

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JANE DOE et al.,

Plaintiffs,

v.

JOSEPH A. LADAPO et al.,

Defendants.

Civil No. 4:23-cv-00114-RH-MAF

JOINT PRETRIAL STIPULATIONS

Plaintiffs Jane Doe, individually and on behalf of her minor daughter Susan Doe, Fiona Foe, individually and on behalf of her minor daughter Freya Foe, Gloria Goe, individually and on behalf of her minor son Gavin Goe, and Patricia Poe, individually and on behalf of her minor son Paul Poe, and all on behalf of the class of transgender minors in Florida defined in the Court’s Order Certifying Classes (Dk. 166); Plaintiffs Jane Doe, individually and on behalf of her minor daughter Susan Doe, and Gloria Goe, individually and on behalf of her minor son Gavin Goe, and all on behalf of the subclass of transgender minors in Florida defined in the Court’s Order Certifying Classes (Dk. 166); and Brenda Boe, individually and on behalf of her minor son Bennett Boe, Carla Coe, individually and on behalf of her minor daughter Christina Coe (the “Parent Plaintiffs” and “Minor Plaintiffs”

respectively); Lucien Hamel, Olivia Noel, Rebecca Cruz Evia, and Kai Pope (the “Adult Plaintiffs”) (together with the Parent and Minor Plaintiffs, “Plaintiffs”), on behalf of themselves and the class of transgender adults in Florida defined in the Order Certifying Classes; and Defendants Florida Surgeon General, the Florida Board of Medicine and its members, the Florida Board of Osteopathic Medicine and its members, and the State Attorney for Florida’s Fifth Judicial Circuit (together “Defendants”), jointly submit this Pretrial Stipulation pursuant to the Agreed Motion and Proposed Order for Leave to Amend Case Schedule. (Dkt. 155; *see also* Dkt. 169 (order granting the amended schedule).)

I. Basis of Federal Jurisdiction

The parties agree this Court has (1) subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 because the action arises under the Constitution and the laws of the United States, and (2) personal jurisdiction over Defendants because they are domiciled in Florida and their actions in implementing and enforcing the statute and rules in dispute arise out of and relates to their official duties in Florida.

The parties also agree that venue is proper in this district pursuant to: (1) 28 U.S.C. § 1391(b)(1), because each of the Defendants is a resident of the State of Florida and serves in his or her official capacity for a government office for the State of Florida; (2) 28 U.S.C. § 1391(b)(2), because the statute and rules at issue affect Plaintiffs in this judicial district; and (3) N.D. Fla. L.R. 3.1(B), because it is the

location of the principal place of business for a majority of the Defendants and where a substantial portion of the acts or omissions complained of herein occurred. The parties further agree that this Court has authority to enter a declaratory judgment pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. §§ 2201 and 2202, and this Court's inherent equitable powers.

II. Brief General Statement of Each Party's Case

A. Plaintiffs' Statement

Empirical evidence and decades of clinical experience demonstrate that medical care for gender transition – including, the use of puberty blocking, hormone, and hormone antagonist therapies (referred to herein as “Established Care”) and transition-related surgeries – is medically necessary, safe, and effective for both transgender adolescents and adults with gender dysphoria. Established Care and transition-related surgeries are neither experimental nor investigational; they are the prevailing standard of care, accepted and supported by every major medical organization in the United States.

Until recently, adolescent and adult transgender persons for whom it was medically necessary to treat gender dysphoria could obtain Established Care and transition-related surgeries in Florida. However, in March 2023, the Florida Boards of Medicine and Osteopathic Medicine (the “Boards”) issued rules banning

transgender minors from receiving these treatments (the “Boards’ Bans” or “Bans”).¹

