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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI, Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC.; ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER D/B/A ST. JOSEPH'S REGIONAL MEDICAL CENTER; and FATHER MARTIN D. ROONEY, Defendants.	Honorable Claire C. Cecchi, U.S.D.J. Honorable Cathy L. Waldor, U.S.M.J. Case No. 2:17-cv-00050 (CCC/CLW) **NOTICE OF DEFENDANTS' MOTION APPEALING THE HONORABLE CATHY L. WALDOR'S JANUARY 22, 2020 AND MARCH 30, 2020, OPINIONS AND ORDERS**

TO: Tom Barnes, Esq.
Jaclyn Palmerson, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010-1601

Omar Gonzalez-Pagan, Esq.
Lambda Legal Defense and Education Fund, Inc.
120 Wall Street, 19th Floor
New York, New York 10005

PLEASE TAKE NOTICE that on July 6, 2020, at 9:00 a.m., or as soon thereafter as counsel may be heard, Defendants St. Joseph's Health, Inc., St. Joseph's University Medical

Center, Inc., and Father Martin D. Rooney (collectively, "Defendants"), shall move this Court pursuant to L. Civ. R. 72.1(c)(1)(A), for entry of an order of the District Court vacating The Honorable Cathy L. Waldor's January 22, 2020 and March 30, 2020, Opinions and Orders denying Defendants' motion to compel the mental examination of Plaintiff Jionni Conforti, pursuant to Fed. R. Civ. P. 35(a).

PLEASE TAKE FURTHER NOTICE that Defendants will rely on the Declaration of Christopher S. Mayer, Esq. and Brief submitted in Support of this Appeal.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order accompanies this Notice of Motion.

Respectfully submitted,

McCARTER & ENGLISH, LLP
Attorneys for Defendants St. Joseph's Health, Inc., St. Joseph's University Medical Center, Inc., and Father Martin D. Rooney

By: s/Christopher S. Mayer
Christopher S. Mayer
Thomas F. Doherty

Dated: June 1, 2020

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JIONNI CONFORTI, Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER D/B/A ST. JOSEPH'S REGIONAL MEDICAL CENTER, and FATHER MARTIN D. ROONEY, Defendants.	:	Honorable Claire C. Cecchi, U.S.D.J. Honorable Cathy L. Waldor, U.S.M.J. Case No. 2:17-cv-00050 (CCC/CLW)

DECLARATION OF CHRISTOPHER S. MAYER, ESQ.

CHRISTOPHER S. MAYER declares as follows:

1. I am an attorney-at-law of the State of New Jersey, a member in good standing of the bar of this Court, and a Partner in the law firm of McCarter & English, LLP, attorneys for Defendants St. Joseph's Health, Inc., St. Joseph's University Medical Center, Inc., and Father Martin D. Rooney (collectively, "Defendants"). I submit this declaration in support of Defendants' Appeal of The Honorable Cathy L. Waldor's January 22, 2020 and March 30, 2020, Opinions and Orders.

2. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiff Jionni Conforti's Complaint, filed in this action on January 5, 2017 (Dkt. 1).

3. Attached hereto as Exhibit 2 is a true and correct copy of relevant portions of the transcript of Plaintiff's deposition, conducted on January 29, 2019.

4. Attached hereto as Exhibit 3 is a true and correct copy of relevant portions of the transcript of Dr. Ian Tang's deposition, conducted on September 20, 2019.

5. Attached hereto as Exhibit 4 is a true and correct copy of relevant portions of the transcript of Ms. Rissy Batista's deposition, conducted on September 18, 2019.

6. Attached hereto as Exhibit 5 is a true and correct copy of relevant portions of Plaintiff's medical records from Dr. Ian Tang.

7. Attached hereto as Exhibit 6 is a true and correct copy of relevant portions of medical records from Dr. Joseph Vitale.

8. Attached hereto as Exhibit 7 is a true and correct copy of relevant portions of health care records from Ms. Rissy Batista.

9. Attached hereto as Exhibit 8 is a true and correct copy of relevant portions of health care records from Vincent Fitzgerald, LCSW.

10. Attached hereto as Exhibit 9 is a true and correct copy of relevant portions of Plaintiff's Answers to Defendants' First Set of Interrogatories.

11. Attached hereto as Exhibit 10 is a true and correct copy of the relevant portions of Defendants' moving brief in support of their motion to compel the mental examination of Plaintiff, pursuant to Fed. R. Civ. P. 35(a) and 37.

12. Attached hereto as Exhibit 11 is a true and correct copy of the transcript of a hearing before Judge Waldor on June 20, 2019.

13. Attached hereto as Exhibit 12 is a true and correct copy of Judge Waldor's August 15, 2019, Opinion and Order (Dkt. 104).

14. Attached hereto as Exhibit 13 is a true and correct copy of the transcript of a hearing before Judge Waldor on December 3, 2019.

15. Attached hereto as Exhibit 14 is a true and correct copy of the Judge Waldor's January 22, 2020, Opinion and Order (Dkt. 116).

16. Attached hereto as Exhibit 15 is a true and correct copy of the Declaration of Dr. Expert Report of Dr. Raymond Reeves, Jr., M.D.

17. Attached hereto as Exhibit 16 is a true and correct copy of Judge Waldor's March 30, 2020, Opinion and Order, entered on the docket on April 1, 2020 (Dkt. 128).

18. Attached hereto as Exhibit 17 is a true and correct copy of the Expert Report of Dr. Randi C. Ettner, Ph.D.

19. Attached hereto as Exhibit 18 is a true and correct copy of the Expert Report of Dr. Loren S. Schechter Report, M.D.

I declare under penalty of perjury that the foregoing is true and correct.

s/Christopher S. Mayer
Christopher S. Mayer, Esq.

Dated: June 1, 2020

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI,

Plaintiff,

v.

ST. JOSEPH'S HEALTHCARE SYSTEM, INC.; ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER D/B/A ST. JOSEPH'S REGIONAL MEDICAL CENTER; and FATHER MARTIN D. ROONEY,

Defendants.

Case No. _____

Jury Trial Demanded

COMPLAINT FOR DECLARATORY, COMPENSATORY, AND INJUNCTIVE RELIEF

Christopher T. Cook (N.J. Bar No. 015382012)
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**pro hac vice* motions to be filed

Attorneys for Plaintiff Jionni Conforti

Plaintiff Jionni Conforti, by and through his attorneys, Quinn Emanuel Urquhart & Sullivan, LLP and Lambda Legal Defense and Education Fund, Inc., files this Complaint against St. Joseph's Healthcare System, Inc., St. Joseph's Hospital and Medical Center d/b/a St. Joseph's Regional Medical Center, and Father Martin D. Rooney (each a "Defendant," and together the "Defendants" or "St. Joseph's Healthcare"), and alleges as follows:

LOCAL CIVIL RULE 10.1 STATEMENT

1. The names and addresses of the parties to this action are as follows:

   a. Plaintiff Jionni Conforti resides in Totowa, New Jersey. Plaintiff's address: c/o Omar Gonzalez-Pagan, Lambda Legal Defense and Education Fund, Inc., 120 Wall Street, 19th Floor, New York, New York 10005;

   b. Defendant St. Joseph's Healthcare System, Inc. ("SJHS") has its principal place of business at 703 Main Street, Paterson, New Jersey 07503;

   c. Defendant St. Joseph's Hospital and Medical Center d/b/a St. Joseph's Regional Medical Center ("SJRMC") has its principal place of business at 703 Main Street, Paterson, New Jersey 07503; and

   d. Upon information and belief, Defendant Father Martin D. Rooney resides in New Jersey; his street and post office address are unknown.

INTRODUCTION

2. Plaintiff Jionni Conforti ("Plaintiff" or "Jionni"), a man who is transgender, sought and was denied medically necessary access to treatment, services, and facilities by St. Joseph's Healthcare because of his sex, non-conformity with sex stereotypes, and gender identity. St. Joseph's Healthcare's denial of access to such medical treatment, services, and facilities violates both Section 1557 of the Patient Protection and Affordable Care Act ("ACA"),

codified at 42 U.S.C. § 18116 ("Section 1557"), and the New Jersey Law Against Discrimination, N.J. Stat. Ann. §§ 10:5-1, *et seq.* (the "NJ LAD").

3. In 2014, Jionni was diagnosed with gender dysphoria. Then thirty-one years old, Jionni had long struggled with depression and anxiety rooted in the need to align himself with his true sex. As part of his treatment for gender dysphoria, Jionni has received hormone therapy under the direction and supervision of his primary care physician as well as other medical treatment.

4. In 2015, after receiving a recommendation that he undergo a hysterectomy as part of his treatment for gender dysphoria, Jionni consulted with Dr. Brian Day ("Dr. Day"), an experienced surgeon who at all relevant times had admitting privileges at SJRMC. Dr. Day agreed to perform the surgery. Jionni also obtained letters from both his primary care physician and his therapist that recommended that he undergo a hysterectomy, concluding that doing so was medically necessary for Jionni. Jionni's decision to seek to undergo a hysterectomy was also based, in part, on a possible link between Jionni's hormone therapy and certain reproductive system cancers.

5. SJRMC operates the two hospitals closest to Jionni's home at SJRMC's Paterson location and SJRMC's Wayne location ("SJW") in New Jersey, both of which are part of SJHS—one of New Jersey's leading health care systems. As a result, Jionni and his family have a long history with both SJRMC's Paterson hospital and SJW, and relied on these hospitals for care in the past.

6. SJRMC also has a nationally recognized Department of Obstetrics and Gynecology, where it routinely performs, among other surgeries, hysterectomies.

7. On June 8, 2015, at the recommendation of Dr. Day, Jionni went to SJW to confirm that SJRMC could schedule his surgery. The head nurse in charge of surgery at SJW assured Jionni that there would be no issues with his undergoing the hysterectomy either at SJW or SJRMC's Paterson location.

8. Notwithstanding what the head nurse in charge of surgery at SJW told Jionni, on June 16, 2015, Dr. Day informed Jionni that the SJHS administration would not permit Jionni's surgery to be scheduled at its facilities because the procedure was being performed for the purpose of "gender reassignment." The same day, Father Martin D. Rooney, Director of Mission Services at SJHS, sent Jionni an email stating:

> This is to follow up to your e-mail inquiring about scheduling a total hysterectomy here at St. Joseph's to remove all female parts based on the medical necessity for Gender Reassignment. This is to inform you that as a Catholic Hospital we would not be able to allow your surgeon to schedule this surgery here at St. Joseph's.

As this email makes clear, St. Joseph's Healthcare denied Jionni's medically necessary hysterectomy from being performed at SJRMC because of: (1) Jionni's sex; (2) Jionni's nonconformity with sex stereotypes; and (3) Jionni's gender identity.

9. As a result of this denial of access to medically necessary treatment, which followed Jionni having found a surgeon he felt comfortable with, and Jionni having been assured he could have his surgery at one of SJHS's hospitals, Jionni felt betrayed by St. Joseph's Healthcare and became deeply depressed. In addition, this denial caused Jionni great anxiety, as he not only had to once again search for a surgeon whom he could trust to perform this highly sensitive surgical procedure, but he also became, and remains, anxious about visiting either SJRMC's Paterson hospital or SJW—the two hospitals closest to his home—for medical care. Due to the discrimination he suffered at the hands of St. Joseph's Healthcare, Jionni experiences

significant distress at the thought of having to attend either facility in the event of an emergency or otherwise. In fact, 911 emergency services responding to a call at Jionni's home would automatically transport him to either SJRMC Paterson or SJW unless he were to hire and pay for transportation to another more distant hospital at his own cost.

10. Jionni has suffered emotional distress, humiliation, embarrassment, and a loss of dignity at the hands of St. Joseph's Healthcare—who purportedly pride themselves on providing health care with a "patients first" approach. St. Joseph's Healthcare's discriminatory actions are also contrary to the SJHS Patient Bill of Rights, which expressly entitles all patients to "treatment and medical services without discrimination based on . . . sex, . . . [and] gender identity or expression."

11. St. Joseph's Healthcare's discriminatory actions violate both federal and New Jersey laws. Section 1557 prohibits discrimination in the provision of health care on the basis of sex, failure to conform to sex stereotypes, or gender identity. Similarly, the NJ LAD prohibits discrimination on the basis of sex and gender identity in places of public accommodation, including hospitals open to the public.

12. Accordingly, Jionni brings these claims under Section 1557 and the NJ LAD to recover damages for the harms St. Joseph's Healthcare caused him, for a declaratory judgment that St. Joseph's Healthcare's actions violated Section 1557 and the NJ LAD, and for injunctive relief to mandate changes in St. Joseph's Healthcare's policies and practices to ensure the provision of non-discriminatory health care in compliance with St. Joseph's Healthcare's legal obligations, so that in the future St. Joseph's Healthcare will provide medically necessary care to all of their patients, regardless of sex, gender identity, or transgender status, as required under the law.

JURISDICTION AND VENUE

13. This Court has jurisdiction over Defendants SJHS and SJRMC with respect to Plaintiff's federal claim under Section 1557 asserted herein pursuant to 28 U.S.C. §§ 1331 and 1343(a). This Court has jurisdiction over all Defendants with respect to Plaintiff's state law claim pursuant to 28 U.S.C. § 1367.

14. This Court has jurisdiction to declare the rights and legal relations of the parties and to order further relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court is authorized to issue permanent injunctive relief pursuant to Fed. R. Civ. P. 65.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Defendants all reside or are present within this judicial district, and a substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district.

THE PARTIES

16. Plaintiff Jionni Conforti is a man who was born and continues to reside in Totowa, New Jersey. He is transgender.

17. SJHS is a not-for-profit holding corporation sponsored by the Sisters of Charity of Saint Elizabeth and is the principal provider of health care to the general public in Passaic County, New Jersey, through its network of wholly owned subsidiaries. SJHS is a New Jersey-based health care organization receiving both federal and state financial assistance and revenue such as reimbursement, credits, subsidies, or contracts of insurance.

18. SJRMC operates two hospitals: (1) an acute-care hospital with 651 licensed beds with its principal place of business at 703 Main Street, Paterson, New Jersey 07503, and (2) SJW, an acute-care hospital with 229 licensed beds located in Wayne, New Jersey, which was merged with SJRMC effective January 1, 2010. SJRMC is a wholly owned subsidiary of SJHS that provides health care to the general public in Passaic County, New Jersey. SJRMC is a New

Jersey-based health care organization receiving both federal and state financial assistance and revenue such as reimbursement, credits, subsidies, or contracts of insurance.

19. Defendant Father Martin D. Rooney is, and during all periods relevant to this Complaint was, SJHS's Director of Pastoral Care and Mission Services and an administrator of SJHS in the Department of Patient Relations. Father Rooney is, and during all periods relevant to this Complaint was, listed as the primary contact person for all questions concerning the SJHS Patient Bill of Rights.

20. Defendants SJHS and SJRMC are vicariously and/or contractually liable for the actions of their subsidiaries, directors, officers, agents, employees, and/or partners.

FACTUAL BACKGROUND

A. Sex, Gender Identity, and Gender Dysphoria

21. A person's sex is determined by multiple factors, including hormones, external and internal morphological features, external and internal reproductive organs, chromosomes, and gender identity. These factors may not always be in alignment.

22. The phrase "sex assigned at birth" refers to the sex recorded on a person's birth certificate at the time of birth. Typically, individuals are assigned a sex on their birth certificate solely on the basis of the appearance of external genitalia at the time of birth. Additional determinants of a person's sex (such as a person's chromosomal makeup, for example) are typically not assessed or considered at the time of birth.

23. Gender identity—a person's internal sense of their own gender—is the primary factor in determining a person's sex. Every person has a gender identity. There is a medical consensus that gender identity is innate and that efforts to change a person's gender identity are unethical and harmful to a person's health and well-being.

24. Although there is not yet one definitive explanation for what determines gender identity, biological factors—most notably sexual differentiation in the brain—have a role in gender identity development.

25. Because gender identity is the primary factor in establishing a person's sex and external genitalia are but one of a number of factors that make up a person's sex, external genitalia are not always determinative of a person's sex.

26. Transgender individuals are people whose gender identity diverges from the sex they were assigned at birth. A transgender man's sex is male (despite being incorrectly assigned the sex of female at birth) and a transgender woman's sex is female (despite being incorrectly assigned the sex of male at birth).

27. Cisgender individuals are people whose gender identity aligns with the sex they were assigned at birth. A cisgender man's sex is male and a cisgender woman's sex is female.

28. Gender identity and transgender status are therefore inextricably linked to one's sex and are sex-related characteristics.

29. Gender dysphoria refers to clinically significant distress that can result when a person's gender identity differs from the person's sex assigned at birth.

30. Gender dysphoria is a serious medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"), and by other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.

31. The DSM-5 was updated in May 2013 by the American Psychiatric Association to include a revision to the previously used term "Gender Identity Disorder" by replacing it with "Gender Dysphoria."

32. As set forth in the DSM-5, the diagnostic criteria for gender dysphoria in adolescents and adults are:

> A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months duration, as manifested by 2 or more of the following indicators:
>
> 1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or, in young adolescents, the anticipated secondary sex characteristics).
>
> 2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or, in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
>
> 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
>
> 4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
>
> 5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
>
> 6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

33. Gender dysphoria is also included in the International Classification of Diseases, Tenth Revision, Clinical Modification ("ICD-10"), and was included in the International Classification of Diseases, Ninth Revision, Clinical Modification ("ICD-9").

34. If not properly treated, gender dysphoria may result in psychological distress, anxiety, depression, and even self-harm or suicidal ideation.

35. Gender dysphoria often intensifies with time. The longer an individual goes without treatment, the greater the risk of severe harms to the individual's physical and psychological health.

36. Medical treatment for gender dysphoria must be individualized and tailored to the medical needs of each patient.

37. Treatment of gender dysphoria is usually provided pursuant to the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People ("Standards of Care"), published by the World Professional Association for Transgender Health ("WPATH") and internationally recognized as the authoritative articulation of professional consensus on the treatment of gender dysphoria.

38. Treatment in accordance with the Standards of Care may include changes in gender expression and role (*i.e.*, presenting and living in accordance with a person's gender identity in all aspects of life), mental health treatment, hormone therapy, and gender confirmation surgery to change primary and/or secondary sex characteristics.

39. An established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy, and gender confirmation surgery as forms of treatment for many people diagnosed with gender dysphoria. Health experts, including WPATH and the American Medical Association, have recognized that such treatments are not "cosmetic" or "experimental" and have recognized that these treatments can provide safe and effective treatment for a serious health condition.

40. Gender confirmation surgery—sometimes called "sex reassignment" surgery—does not constitute a single procedure, but refers to any form of surgical procedure undergone by a transgender person to better align that person's bodily characteristics with his or her gender identity. WPATH has issued guidance confirming that for some transgender individuals, a complete hysterectomy is essential and medically necessary to alleviate their gender dysphoria.

41. Seeking medically necessary care to align one's sex characteristics with one's true sex, as determined by one's gender identity, inherently violates sex stereotypes.

B. St. Joseph's Healthcare System

42. SJRMC has a nationally recognized Department of Obstetrics and Gynecology where patients may choose from private physicians in the community. Through its Department of Obstetrics and Gynecology, SJRMC also offers a robust Robotic Surgery program and routinely performs, among other surgeries, hysterectomies.

43. Upon information and belief, in 2012, physicians at the SJRMC location performed 159 abdominal hysterectomies, and physicians at the SJW location performed 31 abdominal hysterectomies. In 2016, SJRMC received an Excellence Award from Healthgrades for Gynecologic Surgery, including a "Hysterectomy Five-Star Rating," and was ranked in the Top 10% in the United States for Gynecologic Surgery. SJRMC's 2016 Healthgrades Five-Star Hysterectomy rating was based on data showing a below-average complication rate for the 452 hysterectomy cases performed at SJRMC. Healthgrades also determined that SJRMC performed approximately 160 more hysterectomies than the average hospital.

44. Upon information and belief, in 2008 and 2009, surgeons at SJRMC performed at least 131 direct sterilization procedures, identified by ICD-9 code V25.2. Direct sterilizations identified by ICD-9 code V25.2 represent non-pathology based requests for direct sterilization for contraceptive purposes. In 2008 and 2009, in addition to the 131 direct sterilizations, surgeons at SJRMC also performed at least 98 tubal ligations.

45. SJRMC actively promotes its gynecologic surgery services and offerings to the public, engaging in broad public solicitation both independently and in conjunction with surgeons affiliated with SJRMC. SJRMC and associated doctors—including Dr. Day—actively

advertise their services for laparoscopic hysterectomies. Dr. Roger P. Kierce, MD, the Chairman of the Department of Obstetrics and Gynecology at SJRMC, has advertised SJRMC's gynecologic surgery services, noting that "St. Joseph's Regional Medical Center is a highly specialized tertiary health care delivery system that offers state-of-the-art, cutting-edge medical and surgical care to our local and distant communities."

46. SJHS and its subsidiary, SJRMC, receive substantial revenues from the state and federal government by treating patients insured through Medicare, Medicaid, and through state-based charity care payments. According to SJHS's 2015 Audited Financial Statement, combined revenue from the Medicare and Medicaid programs accounted for approximately 38% of SJRMC net patient service revenue, exclusive of state subsidies for charity care, for both years ended December 31, 2015 and 2014, respectively. In addition, SJHS receives state funds through New Jersey's Hospital Charity Care Program, which was established to provide state-funded charity care payments to hospitals in New Jersey to offset the costs of uncompensated care delivered to low-income uninsured patients. In 2015, SJHS received charity care payments of approximately $68 million and a special subsidy of approximately $9.7 million.

47. SJHS's Patient Bill of Rights specifically mandates that all patients are entitled to "Legal Rights," including "treatment and medical services without discrimination based on . . . sex . . . [and] gender identity or expression."

48. SJHS's website indicates that if a patient has questions concerning his or her rights as articulated in the Patient Bill of Rights, the patient should contact Father Martin Rooney.

49. Jionni has been attending SJRMC, including SJW, his entire life. He has visited both the Paterson and SJW hospitals for various medical issues, including emergency care. In

2007, Jionni underwent lumpectomy surgery at SJW. Additionally, in 2010, Jionni underwent gall bladder surgery at SJW.

50. Jionni's family also has extensive history at both of SJRMC's locations. Jionni's father had an accident in 2010, after which he received extensive and ongoing medical treatment at both SJRMC Paterson and SJW. In 2002, Jionni's mother was diagnosed with breast cancer and received much of her ensuing treatment at SJRMC Paterson and SJW. She passed away at SJW in 2004.

C. Jionni's Gender Identity and Diagnosis of Gender Dysphoria

51. Jionni was assigned the sex of female at birth. Since early childhood, Jionni has identified more with the male gender than the female gender, although he was unfamiliar with the terms transgender, gender dysphoria, and gender identity disorder until adulthood. As a child, Jionni found himself preferring stereotypically male clothing, such as a suit and tie or a Yankees uniform.

52. Following the death of his mother due to complications from breast cancer in 2004, Jionni, then twenty-one years old, began to present himself in a more masculine way. He cut his hair short, threw out all of his stereotypically-female clothing, and began to dress and present as masculine. At the time, Jionni often felt depressed, not understanding at the time that his desire to present himself as masculine was due to his gender dysphoria.

53. In October 2013, Jionni married his wife.

54. In early 2014, Jionni began to realize that his depression was due to the fact that his gender identity did not conform with his sex assigned at birth. After watching a documentary featuring a transgender man and discussing the man's gender transition, Jionni identified with the experience of the subject of the documentary and began to watch videos posted by others on

YouTube describing their transition experiences. In February 2014, Jionni joined a Facebook group involving transgender and transition-related topics and spoke with individuals in the group about transitioning. Jionni felt that he immediately understood what others were discussing and knew that he had to move forward with his own transition and gender confirmation process.

55. In June 2014, Jionni was diagnosed with gender dysphoria by his primary care physician, Dr. Ian Tang ("Dr. Tang"). Shortly after receiving this diagnosis, he began to take steps, at Dr. Tang's direction, to align himself with his true sex—*i.e.*, to transition in a manner consistent with his gender identity. Jionni began receiving gender-confirming hormone therapy in June 2014. Jionni continues to receive such medically necessary hormone therapy.

D. Jionni's Pursuit of Gender Confirmation Surgery

56. In consultation with his physicians, Jionni took steps to obtain a double mastectomy so that his physical appearance would reflect his gender identity. This treatment was medically necessary to help Jionni align himself with his true sex, consistent with his gender identity. He was referred to a surgeon in Texas and underwent a double mastectomy in October 2014. Jionni's surgeon made him feel comfortable both during the surgery and his recovery.

57. After completing his double mastectomy, Jionni discussed further gender confirmation surgery with Dr. Tang. Jionni also discovered that there was a possible link between the hormone therapy he was receiving and certain reproductive system cancers. In addition, Jionni's family has a history of cancer. Due to these concerns, and in consultation with Dr. Tang, Jionni decided to continue with his gender confirmation by seeking to undergo a total hysterectomy.

58. Jionni contacted several gynecologic surgeons in the local area to determine whether they could perform the surgery. Ultimately, Jionni was referred to Dr. Day. Dr. Day is

a surgeon and fellow of the American College of Obstetricians and Gynecologists, who practices at Totowa OB/GYN.

59. Dr. Day is associated with and has admitting privileges at SJRMC's hospitals. Dr. Day has significant expertise in advanced minimally invasive and robotic gynecologic surgery, and routinely performs laparoscopic hysterectomies.

60. On May 13, 2015, Jionni emailed Dr. Day's office explaining his desire to obtain a hysterectomy and his need for seeking it—*i.e.*, as treatment for his gender dysphoria. Dr. Day responded that same day that he would be capable of performing the surgery and happy to do so.

61. As required by Jionni's insurer, Amerigroup of New Jersey, Jionni obtained two referral letters from medical professionals recommending a total hysterectomy as medically necessary.

62. Jionni's therapist Rissy Batista, LPC, of Rissy's Lighthouse Therapeutic Services, a mental health clinician affiliated with SJRMC, wrote one referral letter, in which she stated that "[a] full hysterectomy has been discussed at length and is currently recommended to complete full transition from female to male."

63. Dr. Tang wrote the second referral letter, in which Dr. Tang confirmed that Jionni had been diagnosed with Gender Identity Disorder, an alternative and previously-used term for gender dysphoria. Dr. Tang stated that undergoing a total hysterectomy is "necessary and highly beneficial for Mr. Confort[i]'s wellbeing."

64. In the beginning of June, after several email exchanges with Dr. Day, Jionni scheduled an appointment at Dr. Day's office for June 16, 2015. Dr. Day suggested to Jionni that prior to his June 16 appointment, Jionni should reach out to SJRMC to ensure that the hospital would be able to schedule the surgery.

65. Following Dr. Day's suggestion, Jionni went to SJW on Monday, June 8, 2015 to speak to a representative in Patient Care Services to ensure that one of SJRMC's locations would be able to schedule his surgery. Jionni again fully explained why he needed a hysterectomy. At SJW, the head nurse of surgery in charge of set up and intake informed Jionni that there would be no issues with Jionni undergoing the hysterectomy procedure at either of SJRMC's locations based on the reason for surgery—treatment of Jionni's gender dysphoria. She explained that all Jionni needed were letters from his physicians explaining that the surgery is medically necessary to treat his gender dysphoria, and final authorization from his health care insurance provider.

66. Jionni also contacted SJHS through its "Contact Us" form on its website explaining why he needed a hysterectomy and inquiring whether there would be an issue scheduling the surgery at SJRMC. Elizabeth Regula, the acting Executive Director of the St. Joseph's Regional Medical Center Foundation at the time, responded to Jionni's email on Thursday, June 11, 2015. She stated that she received Jionni's email but would have to reach out to the administrative director of surgery to provide a more definitive answer. On Friday, June 12, 2015, Jionni sent a follow-up email to Ms. Regula, who informed Jionni that he would receive a response on Monday, June 15, 2015. Jionni did not hear back from Ms. Regula or any other SJHS representative prior to his June 16 appointment with Dr. Day.

E. Discrimination by SJHS, SJRMC, and Father Rooney

67. On June 16, 2015, Jionni had an in-person consultation with Dr. Day regarding scheduling his hysterectomy procedure. At this consultation, Dr. Day told Jionni that Father Rooney, Director of Mission Services at SJHS, would not allow Jionni's surgery to be scheduled at SJHS's facilities, as the surgery was being performed for purposes of "gender reassignment."

68. Dr. Day informed Jionni that because Dr. Day had admitting privileges only at SJRMC's two locations, Dr. Day would not be able to perform Jionni's hysterectomy at all. Dr. Day told Jionni that Father Rooney would provide Jionni with the reason for SJHS's denial of medical services to Jionni in writing.

69. On June 16, 2015, Father Rooney sent an email to Jionni stating, in pertinent part:

> This is to follow up to your e-mail inquiring about scheduling a total hysterectomy here at St. Joseph's to remove all female parts based on the medical necessity for Gender Reassignment. This is to inform you that as a Catholic Hospital we would not be able to allow your surgeon to schedule this surgery here at St. Joseph's.

70. Father Rooney prevented Jionni's medically necessary hysterectomy from being performed at SJRMC's hospitals because of Jionni's sex, nonconformity with sex stereotypes, gender identity, and transgender status.

71. Upon reading Father Rooney's email, Jionni was shocked, confused, and hurt.

72. Jionni felt betrayed by SJHS, the closest health care system to his home and one upon which he and his family had come to rely. Jionni had not previously experienced such blatant discrimination and was humiliated and angered at being refused the facilities and services for medically necessary care because of who he is.

73. Jionni was also depressed that after his long search to find a surgeon who could perform the surgery, and after initially being assured by SJRMC staff that performing the surgery at their facilities would not be an issue, he was denied access to medically necessary care. Jionni also felt anxiety at having to search for a new surgeon whom he could trust to perform this highly sensitive surgical procedure. Jionni worried it would severely impede his ability to live as his true self in accordance with his gender identity.

74. Due to this discriminatory incident, Jionni has become wary of visiting either SJRMC or SJW for medical care and experiences distress at the thought of having to attend

either facility in the event of an emergency or otherwise. SJHS provides the closest and most expansive health care treatment in the area. The two hospitals closest to Jionni's home are operated by SJHS—SJRMC Paterson and SJW. Moreover, if Jionni requires emergency assistance in the vicinity of his home through dialing 911, he would be transported by ambulance automatically to either SJRMC Paterson or SJW unless he were to hire and pay for transportation to another more distant hospital at his own cost.

75. In October 2016, Jionni was involved in a vehicular accident in Wayne, New Jersey, near his home in Totowa, during which he sustained minor injuries and was evaluated by emergency service technicians. The emergency service technicians recommended that Jionni obtain emergency care at a hospital and explained to him that they could only take him to the emergency care department at SJRMC Paterson or SJW. The emergency service technicians noted that if Jionni wanted to be taken to another hospital farther away, he would have to pay for such transportation out of pocket. Afraid that he would be discriminated against by SJHS and unable to pay for the ambulance transportation to another hospital, Jionni declined to be taken to a hospital by the emergency service technicians.

76. St. Joseph's Healthcare's refusal to allow Jionni's hysterectomy to be performed at their facilities is particularly humiliating and degrading to Jionni because he knows SJRMC provides access to the very same laparoscopic hysterectomy procedure and related treatments to other patients who do not fail to conform to sex stereotypes and are not transgender. For example, in 2009, Dr. Day performed a hysterectomy for an acquaintance of Jionni, a cisgender woman, at SJRMC Paterson. Moreover, Dr. Day and other surgeons routinely perform total laparoscopic hysterectomies and direct sterilizations at SJRMC.

77. Because the only individuals who require medically necessary care to treat gender dysphoria are transgender individuals, denying coverage for such health care constitutes discrimination based on sex, nonconformity with sex stereotypes, gender identity, and transgender status. As a result of the actions and practices of St. Joseph's Healthcare, cisgender individuals can schedule and obtain hysterectomies as part of their medically necessary health care at SJRMC, but transgender individuals cannot.

78. As a result of Father Rooney's, SJHS's, and SJRMC's denial of medically necessary treatment to Jionni based on Jionni's sex, nonconformity with sex stereotypes, gender identity, and transgender status, Jionni has suffered emotional distress, humiliation, embarrassment, and a loss of dignity.

79. Jionni has not sought or obtained medical treatment from SJRMC Paterson or SJW since June 2015 because of this discriminatory incident.

F. OCR Complaint and Investigation

80. On December 11, 2015, Jionni, by his counsel Lambda Legal Defense and Education Fund, Inc., filed a civil rights administrative complaint against SJRMC with the U.S. Department of Health and Human Services ("HHS") Office for Civil Rights ("OCR Complaint"). In the OCR Complaint, Jionni alleged, as he does here, that SJRMC discriminated against him on the basis of sex, in violation of Section 1557. Attached to the OCR Complaint was the aforementioned email from Father Rooney to Jionni articulating the discriminatory reason for denying Jionni health care at SJRMC.

81. On May 12, 2016, the Office of Civil Rights informed Jionni and his counsel that it had determined it had the authority to proceed with the OCR Complaint and indeed would be commencing an investigation into his allegations. Notably, the Office of Civil Rights informed

Jionni and his counsel of this investigation one day prior to releasing its Final Rule expressly concluding that gender identity is encompassed within Section 1557's prohibition on sex discrimination in health care.

CAUSES OF ACTION

COUNT ONE – DISCRIMINATION ON THE BASIS OF SEX IN VIOLATION OF SECTION 1557 OF THE ACA, 42 U.S.C. § 18116
(Against Defendants SJHS and SJRMC)

82. Plaintiff realleges, adopts, and incorporates the allegations in paragraphs 1 through 81 above, as though fully set forth herein.

83. Section 1557 of the ACA, 42 U.S.C. § 18116, provides, in relevant part, that "an individual shall not, on the ground prohibited under . . . title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, *et seq*.)"—which prohibits discrimination "on the basis of sex"—"be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance."

84. Defendants SJHS and SJRMC receive federal financial assistance, and are therefore each a "covered entity" subject to the requirements of Section 1557.

85. Discrimination on the basis of gender identity, transgender status, or nonconformity with sex stereotypes are all encompassed by the prohibition on discrimination on the basis of "sex" under Section 1557.

86. In 2016, the HHS Office for Civil Rights issued a final rule defining "on the basis of sex" under Section 1557 of the ACA to include "discrimination on the basis of . . . gender identity." 45 C.F.R. § 92.4. Accordingly, pursuant to HHS regulations implementing Section 1557, a covered entity such as Defendants SJHS and SJRMC must "provide individuals equal access to its health programs or activities without discrimination on the basis of sex," and "a

covered entity may not deny or limit health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual based on the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available." 42 C.F.R. § 92.206.

87. Jionni has a right under Section 1557 to receive health care services free from discrimination based on his sex, nonconformity with sex stereotypes, gender identity, or transgender status. Indeed, Defendants SJHS and SJRMC's written policies acknowledge their responsibility to treat all individuals equally and not to discriminate on the basis of sex or gender identity or expression.

88. By denying Jionni the ability and opportunity to schedule a hysterectomy at SJRMC because it was related to the medically necessary treatment for Jionni's gender dysphoria, Defendants SJHS and SJRMC discriminated against Jionni based on his sex, nonconformity with sex stereotypes, gender identity, and transgender status. Defendants SJHS and SJRMC have discriminated against Jionni on the basis of sex in violation of Section 1557 and have thereby denied Jionni the full and equal participation in, benefits of, and right to be free from discrimination in a health program or activity.

89. Defendants SJHS and SJRMC perpetrated this discrimination purposefully, willfully, with malice, and with reckless disregard for and/or with deliberate indifference toward Jionni's rights.

90. As a result of Defendants SJHS and SJRMC's discriminatory acts, Jionni has suffered emotional distress, humiliation, degradation, embarrassment, emotional pain and anguish, violation of his dignity, loss of enjoyment of life, and other compensatory damages, in an amount to be established at trial.

COUNT TWO – DISCRIMINATION BECAUSE OF SEX AND GENDER IDENTITY IN VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION, N.J. STAT. ANN. §§ 10:5-1, *et seq.*
(Against All Defendants)

91. Plaintiff realleges, adopts, and incorporates the allegations in paragraphs 1 through 90 above, as though fully set forth herein.

92. The NJ LAD, N.J. Stat. Ann. § 10:5-4 provides, in relevant part:

> All persons shall have the opportunity . . . to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, . . . without discrimination because of . . . sex, gender identity or expression . . . . This opportunity is recognized as and declared to be a civil right.

93. The NJ LAD, N.J. Stat. Ann. § 10:5-12(f)(1) provides, in relevant part:

> It shall be . . . an unlawful discrimination . . . [f]or any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof . . . on account of the . . . sex, gender identity or expression . . . of such person . . . .

94. New Jersey enacted the Law Against Discrimination in recognition that "discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State." N.J. Stat. Ann. § 10:5-3.

95. The NJ LAD provides an extensive, non-exhaustive list of examples of businesses and places that would constitute "[a] place of public accommodation," including "any dispensary, clinic or hospital." N.J. Stat. Ann. § 10:5-5(l).

96. Under New Jersey law, "'Gender identity or expression' means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth." N.J. Stat. Ann. § 10:5-5(rr).

97. New Jersey law explicitly delineates the responsibility of hospitals and hospital administrators to protect patient rights to treatment and medical services without discrimination based on sex or diagnosis. New Jersey law provides, in relevant part:

> Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The hospital administrator shall be responsible for developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. These rights shall include at least the following:
>
> . . .
>
> 2. To treatment and medical services without discrimination based on . . . sex . . . [or] diagnosis . . .;
>
> 3. To retain and exercise to the fullest extent possible all the constitutional, civil, and legal rights to which the patient is entitled by law;"

N.J. Admin. Code § 8:43G-4.1.

98. Jionni has a right under the NJ LAD to receive health care services free from discrimination based on his sex, nonconformity with sex stereotypes, gender identity or expression, or transgender status.

99. By denying Jionni the ability and opportunity to schedule a hysterectomy at SJRMC because it was related to the medically necessary treatment for Jionni's gender dysphoria, Defendants discriminated against Jionni based on his sex, gender identity, transgender status, and nonconformity with sex stereotypes. Defendants have discriminated against Jionni on the basis of sex and gender identity in violation of the NJ LAD and have thereby denied Jionni the full and equal opportunity to obtain all the accommodations, advantages, facilities, and privileges of a place of public accommodation free from discrimination.

100. Defendants perpetrated this discrimination purposefully, willfully, with malice, and with reckless disregard for and/or with deliberate indifference toward Jionni's rights.

101. As a result of Defendants' acts of discrimination, Jionni has suffered emotional distress, humiliation, degradation, embarrassment, emotional pain and anguish, violation of his dignity, loss of enjoyment of life, and other compensatory damages, in an amount to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Issue a declaratory judgment finding that Defendants have violated Plaintiff's rights under Section 1557 and the NJ LAD.

B. Issue a permanent injunction against Defendants, their agents, employees, successors, and all others acting in concert with them:

1. Ordering Defendants, their agents, employees, successors, and all others acting in concert with them, to refrain from discriminating on the basis of sex, nonconformity with sex stereotypes, gender identity or expression, transgender status, and/or diagnosis of gender dysphoria in the provision of health care services, treatment, and facilities;
2. Ordering Defendants, their agents, employees, successors, and all others acting in concert with them, to provide transgender individuals, including Plaintiff, who seek gender confirmation or gender dysphoria-related health care, with medical assistance for all medically necessary care, regardless of its nature, when such care is provided to or made available to cisgender individuals; and
3. Ordering Defendants, their agents, employees, successors, and all others acting in concert with them, to modify their policies, practices, and procedures to ensure the provision of non-discriminatory medically necessary care to all of

their patients, without regard to sex, sex stereotypes, gender identity or expression, transgender status, or diagnosis of gender dysphoria.

C. Award Plaintiff compensatory damages in an amount to be established at trial for his emotional distress and suffering, embarrassment, humiliation, emotional pain and anguish, violation of his dignity, and loss of enjoyment of life.

D. Award Plaintiff punitive damages, to the extent allowed by federal or state law.

E. Award Plaintiff costs and disbursements, including reasonable attorneys' fees and costs.

F. Award Plaintiff such other and further legal and equitable relief as the Court may deem appropriate, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues properly triable by right to a jury.

DATED: January 5, 2017

Respectfully Submitted,

By: s/ *Christopher T. Cook*

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**pro hac vice* motions to be filed

Attorneys for Plaintiff Jionni Conforti

LOCAL CIVIL RULE 11.1 CERTIFICATION

The undersigned hereby certifies that the matter in controversy is the subject of an administrative complaint filed with the U.S. Department of Health and Human Services Office for Civil Rights on December 11, 2015.

DATED: January 5, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: s/ *Christopher T. Cook*

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Attorneys for Plaintiff Jionni Conforti

EXHIBIT 2

(FILED UNDER SEAL)

EXHIBIT 3

(FILED UNDER SEAL)

EXHIBIT 4

(FILED UNDER SEAL)

EXHIBIT 5

(FILED UNDER SEAL)

EXHIBIT 6

(FILED UNDER SEAL)

EXHIBIT 7

(FILED UNDER SEAL)

EXHIBIT 8

(FILED UNDER SEAL)

EXHIBIT 9

(FILED UNDER SEAL)

EXHIBIT 10

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JIONNI CONFORTI, Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC.; ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER D/B/A ST. JOSEPH'S REGIONAL MEDICAL CENTER; and FATHER MARTIN D. ROONEY, Defendants.	Honorable Claire C. Cecchi, U.S.D.J. Honorable Cathy L. Waldor, U.S.M.J. Case No. 2:17-cv-00050 (CCC/CLW)

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL MENTAL EXAMINATION OF PLAINTIFF

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Of Counsel,
Christopher S. Mayer

On the Brief,
Christopher S. Mayer
Thomas F. Doherty

ongoing anxiety and depression to Defendants. See Mayer Decl., Ex. A, at 249:4-10. In January 2017, for example, Plaintiff visited Ms. Batista and presented with "severe anxiety, inclusive of panic attacks" for unidentified causes. See Mayer Decl., Ex. F, BATISTA00061-62. Similarly, in or around February 23, 2017, Plaintiff sought treatment with Vincent Fitzgerald, LCSW of Nutley Family Services for "anxiety" and "depression," as well as other personal stressors such as familial conflict and issues associated with his transitioning. See Mayer Decl., Ex. G, FITZGERALD00012-20. Likewise, Plaintiff testified at deposition that he continued to treat with Dr. Vitale for generalized anxiety disorder on or about May 1, 2017. See Mayer Decl., Ex. A, at ¶¶ 248:14-249:10; see also Mayer Decl., Ex. D, VITALE00002-5. As a result of this visit and subsequent visits, Dr. Vitale prescribed Plaintiff anti-depressants, including Xanax and Lexapro, to treat his psychiatric disorders and recommended screenings for clinical depression. Id. at VITALE00080-84, VITALE000111-115.

D. The Proposed Examination of Mr. Conforti.

Defendants have engaged a psychiatrist, Donald Raymond Reeves, Jr., M.D., to submit an expert report in this matter. Dr. Reeves' proposed examination of Mr. Conforti will consist of a mental status examination, a developmental history, a psychiatric history (including treatments for psychiatric and psychological conditions), a family history, an education and work history, and the history of Plaintiff's alleged gender dysphoria.

As a predicate to his report, Dr. Reeves will assess during his examination, without limitation, the following topics: Plaintiff's alleged emotional distress, depression and anxiety that purportedly were caused by Defendants' conduct described in the Complaint, including the extent and duration of same, other potential causes of Plaintiff's alleged distress/ depression/anxiety and the treatment Plaintiff has undergone (including medications) for same;

and Plaintiff's claimed gender dysphoria and the impact on the dysphoria symptoms of the hysterectomy that Plaintiff underwent at a different hospital.

The examination will take place at Dr. Reeves' medical office, Hydrangea Hill Psychiatric Associates, Inc., located at 112 Raymond Avenue, South Orange, New Jersey 07079. The location is convenient to Mr. Conforti as it is less than 15 miles from his Totowa residence and Plaintiff will not be missing time from a job because he does not work. The entire examination is expected to be completed in approximately four hours.

LEGAL ARGUMENT

THE COURT SHOULD COMPEL PLAINTIFF TO APPEAR FOR A MENTAL EXAMINATION

Rule 35 of the Federal Rules of Civil Procedure provides, in relevant part, that when the "mental or physical condition" of a party "is in controversy," the court may order the party "to submit to a physical or mental examination by a suitably licensed or certified examiner" upon a showing of "good cause." Fed. R. Civ. P. 35(a). In applying Rule 35, courts must start with the "basic premise 'that the deposition-discovery rules are to be accorded *a broad and liberal treatment* … to effectuate their purpose that 'civil trials in the federal courts no longer need be carried on in the dark.'" Schlagenhauf v. Holder, 379 U.S. 104, 115 (1964) (citations omitted)(emphasis added). "One of the purposes behind Rule 35 is to 'level the playing field' between the two parties in cases where a party's physical or mental condition has become an issue." Womack v. Stevens Transp., Inc., 205 F.R.D. 445, 446 (E.D. Pa. 2001) (quoting Ragge v. MCA/Universal, 165 F.R.D. 605, 608 (C.D. Cal. 1995)). Whether to compel a mental examination pursuant to Fed. R. Civ. P. 35 is within the sound discretion of the trial court. See, e.g., Shirsat v. Mut. Pharm. Co., Inc., 169 F.R.D. 68, 69-70 (E.D. Pa. 1996).

CONCLUSION

Based on the foregoing, Defendants respectfully submit that Plaintiff should be compelled to appear for an independent mental examination within 30 days of the Court's Order and request that certain portions of this Brief and Exhibits A and C to G attached to the Mayer Declaration be sealed pursuant to L. Civ. R. 5.3.

Respectfully submitted,

McCARTER & ENGLISH, LLP
Attorneys for Defendants

By: */c/ Christopher S. Mayer*
Christopher S. Mayer
Thomas F. Doherty

Dated: July 22, 2019

EXHIBIT 11

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CONFORTI, Plaintiff, vs. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al., Defendants.	.	Case No. 17-cv-00050 Newark, New Jersey June 20, 2019

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE

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(Commencement of proceedings at 10:53 A.M.)

THE COURT: We're on the record -- hold on -- let me do the caption.

This is Conforti versus St. Joseph's Healthcare System. It's 10:54 on June 20th, 2019.

Let's have appearances beginning with the plaintiff.

MR. BARNES: Good morning, Your Honor. Tom Barnes and Jaclyn Palmerson from Quinn Emanuel. And with me is cocounsel, who, I believe was *pro hac'd* in this morning, Carl Charles who will be filling in for Omar today.

THE COURT: Okay.

MR. MAYER: And Christopher Mayer and Thomas Doherty from McCarter & English for defendants.

THE COURT: So, Mr. Mayer, I asked off the record what happened to our discussion with respect to settling the emotional distress aspects of this case. And I believe you wanted to address that. And it need not be in a vacuum. You can address it in the context of anything you want.

MR. MAYER: Sure. Would Your Honor prefer I come up to the podium? Or can I sit --

THE COURT: No. I'm -- wherever you're comfortable.

MR. MAYER: I'll stay seated.

So just to go back, I think we were here previously in April to argue this motion, and Your Honor proposed potentially trying to resolve the emotional distress claim as a way to avoid all the depositions of Mr. Conforti's treating physicians and psychotherapists that we're trying to take and that they're trying to quash. And it was intriguing to both parties. So we did discuss it. And, again, I am not going to get into the amounts we discussed.

THE COURT: Okay.

MR. MAYER: But my understanding, based on representations from counsel, was that the monetary side of it was not going to be an issue, that we were going to be able to reach agreement on that.

And we did counter. We made a demand, and we countered.

Where the hangup was was on the stipulations that we proposed. And so just going back -- and this is obviously relevant to the motions that we're arguing today -- we proposed two separate very broad stipulations: One related to his emotional distress claim that if we are going to agree not to take any of those depositions and if that is now going to be the case that there can't be any evidence by either party introduced at trial about emotional distress. And there's a lot more to it than that, that that's the gist of the first stipulation.

And then the second stipulation related to the -- mostly to the doctors that we wanted to depose. The OB/GYNs, that apparently was -- one OB/GYN that Mr. Conforti went to before he came to St. Joseph's and asked to perform a hysterectomy. And then there's the one who actually performed the hysterectomy. And all we wanted was a representation that the only -- which is consistent with Mr. -- Mr. Conforti's testimony at his deposition, that the only reason he wanted the hysterectomy to be performed was that -- was for gender dys- -- gender dysphoria, treat gender dysphoria and no other reason. And there were no other reasons given to his doctors by him. There was nothing else. Because, St. Joseph's that was the only reason that was given to them.

