DECLARATION OF MAXWELL KADEL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, *et al.*,

Defendants.

No. 1:19-cv-00272-LCB-LPA

DECLARATION OF MAXWELL KADEL

I, Maxwell Kadel, hereby state as follows:

1. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am a 38-year-old transgender man. I was employed by the University of North Carolina at Chapel Hill ("UNC") from October 2016 to November 2019. After working for a different employer since November 2019, I returned to work at UNC in October 2021. I live in Chapel Hill, North Carolina.

3. I was designated female at birth but have a male gender identity. I live all aspects of my life in accordance with my male gender identity.

4. I began working with the UNC School of Government in October 2016, where I worked as an Administrative Support Associate until I accepted another job opportunity outside the University system in November 2019. In October 2021, I returned to UNC as a Software Applications Developer in the UNC University Libraries system.

5. While working at the UNC School of Government, as a North Carolina state employee, I was enrolled in the North Carolina State Health Plan for Teachers and State Employees ("NCSHP"), and I received health care benefits from this plan as part of my compensation. I contributed each month to the plan via a paycheck deduction.

6. I have struggled with gender dysphoria since childhood, and was diagnosed with gender dysphoria at the age of 33.

7. As part of my prescribed treatment for gender dysphoria, I began hormone therapy in June 2016.

8. While I was working at the UNC School of Government, I lived with significant distress caused by gender dysphoria. This included distress and anxiety about how people treated me with regard to my gender, and discomfort with my physical appearance and with being seen as a woman.

9. Because of the NCSHP's categorical Exclusion of coverage for gender-confirming health care, my insurance did not cover my hormone therapy and I was forced to pay for it out of pocket.

10. On October 29, 2018, CVS issued a Notice of Determination ("ND") denying prior authorization for coverage of my testosterone prescription. A true and correct copy of the ND is attached as Exhibit A. The ND explained that the prescription would only be covered for males with "primary or hypogonadotropic hypogonadism," and that because my "use of this drug d[id] not meet th[is] requirement," it would not be covered. Exhibit A at 2 (KADEL00313153).

11. In 2017, after the NCSHP eliminated the Exclusion, I considered pursuing chest surgery to create a more typically masculine chest, but decided to wait and see whether hormone therapy would be sufficient to relieve my gender dysphoria.

12. In 2018, in consultation with my health care providers, I determined that chest surgery was necessary to alleviate my gender dysphoria, and was ready to move forward with further consultations leading to surgery. I then discovered that the NCSHP had reinstated the Exclusion, effective January 1, 2018, in all of its health plans.

13. After the Exclusion was reinstated in 2018, I was deprived of insurance coverage for medically necessary hormone therapy and gender-confirming surgical care. I paid out-of-pocket for hormone therapy. During that time, to lessen the financial burden of paying out-of-pocket for testosterone every month, I often rationed and used vials of testosterone past the expiration date.

14. I also had to forgo chest surgery, which caused me to experience significant gender dysphoria-related distress on a daily basis. I wore a binder to compress my chest, but it caused me physical discomfort and breathing difficulties. I also have asthma, which was exacerbated by having to bind my chest because I could not obtain a permanent medically necessary solution through surgery.

15. Eventually, I was able to save enough to undergo chest surgery in February 2021. Although the expense for surgery was substantial for me as an individual paying out-of-pocket—$10,525—surgery brought significant relief from my gender dysphoria and

the physical discomfort I had felt with my body. I now feel much more comfortable with my body.

16. Because I have returned to work at UNC, the Exclusion also prohibits me from seeking future medically necessary gender-confirming health care, such as ongoing hormone therapy and additional surgery I may need.

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

DATED: 11/24/2021

Maxwell Kadel

Subscribed and sworn before me, a Notary Public in and for the ORANGE COUNTY State of NORTH CAROLINA, this 24 day of NOVEMBER, 2021.

KYLE F. HOOPES NOTARY PUBLIC ORANGE COUNTY, NC

Signature of Notary

Kyle F Hoopes

Exp: JANUARY 27, 2023

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: November 30, 2021

/s/ Amy E. Richardson

Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Counsel for Plaintiffs

Exhibit A

CVS caremark

Fax Transmittal

To: MEMBER

From: CVS Caremark® Prior Authorization

Electronically (ePA) (4 to 5 **minutes** process time)	Phone (10 to 15 **minutes** process time)	Fax (24 to 72 **hours** process time)
ePA is CVS Caremark's preferred method for receiving prior authorizations and now accepts PA requests online 24/7. **Easier:** Reduce the need for paper forms, faxes, and phone calls **More Convenient:** Centrally manage ePAs and more easily view their status **Faster:** Generally receive faster determinations so patients can fill their medication sooner **Visit http://info.caremark.com/ePA to learn more and get started today.**	Calling us with your PA request during our business hours is another option. **See next page for the specific phone number.** The process over the phone can take between 10 and 15 minutes. OR see ePA option	You may also continue to fax us your PA request. **See next page for specific fax number.** Faxes received are processed within 24 to 72 hours. OR see ePA option

If this fax is in response to an inquiry about clinical criteria for coverage of a prescription drug for your patient, the criteria for the specific drug is attached.
Please note that your inquiry does not constitute a request for coverage. CVS Caremark cannot process a request for coverage until we receive a completed criteria form or appropriate clinical information.

91-41319A 062917

CVS caremark™

North Carolina State Health Plan FOR TEACHERS AND STATE EMPLOYEES
A Division of the Department of State Treasurer

DALE R. FOLWELL, CPA

Notice of Determination

Date: 10/29/2018

MAXWELL KADEL
[redacted]

Plan Member Name: MAXWELL KADEL
Plan Member ID: ******[redacted]
Plan Name: North Carolina State Health Plan 0274 Non-Grandfathered

Prescriber Name: QUANG PHAM
Prescriber Phone: 1-9199428741
Prescriber Fax: 1-9199421473

Dear MAXWELL KADEL:

CVS Caremark® received a request from your provider for coverage of Testosterone Cypionate IM Injection. The request was denied because:

Your plan approved Testosterone Products criteria covers this drug when you have primary or hypogonadotropic hypogonadism. Your use of this drug does not meet the requirement. This is based on the information we have.

You can ask for a free copy of the actual benefit provision, guideline, protocol or other similar criterion used to make the decision and any other information related to this decision by calling Customer Care at **1-888-321-3124**.

For more information regarding your prescription benefit, please refer to your Benefit Booklet available on the Plan's website at **www.shpnc.org**.

If your provider would like to discuss this decision with a clinical reviewer at CVS Caremark, your provider can call CVS Caremark, and we will make arrangements for the conversation.

You may request an appeal by sending a written request to the address below. To be eligible for an appeal, your request must be in writing and received within 180 days of the date of this letter. Please mail or fax your appeal to:

Blue Cross/Blue Shield of North Carolina
Appeals Department / Level I
PO Box 30055
Durham, NC 27702
Fax: 1-919-765-2322

If your situation is urgent as defined by law, you may ask for an expedited appeal. Important information about your appeal rights and directions about how to ask for an appeal are provided with this letter.

If you have questions, please call Customer Care at **1-888-321-3124**.

Sincerely,

CVS Caremark

Enclosures

cc: Dr. QUANG PHAM

PA# North Carolina State Health Plan 0274 Non-Grandfathered 18-035548880 AG
Plan-approved Criteria: Testosterone Products
Claim Amount (if available):
Service Date: 10/25/2018 10:23:25 AM

If your provider included diagnosis or treatment codes with your claim for Testosterone Cypionate IM Injection to CVS Caremark, that information is listed here:
ICD diagnosis code: E34.9
Associated diagnosis: Endocrine disorder, unspecified
CPT treatment code:
Associated treatment:
You may wish to contact your provider for more information about these codes.

Important Information About Your Appeal Rights

What if I need help understanding this denial? You may contact CVS Caremark by calling **1-800-294-5979** if you need assistance understanding this notice or our decision to deny you a service or coverage.

What options does my provider have? If there is relevant information that has not been previously submitted, the treating physician may request a Provider Courtesy Review (PCR) by calling **1-800-446-8053 extension 52961** or by sending a written request within 180 days to:

Blue Cross/Blue Shield of North Carolina
Appeals Department / Provider Courtesy Review
PO Box 30055
Durham, NC 27702

What if I don't agree with this decision? You may request an appeal by sending a written request to the address below. To be eligible for an appeal, your request must be in writing and received within 180 days of the date of this letter.

Blue Cross/Blue Shield of North Carolina
Appeals Department / Level I
PO Box 30055
Durham, NC 27702

A member appeal form is available on the Web at **www.BCBSNC.com**.

What if my situation is urgent? If your situation meets the legal definition of urgency, the review of your claim will be conducted within 72 hours, or earlier if required by law. Generally, an urgent situation is one in which your health may be in serious jeopardy or, in the opinion of your physician, you may experience pain that cannot be adequately controlled while you wait for a decision on the external review of your claim. If you believe that your situation is urgent, you or your physician may request an expedited appeal by contacting BCBSNC via mail or fax at the address below. In addition, you may have the ability to seek an expedited external review of your adverse benefit determination. To determine whether an external review process is available to you, please consult your benefit booklet or call BCBSNC customer service on the back of your ID Card.

Blue Cross/Blue Shield of North Carolina
Appeals Department / Level 1
PO Box 30055
Durham, NC 27702
Fax: 1-919-765-2322

Who may file an appeal? You or someone whom you name to act for you (your authorized representative) may file an appeal. A member consent form is attached for your convenience and is also available on our Web site at **www.BCBSNC.com**.

