
**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

D.H., BY AND THROUGH HIS MOTHER, JANICE HENNESSY-WALLER; JOHN DOE, BY HIS GUARDIAN AND NEXT FRIEND, SUSAN DOE, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

Plaintiffs-Appellants,

v.

JAMI SNYDER, DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM, IN HER OFFICIAL CAPACITY,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Arizona, No. 20-cv-00335-SHR
Before the Honorable Judge Scott J. Rash

**BRIEF FOR PEDIATRIC ENDOCRINE SOCIETY, WORLD
PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH,
UNITED STATES PROFESSIONAL ASSOCIATION FOR
TRANSGENDER HEALTH, AS AMICI CURIAE IN SUPPORT OF
PLAINTIFFS-APPELLANTS AND REVERSAL**

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May 21, 2021

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, amici curiae state that no party to this brief is a publicly-held corporation, issues stock, or has a parent corporation.

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STATEMENT OF INTEREST AND SOURCE OF AUTHORITY

Pursuant to Federal Rule of Appellate Procedure 29 and Ninth Circuit Local Rule 29-2, the Pediatric Endocrine Society, the World Professional Association for Transgender Health, and the United States Professional Association for Transgender Health respectfully submit this brief *amici curiae* in support of Plaintiff-Appellants' Appeal and Reversal from Order of the United States District Court for the District of Arizona. All parties have consented to this filing.¹

The Pediatric Endocrine Society (“PES”) is the leading professional society for pediatric endocrinology in the United States. The PES, with more than 1,300 members, is dedicated to promoting the endocrine health of all children and adolescents, including those who are transgender. PES is a co-sponsor of the Endocrine Society’s clinical practice guidelines for transgender individuals, which promote a gender-affirmative model of care.

The World Professional Association for Transgender Health (“WPATH”) is a non-profit professional and educational organization devoted to transgender health, with professional, supporting, and student members engaged in clinical and academic research to develop evidence-based medicine and promote high quality

¹ *Amici* affirm that no counsel for a party authored this brief in whole or in part and no one other than *amici*, its members, or its counsel contributed any money to fund its preparation or submission.

care for transsexual, transgender, and gender-nonconforming individuals internationally. The United States Professional Association for Transgender Health (“USPATH”) is the US chapter of WPATH. All U.S. members of WPATH are automatically members of USPATH.

PES, USPATH, and WPATH submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols and standards of care for the treatment of gender dysphoria, which include medically necessary chest reconstruction surgery for transgender adolescent men on a case-by-case basis; and the demonstrated benefits of male chest reconstruction for transgender adolescent men.

INTRODUCTION

Over the last century, the health care community's understanding of how to provide effective medical treatment to transgender individuals has increased greatly. Transgender people have gender identities that are incongruent with the sex they were assigned at birth. Because of the disconnect between their gender identity and assigned sex, transgender people often experience a condition called "gender dysphoria," which is characterized by significant distress. Physicians around the world have recognized that the only effective treatment for gender dysphoria is to support patients to live in accordance with their gender identity (rather than the sex assigned to them at birth), which alleviates the distress associated with gender dysphoria and allows transgender people to live healthy, well-adjusted lives. The efficacy of gender reassignment as a treatment for gender dysphoria is well-established, based upon decades of research and clinical experience.

In particular, it is well-established that male chest reconstruction surgery is a medically necessary treatment for certain individuals, including adolescents, who experience gender dysphoria. Policies that categorically deny coverage of gender reassignment surgeries conflict with these well-established, evidence-based standards of care and put transgender patients at risk of serious harm to their health and wellbeing.

ARGUMENT

I. TRANSGENDER INDIVIDUALS AND GENDER DYSPHORIA

Transgender individuals have a gender identity that does not match the sex assigned to them at birth.² A sex designation typically occurs based on an infant's genitalia at birth and is usually listed on the infant's birth certificate. The gender identity of most individuals typically, but not always, aligns with their sex assigned at birth. A transgender male is an individual who is assigned the sex of female at birth but is in fact male and transitions to live a life consistent with his male gender identity.