And his cancer history was given, but it came back clean.

So for the first stipulation, we were told that the concern was that Mr. Conforti would still be allowed -- wanted to still be able to testify at trial about his embarrassment, his humiliation, you know, that basically the gist --

THE COURT: Okay.

MR. MAYER: -- of his emotional -- and we didn't think that was going to go.

THE COURT: That was a nonstarter from the --

MR. MAYER: That was a nonstarter.

And then for the second one, the hangup was that counsel told us that Mr. Conforti wanted to be able to talk about his personal concerns about the hormone therapy that he was taking and that it might cause him cancer.

And, again, that's concerning to us, because that's the reason we want to depose these doctors, the OB/GYNs, to make sure that there's no other reason out there that we're missing, that it's just gender dysphoria. And if there's something else out there, we need to be able to probe that. And that would be inconsistent with what he told us at his deposition.

THE COURT: Okay. That's instructive to me as well.

So do you agree with that as being the stumbling block?

MR. BARNES: Thank Your Honor. And Carl will take that motion to quash, but I'll address the settlement issue.

THE COURT: Okay. Thank you.

MR. BARNES: I think I agree on a broad level that those were some of the issues. I would note that for the first stipulation as to precluding Mr. Conforti from testifying as to the consequences of the discrimination, again, that would be important for both trial as in his factual narrative of the case, as well as our injunctive

relief claim, which we have elements to prove, including, I believe -- a harm element as well.

So Mr. Conforti -- to preclude Mr. Conforti from testifying about how he felt or how -- or the impact of the discrimination on him and how that motivates, you know, his fear of recurrent discrimination in the future is important to the case. So stipulating just to get rid of the emotional distress damages to sort of undercut our injunctive relief claim was problematic for us.

We'd also, Your Honor, as to the second stipulation, Mr. Conforti testified -- they have testimony that says the only reason given was gender dysphoria to the Dr. Hadad [phonetic]. That was the reason it was performed.

But, again, to preclude him to say why was he -- to preclude his testimony, his personal testimony about why he was motivated or what he was worried about or concerns he had -- while struggling with gender dysphoria is, again, an important part of the narrative of the case. So we are always happy to continue discussing with counsel about resolving this case. But we -- we believe that for these subpoenas, what they were asking for was far greater than what we were willing to give to moot this issue.

THE COURT: So --

MR. MAYER: Did you want to hear from me further on that, Your Honor?

THE COURT: Yeah, I do.

MR. MAYER: Okay. So I mean the -- you could imagine what the issue is for us, starting with the second aspect of it. If there is a personal concern about cancer, we want to know -- and this, again, I'm arguing the motions -- we want to know did he tell his doctors that. Did he tell the OB/GYNs? I guess if he told someone else too. You know, I'm a little uncomfortable, because now I'm telling that we're doing -- we want to do at these depositions. But we would want to know, did he talk to these OB/GYNs about this fear? And what did they say? You know, what did they say in response to it? And was this a consideration for his request to them for a hysterectomy? And is he later going to say that he told the same thing to St. Joseph's, even though he didn't tell us that before.

So that's what we're concerned is about, Your Honor, at least with respect to the second stipulation.

The first one, you know, I think it's obvious, it -- I understand their position that, you know, it's relevant to their request for injunctive relief. But we would want all references to emotional harm to come out, because we -- if it's settled and resolved, you know, we feel if either party said anything about that, it would be prejudicial. I mean, he would not want us to talk about any of the stressors or his other prior conditions that we're

going into today here. And we -- want him saying, you know, I experienced some sort of emotional harm as a result of this. That, we think, is prejudicial and would affect liability, even though it really isn't relevant in any way to liability.

THE COURT: It's hard to slice this pie. It's --

MR. MAYER: It is.

THE COURT: -- everything is just very interrelated.

MR. MAYER: That's right.

THE COURT: So it was a good idea.

MR. MAYER: It was a good idea. It was --

THE COURT: But I see what the problems are. And I don't necessarily know that they're resolvable, because -- so this -- this -- before I continue, this anxiety about continued hormone therapy goes to irreparable harm?

MR. BARNES: No, Your Honor. It -- don't want to say "no," Your Honor. But -- that wasn't a point --

THE COURT: I'm not asking you to preclude, by the way.

MR. BARNES: Yes.

THE COURT: I'm having a discussion.

MR. BARNES: Yes, thank you.

That -- that's an allegation in the complaint. To sort of explain -- I -- Mr. Conforti was, I think, timely

trying to move through his treatment. And that isn't something -- in the complaint he alleged was just a concern on his mind, so --

THE COURT: So that was why he -- the time period was essential.

MR. BARNES: That was -- yeah. I think that motivates it, Your Honor.

THE COURT: So what does that go to in the end?

MR. BARNES: So, again, Your Honor, they have his testimony -- right here, I'm looking at it -- asking what reasons did you give Dr. Hadad for the hysterectomy, and he says it was gender dysphoria.

They said "Was there anything else he told his office."

"ANSWER: No."

So that -- I mean that's the answer. And they're worried about, I think, him changing his story. But now they have the testimony --

THE COURT: Right. Right. I understand that they are worried about unanticipated testimony. And rightfully so, because you're worried about that as well in every case. But if you reserved the right to testify as to the fear of cancer, which is what you want to do.

MR. BARNES: What -- I think -- I think --

THE COURT: My daughter just had a baby.

Go ahead.

UNIDENTIFIED SPEAKERS: Congratulations.

THE COURT: I'm waiting for the name. They won't tell me the name.

So, go ahead.

MR. BARNES: Yes, Your Honor. I apologize.

Well --

THE COURT: So you want -- you want Mr. Conforti to be able to testify that he had a concern about continuing hormonal therapy?

MR. BARNES: Your Honor, I think that we want to -- we would like to reserve our rights generally to, you know, have him testify about his personal experiences, about both before and after the -- this event, and I would say, though, Your Honor, that that testimony, even if he did -- was to testify to that and even if he was to change his story, that's -- they now have this, I think, impeachment evidence that -- that is consistent with what he's been saying all along, which is there were reasons. There's -- you know, there's other reasons -- maybe they're not necessarily medical reasons -- that he might want -- might have wanted a hysterectomy. But as far as the medical necessity, the reason that he gave his doctors was gender dysphoria. And I think that was established by the testimony that --

THE COURT: I'm not so concerned, believe it or not

with the medical necessity aspect of this case.

I just want to know -- and I'm really trying to dig into the -- to the framework of the trial. And I realize that it exposes both sides to disclosing strategy.

But, you know, lawyers can pretty much anticipate strategy, so --

MR. BARNES: Absolutely.

THE COURT: -- I think that's sometime just a phantom fear.

I want to know specifically would Mr. Conforti testify -- you want to reserve the right to have him testify to other reasons than gender dysphoria.

MR. BARNES: No, Your Honor. Not other reasons for gender dysphoria. And I think that's --

THE COURT: Hold on, let's see if we have a name here.

No. No name.

MR. MAYER: Your Honor, do you want to take a break and call --

THE COURT: No.

MR. MAYER: Are you sure? Okay.

THE COURT: I'd like to include you in this.

MR. BARNES: No, Your Honor, I would say that, no, we wouldn't want to reserve the right to say that this was another reason for the hysterectomy. That is not what -- he

has never said or we ever argued, we've always consistently argued that he needed a hysterectomy for gender dysphoria.

I think this is a red-herring issue, a little bit, for the purpose of this motion, because the -- that's why I sort of bring up that he's already test- -- that is -- he's testified that that was the only reason. Because while he will want to -- as any litigant would -- give the narrative of his experiences, the reason for the hysterectomy is I'm -- I think dispute it. I think both parties agree there was only one reason given and only one reason was sought. One medical reason.

So there is broader issues -- broader, I think, concerns about wanting to protect his ability to testify -- give the narrative of his -- of his experiences around this. And that was the issue with the stipulations was not so much that we would stipulate to, yes, of course, that was the only reason he sought a hysterectomy; it's the extra stipulations and the vagueness of the stipulations about what exactly he will be precluded from -- afraid that during trial or a hearing before Your Honor that sort of vague, simple preclusion sentence in that stipulation of his other reasons he might have sought a hysterectomy, I think, could be overbroad and -- down the line.

So that's why we said to them, we're waiting to consider a second stipulation, but these are issues that we

are concerned about about over-precluding him from this testimony that I think for the settlement, it's an issue.

THE COURT: It's sort of like scripting a trial that maybe can't be scripted except by the judge.

MR. MAYER: And, Your Honor, just to be clear, we're not trying to prevent Mr. Conforti from testifying about what he wants unless we were able to resolve that.

But it shows where our concern is here, that if he does change his testimony or elaborate further, that if we don't get the chance to depose the OB/GYN, then how are we going to cross-examine him? And if we can't cross-examine him on this issue, then there's the potential that the jury will be confused, the jury might believe that this somehow does affect liability, that it's inconsistent with our belief that we didn't have to perform the hysterectomy under the ethical and religious directives that a Catholic hospital has to abide by.

So those are the concerns we have.

So it -- that's why we just want to take discovery of this. We're not trying to, you know, argue that he can't testify about what he wants. It just shows more why we need to take this discovery.

THE COURT: How -- while we're on the subject, how does medical necessity play into this case?

MR. MAYER: It comes in under the ERDs. So the

ERDs define, you know, basically when a sterilization procedure can be performed --

THE COURT: Through your hospital.

MR. MAYER: -- I don't have -- for a Catholic institution.

THE COURT: That's what I mean. Okay.

MR. MAYER: Yes.

THE COURT: I see.

MR. MAYER: So -- and you could do it if there's basically a medical necessity and there's no other alternative available to the hospital. So if there's another way to -- you know, to do it, then it -- so that's how the ERDs comes into play, and that's where it comes from.

THE COURT: I forgot about that.

MR. MAYER: Yeah.

THE COURT: We did talk about that.

MR. MAYER: We did. And I can quote it for you, but I don't have the --

THE COURT: No, I remember. And I remember looking them up, actually --

(Simultaneous conversation)

THE COURT: And I said to you --

(Simultaneous conversation)

MR. MAYER: It's 53 in the ERDs. Yeah, that's right, you looked it up last time.

THE COURT: -- are these what I should be looking at at one point. Okay.

All right. So let's -- let's begin argument. I have what I believe to be some documents that are "attorneys' eyes only" that we have to address as to whether or not they can be given to providers. And there's a single document that you don't have, and a certain section in that document that we have to discuss, which is difficult for them to argue, because they don't know what it is. And then we have to go through -- I'd like to go through all the providers and discuss them individually on both sides, because plaintiff would like to not have them all deposed. Correct?

MR. BARNES: Yes, Your Honor.

THE COURT: And what else do I have before me?

MR. MAYER: I think that's it. There are the two new doctors too, which wasn't part of the original --

THE COURT: Okay.

MR. MAYER: -- we didn't serve subpoenas on those doctors yet.

THE COURT: And who are the two new doctors -- or what are the two doctors?

MR. MAYER: One is Dr. Diana Vitale. She was the OB/GYN that Mr. Conforti went to before he came to St. Joseph's. And then another is a neurologist -- Dr. Avery Katz.

THE COURT: And when did the neurologist see Mr. Conforti?

MR. MAYER: He also -- it was before he came to -- to us. So that was May 2014, and he went to Dr. Vitale, I believe, in April -- we believe April 2015. But we're not a hundred percent --

THE COURT: So I really need to talk in a specific sense about each doctor.

UNIDENTIFIED SPEAKER: Yes.

THE COURT: Oh, yeah, and medical records after July 2018, that's another issue that we have to talk about. You want -- that's your motion to compel?

MR. BARNES: Yes, Your Honor. As part of the subpoenas for the --

THE COURT: Or a protective order.

MR. BARNES: As part of the motion to quash --

THE COURT: Okay.

MR. BARNES: -- as part of their subpoenas of doctors they requested the additional records, yes, Your Honor.

THE COURT: Got it. All right. So maybe we can start with the medical providers. Primary care doctor is Ian -- Ian Tang?

MR. CHARLES: Yes, Your Honor.

THE COURT: Oh, I'm sorry. So you're going to be

arguing this part of it.

MR. CHARLES: Yes, Your Honor. Carl Charles with Lambda Legal.

THE COURT: So, Mr. Charles, on the protective order side or the quash side, tell me why Dr. Tang is not relevant. And know that I'm deeply concerned -- and I said this before in this case -- about exposing what I consider to be very private information. For anybody.

So tell me why Dr. Ian Tang is not relevant to the claims and to emotional distress.

MR. CHARLES: Yes, thank you, Your Honor.

So Dr. Tang was a provider that Mr. Conforti saw well -- well before this incident of discrimination and provided treatment to Mr. Conforti that we argue is not at issue in this matter. He and his team at Apicha Community Healthcare saw Mr. Conforti for the issue of gender dysphoria, which he had been experiencing. And Dr. Tang is an endocrinologist, but he works together with a multidisciplinary team.

And so as to Mr. Conforti's emotional distress following an incident of discrimination, Your Honor, we don't feel that Mr. Tang would have any perspective to provide on that issue and that the issue of his gender dysphoria and the diagnosis of therefore, was -- predated this incident of discrimination.

THE COURT: So you have the medical records from Dr. Tang. Right?

MR. MAYER: We do and --

THE COURT: Is there something specific --

(Simultaneous conversation)

MR. MAYER: -- I guess we don't have the updated, but we have --

THE COURT: Is there something specific in -- what would -- the period of treatment was 2014 for Dr. Tang?

MR. BARNES: Yes, Your Honor.

THE COURT: What specifically in 2014 -- in the records for -- how often did Dr. Tang see Mr. Conforti? Do we know that?

MR. MAYER: Well, I think he started in 2014. I think we went right up until the time that he -- in 2015, that he requested the hysterectomy from St. Joseph's.

We can't locate Dr. Tang. We haven't been able to find him. We didn't get a new date -- new address from plaintiff's counsel for him, so we may not be able to serve him anyways.

We did serve his practice, and if we can't get ahold of Dr. Tang, we -- I think we'd like to depose somebody from the practice instead or both of them.

He's listed -- counsel represented he's an endocrinologist. We weren't really sure what he was. He's

also listed as an infectious disease specialist. He's not listed as a psychotherapist. I didn't see any indication that that's what he does. But he did diagnose Mr. Conforti with gender dysphoria, so he is the doctor who diagnosed Conforti with gender dysphoria, which was the reason for the request to St. Joseph's.

He also, in making that diagnosis, it looks like, took a complete psychiatric history or a psychological history of -- of Mr. Conforti, including preexisting conditions prior to 2014.

So that's -- that's in the records as well.

And those are all -- there's discussion about his psychological condition, setting aside gender dysphoria, which is a diagnosable condition, recognized by the DSM-5, that he had other psychiatric continues, diagnosable conditions, and that there are other stressors, many other stressors in his life. And he took a history of that. And we would like to talk to him about that. And that's the predicate for the eventual medical exam that we would like to take of Mr. Conforti. So we have -- that's the next step in all this. We haven't gotten to that yet, but this is the predicate for that.

So we would like to go through and depose him on those records. And then just as a practical matter -- and I can't tell you every doctor that I couldn't read the

handwriting for.

THE COURT: Right.

MR. MAYER: But with all these doctors, we have to --

THE COURT: You have to go over some of the notes.

MR. MAYER: Exactly. So it needs somebody to clean it out.

THE COURT: But the issue with Dr. Tang is that you can't find him. And even if you can find somebody on his staff, you're not likely to get the information, unless they can read his notes; you might get that. But --

MR. MAYER: His staff does appear to have provided a lot of the treatment as well. So it wasn't just Tang alone; it was his staff was heavily involved in the treatment.

So I would -- I would prefer to start with Dr. Tang and then determine if we needed to depose somebody else --

THE COURT: How were they involved in the treatment? Like an attending --

MR. MAYER: I think there were a number of -- and I don't know exactly what -- whether they're nurses or what they are -- who took information from Mr. Conforti --

THE COURT: Oh.

MR. MAYER: -- to create about a psychiatric history. They did not diagnose -- Dr. Tang diagnosed the

gender dysphoria. That appears to be clear.

We did find his apartment in New York City. We think it's current, but we don't know. So that's all we have. That's all we have for Dr. Tang.

Apicha is still in operation, and they're still practicing, which is his whole practice. Or, at least that's what appears to us.

MR. CHARLES: Your Honor, I mean, unfortunately, this is a little bit procedurally defective, as they haven't found or served Dr. Tang. And it's been nearly six months. You know, if it is the case that they want to locate someone within the practice, that was totally their purview, and that could have been addressed months ago.

And, again, I think the allegation that this goes to Mr. Conforti's emotional distress or any preexisting mental health history, which we don't contest that he has preexisting mental health history, we're just not sure how that's relevant to the claim at issue.

THE COURT: Well, that's -- you know, we're not talking about admissibility. So that's the vacuum with which I deal. I don't know -- this is -- Judge Cecchi is the district judge. I'm not familiar with the parameters of her rulings on admissibility, because I don't normally manage her cases.

So I don't know that any of this is admissible.

And that's your problem, if I let you have anything. Not mine.

So relevant evidence, to me, is something that might lead to admissible -- might lead to admissible evidence. And I think that there should be some parameters of what can be disclosed. For example, if there were allegations of drug addiction that might appear in these reports, when -- or drug abuse or drug use when did that drug use occur? That would be important to me, because I think there are temporal limits that need to be explored.

I know that there are some other allegations of worries about his father, because his father was ill. And I need to know when in time that occurred, because it's so difficult to delineate what stressors are attributable to emotional distress in the moment. And we -- this is -- my concern last time: How do I -- how does a jury parse out or give a monetary award to emotional distress when there are either stressors and they are not entitled to know about them?

MR. MAYER: Well, Your Honor the records show that the stressors in his life have continued to trouble him throughout his life. I mean, the issues that happened with his family, whether they happened recently or a long time ago, they've continued to contribute to his psychiatric condition. That, to us, is very clear.

And so I don't think that the temporal proximity of when those things happened matter, if they're still troubling him today. And he brought all those things up in -- you know, in more recent times when he met with psychotherapists. We should be able to put -- you know, peruse those issues.

His drug abuse -- and I can't give you every date -- yes. There was -- there were -- there was drug abuse that goes back some time in his life. There was more recent drug abuse where he was abusing Percocet and -- and codeine and other opioids, it appears. That's more recent. So he's had drug abuse throughout his life. And so I don't know that you can just cut off one part of that.

He went to rehab. That's what his -- his newsletter that he wrote that's public talks about his experiences with drug abuse and going to rehab. You know, and that doesn't go -- it's not ancient history. He's not that -- he's not that old. And he's had these problems throughout his life.

So I would submit, Your Honor, that it's been -- his emotional problems and everything else has been an ongoing problem in his life, culminating up until the point where he was diagnosed with gender dysphoria, which he has explained and testified help him -- helped him really understand some of the other problems that he had in his life at that point in time.

THE COURT: That's -- that's sort of how things seem to be connected. Was it the horse or the cart that came first?

MR. BARNES: May I respond, Your Honor? To a point earlier in that question.

THE COURT: Sure.

MR. BARNES: As far as which came first, Your Honor, again, I think that's not relevant to this case in the sense of Rule 26(b), which I'll explain.

THE COURT: Okay.

MR. BARNES: But it's not relevant in the sense that his emotional distress damages are the garden-variety damages where the jury consider it have -- you know, this action, what kind of emotional, standard garden-variety emotional damages, did they cause to a discrimination victim -- an alleged discrimination victim. Whether or not these -- he had prestressors, he had other, depression, how -- I would argue, Your Honor, that the medical records clearly show that there is no drug abuse around the time of this event or within the last few years preceding the event. During depositions, we explored in depth his history of teenage drug abuse in detail, in full candor.

And so under Rule 26, Your Honor, the standard applicable to this discovery dispute is, one, is it relevant to the party's claims or defenses? And then it gives other

considerations, including the importance of the discovery in resolving the issues of the case.

Once -- that diagnosis of gender dysphoria, both parties agree, yes, that's what he'll testify. That's the evidence they will show.

Do they need to explore if he was diagnosed with gender dysphoria? There's no need, because their defense is not that he was never diagnosed. Our claim is not that there was some other reason. That issue isn't relevant to the claims or defenses, and even if it was, it's of very little importance to resolving the dispute here, because there's no dispute about these facts, about the preexisting reasons or the drug abuse, any of that.

So the suggestion that they need to talk to Dr. Tang, for instance, about -- or his staff about what information was provided, all of that was either covered by Jionni's deposition or the medical records they already received or they wouldn't be able to provide any more information beyond that. There's no indication of that.

And there's no indication, as Mr. Charles said, that this testimony that they're seeking goes to any disputed issues or any relevance to the act of discrimination and the results of that act of discrimination. If they are doing that we're trying to seek more damages for maybe, say, worsening depression, these special above-and-beyond damages,

beyond garden variety, if that's what they're arguing and if that's what we're going to take discovery on, then Mr. Conforti should seek that. He's repeatedly said he's not. But if we're going to approve this discovery, then -- then if they think that's at issue, then maybe that is a disputed issue.

We're telling -- we represented -- Mr. Conforti represented at his deposition, there's no dispute that the reason for the hysterectomy, the damages he is seeking are not related to these other preexisting stressors about family issues --

(Simultaneous conversation)

THE COURT: So let's go backwards, because this is where we landed last time. In Mr. Conforti's emotional distress damages, what will he testify to?

MR. CHARLES: Yes, Your Honor, it will be a very narrow testimony, really focused on exactly what he experienced following that denial of care. So --

THE COURT: For -- now, is it going to be limited to a two-month period? Or will the emotional distress carry over until after the hysterectomy?

MR. BARNES: I'll just say, Your Honor, that one issue is that he has a lingering fear of repeated discrimination. And I think that --

THE COURT: Okay. Okay.

MR. BARNES: -- is connected. But -- so there is an issue, for instance, a year and a half, I think, after this event, Mr. Conforti was injured, I believe, in a car accident, and the ambulance would only take him to St. Joseph's and he was worried about what would happen if he went to St. Joseph's. And so he declined that care --

THE COURT: I see.

MR. BARNES: So there were issues --

THE COURT: Well, that's pretty specific.

So it's specific to St. Joseph's.

MR. BARNES: It's specific to St. Joseph's --

THE COURT: Okay.

MR. BARNES: -- and the effects of their actions on a particular person. Just like any other plaintiff in a discrimination case. In a race discrimination case, gender discrimination race, they allege that discrimination haunted them like everyone else -- like anyone else in that situation. And defendants aren't entitled to go through that person's entire medical history and go through nondisputed issues to confirm that they're not at issue. When they've been given medical records, when they've been given uncontradictory plaintiff's testimony, I think that it's -- when we talk about garden variety, what he's going to testify to is the same thing that every standard discrimination claim would present. And those standard discrimination claims

wouldn't go into all these special damages about how preexisting stressors might have been exacerbated or worsened --

THE COURT: I know what you're saying, but I also need to know if he were to take the stand and say, I'm depressed as a result of being discriminated against, then that opens the door a little bit, because who's to say why he's depressed. That is, is it because it rained yesterday or he's worried about his family? So the very specific statement that you gave me that he was afraid he'd be carted by the ambulance of St. Joseph's, that's pretty particular.

MR. CHARLES: Your Honor, I think the difference is in the tense. Right? Instead of I am depressed, it would I -- it would be I experienced depression following this incident --

THE COURT: Okay.

MR. CHARLES: -- if that's clear.

THE COURT: But -- but -- if he experienced depression following this, that doesn't necessarily tie it to the discrimination, because wouldn't -- wouldn't Mr. Mayer be entitled to say at that point, "Well, are you depressed because your cat is ill? Are you depressed" -- I feel like I'm -- we're deja vu-ing because this is what brought me to ask you to settle this last time. It's just not a well-settled issue. And it's individualized in every case.

So wouldn't Mr. Mayer be entitled to cross-examine on other stressors?

MR. BARNES: Your Honor --

THE COURT: And if he's entitled to that, he would certainly be entitled to have discovery on that.

MR. BARNES: Your Honor, I think that the issue here is one that would -- they -- if he testified to that, you know, depression, we would say is -- first that the allegation is that he experienced -- was depressed in that sort of colloquial sense. He made that clear in his testimony.

THE COURT: Yes.

MR. BARNES: It wasn't that he was diagnosed after this to depression because of these events.

THE COURT: Right.

MR. BARNES: And so that's important when we're talking about the depression part. When we say he was depressed, it was the feeling he experienced --

THE COURT: Well, if he was diagnosed, that further opens the door. When we're talking about garden variety, as I understand it, we're talking about his testimony with respect to his emotional distress.

MR. BARNES: But -- yes, Your Honor, except that we're not seeking any -- he's not going to argue that he was previously depressed and that worsened it. That's the

essential difference, I think.

THE COURT: Repeat that.

MR. BARNES: That we're not arguing that he was previously diagnosed with depression and that these events worsened his medical diagnosis, his illness.

And that's not what we're claiming, that sort of special beyond the standard damages kind of request, and that's what we mean by that.

So when he says, Your Honor, up on the stand, after this event, I was angry, I was upset, I was humiliated, I was afraid it was going to happen to me again, I didn't know if I would ever get healthcare out of my hospital --

THE COURT: Okay. Those are specific words.

MR. BARNES: All of that. And then if they were to say, Well, weren't you also upset about this event?

Yes.

Weren't you also upset about this event?

Yes.

Is that -- could that have influenced it?

And then he would testify however he would, but I think that the answer would be I was upset about your actions. I wasn't -- we're not talking about, you know, like everyone else, of course, I am upset about other things on various days, like anybody.

But that's not what the claim here is. That's not

what the damages we're seeking is.

And if it is, then the damages would be much greater, and this would be a much more complicated case. But it's not one of those special tort cases, I think, that would merit this particularly invasive discovery.

Now, beyond medical records, we're now talking about going into doctors and talking to them and making them testify, compelling them --

THE COURT: I agree, it's very broad.

(Simultaneous conversation)

MR. BARNES: -- very broad and very invasive, Your Honor.

THE COURT: I'll give you that.

But I'm trying to figure out how to limit it. And the only way I can figure that out is to know what he's going to testify to and ascertain important whether or not, if it's a word like I was depressed as a result of this -- it's different if you say, I had a headache for two months until I -- the hysterectomy was performed, or I'm afraid I'll go back to St. Joseph's. Very specific, defined garden variety -- and I still have no idea what that means and why it's called "garden variety." But that kind of "I didn't sleep for two weeks after they said no." "I had a bad dream about the receiving office in the hospital and what the people looked like because they told me no," or however, you

know, that happened logistically. Very, very specific.

When we get into the depression category, it does broaden his ability to cross-examine.

MR. BARNES: Your Honor, I would say that when you would ask what do he testified to or defendants asking what we testified to, we know the answer to that, because they had seven hours to depose him, and they asked these questions.

THE COURT: But depression, I thought, was used in that.

MR. BARNES: Again, though, he clarified -- he -- they asked him follow-up questions about the extent of it, what he meant, and what the allegation meant to the complaint. They got all that testimony. So if he was to say I was suddenly sleepless for two weeks, they would then say, well, when we asked you about your symptoms before, what did you testify to? They would impeach him, just like any other jury -- or any other trial and how that would go -- that would affect his credibility about changing his story, once they've now locked him in.

So without pointing to saying some sort of discrepancies in his testimony that they need to explore further, there hasn't been any discrepancies. He agrees with everything they've been saying. And, yet, still, they want a multitude of medical providers to come into -- you know, depose, possibly attend trial.

And so, Your Honor, I would also suggest to you that -- to Carl's earlier procedural point, it's -- our discovery is now two and a half -- two and a half years after filing --

THE COURT: I know.

MR. BARNES: -- we're now almost six months. And they're now talking about still filing additional motions. Eventually, it has to stop, and we have to go forward with this case.

THE COURT: What additional motions?

MR. BARNES: They said they were still -- this is a basis for them moving -- or them seeking another -- the Rule 35, 36 medical examination of Mr. Conforti.

And additionally, they're talking about someone else at Apicha they can't even name yet. They're not sure yet. But they'll serve somebody eventually.

I think that's a very basic way to at least get rid of some of these subpoenas that haven't been served, they don't have any plan to serve them, and six months is enough time to either have figured it out or to -- we should move on forward.

THE COURT: Well, that's a valid point. I do have to move the case.

MR. MAYER: Can I address that, Your Honor?

THE COURT: Yeah, sure, you can address everything.

MR. MAYER: So, you know, we made it clear from the beginning we intended to take these doctors' depositions. And I know we last talked to you before we served them in December that we were going to serve these subpoenas.

When we -- these subpoenas went out, we didn't know that Dr. Tang and Risi Batista [phonetic] had relocated. We served the subpoenas. We put them out. They were -- they didn't get served. But they told us immediately that they were going to object to all the depositions anyway. So at that point, we're not going to serve new subpoenas. And all due respect to counsel.

THE COURT: Did you find Risi Batista?

MR. MAYER: We think we found her, but we haven't done anything since --

THE COURT: Okay.

MR. MAYER: -- since they told us they were going to file a motion, because we're not going to start serving more subpoenas when this is all in dispute.

THE COURT: Okay. So other than these providers, there are other providers, the two doctors that you spoke of before?

MR. MAYER: That's right.

THE COURT: And that would be the other two doctors?

MR. MAYER: And that, we did not file out. So

Diana Vitale, for example, we did not find out until -- until Mr. Conforti's deposition that he went to her and asked her to perform a hysterectomy. We didn't know that. And there's a representation that we should have known that because she's a doctor at St. Joseph's. We don't -- doctors don't just disclose their medical records willy-nilly. We don't know what every doctor has done or who they've treated. We found out at his deposition that, you know, he went to Dr. -- Dr. Vitale and asked her to perform a hysterectomy, and for a reason that we don't know, she said no. And we want to ask her about that.

We're not going to just go and try to talk to her --

(Simultaneous conversation)

MR. MAYER: -- we're doing it properly through this forum --

(Simultaneous conversation)

THE COURT: What difference does it make? What difference does it make that she said no?

MR. MAYER: We don't know. I mean, if she said no for some reason other than --

THE COURT: You think that goes to his discrimination?

MR. MAYER: We do. We do. We do. And we want to know what he told her. We want to know what the reasons

was -- were that he told her. Did he change them to us? Did he -- you know, what was going on? And was it just gender dysphoria? Was he telling her something else? Did he tell her about this -- you know, this belief that he had cancer. We don't -- we don't know what he was telling her.

So now we're jumping around to different doctors.

THE COURT: That's okay.

MR. MAYER: But, Your Honor, so let's go back to Dr. Tang for a moment, if we could. So, you know, we started -- we were talking about relevance, and now we're talking about garden-variety emotional distress.

That's not relevance. That's getting into the patient-psychotherapist privilege and whether that's been waived or not. And so that only applies to psychotherapy.

THE COURT: Right.

MR. MAYER: That doesn't apply to going to an OB/GYN and asking the OB/GYN to perform a hysterectomy. That doesn't apply to a lot of these -- these medical records, which are clearly relevant, but they're not privileged.

So, you know, that -- that's honing in on the privilege in particular, which is narrow and was set by the Supreme Court in the Jaffee case, and it talks about it applying to psychiatrists, licensed psychologists, social -- licensed social workers who provide psychotherapy and only to the psychotherapy part of their treatment. And then, you

know, the Jackson v. Chubb case, Judge Wolfson adopted the broad -- the broad waiver view. And, you know, we argue that's the right approach for this, that by placing your emotional condition in issue, they've waived -- Mr. Conforti's waived the psychotherapist-patient privilege here, and we are entitled to take discovery on that. They're trying to get around that by saying that his -- his emotional distress is garden variety.

And, as Your Honor said, you're not sure what garden variety. It is unclear. But it seems to me that this is not garden variety. And, you know, I know Mr. Barnes represented that they are going to not argue that Mr. Conforti was previously diagnosed with mental conditions that -- and that the events at St. Joseph's worsened his condition. Of course they're not going to. That's what we want to argue. That's why we want to take discovery.

THE COURT: Right.

MR. MAYER: And that goes to the fact that he's -- it's not garden variety, that he has all these other conditions in his life, all these other stressors that make his life very complicated, setting aside the fact that he testified that transitioning was difficult for him. And, yes, he was forthcoming at his deposition. But when we asked him about his -- some of his conditions, he said I am not diagnosed -- I am not qualified to diagnose depression. You

know, basically, ask my doctors about that is the suggestion.

That's why we want to talk to the doctors. We want to find out what was going on, what -- you know, what his conditions were, and what contributed to that diagnosis, and without knowing that fully, it's difficult to cross-examine him on these issues.

THE COURT: So we talked about Dr. Tang. Let's talk about Joseph and Nurse Practitioner -- or Vitale. So he's a primary care doctor. He treated for four years or so. He took a medical history and made a mental health referral.

MR. MAYER: Correct. And he prescribed -- it appears he prescribed anti-anxiety and anti-depressant medications.

THE COURT: And had a discussion about gender dysphoria before Mr. Conforti went to St. Joseph's.

MR. MAYER: That's correct. And he is not, as you just pointed out, a psychotherapist or a psychiatrist or a social worker.

THE COURT: Right.

MR. MAYER: So I don't know what capacity he could have provided psychotherapy to Mr. Conforti, but he did -- he did take a history of it. And so that's another -- another source that -- more explanation on stressors in his life that we want to pursue.

THE COURT: Do you want to argue the particulars?

Or do you want to rely on your general argument? Either of you or both of you?

MR. BARNES: Your Honor, we'd like to address those points.

We'd like to suggest Diana Vitale -- the earlier one you mentioned or hold off on that?

THE COURT: Either one.

MR. CHARLES: Your Honor, I respectfully, the defendants represent that they were unaware of Dr. Diana Vitale and Dr. Avery Katz. But Dr. Diana Vitale was actually -- her records were included in records we received from defendants, which is included in our reply to their opposition.

And, you know, while -- while we don't have unreasonable expectations about defendants' knowledge of their clients and who their clients employ, I think it's reasonable that once they're aware that this factor existed, a simple Google search would have been sufficient to determine that she was, in fact, an employee of St. Joseph's.

Furthermore, Your Honor, Mr. Conforti only saw Dr. Diana Vitale for one visit. And then he didn't go to her again because she -- she couldn't provide the kind care that he needed. And therefore I am not sure what defendants hope to obtain from her exactly, because he only saw her for a brief visit and then never followed up. And so I am not sure

how that --

THE COURT: They want to know why she wouldn't do the hysterectomy.

MR. CHARLES: Well, she didn't represent, to my knowledge, that she wouldn't do the hysterectomy.

THE COURT: Oh.

MR. BARNES: As -- they got testimony from Mr. Conforti at his deposition --

MR. CHARLES: She never turned him down for that.

MR. BARNES: She wanted extra tests that Mr. Conforti thought was -- weren't necessary, and he didn't like the relationship they were -- the initial relationship, and he moved on, then, to Dr. Day. He testified to that. And there are medical records they produced to us from her don't contradict that testimony either. That's consistently agreed upon, I think, Your Honor, for Dr. Vitale.

MR. CHARLES: And Dr. Avery Katz was also included in records Mr. Conforti produced for defendant.

THE COURT: And who's Dr. Katz again? I'm sorry.

MR. CHARLES: He was the neurologist who Mr. Conforti saw --

THE COURT: Who was the urologist?

MR. CHARLES: No urologists, Your Honor.

THE COURT: Oh, so you said -- Mr. Mayer, you said neurologists?

MR. CHARLES: He said neurologists, yeah.

MR. MAYER: He's a neurologist, yeah.

THE COURT: Okay. Thanks.

When did Dr. Katz see Mr. Conforti?

MR. MAYER: I think it's May 2014.

MR. CHARLES: '14.

THE COURT: And how many visits?

MR. CHARLES: He saw him for, I think, one or two visits. I think one visit, and it was for -- it was never for any treatment associated with gender dysphoria. I think it was for headaches, Your Honor. And, again both of these doctors were included in records --

THE COURT: Okay.

MR. CHARLES: -- that Mr. Conforti produced. So to the extent defendants allege that they were not made aware of them until Mr. Conforti's deposition, that would not be accurate.

THE COURT: Okay.

MR. MAYER: And, Your Honor, can I address that for a moment? So --

THE COURT: Okay.

MR. MAYER: -- Dr. Diana Vitale -- so, as I explained, what we didn't know about her was that Mr. Conforti went to her and requested the hysterectomy. We did not find that out until his deposition.

The records they're referring to did not come from St. Joseph's. They came -- and like Dr. Day, who was the one at St. Joseph's that Mr. Conforti went to ask to have the hysterectomy performed, like Dr. Diana Vitale, Mr. Conforti went to them initially with respect to their private practices, which are affiliated, they run like any medical practice, separate and apart from the hospital.

Dr. Day's records contained this record from Dr. Diana Vitale that actually came from Mr. Conforti. After Mr. Conforti had been told that the hospital wasn't going to perform a hysterectomy, that record was to be given to the referral that Mr. -- that Dr. Day was making to another OB/GYN who Mr. Conforti didn't go to. That's all that was in there. It was not, like, a complete Dr. Diana Vitale record. It didn't mean anything.

Same -- same with Dr. Katz. Yes, there was anything in the record showing that a Dr. Katz existed. We didn't seek to depose him because he was not identified as someone who treated --

THE COURT: Okay.

MR. MAYER: -- Mr. -- Mr. Conforti for his mental health conditions, but he actually prescribed him anti-depressants. So when we learned about that, that's when we wanted to take his deposition.

THE COURT: Okay.

MR. MAYER: That's all.

THE COURT: Let's talk about the other Vitals. I think that's where we left off.

MR. MAYER: That's where we left off.

MR. BARNES: Yes, Your Honor. And I can respond to those.

I think, as we covered, the two Vitales are Mr. Conforti's primary care phys- -- healthcare providers. They provide case -- general, everyday, go to your doctor kind of healthcare.

Their treatment of Mr. Conforti, again, largely is completely irrelevant. And now they seem to be hanging on for this point for Dr. Katz, the neurologist, who he saw, headaches, they're claiming that because they also prescribed another medication that has to do with either anti-anxiety or antidepression, that that would somehow make their testimony so relevant that they, in addition to Mr. Conforti's testimony, the medical records, they now need to talk directly with both of them.

But there's no -- but there's no dispute that he was diagnosed -- or -- sorry -- that he was prescribed those medications. And they have the medical records showing that it was prescribed.

So to say that they need all three to confirm a very basic fact that he was prescribed a medication that's

not a dispute is a very, very small discrete undisputed issue that doesn't warrant this very invasive discovery mechanism.

I would also just say, Your Honor, too that our point that is -- when we say that they produced these records is that they just had notice of this too. This whole time they've had notice of these names and these doctors, yet they waited until three weeks before the close of discovery.

THE COURT: Well, that's also partially my fault because I set this case off track -- what was it? In December?

MR. BARNES: I don't recall, Your Honor.

THE COURT: When was our last -- whenever our last meeting was.

But I would rather not decide this on procedural grounds or failure to, you know -- I'd rather decide it on relevance or something that would lead to admissible evidence.

MR. BARNES: Prejudice and burden to --

(Simultaneous conversation)

THE COURT: And versus prejudice and invasion.

MR. BARNES: Yes, Your Honor. And I think, though, one point, though, that I think still is relevant a little bit here is that since they've had notice of these so long, that there were -- if they have -- questions or they had these issues, there were other discovery mechanisms,

including interrogatories and requests for admission, they could have also used during that time to get this discovery without these invasive tactics. To say -- to say that this deposition is warranted because of this prescribed medication or that they need to confirm that the only reason is gender dysphoria, one, that's undisputed. And, two, they could have done that through a much less invasive discovery mechanism during discovery time. That's a perfectly fine interrogatory, a perfectly fine request for admission.

And to say that they didn't do that and now they are trying to do this or serve a subpoena six months later, I think that would weigh a -- also in favor of that this discovery is not needed.

MR. MAYER: And, Your Honor, I've been trying to avoid the delay argument, but I'm going to address it now, because it keeps coming up.

You know, going back and reminding you of the history of this case, we did spend a substantial amount of time looking through documents last fall that Your Honor ordered us to produce to -- to review and produce to plaintiff's counsel, and that took a substantial amount of time, as you know. And everything was kind of on hold while that was going on. So they were getting their discovery, and everything else was on hold. They've taken seven depositions. We've taken one deposition to date. And they

still want to take more depositions. They are completely ignoring the fact that they've got a 30(b)(6) notice out there with 17 topics. And, oh, are we going to argue that that's late? No, we're not going to argue that. I don't know why this keeps coming up, Your Honor.

MR. BARNES: That was served before the discovery deadline. And is --

MR. MAYER: So were these --

(Simultaneous conversation)

MR. BARNES: -- is a subject to a pending dispute or -- as are these.

But I think that there's a difference between saying we served it, we had a meet-and-confer about it, and we still have to resolve issues.

THE COURT: All right, everybody.

MR. BARNES: Sorry, Your Honor.

THE COURT: Not --

(Simultaneous conversation)

MR. MAYER: That's why I didn't want to get into that --

(Simultaneous conversation)

THE COURT: Yeah. I am not going to decide this on procedural deficiencies or lack thereof.

So we're at Risi Batista who you think you've located. And that -- is that a social worker? Mental health

clinician? Is that a social worker? I don't know what is.

MR. MAYER: I think she's a licensed therapist.

THE COURT: Okay.

MR. MAYER: And just going back to Dr. Vitale, Mary [phonetic] Vitale from -- they're interested because they treated Mr. Conforti before and after the request hysterectomy, so they are uniquely positioned --

THE COURT: There's a four-year period of treatment, I see.

MR. MAYER: Yes. So it started before. And then they continued to see him after he was denied the hysterectomy at St. Joseph's, so they'll be uniquely positioned to say if he changed --

THE COURT: Okay.

MR. MAYER: -- what happened, you know. So that's another reason we want to depose them.

Yes, Risi Batista is a licensed therapist, so that the --

THE COURT: When did the treatment end with Therapist Risi?

MR. MAYER: I believe she continued to treat him after the hysterectomy as well. I don't know the exact date that it ended. It started in March 2015.

THE COURT: Plaintiff, do you know when that treatment occurred?

MR. BARNES: I believe, Your Honor, it began prior to the -- I don't recall when it ended or when he transitioned. I could -- I will look at it -- Your Honor.

MR. MAYER: I mean, we know she relocated about -- about a year and a half ago. So it certainly ended by then, because she had left the state. She's in Pennsylvania now.

THE COURT: So the records show that -- was she involved in this diagnosis of a depressive disorder and anxiety disorder?

MR. MAYER: She treated him for emotional distress, so, yes, I believe so. I think she also separately diagnosed him with gender dysphoria, because that was in the records that were provided to Dr. Day. So it's those two issues with respect to Risi Batista.

THE COURT: Okay.

MR. MAYER: And then, like, Dr. Vitale, Mary Vitale, she treated him before and after the hysterectomy --

THE COURT: And plaintiff's asserting the patient-psychotherapist privilege as to Batista?

MR. BARNES: Yes, Your Honor. And Dr. Fitzgerald as well.

THE COURT: Dr. Who?

MR. BARNES: Dr. Fitzgerald.

THE COURT: Oh, okay.

MR. MAYER: And Fitzgerald is the one he went to

after the hysterectomy was performed. He's a clinical social worker therapist. So he does appear to be a psychotherapist.

THE COURT: Well, did you offer to withdraw the Hadad subpoena with certain stipulations?

MR. MAYER: We did, but those are the same stipulations that we tried to work out as part of the settlement.

THE COURT: Okay.

MR. MAYER: So it will be a very quick deposition with Dr. Hadad.

THE COURT: Well --

MR. MAYER: But there's relevant inquiry. But it just won't take very long.

THE COURT: What do you have to say about Dr. Hadad?

MR. CHARLES: I mean, Your Honor, I think this is similar to our responses to many of these primarily physical medical doctors. To the extent that defendants are interested in mental healthcare providers, that's one matter. But to the extent they want to speak with doctors who were taking Mr. Conforti's blood pressure or Mr. Hadad, who performed Mr. Conforti's hysterectomy after defendant's refusal to do so, he's not a mental health practitioner and would have no knowledge of Mr. Conforti's emotional state at the time of defendant's actions. Right?

So Mr. Conforti made the request based on medical necessity to treat his gender dysphoria. Dr. Hadad said yes. The procedure was performed. That was the end of their patient-doctor relationship.

So I think defendant's representation that it will be a quick deposition goes to the point of whether or not it's particularly useful in this instance.

THE COURT: Your deposition would go to any other medical necessity other than gender dysphoria?

MR. MAYER: Primarily. You know, what Mr. Conforti told him, what -- what sort of tests did he perform on Mr. Conforti before he performed the hysterectomy. And that's it.

THE COURT: Why is that relevant?

MR. MAYER: Well, that's the -- that's the reason he request -- it's relevant to the reason he requested it from St. Joe's. So if it's different in any way, if it -- if it somehow varied in some way, we'd want to know that, and that's potentially relevant. If Mr. Conforti changed the reasons that he provided to Hadad, that's -- that's relevant. And why didn't he provide those to St. Joseph's when he made the request.

MR. CHARLES: Your Honor, Mr. Conforti's requests for this procedure have been consistent over time, and they were -- you know, in his deposition he testified that he was

seeking this procedure from Dr. Hadad for the sole reason of treating his gender dysphoria.

THE COURT: Therapist Vincent Fitzgerald, again, plaintiff's claiming the patient-psychotherapist --

MR. CHARLES: And just for -- just for clarity, Your Honor --

THE COURT: Yeah.

MR. CHARLES: -- Dr. Fitzgerald began treating Mr. Conforti two years after this incident.

THE COURT: Yeah, that's interesting.

MR. CHARLES: It is, Your Honor. I think it is particularly significant in that I'm really uncertain the degree to which he's going to have anything to say that's going to go to this very standard specific damages we're alleging in this matter.

MR. MAYER: Well, he treated him after the alleged incident and after Mr. Conforti was supposedly caused emotional distress, and he can talk about it. I mean, I don't know how that could be any clearer in terms of relevance. I mean, that clearly is -- it's relevant inquiry.

MR. BARNES: Because it's -- there was -- Your Honor, there was no representation made that he sought Mr. Fitzgerald's treatment because of the discrimination. That's never been represented that was the reason for the treatment. That's why it's not relevant, and that's why it

doesn't go towards these issues.

As for the temporal point, Your Honor, I think you made this certain earlier about temporal being too far back. Another issue too is with -- both with Dr. Hadad and with Dr. Fitzgerald is, as far as, you know, the allegation, the claim here that Mr. Conforti was discriminated against, the information they may have that Mr. -- whether Mr. Conforti, you know, hypothetically lied to Dr. Hadad or lied during his deposition and gave a different reason, all these hypothetical fishing expedition scenarios, that all came after the act of discrimination and wasn't -- didn't form -- factor into at all their decision-making then either. This testimony about why did Dr. Hadad perform a hysterectomy, that's not really relevant when the question is why didn't you perform a hysterectomy, events and facts that came after one has played a part in their decision-making.

THE COURT: Okay. That is argument on the providers.

MR. MAYER: Yeah, I think we've covered all of them.

THE COURT: Yeah. So I want to -- do you have Dr. Hadad's medical records?

MR. MAYER: We do.

THE COURT: And in the notes, is there any notation of the reason for performing the hysterectomy?

MR. MAYER: The records primarily -- and this is my recollection -- the only things that's in there talk about the hysterectomy itself, the surgical procedure. There's very detailed descriptions about the overall procedure, how it went, how it -- and we don't want to get into that, obviously. That's not what we're trying to discuss with him.

We want to talk about --

(Simultaneous conversation)

THE COURT: But does Dr. Hadad state anywhere in the treatment notes the reason?

MR. MAYER: I don't believe so. No. I don't believe that's in there.

THE COURT: Okay.

MR. MAYER: No. I mean, there's certainly nothing like the only reason is because of this. There may be a -- I mean, there's certainly a mention of gender dysphoria in there. But there's nothing about this being the only --

(Simultaneous conversation)

THE COURT: Well, if the parties seem to agree that gender dysphoria is the reason. The only outlier is, as I see it, unless there's something I don't know, is whether or not the continuation of certain other treatment would have led to cancer. Is there any other reason --

(Simultaneous conversation)

MR. MAYER: Whether he had a fear of cancer.

THE COURT: Fear of cancer.

MR. MAYER: Yeah, if he had some sort of belief that if he didn't have it done, he was going to get cancer.

THE COURT: Okay.

MR. MAYER: I think that's --

THE COURT: Okay.

MR. MAYER: -- that's the inquiry. That's the primary inquiry.

You know, we would want to generally just ask him about what Mr. Conforti told him when he met with him.

