

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Appeal of  
L.D.,

INDEX NO.

Petitioner,

For a Judgment Pursuant to Article 78 and Section 3001  
of the Civil Practice Law and Rules,

**VERIFIED PETITION**

-against-

LINDA A. LACEWELL, as Acting Superintendent of the  
New York State Department of Financial Services, and

MCMC, LLC, as External Review Agent Authorized by the  
New York State Department of Financial Services,

Respondents.

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Petitioner L.D., by her attorney Emile Primeaux, Esq., as and for L.D.'s verified  
application alleges upon information and belief as follows:

**PRELIMINARY STATEMENT**

1. This is an application pursuant to Section 3001 and Article 78 of the Civil  
Practice Law and Rules challenging a determination rendered by the Respondents dated January  
22, 2021. See January 22, 2021, Respondents' Decision Upon External Appeal annexed hereto as  
Exhibit "A."

2. L.D. is a 16-year-old transgender girl (*i.e.*, a girl who was assigned male at birth)  
diagnosed with gender dysphoria who seeks coverage of a medically necessary vaginoplasty  
procedure (*i.e.*, creation of a neo-vagina) by her fully-funded health insurance plan Cigna, which  
is regulated by the New York State Department of Financial Services (hereinafter, "NYS DFS").

3. Because L.D. is a minor, her name has been redacted to initials and all identifying information in this petition and accompanying exhibits is redacted as well.

4. Cigna's plan covers treatment for gender dysphoria as medically necessary; however, the plan categorically limits certain procedures, including vaginoplasty, to members who are 18 years or older. See Cigna Medical Coverage Policy for Treatment of Gender Dysphoria, eff. April 15, 2019, annexed hereto as Exhibit "B."<sup>1</sup>

5. L.D. meets all other clinical pre-requisites for obtaining vaginoplasty except for Cigna's arbitrary restriction based on her age.

6. L.D. has exhausted all administrative remedies available under the law and seeks review of the State agency's adverse determination by this Court.

7. Due to medical necessity and urgency in L.D.'s specific case, her parents paid \$43,999.85 out of pocket for the vaginoplasty, which was performed by Dr. Satterwhite on July 29, 2020, while they waited for the outcome of the internal and external appeals processes. Her parents also paid \$14,701.29 out of pocket for a routine revision procedure on the vaginoplasty on November 4, 2020, at the same time as the tracheal shave for which Cigna did pay, despite its own exclusionary policies categorically denying such coverage. The total out of pocket loss for L.D.'s family due to Cigna's denial and the Respondents' determination is \$58,701.14.

8. Specifically, the Petitioner seeks a judgment declaring the Respondents' denial of the Petitioner's appeal for coverage of medically necessary treatment for gender dysphoria to be arbitrary and capricious, an abuse of discretion and a violation of New York State Insurance Law

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<sup>1</sup> A later version of Cigna's Medical Coverage Policy, which became effective Nov. 15, 2020, was submitted as Petitioner's Exhibit 16 on external appeal with the Respondents. Annexed hereto as Exhibit B is Cigna's Medical Coverage Policy effective at the time of the pre-authorization request and subsequent denials and appeals at issue in this case. The two versions of the document are materially identical regarding all provisions and clinical references cited by the plan in its denial and by the Respondents in upholding the plan's denial.

and Human Rights Law (including subsequent regulations and policies), and declaring the health care plan's original denial to be unreasonable and not made with sound medical judgment or in the best interests of the Petitioner. Further, the Petitioner seeks an order directing the Respondents to modify the determination and order the health insurance plan to cover the cost of the treatment in accordance with its policy without application of the categorical age restriction.

### **THE PARTIES**

9. Petitioner L.D. resides at 471 Colon Avenue, San Francisco, California, 94127-2107. L.D. is a beneficiary of the fully-funded Cigna insurance plan provided by her parent's employer that is based in New York and therefore regulated by the NYS DFS.

10. Respondent Linda A. LACEWELL is the Acting Superintendent of NYS DFS and is responsible for the administration of external review processes and determinations for appeals of insurance denials made by plans the agency regulates, and for the agency's compliance with the New York State Insurance Law and the policies and regulations promulgated thereunder.

11. Respondent MCMC, LLC is an external review agent authorized by the NYS DFS to conduct independent reviews and render final determinations that are binding on the parties of such insurance appeals.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction pursuant to C.P.L.R. § 3001.

13. This Court also has jurisdiction pursuant to C.P.L.R. §§ 7801-7806, to review the actions by bodies or officers who have failed to perform a duty enjoined upon them by law.

14. This Court has personal jurisdiction over the Petitioner as a beneficiary of a health insurance plan regulated by New York State who has exhausted all administrative remedies available to her, and over the Respondents, respectively, pursuant to Civil Practice Law and Rules § 301 and § 7801. *See Mercy Flight Central, Inc. v. Kondolf*, 41 Misc.3d 483 (2013) (finding Article 78 proceeding to be the proper vehicle for appealing the decision of an external appeal agent because agent was acting as an agent of the State).

15. Venue is proper in Albany County, pursuant to C.P.L.R. §§ 506(b) and 7804(b) in that it is Respondents' principal place of business and where the adverse determination was made.

#### **LAWS, REGULATIONS, AND POLICIES AT ISSUE**

16. Article I of the New York State Constitution states that “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.” New York State Constitution, Article I § 11 (2001).

17. The New York State Insurance Law, which is enforced by the NYS DFS, specifically speaks to the standard for reviewing medical necessity and non-discrimination requirements based on sex with corresponding regulations defining “sex” to include gender identity, gender expression, and transgender status, as well as subsequent policy bulletins that clarify the application of these laws on access to health care coverage for transgender individuals specifically.

- a. N.Y. Insurance Law §§ 2607, 3243 and 4330 define “sex” to include gender identity, gender expression, and transgender status.
- b. N.Y. Insurance Law §§ 3243 and 4330 prohibit discrimination in health insurance policies or contracts because of sex, such as “inserting in the policy or contract

any condition or making a stipulation whereby the insured is bound to accept any sum less than the full value or amount of such policy or contract in case of a claim thereon except where such conditions are imposed upon others in similar cases.”

