DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver, Colorado 80202	DATE FILED July 21, 2026 3:47 PM CASE NUMBER: 2024CV30455
Plaintiff: CADEN KENT, v. **Defendant:** CHILDREN'S HOSPITAL OF COLORADO.	**▲ COURT USE ONLY ▲** Case No: 24CV30455 Courtroom: 259

ORDER DENYING DEFENDANT'S MOTION TO DISMISS COMPLAINT PURSUANT TO C.R.C.P. 12(B)(1) AND 12(B)(5)

THIS MATTER comes before the Court on a Motion to Dismiss Pursuant to C.R.C.P. 12(b)(1) and 12(b)(5) ("Motion") filed by Defendant Children's Hospital of Colorado ("CHCO") on April 19, 2024. Plaintiff Caden Kent ("Mr. Kent") filed his Response to CHCO's Motion to Dismiss on May 10, 2024. CHCO filed its Reply on May 17, 2024. The Court, having reviewed the Petition, all pertinent pleadings and authority, and being otherwise fully advised on the matter, finds and orders as follows:

BACKGROUND

The following information concerning the underlying dispute is taken from Mr. Kent's Complaint, filed February 14, 2024, and is accepted as true for purposes of the Court's review of CHCO's Motion.

CHCO is the No. 1-ranked pediatric healthcare provider in the state and region. Its stated mission is to improve the health of children through the provision of high-quality coordinated programs of patient care, education, research and advocacy. While the services provided at CHCO are generally focused on the care of children and adolescents under the age of 18, CHCO

sometimes provides care to non-pediatric patients where CHCO's pediatric expertise carries over to the needs of the patient even though they have legally become an adult; where a clear quality and safety advantage to pediatric expertise exists; or where the patient received care at CHCO before they turned 18.

Mr. Kent is 18 years old and lives in Denver, Colorado. Mr. Kent is transgender and began receiving care at CHCO's TRUE Center for Gender Diversity in 2021 when he was 16. He was diagnosed with gender dysphoria in early 2022. Gender dysphoria is a medical condition unique to transgender people and characterized by clinically significant distress associated with incongruence between a person's gender identity and assigned sex at birth. Although hormone therapy improved Caden's symptoms, it did not fully alleviate his gender dysphoria, and he continued to experience significant distress that was exacerbated by the misalignment of his secondary sex characteristics with his gender identity. He began binding his chest—a method of flattening the chest with clothing to have a more masculine appearance. He felt uncomfortable leaving his house without a binder, notwithstanding the extreme physical pain that comes with prolonged binding.

In 2023, CHCO doctors determined that chest masculinization surgery was medically necessary for Caden and that he was a good candidate for the procedure. Prior to July 13, 2023, CHCO would sometimes perform such surgical procedures for non-pediatric transgender patients when medically necessary to treat their gender dysphoria. CHCO would provide these procedures to transgender patients over the age of 18 if they began their course of treatment and surgery planning with CHCO before turning 18. The CHCO care team told Mr. Kent and his family that CHCO would perform chest masculinization surgery on patients over the age of 18 if they had begun their course of treatment and surgery planning with CHCO before turning 18.

The CHCO care team gave Mr. Kent and his family a list of surgeons recommended by the TRUE Center, which included CHCO surgeons. Mr. Kent and his family chose to consult with a surgeon in CHCO's pediatric plastic surgery practice specifically because they understood that working with a surgeon within the CHCO system would provide better continuity of care for Mr. Kent, and because they wanted to work with a pediatric expert who would have experience in counseling, treatment, and post-operative care of a young transgender person. On June 2, 2023, Mr. Kent's CHCO pediatric mental health care provider submitted a letter stating that chest masculinization surgery was medically necessary treatment for Caden's gender dysphoria.