The misalignment between gender identity and sex assigned at birth can create severe distress for transgender people. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5") uses the term "gender dysphoria" to describe the clinically significant distress that results from "a marked incongruence between one's experienced/expressed gender and their assigned gender" at birth.³ The DSM-5 identifies the following

² Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70(9) AM. PSYCH. 832, 834 (Dec. 2015) (hereinafter "Am. Psych. Ass'n Guidelines"); see also David A. Levine & Comm. on Adolescence, Am. Acad. of Pediatrics Technical Report, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 PEDIATRICS e297, 298 (2013), <https://pediatrics.aappublications.org/content/132/1/e297> (hereinafter "AAP Tech. Report").

³ DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS [hereinafter DSM-5] (Am. Psychiatric Ass'n 5th ed. 2013); Am. Psychiatric Ass'n, *What is*

diagnostic criteria for gender dysphoria: “A marked incongruence between one’s experienced/expressed gender and assigned gender, of at least six months’ duration, as manifested by at least two” out of six criteria, and “clinically significant distress or impairment in social, occupational, or other important areas of functioning.”⁴ The six criteria consist of (1) “[a] marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics”; (2) “[a] strong desire to be rid of one’s primary and/or secondary sex characteristics”; (3) “[a] strong desire for the primary and/or secondary sex characteristics of the other gender”; (4) “[a] strong desire to be of the other gender (or some alternative gender . . .)”; (5) “[a] strong desire to be treated” as a gender different from one’s assigned gender; and (6) “[a] strong conviction that one has the typical feelings and reactions” of a different gender.⁵

Gender dysphoria is a serious medical condition. The American Academy of Pediatrics has emphasized the importance of following the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (“WPATH Standards” or “Standards of Care”) promulgated by WPATH in treating adolescents for gender dysphoria. “Not doing so can prolong or exacerbate gender

Gender Dysphoria, <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> (last visited May 15, 2021).

⁴ DSM-5, *supra*, at 452–453.

⁵ *Id.* at 452.

dysphoria and contribute to abuse and stigmatization.”⁶ If gender dysphoria is not treated, it may result in serious anxiety and depression, self-harm, and suicidality.⁷

In the transgender community, forty percent of adults report having attempted suicide and ninety-two percent of those individuals attempted suicide before they turned twenty-five.⁸ Current research shows that when transgender youth are supported in transitioning, their long-term mental health and stability is greatly improved.⁹ In fact, longitudinal studies show that transgender minors who were permitted to transition as minors and to undergo medically appropriate treatments are no more likely to have significant mental health problems than peers who are not transgender.¹⁰ To ensure the health and wellbeing of transgender youth and to protect them from the serious harms associated with being denied

⁶ Jason Rafferty et al., *Ensuring Comprehensive Care and Support of Transgender and Gender-Diverse Children and Adolescents*, 142(4) PEDIATRICS 1, 4 (Oct. 2018), <https://pediatrics.aappublications.org/content/142/4/e20182162>.

⁷ Derek S. Day et al., *Gender Dysphoria and Suicidal Ideation: Clinical Observations from a Psychiatric Emergency Service*, 11(11) CUREUS e6132 (Nov. 12, 2019).

⁸ The Trevor Project, *Preventing Suicide: Facts About Suicide*, <https://www.thetrevorproject.org/resources/preventing-suicide/facts-about-suicide/> (last visited May 15, 2021).

⁹ The Trevor Project, *Research Brief: Gender-Affirming Care for Youth* (Jan. 29, 2020), <https://www.thetrevorproject.org/2020/01/29/research-brief-gender-affirming-care-for-youth/>.