- c. 11 N.Y.C.R.R. § 52.72 prohibits insurance issuers from discriminating based on several factors, including “sex,” the definition of which includes gender identity or expression and transgender status.
- d. 11 N.Y.C.R.R. § 52.75, which became effective July 28, 2020 (one day before Dr. Satterwhite performed L.D.’s vaginoplasty), prohibits discrimination based on gender identity, gender expression, and transgender status. Subsection 52.75(a)(1) specifies the inclusion of policies or contract clauses that purport to deny, limit, or exclude coverage based on an insured’s protected status (*e.g.*, exclusions for treatments related to gender transition, gender dysphoria, or gender incongruence). Subsection 52.75(a)(2) prohibits denying, limiting, or otherwise excluding medically necessary services or treatment otherwise covered by a policy or contract on the basis that the treatment is for gender dysphoria.
- e. 11 N.Y.C.R.R. § 52.16(c) prohibits an insurance issuer from limiting coverage by type of illness, treatment, or medical condition. The NYS DFS has elaborated upon this regulation as it pertains to treatment of gender dysphoria:

“Exclusions are not permitted for specific care or treatment unless such exclusions are permitted by § 52.16(c)... Thus, an issuer may not deny a specific procedure to treat gender dysphoria on the basis that such procedure is deemed always cosmetic or experimental or investigational for all insureds without conducting an internal review and providing external appeal rights. An issuer must review an insured’s request for treatment according to its utilization review plan and make a determination specific to the insured’s case...”

See June 28, 2020, NYS DFS Insurance Circular Letter No. 13.

f. Article 49 of the New York Insurance Law provides that reviewers of an external appeal “shall make a determination as to whether the health care plan acted reasonably and with sound medical judgment and in the best interest of the patient,” considering “the clinical standards of the plan, the information provided concerning the patient, the attending physician’s recommendation, [and] applicable and generally accepted practice guidelines developed by the federal government, national or professional medical societies, boards and associations.” N.Y. Ins. Law § 4914(b)(4)(A).

18. New York State has a clear, long-standing public policy in favor of transgender individuals being treated fairly by insurance companies and accessing medically necessary care in the treatment of gender dysphoria.

a. On December 11, 2014, the NYS DFS issued Insurance Circular Letter No. 7 reminding insurance issuers that the law prohibits them from denying coverage for medically necessary treatment of gender dysphoria, that an insurance policy that includes coverage for mental health conditions may not exclude coverage for the diagnosis and treatment of gender dysphoria, and that any medical necessity review of treatment for gender dysphoria must be performed consistently with the provisions of Article 49 of the Insurance Law and/or Public Health Law.

b. In January 2016, the New York State Division of Human Rights promulgated regulations that added gender identity, transgender status, and gender dysphoria to the definitions of “sex” and “disability” in instances of discrimination and harassment in employment, housing, education, access to credit, and public

accommodations such as hospitals, emergency rooms, and government agencies.

9 N.Y.C.R.R. § 466.13.

- c. On December 7, 2016, 18 N.Y.C.R.R. 505.2(l) was amended to ensure broader coverage of medically necessary gender affirming surgeries for transgender Medicaid recipients (many of which were specific to transgender women), to accept letters of referral for gender-affirming care from licensed clinical social workers, and to make covered services (*including vaginoplasty*) available to Medicaid recipients *under the age of 18* in specific cases if medical necessity is demonstrated and prior approval is received.
- d. On April 19, 2017, the NYS DFS issued Insurance Circular Letter No. 7 advising insurance issuers that they cannot discriminate in the coverage of infertility treatments based on the member's sexual orientation or gender identity.
- e. On August 16, 2017, the NYS DFS issued Insurance Circular Letter No. 12 advising insurance issuers not to automatically deny claims for transgender individuals because their gender does not align with the sex-specific service provided (*e.g.*, pap smears for trans men or prostate exams for trans women).
- f. On June 25, 2018, the NYS DFS issued Insurance Circular Letter No. 9 reminding insurance issuers that is unlawful to discriminate against beneficiaries on the basis of gender identity or gender dysphoria, reiterating and emphasizing the aforementioned circular letters.
- g. On July 23, 2019, the NYS DFS issued Insurance Circular Letter No. 8 reminding insurance issuers that is unlawful to discriminate against beneficiaries on the basis

of gender identity, gender expression, or transgender status in premiums, issuance of policies or contracts, and assessment of treatment for gender dysphoria.

h. On June 28, 2020, the NYS DFS issued Insurance Circular Letter No. 13 explaining requirements under newly effective 11 N.Y.C.R.R. § 52.75, reminding insurance issuers of all previously issued circulars, and advising that it is unlawful to discriminate against beneficiaries on the basis of gender identity, gender expression, or transgender status in the coverage of preventive care and screenings.

19. As of 2019, the New York State Human Rights Law prohibits discrimination or disparate treatment on the basis of many protected statuses, including actual or perceived sex, gender identity, gender expression, and disability (which includes the diagnosis of gender dysphoria). N.Y. Exec. Law § 290 *et. seq.*

20. To the Petitioner’s knowledge and belief, there is no minimum age requirement for giving informed consent for medical treatment in New York State.

**STATEMENT OF FACTS AND BASIS FOR RELIEF**

*Diagnoses, Procedures, And Standards of Care at Issue*

21. Gender dysphoria is defined in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition as the distress that occurs when there is a marked incongruence between the gender a person was assigned at birth and the gender that they experience or express. See Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), American Psychiatric Association, 2013, p. 452. Gender dysphoria is

associated with a number of serious physical and mental health disparities, including elevated risks of depression, anxiety, suicidality, substance abuse, and HIV. Id.

22. The most current applicable and accepted guidelines for treatment of gender dysphoria developed by professional societies recommend gender-affirming surgery for adolescents with gender dysphoria *on a case-by-case basis*.

- a. In 2018, the American Academy of Pediatrics (AAP) – an organization of 67,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents and young adults – published a policy statement endorsing surgical intervention to treat gender dysphoria in transgender adolescents on a case-by-case basis. See Rafferty, Jason, and Committee on Psychosocial Aspects of Child and Family Health, "Ensuring comprehensive care and support for transgender and gender-diverse children and adolescents," *Pediatrics* 142.4 (2018), hereto annexed as "Exhibit C."<sup>2</sup> The statement acknowledges that although "[e]ligibility criteria for gender-affirmative surgical interventions among adolescents are not clearly defined between established protocols and practice... most protocols for gender-affirming interventions incorporate World Professional Association of Transgender Health and Endocrine Society recommendations" including one or more of the following: social affirmation, legal affirmation, medical affirmation, and/or surgical affirmation. Id. at 6. Of surgical affirmation, the statement provides:

"Surgical approaches may be used to feminize or masculinize features, such as hair distribution, chest, or genitalia, and may include removal of internal organs, such as ovaries or the uterus (affecting fertility). These

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<sup>2</sup> Submitted as Petitioner's Exhibit 7 on extenuating appeal with the Respondents.

changes are irreversible. *Although current protocols typically reserve surgical interventions for adults, they are occasionally pursued during adolescence on a case-by-case basis, considering the necessity and benefit to the adolescent's overall health and often including multidisciplinary input from medical, mental health, and surgical providers as well as from the adolescent and family.*"

Id. at 7 (emphasis added).

