DECLARATION OF ROBERT BOLAN, MD, CHIEF MEDICAL OFFICER, LA LGBT CENTER, IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Case No. 5:19-cv-2916
I, Robert Bolan, declare as follows:

1. I am the Chief Medical Officer and Director of Clinical Research for the LA LGBT Center. I oversee all medical care related services at the LA LGBT Center, as well as maintain a panel of patients for whom I provide direct care. In addition, I oversee the LA LGBT Center’s Research Department, am the principal investigator for multiple HIV treatment and prevention trials, and have written and presented extensively on various matters related to the care and treatment of people living with or at risk of acquiring HIV and other sexually transmitted infections (STIs). I am also Clinical Associate Professor of Family Medicine at the University of Southern California (USC) – Keck School of Medicine, and an Adjunct Clinical Professor of Pharmacy Practice at the Western University of Health Sciences. I received my medical degree from the University of Michigan Medical School, interned at St. Mary’s Hospital Medical Center, and completed my residency at St. Michael Family Practice Residency. I was the Director of HIV Services in the Department of Family Medicine at the USC Keck School of Medicine, and I have been honored with the Leadership Award from the San Francisco AIDS Foundation. I maintain active board certification with the American Board of Family Physicians and specialty certification with the American Academy of HIV Medicine. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Injunction to prevent the Denial-of-Care Rule from going into effect.

2. As the Chief Medical Officer, I oversee the delivery of healthcare for approximately 9000 patients who come to the LA LGBT Center and have a panel of approximately 300 patients for whom I personally provide medical care. Over 90% of my patients identify within the LGBTQ communities. My patient population is also disproportionately low-income and experiences high rates of chronic conditions, homelessness, unstable housing, trauma history, and discrimination and stigmatization in healthcare services. Many of these patients come to me from different areas of California, other states, and even other nations to seek services in a safe and affirming environment.

3. Our healthcare services span the full spectrum of primary healthcare services, including, but not limited to, HIV treatment and testing, treatment and prevention of sexually
transmitted infections, as well as treatment for gender dysphoria, mental-health disorders, and
substance-use disorders.

4. Many if not most of the individuals in our very diverse patient population face
considerable stigma and discrimination – as people living with HIV, as sexual or gender minority
people, as people of color. In addition, there is a very high incidence of other social determinants
of poor health outcomes among our population. These include homelessness, food insecurity, lack
of access to transportation, and lack of employment opportunities.

5. Furthermore, there is every reason to believe that the Denial-of-Care Rule will
encourage healthcare providers and staff to claim the absolute right to refuse care or opt out of
serving patients with particular needs, based on personal beliefs, which will result in more
discrimination against LGBT patients and patients living with HIV at other clinics, doctors’
offices, hospitals, pharmacies, and other healthcare facilities outside the LA LGBT Center. I, and
the other providers that I supervise at the Los Angeles LGBT Center, have many patients who
have experienced traumatic stigma and discrimination – based on their sexual orientation, gender
identity, HIV status, and/or other factors – even before the Denial-of-Care Rule was proposed or
issued. Based on the stories that my patients have shared with me, this discrimination,
mistreatment, and denial of healthcare services has been motivated by the personal moral or
religious beliefs of other healthcare providers and staff outside of the LA LGBT Center.

6. Over the twenty years I have been at the Center I have listened to the stories of
countless individuals who have suffered overtly homophobic remarks from healthcare providers
and who were either refused care or given clearly inadequate and inappropriate care because of
their sexual orientation or gender identities. One of the most egregious examples was a
transgender woman who needed extensive surgery to repair diffuse damage done by silicone
injections into her breasts several years earlier. In 2009, she was turned away from an academic
plastic surgery center in Los Angeles after the surgeon said her problem was caused by her own
poor decision-making and she would therefore not be considered for treatment.

7. Incidents like this reveal that many healthcare providers and other staff harbor
explicit or implicit biases against LGBT people. Because of legal requirements, healthcare
facility non-discrimination policies, and professional norms, many of them have kept their
personal beliefs and feelings in check. By empowering healthcare staff to think that they have the
legal right to act on their personal beliefs, even at the expense of patient needs, the Denial-of-
Care Rule is very likely to result in many more incidents of discrimination and greater harm to
LGBT individuals struggling with mental-health or substance-use issues, including the patients
whom I treat and whose treatment I supervise.

8. Such experiences are not only insulting and demoralizing for the patient, but can
jeopardize the patient’s health, when a screening or treatment is denied or postponed, or the
patient is discouraged from seeking medical care out of fear of repeated discrimination. Many if
not most of my and the LA LGBT Center’s transgender patients express strong distrust of the
healthcare system generally and are reluctant to seek care outside the LA LGBT Center unless
they are in a crisis or in physical or mental stress. This is because they want to avoid
discrimination or belittlement. Such incentives to avoid regular check-ups and other medical care
can result in disease processes that are more advanced at diagnosis, less responsive to treatment,
or even no longer curable in the case of some cancers.

