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14 *Attorneys for Defendant*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 D.H., by and through his mother, Janice
18 Hennessy-Waller; and John Doe, by and
19 through his guardian and next friend, Susan
20 Doe, on behalf of themselves and all others
21 similarly situated,

22 Plaintiffs,

23 vs.

24 Jami Snyder, Director of the Arizona Health
25 Care Cost Containment System, in her
26 official capacity,

27 Defendant.

Case No. 4:20-cv-00335-SHR

**DEFENDANT’S RESPONSE TO
SUPPLEMENTAL DECLARATION
OF ANDREW CRONYN, MD, IN
SUPPORT OF D.H. AND JOHN
DOE’S MOTION FOR
PRELIMINARY INJUNCTION**

(Assigned to the Honorable Scott H.
Rash)

28 Defendant Jami Snyder (“Defendant”) submits this Response to the Supplemental Declaration of Andrew Cronyn, MD in Support of D.H. and John Doe’s Motion for Preliminary Injunction (“Supplemental Declaration”). (Doc. 32) As explained in detail below, the Supplemental Declaration does not support Plaintiffs’ request for injunctive relief.

1 As an initial matter, Defendant noted in her Opposition to Plaintiffs’ Motion for
2 Preliminary Injunction that Plaintiffs refused to disclose to Defendant any of their relevant
3 medical records. (Doc. 18, p. 3) Significantly, Plaintiffs have continued to refuse to
4 produce relevant medical records. When Plaintiffs requested Defendant’s position on
5 Plaintiffs’ Motion for Leave to file the Supplemental Declaration (Doc. 26), Defendant
6 stated it would not oppose the filing of a supplemental declaration by Dr. Andrew Cronyn,
7 on the conditions that (1) Defendant has the opportunity to respond to the supplemental
8 declaration, and (2) Defendant received all of D.H.’s medical records that address the new
9 development, along with all relevant medical records for D.H. and John Doe, the
10 disclosure of which the parties had discussed during the Rule 26(f) conference. When
11 Defendant asked for Plaintiffs’ assurance on these issues, Plaintiffs would not agree to
12 produce all of the relevant medical records, and instead stated Plaintiffs would withhold
13 documents if they had a “good-faith basis for doing so.” *See* Email Correspondence dated
14 Nov. 16-20, 2020, attached as Exhibit A.

15
16 Plaintiffs now claim the Supplemental Declaration supports D.H.’s claim for
17 irreparable harm. (Doc. 26) But for the same reasons set forth in Defendant’s Opposition
18 to Plaintiff’s Motion for Preliminary Injunction (Doc. 18, p. 9-12), the Supplemental
19 Declaration does not establish irreparable harm relating to Plaintiffs’ alleged gender
20 dysphoria. By way of example, and based upon the limited records available to
21 Defendant:

- 22 • The results of an EEG are still pending to “rule out the possibility that [D.H.] had a
23 seizure” on November 2, 2020. (Doc. 32, ¶¶8-9)
- 24
25 • Dr. Cronyn states Plaintiff D.H.’s asthma and decision to “double bind”
26 contributed to the severity of the panic attack (not the alleged underlying gender
27 dysphoria, for which Defendant still has not received medical records to confirm
28 such diagnosis). (Doc. 32, ¶¶8-10)

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- There are a number of important, relevant pieces of information pertaining to D.H. that are glaringly omitted from the Supplemental Declaration. For example, according to Paragraph 7 of the Supplemental Declaration, D.H. called emergency services and was evaluated by EMTs. An important role of an EMT would be to get D.H.'s vital signs (e.g., blood pressure, heart rate, respiration rate, pulse oximeter level), but none of that information is in the Supplemental Declaration. This information would be relevant to determine if the cause of the November 2, 2020 incident was something else, including an asthma attack.
 - Paragraph 10 of the Supplemental Declaration indicates D.H.'s asthma contributed to the severity of the November 2, 2020 incident. If the incident was caused by an asthma attack, there are serious questions about whether D.H.'s asthma is being treated adequately – e.g., does D.H. use an inhaler or take steroids or other medication for asthma? Before moving forward with an irreversible surgery, it would be important to know whether D.H. is correctly and regularly using an inhaler, steroids, or other medication to properly treat D.H.'s asthma – specifically using them according to prescribed standards.
 - In addition, as noted in the Declaration of Dr. Michael Laidlaw, M.D., hormones (such as steroids to treat asthma) can exacerbate symptoms of anxiety and panic. (*See* Doc. 18-1, ¶¶ 20-21) Thus, there are unresolved questions about whether any steroids or medication D.H. is on may have contributed to the severity of the November 2, 2020 incident.
 - The Supplemental Declaration (Paragraph 10) indicates D.H.'s asthma contributed to the severity of the November 2, 2020 incident, but the Supplemental Declaration does not indicate that D.H. has been referred to – or is being treated by - a pulmonologist (a lung specialist). Since D.H. has asthma, is D.H. being adequately treated for asthma? It could be an asthma-related issue that caused the severity of

