

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CODY FLACK and  
SARA ANN MAKENZIE,

Plaintiffs,

v.

Case No. 18-CV-0309

WISCONSIN DEPARTMENT OF  
HEALTH SERVICES and  
LINDA SEEMEYER, in her official  
capacity as Secretary of the Wisconsin  
Department of Health Services,

Defendants.

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**DECLARATION OF CHESTER W. SCHMIDT, JR., M.D.**

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**Chester W. Schmidt, Jr., M.D.**, declares as follows under penalty of perjury, pursuant to 28 U.S.C. § 1746:

**QUALIFICATIONS**

1. This declaration is based upon my personal knowledge and review of records provided to me by counsel for the Defendants relating to this case and the Plaintiffs' medical records.

2. I am currently a Professor of Psychiatry and Behavioral Sciences at the John Hopkins University School of Medicine. I am the Associate Medical Director of the Sexual Behaviors Consultation Unit at Johns Hopkins Hospital,

which I co-founded. I am Chief Medical Officer Priority Partners, a Medicaid managed care organization 50% owned by Johns Hopkins Health Care. I have provided direct clinical treatment to patients with gender dysphoria for 47 years.

3. I earned my M.D. from the Johns Hopkins University School of Medicine in 1960 and completed a residency and fellowship in psychiatry in 1967.

4. I am board certified by the American Board of Psychiatry & Neurology / Psychiatry since 1970. I am a Distinguished Life Fellow of the American Psychiatric Association, a Fellow of the American College of Psychiatrists, and a member of the American Medical Association and Maryland Psychiatric Society, Inc.

5. My qualifications for evaluating and treating transgendered patients are included in my Curriculum Vitae, a true and accurate copy of which is attached as **Exhibit A**.

#### **MATERIALS REVIEWED**

6. I have been retained by counsel for the Defendants in the above-captioned case to provide an expert opinion regarding whether Plaintiffs Cody Flack and Sara Ann Makenzie will suffer imminent irreparable harm if they are not provided gender reassignment surgery prior to the final resolution of this lawsuit.

7. I have reviewed the following materials provided to me in this case: the complaint in this matter, certain medical records for Plaintiffs Cody Flack and Sara Makenzie that I understand Plaintiffs produced to Defendants, declarations from Cody Flack and Sara Mackenzie, declarations from Plaintiffs' treating physicians (Daniel Bergman, Amy Degueme, Clifford King, Trisha Schimek, Katherina Gast, and Beth Potter), and declarations from non-treating medical experts (Stephanie Budge, Daniel Schumer, Jaclyn White Hughto, and Loren Schecter).

### **OPINIONS**

8. Based on the materials I have reviewed and in my professional opinion, there is an insufficient clinical basis to conclude that either Flack or Makenzie will suffer imminent, irreparable harm if they do not receive gender reassignment surgery prior to the conclusion of this case. I reach this opinion for the following reasons.

9. I have not located a current mental status examination in the patients' medical records. This is a standard psychiatric report (akin to a yearly "physical" examination) that should be performed when a patient presents with potential signs and symptoms of gender dysphoria. Without such an examination, there is an insufficient basis for any clinician to conclude that either Flack or Makenzie faces an imminent risk of suicide or other self-harm, whether due to gender dysphoria or any other psychiatric disorder. I note that

none of Flack's or Makenzie's treating physicians refer to a current mental status examination which, in my opinion, is a serious omission that undermines their opinions on their patients' mental state.

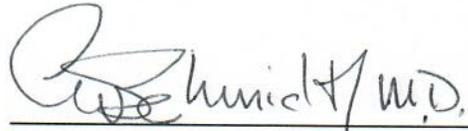
10. I have reviewed recent outpatient notes for Flack. Those notes primarily focus on issues unrelated to the surgical procedures at issue here. Those notes do indicate that Flack is experiencing psychiatric issues, but they do not indicate that he is so destabilized such that a substantial risk of imminent self-harm exists. (I have not yet had access to any similar outpatient notes from Makenzie.)

11. Although Flack and Makenzie state that they have had thoughts of self-harm, a patient's own self-reports are an insufficient basis to conclude that a serious risk of self-harm exists, let alone that receiving the surgical procedures Flack and Makenzie seek will reduce or eliminate that risk. In my experience, when patients present with thoughts of self-harm, those thoughts are often created by accompanying depression, anxiety, or other psychiatric disorders. The first step is to treat those accompanying disorders, and only then proceed with any potential gender reassignment surgical procedures.

12. Flack has been in the process of gender transitioning for a number of years, with no prior evidence of self-harm. That is a further indication he does not present a substantial risk of self-harm in the near term.

13. In summary, Flack and Makenzie have been in the process of successfully transitioning for years and without a current complete psychiatric evaluation, which includes a mental status examination, there is no medical basis for determining the severity of their threats of self-harm.

Dated 7/5/18

  
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CHESTER W. SCHMIDT, JR., M.D.