- b. For the care of peripubertal youths and older adolescents, the Endocrine Society recommends "that an expert multidisciplinary team comprised of medical professionals and mental health professionals manage this treatment. The treating physician must confirm the criteria for treatment used by the referring mental health practitioner and collaborate with them in decisions about gender-affirming surgery in older adolescents." Hembree et al., Guidelines on Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *J. Clin. Endocrinol. Metab.* 102(11): 3870 (Nov. 2017), annexed hereto as Exhibit "D."<sup>3</sup> Although the Society suggests that genital surgery be delayed until 18 (Id. at 3894), that recommendation itself is graded by the Endocrine Society as "weak" and based on "low quality" evidence, by which they mean that such a recommendation "*require[s] more careful consideration of the person's circumstances, values, and preferences to determine the best course of action*" (Id. at 3872, emphasis added).
- c. The World Professional Association for Transgender Health (WPATH) is widely recognized as "an international, multidisciplinary, professional association whose mission is to promote evidence-based care, education, research, advocacy, public policy, and respect for transgender health." NYS DFS External Appeal

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<sup>3</sup> Submitted as Petitioner's Exhibit 9 on external appeal with the Respondents.

Summaries, Case Nos. 201907-119455, 201907-119070, and 201908-120599, annexed hereto as Exhibit “E.” The 7<sup>th</sup> edition of the WPATH Standards of Care (SOC) was published in 2011. See Coleman, Eli, *et al.* "Standards of care for the health of transsexual, transgender, and gender-nonconforming people, version 7," *International Journal of Transgenderism* 13.4 (2012): 165-232, annexed hereto as Exhibit “F.”<sup>4</sup> The NYS DFS frequently cites the WPATH SOC in external appeals related to gender-affirming treatment for individuals with gender dysphoria, such as:

“One of the main functions of WPATH is to promote the highest standards of health care for individuals through the articulation of Standards of Care (SOC) for the Health of Transsexual, Transgender, and Gender Nonconforming People. The SOC are based on the best available science and expert professional consensus. The most recent standards published in 2011 are version 7 and are the current standards of care applied by physicians and surgeons worldwide. Prior to any treatment the criteria requirements are diagnostic and real life experience.”

See Exhibit “E.” The 7<sup>th</sup> edition of the WPATH SOC recommends a transgender patient reach “age of majority in the given country” before undergoing gender affirming vaginoplasty. See Exhibit “F” at 178. Notably, “age of majority” is a legal concept, not a medical benchmark given that “age of majority” varies widely by locale. However, SOC itself contains a critical caveat regarding the intended flexibility of all its guidance, including recommendations regarding age:

“The SOC are intended to be flexible in order to meet the diverse health care needs of transsexual, transgender, and gender-nonconforming people... As in all previous versions of the SOC, the criteria put forth in this document for hormone therapy and surgical treatments for gender dysphoria are clinical guidelines; *individual health professionals and programs may modify them. Clinical departures from the SOC may come about because of a patient’s unique anatomic, social, or psychological*

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<sup>4</sup> Submitted as Petitioner’s Exhibit 8 on external appeal with the Respondents.

*situation; an experienced health professional's evolving method of handling a common situation; a research protocol; lack of resources in various parts of the world; or the need for specific harm-reduction strategies.* These departures should be recognized as such, explained to the patient, and documented through informed consent for quality patient care and legal protection.”

Id. at 166-67 (emphasis added).

23. There is no dispute that vaginoplasty (*i.e.*, surgical creation of a neo-vagina) is a safe, effective, clinically appropriate treatment for gender dysphoria in women who are assigned the male sex at birth. The overwhelming medical consensus is reflected in the fact that all insurance companies with clinical policies on gender dysphoria treatments recognize vaginoplasty as medically necessary – including Cigna and its policy at issue in this case. The dispute centers on how to determine the medical necessity of such a procedure on transgender adolescents under the age of 18. To this end, L.D.’s appeal for external review by the Respondents cited and included as exhibits a number of pertinent studies showing:

- a. The current clinical best practices are informed by the understanding that delaying surgical intervention until a patient reaches age 18 is not a “neutral” act, but rather one that can potentially increase the risk of comorbid mental health disorders and suicidality. See de Vries, A. L., Doreleijers, T. A., Steensma, T. D., & Cohen-Kettenis, P. T. (2011). Psychiatric comorbidity in gender dysphoric adolescents, *Journal of Child Psychology and Psychiatry*, 52(11), 1195-1202, annexed hereto as Exhibit “G.”<sup>5</sup>
- b. Gender affirming vaginoplasty safely and effectively reduces gender dysphoria and the associated risks of self-harm and suicide. See Smith, Y. L., Van Goozen, S. H., Kuiper, A. J., & Cohen-Kettenis, P. T. (2005). Sex reassignment: outcomes

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<sup>5</sup> Submitted as Petitioner’s Exhibit 11 on external appeal with the Respondents.

- and predictors of treatment for adolescent and adult transsexuals, *Psychological Medicine*, 35(1), 89-99, annexed hereto as Exhibit “H.”<sup>6</sup>
- c. Two studies following the same population of transgender girls who underwent vaginoplasty during adolescence reported improved psychological functioning and decreased gender dysphoria. See Peggy T. Cohen-Kettenis & Stephanie H.M. van Goozen, Sex Reassignment of Adolescent Transsexuals: A Follow-up Study, 36 *J. Am. Acad. Child Adolesc. Psychiatry* 263–271 (1997), annexed hereto as Exhibit “I”<sup>7</sup>; Yolanda L.S. Smith, Stephanie H.M. van Goozen & Peggy T. Cohen-Kettenis, Adolescents with Gender Identity Disorder Who Were Accepted or Rejected for Sex Reassignment Surgery: A Prospective Follow-Up Study, 40 *J. of the Am. Academy of Child and Adolescent Psychiatry* 472–481 (2001), annexed hereto as Exhibit “J.”<sup>8</sup>
- d. Delays in access to medical treatment are specifically correlated with suicidal ideation and attempt. See Bailey, L., Ellis, S. J., & McNeil, J. (2014). Suicide risk in the UK trans population and the role of gender transition in decreasing suicidal ideation and suicide attempt, *The Mental Health Review*, 19(4), 209, annexed hereto as Exhibit “K.”<sup>9</sup>
- e. A 2017 study found that there were only 22 surgeons in the country who perform gender-affirming vaginoplasty for transgender patients, irrespective of age, and of these surgeons, an overwhelming majority found the 18-year-old threshold is an arbitrary metric for determining candidacy for surgery, citing psychological

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<sup>6</sup> Submitted as Petitioner’s Exhibit 1 2 on external appeal with the Respondents.