Can I provide additional information about my appeal? Yes. As part of the appeal process, you have the right to submit supporting materials in advance of a decision being made on your appeal.

What happens next? If you appeal, BCBSNC will review the decision and provide you a written determination within 30 calendar days. If the adverse benefit determination is overturned, BCBSNC will provide coverage or payment for your health care item or service. If the adverse benefit determination is upheld, you may have additional appeal rights.

How do I file a request for external review? You may be eligible for an external review process. To determine whether an external review process is available to you, please consult your benefit booklet or call BCBSNC customer service on the back of your ID card.

What other remedies do I have? Depending on your plan, you may also have the right to bring action under section 502(a) of ERISA. You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor office and your state insurance regulatory agency.

Can I request copies of information relevant to my adverse benefit determination? Yes. You may request and receive, at no cost to you, reasonable access to and copies of all documents, records and other information relevant to your claim by writing to:

Blue Cross and Blue Shield of North Carolina
Healthcare Management & Operations
P. O. Box 2291
Durham, NC 27702

This information may also include the following:

- Any internal rules, guidelines, protocols, or other criteria used to make this decision, including any clinical review criteria indicated above (please include the referenced medical policy from page 1 of this notice with your request); and/or
- If the decision is based on medical necessity, experimental treatment or another similar exclusion, an explanation of the scientific or clinical judgment for the determination, applied to your medical circumstances.

Other resources to help you: For questions about your rights, this notice, or for assistance, you can contact the Employee Benefits Security Administration at **1-866-444-EBSA (3272)**. You may also receive assistance with appeals from Smart NC by contacting:

North Carolina Department of Insurance
Health Insurance Smart NC
1201 Mail Service Center
Raleigh, NC 27699-1201
1-855-408-1212 (toll-free)

External Review
North Carolina law provides for review of *adverse benefit determinations* by an external, independent review organization (IRO). The North Carolina Department of Insurance (NCDOI) administers this service at no charge to you, arranging for an IRO to review your case once the NCDOI establishes that your request is complete and eligible for review. *BCBSNC* will notify you of your right to request an external review each time you receive:

- An *adverse benefit determination*, or
- An appeal decision upholding an *adverse benefit determination* or
- A second-level *appeal* decision upholding an *adverse benefit determination*.

You or someone whom you have authorized to represent you may request an external review.

In order for your request to be eligible for an external review, the NCDOI must determine the following:

- Your request is about a *medical necessity* determination that resulted in an *adverse benefit determination (i.e., a noncertification)*;
- You had coverage with *BCBSNC* when the *adverse benefit determination* was issued;
- The service for which the *adverse benefit determination* was issued appears to be a *covered service*; and
- You have exhausted *BCBSNC's* internal *appeal* review process as described below.

For a standard external review, you will have exhausted the internal *appeal* review process if you have:

- Completed *BCBSNC's* first- and second-level *appeal* review and received a written second-level determination from *BCBSNC*, or
- Filed a second-level *appeal* and have not requested or agreed to a delay in the second-level *appeal* process, but have not received *BCBSNC's* written decision within 60 days from the date that you can demonstrate that an appeal was filed with BCBSNC, or
- received written notification that *BCBSNC* has agreed to waive the requirement to exhaust the internal *appeal* and/or second-level *appeal* process.

External reviews are performed on a standard or expedited basis, depending on which is requested and on whether medical circumstances meet the criteria for expedited review.

Standard External Review
For all requests for a standard external review, you must file your request with the NCDOI within 120 days of receiving one of the notices listed above.

If the request for an external review is related to a retrospective *adverse benefit determination* (an *adverse benefit determination* that occurs after you have already received the services in question), the 60-day time limit for receiving *BCBSNC's* second-level determination does not apply. You will not be eligible to request an external review until you have exhausted the internal appeal process and have received a written second-level determination from *BCBSNC*.

Expedited External Review
An expedited external review may be available if the time required to complete either an expedited internal first- or second-level appeal review or a standard external review would reasonably be expected to seriously jeopardize your life or health or to jeopardize your ability to regain maximum function. If you meet this requirement, you may file a request to the NCDOI for an expedited external review, after you receive:

- An *adverse benefit determination* from *BCBSNC* and have filed a request with *BCBSNC* for an expedited first-level appeal; or
- A first-level appeal decision upholding an *adverse benefit determination* and have filed a request with *BCBSNC* for an expedited second-level *appeal* review; or
- A second-level *appeal* review decision from *BCBSNC*.

In addition, prior to your discharge from an inpatient facility, you may also request an expedited external review after receiving a first-level appeal or second-level appeal decision concerning an adverse benefit determination of the admission, availability of care, continued stay or emergency health care services.

If your request is not accepted for expedited review, the NCDOI may (1) accept the case for standard external review if you have exhausted the internal appeal review process; or (2) require the completion of the internal appeal review process and another request for an external review. An expedited external review is not available for retrospective adverse benefit determinations.

When processing your request for external review, the NCDOI will require you to provide the NCDOI with a written, signed authorization for the release of any of your medical records that need to be reviewed for the purpose of reaching a decision on the external review. For further information about external review or to request an external review, contact the NCDOI at:

(Mail)
By Mail:
NC Department of Insurance
Health Insurance Smart NC
1201 Mail Service Center
Raleigh, NC 27699-1201
Toll-Free Telephone: **1-855-408-1212**
www.ncdoi.com/smart

(In person)
For the physical address for Health Insurance Smart NC, please visit the web-page:
http://www.ncdoi.com/Smart
Toll-Free Telephone: **1-855-408-1212**

The Healthcare Review Program provides consumer counseling on utilization review and appeal issues. Within ten business days (or, for an expedited review, within three business days) of receipt of your request for an external review, the NCDOI will notify you and your provider of whether your request is complete and whether it has been accepted. If the NCDOI notifies you that your request is incomplete, you must provide all requested, additional information to the NCDOI within 150 days of the written notice from BCBSNC upholding an adverse benefit determination (generally the notice of a second-level appeal review decision), which initiated your request for an external review. If the NCDOI accepts your request, the acceptance notice will include: (i) name and contact information for the IRO assigned to your case; (ii) a copy of the information about your case that BCBSNC has provided to the NCDOI; and (iii) a notification that you may submit additional written information and supporting documentation relevant to the initial adverse benefit determination to the assigned IRO within seven days after the receipt of the notice. It is presumed that you have received written notice two days after the notice was mailed. Within seven days of BCBSNC's receipt of the acceptance notice (or, for an expedited review, within the same business day), BCBSNC shall provide the IRO and you, by the same or similar expeditious means of communication, the documents and any information considered in making the adverse benefit determination, appeal decision or the second-level appeal review decision. If you choose to provide any additional information to the IRO, you must also provide that same information to BCBSNC at the same time and by the same means of communication (e.g., you must fax the information to BCBSNC if you faxed it to the IRO). When sending additional information to BCBSNC, send it to:

(Mail)
Blue Cross/Blue Shield of North Carolina
Appeals Department
PO Box 30055
Durham, NC 27702

Questions? Do you need help in a different language or format? If you do not speak English or have special needs, oral interpretation and alternate formats of this notice are available, as is other assistance, by contacting us at the number on your State Health Plan ID card.

Spanish:
Si usted necesita asistencia o necesita hablar con alguien en Español, por favor llame al número gratuito de Servicio al Cliente ubicado en su tarjeta de identificación de beneficios.

Chinese (simplified):
如果您需要帮助，或需要同中国人讲话，请拨打您的福利卡上面的客户服务免费电话号码。

Tagalog:
Kung kailangan ninyo ng tulong o kailangan ninyong makipag-usap sa isang tao sa Tagalog, mangyari lamang na tumawag nang walang-bayad sa Serbisyo sa Kostumer sa numero na nakasulat sa inyong ID kard ng benepisyo.

Navajo:
Shíka at'ohwol ei doodaii' dinék'ehgo łą bi'chį haadeedziih nínízinígo, t'áá shǫǫdí, t'áá jíík'e ya ndaalníshí, ni naaltsoos bikáa'gi bi'chį hodiilniih.

Activity Report

Date/Time	10-29-2018	05:29:33 p.m.	Transmit Header Text	
Local ID 1	0000000000		Local Name 1	000

Completed Jobs : 1

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	402	CVS Caremark	05:24:06 p.m. 10-29-2018	00:05:04	10/10	1	EC	HR	CP2400

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct

DECLARATION OF CONNOR THONEN-FLECK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, *et al.*, *Plaintiffs*, v. DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, *et al.*, *Defendants*.	No. 1:19-cv-00272-LCB-LPA **DECLARATION OF CONNOR THONEN-FLECK**

Pursuant to 28 U.S.C.§ 1746, I hereby declare as follows:

1. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am a 19-year-old man.

3. I am also transgender. This means that although I was designated "female" at birth, I have a male gender identity.

4. I am a college sophomore at the North Carolina State University. I have long been passionate about veterinary science, and am currently working on a double-major in Animal Science and Biochemistry to prepare for veterinary school.

5. I struggled with gender dysphoria since childhood. I demonstrated stereotypically masculine tendencies and characteristics from a young age. But until I began to transition, I was in serious and increasing distress, to the point that I experienced

suicidal ideation because of untreated gender dysphoria. Ultimately, I came out as transgender to my family and explained my need to transition.

6. My family and I did some research and learned that there were medical professionals we could consult with about the proper treatment for me. I initially began seeing a psychiatrist and therapist. By the time I was 15 years old, I had socially transitioned and was living in my authentic male gender identity in all aspects of my life.

