

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Other Civil

OutFront Minnesota, OutFront Minnesota  
Community Services, and Evan Tysilio  
Thomas,

Court File No. 62-CV-15-7501  
Judge William H. Leary III

Plaintiffs,

**DEFENDANT COMMISSIONER EMILY  
JOHNSON PIPER'S ANSWER**

vs.

Emily Johnson Piper, in her official  
capacity as Commissioner of the Minnesota  
Department of Human Services,

Defendant.

Defendant Commissioner Emily Johnson Piper for her answer to Plaintiffs' Complaint admits, denies, and alleges as follows:

1. Unless expressly admitted or otherwise qualified, Defendant denies each and every allegation in Plaintiffs' Complaint.

### **INTRODUCTION**

2. As to paragraph 1, the first sentence is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation. With respect to the second sentence and footnote 1, Defendant refers to the official text of Minnesota Statutes Chapters 256B (Medical Assistance) and 256L (MinnesotaCare), which speak for themselves, and denies the allegations to the extent they are inconsistent with those provisions. With respect to the third sentence, Defendant refers to the official text of Minn. Stat. § 256B.0625, subd. 3a, which speaks for itself, and denies the allegation to the extent it is inconsistent with that provision. With respect to the fourth sentence, Defendant refers to the official text of Minnesota

Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions. With respect to the fifth sentence, whether Minn. Stat. § 256B.0625, subd. 3a is discriminatory is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation. The remainder of the sentence is vague such that Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

3. Paragraph 2 constitutes the Plaintiffs' characterization of their own action and/or legal conclusions to which no response is required. To the extent a response is required, Defendant denies that Minn. Stat. § 256B.0625, subd. 3a violates the right to equal protection and the fundamental right to privacy under the Minnesota Constitution.

### **PARTIES**

4. Upon information and belief, Defendant admits the allegation in paragraph 3.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 4.

6. Upon information and belief, Defendant admits the allegation in paragraph 5.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 6–8.

8. Upon information and belief, Defendant admits the allegation in paragraph 9.

9. Defendant admits the allegation in paragraph 10.

### **JURISDICTION AND VENUE**

10. Paragraphs 11–14 constitute the Plaintiffs' characterization of their own action and/or legal conclusions to which no response is required. To the extent a response is required,

Defendant denies that Minn. Stat. § 256B.0625, subd. 3a violates the right to equal protection and the fundamental right to privacy under the Minnesota Constitution.

### **ALLEGED FACTUAL BACKGROUND**

#### **Gender Dysphoria**

11. As to paragraph 15, Defendant admits that the term “gender identity” is often used to describe one’s sense of one’s gender. The remainder of the first sentence is vague such that Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence.

12. As to paragraph 16, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation.

13. Defendant admits the allegations in paragraphs 17–18.

14. As to paragraph 19, Defendant admits that a feeling of incongruence between one’s gender identity and one’s sex assigned at birth is one component of gender dysphoria, but denies that it is the only component.

15. As to paragraph 20, Defendant refers to the official text of the DSM-V and the International Classification of Diseases-10, which speak for themselves, and denies the allegations to the extent they are inconsistent with those publications. Defendant is without knowledge or information sufficient to form a belief as to the truth of whether the DSM-V criteria are the only recognized criteria for diagnosing gender dysphoria.

16. Paragraph 21 appears to be a quote from American Medical Association House of Delegates Resolution 122 (A-08). Defendant refers to the official text of Resolution 122, which

speaks for itself. Defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of allegation.

17. As to paragraph 22, Defendant admits that WPATH was formerly known as the Harry Benjamin International Gender Dysphoria Association and that it publishes standards of care for treating gender dysphoria. The remainder of the sentence is vague such that Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation.

18. As to paragraph 23, Defendant admits that treatment for gender dysphoria can sometimes include medical steps to affirm the individuals' gender identity and help them transition from living as one gender to another. With respect to the second sentence, Defendant admits that potential treatments for gender dysphoria include hormone therapy and what is sometimes referred to as sex reassignment surgery. Defendant admits the allegation in the third sentence. The remainder of the paragraph is vague such that Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation.

19. As to paragraph 24, those organizations' official positions on gender dysphoria speak for themselves, and Defendant denies the allegation to the extent it is inconsistent with those positions.

20. As to paragraph 25, Defendant does not know which cases Plaintiffs are referring to, but federal court decisions speak for themselves.

21. As to paragraph 26, Defendant refers to the official text of the November 24, 2015 bulletin, which speaks for itself, and denies the allegations to the extent they are inconsistent with the bulletin. With respect to the last sentence, the effect of the bulletin is a legal conclusion to which no response is required.

## **Coverage for Transition-Related Surgery in Minnesota**

22. As to paragraph 27, Defendant refers to the text of Minnesota Supreme Court decision in *Doe v. Dep't of Pub. Welfare*, 257, N.W.2d 816 (Minn. 1977), which speaks for itself, and denies the allegations to the extent they are inconsistent with the Court's opinion.

23. Defendant admits the allegation in paragraph 28.

24. As to paragraph 29, Defendant refers to the official records of the Minnesota Legislature's activity, which speak for themselves, and denies the allegations to the extent they are inconsistent with those records.

25. As to paragraph 30, Defendant admits the allegation in the last sentence. With respect to the remaining allegation, Defendant refers to the official records of the Minnesota Legislature's activity and the official text of Minn. Stat. § 256B.0625, subd. 3a (2004), which speak for themselves, and denies the allegations to the extent they are inconsistent with those records and that statute.

