treatment for her Gender Dysphoria and has access to mental health and medical treatment.

Regarding her current condition, during Ms. Edmo's exam with Dr. Gorton, she denied active suicidal ideations with "vague thoughts" of non-suicidal self-injury. She rated her anxiety

as a 3/10, depression 4/10, and her gender dysphoria as a 7/10. (Dkt. 62-1, p. 55). Furthermore, Dr. Gorton opines that Ms. Edmo must be referred to an “appropriate surgeon” for sex re-assignment surgery “as soon as possible but at a minimum within the next 6 months.” (Dkt. 62-1, p. 87) (emphasis added). Six months is the minimum amount of time that these Defendants require to conduct the appropriate discovery and expert review in order to adequately respond to Ms. Edmo’s request for a preliminary injunction.

Finally, twenty-one days does not provide these Defendants with adequate notice and an opportunity to be heard on the many issues raised by Ms. Edmo in her *Motion* and supporting *Declarations*. Allowing for additional time to respond to Plaintiff’s *Motion* will assist in providing these Defendants with the requisite due process they are owed on such a *Motion*. The IDOC Defendants require adequate time to evaluate the Plaintiff’s claims and to prepare a comprehensive response to Ms. Edmo’s *Motion*. Without additional time, the IDOC Defendants will not be provided an ample opportunity to be heard and this Court will not be provided with the necessary evidence and context to make a thorough decision. Accordingly, the IDOC Defendants respectfully request that this Court grant their *Motion for Extension of Time* of a minimum of six months. In addition, these Defendants request that this Court immediately set a status conference to discuss the briefing and discovery schedules in this case.

CONCLUSION

For the foregoing reasons, the IDOC Defendants respectfully request that this Court grant the *IDOC Defendants’ Motion for Extension of Time to Respond to Plaintiff’s Motion for Preliminary Injunction* and allow these Defendants a minimum of six months to conduct discovery, retain expert witnesses, and prepare a full and complete response to the Plaintiff’s *Motion*. IDOC Defendants further request that this Court set an immediate status conference to

schedule briefing deadlines for the Plaintiff's *Motion*, along with litigation and discovery plans.

DATED this 4th day of June, 2018.

Moore Elia Kraft & Hall, LLP

/s/Brady J. Hall

*Attorneys for Defendants Idaho Department of
Correction, Henry Atencio, Jeff Zmuda, Howard
Keith Yordy, Richard Craig, and Rona Siegert*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle.com

J. Kevin West
kwest@parsonsbehle.com

Brady Hall
brady@melawfirm.net

Lori Rifkin
lrifkin@hadsellstormer.com

Dan Stormer
dstormer@hadsellstormer.com

Craig Durham
chd@fergusondurham.com

Deborah Ferguson
daf@fergusondurham.com

Amy Whelan
awhelan@nclrights.org

Julie Wilensky
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102

Shaleen Shanbhag
sshanbhag@hadsellerstormer.com

/s/Brady J. Hall

Lori Rifkin, Esq. (CA # 244081)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (415) 685-3591
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. (CA # 101967)
(*pro hac vice*)
Shaleen Shanbhag, Esq. (CA # 301047)
(*pro hac vice*)
HADSELL STORMER & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshshanbhag@hadsellstormer.com

Attorneys for Plaintiff

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
DAF@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
(*pro hac vice*)
Julie Wilensky, Esq. (CA # 271765)
(*pro hac vice*)
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: AWhelan@NCLRights.org
jwilensky@nclrights.org

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY INJUNCTION
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	None Set
Motion Cut-Off:	None Set
Trial Date:	None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff, through her counsel of record, hereby moves the Court for the issuance of a preliminary injunction: 1) ordering Defendants to provide her immediate access to necessary medical treatment, including (a) sex-reassignment surgery; (b) reinstatement of spironolactone, or an equivalent type of care; (c) access to gender-appropriate underwear, clothing, and commissary items; (d) any other treatment a medical professional qualified to assess and treat gender dysphoria determines to be medically urgent; and 2) prohibiting Defendants from (a) implementing their policy and/or practice of blanket denial of access to such treatment for transgender persons incarcerated in the Idaho Department of Corrections; and (b) disciplining or retaliating against Plaintiff for expressing her gender identity, including wearing gender-appropriate underwear and clothing, and adhering to female grooming standards with regards to makeup and hair styling.

This motion is based on this Notice of Motion and Motion, the memorandum of points and authorities filed herewith, the Declarations of Adree Edmo, Dr. Randi Ettner, Dr. Nick Gorton, and Lori Rifkin filed in support of this Motion, and all pleadings and files on record in this action, as well as any oral argument and evidence that may be presented at any hearing on this motion.

Dated: June 1, 2018

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Lori E. Rifkin
Lori E. Rifkin
Attorneys for Plaintiff

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INTRODUCTION

Plaintiff Adree Edmo moves for a preliminary injunction to address Defendants' failure to appropriately treat her serious medical condition of gender dysphoria. Two of the preeminent experts in the treatment of gender dysphoria have now evaluated Ms. Edmo and determined that Defendants' denial of necessary treatment causes her to suffer life-threatening physical and psychological harm. Ms. Edmo has already attempted to self-castrate twice in the absence of necessary treatment, and she will suffer irreparable harm in the absence of preliminary relief.

PROCEDURAL STATUS

Ms. Edmo filed her original complaint in this case in *pro per* on April 6, 2017 seeking injunctive relief as well as damages for, *inter alia*, Defendants' failure to provide her timely access to necessary medical treatment for her gender dysphoria. On April 14, 2017, the Court issued an Initial Screening Order permitting Ms. Edmo to move forward on many of her claims. In the fall of 2017, Ms. Edmo obtained counsel to represent her and filed a Second Amended Complaint on September 1, 2017. Defendants then filed a Motion for Dispositive Relief on November 1, 2017, for which the Court heard oral arguments on April 4, 2018.

Since filing the Second Amended Complaint, Ms. Edmo's counsel sought access from Defendants to her medical records in order to assess the urgency of Ms. Edmo's medical needs. Defendants refused to produce these records until the end of May 2018. Declaration of Lori Rifkin in Support of Plaintiff's Motion for a Preliminary Injunction ("Rifkin Decl.") ¶ 2. However, because of the gravity of Ms. Edmo's medical condition, Ms. Edmo's counsel retained two highly qualified medical experts to evaluate Ms. Edmo and review the incomplete medical records accessible by Ms. Edmo. *Id.* ¶ 3. Based on the assessments of these experts,¹ Plaintiff now moves the Court for a preliminary injunction 1) ordering Defendants to provide her immediate access to necessary medical treatment, including sex-reassignment surgery; and 2) prohibiting Defendants from enforcing their policy and/or practice of blanket denial of such

¹ The expert declarations of Dr. Randi Ettner ("Ettner Decl.") and Dr. Nicholas Gorton ("Gorton Decl.") are attached as Exhibits 1 and 2, respectively, to the Declaration of Lori Rifkin, submitted concurrently. Rifkin Decl. ¶¶ 4-5 & Exhs. 1-2.

treatment for transgender persons incarcerated in the Idaho Department of Corrections.

STATEMENT OF FACTS

Plaintiff's History of Gender Dysphoria

Ms. Edmo is a transgender woman—an individual whose female gender identity differs from the male sex assigned to her at birth. SAC ¶ 1. Prior to being incarcerated, Ms. Edmo lived full-time as a woman. *Id.* ¶¶ 3, 39. Ms. Edmo has been incarcerated since April 2012. *Id.* ¶ 1. In July 2012, Defendants diagnosed Ms. Edmo with gender dysphoria, a serious medical condition characterized by marked incongruence between the sex assigned at birth and a person's gender identity, strong cross-gender identification, and clinically significant distress or impairment of functioning. Ettner Decl. ¶¶ 17, 35-36; SAC ¶¶ 1, 40.

From the time Ms. Edmo was a very young child, she understood herself to be a girl. Declaration of Adree Edmo in Support of Plaintiff's Motion for a Preliminary Injunction ("Edmo Decl.") ¶ 3. She describes her female gender identity as something she "never questioned . . . it's always been this way as long as I can remember." Ettner Decl. ¶ 15. Ms. Edmo assumed she would grow up to be as feminine as her older sisters, and her body would develop as theirs did rather than like that of her older brothers. Ettner Decl. ¶ 15; Edmo Decl. ¶ 3; Gorton Decl. ¶ 29. She had mostly female friends during her school years and "felt like one of them," and would even sometimes use the girls' restroom in grade school and high school. Gorton Decl. ¶¶ 26, 30. Ms. Edmo experienced mostly positive support for her gender identity as female from her immediate family, which she attributes in part to being Native American and growing up on the Shoshone Bannock reservation, because there is a history in Native American communities of accepting gender nonconforming people. *Id.* ¶ 27.