¹⁰ The Trevor Project, *Research Brief: Gender-Affirming Care for Youth* (Jan. 29, 2020), <https://www.thetrevorproject.org/2020/01/29/research-brief-gender-affirming-care-for-youth/>.

medically needed care without considerations to their individual circumstances, the Standards of Care recognize that the only evidence-based, medically effective, and medically appropriate course of treatment consists of supporting patients' gender identities and providing the individualized medical treatments needed to alleviate the patient's gender dysphoria.

II. STANDARDS OF CARE FOR TRANSGENDER PEOPLE

A. Standards of Care Require Gender-Affirming Care for Gender Dysphoria

The Endocrine Society has created clinical practice guidelines for treating gender dysphoria that establish a “framework for gender-affirming care” and “include evidence that treatment of gender dysphoria/incongruence is medically necessary and should be covered by insurance.”¹¹ The Standards of Care set forth the accepted protocol for the diagnosis and treatment of gender dysphoria. The WPATH recognize that treatment is aimed at “affirm[ing] patients' gender identities and reduc[ing] the distress of gender dysphoria,”¹² with the goal of

¹¹ Endocrine Soc’y, *Transgender Health, An Endocrine Society Position Statement* (Dec. 15, 2020), <https://www.endocrine.org/advocacy/position-statements/transgender-health#6>.

¹² World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Conforming People 3* (7th version 2012), <https://www.wpath.org/publications/soc>.

eliminating distress by enabling an individual who is transgender to live a life consistent with their gender identity.

The Standards of Care recognize that while the medical needs of transgender patients must be evaluated based on the patient’s individualized need, the most common components of treatment include counseling, hormone therapy, and a variety of gender reassignment surgeries. The major medical and mental health organizations in the United States all recognize that these treatments for gender dysphoria, including for adolescents, are safe and effective.¹³

The Standards of Care—which are recognized as authoritative by other leading professional medical societies, including the American Psychiatric Association, the Endocrine Society, the American Academy of Child and Adolescent Psychiatry (AACAP), the American Academy of Pediatrics, and the American Psychological Association¹⁴—identify the following treatment protocols for people with gender dysphoria:

¹³ Am. Med. Ass’n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (2008), <https://policysearch.ama-assn.org/policyfinder/detail/H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml>; Am. Psych. Ass’n, *Report of the APA Task Force Report on Gender Identity and Gender Variance* 32 (2009), <https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf> (hereinafter “Am. Psych. Ass’n Task Force Report”); AAP Tech. Report, *supra*, at 307–308.

¹⁴ Am. Acad. of Child & Adolescent Psychiatry, *AACAP Statement Responding to Efforts to ban Evidence-Based Care for Transgender and Gender Diverse Youth* (Nov. 8, 2019),

- Changes in gender expression and role;
- Psychotherapy (individual, couple, family, or group) for purposes such as exploring gender identity, role, and expression; addressing the negative impact of gender dysphoria and stigma on mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; or promoting resilience;
- Hormone therapy; and
- Surgery to change primary and/or secondary sex characteristics.¹⁵

It is well established that “[p]atients who receive gender-affirming care, including surgical care, feel more congruent in their bodies and report improved mental health.”¹⁶ Among the benefits of gender-affirming care are significant

https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx.

¹⁵ WPATH Standards of Care, *supra*, at 9–10; *see also* Am. Psych. Ass’n Task Force Report, *supra*, at 32–39; William Byne et al., *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175(1) AM. J. PSYCHIATRY 1046 (2018).

¹⁶ AMA & GLMA, *Issue Brief: Health Insurance Coverage for Gender-Affirming Care of Transgender Patients* 4 (2019), <https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf> (hereinafter “AMA & GLMA Issue Brief”).

decreases in the rate of suicide attempts.¹⁷ Studies have also found that gender-affirming care can lead to a decrease in depression and anxiety, the most frequent triggers of suicide.¹⁸

Scientific studies have repeatedly confirmed the benefits of gender-affirming care among adolescents.¹⁹ Research demonstrates that such care, including access to medications and surgeries, can help lead to “fewer mental health concerns than has been historically seen among transgender populations.”²⁰ Notably, studies

¹⁷ Mohammad Hassan Murad et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72(2) CLIN. ENDOCRINOL. 214–331 (2010).