MR. CHARLES: Which Mr. Conforti has stated in his deposition was on the basis of gender dysphoria.

MR. MAYER: Right. But the normal procedure is to view both parties to -- is to discuss both parties to a conversation, and, you know, and, again, of course, the records themselves, have him be able to explain any difficult -- in there, although I don't think there was any difficult notes with Hadad in particular. I think it was mostly typed-written --

(Simultaneous conversation)

THE COURT: I want to reflect on the transcript before making a decision on the providers.

MR. MAYER: I see. Okay.

Your Honor, did you want to talk about our request for updated medical records too? I know that was --

THE COURT: I want to talk about everything, because I want to move the case.

The *in camera* statement that has not been disclosed that I reviewed *in camera* won't be subject to discovery. It's of little or no relevance.

MR. CHARLES: Thank you, Your Honor.

THE COURT: Now, with respect to the Exhibit B documents and handing them over to your experts, that's --

MR. MAYER: I think plaintiff's counsel in their reply already said we could do that.

MR. BARNES: Yes, Your Honor. The -- for the 18 records or so designated "attorneys' eyes only," we've confirmed with them earlier during the settlement negotiations that they could share that information with their insurance carrier --

THE COURT: Okay.

MR. BARNES: -- and in our reply, we confirmed that they could share that with their experts or third-party --

THE COURT: Okay.

MR. BARNES: -- consultants.

That's not the issue. And we also confirmed -- I should say that any of the depositions that do go forward, we have no objection over showing them their own records that are marked "attorneys' eyes only" and that's for them to discuss that doctor's records.

THE COURT: Okay.

MR. BARNES: The only issue on this is whether -- we're seeking a protective order because they would like every single page to be designated so they could show any doctors any medical records from any other doctor.

And we say for those 18, those should be protected or a more specific request should be made if there's something particularly important that overcomes the "attorneys' eyes only" designation as it falls under a protective order that both parties agree to.

THE COURT: I'm not following. You've agreed that they can show these documents in depositions and give them to their experts to include in the report. But you don't agree that --

MR. BARNES: So, for instance, this Tang record that's marked for attorneys' eyes only --

THE COURT: Yeah.

MR. BARNES: -- could be used in a Dr. Tang deposition. But Dr. Hadad, there's no reason that Dr. -- that this highly confidential information should be disclosed to Dr. Hadad during the deposition, that the physical medical records --

THE COURT: So what doctors should not be able to see these records? Because I don't know who's going to be deposed yet.

MR. BARNES: Well, yes, Your Honor, so the --

THE COURT: Though I have some sense, but --

MR. BARNES: So the -- so the question, Your Honor, is it's -- I should -- starting maybe from the beginning.

THE COURT: Okay.

MR. BARNES: The protective order allows this designation, the parties entered into --

THE COURT: Right.

MR. BARNES: -- when the information is of a highly personal, confidential, personal nature that is likely to cause a significant harm to the individual if it was disclosed. And so for these 18 specific records, each of them, Your Honor, have -- most frequently it's a reference to drug abuse or even parental abuse from your parents --

THE COURT: Okay.

MR. BARNES: -- those records, we think, don't need to be disclosed to a doctor who has no knowledge about that act. They can -- what questions they might ask, it's relevant to their records or that -- that doctor's treatment is one thing. But dedesignating all of these records without singling out any particular one that has more information that's more important than -- or that has information that they can't otherwise gather -- a certain doctor, we haven't had any representation like that. This is sort of a blanket request they've made and a blanket request to Your Honor that

they haven't identified any reason to dedesignate these, because, one, they satisfy the standard in the protective order of the definition of for attorneys' eyes only. And, two, they haven't given any need for any specific page that they need to show a specific doctor. So I couldn't really tell --

THE COURT: I see.

MR. BARNES: -- tell necessarily which one would go to which, because they don't really go to any. Why Dr. Hadad needs to Batista's -- the few records we marked for attorneys' eyes only from Batista or the few records we marked for attorney's eyes only from Tang, why would they need to show that to another doctor hasn't been established by them. So I wouldn't be able to answer that.

MR. MAYER: This is difficult to answer, but I -- I could give you an example. Mr. Fitzgerald, if you let us take Fitzgerald's deposition -- he's a psychotherapist who treated Conforti only after the fact -- if we're going through there, at his deposition he tells me I believe all of his emotional distress was caused by the decision -- that he's ever experienced was caused by the decision that St. Joseph's made to deny him a hysterectomy, then I'm going to want to ask him, did he -- did he tell you this? Did he tell you that? Things from his past that maybe he didn't tell.

But that all depends on whether he tells me he didn't consider those or wasn't told this. If he was told those things, I don't know that I would need to go any further than that. But if he says, no, I didn't consider that, I would say does -- did that -- would that affect your opinion, had you known that at the time.

That's -- that's the kind of inquiry I'm talking about. I'm not talking about showing an OB/GYN information about psychotherapy treatment. That would be -- that would be silly. I mean, we wouldn't do that. I wouldn't necessarily even put the document in front of the doctor. It would be using information --

(Simultaneous conversation)

THE COURT: I don't -- I am not sure I understand what the real problem is here. If -- I really don't understand what showing a doctor or a therapist another doctor or therapist's notes, what's your fear?

MR. BARNES: Absolutely, Your Honor.

I would say, first of all, under the protective order, they're allowed to submit -- we can agree on specific requests. That's what we did for the other parties.

THE COURT: So you just want them to be more specific?

MR. BARNES: That would have result -- I think that could have helped. It would have explained to us why they

need to show these doctors other records.

So -- just -- I will say, for example --

THE COURT: Yes.

MR. BARNES: -- the Fitzgerald, for instance, they have Fitzgerald's records, so they can ask him everything on his -- on his records.

And if they said, if he had told you X, would that have changed your opinion --

THE COURT: Right.

MR. BARNES: -- that might be a question to ask. But why does that require them to disclose Mr. Conforti's medical records with one party? Information he confidentially gave to that party, a relationship they had, questions that doctor asked that are relevant to their diagnosis.

THE COURT: Well, clearly if he's going to say would it change your opinion if there were two and a half years of drug abuse, then that person's going to know that he's got some other doctor's records that he got that from.

MR. BARNES: Well, I would say, Your Honor, that Fitzgerald might already know that. They can ask him about that. And they can ask him -- because about some of the records that were marked for attorneys' eyes only.

The requests that they are making and that we oppose and we're seeking a protective order is to dedesignate

all the records to use at any deposition. That's the only request.

And we think that's not --

THE COURT: So when you mean any deposition, you mean of the professionals.

MR. MAYER: Of the professionals. And they would still be designated AEO, so that it wouldn't -- that portion of the deposition would be confidential. And these are doctors. They know how to respect the confidentiality of a medical condition. That's what they do for a living.

(Simultaneous conversation)

THE COURT: I mean, you -- the worst-case scenario, you can have them sign on to the confidentiality.

MR. BARNES: Well, Your Honor, that would -- that would not require dedesignating all of the records --

THE COURT: Right.

MR. BARNES: -- so they can then use it in other parts.

THE COURT: But he's not asking for dedesignation. He's asking for a broader use of 18 documents.

MR. BARNES: I think, Your Honor, it's the same thing. You know, he said there would still be for attorneys' eyes only. I mean, they wouldn't be with the requests they made. They want to dedesignate it. They haven't asked us to show this doctor this page or to -- or to unlimited

designation. That was one thing.

The second thing is what harm does it cause? I think it does cause harm to call in someone's doctor who treats them for headaches, and then to tell them, did you know that your patient used drugs as a teenager? You know, to give this information, here's this -- here's this right here in his medical records.

(Simultaneous conversation)

THE COURT: Doctors are bound to confidentiality anyhow.

MR. BARNES: That the patient discloses as a confidential relationship. But not -- a third-party attorney is going to tell him at a deposition information that he never knew, that never considered during his diagnosis.

There's just -- what reason do they need to dedesignate these? I think that we can -- I would -- I believe, Your Honor, that saying that he has seen or experienced parents' parental abuse or that he has seen, experienced drug use, that information, I think, if it was to be -- I think it is highly sensitive as under the protective order says. And I think it would be detrimental to him to disclose that sort of facts that he chose not to -- maybe he doesn't have the relationship with doctor -- a certain doctor, maybe that doctor knows his family, his mom, his dad, I mean, maybe that doctor doesn't really respect attorney --

I mean, there's many reasons why he may have -- it may not have come up or he might fear an attorney -- the open use, unprotected at the highest level of really sensitive information in his records. 18 pages out of 350-odd pages.

There was -- said, I think that hasn't at all precluded their ability to inquire into these topics. And they certainly shown it has.

I -- they said, you know, they have no reason to ask the OB/GYN about, you know, drug use -- I think he might -- he may have said, or -- you know, they may be make -- he had, I think, hypothesized that an OB/GYN might -- they might not ask him some of these records.

But that's not -- but that -- or they leave that open. They would want to be able to show it -- Diane Vitale, he saw once, all of these really sensitive facts about Mr. Conforti that he never came to her office and disclose -- chose to disclose.

THE COURT: All right.

MR. BARNES: It's protecting that relationship, Your Honor, and the importance that he gave this in confidence and that disclosing that should not be done unless there's a specific reason for that.

THE COURT: So when I consider what depositions I'll permit, I will also rule on these 18 documents.

MR. BARNES: Thank you, Your Honor.

MR. MAYER: And, Your Honor, we don't want to dedesignate it. We just want to be able to show it to Mr. Conforti, which, I think, they've agreed we can do. We did at his deposition, but they objected to the doctors who created the records to our treating our expert who might eventually perform a medical exam to the other doctors and that we did ask to be able to be show medical records to actually Conforti that relate to their relationship -- actually Conforth [phonetic], who's Mr. Conforti's spouse. And that was the extent of who we want to show medical records to. There is no one else that we wanted to show medical records to.

So otherwise, they --

THE COURT: Does that change your opinion?

MR. BARNES: I think, Your Honor, that they said they want to show all of these records to his wife. And they want to disclose it to other third parties that didn't generate the records. I think we'd still be just concerned about that sort of opening use of very sensitive information.

Again, I think that if there were more specific requests, we would be willing to entertain that. But when he -- I guess I -- I'm a little confused too, Your Honor, what he's saying --

THE COURT: Well, you're -- the more specific requests are going to be the drug use and the family

problems.

MR. MAYER: Yeah, those 18 pages are, from our perspective, the most important pages in those records.

MR. BARNES: But those --

(Simultaneous conversation)

THE COURT: Those are the specific requests.

MR. BARNES: Yes, Your Honor. But those page -- those documents already have medical records with that information in it. The 18 pages is not just from one doctor who is the only source of the information.

THE COURT: I understand.

MR. BARNES: This is, I think, information that they could obtain or could be asked easily elsewhere without having to --

THE COURT: Okay.

MR. BARNES: -- modify it.

THE COURT: I'll --

MR. BARNES: I guess --

THE COURT: I'll decide -- I'll decide this when I decide what depositions I'm going to permit, because that may have an effect how I feel about these 18 pages.

Now, I think the only issue left is the request for additional medical records, 2018 to the present. So let me hear you on that. Did I miss something?

MR. MAYER: No --

MR. BARNES: No, Your Honor. I believe -- I think we're --

THE COURT: Okay.

MR. BARNES: -- okay.

THE COURT: Mr. Mayer.

MR. MAYER: I mean, first of all, as a practical matter, it's normal to get updated records prior to trial where there are ongoing issues. And, you know, this doesn't apply to every doctor. He's not going to Batista or Hadad or Tang or any of those doctors, as far as we know anymore, so there may not be any updated records to provide.

Fitzgerald is one that we think he's probably still going to. And he's a good example -- again, I'll just keep using it as an example. If he goes to Fitzgerald and Fitzgerald has concluded he's better now and there's no -- he's not experiencing any emotional harm anymore, we want to know that. If Mr. Conforti told him that in the course of treatment and then his condition got worse again after that, so that -- that's the type of thing we'd be looking for in getting updated medical records.

(Simultaneous conversation)

THE COURT: But if he doesn't have a condition.

MR. MAYER: Well, he does. He has depression, and he has anxiety. So he has -- he's had those diagnosed conditions in the past.

Now, he's saying that he's not going to testify about that, but those are facts that previous psychotherapists have diagnosed him with those conditions before he even knew that he had gender dysphoria, before that was even diagnosed. So if that's gotten better, we'd want to know why. That's all.

THE COURT: Okay.

MR. MAYER: Or if it's gotten worse.

MR. BARNES: Your Honor, I think we have two concerns with the document requests. The first one, I think, before I get to relevant -- the relevance issue is that the document requests extend from July 2018 to the present. They're defective because they attached Mr. Conforti's old authorization. They never requested a new authorization from Mr. Conforti for those dates. So he's only given an authorization to his medical providers --

THE COURT: Right.

MR. BARNES: -- to release the authorization assigned August 23rd, 2018, I believe.

THE COURT: Okay.

MR. BARNES: August 23rd, 2018.

So -- and we've already given them records up until that date. So July to August, they've already -- they should already have. I don't believe they've been represented that they're missing any -- I don't believe.

And then after that, they don't even have the authorization to request to subpoena these records from the other side. So it's defective in that sense. Procedurally defective in that sense.

But it's important because -- I mean, the medical providers are going to get this subpoena and get an outdated, inapplicable authorization from a patient. Already one provider has -- went ahead and provided additional medical records to defendant, even though we had objected and that the authorization isn't appropriate.

And it's typical, they wouldn't -- they -- I believe what should have happened is they would have gotten -- would have either -- you know, gotten them a new authorization, or they would have had to move for one, I suppose.

So that would be the procedural issue that I think granting these -- or ordering the subpoenas or denying the motion to quash, that still have a problem with the subpoenas.

Two, Your Honor, is the relevance issue. We've produced now seven and a half years' worth of medical records that extend now to two and a half years into litigation. The medical records are consistent with Mr. Conforti's testimony, with everything that defendants have gotten from the previous records produced now twice.

There's been no showing, again, that more records, even farther removed from that date, the date of discrimination and this very, we argue, standard damages case, is necessarily required. Or relevant necessarily to the effect of discrimination that occurred in 2015.

MR. MAYER: And, Your Honor, the authorizations that are attached to our subpoenas, they say through the current date. So the -- Mr. Conforti, when he signed them authorized the release of his medical records to current. And those are attached to the subpoenas. They say January 1st, 2011, to current.

THE COURT: Does "current" mean today or the day it was signed?

MR. MAYER: I mean, it's ordinary to update through the date of trial, so I think that's pretty clear that that means up until now. I mean, I -- I assume they would want us to update our records to the extent there are they want through date of trial. I mean that's -- that's what happens. So when you get an authorization like this and you say "current," the intention is that you can get the records ongoing.

MR. BARNES: I think --

MR. MAYER: And that's what we do in employment cases all the time. I -- you know, that's standard.

MR. BARNES: I think it doesn't say "ongoing,"

Your Honor. I think it says "current." And the intention there was that was what -- how long the medical records are going to be produced for. And I think that's reflected too in our production that was -- the production given under this authorization.

I believe we made that production sometime in October -- there was one in October. And that was the agreement we reached with defendants as well -- confer -- we agreed to that date. Now they want more records beyond the agreement.

So I think it's very clear that both -- from the agreement, from the records produced, and from the date of document that that's all authorized.

THE COURT: Okay.

Is there anything else we need to discuss today?

Let me -- talk to you about scheduling, because I -- I understand that scheduling is contingent upon some of the decisions that I make today. We'll try to get them out quickly because it is an old motion that I delayed by telling you to try and settle. But we will make every attempt to quickly resolve it.

But what else is outstanding that would be unaffected by these depositions and documents that we discussed today? Is there other outstanding discovery?

MR. MAYER: That's the medical examination that we

intend to take, but we have to finish --

THE COURT: Is that scheduled?

MR. MAYER: No. But we haven't scheduled it until after we get these records, because that's -- our expert's going to need to see the transcripts from these depositions, assuming we get some of them.

If we don't, we can notice it right away.

THE COURT: Okay.

MR. MAYER: -- the notice at 45. And then we're going to have a file a motion, because they're going to object to it. So ...

THE COURT: Oh.

MR. BARNES: Yes, Your Honor. To the --

(Simultaneous conversation)

THE COURT: So I have that to look forward to.

(Simultaneous conversation)

MR. MAYER: So we're going to have motion practice.

THE COURT: Okay.

MR. BARNES: And that's been well known too, I think, for --

MR. MAYER: Yeah, that was raised --

(Simultaneous conversation)

THE COURT: So then --

MR. MAYER: -- scheduling --

(Simultaneous conversation)

THE COURT: -- we should probably be teeing up that motion.

MR. MAYER: We should, although we'd like to take the depositions first, because they are --

(Simultaneous conversation)

THE COURT: They're going to object --

MR. MAYER: -- potentially going to --

(Simultaneous conversation)

THE COURT: -- and you're going to want to have the medical exam.

What else do you need?

MR. MAYER: Well, we'd like to take the depositions that if we -- if we're allowed to take the depositions, what we get from those doctors might help support our request for the medical exam. So that's -- that's the only -- I would want to take the depositions first and then make the motion. Otherwise, we're going to have to supplement it and maybe say -- that are going to be inconsistent with what we actually -- those doctors and other healthcare providers.

THE COURT: I don't see how the issue of a medical exam is going to be affected. You're going to want it no matter what. You think there is some testimony in some of these depositions that will support that?

MR. MAYER: Yes, Your Honor. I do. I mean, if there is -- if we learn more about his psychological history,

that supports the reason we are asking for the examination. So if we take these depositions, I think -- and, again, I don't know what we're going to be allowed to take, but if we're allowed to take any of them and we get more information that helps support that request, it is relevant. And that's -- that is how it's ordinarily done, to get that information first and then make the request. Otherwise, we'll just have a supplement it or, I guess, run the risk that it gets decided before we have all of the potentially relevant information.

So that -- that would be my only reason to wait. Otherwise, we could tee it up now.

THE COURT: I'd like it teed up now.

MR. MAYER: Okay.

THE COURT: I'll leave you to schedule teeing it up. If supplementation is necessary, then I'll permit you to do that.

MR. MAYER: Okay.

THE COURT: But I think that the issues are much broader than that. And I'd like to preview that.

MR. BARNES: And, Your Honor, to -- if that's -- words for defense -- we're -- it up without setting a date -- you know, they might --

THE COURT: You can meet and confer and --

MR. BARNES: -- be worried about --

(Simultaneous conversation)

THE COURT: -- decide on a schedule.

What else do we have to do?

MR. MAYER: The 30(b)(6) depositions, which are multiple depositions.

MR. BARNES: There's one deposition, Your Honor. But they -- they are --

THE COURT: There are 17 topics. So we don't know how many witnesses are --

MR. MAYER: It can't be one. I know that. It's going have to at least be three.

THE COURT: Can we start with that? Is that scheduled?

MR. BARNES: It's not scheduled, Your Honor. But we absolutely can start with that. I think that we had disputes over a few lingering ones, and I think we had discussed it -- we had raised the possibility, hadn't reached conclusion, about whether defendants were going to try and designate previous deposition pages as their Rule 30(b)(6) testimony.

THE COURT: Oh.

MR. BARNES: Which would obviate it. That's where we've kind of left things off --

THE COURT: Okay.

MR. BARNES: -- and then got in this dispute.

THE COURT: Obviously, if you can do that, that would be great.

MR. MAYER: I don't think we can here on this topic, so --

THE COURT: Okay. I didn't think so. But --

MR. MAYER: And one of the -- one of the ones -- one of the individuals who likely will be coming back as the OB/GYN -- I don't know if you remember, we had a dispute about bringing him in -- he's the chair of the department.

THE COURT: Right.

MR. MAYER: And he'll be coming in on a number of the topics. He is not easy to schedule with, though we'll try to do that.

THE COURT: So let's try and do that, because that's going to be a lot of heavy lifting scheduling and --

MR. MAYER: Yup --

MR. BARNES: Yes, Your Honor.

THE COURT: And I don't even know if we're on a discovery schedule anymore.

MR. MAYER: We're past it. We're off schedule.

THE COURT: Okay.

MR. MAYER: Fact discovery ended -- you left it at --

THE COURT: Anybody know?

MR. BARNES: I think it was January 30th.

MR. MAYER: It was January, technically, but you've left it open.

THE COURT: Okay. Was this always Judge Cecchi's case? Or did it get transferred from Judge Linares?

MALE SPEAKER: It was transferred --

(Simultaneous conversation)

MR. MAYER: Linares, I think it was -- well, it's -- it's moved around, Judge.

MR. BARNES: Your Honor, it's -- if you'd like us to, we can -- after this, could meet and confer and present -- maybe a schedule to the Court about --

THE COURT: To me.

(Simultaneous conversation)

MR. BARNES: -- about 30(b)(6) --

(Simultaneous conversation)

THE COURT: Schedule it --

MR. BARNES: -- or present -- present a proposed schedule to you.

THE COURT: A proposed schedule for the entire case. And we're going to have to work on moving the case.

MR. BARNES: And you'd like us to propose for briefing of the --

(Simultaneous conversation)

THE COURT: Do a schedule for the briefing. Start to tee that up. Do a schedule on a go-forward basis which

includes expert -- through the end of expert. And I'll address the issues as they come up.

I realize that this is an out-of-the-ordinary case, but our caseload in this courthouse dictates that I have to move all cases evenly.

So I'll set a conference call for our next meeting, but please keep the letters, cards and letters rolling in as the problems arise.

Okay? This.

MR. MAYER: Thank you.

THE COURT: I thank you all for your time.

UNIDENTIFIED SPEAKERS: Thank you, Your Honor.

(Conclusion of proceedings at 12:21 P.M.)

Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 79 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

S/ *Sara L. Kern* 3rd of July, 2019

Signature of Approved Transcriber Date

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EXHIBIT 12

JIONNI CONFORTI Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al., Defendants.	Civ. No. 2:17-cv-00050-CCC-CLW **OPINION & ORDER**

I. INTRODUCTION

This matter comes before the Court on Plaintiff Jionni Conforti's Motion to Quash Subpoenas and For a Protective Order. (ECF No. 69). The Court heard oral argument on June 20, 2019, and, for the reasons set forth below, Plaintiff's Motion is **GRANTED** in part and **DENIED** in part.

II. BACKGROUND

On January 5, 2017, Plaintiff Jionni Conforti ("Conforti") filed this action against Defendants St. Joseph's Healthcare System, Inc. ("SJHS"), St. Joseph's Hospital and Medical Center (d/b/a St. Joseph's Regional Medical Center) ("SJRMC"), and Father Martin D. Rooney, who serves as St. Joseph's Health Care System's Director of Pastoral Care and Mission Services.

This action arises out of Defendants' allegedly unlawful refusal to schedule a hysterectomy for Conforti at SJRMC for discriminatory reasons. The following facts are taken from the Complaint. In June 2014, Dr. Ian Tang diagnosed Conforti with gender dysphoria, and Conforti started gender-confirming hormone therapy under Dr. Tang's care. (Compl. ¶ 55). In October 2014, Conforti underwent a double mastectomy at a hospital in Texas. (*Id.* ¶ 56). Thereafter, in consultation with Dr. Tang, Conforti decided to seek a total hysterectomy and began the process of finding a gynecological surgeon to perform the procedure. (*Id.* ¶¶ 57-58). Conforti was ultimately referred to Dr. Brian Day, a surgeon and obstetrician at Totowa OB/GYN with admitting privileges at SJRMC. (*Id.* ¶¶ 58-59).

Conforti obtained referral letters recommending a hysterectomy as a medically necessary treatment from Dr. Ian Tang and therapist Rissy Batista. (*Id.* ¶¶ 61-63). Conforti then scheduled a June 16, 2015 consultation with Dr. Day. (*Id.* ¶ 64). During this consultation, Dr. Day informed

Conforti that Defendant Father Rooney, Director of Mission Services at SJHS, "would not allow [the] surgery to be scheduled at SJHS's facilities, as the surgery was being performed for the purposes of 'gender reassignment.'" (*Id.* ¶ 67). Father Rooney subsequently sent an e-mail to Conforti stating, "This is to follow up to your e-mail inquiring about scheduling a total hysterectomy here at St. Joseph's to remove all female parts based on the medical necessity for Gender Reassignment. This is to inform you that as a Catholic Hospital we would not be able to allow your surgeon to schedule this surgery here at St. Joseph's." (*Id.* ¶ 69). Thus, Dr. Day did not perform Conforti's hysterectomy at SJRMC, and Conforti ultimately underwent a hysterectomy with Dr. Charles Haddad at Mountainside Hospital in September 2015. (Pl.'s Br., ECF No. 69-1, at p. 10).

Conforti alleges that Defendants denied him "the ability and opportunity to schedule his hysterectomy at SJRMC because it was related to the medically necessary treatment of gender dysphoria," and thus discriminated against him on the basis of his "sex, nonconformity with sex stereotypes, gender identity, and transgender status." (Compl., ¶¶ 88, 99). On the basis of this alleged discrimination, Conforti brings claims under Section 1557 of the Affordable Care Act and the New Jersey Law Against Discrimination ("NJLAD"). Conforti seeks multiple forms of relief, including a declaratory judgment that Defendants violated Section 1557 and NJLAD, a permanent injunction modifying Defendants' practices and policies, costs and fees, and compensatory and punitive damages.

The last category of relief – compensatory damages for emotional distress – is at the crux of the parties' dispute over the proper scope of discovery from Conforti's medical providers. In the Complaint, Conforti alleges that he has "suffered emotional distress, humiliation, degradation, embarrassment, emotional pain and anguish, violation of his dignity, loss of enjoyment of life, and other compensatory damages, in an amount to be established at trial." (Compl., ¶¶ 99, 101). Conforti seeks compensatory damages for these emotional harms. (*Id.* at p. 25).

On February 15, 2019, Conforti filed his Motion to Quash Subpoenas and For a Protective Order. Conforti seeks two forms of relief in his Motion: (1) an order quashing Defendants' subpoenas to Conforti's medical providers. These subpoenas seek depositions of six medical providers and updated medical records; and (2) a protective order preserving Conforti's Attorneys

Eyes' Only ("AEO") designation for eighteen pages of his medical records and the redaction of one note contained in those medical records.[1]

Defendants oppose Conforti's Motion in its entirety. Defendants argue that the contested subpoenas fall within the scope of Federal Rule of Civil Procedure 26(b)(1), because these providers' testimony and updated medical records are highly relevant to Conforti's allegations and his damages claim for emotional distress. In their Opposition, Defendants identified two additional medical providers – OB/Gyn Dr. Diana Vitale and neurologist Dr. Avery Katz - whose depositions they now seek on the same basis as the original six providers. (Def.'s Opp., ECF No. 73, at p. 13). Defendants also oppose Plaintiff's AEO designations.

III. DISCUSSION

LEGAL STANDARD

Federal Rule of Civil Procedure 26(b)(1) allows a party to obtain information concerning "any matter, not privileged, which is relevant to the subject matter involved in the pending action." *Sanofi-Aventis v. Sandoz, Inc.*, No. 03-6025, 2005 WL 6714281, at *1 (D.N.J. 2011). The party seeking discovery must demonstrate that the discovery request is "relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Pursuant to Rule 26(b)(1), the Court may limit discovery when, among other things, "the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* Under Rule 26(c), the Court may, "for good cause," issue a protective order to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]" *Id.*

"Discovery sought via a subpoena issued pursuant to Rule 45 must fall within the scope of discovery permissible under Rule 26(b)." *Gov't Employees Ins. Co. v. Trnovski*, No. CV 16-4662 (CCC), 2018 WL 5281424, at *2 (D.N.J. Oct. 23, 2018) (citing *OMS Investments, Inc. v. Lebanon Seaboard Corp.*, 2008 WL 4952445 (D.N.J. Nov. 18, 2008)). Under Rule 45(3)(A), "the

[1] Plaintiff redacted one line of sensitive medical information in one medical record (Fitzgerald 016 and 061) and, as part of his Motion, submitted the redacted note for *in camera* review. (Pl.'s Br., ECF No. 69-1, at p. 23). After reviewing the redacted statement *in camera*, the Court ruled on the record that the statement is irrelevant and will not be subject to discovery. (Transcript, at p. 56:3-5).

court…must quash or modify a subpoena that….requires disclosure of privileged or other protected matter" or "subjects a person to an undue burden." *Id.*

Here, Conforti moves to quash third-party subpoenas issued to his medical providers. Generally, courts afford greater protection to non-parties in discovery, and nonparty subpoenas must meet a higher standard of relevance than subpoenas directed toward parties. *See, e.g.*, *Chazanow v. Sussex Bank*, No. 11-1094, 2014 WL 2965697, at *3 (D.N.J. July 1, 2014); *Kelley v. Enhanced Recovery Co., LLC*, no. CV 15-6527, 1016 WL 8673055 at *2 (D.N.J. Oct. 7, 2016). Because the third-party subpoenas here relate to Conforti's medical information and Conforti claims his medical information is privileged, he has standing to move to quash the subpoenas. *DIRECTV, Inc. v. Richards*, No. CIV. 03-5606 (GEB), 2005 WL 1514187, at *1 (D.N.J. June 27, 2005) ("A party lacks standing to seek the modification or quashing of a subpoena upon a third party unless the party claims a personal privilege is implicated."). Defendants do not contest Conforti's standing to bring this Motion.

A. DEPOSITIONS OF MEDICAL PROVIDERS

Conforti seeks to block the depositions of six medical providers who were subject to Defendants' initial round of subpoenas: (1) Dr. Ian Tang, (2) Dr. Joseph Vitale and (3) Nurse Practitioner Mary Vitale, (4) Dr. Charles Haddad, (5) Rissy Batista, and (6) Vincent Fitzgerald. Importantly, Conforti has already produced medical records from these six providers for January 11, 2011 through August 23, 2018. Conforti also objects to Defendants' proposed depositions of two newly identified providers, OB/Gyn Dr. Diana Vitale and Dr. Avery Katz.

The Court will permit the depositions of the following providers: Dr. Ian Tang, Dr. Joseph Vitale, and Rissy Batista. These providers' treatment of Conforti is directly intertwined with the allegations in the Complaint concerning his gender dysphoria diagnosis, his subsequent course of treatment, and the emotional distress that he suffered upon Defendants' denial of his hysterectomy. Moreover, these depositions have a reasonable temporal scope, because these three providers treated Conforti in the leadup to Defendants' alleged wrongdoing and in its immediate aftermath.

Dr. Ian Tang

Dr. Tang is an endocrinologist who, together with a team at Apicha Community Healthcare, began providing care to Conforti in May or June of 2014. (Transcript of Oral Argument, at pp.

18:12-19, 19:8-10). Conforti argues that Dr. Tang's deposition – as well as the other providers' depositions – is irrelevant, invasive, and imposes an undue burden on Conforti. According to Conforti, neither Dr. Tang's nor any other provider's testimony will shed light on the question of Defendants' liability, which turns on whether Defendants denied Plaintiff the hysterectomy because of his transgender identity. Conforti rightly notes that Defendants do not contest his gender dysphoria diagnosis, and there is no allegation that Plaintiff's medical history was a factor in Defendants' decision to deny Plaintiff's hysterectomy. (Pl.'s Br., ECF No. 69-1, at p. 14-15).

Nevertheless, as the Complaint's numerous references to Dr. Tang make clear, Dr. Tang's treatment of Plaintiff lies at the heart of the factual allegations in this matter. Dr. Tang diagnosed Plaintiff with Gender Dysphoria and oversaw Plaintiff's gender-confirming hormone therapy. (Compl. ¶ 55). Dr. Tang recommended that Plaintiff undergo a complete hysterectomy and wrote a referral letter for the procedure, which described a total hysterectomy as "necessary and highly beneficial for Mr. Conforti's well-being." (*Id.* ¶¶ 57, 63). Given Dr. Tang's close involvement with Plaintiff's gender dysphoria treatment, his testimony falls within the broad scope of discoverable evidence under Rule 26(c). It would be inappropriate to adopt Plaintiff's narrow view of relevance at this stage and cut off Defendants' ability to elicit potentially relevant testimony concerning Plaintiff's gender dysphoria treatment and emotional distress.

Dr. Joseph Vitale

Defendants are likewise entitled to depose Dr. Joseph Vitale. Dr. Vitale, a primary care doctor affiliated with West Paterson Family Medical Practice, treated Plaintiff from early 2014 through the end of 2018. According to Defendants, Dr. Vitale took a complete medical history of Plaintiff, made a mental health referral in 2014, and prescribed Plaintiff antidepressants and anxiety medications both before and after Plaintiff's hysterectomy. (Def.'s Opp., ECF No. 73, at p. 12).

Conforti disputes the relevance of Dr. Vitale's testimony, largely for the same reasons as Dr. Tang's testimony. Additionally, Conforti contends that because Dr. Vitale is "not [a] mental heath care provide[r]," he has "no insight as to [Plaintiff's] mental state at the time of this incident" and cannot testify to Conforti's emotional distress. (Pl.'s Reply, ECF No. 76, at p. 11).

According to Defendants, Dr. Vitale is "uniquely positioned" to provide relevant testimony because he "treated [Plaintiff] before and after the request[ed] hysterectomy." (Transcript, at p.

48:1-16). The Court agrees. Moreover, as Plaintiff himself acknowledges, because the Vitales are not mental health care providers, the incursion on Plaintiff's privacy interests is less significant.

In addition to Dr. Vitale, Defendants seek to depose Nurse Mary Vitale, who is also affiliated with the West Paterson Family Medical Practice. (Def.'s Opp., ECF No. 73, at p. 12). There is no indication that Mary Vitale's testimony will have any marginal benefit beyond Dr. Vitale's testimony. Defendants contend in a general manner that Mary Vitale discussed Plaintiff's gender dysphoria "shortly before" Plaintiff sought a hysterectomy as St. Joseph's. (*Id.*). Given that this topic will likely be covered by Dr. Tang and Dr. Vitale's depositions, the Mary Vitale subpoena is cumulative and unduly burdensome.

Rissy Batista

Rissy Batista is a therapist and mental health clinician. Batista began treating Plaintiff in March 2015 and wrote a referral letter in late May or early June 2015 recommending a total hysterectomy as a medically necessary treatment. (Compl. ¶ 62). Medical records indicate that Batista diagnosed Plaintiff with gender dysphoria and may have diagnosed Plaintiff with Major Depressive Disorder and Generalized Anxiety Disorder. (Def.'s Opp., ECF No. 73 at p. 11). Although neither Plaintiff nor Defendants could specify when Plaintiff ended his treatment with Batista, Plaintiff appears to have continued seeing her for some period after St. Joseph's denial of the hysterectomy. (Transcript, at pp. 48:19-25, 49:1-9).

Plaintiff moves to quash the Batista deposition on several grounds. First, Plaintiff objects to the deposition as irrelevant and "oppressive," because "Conforti's gender dysphoria diagnosis is not at issue in this case" and "[Batista's] mental health treatment is separate and distinct from the 'garden variety' damages asserted" in this case. (Pl.'s Br., ECF No. 69-1, at p. 18). Second, Plaintiff claims that Batista's testimony is protected by the psychotherapist-patient privilege. (*Id*). According to Plaintiff, by limiting his damages to "garden variety" emotional distress, he has not waived this privilege.

Defendants strongly contest Plaintiff's characterization of his emotional distress damages as "garden variety." Defendants argue that the complexity of Plaintiff's mental health history reaches beyond the realm of routine emotional distress, and that Plaintiff has waived the patient-

psychotherapist privilege by putting this complicated mental health history at issue in this case. (Def.'s Opp., ECF No. 73, at p. 16).

"It is axiomatic…. that communications between a psychotherapist and a patient in the course of diagnosis or treatment are privileged and therefore protected from compelled disclosure under Federal Rule of Evidence 501." *Jackson v. Chubb Corp*., 193 F.R.D. 216, 219 (D.N.J. 2000) (citing *Jaffee v. Redmond*, 518 U.S. 1, 15 (1996)). However, the privilege is not absolute. The *Jackson* court adopted the so-called "broad view" of waiver and held that "a plaintiff waives the psychotherapist-patient privilege by placing his/her mental or emotional condition at issue[.]" *Id*. at 225. When evaluating a psychotherapist-patient privilege claim, the court must balance the plaintiff's interest in the confidentiality of the patient-psychotherapist relationship with the defendants' need to "moun[t] an adequate defense" to emotional distress claims with access to "all the relevant evidentiary materials." *Id.*

The Court recognizes that, unlike the plaintiff in *Jackson*, Conforti does not bring an intentional infliction of emotional distress cause of action and has not expressed an intention to introduce mental health records at trial or present evidence that Defendants' actions exacerbated diagnosed mental health conditions. When pressed on the contours of Plaintiff's damages claim at oral argument, Plaintiff's counsel represented that Plaintiff's emotional distress testimony would be limited to the "standard…damages" sought in any discrimination case, such as being "angry," "upset," "humiliated," and fearing recurring discrimination if Plaintiff were to return to St. Joseph's. (Transcript, at p. 31:6-24).

However, the broad view of the waiver adopted in *Jackson* compels the conclusion that Conforti has waived the psychotherapist-patient privilege as to his treatment with Batista. Plaintiff has "manifest[ed] an unmistakeable intent to inject [his]…symptoms and diagnoses into the underlying litigation." *Jackson*, 193 F.R.D. at 226. Conforti references his mental health issues throughout the Complaint. Conforti alleges that he has experienced depression since 2004 and realized in 2014 that his depression was caused by gender dysphoria. (Compl., ¶¶ 52, 54). Conforti further alleges that he "became deeply depressed" and felt "great anxiety" when St. Joseph's denied the hysterectomy. (*Id.* ¶ 9). Moreover, at his deposition, Conforti testified that he felt "emotional distress," "hurt," "shame," and "of course some depression" after St. Joseph's did not permit Dr. Day to perform Plaintiff's hysterectomy. (Def.'s Opp., ECF No. 73, at p. 15).

Under the *Jackson* balancing test, quashing Batista's deposition would work an undue prejudice on Defendants. At the discovery stage, Defendants are entitled to pursue relevant inquiries into these complex emotional and psychological factors, which cannot be neatly reduced to "garden variety" distress at this stage. Moreover, as the Complaint spells out, Conforti suffered from depression and anxiety long before Defendants denied him the hysterectomy in June 2015. Without Batista's testimony, Defendants would be hamstrung in exploring other contributing factors to Conforti's emotional distress and defending themselves against Conforti's allegation that Defendants' discrimination was the driving cause of Plaintiff's emotional damages, whether "garden variety" or otherwise.

REMAINING PROVIDERS

The depositions of the four remaining medical providers are overly broad, cumulative, and unduly burdensome. Plaintiff has already produced seven years of medical records from these providers. Defendants have failed to demonstrate that the benefits of any additional information gleaned from these deponents would outweigh the incursion on Plaintiff's privacy interests and the burden on both Plaintiff and his medical providers.

Dr. Charles Haddad

Dr. Charles Haddad performed Plaintiff's hysterectomy at Mountainside Hospital in September 2015. (Pl.'s Br., ECF No. 69-1, at p. 10). Dr. Haddad does not appear to have treated Plaintiff beyond performing the hysterectomy. Defendants argue that "information to be elicited at [Dr. Haddad's] deposition [is] clearly relevant to Plaintiff's claims." (Def.'s Opp., ECF No. 73, at p. 22). Specifically, Defendants seek Haddad's testimony about any "tests" that Dr. Haddad performed prior to the hysterectomy, as well as the medical reasons that Plaintiff presented to Haddad for the hysterectomy. (Transcript, at p. 51:10-13). According to Defendants, if Conforti told Dr. Haddad that he was seeking a hysterectomy for a reason other than the one given to St. Joseph's, that inconsistency would be "relevant" to Plaintiff's claims. (*Id.* at p. 51:15-22).

The Court grants Plaintiff's request to quash this subpoena. Defendants already have access to all of Dr. Haddad's medical records, and Conforti testified at his deposition that he sought a hysterectomy from Dr. Haddad for the "sole reason of treating his gender dysphoria." (Transcript,

at p. 52:1-2). Defendants have not articulated, either in their briefing or at oral argument, any need to further probe Plaintiff's treatment with Dr. Haddad by deposing him.

Dr. Diana Vitale and **Dr. Avery Katz**

In their Opposition to Plaintiff's Motion, Defendants, for the first time, sought to depose Dr. Diana Vitale and Dr. Avery Katz. Dr. Diana Vitale is an OB/GYN who Conforti saw for one visit when he decided to pursue a hysterectomy. (Transcript, at p. 40:20-21). According to Conforti, he did not return to Dr. Vitale after his sole visit because "[s]he wanted extra tests that Mr. Conforti thought….weren't necessary," and Conforti "didn't like the [initial] relationship" with her. (*Id.* at p. 41:10-15). Given Conforti's limited interaction with this provider, Defendants have failed to demonstrate that her deposition is proportional to the needs of this case, especially in light of the fact that Defendants are in possession of the medical records from this visit.

Neurologist Dr. Avery Katz treated Conforti for one or two visits in May 2014. Defendants indicate that they want to take Dr. Katz's deposition because Dr. Katz "prescribed [Conforti] antidepressants." (Transcript, at p. 43:21-23). However, according to Conforti, Dr. Katz treated Plaintiff for headaches and "never" provided any treatment related to gender dysphoria. (*Id.* at p. 42:10-11). Defendants have not presented any evidence, from Dr. Katz's medical records or otherwise, to dispute this. Because Dr. Katz treated Conforti for unrelated medical conditions for a very circumscribed period, Dr. Katz's deposition is neither relevant nor proportional.

Vincent Fitzgerald

Therapist Vincent Fitzgerald began treating Plaintiff in 2017 and continues to treat Plaintiff. Defendants argue that Fitzgerald's treatment of Plaintiff is relevant to Plaintiff's emotional distress damages, because Plaintiff testified at his deposition that he discussed his family psychiatric history, substance abuse history, and this lawsuit with Fitzgerald. (Def.'s Opp., ECF No. 73, at p. 12). Defendants also note that Fitzgerald's records "raise questions about whether Plaintiff has followed through with recommended therapy." (*Id*). As with Rissy Batista, Plaintiff asserts the psychotherapist-patient privilege over the Fitzgerald deposition. (Pl.'s Br., ECF No. 69-1, at p. 12).

The Court grants Conforti's request to quash Fitzgerald's deposition. The need to protect the confidentiality of Conforti's privileged patient-psychotherapist communications is particularly

acute here, given that Conforti continues to see Fitzgerald for therapy. Defendants will not be prejudiced without Fitzgerald's testimony. Conforti began seeing Fitzgerald more than two years after St. Joseph's denial of the hysterectomy, and any connection to Plaintiff's emotional distress damages is highly attenuated.

B. MEDICAL RECORDS FROM JULY 1, 2018 THROUGH THE PRESENT

Plaintiff has produced medical records from January 1, 2011 through August 23, 2018. (Transcript, at p. 68:18-25). Defendants now seek updated medical records through the present day. Defendants argue that as a "practical matter," they are entitled to "updated records prior to trial" in a case with "ongoing issues." (*Id.* at p. 67:6-8). Defendants also seek updated records about the status of Conforti's ongoing treatment, if any, for emotional distress. (*Id.* at p. 67:15-17).

Defendants' request for medical records that postdate the underlying events in this case by several years is unduly burdensome and invasive. Defendants have not demonstrated the relevance of medical records for treatment that occurred upwards of three years after the alleged act of discrimination. Accordingly, Conforti's application to quash Defendants' request for updated medical records is granted.

C. AEO DESIGNATIONS

Finally, Plaintiff moves for a protective order to preserve his Attorneys Eyes Only designation of eighteen pages of medical records.[2] (Pl.'s Br., ECF No. 69-1, at p. 23). Plaintiff argues that the AEO designations are proper under the Discovery Confidentiality Order, which allows for AEO designations of "highly sensitive…personal information, the disclosure of which is highly likely to cause significant harm to an individual." (*Id*). According to Plaintiff, the AEO records contain Conforti's most sensitive and confidential personal information.

Defendants object to Plaintiff's AEO designations, because Defendants would like to use these eighteen pages of medical records at the depositions of Plaintiff's health care providers and to disclose the records to experts. (Def.'s Opp., ECF No. 73, at p. 26). Plaintiff has no objection to Defendants disclosing AEO records to experts and third-party consultants. (Transcript, at p. 56:17-18). However, Plaintiff does object to Defendants disclosing AEO records to medical providers

[2] Plaintiff electronically submitted the disputed medical records under seal for the Court's review. (ECF No. 70).

who did not previously have access to those records. (*Id*. at p. 57:2-10). According to Plaintiff, if a provider learns sensitive information from the AEO records that Plaintiff chose not to share with that provider during the course of his treatment, Plaintiff's privacy interests and his trust in the confidentiality of his doctor-patient relationships will be damaged. (*Id.*).

Plaintiff's request for a protective order upholding the AEO designations of eighteen pages of medical records is denied. These records shall be designated Confidential, and Defendants are permitted to disclose the records to Dr. Ian Tang, Dr. Joseph Vitale, and Rissy Batista in connection with their depositions. Plaintiff's privacy concerns can be addressed by designating the records as Confidential, so that they are disclosed only to this limited group of medical providers and any experts retained by Defendants.

IV. CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Quash Subpoenas and For a Protective Order is **GRANTED** in part and **DENIED** in part. An appropriate order follows.

IT IS, on this 14th day of August, 2019, hereby

ORDERED that Plaintiff's application to quash the depositions of Dr. Ian Tang, Dr. Joseph Vitale, and Rissy Batista is **DENIED**;

ORDERED that Plaintiff's application to quash the depositions of Nurse Practitioner Mary Vitale, Dr. Charles Haddad, Vincent Fitzgerald, Dr. Diana Vitale, and Dr. Avery Katz is **GRANTED**;

ORDERED that Plaintiff's application to quash Defendants' subpoenas for medical records from August 23, 2018 through the present is **GRANTED;**

ORDERED that Plaintiff's motion for a protective order preserving the AEO designations of eighteen pages of medical records is **DENIED**;

and **ORDERED** that the Clerk shall terminate ECF No. 69 upon entry of this Opinion and Order.

s/Cathy L. Waldor
CATHY L. WALDOR
United States Magistrate Judge

EXHIBIT 13

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CONFORTI, Plaintiff, vs. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al., Defendants.	.	Case No. 17-cv-00050 Newark, New Jersey December 3, 2019

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE

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(Commencement of proceedings at 1:03 P.M.)

THE COURT: It's December 3rd, and it is 1:03. This was oral argument scheduled for, I believe, 11 o'clock. The parties were all here -- because the recorder did not work. I want that on the record.

We then proceeded to Judge Dickson's after trying to fix it, and ultimately we were able to fix it. So two hours after we were scheduled, we are on the record in Conforti versus St. Joseph's.

Let's have appearances of all plaintiffs first.

MR. GONZALEZ-PAGAN: Good afternoon, Your Honor, Omar Gonzalez-Pagan for the plaintiff.

MR. BARNES: Tom Barnes for the plaintiff.

MS. PALMERSON: Jaclyn Palmerson --

MALE SPEAKER: --

THE COURT: All right. And who do we have for the defendant?

MR. MAYER: Christopher Mayer for defendants.

MR. DOHERTY: And Thomas Doherty from McCarter & English for defendants.

THE COURT: Okay. So we're here on your motion, Defendants, to compel mental examination of plaintiff. And I brought you all here for oral argument and to answer questions. So I'll let you begin and you can format how

these proceedings are going to go by the order of your argument.

MR. MAYER: Thank you, Your Honor. Can I use the podium or stay back --

THE COURT: Whatever you're comfortable with.

MR. MAYER: I'll stay back.

As you stated, Your Honor, we're here on defendants' motion. So real briefly -- and I know you have our briefs and you've had plenty of time to go through them, I'm just going to state once again the standard under Rule 35 to compel a mental examination. There are two steps to it. It has to be -- the mental condition, which is what we're dealing with, has to be in controversy, and there has to be good cause, to show any good cause.

And, Your Honor, I would submit that the Court has already made its decision with respect to those showings on the motion that preceded this one, the motion that plaintiffs made on the motion to quash our subpoenas, the defendants' subpoenas. But I'll go through it --

THE COURT: Well, for the record, I permitted deposition of certain doctors or therapists, but not all.

MR. MAYER: Correct. And I'll go through what I --

THE COURT: Okay.

MR. MAYER: -- what I believe is not dispositive. I just want to point the Court to that part of your order,

because that happened after the briefing was closed on this motion.

THE COURT: Right.