Ms. Edmo attended public elementary, middle, and high school, and one year of college at Idaho State University. Ettner Decl. ¶ 13. At around age 11 or 12, Ms. Edmo understood herself as "a girl in a boy's body," although she did not have a word to describe this at the time. Gorton Decl. ¶ 29. Her transition through puberty was "shocking and very depressing" to her,

and caused a dramatic increase in her gender dysphoria. Edmo Decl. ¶ 4; Gorton Decl. ¶ 29. As she moved into her teenage years, however, Ms. Edmo began to feel more confident about expressing her female identity and began wearing girls' clothing and makeup to school. Edmo Decl. ¶ 5. Ms. Edmo's immediate family and friends remained supportive, although she experienced some harassment and sexual assault as a result of her gender identity. Gorton Decl. ¶¶ 27-28; Edmo Decl. ¶ 6. By age 21, Ms. Edmo began to live as a woman full-time, using female pronouns and dressing in women's clothing. Edmo Decl. ¶ 7; Ettner Decl. ¶ 16; Gorton Decl. ¶ 33. Living as a woman, Ms. Edmo felt for the first time in her life "like others saw me as the real person that I am—as the woman I am." Edmo Decl. ¶ 8.

Although Ms. Edmo's incarceration beginning in 2011 impeded her ability to continue fully living as female, she has continually sought to do so even in the face of repeated disciplinary consequences, which, in turn, have affected her eligibility for parole. Edmo Decl. ¶¶ 19-20; Gorton Decl. ¶¶ 37-38. This has included altering the prison-issued male underwear to allow her to tuck her penis, wearing her hair long and in a traditionally feminine style, and making or obtaining her own facial make-up, despite IDOC's refusal to permit her access to women's underwear and female commissary items. Edmo Decl. ¶ 19; Gorton Decl. ¶¶ 36-41. In 2012, Ms. Edmo changed her name socially and in 2013, she legally changed her name. Edmo Decl. ¶ 11.

Standards of Care for Treatment of Gender Dysphoria

Gender dysphoria is a diagnosable and highly treatable condition recognized by the American Psychiatric Association and included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"), as well as the World Health Organization's International Classification of Diseases-10. SAC ¶ 26; Ettner Decl. ¶ 34; Gorton Decl. ¶ 8. Like many other medical conditions, gender dysphoria can be ameliorated or cured through medical treatment. SAC ¶¶ 27-28; Gorton Decl. ¶ 10. The World Professional Association for Transgender Health ("WPATH"), the leading international organization focused on transgender health care, has established internationally accepted Standards of Care for the treatment of gender dysphoria. SAC ¶ 28; Gorton Decl. ¶ 11. The current version of the WPATH Standards

of Care, Version 7, was published in September 2011, and constitutes the prevailing standard of care used by medical and mental health professionals treating gender dysphoria. SAC ¶ 28; *Hicklin v. Precynthe*, No. 4:16-cv-02357-NCC, Dkt. No. 176, at 5-6 (E.D. Mo. May 22, 2018); *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1186 (N.D. Cal. 2015) (WPATH Standards of Care are the accepted standards of treatment for transgender patients); *see also De'lonta v. Johnson*, 708 F. 3d 520, 522-23 (4th Cir. 2013); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 231 (D. Mass. 2012); *O'Donnabhain v. Comm'r of Internal Revenue*, 134 T.C. 34, 65 (U.S. Tax Ct. 2010).

The WPATH Standards of Care set forth medical treatment options for gender dysphoria and require that a competent medical professional with knowledge and expertise in gender dysphoria evaluate a patient for appropriate and necessary treatment options, which, in addition to living in accord with the person's gender identity, may include hormone therapy, surgery to change primary and/or secondary characteristics, and/or psychotherapy addressing the negative impact of gender dysphoria and stigma on mental health. SAC ¶¶ 33-36, Ettner Decl. ¶¶ 40-41; Gorton Decl. ¶¶ 12-16. The Standards "explain that some individuals are unable to obtain relief from gender dysphoria without surgical intervention, and describe sex-reassignment surgery (or "SRS") as 'essential and medically necessary' for this group of patients." *Norsworthy*, 87 F. Supp. 3d at 1186 (quoting WPATH Standards of Care at 36); Ettner Decl. ¶¶ 55-56. The WPATH Standards of Care apply to incarcerated as well as non-incarcerated people. SAC ¶ 36; Ettner Decl. ¶ 43; Gorton Decl. ¶ 17.

Defendants' Inadequate Treatment of Plaintiff's Gender Dysphoria

Since Defendants diagnosed Ms. Edmo with gender identity disorder—now recognized as gender dysphoria—in 2012, she has continually sought appropriate treatment, including access to feminizing hormones, evaluation for and access to sex-reassignment surgery (also referred to as gender confirmation surgery), and the ability to live as a woman while incarcerated. SAC ¶ 4; Ettner Decl. ¶ 60; Edmo Decl. ¶¶ 27-28. However, Defendants have refused to provide Ms. Edmo with sex-reassignment surgery, have not adequately monitored and adjusted her feminizing hormones, and have denied her access to other medically necessary

treatments for reducing her gender dysphoria, including being called by her legal name and the appropriate pronouns and the ability to access and wear appropriate undergarments. SAC ¶¶ 4, 41-44, 49-51, 54; SAC Ex. B, at 39-40, 45; Ettner Decl. ¶¶ 60, 64-70; Gorton Decl. ¶¶ 36-41, 49-52, 55-65; Edmo Decl. ¶¶ 14, 17, 23, 27-28. Ms. Edmo is harassed by both correctional officers and other inmates for her appearance, mannerisms, and transitioning body.² Edmo Decl. ¶¶ 15-16. Defendants' refusal to treat Ms. Edmo as a woman is "a constant reminder that my body does not match my feeling of being a woman and female" and "torture above and beyond my prison sentence." Edmo Decl. ¶¶ 13, 16.

Although Defendants have provided Ms. Edmo with some feminizing hormones, they have failed to provide appropriate treatment for her continued severe gender dysphoria and attendant depression. Ettner Decl. ¶¶ 59-70. Ms. Edmo meets and exceeds the criteria for medically necessary sex-reassignment surgery as a result of her persistent, well-documented gender dysphoria and severe distress. Ettner Decl. ¶¶ 65-66; Gorton Decl. ¶¶ 84, 87-88. However, Defendants' medical providers are not qualified to assess and treat gender dysphoria and, even if they were qualified, IDOC policies and/or practices prohibit them from providing medically necessary and likely life-saving care through a categorical ban on sex-reassignment surgery. Ettner Decl. ¶ 64; Gorton Decl. ¶¶ 44, 47, 50-54, 73. The notes of several providers who purportedly treated Ms. Edmo for gender dysphoria show no attempts to assess Ms. Edmo's history as a transgender person. Gorton Decl. ¶ 47. The only record in the six years since Defendants diagnosed Ms. Edmo's gender dysphoria that could conceivably resemble an evaluation of Ms. Edmo's transgender history is a single note by one doctor dated December 14, 2016. *Id.*

Defendants are also failing to adequately monitor Ms. Edmo's hormone regimen and have inappropriately removed her from one hormone, spironolactone, as a result of elevated enzyme levels found during Ms. Edmo's liver function test, even though this hormone is unlikely

² Correctional officers also recently threatened Ms. Edmo that she will not be permitted to attend attorney-client visits if she is wearing makeup and styles her hair in a feminine manner. Rifkin Decl. ¶ 6.

to be responsible for Ms. Edmo's elevated enzyme levels. Ettner Decl. ¶ 70; Gorton Decl. ¶¶ 49-63. While the proper course in response to abnormal labs is to immediately perform an adequate history and physical examination, Ms. Edmo's records contain no evidence of any evaluation to determine the actual cause of Ms. Edmo's abnormal liver function test results. Gorton Decl. ¶¶ 56, 65.

In the meantime, the unnecessary withdrawal of Ms. Edmo's spironolactone means that she is not receiving the appropriate dosage of feminizing hormones and is therefore experiencing recurring masculinization. Gorton Decl. ¶ 64. These unexpected and unwanted physical changes, including rapid facial hair growth and, in particular, the painful enlargement of her testicles, have considerably worsened Ms. Edmo's dysphoria and place her at significant risk of self-surgery or suicide if she does not get the medical treatment she needs. Gorton Decl. ¶ 39, 64; Edmo Decl. ¶ 26.

