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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; AL RAMIREZ, 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' OBJECTION TO THE
COURT'S ORDER DENYING
EXPEDITED MOTION TO STAY AND
SETTING HEARING RE:
SURGICAL TECHNIQUE AND
PRESURGICAL TREATMENTS [DKT.
244]**

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, Al Ramirez, Howard Keith Yordy, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP, submit the following in response to the Court's Order Denying Defendants' Expedited Motion to Stay (Dkt. 244).

First, Defendants reserve and do not waive any and all of their objections, arguments and defenses asserted in this district court case and any related appeal in this case.

Second, Defendants object to the Court's October 24, 2019 Order Requiring Defendants Provide All Pre-Surgical Treatments and Related Corollary Appointments or Consultations Necessary for Gender Confirmation Surgery (Dkt. 225) and the Order Denying Defendants' Expedited Motion to Stay (Dkt. 244). In their Motion to Stay (Dkt. 228), Defendants already identified issues with the Court's October 24, 2019 Order (Dkt. 225) requiring Defendants proceed with pre-surgical treatments, including but not limited to permanent hair removal. The arguments in Defendants' Motion to Stay (Dkt. 228) are also incorporated herein in their entirety in this objection.

For the same reasons stated in their Motion to Stay (Dkt. 228), this Court does not have jurisdiction to proceed with further briefing and evidentiary hearing regarding which surgery is medically necessary and what pre-surgical treatment and requirements are medically necessary at this time. *See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166-1167 (9th Cir. 2001) (holding "Once a notice of appeal is filed, the district court is divested of jurisdiction over the matters being appealed."; "any action taken pursuant to Rule 62(c) may not materially alter the status of the case on appeal."; and any modification of an injunction must leave "unchanged the core questions" on appeal.) Ms. Edmo agrees with Defendants that this Court

does not have jurisdiction to further adjudicate the issues implicated by its Presurgical Order. (Dkt. 249, p. 1.)_The issues to be addressed by this Court in the November 21, 2019 hearing are on appeal in both Defendants' original appeal in this case and now in its recent appeal of the Court's Order regarding pre-surgical requirements (Dkt. 225). Accordingly, this Court does not have jurisdiction to proceed with briefing, fact gathering, or the November 21, 2019 evidentiary hearing because it all relates to Defendants' arguments on appeal.

To be clear, Defendants did not ask for (and are not asking for) an evidentiary hearing at this point and are not trying to re-litigate issues. Defendants' filed the Declaration of Dr. Dawson with its Motion to Stay primarily for the purpose of demonstrating that Plaintiff is inappropriately demanding pre-surgical treatment, such as permanent hair removal, without having established that the Eighth Amendment could only be satisfied by a surgical procedure that requires hair removal. Indeed, this is especially concerning because there are at least three distinct and unique vaginoplasty surgical options for Plaintiff, two of which do not require permanent hair removal. While Defendants contend that Plaintiff does not get to choose which medically acceptable vaginoplasty surgery she receives under the Eighth Amendment, it is notable that Plaintiff had apparently not even decided which surgery she wants as of her last appointment with the GCS surgeon.

Third, Defendants object to the November 21, 2019 evidentiary hearing and the related briefing schedule because the timing is unfair and unduly prejudicial to Defendants. Among other things, Defendants have to file their Opening Brief in their second appeal to the Ninth Circuit in this case by the end of this week. Further, some of the questions that the Court wants to address regarding medical necessity call for expert testimony, yet this Court has provided the parties with less than two weeks to secure experts and develop the requisite testimony. Defendants also object

to the extent the Court has shifted the burden of proof onto Defendants demanding that they establish an element of Plaintiff's case regarding medical necessity. *See Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004). However, to the extent the Court wants Defendants to provide evidence related to its questions for the evidentiary hearing, Defendants need more time to retain and work with appropriate experts in this regard. Additionally, absent an order establishing how much time the Court has reserved for the limited evidentiary hearing, Defendants maintain an objection to the hearing out of concern they will not be provided sufficient time to present testimony and cross-examine witnesses such that Defendants are not prejudiced.