MR. MAYER: So, Your Honor -- and we've gone through this ad nauseam already, but believe -- and I would submit that plaintiff's mental condition is an issue in this case in two ways. And first of all, he has gender dysphoria. That's what -- that's the crux of this case that he has made an allegation that he has gender dysphoria and that it was medically necessary that he have a hysterectomy done at St. Joseph's Hospital back in June of 2015. And I'll get a little bit more into that, because we've taken certain depositions, as Your Honor knows.

THE COURT: That's what I want to hear about.

MR. MAYER: -- since the briefing closed. I would like to go through that, so -- that's not part of the record.

So that's one way that his mental condition is in issue, the issue of gender dysphoria, whether or not he has it, whether or not it was medically necessary for him to have the hysterectomy done. So that's issue number one.

Issue number two, as Your Honor knows, is the crux of this case in terms of damages. He seeks one form of compensatory damage, and that's emotional distress damage. So that put his mental condition in issue in this case.

And, again, as I stated before, Your Honor has

already decided that these issues are in controversy, that -- I refer you to page 7 of your August 15th, 2019, order, again, on the motion to -- on the motions for -- to quash the subpoenas.

And so in that ruling, Your Honor stated that -- and you're quoting from Jackson v. Chubb when you state this, that Mr. Conforti has manifested an unmistakable intent to inject his symptoms and diagnoses into the underlying litigation. And then you go on to repeat from what we put into our papers all the ways that Mr. Conforti's done that: That he has referenced his mental health issues throughout the complaint; that he has experienced depression since 2004, and that in 2014; he was diagnosed with anxiety; he was diagnosed with depression; and he was diagnosed with gender dysphoria.

THE COURT: Well -- okay. But it -- depression was caused by gender dysphoria.

MR. MAYER: Well, that's -- that's an open issue.

THE COURT: So is gend- -- yeah, yeah.

MR. MAYER: That's an open issue. And that does go to the heart of why we need to have a medical examination done. So --

THE COURT: So is gender dysphoria in DSM?

MR. MAYER: It is in the DSM, Your Honor.

THE COURT: Okay.

MR. MAYER: And so the -- and this is a good time go into the two doctors that were deposed through the --

THE COURT: Okay.

MR. MAYER: -- the psychologists and the doctors.

So we took -- Your Honor allowed us to take the depositions of Dr. Ian Tang, who is a medical doctor, who guided Mr. Conforti through his treatment. He diagnosed him with gender dysphoria. And using the DSM -- DSM 4 -- so he used that to reach his conclusion. And also Rissy Batista who's a psychologist, you allowed us to take her deposition as well, she also diagnosed Mr. Conforti with gender dysphoria.

At those depositions, it became apparent that -- not that they didn't do any work or they didn't -- you know, they didn't meet with Mr. Conforti and reach their own independent diagnoses, but the diagnosis and the test under the DSM is largely based on what Mr. Conforti told them. So -- and virtually every fact -- and we went through each one with both Ms. Batista and -- Mr. Doherty did with Dr. Tang, and they both agreed that that is based on what Mr. Conforti told them.

So essentially when they made the diagnosis of gender dysphoria, it was largely in part on what Mr. Conforti told them, that he -- you know, he believed he had gender dysphoria and that all the different characteristics of

gender dysphoria in the DSM were met because he told them that he believed he had -- so that was interesting to us.

And, again, we're not medical doctors. This is why, you know, we feel it's important that a medical exam be done of Mr. Conforti by independent medical examiner so that we can pursue those issues and look into them through our own -- our own independent analysis.

The other thing that was interesting about those depositions -- and obviously there are many, many things that are interesting, but what's important today is that Dr. Tang relied on the WPATH protocol. And you may have seen that at times in this case. There's a lot of discussion of the WPATH protocol in plaintiff's complaint. And he used that to guide him in terms of how he treated Mr. Conforti. The WPATH protocol is universally accepted. So there was a recent Fifth Circuit decision, I think it's Gibson, where the court noted that the WPATH protocol actually has not been universally accepted, that it was just taking note of that and that -- I think in a footnote it mentioned that CMS, the Department of Health and Human Services had noted and not adopted the WPATH standards, because there was controversy about it.

So that case is Gibson v. Collier, and I'll give you -- give Your Honor the cite. It's 920 F.3d 212. I don't recall the date offhand, but it was -- it was a recent

decision.

THE COURT: Okay.

MR. MAYER: And I apologize. I'm jumping around quite a bit, Your Honor.

THE COURT: That's okay. That's fine.

MR. MAYER: So those are the two main events that have happened since -- since the briefing was closed, that we took the depositions of Batista and Dr. Tang, and we -- you know, Your Honor, we would be happy to submit excerpts from those depositions, if you would like to see it.

THE COURT: Well, let's talk about it a little bit.

MR. MAYER: Sure.

THE COURT: So Dr. Tang, I understand what you're saying that the information came from Mr. Conforti. As many DSM diagnostics are really from the patient, objective -- objective versus subjective. So that may be true of a lot of the diagnostics in DSM.

So what are you saying is attributable -- do you think because Mr. Conforti self-confessed, if you will, to certain symptoms, that that lends itself to the necessity of a medical -- or a psychiatric exam?

MR. MAYER: In part, Your Honor. So Mr. Conforti alleges -- and this has been in his complaint, this is in all the papers that the hysterectomy was medically necessary.

THE COURT: Right.

MR. MAYER: And that's -- that's throughout. But we don't have any medical testimony about that. We don't have -- obviously, we didn't examine him to that degree at St. Joseph's. So that was not done. He came. He said he wanted to have a hysterectomy done. He said it was medically necessary. St. Joseph's couldn't do it because of the ERDs, and I know that's a separate issue that we don't need to get into.

As it turns out, both Dr. Tang and Ms. Batista would not say that it was medically necessary. So they both were asked to write letters. And Mr. Conforti gave them form letters to submit to the insurance carrier, and then ultimately they're submitted to the --

THE COURT: But is medical necessity, does that go to coverage? Or it -- are you tieing that into mental state?

MR. MAYER: It's both. It's -- so coverage is a separate issue obviously. That's not part of this case.

THE COURT: Right.

MR. MAYER: But it goes to why the hysterectomy was being done. So if it's medically necessary, then it -- you know, Mr. Conforti claims that it should have been done by St. Joseph's.

THE COURT: Right.

MR. MAYER: And so that -- that doesn't just wipe out our defense. That's a threshold issue in this case. And

Mr. Conforti seems to recognize that that's an issue, before you could even get to the discrimination, he has to satisfy that it's medically necessary.

THE COURT: But does that have anything to do with your compelling a medical examination? I'm trying to see if there's a tie-in.

MR. MAYER: It does, because we -- what I'm suggesting, Your Honor, is that we should have the opportunity to examine Mr. Conforti, to go through the DSM; our expert would do this.

THE COURT: Right.

MR. MAYER: Do review all the -- obviously, a psychiatric history, but --

THE COURT: To determine if it is medically necessary.

MR. MAYER: -- to confirm the diagnosis.

THE COURT: Okay.

MR. MAYER: And go through it.

THE COURT: Okay.

MR. MAYER: And in part of that, he could make a determination on whether or not it's medically necessary.

THE COURT: All right. So let me take the next leap.

MR. MAYER: And I'm not suggesting how that's going to come out. I'm just suggesting --

THE COURT: What if it isn't medically necessary? What does that have to do with a psychiatric or therapeutic or psychological exam? Let's assume it's not medically necessary, for the heck of it, hypothetically.

Why would you want to examine Mr. Conforti if it wasn't medically necessary?

MR. MAYER: So just completely setting aside medical necessity completely.

THE COURT: Right.

MR. MAYER: So Rule 35 gives a party the opportunity -- and it's described in the courts, including Schleghauf [phonetic], the opportunity to level the playing field. And -- so that's what we -- exactly what we proposed to do. We want to have him examined because he makes a claim for emotional distress damages, and he claims that those damages were caused solely by St. Joseph's. That's Mr. Conforti's claim, that the harm that was done to him --

THE COURT: Isn't Mr. Conforti claiming -- I hate this expression -- and we were just talking with Judge Dickson about it -- "garden-variety."

MR. MAYER: He is. He's claiming it's garden variety.

THE COURT: Whatever that means.

MR. MAYER: Whatever that means. He's claims that it flows that the -- the damages are what would normally flow

from discrimination. That's what he's suggesting.

So, therefore --

THE COURT: Right.

MR. MAYER: -- we should ignore everything else in his psychiatric history. What preceded that what -- you know, what else has happened? It doesn't matter. So he wants me to look -- testify that the procedure was medically necessary.

THE COURT: Right.

MR. MAYER: -- and that cannot be rebutted, you know, if he can come and just say it on his own, we'd have a chance to look into that issue.

And he wants to be able to say I experienced emotional harm, distress, humiliation, but it's gone -- we shouldn't go any further. You know, I'm allowed to say that --

(Simultaneous conversation)

THE COURT: In a very -- a very non-specific sense.

MR. MAYER: In a very non-specific sense. So he's hoping that he can say that, but, then, our concern is that at trial, obviously, that -- about that, number one. But it'll pivot, and he will talk about his depression. He will talk about his anxiety. He will -- it will become a much more full-blown --

THE COURT: Okay.

MR. MAYER: -- discussion of his emotional harm. He admits that he is not qualified to diagnose those conditions. But he intends to talk about them.

And, Your Honor, one other important note that -- I don't think it's in the record -- at Mr. Conforti's deposition back in January, he testified that his emotional harm began the day he went into Dr. Day's office, and he began to realize that maybe the hysterectomy was not going to be done at St. Joseph's. So he's claiming that that's when it started. He wants us to ignore, as I said, everything that preceded that, and the other emotional harm that he may actually have from his gender dysphoria, he wants that to be ignored completely.

He also testified -- and, again, this is as of January 2000- --

THE COURT: Well, wouldn't a finder of fact be able to weigh -- without an additional exam, be able to weigh whether or not a certain percentage of emotional distress comes from gender dysphoria? Or do you need the help of counter-exam, so to speak, for the finder of fact to be able to determine that?

MR. MAYER: We believe we need an exam to be able to determine that. So we need a -- the examination to allow our expert to look more fully into that issue and to take the complete psychiatric history and to go through the diagnosis

and see if he agrees or disagrees with those diagnoses and to make that determination on his own.

And, Your Honor, I'm happy to answer any more questions you have.

THE COURT: I may have some more, but let's hear from plaintiff for a bit and see if I can give myself some direction before I get back to you with questions.

MR. MAYER: Fair enough.

MR. GONZALEZ-PAGAN: Thank Your Honor. I would like to start with what is in controversy here in this case. And what's in controversy here in this case is that we have an email from the hospital administrator, Father Martin Rooney, stating we will not be able to schedule your hysterectomy, because it is for the purposes of gender reassignment. That is an email admission from the defendants.

It does not matter whether Jionni Conforti has gender dysphoria or not. He does. But it does not matter for purposes of his cause of action, because as court after court has found, even a perceived discrimination based on a perceived basis is sufficient to give a cause of action for discrimination.

So even if defendant were right and the Court were to allow an order, an independent medical examination, an extraordinarily intrusive procedure for which there is a

stringent and discriminating requirement, discriminating as articulated by the Supreme Court in Schleghauf, even if the Court were to allow it, the information to be gleaned from it is completely irrelevant to whether there is a cause of action in this case.

What is more, the fact that the defendants are now trying to make Mr. Conforti's dysphoria an item of controversy doesn't mean that is in controversy in this case. They did not deny Mr. Conforti the ability to schedule a hysterectomy because they didn't think it was medically necessary. They did not deny Mr. Conforti the ability to schedule a hysterectomy because they weren't sure he met medical criteria.

They denied him based on the ERDs. That is the sole issue in this case. And I don't --

THE COURT: So are you saying that his mental condition is not in controversy?

MR. GONZALEZ-PAGAN: His mental condition -- well, Your Honor, I would argue throughout this case, his mental condition and state are not in controversy at all. One, we have asked that Your Honor assert -- asserted earlier, we have always alleged -- and I think I like this -- the term "standard emotional distress damages."

THE COURT: Oh, that's good.

MR. GONZALEZ-PAGAN: Rather than garden-variety.

THE COURT: It's better than garden-variety.

MR. GONZALEZ-PAGAN: But we have always alleged for garden-variety damages, standard damages that are given to a plaintiff for the very act that they suffered discrimination. That's it. We have not alleged that Mr. Conforti's gender dysphoria was exacerbated by defendants' actions. We have not alleged that he suffers from unusually severe emotional distress, which is a specific -- a specific and explicit factor under Turner, which this Court and the Third Circuit and the Supreme Court held -- have talked about. And we have not alleged that Mr. Conforti suffers from clinical depression, anxiety as a result of defendants' actions.

And, Your Honor, I think my opposing counsel made reference to Your Honor's order with regards to the depositions. But the standards under Rule 26 and Rule 35 are extremely different. Rule 35 is the only rule that requires that there be in controversy. And the -- one of two rules under the federal rules of civil procedure that requires a showing of good cause. That is because unlike, as defendants assert in their papers -- defendants do not have a right to this extremely intrusive and invasive procedure of a plaintiff.

I think the Robinson case, Your Honor, from Florida -- and we cited in our brief -- is a illustrative of why the inquiry that is being proposed by opposing counsel is

out of balance. In that case, the plaintiff suffered from diagnosed PTSD. And, in fact, the plaintiff alleged that the PTSD was exacerbated by the discriminatory act at issue. And even in those circumstances an independent medical examination was not permitted because whether -- because whether there was exacerbation of that condition did not go to the specific claims made for -- that case -- and that the standard for the damages that were being asserted had to do with discrimination and standard garden-variety damages.

Your Honor, I would also argue that defendants' proposition that a history of gender dysphoria or a history of depression opens the door to an independent medical examination anytime a plaintiff has suffered standard emotional distress in a discrimination case would create a ruling which, after a deposition, opposing counsel would ask any plaintiff, do you have a history of depression? Do you have a history of clinical distress? And all of a sudden any victim of discrimination is open to an IME. There is a reason --

THE COURT: And that's why you rely on the Turner test?

MR. GONZALEZ-PAGAN: Well, that's in part why the Turner test, which has been adopted by the Third Circuit in Cominka [phonetic], the district -- this very court in the District of New Jersey has considered is important. And none

of those five factors are met here.

For one, there is no specific injury, mental disorder or otherwise that can be or is alleged to be attributed by the plaintiff to defendants' actions. That is one.

Two, we have explicitly stated that we do not intend to call an expert witness to verify or speak to the extent of Mr. Conforti's anxiety -- depress- -- distress and humiliation at the very act that he suffered.

However, Your Honor, I would make the caveat that that could change if an IME were to be ordered, because then the plaintiff would not be able to introduce evidence that the defendants then are going to introduce themselves.

THE COURT: Right.

MR. GONZALEZ-PAGAN: But it is our intent and we would offer to the Court that should an IME not be ordered, that is not something that we would do.

And, Your Honor --

THE COURT: And the emotional distress is not severe, I think you've conceded that.

MR. GONZALEZ-PAGAN: We've definitely conceded, Your Honor, that we make no allegation of any specific -- and when the term used in Turner has to do with unusually severe emotional distress, and we don't allege that either. In fact, I think that my very use of very term "standard

emotional distress" is what is being alleged here.

I would argue that the sleight of hand being posited here to confuse fact finder as to what are the issues of this case, as to whether Mr. Conforti has that diagnosable gender dysphoria as to whether there is or not medical necessity. It really is obfuscation and confusion for a fact finder and a jury, ultimately, because the question at issue is whether the reliance by the defendants on the ERDs for specifically stating in an email we will not schedule your hysterectomy, because as a Catholic hospital, we are not allowed to -- for the purposes of gender reassignment.

And that's not verbatim, off the top of my head, Your Honor, but that is exactly what is at issue here is whether the reliance on those ERDs for the denial of a hysterectomy because it was for the purposes of gender reassignment is discrimination under the LAD or under the Affordable Care Act. That is it. It's not whether Mr. Conforti has gender dysphoria. He does. He has testified to that fact in deposition. His medical providers have testified to that fact. Defendants got to depose two of them recently.

And I would further posit, Your Honor, that defendants now try to introduce this idea that gender dysphoria is in controversy, and, yet, they provide very to little no information about who the medical examiner is and

whether that person has any experience at all with transgender patients, let alone diagnosing gender dysphoria.

THE COURT: But isn't your main point, which is what I think you made and what I was trying to ascertain is gender dysphoria pertinent to anything? I mean, I think your position is, no, it doesn't matter, nor does medical necessity really matter for what is -- my understanding or your understanding of the defense in the case.

So that's -- you know, where's -- first of all, thank you. Let's -- tell me how gender dysphoria matters.

MR. MAYER: Well, Your Honor, going -- let's take a step back. Hysterectomies in general are not performed by OB/GYNs for any reason. You can't just walk off the street and meet with an OB/GYN and say I want to have a hysterectomy.

THE COURT: Right.

MR. MAYER: They will not do that. We've talked to scores of OB/GYNs at this point. They've all explained to us, that is not how it works. And that -- that's been an education for all of us, that that's how it works.

So you have to have a medical necessity to have a hysterectomy done. There has to be some condition, whether it's a condition of cancer --

THE COURT: So what if there's no medical necessity? I go back to that? What does that do to your

defense?

MR. MAYER: If there's no medical necessity, then -- then they would not perform a hysterectomy. So no -- no hysterectomy would be performed anywhere if there's no medical necessity.

So there has -- it has to be a medical necessity in this case. And that's why it is still an issue, Your Honor. Gender dysphoria is still an issue.

And plaintiff has recognized that. They have pled. They have argued that throughout the case, and they clearly intend to argue that at trial. So medical necessity is very much a part of this case.

And so -- and it -- and, of course, it ties into the ERDs as well. There is an exception under the ERDs that if there was a -- an injury to one of the organs, that we would perform the hysterectomy.

THE COURT: Right.

MR. MAYER: The Catholic institution would and could do it, which is really not any different than the evaluation that goes on at any hospital in America, save even for the fact that gender dysphoria, it's not a recognized condition that a hysterectomy could be performed.

Medical necessity still ties into that, though. I mean, they would not be able to do -- if there's no medical necessity in this case, St. Joseph's would not have had to do

the hysterectomy, period.

So it is still part of this case, and that's why gender dysphoria does matter --

THE COURT: Okay. I didn't understand that. I thought that you were relying on the ERDs. I didn't really -- unless I'm conflating things that shouldn't be conflated or deflating things or taking them apart.

Let me -- so a hospital performed the hysterectomy. So somebody determined from what you've just argued that there was a medical necessity. And --

MR. MAYER: No, Your Honor.

THE COURT: And you're questioning that determination?

MR. MAYER: No. What I'm suggesting is that it is still part of the case, because it is a threshold issue in this case as to whether or not there is discrimination. If there -- they basically would have no standing if there was no medical necessity. That's what I'm suggesting.

THE COURT: Okay. Okay.

MR. MAYER: And so I do think we --

THE COURT: I understand.

MR. MAYER: -- we're entitled to pursue that.

THE COURT: I understand.

MR. MAYER: I did want to address one point that Mr. -- or a couple of points that Mr. Pagan --

THE COURT: Go ahead.

MR. MAYER: But let me take them in order.

So I -- the first point, as I understood it, he was talking about that there can be a perception of discrimination, and that if you perceive someone to -- to be a protected category, that could be actionable discrimination. We don't dispute that.

I think what he's suggesting is that that -- because that exists, that would wipe out any opportunity to take that type of discovery, to have a medical examination, ever, in any case. And that's not the case here. And that's not this case anyways.

This case is he presented as having gender dysphoria, gender identity disorder, Mr. Conforti did. And that's what was presented to us.

So the perception issue is not part of this case.

And he was discussing the Turner decision, which I understand that's -- that is what they're hanging their hat on. I -- if -- you know, my concern is that there's a sleight of hand being done, we are concerned that it's being done by the plaintiff. We are very direct at -- in terms of what we want done here. We want to have a medical exam done. We're telling you why. We are concerned that Mr. Conforti at trial is going to broaden his testimony.

THE COURT: But that's not going to happen. I can

prevent that.

MR. MAYER: You can prevent that.

THE COURT: Yes.

MR. MAYER: But Mr. Pagan said that there is no issue about the severity of his emotional harm that was caused by St. Joseph's. That is not the case. They have pled in their complaint that when St. Joseph's denied the hysterectomy -- and this is in paragraph 9 of the complaint -- he became deeply depressed, and he felt great anxiety. And I -- Your Honor, I'm reading from your order, your August 15th order where you cited that.

It -- it's in issue here. You can't -- you can't ignore it. He does contend that that's what happened. And he, of course, has this -- this history, this great history of depression and of other stressors in his life, and -- you know, I am not going to go through all of them, but Your Honor knows about the family issues, the drug abuse, all these other issues. This is why we want to have the medical examination done by Dr. Reeves[phonetic].

THE COURT: Okay. I'm getting a better picture, tieing in gender dysphoria and medical necessity.

MR. MAYER: And, Your Honor --

THE COURT: Yeah.

MR. MAYER: -- when we're talking about that, I'm ignoring the emotional distress claim for that purpose --

THE COURT: Right. Right. Right.

Did you want to respond?

MR. GONZALEZ-PAGAN: Yes, Your Honor, if I may. Quickly, a couple of points. First, with regards to the gender dysphoria and its relevance let alone whether it's in controversy in this case, I think that defendants' now assertion that medical necessity played a role in their denial of the scheduling of the hysterectomy is a little too cute. We have an email --

THE COURT: I don't know that he's saying that.

MR. MAYER: I didn't say that.

THE COURT: Yeah.

MR. GONZALEZ-PAGAN: And explicitly saying that the reason why it wasn't allowed was because it was what -- for the purposes of gender reassignment. That's it. That is the reason why Mr. Conforti was denied a hysterectomy. And that is the reason -- the only question at issue is whether that is discrimination.

It doesn't matter if Mr. Conforti has actual diagnosed gender dysphoria. He does. Again, but it doesn't matter for purposes of evaluating that specific question, which is the main crux of this case. And a post hac rationalization as to the reasons why they could have denied it doesn't deny the fact that the reason that they denied it was because it was related to gender reassignment in writing,

in an email to the plaintiff.

And, ultimately, Your Honor, I would posit that some of the concerns alleged by opposing counsel don't play out. If there -- there is a reason that Rule 35 has a much higher standard than just relevance. It requires that the actual diagnosed condition be in actual controversy in the case, meaning that it is actually part of the fact -- not just the factual allegations, by the way, mere allegations in the complaint are insufficient to support a Rule 35 IME, as stated by the Supreme Court in Schleghauf. But that -- it's not just whether those allegations are important. It's not just whether the gender dysphoria at issue here played a role any of this case. It's whether it's actually in controversy, meaning it was a result of -- or attendant to the actions of the defendant.

And they're not. Mr. Conforti had gender dysphoria long before he encountered defendants. He had. He has --

THE COURT: 2014.

MR. GONZALEZ-PAGAN: Exactly, Your Honor. Long before.

And it has nothing to do with the reasons why he was denied the hysterectomy. The reason why he was denied the hysterectomy is because it related to his gender status and sex, because it was for the purpose of gender reassignment. Period.

Your Honor, I would also argue that their reliance on your order ignores another part that this Court already found in its prior order, which is that the Rule 26 standard is about relevance. And the only reason why the three medical providers were permitted to proceed with depositions of that -- of those, were because they were close in time to when the injury happened and they had pertinent information about what was the state of mind of the plaintiff at that moment in time.

THE COURT: Which is another concern that I have: How does an exam today be able to look backwards?

MR. GONZALEZ-PAGAN: And it did not. It doesn't need to, because we're not alleging some ongoing clinical harm or injury or mental disorder as a result of defendants' actions. We can't. Mr. Conforti was able to obtain this hysterectomy somewhere else.

THE COURT: Okay.

MR. GONZALEZ-PAGAN: So it really is about -- it really is about whether the actual discriminatory act was discriminatory and unlawful, and, as a result, the attendant standard emotional distress that one suffers. Of course, we alleged in the complaint Mr. Conforti felt humiliated, was saddened and distressed by it, as any person would, when you're trying to seek a medical service and you're denied that medical service because of who you are.

But that is not pertinent to whether an IME should be allowed in this case.

I should point out, Your Honor, that the question of medical necessity here, to the extent that defendants think that gender dysphoria is not a sufficient medical basis for a hysterectomy, that can be dealt with through expert testimony separately and apart from an intrusive, invasive, and rare independent medical examination. There is a reason why they don't have a right to pursue this and need to come to court for an order to compel.

And that is because it is something that is really intrusive, something that is, in many ways, harassing, and that has -- in no shape or form should be allowed unless there is actual information to be gleaned about the cause of action here.

And here the question is was the discriminatory act based on the denial of the hysterectomy because it was related to gender reassignment, discrimination on the basis of sex and transgender status, which is prohibited by the Affordable Care Act and the Law Against Discrimination of New Jersey.

THE COURT: Thank you. Did you -- you want to respond? I do have a concern about a lookback on mental condition, because that's what it would be. If you had a medical exam or psychiatric exam, how would that examiner be

able to look back to emotional distress at the time of the hysterectomy denial?

MR. MAYER: I am not sure I understand, Your Honor. You mean, how would he be able to evaluate --

THE COURT: So he'd be examined today.

MR. MAYER: Right.

THE COURT: Or tomorrow. And the evaluation would have to look back in time to the incident.

MR. MAYER: Right. Well, the evaluation would be what happened, what did you -- you know, what did you experience? What did you feel? And is it going on today? Which he testified that it is still going on, as of January 2019, he said it still upsetting me what happened. I don't think it's right. It still hurts me.

So their representation that it's not continuing, that's not what he testified at his deposition --

(Simultaneous conversation)

THE COURT: He said it upsets him, in person.

MR. MAYER: Right. He's still feeling it, as of today. So it didn't just end when he had the hysterectomy.

You know, frankly, we'd prefer it to be that way, but he's testified that it continues on and on. So that's why we need to evaluate --

THE COURT: But "it" is a big word here. He doesn't say --

MR. MAYER: It is a big word, but it's solving --

THE COURT: -- depression --

MR. MAYER: We're talking about his emotional harm. I mean that's -- this is the section of the deposition where we're going through that. And that's what he's talking about. He had just testified that, you know, he started feeling his emotional condition the day that he met with Dr. Day and felt that --

THE COURT: Right.

MR. MAYER: -- the hysterectomy was likely to be denied. So that -- you know, it did follow from that.

So, Your Honor, I -- to go back to over the points that Mr. Pagan made about the standard for Rule 35, we do agree it's a higher standard. And we've argued that on the briefing on the initial motion as well, because we point out the plaintiffs were using that higher standard at that time. They were arguing about garden-variety. They were arguing, essentially, good cause. So we made our arguments at that time to satisfy that standard, and we allege that we did satisfy that standard. And that's the portion of your -- your order that I was pointing to on page 7 where you discuss Jackson v. Chubb, which is --

THE COURT: Right.

MR. MAYER: -- has that dicta in there about the garden-variety emotional distress.

The Jackson v. Chubb case stands for the proposition that at the discovery stage, defendants are entitled to pursue relevant inquiries into complex emotional, psychological factors, which, as Your Honor stated, cannot be neatly reduced to garden-variety distress in this stage. And that was on page 8 of your order.

And there may have been one other point Mr. Pagan made, but it escaped me. I don't know if there's anything else you want me to address that he stated.

THE COURT: I think I've got enough.

MR. MAYER: Okay.

THE COURT: I am not going to rule from the bench. I want to review the transcript and rereview the briefing. And I've a lot to think about.

So --

MR. MAYER: Would you like us to submit the deposition transcripts from Tang and Batista?

THE COURT: You know what? Could you do that?

MR. MAYER: Sure.

THE COURT: Would you mind doing that on my orders email? That would -- that would be -- I don't think I need any other submissions on the legal issues. If you do, I'll call you.

MR. GONZALEZ-PAGAN: Your Honor, if I may, just a couple of quick points just to not leave unaddressed.

Counsel cited the cases out of the Fifth Circuit, give something -- that was an Eighth Amendment case involving the denial of care to a transgender person who was incarcerated.

The standard is much more different than there. It actually has to do with whether it is -- well, punishment that is unconstitutional on there -- the Eighth Amendment to deny that care. And for what it's worth, a subsequent authority -- and just to be clear, I would add was decided long before the papers were submitted in this case.

But for what it's worth, a subsequent authority after Gibson -- is the case of -- in -- out of the 9th Circuit, Edma [phonetic], the case Edma against the State of Idaho presenting the very same question, and not only denouncing the decision in Gibson v. Clear [phonetic] which was a split decision, Your Honor, I might point out, by a relatively conservative panel. But also finding that the medical necessity of gender-affirming surgery and the denial of a medical -- of medical necessary gender-affirming surgery to an incarcerated transgender inmate was actually a violation of the Eighth Amendment. Accepting not only the existence of the -- standards, but their controlling nature.

And I will point to the fact that the Seventh Circuit has also relied on the double impact standards in fields long ago, over a decade now.

And so I just wanted to correct that part of the

record.

Your Honor, I would also posit about the fact that -- really, to the extent the defendants are relying on Mr. Conforti's testimony that he felt hurt by the issue and he still feels hurt that it happened, not be glib about this, but I don't understand why -- what any medical examiner can say about somebody's feelings. They are feelings. And they're standard feelings that any person can have. They're not clinical. They're not diagnosable. They're not -- they don't rise to that level because that's not what we're alleging. There's no specific diagnosable, psychiatric or mental disorder that's alleged to have resulted from defendants' actions. And Mr. Conforti's testimony doesn't refute that. And, frankly, I would find it odd that there would be a medical examiner that would say, yes, you weren't hurt four years ago. You didn't feel sad four years ago when that happened.

There is nothing to be gleaned from this intrusive and harassing tool. And it is one that there -- a reason for which there is a much higher threshold standard than the simple relevance standard that exists under Rule 26. And even under that standard, some of the medical providers were not allowed to proceed before.

MR. MAYER: And to be clear, Your Honor, the Gibson case, you were only referring to to the extent that there was

a discussion of the WPATH standards, the protocol --

THE COURT: Right.

MR. MAYER: -- is not widely accepted.

THE COURT: Okay.

MR. MAYER: Or not universally accepted, I should say. And I think they cite to the first -- First Circuit as well for the proposition.

That was all. I wasn't comparing this case to Gibson.

THE COURT: Okay. I understand that.

You have a note there. Did you want to say something else?

MALE SPEAKER: No, Your Honor. Thank you.

THE COURT: All right. Thank you. And, again, my sincerest apologies for wasting your day, although it was worth it for me to hear oral argument on this.

We'll get right to it.

UNIDENTIFIED SPEAKERS: Thank you, Your Honor.

THE COURT: Thank you.

(Conclusion of proceedings at 1:45 P.M.)

Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 36 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

S/ *Sara L. Kern* 11th of December, 2019

Signature of Approved Transcriber Date

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EXHIBIT 14

JIONNI CONFORTI Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al., Defendants.	Civ. No. 2:17-cv-00050-CCC-CLW **OPINION & ORDER**

Introduction

This matter comes before the Court on Defendants St. Joseph's Healthcare System, Inc., St. Joseph's University Medical Center, Inc., and Father Martin D. Rooney's ("Defendants") Motion To Compel Mental Examination of Plaintiff. (ECF No. 96). The Court heard oral argument on December 3, 2019. For the reasons stated below, Defendants' Motion is **DENIED**.

Background

The factual background of this matter is discussed at length in the Court's August 15, 2019 Opinion and Order granting in part and denying in part Plaintiff's Motion to Quash and for a Protective Order. (ECF No. 104). This section will address the additional facts relevant to this Motion.

Defendants move to compel Plaintiff Jionni Conforti ("Plaintiff") to appear for an independent medical examination ("IME"), to be conducted by psychiatrist Donald Raymond Reeves, Jr., M.D. (Def.'s Br., ECF No. 97, at p. 12). Dr. Reeves's examination would include: "a mental status examination, a developmental history, a psychiatric history (including treatments for psychiatric and psychological conditions), a family history, an education and work history, and the history of Plaintiff's alleged gender dysphoria." (*Id.*). During the IME, Dr. Reeves would assess the extent and duration of Plaintiff's alleged emotional distress, depression and anxiety, other

causes of Plaintiff's mental distress aside from Defendants' refusal to perform a hysterectomy, Plaintiff's treatment for his mental health issues, Plaintiff's gender dysphoria diagnosis, and the effect of Plaintiff's hysterectomy on his gender dysphoria. (*Id.* at pp. 12-13). Defendants estimate that the IME would last four hours. (*Id.* at p. 13).

Legal Standard

Under Federal Rule of Civil Procedure 35, the "court…may order a party whose mental or physical condition is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner." Fed. R. Civ. P. 35(a)(1). The court may only order such an examination upon a motion demonstrating "good cause" for the examination. *Id.* 35(a)(2)(A).

In *Schlagenhauf v. Holder*, the Supreme Court held that Rule 35 imposes a higher standard on movants than "mere relevance." 379 U.S. 104, 118, 85 S. Ct. 234, 242, 13 L. Ed. 2d 152 (1964). A party seeking to compel an IME must meet two requirements that flow from the language of Rule 35. The movant must make "an affirmative showing" that (1) the subject's condition "is really and genuinely in controversy" and (2) "good cause exists" for the examination. *Id. Schlagenhauf* directs trial courts to make a "discriminating application" of these "limitations prescribed by [Rule 35]." *Id.* at 121.

In keeping with the heightened standard for Rule 35 examinations, the Third Circuit has endorsed the five-part test in *Turner v. Imperial Stores*, 161 F.R.D. 89, 95 (S.D. Cal. 1995) for determining if a party's mental condition is truly "in controversy." *Kuminka v. Atl. Cty. New Jersey*, 551 F. App'x 27, 29 (3d Cir. 2014). Under the *Turner* test, a garden variety emotional distress claim is "insufficient to place the plaintiff's mental condition 'in controversy' for purposes of Rule 35(a)." *Id.* (quoting *Bowen v. Parking Auth. Of City of Camden,* 214 F.R.D. 188, 193 (D.N.J. 2003)). The movant must demonstrate that, in addition to an emotional distress claim, one

or more of the following factors is present: (1) "a cause of action for intentional or negligent infliction of emotional distress;" (2) "an allegation of a specific mental or psychiatric injury or disorder;" (3) "a claim of unusually severe emotional distress;" (4) "plaintiff's offer of expert testimony to support a claim of emotional distress;" and/or (5) "plaintiff's concession that his or her mental condition is 'in controversy' within the meaning of Rule 35(a)." *Id.* (holding that a Rule 35 examination was warranted because plaintiff "explicitly included a cause of action for intentional infliction of emotional distress in her complaint").

Discussion

The Court must first determine if Plaintiff has placed a mental health condition "in controversy" under the *Turner* test. Plaintiff does not assert a cause of action for intentional or negligent infliction of emotional distress, nor does he allege a claim of unusually severe emotional distress. Plaintiff does not plan to offer expert testimony to support his emotional distress damages. Therefore, out of the five *Turner* factors, only two are potentially applicable here: (1) "an allegation of a specific mental or psychiatric injury or disorder" and (2) "plaintiff's concession that his or her mental condition is 'in controversy' within the meaning of Rule 35(a)." Defendants argue that Plaintiff has placed his mental condition "in controversy" by alleging that he suffers from three specific psychiatric disorders – depression, anxiety, and gender dysphoria. (Def.'s Br., ECF No. 97, at pp. 14-15).

The Court will first address whether Plaintiff has placed his depression and anxiety diagnoses "in controversy." Within the context of the broad relevance standard under Federal Rule of Civil Procedure 26 and the broad waiver rules for the patient-psychotherapist privilege, the Court previously found that Defendants were entitled to explore the extent and causes of Plaintiff's emotional distress by deposing three of his medical providers. (Opinion and Order, ECF No. 104,

at p. 8). The same logic does not extend to Rule 35 examinations, which are subject to a separate and more exacting standard than other forms of discovery. Plaintiff's history of depression and anxiety, no matter how extensive or complicated, cannot on its own sustain Defendants' burden under Rule 35.

Plaintiff has not placed his depression and anxiety "in controversy" within the meaning of Rule 35. Plaintiff has repeatedly reiterated that his damages will be limited to "standard" emotional distress, and Plaintiff has represented that he will not introduce evidence that Defendant's conduct caused or exacerbated any clinical conditions. (Pl.'s Opp., ECF No. 100, at p. 12; Transcript of Oral Argument, at pp. 19:2-25, 20:1). Plaintiff's characterization of his damages claim is consistent with the language in the Complaint, which contains standard language concerning the emotional distress damages typically sought in discrimination cases. (Compl., ¶¶ 99, 101). At his deposition, Plaintiff described his mental distress at the time Defendants denied the hysterectomy in 2015 in general terms: "I was upset. There was definitely emotional distress and hurt…shame and of course some depression." (Ex. A to Mayer Declaration, ECF No. 97-2, at p. 162:8-11).

Defendants argue that courts are particularly inclined to find that a plaintiff's mental condition is in controversy when the plaintiff alleges that his emotional distress is ongoing. (Def.'s Br., ECF No. 97, at pp. 14, 16-17). However, Plaintiff has testified about his ongoing emotional distress in a colloquial manner. When asked about his "emotional condition" on the day of the January 2019 deposition, Plaintiff stated "[i]t still upsets me what happened. I don't think it's right. It still hurts me." (Ex. A to Mayer Declaration, ECF No. 97-2, at p. 163:1-2). Courts have consistently found that an allegation of ongoing mental distress exposes a plaintiff to a Rule 35 examination only when the plaintiff intends to seek damages for symptoms or conditions that are more severe than general emotional distress. *See, e.g., McLaughlin v. Atl. City*, 2007 WL 1108527,

at *5; *Bowen*, F.R.D. 188 at 193; *Montana v. Cty. of Cape May Bd. of Freeholders*, No. CIV. 09-0755 NLH/JS, 2013 WL 5724486, at *6 (D.N.J. Oct. 18, 2013).

Defendants similarly have not demonstrated that Plaintiff's gender dysphoria diagnosis is "in controversy" for purposes of adjudicating Plaintiff's discrimination claims and Defendants' affirmative defenses. Plaintiff correctly notes that at no point – either at the time that Defendants denied the hysterectomy or in the course of their defense of this action – have Defendants asserted that they refused to perform a hysterectomy because Plaintiff does not suffer from gender dysphoria. (Pl.'s Opp., ECF No. 100, at p. 20). Rather, the liability determination in this matter turns on whether Defendants denied Plaintiff treatment for impermissible discriminatory reasons – namely, because the Ethical and Religious Directives prevented Defendants from performing a hysterectomy for gender reassignment purposes. (Transcript of Oral Argument, at pp. 15:9-16:15).

At oral argument, Defendants suggested that whether Plaintiff's hysterectomy was truly medically necessary is a "threshold issue," because Plaintiff "would have no standing if there was no medical necessity." (Transcript, at p. 23:14-18). This appears to be a novel argument – in their Answer, Defendants assert that Plaintiff lacks standing because his subsequent hysterectomy renders his claim for injunctive relief moot, not because a hysterectomy was not medically necessary to treat Plaintiff's gender dysphoria. (Def.'s Answer, ECF No. 8, at p. 14).

Even if Plaintiff had placed his depression, anxiety, or gender dysphoria in controversy here, Defendants' Rule 35 application still fails for lack of good cause. Defendants state that Plaintiff's complex history of depression and anxiety, his gender dysphoria diagnosis, and potential contributing factors to Plaintiff's emotional distress other than Defendants' conduct are "highly relevant" to both liability and damages. (Def.'s Br., ECF No. 97, at p. 20). *Schlagenhauf* makes clear that relevance is an insufficient basis for a finding of good cause.

The good cause analysis is fact-sensitive, and "what may be good cause for one type of examination may not be so for another." *Schlagenhauf*, 379 U.S. at 118. If the movant can obtain the desired information through other discovery methods, there is no good cause for conducting a Rule 35 examination to obtain that information. *Id.* "[A] request to examine a party will be denied when the information that can be obtained from a Rule 35 examination is available through other means." *McLaughlin*, 2007 WL 1108527, at *4 (surveying cases).

That is the case here. Defendants possess medical records for January 11, 2011 through August 23, 2018 from Plaintiff's relevant medical providers. Additionally, the Court allowed Defendants to depose the three providers whose treatment is at the center of Plaintiff's allegations. (ECF No. 104). Defendants have since deposed Dr. Ian Tang, the doctor who diagnosed Plaintiff with gender dysphoria and supervised Plaintiff's treatment for that condition, as well as Rissy Batista, the psychologist who treated Plaintiff in the runup and aftermath to Plaintiff's gender reassignment surgery. (Transcript of Oral Argument, at p. 7:4-12). Defendants have also deposed Plaintiff's primary care doctor, Dr. Joseph Vitale. These deposition transcripts were submitted to the Court for in camera review in connection with this Motion.

In light of the comprehensive discovery available to Defendants, Defendants have failed to present a convincing argument for why the Court should compel Plaintiff to submit to an IME. The Court does not dispute that "plaintiff's psychological history is relevant to [Plaintiff's] claim that the emotional distress emanated from" Defendants' actions. *Bowen*, 214 F.R.D. at 195. However, Defendants have already had the opportunity to "question the plaintiff on these issues, request psychological records, and depose [his therapist] on [her] treatment of the plaintiff." *Id.* (denying motion for Rule 35 examination where plaintiff alleged he suffered emotional distress

because of his work environment and plaintiff's treating physician testified that plaintiff's work environment exacerbated his depression).

Defendants point the Court to the vagueness of some information in Plaintiff's medical records concerning his emotional distress. (Def.'s Br., ECF No. 97, at p. 18). For example, Plaintiff attended a therapy session with Ms. Batista shortly after Defendants denied the hysterectomy in June 2015, and her records indicate that Plaintiff exhibited only mild anxiety that was not attributed to a specific cause. (*Id*). These shortcomings do not entitle Defendants to compel Plaintiff to sit for an IME. Over four years have passed since the alleged discriminatory incident at issue here. There is little marginal benefit to probing these ambiguities by having Dr. Reeves reevaluate Plaintiff's emotional distress years after the fact. *See McLaughlin v. Atl. City*, 2007 WL 1108527, at *4 (a "difference of opinion [among past physicians] does not necessitate that yet another examination be done, especially when the purpose of the exam is to give an opinion of the patient's mental status 3 ½ years ago.").

At oral argument, Defendants also raised doubts concerning the deposition testimony of Dr. Tang and Ms. Batista. For example, Defendants note that Dr. Tang and Ms. Batista diagnosed Plaintiff based on self-reported symptoms, as is the case with many psychiatric conditions. (Transcript of Oral Argument, at pp. 7:5-25, 8:1-7). Also, Dr. Tang relied on the World Professional Association for Transgender Health ("WPATH") protocol, which Defendants claim is not "universally accepted," to guide his treatment of Plaintiff. (*Id.* at pp. 8:8-25). Finally, rather than Dr. Tang and Ms. Batista independently concluding that a hysterectomy was medically necessary, Plaintiff gave these providers form letters about the hysterectomy's medical necessity to submit to Plaintiff's insurance carrier. (*Id.* at p. 10:8-13).

Where a movant can explore a party's psychiatric condition through other discovery methods, the movant must "produce more than conclusory statements by a psychiatric expert to support its burden of proof" that it is entitled to an IME under Rule 35. *McLaughlin*, 2007 WL 1108527, at *3. Defendants have not sustained their burden of specifically demonstrating that the extraordinary remedy of a Rule 35 examination is necessary here. Defendants argued in a conclusory manner that Dr. Tang and Ms. Batista's testimony raised questions that can only be answered by allowing Dr. Reeves to conduct his own examination of Plaintiff. However, Defendants have not produced any declarations or certifications regarding either Dr. Reeves's qualifications for the diagnosis and treatment of gender dysphoria or his ability to reevaluate Dr. Tang and Ms. Batista's diagnostic techniques and the WPATH treatment protocol by conducting a psychiatric examination of Plaintiff at this stage.

Conclusion

For the reasons stated above, Defendants' Motion to Compel Mental Examination of Plaintiff is **DENIED**. The Clerk shall terminate ECF No. 96 upon entry of this Opinion and Order.

1/21/20

s/Cathy L. Waldor
CATHY L. WALDOR
United States Magistrate Judge

EXHIBIT 15

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JIONNI CONFORTI, Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER D/B/A ST. JOSEPH'S REGIONAL MEDICAL CENTER, and FATHER MARTIN D. ROONEY, Defendants.	Honorable Claire C. Cecchi, U.S.D.J. Honorable Cathy L. Waldor, U.S.M.J. Case No. 2:17-cv-00050 (CCC/CLW)

DECLARATION OF DONALD RAYMOND REEVES, JR., M.D.

DONALD RAYMOND REEVES, JR., M.D. declares as follows:

1. I have been retained by counsel for Defendants St. Joseph's Health, Inc., St. Joseph's University Medical Center, Inc., and Father Martin D. Rooney (collectively, "Defendants") to serve as an expert witness in this matter.

2. I am a physician specializing in psychiatry, licensed in the States of New Jersey and New York, and board certified in Psychiatry and the subspecialty of Forensic Psychiatry. My Curriculum Vitae is included with this declaration as Attachment A. If called as a witness, I could and would competently testify to these facts as set forth herein.

3. By way of brief biographical background, I obtained my undergraduate degree from Princeton University with a major in psychology in 1986 and obtained my medical degree from the University of Texas Southwestern Medical Center in 1991. Thereafter, I attended my medical residency in psychiatry and participated in a fellowship program in psychiatry, both at St.

Vincent's Hospital in New York, New York. I presently maintain a private practice at my medical office, Hydrangea Hill Psychiatric Associates, Inc., located at 112 Raymond Avenue, South Orange, New Jersey 07079.

4. I have written numerous peer-reviewed bibliographies and participated in countless lectures and conferences relating to the field of psychiatry. Among other lectures and conferences, on August 7, 2014, I participated in a statewide lecture for University Correctional Health Care clinicians concerning the diagnosis and treatment of gender dysphoria.

5. My psychiatric experience has been diverse. In my practice of psychiatry, I have extensive experience in diagnosing and treating patients with mental disorders. I have treated psychiatric in-patients and out-patients for serious and less serious mental conditions and have extensive experience in short- and long-term psychotherapy, as well as pharmacotherapy. I am familiar with the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), including the DSM-5's definition of the condition known as "gender dysphoria." I have the competency and experience to diagnose gender dysphoria. I am also familiar with treatments for gender dysphoria.

6. My proposed examination of plaintiff Jionni Conforti, if allowed by the Court, would consist of a mental status examination, a developmental history, a psychiatric history (including treatments for psychiatric and psychological conditions), a family history, an education and work history, and the history of Plaintiff's alleged gender dysphoria. This would include taking a history of Mr. Conforti's present psychiatric complaints, including subjective psychological symptoms and objective signs, as well as inquiring into causal factors. This will include a history of the changes over time in Mr. Conforti's psychological and/or emotional signs or symptoms since the onset of any psychological or emotional distress reportedly

connected to the denial of his request for a hysterectomy to be performed at St. Joseph's as described in the Complaint. In addition, I will inquire into any past history of emotional distress and psychological symptoms and signs, including any similarity or contribution to Mr. Conforti's claim of emotional distress, psychological symptoms and signs, and impairment and/or disability, if any. I will ask Mr. Conforti about any past psychiatric, psychological and/or mental health treatment, as well as the hysterectomy that I understand was performed at a hospital other than St. Joseph's to determine the effectiveness of such treatment and whether he had any residual emotional distress, psychological symptoms and signs, and psychiatric impairment and/or disability, if any. Drug and alcohol history also reveals important information about potential causal factors of past and current psychiatric disability.

7. I intend to assess the following topics if I am permitted to examine Mr. Conforti: Plaintiff's alleged emotional distress, depression and anxiety that purportedly were caused by Defendants' conduct described in the Complaint, including the extent and duration of same, other potential causes of Plaintiff's alleged distress/depression/anxiety and the treatment Plaintiff has undergone (including medications) for same; and Plaintiff's claimed gender dysphoria and the impact on the dysphoria symptoms of the hysterectomy that Plaintiff underwent at a different hospital.

8. Based on my review of Mr. Conforti's allegations in the Complaint, his deposition testimony in this matter, and medical records from various medical providers who have evaluated and treated Mr. Conforti, my professional opinion is that a comprehensive forensic psychiatric clinical examination of Mr. Conforti, given his known preexisting psychiatric disorder, is necessary to assess the psychiatric distress he claims he suffered as a result of the denial of his hysterectomy.

9. If permitted by the Court, I would conduct the mental examination of Mr. Conforti at my medical office, which I believe is approximately 15 miles from his residence.

I declare under penalty of perjury that the foregoing is true and correct.

Donald R. Reeves, Jr., M.D.

