

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF AITKIN

NINTH JUDICIAL DISTRICT

Case Type: Discrimination

Andrea Anderson,

Court File No.: _____

Plaintiff,

Judge: _____

vs.

**COMPLAINT AND
DEMAND FOR JURY TRIAL****Grand St. Paul CVS, LLC dba CVS Pharmacy
#10397; CVS Health Corporation; CVS
Pharmacy, Inc.;
Aitkin Pharmacy Services, LLC dba Thrifty
White Pharmacy;
CVS Pharmacist #1;
George Badeaux,**

Defendants.

Plaintiff Andrea Anderson (“Anderson” or “Plaintiff”), through her attorneys, Jess Braverman and Christy L. Hall of Gender Justice, 200 University Ave. West, Suite 200, St. Paul, Minnesota 55103, for her Complaint against the above-named defendants, states and alleges as follows:

INTRODUCTION

Plaintiff Andrea Anderson is a mom and a licensed foster parent. She and her partner have lived in McGregor, Minnesota for several years. McGregor is a small town with only one pharmacy - Thrifty White.

In January 2019, Anderson’s contraception failed. She obtained a prescription for an emergency contraception, ella, and had her doctor send it to the McGregor Thrifty White pharmacy. She acted quickly because any delay in obtaining emergency contraception increases the risk of

pregnancy. The pharmacist on duty told her that he would be unable to fill her prescription because of his “beliefs.” He also warned her against trying Shopko, another pharmacy in the surrounding area. The pharmacist did not provide Anderson with any information about how she could get her prescription filled.

Anderson next tried a CVS pharmacy in Aitkin, Minnesota, a town roughly 20 miles away. The CVS pharmacist also indicated that she could not fill the prescription. The pharmacist then claimed that she called a pharmacist at the Walgreens in Brainerd Minnesota, who told her that they could not fill the prescription either. Anderson later confirmed with that Walgreens pharmacist that they did speak with a pharmacist from CVS, but that they had told the CVS pharmacist that Walgreens could fill the prescription.

Though Anderson finally found a pharmacy that was willing to fill her prescription, it was over fifty miles from her home. Meanwhile, a massive snowstorm was headed to central Minnesota. Given the increased risk of pregnancy from any delay in taking emergency contraception, Anderson drove over 100 miles round trip in the snowstorm in order to fill her prescription. While the drive normally takes over two hours round trip, that day it took over three hours in light of the storm.

The Defendants in this case singled out health care that only people who may become pregnant need—emergency contraception—and refused to provide it. Defendants also tried to prevent Plaintiff from obtaining that care from others by putting delays and obstacles in her path, failing to provide her a reasonable alternative, and in one instance, even apparently deceiving her about where she could obtain care. Plaintiff brings this lawsuit to remedy illegal discrimination based on her sex through denying her service as a result of her pregnancy-related health care needs in violation of the Minnesota Human Rights Act (“MHRA”), Minn. Stat §§ 363A.01, *et seq.*

