

The Commonwealth of Massachusetts
Commission Against Discrimination
436 Dwight Street, Rm. 220, Springfield, MA 01103
Phone: (413) 739-2145

Public Accommodation

MCAD DOCKET NUMBER:
FILING DATE: 11/23/2010

EEOC/HUD CHARGE NUMBER:
VIOLATION DATE: 10/3/2010

Name of Aggrieved Person or Organization:

Northampton, Ma 01060

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

Baystate Reproductive Medicine
3300 Main Street
Springfield, Ma 01199
(413) 794-7045

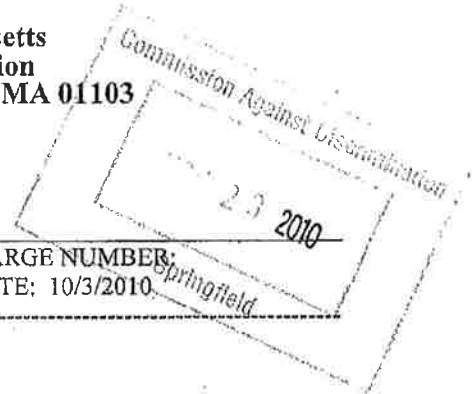
Baystate Reproductive Medicine
759 Chestnut Street
Springfield, Ma 01199
(413) 794-7045

Cause of Discrimination based on:
Sex (Transgender)

The particulars are:

I, _____, believe that I was discriminated against by Baystate Reproductive Medicine, on the basis on Sex (Transgender). This is in violation of C.272, Section 98.

1. Beginning on or about September 23, 2009, up until most recently October 3, 2010, I was subjected to different standards due to transgender, as I was told that I was too masculine to have a baby. I was extremely offended by this statement. I meet all standards in regard to my physical and hormonal level required by all patients seeking fertility.
2. On October 29, 2009, I received a letter via email from _____, MSW; requesting information from my therapist regarding my therapist's opinion on my ability emotionally to handle pregnancy and parenting. I am aware that non-transgender patients are not required to provide information.
3. On January 21, 2010, BRM Nurse Coordinator, _____, informed me via mail that Baystate Reproductive Medicine does not have the expertise necessary to treat me at that time. I was further encouraged to pursue my treatment with Boston IVF. I believe I was being sent to another location for fertility treatment due to my transgender.
4. In 2010, I contacted Baystate administrators to complain about me being refused fertility treatment.
5. On February 1, 2010, I received a second letter from _____, stating that at this time, they do not have the experience and expertise that they feel is necessary to provide me with



The Commonwealth of Massachusetts
Commission Against Discrimination
436 Dwight Street, Rm. 220, Springfield, MA 01103
Phone: (413) 739-2145 Fax: (413) 784-1056

Date: 8-28-13

c/o LGBTQ Parenting Network
Sherbourne Health Centre
333 Sherbourne Street
Toronto, ON, CA 00000

Jay M. Presser
Skoler, Abbott & Presser, P.C.
One Monarch Place, Suite 2000
Springfield, MA 01103

RE: v. Baystate Reproductive Medicine, Baystate Reproductive Medicine
MCAD Docket Number: 10SPA03040
EEOC/HUD Federal Charge Number:

PROBABLE CAUSE FINDING

Dear Parties/Counsel:

You are hereby notified that I have found probable cause to credit the allegations in the above-referenced complaint. A copy of the disposition is enclosed.

The Commission is charged by statute (G.L.c.151B, § 5) to try to enforce compliance with the Commonwealth's anti-discrimination laws without resort to a public hearing. To this end, parties and counsel are required to attend a conciliation conference at the Commission's office on a date to be later scheduled with Commissioner Williamson or designee.

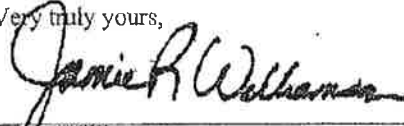
Conciliation is difficult or impossible unless persons with authority to settle the case are present. The officer designated to appear for a business or other entity must be familiar with the case and authorized to offer an appropriate settlement.

