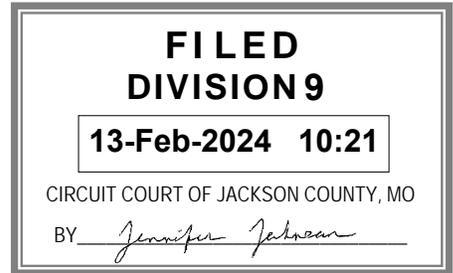


**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

PLANNED PARENTHOOD )  
GREAT PLAINS, )  
 )  
Petitioner, )  
 )  
 )  
v. )  
 )  
STATE OF MISSOURI, EX REL. )  
ATTORNEY GENERAL ANDREW )  
BAILEY, )  
Respondent. )

**Case No. 2316-CV08907  
Division 9**



**JUDGMENT**

Pending before the Court is Planned Parenthood Great Plains’ Motion for Judgment on the Pleadings and to Deny the Missouri Attorney General’s Counterclaim and the Missouri Attorney General’s Motion for Judgment on the Pleadings. For the following reasons, Planned Parenthood Great Plains’ Motion for Judgment on the Pleadings is denied and the Missouri Attorney General’s Motion for Judgment on the Pleadings is granted.

**Background**

On March 31, 2023, Planned Parenthood Great Plains (“Planned Parenthood”) filed a Petition to Set Aside Civil Investigative Demand issued by the Missouri Attorney General’s Office (“the AG”). The lawsuit arises from the AG’s March 10, 2023 issuance of a Civil Investigative Demand (“CID”) to Planned Parenthood seeking information related to the AG’s investigation of Washington University Pediatric Transgender Center at St. Louis Children’s Hospital (“Washington University”) “and others.” Planned Parenthood alleged the CID failed to comply with the Missouri Merchandizing Practices Act (“MMPA”) requirements for a CID, that it exceeded the MMPA’s limits on the scope of permissible inquiry, that it is outside the scope of

the AG's regulatory authority, and that it violates Planned Parenthood's constitutional rights. Planned Parenthood objected to the CID as a whole and sought Declaratory Judgment that the CID was not properly brought under the MMPA and violates the MMPA, that it is preempted by the Missouri Division of Professional Registration for the Healing Arts ("Board of Healing Arts"), and that it violates the United States Constitution and Article 1, Sections 10 and 15 of the Missouri Constitution. Planned Parenthood requested the Court set aside the CID or, in the alternative, modify it by limiting the requests for information and documents to information Planned Parenthood has related to referrals of minors to Washington University since 2020. On May 18, 2023, the AG filed its Answer and a Counterclaim against Planned Parenthood. The AG requested an Order enforcing the CID and that Judgment be entered against Planned Parenthood.

On June 19, 2023, Planned Parenthood filed an Answer to the AG's Counterclaim and alleged various affirmative defenses consistent with its Petition. On July 3, 2023, representing that the facts were undisputed and that the issues and claims raised by the parties could be decided as a matter of law based the pleadings, the parties stipulated to a briefing schedule to place all issues before the Court through cross-dispositive motions.<sup>1</sup> That briefing has been completed. After review of the pleadings, the parties' briefs, and the law, the Court rules as follows.

#### Legal Standard

When reviewing a motion for judgment on the pleadings, the Court treats all well-pleaded facts in the opposing party's pleadings as true. *Madison Block Pharmacy, Inc. v. United States Fid. & Guar. Co.*, 620 S.W.2d 343, 345 (Mo. banc 1981) (internal citations omitted). "The

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<sup>1</sup> The parties agreed there are no disputed facts. Facts included in the analysis were either not disputed, were taken from the face of the pleadings, or the dispute did not precluded the entry of judgment on the pleadings.

position of a party moving for judgment on the pleadings is similar to that of a movant on a motion to dismiss, i.e., assuming the facts pleaded by the opposite party to be true, these facts are nevertheless insufficient as a matter of law.” *Id.* (internal quotation and citations omitted). The Court can only sustain a motion for judgment on the pleadings where a material issue of fact does not exist. *Id.* (internal citations omitted). “[A] motion for judgment on the pleadings should be sustained if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law.” *Id.* (internal citations omitted).