Donald Raymond Reeves, Jr., M.D.

Dated: February 5, 2020

EXHIBIT A

Donald (Rusty) Raymond Reeves, Jr., M.D.
Curriculum Vitae

PERSONAL DATA:

Name: Donald (Rusty) Raymond Reeves Jr., MD

Private Practice: Hydrangea Hill Psychiatric Associates, Inc., 112 Raymond Ave., South Orange, New Jersey 07079; (973)-378-9599; fax: (973) 378-9599; e-mail: dreeves11@optonline.net

University Office: Dept. of Psychiatry, Rutgers U. – Robert Wood Johnson Medical School 671 Hoes Lane, Piscataway, NJ 08854; (732) 235-4433; e-mail: rusty.reeves@rutgers.edu

UCHC Office: P.O. Box 863, Bates Building, 2nd Floor, Whittlesey Road, Trenton, NJ 08625 (609) 292-3096 x5228; fax: (609) 341-9380

EDUCATION:

Undergraduate: Princeton University, Princeton, New Jersey, 1982 to 1986; Degree: B.A. with Highest Honors; Major: Psychology

Medical School: University of Texas Southwestern Medical Center, Dallas, Texas, September, 1986 to May, 1988, and July, 1989 to May, 1991; Degree: M.D.

POSTDOCTORAL TRAINING:

Internship: St. Vincent's Hospital, New York, New York, July, 1991 to June, 1992

Residency: Psychiatry, St. Vincent's Hospital, New York, New York, July, 1992 to June, 1995

Fellowship: Forensic psychiatry, St. Vincent's Hospital, New York, New York, July, 1997 to June, 1998

LICENSURE:

New Jersey – #25MA06641000, expiration 06/30/21

New York – #192287, expiration 11/30/20

CERTIFICATIONS:

Distinguished Fellow of the American Psychiatric Association, December 15, 2015

American Board of Psychiatry and Neurology, Diplomate in Psychiatry, #43883, expiration 12/31/27

American Board of Psychiatry and Neurology Diplomate in Forensic Psychiatry, #1184, expiration
12/31/27

NARCOTICS CERTIFICATION:

New Jersey CDS #D076483, expiration 10/31/19

DEA #BR4142270, expiration 04/30/21

DEA #FR1278868, expiration 04/30/21

UNIVERSITY APPOINTMENTS:

Instructor, New York Medical College, July 1994 to June, 1995

Assistant Professor of Psychiatry and Behavioral Sciences, New York Medical College 1997 to 1999

Assistant Professor of Psychiatry, University of Medicine and Dentistry of New Jersey, 1999 to April, 2005

Associate Professor of Psychiatry, Rutgers University (formerly University of Medicine and Dentistry of New Jersey), April, 2005 to June, 2017

Professor of Psychiatry, Clinical Educator Track, Rutgers University July, 2017 to present

HOSPITAL APPOINTMENTS:

Atlanticare Hospital, Lynn, Massachusetts, July, 1995 to January, 1996

Bayridge Hospital, Lynn, Massachusetts, January, 1996 to June, 1997

St. Vincents Hospital, New York, New York, 1997 to 2000

Kirby Forensic Psychiatric Center, New York, New York, 1998 to 1999

University Hospital, Newark, NJ, 1999 to 2005

PROFESSIONAL POSITIONS:

St. Vincent's Hospital, Westchester Branch, moonlighting, 1993 to June, 1995

Atlanticare Hospital (Choate Health Systems), Lynn, Massachusetts, staff psychiatrist, July 1995 to
January, 1996

Bayridge Hospital (Choate Health Systems), Lynn, Massachusetts, staff psychiatrist, January 1996

to June 1997

St. Vincent's Hospital, New York, New York, attending community consultation psychiatrist, July
1997 to April, 1998 (job sites: Flemister House, a day-treatment program for persons with AIDS; Manhattan Detention Center (the Manhattan jail), July 1997 - December 1997)

St. Barnabus Hospital, January, 1998 to July, 1998, staff psychiatrist at the Manhattan Detention Center

Kirby Forensic Psychiatric Center, New York, New York, staff psychiatrist, August, 1998 to September, 1999

University of Medicine and Dentistry of New Jersey, Newark, NJ, consultant to Greystone Park Psychiatric Hospital, September, 1999 to November, 2004

Correctional Medical Services, staff psychiatrist, December, 2002 to November, 2004

Rutgers University (formerly University of Medicine and Dentistry of New Jersey), University Correctional Health Care, Piscataway, NJ, Director of Psychiatry, November, 2004 to June, 2017

Rutgers University (formerly University of Medicine and Dentistry of New Jersey), University Correctional Health Care, Piscataway, NJ, Director of Psychiatry and Director of Mental Health, July, 2017 to present

AWARDS AND HONORS:

Undergraduate: Princeton University, Graduated with Highest Honors

Henry Crosby Warren Senior Prize in Psychology

Residency: Mead-Johnson Award for Outstanding Psychiatric Resident, 1994 - 1995

Post-residency: Distinguished Fellow of the American Psychiatric Association, 2015

Remarkable Achievement award, New Jersey Psychiatric Association, 2012

Teacher of the year award, New Jersey Medical School, 2012 – 2013

Recognition of service as President of the Tri-State Chapter of the American Academy of Psychiatry and the Law, January, 2007 to January, 2009

Distinguished Alumnus Award, St. Vincents Hospital, June, 2005

Teacher of the year award, New Jersey Medical School, 2001 – 2002

Recognition of exceptional service at Kirby Forensic Psychiatric Center, November, 1998 to January 1999

COMMITTEES:

Drug and Therapeutics Committee, Kirby Forensic Psychiatric Center, August, 1998 to September, 1999

Pharmacy Committee, Kirby Forensic Psychiatric Center, August, 1998 to September, 1999

Cabinet Committee, Kirby Forensic Psychiatric Center, August, 1998 to September, 1999

Tri-state AAPL (American Academy of Psychiatry and the Law), Conference Co-Chairman: "Sex, Psychiatry and the Law," January, 1999

Tri-State AAPL, Conference Chairman: "Mental Health Law Review," March, 1999

Tri-State AAPL, Conference Chairman: "Neuroscience in Forensic Psychiatry," January, 2000

Executive Committee, Tri-State AAPL, January, 2000 to January, 2007, and January, 2009 to present

President, Tri-State Chapter of the American Academy of Psychiatry and the Law, January, 2007 to January, 2009

Psychiatry residency Program Evaluation Committee member, Dept. of Psychiatry, Rutgers – Robert Wood Johnson Medical School, 2015 to present

PROFESSIONAL SOCIETIES:

American Medical Association, 1992 to present

American Psychiatric Association, 1992 to present

American Academy of Psychiatry and the Law, 1997 to present

New Jersey Psychiatric Association, 2000 to present
Forensic Consultant 2012 to present

American Society for Adolescent Psychiatry, 2002 to 2010

New York County Medical Society, 1992 to 1995, and 1997 to 1999

New York County District Branch Legislative Committee, 1993 - 1995

RESEARCH INTERESTS:

Correctional psychiatry

CLINICAL REPSPONSIBILITIES:

Atlanticare Hospital (Choate Health Systems), Lynn, Massachusetts, July 1995 to January 1996: emergency evaluations and admissions

Bayridge Hospital (Choate Health Systems), Lynn, Massachusetts, January 1996 to June 1997: emergency evaluations, admissions, inpatient treatment, and outpatient follow-up

St. Vincent's Hospital, New York, New York, July 1997 to April, 1998: Flemister House: out-patient evaluation and follow-up of patients with AIDS and substance abuse; Manhattan Detention Center: intake evaluation and follow-up of jail inmates

St. Barnabus Hospital, New York, New York, January 1998 to July, 1998: Manhattan Detention Center: intake evaluation and follow-up of jail inmates

Kirby Forensic Psychiatric Center, New York, New York, August, 1998 to September, 1999: admission and treatment of male patients (patients found incompetent to stand trial, patients found not guilty by reason of insanity, and patients too violent to be managed in a civil facility)

University of Medicine and Dentistry of New Jersey, Newark, NJ, September 1999 to November, 2004: Greystone Park Psychiatric Hospital: consultation on difficult psychiatric patients, particularly forensic patients; teaching staff psychiatrists elements of forensic psychiatry

Correctional Medical Services, Rahway, NJ, December, 2002 to November, 2004: staff Psychiatrist at East Jersey State Prison

Rutgers University (formerly University of Medicine and Dentistry of New Jersey), University Correctional HealthCare, Piscataway, NJ, November, 2004 to present: Director of Psychiatry (administrator and chief psychiatrist for the provision of mental health care to New Jersey's state inmates)

ADMINISTRATIVE RESPONSIBILITIES:

Chief Resident in Psychiatry, St. Vincent's Hospital, New York, New York, July, 1994 to June, 1995

Medical Director of Emergency Psychiatric Services, Bayridge Hospital, Lynn, Massachusetts, January, 1996 to June, 1997

President, Medical Staff Organization, Kirby Forensic Psychiatric Center, New York, New York, 1998 to 1999

Developed a forensic psychiatry fellowship, University of Medicine and Dentistry of New Jersey – New Jersey Medical School, Newark, NJ, September 2000 to February, 2002. Funding was not obtained for the fellowship, but the work led to the eventual successful creation of the fellowship as described below.

Rutgers University (formerly University of Medicine and Dentistry of New Jersey), University Correctional HealthCare, Piscataway, NJ, November, 2004 to June, 2017: Director of Psychiatry (administrator and chief psychiatrist for the provision of mental health care to New Jersey's state inmates)

Rutgers University (formerly University of Medicine and Dentistry of New Jersey), Robert Wood Johnson Medical School, Piscataway, NJ, January, 2009 to present: Forensic Psychiatry

Training Director (founder and director of forensic psychiatry training program at the medical school)

Rutgers University (formerly University of Medicine and Dentistry of New Jersey), University Correctional HealthCare, Piscataway, NJ, July, 2017 to present: Director of Psychiatry and Director of Mental Health (chief psychiatrist and chief mental health professional for the provision of mental health care to New Jersey's state inmates)

PRIVATE PRACTICE:

St. Vincents Psychiatric Associates, 201 W. 12th St., New York, New York 10011
July 1997 to July, 1999

Forensic psychiatry, July, 1999 to present

BIBLIOGRAPHY (PEER-REVIEWED):

Zgobo, K., Reeves, R., Debilio, L., and Tamburello, A. Criminal Recidivism in Inmates with Mental Illness and Substance Use Disorders, in progress.

Reeves, R. Forensic considerations, in *Sex Offenders: Identification, Risk Assessment, Treatment, and Legal Issues, 2nd Edition,* Eds. Saleh, F., Grudzinskas, A., Bradford, J. and Brodsky, D., Oxford University Press. In press.

Reeves, R., Rosner, R., Reiss, D. Waheed, W. Training and education for mental health professionals, in *The Wiley International Handbook of Psychopathic Disorders and the Law, 2nd Ed.,* Eds. Felthous, A. and Sass, H. Oxford: Wiley. In press.

Reeves, R., Tamburello, A., Platt, J., Tepper, D. and Edelman K. Characteristics of inmates who participate in hunger strikes. Journal of the American Academy of Psychiatry and the Law, 45:302-310, 2017.

Tamburello, A., Kathpal, A., Reeves, R. Characteristics of inmates who misuse prescription medication. Journal of Correctional Health Care, 23(4):449-458, 2017.

Reeves, R., Tamburello, A. and DeBilio, L. Metabolic syndrome prevalence and reduction in Inm ates prescribed antipsychotic medication. Journal of Correctional Health Care, 23(2):203-213, 2017.

Reeves, R., Rosner, R., Gunn, J., Reiss, D. and Bourget, D. Education and training in forensic psychiatry, in *Principles and Practice of Forensic Psychiatry,* Eds. Rosner, R. and Scott, C. London: NY,NY: CRC Press, Taylor and Francis, 2016, pp. 59-63.

Reeves, R., Rosner, R., Gunn, J., Reiss, D. Waheed, W. and Igarashi, Y. Forensic psychiatry – education, training and certification, in *Encyclopedia of Forensic and Legal Medicine, 2nd Ed.,* Eds. Payne-James, J. and Byard, R. Oxford: Elsevier, 2015, pp. 615-620.

Reeves, R., and Rosner, R. Forensic psychiatric assessment, in *Encyclopedia of Forensic and Legal Medicine, 2nd Ed.,* Eds. Payne-James, J. and Byard, R. Oxford: Elsevier, 2015, pp.610-614.

Salem, A., Kushnier, A., Dorio, N. and Reeves, R. Involuntary antipsychotic medication reduces disciplinary charges among mentally ill inmates. Journal of the American Academy of Psychiatry and the Law, 43:159-164, 2015.

Li, I., Brewer, A. and Reeves, R. Hypnotic Agents and Controlled Substances. In *The Oxford Textbook of Correctional Psychiatry*, Eds. Trestman, R., Appelbam, K. and Metzner, J. NY, NY: Oxford University Press, 2015, pp. 155-158.

Dickert, J., Williams, J., Reeves, R., Gara, M. and DeBilio, L Decreased mortality rates of inmates with mental illness after a tobacco-free prison policy. Psychiatric Services, 66(9):975-979, 2015.

Tamburello, A., Bajgier, J. and Reeves, R. The prevalence of delusional disorder in prison. Journal of the American Academy of Psychiatry and the Law, 43(1):82-86, 2015.

Reeves, R. and Tamburello, A. Single cells, segregation and suicide in prison. Journal of the American Academy of Psychiatry and the Law, 42:489-494, Dec., 2014.

Reeves, R., Brewer, A, DeBilio, L., Kosseff, C. and Dickert, J. Benefits of a department of corrections partnership with a health sciences university: New Jersey's experience. Journal of Correctional Health Care, 20(2):144-153, April, 2014.

Tamburello, A., Lieberman, J., Baum, R., and Reeves, R. Successful removal of quetiapine from a correctional formulary. Journal of the American Academy of Psychiatry and the Law, 40:502-508, Dec., 2012.

Reeves, R. Guideline, education and peer comparison reduce prescriptions of benzodiazepines and low-dose quetiapine in prison. Journal of Correctional Health Care, 18(1), Jan. 2012, pp. 41-48.

Reeves, R., Kaldany, H., Lieberman, J. and Vyas, R. Creation of a metabolic monitoring program for second-generation (atypical) antipsychotics. Journal of Correctional Health Care, 15(4), Oct. 2009, pp. 292-301.

Reeves, R. and R. Rosner. Forensic considerations, in *Sex Offenders: Identification, Risk Assessment, Treatment, and Legal Issues*, Eds. Saleh, F., Grudzinskas, A., Bradford, J. and Brodsky, D., Oxford University Press, 2009, pp. 379-385.

Reeves, R., Rosner, R., Bourget, D., and J. Gunn. Training and education for mental health professionals, in *International Handbook on Psychopathic Disorders and the Law*, Ed. Alan R. Felthous and Henning Saβ, West Sussex, England: Wiley, 2007, pp. 505-518.

Reeves, R. Richard Rosner, MD: Pioneer in forensic psychiatry. Journal of the American Academy of Psychiatry and the Law, 34(2), 2006.

Reeves. R. and R. Rosner. Forensic psychiatry – Education, training and certification, in *Encyclopedia of Forensic and Legal Medicine*, Ed. Jason Payne-James, Roger W. Byard, Tracey S. Corey and Carol Henderson, Oxford: Elsevier, 2005, pp. 350 - 354.

Reeves, R. and R. Rosner. Forensic psychiatry and forensic psychology – Assessment, in *Encyclopedia of Forensic and Legal Medicine*, Ed. Jason Payne-James, Roger

W. Byard, Tracey S. Corey and Carol Henderson, Oxford: Elsevier, 2005, pp. 355 - 358.

Reeves, R. "Voluntary" hospitalization of adolescents, in *Adolescent Psychiatry: The Annals of the American Society for Adolescent Psychiatry, Vol. 28*, Hillsdale, NJ: Analytic Press, 2004, pp. 47-58.

Reeves, R. Violent offenders, in *Textbook of Adolescent Psychiatry*, Ed. Richard Rosner, London: Arnold, 2003, pp. 470 - 481.

Reeves, R. and R. Rosner. Education and training in forensic psychiatry, in *Principles and Practice of Forensic Psychiatry, 2nd Ed.* Ed. Richard Rosner, London: Arnold, 2003, pp. 52 – 55.

Reeves, D, and S. Billick. Neuroimaging in forensic psychiatry, in *Principles and Practice of Forensic Psychiatry, 2nd Ed.* Ed. Richard Rosner, London: Arnold, 2003, pp. 724-727.

Reeves, D., J. Brodie, S. Billick, and M. Mills. Limitations of brain imaging in forensic psychiatry. J. Amer. Acad. Psychiatry and the Law, 31:89-96, 2003.

Rogers, H.B., D.R. Reeves, T. Schroeder, N.H. Secher, and J.H. Mitchell. Cerebral blood flow during static exercise in humans. J. Applied Physiology, 1990.

Mitchell, J.H. D.R. Reeves, Jr., H.B. Rogers, and N.H. Secher. Epidural anesthesia and the cardiovascular response to static exercise in man. J. Physiology, 417: 13-24, Oct. 1989.

Lassen, A., J.H. Mitchell, D.R. Reeves, Jr., H.B. Rogers, and N.H. Secher. Cardiovascular responses to brief static contractions in man with topical nervous blockade. J. Physiology, 409: 333-341 Feb 1989.

Mitchell, J.H., D.R. Reeves, Jr., H.B. Rogers, N.H. Secher, and R.G. Victor. Autonomic blockade and cardiovascular responses to static exercise in partially curarized man. J. Physiology, 413: 433-445, June, 1989.

LECTURES/CONFERENCES/POSTERS/MONOGRAPHS:

"Peer Navigators, Medication-Assisted Treatment and Appointment Attendance" – Grand Rounds, Rutgers University-Robert Wood Johnson Medical School, Dept. of Psychiatry, Piscataway, NJ. May 9, 2018.

"Medication-Assisted Treatment (MAT) Implementation for Opioid Use Disorder in a State Correctional System" – national lecture for University of Massachusetts Medical School 11th Academic and Health Policy Conference on Correctional Health, March 20, 2019.

"New Jersey's Expanded Duty to Warn Law and Violence Risk Assessment" – video for the New Jersey Psychiatric Association, December 6, 2018.

"Medication-Assisted Treatment (MAT) Implementation for Opioid Use Disorders in Correctional

Systems" – national lecture for American Academy of Psychiatry and the Law 49th Annual Meeting, Austin, Texas, October 27, 2018

"Attendance of substance abuse appointments by released inmates" – Grand Rounds, Rutgers University-Robert Wood Johnson Medical School, Dept. of Psychiatry, Piscataway, NJ. May 3, 2018.

Mock civil commitment trial – Greystone Park Psychiatric Hospital, Morris Plains, NJ, April 19, 2018.

"Confidentiality and Its Exceptions" – Grand Rounds, Saint Joseph's Healthcare System, Paterson, NJ, April 18, 2018.

"Addictions in the Correctional System" – Grand Rounds, Columbia University, NY, NY, April 17, 2018.

"Single-Parent Families, Crime and Other Adverse Effects Upon Children, and the Role of Health Professionals" – poster presentation for Rutgers University – Robert Wood Johnson Medical School, April 12, 2018.

"Single-Parent Families, Crime and Other Adverse Effects Upon Children, and the Role of Health Professionals" – national poster presentation for University of Massachusetts Medical School 11th Academic and Health Policy Conference on Correctional Health, March 22, 2018.

"Psychiatric Malpractice" – Emergency Psychiatry Symposium, Hackensack Meridian Health – Jersey Shore University Medical Center, Neptune, NJ, March 14, 2018.

"Involuntary Psychiatric Treatment in the Community and in Corrections" – Grand Rounds, Saint Joseph's Healthcare System, Paterson, NJ, February 21, 2018.

"Psychiatric Malpractice" – Grand Rounds, Saint Joseph's Healthcare System, Paterson, NJ, October 18, 2017.

"Suicide and Violence – Assessment and Management" – Grand Rounds, Saint Joseph's Healthcare System, Paterson, NJ, September 20, 2017.

"Malingering in Psychiatry" – Grand Rounds, Trinitas Hospital, Elizabeth, NJ, June 6, 2017.

"Assaults in Prison" – Grand Rounds, Rutgers University-Robert Wood Johnson Medical School, Dept. of Psychiatry, Piscataway, NJ. May 11, 2017.

"Psychiatric Malpractice" – Grand Rounds, Trinitas Hospital, Elizabeth, NJ, May 2, 2017.

"Metabolic Syndrome Prevalence and Reduction in Inmates Prescribed Antipsychotic Medication" – national paper presentation for University of Massachusetts Medical School 10th Academic and Health Policy Conference on Correctional Health, March 16, 2017.

"Correctional Psychiatry" – Grand Rounds, Mid-Hudson Forensic Psychiatric Center, Goshen,

NY, February 21, 2017.

"Suicide and Violence – Assessment and Management" – Grand Rounds, Trinitas Hospital, Elizabeth, NJ February 7, 2017.

"Managing Inmates in a General Hospital" – Grand Rounds, Saint Joseph's Healthcare System, Paterson, NJ, November 16, 2016.

"Addictions in the Correctional System" – statewide presentation to community and correctional psychiatrists, sponsored by the New Jersey Psychiatric Association, October 15, 2016

"Career in Forensic Psychiatry" – statewide presentation for psychiatry residents, sponsored by the New Jersey Psychiatric Association, June 11, 2016.

"Characteristics of Inmates Who Participate in Hunger Strikes" – Grand Rounds, Rutgers University-Robert Wood Johnson Medical School, Dept. of Psychiatry, Piscataway, NJ. May 12, 2016.

"Characteristics of Inmates Who Participate in Hunger Strikes" – national paper presentation for University of Massachusetts Medical School 9th Academic and Health Policy Conference on Correctional Health, March 17, 2016.

"Health Care Behind Bars" – feature article for *Rutgers Magazine*, Spring, 2016.

"Characteristics of Inmates Who Misuse Medications" – national paper presentation for American Academy of Psychiatry and the Law annual conference, Ft. Lauderdale, FL, October 23, 2015.

"Prison Mental Health" – national lecture for *Health in Prisons* summer program sponsored by Johns Hopkins Berman Institute of Bioethics, Johns Hopkins Bloomberg School of Public Health and International Committee of the Red Cross, June 18, 2015.

"Substance Abuse in Prison" – statewide lecture for Partnership for a Drug-Free New Jersey, April 30, 2015.

"Mental Illness, Tobacco and Mortality" – national lecture for University of Massachusetts Medical School 8th Academic and Health Policy Conference on Correctional Health, March 19, 2015.

"Prescription Medication Abuse in Prisons" – Grand Rounds, Rutgers University-Robert Wood Johnson Medical School, Dept. of Psychiatry, Piscataway, NJ, March 12, 2015.

"UCHC Guideline for Substance Abuse Treatment in the NJDOC" – Grand Rounds, Rutgers University-Robert Wood Johnson Medical School, Dept. of Psychiatry, Piscataway, NJ, March 12, 2015.

"Single Cells, Segregated Housing and Suicide in the NJ DOC" – national paper presentation for American Academy of Psychiatry and the Law annual conference, Chicago, IL, October 25, 2014.

"Gender Dysphoria – Diagnosis and Treatment" – statewide lecture for University Correctional

Health Care clinicians, August 7, 2014.

"Medicine Meets Law: Forensic Psychiatrists Evaluate the Disturbed and Dangerous." -- feature article for *Rutgers Today* online news magazine, April 7, 2014.

"Single Cells, Segregated Housing and Suicide in the NJ DOC" – national lecture for University of Massachusetts Medical School 7th Academic and Health Policy Conference on Correctional Health, March 20, 2014

Forensic Psychiatry Seminar Rutgers-RWJMS psychiatry residents, March, 2014 to present.

"Psychiatric Malpractice" – Grand Rounds at Lincoln Hospital, March 11, 2014.

"Suicide and Violence – Assessment and Management" – Grand Rounds, Rutgers University-Robert Wood Johnson Medical School, Dept. of Psychiatry, Piscataway, NJ. February 6, 2014.

"Involuntary Psychiatric Treatment in the Community and in Corrections" – Abraham Halpern award lecture, regional lecture for Tri-State Chapter of the American Academy of Psychiatry and the Law annual conference, January 25, 2014.

"Suicide and Violence – Assessment and Management" – statewide lecture for University Correctional Health Care annual conference, Rutgers University-Robert Wood Johnson Medical School, Hamilton, NJ, November 18, 2013.

"Suicide and Violence – Assessment and Management" – regional lecture for Current and Emerging Approaches in Urban Mental Health conference, Rutgers University-New Jersey Medical School, Newark, NJ, November 1, 2013.

"Involuntary Antipsychotic Medication Reduces Disciplinary Charges in Mentally Ill Inmates" – poster for American Academy of Psychiatry and the Law annual conference, San Diego, CA, October 25, 2013.

"Primary Care Considerations in Providing Care to Mental Health Patients" – article for *CorrDocs*, newsletter of the Society of Correctional Physicians, Spring, 2013.

"Primary Care Considerations in Providing Care to Mental Health Patients" – national lecture for Society of Correctional Physicians, Denver, CO, April 21, 2013.

"Involuntary Antipsychotic Medication Reduces Disciplinary Charges in Mentally Ill Inmates" – poster for University of Massachusetts' 6th Academic and Health Policy Conference on Correctional Health, Chicago, IL, March 22, 2013.

"Involuntary Antipsychotic Medication Reduces Disciplinary Charges in Mentally Ill Inmates" – Grand Rounds at UMDNJ-Robert Wood Johnson Medical School, March 14, 2013.

"Violence and Its Relationship to Mental Illness – Report from the New Jersey Psychiatric Association" – statewide report submitted to the Governor of New Jersey's NJ SAFE task force, March 7, 3013.

"Malingering in Psychiatry" – Grand Rounds at Richmond University, February 1, 2013.

"Psychiatric Malpractice" – Grand Rounds at Richmond University, October 12, 2012.

"Correctional Psychiatry" – Grand Rounds at Jersey Shore Medical Center, April 11, 2012.

"Correctional Psychiatry" – Grand Rounds at Richmond University, February 24, 2012.

"Correctional Psychiatry" – Grand Rounds at UMDNJ-Robert Wood Johnson Medical School, December 1, 2011.

Testimony before the New Jersey Legislature on forensic psychiatric matters, for the New Jersey Psychiatric Association, 2011 to present.

"Assessing Competence in Forensic Settings" – University Correctional Health Care Prison Lecture Series, February, 2011 to present

"Correctional Psychiatry" – Grand Rounds at Richmond University, February 5, 2010.

"Pharmacological Treatment of Head Trauma," statewide lecture for UCHC clinicians, November 11, 2009.

"History of Forensic Psychiatry" – regional lecture for Tri-State AAPL conference, October 15, 2008

"Self-injurious Behavior in Forensic Settings," – Grand Rounds at Mid-Hudson Forensic Psychiatric Center, May 27, 2008

"Correctional Psychiatry" – Grand Rounds at UMDNJ-New Jersey Medical School, November 21, 2007.

Forensic psychiatry seminar for NYC forensic psychiatry residents, through Tri-State Chapter of the American Academy of Psychiatry and the Law, October 3, 2007 – October, 2009.

"Suicide Assessment in the Prisons," – annual statewide lecture for UCHC clinicians, January 12, 2007 to present.

"Sexually Violent Predator Law and Psychiatry" - Grand Rounds at New York Medical College, April 18, 2006.

"Sexually Violent Predator Law and Psychiatry" - Grand Rounds at St. Vincents Hospital, June 2, 2005

Sexually Violent Predator training course for UCHC psychiatrists, April 26, 2005

"Risk Assessment" – Grand Rounds for Greystone Park Psychiatric Hospital and Ancora Psychiatric Hospital, September 11 and 12, 2003.

"'Voluntary' Hospitalization of Adolescents," national lecture for Society of Adolescent Psychiatry annual conference, March 27, 2003.

"Psychiatric evaluation for commitment under New Jersey's Sexually Violent Predator Act" – lecture for Correctional Medical Services, March 7, 2003.

"Prediction of Adolescent Violence," for Society of Adolescent Psychiatry, May 11, 2002.

Forensic Psychiatry Seminar for Rutgers-NJMS psychiatry residents, September, 2001 to present.

"Combination Medication Therapy in Psychiatry," UMDNJ poster session, April 25, 2001.

"Civil Commitment" for Tri-State AAPL Review Course, March 3, 2001.

Forensic Psychiatry Seminar for Greystone Park Psychiatric Hospital psychiatrists, February, 2000 – August, 2002.

"Brain Imaging in Forensic Psychiatry," Grand Rounds at Kirby Forensic Psychiatric Center, December 3, 1998.

"Brain Imaging in Forensic Psychiatry," national lecture for AAPL annual conference, October 25, 1998.

"Predicting Medication Compliance in jail inmates," AAPL annual conference, Oct. 23, 1998.

"Health Care Reform," Grand Rounds at St. Vincent's Hospital, May, 1994.

OTHER ACTIVITIES:

Chairman, Board of Adjustment, South Orange, NJ, March 2001 to present

REFERENCES:

Available upon request

EXHIBIT 16

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
ROOM 4040
NEWARK, NJ 07101
973-776-7862

LETTER ORDER

Re: Jionni Conforti v. St. Joseph's Healthcare System, Inc., et al.
Civil Action No. 2:17-cv-00050-CCC-CLW

This matter comes before the Court on Defendants St. Joseph's Healthcare System, Inc., St. Joseph's Hospital and Medical Center, and Father Martin D. Rooney's ("Defendants") Motion for Reconsideration of the Court's Opinion and Order Denying Defendants' Motion to Compel a Mental Examination of Plaintiff . (ECF No. 119). Plaintiff Jionni Conforti ("Plaintiff") opposes the Motion. (ECF No. 126). The Court declined to hear oral argument pursuant to Federal Rule of Civil Procedure 78. For the reasons set forth below, Defendants' Motion is **DENIED**.

Background

On January 22, 2020, after consideration of the papers, oral argument, and supplemental deposition transcripts, this Court issued an Opinion and Order denying Defendants' Motion to Compel Mental Examination of Plaintiff. (ECF No. 116). Under Federal Rule of Civil Procedure 35, the Court may order a "mental examination" of a party if that party's "mental or physical condition is in controversy" and if the movant demonstrates "good cause" for the examination. *Id.* §§ (a)(1); (a)(2)(A). The movant must make "an affirmative showing" that (1) the subject's condition "is really and genuinely in controversy" and (2) "good cause exists" for the examination. *Schlagenhauf v. Holder*, 379 U.S. 118 at 121 (1964). This Court found that Defendants failed to meet both prongs of the *Schlagenhauf* test.

Defendants now move for reconsideration of that Opinion and Order on several grounds. (Def.'s Br., ECF No. 120). First, Defendants contend that this Court contradicted its prior ruling when the Court found that Plaintiff's emotional distress claim did not place his mental condition "in controversy" under Rule 35. (*Id*. at p. 4). Second, Defendants argue that the Court "erred in not giving Defendants the opportunity to take the depositions of [Dr. Ian Tang and Rissy Batista] before compelling Defendants to fully brief" their Rule 35 Motion. (*Id*.). Third, according to Defendants, the Court engaged in an "improper" *sua sponte* inquiry of the qualifications of Dr. Donald Raymond Reeves, Jr., the psychiatrist engaged by Defendants to conduct the Rule 35 examination. (*Id*. at p. 5). In support of their Motion, Defendants now submit a Declaration from Dr. Reeves, in which he details his qualifications, the proposed methods and topics of his Rule 35 examination, and the necessity of conducting a forensic psychiatric clinical examination to assess Plaintiff's emotional distress claims. (ECF No. 121).

Legal Standard

"The purpose of a motion for reconsideration….is to correct manifest errors of law or fact or to present newly discovered evidence." *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (quoting *Harsco Corp. v. Zlotnicki*, 779 F. 2d 906, 909 (3d Cir. 1985)). The party moving for reconsideration must demonstrate: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion….or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Id*.

Discussion

Defendants raise three specific challenges to the Court's ruling. The Court will address each in turn. First, Defendants argue that the Court erred in finding that Plaintiff did not place his mental condition "in controversy" by asserting emotional distress damages. (Def.'s Br., ECF No. 120, at p. 8). In particular, Defendants argue that the Court contradicted its August 15, 2019 ruling permitting the depositions of three of Plaintiff's medical providers. (*Id*.). The Court recognizes the discrepancy in its discussions of Plaintiff's emotional distress damages. In its prior Opinion, the Court found that in light of Plaintiff's complex history of mental health issues, Plaintiff's emotional distress "cannot be neatly reduced to 'garden variety' distress at this stage." (ECF No. 104, at p. 8). By contrast, in its ruling on Defendants' Rule 35 Motion, the Court observed "Plaintiff has repeatedly reiterated that his damages will be limited to 'standard' emotional distress....Plaintiff's characterization of his damages claim is consistent with the language in the Complaint, which contains standard language concerning the emotional distress damages typically sought in discrimination cases." (ECF No. 116, at p. 4).

While Defendants may be correct that the Court's discussions of Plaintiff's emotional distress damages are internally inconsistent to some degree, this inconsistency does not disturb the Court's ultimate conclusion that Plaintiff has not placed his mental condition "in controversy" within the meaning of Rule 35. As discussed in the Court's Opinion, Rule 35 and *Schlagenhauf* require the Court to view Plaintiff's emotional distress damages claim through a different lens than the Rule 26 relevance analysis and the patient-psychotherapist privilege waiver analysis. (ECF No. 116, at pp. 3-4) ("Rule 35 examinations…are subject to a separate and more exacting standard than other forms of discovery. Plaintiff's history of depression and anxiety, no matter how extensive or complicated, cannot on its own sustain Defendants' burden under Rule 35.") Defendants do not point to any clear error of law or fact made by the Court in concluding that Defendants did not make an affirmative showing that Plaintiff has placed his mental condition in controversy.

Second, Defendants urge the Court to reconsider its Opinion in light of discovery taken after the briefing on the Rule 35 Motion was completed. (Def.'s Br., ECF No. 120, at p. 12). After the Rule 35 Motion was briefed, Defendants deposed Dr. Ian Tang, an endocrinologist who diagnosed Plaintiff with gender dysphoria and supervised Plaintiff's gender-confirming hormone therapy. Defendants also deposed Rissy Batista, a therapist and mental health clinician who began treating

Plaintiff in March 2015 and also diagnosed Plaintiff with gender dysphoria.[1] Defendants argue that the Tang and Batista depositions revealed that these providers "hastily accepted Conforti's self-diagnosis of gender dysphoria." (*Id.* at p. 13). The newly revealed "haphazard way" in which these providers arrived at their diagnoses "presents a change in circumstances that warrants Dr. Reeves's examination so that he may evaluate Conforti's gender dysphoria." (*Id*).

Contrary to Defendants' assertions, the Tang and Batista depositions do not constitute "new evidence that was not available when the court [denied] the motion." *Max's Seafood Cafe ex rel. Lou-Ann, Inc.*, 176 F.3d at 677. Counsel for Defendants discussed the Tang and Batista depositions at length during the December 3, 2019 oral argument on the Motion. (Transcript of Oral Argument, at pp. 7-11). Immediately following oral argument, Defendants submitted the Tang and Batista deposition transcripts to the Court for review. (ECF No. 116, at p. 6). In its Opinion, the Court discussed the Tang and Batista depositions in detail and included their testimony in the Rule 35 analysis. (*Id*. at pp. 6-8). The Court acknowledged the Defendants' perceived shortcomings in Tang and Batista's testimony and concluded that good cause did not exist for a Rule 35 examination regardless. (*Id*. at p. 8).

As their final point of objection, Defendants assert that the Court "erred in questioning Dr. Reeves's qualifications" *sua sponte*. (Def.'s. Br., ECF No. 120, at p. 14). Defendants point out that Plaintiff did not challenge Dr. Reeves's qualifications. (*Id*). Further, Defendants contend that the Court did not request further information about Dr. Reeves's qualifications and proposed examination, yet unfairly relied on the absence of this information to deny Defendants' Rule 35 motion. (*Id.* at p. 15).

This objection does not constitute adequate grounds for a reconsideration of the Court's decision. Under Rule 35, it is *Defendants* who have the burden of affirmatively demonstrating that there is good cause for Dr. Reeves's examination. Rule 35 places the obligation on Defendants – rather than on the Court or on Plaintiff – to make this showing. While Defendants are correct that Rule 35 does not "obligate a moving party to present a sworn statement attesting to the qualifications of an expert or the intended examination," (Def.'s Br., ECF No. 120, at p. 15), other Rule 35 Movants have attempted to meet the good cause standard by submitting materials from their proposed experts about the necessity of a mental examination. *See, e.g., McLaughlin v. Atl. City*, No. CIV 05-2263 RMB, 2007 WL 1108527, at *2 (D.N.J. Apr. 10, 2007) (plaintiff "relied on" psychiatric expert's "letter to support his argument that this Court should order a psychiatric examination of Officer Raddi."). The Court properly considered the absence of such materials in its Rule 35 analysis.

Defendants' related argument that the Court's analysis of Dr. Reeves's qualifications is premature fails for similar reasons. Defendants contend that as long as they clear a minimum threshold of proffering a licensed medical professional to conduct the Rule 35 examination, any further inquiry into their expert's qualifications in the Rule 35 analysis is inappropriate. (Def.'s Br., ECF No. 120, at p. 15). According to Defendants, "[w]hether an expert is qualified is appropriately addressed pre-trial, by *in limine* motion, after the completion of expert discovery." (*Id.*). However, as

[1] Dr. Ian Tang and Rissy Batista's treatment of Plaintiff is summarized in the Court's August 15, 2019 Opinion and Order granting in part and denying in part Plaintiff's Motion to Quash subpoenas of his medical providers. (ECF No. 104, at pp. 4-6).

discussed above, the Court may look beyond Dr. Reeves's qualifications and inquire into the propriety and usefulness of Dr. Reeves' examination as part of the Rule 35 inquiry.

Even if the Court were to take into account Dr. Reeves's newly submitted Declaration, this Declaration does not warrant a reconsideration of the Court's conclusion that Defendants have failed to demonstrate good cause for a Rule 35 examination. As the Court stated in its original ruling, "[w]here a movant can explore a party's psychiatric condition through other discovery methods, the movant must 'produce more than conclusory statements by a psychiatric expert to support its burden of proof' that it is entitled to an IME under Rule 35. *McLaughlin*, 2007 WL 1108527, at *3." (ECF No. 116, at p. 8). Conclusory statements by a psychiatric expert are precisely what Defendants have proffered here. Dr. Reeves states, "Based on my review of Mr. Conforti's allegations in the Complaint, his deposition testimony in this matter, and medical records….my professional opinion is that a comprehensive forensic psychiatric clinical examination of Mr. Conforti, given his known preexisting psychiatric disorder, is necessary to assess the psychiatric distress he claims he suffered[.]" (ECF No. 121, ¶ 8). Therefore, "Defendants have not sustained their burden of specifically demonstrating that the extraordinary remedy of a Rule 35 examination is necessary here." (*Id*).

Conclusion

Defendants have failed to demonstrate either the availability of new evidence or the need to correct a clear error of law or fact in the Court's Order denying Defendants' Motion to compel an examination under Federal Rule of Civil Procedure 35. Therefore, the Motion for Reconsideration of that decision is denied. The Clerk of Court shall terminate ECF No. 119 upon entry of this Order.

March 30, 2020

s/Cathy L. Waldor
CATHY L. WALDOR
United States Magistrate Judge

EXHIBIT 17

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI, *Plaintiff,* v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., *et al.*, *Defendants*.	Case No. 2:17-cv-00050-CCC-CLW

EXPERT REPORT OF DR. RANDI C. ETTNER, Ph.D.

I. INTRODUCTION

1. My name is Dr. Randi C. Ettner. I have been retained by counsel for Plaintiff Jionni Conforti as an expert in connection with the above-captioned litigation.

2. I have been asked by Plaintiff's counsel to provide my expert opinion on: (i) information regarding the nature of sex, gender identity, and gender dysphoria; (ii) information regarding the best practices and the accepted standards of care for individuals with gender dysphoria, including the efficacy of gender confirmation surgery (previously referred to as sex reassignment surgery); and (iii) the impact that the provision or denial of treatment for gender dysphoria has on transgender individuals.

3. I have actual knowledge of the matters stated herein. If called to testify in this matter, I would testify truthfully and based on my expert opinion.

4. I prepared this report to set forth the opinions I may express at trial and the bases for my opinions. The opinions expressed in this report are based on the information that I have reviewed to date. I reserve the right to revise and supplement this report if any new information becomes available in the future.

5. My Curriculum Vitae, which includes a list of publications, is attached to this report as Exhibit A. Materials that I considered in forming my opinions are listed in Exhibit B or referenced in this report. I also relied on my considerable professional experience in reaching the conclusions in this report.

6. In the last four years, I have testified as an expert at trial or by deposition in the following cases: *Eller v. Prince George's Cty. Public Sch.*, No. 8:18-cv-03649-TDC (D. Md. 2020); *Williams v. Allegheny Cty.*, No. 2:17-cv-01556-MJH (W.D. Pa. 2020); *Ray v. Acton*, No. 2:18-cv-00272 (S.D. Ohio 2019); *Monroe v. Jeffreys*, No. 3:18-cv-00156-NJR-MAB (S.D. Ill. 2019); *Soneeya v. Turco*, No. 07-12325-DPW (D. Mass. 2019); *Edmo v. Idaho Dep't of Correction*, No. 1:17-CV-00151-BLW, 2018 WL 2745898 (D. Idaho 2018); *Carillo v U.S. Dep't of Justice Exec. Office of Immig. Rev.* (2017); *Broussard v. First Tower Loan, LLC*, 135 F. Supp. 3d 540 (E.D. La. 2016); *Faiella v. American Medical Response of Conn., Inc.*, No. HHD-CV15-6061263-S (Conn. Super. Ct.).

7. I am being compensated for my work on this matter at a rate of $375.00 per hour for preparation of declarations and expert reports. I will be compensated $500.00 per hour for any pre-deposition and/or pre-trial preparation and any deposition testimony or trial testimony. I will receive a flat fee of $2,500.00 for any travel time to attend deposition or trial, and will be reimbursed for reasonable out-of-pocket travel expenses incurred for the purpose of providing expert testimony in this matter. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I may provide.

II. SUMMARY OF QUALIFICATIONS

8. I am a licensed clinical and forensic psychologist with expertise concerning the diagnosis and treatment of gender dysphoria. I received my doctorate in psychology from

Northwestern University in 1979. I was the chief psychologist at the Chicago Gender Center from 2005 to 2016, when it moved to the Weiss Memorial Hospital. Since that time, I have held the sole psychologist position at the Center for Gender Confirmation Surgery at Weiss Memorial Hospital, which specializes in the treatment of individuals with gender dysphoria. I have been involved in the treatment of patients with gender dysphoria since 1977, when I was an intern at Cook County Hospital in Chicago.

9. During the course of my career, I have evaluated and/or treated between 2,500 and 3,000 individuals with gender dysphoria and mental health issues related to gender variance.

10. I have published four books related to the treatment of individuals with gender dysphoria, including the medical text entitled *Principles of Transgender Medicine and Surgery* (Ettner, Monstrey & Eyler, 2007) and its second edition (Ettner, Monstrey & Coleman, 2016). I have authored numerous articles in peer-reviewed journals regarding the provision of care to this population. I serve as a member of the editorial boards for the *International Journal of Transgenderism* and *Transgender Health*.

11. I am the Secretary and member of the Executive Board of Directors of the World Professional Association for Transgender Health ("WPATH") (formerly the Harry Benjamin Gender Dysphoria Association) and I am an author of the *WPATH Standards of Care for the Health of Transsexual, Transgender and Gender-nonconforming People* (7th version), published in 2011. The WPATH-promulgated *Standards of Care* ("*Standards of Care*") are the internationally recognized guidelines for the treatment of persons with gender dysphoria and serve to inform medical treatment in the United States and throughout the world.

12. I have lectured throughout North America, South America, Europe, and Asia on topics related to gender dysphoria, and on numerous occasions I have presented grand rounds on

gender dysphoria at medical hospitals. I am the honoree of the externally-funded *Randi and Fred Ettner Fellowship in Transgender Health* at the University of Minnesota. I have been an invited guest at the National Institute of Health to participate in developing a strategic research plan to advance the health of sexual and gender minorities, and in November 2017 was invited to address the Director of the Office of Civil Rights of the United States Department of Health and Human Services regarding the medical treatment of gender dysphoria. I received a commendation from the United States Congress House of Representatives on February 5, 2019 recognizing my work for WPATH and gender dysphoria in Illinois.

13. I have been retained as an expert regarding gender dysphoria and its treatment in multiple court cases in both state and federal courts, as well as administrative proceedings, and I have repeatedly qualified as an expert. I have also been a consultant to policymakers regarding appropriate care for transgender inmates and for Centers for Medicare and Medicaid in the state of Illinois.

14. A true and accurate copy of my Curriculum Vitae is attached hereto as Exhibit A, which documents my education, training, research, and years of experience in this field. A bibliography of the materials reviewed in connection with this report is attached hereto as Exhibit B. The sources cited therein are authoritative, scientific peer-reviewed publications. I generally rely on these materials when I provide expert testimony, and they include the documents specifically cited as supportive examples in particular sections of this declaration. The materials I have relied on in preparing this declaration are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

15. I have not met or spoken with the Plaintiff for purposes of this report. My opinions are based solely on the information I have been provided by Plaintiff's attorneys, the materials

referenced in the Bibliography as Exhibit B and cited herein, and my extensive experience studying gender dysphoria and in treating transgender patients.

III. EXPERT OPINIONS

A. Gender Identity and Gender Dysphoria

16. A person's sex is comprised of a number of components including, *inter alia*: (i) chromosomal composition (detectible through karyotyping); (ii) gonads and internal reproductive organs (detectible by ultrasound, and occasionally by a physical pelvic exam); (iii) external genitalia (which are visible at birth); (iv) sexual differentiations in brain development and structure (detectible by functional magnetic resonance imaging studies and autopsy); and (v) gender identity.

17. Gender identity is a well-established concept in medicine. Gender identity refers to a person's inner sense of belonging to a particular sex, such as male or female. It is a deeply felt and core component of human identity. All human beings develop this elemental internal view: the conviction if belonging to a particular gender, such as male or female. Gender identity is innate, has biological underpinnings, and is firmly established early in life.

18. When there is divergence between anatomy and identity, one's gender identity is paramount and the primary determinant of an individual's sex designation. Developmentally, it is the overarching determinant of the self-system, influencing personality, a sense of mastery, relatedness, and emotional reactivity, across the life span. It is also the foremost predictor of satisfaction and quality of life. Efforts to change an individual's gender identity are harmful, futile, and unethical.

19. At birth, individuals are assigned a sex—typically male or female—based solely on the appearance of their external genitalia. For most people, that assignment turns out to be

accurate, and their birth-assigned sex matches that person's actual sex. However, for transgender individuals, this is not the case.

20. For transgender individuals, the sense of one's self—one's gender identity—differs from the sex they were assigned at birth, giving rise to a sense of being "wrongly embodied."

21. The medical diagnosis for that feeling of incongruence and accompanying distress is "gender dysphoria," a serious medical condition, formerly known as "gender identity disorder" ("GID"). Gender dysphoria is a diagnosis codified in the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5").

22. The critical element of the gender dysphoria diagnosis is the presence of symptoms that meet the threshold for clinical impairment. This represents a change from GID, which focused on an individual's *identity* being disordered. This new diagnostic term, "gender dysphoria," is also an acknowledgment that gender incongruence, in and of itself, does not constitute a mental disorder. As recently as June 16, 2018, the World Health Organization ("WHO") likewise announced it was reclassifying the gender incongruence diagnosis in the forthcoming International Classification of Diseases-11 ("ICD-11"). This is significant because it removes "gender identity disorder" from the chapter on mental and behavioral disorders, recognizing that gender incongruence is not a mental illness, and instead incorporates it within a new chapter dedicated to sexual health.

23. Gender dysphoria is characterized by incongruence between one's experienced/expressed gender and assigned sex at birth, and clinically significant distress or impairment of functioning that results. Gender dysphoria is manifested by symptoms such as preoccupation with ridding oneself of the primary and/or secondary sex characteristics associated

with one's birth- assigned sex. Untreated gender dysphoria can result in significant clinical distress, debilitating depression, and suicidality.