¹⁸ Yolanda Smith et al., *Sex Reassignment: Outcomes and Predictors of Treatment for Adult and Adolescent Transsexuals*, 35(1) Psych. Med. 89–99 (Jan. 2005); Tiffany Ainsworth & Jeffrey Spiegel, *Quality of life of individuals with and without facial feminization surgery or gender reassignment surgery*, 19(7) QUALITY LIFE RES. 1019–1024 (Sept. 2010).

¹⁹ Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56(2) J. Am. Acad. Child & Adolescent Psychiatry 116–123 (Nov. 2016); Kristina Olson et al., *Mental Health of Transgender Children who are Supported in Their Identities*, 137(3) PEDIATRICS 1 (2016).

²⁰ Laura Edwards-Leeper & Norman Spack, *Psychological evaluation and medical treatment of transgender youth in an interdisciplinary “Gender Management Service” (GeMS) in a major pediatric center*, 59(3) J. HOMOSEXUALITY 321–336 (Mar. 2012); Edgardo Menvielle, *A comprehensive program for children with gender variant behaviors and gender identity disorders*, 59(3) J. HOMOSEXUALITY 357–368 (Mar. 2012); Darryl Hill et al., *An affirmative intervention for families with gender variant children: parental ratings of child mental health and gender*, 36(1) J. SEX & MARITAL THERAPY 6–23 (2010).

have also found self-reported feelings of regret among adolescents following male chest reconstruction surgery were nearly zero.²¹

B. Chest Reconstruction Surgery A Medically Necessary And Appropriate Treatment For Transgender Adolescents

The medical community is in broad consensus that surgery is an appropriate and medically necessary treatment for certain transgender people, including some adolescents, diagnosed with gender dysphoria.²² Surgical treatments that have been deemed appropriate for adolescents include chest reconstruction surgery for transgender men and breast augmentation for transgender women.²³

Medical health professionals agree that for some transgender people psychotherapy and/or hormone therapy are insufficient treatments to manage their gender dysphoria and that “relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to

²¹ Johanna Olson-Kennedy et al., *Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults: Comparisons of Nonsurgical and Postsurgical Cohorts*, 172(5) JAMA PEDIATRICS 431–436 (May 2018).

²² WPATH Standards of Care, *supra*, at 54–55; Am. Psych. Ass’n, *APA Adopts Guidelines For Working With Transgender, Gender Nonconforming People* (Aug. 6, 2015), <http://www.apa.org/news/press/release/2015/08/working-transgender.aspx>.

²³ Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11) J. CLIN. ENDOCRINOL. & METABOLISM 3869, 3893–3895 (Nov. 2017); *see also* WPATH Standards of Care, *supra*, at 57–58.

establish greater congruence with their gender identity.”²⁴ It is widely recognized that “[t]he medical procedures attendant to gender affirming/confirming surgeries are not ‘cosmetic’ or ‘elective’ or ‘for the mere convenience of the patient.’ These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition.”²⁵ The Endocrine Society similarly recognizes in its guidelines that gender-affirming surgery is a necessary step for certain transgender individuals “toward achieving their ultimate goal of living successfully in their desired gender role.”²⁶

Major medical and mental health organizations have repeatedly recognized that gender-affirming surgery is medically necessary and appropriate. For example, the American Medical Association (AMA) and GLMA: Health Professionals Advancing LGBTQ Equality (GLMA) published an issue brief on the importance of health insurance coverage for transgender patients for medically necessary services, including gender-affirming surgeries.²⁷ The brief concludes

²⁴ WPATH Standards of Care, *supra*, at 54–55.