9. In the case of the transgender woman I described above, her general medical
condition gradually deteriorated over the several years it took for me to finally identify a surgeon
who would take her case. She was suffering from systemic metabolic complications from the
chronic inflammation and skin breakdown caused by the hardened subcutaneous silicone
injections. I feared for her survival. Fortunately, the surgeon who cared for her did so with
kindness, respect, and compassion, and the patient has had an excellent result. The surgeon saved
her life. Nevertheless, the ultimate tragedy in my patient’s case was that after the humiliating and
callous abuse to which she was subjected by the academic center’s specialists, she was
completely unwilling to even consider seeing another surgeon for the next six-and-a-half years.
Her suffering during that time was completely avoidable had she been treated with basic human
respect.

10. With existing health and healthcare disparities affecting the LGBTQ community –
particularly the shortage of LGBTQ/HIV culturally competent providers – the Denial-of-Care
Rule’s vague and confusing language will further exacerbate existing barriers to healthcare and result in negative community health outcomes. Good medical care is based on trust as well as frank and full communication between the patient and their provider. In many, if not most encounters, providers need patients to fully disclose all aspects of their health history, sexual history, substance-use history, lifestyle, and gender identity in order to provide appropriate care for the patients’ health, both physical and mental. Incomplete communication, or miscommunication, can have dangerous consequences. For instance, a patient who conceals or fails to disclose a same-sex sexual history may not be screened for HIV or other relevant infections or cancers; and a patient who fails to fully disclose their gender identity and sex assigned at birth may not undergo medically-indicated tests or screenings (such as tests for cervical or breast cancer for some transgender men, or testicular or prostate cancer for some transgender women). Patients need to be encouraged to fully disclose all information relevant to their healthcare and potential treatment, which can only be achieved when patients are assured that the information they provide will be treated confidentially and with respect. The Denial-of-Care Rule endangers the provider-patient relationship, and is likely to harm many patients’ health, by discouraging patients from full disclosure, and by encouraging providers to avoid topics that may offend their personal moral or religious beliefs in their encounters with patients.

11. The Denial-of-Care Rule will cause LGBT patients and patients living with HIV to lose trust in their healthcare providers (either out of fear of discrimination or on account of being denied care on religious grounds). The Rule will cause LGBT patients to attempt to hide their LGBT identities to an even greater degree when seeking healthcare services, especially from religiously-affiliated healthcare organizations, in order to avoid discrimination. The Denial-of-Care Rule endangers the provider-patient relationship, and is likely to harm many patients’ health, by discouraging patients from full disclosure about their gender identity, sexual orientation, or related medical histories. Patients will avoid raising any topics, questions, facts that they fear could possibly offend their healthcare providers’ personal beliefs, resulting in harm to patients.
12. The Denial-of-Care Rule is also likely to cause an increase in demand for my healthcare services because I have seen a spike in behavioral and mental-health issues resulting from religious or moral-based discrimination and denials of healthcare services.

13. The Denial-of-Care Rule is in direct conflict with the oath I swore as a doctor and many of the federal, state, and insurance rules, regulations, and statutes that I am required to follow. This has personally caused me great confusion and stress as it is unclear how I can work collaboratively with my colleagues who discriminate against or deny care to my patients without violating either current ethical and legal standards or the Denial-of-Care Rule.

14. As a healthcare provider with the LA LGBT Center, I receive various forms of federal funding directly and indirectly via federal programs, including but not limited to those governed by the Centers for Medicare and Medicaid Services through Medicaid and Medicare reimbursements and the Ryan White Comprehensive AIDS Resources Emergency Act of 1990. I may be, therefore, subject to the restrictions of HHS's Denial-of-Care Rule. These funds and related benefits account for a significant portion of my work and the healthcare services that I, and those that I supervise, provide to patients. Without such funding, we could not provide proper treatment to our patients, especially because a large portion of the population that we serve relies heavily on Medicaid and Medicare for its healthcare needs. I, therefore, have a reasonable fear that I could be sanctioned and lose federal funding for the work that I do as a result of nondiscrimination policies that I enforce in my department and amongst the staff that I supervise—policies that are vital to providing proper care to my patients and other patients whose care I supervise. If such a loss of funding were to occur, it would result in service reductions if not closure of our programs in their entirety.

15. The “Denial-of-Care Rule” is inherently demeaning and codifies our government’s belief that providers’ freedoms are the most important and that patients are supplicants when they seek healthcare. This proposed rule is shameful.

16. As LA LGBT Center’s Chief Medical Officer and Director of Clinical Research, my responsibility includes enforcing our nondiscrimination mandate with respect to all of our providers and staff, including those working on federally funded research. I, therefore, have a
reasonable fear that the ability to provide federally funded healthcare services and conduct federally funded research could be severely impeded potentially putting patients and research participants at risk. I could also be subject to sanctions as the principal investigator for many federally funded research programs at the LA LGBT Center.

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

Dated: June 4, 2019

Respectfully submitted,

Robert Bolan, MD