24. Per the DSM-5, the diagnostic criteria for gender dysphoria in adults are as follows:

a. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 month's duration, as manifested by at least two of the following:

i. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics.
ii. A strong desire to be rid of one's primary and/or secondary sex characteristics.
iii. A strong desire for the primary and/or secondary sex characteristics of the other gender.
iv. A strong desire to be of the other gender.
v. A strong desire to be treated as the other gender.
vi. A strong conviction that one has the typical feelings and reactions of the other gender.

b. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

25. Gender dysphoria is a highly treatable condition. Without treatment, however, individuals with gender dysphoria may experience anxiety, depression, suicidality, and other attendant mental health issues. They are also frequently isolated because they carry a burden of shame and low self-esteem, attributable to the feeling of being inherently "defective." This leads to stigmatization, and over time, ravages healthy personality development and interpersonal relationships. As a result, without treatment many such individuals are unable to function effectively in daily life. Studies show a 41%-43% rate of suicide attempts among the aforementioned population, far above the baseline for North America (Haas et al., 2014).

26. Gender dysphoric patients who are assigned a male sex at birth but identify as female and lack access to appropriate care are often so desperate for relief that they may resort to

life-threatening attempts at auto-castration—removal of the testicles—in the hopes of eliminating the major source of testosterone that kindles the distress (Brown, 2010; Brown & McDuffie, 2009).

27. Similarly, some transgender men are so intensely uncomfortable with their breasts that they will suffer infection, dyspnea (shortness of breath) and fractured ribs from binding the breasts in an effort to conceal them.

28. Gender dysphoria generally intensifies with age. As gender dysphoric individuals approach middle age, they experience an exacerbation of symptoms (Ettner, 2013; Ettner & Wiley, 2013).

B. Treatment of Gender Dysphoria

29. The standards of care for treating gender dysphoria are set forth in the WPATH *Standards of Care*, first published in 1979. The *Standards of Care* are the internationally recognized guidelines for the treatment of persons with gender dysphoria, and inform medical treatment throughout the world, and in this country. The American Medical Association, the Endocrine Society, the American Psychological Association the American Psychiatric Association, the World Health Organization, the American Academy of Family Physicians, the American Public Health Association, the National Association of Social Workers, the American College of Obstetrics and Gynecology and the American Society of Plastic Surgeons all endorse protocols in accordance with the WPATH standards. *See*, *e.g.*, American Medical Association (2008) Resolution 122 (A-08); *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline* (2017); American Psychological Association Policy Statement on Transgender, Gender Identity & Gender Expression Non-discrimination (2008).

30. The *Standards of Care* identify the following evidence-based protocols for the treatment of individuals with gender dysphoria:

- Changes in gender expression and role, consistent with one's gender identity (social role transition).
- Psychotherapy for purposes such as addressing the negative impact of stigma, alleviating internalized transphobia, enhancing social and peer support, improving body image, promoting resiliency, etc.
- Hormone therapy to feminize or masculinize the body.
- Surgery to alter primary and/or secondary sex characteristics (e.g., breasts, external genitalia, facial features, body contouring).

31. The ability to live in a manner consistent with one's gender identity is critical to a person's health and well-being and is a key aspect in the treatment of gender dysphoria. The process by which transgender people come to live in a manner consistent with their gender identity, rather than the sex they were assigned at birth, is known as "transition." The steps that each transgender person takes to transition are not identical. Whether any particular treatment is medically necessary or even appropriate depends on the medical needs of the individual.

32. Once a diagnosis is established, a treatment plan should be developed based on the individualized assessment of the medical needs of the patient. WPATH specifies that treatment plans and provision of care must be undertaken by qualified professionals, with established competencies in the treatment of gender dysphoria (Section VIII).

33. **Psychotherapy:** Psychotherapy can provide support and help with many issues that arise in tandem with gender dysphoria. However, psychotherapy alone is not a substitute for medical intervention when medical interventions are required, nor is it a precondition for medically indicated treatment. By analogy, counseling can be useful for patients with diabetes by providing psychoeducation about living with chronic illness and nutritional information, but counseling does not obviate the need for insulin.

34. **Social Role Transition:** The *Standards of Care* establish the therapeutic importance of changes in gender expression and presentation—the ability to feminize or masculinize one's appearance—as a critical component of treatment. Known as the "real life experience," it requires dressing, grooming, and otherwise conveying, via social signifiers, a public face and role consistent with one's gender identity. This is an appropriate and essential part of identity consolidation. Through this experience, the transgender individual can begin to address the shame some experience of growing up living as a "false self" and the grief of being born in the "wrong body." (Greenberg and Laurence, 1981; Ettner, 1999; Devor, 2004; Bockting, 2007.)

35. **Hormone Therapy:** For individuals with persistent, well-documented gender dysphoria, hormone therapy is an essential, medically indicated treatment to alleviate the distress of the condition. Cross-sex hormone administration is a well-established and effective treatment modality for gender dysphoria. The American Medical Association, the Endocrine Society, the American Psychiatric Association and the American Psychological Association all concur that hormone therapy, provided in accordance with the WPATH *Standards of Care*, is the medically necessary, evidence-based, best practice care for most patients with gender dysphoria.

36. The goals of hormone therapy are (1) to significantly reduce hormone production associated with the person's birth sex, causing the unwanted secondary sex characteristics to recede, and (2) to replace the natal, circulating sex hormones with either feminizing or masculinizing hormones, using the principles of hormone replacement treatment developed for hypogonadal patients (*i.e.*, those born with insufficient sex steroid hormones). *See Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline* (2017); *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline* (2009).

37. The therapeutic effects of hormone therapy are twofold. First, with endocrine treatment, the patient acquires secondary sex characteristics congruent with their gender identity. For transgender women, this means, *inter alia*, breast development, redistribution of body fat, cessation of male pattern baldness, and reduction of body hair. For transgender men, this means, *inter alia*, the voice deepens, growth of facial and body hair, redistribution of body fat, and overall increase in muscle mass. Second, hormones act directly on the brain, via receptor sites, attenuating the dysphoria and attendant psychiatric symptoms, and promoting a sense of well-being.

38. For many transgender women patients, hormones alone will not provide sufficient breast development to approximate the female torso. For these patients, breast augmentation has a dramatic, irreplaceable, and permanent effect on reducing gender dysphoria, and thus unquestionable therapeutic results. Conversely, hormones alone do not reduce breast tissue and transgender men therefore require surgical intervention, such as a mastectomy and male chest contouring, to eliminate this most obvious typically female sex characteristic.

39. **Surgical Treatment:** For individuals with severe gender dysphoria, hormone therapy alone is insufficient. In these cases, dysphoria does not abate without surgical intervention.

40. For transgender women, genital confirmation surgery has two therapeutic purposes. First, removal of the testicles eliminates the major source of testosterone in the body. Second, the patient attains body congruence resulting from the normal appearing and functioning female uro-genital structures. Both outcomes are crucial in attenuating or eliminating gender dysphoria. Additionally, breast augmentation procedures play the critical role in treatment mentioned in the paragraph immediately above.

41. For transgender men, gender confirmation surgery in the form of a hysterectomy—the removal of female reproductive organs, such as the uterus, ovaries, fallopian tubes and cervix—is a medically necessary procedure for the treatment of gender dysphoria.

42. For transgender men, a hysterectomy confers three therapeutic benefits: First, it eliminates a source of estrogen and preexisting conditions of tumors, cysts, fibroids or endometriosis. Second, it removes the increased risk of ovarian cancer (thought to originate in the fallopian tubes) and other typically female cancers associated with atrophied organs. Finally, a hysterectomy eliminates the need for routine gynecological exams and significantly attenuates gender dysphoria.

43. Decades of methodologically sound and rigorous scientific research have demonstrated that gender confirmation surgery is a safe and effective treatment for severe gender dysphoria and, indeed, for many, it is the only effective treatment. The American Medical Association, the Endocrine Society, the American Psychological Association, and the American Psychiatric Association all endorse surgical therapy, in accordance with the WPATH *Standards of Care*, as medically necessary treatment for individuals with severe gender dysphoria. *See* American Medical Association (2008), Resolution 122 (A-08); *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline* (2017) ("For many transgender adults, genital gender-affirming surgery may be the necessary step toward achieving their ultimate goal of living successfully in their desired gender role."); American Psychological Association, *Policy Statement on Transgender, Gender Identity and Gender Expression Nondiscrimination* (2009) (recognizing "the efficacy, benefit and medical necessity of gender transition treatments" and referencing studies demonstrating the effectiveness of sex-reassignment surgeries).

44. Surgeries are considered "effective" from a medical perspective, if they "have a therapeutic effect" (Monstrey et al. 2007). More than three decades of research confirms that gender confirmation surgery is therapeutic and therefore an effective treatment for gender dysphoria. Indeed, for many patients with severe gender dysphoria, gender confirmation surgery is the only effective treatment.

45. In a 1998 meta-analysis, Pfafflin and Junge reviewed data from 80 studies, from 12 countries, spanning 30 years. They concluded that "reassignment procedures were effective in relieving gender dysphoria. There were few negative consequences and all aspects of the reassignment process contributed to overwhelmingly positive outcomes" (Pfafflin & Junge 1998).

46. Numerous subsequent studies confirm this conclusion. Researchers reporting on a large-scale prospective study of 325 individuals in the Netherlands concluded that after surgery there was "a virtual absence of gender dysphoria" in the cohort and "results substantiate previous conclusions that sex reassignment is effective" (Smith et al. 2005). Indeed, the authors of the study concluded that the surgery "appeared therapeutic and beneficial" across a wide spectrum of factors and "[t]he main symptom for which the patients had requested treatment, gender dysphoria, had decreased to such a degree that it had disappeared."

47. As a general matter, patient satisfaction is a relevant measure of effective treatment. Achieving functional and normal physical appearance consistent with gender identity alleviates the suffering of gender dysphoria and enables the patient to function in everyday life. Studies have shown that by alleviating the suffering and dysfunction caused by severe gender dysphoria, gender confirmation surgery improves virtually every facet of a patient's life. This includes satisfaction with interpersonal relationships and improved social functioning (Rehman et al., 1999; Johansson et al., 2010; Hepp et al.; 2002; Ainsworth & Spiegel, 2010; Smith et al., 2005); improvement in

self-image and satisfaction with body and physical appearance (Lawrence, 2003; Smith et al., 2005; Weyers et al., 2009); and greater acceptance and integration into the family (Lobato et al., 2006).

48. Studies have also shown that surgery improves patients' abilities to initiate and maintain intimate relationships (Lobato et al., 2006; Lawrence, 2005; Lawrence, 2006; Imbimbo et al., 2009; Klein & Gorzalka, 2009; Jarolim et al., 2009; Smith et al., 2005; Rehman et al., 1999; DeCuypere et al., 2005).

49. In addition, longitudinal studies show that gender confirmation surgery has been linked with a reduction in the need for mental health treatment for transgender patients (Branstrom, et al., 2019).

50. Given the decades of extensive experience and research supporting the effectiveness of gender confirmation surgery, including a hysterectomy for a transgender man, it is clear that surgical treatment, is medically necessary, not experimental, for gender dysphoria. Therefore, decades of peer-reviewed research and a medical consensus support the inclusion of gender confirmation surgery as a medically necessary treatment in the WPATH *Standards of Care*.

51. In 2016 WPATH issued a "Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A." ("Position Statement"), affirming a statement originally issued in 2008. As the Position Statement explains, "These medical procedures and treatment protocols are not experimental: Decades of both clinical experience and medical research show they are essential to achieving well-being for the transsexual patient."

52. Similarly, Resolution 122 (A-08) of the American Medical Association states: "Health experts in GID, including WPATH, have rejected the myth that these treatments are

'cosmetic' or 'experimental' and have recognized that these treatments can provide safe and effective treatment for a serious health condition."

53. On May 30, 2014, the Appellate Division of the Departmental Appeals Board of the United States Department of Health and Human Services issued decision number 2576, in which the Board determined that Medicare's policy barring coverage for transition-related surgeries was not valid under the "reasonableness standard." The Board found that the ban "was based principally on" a report from 1981 that has been rendered obsolete by numerous "medical studies published in the more than 32 years since issuance of the 1981 report." The Board specifically concluded that transition-related surgeries are "safe and effective and not experimental." As a result, Medicare's exclusion was struck down and Medicare was directed to consider surgeries on a case-by-case basis.

54. The overwhelming scientific evidence indicates that transition-related care, including gender confirmation surgery, is medically necessary for the treatment of gender dysphoria in some patients.

55. Equating gender confirmation surgery that has been prescribed to treat gender dysphoria with sterilization is medically inaccurate. Procedures undertaken for the purpose of sterilization are distinct from medical procedures undertaken for other purposes that incidentally affect reproductive function.

56. A sterilization procedure is a medical procedure performed as a form of permanent birth control. Thus, a sterilization procedure is one that is intended to function as a form of permanent contraception.

57. The American College of Obstetricians and Gynecologists defines sterilization as "a permanent method of birth control." The U.S. Department of Health and Human Services

similarly defines sterilization as "a form of contraception (birth control) that is meant to be permanent."

58. By contrast, transition-related health care (also known as gender-affirming health care), such a hormone replacement therapy or gender confirmation surgery (previously known as gender reassignment surgery), *are not* sterilization procedures because they are not performed for the purpose of contraception. Gender-affirming health care is medically necessary for the treatment of gender dysphoria and can be life-saving for transgender individuals diagnosed with gender dysphoria.

59. To be sure, studies document how transgender individuals desire to have children and form families just like any other person (De Roo, et al., 2016; Wierckx, et al., 2012; De Sutter, et al., 2002). Indeed, a majority of transgender men desire to have children (Wierckx, et al., 2012).

60. Moreover, there is documented evidence of transgender men becoming pregnant after transitioning and having undergone hormone replacement therapy (Light, et al., 2014; Wierckx, et al., 2012). Thus, transgender men are achieving pregnancy after having transitioned socially, medically, or both.

61. What is more, transgender people can, and sometimes do, seek to preserve their ability to have children before undergoing any gender affirming medical procedure that will have an incidental effect on their fertility. Among the options available for fertility preservation to transgender men are: (1) embryo banking; (2) oocyte banking; and (3) ovarian tissue cryopreservation (De Roo, et al., 2016; Finlayson, et al., 2016). Transgender women can also preserve their fertility through cryopreservation of sperm (De Roo, et al., 2016).

62. The options for fertility preservation available to transgender patients are no different from those available to cancer patients undergoing treatments, including chemotherapy and radiation, which can lead to infertility, a field known as oncofertility (Finlayson, et al., 2016).

63. It makes sense that the options for fertility preservation available to transgender patients are the same as those available to cancer patients. In both instances, the patient is obtaining medical treatment that may have an incidental effect on fertility, but which is obtained for the primary purpose of treating a medical condition and not for contraception. For example, a hysterectomy may be medically necessary for the treatment and alleviation of a transgender man's gender dysphoria, just as hysterectomy may be medically necessary for the treatment of uterine cancer or endometriosis.

C. The Harmful Effects of Denial-of-Care to Transgender People

64. The overarching goal of treatment is to eliminate the distress of gender dysphoria by aligning an individual patient's body and presentation with their internal sense of self, thereby consolidating identity. Developing and integrating a positive sense of self-identity formation is a fundamental undertaking for all human beings. Denial of medically indicated care to transgender people based on moral or religious objections signals that such people are "inferior" or "unworthy," and triggers shame. Such denials erode resilience and pose lifelong health risks to transgender and gender nonconforming individuals, including depression, posttraumatic stress disorder, cardiovascular and other disease, premature death and suicide.

65. A wealth of research establishes that transgender people suffer from discrimination, stigma and shame. The "minority stress model" explains that the negative impact of the stress attached to being stigmatized is socially based. The stress process can be both external, *i.e.*, actual experiences of rejection and discrimination (enacted stigma), and as a result of such experiences,

internal, *i.e.*, perceived rejection and the expectation of being rejected or discriminated against (felt stigma). A 2015 study of 28,000 transgender and gender-nonconforming individuals found that 30% reported being fired, discriminated or otherwise experiencing mistreatment in the workplace. Similarly, 31% of respondents had been mistreated in a public place, including 14% who were denied service, 24% who were verbally harassed and 2% who were physically attacked.

66. This discrimination, often in the form of violence, abuse or harassment, is related to negative health outcomes. A 2012 study of transgender adults found fear of discrimination increased the risk of developing hypertension by 100%, owing to the intersectionality of shame and cardiovascular reactivity. Indeed, a 2012 study of discrimination and implications for health concluded: "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses." Another study found transgender adults' access to college bathrooms and housing was related to suicidality.

67. Until recently, it was not fully understood that these experiences of shame and discrimination could have serious and enduring consequences. But it is now known that marginalization, stigmatization and victimization are some of the most powerful predictors of current and future mental health problems, including the development of psychiatric disorders. The social problems that young transgender people face actually create the blueprint for future mental health, life satisfaction, and even physical health. A recent study of 245 gender-nonconforming adults found that stress and victimization during childhood and adolescence was associated with a greater risk for post-traumatic stress disorder, depression, life dissatisfaction, anxiety, and suicidality in adulthood. A 2011 Institute of Medicine (IOM) report concurs: "the marginalization of transgender people from society is having a devastating effect on their physical and mental health." And the American Journal of Public Health recently reported that more than

half of transgender women "struggle with depression from the stigma, shame and isolation caused by how others treat them."

68. Conversely, Bauer et al. found a 62% reduction in risk of suicide ideation with the completion of medical transition. That corresponds to a potential prevention of 240 suicide attempts per 1,000 per year.

69. While there is a growing body of documentation that structural forms of stigma (policies) harm the health of transgender people, a 2010 study was the first to show that structural stigma is associated with *all-cause mortality* (*i.e.*, deaths from any cause). In other words, stigma—a chronic source of psychological stress--disrupts physiological pathways, increasing disease vulnerability, and leading to premature death.

70. Adding to the corpus of research in this area is a relatively new approach to the investigation of the relationship between discrimination and health. Neuroscientists have discovered that, in addition to causing serious emotional difficulties and physical harms, discrimination, harassment and verbal abuse permanently alter the architecture of the brain. Deviations in the myelin sheathing of the corpus callosum and damage to the hippocampus cause cognitive difficulties in individuals who have been routinely subjected to humiliation and ostracism.[1]

71. Transgender individuals currently face significant discrimination in health care settings and barriers to care. Forty percent (40%) fear accessing care, and forego routine screening and preventative care. A 2017 report by the Center for American Progress of 7,500 transgender adults found 29% were refused treatment based on their gender identity and 21% were verbally

[1] To be sure, I have not met with or evaluated Mr. Conforti. As such, I do not offer any specific opinions about the effects the denial of a hysterectomy by the defendants might have had on Mr. Conforti.

abused when seeking healthcare. The report also found that transgender individuals often had to travel to other states to find medical providers. A 2018 survey of 6,450 participants found 24% were denied treatment in doctor's offices or hospitals, 13% in emergency rooms, 11% in mental health clinics and 5% for ambulance or emergency medical services. As a result, transgender individuals have poorer health, greater stress, and higher rates of obesity, even when compared to lesbian and gay populations. Indeed, 23% of respondents to a 2015 study did not see a doctor when they needed to because of fear of being mistreated as a transgender person. These findings led to the Association of American Medical Colleges to convene an advisory committee to develop curricula based on competencies for medical education.

IV. CONCLUSION

72. Gender affirming health care, including gender confirmation surgery, is not a sterilization procedure. It is not performed for the purposes of contraception. Rather, gender affirming health care, including gender confirmation surgery (such as a hysterectomy for a transgender man), is medically necessary for the treatment and alleviation of a transgender patient's gender dysphoria, which is a serious medical condition that can result in significant clinical distress, debilitating depression, and suicidality.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 13 day of March, 2020.

Dr. Randi C Ettner

Dr. Randi C. Ettner

Exhibit A – Curriculum Vitae

RANDI ETTNER, PHD
1214 Lake Street
Evanston, Illinois 60201
847-328-3433

POSITIONS HELD

Clinical Psychologist
Forensic Psychologist
Fellow and Diplomate in Clinical Evaluation, American Board of Psychological Specialties
Fellow and Diplomate in Trauma/PTSD
President, New Health Foundation Worldwide
Secretary, World Professional Association of Transgender Healthcare (WPATH)
Chair, Committee for Institutionalized Persons, WPATH
Global Education Initiative Committee
University of Minnesota Medical Foundation: Leadership Council
Psychologist, Center for Gender Confirmation Surgery, Weiss Memorial Hospital
Adjunct Faculty, Prescott College
Editorial Board, *International Journal of Transgenderism*
Editorial Board, *Transgender Health*
Television and radio guest (more than 100 national and international appearances)
Internationally syndicated columnist
Private practitioner
Medical staff Weiss Memorial Hospital, Chicago IL

EDUCATION

PhD, 1979	Northwestern University (with honors) Evanston, Illinois
MA, 1976	Roosevelt University (with honors) Chicago, Illinois
BA, 1969-73	Indiana University Bloomington, Indiana Cum Laude Major: Clinical Psychology; Minor: Sociology
1972	Moray College of Education Edinburgh, Scotland International Education Program
1970	Harvard University Cambridge, Massachusetts Social Relations Undergraduate Summer Study Program in Group Dynamics and Processes

CLINICAL AND PROFESSIONAL EXPERIENCE

2016-present	Psychologist: Weiss Memorial Hospital Center for Gender Confirmation Surgery
	Consultant: Walgreens; Tawani Enterprises Private practitioner
2011	Instructor, Prescott College: Gender-A multidimensional approach
2000	Instructor, Illinois Professional School of Psychology
1995-present	Supervision of clinicians in counseling gender non conforming clients
1993	Post-doctoral continuing education with Dr. James Butcher in MMPI-2 Interpretation, University of Minnesota
1992	Continuing advanced tutorial with Dr. Leah Schaefer in psychotherapy
1983-1984	Staff psychologist, Women's Health Center, St. Francis Hospital, Evanston, Illinois
1981-1984	Instructor, Roosevelt University, Department of Psychology: Psychology of Women, Tests and Measurements, Clinical Psychology, Personal Growth, Personality Theories, Abnormal Psychology
1976-1978	Research Associate, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
1975-1977	Clinical Internship, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
1971	Research Associate, Department of Psychology, Indiana University
1970-1972	Teaching Assistant in Experimental and Introductory Psychology Department of Psychology, Indiana University
1969-1971	Experimental Psychology Laboratory Assistant, Department of Psychology, Indiana University

LECTURES AND HOSPITAL GRAND ROUNDS PRESENTATIONS

The Transgender Surgical Patient, American Society of Plastic Surgeons, Miami, FL 2019

Mental health issues in transgender health care, American Medical Student Association, webinar presentation, 2019

Sticks and stones: Childhood bullying experiences in lesbian women and transmen, Buenos Aires, 2018

Gender identity and the Standards of Care, American College of Surgeons, Boston, MA, 2018

The mental health professional in the multi-disciplinary team, pre-operative evaluation and assessment for gender confirmation surgery, American Society of Plastic Surgeons, Chicago, IL, 2018; Buenos Aires, 2018

Navigating Transference and Countertransference Issues, WPATH global education initiative, Portland, OR; 2018

Psychological aspects of gender confirmation surgery International Continence Society, Philadelphia, PA 2018

The role of the mental health professional in gender confirmation surgeries, Mt. Sinai Hospital, New York City, NY, 2018

Mental health evaluation for gender confirmation surgery, Gender Confirmation Surgical Team, Weiss Memorial Hospital, Chicago, IL 2018

Transitioning; Bathrooms are only the beginning, American College of Legal Medicine, Charleston, SC, 2018

Gender Dysphoria: A medical perspective, Department of Health and Human Services, Office for Civil Rights, Washington, D.C, 2017

Multi-disciplinary health care for transgender patients, James A. Lovell Federal Health Care Center, North Chicago, IL, 2017

Psychological and Social Issues in the Aging Transgender Person, Weiss Memorial Hospital, Chicago, IL, 2017.

Psychiatric and Legal Issues for Transgender Inmates, USPATH, Los Angeles, CA, 2017

Transgender 101 for Surgeons, American Society of Plastic Surgeons, Chicago, IL, 2017.

Healthcare for transgender inmates in the US, Erasmus Medical Center, Rotterdam, Netherlands, 2016.

Tomboys Revisited: Replication and Implication; Models of Care; Orange Isn't the New Black Yet- WPATH symposium, Amsterdam, Netherlands, 2016.

Foundations in mental health; role of the mental health professional in legal and policy issues, healthcare for transgender inmates; children of transgender parents; transfeminine genital surgery assessment: WPATH global education initiative, Chicago, IL, 2015; Atlanta, GA, 2016; Ft. Lauderdale, FL, 2016; Washington, D.C., 2016, Los Angeles, CA, 2017, Minneapolis, MN, 2017, Chicago, IL, 2017; Columbus, Ohio, 2017; Portland, OR, 2018; Cincinnati, OH, 2018, Buenos Aires, 2018

Pre-operative evaluation in gender-affirming surgery-American Society of Plastic Surgeons, Boston, MA, 2015

Gender affirming psychotherapy; Assessment and referrals for surgery-Standards of Care-Fenway Health Clinic, Boston, 2015*Gender reassignment surgery*- Midwestern Association of Plastic Surgeons, 2015

Adult development and quality of life in transgender healthcare- Eunice Kennedy Shriver National Institute of Child Health and Human Development, 2015

Healthcare for transgender inmates- American Academy of Psychiatry and the Law, 2014

Supporting transgender students: best school practices for success- American Civil Liberties Union of Illinois and Illinois Safe School Alliance, 2014

Addressing the needs of transgender students on campus- Prescott College, 2014

The role of the behavioral psychologist in transgender healthcare – Gay and Lesbian Medical Association, 2013

Understanding transgender- Nielsen Corporation, Chicago, Illinois, 2013

Role of the forensic psychologist in transgender care; *Care of the aging transgender patient*-University of California San Francisco, Center for Excellence, 2013

Evidence-based care of transgender patients- North Shore University Health Systems, University of Chicago, Illinois, 2011; Roosevelt-St. Vincent Hospital, New York; Columbia Presbyterian Hospital, Columbia University, New York, 2011

Children of Transsexuals-International Association of Sex Researchers, Ottawa, Canada, 2005; Chicago School of Professional Psychology, 2005

Gender and the Law- DePaul University College of Law, Chicago, Illinois, 2003; American Bar Association annual meeting, New York, 2000

Gender Identity, Gender Dysphoria and Clinical Issues –WPATH Symposium, Bangkok, Thailand, 2014; Argosy College, Chicago, Illinois, 2010; Cultural Impact Conference, Chicago, Illinois, 2005; Weiss Hospital, Department of Surgery, Chicago, Illinois, 2005; Resurrection Hospital Ethics Committee, Evanston, Illinois, 2005; Wisconsin Public Schools,

Sheboygan, Wisconsin, 2004, 2006, 2009; Rush North Shore Hospital, Skokie, Illinois, 2004; Nine Circles Community Health Centre, University of Winnipeg, Winnipeg, Canada, 2003; James H. Quillen VA Medical Center, East Tennessee State University, Johnson City, Tennessee, 2002; Sixth European Federation of Sexology, Cyprus, 2002; Fifteenth World Congress of Sexology, Paris, France, 2001; Illinois School of Professional Psychology, Chicago, Illinois 2001; Lesbian Community Cancer Project, Chicago, Illinois 2000; Emory University Student Residence Hall, Atlanta, Georgia, 1999; Parents, Families and Friends of Lesbians and Gays National Convention, Chicago, Illinois, 1998; In the Family Psychotherapy Network National Convention, San Francisco, California, 1998; Evanston City Council, Evanston, Illinois 1997; Howard Brown Community Center, Chicago, Illinois, 1995; YWCA Women's Shelter, Evanston, Illinois, 1995; Center for Addictive Problems, Chicago, 1994

Psychosocial Assessment of Risk and Intervention Strategies in Prenatal Patients- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984; Purdue University School of Nursing, West Layette, Indiana, 1980

Psychonueroimmunology and Cancer Treatment- St. Francis Hospital, Evanston, Illinois, 1984

Psychosexual Factors in Women's Health- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984

Sexual Dysfunction in Medical Practice- St. Francis Hospital, Dept. of OB/GYN, Evanston, Illinois, 1980

Sleep Apnea - St. Francis Hospital, Evanston, Illinois, 1996; Lincolnwood Public Library, Lincolnwood, Illinois, 1996

The Role of Denial in Dialysis Patients - Cook County Hospital, Department of Psychiatry, Chicago, Illinois, 1977

PUBLICATIONS

Ettner, R., White, T., Ettner, F., Friese, T., Schechter, L. (2018) Tomboys revisited: A retrospective comparison of childhood behaviors in lesbians and transmen. *Journal of Child and Adolescent Psychiatry*.

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"The Role of Psychological Tests in Forensic Settings," *Chicago Daily Law Bulletin,* 1997.

Confessions of a Gender Defender: A Psychologist's Reflections on Life amongst the Transgender. Chicago Spectrum Press. 1996.

"Post-traumatic Stress Disorder," *Chicago Daily Law Bulletin,* 1995.

"Compensation for Mental Injury," *Chicago Daily Law Bulletin,* 1994.

"Workshop Model for the Inclusion and Treatment of the Families of Transsexuals," Proceedings of the Harry Benjamin International Gender Dysphoria Symposium; Bavaria, Germany, 1995.

"Transsexualism- The Phenotypic Variable," Proceedings of the XV Harry Benjamin International Gender Dysphoria Association Symposium; Vancouver, Canada, 1997.

"The Work of Worrying: Emotional Preparation for Labor," Pregnancy as Healing. A Holistic Philosophy for Prenatal Care, Peterson, G. and Mehl, L. Vol. II. Chapter 13, Mindbody Press, 1985.

PROFESSIONAL AFFILIATIONS

University of Minnesota Medical School–Leadership Council
American College of Forensic Psychologists
World Professional Association for Transgender Health
World Health Organization (WHO) Global Access Practice Network
TransNet national network for transgender research
American Psychological Association
American College of Forensic Examiners
Society for the Scientific Study of Sexuality
Screenwriters and Actors Guild
Phi Beta Kappa

AWARDS AND HONORS

Letter of commendation from United States Congress for contributions to public health in Illinois, 2019
WPATH Distinguished Education and Advocacy Award, 2018
The Randi and Fred Ettner Transgender Health Fellowship-Program in Human Sexuality, University of Minnesota, 2016
Phi Beta Kappa, 1972
Indiana University Women's Honor Society, 1970-1972
Indiana University Honors Program, 1970-1972
Merit Scholarship Recipient, 1970-1972
Indiana University Department of Psychology Outstanding Undergraduate Award Recipient, 1970-1972
Representative, Student Governing Commission, Indiana University, 1970

LICENSE

Clinical Psychologist, State of Illinois, 1980

Exhibit B – Bibliography

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EXHIBIT 18

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI, *Plaintiff,* v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC., *et al.*, *Defendants*.	Case No. 2:17-cv-00050-CCC-CLW

EXPERT WITNESS REPORT OF LOREN S. SCHECHTER, M.D.

I. PRELIMINARY STATEMENT

1. My name is Loren S. Schechter, MD. I have been retained by counsel for Plaintiff Jionni Conforti as an expert in connection with the above-captioned litigation.

2. I have actual knowledge of the matters stated herein. If called to testify in this matter, I would testify truthfully and based on my expert opinion.

3. I have been asked by Plaintiff's counsel to provide my expert opinion on: (i) the nature of gender dysphoria; (ii) the standards of care for treating individuals diagnosed with gender dysphoria; (iii) whether gender confirmation surgeries are appropriate and medically necessary for the treatment of transgender people's gender dysphoria; and (iv) the ethical duty of doctors to provide appropriate, medically-necessary treatment to patients.

4. I am a board-certified plastic surgeon. I specialize in performing gender confirming surgeries (including chest reconstruction surgeries, genital reconstruction surgeries, and other

procedures to feminize or masculinize the face and body, as described in more detail below),[1] and I am a recognized expert in this field.

5. I prepared this report to set forth the opinions I may express at trial and the bases for my opinions. The opinions expressed in this report are based on the information that I have reviewed to date. I reserve the right to revise and supplement this report if any new information becomes available in the future.

6. My curriculum vitae, which includes a list of publications, is attached to this report as Exhibit A. Materials that I considered in forming my opinions are listed in Exhibit B or referenced in this report. I also relied on my considerable professional experience in reaching the conclusions in this report.

7. In the last four years, I have testified as an expert at trial or by deposition in the following cases: *Willis v. Flagg*, No. 2010-L-006049 (Ill. Cir. Ct., Cook Cty.); *Carver v. VanRaalte*, No. 2012L8 (Ill. Cir. Ct., Rock Island Cty.); *Boyden v. State of Wisconsin Dep't of Employee Trust Funds*, No. 3:17-cv-00264 (W.D. Wis.); and *Bruce v. State of South Dakota*, No. 5:17-cv-05080-JLV (D.S.D.).

8. I am being compensated at an hourly rate of $450/hour plus expenses for my time spent preparing this report and providing local testimony (including deposition or providing hearing

[1] I refer to this family of procedures as "gender confirmation" or "gender confirming surgeries" because they are one of the therapeutic tools used to enable people to be comfortable living in accordance with their gender identity. Out of the myriad of labels I have heard for these procedures—"sex reassignment surgery," "gender reassignment surgery," and "sex change operation," to name but a few—none is as accurate when it comes to describing what is actually taking place as "gender confirmation" or "gender affirmation surgery." Most, if not all, of the other names used for these procedures suggest that a person is making a choice to switch genders, or that there is a single "surgery" involved. From the hundreds of discussions I have had with patients over the years, nothing could be further from the truth. This is not about choice; it is about using one or more surgical procedures as therapeutic tools to enable people to live authentically.

testimony by telephone or video-teleconference). I will be compensated a flat daily rate of $7,500 for any out-of-town deposition or hearing testimony. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I may provide.

II. BACKGROUND AND QUALIFICATIONS

9. My professional background, experiences, publications, and presentations are further detailed in my curriculum vitae, a true and correct copy of which is attached as Exhibit A.

10. I received my medical degree from the University of Chicago, Pritzker School of Medicine. I completed my residency and chief residency in plastic and reconstructive surgery and a fellowship in reconstructive microsurgery at the University of Chicago Hospitals.

11. I am currently a Clinical Professor of Surgery at the University of Illinois at Chicago. I also maintain a clinical practice in plastic surgery in Illinois where I treat patients from around the country, as well as from around the world.

12. I have been performing gender confirmation surgeries for over 20 years. For the past four or five years, I have been performing approximately 150 gender confirmation procedures every year. I have performed over 600 gender confirmation surgeries during my medical career. Currently, approximately 85-90 percent of the patients in my clinical practice are transgender individuals seeking gender confirmation surgeries.

13. I was a contributing author to the Seventh Version (current) of the World Professional Association for Transgender Health's (WPATH) *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* ("WPATH Standards of Care"). In particular, I wrote the section focused on the relationship of the surgeon with the treating mental health professional and the physician prescribing hormone therapy. WPATH is in the midst of

drafting the eighth version of the WPATH Standards of Care. I am the co-lead on the surgical and postoperative care chapter in the eighth version.

14. The WPATH Standards of Care provide clinical guidance for health professionals based on the best available science and expert professional consensus. The purpose of the WPATH Standards of Care is to assist health providers in delivering medical care to transgender people in order to provide them with safe and effective pathways to achieving lasting personal comfort with their gendered selves and to maximize their overall health, psychological well-being, and self-fulfillment.

15. In addition, I have written a number of peer-reviewed journal articles and chapters in professional textbooks about gender confirmation surgeries. In 2016, I published *Surgical Management of the Transgender Patient*, the first surgical atlas (a reference guide for surgeons on how to perform surgical procedures using safe, well-established techniques) dedicated to gender confirming surgeries. In 2020, I published a second textbook through Springer, entitled *Gender Confirmation Surgery Principles and Techniques for an Emerging Field*, for which I was the primary editor. A full and complete list of my publications is included in my CV (Exhibit A).

16. I am a guest reviewer for the *Journal of Plastic and Reconstructive Surgery*, the *Journal of Reconstructive Microsurgery*, *JAMA Surgery*, and the *Journal of Sexual Medicine*. I am also a guest oral board examiner for The American Board of Plastic Surgery. I also serve on the editorial board of both *Transgender Health* and the *International Journal of Transgenderism*. Each of these publications is a peer-reviewed medical journal.

17. I am actively involved in training other surgeons to perform gender confirmation surgeries. Three years ago, I started the surgical fellowship in gender surgery at Weiss Memorial Hospital in Chicago. I am also the Medical Director of the Center for Gender Confirmation Surgery

at Weiss Memorial Hospital. In addition, I am the site director for a fellowship in reconstructive urology and gender surgery at Weiss Memorial Hospital, under the auspices of the Department of Urology at the University of Illinois at Chicago.

18. I have given dozens of public addresses, seminars, and lectures on gender confirmation surgeries, including many through the American Society of Plastic Surgeons. I have also taught a number of courses through WPATH's Global Education Initiative, which provides training courses toward a member certification program in transgender health for practitioners around the world. In addition, I recently co-directed the first live surgery course in gender confirmation procedures at Mount Sinai Hospital in New York City, and I am co-directing the second course, scheduled for March 2019. In November 2017, I was an invited discussant at the Pentagon/Department of Defense during deliberations regarding service of transgender individuals in the military.

19. I am also a former member of the Board of Governors of the American College of Surgeons and a current member of the Board of Directors of the World Professional Association for Transgender Health.

III. BASIS FOR OPINIONS

20. My opinions contained in this report are based on all of the following: (i) my education, training, research, and clinical experience of over 20 years of caring for transgender individuals, which are detailed in my curriculum vitae attached as Exhibit A to this report; (ii) my review and familiarity with relevant peer-reviewed literature and research;[2] and (iii) discussions

[2] I regularly and routinely perform literature searches as an educator, including in my roles as clinical professor of surgery at the University of Illinois and as an attending surgeon at Rush University Medical Center, where I participate in fellow, resident, and student education; Director of the Center for Gender Confirmation Surgery at Weiss Memorial Hospital; lecturer for the Global Education Initiative for WPATH; invited lecturer at national and international conferences; co-

with colleagues and other experts in the field, including attendance and participation in various educational conferences both nationally and internationally. The research I relied on in preparing this report is cited in the footnotes and detailed in the reference list attached as Exhibit B to this report. The sources cited therein are authoritative, scientific peer-reviewed publications. The materials I have relied on in preparing this report are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

21. I have not met or spoken with the plaintiff in this case for purposes of this report.[3] My opinions are based solely on the information I have been provided by Plaintiff's attorneys, the materials referenced in the Bibliography as Exhibit B and cited herein, and my extensive clinical and professional experience studying gender dysphoria and in treating transgender patients.

IV. DISCUSSION

A. Background on Gender Identity and Gender Dysphoria

22. The term "transgender" is used to describe a diverse group of individuals whose gender identity or internal sense of gender differs from the sex they were assigned at birth.

23. Many transgender individuals experience gender dysphoria at some point in their lives. Gender dysphoria is defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) published by the American Psychiatric Association as "a difference between one's experienced/expressed gender and assigned gender, and significant distress or problems

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lead of the surgery and post-operative care chapter of the upcoming WPATH Standards of Care Version 8; an editor and reviewer for peer-reviewed publications; and a course director for various educational opportunities for WPATH, American Society of Plastic Surgeons, and other organizations.

[3] Since I have not met with or evaluated Mr. Conforti, I do not offer any specific opinions about the effects the denial of a hysterectomy by the defendants might have had on Mr. Conforti.

functioning." Gender dysphoria is a serious medical condition recognized by the International Classification of Diseases-10 (ICD-10) and the DSM-V. Individuals diagnosed with gender dysphoria have an intense and persistent discomfort with the primary and/or secondary sex characteristics of the sex they were assigned at birth. Gender dysphoria can lead to debilitating anxiety and depression, as well as serious incidents of self-harm, including self-mutilation, suicide attempts, and suicide.

24. Appropriate medical care, including mental health services, hormone therapy, and gender confirmation surgeries, can help alleviate gender dysphoria. Gender confirmation surgeries, which bring a person's body into better alignment with their gender identity, have been shown to be an effective treatment for gender dysphoria.

B. Gender Confirmation Surgeries Are Standard, Medically Accepted, and Medically Necessary Treatments for Gender Dysphoria for Many Transgender People

25. It is my professional opinion, supported by the prevailing consensus of the medical community, that procedures used to treat gender dysphoria are medically necessary treatments for gender dysphoria for many transgender individuals; that these procedures are properly considered as medically necessary, and are not cosmetic in nature; and that these procedures are safe and effective treatments for gender dysphoria.

1. Applicable Standards of Care for Treating Gender Dysphoria

26. WPATH is a non-profit professional and educational organization devoted to transgender health. WPATH's mission is "to promote evidence-based care, education, research, advocacy, public policy, and respect in transgender health."[4] WPATH publishes Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (WPATH

[4] WPATH, Mission and Vision, https://www.wpath.org/about/mission-and-vision.

Standards of Care). The WPATH Standards of Care are based on the best available scientific evidence and expert professional consensus.

27. WPATH published the first version of the Standards of Care in 1979. Since that time, the guidelines have been updated seven times, reflecting the significant advances made in the understanding, management, and care of transgender individuals.

28. The WPATH Standards of Care are widely recognized guidelines for the clinical management of transgender individuals with gender dysphoria. Most surgeons, who regularly treat individuals experiencing gender dysphoria, including myself, practice in accordance with the WPATH Standards of Care.

29. As indicated in the WPATH Standards of Care, effective treatment options for gender dysphoria include mental health care, hormone therapy, and various surgical procedures to align a person's primary and/or secondary sex characteristics with the person's gender identity. (WPATH Standards of Care at 9-10). Surgery is often the last and most considered of the treatment options for gender dysphoria in transgender individuals. Not every transgender person wants, requires, or qualifies for every available surgical procedure. In fact, the WPATH Standards of Care note that "[t]he number and sequence of surgical procedures may vary from patient to patient, according to their clinical needs." (WPATH Standards of Care at 58). Evidence shows that while some transgender individuals do not require surgery, "for many others surgery is essential and medically necessary to alleviate their gender dysphoria. For the latter group, relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to establish greater congruence with their gender identity." (WPATH Standards of Care at 54-55).

30. The WPATH Standards of Care set forth criteria for initiation of surgical treatment. The Endocrine Society—the leading professional organization devoted to research on hormones and the clinical practice of endocrinology—has also issued clinical guidelines for the treatment of transgender individuals.[5] The guidelines indicate that for many transgender individuals, gender-confirming surgeries are necessary and effective treatments.[6]

31. The broader medical community, including the American Medical Association, American Psychological Association, American Psychiatric Association, American College of Obstetricians and Gynecologists, American Academy of Family Physicians, and World Health Organization, recognizes that gender confirmation surgeries are standard, appropriate, and necessary treatments for many people with gender dysphoria.

2. Surgical Treatments for Gender Dysphoria

32. For transgender men (men who were assigned female at birth and have a male gender identity), surgical treatment options that are generally accepted in the medical community and are consistent with the WPATH Standards of Care include, but are not limited to:

- Chest reconstruction surgery: double mastectomy (breast removal); and
- Genital reconstruction surgeries: hysterectomy (removal of the uterus), oophorectomy (removal of fallopian tubes and ovaries), phalloplasty (creation of neo-phallus and testicular implants).

33. For transgender women (women who were assigned male at birth and have a female gender identity), surgical treatment options that are generally accepted in the medical community and are consistent with the WPATH Standards of Care include, but are not limited to:

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[5] Wylie C Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clin. Endocrinology & Metabolism 3869 (2017).

[6] *Id.*

- Feminizing augmentation mammoplasty;
- Facial feminization surgery; and
- Genital reconstruction surgeries: orchiectomy (removal of the testes), vaginoplasty (creation of a neo-vagina)

3. Gender Confirmation Surgeries Are Medically Necessary, Not Cosmetic

34. The medical community and insurance providers recognize a distinction between a surgery that is medically necessary and a cosmetic surgery, which generally is not. No particular procedure is inherently cosmetic or inherently medically necessary; rather, the underlying diagnosis determines whether the procedure is considered cosmetic or medically necessary.

35. With respect to surgical treatments for gender dysphoria, the medical community generally consider those surgeries to be medically necessary. This is true even though the same surgical procedures might be considered cosmetic when performed on someone without a diagnosis of gender dysphoria. Gender confirmation surgeries are not cosmetic because, when performed in accordance with the WPATH Standards of Care, they are clinically indicated to treat the underlying medical condition of gender dysphoria. Indeed, as explained further below, the surgical procedures listed above to treat gender dysphoria are similar to surgical procedures performed for other diagnoses (e.g., breast cancer). Because these medically necessary procedures help transgender individuals live and present in a manner more consistent with their gender identity and therefore reduce their gender dysphoria, the professional medical consensus is that these are appropriately categorized as medically necessary.

36. Certain surgical procedures are medically necessary when used to treat gender dysphoria or another medical condition, but are cosmetic when used only to alter one's appearance without an underlying medical diagnosis (e.g., a non-transgender woman obtaining a breast augmentation to improve appearance). While the procedures themselves are technically similar,

the reasons for performing the procedures are not.[7] Unlike the transgender patient with gender dysphoria, the non-transgender woman does not have a recognized medical condition for which the surgery performed is a clinically indicated treatment.

37. As noted in *The Standards of Care*, version 7, for many individuals, relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to establish congruence with their gender identity. Moreover, surgery can help patients feel more at ease in the presence of sexual partners or in venues such as physicians' offices, swimming pools, or health clubs. In some settings, surgery might reduce risk of harm, such as during a body search by police or other authorities.

38. Transgender men may seek hysterectomy and/or oophorectomy in order to reduce their medical discomfort (gender dysphoria) in having a menses as well as to remove internal reproductive organs typically associated with individuals assigned female at birth. Additional purposes and benefits to transgender men who seek hysterectomy and/or oophorectomy include: no longer needing to medically survey these organs (ie Pap smear), to decrease the risk of developing gynecologic cancers (ie cervical, endometrial, and/or ovarian cancer), and/or to relieve pelvic pain.

39. In addition, for transgender men, hysterectomy is often required prior to undergoing genital reconstructive surgery. Before undergoing either a phalloplasty or a metoidioplasty with

[7] Put simply, medically necessary surgery is performed for medical conditions with the goal of either curing or preventing progression of medical conditions. Moreover, the terms "cosmetic" and "elective" are not synonymous. Many, if not most, surgeries are elective in nature. This does not imply that elective surgeries are not medically indicated. What differentiates elective surgeries from emergent or urgent surgeries is the immediacy of need in addressing a particular clinical condition, not the necessity of the surgery. For example, emergent or urgent surgeries refer to imminent or near-term threat of loss of life or limb. However, delaying "elective" surgeries may have adverse consequences, such as disease progression. For instance, indefinite delay of gender affirming surgery leads to the progression/worsening of the medical condition, gender dysphoria.

colpectomy, a hysterectomy is a medically necessary prerequisite. In these instances, failure to perform a hysterectomy will lead to serious adverse health consequences. First, there is no method to survey the cervix (i.e. A pap smear is not possible and this may lead to a failure to diagnosis cervical and/or uterine cancer), and second, there is no mechanism to allow egress of uterine secretions (potentially leading to infections, abscesses, and pain)

40. Hysterectomy for gender dysphoria is a medically necessary procedure, as it may be for other conditions like cancer. Whether to reduce the risk of cancer, stop menstruation, alleviate the need to survey these organs, or treat pelvic pain, hysterectomy serves an integral role in the treatment of gender dysphoria.

C. Medical Providers Have An Ethical Obligation to Treat Transgender Patients with Gender Dysphoria

41. It is undisputed that medical providers have an ethical duty to appropriately treat their patients according to scientifically based and medically indicated best practices for a given pathology. This includes providing gender confirmation surgery to patients with gender dysphoria for whom it is medically indicated**.**

42. A physician's responsibility is to care for their patients using their medical knowledge and their medical judgment. The physician and the patient must then reach a mutually agreed upon treatment plan. External influences, especially those not founded in science or medicine should not influence a physician's ability to care for their patient or to follow the appropriate and individualized treatment plan for each patient.

V. SUMMARY OF OPINIONS AND CONCLUSIONS

43. Based on my 20 years of clinical experience performing gender confirmation procedures and caring for transgender individuals, my knowledge of the standards of care and relevant peer-reviewed literature, and my discussions and interactions with experts throughout the

world, it is my professional opinion that gender confirmation surgeries are medically necessary treatments for gender dysphoria in many transgender individuals. In my experience, the overwhelming number of individuals who undergo gender confirmation procedures describe relief and/or reduction of their gender dysphoria and improvement in their quality of life and overall functioning.