Defendants are also violating the Standards of Care by refusing to allow Ms. Edmo access to female underwear and a gaff (an undergarment commonly worn by transgender women to minimize the appearance of male genitals), canteen items available to female prisoners, and safe and effective means of hair removal. Gorton Decl. ¶ 36. These are medically necessary treatments to ameliorate her gender dysphoria. Ettner Decl. ¶ 69; Gorton Decl. ¶ 92. Moreover, Defendants have disciplined Ms. Edmo numerous times for actions and behaviors that are medically necessary for transgender patients, which has exacerbated Ms. Edmo's gender dysphoria. Ettner Decl. ¶ 60; Gorton Decl. ¶ 40, 93. For example, Defendants disciplined her for altering her prison-issued male underwear to resemble women's underwear or a gaff. Gorton Decl. ¶ 37. Ms. Edmo reports that her makeshift gaff, which she wears because she is denied access to both a proper gaff and women's clothing, has caused redness, swelling, and extreme pain on several occasions. *Id.* ¶ 39.

Plaintiff's Ongoing Substantial Risk of Serious Harm

As a result of Defendants' failure to treat her, Ms. Edmo has twice resorted to attempting auto-castration (removal of the testicles). SAC ¶ 45. This is not an act of self-mutilation or

intended self-harm, but rather “surgical self-treatment.” Ettner Decl. ¶ 62; Gorton Decl. ¶ 18; Edmo Decl. ¶ 34. Transgender women without access to appropriate care, particularly those who are imprisoned, are often so desperate for relief that they resort to life-threatening attempts at auto-castration in the hopes of eliminating the major source of testosterone that kindles the distress. Ettner Decl. ¶ 38. However, such self-surgery attempts are extremely dangerous, and can result in major loss of blood leading to death unless an individual is sent to a hospital in time, as Ms. Edmo was during her second attempt. Ettner Decl. ¶ 62; Gorton Decl. ¶ 74.

It is also common for patients like Ms. Edmo, who are in desperate need of medical treatment, to become more sophisticated in subsequent self-surgery attempts, placing them at substantial and increasing risk of serious and irreparable harm. Gorton Decl. ¶ 74. After her first attempt, Ms. Edmo resolved to be successful if she decided to attempt self-surgery again. Edmo Decl. ¶ 32. To this end, Ms. Edmo prepared for weeks before her second auto-castration attempt—she studied the anatomy of the scrotum, chose an incision site with a better chance of success, obtained gauze and alcohol swabs, boiled the razor blade to reduce chances of infection, and enlisted another inmate to call for help in the event she lost too much blood because she did not want to die. Gorton Decl. ¶ 74; Edmo Decl. ¶ 33. During her second attempt, Ms. Edmo made further surgical progress, but abandoned her efforts because the high blood loss prevented her from being able to see what she was doing. Gorton Decl. ¶ 74. She was taken to the hospital, where her testicle was repaired without any discussion of possibly removing the nearly-severed testicle. *Id.*; Edmo Decl. ¶ 33.

Dr. Gorton opines that it is medically necessary for Ms. Edmo to be referred to a surgeon for sex-reassignment surgery immediately, but at minimum within the next six months. Gorton Decl. ¶ 88. Dr. Gorton explains that Ms. Edmo has “well established and persistent gender dysphoria, a substantial portion of which is related to her male genitalia,” placing her at high risk of re-attempting self-surgery or suicide if she is denied this medically necessary care. *Id.*

Similarly, Dr. Ettner opines that because having male genitalia generates profound distress for Ms. Edmo, this anguish is very likely to result in further emotional deterioration and

self-harm. Ettner Decl. ¶ 61. Dr. Ettner further opines that Ms. Edmo is at great risk for succumbing to feelings of hopelessness and despair, leading to emotional destabilization and suicide. *Id.* ¶ 67. Dr. Ettner also explains that gender dysphoria intensifies with age, which is consistent with Ms. Edmo’s description of her experience. *Id.*; Edmo Decl. ¶ 36. Ms. Edmo scored 11 on the Beck Hopelessness Scale (BHS), relative to a study finding that of outpatients who ultimately committed suicide, 93.8% had BHS scores of 9 or higher. Ettner Decl. ¶ 30. Ms. Edmo also scored a 100—the highest score possible—on the Traumatic Symptom Inventory-2 scale that measures suicide ideation and suicide behavior. *Id.* ¶ 33. Dr. Ettner found this result “alarming” considering Ms. Edmo’s previous history of suicide attempts and the fact that she is currently receiving the maximum dose of her anti-depressant medication. *Id.*

Indeed, the most significant suicidality Ms. Edmo has experienced while incarcerated occurred because she felt hopeless after she requested sex-reassignment surgery and was told that she would “never” get the surgery. Gorton Decl. ¶ 77; Edmo Decl. ¶ 29. Defendants then placed her on suicide watch, where she was stripped of all her clothes and thus forced to see her body unclothed—a significant trigger for patients with gender dysphoria, which increased both her dysphoria and suicidal thoughts. Gorton Decl. ¶ 77; Edmo Decl. ¶ 30.

Further, Defendants’ mental health providers do not understand the difference between suicidality, non-suicidal self injury, and self-surgery, and have incorrectly assessed Ms. Edmo’s self-surgery attempts as either non-suicidal self-injury or suicidality. Gorton Decl. ¶¶ 66-67. Rather than intended self-harm, Ms. Edmo’s self-surgery is “health-seeking” behavior intended to remove testosterone from the body, thereby alleviating gender dysphoria. *Id.* ¶ 67. Ms. Edmo attempted self-surgery because she was “at a point beyond mental anguish . . . thinking: ‘If I don’t do this, I won’t be able to keep going.’” Edmo Decl. ¶ 34. Thus, questions routinely asked by Defendants’ mental health staff, such as whether Ms. Edmo wants to harm or kill herself, are insufficient to address her high risk for self-surgery. Gorton Decl. ¶ 71; Ettner Decl. ¶¶ 44, 68.

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ARGUMENT

I. Legal Standard for Preliminary Injunction

“A plaintiff seeking a preliminary injunction must establish that [s]he is likely to succeed on the merits, that [s]he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2009); *Pimentel v. Dreyfus*, 670 F. 3d 1096, 1105 (9th Cir. 2012) (applying *Winter* to claim under 42 U.S.C. § 1983). “[S]erious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1135 (9th Cir. 2011) (internal quotation marks omitted).

While preliminary injunctions that order a party to take affirmative action are generally not granted “unless extreme or very serious damage will result,” *see Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F. 3d 873, 879 (9th Cir. 2009), this is exactly such a case. Defendants’ ongoing refusal to provide necessary medical treatment to Ms. Edmo places her at imminent risk of serious harm. Ms. Edmo has a history of suicide attempts and twice risked her life in attempts to remove her testicles herself. As set forth in detail *infra*, and in the concurrently-submitted declarations, two of the preeminent experts in the field of medical treatment for patients with gender dysphoria have assessed Ms. Edmo and found Defendants’ failure to appropriately treat her—including their denial of access to sex-reassignment surgery—to be life-threatening.

II. Plaintiff Will Succeed on the Merits of Her Claims

Ms. Edmo moves for preliminary injunctive relief on the basis of her Eighth Amendment claim for failure to provide adequate and necessary medical treatment for the serious medical condition of gender dysphoria, and on the basis of her sex discrimination claims under the

Fourteenth Amendment and the Affordable Care Act.³ Even at this early procedural stage in the case, the evidence decisively establishes that Ms. Edmo will succeed on the merits of these claims.

A. Defendants Are Denying Plaintiff Medically Necessary Treatment in Violation of the Eighth Amendment

It is well-established that “[d]eliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (internal citation omitted). Deliberate indifference may be “manifested by prison doctors in their response to the prisoner’s needs or by prison [officials or] guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.” *Id.* A plaintiff establishes deliberate indifference by showing a serious medical need such that failure to treat the condition could result in further significant injury or the unnecessary and wanton infliction of pain, and showing that a defendant engaged in a purposeful act or failure to respond to this medical need such that the plaintiff was harmed. *Jett v. Penner*, 439 F. 3d 1091, 1096 (9th Cir. 2006). Deliberate indifference may be demonstrated “when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison officials provide medical care.” *Id.* (internal quotations and citations omitted).