26. As to paragraph 31, Defendant admits that Minn. Stat. § 256B.0625, subd. 3a (2014) states that "[s]ex reassignment surgery is not covered." As to the remaining allegations, Defendant refers to the official records of the Minnesota Legislature's activity, which speak for themselves, and denies the allegations to the extent they are inconsistent with those records.

27. As to paragraphs 32–34, Defendant refers to the official records of the Minnesota Legislature's activity, which speak for themselves, and denies the allegations to the extent they are inconsistent with those records.

## **The OutFront Plaintiffs**

28. As to paragraphs 35–42, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

29. As to paragraph 43, Defendant admits that sex reassignment surgery is not covered by Medical Assistance or MinnesotaCare. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

30. As to paragraphs 44–47, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

**Plaintiff Evan Thomas**

31. As to paragraph 48, Defendant admits that Plaintiff Thomas is 63 years old and resides in St. Paul, Ramsey County, Minnesota. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

32. As to paragraph 49, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

33. As to paragraph 50, Defendant admits that Plaintiff Thomas has applied for and was determined to be eligible for Medical Assistance. As of the date of this Answer, Plaintiff remains eligible for Medical Assistance. Plaintiff is currently enrolled in a managed care plan to which DHS pays a monthly capitation for the management and provision of Plaintiff’s care. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

34. As to paragraph 51, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

35. As to paragraph 52, Defendant admits that Blue Plus has been covering testosterone hormone therapy and mental health services for Plaintiff Thomas, and that DHS has a contract with Blue Plus regarding the provision of medical services to medical assistance

enrollees. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

36. As to paragraphs 53–57, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

37. Defendant admits the allegation in paragraph 58.

38. As to paragraphs 59–60, Blue Plus, not Defendant, possesses the referenced documents, and it declined to provide Defendant with copies absent authorization from Plaintiff Thomas, citing privacy laws. Therefore, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

39. As to paragraphs 61–64, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

**Count One**  
**Alleged Discrimination Based on Medical Diagnosis**

40. Paragraph 65 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

41. As to paragraph 66, Defendant refers to the official text of the Minnesota and United States Constitutions, which speak for themselves.

42. As to paragraph 67, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

43. As to paragraph 68–69, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions.

44. Paragraphs 70–72 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations.

**Count Two**  
**Alleged Discrimination Based on Transgender Status**

45. Paragraph 73 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

46. As to paragraph 74, Defendant refers to the official text of the Minnesota and United States Constitutions, which speak for themselves.

47. Paragraph 75 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations.

48. Paragraphs 76–77 are legal conclusions to which no response is required.

49. As to paragraph 78, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions.

50. Paragraph 79 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

51. Defendant admits the allegation in paragraph 80.

52. As to paragraph 81, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions.

53. Paragraph 82 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

54. As to paragraph 83, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions.

55. Paragraphs 84–87 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations.

**Count Three**  
**Alleged Discrimination Based on Sex**

56. Paragraph 88 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

57. As to paragraph 89, Defendant refers to the official text of the Minnesota and United States Constitutions, which speak for themselves.

58. Paragraph 90 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations.

59. Paragraph 91 is a legal conclusion to which no response is required.

60. As to paragraph 92, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions.

61. Paragraph 93 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

62. Defendant admits the allegation in paragraph 94.

63. As to paragraph 95, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions.

64. Paragraph 96 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

65. As to paragraph 97, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions..

66. Paragraphs 98–100 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations.

**Count Four  
Fundamental Right to Privacy**

67. Paragraph 101 is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegation.

68. As to paragraph 102, Defendant refers to the official text of the Minnesota Bill of Rights and the Minnesota Court of Appeals’ opinion in *Jarvis v. Levine*, 403 N.W.2d 298 (Minn. App. 1987), which speak for themselves.

69. Paragraphs 103–04 are legal conclusions to which no response is required.

70. As to paragraph 105, Defendant refers to the official text of Minnesota Statutes Chapter 256B, which speaks for itself, and denies the allegation to the extent it is inconsistent with those provisions.

71. Paragraphs 106–10 are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations.

**PRAYER FOR RELIEF**

72. The Plaintiffs’ prayer for relief contains no averments that require a response. To the extent a response is deemed necessary, Defendant denies that Plaintiffs are entitled to the requested relief.

**SEPARATE DEFENSES**

73. Plaintiffs’ Complaint fails to state a claim upon which relief can be granted.

74. Plaintiffs failed to join parties pursuant to Minn. R. Civ. P. 19 and Minn. Stat. § 555.11, including HMO Minnesota, dba Blue Plus.

75. Plaintiffs failed to exhaust their administrative remedies.

76. The State Defendants reserve the right to assert any other affirmative defenses or objections as may arise or become available under the Rules of Civil Procedure.

Dated: January 20, 2016

OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota

/s/ **Jacob Champion**

Jacob Champion  
Assistant Attorney General  
Atty. Reg. No. 0391274

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1459 (Voice)  
(651) 282-5832 (Fax)  
jacob.campion@ag.state.mn.us

ATTORNEY FOR DEFENDANT  
COMMISSIONER EMILY JOHNSON PIPER

**MINN. STAT. § 549.211 ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions, including reasonable attorneys' fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

Dated: January 20, 2016

**/s/ Jacob Champion**

---

Jacob Champion  
Assistant Attorney General  
Atty. Reg. No. 0391274

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1459 (Voice)  
(651) 282-5832 (Fax)  
jacob.campion@ag.state.mn.us

ATTORNEY FOR DEFENDANT  
COMMISSIONER EMILY JOHNSON PIPER