Complainant's counsel should send a written proposal of settlement to Respondent's counsel not less than 10 days before the scheduled meeting. We also require that parties hold preliminary settlement discussions at least five days before the conciliation date.

Be prepared to spend one to two hours at the conciliation session. **Failure to attend the session may result in immediate certification to public hearing and/or imposition of sanctions for costs incurred by the Commission and the opposing party. Furthermore, Complainant's failure to attend may result in dismissal of the case.**

No continuances will be granted except upon written motion to the Conciliation Clerk with notice to the opposing party and upon a showing of good cause. Please direct correspondence to Carol Murchison at this office.

Very truly yours,



Jamie Williamson
Investigating Commissioner

INVESTIGATIVE DISPOSITION

Case Name: v. Baystate Reproductive Medicine
MCAD Docket No.: 10SPA03040
EEOC Docket No.: N/A
No. of Employees: 25+
Investigator: Maryann Brunton, Supervisor
Recommendation: **Probable Cause**

Introduction

On November 23, 2010, Complainant filed a charge alleging Respondent subjected him to unlawful discrimination in a place of public accommodation because of his sex (transgender), in violation of M.G.L. Chapter 272, Section 98.

Complainant's Allegations

Complainant sought fertility services at Respondent. Complainant alleges Respondent subjected Complainant to unequal treatment due to his sex (transgender). Respondent's personnel told Complainant he was too masculine to have a baby. Complainant was offended by this statement. Complainant met all standards in regard to his physical and hormonal level required by all patients seeking fertility.

On October 29, 2009, Complainant received an email from _____, MSW, requesting information from Complainant's therapist regarding Complainant's therapist's opinion about Complainant's emotional ability to handle pregnancy and parenting. Complainant is aware that non-transgender patients were not required to provide this information.

On January 21, 2010, Respondent's nurse coordinator, _____, informed Complainant via email that Respondent did not have the expertise necessary to treat Complainant at that time. Respondent encouraged Complainant to pursue treatment elsewhere. Complainant believes Respondent sent Complainant to another location for fertility treatment because Complainant is transgender.

In 2010, Complainant contacted Respondent's administrators and complained about being refused fertility treatment. On February 1, 2010, _____ sent Complainant a second letter stating that Respondent did not have the necessary experience to provide Complainant with the highest quality of care. _____ encouraged Complainant to pursue treatment with a program that had experience.

On October 3, 2010, Complainant gave birth to a baby with a fertility program located in Boston, MA, where Complainant did not experience being subjected to different standards.

Respondent's Position

Respondent denies discriminating against Complainant. Respondent has no legal or ethical obligation to accept all potential patients without question. Each putative patient seeking treatment is evaluated by a committee comprised of representatives of Respondent from psychiatry, reproductive biology, reproductive endocrinology, reproductive nursing, risk management, spiritual services, and hospital ethics committee. The committee reviews all potential patients and denies services to any patient, couple or donor deemed inappropriate for treatment. This committee reviewed the information regarding Complainant and determined that at the time, they did not have the expertise to perform the desired procedure on a transgender individual and therefore referred Complainant to a facility which they perceived to have the expertise.

This did not reflect a value judgment on Complainant or a desire not to treat transgender individuals. After referring Complainant elsewhere Respondent took steps to address the issue prospectively. Unfortunately, Respondent had no program in place to familiarize staff with the special considerations and needs of transgender patients at the time Complainant first sought treatment, but was already in the process of dealing with the issue. Respondent's diversity officer was facilitating the process of educating personnel on these issues, to begin the process of obtaining the requisite experience.

Respondent argues the fact that a patient was not treated is not sufficient to establish a violation of the law. Massachusetts precedent holds that a place of public accommodation has an obligation to treat each member of the public equally, except for good cause. Good cause includes the circumstances of Complainant as his circumstances were beyond Respondent's expertise.