Prison officials are liable for violations under the Eighth Amendment when they are deliberately indifferent to a substantial risk of serious harm to a prisoner, which the Supreme Court has described as “the equivalent of recklessly disregarding that risk.” *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). As the United States Supreme Court explained in *Farmer*, “[d]eliberate indifference lies somewhere between the poles of negligence at one end and purpose or knowledge at the other.” 511 U.S. at 836; *see also Mandala v. Coughlin*, 920 F. Supp. 342, 353 (E.D.N.Y. 1996) (while a showing of medical malpractice or mere negligence does not

³ Ms. Edmo is also likely to succeed on the merits of her other claims, including her Americans with Disabilities Act claim. *See* Pl.’s Response to Defs.’ Mot. for Dispositive Relief, ECF No. 44 at 18-23. However, given that the law on those claims is less clearly established, Plaintiff’s motion for a preliminary injunction focuses more narrowly on her Eighth Amendment, Fourteenth Amendment, and ACA claims.

suffice, neither must a defendant's act or omission be "for the very purpose of causing harm or with knowledge that harm will result" (internal quotations and citations omitted)).

The evidence overwhelmingly shows that Ms. Edmo has a serious medical need cognizable under the Eighth Amendment. Defendants' own doctors diagnosed Ms. Edmo with gender dysphoria, which is recognized by the medical field as a serious medical condition. Ettner Decl. ¶ 34; Gorton Decl. ¶ 8. Courts have consistently considered gender dysphoria to be a serious medical condition for the purposes of the Eighth Amendment. *E.g.*, *Fields v. Smith*, 653 F. 3d 550, 555 (7th Cir. 2011) (discussing cases finding that Gender Identity Disorder is a "serious medical need" for purposes of the Eighth Amendment); *Hicklin v. Precynthe*, No. 4:16-cv-02357-NCC, Dkt. No. 176, at 5 (E.D. Mo. May 22, 2018) ("Gender dysphoria is an objectively serious medical need."); *Norstworthy*, 87 F. Supp. 3d at 1170. In support of this motion, Ms. Edmo submits evidence from Dr. Ettner and Dr. Gorton as well as her own declaration and medical records demonstrating "that, notwithstanding years of treatment in the form of hormone therapy and counseling, she continues to experience severe symptoms of gender dysphoria." *Norworthy*, 87 F. Supp. 3d at 1186. These symptoms include severe "[p]sychological and emotional pain [she] experiences as a result of her gender dysphoria," that place her mental and physical health in serious jeopardy and "means that she is unable to complete her existence or complete who she is." *Id.* (internal alterations and quotations omitted).

Defendants' failures to appropriately monitor and adjust Ms. Edmo's feminizing hormones, assess and provide her access to sex-reassignment surgery, and provide other medically necessary treatments that allow her to live in accord with her female gender identity—as well as Defendants' punishment of Ms. Edmo for expressing her gender identity—put Ms. Edmo at life-threatening risk. This includes heightened risk of re-attempting self-surgery, and of emotional destabilization that may lead to other self-harm, including suicide. Ettner Decl. ¶¶ 61, 67; Gorton Decl. ¶ 88.

The evidence also overwhelmingly establishes that Defendants' actions and omissions in denying Plaintiff necessary treatment for her serious medical need are deliberate. Plaintiff has

repeatedly and exhaustively requested appropriate medical treatment including assessment for sex-reassignment surgery through every avenue available to her in the prison system, including filing grievances through IDOC's administrative grievance process, as well as repeatedly asking Corizon medical providers for assessments and referrals. Edmo Decl. ¶¶ 27-28; *see Norsworthy*, 87 F. Supp. 3d at 1189 ("Despite access to the relevant Standards of Care and evidence that SRS was medically necessary for Norsworthy, Defendants failed to provide her SRS, or to refer her to a specialist for further evaluation.") (citing *Hoptowit v. Ray*, 682 F. 2d 1237, 1253 (9th Cir. 1982)). Defendant IDOC officials and supervisors have not only denied her individual appeals, Defendants have also adopted and enforced a blanket policy and/or practice prohibiting provision of sex-reassignment surgery to people incarcerated in IDOC facilities, regardless of whether such treatment is medically necessary. *See Norsworthy*, 87 F. Supp. 3d at 1191 (blanket policy barring sex-reassignment surgery conflicts with requirement that medical care be individualized based on a particular patient's needs). Defendants are also actively contesting this lawsuit, while still refusing to provide Ms. Edmo adequate and necessary medical treatment, further evidencing the deliberateness of their decisions.

Defendants have been repeatedly placed on notice of the substantial risk of serious harm resulting from their ongoing denial of necessary treatment to Ms. Edmo: refusal of such treatment has resulted in Ms. Edmo twice attempting to perform self-castration and separately attempting suicide, as well as ongoing serious psychological, emotional, and physical distress. *Farmer*, 511 U.S. at 837; *see also Lolli v. Cnty. of Orange*, 351 F. 3d 410, 421 (9th Cir. 2003) ("Much like recklessness in criminal law, deliberate indifference to medical needs may be shown by circumstantial evidence when the facts are sufficient to demonstrate that a defendant actually knew of a risk of harm.").

Defendants' provision of Ms. Edmo with some treatment for gender dysphoria further supports her deliberate indifference claim. This partial treatment shows that Defendants recognize that she has a serious medical condition warranting treatment while also refusing to provide the medically necessary care her condition requires. *See Hicklin*, No. 4-16-cv-01357-

NCC, Dkt. No. 176, at 6 (“providing [only] counseling and/or psychotropic medication to a severely gender dysphoric patient whose condition warrants medical intervention is a departure from the [WPATH] standards of care . . . [and] puts a person at serious risk of psychological and physical harm” in violation of the Eighth Amendment); *Norsworthy*, F. Supp. 3d at 1187 (“Just because defendants have provided a prisoner with some treatment consistent with the Standards of Care, it does not follow that they have necessarily provided her with *constitutionally adequate* treatment.”) (internal alterations omitted) (quoting *De’lonta v. Johnson*, 708 F. 3d 520, 526 (4th Cir. 2013)); *see also Ortiz v. City of Imperial*, 884 F. 2d 1312, 1314 (9th Cir. 1989) (a plaintiff alleging deliberate medical indifference “need not prove complete failure to treat”). Just as Defendants would be deliberately indifferent if they denied surgery to a patient requiring an operation and instead simply prescribed the patient painkillers, Defendants’ refusal to provide Ms. Edmo with access to a crucial medical intervention required to treat her condition constitutes deliberate indifference to a serious medical need. *See Ettner Decl.* ¶ 68; *Fields*, 653 F. 3d at 556 (holding statute barring Wisconsin corrections officials from providing transgender inmates hormone therapy and sex-reassignment surgery unconstitutional under the Eighth Amendment, and recognizing that “[r]efusing to provide effective treatment for a serious medical condition serves no valid penological purpose and amounts to torture”).

B. Defendants Are Discriminating Against Plaintiff on the Basis of Sex in Violation of the Fourteenth Amendment and the Affordable Care Act

Defendants’ refusal to provide Ms. Edmo with medically necessary care because she is transgender discriminates based on sex. Defendants are withholding care from Ms. Edmo based on their belief that a transgender person should not receive certain medical treatment such as sex-reassignment surgery and access to traditionally female underwear, despite this treatment being the accepted standard of care for treating gender dysphoria.

Discrimination against transgender people constitutes discrimination based on sex. *Schwenk v. Hartford*, 204 F. 3d 1187, 1201-02 (9th Cir. 2000); *see also Martin v. Barron*, 286 F. Supp. 3d 1131, 1144 (D. Idaho 2018) (“[T]o conclude discrimination based on gender identity or

transsexual status is not discrimination based on sex is to depart from advanced medical understanding in favor of archaic reasoning.”). Such discrimination is subject to heightened scrutiny when evaluating whether it violates the Equal Protection Clause. *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, 858 F. 3d 1034, 1051 (7th Cir. 2017) (holding that discrimination against a transgender student is “inherently based upon a sex-classification and heightened review applies”); *Glenn v. Brumby*, 663 F. 3d 1312, 1317 (11th Cir. 2011) (“[D]iscrimination against a transgender individual because her gender-nonconformity is sex discrimination,” under the Equal Protection Clause, “whether it’s described as being on the basis of sex or gender”); *Smith v. City of Salem*, 378 F. 3d 566, 572-73 (6th Cir. 2004) (same); *Stockman v. Trump*, No. 5:17-cv-01799-JGB-KK, Dkt. No. 79, at 19 (C.D. Cal. Dec. 22, 2017) (applying intermediate scrutiny to claims of transgender servicemembers as sex-based discrimination); *Karnoski v. Trump*, No. C17-1297-MJP, 2017 WL 6311305, at *7 (W.D. Wash. Dec. 11, 2017) (same); *Olive v. Harrington*, No. 1:15-cv-01276, 2016 WL 4899177, at *5 (E.D. Cal. Sept. 14, 2016) (“Discrimination on the basis of transgender status is subject to intermediate scrutiny.”); *Marlett v. Harrington*, No. 1:15-cv-01382, 2015 WL 6123613, at *4 (E.D. Cal. Oct. 16, 2015) (same); *Norsworthy*, 87 F. Supp. 3d at 1119 (“[D]iscrimination against transgender individuals is a form of gender-based discrimination subject to intermediate scrutiny under the Equal Protection Clause”).