<sup>7</sup> Submitted as Petitioner’s Exhibit 1 3 on external appeal with the Respondents.

<sup>8</sup> Submitted as Petitioner’s Exhibit 1 4 on external appeal with the Respondents.

<sup>9</sup> Submitted as Petitioner’s Exhibit 1 5 on external appeal with the Respondents.

maturity as the main criterion for adolescent patient selection rather than specific chronological age. See Milrod, C., & Karasic, D. H. (2017). Age is just a number: WPATH-affiliated surgeons' experiences and attitudes toward vaginoplasty in transgender females under 18 years of age in the United States, *The Journal of Sexual Medicine*, 14(4), 624-634, annexed hereto as Exhibit "L."<sup>10</sup> One surgeon in the study explained:

"I base [the decision to perform gender affirming vaginoplasty on transgender adolescents] on very strong family support, very strong letters from their psychologist and their behavioral health therapist ... You also need to take into account the maturity of the individual and whether they are at a point where they are mature enough to understand the seriousness of the surgery and the seriousness of adhering to all of the post-op instructions so that they maximize their results." Id.

***Persistence and Severity of L.D.'s Gender Dysphoria as a Basis of Medical Necessity for Gender-Affirming Vaginoplasty in Her Individual Case***

24. L.D. is now a 16-year-old transgender girl diagnosed with gender dysphoria.

25. In 2016, at age 11, L.D. fully realized that her gender identity was that of a girl, and in January 2018 she disclosed to her parents the persistent and acute distress she experienced around the incongruence of her gender identity and sex assigned at birth. See April 2, 2020, Dr. Anderson's Letter of Medical Necessity, annexed hereto as Exhibit "M"<sup>11</sup>; April 27, 2020, UCSF Pediatric Endocrinology's Letter of Medical Necessity, annexed hereto as Exhibit "N"<sup>12</sup>; April 28, 2020, Dr. Mar's Letter of Medical Necessity, annexed hereto as Exhibit "O"<sup>13</sup>; May 29, 2020, L.D.'s Personal Statement, annexed hereto as Exhibit "P."<sup>14</sup>

<sup>10</sup> Submitted as Petitioner's Exhibit 10 on external appeal with the Respondents.

<sup>11</sup> Submitted as Petitioner's Exhibit 2 on external appeal with the Respondents.

<sup>12</sup> Submitted as Petitioner's Exhibit 3 on external appeal with the Respondents.

<sup>13</sup> Submitted as Petitioner's Exhibit 4 on external appeal with the Respondents.

<sup>14</sup> Submitted as Petitioner's Exhibit 5 on external appeal with the Respondents.

26. Upon reaching puberty, L.D. experienced severe depression and self-harm related to her body becoming more masculine, increases and thickening of her body hair, deepening of her voice, and increases in her height. See Exhibits “M,” “O,” “P.”

27. In or around June 2018, L.D. began medical transition through a regimen of puberty hormone blockers and estradiol (*i.e.*, a female hormone replacement) with her parents’ full support and under the care and supervision of a multidisciplinary team of medical and mental health providers that included psychologist Erica E. Anderson, PhD, psychiatrist Kobi Mar, PsyD, pediatric endocrinology nurse practitioner Meredith Russell, AC-CPNP, pediatric endocrinologist Stephen Rosenthal, MD, and the University of California San Francisco (UCSF) Child and Adolescent Gender Center. See Exhibits “M,” “N,” “O.”

28. Over the next 18 months, L.D. socially and hormonally transitioned to being the girl she already knew she was inside. The acuteness of L.D.’s depression and suicidality subsided, but self-loathing of her genitalia and the overwhelmingly constant fear of discovery by friends and classmates of being a transgender girl persisted. See Exhibit “P.” The gender dysphoria continued to cause “clinically significant distress or impairment in function.” See Exhibit “N.”

29. In April 2020, L.D. was evaluated by her multidisciplinary medical and mental health team, all of whom found that L.D.’s persistent and severe gender dysphoria necessitated gender-affirming vaginoplasty. See Exhibits “M,” “N,” “O.”

30. Erica E. Anderson, PhD, a clinical psychologist with 40 years of experience, a WPATH member, and a clinician with the UCSF Child and Adolescent Gender Clinic, wrote a letter of support for L.D.’s vaginoplasty, noting that “[L.D.] reports feeling uncomfortable with her body since before the onset of puberty at about age 12 and would appear to have suffered

from intense gender dysphoria since that time.” See Exhibit “M.” Dr. Anderson explains L.D.’s journey of obtaining hormonal replacement treatment that helped her “successfully avoid[] most of the unwanted secondary sex characteristics associated with male puberty” and how she “has blossomed into a lovely young woman.” Id. Dr. Anderson stresses the consistency of L.D.’s female identity and the need for vaginoplasty to bring her body into alignment with her identity. Id. Dr. Anderson also notes that “[L.D.] is very talented athletically” especially in volleyball and basketball, so much so that it may be “possible for further competition in high school but also the possibility of an athletic scholarship to college/university” – a dream likely only possible with the completion of vaginoplasty in the near future. Id. She concluded, “I have no reservations about my full recommendation that this young woman is an excellent candidate for vaginoplasty.” Id.

31. Certified pediatric nurse practitioner and Nursing Director of the UCSF Child and Adolescent Gender Center (CAGC) Meredith Russell, along with pediatric endocrinologist and CAGC Medical Director Stephen Rosenthal, MD co-authored a letter of support for L.D.’s vaginoplasty, noting that “[a]lthough hormone therapy has helped patient more closely align gender expression with gender identity, body dysphoria symptoms persist,” her “gender dysphoria is not a symptom of another mental health disorder, and the gender dysphoria causes clinically significant distress or impairment in function.” See Exhibit “N.” They concluded, “Patient expresses a consistent, persistent, and insistent female gender identity and a desire for gender affirming vaginoplasty surgery. It is in this person’s best interest to have this surgery.” Id.