7. In January of 2018, I began hormone therapy as part of treatment for my gender dysphoria. I did not undertake this decision lightly, and had been considering hormone therapy for many months prior to initiating that care. My doctors provided information so that my parents and I could make an informed decision that was right for me regarding whether to receive hormones. My parents both believed, based on my symptoms of gender dysphoria, and the advice and expertise of my treating doctors, that hormone therapy was the best treatment option for me. In fact, it was life-changing for me, and the anxiety and depression I had experienced without treatment began to lift.

8. I continued my transition so that all aspects of my life were aligned with my male gender identity. In March of 2018, I obtained a legal name and gender marker change and subsequently obtained a corrected birth certificate and driver's license.

9. Although counseling, hormone therapy, and social transition significantly improved my quality of life, I still experienced significant gender dysphoria on a daily basis because I did not have a typically male chest.

10. As part of treatment for my gender dysphoria, my health care providers recommended chest surgery that would give me a more typical male chest. This surgery was medically necessary, including to bring my body into better alignment with my gender identity and lived experience and further reduce my symptoms of gender dysphoria.

11. My father, Jason Fleck, is a North Carolina state employee, and is enrolled for health coverage through NCSHP. As my father's dependent, I also am enrolled in health coverage through NCSHP.

12. In 2018, my father and I were both enrolled in the 80/20 Health Plan offered through NCSHP. My father and I struggled after that point to obtain coverage of my required office visits to my endocrinologist, who prescribes and monitors my masculinizing hormone therapy. My understanding is that because I received that care in connection with my gender dysphoria, insurance coverage for those visits has been inconsistent, and in some instances denied. Where coverage has been denied, my father and I have been left with full financial responsibility for the cost of the care.

13. My family and I have done our best to access medically necessary health care, but paying out-of-pocket for health care that has been denied under the plan has been an emotional and financial burden on me and my parents. This became even more stressful after we had to pay out-of-pocket for chest surgery for me, since living indefinitely without it had become unbearable for me.

14. Before obtaining that surgery, I lived with daily distress caused by not having a typically male chest, and urgently required gender-confirming surgery to treat my

symptoms of gender dysphoria. My parents and I could not easily afford to pay for the surgery out of pocket, as it imposed a financial hardship on us. As a result, even with my full academic workload, I took on a part-time job during high school in an effort to earn and save money so that I could contribute to the out-of-pocket costs for my surgery. This mean that, as a 16-year-old, I needed to work a job in addition to my schoolwork so that I could help pay for my own medical care.

15. My family witnessed my daily distress due to my inability to access health insurance coverage for medically necessary care and were worried about the effects my untreated gender dysphoria had on my mental and physical health, my education, and my future plans.

16. We finally saved enough for me to undergo surgery on May 28, 2019. Although shouldering that expense was stressful for me and my parents, I felt like my life was opening up, and I was much more at ease with myself and with other people in social situations. The relief the surgery provided me from my gender dysphoria was critical for my ongoing development and functioning as a young adult.

17. I require ongoing access to hormone therapy as treatment for gender dysphoria. I also anticipate needed additional surgery in the future, including for example a hysterectomy. Without access to health coverage, however, it is difficult to imagine when I can afford that surgery on my own.

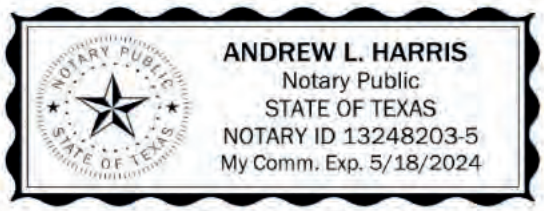
I declare under the penalty of perjury that the foregoing is true and correct.

Dated: November 15th, 2021

Connor Thonen-Fleck

State of Texas

County of Tarrant



This notarial act was an online notarization

Sworn and subscribed before me on November 15, 2021 by Connor Thonen-fleck. This notarial act was an online notarization.

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: November 30, 2021

/s/ Amy E. Richardson
Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Counsel for Plaintiffs

DECLARATION OF JASON FLECK

E E A E
E M E A A

MAXWELL KADEL, *et al.*, *Plaintiffs*, v. DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, *et al.*, *Defendants*.	No. 1:19-cv-00272-LCB-LPA **E A A A E**

Pursuant to 28 U.S.C.§ 1746, I hereby declare as follows:

1. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am the father of Plaintiff Connor Thonen-Fleck, a 19-year-old transgender man. I am an employee of the University of North Carolina, Greensboro ("UNCG"), and Connor receives health coverage as my dependent. I live in High Point, North Carolina.

3. I have been employed by UNCG since 1997 and currently work as Associate Director for Technology and Operations.

4. As a North Carolina state employee, I am enrolled for health coverage through the North Carolina State Health Plan. As my dependent, Connor is also enrolled in health coverage through NCSHP.

5. Connor has long excelled academically and is a college sophomore. In addition to his rigorous academic responsibilities, Connor also works at a veterinary clinic.

Connor is passionate about veterinary medicine and plans to pursue a career in the veterinary field.

6. Looking back now, I can see that Connor struggled with gender dysphoria since his childhood. But before we understood that he was transgender and began seeking treatment under the prevailing standards of care, Connor was in serious and consistently increasing distress. His symptoms of depression and distress became more pronounced around his freshman year of high school. I remember that he was sleeping excessively, was very unhappy, and was isolating himself from others.

7. When Connor first came out to me and explained that he is transgender, I told him that he was my child, and as long as he was happy and healthy, that was all that was important to me.

8. The lack of access to coverage through the state health plan has been a serious barrier at different points to helping Connor be happy and healthy, and has imposed significant stress on our family.

9. In January of 2018, Connor began hormone therapy as part of treatment for his gender dysphoria. He became a totally different person. His mood brightened. He started interacting with friends and being more social. He started thriving. The change was drastic. Before he began this treatment, we were deeply worried about Connor's suicidal ideation. But after he was on hormone therapy for a few months, he had improved so much that we no longer had that concern. In retrospect, it has become clear to me that treatment for gender dysphoria was what Connor needed all along.

10. But trying to access coverage for this care was stressful. In 2018, Connor and I were enrolled in the 80/20 Health Plan offered through NCSHP. The exclusion for gender-affirming care had been reinstated by that point and touched off an ongoing struggle to get Connor's urgently-needed medical care covered. We had difficulty getting coverage for Connor's required office visits to his endocrinologist, who prescribes and monitors Connor's masculinizing hormone therapy. Where coverage has been denied, Connor and I have been left with full financial responsibility for the cost of the care.

11. On April 9, 2018, CVS issued a Notice of Determination denying prior authorization for coverage of Connor's testosterone prescription. The Notice of Determination explained that the diagnosis code submitted, F64.0 "Transsexualism," was not a covered diagnosis code for prescription testosterone under the plan. The Notice of Determination further explained that the prescription would be covered for males with "primary or hypogonadotropic hypogonadism," but not for Connor. No other exclusion in the health plan was cited as a basis for the denial of coverage. A true and correct copy of the Notice of Determination is attached as Exhibit A.

12. We appealed the denial of coverage and were issued a Notice of Final Adverse Benefit Determination dated November 8, 2018. A true and correct copy is attached as Exhibit B. The sole basis provided for denial of the coverage is the exclusion of care for gender dysphoria. *See* Exhibit B at 2 (citing in relevant part exclusion for "Treatment or studies to or in connection with sex changes or modifications and related care"). No other exclusion was referenced to deny the coverage.

13. We also struggled to cover the cost of Connor's chest reconstruction surgery. Despite the benefit he experienced from hormone therapy, it was clear that being a teenage boy without a typically male chest was very painful for him. As part of treatment for the gender dysphoria he was experiencing relating to his chest, Connor's health care providers recommended surgery that would give Connor a more typical male chest. Based on medical advice, I understand this surgery to have been medically necessary, including to bring Connor's body into better alignment with his gender identity and lived experience and further reduce his gender dysphoria.

14. But without any coverage under our health plan, we could not afford the care when Connor was ready for it, and he had to suffer through delay while we saved money and he worked a job to help contribute to the cost of the surgery. Watching your child suffer without needed care and have to shoulder the burden of earning money as a 16-year-old to pay for basic, essential medical treatment, is an awful feeling.

15. After we saved enough money, Connor was finally able to undergo surgery on May 28, 2019. The further relief this provided him from his gender dysphoria allowed him the basic sense of well-being to be able to thrive again.

16. The process of obtaining this care for Connor has been thoughtful and deliberative. Both Connor's mother and I were involved in working with a team of medical professionals who helped us understand why Connor was suffering without treatment for gender dysphoria, the risks and benefits of treatment, and the standard of care for treating gender dysphoria in adolescents. The process was also a careful one on the provider side,

since the treatment requires multiple steps to help ensure that it is medically necessary and indicated for the adolescent. While the process was not easy, the life-changing effect it has had for Connor is unmistakable. After he started undergoing treatment, I finally felt like I had my kid back.

17. As a North Carolina state employee, I am enrolled in the NCSHP and receive health care benefits from this plan as part of my compensation. As a dependent of mine, Connor also is enrolled in the NCSHP. I contribute $305.00 each month via a payroll deduction for family coverage under the 80/20 Health Plan. Even though I receive inferior coverage because of the exclusion for gender-affirming care, I pay the same amount for this family coverage as my colleagues do.

* * *

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

DATED: November 11, 2021

Jason Fleck

E A E E E

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: November 30, 2021

/s/ Amy E. Richardson

Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Counsel for Plaintiffs

G.S. § 10B-41 NOTARIAL CERTIFICATE FOR ACKNOWLEDGMENT

Guilford County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Jason Fleck.