Numerous district courts, including in the District of Idaho and others in the Ninth Circuit, have also held that “government discrimination based on transgender status is also discrimination based on a quasi-suspect class and thus is subject to intermediate scrutiny.” *Martin*, 286 F. Supp. 3d at 1144; *see id.* at 1145 (“[I]n Idaho . . . transgender people have no state constitutional protections from discrimination based on their transgender status in relation to employment decisions, housing, and other services. Therefore, transgender people bear all of the characteristics of a quasi-suspect class.”); *Norsworthy*, 87 F. Supp. 3d at 1119 (“Applying *Schwenk*, . . . discrimination based on transgender status independently qualifies as a suspect classification because transgender people meet the indicia of a ‘suspect’ or ‘quasi-suspect

classification.”); *Stockman*, No. 5:17-cv-01799-JGB-KK, Dkt. No. 79, at 19 (same); *Karnoski*, No. C17-1297-MJP, 2017 WL 6311305, at *7 (“The Court concludes that the policy distinguishes on the basis of transgender status, a quasi-suspect classification, and is therefore subject to intermediate scrutiny.”); *see also Stone v. Trump*, 280 F. Supp. 3d 747, 768 (D. Md. 2017); *Doe v. Trump*, 275 F. Supp. 3d 167, 208 (D.D.C. 2017); *A.H. v Minersville Area School District*, 2017 U.S. Dist. LEXIS 193622 (M.D. Pa. Nov. 22, 2017); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 140 (S.D.N.Y. 2015). Thus, heightened scrutiny applies to Plaintiff’s Equal Protection claim, whether regarded as a claim based on sex, or also directly based on transgender status.

Under heightened scrutiny, Defendants have the burden to show that their policy of denying sex-reassignment surgery and other medically necessary care to transgender people is substantially related to an important government interest. *See, e.g., Martin*, 286 F. Supp. 3d at 1142. The asserted governmental justification must be “exceedingly persuasive” and it must be “genuine, not hypothesized or invented *post hoc* in response to litigation.” *United States v. Virginia*, 518 U.S. 515, 533 (1996). Defendants cannot meet that burden here. There is no legitimate, much less important, governmental purpose served by denying medically necessary care to a socially disfavored group of people. *See Fields*, 653 F. 3d at 556; *Norsworthy*, 87 F. Supp. 3d at 1120 (recognizing that Defendants “articulate[d] no important governmental interest” served by denying access to sex-reassignment surgery). Gender dysphoria is a serious medical condition; when left untreated, it can result in debilitating harms, including severe depression and suicidality. Ettner Decl. ¶¶ 34, 37; Gorton Decl. ¶ 10. The treatments for gender dysphoria are well-established and effective. Ettner Decl. ¶¶ 40-58; Gorton Decl. ¶¶ 11-17. There is no legitimate government interest in denying transgender prisons access to this life-saving care.

Defendants’ policy also violates Section 1557 of the Affordable Care Act, which prohibits covered entities from discriminating based on sex in the provision of health care services. 42 U.S.C. § 18116. As a health program or activity that receives federal financial assistance, IDOC is a covered entity subject to the Affordable Care Act’s nondiscrimination

requirement. The anti-discrimination provisions of the ACA are construed consistently with those of other federal sex discrimination laws; accordingly, the ACA's prohibition of discrimination based on sex prevents differential treatment of transgender patients. *See, e.g., Prescott v. Rady Children's Hospital-San Diego*, 265 F. Supp. 3d 1090, 1099 (S.D. Cal. 2017).

III. Plaintiff Is Now Suffering and Will Continue to Suffer Irreparable Harm in the Absence of Relief

Defendants' refusal to provide Ms. Edmo with medically necessary care is causing her irreparable harm. As a result of Defendants' denial of care, Ms. Edmo has attempted suicide and twice risked her life in attempts to self-castrate. While a plaintiff seeking a preliminary injunction ordering treatment for gender dysphoria "is not required to demonstrate that she is at risk of death or imminent self-harm," *Norsworthy*, F. Supp. 3d at 1188, Ms. Edmo is at risk of these outcomes here. Ettner Decl. ¶¶ 30-33, 67; Gorton Decl. ¶ 88.

In addition to being at risk of death due to suicide or attempts to perform her own surgical care, Ms. Edmo is also suffering serious psychological harm, which the Ninth Circuit has repeatedly held constitutes irreparable injury. *See, e.g., Chalk v. U.S. Dist. Ct. Cent. Dist. of California*, 840 F. 2d 701, 709 (9th Cir. 1988) (plaintiff's "emotional stress, depression and reduced sense of well-being" constituted irreparable harm); *Thomas v. Cnty. of Los Angeles*, 978 F. 2d 504, 512 (9th Cir. 1992) ("Plaintiffs have also established irreparable harm, based on this Court's finding that the deputies' actions have resulted in irreparable physical and emotional injuries to plaintiffs and the violation of plaintiffs' civil rights."); *see also Hernandez v. Cnty. of Monterey*, 110 F. Supp. 3d 929, 956 (N.D. Cal. 2015) ("[P]ain, suffering and the risk of death constitute irreparable harm sufficient to support a preliminary injunction in prison cases.") (internal quotations omitted); *Wood v. Cnty. of Alameda*, 1995 U.S. Dist. LEXIS 17514, at *46 (N.D. Cal. Nov. 17, 1995) (finding irreparable injury where plaintiff's "declaration ma[de] clear that she has suffered feelings of guilt, depression, anxiety, and loss of self-esteem . . .").

District courts have specifically recognized that emotional pain and suffering, anxiety, and depression caused by prison officials' failure to provide adequate treatment for gender

dysphoria constitute irreparable harm warranting a preliminary injunction. *See, e.g., Hicklin*, No. 4:16-cv-02357-NCC, Dkt. No. 176 (granting permanent injunction); *Hicklin v. Precynthe*, 2018 U.S. Dist. LEXIS 21516, at *29 (concluding that plaintiff would suffer “irreparable harm in the absence of a preliminary injunction because she suffers from depression, anxiety, and intrusive thoughts of self-castration as a result of Defendants’ conduct”) (E.D. Mo. Feb. 9, 2018) (“*Hicklin I*”); *Norsworthy*, 87 F. Supp. 3d at 1192 (irreparable injury where plaintiff testified that “she suffers continued and ‘excruciating’ ‘psychological and emotional pain’ as a result of her gender dysphoria”). Evidence that an incarcerated person is at “severe risk of self-harm” through self-castration also supports a finding of irreparable injury. *Hicklin I*, 2018 U.S. Dist. LEXIS 21516, at *31 (irreparable injury where plaintiff was at “severe risk of self-harm” in light of evidence that “she has a history of suicide ideation and has indicated on more than one occasion the inclination to remove her own testicles”).

Here, the irreparable harm Ms. Edmo continues to suffer in the absence of necessary medical treatment is clear. Defendants’ refusal to provide Ms. Edmo access to qualified medical providers knowledgeable about gender dysphoria, including those who can appropriately evaluate her for and perform sex-reassignment surgery, causes Ms. Edmo extreme anguish, anxiety, depression, and stress, and places her at high risk for attempting to castrate herself again. Gorton Decl. ¶¶ 67, 69, 73, 76, 85-87; Edmo Decl. ¶¶ 27-29, 35-36. This risk is substantially heightened by the recent enlargement of Ms. Edmo’s testicles, which is a result of medically unwarranted cessation of her spironolactone. Gorton Decl. ¶ 64; Ettner Decl. ¶ 70. Ms. Edmo describes “[t]he thought of never being able to have sex-reassignment surgery” as “too stressful to imagine. I would compare it to telling a cancer patient: ‘This treatment will cure you, but you can’t have it.’ Without surgery, I feel like I am living, but dying inside.” Edmo Decl. ¶ 37. Drs. Ettner and Gordon both opine that without sex-reassignment surgery, Ms. Edmo’s symptoms of gender dysphoria will continue to worsen and the risk that she may resort to life-threatening self-castration, or another suicide attempt, is significant and “dire.” Ettner Decl. ¶¶ 67, 71; Gorton Decl. ¶ 88.