²⁵ World Prof’l Ass’n for Transgender Health, *WPATH Policy Statements: Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.* (Dec. 21, 2016), <https://www.wpath.org/newsroom/medical-necessity-statement>.

²⁶ Hembree, *Endocrine Treatment*, *supra* n.19, at 3893.

²⁷ AMA & GLMA Issue Brief, *supra* n.12.

that the AMA “supports public and private health insurance coverage for treatment of gender dysphoria as recommended by the patient’s physician” and that GLMA has recognized that “mental healthcare, hormone replacement therapy, and/or gender-affirming surgery are medically necessary for the treatment of transgender people who meet the criteria for gender dysphoria and advocates that these services not be excluded from any public or private insurance programs.”²⁸

Indeed, numerous medical studies show the benefits of gender-affirming surgeries for transgender people, including the benefits of chest reconstruction surgery for adolescents. Surgical interventions reduce gender dysphoria and improve mental health and quality of life for transgender people.²⁹ The scientific research on adolescents has also found that “when clearly indicated in accordance with international guidelines” gender-affirming surgery is “associated with

²⁸ *Id.* at 5.

²⁹ Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134(4) PEDIATRICS 696 (Oct. 2014); William Byne et al., *Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder*, 41 ARCH. SEXUAL BEHAV. 759, 778–79 (2012); Mohammad Hassan Murad et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 CLIN. ENDOCRINOL. 214–231 (2010); Luk Gijs & Anne Brewaeys, *Surgical Treatment of Gender Dysphoria in Adults and Adolescents: Recent Developments, Effectiveness, and Challenges*, 18 ANN. REV. SEX RESEARCH 178 (2007); Jan Eldh et al., *Long-Term Follow Up After Sex Reassignment Surgery*, 31(1) SCAND. J. PLASTIC & RECONSTRUCTIVE SURGERY & HAND SURGERY 39 (1997).

improvements in mental health and quality of life.”³⁰ Surgery is a medically necessary part of gender-affirming treatment, including chest reconstruction surgery for some adolescents.

Defendant-Appellees’ expert witnesses claim that there is insufficient “quality of evidence” demonstrating the benefits of male chest reconstruction surgery and that there is no evidence that individuals will not “outgrow” their gender dysphoria and therefore people under twenty-one years of age should be prohibited from the scientifically-recognized benefits of gender affirming surgeries. Submitted ECF Excerpts of Record (dkt. 6), 264-65, Decl. of Michael K. Laidlaw, M.D., ¶ 40. This conclusory statement ignores the consensus in the medical community requiring that “treatment approaches for adolescents affirm an adolescent’s gender identity.”³¹ Research has confirmed the negative impact of delaying treatment until adulthood for adolescents experiencing gender dysphoria.³² In fact, scientific studies have shown that adolescents who experience

³⁰ Simone Mahfouda et al., *Gender-affirming hormones and surgery in transgender children and adolescents*, 7(6) LANCET (DIABETES & ENDOCRINOLOGY) 484, 484 (June 2019).

³¹ Am. Psych. Ass’n Guidelines, *supra*, at 842.

³² Henry Parr, *Fixing Medicaid to “Fix Society”*: Extending Medicaid Coverage of Gender-Affirming Healthcare to Transgender Youth, 43 FORDHAM URB. L.J. 71, 102–103 (Jan. 2016).

gender dysphoria frequently experience those feelings into adulthood.³³ As a result, it is important for transgender adolescents who require male chest reconstruction surgery to obtain the surgery without delay to ensure adequate and effective treatment for their gender dysphoria.