1 the breathing issues on November 2, 2020 (rather than the binder), but it unclear
2 whether D.H. is being adequately treated for D.H.'s lung/asthma issues.

- 3
- 4 • There are also unanswered questions about D.H.'s medications. Is D.H. receiving
5 medication for panic attacks? Is D.H. taking all of the prescribed medications
6 regularly and properly, according to prescribed standards? Again, this would be
7 important information to evaluate before moving forward with an irreversible
8 surgery of a teenager.
 - 9 • As noted in Paragraphs 7-8 of the Supplemental Declaration, D.H. was in the
10 emergency room and receiving fluids. But there is no indication in the
11 Supplemental Declaration whether a toxicology screen was done to determine
12 whether any medication caused or exacerbated the November 2, 2020 incident.
13 There could be medications, including legally prescribed medications (e.g., pain
14 medications), that exacerbated D.H.'s symptoms.
 - 15 • There is also no indication in the Supplemental Declaration that, as part of D.H.'s
16 work up, the providers checked for other endocrinology issues (e.g.,
17 hyperthyroidism) that could present similar symptoms.
 - 18 • According to Paragraph 9 of the Supplemental Declaration, Dr. Cronyn "ensured
19 that D.H. was continuing to have regular appointments with Tamar Reed." But
20 Tamar Reed is a Licensed Professional Counselor ("LPC") - she is not a medical
21 doctor or psychologist (Doc. 5-2, ¶¶ 3-4). LPC's in Arizona cannot prescribe
22 medication, and thus Ms. Reed is not qualified to prescribe D.H. medication or
23 evaluate D.H.'s medications. *See, e.g.*, A.R.S. §§ 32-3301, 32-1968(A)(1), 32-
24 1921(A)(5). As noted in the Declarations of Dr. Michael Laidlaw, M.D., and Dr.
25 Stephen Levine, M.D. (Doc. 18-1, ¶23; Doc. 18-2, ¶¶23, 27-35), before an
26 irreversible surgery is performed on D.H., it would be important to ensure that
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D.H. was thoroughly evaluated and treated by a qualified psychiatrist or psychologist who can thoroughly address D.H.’s mental health issues, including through medication.

Even without a full medical history, it is clear that Dr. Cronyn’s Supplemental Declaration does not establish irreparable harm resulting from D.H. not receiving coverage for an irreversible chest reconstruction surgery. Accordingly, Plaintiffs’ Motion for Preliminary Injunction should be denied.

RESPECTFULLY SUBMITTED this 8th day of December, 2020.

BURNSBARTON PLC

By /s/ Kathryn Hackett King

David T. Barton
Kathryn Hackett King

JOHNSTON LAW OFFICES, P.L.C.
Logan T. Johnston
14040 N. Cave Creek Rd., Suite 309
Phoenix, Arizona 85022

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certifies that on December 8, 2020, I electronically transmitted the foregoing document, using the ECF System for filing and transmittal of a Notice of Electronic Filing and to ECF registrants and e-mailed a copy of the foregoing to the following:

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Attorneys for Plaintiffs and the Class

s/Carolyn Galbreath

EXHIBIT A



From: Kate King kate@burnsbarton.com 
Subject: Re: Motion for Leave to File a Supplemental Declaration
Date: November 20, 2020 at 10:34 AM
To: Asaf Orr AOrri@nclrights.org
Cc: Logan Johnston ltjohnston@live.com, David T Barton david@burnsbarton.com, Ray, Brent bray@kslaw.com, Chinsky, Andrew achinsky@kslaw.com, Catherine McKee mckee@healthlaw.org, Abbi Coursolle coursolle@healthlaw.org, Chris Stoll CStoll@nclrights.org, Barr, Daniel (Perkins Coie) DBarr@perkinscoie.com, Howe, Janet M. (Perkins Coie) JHowe@perkinscoie.com

Hi Asaf, Because plaintiffs have refused our reasonable requests, we will not consent to the filing of the supplemental declaration and will move to have it stricken. We will also let the Court know about our reasonable offer of a compromise that has been rejected.