In addition to these severe emotional, psychological, and physical harms, the deprivation of Ms. Edmo's Eighth and Fourteenth Amendment rights alone also establishes irreparable injury. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F. 3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also *Doe v. Harris*, 772 F. 3d 563, 583 (9th Cir. 2014); *Norsworthy*, 87 F. Supp. 3d at 1193 ("[T]he deprivation of [Plaintiff's] constitutional rights under the Eighth Amendment is itself sufficient to establish irreparable harm."); *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1282 (N.D. Cal. 2014) ("[D]eprivation of constitutional rights always constitutes irreparable harm."); accord *Stockman*, No. 5:17-cv-01799-JGB-KK, Dkt. No. 79, at 20 (finding that the stigmatic harm of transgender people being seen as "less-than" as a result of the transgender military ban constituted irreparable harm sufficient to warrant the grant of a preliminary injunction).

IV. The Balance of Equities Weighs Strongly in Plaintiff's Favor

The balance of equities heavily favors Ms. Edmo's requested relief. "Courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" *Winter*, 555 U.S. at 24 (quoting *Amoco Production Co.*, 480 U.S. 531, 542 (1987)).

Plaintiff has established that she suffers irreparable harm, including unnecessary physical and emotional suffering and denial of her constitutional rights, as a result of Defendants' refusal to provide her with medically necessary treatment for gender dysphoria, including sex-reassignment surgery. This is more than sufficient to tip the balance of equities in Ms. Edmo's favor. See, e. g., *Hicklin I*, 2018 U.S. Dist. LEXIS 21516, at *44 (finding the "balance of harms substantially weighs in favor of granting injunctive relief" because plaintiff demonstrated "she continues to face irreparable injury absent relief . . . including the denial of her constitutional rights"); *Norsworthy*, 87 F. Supp. 3d at 1193 ("The balance of the equities favors [plaintiff's] requested relief. She has established that she is suffering and is likely to continue to suffer unnecessary pain if she is denied SRS."); *Rhea v. Wash. Dep't of Corr.*, 2010 U.S. Dist. LEXIS

97705, at *37 (W.D. Wash. July 2, 2010) (“In light of the medical findings of these physicians that [plaintiff] is suffering and will continue to suffer unnecessary pain, the undersigned finds that the balance of hardships is greater for Ms. Rhea if the injunction were not granted.”).

Defendants cannot cite any legitimate concerns that would outweigh the irreparable harm Ms. Edmo is suffering. *Rodde v. Bonta*, 357 F. 3d 988, 999 (9th Cir. 2004) (balance of hardships favored disabled plaintiffs, who would be deprived of necessary treatment and suffer increased pain and medical complications without relief); *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (defendant “cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations”); *Hernandez*, 110 F. Supp. 3d at 957 (balance of equities favored inmates given Ninth Circuit law holding “that the interest in protecting individuals from physical harm outweighs monetary costs to government entities”).

V. The Public Interest Requires an Injunction

Finally, the public interest requires that Defendants be ordered to provide medically necessary treatment to Ms. Edmo, including sex-reassignment surgery. *See Melendres*, 695 F. 3d at 1002 (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” (citations and internal quotations omitted)); *see also United States v. Raines*, 362 U.S. 17, 27 (1960) (“[T]here is the highest public interest in the due observance of all constitutional guarantees.”). “In addition, ‘the public has a strong interest in the provision of constitutionally-adequate health care to prisoners.’” *McNearney v. Wash. Dep’t of Corr.*, 2012 U.S. Dist. LEXIS 115802, at *44 (W.D. Wash. June 15, 2012) (quoting *Flynn v. Doyle*, 630 F. Supp. 2d 987, 993 (E.D. Wis. 2009)). Conversely, there is no public interest in forcing Ms. Edmo to continue to suffer unnecessary and life-threatening harms during this litigation. *See Fields*, 653 F. 3d at 556; *Norsworthy*, 87 F. Supp. 3d at 1194.

VI. Plaintiff’s Requested Relief Complies with the Prison Litigation Reform Act

The scope of Plaintiff’s proposed injunction conforms to the Prison Litigation Reform Act’s requirement that a court “shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation

of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(2). “The Court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system.” *Id.* The Ninth Circuit has clarified that the PLRA “has not substantially changed the threshold findings and standards required to justify an injunction.” *Gomez v. Vernon*, 255 F. 3d 1118, 1129 (9th Cir. 2001).

Here, an injunction granting Ms. Edmo “access to adequate medical care, including referral to a qualified surgeon for sex-reassignment surgery, is narrowly drawn, extends no further than necessary to correct the constitutional violation, and is the least intrusive means necessary to correct the violation.” *Norsworthy*, F. Supp. 3d at 1194-95. Further, “[t]here is no evidence that granting this relief will have any adverse impact on public safety or the operation of the criminal justice system.” *Id.* at 1195; *see Fields*, 653 F. 3d at 556.

CONCLUSION

For the foregoing reasons, Plaintiff requests the Court issue a preliminary injunction: 1) ordering Defendants to provide her immediate access to necessary medical treatment, including (a) sex-reassignment surgery; (b) reinstatement of spironolactone, or an equivalent type of care; (c) access to gender-appropriate underwear, clothing, and commissary items; (d) any other treatment a medical professional qualified to assess and treat gender dysphoria determines to be medically urgent; and 2) prohibiting Defendants from (a) implementing their policy and/or practice of blanket denial of access to such treatment for transgender persons incarcerated in the Idaho Department of Corrections; and (b) disciplining or retaliating against Plaintiff for expressing her gender identity, including wearing gender-appropriate underwear and clothing, and adhering to female grooming standards with regards to makeup and hair styling.

Dated: June 1, 2018

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Lori E. Rifkin

Lori E. Rifkin

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of June, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dylan Eaton
deaton@parsonsbehle. com

J. Kevin West
kwest@parsonsbehle. com

Attorneys for Corizon Defendants

Brady James Hall
brady@melawfirm. net

Attorney for IDOC Defendants

/s/ - Lori E. Rifkin
Lori E. Rifkin

5/06

Form: Pro Hac Vice

IN THE UNITED STATES DISTRICT/BANKRUPTCY COURTS
FOR THE DISTRICT OF IDAHO

Adree Edmo	)	Case No. 1:17-cv-00151-BLW
	)	
v.	)	APPLICATION FOR ADMISSION
Idaho State Board of Correction, et al.	)	PRO HAC VICE
	)	
	)	Fee: \$225.00

Pursuant to Local Rule 83.4(e) of the United States District Court for the District of Idaho,
Dan Stormer, hereby applies for admission pro hac vice to appear and participate
in this case on behalf of Plaintiff, Adree Edmo,

The applicant hereby attests as follows:

1. Applicant resides in Los Angeles, California, and practices at the following
address and phone number Hadsell Stormer & Renick LLP, 128 N. Fair Oaks Ave., Pasadena, CA 91103;
(626) 585-9600

2. Applicant has been admitted to practice before the following courts on the following dates:

Courts:	Dates:
<u>U.S. Supreme Court</u>	<u>11/05/1979</u>
<u>Court of Appeals - Ninth Circuit</u>	<u>05/03/1978</u>
<u>U.S. Court of Appeals for the Federal Circuit</u>	<u>02/05/1986</u>
<u>(Continued on Attachment)</u>	

3. Applicant is in good standing and eligible to practice in said courts.

4. Applicant is not currently suspended or disbarred in any other courts.

5. Craig Durham, a member in good standing of the bar of this court, of the firm of
Ferguson Durham, practices at the following office address and phone number:
223 N. 6th Street, Suite 325, Boise, Idaho 83702; (208) 345-5183

and is hereby designated as co-counsel with authority to act as attorney of record for all purposes. Said designee hereby consents
to this designation by signing this application.

Dated this _____ day of _____,

Applicant

Signed under penalty of perjury.