On or about July 13, 2023, CHCO determined that it would no longer provide medically necessary surgeries to transgender patients for the treatment of gender dysphoria, effective immediately. Mr. Kent had just received an insurance authorization for the surgery and only learned of the change in policy after his father contacted the physician's assistant to schedule the surgery. The physician's assistant expressed regret that they "unfortunately ha[d] not been given any further information to answer critical questions regarding any reasoning behind this executive decision." On February 14, 2024, Mr. Kent filed a Complaint against CHCO alleging discrimination based on disability, sex, gender identity, and gender expression, in violation of C.R.S. § 24-34-601 et seq. and § 24-34-802 (the Colorado Anti-Discrimination Act, or "CADA"). In addition to the statutory fines and attorney fees available as relief under CADA, Mr. Kent also seeks an injunction and order requiring CHCO's compliance with CADA.

LEGAL AUTHORITY

The purpose of a motion to dismiss for failure to state a claim is to test the formal sufficiency of the statement of the claim for relief. *Credit Serv. Co., Inc. v. Skivington,* 469 P.3d 531, 534 (Colo. App. 2020). Among other reasons, a court may dismiss a complaint for "lack of

jurisdiction over the subject matter" or "failure to state a claim upon which relief can be granted." C.R.C.P. 12(b)(1), (5).

When considering a motion to dismiss for lack of subject matter jurisdiction, the district court must examine the "substance of the claim based on the facts alleged and the relief requested." *West Colo. Motors, LLC v. General Motors, LLC*, 411 P.3d 1068, 1078 (Colo. App. 2016). Moreover, to survive a Rule 12(b)(5) motion, the claimant must plead sufficient facts, taken as true and in the light most favorable to it, to state a claim for relief that is plausible on its face. *Warne v. Hall*, 373 P.3d 588, 589-90, 595 (Colo. 2016) (embracing the plausibility standard in federal cases *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) as applicable in Colorado).

In the determination of a motion to dismiss for failure to state a claim, a trial court may consider the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference, and matters proper for judicial notice. *Fry v. Lee*, 408 P.3d 843, 848 (Colo. App. 2013). Further, under C.R.C.P. 8's liberal notice pleading standard, the complaint is "to be liberally construed" and "need only serve as adequate notice of the claim being asserted." *Hofer v. Polly Little Realtors, Inc.*, 543 P.2d 114, 116 (Colo. App. 1975); *Eliminator, Inc. v. 4700 Holly Corp.*, 681 P.2d 536, 539 (Colo. App. 1984). If an opposing party is given sufficient notice of the transaction involved, "the theory of the pleader is not important." *Denny Const., Inc. v. City and Cty. of Denver ex rel. Bd. of Water Comm'rs,* 170 P.3d 733, 736 (Colo. App. 2007). Finally, motions to dismiss are generally viewed with disfavor. *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248, 1253 (Colo. 2012); *Bly v. Story*, 241 P.3d 529, 533 (Colo. 2010).

ANALYSIS

CHCO makes three main arguments as to why the Court should grant its Motion: (1) this Court lacks jurisdiction to order CHCO to provide specific treatment; (2) Plaintiff lacks standing to seek a mandatory injunction under CADA, and (3) Plaintiff fails to state a claim for discrimination under CADA. The Court will address each of CHCO's arguments in turn.

1. The Court's Jurisdiction Over CHCO's Practice

CHCO first argues that the Court lacks subject-matter jurisdiction over this matter because the determination of what sort of medical procedures a hospital must provide presents a non-justiciable political question. Specifically, CHCO argues that, because the practice of medicine is regulated by the legislature and the legislature has not mandated that CHCO offer every conceivable treatment for gender dysphoria, this Court lacks authority to second-guess CHCO's discretion concerning its treatment offerings. CHCO directs the Court to *Rucho v. Common Cause* for the proposition that, absent specific statutory authority, this Court cannot compel CHCO to provide chest masculinization surgery because "no manageable standard exists for such relief." 139 S. Ct. 2484, 2502 (2019).

