

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

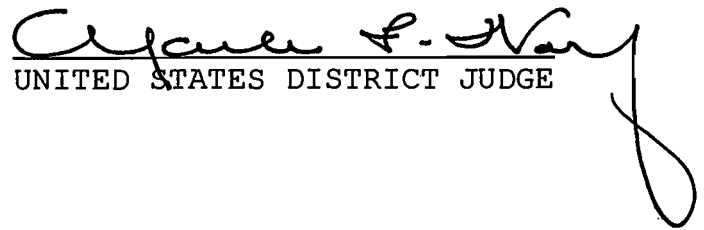
MICHELLE L. KOSILEK,)	
Plaintiff,)	
)	
v.)	C.A. No. 00-12455-MLW
)	
LUIS S. SPENCER, in his official)	
capacity as Commissioner of the)	
Massachusetts Department of)	
Correction,)	
Defendant)	

ORDER

WOLF, D.J.

February 5, 2013

It is hereby ORDERED that the attached redacted version of the Affidavit of Luis S. Spencer (Under Seal) (Docket No. 615-2, with further redactions made by the court) shall be docketed for the public record in this case.


 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHELLE KOSILEK,

Plaintiff,

v.

Civil Action No. 00-12455-MLW

LUIS S. SPENCER, in his official
capacity as Commissioner of the
Massachusetts Department of Correction,

Defendant.

AFFIDAVIT OF LUIS S. SPENCER (UNDER SEAL) (REDACTED)

I, Luis S. Spencer, do hereby depose and state as follows:

1. I am the Commissioner of Correction for the Commonwealth of Massachusetts.
2. I have read the Court's Memorandum and Order dated January 18, 2013 with respect to this litigation. I have also read the Court's Order of November 20, 2012, which stayed the September 4, 2012 Order providing sex reassignment surgery ("SRS") to Michelle Kosilek ("Kosilek") and required the Massachusetts Department of Correction ("DOC") to take the steps reasonably necessary in preparation for providing the SRS should the appeal of the September 4, 2012 Order ultimately be unsuccessful.
3. The information provided in this affidavit is based on my personal knowledge and information obtained from DOC Assistant Deputy Commissioner for Clinical Services ("ADC"), Lawrence Weiner, DOC Deputy Commissioner Katherine Chmiel, and University of Massachusetts Correctional Health ("UMCH") Medical Director, Dr. Thomas Groblewski, the DOC's medical services provider. The information provided herein is true and complete to the best of my knowledge.

4 The information contained in this affidavit demonstrates that, far from “foot-dragging,” the Department has made substantial progress in taking the steps reasonably necessary to provide Kosilek with SRS promptly should the appeal of the Court’s September 4, 2012 Order ultimately be unsuccessful.

5. In response to the Court’s November 20, 2012 Order, I assigned ADC Weiner to lead a team to identify the actions reasonably necessary to provide inmate Kosilek with SRS, including the identification of surgeons who can perform SRS, should the DOC’s appeal of the Court’s September 4, 2012 Order requiring SRS ultimately be unsuccessful. Following the Thanksgiving holiday weekend, on November 28, 2012, ADC Weiner requested that Dr. Groblewski and Dr. Robert Diener, Chief Psychiatrist for MHM, Inc., the DOC’s mental health services provider, assist him in taking the actions necessary to provide Kosilek with SRS should the Department’s appeal of the Court’s September 4, 2012 Order ultimately be unsuccessful, including the identification of qualified surgeons. Both doctors have experience in the treatment of inmates diagnosed with gender identity disorders (“GID”) through their work on the DOC’s GID Treatment Committee. Dr. Diener presently serves as the chairperson of the GID Treatment Committee. ADC Weiner’s initial meeting with Dr. Groblewski and Dr. Diener took place one week later, on December 6, 2012.

6. I was advised by ADC Weiner that at the December 6, 2012 meeting, Dr. Groblewski and UMCH agreed to take the lead and commence a search for qualified surgeons available to provide SRS for Kosilek. Dr. Diener also agreed to reach out to mental health professionals with experience in treating GID for referrals to surgeons who performed SRS. It was also agreed that the group would continue to meet monthly.

7. As promptly as possible following the Hanukah, Christmas and New Year's holidays, a second meeting was convened on January 3, 2013 with ADC Weiner, Katherine O'Neill, DOC's Director of Behavioral Health, Dr. Groblewski, Dr. Diener, Dyana Nickl, UMCH Director of Operations, and Kathleen Wiwatoski, UMCH Referral Management Nurse, present. Nurse Wiwatoski reported that she had contacted the director of the [REDACTED] in Boston, [REDACTED], seeking referrals for surgeons qualified to perform SRS on male to female transsexuals. [REDACTED] identified two surgeons who had performed SRS for [REDACTED] clients: [REDACTED], M.D., of [REDACTED] and [REDACTED], M.D., of [REDACTED]. [REDACTED] advised Nurse Wiwatoski that she was not aware of any surgeons working in Massachusetts or New York who performed SRS. The lack of surgeons in Massachusetts or New York who perform SRS was confirmed by Nurse Wiwatoski via a thorough internet search. Dr. Diener's independent search for SRS surgeons also confirmed that there were no SRS surgeons in Massachusetts or New York.

8. On January 11, 2013, Nurse Wiwatoski advised ADC Weiner and Dr. Groblewski that she had identified a transgender conference [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. I requested that Dr. Groblewski and Deputy Commissioner Chmiel attend the [REDACTED] presentations by these three surgeons and attempt to meet with the surgeons.