32. Psychiatrist Dr. Kobi Mar, who has specialized training to work with transgender and gender-nonconforming populations, wrote a letter of support as a secondary evaluator, noting that “[L.D.] experiences distress when thinking about her bottom parts and shared that it

is especially difficult when she plays competitive sports that require her to wear tight shorts.” See Exhibit “O”. Dr. Mar stated: “It is my professional opinion that [L.D.] is an appropriate candidate for this procedure. I do not see any psychological difficulties that will make it difficult to embark on this medical treatment at this time... I follow the WPATH Standards of Care 7 (SOC7) as flexible guidelines in my approach to working with transgender and gender nonconforming individuals.” *Id.* Over the course of 21 therapy sessions, Dr. Mar observed that despite L.D.’s marked improvement after beginning her medical and social transition in 2018, she “still experiences significant dysphoria relative to her bottom parts and for this reason is seeking gender confirmation surgery. [L.D.] experiences distress when thinking about her bottom parts and shared that it is especially difficult when she plays competitive sports that require her to wear tight shorts.” *Id.* Finally, Dr. Mar noted L.D.’s high level of familial support, her demonstration of “adequate intelligence, insight, judgment, and decision-making capacity,” and her ability to “clearly articulate reasons for desiring surgery, risks and benefits, and the implications of this procedure on her gender presentation and life.” *Id.*

### *Procedural History and Exhaustion of Administrative Remedies*

33. On May 15, 2020, upon receipt and acceptance of these letters of recommendation for surgery from the multidisciplinary team, and in accordance with the prevailing practice guidelines, standards of care, and current research (see *supra*, ¶¶ 21-23), L.D.’s treating surgeon Dr. Thomas Satterwhite submitted a pre-authorization request for gender-affirming vaginoplasty to L.D.’s insurance plan, Cigna. See Dr. Thomas Satterwhite Prior Authorization Request for Cigna’s Coverage of Vaginoplasty, annexed hereto as Exhibit “Q.”<sup>15</sup>

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<sup>15</sup> Submitted as Petitioner’s Exhibit 1 on external appeal with the Respondents.

34. Cigna's Medical Coverage Policy explicitly covers vaginoplasty for transgender women diagnosed with gender dysphoria, but categorically limits coverage of this procedure to members who are 18 years or older. See Exhibit "B" at 2.

35. On June 4, 2020, Cigna issued an Initial Adverse Determination (IAD) denying pre-authorization for vaginoplasty to treat L.D.'s gender dysphoria on the basis that she did not meet the age threshold of 18, as required by its Medical Coverage Policy. See June 4, 2020, Cigna's Initial Adverse Determination of Prior-Authorization for Vaginoplasty, annexed hereto as Exhibit "R."<sup>16</sup>

36. In July 2020, the Community Health Advocates, a not-for-profit healthcare advocacy organization, submitted an internal appeal of the denial of coverage on L.D.'s behalf.

37. Among other documents submitted with this internal appeal to Cigna was a letter written by L.D. herself, in which she describes the extent and severity of her gender dysphoria, cutting (*i.e.*, self-mutilation associated with externalizing deeply internal pain and suffering), and tucking (*i.e.*, forcibly and painfully hiding male genitalia under the body to create a more feminine-looking appearance). See Exhibit "P." Specifically she wrote:

"[A]s my body matured, my gender dysphoria grew... I would initially just cringe at the sight of my penis in the mirror after taking a shower, but this cringe turned into a deep hatred towards my body which each day was resembling that of a man more and more. I started to cut myself with the sole intention to feel something other than the disappointment I felt to be living in the body I was living in. My gender dysphoria consumed my daily life, and I developed habits that are prevalent in my life today, like tucking. Tucking involves forcing the shaft of the penis beneath your body, pushing the testicles up and making the male genitalia unrecognizable provided you throw on a few pairs of tight spandex/compression undergarments. While this process is painful for both the genitalia and the sides of the body where the spandex digs in due to its fit, it was worth it. I was willing to go to great lengths to appear like a female. This, along with access to puberty blockers and female hormones led to a significant reduction in the negative thoughts that plagued my mind on a daily basis. I stopped cutting, and I started living. The gender dysphoria has not disappeared, but it has been suppressed... I

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<sup>16</sup> Submitted as Petitioner's Exhibit 17 on external appeal with the Respondents.

feel incomplete, I don't feel like myself. I need vaginoplasty to feel complete. A piece of me is missing without it...

Gender reassignment surgery would not only clear up my gender dysphoria, but it would further my ability to live as my true self, a female...I want to be happy, while my self-harming habits are obsolete now, I am still missing a part of myself. I want to be able to go outside without perfecting my painful tuck 15-30 minutes prior. I want to wear spandex and play volleyball like a cisgender [*i.e.*, non-transgender] female and not be paranoid about those watching. *'Do they know?'* rings through my brain and I hate it. The amount of opportunities I've turned down due to my biological sex is extremely upsetting. I fear going to sleepovers, pools, beaches, or anywhere that over exposes myself. I want to be intimate without feeling like I am hiding. The fear that comes with physical contact is atrocious, and I never want to feel like someone I am close to can't touch me. My primary motive for obtaining this surgery is not sexual. I want to free myself of the mental and physical pain that follows me everywhere." Id.

38. The internal appeal to Cigna also included a letter authored by L.D.'s parents who offered the following insight into L.D.'s condition and precariousness of her well-being:

"This incongruence with her anatomy and her intrinsic knowledge about her gender is not a choice. She would not wish this struggle on anyone. She has posed questions to us in the past such as 'Why does God hate me?' She is self-loathing, and hates her body that doesn't reflect who she is. The resulting gender dysphoria is real and damaging. [L.D.] has resorted to self-harm when the feelings are overwhelming, and we fear for how far such behaviors will go without aligning her body with who she is on the inside. The idea of waiting until she is 18 years old is inconceivable. One can only tread water for so long. You either drown, or must start swimming to land. Without gender-affirming surgery, [L.D.] will drown... We fear she will take her life and we will lose our precious daughter before she can fully blossom into the beautiful young woman we know she is... For an innate social creature such as [L.D.], this is extremely difficult, isolating and causes a profound depression... Her self-harming ways are in check right now because she sees the light at the end of the tunnel, and that light is gender affirming surgery. If denied this treatment, I know in my heart these behaviors will begin again, and I am fearful of where they will end."

See July 16, 2020, Personal Statement of L.D.'s Parents in Support for Vaginoplasty, annexed hereto as Exhibit "S."<sup>17</sup>

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<sup>17</sup> Submitted as Petitioner's Exhibit 6 on external appeal with the Respondents.