C. The Standards of Care Establish Criteria for Male Chest Reconstruction

Secondary-sex characteristics contribute significantly to gender dysphoria and highlight the misalignment between a transgender person’s sex at birth and gender identity. Among transgender males, the chest causes the most gender dysphoria. Submitted ECF Excerpts of Record (dkt. 6), 163-64, Decl. of Aron Janssen, M.D., ¶¶ 27-28 Not surprisingly, male chest reconstruction can “greatly facilitate the experience of living in a gender role that is congruent with a gender identity.”³⁴

The WPATH Standards identify male chest reconstruction as a medically necessary treatment for gender dysphoria, including for some transgender individuals under the age of eighteen. The Standards of Care recommend that chest surgery be carried out “preferably after ample time of living in the desired gender role and after one year of testosterone treatment” so as “to give adolescents

³³ Am. Psych. Ass’n Guidelines, *supra*, at 841–842.

³⁴ Karel Claes et al., *Chest Surgery for Transgender and Gender Nonconforming Individuals*, 45(3) CLIN. PLASTIC SURGERY 369, 369 (2018).

sufficient opportunity to experience and socially adjust in a more masculine gender role, before undergoing irreversible surgery.”³⁵

The WPATH Standards identify four general criteria for male chest reconstruction surgery: “1. Persistent, well-documented gender dysphoria; 2. Capacity to make a fully informed decision and to consent for treatment; 3. Age of majority in a given country (if younger, follow the SOC for children and adolescents); 4. If significant medical or mental health concerns are present, they must be reasonably well controlled.”³⁶

Similarly, the Endocrine Society’s guidelines for surgical treatment advise that “clinicians determine the timing of breast surgery for transgender males based upon the physical and mental health status of the individual[s].”³⁷ The guidelines do not recommend a specific age for the surgery. The American Academy of Pediatrics has also published guidelines for treating gender dysphoria in children and adolescents, which include surgical treatments such as male chest reconstruction for adolescents on a case-by-case basis.³⁸

³⁵ WPATH Standards of Care, *supra*, at 21.

³⁶ *Id.* at 59.

³⁷ Wylie C. Hembree, *Endocrine Treatment*, *supra* n.19, at 3872, 3894.

³⁸ Jason Rafferty, et al., *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) PEDIATRICS (Oct. 2018), <https://pediatrics.aappublications.org/content/pediatrics/142/4/e20182162.full.pdf>.

The transgender adolescent, his or her parent(s) or guardian, and his or her team of physicians, along with other health care professionals, including psychologists, use these types of guidelines to determine what the best course of treatment is for the adolescent's gender dysphoria.³⁹ Similar to every medical procedure, the medical professionals look to all the available procedures and treatments plans to determine what the best course of action is. Research has shown that for some adolescents, early treatment of gender dysphoria is critical and medically necessary to prevent serious harms. There is no medical basis for categorical denials of coverage for gender reassignment surgeries. To the contrary, the enforcement of such categorical bars conflicts with well-established standards of care and endangers transgender individuals, putting them at risk of being denied essential medical care, which is extremely detrimental to their long-term health and wellbeing.

D. Medical Research Has Confirmed the Benefits of Male Chest Reconstruction

Numerous recent peer-reviewed studies have confirmed the benefits of chest reconstruction as a treatment for transgender males diagnosed with gender dysphoria. These studies all support the conclusion that male chest reconstruction has positive impacts on transgender males, including adolescents, and that it is a

medically necessary surgical treatment for gender dysphoria.

For example, a recent study by researchers at the Children’s Hospital of Los Angeles and the University of Southern California looked at youth between the ages of thirteen and twenty-five years old, who were assigned female at birth but identified as a gender other than female. The study compared sixty-eight participants who had undergone male chest reconstruction surgery with sixty-eight participants who had not. The study found that non-surgical participants experienced significantly higher chest dysphoria, a condition that describes significant stress relating to breasts. Non-surgical participants reported feelings that their chest impeded their lives. The study noted that substantial numbers of youth “were binding their chest frequently or all the time, including during sleep.” In stark contrast, all post-surgical participants affirmed that “it was a good decision to undergo chest reconstruction.” Sixty-seven of the sixty-eight participants reported “no regret” about the procedure, with only one participant (who was older than eighteen at the time of surgery) reporting experiencing regret “sometimes.”