9. Dr. Groblewski and Deputy Commissioner Chmiel attended the following [REDACTED] seminars by the three surgeons: [REDACTED] ([REDACTED]); [REDACTED] ([REDACTED]); [REDACTED] ([REDACTED]). They were able to speak personally with [REDACTED] and [REDACTED] following their presentations. Dr. [REDACTED] was not available to speak personally with Dr. Groblewski and Deputy Commissioner Chmiel after his presentation, however, Dr. Groblewski later contacted [REDACTED] via telephone regarding SRS.

10. [REDACTED] advised Dr. Groblewski and Deputy Commissioner Chmiel that he is board certified in general surgery, as well as plastic and reconstructive surgery. [REDACTED] stated that he has performed more than 1000 sex reassignment surgeries using the single stage method, and that he performs the surgeries at the [REDACTED]. [REDACTED] further indicated that after the SRS has been completed, a recuperation period of 10-14 days in a hospital is required. [REDACTED] stated that he would be willing to perform SRS on an inmate serving a life sentence. [REDACTED] stated that he is not interested in pursuing licensing, credentialing and privileging in Massachusetts.

11. [REDACTED] advised Dr. Groblewski and Deputy Commissioner Chmiel that she is board certified in plastic and reconstructive surgery. [REDACTED] stated that she has performed more than 100 sex reassignment surgeries using the single stage method, and that she performs SRS in the [REDACTED] and [REDACTED], both in the [REDACTED] area. Similar to [REDACTED], [REDACTED] indicated that after the SRS has been completed, a recuperation period of 10-14 days in a hospital is required. [REDACTED] stated that she would be willing to perform SRS on an inmate serving a life sentence. She also stated that she would be interested in pursuing licensing, credentialing and privileging in Massachusetts.

12. Dr. Groblewski contacted [REDACTED] office in [REDACTED] via telephone to inquire as to [REDACTED] credentials and experience in performing SRS. [REDACTED] advised Dr. Groblewski that he is board certified in plastic and reconstructive surgery. [REDACTED] stated that he has performed more than 3000 sex reassignment surgeries and prefers the two stage method. He performs SRS in a private clinic in [REDACTED]. [REDACTED] stated that after the SRS has been completed, a recuperation period of 10 days in a hospital is required. [REDACTED] stated that he prefers to perform SRS in two stages, with the second stage taking place three months after completion of the first stage. [REDACTED] indicated that he would be willing to perform SRS on an inmate serving a life sentence. He also stated that he would be interested in pursuing licensing, credentialing and privileging in Massachusetts.

13. Dr. Groblewski also contacted two other surgeons within the United States who had been [REDACTED] identified [REDACTED] as performing SRS: [REDACTED], M.D., of [REDACTED] and [REDACTED], M.D., of [REDACTED].

14. Dr. Groblewski contacted the office of [REDACTED], M.D., a surgeon who has performed more than 1000 sex reassignment surgeries using the one stage method. [REDACTED] is board certified in obstetrics and gynecology. [REDACTED] generally requires a recuperation period of 10-14 days in a hospital. [REDACTED] would be willing to perform SRS on an inmate serving a life sentence. [REDACTED] would also consider pursuing licensing, credentialing and privileging in Massachusetts. [REDACTED] relocated her practice from [REDACTED] to [REDACTED].

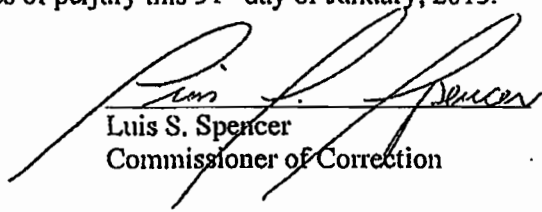
15. Dr. Groblewski also contacted [REDACTED], M.D., a plastic surgeon who performs SRS, and who was identified [REDACTED] as someone willing to perform SRS for Kosilek. Dr. Groblewski spoke to [REDACTED] and inquired as to his experience in

performing SRS. [REDACTED] is board certified in plastic surgery and has performed 30-40 sex reassignment surgeries. [REDACTED] generally requires a recuperation period of 10-14 days in a hospital. [REDACTED] stated that he would be willing to perform SRS on an inmate serving a life sentence. [REDACTED] stated that he would be interested in pursuing licensing, credentialing and privileging in Massachusetts.

16. Dr. Groblewski also contacted [REDACTED], a plastic surgeon who performs SRS in the [REDACTED] area, and who was identified by the [REDACTED]. Dr. Groblewski spoke to [REDACTED] and inquired as to her experience in performing SRS. [REDACTED] is board certified in plastic and reconstructive surgery and has performed more than 500 sex reassignment surgeries using the one stage method. [REDACTED] requires a recuperation period of 10-14 days in a hospital. [REDACTED] would be willing to perform SRS on an inmate serving a life sentence. [REDACTED] stated that she would consider pursuing licensing, credentialing and privileging in Massachusetts.

17. The next steps in the process of providing SRS for Kosilek, should the Department's appeal of the September 4, 2012 Order ultimately be unsuccessful, are to conduct an analysis of the logistics involved in providing SRS for Kosilek by the surgeons identified above, including the ability to achieve licensing, credentialing and privileging for them in Massachusetts, potential hospital sites at which the SRS could be performed, and any potential safety and security issues arising therefrom, including, but not limited to, transportation issues, correction officer staffing, and housing of Kosilek pre- and post-surgery and during recuperation.

Signed under the pains and penalties of perjury this 31st day of January, 2013.


Luis S. Spencer
Commissioner of Correction