### Analysis

The CID directed Planned Parenthood to produce all responsive documents and information by March 31, 2023. Pursuant to Missouri Statute Section 407.070, Planned Parenthood timely filed a Petition to Set Aside Civil Investigative Demand. The AG represented that the CID was issued because of an investigation into Washington University to address claims raised in an affidavit by Jamie Reed (“Reed Affidavit”) about the transgender care provided at Washington University. The Reed Affidavit did not raise concerns about Planned Parenthood. On March 27, 2023, the AG indicated Washington University is the sole subject of the AG’s investigation.

As provided by Missouri statute, a CID shall (1) state the statute or section thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation; (2) describe the class or classes of information, documentary material, or physical evidence to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded; (3) prescribe a return date by which the information, documentary material, or physical evidence is to be produced; and (4) identify the members of the AG’s staff to whom the information, documentary material or physical evidence requested is to be made available.

Mo. Rev. Stat. § 407.040.2. The CID stated the AG “believes it to be in the public interest that an investigation be made to ascertain whether the Washington University Pediatric Transgender Center at St Louis Children’s Hospital (“Subject”), its agents or employees, or others in the state providing similar services have engaged in or are engaging in any practices declared to be unlawful by § 407.020, RSMo.” The AG further stated it “has reason to believe that Subject or others in the state may have used deception, fraud, false promises, misrepresentation, unfair practices, and/or the concealment, suppression, or omission of material facts within the scope of the Missouri Merchandising Practices Act.” Planned Parenthood did not dispute the CID complied with the statutory requirements provided for in the Statute.

The AG alleged in this lawsuit that it “believes that Planned Parenthood has information, documentary material, or physical evidence relevant to Subject’s alleged or suspected violation,” and that “upon information and belief,” agents of Planned Parenthood may have met with agents of Subject to discuss the services that each of them provide, Planned Parenthood and Subject have a practice of referring patients to each other or otherwise recommending that certain patients seek services from the other, and Planned Parenthood organizations in Missouri have a history of having board members affiliated with Subject. Planned Parenthood denied those allegations and stated its four Missouri centers do not provide gender-affirming surgery or puberty blockers to minors. Only gender-affirming hormone care to patients over the age of eighteen is offered at present. Planned Parenthood stated that in the past, with parental consent, patients who were sixteen or seventeen years old were provided hormone care, but such care has not been provided since 2020. The AG alleged in its counterclaim that Planned Parenthood is a subject of the AG’s investigation.

Planned Parenthood contends the AG’s CID fails to comply with the MMPA and exceeds the MMPA’s limits on the scope of permissible inquiry as a matter of law. To establish a cause of action under the MMPA, a person must demonstrate they have (1) purchased merchandise; (2) for personal, family, or household purposes; (3) and suffered an ascertainable loss of money or property; (4) as a result of an act declared unlawful by Section 407.020. *Walker v. AI Solar Source Inc.*, 658 S.W.3d 529, 534 (Mo. Ct. App. 2022). Planned Parenthood maintains that the CID does not pertain to the unlawful sale or advertisement of merchandise, however, “medical goods and services meet the statutory definition of merchandise as defined by Section 407.010(4).”<sup>2</sup> *Freeman Health Sys. v. Wass*, 124 S.W.3d 504, 507 (Mo. Ct. App. 2004); *Gregory v. Barton*, 510 F. Supp. 3d 829, 836 (E.D. Mo. 2020); *Dorgan v. Ethicon, Inc.*, 4:20-00529-CV-RK, 2020 WL 5372134, at \*4 (W.D. Mo. Sept. 8, 2020). A review of the CID indicates “Your Services” refers to services provided to Planned Parenthood clients that are in the nature of “medical goods and services.”