Then, in May 2023, the Florida Legislature passed Florida Senate Bill 254, “[a]n act relating to treatments for sex reassignment” (“SB 254”), which codified the Boards’ Bans into state law and created additional restrictions applicable to transgender adults and the small number of transgender minors still eligible to obtain Established Care. These further restrictions include (1) prohibiting non-physicians, such as advanced practice registered nurses, from providing treatment for gender dysphoria; (2) mandating the use of “informed consent” forms that contain blatantly false information, deviate from the well-accepted standards of care for gender dysphoria, and impose numerous medically-unnecessary requirements; and (3) requiring transgender patients to see a physician in-person in order to give informed consent and sign the forms in the presence of a third-party witness. SB 254 also imposes criminal and civil penalties on healthcare providers who provide Established Care and transition-related surgeries to transgender persons in violation of its provisions. Florida Governor Ron DeSantis signed SB 254 into law in May 2023 and in July the Boards issued emergency rules and informed consent forms

¹ Board of Medicine, Rule 64B8-9.019, Fla. Admin. Code; Board of Osteopathic Medicine, Rule 64B15-14.014, Fla. Admin. Code.

implementing SB 254's mandates (the "Emergency Rules").²

The Boards Bans', SB 254, and the Emergency Rules (collectively, the "Treatment Bans and Restrictions") are the product of invidious discrimination against transgender persons and were designed for the purpose of discouraging transgender persons from living consistent with their gender identity – in other words to discourage them from being transgender. They were the result of a targeted and strategic effort coordinated by the executive office of Florida's gubernatorial administration in collaboration with the Boards, the Florida Department of Health ("FDOH"), the Agency on Health Care Administration ("AHCA"), and the Florida Legislature, to bar and restrict access to Established Care and transition-related surgeries for transgender people because of a belief that people should not be transgender. This constitutes purposeful discrimination against a vulnerable group and is plainly demonstrated by the Boards' process in developing the Bans and the legislative history surrounding SB 254.

For example, at the direction of the Governor's Office, FDOH, and AHCA, Surgeon General Joseph Ladapo issued Guidance in April 2022 denouncing the use of Established Care to treat gender dysphoria in transgender minors. Following issuance of the guidance, AHCA initiated a process to develop a Generally Accepted

² Board of Medicine, Emergency Rules 64B8ER23-7 and 64B8ER23-8; Board of Osteopathic Medicine, Emergency Rules 64B15ER23-9 and 64B15ER23-10.

Professional Medical Standard (“GAPMS”) report on which the justifications for the Boards’ Bans and SB 254 would rest. As this Court explained in *Dekker*, that “GAPMS process was, from the outset, a biased effort to justify a predetermined outcome, not a fair analysis of the evidence.” (Post-Trial Order (Dkt. 246) at 9, *Dekker v. Weida*, No. 4:22-cv-00325-RH-MAF (N.D. Fla.)) The flawed GAPMS report was published on June 2, 2022.

The same day the GAPMS report was published, Defendant Surgeon General Ladapo sent a letter to the Boards encouraging them to review the GAPMS report and the FDOH Guidance and to “establish a standard of care for these complex and irreversible procedures.” In July, the FDOH petitioned the Boards to initiate rulemaking to establish standards of care for the treatment of gender dysphoria in transgender minors (the “Petition”) and based the Petition expressly on the GAPMS report. This was a gross deviation from the normal rulemaking process followed by the Boards, as traditionally the Boards initiate rulemaking only in response to disciplinary cases that come before them. Following the Petition, the Boards’ Joint Rules Committee held a Rule Development Workshop for which they recruited and presented a biased slate of purported “subject matter experts” who testified in support of banning Established Care for transgender minors. These individuals repeated the same discredited claims reached in the GAPMS report that medical

treatments for transgender adolescents are unsafe, ineffective, and unsupported by evidence.

Even the public comment portion of the workshop departed from normal practice, as nearly all of the speakers were preselected to be “the first to speak” by a national organization known for advocating against transgender rights. This effort was coordinated by the Executive Director of the Board of Osteopathic Medicine, who had pre-filled speaker cards with the out-of-state opponents of treatment, which plainly subverted the regular procedural process of permitting those who arrived early to fill out speaker cards on a first-come-first-serve basis. In an extraordinary shift away from normal process, the state placed its thumb on the scale of the public testimony to exaggerate support for the bans before the Boards’ members and the public at large, excluding the testimony of real Floridians who traveled to the meeting to share with the Boards their positive experiences with gender-affirming care.