Respondent notes the last act of alleged discrimination was the decision not to perform the procedure and to refer Complainant elsewhere. That act occurred more than three hundred days before Complainant filed the charge of discrimination, and therefore the charge is time-barred.

Respondent states _____, Infertility Psychiatric Counselor in Respondent's reproductive medicine department, meets with all potential patients seeking third party reproduction treatment using donor sperm or eggs to gather information regarding their psycho-social background as part of the process. Respondent denies non-transgender patients are not required to provide the same information sought from Complainant or that it is inappropriate to do so.

During her evaluation meeting with patients, _____ generally explains what it means to use a third-party donor, what the psychological implications may be, inquires about topics such as what they are planning on telling the child, what the child will be told about the third-party donor, sibling registry, anonymity, disclosure and what it means to the child,

etc. These are routine questions and information _____ gathers during her interviews. _____ is an expert in fertility counseling but had no previous experience counseling or providing psycho-education or therapy to a transgender patient.

During their initial meeting on October 27, 2009, Complainant indicated he was seeing a therapist. Accordingly, as a standard part of the evaluation process when the patient so indicates, _____ asked Complainant to have his therapist provide her with information regarding his professional opinion on Complainant's ability emotionally to handle pregnancy and parenting. While Respondent does not require a psychiatric examination in all cases, upon learning that the applicant for treatment is undergoing such care it is customary for _____ to seek input from the patient's mental health provider as an additional factor that the committee can consider in either approving or disqualifying someone seeking treatment. In that way the committee is best able to make individual assessments about the candidate's suitability for the treatment and ensure that the candidate has the appropriate counseling under the circumstances. Such counseling is encouraged by medical industry guidelines. _____ requested information to clarify certain issues regarding information Complainant provided during their initial meeting regarding his sperm donor and his history. For whatever reason, Complainant was hesitant to provide the information.

On December 11, 2009, in response to _____'s request for information from his therapist, Complainant sent a letter stating that in order for him to comply with the request, he needed to understand what information was being sought and the basis for the request. Complainant said he requested information in writing from the guidelines committee with regard to their consideration of his case. Complainant wanted a copy of all policies Respondent had in place with regard to seeking approval from patients' therapists prior to treatment, and the outcome of the committee's discussion of Complainant's case.

On December 21, 2009, _____, Reproductive Medicine Nurse Coordinator, responded, indicating it was Respondent's practice for the psychological counselor to request information from a patient's current therapist when one had been identified. _____ explained this was the standard of care in their practice and that _____ had sent that request to Complainant on October 29, 2009. _____ further noted that in Complainant's case they were requesting that his therapist provide a professional opinion regarding, specifically, Complainant's emotional ability to tolerate the physical, hormonal, and emotional changes that result from pregnancy. _____ requested the letter from Complainant's therapist before the guidelines committee held a follow up meeting on January 6, 2010. She also advised Complainant that the committee had not yet made a decision on his case.

Complainant wrote a letter to _____, Chief Diversity Officer, detailing his interactions with members of the staff over the past several months. On or about January 29, 2010, _____ met with Jennifer Levi from Gay & Lesbian Advocates and

Defenders (GLAD) and informed Respondent for discrimination.

that Complainant was going to sue

Respondent admits that [redacted] sent Complainant a second letter dated January 21, 2010, expressly informing Complainant that the guidelines committee met on January 6, 2010, and the committee recognized that Respondent did not have the expertise necessary to treat Complainant at that time. [redacted] encouraged Complainant to pursue treatment at another facility.

Respondent has no first-hand knowledge that Complainant gave birth to a baby on October 3, 2010.

Respondent did not have the requisite expertise at the time. The American Society for Reproductive Medicine Guidelines, which Respondent follows, did not contain any specific information about transgender patients. Respondent had no previous experience with such treatment for transgender patients and had not, at the time, have a program in place to deal with these issues.

