

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

ALEXANDER PANGBORN,

Plaintiff,

v.

CARE ALTERNATIVES OF
MASSACHUSETTS, LLC D/B/A ASCEND
HOSPICE; and CARE ONE MANAGEMENT
LLC,

Defendants.

Civil Action No. _____

COMPLAINT

1. The plaintiff Alexander Pangborn is a transgender man employed by the defendants Care Alternatives of Massachusetts, LLC, doing business as Ascend Hospice, and Care One Management LLC. He has a diagnosis of Gender Dysphoria, a serious medical condition that requires treatment. Standard of care treatments for Gender Dysphoria, endorsed by major medical organizations (including the American Medical Association, American Psychiatric Association, and the World Health Organization), are medically necessary and effective. The defendants offer health care benefits to their employees as part of their compensation through an employer-sponsored self-funded plan. Contrary to the prevailing and authoritative view of the medical profession, however, the defendants' health care benefits plan contains a categorical exclusion prohibiting *any* treatment for Gender Dysphoria or gender transition-related care. Mr. Pangborn has been denied essential medical care directly and solely because of the exclusion in the health care benefits plan. Mr. Pangborn therefore brings claims for violations of federal and state laws prohibiting discrimination on the basis of sex, gender identity, and disability.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal claims asserted herein under 28 U.S.C. §§ 1331 and 1343(a)(4). This Court has jurisdiction over the state law claims asserted herein under 28 U.S.C. § 1367(a).

3. The plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202.

4. Venue is proper in this district under 28 U.S.C. § 1391, including because a substantial part of the events or omissions giving rise to this action occurred in Massachusetts.

PARTIES

Defendant Care Alternatives of Massachusetts, LLC

5. Defendant Care Alternatives of Massachusetts, LLC (hereinafter, "Care Alternatives MA") is a Delaware corporation, which is registered to do business in Massachusetts with the Secretary of the Commonwealth in order to provide hospice services.

6. Care Alternatives MA operates in Massachusetts, doing business as Ascend Hospice.

7. Care Alternatives MA employs more than fifteen people in Massachusetts.

8. At all times relevant to the facts in this Complaint Care Alternatives MA has been a recipient of Federal funding and a provider of health services.

Defendant Care One Management LLC

9. Defendant Care One Management LLC ("Care One") is a Delaware corporation and is a national hospice and palliative care provider.

10. Upon information and belief, Care One owns, operates, and/or controls Care Alternatives MA.

11. At all times relevant to the facts in this Complaint Care One has been a recipient of

Federal funding and a provider of health services.

12. Care Alternatives MA provides health care benefits to its employees as part of their compensation through an employer-sponsored self-funded plan (the “Plan”), which, upon information and belief, is established and controlled by Care One.

13. The Plan is administered by Aetna Life Insurance Company.

14. The relevant plan document provided by Care Alternatives MA to its employees in Massachusetts lists Care One as the “employer.”

15. Upon information and belief, Care Alternatives MA and Care One each act as employers, or alternatively as a single employer, for individuals employed in Massachusetts, including the plaintiff in this case.

Plaintiff Alexander Pangborn

16. Plaintiff Alexander Pangborn has at all relevant times been a resident of Hampshire County, Massachusetts.

17. Since 2017, Mr. Pangborn has been employed by Care Alternatives MA, doing business as Ascend Hospice, and Care One as a hospice nurse. He travels to care for patients at private homes, assisted living facilities, and nursing homes.

18. Care Alternatives MA is the entity listed on Mr. Pangborn’s paycheck and W-2 tax document.

19. As part of his compensation, Mr. Pangborn was offered participation in the Plan.

20. Mr. Pangborn has been eligible for participation in the Plan and has been enrolled in the Plan to receive health benefits as part of his compensation continuously since he began employment with Care Alternatives MA and Care One.

FACTS

Gender Dysphoria and its Treatment

21. The term “gender identity” is a well-established concept in medicine, referring to one’s internal sense of their own gender. Gender identity is firmly established early in life.

22. For most people, their gender identity matches the sex they were identified as being at birth. Typically, persons whose sex is identified as male when they were born grow up and identify as men, while those whose sex is identified as female when they were born grow up and identify as women.

23. For transgender individuals, this is not the case. For transgender individuals, their gender identity differs from the sex they were identified as being at birth.

24. A transgender man is a man who was identified as female at birth, but who has a male gender identity.

25. Gender Dysphoria is the medical diagnosis for the experience that results from a transgender person having a gender identity that is different from their assigned birth sex.