Planned Parenthood also argues the CID is invalid because it did not include any requests concerning Washington University and failed to define any MMPA violations perpetrated by Planned Parenthood.<sup>3</sup> The AG pled that Planned Parenthood is now a subject of its investigation and the CID indicates the AG believes it is in the public’s interest to investigate whether Washington University “and others” have violated the MMPA. Planned Parenthood conceded it at one time provided hormone-affirming care to minors. Planned Parenthood has provided no support for the proposition that more is required. No authorizing statute requires the AG to

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<sup>2</sup> Planned Parenthood did not challenge any other MMPA elements.

<sup>3</sup> Planned Parenthood did not indicate how the CID did not pertain to the unlawful sale or advertisement of merchandise or identify parts of the CID it believed was outside of the scope of the MMPA beyond the fact it did not seek information about Washington University and could not be used to investigate healthcare providers.

provide details of an investigation or provide facts in support of an allegation, for that is the purpose of an investigation and a CID: to gather such facts, if they exist, or establish such allegations are unfounded. *State ex rel. Danforth v. Indep. Dodge, Inc.*, 494 S.W.2d 362, 365 (Mo. Ct. App. 1973) (purpose of the CID procedure “was to provide a form of pretrial discovery for the benefit of the attorney general”).

Planned Parenthood relies on *U.S. v. Union Oil Co. of Cal.* for the proposition that the AG cannot issue a CID to search for evidence of a violation of a regulation that has not been passed or fish for evidence of hypothetical future wrongdoings. 343 F.2d 29, 31 (9th Cir. 1965). In *U.S. v. Union Oil Co. of Cal.*, the Department of Justice was investigating a target’s prospective acquisitions, which, if consummated, might violate federal law. The court determined the statute, and the civil investigative process provided for in the statute, could be used for investigation of existing antitrust violations, and not prospective violations. Thus the CID was set aside. Planned Parenthood has not argued the AG is investigating prospective violations and has not showed the MMPA prohibits investigation as a matter of law in this instance.

Planned Parenthood expressed concern that complying with the CID would require it to produce privileged patient information that is protected from disclosure. As noted by the AG, however, under Missouri law, no CID shall:

- (1) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or
- (2) Require the disclosure of any documentary material which would be privileged or which, for any other reason, could not be required by a subpoena duces tecum issued by a court of this state.

Mo. Rev. Stat. § 407.040.3. The AG represented privileged information is not sought and Planned Parenthood is under no obligation to provide such information.<sup>4</sup>

Planned Parenthood next asserts the MMPA is not intended to be used as a medical malpractice statute or for the AG to act as an alternative to healthcare agencies overseeing Planned Parenthood. However, the AG contends it is not pursuing a medical malpractice case, an “action” seeking to recover damages for personal injury or death, or disciplining a medical professional, but rather investigating potential MMPA violations as permitted by the MMPA.<sup>5</sup> *Schulte v. Conopco, Inc.*, 997 F.3d 823, 826 (8th Cir. 2021) (quoting *Ports Petroleum Co. v. Nixon*, 37 S.W.3d 237, 240 (Mo. 2001)) (terms of the statute are “unrestricted, all-encompassing and exceedingly broad”). While healthcare agency oversight could overlap with MMPA investigations and both necessarily examine the actions of healthcare providers, one does not preclude the other.<sup>6</sup> *See, e.g., Breeden v. Hueser*, 273 S.W.3d 1, 6 (Mo. Ct. App. 2008) (MMPA claim brought against doctor for overcharging chemical doses administered to patients). *Ports Petroleum Co., Inc. v. Nixon* does not support Planned Parenthood’s position. There, the Court specifically examined the overlap of the MMPA and the Motor Fuel Marketing Act (“MFMA”)

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<sup>4</sup> Planned Parenthood did not identify “undue burden or expense” beyond the production of privileged information.

<sup>5</sup> Further, if the AG alleged these types of claims in a future lawsuit, Planned Parenthood could move to dismiss them.