Name(s) of principal(s)

Date: 11/11/21

(Official Seal)

DONNA S. HUFF NOTARY PUBLIC ALAMANCE COUNTY, NC

Official Signature of Notary

Donna S. Huff, Notary Public

Notary's printed or typed name

My commission expires: June 6, 2026

Exhibit A

CVS caremark

Fax Transmittal

To: DOCTOR

From: CVS Caremark® Prior Authorization

Electronically (ePA) (4 to 5 **minutes** process time)	Phone (10 to 15 **minutes** process time)	Fax (24 to 72 **hours** process time)
ePA is CVS Caremark's preferred method for receiving prior authorizations and now accepts PA requests online 24/7. **Easier:** Reduce the need for paper forms, faxes, and phone calls **More Convenient:** Centrally manage ePAs and more easily view their status **Faster:** Generally receive faster determinations so patients can fill their medication sooner **Visit http://info.caremark.com/ePA to learn more and get started today.**	Calling us with your PA request during our business hours is another option. **See next page for the specific phone number.** The process over the phone can take between 10 and 15 minutes. OR see ePA option	You may also continue to fax us your PA request. **See next page for specific fax number.** Faxes received are processed within 24 to 72 hours. OR see ePA option

If this fax is in response to an inquiry about clinical criteria for coverage of a prescription drug for your patient, the criteria for the specific drug is attached.
Please note that your inquiry does not constitute a request for coverage. CVS Caremark cannot process a request for coverage until we receive a completed criteria form or appropriate clinical information.

91-41319A 062917

CVS caremark

State Health Plan

Notice of Determination

Date: 04/09/2018

MARIONELIZABETH WALSH
1 MEDICAL CENTER BLVD FL 1ST
WINSTON SALEM, NC 27103

Plan Member Name: CONNOR THONEN FLECK
Plan Member ID: *******[redacted]
Plan Name: North Carolina State Health Plan 0274 Non-Grandfathered

Prescriber Name: MARIONELIZABETH WALSH
Prescriber Phone: 1-3367164500
Prescriber Fax: 1-336-713-4501

Dear CONNOR THONEN FLECK:

CVS Caremark® received a request from your provider for coverage of Testosterone Cypionate IM Injection. The request was denied because:

Your plan approved Testosterone Products criteria covers this drug when you meet one of these conditions: - You are a male with primary or hypogonadotropic hypogonadism Your use of this drug does not meet the requirements. This is based on the information we have.

You can ask for a free copy of the actual benefit provision, guideline, protocol or other similar criterion used to make the decision and any other information related to this decision by calling Customer Care at **1-888-321-3124**.

For more information regarding your prescription benefit, please refer to your Benefit Booklet available on the Plan's website at **www.shpnc.org**.

If your provider would like to discuss this decision with a clinical reviewer at CVS Caremark, your provider can call CVS Caremark, and we will make arrangements for the conversation.

You may request an appeal by sending a written request to the address below. To be eligible for an appeal, your request must be in writing and received within 180 days of the date of this letter. Please mail or fax your appeal to:

BlueCross BlueShield of North Carolina
Appeals Department / Level I
P.O. Box 30055
Durham, NC 27702

Fax: 919-765-2322

If your situation is urgent as defined by law, you may ask for an expedited appeal. Important information about your appeal rights and directions about how to ask for an appeal are provided with this letter.

If you have questions, please call Customer Care at **1-888-321-3124**.

Sincerely,

CVS Caremark

Enclosures

cc: Dr. MARIONELIZABETH WALSH

PA# North Carolina State Health Plan 0274 Non-Grandfathered 18-032492652 JM
Plan-approved Criteria: Testosterone Products
Claim Amount (if available): 0.0
Service Date: 4/9/2018 11:02:26 AM

If your provider included diagnosis or treatment codes with your claim for Testosterone Cypionate IM Injection to CVS Caremark, that information is listed here:
ICD diagnosis code: F64.0
Associated diagnosis: Transsexualism
CPT treatment code:
Associated treatment:
You may wish to contact your provider for more information about these codes.

Important Information About Your Appeal Rights

What if I need help understanding this denial? You may contact CVS Caremark by calling **1-800-294-5979** if you need assistance understanding this notice or our decision to deny you a service or coverage.

What options does my provider have? If there is relevant information that has not been previously submitted, the treating physician may request a Provider Courtesy Review (PCR) by calling 1-800-672-7897 extension 52961 or by sending a written request within 180 days to:

BlueCross BlueShield of North Carolina
Appeals Dept. / Provider Courtesy Review
P. O. Box 30055
Durham, NC 27702

What if I don't agree with this decision? You may request an appeal by sending a written request to the address below. To be eligible for an appeal, your request must be in writing and received within 180 days of the date of this letter.

BlueCross BlueShield of North Carolina
Appeals Department / Level I
P.O. Box 30055
Durham, NC 27702

A member appeal form is available on the Web at **www.BCBSNC.com**.

What if my situation is urgent? If your situation meets the legal definition of urgency, the review of your claim will be conducted within 72 hours, or earlier if required by law. Generally, an urgent situation is one in which your health may be in serious jeopardy or, in the opinion of your physician, you may experience pain that cannot be adequately controlled while you wait for a decision on the external review of your claim. If you believe that your situation is urgent, you or your physician may request an expedited appeal by contacting BCBSNC via mail or fax at the address below. In addition, you may have the ability to seek an expedited external review of your adverse benefit determination. To determine whether an external review process is available to you, please consult your benefit booklet or call BCBSNC customer service on the back of your ID Card.

BlueCross BlueShield of North Carolina
Appeals Department / Level 1
P. O. Box 30055
Durham, NC 27702
Fax: 919-765-2322

Who may file an appeal? You or someone whom you name to act for you (your authorized representative) may file an appeal. A member consent form is attached for your convenience and is also available on our Web site at **www.BCBSNC.com**.

Can I provide additional information about my appeal? Yes. As part of the appeal process, you have the right to submit supporting materials in advance of a decision being made on your appeal.

What happens next? If you appeal, BCBSNC will review the decision and provide you a written determination within 30 calendar days. If the adverse benefit determination is overturned, BCBSNC will provide coverage or payment for your health care item or service. If the adverse benefit determination is upheld, you may have additional appeal rights.

How do I file a request for external review? You may be eligible for an external review process. To determine whether an external review process is available to you, please consult your benefit booklet or call BCBSNC customer service on the back of your ID card.

What other remedies do I have? Depending on your plan, you may also have the right to bring action under section 502(a) of ERISA. You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor office and your state insurance regulatory agency.

Can I request copies of information relevant to my adverse benefit determination? Yes. You may request and receive, at no cost to you, reasonable access to and copies of all documents, records and other information relevant to your claim by writing to:

Blue Cross and Blue Shield of North Carolina
Healthcare Management & Operations
P. O. Box 2291
Durham, NC 27702

This information may also include the following:

- Any internal rules, guidelines, protocols, or other criteria used to make this decision, including any clinical review criteria indicated above (please include the referenced medical policy from page 1 of this notice with your request); and/or
- If the decision is based on medical necessity, experimental treatment or another similar exclusion, an explanation of the scientific or clinical judgment for the determination, applied to your medical circumstances.

Other resources to help you: For questions about your rights, this notice, or for assistance, you can contact the Employee Benefits Security Administration at 866.444.EBSA (3272). You may also receive assistance with appeals from Smart NC by contacting:

North Carolina Department of Insurance
Health Insurance Smart NC
1201 Mail Service Center
Raleigh, NC 27699-1201
855-408-1212 (toll free)

External Review
North Carolina law provides for review of *adverse benefit determinations* by an external, independent review organization (IRO). The North Carolina Department of Insurance (NCDOI) administers this service at no charge to you, arranging for an IRO to review your case once the NCDOI establishes that your request is complete and eligible for review. *BCBSNC* will notify you of your right to request an external review each time you receive:

- An *adverse benefit determination*, or
- An appeal decision upholding an *adverse benefit determination* or
- A second-level *appeal* decision upholding an *adverse benefit determination*.

You or someone whom you have authorized to represent you may request an external review.

In order for your request to be eligible for an external review, the NCDOI must determine the following:

- Your request is about a *medical necessity* determination that resulted in an *adverse benefit determination (i.e., a noncertification)*;
- You had coverage with *BCBSNC* when the *adverse benefit determination* was issued;
- The service for which the *adverse benefit determination* was issued appears to be a *covered service*; and
- You have exhausted *BCBSNC's* internal *appeal* review process as described below.

For a standard external review, you will have exhausted the internal *appeal* review process if you have:

- Completed *BCBSNC's* first- and second-level *appeal* review and received a written second-level determination from *BCBSNC*, or
- Filed a second-level *appeal* and have not requested or agreed to a delay in the second-level *appeal* process, but have not received *BCBSNC's* written decision within 60 days from the date that you can demonstrate that an appeal was filed with BCBSNC, or
- received written notification that *BCBSNC* has agreed to waive the requirement to exhaust the internal *appeal* and/or second-level *appeal* process.

External reviews are performed on a standard or expedited basis, depending on which is requested and on whether medical circumstances meet the criteria for expedited review.

Standard External Review
For all requests for a standard external review, you must file your request with the NCDOI within 120 days of receiving one of the notices listed above.

If the request for an external review is related to a retrospective *adverse benefit determination* (an *adverse benefit determination* that occurs after you have already received the services in question), the 60-day time limit for receiving *BCBSNC's* second-level determination does not apply. You will not be eligible to request an external review until you have exhausted the internal appeal process and have received a written second-level determination from *BCBSNC*.