26. Gender Dysphoria is a serious medical condition characterized by a clinically significant and persistent feeling of distress and discomfort with one’s assigned birth sex.

27. The criteria for a diagnosis of Gender Dysphoria are set forth in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) (302.85).

28. There is a scientific consensus that gender identity is deep-seated and impervious to external influence. Scientific and medical research also shows that Gender Dysphoria has a physiological and biological etiology.

29. Gender Dysphoria evolves as a result of the interaction of the developing brain and sex hormones.

30. Gender Dysphoria is a medical condition that is highly treatable and for which there is an established course of care.

31. Without treatment, Gender Dysphoria causes debilitating psychological symptoms, including anxiety, depression, suicidality, and other attendant mental health issues, and impairs basic life functionality.

32. The authoritative standards of care for treatment of Gender Dysphoria are set forth in the *World Professional Association for Transgender Health* (the “WPATH”) *Standards of Care* (7th version, 2011). The WPATH-promulgated Standards of Care (“SOC”) are the internationally recognized guidelines for the treatment of persons with Gender Dysphoria and inform medical treatment throughout the world. The *American Medical Association*, the *Endocrine Society*, the *American Psychological Association*, the *American Psychiatric Association*, the *World Health Organization*, the *American Academy of Family Physicians*, the *American Public Health Association*, the *National Association of Social Workers*, the *American College of Obstetrics and Gynecology*, and the *American Society of Plastic Surgeons* all recognize Gender Dysphoria as a serious medical condition. They also recognize the WPATH SOC as the authoritative guidelines for treating Gender Dysphoria.

33. The SOC set forth the medically necessary procedures for treating a person with Gender Dysphoria. These procedures include gender transition, which brings a transgender person’s body into alignment with their gender identity, thereby relieving the distress associated with Gender Dysphoria.

34. The SOC recommend an individualized approach to gender transition, consisting of one or more of the following:

- Changes in gender expression and role (e.g., dressing consistently with the person’s

gender identity and changing name and legal documentation to reflect the person's gender identity);

- Hormone therapy to feminize or masculinize the body;
- Surgery to change primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or internal genitalia, and facial features); and
- Psychotherapy for purposes of addressing the negative impact of Gender Dysphoria and stigma on mental health, alleviating internalized shame, enhancing social and peer support, improving body image, or promoting resilience.

Alexander Pangborn's Gender Dysphoria and Defendants' Denial of Medically Necessary Treatment

35. Mr. Pangborn is a man.

36. Mr. Pangborn is a transgender man, meaning that, although he was identified as female at birth, he has a male gender identity.

37. Mr. Pangborn has Gender Dysphoria.

38. As part of the course of treatment for Gender Dysphoria, Mr. Pangborn has gone through the process of gender transition and is a man.

39. Mr. Pangborn's United States passport and Massachusetts driver's license identify him as male.

40. Mr. Pangborn had male chest reconstructive surgery and has taken male hormones for over twenty years. He must continue to be on hormone therapy for the rest of his life.

41. In March 2018, Mr. Pangborn's doctors determined that phalloplasty surgery is also medically necessary treatment for the Gender Dysphoria from which he continues to suffer.

42. In 2018, Mr. Pangborn requested coverage for medically necessary phalloplasty surgery.

43. Although the Plan generally covers medically necessary treatments, it has a categorical exclusion of coverage for “[a]ny treatment, drug, service or supply related to changing sex or sexual characteristics” (hereinafter, the “Exclusion”).

44. The Exclusion creates an exception to coverage for treatment of Gender Dysphoria.

45. As a result of the Exclusion, the Plan administrator contracted by Care Alternatives MA and Care One did not apply the generally applicable criteria for medical necessity to Mr. Pangborn’s request for phalloplasty surgery.

46. The Plan denied coverage for Mr. Pangborn’s phalloplasty surgery, solely and directly because of the Exclusion, by letter dated January 17, 2019. The Plan upheld its denial based on the Exclusion in subsequent letters denying Mr. Pangborn’s first-level and final appeals. As a result, Mr. Pangborn was denied the opportunity to demonstrate the medical necessity of the requested surgery and experienced harm, including the denial of critical medical care and emotional distress.

47. Mr. Pangborn emailed the human resources office at Care One to request that the Exclusion be removed from the Plan. He was informed that the defendants had no intention of removing the Exclusion.