39. On August 4, 2020, Cigna issued a Final Adverse Determination (hereinafter “FAD”) upholding the denial of coverage on the sole basis that L.D. was under 18 years old. See August 4, 2020, Cigna’s Final Adverse Determination annexed hereto as Exhibit “T.”<sup>18</sup>

40. In December 2020, on L.D.’s behalf, the Community Health Advocates filed an external appeal with NYS DFS, which assigned the appeal to Respondent MCMC, an independent review organization authorized to conduct such reviews on behalf of the State. See December 17, 2020, External Appeal to NYS DFS by Community Health Advocates annexed hereto as Exhibit “U” (excluding the exhibits as originally attached to the appeal, as they are annexed hereto this present petition).

41. On January 22, 2021, MCMC upheld the insurance plan’s determination, finding that vaginoplasty was not medically necessary for L.D. because she is under the age of 18. See Exhibit “A.” This marked the exhaustion of available administrative remedies for this matter.

#### *Deficiencies and Inconsistencies in Cigna’s Medical Coverage Policy*

42. Cigna’s Medical Coverage Policy creates a seemingly non-rebuttal presumption that many treatments for gender dysphoria cannot ever be deemed medically necessary for anyone under the age of 18 years. See Exhibit “B.” For example, in the section on Gender Reassignment Surgery, the policy begins with “Gender reassignment surgery (see Table 1) is considered medically necessary treatment of gender dysphoria *when the individual is age 18 years or older and* when the following criteria are met...” Id. at 2 (emphasis added). With regard to behavioral health services, the Policy states that “Documentation for hormonal and/or surgery should be comprehensive and include the extent to which eligibility criteria have been met (i.e.,

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<sup>18</sup> Submitted as Petitioner’s Exhibit 18 on external appeal with the Respondents.

confirmed gender dysphoria, capacity to make a fully informed decision, *age ≥ 18 years or age of majority, and other significant medical or behavioral health concerns are well-controlled*),” in addition to other factors. Id. at 5 (emphasis added).

43. Cigna’s Medical Coverage Policy further states that “Performing gender reassignment surgery *prior to age 18, or the legal age to give consent*, is not recommended by professional societies” (See Exhibit “B” at 6, emphasis added), citing a number of documents by professional associations, many of which are now outdated or have since been withdrawn:

- a. The Policy cites an outdated version of guidance issued by the American College of Obstetricians and Gynecologists (ACOG) in 2017. Id. at 7. That guidance has since been withdrawn and replaced with updated guidance that makes no recommendations regarding age-based restrictions for treatment of gender dysphoria. See March 2021, Health Care for Transgender and Gender Diverse Individuals, ACOG Committee Opinion No. 823 (Replaces Committee Opinion 512, Dec. 2011 and Committee Opinion 685, Jan. 2017), annexed hereto as Exhibit “V.”
- b. The Policy cites the latest WPATH SOC, (see Exhibit “B” at 8), but fails to acknowledge the SOC’s own clear caveat regarding the flexibility with which its standards and guidance are intended to be applied on a case-by-case basis (see supra ¶ 22(c)).
- c. The Policy cites an outdated version of guidance issued by the Endocrine Society from 2009. See Exhibit “B” at 8. In 2017, the Endocrine Society published updated guidance that, with regard to the care of peripubertal youths and older adolescents, recommends:

“that an expert multidisciplinary team comprised of medical professionals and mental health professionals manage this treatment. The treating physician must confirm the criteria for treatment used by the referring mental health practitioner and collaborate with them in decisions about gender-affirming surgery in older adolescents.”

See Exhibit “D” at 3870. The updated guidance was referenced in L.D.’s appeals, but appears to have been disregarded by the plan and the Respondents.

44. According to Cigna’s Medical Coverage Policy, some gender-affirming procedures such as “Thyroid reduction chondroplasty,” also known as a tracheal shave or surgical reduction of the Adam’s apple for male-to-female transgender individuals, are considered “Cosmetic and/or Not Medically Necessary (Unless coverage is specifically listed as available in the applicable benefit plan document).” See Exhibit “B” at 4. Nevertheless, contrary to its own policies and age-based restrictions, Cigna covered L.D.’s thyroid reduction chondroplasty, which she obtained on November 4, 2020 at age 15. See Cigna’s Explanation of Benefits and Dr. Satterwhite’s Invoice for L.D.’s Thyroid Reduction Chondroplasty Obtained on November 4, 2020, annexed hereto as Exhibit “W.”

*Inconsistencies in Respondents’ Medical Necessity Determinations  
for People with Gender Dysphoria*

45. The appeal determination for L.D.’s case rendered by the Respondents contains several errors and omissions of material facts. See Exhibit “A.”

- a. Listing the source of the documents received and that were reviewed, the MCMC reviewer marked “Health Plan” and “Patient’s provider” as sources, but not “Patient/patient representative,” when in fact the appeal documents were

submitted directly from L.D.'s representative through the Community Health Advocates (see Exhibit "U").

- b. The review fails to identify several key members of L.D.'s multidisciplinary team, including a psychiatrist, a certified pediatric nurse practitioner who is the Nursing Director of the UCSF Child and Adolescent Gender Center (CAGC), and pediatric endocrinologist who is the CAGC Medical Director. Such a multidisciplinary team of providers is recommended across current guidelines and standards of care in order to have an effective evaluation of the individual patient's needs on a case-by-case basis. See supra ¶¶ 22-23.
- c. The review fails to acknowledge in detail that L.D. satisfies all other pre-requisites for vaginoplasty in accordance with all prevailing current guidelines and standards of care.
- d. The review fails to acknowledge any of L.D.'s individual circumstances that would justify flexibility or modification of the standards of care (as predicted and permitted by the WPATH SOC, see Exhibit "F" at 166-67), such as her clinically recorded history of profound gender dysphoria, depression, and self-mutilation, as well as statements of self-loathing and painful tucking by L.D. herself and her parent's earnest concern about death by suicide were she not able to obtain this surgery soon (see Exhibits "M" – "Q").
- e. The review bases its determination solely on the arbitrary and discriminatory factor of L.D.'s age.

46. NYS DFS inconsistently applies WPATH SOC to its determinations upon external review of health insurance appeals involving transgender individuals, both within L.D.'s age range and outside of it.