While at the time there was no program in place to address the needs of transgender patients, Respondent held a program on November 20, 2009 entitled, "Transgender Health: Medical, Surgical, and Psychosocial Issues," in order to provide attendees with an update on the medical, surgical, and psychosocial issues related to gender identity and gender reassignment as well as other related issues.

In addition, Respondent's guidelines committee created a sub-committee to review program needs in order to provide quality care services to transgender patients. Respondent has been offering a Transgender Clinic and Transgender Health Care Education at the Adult Medicine Clinic one evening a week. A staff member in the Center for Family Advocacy Program recently cared for a transgender couple on the Medical/Surgical Units. Thus, rather than evidencing a desire not to treat transgender patients, Respondent sought to gain the requisite expertise and provide a more supportive work environment to transgender employees and patients.

Summary of Investigation and Analysis

Complainant alleges Respondent refused to medically treat him in a place of public accommodation because he is transgender. Respondent asserts at the time, they did not have the expertise to perform the desired procedure on a transgender individual and therefore referred Complainant to a facility which they perceived to have the expertise. Respondent asserts it had no program in place to familiarize staff with the special considerations and needs of transgender patients at the time Complainant first sought treatment.

Respondent argues the fact that a patient was not treated is not sufficient to establish a violation of the law. Massachusetts precedent holds that a place of public accommodation has an obligation to treat each member of the public equally, except for good cause. Good cause includes the circumstances of Complainant as his circumstances were beyond Respondent's expertise.

In his rebuttal, Complainant asserts he was treated by multiple doctors for the purpose of conceiving a child and the treatment was completely standard treatment. Complainant further asserts that when he started receiving care from Respondent there were no issues raised until he received a message from _____ on October 16, 2009. Complainant states prior to this other medical professionals treated him using the same protocols as they used to treat other patients. Complainant argues Respondent's claim that transgender patients are high risk or present challenges so far outside of Respondent's area of expertise that they could not treat Complainant is groundless.

Complainant also disputes Respondent ever asked him for additional information about a sperm donor or that he was unwilling to provide any requested information. Complainant also argues that Respondent did not give Complainant a referral to another medical provider; instead they just directed Complainant to seek treatment elsewhere.

Complainant states on October 22, 2009, _____ stated to him, "You present as a male. We've never treated anyone who presents as a male before." Complainant alleges on October 27, 2009, _____ stated to him, "You're a male seeking female services." Complainant asserts he made repeated requests for Respondent's specific concerns in treating him in person and in writing and the requests went unanswered.

Complainant states he was asked for a letter from a therapist regarding Complainant's ability to emotionally handle the pregnancy and parenting. Complainant disputes this is a routine request and states when he asked for a copy of the policy under which the request was made he was not given any policy. Upon further investigation, the Commission found Respondent does not have a written policy regarding requiring therapists' recommendations.

Complainant asserts when he met with _____ she asked a series of questions that focused on Complainant's appearance and gender identity, including what clothing Complainant preferred to wear as a child and his sexual orientation. Complainant was hesitant to answer these questions as they had no bearing on the treatment he sought and the questions would not have been asked if he was not transgender.

The undisputed facts show Respondent routinely provides fertility services to non-transgender individuals. There is no dispute that Complainant was treated differently when he requested fertility services. Respondent argues they lacked the expertise at the time, and now is able to treat transgender patient because: (1) they created a sub-committee to review program needs in order to provide quality care services to transgender patients, and

(2) they held a one time program on November 20, 2009, entitled, "Transgender Health: Medical, Surgical, and Psychosocial Issues," in order to provide attendees with an update on the medical, surgical, and psychosocial issues related to gender identity and gender reassignment as well as other related issues. Respondent does not assert that its staff was required to attend Respondent states they had little experience in treating transgender patients and had not participated in transgender care aside from assisting a few patients who needed help with hormones. Respondent states they had little experience with the required counseling process so it was their practice to refer patients to those with expertise in the area.

During the investigation, the Commission requested that Respondent identify whether they refused to treat any other individuals because of Respondent's lack of expertise. Respondent replied that they refused treatment to others who had recurrent pregnancy loss and patients who failed on multiple attempts in invitro fertilization.