Designee



Digitally signed by Craig Durham
DN: cn=Craig Durham, o, ou,
email=durhamlaw@outlook.com, c=US
Date: 2017.08.31 09:41:53 -06'00'

Attachment to Application for Admission *Pro Hac Vice* (Dan Stormer)

[Continued from first page]

2.

Courts:	Dates:
U.S. District Court - Central District of California	07/06/1984
U.S. District Court - Northern District of California	11/10/1999
U.S. District Court - Eastern District of California	03/08/1990
U.S. District Court - Southern District of California	03/12/2004
U.S. District Court – District of Arizona	07/31/2015
U.S. District Court - District of Colorado	1975
U.S. District Court - District of Columbia	2009
Court of Appeals – 10th Circuit	1981
U.S. Court of Appeals - District of Columbia Circuit	11/16/2009
U.S. Court of Federal Claims	1986
California State Court	12/1981
Colorado State Court	1974
Washington State Court	1977

5/06

Form: Pro Hac Vice

IN THE UNITED STATES DISTRICT/BANKRUPTCY COURTS
FOR THE DISTRICT OF IDAHO

Adree Edmo	)	Case No. 1:17-cv-00151-BLW
	)	
v.	)	APPLICATION FOR ADMISSION
Idaho State Board of Correction, et al.	)	PRO HAC VICE
	)	
	)	Fee: \$225.00

Pursuant to Local Rule 83.4(e) of the United States District Court for the District of Idaho,
Lori E. Rifkin, hereby applies for admission pro hac vice to appear and participate
in this case on behalf of Plaintiff, Adree Edmo

The applicant hereby attests as follows:

1. Applicant resides in Oakland, California, and practices at the following
address and phone number Hadsell Stormer & Renick LLP, 4300 Horton Street, #15, Emeryville, CA 94608;
(626) 585-9600

2. Applicant has been admitted to practice before the following courts on the following dates:

Courts:	Dates:
<u>U.S. District Court - Central District of California</u>	<u>11/24/2008</u>
<u>U.S. District Court - Northern District of California</u>	<u>10/24/2006</u>
<u>U.S. District Court - Eastern District of California</u>	<u>10/16/2006</u>
<u>(Continued on Attachment)</u>	

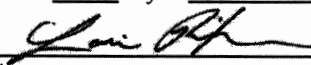
3. Applicant is in good standing and eligible to practice in said courts.

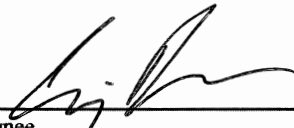
4. Applicant is not currently suspended or disbarred in any other courts.

5. Craig Durham, a member in good standing of the bar of this court, of the firm of
Ferguson Durham, practices at the following office address and phone number:
223 N. 6th Street, Suite 325, Boise, Idaho 83702; (208) 345-5183

and is hereby designated as co-counsel with authority to act as attorney of record for all purposes. Said designee hereby consents
to this designation by signing this application.

Dated this 30th day of August, 2017.


Applicant


Designee

Signed under penalty of perjury.

Attachment to Application for Admission *Pro Hac Vice* (Lori Rifkin)

[Continued from first page]

2.

Courts:

Dates:

Court of Appeals - Ninth Circuit

1/25/2007

California State Court

09/2006

Western District of New York

01/2011

US District Court - District of Connecticut

09/2005

New York State Court

2005 (Inactive - Resigned)

Connecticut State Court

2005 (Inactive - Retired)

5/06

Form: Pro Hac Vice

IN THE UNITED STATES DISTRICT/BANKRUPTCY COURTS
FOR THE DISTRICT OF IDAHO

Adree Edmo	)	Case No. 1:17-cv-00151-BLW
	)	
v.	)	APPLICATION FOR ADMISSION
Idaho State Board of Correction, et al.	)	PRO HAC VICE
	)	
	)	Fee: \$225.00

Pursuant to Local Rule 83.4(e) of the United States District Court for the District of Idaho,
Amy Whelan, hereby applies for admission pro hac vice to appear and participate
 in this case on behalf of Plaintiff, Adree Edmo.

The applicant hereby attests as follows:

1. Applicant resides in San Francisco, California, and practices at the following
 address and phone number National Center for Lesbian Rights, 870 Market Street, Suite 370, San Francisco, CA 94102;
(415) 365-1338

2. Applicant has been admitted to practice before the following courts on the following dates:

Courts:	Dates:
<u>United States Supreme Court</u>	<u>07/26/2010</u>
<u>United States Court of Appeals for the Ninth Circuit</u>	<u>02/20/2001</u>
<u>United States Court of Appeals for the Sixth Circuit</u>	<u>03/19/2014</u>
<u>(Continued on Attachment)</u>	

3. Applicant is in good standing and eligible to practice in said courts.

4. Applicant is not currently suspended or disbarred in any other courts.

5. Craig Durham, a member in good standing of the bar of this court, of the firm of
Ferguson Durham, practices at the following office address and phone number:
223 N. 6th Street, Suite 325, Boise, Idaho 83702; (208) 345-5183

and is hereby designated as co-counsel with authority to act as attorney of record for all purposes. Said designee hereby consents
 to this designation by signing this application.

Dated this 30th day of August, 2017.


 Applicant

Signed under penalty of perjury.


 Designee

Digitally signed by Craig Durham
 DN: cn=Craig Durham, o, ou,
 email=durhamlaw@outlook.com, c=US
 Date: 2017.08.30 14:20:37 -0600

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Attachment to Application for Admission *Pro Hac Vice* (Amy Whelan)

[Continued from first page]

2.

Courts:

Dates:

United States Court of Appeals for the Third Circuit	12/10/2013
U.S. District Court – Northern District of CA	12/03/2001
U.S. District Court – Eastern District of CA	12/20/2001
U.S. District Court – Central District of CA	07/14/2009
U.S. District Court – Southern District of CA	07/26/2010
Supreme Court of California	12/03/2001

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Adree Edmo
IDOC 94691
ISCI/BHU Unit 16
P.O. BOX 14
Boise, Idaho 83707-0014
Plaintiff

Case No: _____ Inmate Name: Adree Edmo
Date: 04/06/2017 Inmate IDOC#: 94691
Document Title: Motion For Appointment of
3 Counsel
Total Pages: 3 Inmate Initials Verifying Page Count: AE
Document(s) 1 of 3

UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF IDAHO

ADREE EDMO,
PLAINTIFF,
v.

IDAHO STATE BOARD OF
CORRECTION, et al.,
DEFENDANTS.

Case No.

MOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW, ADREE EDMO, Plaintiff in above entitled matter moves this Honorable Court to GRANT Plaintiff's MOTION FOR APPOINTMENT OF COUNSEL, for the reasons more fully set forth herein PLAINTIFF'S AFFIDAVIT OF SUPPORT IN MOTION FOR APPOINTMENT OF COUNSEL and PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL.

1. Plaintiff is currently incarcerated within the Idaho Department of Correction ("IDOC") under direct care, custody and control of Warden Howard Kieth Yordy at the Idaho State Correctional Institution ("ISCI").

2. The issues to be presented in this matter may become complex and complicated due to medical and legal theories far reaching beyond Plaintiff's ability and resources available to her in a prison facility.

MOTION FOR APPOINTMENT OF COUNSEL-1

3. The issues presented in this matter also require the ability to investigate the facts extensively, requiring access to computer generated/stored information, e.g., medical databases, emails, electronic formats, etc. This case presents the need of extensive documentary discovery, depositions of prison officials, and expert witnesses outside the prison within the community.

4. The Plaintiff's indigent ability to present issues herein case as she is not an experienced jailhouse lawyer, nor does she have access to resources to conduct adequate legal research of case law to resent herein issues.

5. The complexity and difficulty of this case, specifically, access to Plaintiff's medical records in which Plaintiff would need representation to acquire such records, as well as a trained medical professional to explain the medical terminology and a medical expert to explain the medical issues herein.

6. The above burden placed on Plaintiff would not allow Plaintiff to present this case as equally compared to the trained Counsel of the State of herein matter.

DATED This 30th day of March, 2016.

Adree Edmo 04/06/2017 AE
ADREE EDMO, PLAINTIFF

MOTION FOR APPOINTMENT OF COUNSEL-2

CERTIFICATE OF SERVICE

I, ADREE EDMO, CERTIFY, I mailed a true and correct copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL, for the purposes of filing with the Court via the ISCI Offender Mailing Procedures to the address listed below:

X U.S. DISTRICT COURT
JAMES A. MCCLURE FEDERAL BUILDING
550 WEST FRONT STREET
BOISE IDAHO 83704

Admo *03/30/2017* *04/06/2017* *Ag*
ADREE EDMO, PLAINTIFF

Case 1:17-cv-00151-BLW Document 5-1 Filed 04/06/17 Page 1 of 6

Adree Edmo
IDOC 94691
ISCI/BHU 16
P.O.BOX 14
Boise, Idaho 83707-0014
Plaintiff, Pro Se.