44. Furthermore, based on my clinical and professional experience and my ongoing review of the literature, it is my professional opinion that the denial of necessary medical care is likely to perpetuate gender dysphoria and create or exacerbate other medical issues, such as depression and anxiety, leading to an increased possibility of self-harm, negative health outcomes, and even suicide.

45. In conclusion, it is my professional opinion that the denial of a medically necessary hysterectomy to Mr. Conforti by St. Joseph's Healthcare System, Inc., assuming such a hysterectomy was deemed to be medically necessary by Mr. Conforti's health care providers,[8] is (i) inconsistent with the Standards of Care for treating transgender individuals diagnosed with gender dysphoria, (ii) inconsistent with the peer-reviewed scientific and medical research demonstrating that gender dysphoria is a serious pathology requiring acute treatment and in many cases gender confirmation surgery; and (iii) inconsistent with the ethical duty of doctors to provide appropriate treatment for patients with gender dysphoria. To the extent the denial is premised on the assumption that gender confirmation surgical care is not medically necessary, that assumption is wrong. The standards of care confirm, based on clinical evidence, that gender confirmation

[8] Again, I have not met with or evaluated Mr. Conforti. Accordingly, I do not offer any opinion as to whether a hysterectomy was medically indicated for Mr. Conforti specifically.

surgeries are medically necessary to help people alleviate the often serious and life-threatening symptoms of gender dysphoria.

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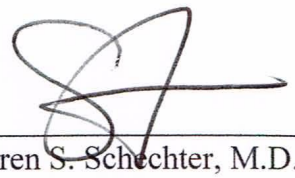
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and corrected.

Executed this 20 day of March, 2020.



Loren S. Schechter, M.D.

Exhibit A – Curriculum Vitae

Curriculum Vitae

NAME: **LOREN SLONE SCHECHTER, MD, FACS**

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Tel: 847.967.5122
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E-MAIL: lss@univplastics.com
WEB SITE: www.univplastics.com
www.plasticsurgery.org/md/DRLOREN.htm

BIRTHDATE: August 14, 1968
BIRTHPLACE: Galveston, Texas
MARITAL STATUS: Married
SPOUSE: Rebecca Brown Schechter, MD
CHILDREN: Owen Slone Schechter
Miles Slone Schechter

CERTIFICATION:

	The American Board of Plastic Surgery	2001
	Certificate Number 6271	
	Date Issued: September 2001	
	Maintenance of Certification:	2011

EDUCATION:

1986-1990	The University of Michigan	BS, 1990
1990-1994	The University of Chicago Pritzker School of Medicine	MD, 1994

POSTGRADUATE TRAINING:

Residency:	The University of Chicago Hospitals Coordinated Training Program in Plastic and Reconstructive Surgery	1994-1999
Chief Resident:	The University of Chicago Hospitals Section of Plastic and Reconstructive Surgery	1998-1999
Fellowship:	Reconstructive Microsurgery The University of Chicago Hospitals Section of Plastic and Reconstructive Surgery	1999-2000

TEACHING APPOINTMENT:
Clinical Professor of Surgery, The University of Illinois at Chicago

	Associate Professor, Physician Assistant Program, College of Health Professionals, Rosalind Franklin University

LICENSURE:

	Illinois Illinois Controlled Substance DEA

STAFF APPOINTMENTS:

	University of Illinois at Chicago Hospital Rush University Medical Center Advocate Lutheran General Hospital Louis A. Weiss Memorial Hospital Illinois Sports Medicine and Orthopedic Surgery Cente

HONORS AND AWARDS:

2017-2020	Castle Connolly Top Doctor (Chicago)
2017	Chicago Consumer Checkbook Top Doctor
2015	University of Minnesota Program in Human Sexuality Leadership Council
2014	National Center for Lesbian Rights honored guest
2013	Illinois State Bar Association Award for Community Leadership
2010	Advocate Lutheran General 2009 Physicians Philanthropy Leadership Committee-Outstanding Leadership
2009	Advocate Lutheran General Hospital Value Leader
1994	Doctor of Medicine with Honors
1994	University of Chicago Department of Surgery Award for Outstanding Performance in the Field of Surgery
1994	Catherine Dobson Prize for the Best Oral Presentation Given at the 48th Annual Senior Scientific Session in The Area of Clinical Investigation
1993	Alpha Omega Alpha
1991	University of Chicago National Institutes Of Health Summer Research Award
1990	Bachelor of Science with High Distinction And Honors in Economics
1990	James B. Angell Award for Academic Distinction
1989	Omicron Delta Epsilon-National Economic Honor Society
1988	College Honors Program Sophomore Honors Award For Academic Distinction
1988	Class Honors (Dean's List)

MEMBERSHIPS:

2018-	The American Association of Plastic Surgeons

2016-	The American Society for Gender Surgeons (founding member and president-elect)
2010-	World Society for Reconstructive Microsurgery
2005-	The University of Chicago Plastic Surgery Alumni Association
2005-	The Chicago Surgical Society
2004-	The American Society for Reconstructive Microsurgery
2003-	The American College of Surgeons
2002-	The American Society of Plastic Surgeons
2001-	Illinois Society of Plastic Surgeons (formerly, Chicago Society of Plastic Surgeons)
2001-	The American Society of Maxillofacial Surgeons
2001-	American Burn Association
2001-	Midwest Association of Plastic Surgeons
2001-	WPATH
1994-	The University of Chicago Surgical Society
1994-	The University of Chicago Alumni Association
1992-	American Medical Association
1992-	Illinois State Medical Society
1992-	Chicago Medical Society
1990-	The University of Michigan Alumni Association

CURRENT HOSPITAL COMMITTEES:

Director, Center for Gender Confirmation Surgery, Louis A. Weiss Memorial Hospital

PROFESSIONAL SOCIETY COMMITTEES:

American Society of Breast Surgeons Research Committee, ASPS repreentative

American Board of Plastic Surgery, Guest Oral Board Examiner

WPATH Ethics Committee

American College of Radiology Committee on Appropriateness Criteria Transgender Breast Imaging Topic

American Society of Plastic Surgeons, Finance and Investment Committee

Board of Directors, at-large, The World Professional Association for Transgender Health

PlastyPac, Chair, Board of Governors

American Society of Plastic Surgeons, Coding and Payment Policy Committee

American Society of Plastic Surgeons, Practice Management Education Committee

Medicare Carrier Advisory Committee

Chair of the Metro Chicago District #2 Committee on Applicants, American College of Surgeons

American Society of Plastic Surgery, Health Policy Committee

American Society of Plastic Surgery, Patient Safety Committee

OTHER:

Guest Reviewer, European Medical Journal

Guest Reviewer, Open Forum Infectious Diseases

Guest Reviewer, The Journal of The American College of Surgeons

Guest Book Reviewer, Plastic and Reconstructive Surgery

Editorial Board, Transgender Health

Editorial Board (Associate Editor), International Journal of Transgenderism

Fellow of the Maliniac Circle

Guest Reviewer, Journal of Reconstructive Microsurgery

Guest Reviewer, Journal of Plastic and Reconstructive Surgery

Guest Reviewer, Journal of Sexual Medicine

Guest Editor, Clinics in Plastic Surgery, Transgender Surgery (Elsevier Publishing)

Guest Reviewer, The Journal of Plastic and Reconstructive Surgery

PREVIOUS EDITORIAL ROLE:

Guest Reviewer, EPlasty, online Journal

Module Editor for Patient Safety, Plastic Surgery Hyperguide

Editorial Advisory Board, Plastic Surgery Practice

Guest Reviewer, International Journal of Transgenderism

Guest Reviewer, Pediatrics

PREVIOUS ACADEMIC APPOINTMENT:

Visiting Clinical Professor in Surgery, The University of Illinois at Chicago

Chief, Division of Plastic and Reconstructive Surgery, Chicago Medical School, Rosalind Franklin University of Medicine and Science

Associate Professor of Surgery, The College of Health Professionals, Rosalind Franklin University

Clinical Associate in Surgery, The University of Chicago

PREVIOUS HOSPITAL COMMITTEES:

Division Director, Plastic Surgery, Lutheran General Hospital

Division Director, Plastic Surgery, St. Francis Hospital

Medical Staff Executive Committee, Secretary, Advocate Lutheran General Hospital

Credentials Committee, Lutheran General Hospital

Pharmacy and Therapeutics Committee Lutheran General Hospital

Operating Room Committee, St. Francis Hospital

Cancer Committee, Lutheran General Hospital
-Director of Quality Control

Risk and Safety Assessment Committee, Lutheran General Hospital

Nominating Committee, Rush North Shore Medical Center

Surgical Advisory Committee, Rush North Shore Medical Center

Section Director, Plastic Surgery, Rush North Shore Medical Center

PREVIOUS SOCIETY COMMITTEES:

Board of Governors, Governor-at-large, The American College of Surgeons

American College of Surgeons, International Relations Committee

Chair, Government Affairs Committee, American Society of Plastic Surgeons

President, The Metropolitan Chicago Chapter of The American College of Surgeons

2012 Nominating Committee, American Society of Plastic Surgeons

Program Committee, The World Society for Reconstructive Microsurgery, 2013 Bi-Annual Meeting

President, Illinois Society of Plastic Surgeons

Vice-President, The Illinois Society of Plastic Surgeons (formerly the Chicago Society of Plastic Surgery)

Vice-President, The Metropolitan Chapter of the American College of Surgeons

American Society of Plastic Surgery, Chairman, Patient Safety Committee

2006-2007 Pathways to Leadership, The American Society of Plastic Surgery

2005 & 2006 President, The University of Chicago Plastic Surgery Alumni Association

2003 Leadership Tomorrow Program, The American Society of Plastic Surgery

Senior Residents Mentoring Program, The American Society of Plastic Surgery

American Society of Maxillofacial Surgery, Education Committee

Alternate Councilor, Chicago Medical Society

American Society of Aesthetic Plastic Surgery, Electronic Communications Committee

American Society of Aesthetic Plastic Surgery, Intranet Steering Committee

American Society of Aesthetic Plastic Surgery, International Committee

Membership Coordinator, The Chicago Society of Plastic Surgeons
The Illinois State Medical Society, Governmental Affairs Council

The Illinois State Medical Society, Council on Economics

Chicago Medical Society, Physician Review Committee
-Subcomittee on Fee Mediation

Chairman, Chicago Medical Society, Healthcare Economics Committee

Secretary/Treasurer, The Metropolitan Chicago Chapter of the American College of Surgeons

Scientific Committee, 2007 XX Biennial Symposium WPATH

Local Organizing Committee 2007 WPATH

Secretary, The Chicago Society of Plastic Surgeons

Treasurer, The Chicago Society of Plastic Surgeons

Council Member, The Metropolitan Chicago Chapter of the American College of Surgeons

INTERNATIONAL MEDICAL SERVICE:

Northwest Medical Teams
Manos de Ayuda (Oaxaca, Mexico)

Hospital de Los Ninos (San Juan, Puerto Rico)

COMMUNITY SERVICE:

Board of Directors, Chicago Plastic Surgery Research Foundation

National Center for Gender Spectrum Health Advisory Council

PREVIOUS COMMUNITY SERVICE:

Board of Directors, Committee on Jewish Genetic Diseases, Jewish United Fund, Chicago, Illinois

Governing Council, Lutheran General Hospital, Park Ridge, Il

Lutheran General Hospital Development Council, Park Ridge, Il

Lutheran General Hospital Men's Association, Park Ridge, Il

Advisory Board, Committee on Jewish Genetic Diseases, Cancer Genetics Subcommittee, Jewish United Fund, Chicago, Illinois

Health Care Advisory Board, Congressman Mark Kirk, 10th Congressional District, Illinois

Major Gifts Committee, Saint Francis Hospital Development Council, Evanston, Il

Visiting Professor:

1. University of Utah, Division of Plastic Surgery, November 6-8, 2014.

2. Northwestern University, Division of Plastic Surgery, April 21-22, 2016.

3. The University of North Carolina, Division of Plastic Surgery, March 28-29, 2017

4. Georgetown University, Department of Plastic Surgery, May 17-18, 2017

5. The University of Basel, Basel, Switzerland, August 31-September 1, 2018

6. The Ochsner Health System, January 28-January 30, 2019

7. The University of Toronto, Toronto, Ontario, Canada, February 21-22, 2019

8. The University of Michigan, Ann Arbor, MI

Invited Discussant:

1. Department of Defense, Military service by people who are transgender, Invitation from Terry Adirim, M.D., M.P.H.Deputy Assistant Secretary of Defense for Health Services Policy & Oversight, The Pentagon, November 9, 2017

2. Aesthetic Surgery Journal, Invited Discussant May 7, 2019, Journal Club. "What is "Nonbinary" and What Do I need to Know? A Primer for Surgeons Providing Chest Surgery for Transgender Patients."

Research Interests:

1. Role of Omental Stem Cells in Wound Healing (Grant: Tawani Foundation)

2. Robotic-Assisted Bilateral Prophylatic Nipple Sparing Mastectomy with Immediate Tissue Expander/Implant Reconstruction (Pending submission to the FDA for Investigational Device Exemption in association with Intuitive Surgical)

3. Transgender Health and Medicine Research Conference, National Institutes of Health, Bethesda, MD May 7-8, 2015

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7. Iris Seitz, MD Craig Williams, MD, Thomas Weidrich, MD, John Seiler, MD, Ginard Henry, MD, and **Loren S. Schechter, MD**: Omental Free Tissue Transfer for Coverage of Complex Upper Extremity Defects: The Forgotten Flap (published online March 25, 2009, *Hand*)*Hand, Vol. 4. Issue 4 (2009)p.397*

8. Michael Salvino and **Loren S. Schechter**: Microvascular Reconstruction of Iatrogenic Femoral Artery Thrombus in an Infant: A Case Report and Review of the Literature ePlasty Volume 9 ISSN: 19357-5719, E-location ID: e20

9. Phillip C. Haeck, MD, Jennifer A. Swanson, BS, Med, Ronald E. Iverson, MD., **Loren S. Schechter, MD**, Robert Singer, MD, Bob Basu, MD, MPH, Lynn A. Damitz, MD, Scott Bradley Bradley Glasberg, MD, Lawrence S. Glasman, MD, Michael F. McGuire, MD, and the ASPS Patient Safety Committee: Evidence-Based Patient Safety Advisory: Patient Selection and Procedures in Ambulatory Surgery, Supplement to Plastic and Reconstructive Surgery, Volume 124, Number 4s, October Supplement 2009.

10. Philip C. Haeck, MD, Jennifer A. Swanson, BS, Med, **Loren S. Schechter, MD**, Elizabeth J. Hall-Findlay, MD, Noel B. McDevitt, MD, Gary Smotrich, MD, Neal R. Reisman, MD, JD, Scot Bradley Glasberg, MD, and the ASPS Patient Safety Committee: Evidence-Based Patient Safety Advisory: Blood Dyscrasias, Patient Selection and Procedures in Ambulatory Surgery, Supplement to Plastic and Reconstructive Surgery, Volume 124, Number 4s, October Supplement 2009.

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35. Loren S. Schechter, Mimis N. Cohen, "Gender Confirmation Surgery: Moving Forward," The Journal of Craniofacial Surgery, Vol. 30, No. 5, July 2019, P. 1364

36. Loren S. Schechter, Rebecca Schechter, "Training Surgeons in Gender Confirmation Surgery," The Journal of Craniofacial Surgery, Vol 30, No 5, July 2019, p. 1380

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2. **Schechter LS**, Memmel H, Layke J: Breast Reconstruction: The Plastic Surgeon as a Member of the Multi-Disciplinary Team. *Chicago Medicine*, 106(15): 34-38, 2003

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6. **Loren S. Schechter, MD** and Iris Seitz, MD, PhD: Mission: Possible Achieving a Successful Microsurgical Reconstruction of the Head and Neck, *Plastic Surgery Practice*, May 2009.

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2. Loren S. Schechter, Surgery for Gender Identity Disorder, *Plastic Surgery*, Fourth Edition, ed. Neligan, 2013, Elsevier, Vol. Four, Volume Editor (Submitted for publication): David H. Song

3. Nicholas Kim and **Loren S. Schechter,** Plastic Surgery Board Review: Pearls of Wisdom, 3rd Edition, Gender Confirmation Surgery McGraw Hill, 2016

4. **Loren S. Schechter,** Surgical Management of the Transgender Patient (Elsevier, 2016)

5. **Loren S. Schechter** and Rebecca B. Schechter, Pursuing Gender Transition Surgeries, *Adult Transgender Care An Interdisciplinary Approach for Training Mental Health Professionals*, First Edition, published 2018, Taylor and Francis, edited by Michael Kauth and Jillian Shipherd

6. **Loren S. Schechter,** Breast and Chest Surgery in Transgender Patients, Comprehensive Care of the Transgender Patient Elsevier

7. **Loren S. Schechter,** Gender Confirmation Surgery-Principles and Techniques for an Emerging Field, Springer-Verlag

8. **Loren S. Schechter,** Gender Confirmation Surgery, Clinics in Plastic Surgery Elsevier

9. **Loren S. Schechter** and Paul Weiss, Transgender Breast Surgery, Cosmetic Breast Surgery, (In publication, Thieme)

10. **Loren S. Schechter,** Surgical Effects of GnRHa Treatment, Pubertal Suppression in Transgender Youth, Elsevier

11. **Loren S. Schechter,** Surgical Anatomy: Phalloplasty, in Urological Care for the Transgender Patient: A Comprehensive guide (in preparation, Springer Nature)

12. **Loren S. Schechter** and Alexander Facque, Transgender Surgery-Feminization and Masculinization, Tips and Tricks in Plastic Surgery, edited by Seth R. Thaller and Zubin Panthaki,(Springer Nature, Submitted for publication)

13. **Loren S. Schechter** and Alexander Facque, Aesthetic Breast Surgery in Transgender Patients: Male to Female, Spear's Surgery of the Breast: Principles and Art, 4e by Allen Gabriel, Wolters Kluwer (in publication)

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15. **Loren S. Schechter**, Gender Affirming Surgery: Bottom Surgery, The Art of Aesthetic Surgery: Principles and Techniques, edited by Drs. Foad Nahai, Jeffrey Kenkel, Grant Stevens, Farzad Nahai, John Hunter, and William P. Adams,(Thieme, In Publication)

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3. **L. Schechter**, Robert Walton: Plication of the Orbital Septum in Lower Eyelid Blepharoplasty. New Frontiers in Aesthetic Surgery Annual Meeting Program Manual, p.90-91, 1999

4. **Loren Schechter, M.D.**, K. Alizadeh, M.D., M. McKinnon, M.D., Craniofacial Osseo-Distraction: A Bridge to Eucephaly, Abstracts of the 12th Congress of the International Confederation for Plastic, Reconstructive, and Aesthetic Surgery, p. 63, 1999.

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12. Liza C. Wu, **Loren S. Schechter**, Robert F. Lohman, Somchai Limsrichamren, Charles G. Winans, J. Michael Millis, and David C. Cronin: Implantable Doppler Probe for Continuous Monitoring of Hepatic Artery and Portal Vein Blood Flow in Pediatric Liver Transplantation, The Journal of Reconstructive Microsurgery, 19(7): 517, 2003.

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15. **Loren S. Schechter, MD, FACS**, James Boffa, MD, Randi Ettner, Ph.D., and Frederic Ettner, MD: Revision Vaginoplasty With Sigmoid Interposition: A Reliable Solution for a Difficult Problem, The World Professional Association for Transgender Health (WPATH) 2007 XX Biennial Symposium P. 31-32

16. Jacob M.P. Bloom, MS, Alvin B. Cohn, MD, Benjamin Schlechter, MD, Nancy Davis, MA, **Loren S. Schechter, MD**, Abdominoplasty and Intra-Abdominal Surgery: Safety First, Plastic Surgery Abstract Supplement vol. 120, no 4, p. 99

17. I.A. Seitz, C.S. Williams, T.A. Wiedrich, **L.S. Schechter**, Omental Free Tissue Transfer for Coverage of Complex Upper Extremity and Hand Defects-The Forgotten Flap, Plastic Surgery At The Red Sea International Symposium Book Of Abstracts, March 24-28, 2009, p. 25

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20. Iris A. Seitz, MD, Phd, Sarah Friedewald, MD, Jonathon Rimler, BS, **Loren Schechter, MD, FACS**, Breast MRI Helps to Define the Blood Supply to the Nipple-Areolar Complex, Advocate Research Forum, Advocate Lutheran General Hospital, May 5, 2010,p.26

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25. 25th WPATH Symposium, Surgeons Only, November 1, 2018, Buenos Aires, Argentina, A Novel Approach for Neovagina Configuration During Vaginoplasty for Gender Confirmation Surgery

26. 25th WPATH Symposium, Surgeons Only, November 1, 2018, Buenos Aires, Argentina, IPP Implantation Post-Phalloplasty: The Chicago Experience

27. 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, The Role of Pelvic Floor Physical Terhapy in Patients Undergoing Gender Confirming Vaginoplasty Procedures

28. 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, Establishing Guidelines for VTE Prophylaxis in Gender Confirmation Surgery

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PRESENTATIONS:

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2. American Association for the Surgery of Trauma, Sept. 17-19, 1992, Louisville, KY: "Routine HIV Testing in A Burn Center: A Five Year Experience"

3. American Burn Association Poster Session, April 20-23, 1994, Orlando, Fl: "Calculated Versus Measured Energy Requirements in Adult Burn Patients"

4. 48th Annual Senior Scientific Session: The University of Chicago, May 19, 1994: "Calculated Versus Measured Energy Requirements in Adult Burn Patients"

5. Plastic Surgery Senior Residents Conference, April 20-25, 1999, Galveston, TX: "Plication of the Orbital Septum in Lower Eyelid Blepharoplasty"

6. The Chicago Society of Plastic Surgery, May 6, 1999, "Plication of the Orbital Septum in Lower Eyelid Blepharoplasty"

7. The American Society for Aesthetic Plastic Surgery, May 14-19, 1999, Dallas, TX: "Plication of the Orbital Septum in Lower Eyelid Blepharoplasty"

8. XIII Congress of the International Confederation for Plastic, Reconstructive, and Aesthetic Surgery, June 27-July 2, 1999, San Francisco, CA: "Craniofacial Osseo-Distraction: A Bridge to Eucephaly"

9. XIII Congress of the International Confederation for Plastic, Reconstructive, and Aesthetic Surgery, June 27-July 2, 1999 San Francisco, CA: "Ethnic Aesthetic Analysis and Surgery"

10. Inaugural Congress of the World Society for Reconstructive Microsurgery, October 31-November 3, 2001, Taipei, Taiwan: "Comparing Sural Neurocutaneous and Free Flaps for Reconstruction of Leg Wounds: Indications and Outcomes"

11. American Society for Reconstructive Microsurgery, January 12-15, 2002, Cancun, Mexico: "The Role to Free Tissue Transfer and Sural Neurocutaneous flaps for Reconstruction of Leg Wounds"

12. American Society of Plastic Surgery, 71st Annual Scientific Meeting, November 2-6, 2002, San Antonio, Texas: "Defining the Role for Negative Pressure Therapy in the Treatment Algorithm of Extremity Wounds"

13. American Society of Reconstructive Microsurgery, Annual Scientific Meeting, January 11-15, 2003, Kauai, Hawaii: "Advances in Pediatric Liver Transplantation: Continuous Monitoring of Portal Venous and Hepatic Artery Flow With an Implantable Doppler Probe"

14. The 5th Annual Chicago Trauma Symposium, August 8-10, 2003, Chicago, Illinois: "Soft Tissue Salvage: Where Are We in 2003?"

15. The Midwestern Association of Plastic Surgeons, 42nd Annual Meeting, Chicago, Il May 1-2, 2004: "The Gastrocnemius-Achilles Tendon Myocutaneous Flap (GAT Flap) for Single Stage Reconstruction of Combined Soft Tissue and Extensor Mechanism Defects of the Knee: An Eighteen Year Experience"

16. The 6th Annual Chicago Trauma Sympsoium, August 12-15, 2004, Chicago, Il "Complex Wound Management"

17. The American Society of Plastic Surgery, October 9-13, 2004, Philadelphia, Pennsylvania: "The Gastrocnemius-Achilles Tendon Myocutaneous Flap (GAT Flap) for Single Stage Reconstruction of Combined Soft Tissue and Extensor Mechanism Defects of the Knee: An Eighteen Year Experience"

18. The American Society for Reconstructive Microsurgery, January 15-18, 2005, Fajardo, Puerto Rico: "Surviving as a Plastic Surgeon"

19. American Hernia Society, Poster Presentation, February 9-12, 2005, San Diego, California: "When Component Separation Isn't Enough"

20. The Midwestern Association of Plastic Surgeons, April 23-24, Chicago, Il: "Hereditary Gingival Fibromatosis in Monozygotic Twins: First Reported Case"

21. The Midwestern Association of Plastic Surgeons, April 23-24, Chicago, Il: "Modified Components Separation Technique for Two Massive Ventral Hernias"

22. The Midwestern Association of Plastic Surgeons, April 23-24, Chicago, Il: "Mucormycosis of the Head and Neck: A Fatal Disease?"

23. The 7th Annual Chicago Trauma Symposium, August 11-14, 2005, Chicago, Il "Management of Complex Injuries"

24. Current Concepts in Advanced Wound Healing: *A Practical Overview*, Rush North Shore Medical Center, Skokie, Il September 18, 2005 "From Flaps to Grafts"

25. Taizoon Baxamusa, M and Loren S.Schechter, MD, Abdominoplasty: Use in Reconstruction of the Mangled Upper Extremity, The American Association For Hand Surgery Annual Scientific Meeting, January 11-14, 2006, Tucson, Arizona.

26. The American Academy of Orthopedic Surgeons 2006 Annual Meeting, March 22-26, 2006, Chicago, Il "Methods of Patella-Femoral and Extensor Mechanism Reconstruction for Fracture and Disruption After Total Knee Arthroplasty"

27. Midwestern Association of Plastic Surgeons 44th Annual Meeting, April 29-30, 2006, Oak Brook, Illinois "Elective Abdominal Plastic Surgery Procedures Combined with Concomitant Intra-abdominal Operations: A Single Surgeon's Four Year Experience"

28. Midwestern Association of Plastic Surgeons 44th Annual Meeting, April 29-30, 2006, Oak Brook, Illinois "Hereditary Gingival Fibromatosis: Aggressive Two-Stage Surgical Resection Versus Traditional Therapy"

29. Midwestern Association of Plastic Surgeons 44th Annual Meeting, April 29-30, 2006, Oak Brook, Illinois "Abdominoplasty Graft & VAC Therapy: Two Useful Adjuncts in Full-Thickness Grafting of the Mangled Upper Extremity"

30. The American Association of Plastic Surgeons 85th Annual Meeting, May 6-9, 2006 Hilton Head, South Carolina "Excision of Giant Neurofibromas"

31. The 8th Annual Chicago Trauma Symposium, July 27-30, 2006, Chicago, Il "Management of Complex Injuries"

32. The American Society of Plastic Surgeons Annual Meeting, October 6-12, 2006, San Francisco, California "Excision of Giant Neurofibromas"

33. The American College of Surgeons Poster Presentation, October, 2006, Chicago, Il "Abdominoplasty: Use in Reconstruction of the Mangled Upper Extremity"

34. American Medical Association-RFS 3rd Annual Poster Symposium, November 10, Las Vegas, NV, 2006 "Abdominal Wall Reconstruction With Alloderm"

35. Advocate Injury Institute: "Trauma 2006: The Spectrum of Care), November 30-December 2, 2006, Lisle, Il, "Pit Bull Mauling: A Case Study"

36. The 9th Annual Chicago Trauma Symposium, August 10-12, 2007, Chicago, Il "Management of Complex Injuries"

37. The World Professional Association for Transgender Health (WPATH) 2007 XX Biennial Symposium, September 5-8. 2007, Chicago, Il Revision Vaginoplasty With Sigmoid Interposition: "A Reliable Solution for a Difficult Problem"

38. Metropolitan Chicago Chapter of the American College of Surgeons, 2008 Annual Meeting, March 15, 2008 "ER Call: Who's Job is it Anyway"

39. The 10th Annual Chicago Trauma Symposium, August 7-10, 2008, Chicago, Il "Management of Complex Injuries"

40. 23nd Annual Clinical Symposium on Advances in Skin & Wound Care: The Conference for Prevention and Healing October 26-30, 2008, Las Vegas, Nevada,poster presentation "Use of Dual Therapies Consisting of Negative Pressure Wound Therapy (NPWT) and Small Intestine Mucosa (SIS) on a Complex Degloving Injury With an Expose Achilles Tendon: A Case Report."

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42. The American Association for Hand Surgery Annual Meeting, January 7-13, 2009, Maui, Hawaii, poster session: "Omental Free Tissue Transfer for Coverage of Complex Upper Extremity and Hand Defects-The Forgotten Flap."

43. Plastic Surgery At The Red Sea Symposium, March 24-28, 2009 Eilat, Israel, "Omental Free Tissue Transfer for Coverage of Complex Upper Extremity and Hand Defects-The Forgotten Flap."

44. ASPS/IQUAM Transatlantic Innovations Meeting, April 4-7, 2009 Miason de la Chimie, Paris, France, "Advertising in Plastic Surgery?"

45. ASPS/IQUAM Transatlantic Innovations Meeting, April 4-7, 2009 Miason de la Chimie, Paris, France, "Cost-Effectiveness of Physician Extenders in Plastic Surgery"

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47. Midwestern Association of Plastic Surgeons, 47th Annual Meeting, April 18-19, 2009, Chicago, Il,"Two Birds, One Stone: Combining Abdominoplasty with Intra-Abdominal Procedures"

48. The 11th Annual Chicago Trauma Symposium, August 1, 2009, Chicago, Il "Management of Complex Injuries"

49. Societa Italiana Di Microchirurgia, XXIII Congresso Nazionale della Societa Italiana di Microchirurgia, First Atlanto-Pacific Microsurgery Conference, Modena, Italy, October 1-3, 2009, "Omental Free Tissue Transfer for Coverage of Complex Extremity Defects: The Forgotten Flap."

50. Societa Italiana Di Microchirurgia, XXIII Congresso Nazionale della Societa Italiana di Microchirurgia, First Atlanto-Pacific Microsurgery Conference, Modena, Italy, October 1-3, 2009, "Challenging Cases."

51. American Society of Plastic Surgeons Annual Meeting, October 23-27, 2009, Seattle, WA, "President's Panel: The Future of the Solo Practice-Can We, Should We Survive?"

52. The 12th Annual Chicago Trauma Symposium, August 5-8, 2010, Chicago, Il "Management of Complex Injuries"

53. Breast MRI to Define The Blood Supply to the Nipple-Areolar Complex. German Society of Plastic, Reconstructive and Aesthetic Surgery (DGPRAEC), Dresden, Germany, September 2010

54. Roundtable Discussion: Electronic Health Records-Implications for Plastic Surgeons, The American Society of Plastic Surgeons Annual Meeting, October 3, 2010, Toronto, CA

55. Breast MRI Helps Define the Blood Supply to the Nipple-Areolar Complex, The American Society of Plastic Surgeons Annual Meeting, October 3, 2010, Toronto, CA.

56. ASPS/ASPSN Joint Patient Safety Panel: Patient Selection and Managing Patient Expectations, The American Society of Plastic Surgeons Annual Meeting, October 4, 2010, Toronto, CA

57. Lunch and Learn: Prevention of VTE in Plastic Surgery Patients, The American Society of Plastic Surgeons Annual Meeting, October 5, 2010, Toronto, CA

58. Breast MRI Helps Define the Blood Supply to the Nipple-Areolar Complex, 16th Congress of The International Confederation for Plastic Reconstructive and Aesthetic Surgery, May 22-27, 2011, Vancouver, Canada

59. Breast MRI Helps Define the Blood Supply to the Nipple-Areolar Complex, The 6th Congress of The World Society for Reconstructive Microsurgery, WSRM 2011, 29 June-2 July, 2011, Helsinki, Finland

60. Applications of the Omentum for Limb Salvage: The Largest Reported Series, The 6th Congress of The World Society for Reconstructive Microsurgery, WSRM 2011, 29 June-2 July, 2011, Helsinki, Finland

61. Successful Tongue Replantation Following Auto-Amputation Using Supermicrosurgical Technique, Poster Session, The 6th Congress of The World Society for Reconstructive Microsurgery, WSRM 2011, 29 June-2 July, 2011, Helsinki, Finland

62. The 13th Annual Chicago Trauma Symposium, August 25-28, 2011, Chicago, Il "Soft Tissue Defects-Getting Coverage"

63. WPATH: Pre-conference Symposium, September 24, 2011, Atlanta, GA "Surgical Options and Decision-Making"

64. American Society of Plastic Surgeons Annual Meeting, September 27, 2011, Denver, CO Closing Session Lunch and Learn: Pathways to Prevention-Avoiding Adverse Events, Part I: Patient Selection and Preventing Adverse Events in the Ambulatory Surgical Setting

65. American Society of Plastic Surgeons Annual Meeting, September 27, 2011, Denver, CO Closing Session Lunch and Learn: Pathways to Prevention-Avoiding Adverse Events, Part III: Preventing VTE

66. XXIV Congresso Nazionale della Societa Italiana di Microchirugia congiunto con la American Society for Reconstructive Microsurgery, October 20-22, 2011, Palermo, Sicily: 3 Step Approach to Lower Extremity Trauma

67. XXIV Congresso Nazionale della Societa Italiana Microchirugia congiunto con la American Society for Reconstructive Microsurgery,

October 20-22, 2011, Palermo, Sicily: Applications of the Omentum for Limb Salvage: The Largest Reported Series

68. American Society for Reconstructive Microsurgery, Poster Presentation, January 14-17, 2012, Las Vegas, NV: Neonatal Limb Salvage: When Conservative Management is Surgical Intervention

69. The 14th Annual Chicago Trauma Symposium, August 2-5, 2012, Chicago, Il "Soft Tissue Defects-Getting Coverage"

70. The Annual Meeting of The American Society of Plastic Surgeons, October 25th-30, 2012, New Orleans, LA "Reimbursement in Breast Reconstruction"

71. The Annual Meeting of The American Society of Plastic Surgeons, October 25th-30, 2012, New Orleans, LA "Thriving in a New Economic Reality: Business Relationships and Integration in the Marketplace"

72. The 15th Annual Chicago Trauma Symposium, August 2-5, 2013, Chicago, Il "Soft Tissue Defects-Getting Coverage"

73. 2014 WPATH Symposium, Tansgender Health from Global Perspectives, February 14-18, 201, "Short Scar Chest Surgery."

74. 2014 WPATH Symposium, Transgender Health from Global Perspectives, February 14-18, 2014, "Intestinal Vaginoplasty with Right and Left Colon."

75. 24th Annual Southern Comfort Conference, September 3-7, 2014, Atlanta, Georgia, "Gender Confirmation Surgery: State of the Art."

76. The 15th Annual Chicago Trauma Symposium, September 4-7, 2014, Chicago, Il "Soft Tissue Defects-Getting Coverage"

77. The Midwest Association of Plastic Surgeons, May 30, 2015, Chicago, Il "Gender Confirmation Surgery: A Single-Surgeon's Experience"

78. The Midwest Association of Plastic Surgeons, May 30, 2015, Chicago, Il, Moderator, Gender Reassignment.

79. the American Society of Plastic Surgeons 2015 Professional Liability Insurance and Patient Safety Committee Meeting, July 17, 2015, "Gender Confirmation Surgery."

80. The American Society of Plastic Surgeons, October 16-20, 2015, Boston, MA. From Fee-for-Service to Bundled Payments

81. The American Society of Plastic Surgeons, October 16-20, 2015, Boston, MA. Moderator, Transgender Surgery

82. The American Society of Plastic Surgeons, October 16-20, 2015, Boston, MA. Efficient Use of Physician Assistants in Plastic Surgery.

83. The American Society of Plastic Surgeons, October 16-20, 2015, Boston, MA. Patient Safety: Prevention of VTE

84. The World Professional Association for Transgender Health, Objective Quality Parameters for Gender Confirmation Surgery, June 18-22, 2016, Amsterdam, Netherlands

85. The World Professional Association for Transgender Health, Resident Education Curriculum for Gender Confirmation Surgery, June 18-22, 2016, Amsterdam, Netherlands

86. The World Professional Association for Transgender Health, Urologic Management of a Reconstructed Urethra(Poster session #195), June 18-22, 2016, Amsterdam, Netherlands

87. The World Professional Association for Transgender Health, Construction of a neovagina for male-to-female gender reassignment surgery using a modified intestinal vaginoplasty technique, poster session (Poster session #198), June 18-22, 2016, Amsterdam, Netherlands

88. Aesthetica Super Symposium, The American Society of Plastic Surgeons, Genital Aesthetics: What are we trying to achieve?, Washington, DC June 23-25, 2016

89. Aesthetica Super Symposium, The American Society of Plastic Surgeons, Female to Male Gender Reassignment, Washington, DC June 23-25, 2016

90. Aesthetica Super Symposium, The American Society of Plastic Surgeons, The journal of retractions, what I no longer do, Washington, DC June 23-25, 2016

91. Aesthetica Super Symposium, The American Society of Plastic Surgeons, The three minute drill, tips and tricks, Washington, DC June 23-25, 2016

92. Aesthetica Super Symposium, The American Society of Plastic Surgeons, Moderator, Mini master class: Male genital plastic surgery, Washington, DC June 23-25, 2016

93. The 16th Annual Chicago Trauma Symposium, August 18-21, 2016, Chicago, Il "Soft Tissue Defects-Getting Coverage"

94. USPATH Poster Session, Feb 2-5, 2017, Los Angeles, CA, Partial Flap Failure Five Weeks Following Radial Forearm Phalloplasty: Case Report and Review of the Literature

95. USPATH Poster Session, Feb 2-5, 2017, Los Angeles, CA, Urethroplasty for Stricture after Phalloplasty in Transmen Surgery for Urethral Stricture Disease after Radial Forearm Flap Phalloplasty-Management Options in Gender Confirmation Surgery

96. USPATH, Feb 2-5, 2017, Los Angeles, CA, Patient Evaluation and Chest Surgery in Transmen: A Pre-operative Classification

97. USPATH, Feb 2-5, 2017, Los Angeles, CA Single Stage Urethral Reconstruction in Flap Phalloplasty: Modification of Technique for Construction of Proximal Urethra

98. USPATH, Feb 2-5, 2017, Los Angeles, CA, Use of Bilayer Wound Matrix on Forearm Donor Site Following Phalloplasty

99. USPATH, Feb 2-5, 2017, Los Angeles, CA, Vaginoplasty: Surgical Techniques

100. USPATH, Feb 2-5, 2017, Los Angeles, CA, Positioning of a Penile Prosthesis with an Acellular Dermal Matrix Wrap following Radial Forearm Phalloplasty

101. USPATH, Feb 2-5, 2017, Los Angeles, CA, Principles for a Gender Surgery Program

102. USPATH, Feb 2-5, 2017, Los Angeles, CA, Construction of a Neovagina Using a Modified Intestinal Vaginoplasty Technique

103. The 18th Annual Chicago Orthopedic Symposium, July 6-9, 2017, Chicago, Il "Soft Tissue Defects-Getting Coverage"

104. The American Society of Plastic Surgeons Annual meeting, October 6-10, 2017, Orlando, FL, Moderator: Genital Surgery Trends for Women

105. The American Society of Plastic Surgeons Annual meeting, October 6-10, 2017, Orlando, FL, Adding Transgender Surgery to Your Practice, Moderator and Speaker

106. The American Society of Plastic Surgeons Annual meeting, October 6-10, 2017, Orlando, FL, Transbottom Surgery

107. 14th Congress of The European Federation of Societies for Microsurgery, Belgrade, May 5-8, 2018 A Novel Approach to IPP Implantation Post Phalloplasty: The Chicago Experience

108. 14th Congress of The European Federation of Societies for Microsurgery, Belgrade, May 5-8, 2018, A Novel Approach for Neovagina Configuration During Vaginoplasty for Gender Confirmation Surgery

109. 14th Congress of The European Federation of Societies for Microsurgery, Belgrade, May 5-8, 2018 Developlment of a Pelvic Floor Physical Therapy Protocol for Patients Undergoing Vaginoplasty for Gender Confirmation

110. 14th Congress of The European Federation of Societies for Microsurgery, Belgrade, May 5-8, 2018 Establishing Guidelines for Gender Confirmation Surgery: The Perioperative Risk of Asymptomatic Deep Venous Thrombosis for Vaginoplasty

111. The 19th Annual Chicago Trauma Symposium, August 16-19, 2018, Chicago, Il "Soft Tissue Defects-Getting Coverage"

112. Midwest LGBTQ Health Symposium, September 14-15, 2018, Chicago, Il "Quality Parameters in Gender Confirmation Surgery"

113. 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, Poster Session, Proposed Guidelines for Medical Tattoo Following Phalloplasty; An Interdisciplinary Approach

114. 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, Establishment of the First Gender Confirmation Surgery Fellowship

115. 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, ISSM Lecture, The Importance of Surgical Training

116. 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, Tracking Patient-Reported Outcomes in Gender Confirmation Surgery

117. "Theorizing the Phantom Penis," The Psychotherapy Center for Gender and Sexuality's 6th Biannual Conference, Transformations, March 29-March 30, 2019, NY, NY

INSTRUCTIONAL COURSES:

1. Emory University and WPATH: Contemporary Management of Transgender Patients: Surgical Options and Decision-Making, September 5, 2007 Chicago, Il

2. Craniomaxillofacial Trauma Surgery: An Interdisciplinary Approach, February 16-17, 2008, Burr Ridge, Il

3. Societa Italiana Di Microchirurgia, XXIII Congresso Nazionale della Societa Italiana di Microchirurgia, First Atlanto-Pacific

Microsurgery Conference, Modena, Italy, October 1-3, 2009, Moderator: Free Papers, Lower Extremity

4. American Society of Plastic Surgeons Annual Meeting, October 23-27, 2009, Seattle, WA, Moderator: ASPS/ASPSN Patient Panel: Effective Communication-A Key to Patient Safety and Prevention of Malpractice Claims

5. American Society of Plastic Surgeons Annual Meeting, October 23-27, 2009, Seattle, WA, Instructional Course: Strategies to Identify and Prevent Errors and Near Misses in Your Practice

6. American Society of Plastic Surgeons Annual Meeting, October 23-27, 2009, Seattle, WA, Roundtable Discussion: Electronic Health Records-Implications for Plastic Surgeons

7. 10th Congress of The European Federation of Societies for Microsurgery, May 2—22, 2010, Genoa, Italy, "The Mangled Lower Extremities: An Algorithm for Soft Tissue Reconstruction."

8. Mulitspecialty Course for Operating Room Personnel-Craniomaxillofacial, Orthopaedics, and Spine, A Team Approach, AO North American, June 26-27, 2010, The Westin Lombard Yorktown Center.

9. Management of Emergency Cases in the Operating Room, The American Society of Plastic Surgeons Annual Meeting, October 4, 2010, Toronto, CA.

10. Surgical Approaches and Techniques in Craniomaxillofacial Trauma, November 6, 2010, Burr Ridge, Il.

11. The Business of Reconstructive Microsurgery: Maximizing Economic value (Chair)The American Society for Reconstructive Microsurgery, January 14-17, 2012, Las Vegas, Nevada.

12. Strategies to Identify and Prevent Errors and Near Misses in Your Practice, The Annual Meeting of The American Society of Plastic Surgeons, October 25th-30th, 2012, New Orleans, LA

13. Strategies to Identify and Prevent Errors and Near Misses in Your Practice, The Annual Meeting of The American Society of Plastic Surgeons, October 11th-15th, 2013, San Diego, CA

14. Mythbusters: Microsurgical Breast Reconstruction in Private Practice, The Annual Meeting of The American Society of Plastic Surgeons, October 11th-15th, 2013, San Diego, CA

15. Minimizing Complications in Perioperative Care, The American Society for Reconstructive Microsurgery, January 11-14, 2014, Kauai, Hawaii

16. Genitourinary and Perineal Reconstruction, The American Society for Reconstructive Microsurgery, January 11-14, 2014, Kauai, Hawaii

17. Transgender Breast Surgery, The American Society of Plastic Surgeons, October 16-20, 2015, Boston, MA

18. Gender Confirmation Surgery, The School of the Art Institute (recipient of American College Health Fund's Gallagher Koster Innovative Practices in College Health Award), October 27, 2015, Chicago, Il

19. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, November 5-7, 2015, Chicago, Il Overview of Surgical Treatment Options

20. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, November 5-7, 2015 Chicago, Il Surgical Procedures

21. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, November 5-7, 2015, Chicago, Il Surgical Complications

22. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, November 5-7, 2015, Chicago, Il Post-operative Care

23. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, November 5-7, 2015, Chicago, Il Case Discussions: The Multidisciplinary Team

24. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, January 20-23,2016, Atlanta, GA Overview of Surgical Treatment Options

25. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, January 20-23, 2016, Atlanta, GA Surgical Treatment Options

26. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, March 30-April 1, 2016, Springfield, MO, Surgical Treatment Options.

27. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Certified Training Course, March 30-April 1, 2016, Springfield, MO, Multi-disciplinary Case Discussion.

28. Introduction to Transgender Surgery, ASPS Breast Surgery and Body Contouring Symposium, Santa Fe, NM, August 25-27, 2016

29. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Global Education Initiative Advanced Training Course, September 28, 2016, Ft. Lauderdale, FL.

30. Cirugias de Confirmacion de Sexo Paso a Paso, XXXV Congreso Confederacion Americana de Urologia (CAU), Panama City, Panama, October 4-8, 2016.

31. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Global Education Initiative Advanced Training Course, December 3, 2016, Arlington, VA.

32. PSEN (sponsored by ASPS and endorsed by WPATH), Transgender 101 for Surgeons, January 2017-March 2017

33. Surgical Anatomy and Surgical Approaches to M-to-F Genital Gender Affirming Surgery and the Management of the Patient Before, During and After Surgery: A Human Cadaver Based Course, Orange County, CA, Feb. 1, 2017

34. Gender Confirmation Surgery, ALAPP, 2 Congreso Internacional de la Asociacion Latinoamericana de Piso Pelvico, Sao Paulo, Brasil, 9-11 de marzo de 2017

35. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Global Education Initiative Foundations Training Course, Overview of Surgical Treatment, March 31-April 2, 2017, Minneapolis Minnesota.

36. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Global Education Initiative Foundations Training Course, The Multi-Disciplinary Team Case Discussions, March 31-April 2, 2017, Minneapolis Minnesota.