PARTIES, JURISDICTION & VENUE

1. Plaintiff is a resident and citizen of the state of Minnesota.

2. During all relevant times, Defendants Aitkin Pharmacy Services, LLC dba Thrifty White Pharmacy (“Thrifty White”) and Grand St. Paul CVS, L.L.C., CVS Health Corporation, and CVS Pharmacy, Inc. were “places of public accommodation,” as defined by Minn. Stat. § 363A.03, subd. 34 and businesses as defined by Minn. Stat. § 363A.03 subd. 4.
3. Defendant Thrifty White is a Limited Liability Company under Minn. Stat. § 322C registered in the State of Minnesota. Its registered office is located at 241 W State Hwy 210, McGregor, MN 55760.
4. During all relevant times, Defendant George Badeaux worked as a pharmacist at Thrifty White located at 241 W State Hwy 210, Suite 1, McGregor, MN 55760.
5. Defendant Grand St. Paul CVS is a domestic Limited Liability Corporation under Minn. Stat. § 322C registered to do business in the State of Minnesota. Grand St. Paul CVS does business as CVS Pharmacy #10397 in Aitkin Minnesota. Its principal executive office is located at 1 CVS Drive, Woodsocket, Rhode Island, 02895. Its registered office is located at 1010 Dale St N. Saint Paul, MN 55117.
6. Defendant CVS Pharmacy, Inc. is a foreign corporation registered under Minn Stat. § 303. Its principle executive office is located at 1 CVS Drive, Woodsocket, Rhode Island, 02895. Its registered office is located at 1010 Dale St N, Saint Paul, MN 55117. Defendant CVS Pharmacy, Inc. owns defendant Grand St. Paul CVS.
7. CVS Health Corporation is a corporation incorporated in Delaware. Its headquarters is located at 1 CVS Drive, Woodsocket, RI 02895. CVS Health Corporation owns CVS Pharmacy, Inc.
8. At all relevant times, Defendant CVS Pharmacist #1 worked as a pharmacist at the CVS Pharmacy #10397, located at 25 2nd Ave NE, Aitkin, MN 56431.

9. The District Court in the County of Aitkin, State of Minnesota, has original jurisdiction over the parties and all claims set forth in this Complaint pursuant to Minn. Stat. § 484.01, subd. 1.
10. Venue in this Court is proper pursuant to Minn. Stat. § 542.09, because Defendants are located in Aitkin County and the unlawful actions alleged herein occurred in Aitkin County.

EMERGENCY CONTRACEPTION

11. Emergency contraception is a method of birth control that can be used when a regular birth control method did not work correctly.¹
12. Emergency contraception works by delaying or preventing ovulation.
13. If an individual is already pregnant, meaning that a fertilized egg has implanted in their uterus, emergency contraception “will not stop or harm” the pregnancy.²
14. Currently, there are two types of emergency contraception pills that are approved by the United States Food and Drug Administration (“FDA”): ella[®] (“ella”) and Plan B One-Step[®] (“Plan B”). *Id.* There are also a number of generic versions of Plan B One-Step[®] available.³
15. Both ella and Plan B are regarded as safe forms of emergency contraception. They have limited side effects such as headache, fatigue, and abdominal pain, and “the side effects are usually mild and do not last long.”⁴
16. Plan B may not work for people who weigh more than 165 pounds. For people in this weight category, ella appears to be more effective.

¹ Office on Women’s Health, *Emergency Contraception* (Apr. 23, 2019), <https://www.womenshealth.gov/a-z-topics/emergency-contraception>.

² *Id.*

³ *Id.*

⁴ Office on Women’s Health, *Emergency Contraception* (Apr. 23, 2019), <https://www.womenshealth.gov/a-z-topics/emergency-contraception>. (emphasis in original).

17. Because emergency contraception works by delaying or preventing ovulation, a person must take the pill as soon as possible after sex, and within five days of having sex, to reduce the possibility that they will ovulate after having sex but before taking the pill.
18. Ella is only available with a prescription.

FACTUAL ALLEGATIONS

19. On January 20, 2019, Anderson's primary method of birth control, a condom, failed.
20. Anderson did not want to get pregnant. As a result, she called her regular healthcare provider, Park Nicollet OB/GYN, on January 21, 2019 to inquire about emergency contraception.
21. A nurse at Park Nicollet OB/GYN immediately prescribed her ella. Anderson requested that the prescription be sent to the Thrifty White Pharmacy in McGregor, Minnesota.
22. At the time, the Thrifty White was the only pharmacy in McGregor, Minnesota, and was Anderson's primary pharmacy.
23. Anderson then called the Thrifty White to confirm that the prescription had been sent over and that the pharmacy would be able to fill the prescription in a timely manner.
24. When Anderson called the Thrifty White, she spoke with an individual who verified that the prescription could be delivered to the pharmacy the next day and that the medication was covered by her insurance plan.
25. Less than an hour later, Anderson received a call from the on-duty pharmacist at Thrifty White, George Badeaux. Badeaux informed Anderson that for "personal reasons" he would be unable to fill her prescription.
26. Anderson was confused by this statement and assumed that Badeaux meant that the prescription would interact poorly with one of her other prescriptions. She asked Badeaux for clarification.