Finally, without waiving any objections, arguments and defenses (including those stated herein), Defendants refer the Court to the Second Declaration of Geoffrey Stiller, dated November 12, 2019, filed contemporaneously herewith. This declaration is submitted pursuant to the Court's order (Dkt. 244) requiring evidentiary materials to be submitted by November 15, 2019 for an evidentiary hearing the Court has scheduled for November 21, 2019. Defendants reserve the right to submit additional briefing, declaration/affidavits or other evidentiary materials for the November 21, 2019 hearing.

DATED this 13th day of November, 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 13th day of November, 2019.

MOORE ELIA KRAFT & HALL, LLP

By: /s/ Brady J. Hall

Brady J. Hall

Counsel for Defendants Idaho Department of
Correction, Henry Atencio, Jeff Zmuda, Al
Ramirez, Howard Keith Yordy, Richard Craig,
and Rona Siegert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of November, 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:

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Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**SECOND DECLARATION OF
GEOFFREY D. STILLER**

I, Geoffrey D. Stiller, M.D., state as follows:

1. I have actual knowledge of the matters stated in this declaration and would so testify if called as a witness in this proceeding.

2. My credentials are previously on file with the court. But, by way of background, I received my M.D. from the University of Minnesota Medical School in 1996. I am a licensed physician and surgeon in Idaho and Washington.

3. Among other things, I provide a variety Gender Confirmation Surgeries to patients. Such surgeries include, but are not limited to, penectomy, orchiectomy, vaginoplasties, clitoroplasty, and vulvoplasty.

4. Corizon asked me to provide an initial consult with its patient, Adree Edmo. As such, Ms. Edmo had that initial consult with me on April 12, 2019. Attached as Exhibit A is a true and correct copy of my note regarding this initial consult appointment with Ms. Edmo. The only alterations to my attached note are the date of birth has been redacted, there are bates numbers "Corizon 1858 – 1861" on the bottom of the pages, and the first page of my note includes a stamp and writing under it from a Joseph Starrs, PA-C, which I believe to be a prison medical provider who reviewed my note. The remainder of the attached note was prepared by me and my office and electronically signed by me.

5. As I have indicated in my previous declaration, I had a presurgical appointment with Ms. Adree Edmo on April 12, 2019. During this appointment, I discussed three types of medically acceptable vaginoplasties, including: (1) a penile inversion surgery, (2) colovaginoplasty, and a (3) zero-depth option.

6. At the April 12 initial consult, I discussed the zero-depth surgical option with Ms. Edmo, which involves removal of the penis and testicles without creation of a vagina (a.k.a. an orchiectomy and penectomy). Hair removal is not medically necessary for this surgical option.

7. At the April 12 initial consult, I also discussed another vaginoplasty option with Ms. Edmo called the penile inversion surgery. As I indicated in my previous declaration in this case, the penile inversion surgery is by far the most common vaginoplasty option selected by my patients. This option involves, in basic terms, using the penile skin to construct the vaginal lining and the labia majora are created using scrotal skin. Since the penile and scrotal skin, which has hair, is used to create the vagina, permanent hair removal in the genital area is a medically necessary part of this surgery. In order to achieve the required hair removal, the patient must undergo electrolysis or laser hair removal in the penile and scrotal area. This hair removal process typically requires multiple hair removal treatment sessions over a period of 6 to 9 months. After these hair removal treatment sessions are complete, the hair removal is permanent in the treated area.

8. At the April 12 initial consult, I also discussed with Ms. Edmo another vaginoplasty option is called the colovaginoplasty. Colovaginoplasty is a surgical procedure that involves using a section of the end of the large intestine (the sigmoid colon) to create a vagina. This procedure involves at least two separate surgeries that usually occur about 6 months apart. The first surgery involves creating the external anatomy. The second surgery involves creating the vagina from the colon. Since the colon is used for the colovaginoplasty surgical option, rather than the penile and scrotal skin, hair removal (by way of electrolysis or laser) in the genital area is not medically necessary or required for colovaginoplasty surgery.