Expedited External Review
An expedited external review may be available if the time required to complete either an expedited internal first- or second-level appeal review or a standard external review would reasonably be expected to seriously jeopardize your life or health or to jeopardize your ability to regain maximum function. If you meet this requirement, you may file a request to the NCDOI for an expedited external review, after you receive:

- An *adverse benefit determination* from *BCBSNC* and have filed a request with *BCBSNC* for an expedited first-level appeal; or
- A first-level appeal decision upholding an *adverse benefit determination* and have filed a request with *BCBSNC* for an expedited second-level *appeal* review; or
- A second-level *appeal* review decision from *BCBSNC*.

In addition, prior to your discharge from an inpatient facility, you may also request an expedited external review after receiving a first-level appeal or second-level appeal decision concerning an adverse benefit determination of the admission, availability of care, continued stay or emergency health care services.

If your request is not accepted for expedited review, the NCDOI may (1) accept the case for standard external review if you have exhausted the internal appeal review process; or (2) require the completion of the internal appeal review process and another request for an external review. An expedited external review is not available for retrospective adverse benefit determinations.

When processing your request for external review, the NCDOI will require you to provide the NCDOI with a written, signed authorization for the release of any of your medical records that need to be reviewed for the purpose of reaching a decision on the external review. For further information about external review or to request an external review, contact the NCDOI at:

(Mail)
By Mail:
NC Department of Insurance
Health Insurance Smart NC
1201 Mail Service Center
Raleigh, NC 27699-1201
Toll-Free Telephone: (855) 408-1212
www.ncdoi.com/smart

(In person)
For the physical address for Health Insurance Smart NC, please visit the web-page:
http://www.ncdoi.com/Smart
Toll Free Telephone: (855) 408-1212

The Healthcare Review Program provides consumer counseling on utilization review and appeal issues. Within ten business days (or, for an expedited review, within three business days) of receipt of your request for an external review, the NCDOI will notify you and your provider of whether your request is complete and whether it has been accepted. If the NCDOI notifies you that your request is incomplete, you must provide all requested, additional information to the NCDOI within 150 days of the written notice from BCBSNC upholding an adverse benefit determination (generally the notice of a second-level appeal review decision), which initiated your request for an external review. If the NCDOI accepts your request, the acceptance notice will include: (i) name and contact information for the IRO assigned to your case; (ii) a copy of the information about your case that BCBSNC has provided to the NCDOI; and (iii) a notification that you may submit additional written information and supporting documentation relevant to the initial adverse benefit determination to the assigned IRO within seven days after the receipt of the notice. It is presumed that you have received written notice two days after the notice was mailed. Within seven days of BCBSNC's receipt of the acceptance notice (or, for an expedited review, within the same business day), BCBSNC shall provide the IRO and you, by the same or similar expeditious means of communication, the documents and any information considered in making the adverse benefit determination, appeal decision or the second-level appeal review decision. If you choose to provide any additional information to the IRO, you must also provide that same information to BCBSNC at the same time and by the same means of communication (e.g., you must fax the information to BCBSNC if you faxed it to the IRO). When sending additional information to BCBSNC, send it to:

(Mail)
Blue Cross/Blue Shield of North Carolina
Appeals Department
PO Box 30055
Durham, NC 27702

Questions? Do you need help in a different language or format? If you do not speak English or have special needs, oral interpretation and alternate formats of this notice are available, as is other assistance, by contacting us at the number on your State Health Plan ID card.

Spanish:
Si usted necesita asistencia o necesita hablar con alguien en Español, por favor llame al número gratuito de Servicio al Cliente ubicado en su tarjeta de identificación de beneficios.

Chinese (simplified):
如果您需要帮助，或需要同中国人讲话，请拨打您的福利卡上面的客户服务免费电话号码。

Tagalog:
Kung kailangan ninyo ng tulong o kailangan ninyong makipag-usap sa isang tao sa Tagalog, mangyari lamang na tumawag nang walang-bayad sa Serbisyo sa Kostumer sa numero na nakasulat sa inyong ID kard ng benepisyo.

Navajo:
Shíka at'ohwol ei doodaii' dinék'ehgo łą bi'chį haadeedziih nínízinígo, t'áá shǫǫdí, t'áá jíík'e ya ndaalnishí, ni naaltsoos bikáa'gi bi'chį hodiilniih.

Exhibit

North Carolina State Health Plan
FOR TEACHERS AND STATE EMPLOYEES
A Division of the Department of State Treasurer

Notice of Final Adverse Benefit Determination

Transcend Legal
Attn: Noah E. Lewis
3553 82nd Street #6D
Jackson Heights, NY 11372

Date of Notice: November 8, 2018

Blue Cross Blue Shield of North Carolina Appeals Department P.O. Box 30055 Durham, NC 27702	Telephone Number: 800-446-8053 Fax Number: 919-765-2322 Website: www.BlueCrossNC.com

This document contains important information that you should retain for your records.

This document serves as notice of a final adverse benefit determination. We have declined to provide benefits, in whole or in part, for the requested treatment or service described below.

Case Details:

Patient Name: Connor Thonen Fleck
Member ID: [redacted]
Appeal ID: 469742

Provider: Marion Walsh, MD
Date(s) of Service: Future
Type of Service: Testosterone Cypionate

Reason for Denial: Benefit Exclusion

Claim(s) Detail: *(Not available if this is a pre-service request.)*

Claim #:	Charged Amt.:	Allowed Amt.:	Other Non-Covered Amts.:	Amt. Paid:
Diagnosis Code:	Diagnosis Description:	Treatment (Procedure) Code:	Treatment (Procedure) Description:	Treatment Category (Subcategory):
Denial Code(s):				

Policy Information: *(This information is current based on claims that have fully completed the adjudication process as of the date of this letter.)*

Other Insurance: No	Deductible: Not Applicable (N/A)	Co-pay: N/A
Coinsurance:	YTD Deductible Credit:	YTD Out-of-Pocket Credit:

N/A	N/A	N/A

Background Information:

This is in response to your request, on Connor Thonen Fleck's behalf, for an appeal received October 17, 2018.

Reviewers' Understanding:

You have requested that Blue Cross and Blue Shield of North Carolina (Blue Cross NC) reconsider the denial of testosterone cypionate intramuscular (IM) injection.

Final Adverse Benefit Determination:

The adverse benefit determination has been upheld.

The following evidence and documentation were reviewed:

- Member's North Carolina State Health Plan 80/20 PPO Plan Benefits Booklet;
- Level One Letter of Appeal dated October 6, 2018 written by Noah E. Lewis of Transcend Legal;
- Authorized Representative Request signed by Jason Fleek, member's guardian;
- Hellosign Fleck CVS Authorization to Appeal Document History dated October 5, 2018;
- Document labeled, "Exhibit 2" inclusive of CVS caremark Fax Transmittal dated April 9, 2018 and CVS caremark Notice of Determination dated April 9, 2018;
- Document labeled "Exhibit 3" inclusive of Prior Authorization Criteria for Testosterone Products (Brand and Generic) received on October 17, 2018;
- North Carolina State health Plan for Teachers and State Employees Third Party Authorization From dated October 21, 2018 signed by member's guardian, Jason P. Fleek;
- Blue Cross NC Tracking Systems.

The professional qualifications and licensure of the reviewers are:

- Medical Team Lead, Appeals, Registered Nurse;
- Clinical Appeals Analyst, Registered Nurse with over 15 years of healthcare experience.

Findings:

Contractual Basis:

According to the member's North Carolina State Health Plan 80/20 PPO Plan Benefits Booklet section titled, "What Is Not Covered?" it states, in pertinent part, "…The *Plan* does not cover services, supplies, medications or charges for…Sexual dysfunction unrelated to organic disease… [and/or] Treatment or studies to or in connection with sex changes or modifications and related care…"

Clinical Rationale: Not Applicable (N/A)

A Blue Cross NC Medical Team Lead has reviewed your request, and based on the aforementioned North Carolina State Health Plan 80/20 PPO Plan Benefits Booklet language, it has been determined that the member does not have benefits for the requested treatment.

As a result of this review, Blue Cross NC has confirmed that the denial of benefits for the testosterone cypionate intramuscular (IM) injection was correct. Please consult your benefit booklet, under the section titled, "What Is Not Covered?" to review this exclusion.

If you have any questions regarding this appeal, please contact me directly. If you have other questions about your health plan benefits, please contact Customer Service at 1-888-234-2416.

Sincerely,

Joy Brazier, BSN, RN

Joy Brazier, BSN, RN
Clinical Appeals Analyst
Appeals Department

cc: Parent/Guardian of: Connor Thonen Fleck;
Dr. Marion Walsh

Important Information about Your Rights

What if I need help understanding this denial? Contact the appeals analyst at 1-800-446-8053, extension 52822 if you need assistance understanding this notice or our decision to deny you a service or coverage.

What if I don't agree with this decision? You do have the right to appeal this decision with the Office of Administrative Hearings (OAH) by filing a "Petition for a Contested Case Hearing" within 60 days of the date of this letter. A $20 filing fee is required by OAH. If you cannot afford to pay the filing fee you may request a waiver by filing "A Petition to File a Petition for Contested Case as Indigent" with OAH prior to filing the "Petition for Contested Case Hearing." You may obtain all necessary petition forms by contacting OAH at (919) 431-3000 or visiting the OAH website at www.oah.state.nc.us. The completed form/s should be submitted to:

Office of Administrative Hearings
1711 New Hope Church Rd
Raleigh, North Carolina 27609

A *copy* of the completed form should also be mailed to:

North Carolina State Health Plan
Attention: General Counsel for the NC Department of State Treasurer
3200 Atlantic Avenue,
Longleaf Building
Raleigh, North Carolina 27604

Can I request copies of information relevant to my claim? Yes. You may request and receive, at no cost to you, reasonable access to, and copies of, all documents, records and other information relevant to your claim by writing to:

Blue Cross Blue Shield of North Carolina
Appeals Department
P. O. Box 30055
Durham, NC 27702
Fax: 919-765-2322

- This information may also include the following: any internal rules, guidelines, protocols, or other criteria used to make this decision, including any clinical review criteria indicated above (please include the medical policy number with your request); and/or
- If our decision is based on medical necessity, experimental treatment or another similar exclusion, an explanation of the scientific or clinical judgment for the determination, applied to your medical circumstances.