27. Badeaux clarified that he did not want to fill Anderson's prescription due to "[his] beliefs." He did not clarify what his beliefs were or why they interfered with his ability to perform his job as a medical professional.
28. Badeaux did not provide Anderson with information about where or how she could get her prescription filled.
29. When Anderson pushed Badeaux to help her find an alternative, Badeaux informed her that there would be another pharmacist working the next day, who *might* be willing to fill the medication but that he could not guarantee that they would help. He also informed her that there was a snowstorm coming and the second pharmacist might not make it into work.
30. When Anderson asked about other pharmacies she could go to, Badeaux simply told her not to try Shopko in Aitkin because she would probably run into trouble there.
31. Badeaux only told Anderson about other ways in which she would be unable to fill her prescription. At no time did Badeaux provide Anderson with the name of a pharmacy or pharmacist where she could obtain her prescription medication.
32. Aitkin, Minnesota, is the closest town to McGregor with a pharmacy. Aitkin has a CVS Pharmacy and the Shopko Pharmacy mentioned by Badeaux. The CVS Pharmacy in Aitkin is more than 30 miles from Anderson's home. In contrast, the Thrifty White is approximately ten miles from her home.
33. After speaking with Badeaux, Anderson called the CVS Pharmacy in Aitkin, Minnesota to verify that she would be able to fill her prescription at that location.
34. Anderson did not call the Shopko Pharmacy based on Badeaux's representation that they would be unable or unwilling to fill the prescription there.

35. When she called the CVS Pharmacy in Aitkin, Anderson spoke with a female pharmacist, CVS Pharmacist #1. The pharmacist claimed that she was not able to obtain the medication from her wholesaler and that she would therefore be unable to fill Anderson's prescription.
36. Anderson thought it was unusual that a CVS pharmacy would be unable to obtain ella and was skeptical about the pharmacist's claim. Anderson thought this was unusual because CVS was a large pharmacy chain and should have no trouble obtaining prescribed medication. Anderson was further skeptical that CVS relied on a single wholesaler who was completely unable to provide the needed medication.
37. CVS Pharmacist #1 offered to call the Walgreens in Brainerd, Minnesota, to see whether they would be able to fill the prescription. She put Anderson on hold and, when she returned to the call, she informed Anderson that she had spoken to someone at the Walgreens in Brainerd and that they were also unable to fill the prescription.
38. Following this conversation, Anderson called the Walgreens in Brainerd herself to double check about filling the prescription. The pharmacist at Walgreens confirmed that she had just spoken to CVS Pharmacist #1. The Walgreens pharmacist said that Walgreens *could* fill the prescription and that she had told the CVS pharmacist this.
39. The pharmacist at Walgreens clarified that there would be no issues with filling the prescription, and that they could order the medication to be delivered the next day. However, they did express a concern that, with the impending snowstorm, the delivery may come later in the day than normal.
40. Anderson then called the Thrifty White Corporate number. She spoke with an individual named Sue. Sue told Anderson that she could leave a message for someone named "Dee." Anderson left a message for Dee inquiring about the store's policies for refusing to fill prescriptions.

41. After this conversation, Anderson called her Park Nicollet OB/GYN back and asked them to resend her prescription to the Walgreens in Brainerd. Given her interactions with Badeaux, she did not trust that the Thrifty White would send the prescription to the Walgreens in Brainerd at their request.
42. Once the prescription was transferred, Anderson called the Thrifty White back to confirm the name of the pharmacist who refused to fill her prescription. Anderson confirmed that his name was George Badeaux.
43. The next day, on January 22, 2019, Dee returned Anderson's call. She emphasized that the Thrifty White in McGregor was an affiliate store, meaning that it was independently owned and operated. Dee then provided her with contact information for the store's owner, Matt Hutera.
44. Shortly thereafter, Anderson called and spoke with Hutera. She informed him that George Badeaux had refused to fill her prescription.
45. Hutera told Anderson that Badeaux had already informed him about the situation. Hutera also said that this was not the first time that Badeaux had refused to fill prescriptions based on his personal beliefs. He added that Badeaux was a pastor at a local church.
46. Anderson inquired as to whether the Thrifty White had any policies regarding a pharmacist's refusal to fill prescriptions. Hutera indicated that they did not have an official policy, but that he had informed Badeaux that the proper procedure was to make sure the prescriptions got filled.
47. Hutera told Anderson he did "not agree with Badeaux, but he's a pastor."
48. Even though this was not the first time Badeaux had refused to fill prescriptions, Hutera did not indicate that there would be any repercussions for Badeaux. Instead, Hutera told