Although CHCO correctly points out that the practice of medicine is regulated by the legislature, the notion that this practice is wholly insulated from judicial scrutiny is belied by the most cursory reading of the statute under which Mr. Kent seeks relief. Under C.R.S. § 24-34-601 (2)(a), "[i]t is a discriminatory practice and unlawful . . . to refuse, withhold from, or deny to an individual or a group, because of disability . . . sex . . . gender identity, [or] gender expression . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation . . ." The legislature did not carve out hospitals or medical providers from the sorts of "place[s] of public accommodation" that fall under

the law's broad mandate, and CHCO does not contest that it is a place of public accommodation subject to CADA. As a place of public accommodation, CHCO is required by law to provide its services in a manner that does not discriminate along the lines articulated under CADA. Far from there being "no judicially manageable standard," the legislature set before courts hearing CADA claims the familiar standard of whether or not a Defendant had discriminated against a Plaintiff on the basis of a protected characteristic. The Court is unpersuaded that CHCO's claimed scenarios (e.g. court-mandated rhinoplasties on children) necessarily attends courts ensuring that hospitals are providing services in a manner free from discrimination and consistent with the law.

2. Plaintiff's Standing to Seek an Injunction

CHCO next argues that Mr. Kent lacks standing to seek an injunction. Specifically, CHCO argues that Mr. Kent cannot show the "irreparable harm" needed for a court to grant a permanent injunction because he is scheduled for top surgery with another provider. CHCO reasons that, because Mr. Kent's Complaint demonstrates on its face that he cannot satisfy the criteria for an injunction, he therefore lacks standing to sue for one under CADA.

As an initial matter, CHCO conflates the standing requirements for bringing a claim with the proof requirements demonstrating that a claimant is entitled to particular relief. Under Colorado law, a plaintiff has standing if he has suffered "an injury in fact" to a "legally protected interest." *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977). When determining whether an injury in fact exists, the court must accept all the allegations set forth in the complaint as true. *Ainscough v. Owens*, 90 P.3d 851, 857 (Colo. 2004). "The injury may be tangible, such as physical damage or economic harm; however, it may also be intangible, such as aesthetic issues or the deprivation of civil liberties . . . [or] other legally created rights." *Id.* at 856.

Under CADA, it is illegal for a place of public accommodation to deny services to any individual based on disability, sex, gender identity, or gender expression. C.R.S. § 24-34-601. An individual who believes they have been discriminated against in violation of CADA is entitled to "a court order requiring compliance with [CADA] . . ." only "[u]pon finding a violation of [CADA]." C.R.S. § 24-34-602 (2)(a). Here, Mr. Kent has alleged sufficient facts plausibly demonstrating an injury in fact to his legally protected interest in receiving medical care at a place of public accommodation in a non-discriminatory manner. Mr. Kent filed suit under a statute authorizing such a cause of action and affording such injunctive relief should this Court find a violation of the statute. Whether or not Mr. Kent will be able to present sufficient evidence demonstrating entitlement to a permanent injunction is neither a necessary nor sufficient inquiry for determining whether he has standing to bring a claim seeking an injunction.

3. Plaintiff's Claims for Discrimination Under CADA

Finally, CHCO argues Mr. Kent's Complaint must be dismissed because he has failed to state a claim under CADA. Specifically, CHCO asserts that claims for disability based on gender dysphoria are not cognizable under CADA because CADA borrows the ADA's definition of "disability," which excludes "gender identity disorders not resulting from physical impairments" from coverage. 42 U.S.C. § 12211(b)(1); C.R.S. § 24-34-802(4). Moreover, CHCO asserts that Mr. Kent cannot state a claim for discrimination on the basis of disability, sex, gender identity, or gender expression because the hospital's decision to stop offering chest masculinization surgery was rooted in an intent to re-focus services on pediatric care.

Under CADA, courts hearing a claim for disability discrimination "shall apply the same standards and defenses that are available under the [ADA]." C.R.S. § 24-34-802(4). The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major

life activities of such individual . . .” The ADA excludes from its definition of disability “transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, [and] gender identity disorders not resulting from physical impairments . . .” 42 U.S.C. § 12211(b)(1). However, the law also advises that “[t]he definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.” 42 U.S.C. § 12102 (4)(A).