Other resources to help you:

The North Carolina Department of Insurance is available to assist you with questions about health insurance. You may contact Health Insurance Smart NC at:

By Mail:
NC Department of Insurance
Health Insurance Smart NC
1201 Mail Service Center
Raleigh, NC 27699-1201
Toll Free Telephone: (855) 408-1212
www.ncdoi.com/smart

In Person:
For the physical address for Health Insurance Smart NC, please visit the web-page:
http://www.ncdoi.com/Smart
Toll Free Telephone: (855) 408-1212

Non-Discrimination and Accessibility Notice

Discrimination is Against the Law

• Blue Cross and Blue Shield of North Carolina ("Blue Cross NC") complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

• Blue Cross NC does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.

Blue Cross NC:

- Provides free aids and services to people with disabilities to communicate effectively with us, such as:
  - Qualified interpreters
  - Written information in other formats (large print, audio, accessible electronic formats, other formats)
- Provides free language services to people whose primary language is not English, such as:
  - Qualified interpreters
  - Information written in other languages

• If you need these services, contact Customer Service **1-888-234-2416**, TTY and TDD, call **1-800-442-7028**.

• If you believe that Blue Cross NC has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with:

- Blue Cross NC, PO Box 2291, Durham, NC 27702, Attention: Civil Rights Coordinator- Privacy, Ethics & Corporate Policy Office, Telephone **919-765-1663**, Fax **919-287-5613**, TTY **1-888-291-1783** civilrightscoordinator@bcbsnc.com

• You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, Civil Rights Coordinator - Privacy, Ethics & Corporate Policy Office is available to help you.

• You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at *https://ocrportal.hhs.gov/ocr/portal/lobby.jsf,* or by mail or phone at: U.S. Department of Health and Human Services 200 Independence Avenue, SW Room 509F, HHH Building Washington, D.C. 20201**1-800-368-1019, 800-537-7697** (TDD). Complaint forms are available at *http://www.hhs.gov/ocr/office/file/index.html*.

• This Notice and/or attachments may have important information about your application or coverage through Blue Cross NC. Look for key dates. You may need to take action by certain deadlines to keep your health coverage or help with costs. You have the right to get this information and help in your language at no cost. Call Customer Service **1-888-234-2416**.

ATTENTION: If you speak another language, language assistance services, free of charge, are available to you. Call 1-888-234-2416 (TTY: 1-800-442-7028).

ATENCIÓN: Si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-888-234-2416 (TTY: 1-800-442-7028).

注意：如果您講廣東話或普通話， 您可以免費獲得語言援助服務。請致電 1-888-234-2416 (TTY：1-800-442-7028)

CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-888-234-2416 (TTY: 1-800-442-7028).

주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-888-234-2416 (TTY: 1- 800-442-7028)번으로 전화해 주십시오.

ATTENTION : Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-888-234-2416 (ATS : 1-800-442-7028).

ملحوظة: إذا كنت تتحدث اللغة العربية، فإن خدمات المساعدة اللغوية تتوافر لك بالمجان. اتصل برقم 1 2416 234 888 1 :المبرقة الكاتبة .7028 442 800.

LUS CEEV: Yog tias koj hais lus Hmoob, cov kev pab txog lus, muaj kev pab dawb rau koj. Hu rau 1-888-234-2416 (TTY: 1-800-442-7028).

ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-888-234-2416 (телетайп: 1-800-442-7028).

PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-888-234-2416 (TTY: 1-800-442-7028).

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ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-888-234-2416 (TTY: 1-800-442-7028).

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ໂປດຊາບ: ຖ້າວ່າ ທ່ານເວົ້າພາສາ ລາວ, ການບໍລິການຊ່ວຍເຫຼືອດ້ານພາສາ, ໂດຍບໍ່ເສັຽຄ່າ, ແມ່ນມີພ້ອມໃຫ້ທ່ານ. ໂທຣ 1-888-234-2416 (TTY: 1-800-442-7028).

注意事項：日本語を話される場合、無料の言語支援をご利用いただけます。1-888-234-2416（TTY: 1-800-442-7028）まで、お電話にてご連絡ください。

DECLARATION OF JULIA MCKEOWN

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, *et al.*, *Plaintiffs*, v. DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, *et al.*, *Defendants*.	No. 1:19-cv-00272-LCB-LPA **DECLARATION OF JULIA MCKEOWN**

I, Julia McKeown, hereby state as follows:

1. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am a 45-year-old transgender woman. I am employed by North Carolina State University ("NCSU"). I live in Apex, North Carolina.

3. I was designated male at birth, but my gender identity is female. I live in accordance with my female gender identity in all aspects of my life.

4. I have struggled with gender dysphoria since childhood. I had to suppress my gender identity for much of my early life into adulthood. I was first diagnosed with what was then called gender identity disorder in my mid-teens.

5. I grew up and went to school in Florida. During my time in Florida, I completed my higher education, including a bachelor's degree, two master's degrees, and a doctoral degree. During this time, I was also battling severe, untreated gender dysphoria.

While I presented as female in my personal life starting in college, I did not present as female in my professional life for fear that I would experience discrimination.

6. After completing my doctorate, I reached the point where I could no longer suppress who I really was. I made the life-saving decision to live authentically, in accordance with my gender identity, in all aspects of life. Between 2010 and 2016, I was progressing in my career, life, and transition.

7. In 2016, I accepted a position with NCSU and moved to North Carolina from Florida. Since 2016, I have been employed by NCSU as an Assistant Professor in the Teaching Education and Learning Design Department of the NCSU College of Education. I currently teach in the Learning, Design, and Technology Program. I also serve as the Graduate Coordinator for the Learning, Design, and Technology Program.

8. As a North Carolina state employee, I am enrolled in the North Carolina State Health Plan for Teachers and State Employees ("NCSHP"), and receive health care benefits from this plan as part of my compensation. I contribute each month to the plan via a paycheck deduction. I pay the same amount for this coverage as other employees, even though I receive inferior coverage because of the exclusion for gender-affirming care.

9. Once I moved to North Carolina, I started the medical part of my transition. While hormone therapy and social transition have been important aspects of my transition, I was still dealing with significant distress related to gender dysphoria. By 2018, my medical provider referred me for vaginoplasty, as part of treatment for my gender

dysphoria. After consulting with a surgeon, my surgeon and I requested preauthorization for vaginoplasty on or around July 19, 2018.

10. On or around July 23, 2018, the preauthorization was denied because of the reinstatement of the Exclusion of gender-confirming health care in the NCSHP. A true and correct copy of that notice of denial is attached as Exhibit A. Specifically, the notice from Blue Cross and Blue Shield of North Carolina ("BCBSNC") indicated my preauthorization was denied due to an exclusion in the policy, which stated, "Treatment or studies to or in connection with sex changes or modifications and related care." Exhibit A at 2 (KADEL00312897).

11. I appealed that decision to BCBSNC but was informed that they only administer the plan and could not resolve the issue. I also filed a grievance with the NCSHP Section 1557 Coordinator after the denial of preauthorization on or around August 13, 2018. Exhibit A at 1 (KADEL00312896). The grievance was denied on or around September 12, 2018. A true and correct copy of that denial is attached as Exhibit B (KADEL00311967).

12. At that point in my life, I could no longer wait for surgery. Left with no other options, I made the difficult decision to withdraw funds from my retirement and savings accounts, in order to pay for my medically necessary surgery. The surgery was life-changing. I felt like my physical body was finally aligned with who I really was, and I was able to life a more authentic, fulfilling life. The relief the surgery provided me from my gender dysphoria was critical for my wellbeing.

13. As part of my treatment for gender dysphoria, I was also prescribed hormone therapy, which is excluded under the NCSHP. My cost of gender affirming care that was not covered by insurance exceeded $13,000.00.

14. The Exclusion also prohibits me from seeking future medically necessary gender-confirming health care, such as ongoing hormone therapy and additional surgery I may need, such as a mammoplasty.

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

DATED: 11/19/2021

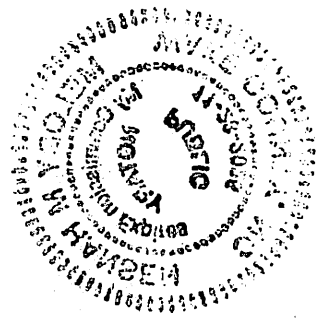
Julia McKeown

Subscribed and sworn before me, a Notary Public in and for the _____,

State of North Carolina, this 19 day of November, 2021.

MELODY M HANSEN NOTARY PUBLIC WAKE COUNTY, NC My Commission Expires 11-28-2025

Signature of Notary



CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: November 30, 2021

/s/ Amy E. Richardson

Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Counsel for Plaintiffs

Exhibit A

Julia McKeown
[redacted]
August 12th, 2018

Chris Almberg
Compliance Officer and Section 1557 Coordinator
North Carolina State Health Plan
3200 Atlantic Avenue
Raleigh, NC 27604

RE: Grievance for Discrimination: Benefits Denial and exclusions based on sex.