<sup>6</sup> Planned Parenthood cites to the SAFE Act that dictates “[t]he performance of a gender transition surgery or the prescription or administration of cross-sex hormones or puberty-blocking drugs to an individual under eighteen years of age in violation of the section shall be considered unprofessional conduct and any health care provider doing so shall have his or her license to practice revoked by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this state.” Mo. Rev. Stat. § 433.070.3. However, there is no language creating any limitation on, or conflict with, a private individual pursuing a medical malpractice case against a healthcare provider, a private individual alleging MHRA violations against a healthcare provider for business practices, or the AG investigating or alleging MHRA violations related to the provision of such care. These matters can proceed in parallel fashion as they have done historically in other provision of care contexts.

and, conceding it was a “close question,” determined the purposes of the MMPA and MFMA were divergent. 37 S.W.3d 237, 240-41 (Mo. 2001). The Supreme Court found the allegation being investigated by the AG (the sale of motor fuel below costs) was not the kind of “unfair practice” encompassed by the MMPA. *Id.* at 241. Planned Parenthood has not demonstrated that the investigation of alleged MMPA violations and healthcare agency oversight operate independently or that their purposes are in conflict. *See, e.g. Nation v. Moore*, No. 3:22-cv-05063-MDH, 2023 U.S. Dist. LEXIS 176809 (W.D. Mo. Oct. 2, 2023) (plaintiff’s MMPA claims against dentist not barred by 2020 MMPA amendments).

The constitutionality of the CID was also raised by Planned Parenthood. It contends the CID violates the Fourth Amendment’s proscription on unreasonable searches and seizures, the Fifth Amendment’s guarantee of due process of law, and Missouri’s Constitution Article I, Section 10 providing that no party shall be deprived of life, liberty or property, but limited its argument to the Fourth Amendment. “The Fourth Amendment’s reasonableness requirement mandates that: (1) the investigative demand comply with the statute authorizing it; (2) the information sought is relevant to the administrative inquiry, *id.*; and (3) the investigative demand is not too indefinite or too broad.” *State ex rel. Koster v. Charter Communs., Inc.*, 461 S.W.3d 851, 859 (Mo. Ct. App. 2015) (internal citations omitted). Planned Parenthood argues the CID is not “pointed and specific” and maintains the CID does not describe any unlawful practice in connection with the sale or advertisement of any merchandise or which violation is under investigation. As noted above, however, the CID alleges potential MMPA violations and the AG is not required to allege facts necessary to establish a cause of action. *See, e.g. In re Emprise Corp.*, 344 F. Supp. 319, 322-23 (W.D.N.Y. 1972). Planned Parenthood has not established the

CID violates the United States Constitution or Missouri's Constitution.<sup>7</sup> *Charter Communs., Inc.*, 461 S.W.3d at859; *Lewandowski v. Danforth*, 547 S.W.2d 470 (Mo. 1977).

For the foregoing reasons, it is hereby,

ORDERED Planned Parenthood Great Plains' Motion for Judgment on the Pleadings is denied and the Attorney General for the State of Missouri's Motion for Judgment on the Pleadings is granted.

IT IS FURTHER ORDERED Judgment is entered for the Attorney General for the State of Missouri on its Counterclaim and against Planned Parenthood Great Plains on its Petition.

IT IS FURTHER ORDERED Planned Parenthood Great Plains is Compelled to comply with the CID within 30 days, or as otherwise agreed by the parties.

**IT IS SO ORDERED.**

February 13, 2024  
Date

  
HONORABLE JOEL P FAHNESTOCK

**CERTIFICATE OF SERVICE**

I hereby certify that notice of the above and foregoing was sent through the Court's e-filing system to all attorneys of record on 13-Feb-2024.

  
Law Clerk, Division 9

<sup>7</sup> Planned Parenthood did not ask the Court to review the specificity or burdensomeness of individual CID requests but rather objected to it "as a whole," thus, the Court has not engaged in that review.