48. There is no medical, scientific, or other justification for the Exclusion.

49. The Exclusion is based on myths, fears, stereotypes about, and animus towards Gender Dysphoria, people who have a diagnosis of Gender Dysphoria, and transgender people.

50. The Plan covers phalloplasty surgery for persons for whom it is medically necessary (e.g., because of illness or injury) unless the surgery is for gender transition, for treatment of Gender Dysphoria, or because the person is transgender.

51. Mr. Pangborn was denied medical care pursuant to the Exclusion because of his birth

sex.

52. If Mr. Pangborn were a man whose birth sex was male rather than female, he would not have been denied the medically necessary surgery for which he sought coverage.

53. Mr. Pangborn is a man who does not conform to gender stereotypes about male bodies, including the stereotype that one's birth sex matches their gender identity and that a person will not undergo gender transition. He was denied medically necessary care because of the defendants' stereotyped beliefs.

54. The only individuals subjected to adverse treatment under the Exclusion are transgender people.

55. The Plan singles out Gender Dysphoria as the only health condition for which all treatment is categorically excluded.

56. The Plan excludes coverage for medically necessary treatments for Gender Dysphoria but allows coverage for the same medical procedures or treatments when medically necessary for other medical conditions.

CAUSES OF ACTION

COUNT ONE

(Discrimination on the Basis of Sex - Title VII)

57. Mr. Pangborn incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

58. Care Alternatives MA and Care One are employers as defined by 42 U.S.C. § 2000e(b).

59. The defendants have unlawfully discriminated, and continue to discriminate, against Mr. Pangborn "with respect to [his] compensation, terms, conditions, or privileges of

employment, because of . . . sex” in violation of 42 U.S.C. § 2000e-2(a)(1), including by offering and maintaining an employer-sponsored health care benefits plan that contains the Exclusion.

COUNT II

(Discrimination on the Basis of Sex - Mass. Gen. Laws ch. 151B, § 4)

60. Mr. Pangborn incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

61. Care Alternatives MA and Care One are employers as defined by Mass. Gen. Laws ch. 151B, § 1.

62. The defendants have unlawfully discriminated, and continue to discriminate, against Mr. Pangborn “because of . . . [his] sex” in the “compensation or in terms, conditions or privileges of [his] employment ” in violation of Mass. Gen. Laws ch. 151B, § 4(1), including by offering and maintaining an employer-sponsored health care benefits plan that contains the Exclusion.

COUNT III

(Discrimination on the Basis of Gender Identity - Mass. Gen. Laws ch. 151B, § 4)

63. Mr. Pangborn incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

64. The defendants have unlawfully discriminated, and continue to discriminate, against Mr. Pangborn “because of . . . [his] gender identity” in the “compensation or in terms, conditions or privileges of [his] employment ” in violation of Mass. Gen. Laws ch. 151B, § 4(1), including by offering and maintaining an employer-sponsored health care benefits plan that contains the Exclusion.

COUNT IV

(Discrimination on the Basis of Disability - Americans with Disabilities Act)

65. Mr. Pangborn incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

66. Care Alternatives MA and Care One are covered entities under 42 U.S.C. § 12111.

67. Gender Dysphoria is a disability as defined by 42 U.S.C. § 12102.

68. Gender Dysphoria is a physiological condition that affects many bodily systems, such as the endocrine system, including because it is caused by an atypical interaction of sex hormones and the brain.

69. Gender Dysphoria is a mental or psychological disorder, as defined in the Americans with Disabilities Act, because it is a serious diagnosis classified in the Diagnostic and Statistical Manual of Mental Disorders.

70. Gender Dysphoria results from physical or physiological “impairments” as that term is used in the Americans with Disabilities Act.

71. Mr. Pangborn’s Gender Dysphoria substantially limits one or more of his major life activities, as defined in the Americans with Disabilities Act, including reproduction and caring for one’s self and the operation of the endocrine and reproductive functions.

72. Mr. Pangborn is a qualified individual with a disability both with respect to his ability to perform his job functions and eligibility for the Plan.

73. The defendants have unlawfully discriminated against Mr. Pangborn in the “compensation . . . and other terms, conditions and privileges of employment . . . on the basis of disability” in violation of 42 U.S.C. § 12112, including by offering and maintaining an employer-sponsored health care benefits plan that contains the Exclusion.

COUNT V

(Discrimination on the Basis of Disability - Rehabilitation Act)

74. Mr. Pangborn incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

75. Care Alternatives MA and Care One receive Federal financial assistance and are in the business of providing health care.