37. Transfeminine Cadaver Course, WPATH, May 19-20, 2017, Chicago, Il

38. Transgender/Penile Reconstruction-Penile Reconstruction: Radial Forearm Flap Vs. Anterolateral Thigh Flap, Moderator and Presenter, The World Society for Reconstructive Microsurgery, June 14-17, 2017, Seoul, Korea

39. Primer of Transgender Breast Surgery, ASPS Breast Surgery and Body Contouring Symposium, San Diego, CA, August 10-12, 2017

40. Confirmation Surgery in Gender Dysphoria: current state and future developments, International Continence Society, Florence, Italy, September 12-15, 2017

41. The American Society of Plastic Surgeons Annual meeting, October 6-10, 2017, Orlando, FL, ASPS/WPATH Joint Session, Session Planner and Moderator

42.Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Global Education Initiative Foundations Training Course: Overview of Surgical Treatment, Columbus, OH, October 20-21, 2017

43. Transgender Health: Best Practices in Medical and Mental Health Care. A WPATH Global Education Initiative Advanced Training Course: Medical Care in the Perioperative Period, Aftercare: Identifying Potential Complications, Columbus, OH, October 20-21, 2017

44. Webinar: Gender Affirming Surgeries 101: Explore The Latest Topics in Gender Affirmation Surgery, PSEN, April 18, 2018

45. Course Director: MT. Sinai/WPATH Live Surgery Training Course for Gender Affirmation Procedures, April 26-28, 2018, New York, NY

46. Philadelphia Trans Wellness Conference, Perioperative Care of the Transgender Woman Undergoing Vaginoplasty (Workshop), Philadelphia, PA, August 3, 2018

47. Philadelphia Trans Wellness Conference, Gender Confirmation Surgery (Workshop), Philadelphia, PA, August 3, 2018

48. Gender Confirmation Surgery, 2018 Oral and Written Board Preparation Course, The American Society of Plastic Surgeons, August 16-18, 2018, Rosemont, Il

49. Confirmation Surgery in Gender Dysphoria: Current State and Future Developments, The International Continence Society, Philadelphia, PA August 28, 2018

50. WPATH Global Education Initiative, Foundations Training Course, "Overview of Surgical Treatment," Cincinnati, OH, September 14-15, 2018

51. WPATH Global Education Initiative, Foundations Training Course, "The Multi-Disciplinary Team: Case Discussions," Cincinnati, OH, September 14-15, 2018

52. WPATH Global Education Initiative, Advanced Training Course, "Medical Care in the Perioperative Period After Care: Identifying Potential Complications," Cincinnati, OH, September 14-15, 2018

53. 25th WPATH Symposium, Surgeons Conference, November 1, 2018, Buenos Aires, Argentina, Moderator

54. 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, Global Education Initiative (GEI): Surgery and Ethics

55. WPATH GEI: Best Practices in Medical and Mental Health Care, Foundations in Surgery, New Orleans, March 22, 2019

56. WPATH GEI: Best Practices in Medical and Mental Health Care, Advanced Surgery, New Orleans, March 22, 2019

57. Program Chair: ASPS/WPATH GEI Inaugural Gender-Affirming Breast, Chest, and Body Master Class, Miami, Fl, July 20, 2019

58. Overview of Surgical Management and The Standards of Care (WPATH, v. 7) ASPS/WPATH GEI Inaugural Gender-Affirming Breast, Chest, and Body Master Class, Miami, Fl, July 20, 2019

59. Program Director, Gender Affirming Breast,Chest, and Body Master Class, The American Society of Plastic Surgeons, Miami, Fl, July 20, 2019

60. Gender Confirmation Surgery, The American Society of Plastic Surgeons Oral and Written Board Preparation Course, August 15, 2019, Rosemont, Il

61. Upper Surgeries (chest surgery & breast augmentation), WPATH, Global Education Initiative, September 4-5, 2019, Washington, DC

62. Preparing for Upper Surgeries-Case Based (chest surgery & breast augmentation), WPATH, Global Education Initiative, September 4-5, 2019, Washington, DC

63. Preparing for Feminizing Lower Surgeries-Case Based (vaginoplasty), WPATH, Global Education Initiative, September 4-5, 2019, Washington, DC

64. Lower Surgeries-Masculinizing (phalloplasty & metoidioplasty), WPATH, Global Education Initiative, September 4-5, 2019, Washington, DC

65. Preparing for Masculinizing Lower Surgeries-Case Based (phalloplasty & metoidioplasty), WPATH, Global Education Initiative, September 4-5, 2019, Washington, DC

66. Panel Discussion about Ethics in Surgery and Interdisciplinary Care, WPATH, Global Education Initiative, September 4-5, 2019, Washington, DC

67. Discussion about Ethics and Tensions in Child and Adolescent Care, WPATH, Global Education Initiative, September 4-5, 2019, Washington, DC

68. Transgender Health: Best Practices in Medical and Mental Health Care Foundation Training Courses, Hanoi, Viet Nam, Jan 14-17, 2020 (Foundations in Surgery, Advanced Medical-surgery and complicated case studies), Planning & Documentation (upper surgeries-chest surgery and breast augmentation, preparing for upper surgeries-case based (chest surgery and breast augmentation), lower surgeries (feminizing-vaginoplasty), preparing for feminizing lower surgeries-case based, lower surgeries-masculinizing (phalloplasty and metoidioplasty), preparing for masculinizing lower surgeries-case-based (phalloplasty and metoidioplasty), Ethics-panel discussion about ethics in surgery and interdisciplinary care)

SYMPOSIA:

1. Program Director, 2011 Chicago Breast Symposium, October 15, 2011, The Chicago Plastic Surgery Research Foundation and The Chicago Medical School at Rosalind Franklin University, North Chicago, IL,

2. Fundamentals of Evidence-Based Medicine & How to Incorporate it Into Your Practice, Challenging Complications in Plastic Surgery: Successful Management Strategies, The American Society of Plastic Surgeons, July 13-14, 2012 Washington, DC

3. Understanding Outcome Measures in Breast & Body Contouring Surgery, Challenging Complications in Plastic Surgery: Successful Management Strategies, The American Society of Plastic Surgeons, July 13-14, 2012 Washington, DC

4. Benchmarking Complications: What We Know About Body Contouring Complication Rates from Established Databases, Challenging Complications in Plastic Surgery: Successful Management Strategies, The American Society of Plastic Surgeons, July 13-14, 2012 Washington, DC

5. Special Lecture: VTE Prophylaxis for Plastic Surgery in 2011, Challenging Complications in Plastic Surgery: Successful Management Strategies, The American Society of Plastic Surgeons, July 13-14, 2012 Washington, DC

6. Nipple Sparing Mastectomy: Unexpected Outcomes, Challenging Complications in Plastic Surgery: Successful Management Strategies, The American Society of Plastic Surgeons, July 13-14, 2012 Washington, DC

7. Program Director, 2011 Chicago Breast Symposium, October 13-14, 2012, The Chicago Plastic Surgery Research Foundation and The Chicago Medical School at Rosalind Franklin University, North Chicago, Il

8. Practice Strategies in a Changing Healthcare Environment, Moderator, Midwestern Association of Plastic Surgeons, April 27-28, 2013, Chicago, Il

9. Moderator: Breast Scientific Paper Session, The Annual Meeting of The American Society of Plastic Surgery, October 12, 2014, Chicago, Il.

10. Moderator: The World Professional Association for Transgender Health, Tuesday, June 21, Surgical Session (0945-1045), June 18-22, 2016, Amsterdam, Netherlands

11. Course Director: Transmale Genital Surgery: WPATH Gender Education Initiative, October 21-22, 2016 Chicago, Il

12. Co-Chair and Moderator: Surgeon's Only Session, USPATH, Los Angeles, CA, Feb. 2, 2017

13. Vascular Anastomosis: Options for Lengthening Vascular Pedicle, Surgeon's Only Session, USPATH, Los Angeles, CA, Feb. 2, 2017

14. Transgender Healthcare Mini-Symposium, Chicago Medical School of Rosalind Franklin University, North Chicago, Il March 10, 2017.

15. Moderator: Penile Transplant: Genito-urinary trauma/penile cancer, The European Association of Urologists, Meeting of the EAU Section of Genito-Urinary Reconstructive Surgeons (ESGURS), London, United Kingdom, March 23-26, 2017

16: 25th WPATH Symposium, November 2-6, 2018, Buenos Aires, Argentina, Mini-Symposium: A Comprehensive Approach to Gender Confirming Surgery

17. Program Director, 2nd Annual Live Surgery Conference for Gender Affirmation Procedures, Ichan School of Medicine at Mt. Sinai, NY, NY February 28, 2019-March 2, 2019.

18. Moderator, "Genital Reassignment for Adolescents: Considerations and Conundrums," Discussions on gender affirmation: surgery and beyond, Dignity Health Saint Francis Memorial Hospital and WPATH GEI, San Francisco, CA, May 30-June 1, 2019

19. Moderator, "Reconstructive Urology and Genitourinary Options in Gender Affirming Surgery," Discussions on gender affirmation: surgery and beyond, Dignity Health Saint Francis Memorial Hospital and WPATH GEI, San Francisco, CA, May 30-June 1, 2019

20. Moderator, "Complications in Masculinizing Genital Reconstruction Surgery," Dignity Health Saint Francis Memorial Hospital and WPATH GEI, San Francisco, CA, May 30-June 1, 2019

21. Moderator, "Preparing for Surgery and Recovery," Dignity Health Saint Francis Memorial Hospital and WPATH GEI, San Francisco, CA, May 30-June 1, 2019

22. Discussant, "WPATH Standards of Care Version 8 Preview," Dignity Health Saint Francis Memorial Hospital and WPATH GEI, San Francisco, CA, May 30-June 1, 2019

23. Program Coordinator, Surgeon's Only Course, USPATH, September 5, 2019, Washington, DC

24. Master Series in Transgender Surgery 2020: Vaginoplasty and Top Surgery, course co-director, Mayo Clinic, Rochester, MN, August 7-8, 2020

FACULTY SPONSORED RESEARCH:

1. Societa Italiana Di Microchirurgia, XXIII Congresso Nazionale della Societa Italiana di Microchirurgia, First Atlanto-Pacific Microsurgery Conference, Modena, Italy, October 1-3, 2009, "Free Tissue Transfer in the Treatment of Zygomycosis." Presented by Michelle Roughton, MD

2. Hines/North Chicago VA Research Day, Edward Hines, Jr., VA Hospital, Maywood, Il, April 29, 2010, "Breast MRI Helps to Define the Blood Supply to the Nipple-Areolar Complex." Presented by Iris A. Seitz, MD, PhD.

3. Advocate Research Forum, Advocate Lutheran General Hospital, May 5, 2010, "Breast MRI Helps to Define the Blood Supply to the Nipple-Areolar Complex." Presented by Iris A. Seitz, MD, PhD.

4. Advocate Research Forum, Advocate Lutheran General Hospital, May 5, 2010, "Achieving Soft Tissue Coverage of Complex Upper and Lower Extremity Defects with Omental Free Tissue Transfer." Presented by Iris A. Seitz, MD, PhD.

5. Advocate Research Forum, Advocate Lutheran General Hospital, May 5, 2010, "Facilitating Harvest of the Serratus Fascial Flap with Ultrasonic Dissection." Presented by Iris A. Seitz, MD, PhD.

6. Advocate Research Forum, Advocate Lutheran General Hospital, May 5, 2010,"Patient Safety: Abdominoplasty and Intra-Abdominal Procedures." Presented by Michelle Roughton, MD

7. The Midwestern Association of Plastic Surgeons, 49th Annual Scientific Meeting, May 15th, 2010, "Breast MRI Helps Define The Blood Supply to the Nipple-Areolar Complex." Presented by Iris A. Seitz, MD, PhD.

8. Jonathan M. Hagedorn, BA, **Loren S. Schechter**, MD, FACS, Dr. Manoj R. Shah, MD, FACS, Matthew L. Jimenez, MD, Justine Lee, MD, PhD, Varun Shah. Re-examining the Indications for Limb Salvage, 2011 All School Research Consortium at Rosalind Franklin University. Chicago Medical School of Rosalind Franklin University, 3/16/11.

9. Jonathan Bank, MD, Lucio A. Pavone, MD, Iris A. Seitz, Michelle C. Roughton, MD, Loren S. Schechter, MD Deep Inferior Epigastric Perforator Flap for Breast Reconstruction after Abdominoplasty The Midwestern Association of Plastic Surgeons, 51st Annual Educational Meeting, April 21-22, 2012, Northwestern Memorial Hospital, Chicago, Illinois

10. Samuel Lake, Iris A. Seitz, MD, Phd, Loren S. Schechter, MD, Daniel Peterson, Phd Omentum and Subcutaneous Fat Derived Cell Populations Contain hMSCs Comparable to Bone Marrow-Derived hMSCsFirst Place, Rosalind Franklin University Summer Research Poster Session

11. J. Siwinski, MS II, Iris A. Seitz, MD PhD, Dana Rioux Forker, MD, Lucio A. Pavone, MD, Loren S Schechter, MD FACS. Upper and Lower Limb Salvage With Omental Free Flaps: A Long-Term Functional Outcome Analysis. Annual Dr. Kenneth A. Suarez Research Day, Midwestern University, Downers Grove, IL, May 2014

12. Whitehead DM, Kocjancic E, Iacovelli V, Morgantini LA, **Schechter LS**. A Case Report: Penile Prosthesis With an Alloderm Wrap Positioned After Radial Forearm Phalloplasty. Poster session presented at: American Society for Reconstructive Microsurgery Annual Meeting, 2018 Jan 13-16; Phoenix, AZ.

13. Whitehead DM, Kocjancic E, Iacovelli V, Morgantini LA, **Schechter LS**. An Innovative Technique: Single Stage Urethral Reconstruction in Female-to-Male Patients. Poster session presented at: American Society for Reconstructive Microsurgery Annual Meeting, 2018 Jan 13-16; Phoenix, AZ.

14. Whitehead, DM Inflatable Penile Prosthesis Implantation Post Phalloplasty: Surgical Technique, Challenges, and Outcomes, MAPS 2018 Annual Scientific Meeting, April 14, 2018, Chicago, Il

15. Whitehead, DM, Inverted Penile Skin With Scrotal Graft And Omission of Sacrospinal Fixation: Our Novel Vaginoplasty Technique MAPS 2018 Annual Scientific Meeting, April 14, 2018, Chicago, Il

Keynote Address:

1. University of Utah, Gender Confirmation Surgery, Transgender Provider Summit, November 8, 2014

INVITED LECTURES:

1. Management of Soft Tissue Injuries of the Face, Grand Rounds, Emergency Medicine, The University of Chicago, August, 1999

2. Case Report: Excision of a Giant Neurofibroma, Operating Room Staff Lecture Series, Continuing Education Series, St. Francis Hospital, Evanston, Il March 2000

3. Wounds, Lincolnwood Family Practice, Lincolnwood, Il April 2000

4. The Junior Attending, Grand Rounds, Plastic and Reconstructive Surgery, The University of Chicago, June 2000

5. Case Report: Excision of a Giant Neurofibroma, Department of Medicine Grand Rounds, St. Francis Hospital, Evanston, Il June 2000

6. Facial Trauma, Resurrection Medical Center Emergency Medicine Residency, September 2000

7. Plastic Surgery of the Breast and Abdomen, Grand Rounds, Dept. of Obstetrics and Gynecology, Evanston Hospital, September, 2000

8. Change of Face; Is Cosmetic Surgery for You?, Adult Education Series, Rush North Shore Medical Center, October, 2000

9. Reconstructive Surgery of the Breast, Professional Lecture Series on Breast Cancer, St. Francis Hospital, October, 2000

10. Plastic Surgery of the Breast and Abdomen, Grand Rounds, Dept. of Obstetrics and Gynecology, Lutheran General Hospital, December, 2000

11. Change of Face; Is Cosmetic Surgery for You?, Adult Education Series, Lutheran General Hospital and The Arlington Heights Public Library, December, 2000

12. Updates in Breast Reconstruction, The Breast Center, Lutheran General Hospital, January 2001

13. Abdominal Wall Reconstruction, Trauma Conference, Lutheran General Hospital, February 2001

14. Wound Care, Rush North Shore Medical Center, March 2001

15. Breast Reconstruction, Diagnosis and Treatment Updates on Breast Cancer, Lutheran General Hospital, April 2001

16. Wound Care and V.A.C. Therapy, Double Tree Hotel, Skokie, Il October 2001

17. The Role of the V.A.C. in Reconstructive Surgery, LaCrosse, WI November 2001

18. Dressing for Success: The Role of the V.A.C. in Reconstructive Surgery, Grand Rounds, The University of Minnesota Section of Plastic and Reconstructive, Minneapolis, MN January, 2002

19. The Vacuum Assisted Closure Device in the Management of Complex Soft Tissue Defects, Eau Claire, WI February, 2002

20. The Vacuum Assisted Closure Device in Acute & Traumatic Soft Tissue Injuries, Orland Park, Il March, 2002

21. Body Contouring After Weight Loss, The Gurnee Weight Loss Support Group, Gurnee, Il April, 2002

22. An Algorithm to Complex Soft Tissue Reconstruction With Negative Pressure Therapy, Owensboro Mercy Medical Center, Owensboro, Ky, April, 2002

23. Breast and Body Contouring, St. Francis Hospital Weight Loss Support Group, Evanston, Il April, 2002

24. The Wound Closure Ladder vs. The Reconstructive Elevator, Surgical Grand Rounds, Lutheran General Hospital, Park Ridge, Il, May, 2002.

25. An Algorithm for Complex Soft Tissue Reconstruction with the Vacuum Assisted Closure Device, The Field Museum, Chicago,Il, May, 2002

26. The Role of Negative Pressure Wound Therapy in Reconstructive Surgery, Kinetic Concepts, Inc. San Antonio, Texas, July 31, 2002

27. Management of Complex Soft Tissue Injuries of the Lower Extremity, Chicago Trauma Symposium, August 2-5, 2002, Chicago, Illinois:

28. Wound Bed Preparation, Smith Nephew, Oak Brook, Il, August 6, 2002

29. Getting Under Your Skin...Is Cosmetic Surgery for You?, Rush North Shore Adult Continuing Education Series, Skokie, Il August 28, 2002.

30. The Role of Negative Pressure Therapy in Complex Soft Tissue Wounds, Columbia/St. Mary's Wound, Ostomy, and Continence Nurse Program, Milwaukee, Wi, September 17, 2002

31. A Systematic Approach to Functional Restoration, Grand Rounds, Dept. of Physical Therapy and Rehabilitation Medicine, Lutheran General Hospital, September 19, 2002

32. The Role of Negative Pressure Wound Therapy in Reconstructive Surgery, Ann Arbor, Mi September 26, 2002

33. Dressing for Success: The Role of the Vaccuum Assisted Closure Device in Plastic Surgery, Indianopolis, In November 11, 2002

34. The Wound Closure Ladder Versus the Reconstructive Elevator, Crystal Lake, Il November 21, 2002

35. A Systematic Approach to Functional Restoration, Grand Rounds, Dept. of Physical Therapy, Evanston Northwestern Healthcare, Evanston, Il February 13, 2003

36. Case Studies in Traumatic Wound Reconstruction, American Association of Critical Care Nurses, Northwest Chicago Area Chapter, Park Ridge, Il February 19, 2003

37. Reconstruction of Complex Soft Tissue Injuries of the Lower Extremity, Podiatry Lecture Series, Rush North Shore Medical Center, Skokie, Il March 5, 2003

38. The Use of Negative Pressure Wound Therapy in Reconstructive Surgery, Kalamazoo, Mi March 19, 2003

39. Updates in Breast Reconstruction, The Midwest Clinical Conference, The Chicago Medical Society, Chicago, Il March 21, 2003

40. Updates of Vacuum Assisted Closure, Grand Rounds, The Medical College of Wisconsin, Department of Plastic Surgery, Milwaukee, Wi March 26, 2003

41. Breast Reconstruction, Surgical Grand Rounds, Lutheran General Hospital, Park Ridge, Il March 27, 2003

42. Decision-Making in Breast Reconstruction: Plastic Surgeons as Members of a Multi-Disciplinary Team, 1st Annual Advocate Lutheran General Hospital Breast Cancer Symposium, Rosemont, Il, April 11, 2003

43. The Wound Closure Ladder Versus The Reconstructive Elevator, Duluth, Mn, April 24, 2003

44. Dressing For Successs: The Role of The Wound VAC in Reconstructive Surgery, Detroit, Mi, May 9, 2003

45. Plastic Surgery Pearls, Grand Rounds Orthopedic Surgery Physician Assistants Lutheran General Hospital and Finch University of Health Sciences, Park Ridge, Il, June 5, 2003

46. A Systematic Approach to Complex Reconstruction, 12th Annual Vendor Fair "Surgical Innovations," October 18, 2003, Lutheran General Hospital, Park Ridge, Il 2003

47. Dressing For Success: The Role of the Wound VAC in Reconstructive Surgery, American Society of Plastic Surgery, October 26, 2003, San Diego, CA

48. Beautiful You: From Botox to Weekend Surgeries, 21st Century Cosmetic Considerations, March 21, 2004 Hadassah Women's Health Symposium, Skokie, Il

49. Updates in Breast Reconstruction, The 2nd Annual Breast Cancer Symposium, Advocate Lutheran General, Hyatt Rosemont, April 2, 2004

50. Head and Neck Reconstruction, Grand Rounds, The University of Illinois Metropolitan Group Hospitals Residency in General Surgery, Advocate Lutheran General Hospital, May 6, 2004

51. Abdominal Wall Reconstruction, Surgeons Forum, LifeCell Corporation, May 15, 2004, Chicago, Il

52. 4th Annual Chicagoland Day of Sharing for Breast Cancer Awareness, Saturday, October 2, 2004, Hoffman Estates, Il

53. Abdominal Wall Reconstruction, University of Illinois Metropolitan Group Hospitals Residency in General Surgery, November 19, 2004, Skokie, Il

54. Advances in Wound Care, Wound and Skin Care Survival Skills, Advocate Good Samaritan Hospital, Tuesday, February 8, 2005, Downer's Grove, Il

55. Plastic Surgery: A Five Year Perspective in Practice, Grand Rounds, The University of Chicago, May 18, 2005, Chicago, Il

56. New Techniques in Breast Reconstruction, The Cancer Wellness Center, October 11, 2005 Northbrook, Il

57. Principles of Plastic Surgery; Soft Tissue Reconstruction of the Hand, Rehab Connections, Inc., Hand, Wrist, and Elbow Forum, October 28, 2005, Homer Glen, Il

58. Principles of Plastic Surgery, Lutheran General Hospital Quarterly Trauma Conference, November 9, 2005, Park Ridge, Il

59. Principles of Plastic Surgery, Continuing Medical Education, St. Francis Hospital, November 15, 2005, Evanston, Il

60. Dressing for Success: A Seven Year Experience with Negative Pressure Wound Therapy, Kinetic Concepts Inc, November 30, 2005, Glenview, Il.

61. Breast Reconstruction: The Next Generation, Breast Tumor Conference, Lutheran General Hospital, May 9, 2006.

62. Complex Wound Care: Skin Grafts, Flaps, and Reconstruction, The Elizabeth D. Wick Symposium on Wound Care, *Current Concepts in Advanced Healing: An Update*, Rush North Shore Medical Center, November 4, 2006.

63. An Approach to Maxillofacial Trauma: Grand Rounds, Lutheran General Hospital/Univ. of Illinois Metropolitan Group Hospital Residency in General Surgery, November 9, 2006.

64. "From Paris to Park Ridge", Northern Trust and Advocate Lutheran General Hospital, Northern Trust Bank, June 7, 2007.

65. "Private Practice Plastic Surgery: A Seven Year Perspective," Grand Rounds, The University of Chicago, Section of Plastic Surgery.

66. "Meet the Experts on Breast Cancer," 7th Annual Chicagoland Day of Sharing, Sunday, April 13th, 2008

67. Gender Confirmation Surgey: Surgical Options and Decision-Making, The University of Minnesota, Division of Human Sexuality, May 10, 2008, Minneapolis, Minnesota.

68. "Private Practice Plastic Surgery: A Seven Year Perspective," Grand Rounds, Loyola University, 2008 Section of Plastic Surgery.

69. "Management of Lower Extremity Trauma," Grand Rounds, The University of Chicago, Section of Plastic Surgery, October, 8, 2008.

70. "Concepts in Plastic Surgery: A Multi-Disciplinary Approach," Frontline Surgical Advancements, Lutheran General Hospital, November 1, 2008

71. "Surgical Techniques-New Surgical Techniques/Plastic Surgery/Prosthetics," Caldwell Breast Center CME Series, Advocate Lutheran General Hospital, November 12, 2008

72. "Genetics: *A Family Affair*" Panel Discussion: Predictive Genetic Testing, 23rd Annual Illinois Department of Public Health Conference, Oak Brook Hills Marriott Resort, Oak Brook, Il, March 18, 2009

73. "Gender Confirmation Surgery" Minnesota TransHealth and Wellness Conference, May 15, 2009, Metropolitan State University, Saint Paul, MN.

74. "The Role of Plastic Surgery in Wound Care, " Practical Wound Care A Multidisciplinary Approach, Advocate Lutheran General Hospital, October 9-10, 2009, Park Ridge, Il.

75. "In The Family," Panel, General Session III, 2009 Illinois Women's Health Conference, Illinois Dept. of Health, Office of Women's Health October 28-29, 2009, Oak Brook, Il.

76. "Patient Safety in Plastic Surgery," The University of Chicago, Section of Plastic Surgery, Grand Rounds, November 18, 2009.

77. "Compartment Syndrome," 6th Annual Advocate Injury Institute Symposium, Trauma 2009: Yes We Can!, November 19-20, 2009.

78. "Maxillofacial Trauma," 6th Annual Advocate Injury Institute Symposium, Trauma 2009: Yes We Can!, November 19-20, 2009.

79. "Management of Complex Lower Extremity Injuries," Grand Rounds, The Section of Plastic Surgery, The University of Chicago, December 16, 2009, Chicago, Il.

80. "Gender-Confirming MTF Surgery: Indications and Techniques," Working Group on Gender, New York State Psychiatric Institute, March 12, 2010

81. "Gender-Confirmation Surgery," Minnesota Trans Health and Wellness Conference, Metropolitan State University, St. Paul Campus, May 14th, 2010

82. "Physical Injuries and Impairments," Heroes Welcome Home The Chicago Association of Realtors, Rosemont, Illinois, May 25th, 2010.

83. "Genetics and Your Health," Hadassah Heals: Healing Mind, Body, & Soul, Wellness Fair, 2010, August 29, 2010, Wilmette, Illinois.

84. "GCS," Southern Comfort Conference 2010, September 6-11, 2010, Atlanta, GA.

85. "Gender Confirming Surgery," The Center, The LGBT Community Center, October 22, 2010 New York, NY.

86. "Gender Confirming Surgery," the Center, The LGBT Community Center, May 20, 2011, New York, NY.

87. "Gender Confirming Surgery," Roosevelt-St. Lukes Hospital, May 20, 2011, New York, NY

88. "Principles of Plastic Surgery," Learn about Ortho, Lutheran General Hospital, May 25, 2011, Park Ridge, Il.

89. "Forging Multidisciplinary Relationships in Private Practice," Chicago Breast Reconstruction Symposium 2011, September 9, 2011, Chicago, Il

90. "Gender Confirming Surgery," Minnesota TransHealth and Wellness Conference, Diverse Families: Health Through Community, September 10, 2011, Minneapolis, Minnesota

91. "Gender Confirming Surgery," University of Chicago, Pritzker School of Medicine, Anatomy Class, September 16, 2011, Chicago, Il

92. "Facial Trauma," 8th Annual Advocate Injury Institute Symposium, Trauma 2011: 40 years in the Making, Wyndham Lisle-Chicago, November 9-10, 2011

93. "Establishing a Community-Based Microsurgical Practice," QMP Reconstructive Symposium, November 18-20, 2011, Chicago, Il

94. "Surgery for Gender Identity Disorder," Grand Rounds, Dept. of Obstetrics and Gynecology, Northshore University Health System, December 7, 2011

95. "Managing Facial Fractures," Trauma Grand Rounds, Lutheran General Hospital, Park Ridge, Il July 17, 2012

96. "Principles of Transgender Medicine," The University of Chicago Pritzker School of Medicine, Chicago, Il, September 7, 2012

97. "State of the art breast reconstruction," Advocate Health Care, 11th Breast Imaging Symposium, January 26, 2013, Park Ridge, Il.

98. "State of the art breast reconstruction," Grand Rounds, Dept. of Surgery, Mount Sinai Hospital, April 25, 2013, Chicago, Il.

99. "Getting under your skin: is cosmetic surgery right for you?" Lutheran General Hospital community lecture series, May 7, 2013, Park Ridge, Il.

100. "Gender Confirming Surgery," University of Chicago, Pritzker School of Medicine, Anatomy Class, September 27, 2013, Chicago, Il

101. "State of the Art Breast Reconstruction," Edward Cancer Center, Edward Hospital, October 22, 2013, Naperville, Il

102. "Transgender Medicine and Ministry," Pastoral Voice, Advocate Lutheran General Hospital, October 23, 2013, Park Ridge, Il

103. "Principles of Transgender Medicine and Surgery," The University of Illinois at Chicago College of Medicine, January 28, 2014, Chicago, Il

104. "Principles of Transgender Medicine and Surgery," Latest Surgical Innovations and Considerations, 22nd Annual Educational Workshop, Advocate Lutheran General Hospital, March 1, 2014, Park Ridge, Il.

105. "Principles of Transgender Medicine: Gender Confirming Surgery," Loyola University Medical Center, March 12, 2014.

106. "Principles of Plastic Surgery," Grand Rounds, Dept. of Obstetrics and Gynecology, Lutheran General Hospital, September 12, 2014.

107. "Gender Confirmation Surgery," The University of Chicago, Pritzker School of Medicine, October 3, 2014

108. "Private Practice: Is There a Future?" The Annual Meeting of The American Society of Plastic Surgical Administrators/The American Society of Plastic Surgery Assistants, Chicago, Il, October 11, 2014.

109. "Private Practice: Is There a Future?" The Annual Meeting of The American Society of Plastic Surgery Nurses, Chicago, Il, October 12, 2014.

110. "Gender Confirmation Surgery" Grand Rounds, The University of Minnesota, Dept. of Plastic Surgery, Minneapolis, MN, October 29, 2014.

111. "Body Contour After Massive Weight Loss," The Bariatric Support Group, Advocate Lutheran General Hospital, February 5, 2015, Lutheran General Hospital, Park Ridge, Il.

112. "Gender Confirmation Surgery," The School of the Art Institute of Chicago, February 1, 2015, Chicago, Il.

113. "Gender Confirmation Surgery," The Community Kinship Life/Bronx Lebanon Department of Family Medicine, Bronx, NY, March 6, 2015

114. "Gender Confirmation Surgery," Educational Inservice, Lutheran General Hospital, Park Ridge, Il, April 20, 2015

115. "Principles of Plastic Surgery, " Surgical Trends, Lutheran General Hospital, Park Ridge, Il, May 16, 2015

116. "Updates on Gender Confirmation Surgery, " Surgical Trends, Lutheran General Hospital, Park Ridge, Il, May 16, 2015

117. "Gender Confirmation Surgery," Lurie Childrens' Hospital, Chicago, Il, May 18, 2015,Chicago, Il 2015.

118. "Gender Confirmation Surgery," TransClinical Care and Management Track Philadelphia Trans-Health Conference, June 5, 2015, Philadelphia, Pa.

119. "Gender Confirmation Surgery: A Fifteen Year Experience," Grand Rounds, The University of Minnesota, Plastic and Reconstructive Surgery and the Program in Human Sexuality, July 30, 2015, Minneapolis, Mn

120. "Gender Confirmation Surgery," Grand Rounds, Tel Aviv Medical Center, Tel Aviv, Israel, August 13, 2015

121. "Gender Confirmation Surgery," Grand Rounds, University of Illinois, Dept of Family Medicine, September 2, 2015

122. "Principles of Plastic Surgery," Grand Rounds, St. Francis Hospital, Evanston, Il September 18, 2015

123. "Gender Confirmation Surgery," Midwest LGBTQ Health Symposium, Chicago, Il, October 2, 2015

124. "Gender Confirmation Surgery," Southern Comfort Conference, Weston, Fl, October 3, 2015

125. "Surgical Transitions for Transgender Patients," Transgender Health Training Institute, Rush University Medical Center, Chicago,Il, October 8, 2015

126. "Gender Confirmation Surgery," The Transgender Health Education Peach State Conference, Atlanta, GA, October 30, 2015

127. "Gender Confirmation Surgery," Weiss Memorial Medical Center, November 4, 2015, Chicago, Il

128. "Gender Confirmation Surgery," University of Illinois at Chicago, Operating Room Staff Inservice, November 18, 2015, Chicago, Il

129. "Gender Confirmation Surgery," University of Illinois at Chicago, Plastic Surgery and Urology Inservice, November 18, 2015, Chicago, Il

130. "Gender Confirmation Surgery," Weiss Memorial Medical Center, November 19, 2015, Chicago, Il

131. "Gender Confirmation Surgery," Section of Plastic Surgery, The University of Illinois at Chicago, January 13, 2016, Chicago, Il

132. "Gender Confirmation Surgery," Dept. of Medicine, Louis A. Weiss Memorial Hospital, February 18, 2016, Chicago, Il

133. "Gender Confirmation Surgery," BCBSIL Managed Care Roundtable March 2, 2016 Chicago, Il

134. "Gender Confirmation Surgery-MtF," Keystone Conference, March 10, 2016, Harrisburg, PA

135. "Gender Confirmation Surgery-FtM," Keystone Conference, March 10, 2016, Harrisburg, PA

136. "Gender Confirmation Surgery," Grand Rounds, Dept. of Ob-Gyn, March 25, 2016, Lutheran General Hospital, Park Ridge, Il 60068

137. "Surgical Management of the Transgender Patient," Spring Meeting, The New York Regional Society of Plastic Surgeons, April 16, 2016, New York, NY

138. "A Three Step Approach to Complex Lower Extremity Trauma," University of Illinois at Chicago, April 27, 2016, Chicago, Il.

139. "Gender Confirmation Surgery," Howard Brown Health Center, July 12, 2016, Chicago, Il

140. "Creating the Transgender Breast M-F; F-M", ASPS Breast surgery and Body Contouring Symposium, Santa Fe, NM, August 25-27, 2016

141. "Overview of Transgender Breast Surgery," ASPS Breast surgery and Body Contouring Symposium, Santa Fe, NM, August 25-27, 2016

142. "VTE Chemoprophylaxis in Cosmetic Breast and Body Surgery: Science or Myth", ASPS Breast surgery and Body Contouring Symposium, Santa Fe, NM, August 25-27, 2016

143. "Gender Confirmation Surgery," Gender Program, Lurie Childrens', Parent Group, September 20, 201, 467 W. Deming, Chicago, Il

144. "Gender Confirmation Surgery," The American Society of Plastic Surgeons Expo, September 24, 2016, Los Angeles, CA

145. Transgender Surgery, Management of the Transgender Patient, Female to Male Surgery, Overview and Phalloplasty, The American College of Surgeons, Clinical Congress 2016 October 16-20,2016 Washington, DC

146. "Gender Confirmation Surgery," The Department of Anesthesia, The University of Illinois at Chicago, November 9, 2016

147. "Gender Confirmation Surgery," The Division of Plastic Surgery, The University of Illinois at Chicago, December 14, 2016

148. "Gender Confirmation Surgery," Nursing Education, The University of Illinois at Chicago, January 10, 2017

149. "F2M-Radial Forearm Total Phalloplasty: Plastic Surgeon's Point of View," The European Association of Urologists, Meeting of the EAU Section of Genito-Urinary Reconstructive Surgeons (ESGURS), London, United Kingdom, March 23-26, 2017

150. "Gender Confirmation Surgery," Grand Rounds, The Department of Surgery, The University of North Carolina, March 29, 2017.

151. "Transgender Facial Surgery," *The Aesthetic Meeting 2017 – 50 Years of Aesthetics* - in San Diego, California April 27- May 2, 2017.

152. "Gender Confirmation Surgery: A New Surgical Frontier," 15th Annual Morristown Surgical Symposium Gender and Surgery, Morristown, NJ, May 5, 2017.

153. "Gender Confirmation Surgery: A New Surgical Frontier," Dept. of Obstetrics and Gynecology, The Medical College of Wisconsin, May 24, 2017

154. "Gender Confirmation Surgery: A New Surgical Frontier," Dept. of Obstetrics and Gynecology, Howard Brown Health Center, August 8, 2017

155. "Current State of the Art: Gynecomastia," ASPS Breast Surgery and Body Contouring Symposium, San Diego, CA, August 10-12, 2017

156. "Gender Confirmation Surgery-An Overview," ASPS Breast Surgery and Body Contouring Symposium, San Diego, CA, August 10-12, 2017

157. "Gender Confirmation Surgery," Grand Rounds, Dept. of Obstetrics and Gynecology, The University of Chicago, August 25, 2017

158. "Gender Confirmation Surgery," Wake Forest School of Medicine, Transgender Health Conference, Winston-Salem, NC, September 28-29, 2017

159. "Phalloplasty," Brazilian Professional Association for Transgender Health, Teatro Marcos Lindenberg, Universidade Federal de São Paulo (Unifesp), November 1-4, 2017

160. "Gender Confirmation Surgery," Brazlian Professional Association for Transgender Health/WPATH Session, Teatro Marcos Lindenberg, Universidade Federal de São Paulo (Unifesp), November 1-4, 2017

161. "Gender Confirmation Surgery," The Division of Plastic Surgery, The University of Illinois at Chicago, December 13, 2017, Chicago, Il

162. "Gender Confirmation Surgery," Gender and Sex Development Program, Ann and Robert H. Lurie Children's Hospital of Chicago, December 18, 2017, Chicago, Il

163. "Transgender Breast Augmentation," 34th Annual Atlanta Breast Surgery Symposium, January 19-21, 2018, Atlanta, GA

164. "Top Surgery: Transmasculine Chest Contouring," 34th Annual Atlanta Breast Surgery Symposium, January 19-21, 2018, Atlanta, GA

165. "Gender Confirmation Surgery," The 17th International Congress of Plastic and Reconstructive Surgery in Shanghai, March 18-25, 2018, Shanghai, China

166. "Gender Confirmation Surgery: Facial Feminization and Metoidioplasty," 97th Meeting of the American Association of Plastic Surgeons, Reconstructive Symposium, April 7-10, 2018, Seattle, WA

167. Moderator: "Gender Confirmation Surgery: Top Surgery", The Annual Meeting of The American Society of Aesthetic Plastic Surgery, April 26-May 1, 2018, New York, NY

168. "Gender Confirmation Surgery," Econsult monthly meeting, Dept. of Veterans' Affaris, May 24, 2018

169. "Gender Confirmation Surgery," Transgender Care Conference: Improving Care Across the Lifespan, Moses Cone Hospital, Greensboro, NC, June 8, 2018

170. "WPATH State of the Art," 1st Swiss Consensus Meeting on the Standardization of Sex Reassignment Surgery, The University of Basel, August 31, 2018-September 1, 2018

171. "Facial Feminiztion Surgery: The New Frontier?" 1st Swiss Consensus Meeting on the Standardization of Sex Reassignment Surgery, The University of Basel, August 31, 2018-September 1, 2018

172. "Current Techniques and Results in Mastectomies," 1st Swiss Consensus Meeting on the Standardization of Sex Reassignment Surgery, The University of Basel, August 31, 2018-September 1, 2018

173. "Gender Confirmation Surgery," The University of Chicago, Pritzker School of Medicine, September 7, 2018, Chicago, Il.

174. The Business End: Incorporating Gender Confirmation Surgery, Plastic Surgery The Meeting, Annual Meeting of The American Society of Plastic Surgeons, September 29, 2018, Chicago, Il

175. Body Contouring in Men, Gynecomastia, Plastic Surgery The Meeting, Annual Meeting of The American Society of Plastic Surgeons, September 30, 2018, Chicago, Il

176. Moderator: Breast Augmentation and Chest Surgery in Gender Diverse Individuals, Plastic Surgery The Meeting, Annual Meeting of The American Society of Plastic Surgeons, October 1, 2018, Chicago, Il

177. Moderator: Aesthetic Surgery of The Male Genitalia, Plastic Surgery The Meeting, Annual Meeting of The American Society of Plastic Surgeons, October 1, 2018, Chicago, Il

178. Moderator: Gender Confirmation Surgeries: The Standards of Care and Development of Gender Identity, Plastic Surgery The Meeting, Annual Meeting of The American Society of Plastic Surgeons, October 1, 2018, Chicago, Il

179. The Center for Gender Confirmation Surgery Lecture Series, "Introduction to Gender Confirmation Surgery," Weiss Memorial Hospital, October 17, 2018, Chicago, Il

180. Institute 3: Gender Dysphoria Across Development: Multidisciplinary Perspectives on the Evidence, Ethics, and Efficacy of Gender Transition, Gender Confirming Care in Adolescence: Evidence, Timing, Options, and Outcomes, The American Academy of Child and Adolescent Psychiatry, 65th Annual Meeting, October 22-27, 2018, Seattle, WA

181. Gender Confirmation Surgery, Combined Endocrine Grand Rounds, The University of Illinois at Chicago, Rush University, Cook County Hospital, January 8, 2019

182. Gender Confirmation Surgery: An Update, Division of Plastic Surgery, The University of Illinois at Chicago, January 23, 2019

183. Gender Confirmation Surgery from Top to Bottom: A 20 Year Experience, Grand Rounds, The Department of Surgery, Ochsner Health System, January 30, 2019, New Orleans, LA

184. Master Series of Microsurgery: Battle of the Masters One Reconstructive Problem – Two Masters with Two Different Approaches, Gender Affirmation, Male-to-Female Vaginoplasty: Intestinal Vaginoplasty, The American Society for Reconstructive Microsurgery, Palm Desert, California, February 2, 2019

185. Gender Confirmation Surgery: From Top to Bottom, The University of Toronto, Toronto, Canada, February 21, 2019

186. Gender Confirmation Surgery: Where are We, The University of Toronto, Toronto, Canada, February 21, 2019

187. Professors' Rounds: Gender Confirmation Surgery: A Twenty Year Experience, Princess Margaret Hospital, Toronto, Canada, February 22, 2019

188. A 3 Step Approach to Lower Extremity Trauma, Plastic Surgery at The Red Sea, Eilat, Israel, March 6-9, 2019.

189. Gender Surgery: Where are We Now?, Plastic Surgery at The Red Sea, Eilat, Israel, March 6-9, 2019.

190. Gender Confirmation Surgery, A Single Surgeon's 20 Year Experience, Plastic Surgery at The Red Sea, Eilat, Israel, March 6-9, 2019.

191. Gender Confirmation Surgery: Where We Have Been and Where We Are Going, Grand Rounds, The University of Chicago, Section of Plastic Surgery, March 13, 2019

192. Gender Confirmation Surgery: From Top To Bottom, Resident Core Curriculum Conference, The University of Chicago, Section of Plastic Surgery, March 13, 2019.

193. "Gender Confirmation Surgery," WPATH/AMSA Medical School Trans Health Elective, Webinar, March 13, 2019

194. Robotic Vaginoplasty: An Alternative to Penile Inversion Vaginoplasty in Cases of Insufficient Skin, Vaginal Stenosis, and Rectovaginal Fistula. The European Professional Association for Transgender Health, April 9-13, Rome, Italy

195. Current State of Gender-Affirming Surgery in the US and Beyond, Gender-affirming genital surgery presented by the American Urologic

Association in collaboration with the Society for Genitourinary Reconstructive Surgeons (GURS), May 2, 2019, Chicago, Il

196. Surgical Training-How Can I get it, The Aesthetic Meeting 2019, New Orleans, LA, May 20, 2019

197. What is the Standard of Care in This New Frontier, The Aesthetic Meeting 2019, New Orleans, LA, May 20, 2019

198. The 20th Annual Chicago Orthopedic Symposium, August 15-18, 2019, Chicago, Il "Soft Tissue Defects-Getting Coverage"

199. Gender Confirmation Sugery, The Potocsnak Family Division of Adolescent and Young Adult Medicine, Ann & Robert H. Lurie Children's Hospital of Chicago, August 19, 2019

200. Anatomy, Embryology, and Surgery, The University of Chicago, First Year Medical Student Anatomy Lecture, September 9, 2019, The University of Chicago, Chicago, Il.

201. Gender Confirmation Surgery, Howard Brown Health Center Gender Affirming Learning Series, September 13, 2019, Chicago, Il.

202. Moderator, Patient Selection in Gender Affirming Survey Surgery, 88th Annual Meeting of The American Society of Plastic Surgeons, September 20-23, 2019, San Diego, CA

203. Breast Augmentation in Transwomen: Optimizing Aesthetics and Avoiding Revisions, 88th Annual Meeting of The American Society of Plastic Surgeons, September 20-23, 2019, San Diego, CA

204. Breast Reconstruction, State of the Art, NYU-Langone Health, NYU School of Medicine, Standards of Care and Insurance Coverage, Saturday, November 23, 2019, New York, NY.

205. ASRM Masters Series in Microsurgery: Think Big, Act Small: The Building Blocks for Success, "Building a Microsurgery Private Practice from the Ground Up", 2020 ASRM Annual Meeting, Ft. Lauderdale, Florida, January 10-14, 2020

206. ASPS/ASRM Combined Panel II: Gender Affirmation Surgery: Reconstruction Challenges of Function and Sensation, 2020 ASRM Annual Meeting, Ft. Lauderdale, Florida, January 10-14, 2020

207. Rush University Medical Center, Division of Urology, Grand Rounds, "Gender Confirmation Surgery: A Single Surgeon's Experience," January 22, 2020

208. Rush University Medical Center, Department of General Surgery, Grand Rounds, "Gender Confirmation Surgery: A Single Surgeon's Experience," February 5, 2020.

Exhibit B – Bibliography

Bibliography

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4. Centers for Medicare & Medicaid Services, Decision Memo for Gender Dysphoria and Gender Reassignment Surgery (CAG-00446N) (2016).

5. Complaint in *Conforti v. St. Joseph's Healthcare Sys. Inc.et al.*, Case No. 2:17-cv-00050-CCC-CLW (D. New Jersey).

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9. Science AMA Series: I'm Cecilia Dhejne a fellow of the European Committee of Sexual Medicine, from the Karolinska University Hospital in Sweden. I'm here to talk about transgender health, suicide rates, and my often misinterpreted study. Ask me anything!, Reddit.com, July 27, 2017 05:14, 30Thttps://www.reddit.com/r/science/comments/6q3e8v/science_ama_series_im_cecilia_dhejne_a_fellow_of30T.

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13. Gaither, T., et al. Postoperative Complications Following Primary Penile Inversion Vaginoplasty Among 330 Male-to-Female Transgender Patients. J Urol. 2018 Mar; 199(3):760-765. doi: 10.1016.

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26. Schechter, Loren S. (2016). Surgical Management of the Transgender Patient. Surgical Therapy, pp. 17–24. doi:10.1016/b978-0-323-48089-5.00004-1.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JIONNI CONFORTI, Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC.; ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER D/B/A ST. JOSEPH'S REGIONAL MEDICAL CENTER; and FATHER MARTIN D. ROONEY, Defendants.	Honorable Claire C. Cecchi, U.S.D.J. Honorable Cathy L. Waldor, U.S.M.J. Case No. 2:17-cv-00050 (CCC/CLW) **[PROPOSED] ORDER GRANTING DEFENDANTS' APPEAL OF THE HONORABLE CATHY L. WALDOR'S JANUARY 22, 2020 AND MARCH 30, 2020, OPINIONS AND ORDERS**

THIS MATTER having been opened to the Court by McCarter & English, LLP, counsel for Defendants St. Joseph's Health, Inc., St. Joseph's University Medical Center, Inc., and Father Martin D. Rooney (collectively, "Defendants"), and the Court having considered submissions in support of and in opposition to Defendants' Appeal of The Honorable Cathy L. Waldor's January 22, 2020 and March 30, 2020, Opinions and Orders, and for good cause shown:

IT IS on this ____ day of _____, 2020

ORDERED that Defendants' Appeal of The Honorable Cathy L. Waldor's January 22, 2020 and March 30, 2020, Opinions and Orders denying Defendants' motion to compel mental examination of Plaintiff pursuant to Fed. R. Civ. P. 35(a), is hereby GRANTED; and it is further

ORDERED that The Honorable Cathy L. Waldor's January 22, 2020 and March 30, 2020, Opinions and Orders denying Defendants' motion to compel mental examination of Plaintiff pursuant to Fed. R. Civ. P. 35(a), are hereby vacated; and it is further

ORDERED that Plaintiff shall appear for a mental examination to be conducted by Donald Raymond Reeves, Jr., M.D., at Dr. Reeves' medical office (located at Hydrangea Hill Psychiatric Associates, Inc., 112 Raymond Ave., South Orange, New Jersey 07079) within thirty (30) days of the entry of this Order; and it is further

ORDERED that the scope of the examination may include: a Mental Status Examination, including developing Plaintiff's family, education and work histories, as well as Plaintiff's developmental and psychiatric histories (including treatments for psychiatric and psychological conditions, such as Plaintiff's claimed gender dysphoria, depression, and anxiety); an evaluation of Plaintiff's alleged emotional distress, depression, and anxiety that purportedly were caused by Defendants' conduct described in the Complaint, including the extent and duration of same, other potential causes of Plaintiff's alleged distress, depression, and anxiety, and the treatment Plaintiff has undergone (including medications) for same; and Plaintiff's claimed gender dysphoria and the impact on the dysphoria symptoms of the hysterectomy that Plaintiff underwent in or about September 2015.

_____
HON. CLAIRE C. CECCHI, U.S.D.J.

____ Opposed
____ Unopposed

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and Father Martin D. Rooney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI, Plaintiff, v. ST. JOSEPH'S HEALTHCARE SYSTEM, INC.; ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER D/B/A ST. JOSEPH'S REGIONAL MEDICAL CENTER; and FATHER MARTIN D. ROONEY, Defendants.	Honorable Claire C. Cecchi, U.S.D.J. Honorable Cathy L. Waldor, U.S.M.J. Case No. 2:17-cv-00050 (CCC/CLW) **CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of June, 2020, a true and correct copy of Defendants' Brief in Support of their Appeal of The Honorable Cathy L. Waldor's January 22, 2020 and March 30, 2020, Opinions and Orders, Declaration of Christopher S. Mayer, Esq., including annexed exhibits, Notice of Motion Appealing The Honorable Cathy L. Waldor's January 22, 2020 and March 30, 2020, Opinions and Orders, Proposed Form of Order, and this Certificate of Service was filed with the Court using the Court's electronic filing system, which will send notice of electronic filing to all participants, resulting in service upon all counsel of record.

s/Katerina R. Mantell
Katerina R. Mantell, Esq.