Another peer-reviewed study surveyed transgender men who underwent chest reconstruction surgery between April 2015 and June 2016.⁴⁰ The study

⁴⁰ Cori Agarwal et al., *Quality of life improvement after chest wall masculinization in female-to-male transgender patients: A prospective study using the BREAST-Q and Body Uneasiness Test*, 71 J. PLASTIC, RECONSTRUCTIVE & AESTHETIC SURGERY 651–657 (2018).

surveyed forty-two patients between the ages of eighteen and fifty. The study found “dramatic improvement in quality of life for [female-to-male] transgender individuals undergoing chest wall masculinization using the most applicable currently available survey tools.”⁴¹ It concluded that the results showed “positive, statistically significant changes in several different domains including physical, psychosocial, sexual well-being, and self-esteem.”⁴²

Other studies surveying transgender men post-surgery further support these findings. Studies have found improved body image satisfaction and self-esteem among transgender men who underwent male chest reconstruction, as well as a higher quality of life.⁴³ Several studies of transgender men who received male chest reconstruction have found that they experienced relatively few physical complications and expressed high levels of satisfaction with the surgery.⁴⁴ A recent survey of studies convincingly concluded that research has “shown benefits

⁴¹ *Id.* at 657.

⁴² *Id.*

⁴³ Tim C. van de Grift et al., *Body Image of Transmen: Multidimensional Measurement and the Effects of Mastectomy*, 13(11) J. SEXUAL MED. 1778, 1785 (2016).

⁴⁴ Michael J. Frederick et al., *Chest Surgery in Female to Male Transgender Individuals*, 78(3) ANNALS OF PLASTIC SURGERY 249–253 (Mar. 2017); M.G. Berry et al., *Female-to-male transgender chest reconstruction: A large consecutive, single-surgeon experience*, 65 J. Plastic, Reconstructive & Aesthetic Surgery 711–719 (2012).

of gender-affirming surgery in adolescents, particularly regarding bilateral mastectomy in transgender adolescent males.”⁴⁵

E. Prohibiting Transgender Males from Obtaining Chest Reconstruction Surgery Will Negatively Impact Their Physical and Mental Health

The Arizona regulation preventing Medicaid from covering all chest reconstruction surgery will have severe negative consequences for the health and well-being of transgender males. If Arizona denies transgender people the opportunity to obtain chest reconstruction surgery, they will be forced to continue to suffer gender dysphoria and risk long-term consequences to their physical and mental health.

In addition to the physical pain that they endure by wearing a binder throughout the day to temporarily flatten the appearance of their chests, transgender males recommended for chest surgery face significant mental health issues resulting from their body dysphoria before surgery. For transgender people who need gender affirming surgery, the scientific evidence makes clear that psychotherapy and hormone therapy alone are often insufficient.⁴⁶ In fact, studies have shown that gender affirming surgery can alleviate other mental health issues,

⁴⁵ Simone Mahfouda, *Gender-affirming hormones, supra*, at 496.

⁴⁶ Peggy T. Cohen-Kettenis & Friedman Pfafflin, *Transgenderism and Intersexuality in Childhood and Adolescence: Making Choices*, DEV. CLIN. PSYCH. & PSYCHIATRY, Vol. 46, at 141 (2003).

such as depression and anxiety. And failure to provide these options to teenagers like the Plaintiffs here can and will “further expose an individual to minority status and victimization.”⁴⁷

Depriving transgender adolescents of medically necessary surgery care is detrimental to their mental and physical health. The denial of access to surgery conflicts with well-established standards of care and the findings of numerous medical studies that have considered the benefits of these surgeries on transgender individuals.

⁴⁷ Parr, *Fixing Medicaid*, *supra* 28, at 130–131.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted.

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May 21, 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P.

32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 4145 words.

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/s/ Boyd Johnson
BOYD JOHNSON

May 21, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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BOYD JOHNSON