Further, throughout the workshop, the Boards’ members repeatedly raised questions about ensuring that the drugs and other treatments comprising Established Care would remain available to treat minors with health conditions other than gender dysphoria. The invited speakers in support of the ban and the Boards’ members themselves consistently stated that they only supported banning treatments for minors with gender dysphoria. The unequivocal and apparently unanimous desire

to ensure that puberty blockers and hormones remain available to people with conditions other than gender dysphoria supports the inference that the Boards were not concerned that the medications themselves were unsafe. Rather, it is clear from the record that the Boards only viewed transgender adolescents, but not non-transgender adolescents, taking these medications as a problem.

The development and passage of SB 254 were also tainted by the same process irregularities and discriminatory motivations that produced the Boards' Bans. The initial rollout of SB 254 started in February 2023 at a meeting held by the Florida House Health & Human Services Committee. That meeting was led by State Representative Randy Fine and included Dr. Scot Akerman (Chair of the Board of Medicine), and experts and witnesses, such as Dr. Stephen Levine (Defendants' retained expert), Chloe Cole (known opponent of gender transition treatments recruited by the state), and David Leatherwood (leader of the local chapter of Gays Against Groomers). Each of these speakers were known in advance to hold positions opposed to medical care for transgender adolescents or adults.

In March 2023, Senator Clay Yarborough filed Senate Bill 254 to restrict access to Established Care and transition-related surgeries for transgender individuals, and a companion bill, House Bill 1421, was introduced that same day by Representatives Randy Fine and Ralph Massullo. The Florida House and Senate members who supported these bills, including Senator Yarborough and

Representative Fine, repeatedly relied on the GAPMS report to justify the bills' prohibitions and restrictions on access to Established Care and transition-related surgeries. The bills' sponsors also continually emphasized that the purpose of the bills was to ban treatment of gender dysphoria only; if the purpose was not gender transition, then the treatment would remain legal.

Supporters of the bills made clear their animus towards transgender persons and those suffering from gender dysphoria through repeated emotional outbursts and hostile remarks. One representative cited a fabricated story that a parent had put a six-month-old child on hormone therapy and that the toddler was "changed into a man." Representative Fine referred to medical care for transgender adolescents as an "abomination," "doctor-driven child abuse," and "self-mutilat[ion] in pursuit of the fiction that [a transgender adult] can defy G-d [sic] and science." Another representative referred to the use of Established Care as "gruesome" and "diabolical," and that it leaves those that undergo it "disfigured" and "crippled." Another, Representative Chase Tramont, proclaimed that it was an absolute truth that "God created male and female." Echoing those comments later in the same hearing, Representative Fine stated that the "ultimate gender-affirming care" is to "affirm they are creatures of God," "made the way they are," and that "God doesn't make mistakes." In sum, legislators' qualms with gender transition were not about the safety and efficacy of medical care, but rather hostility toward the very idea of

providing treatment for gender dysphoria that would permit a transgender person to live in a way consistent with that person's gender identity.

The meetings, workshops, and hearings that transpired between February and May 2023 form a legislative history that fails to offer any legitimate government interest in prohibiting medical care for transgender adolescents and adults. Instead, the Boards' members and Florida legislators relied on the faulty, politically motivated GAPMS report and biased experts and recruited known opponents to treatments to defend their claims. The repeated clarion call for assurances that the same medications would remain available to treat conditions other than gender dysphoria demonstrates that the safety of the medications was not the motivating factor behind the legislation.

Instead, the evidence shows that the Boards and Florida Legislature sought to codify the state's discriminatory view that people should not have a gender identity different from their birth sex. Those motivations are not legitimate state interests. Because the Bans, SB 254, and Emergency Rules facially discriminate based on sex and transgender status, were otherwise enacted for purposeful discrimination, and reflect a bare desire to harm transgender people, these laws violate the Due Process and Equal Protection Clauses of the United States Constitution.