Anderson that Badeaux might be disciplined for failing to make sure a prescription was filled “if it happened again.”

49. Pharmacists and pharmacy owners generally must ensure all prescribed medications are dispensed. However, in 1999, the Minnesota Board of Pharmacy created an extremely permissive exception for dispensing emergency contraception.
50. Under this exception, a pharmacist can decline to fill a prescription for emergency contraception, but they must provide an alternative way for the patient to fill their prescription. Arrangements must be made in advance so that prescriptions are “made available immediately” to the patient. Under the exception it is the “responsibility of the pharmacist-in-charge to make arrangements with a nearby pharmacy to fill these prescriptions so that the appropriate information can be communicated immediately to patients.”
51. The defendants did not comply with this extremely permissive Pharmacy Board rule by providing Anderson with clear and immediate alternative access to her lawfully prescribed medication. Instead they put obstacles in her path. These obstacles could have prevented her from obtaining the medication at all. The defendants’ actions delayed her from obtaining and taking her medication, which could have caused her to become pregnant.
52. On January 22, Anderson drove to the Walgreens in Brainerd in order to fill her prescription. She made this drive during a snowstorm. Although the roads had been plowed, snow continued to fall throughout Anderson’s drive. Winds increased, so snow was blowing and freezing on the roads. Temperatures and wind chills were below zero.
53. Anderson had to drive more than 100 miles round trip in dangerous conditions with her 2.5-year-old son to obtain her prescription. It normally takes more than two hours to drive

round trip. Because of the snowstorm, the drive took Anderson more than 3 hours round trip.

54. After successfully filling her prescription at the Walgreens in Brainerd, Anderson was able to take the medication. She did not become pregnant.
55. Since this incident, Anderson has transferred her personal prescriptions out of the Thrifty White pharmacy. She feels that she cannot depend on or trust the Thrifty White to fill her prescriptions without bias.
56. Anderson now fills her prescriptions in either Aitkin or Brainerd, which requires her to travel a considerable distance in order to get her medication.

COUNT I
Discrimination in Public Accommodations
Minnesota Human Rights Act

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

57. It is an unfair discriminatory practice to deny a person the goods or services of a place of public accommodation because of their sex. Minn. Stat. § 363A.11
58. Sex is defined to include pregnancy, childbirth, and related conditions. Minn. Stat. § 363A.03, subd. 42.
59. Emergency contraceptives are only used by people who may become pregnant to prevent pregnancy. It is therefore illegal public accommodations discrimination to refuse to provide a person their prescribed emergency contraceptive.
60. Defendants discriminated against Plaintiff by refusing to provide her prescribed emergency contraceptive.
61. The unlawful discrimination complained of above was intentional and performed by Defendants with malice and/or reckless indifference to Plaintiff's rights.

62. As a result of Defendants' illegal conduct, Plaintiff suffered emotional distress and has incurred attorneys' fees, costs, and expenses.