The Court disagrees that the language in the ADA (and, by extension, CADA) excluding “gender identity disorders not resulting from physical impairments” necessarily forecloses Mr. Kent’s claim at the pleading stage. CHCO’s own Motion illustrates a fairly robust and split debate among various federal courts over whether or not gender dysphoria not resulting from a physical impairment is excluded under the ADA. CHCO posits that “the majority of courts throughout the United States to consider this issue ruled correctly that claims under the ADA fail as a matter of law if a plaintiff fails to allege that their gender dysphoria resulted from a physical impairment.” Mot. at 17. But preponderance is not the proper quantum of evidence for weighing whether to dismiss a claim on a Motion to Dismiss; at this stage, the standard is whether the Plaintiff puts forth claims that plausibly allege a claim for relief. Absent any clear directive from a higher court interpreting the ADA’s exclusionary language as the categorical bar CHCO believes it to be, this Court cannot say that Mr. Kent’s claim does not plausibly allege discrimination on the basis of disability within the meaning of the ADA (and, by extension, CADA). As CHCO can point to no controlling precedent to the contrary, this Court is satisfied that rejecting CHCO’s narrow interpretation of the ADA’s exclusionary language effectuates the law’s directive that “[t]he definition of disability in this chapter shall be construed in favor of broad coverage of individuals

under this chapter, to the maximum extent permitted by the terms of this chapter." 42 U.S.C. § 12102 (4)(A).

Finally, CHCO argues that Mr. Kent cannot state any claim for discrimination under CADA because the hospital's decision to stop offering chest masculinization surgery was rooted in the lawful purpose of refocusing its services on its pediatric unit rather than an intent to discriminate against any individual based on a classification protected under CADA. In his Complaint, Mr. Kent alleges that CHCO reversed its policy of permitting chest masculinization surgery as treatment for gender dysphoria in adult patients who previously sought care from CHCO for gender dysphoria as minors, but that the hospital continues to perform similar surgeries for reducing breast tissue in cisgender patients (including adults) as treatment for other diagnoses.

"To prevail on a discrimination claim under [CADA], a plaintiff must show that, 'but for' the disability, he or she would not have been denied the full privileges of a place of public accommodation." *Tesemer v. Colorado High School Activities Ass'n*, 140 P.3d 249, 253 (Colo. App. 2006). Here, Mr. Kent has alleged that CHCO categorically denied a particular service (surgery) as treatment for a particular diagnosis (gender dysphoria) that affects only transgender individuals, whose sex assigned at birth is incongruent with their gender identity. "Denying access to [treatment] for the purpose of gender-affirming care but not for purposes unrelated to gender-affirming care differentiates care based on gender identity." *Boe v. Children's Hospital of Colorado*, 589 P.3d 478, 490 (Colo. 2026).

Mr. Kent's complaint does not rely on "conclusory allegations," or legal conclusions pled as fact, but plausible factual allegations that are entitled to a presumption of truth at this stage of litigation. Accepting as true the well-pled facts in the Complaint, Mr. Kent has plausibly alleged that, had he sought such surgery as treatment for a different diagnosis, his request would not have

been denied. In other words, Mr. Kent has plausibly alleged that, but for his diagnosis of gender dysphoria, a condition unique to transgender individuals, he would been provided the service he sought. Accordingly, Mr. Kent has plausibly stated a claim for relief under CADA. Whether or not Mr. Kent's claim will withstand CHCO's defense that the policy change was not discriminatory is not a proper inquiry on a Motion to Dismiss.

CONCLUSION

WHEREFORE, the Court hereby **DENIES** CHCO's Motion to Dismiss Complaint Pursuant to C.R.C.P. 12(b)(1) and 12(b)(5).

SO ORDERED this 21st day of July, 2026.

BY THE COURT:

Christopher J. Baumann
Chief Judge