B. Defendants' Statement

As the U.S. Supreme Court and Eleventh Circuit recognize, States get to make

healthcare policy. This case is no exception. The State of Florida passed reasonable rules and legislation that regulate certain gender-dysphoria treatments. The laws protect patients, particularly minors; ensure high-quality healthcare; and preserve the integrity of the medical profession. They are constitutional. Plaintiffs can't prove that the processes to pass the rules and legislation were the product of intentional discrimination.

III. Witness Lists

Plaintiffs' amended witness list is attached to this Pretrial Stipulation as [Appendix 1]. Defendants' witness list is attached to this Pretrial Stipulation as [Appendix 2].

Due to limitations on the availability of certain witnesses, the parties have agreed in principle to permit each side to call those witnesses out of order during the other side's case. The parties will advise the Court of the specifics of this agreement at the November 28, 2023 final pretrial conference.

Given the parties' agreement to use the trial record in *Dekker v. Weida*, No. 4:22-cv-00325-RH-MAF (N.D. Fla.), the parties have also agreed that any witness qualified by the Court to testify as an expert at the *Dekker* trial shall also be deemed qualified to do so in this case without further proceedings.

IV. Exhibit Lists

Plaintiffs' amended exhibit list is attached to this Pretrial Stipulation as

[Appendix 3]. Defendants' exhibit list is attached to this Pretrial Stipulation as [Appendix 4]. A joint stipulated exhibit list is being filed separately.

V. Stipulations of Fact and Agreement on Issues

A. The Boards' Transgender Medical Rules

1. On June 2, 2022, Defendant Ladapo sent a letter to the Boards asking them to "establish a standard of care" for the treatment of gender dysphoria.

2. On July 28, 2022, the FDOH sent the Board of Medicine a "Petition to Initiate Rulemaking," (the "Petition") asking the Board, among other things, to adopt a rule on treatment of gender dysphoria for people under eighteen years of age.

3. On August 5, 2022, the Board of Medicine discussed the June 2, 2022 letter from Dr. Ladapo and the July 28, 2022 Petition. On August 12, 2022, the Board of Osteopathic Medicine discussed the letter and the Petition and also voted to accept the Petition.

4. On September 1, 2022, the Boards each published a Notice of Development of Rulemaking in the Florida Administrative Register, proposing "rule development to clarify the practice standards for treatment of gender dysphoria in minors."

5. On October 14, 2022, the Boards each published a Notice of Rule Workshop, which would take place on October 28, 2022.

6. On October 28, 2022, the Boards held a Joint Workshop regarding the development of a rule related to “Practice Standards for the Treatment of Gender Dysphoria.”

7. The Florida Board of Medicine filed the following rule with the Florida Department of State on February 24, 2023, with an effective date of March 16, 2023:

- (1) The following therapies and procedures performed for the treatment of gender dysphoria in minors are prohibited.
 - (a) Sex reassignment surgeries, or any other surgical procedures, that alter primary or secondary sexual characteristics.
 - (b) Puberty blocking, hormone, and hormone antagonist therapies.
- (2) Minors being treated with puberty blocking, hormone, or hormone antagonist therapies prior to the effective date of this rule may continue with such therapies.

8. The Florida Board of Osteopathic Medicine filed the following rule with the Florida Department of State on March 8, 2023, with an effective date of March 28, 2023:

- (1) The following therapies and procedures performed for the treatment of gender dysphoria in minors are prohibited.
 - (a) Sex reassignment surgeries, or any other surgical procedures, that alter primary or secondary sexual characteristics.
 - (b) Puberty blocking, hormone, and hormone antagonist therapies.

- (2) Minors being treated with puberty blocking, hormone, or hormone antagonist therapies prior to the effective date of this rule may continue with such therapies.

9. The Boards' rules concerning treatment of transgender minors include a clause that permits minors being treated with puberty blockers or hormones prior to their effective date to continue to receive those treatments.