- a. Upon search of the NYS DFS determinations archived online, there appear to be only six (6) results for transgender individuals between the ages of 10-19 who sought coverage of surgical services, including the Petitioner. Of these, all four (4) cases involving female-to-male transgender boys seeking chest masculinization surgery were granted (*i.e.*, their plan's adverse determination was overturned), and both (2) cases involving male-to-female transgender girls were denied (*i.e.*, their plan's adverse determination was upheld), including the Petitioner's. See NYS DFS External Appeal Summaries, Case Nos. 202012-133332 (male-to-female upheld; L.D.'s case), 2020-07-13-0134 (male-to-female upheld), 202002-126169 (female-to-male overturned), 201908-120599 (female-to-male overturned), 201907-119455 (female-to-male overturned), and 201904-116097 (female-to-male overturned), annexed hereto as Exhibit "X".
- b. In cases involving chest masculinization for female-to-male transgender boys, the NYS DFS cites WPATH SOC in varying degrees of detail, sometimes noting that such surgery can be carried out before the age of 18, "preferably after ample time of living in the desired gender role and after one year" of hormone treatment in an effort "to give adolescents sufficient opportunity to experience and socially adjust in a more masculine gender role, before undergoing irreversible surgery. However, different approaches may be more suitable, depending on an

adolescent's specific clinical situation and goals for gender identity expression.”

See Exhibit “X” at 4-6; Exhibit “F” at 178.

- c. In a case regarding a male-to-female transgender girl aged 10-19 seeking facial feminization surgeries, NYS DFS notes that:

“Although most of these procedures are generally labeled ‘purely aesthetic,’ *these same operations in an individual with severe gender dysphoria can be considered medically necessary, depending on the unique clinical situation of a given patient’s condition and life situation.* This ambiguity reflects reality in clinical situations, and allows for individual decisions as to the need and desirability of these procedures. *The records do not document any unique situations.*”

See Exhibit “X” at 2 (emphasis added).

- d. The Respondents’ willingness to consider the life circumstances of a young person with gender dysphoria tracks with another NYS DFS external appeal determination regarding a male-to-female transgender woman aged 30-39 seeking facial feminization surgeries, in which the Respondent cites letters from the patient’s mental health provider describing this person’s unique situation including the dysphoria she experiences upon looking at her own particularly masculine facial features in the mirror, her fear of never being accepted as a woman, and feeling as though she is being stared at all the time. See NYS DFS External Appeal Summary, Case No. 201907-119070 (emphasis added), annexed hereto as Exhibit “E” at 2. In that case, the Respondent overturned the health plan’s adverse determination, concluding: “*This is a unique clinical situation in which facial feminization is required* to treat the patient’s severe gender dysphoria.” Id. (emphasis added).

47. Even though flexibility, modifications, and such considerations of unique individual circumstances demonstrated in these aforementioned cases are similarly indicated by the WPATH SOC and other guidance for vaginoplasty in adolescents, no such considerations are documented in the Respondents' review of L.D.'s case. See Exhibits "A," and Exhibit "X" at 1.

**FIRST CLAIM**  
**ARBITRARY AND CAPRICIOUS AGENCY ACTION**

48. The Petitioner repeats and re-alleges ¶¶ 1-47 as though fully set forth herein.

49. The Respondents have an affirmative duty to comply with and enforce the New York State Insurance Law so that beneficiaries of health insurance plans regulated by the State can obtain fair and non-discriminatory coverage for medically necessary treatments to which they are entitled.

50. The Petitioner met and complied with all of the requirements set forth by the prevailing standards of care and guidance published by professional associations on the treatment of gender dysphoria in adolescents.

51. Nevertheless, the Petitioner was denied coverage for this care by her health insurance plan based solely on her status as a minor under the age of 18.

52. Cigna's categorical age-based restriction to many gender-affirming treatments, including vaginoplasty, creates an arbitrary and erroneous non-rebuttable presumption of non-medical necessity for all adolescents with gender dysphoria regardless of any other unique factors or circumstances or the professional opinions of the adolescent's multidisciplinary team of medical and mental health providers. As such, it does not follow prevailing standards of care and guidelines set forth by professional associations that call for case-by-case determinations.

53. But for her age, this same surgical procedure would always be considered medically necessary for L.D., who meets all other pre-requisites for vaginoplasty.

54. The Respondents' failure to review the entire record on appeal and the Respondents' subsequent misapplication of the prevailing standards of care and guidance – as well as the Respondents' own case-by-case analysis utilized in other cases with similarly situated individuals – therefore lacks a rational basis and is arbitrary and capricious and an abuse of discretion.

55. This cause of action is brought pursuant to Article 78 of the Civil Practice Law and Rules and seeks reversal of the NYS DFS's decision that upheld Cigna's adverse determination regarding coverage of L.D.'s vaginoplasty. The Petitioner has presented sufficient evidence to rebut any presumption that such surgery is not usually medically necessary for adolescents and therefore is entitled to coverage of this surgery as medically necessary.

56. This cause of action is also brought pursuant to § 3001 of the Civil Practice Law and Rules and seeks a declaratory judgment to enjoin the Respondents' from arbitrary and capricious application of prevailing standards of care and clinical guidelines in a way that unjustly harms other adolescents who seek treatment for their gender dysphoria. All such individuals who comply with the requirements of the prevailing standards of care and clinical guidelines and whose multidisciplinary team of medical and mental health providers support the proposed course of medically necessary treatment should have equal access to coverage by health insurance issuers regulated by the State. The Respondents' failure to fairly apply prevailing standards of care and clinical guidelines and to instead uphold a plan's arbitrary categorical age-based restriction in this case is contrary to the interest of the Petitioner and to public health in general.

**SECOND CLAIM**  
**VIOLATION OF THE NEW YORK STATE INSURANCE LAW**  
**ON THE BASIS OF SEX**

57. The Petitioner repeats and re-alleges ¶¶ 1-47 as though fully set forth herein.

58. The Respondents and NYS DFS violated the Petitioner’s rights under the New York State Insurance Law on the basis of sex (which includes gender identity, gender expression, and transgender status).

59. The Petitioner was denied the privilege of a fair review of her appeal to the Respondents that would have been afforded to similarly situated female-to-male transgender boys aged 10-19 for whom the NYS DFS has consistently found in favor of medical necessity for gender-affirming and irreversible chest reconstruction surgery. But for L.D.’s need for surgery specifically intended to affirm her female gender identity, the Respondents may have found medical necessity in the Petitioner’s case regardless of her age.

**THIRD CLAIM**  
**VIOLATION OF THE NEW YORK STATE INSURANCE LAW**  
**FAILURE TO PROVIDE MEDICAL NECESSITY REVIEW**

60. The Petitioner repeats and re-alleges ¶¶ 1-47 as though fully set forth herein.

61. Article 49 of New York Insurance Law provides that the reviewer of an external appeal “shall make a determination as to whether the health care plan acted reasonably and with sound medical judgment and in the best interest of the patient.” N.Y. Insurance Law § 4914(b)(4)(A). In making this determination, the reviewer must “consider the clinical standards of the plan, the information provided concerning the patient, the attending physician’s recommendation, [and] applicable and generally accepted practice guidelines developed by the federal government, national or professional medical societies, boards and associations.” *Id.*

62. Cigna’s categorical age-based restriction to gender-affirming treatment, including vaginoplasty, is unlawful because it does not permit a medical necessity review as required by the New York State Insurance Law. The restriction effectively creates a non-rebuttal presumption that all such treatment is never medically necessary for adolescents, regardless of any other unique factors or circumstances or the professional opinions of the adolescent’s multidisciplinary team of medical and mental health providers.