The Commission also contacted a physician who treated Complainant for fertility issues. The physician stated he did not have any problem or lack of expertise while treating Complainant and usually did not have any problems treating transgender individuals. He stated one would have to know if someone is on special hormones to conceive but that is not a complex thing to do.

These issues are best reserved for a hearing officer.

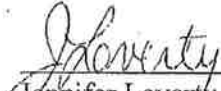
Respondent's letter from _____ to Complainant dated January 21, 2010, stated Respondent did not have the expertise to treat Complainant and encouraged Complainant to seek treatment elsewhere. Complainant states he did not receive the letter until January 29, 2011. If Complainant's allegation that he received the letter on January 29, 2010 is proven true, a fact finder could conclude Complainant filed his charge within the three hundred day statute of limitation. Additionally, after Complainant complained about being refused fertility treatment to Respondent, Respondent sent a second letter from _____ to Complainant dated February 1, 2010, again stating it did not have the expertise to treat Complainant and encouraged him to seek treatment elsewhere. This issue is reserved for a fact finder.

Conclusion

A finding of Probable Cause is recommended against Baystate Reproductive Medicine for discrimination based on gender.



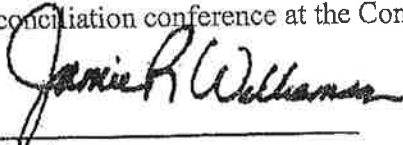
Maryann Brunton
Investigator



Jennifer Laverty
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that **Probable Cause** exists for crediting the allegations of the complaint against Respondent(s). Pursuant to Section 5 of M.G.L. c. 151B, the parties will be afforded an opportunity to participate in a conciliation conference at the Commission.



Jamie Williamson
Investigating Commissioner

8.28-13

Date

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION
436 DWIGHT STREET - SUITE 220
SPRINGFIELD, MASSACHUSETTS 01103
(413)739-6145 Fax (413)784-1056

Date: November 29, 2017

Marylou Fabbo
Skoler, Abbott & Presser, P.C.
One Monarch Place, Suite 2000
Springfield, MA 01144

c/o LGBTQ Parenting Network
Sherbourne Health Centre
333 Sherbourne Street
Toronto, Ontario
Canada

RE: v. Baystate Reproductive Medicine
MCAD Docket Number: 102403040

Dear Parties:

The Commission has received notice that the above-referenced matter has settled. I hereby order the above-referenced file closed as conciliated and dismissed with prejudice.

Very truly yours,



Jamie R. Williamson
Investigating Commissioner



The Commonwealth of Massachusetts Commission Against Discrimination

EXHIBIT A

From:
To: Jamie R. Williamson, Investigating Commissioner
Massachusetts Commission Against Discrimination
Re: v. Baystate Reproductive Medicine

MCAD Docket Number 10-24-03040

Dear Commissioner:

I hereby request permission to withdraw my complaint filed with this Commission and if applicable, from the Equal Employment Opportunity Commission, for the following reason:

- I wish to file a private right of action in civil court.
- I have reached a satisfactory settlement with the Respondent.
- I no longer intend to pursue this matter at the Commission.

Authorization for this request is indicated by the following Certification of Withdrawal by Complainant, OR Certification of Authorization to Withdraw by Counsel.

Certification of Withdrawal by Complainant

I have been advised that it is unlawful for any person or persons to threaten, intimidate, or harass me because I filed a complaint. I have not been coerced into requesting this withdrawal.

Sept. 16 2014
Date

[Signature]
Complainant's signature

Print Name

Certification of Authorization to Withdraw by Counsel

I have been authorized as Counsel of Record for the Complainant and have the authority and permission to sign for the Complainant in this matter. I have advised the Complainant that it is unlawful for any person or persons to threaten, intimidate, or harass him/her because s/he filed a complaint. Complainant has represented that s/he has not been coerced into requesting this withdrawal.

Date

Attorney signature

Print Name