9. To be clear, toward the end of the Plan portion of my attached initial consult note, I state: "If pt desires colovaginoplasty, the first stage can be completed with hair removal then 6 mo later would preceed [sic] with a colonic interposition." There was a typo in this sentence. It should read as follows: "If patient desires colovaginoplasty, the first stage can be completed without hair removal, then 6 months later I would proceed with a the colonic interposition." Indeed, this second, corrected sentence is accurate because the hair removal is not medically necessary for the colovaginoplasty.

10. I have left it up to Ms. Edmo to choose which of the above procedures she wants. At the time of her April 12 initial consult, Ms. Edmo had not chosen which option she wanted.

11. Corizon's Regional Medical Director was recently in contact with me and I explained the above to her. I also explained that Ms. Edmo's hormone therapy will need to be stopped about three weeks prior to the surgery regardless of which of the above vaginoplasty surgical options are chosen by Ms. Edmo. This can result is mood swings, dizziness and nausea or the appearance of masculine traits during this time period.

I declare under penalty of perjury under the laws of the United States of America and the State of Idaho that the foregoing is true and correct.

Executed this 12 day of November, 2019 in Spokane, Washington.



Geoffrey D. Stiller, M.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of November, 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:

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

EXHIBIT A

Apr. 24. 2019 11:39AM

Case 1:17-cv-00151-BLW Document 250-2 Filed 11/13/19 Page 2 of 5

PALOUSE SURGEONS MOSCOW

No. 8982 P. 6



2400 West A Street Suite 101 Moscow, ID 83843-4902
(208) 882-1700 Fax: (208) 882-1778

April 24, 2019
Page 1
Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED]

35429

Ins: Corizon Health Inc.

04/12/2019 - Office Visit: MTF GRS Consult
Provider: Geoffrey D Stiller
Location of Care: Palouse Surgeons

Joseph Starrs, PA-C

Reviewed all

J 4/24/19

Visit Type: Follow-up

Primary Provider: Geoffrey D Stiller

History of Present Illness:

PCP: Dr. Albiso

Endocrinologist: same

Counselor: multiple

Support: unknown

Pt presents to discuss options for GRS.

Pt is a transgender female whose preferred pronouns are "she, her, hers." She resides at Idaho State Correctional Facility. She has sued to allow transitioning both medically and surgically. She has been granted this by the court. She is here to discuss surgical options.

Pt has known of her transgender status since she was a young teenager. Pt has been on hormones since 08/2012. After 6 months she began to find clarity. Pt has been suffering from gender dysphoria for over 10 years. She has also felt different, but was raised on a reservation and had to hide it. Has always felt like her brain is female but her body is not. Puberty was very difficult for her when her body began masculinizing. Diagnosed with depression at age 18 and began treatment. She began to get into drag shows at age 21. She has been in the prison system since age 22. She was presenting in her gender since then, although she was oppressed for many years in prison. She has seen about 8 different mental health providers since beginning her court process. They have all been supportive per the patient. She is expecting to be moved to a female correctional center after surgery. She is hoping for the correct female anatomy.

She has had suicide attempts before transitioning. While incarcerated she did attempt to self castrate requiring operative repair.

Past Medical History:

Reviewed and updated today:

Gender Identity Disorder

Depression

Hepatitis C

Past Surgical History:

Reviewed and updated today:

Laparoscopic Cholecystectomy

Scrotal exploration and closure

Family History



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April 24, 2019

Page 2
 Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED]

35429

Ins: Corizon Health Inc.

- 1) Uncle - Alcoholism - Entered on 4/16/2019
- 2) Aunt - Alcoholism - Entered on 4/16/2019
- 3) Sister - Alcoholism - Entered on 4/16/2019
- 4) Brother - Alcoholism - Entered on 4/16/2019
- 5) Father - Alcoholism - Entered on 4/16/2019
- 6) Mother - Hypertension - Entered on 4/16/2019
- 7) Mother - Alcoholism - Entered on 4/16/2019
 resident of Idaho Correctional Facility

Medications prior to today's visit:

SPIRONOLACTONE TABLET (SPIRONOLACTONE TABS)
 DOCUSATE SODIUM TABLET (DOCUSATE SODIUM TABS)
 VENLAFAXINE HCL TABLET (VENLAFAXINE HCL TABS)
 ESTRADIOL TABLET (ESTRADIOL TABS)
 FINASTERIDE TABLET (FINASTERIDE TABS)

Review of Systems

General

Denies fever, anorexia and weight loss.