COUNT II
Business Discrimination
Minnesota Human Rights Act

Plaintiff realleges the above allegations of this Complaint and alleges as follows:

63. It is an unfair discriminatory practice for a business to intentionally refuse to do business with a person because of their sex. Minn. Stat. § 363A.17.
64. Sex is defined to include pregnancy, childbirth, and related conditions. Minn. Stat. § 363A.03, subd. 42.
65. Emergency contraceptives are only used by people who may become pregnant to prevent pregnancy. It is therefore an unfair discriminatory business practice to refuse to provide a person their prescribed emergency contraceptive.
66. Defendants discriminated against Plaintiff by refusing to provide her prescribed emergency contraceptive.
67. The unlawful discrimination complained of above was intentional and performed by Defendants with malice and/or reckless indifference to Plaintiff's rights.
68. As a result of Defendants' illegal conduct, Plaintiff suffered emotional distress and has incurred attorneys' fees, costs, and expenses.

COUNT III
Aid and Abet Discrimination
Minnesota Human Rights Act

Plaintiff realleges the above allegations of this complaint and alleges as follows:

69. It is unfair discriminatory practice to intentionally aid and abet any practice that constitutes unfair discrimination under the Minnesota Human Rights Act. Minn. Stat. § 363A.14.
70. It is unfair discrimination for a business to refuse to do business with a person because of

their sex. Minn. Stat. § 363A.17.

71. It is also unfair discrimination for a public accommodation to deny a person the goods or services of a place of public accommodation because of their sex. Minn. Stat. § 363A.11
72. Sex is defined to include pregnancy, childbirth, and related conditions. Minn. Stat. § 363A.03, subd. 42.
73. Emergency contraceptives are only used by people who may become pregnant to prevent pregnancy. It is therefore an unfair discriminatory business practice to refuse to provide a person their prescribed emergency contraceptive.
74. Defendants discriminated against Plaintiff by intentionally aiding, abetting, and compelling unlawful discrimination by refusing to provide emergency contraception, and also by putting delays and obstacles in Plaintiff's path and by failing to provide her a reasonable alternative for securing her prescription medication.
75. The unlawful discrimination complained of above was intentional and performed by Defendants with malice and/or reckless indifference to Plaintiff's rights.
76. As a result of Defendants' illegal conduct, Plaintiff suffered emotional distress and has incurred attorneys' fees, costs, and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following:

- A. That the practices of Defendants complained of herein be adjudged, decreed and declared to violate the rights secured to Plaintiff by the Minnesota Human Rights Act, Minn. Stat. § 363A.01 *et seq.*
- B. That a permanent mandatory injunction be issued requiring that Defendants adopt practices in conformity with the requirements of the Minnesota Human Rights Act, Minn. Stat. § 363A.01 *et seq.*

- C. That a permanent prohibitory injunction be issued prohibiting Defendants from engaging in the practices complained of herein.
- D. That the Court order Defendants to pay a civil penalty to the State of Minnesota pursuant to Minn. Stat. § 363A.29.
- E. That Plaintiff be awarded compensatory damages in an amount to be established at trial, and treble damages pursuant to Minn. Stat. § 363A.33 and § 363A.29.
- F. That Plaintiff be awarded punitive damages pursuant to Minn. Stat. § 363A.29 in an amount to be established at trial.
- G. That the Court issue an order enjoining Defendants and their officers, agents, and employees from subjecting Plaintiff to differential treatment and from any retaliation against Plaintiff for prior actions, or for bringing this action.
- H. That Plaintiff be awarded pre- and post-judgment interest on any monetary damages awarded, pursuant to Minn. Stat. § 549.09 (2013).
- I. Pursuant to Minn. R. Civ. P. 8.01, notice is provided that reasonable damages may be greater than \$50,000.
- J. That Plaintiff be awarded such other and further legal and equitable relief as may be found appropriate, just, and equitable.
- K. That the court retain jurisdiction until the Court is satisfied that the Defendants have remedied the practices complained of herein and are determined to be in full compliance with the law.
- L. That the Court order Defendants to pay counsel for Plaintiff her reasonable attorneys' fees and the costs and expenses of this action.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: December 9, 2019

GENDER JUSTICE

/s/ Jess Braverman

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ATTORNEYS FOR PLAINTIFF



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ACKNOWLEDGMENT

The undersigned acknowledges that pursuant to Minn. Stat. § 549.211, subd. 2, that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: December 9, 2019

s/ Jess Braverman



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