Case No: _____ Inmate Name: Adree Edmo
Date: 04/06/2017 Inmate IDOC#: 94691
Document Title: Plaintiff's Memorandum of Law For
Appointment of Counsel
Total Pages: 6 Inmate Initials Verifying Page Count: AG
Document(s) 1 of 6

UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF IDAHO

ADREE EDMO,

PLAINTIFF,

v.

IDAHO STATE BOARD OF
CORRECTION, et al.,
DEFENDANTS.

Case No. _____

PLAINTIFF'S MEMORANDUM
OF LAW FOR APPOINTMENT
OF COUNSEL

A. STATEMENT OF THE CASE

1. This is a civil rights case filed under 42 U.S.C. Section 1983 by a state prisoner and asserting claims for unconstitutional denial of medical care resulting from Plaintiff's serious medical condition.

2. The Plaintiff seeks damages as to all claims and an injunction to ensure proper medical treatment.

B. STATEMENT OF THE FACTS

3. The Complaint alleges that the Plaintiff was diagnosed with a serious medical condition Gender Identity Disorder ("GID") (Compl. at 3, Affidavit of Adree in Support of Civil Rights Complaint at 44).

4. Plaintiff has been provided cross-sex hormonal therapy of female hormones and testosterone suppressants for the feminizing effects it has on the body. (Aff. Adree Edmo Supp.

PLAINTIFF'S MEMORANDUM OF LAW FOR APPOINTMENT OF COUNSEL-1

of Civ. Rights Compl. at 52,53)

5. Plaintiff alleges that cross-sex hormonal treatment and the mood management process group of "Gender Identity Disorder Process Group," had not been adequate medical care for her GID. (Aff. Adree Edmo Supp. of Civ. Rights Compl. at 65)

6. The Complaint alleges that the medical providers knew of and/or know of the appropriate Standard of Care used when treating GID and refused to treat accordingly. (Aff. Adree Edmo of Supp. of Civ. Rights Compl. at 29)

7. The Complaint alleges that non-medical staff and Defendants do not and continually denial Plaintiff with reasonably adequate medical care services at a level reasonably commensurate with modern medical science and of a quality acceptable within prudent official standards. (Compl. at)

C. ARGUMENT

THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF

8. In deciding whether to appoint counsel for an indigent litigant, the Court should consider, "the factual complexity of the case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues." Abdullah v. Gunter, 949 F.2d 1032, 1035 (8th Cir. 1991)(citations omitted), cert. denied, 112 S.Ct. 1995 (1992)

9. In addition, courts have suggested that the most important factor is whether the case appears to have merit. Carmona v. U.S. Bureau of Prisons, 243 F.3d 629, 632 (2d. Cir. 2001)

PLAINTIFF'S MEMORANDUM OF LAW FOR APPOINTMENT OF COUNSEL-2

10. Each of these factors weighs in favor of appointment of counsel in this case.

11. **Factual Complexity.** The Plaintiff alleges the denial of medical care for the Plaintiff's serious medical condition. The sheer number of claims and defendants makes this a factually complex case.

12. In addition, Plaintiff's claims involve medical care and the denial of medical care; it will probably be necessary to present a medical expert witness to cross-examine medical witnesses called by the defendants, or both. The presence of medical claims and other issues requiring expert testimony supports appointment of counsel. Montgomery v. Pinchak, 294 F.3d 492, 503-04 (3d.Cir.2002); Moore v. Mabus, 976 F.2d 268, 272 (5th Cir. 1992); Jackson v. County of McClean, 953 F.2d 1070, 1073 (7th Cir.1992).

13. **The Plaintiff's ability to investigate.** The Plaintiff is not able to investigate the facts necessary to this case. For example, Plaintiff is only allowed to view her medical record one time during one month period. She has no medical education as to the medical terminology. She is also subject to be moved to a different institution deemed appropriate. Plaintiff is in the same situation with regard to developing the facts as an inmate who has been transferred to a different institution, a factor several courts have cited in appointing counsel. Tucker v. Randall, 948 F.2d 288, 291-92 (7th Cir.1991); Gates v. Coughlin, 679 F.Supp. 270, 273 (W.D.N.Y. 1988),

PLAINTIFF'S MEMORANDUM OF LAW FOR APPOINTMENT OF COUNSEL-3

14. Furthermore, this case will require considerable discovery concerning the identity of witnesses, the officer's reports, and statements about the injury incident and the Plaintiff's medical history. See Purham v. Johnson, 126 F.3d 454, 459 (3d.Cir. 1997)(holding counsel should have been appointed because of "prisoner's lack of legal experience and complex discovery rules clearly put him at a disadvantage in countering defendant's discover tactics... these [discovery rules] prevented [Plaintiff] from presenting an effective case below.")

15. **Conflicting Testimony.** Plaintiff's account on her medical treatment are squarely in conflict of medical provider's and other medical personnel. The existence of credibility issues supports the appointment of counsel. Steele v. Shah, 87 F.3d 1266, 1271 (11th Cir. 1996); Gatson v. Coughlin, 679 F.Supp. at 273.

16. **The ability of the indigent to present her claim.** The Plaintiff is an indigent prisoner with no legal training, a factor that supports the appointment of counsel. Forbes v. Edgar, 112 F.3d 262, 264 (7th Cir. 1997). In addition, she is confined with very limited access to legal materials. Rates v. Johnson, 969 F.2d 700, 703-04 (8th Cir. 1992)(citing lack for ready access to law library as a factor supporting appointment of counsel.) (internal citations omitted).

17. **Legal Complexity.** The large number of officials, some of whom are supervisory officials, presents complex legal issues of determining which defendants were sufficiently involved in

PLAINTIFF'S MEMORANDUM OF LAW FOR APPOINTMENT OF COUNSEL-4

the constitutional violations to be liable. Hendricks v. Coughlin, 114 F.3d 390, 394 (2d.Cir. 1997)(holding complexity of supervisory liability supported appointment of counsel)(internal citations omitted).

18. In addition, the Plaintiff has asked for jury trial, which requires much greater legal skill than the Plaintiff has or can develop. Solis v. County of Los Angeles, 514 F.3d 946, 958 (9th Cir. 2009).

19. **Merit of the case.** The Plaintiff's allegations, if proved, would clearly establish a constitutional violation.

20. The allegations of denial of medical care amount to "intentionally interfering with the treatment once prescribed," which the Supreme Court has specifically cited as an example of unconstitutional deliberate indifference to prisoner's medical needs. Estelle v. Gamble, 429 U.S. 97, 105, 97 S.Ct. 285 (1976).

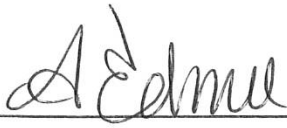
21. Furthermore, denial of female undergarments and denial of access to female commissary hygiene and cosmetics for an individual diagnosed with GID is deliberate indifference to treat a serious condition. Konitzer v. Frank, 711 F.Supp. 2d. 874, 908-11 (E.D.Wis.2010); Soneeya v. Spencer, 851 F. Supp. 2d. 228, 248 (D.Mass. 2012). On it's face, then, this is a meritorious case.

22. CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiff's motion and appoint counsel.

DATED this _____ day of _____, 2016.

PLAINTIFF'S MEMORANDUM OF LAW FOR APPOINTMENT OF COUNSEL-5



ADREE EDMO, PLAINTIFF, PRO SE.

CERTIFICATE OF MAILING

I, ADREE EDMO, CERTIFY I mailed a true and correct copy of the foregoing, PLAINTIFF'S MEMORANDUM OF LAW FOR APPOINTMENT OF COUNSEL, for the purposes of filing with the Court via the ISCI Offender Mailing Procedures to the address listed below:

[X] U.S. DISTRICT COURT
JAMES A. MCCLURE FEDERAL BUILDING
550 WEST FRONT STREET
BOISE, IDAHO 83704



ADREE EDMO, PLAINTIFF, PRO SE.

04/06/2017 AG
~~03/30/2017~~
DATE

PLAINTIFF'S MEMORANDUM OF LAW FOR APPOINTMENT OF COUNSEL-6