B. Restrictions Created by SB 254

10. On May 4, 2023, the Florida Legislature voted to pass SB 254.

11. On May 17, 2023 (the "Effective Date"), Florida Governor Ron DeSantis signed into law SB 254. *See* Doe Pls' Trial Ex. 17 (true and correct copy of SB 254).

12. The Boards issued the emergency rules mandated by SB 254 on June 9, June 22, July 7, and August 22, 2023 (the "Emergency Rules"). *See* Doe Pls' Trial Ex. 21 at 169-82 (true and correct copies of Emergency Rules 3, 4, 7, 8, 9, and 10); Doe Pls' Trial Ex. 126 (true and correct copies of Emergency Rules 11 and 12).

VI. Statement of Factual Issues to be Litigated

A. Plaintiffs' Statement of Factual Issues to Be Litigated

1. The Treatment Bans and Restrictions target transgender adolescents and adults, including Plaintiffs, by banning and restricting their access to necessary treatments for their gender dysphoria, and are the product of invidious discrimination against transgender persons.

2. At the request of the Governor and FDOH, AHCA initiated a biased GAPMS process to review treatments for gender dysphoria.

3. The GAPMS process was biased and distorted to further the State's political agenda against the transgender community. Similar to the GAPMS Report by AHCA, which this Court found to be "a biased effort to justify a predetermined outcome" and which was "not supported by the evidence and was contrary to generally accepted medical standards," Defendants determined the outcome of the process before it began.

4. The Boards' members and Florida legislators relied on the baseless findings in the GAPMS report in passing the Bans, SB 254, and Emergency Rules.

5. The Boards' Bans, SB 254, and Emergency Rules categorically deny access to medically necessary care to thousands of Floridians who lack other means to access such care. Further, the physician and in-person informed consent restrictions on access to Established Care and (only applicable to transgender adults) transition-related surgeries imposed by SB 254 and the Emergency Rules, also effectively deny access to medical treatment to thousands of Floridians who lack other means to access such care.

6. The rulemaking process and legislative history surrounding the Bans, SB 254, and Emergency Rules was plagued by irregularities and evidence of discriminatory intent.

7. Defendants' actions come within the context of a series of measures the State has adopted targeting transgender people for discrimination.

8. Defendants' actions stand in sharp contrast not just to the well-established evidence and widely accepted view of the medical and scientific community in the United States, but also to the policies of the vast majority of states, which permit the treatment of gender dysphoria with Established Care and transition-related surgeries, and by APRNs and NPs.

9. If allowed to remain in effect, the Treatment Bans and Restrictions will continue to have dire physical, emotional, and psychological consequences for transgender persons in Florida.

10. Defendants purposefully targeted transgender people for discrimination.

B. Defendants' Statement of Factual Issues to Be Litigated

1. Whether the laws were passed with discriminatory intent.

VII. Statement of Legal Issues for Determination by the Court

1. Whether Defendants' promulgation and enforcement of the Bans, SB 254, and Emergency Rules were mere pretext designed to effect invidious discrimination against transgender persons in Florida.

2. Whether Defendants, by promulgating and enforcing the Bans, SB 254, and Emergency Rules have violated the fundamental rights of parents under the Due

Process Clause of the Fourteenth Amendment to the United States Constitution to make medical decisions to protect the health and wellbeing of their adolescent children.

3. Whether Defendants, by promulgating and enforcing the Bans, SB 254, and Emergency Rules have violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by discriminating based on transgender status and sex.

4. Whether declaratory and injunctive relief in favor of Plaintiffs and the Plaintiff classes is appropriate.

VIII. Statement of any Disagreement on Admissibility of Evidence and Application of Federal Rules of Procedure

The parties' respective objections to certain exhibits are set forth on the amended exhibit list and exhibit list attached to this Pretrial Stipulation. *See* Appendices 3 and 4. The parties have no other known disagreements regarding the admissibility of evidence or application of the Federal Rules of Procedure or Evidence.

IX. Motions that Remain Pending

No motions are pending as of November 6, 2023.

X. Estimated Length of Trial

The parties estimate that trial of this matter will require a total of five (5) trial days.

Dated: November 6, 2023

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