76. The defendants have unlawfully subjected Mr. Pangborn to discrimination and denied him the benefits of a program or activity receiving Federal financial assistance solely on the basis of disability in violation of 29 U.S.C. § 794, including by offering and maintaining an employer-sponsored health care benefits plan that contains the Exclusion.

COUNT VI

(Discrimination on the Basis of Handicap - Mass. Gen. Laws ch. 151B, § 4)

77. Mr. Pangborn incorporates the preceding paragraphs of this Complaint as though fully set forth herein.

78. Gender Dysphoria is a handicap as defined in Mass. Gen. Laws ch. 151B, § 1(17).

79. Mr. Pangborn is a qualified person with a handicap capable of performing the essential functions of his job and eligible for the Plan.

80. The defendants have unlawfully subjected Mr. Pangborn to discrimination because of handicap in violation of Mass. Gen. Laws ch. 151B, § 4(16), including by offering and maintaining an employer-sponsored health care benefits plan that contains the Exclusion.

COUNT VII

(Discrimination on the Basis of Sex and Disability - Affordable Care Act § 1557)

81. Mr. Pangborn incorporates the preceding paragraphs of this Complaint as though fully set forth herein.

82. Care Alternatives MA and Care One receive Federal financial assistance.

83. The Exclusion in the Plan offered and maintained by the defendants has subjected Mr. Pangborn to the denial of benefits and discrimination by the defendants on the basis of sex, and solely by reason of his disability, in violation of the terms of 42 U.S.C. § 18116.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

84. On June 28, 2019, Mr. Pangborn filed a charge of discrimination with the Massachusetts Commission Against Discrimination against Care Alternatives MA and Care One for discrimination on the basis of sex, gender identity, and disability, which was cross-filed with the Equal Employment Opportunity Commission.

85. Mr. Pangborn has exhausted his administrative remedies under his state law claims because more than ninety days have passed since the filing of his administrative complaint.

86. Mr. Pangborn has exhausted his administrative remedies with respect to his claims under Title VII and the Americans with Disabilities Act because the Equal Employment Opportunity Commission did not undertake any conciliation efforts and issued a right-to-sue letter dated October 23, 2019 and received on November 1, 2019.

RELIEF REQUESTED

WHEREFORE, Alexander Pangborn respectfully requests that the Court:

1. Enter judgment for him against Defendants on each of the counts in this Complaint;
2. Enter a declaration that Defendants have violated each of the claims in the above-referenced Complaint by offering and maintaining an employer-sponsored health care benefits plan that excludes coverage for Gender Dysphoria and gender transition-related health care;
3. Enter a permanent injunction enjoining Defendants from offering or maintaining an employer-sponsored health care benefits plan that excludes coverage for Gender Dysphoria, that

fails to treat Gender Dysphoria the same as other health conditions, or otherwise discriminates against transgender individuals or individuals seeking gender transition-related health care;

4. Order that Defendants approve coverage under the Plan for Plaintiff's requested phalloplasty surgery and related procedures;

5. Award Plaintiff compensatory and consequential damages, including emotional distress damages, and all other available damages from Defendants' acts or omissions alleged in the Complaint;

6. Award Plaintiff punitive damages;

7. Award Plaintiff reasonable attorneys' fees and costs; and

8. Grant such other and further relief as the Court considers just and proper.

Respectfully submitted,

Alexander Pangborn

By his attorneys,

/s/ Chris Erchull
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Dated: January 10, 2020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Pangborn, Alexander

(b) County of Residence of First Listed Plaintiff Hampshire County, MA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Care Alternatives of Massachusetts, LLC Care One Management LLC

County of Residence of First Listed Defendant New Castle County, DE (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): U.S. Civil Statutes 42 USC 2000e-2(a)(1); 42 USC 12112; 29 USC 794; 42 USC 18116

Brief description of cause: Employment discrimination and discrimination in health care

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 01/10/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Chris Erchull

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Parties' Attorneys Section I(c)

Attorneys for Plaintiff:

GLBTQ Legal Advocates & Defenders; Chris Erchull & Bennett H. Klein; 18 Tremont Street
Suite 950, Boston, MA 02108; 617-426-1350

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Pangborn, Alexander v. Care Alternatives of Massachusetts, LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.
III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES [] NO [x]

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES [] NO [x]

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES [] NO []

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES [] NO [x]

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES [] NO [x]

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division [] Central Division [] Western Division []

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division [] Central Division [] Western Division [x]

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES [] NO []

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Chris Erchull

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