GI

Denies abdominal pain, nausea, vomiting, diarrhea, constipation, change in bowel habits, melena, hematochezia, jaundice, gas/bloating, indigestion/heartburn, dysphagia and odynophagia.

Breast

Denies left breast lump, right breast lump, nipple discharge, bloody discharge from nipple, breast pain, abnormal mammogram and breast enlargement.

CV

Denies chest pains, palpitations, syncope and peripheral edema.

Resp

Denies cough, shortness of breath, hemoptysis, wheezing and pleuritic chest pain.

Vascular

Denies varicose veins, leg swelling, leg redness, leg coolness, pain in legs with walking, resting leg pain, pain at night in legs and blue toe(s).

GU

Denies dysuria, hematuria, discharge, urinary frequency, urinary hesitancy, nocturia, incontinence and erectile dysfunction.



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April 24, 2019
Page 3
Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED] 35429

Ins: Corizon Health Inc.

Derm

Denies suspicious lesions, new skin lesions, changing mole(s), rash, itching and history of skin cancer.

Neuro

Denies paralysis, paresthesias, seizures and frequent headaches.

Psych

Denies depression, anxiety, memory loss, suicidal ideation, hallucinations, paranoia, phobia and confusion.

Endo

Denies cold intolerance, heat intolerance, polydipsia, polyphagia, polyuria and unusual weight change.

Heme

Denies abnormal bruising, bleeding and enlarged lymph nodes.

MS

Denies back pain, sciatica and arthritis.

Physical Exam

General:

well developed, well nourished, in no acute distress

Head:

normocephalic and atraumatic

Eyes:

PERRL/EOM intact; conjunctiva and sclera clear

Neck:

no masses, thyromegaly, or abnormal cervical nodes

Lungs:

clear bilaterally to A & P

Heart:

regular rate and rhythm, S1, S2 without murmurs, rubs, gallops, or clicks

Genitalia:

normal male, testes descended bilaterally without masses, no hernias noted, uncircumscised, 3 inch flaccid penis

Extremities:

no clubbing, cyanosis, edema, or deformity noted

Neurologic:

no focal deficits, CN II-XII grossly intact

Cervical Nodes:

no significant adenopathy

Psych:



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April 24, 2019
Page 4
Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED]

35429

Ins: Corizon Health Inc.

alert and cooperative; normal mood and affect; normal attention span and concentration

Assessment

New Problems:

Gender identity disorder (ICD-302.6) (ICD10-F64.9)

Transgender Female

GRS- pt unsure if she desires a penile inversion with scrotal grafts or colovaginoplasty

Plan

Discussed pros and cons of penile inversion technique. Discussed pros and cons of colovaginoplasty.

Discussed use of dilators and other maintenance inside correctional facility.

Discussed average depth of about 5 inches, use of scrotal skin grafts if desired. Hair removal needed if desires penile inversion with scrotal skin grafts- would take 9 mo to 1 yr

Discussed stimulation of clitoris and prostate post operatively.

Discussed procedure in detail, hospital stay, length of surgery etc.

Discussed risks of complications; wounds, loss of grafts, etc.

Recommended hair removal of scrotum for grafts.

If pt desires colovaginoplasty, the first stage can be completed with hair removal then 6 mo later would proceed with a colonic interposition.

We did not receive any recent mental health records. Will need a letter of support from 2 separate mental health providers showing the patient meets WPATH criteria. Will also need a letter of support from her prescribing physician.

New Orders:

99204 New office out pt services Comp, Mod MDM 45min [CPT-99204]

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Electronically signed by Geoffrey D Stiller on 04/16/2019 at 3:35 PM