Dear Chris Almberg:

As the designated coordinator for Grievances involving discrimination for the North Carolina State Health Plan, please accept this letter as my formal letter of complaint regarding denial of benefits (pre-authorization) of a medically necessary and documented surgical procedure.
On July, 23rd, 2018 I received a letter from Blue Cross Blue Shield indicating an adverse benefit determination for pre-authorization for surgery. I have attached a copy of this letter, which also includes the case and reference number, as well as my insurance ID number. The letter indicated that I was denied due to an exclusion in the policy which stated, "*Treatment or studies to or in connection with sex changes or modifications and related care*". Citing this inclusion for my procedure is in clear violation of several federal laws and as cited seems to be completely based on sex. I reviewed the surgery code and determined that the code was correct as submitted: 55970, Intersex Surgery.

I filed a complaint with BCBSNC and they indicated that since they only service the plan for the state that my complaint must be directed to the NC State Health Plan, which is the purpose of this letter.

My desired remedy is simply to have the State Health Plan and by extension BCBSNC approve and pay for these medically necessary procedures according to my schedule of benefits. To exclude these necessary procedures based on my medical situation is nothing less than a discriminatory action specifically targeting me and denying benefits based on my sex. I do hope this issue can be resolved amicably. Should you need additional information, please let me know. I give permission, to the extent required to address this grievance, to access to my health insurance information, and specifically the documents that were submitted as part of this claim, which includes documentation from three medical professionals regarding these surgical procedures.

Sincerely,
Julia McKeown

North Carolina State Health Plan
FOR TEACHERS AND STATE EMPLOYEES
A Division of the Department of State Treasurer

BlueCross BlueShield of North Carolina
Healthcare Management and Operations
P.O. Box 2291
Durham, NC 27702

Telephone Number: 800-672-7897
Fax Number: 800-672-6587
Website: WWW.BCBSNC.COM

JULIA MCKEOWN
[redacted]

Date of Notice: July 23, 2018

This document contains important information that you should retain for your records.

This document serves as notice of an adverse benefit determination. We have declined to provide benefits, in whole or in part, for the requested treatment or service described below. If you think this determination was made in error, you have the right to appeal (see the enclosures to this letter for information about your appeal rights.)

Case Details:

Member/Patient Name: JULIA MCKEOWN
ID Number: [redacted]

Provider: KEELEE MACPHEE, MD
Facility: NORTH CAROLINA SPECIALTY HOSPITAL
Service: Surgical Stay
Date(s) of Service: 9/18/2018 - 9/19/2018
Service: INTERSEX SURGERY; MALE TO FEMALE
Date(s) of Service: 9/18/2018 - 9/19/2018

Reference #: 112412394

Reason for Denial: The requested service is not a covered benefit per your benefit booklet or plan documents.

Explanation of Basis for Determination:

The following is not a covered benefit: Treatment or studies to or in connection with sex changes or modifications and related care.

Sincerely,

Healthcare Management and Operations

cc: KEELEE MACPHEE, MD
cc: NORTH CAROLINA SPECIALTY HOSPITAL

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Exhibit B

North Carolina State Health Plan
FOR TEACHERS AND STATE EMPLOYEES
A Division of the Department of State Treasurer

STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

3200 Atlantic Avenue • Raleigh, NC 27604 • Phone: 919-814-4400 • Fax: 919-814-5817 • www.shpnc.org

Chris Almberg
Compliance Officer
North Carolina State Health Plan
3200 Atlantic Avenue
Raleigh, NC 27604

September 12, 2018

Julia McKeown
[redacted]

Ms. McKeown,

On August 13, 2018, you submitted a grievance letter by email pursuant to the North Carolina Department of State Treasurer (Department) policy, "Section 1557 Grievance Procedure." In this letter, you alleged that the basis for denying a benefit to you was your sex, and requested that the North Carolina State Health Plan (Plan) approve and pay for the denied benefit.

As required by Department policy, I, in my role as 1557 Coordinator for the Department, have conducted a thorough investigation of your complaint. This letter should be considered my formal written decision on your grievance, based on a preponderance of the evidence.

Section 135-48.30 of the North Carolina General Statutes delineates the powers and duties of the State Treasurer with regards to the Plan. It states, in part, that the Treasurer has the power and duty to set benefits for the Plan. N.C.G.S. § 135-48.30(a)(2). The Board of Trustees of the State Health Plan (the Board) has the power and duty to, "Approve benefit programs, as provided in § 135-48.30(a)(2)." N.C.G.S. § 135-48.22. These powers and duties outlined by statute allow the Treasurer, with approval of the Board, to set benefits for the Plan. Setting benefits for the Plan, by nature, includes the power to exclude benefits from coverage. Any benefit excluded from coverage will not be preauthorized by or paid for by the Plan.

On December 2, 2016, the Board voted in favor of covering the treatment of gender dysphoria, including treatment or studies regarding sex changes or modifications, psychological assessments, and psychotherapy treatment, for the 2017 plan year only.

To date, the Board has not voted on whether to cover these items beyond December 31, 2017. Therefore, treatment or studies to or in connection with sex changes or modifications and related care are not covered benefits for the 2018 plan year. These exclusions are listed in the 2018 Benefit Booklet, which was provided to all members in 2017. These exclusions are applied consistently to all Plan members.

You and your medical providers submitted a preauthorization request for intersex surgery; male to female, to the Plan's third party administrator, BlueCross BlueShield of North Carolina (BCBSNC), on or about July 19, 2018 with dates of service of September 18-19, 2018. The preauthorization request was denied because, per the 2018 Benefit Booklet, the requested service is not a covered benefit. You and your providers were informed of this denial by a notice of adverse benefit determination sent by BCBSNC dated July 23, 2018.

Title IX states that no person shall be subjected to discrimination on the basis of sex under any education program or activity receiving Federal financial assistance. Section 1557 of the Affordable Care Act applies the Title IX prohibition on sex discrimination to health programs or activities that receive federal financial assistance. The United States Courts of Appeal do not agree

about whether gender identity is included in the definition of sex in the Title IX context. Some courts have determined that the term "sex" as used in Title IX and its implementing regulations is ambiguous. Other courts have determined found that the plain language definition of "sex" in Title IX is clear and unambiguous. In addition, an injunction set forth by the United States District Court in Texas prohibits the United States Department of Health and Human Services (HHS) from promulgating rules that include gender identity within the definition of sex discrimination.

As a result, based upon all available information, I cannot conclude that excluding treatment of gender dysphoria, including treatment or studies regarding sex changes or modifications, psychological assessments and psychotherapy treatment as a covered benefit is discrimination on the grounds of sex in this case.

If you wish to appeal this decision, you may do so by writing to the Executive Administrator of the State Health Plan within 15 days of receiving this decision. The Executive Administrator shall issue a written decision in response to the appeal no later than 30 days after its filing. If you wish to appeal this decision, please address your appeal as follows:

Dee Jones, Executive Administrator
North Carolina State Health Plan
Department of State Treasurer
3200 Atlantic Avenue
Raleigh, NC 27604

The availability and use of this grievance procedure does not prevent you from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, sex, age, or disability in court or with the U.S. Department of Health and Human Services, Office for Civil Rights.

You can file a complaint of discrimination electronically through the Office for Civil Rights Complaint Portal, which is available at: https://ocrportal.hhs.gov/ocr/portal/lobby.jsf

Or by mail at:

U.S. Department of Health and Human Services
200 Independence Avenue SW.
Room 509F, HHH Building
Washington, DC 20201

Or by phone: 1-800-368-1019

Complaint forms are available at: http://www.hhs.gov/ocr/office/file/index.html.

Such complaints must be filed within 180 days of the date of the alleged discrimination.

Sincerely,

Chris Almberg
North Carolina State Health Plan
Compliance Officer

DECLARATION OF C.B.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, *et al.*, *Plaintiffs*, v. DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, *et al.*, *Defendants*.	No. 1:19-cv-00272-LCB-LPA **DECLARATION OF C.B.**

I, C.B., do hereby state as follows:

1. The initials of my legal name are C.B. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am a boy.

3. I am 16 years old. I was born and raised in Chapel Hill, North Carolina and currently live there with my family.

4. I am transgender, which means that I was designated "female" at birth, even though I am and identify as male.

5. I am a junior in high school. I enjoy swimming, video games, cars, and hanging out with my friends. In school, I particularly enjoy studying psychology and while I have not yet decided what I will study in college, I am considering psychology as a possible career path.

6. Ever since I was a young child, I have known that I am boy. I was always uncomfortable wearing stereotypically female clothing and would try to dress in a more masculine manner. For example, as a child, I recall refusing to go to school one day because my mom wanted me to wear jeans that had pink stitching on them, which made them feel like girl's jeans. I also recall since I was six or seven years old, refusing to wear stereotypically female swimming suits, opting instead to wear board shorts and a shirt.

7. In late 2016, when I was 11 years old, I began to wear a short, typically masculine haircut, which made me feel more like myself.

8. Knowing that I am a boy, in January 2017, while I was in sixth grade, I recall telling my mom that "I'm not a girl."

9. My mom was supportive and asked me if I wanted to tell my dad and my sister, which I asked her to do on my behalf.

10. After I came out to my parents and informed them that I am transgender, my parents and I began meeting with a therapist in the Spring of 2017.

11. At the time, I was anxious about beginning female puberty, so after consultation with my parents and therapist, I asked to be placed on treatment to delay puberty.

12. During the summer of 2017, I began living as male by informing friends and family of my male gender identity and my new more typically male name, wearing traditionally masculine clothes, and living openly as the boy I am.