Kathryn Hackett King
BurnsBarton PLC
2201 E. Camelback Road
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O 602.753.4510 IC 602.614.9819

BurnsBarton

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On Nov 20, 2020, at 9:09 AM, Asaf Orr <AOrri@nclrights.org> wrote:

Hi Kate,

Thanks for your response. The only assurance I can provide is that we will produce records that are responsive to your request and will only withhold documents for which we have a good-faith basis for doing so.

We intend to file the motion for leave to file the supplemental declaration by 4p MT on Friday, November 20, 2020. We will indicate that we do not object your client filing a response to the declaration. Please let us know by 3p MT on Friday, November 20, 2020, whether your client will consent to the filing.

Very truly yours,

Asaf

From: Kate King <kate@burnsbarton.com>

Sent: Thursday, November 19, 2020 12:08 PM

To: Asaf Orr <AOrri@nclrights.org>

Cc: Logan Johnston <ltjohnston@live.com>; David T Barton <david@burnsbarton.com>; Ray, Brent <bray@kslaw.com>; Chinsky, Andrew <achinsky@kslaw.com>; Catherine McKee <mckee@healthlaw.org>; Abbi Coursolle <coursolle@healthlaw.org>; Chris Stoll <CStoll@nclrights.org>; Barr, Daniel (Perkins Coie) <DBarr@perkinscoie.com>; Howe, Janet M. (Perkins Coie) <JHowe@perkinscoie.com>

Subject: Re: Motion for Leave to File a Supplemental Declaration

Importance: High

importance: high

Hello Asaf,

We will send you a formal request for production and consent to the filing of your supplemental declaration but we need your assurance that 1) you will provide the records, not just objections; and 2) you will produce the records at the same time you file your supplement so we can use them in our response.

Kate

Kathryn Hackett King
BurnsBarton PLC
2201 E. Camelback Road
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On Nov 18, 2020, at 7:52 PM, Asaf Orr <AOr@nclrights.org> wrote:

Hi Kate,

Thanks for your response. Our clients would not oppose the Defendant responding to the supplemental declaration by Dr. Cronyn. With regards to the medical records, we ask that you formally request those in a request for production. That will ensure a clean record of the discovery in this matter and allow all parties to reserve their rights as they feel appropriate.

In light of our response on those two conditions, please let us know whether your client would consent to the filing of our motion.

Very truly yours,
Asaf

From: Kate King <kate@burnsbarton.com>

Sent: Tuesday, November 17, 2020 9:48 AM

To: Asaf Orr <AOr@nclrights.org>

Cc: Logan Johnston <ljohnston@live.com>; David T Barton

<david@burnsbarton.com>; Ray, Brent <bray@kslaw.com>; Chinsky, Andrew

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Daniel (Perkins Coie) <DBarr@perkinscoie.com>; Howe, Janet M. (Perkins Coie) <JHowe@perkinscoie.com>

Subject: Re: Motion for Leave to File a Supplemental Declaration

Importance: High

Hello Asaf, We will not oppose the filing of a supplemental declaration by Dr. Andrew Cronyn, on the condition that (1) defendant has the opportunity to respond to the supplemental declaration, and (2) we receive all of D.H.'s medical records that address this new development, along with all of the medical/healthcare records for D.H. and John Doe, which counsel for plaintiffs agreed to provide to defendant during our Oct. 29 phone call. Please let me know if you have any questions or wish to discuss this further over the telephone.

Thank you,
Kate

Kathryn Hackett King
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<image001.png>

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On Nov 16, 2020, at 9:17 PM, Asaf Orr <AOr@nclrights.org> wrote:

Hi Kate,
There has been a significant change in D.H.'s health since we filed our reply brief on the motion for preliminary injunction in October. We intend to seek leave to file a supplemental declaration from Dr. Andrew Cronyn discussing this change. I write to obtain your client's position on that motion. Please let me know so that we can correctly represent that position in our motion.
We hope this e-mail finds you well and look forward to hearing from you.
Very truly yours,
Asaf

Asaf Orr, Esq. | Senior Staff Attorney & Transgender Youth Project
Director

(Pronouns: He, him)

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