63. The Respondents violated the Petitioner’s rights by failing to comply with and enforce the New York State Insurance Law when they upheld Cigna’s arbitrary and discriminatory policy.

**FOURTH CLAIM**  
**VIOLATION OF THE NEW YORK STATE HUMAN RIGHTS LAW**  
**DISPARATE TREATMENT BASED ON AGE, SEX, GENDER IDENTITY,**  
**GENDER EXPRESSION, AND DISABILITY**

64. The Petitioner repeats and re-alleges ¶¶ 1-47 as though fully set forth herein.

65. The Respondents violated the Petitioner’s rights under the New York State Human Rights Law (hereinafter “NYS HRL”) on the basis of age, sex (which includes transgender status), gender identity, gender expression, and disability (which includes gender dysphoria). N.Y. Exec. Law 292 (2019); 9 N.Y.C.R.R. § 466.13 (2016).

66. The Petitioner is a transgender person and is thus covered under the NYS HRL and ensuing regulations.

67. As a State agency and the authorized agent thereof, respectively, the Respondents provide a place of public accommodation as defined by the NYS HRL. N.Y. Exec. Law § 292(9) (2019).

68. The Petitioner was denied the privilege of a fair review of her appeal by the Respondents that would have been afforded to similarly situated female-to-male transgender boys aged 10-19 for whom the NYS DFS has consistently found in favor of medical necessity for gender-affirming and irreversible chest reconstruction surgery. But for L.D.'s identity as a transgender girl and the need for surgery specifically intended to affirm that gender identity, the Respondents would have found medical necessity in the Petitioner's case regardless of her age.

69. Further, the Petitioner was denied the privilege of a fair review of her appeal by the Respondents that would have been afforded to similarly situated male-to-female transgender women aged 18 and older for whom the NYS DFS has consistently utilized a case-by-case analysis of medical necessity given the unique circumstances of their case. But for L.D.'s age of 15 at the time of her request of a vaginoplasty to treat her gender dysphoria, the Respondents would have found medical necessity in the Petitioner's case.

70. Finally, the Petitioner was denied the privilege of a fair review of her appeal by the Respondents that would have been afforded to similarly situated individuals seeking treatment for disabilities other than gender dysphoria regardless of their age. But for L.D.'s diagnosis of gender dysphoria, she may have not been subjected to an arbitrary and erroneous age-based restriction on otherwise medically necessary treatment for her disability.

71. The Respondents' arbitrary application and enforcement of erroneous insurance issuer policies and the prevailing standards of care regarding adolescent male-to-female transgender girls seeking vaginoplasty disparately impacts this population who may otherwise satisfy all other pre-requisites to receive such treatment for their gender dysphoria.

72. Because the Respondents subjected the Petitioner, a male-to-female transgender adolescent, to disparate treatment, the Respondents violated the Petitioner’s rights under the law. N.Y. Exec. Law 292 (2019); 9 N.Y.C.R.R. § 466.13 (2016).

**FIFTH CLAIM**  
**VIOLATION OF THE EQUAL PROTECTION CLAUSE**  
**OF THE NEW YORK STATE CONSTITUTION**

73. The Petitioner repeats and re-alleges ¶¶ 1-47 as though fully set forth herein.

74. Article I of the New York State Constitution states that “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.” See New York State Constitution, Article I § 11 (2001).

75. The State offers the NYS DFS administrative appeals process in order to provide a low-cost expedited layer of review for consumers who believe they are denied something to which they are entitled.

76. Not all transgender individuals diagnosed with gender dysphoria are able to obtain coverage for medically necessary treatment by their health insurance plans regulated by the State. For example, to date, there appear to be only two (2) male-to-female transgender adolescents aged 10-19 who have utilized the NYS DFS administrative appeals process, including the Petitioner in the present case, and both were denied access to medically necessary care. By contrast, four (4) female-to-male transgender adolescents aged 10-19 have utilized the process, and each was able to access the medically necessary care he sought.

77. Further, the case-by-cases analysis of individual and unique circumstances applied by the NYS DFS and its agents to many other cases of similarly situated individuals was

not applied to the Petitioner's case. This case may be illustrative of a more systematic discrepancy and disparate impact on others like the Petitioner.

78. As a result, individuals utilizing the NYS DFS external appeals process are denied equal protection of the laws of the state, in violation of the State constitution.

**PRAYER FOR RELIEF**

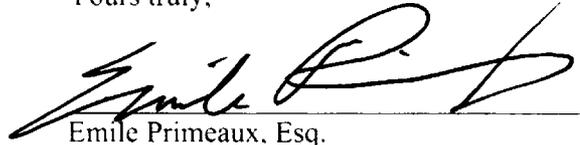
79. **WHEREFORE**, the Petitioner respectfully requests that the Court issue an Order and Judgment:

- a. Declaring to be arbitrary and capricious, an abuse of discretion, and otherwise unlawful the Respondents' denial of the Petitioner's appeal for coverage of medically necessary treatment for gender dysphoria;
- b. Declaring the health care plan's original denial to be unreasonable and not made with sound medical judgment or in the best interests of the Petitioner;
- c. Directing the Respondents to modify the determination and order the health insurance plan to cover the cost of the treatment in full as it would but for its arbitrary and discriminatory categorical age-based restriction;
- d. Awarding the Petitioner reasonable attorney's fees and costs in this action; and
- e. Granting the Petitioner such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Section 7804 of the C.P.L.R., any answering papers shall be served on the undersigned no later than five (5) days before the return date of the Petition.

Dated: May 21, 2021  
Nunda, New York

Yours truly,



Emile Primeaux, Esq.  
Attorney for Petitioner  
P.O. Box 665, Dansville, NY 14437  
(585) 612-1071

Sworn to before me this  
21 day of May, 2021

Cassandra Jordan  
Notary Public

CASSANDRA JORDAN  
NOTARY PUBLIC STATE OF NEW YORK  
LIVINGSTON COUNTY  
LIC. #01JO6381739  
COMM. EXP. OCT. 09, 2022