13. However, as my chest began to develop, I began to experience additional anxiety.

14. In August 2017, I met a team of medical and mental health professionals at the Duke Gender Clinic, where I was diagnosed with gender dysphoria and was prescribed puberty delaying medication, which was delivered through an implant. The implant lasts about 18 months.

15. The treatment of my gender dysphoria has helped reduce my anxiety, and I feel more comfortable knowing I am developing consistent with who I am.

16. In the Spring of 2018, I legally changed my name to the more typically masculine name that I currently have. Soon after I got a U.S. passport that accurately reflects who I am by having a male sex designation. My driver's license, which I obtained later, also reflects the same.

17. As the year 2019 and the 18-month period for my implant approached, I recall observing my parents worry about how they would pay for my medical care.

18. My parents, who love and support me, have gone to great lengths to shield me from any discrimination, but as I have grown older, that discrimination has become more apparent to me.

19. For example, I am aware that the reason I observed my parents worrying about how they would pay for my care is because the North Carolina State Health Plan for Teachers and State Employees, in which I am enrolled through my father, excludes

coverage of gender-confirming care. It made me feel unhappy and really bad to see my parents experience stress over how they would pay for my care.

20. As a result of the Health Plan's exclusion, not only did my parents have to spend a lot of money, but in early 2019, I was forced to switch from the implant to injection shots as a form of puberty delaying medication. Switching from the implant to shots caused me a great deal of frustration, not only because the injections were painful, but because I also ended up developing cysts as a result of the injections on two separate occasions.

21. In March 2019, I also began taking testosterone as hormone therapy for my gender dysphoria. Hormone therapy has brought me a great deal of relief. For example, I am happy with my voice and the fact that I have to shave now.

22. It is my understanding that the Health Plan refuses to cover my hormone therapy as treatment for my gender dysphoria.

23. It makes me feel bad knowing that a whole group of people, including myself, are being discriminated against for something that they cannot control, being transgender. It makes me feel like we are being treated as different and less than.

24. For as long as I can remember, I have always felt gender dysphoria which I understand to be discomfort and distress due to my body not matching who I am. This dysphoria also causes me anxiety. However, the treatment for gender dysphoria with puberty delaying medication and now hormones, has reduced that anxiety and helped me feel better.

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

Dated this 24 day of November, 2021.

CMB [redacted] C.B

C.B.

Subscribed and sworn before me, a Notary Public in and for the Chatham County,

State of NC, this 24 day of November, 2021.

MARGARET E. ASHNESS NOTARY PUBLIC CHATHAM COUNTY, NC

Signature of Notary

5/12/2026

DECLARATION OF MICHAEL D. BUNTING, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, *et al.*, *Plaintiffs*, v. DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, *et al.*, *Defendants*.	No. 1:19-cv-00272-LCB-LPA **DECLARATION OF MICHAEL D. BUNTING, JR.**

Pursuant to 28 U.S.C.§ 1746, I hereby declare as follows:

1. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am the father of Plaintiff C.B., a 16-year-old boy. I live in Chapel Hill, North Carolina.

3. I was a long-term employee of the University of North Carolina at Chapel Hill ("UNC"). I retired from UNC in April 2019.

4. I was employed fulltime by UNC for 28 and a half years, beginning in September 1990 until my retirement in April 2019. My last position with UNC was Associate Athletic Director for Facilities Planning.

5. As a retired North Carolina state employee, I am enrolled for health coverage through the North Carolina State Health Plan. I enrolled in the NCSHP effective October 1, 1990 as a state employee. As my dependent, C.B. is also enrolled in health coverage through NCSHP.

6. C.B., my son, is a boy. He is also transgender. C.B. was designated "female" at birth but has a male gender identity. C.B. is a junior in high school.

7. As I look back, I believe that C.B. has always understood himself to be a boy.

8. Ever since he was a young child, even when he was as young as six years old, C.B. would reject stereotypically female clothing and would dress in a more masculine manner. In late 2016, he began wearing a short, typically masculine haircut.

9. Though C.B. always got along with people and has many friends, he exhibited high levels of anxiety and depressive behaviors that concerned me as his father. C.B. exhibited low grade anger and a short temper over innocuous things, as well as a general unhappiness. His mother and I later came to understand that these behaviors were associated with C.B.'s untreated gender dysphoria.

10. In early 2017, C.B. informed us that he was transgender. It was evident that the knowledge of his true identity was a burden he had carried for many years, causing his anxiety and depressive behavior. C.B.'s openness about his gender appeared to be very freeing for him.

11. Soon after, C.B., his mother, and I, met with a therapist in April 2017. After consultation with the therapist, C.B. asked to be placed on treatment to delay the onset of puberty, which was causing him anxiety.

12. In April of 2017, C.B., Ms. Bunting and I, sought an appointment with the Duke Child and Adolescent Gender Care Clinic ("Duke"), ultimately scheduled for August 2017.

13. During the summer of 2017, C.B. socially transitioned to living as his true self, informing friends and family of his male gender identity, wearing more masculine clothes, and living openly as the boy he is. However, as his breasts began to develop during the summer, C.B. began to experience additional anxiety.

14. As a result of the distress associated with his birth-designated sex, C.B. was diagnosed with gender dysphoria. In August 2017, C.B. began obtaining care from medical and mental health professionals and was prescribed puberty-delaying treatment, in the form of an implant, as part of his treatment for gender dysphoria.

15. Following the beginning of C.B.'s treatment, we noticed that the anxiety he had been experiencing diminished and that he was now a more happy, outgoing, and personable teenage boy.

16. C.B. is treated and known as a boy at school and in all other aspects of his life. He legally changed his name to his current more typically male name in the Spring of 2018.

17. Because in 2017 the NCSHP did not contain an exclusion for gender-confirming health care, C.B.'s puberty-delaying treatment was covered by the NCSHP.

18. C.B.'s puberty-delaying implant only lasted 12 to 18 months. Accordingly, C.B. needed the implant to be removed and replaced in early 2019.

19. However, in mid-2018, Ms. Bunting learned of the reinstitution of the Exclusion of coverage for gender-confirming care within the NCSHP.

20. Worried that we could not afford out-of-pocket the puberty-delaying treatment that C.B. needed, Ms. Bunting and I communicated with the NCSHP Board of Trustees, urging them to once again eliminate the Exclusion of gender-confirming health care within the NCSHP, with no success.

21. Without coverage, the puberty-delaying implant for C.B. would have cost thousands of dollars.

22. In mid-December 2018, following the lack of action by the NCSHP Board of Trustees at their December 2018 meeting to eliminate the Exclusion, Ms. Bunting and I decided to purchase an additional health insurance plan with that would cover puberty-delaying treatment for C.B. Through the federally run ACA health care exchange we purchased a separate insurance plan for C.B. from Blue Cross Blue Shield of North Carolina. Though C.B. and I remained enrolled in the NCSHP and will continue to do so, purchasing additional coverage for C.B. was necessary in order for my family to

be able to afford C.B.'s gender-confirming care. As a result, Ms. Bunting and I had to pay an additional monthly premium and a $6,750.00 deductible for C.B., separate and apart from C.B.'s existing coverage under the NCSHP.

23. In early 2019, C.B. began obtaining puberty-delaying treatment via injection, rather than a longer-lasting implant, because that was the only puberty-delaying treatment on the formulary of the additional health insurance purchased to supplement the coverage under the NCSHP. In March 2019, C.B. also began obtaining hormone therapy as treatment for his gender dysphoria.

24. The additional costs associated with C.B.'s gender-confirming care and the lack of coverage under the NCSHP due to the discriminatory Exclusion were a significant contributing factor in my decision to retire from UNC in 2019.

25. At the time of my decision to retire, Ms. Bunting and I had just learned of the Exclusion and were faced with a potential medical bill for hormone blockers in excess of $29,000 that we did not know how we could afford. I retired and took another job in an effort to increase my income sufficiently to better afford C.B.'s gender-confirming care.

26. C.B. and I remain enrolled in the NCSHP as a dependent and retiree, respectively, following my retirement on April 1, 2019. C.B. now receives masculinizing hormone therapy as part of his gender-confirming care, which he began in 2019. While

the family no longer purchases separate ACA coverage for C.B., C.B.'s hormone therapy is not covered by the NCSHP and we must pay for that care out-of-pocket.

27. As a retired North Carolina state employee, I am enrolled in the NCSHP and receive health care benefits from this plan as part of my compensation. As a dependent of mine, C.B. is also enrolled in the NCSHP. I contributed $700 each month to the plan this past year. Even though I receive inferior coverage because of the Exclusion for gender-affirming care, I pay the same amount towards coverage as other members of the NCSHP.

28. The lack of access to coverage through the state health plan has been a serious barrier at different points to helping C.B. be happy and healthy, and has imposed significant stress on our family.

29. The Exclusion discriminates against and stigmatizes C.B. as a transgender person which has impacted me and my family financially and emotionally, causing us to experience ongoing stress, anxiety, and uncertainty. I lost countless hours of sleep worrying for my son, who I love and support, and how we would pay for his gender-confirming care. Further, the uncertainty caused by the Exclusion contributed in large part to me, a lifelong Tar Heel, leaving my dream job at UNC.

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

DATED: November 22, 2021

Michael D. Bunting, Jr.

Michael D. Bunting, Jr.

Subscribed and sworn before me, a Notary Public in and for the Orange County, State of North Carolina, this 22nd day of November, 2021.

KATIE E NEUMANN NOTARY PUBLIC ORANGE COUNTY, NC

Signature of Notary