Exhibit 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AUGUST DEKKER, et al.,	)	
	)	
Plaintiffs,	)	Case No: 4:22cv325
	)	
v.	)	Tallahassee, Florida
	)	October 12, 2022
SIMONE MARSTILLER, et al.,	)	
	)	9:33 AM
Defendants.	)	
_____	)	

TRANSCRIPT OF PRELIMINARY INJUNCTION PROCEEDINGS
BEFORE THE HONORABLE ROBERT L. HINKLE
UNITED STATES CHIEF DISTRICT JUDGE
(Pages 1 through 120)

Court Reporter: MEGAN A. HAGUE, RPR, FCRR, CSR
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Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

like to call Dr. Michael K. Laidlaw --

THE COURT: All right.

MR. PERKO: -- by remote -- or video.

THE COURT: All right. And for what it's worth, I've read Dr. Laidlaw's declaration, so I've seen some of what he has to say.

MR. PERKO: Good morning, Dr. Laidlaw. Can you hear me?

THE WITNESS: I can hear you okay.

THE COURT: I need to speak with him first.

Dr. Laidlaw, are you there in a room by yourself?

THE WITNESS: I am.

THE COURT: All right. You should be by yourself while you're testifying. If anyone else comes into the room where you are, if you'd stop and let me know, we'll address it.

If you would, please, raise your right hand.

DR. MICHAEL K. LAIDLAW, DEFENSE WITNESS, DULY SWORN

THE COURT: Please tell us your full name, and spell your last name for the record for our record.

THE WITNESS: Michael K. Laidlaw. That's spelled L-a-i-d, as in David, L-a-w.

THE COURT: All right. And the lawyers will have some questions for you.

MR. PERKO: Thank you, Your Honor.

DIRECT EXAMINATION

Q. Are you a member of any professional associations?
A. I am a member of the Endocrine Society.
MR. PERKO: Your Honor, at this time we'd proffer Dr. Laidlaw as an expert in endocrinology.
MR. CHARLES: Objection, Your Honor. I'd like to voir dire the witness.
THE COURT: You may certainly voir dire the witness.
MR. CHARLES: May it please the Court, Your Honor. My name is Carl Charles for the plaintiffs.

VOIR DIRE EXAMINATION

BY MR. CHARLES:
Q. Dr. Laidlaw, can you hear me?
A. Yes.
Q. Okay. Dr. Laidlaw, you wrote a declaration that was filed in this case; correct?
A. Correct.
Q. And as a part of that declaration, you submitted a CV entitled "Exhibit A"?
A. Yes.
Q. And you're not a practicing psychiatrist; is that correct, Dr. Laidlaw?
A. That is correct.
Q. You are not a licensed mental health care provider; is that correct?
A. That's correct.

Q. And you're not a psychologist; is that correct?
A. That is correct.
Q. And, Dr. Laidlaw, you're not an obstetrician; is that correct?
A. That is correct.
Q. And, Dr. Laidlaw, you're not a gynecologist; is that correct?
A. That is correct.
Q. And you're not a surgeon, Dr. Laidlaw; is that correct?
A. That's correct.
Q. And you're not a pediatric endocrinologist; is that correct?
A. That is correct.
Q. Less than 5 percent of your patients are under the age of 18; is that correct?
A. Yes.
Q. And you're not a bioethicist; is that correct?
A. I have no formal training other than an IRB certification many years ago.
Q. Okay. So you don't practice as a bioethicist; is that correct?
A. That's correct.
Q. And you haven't done any primary research on fertility; is that correct?
A. No primary research on fertility; that's correct.

Q. And you haven't done any primary research on sterility; is that correct?
A. That is correct.
Q. And you haven't written any articles which have been subjected to a confirmed peer-review process about fertility; is that correct?
A. I -- specifically about fertility -- I don't know what the peer review -- I had a paper in *The American Journal of Bioethics.* I don't know what the peer-review process was.
Q. Okay. So you -- again, you have not written any articles which have been subjected to a peer review for process which you can confirm about fertility; is that correct?
A. Not that I can confirm.
Q. And you haven't written any articles that have been subjected to a confirmed peer-review process about sterility; is that correct?
A. Correct.
Q. And you haven't performed any primary research about medical ethics; is that correct?
A. That's correct.
Q. And you haven't written any confirmed peer-reviewed publications about medical ethics; is that correct?
A. I have not independent -- there is the article that I mentioned. I have not independently confirmed the peer-review process.

Q. Okay. You cannot confirm that that article has been peer reviewed?

A. I cannot confirm.

Q. And you have not performed any primary research about informed consent; is that correct?

A. That's correct.

Q. And you have not written any articles confirmed to be peer reviewed regarding parents' ability to consent for treatment for their minor children; is that correct?

A. I have not written a peer reviewed article on that topic.

Q. And none of the publications listed in your CV attached to your declaration are based on original primary research; is that correct?

A. That's correct.

Q. And you haven't done any primary research about transgender people; is that correct?

A. Just to clarify, when you say "primary research," you're talking about using human subjects in the research -- as part of the research rather than a review of the literature; is that correct?

Q. You haven't done any original primary research about transgender people; is that correct?

A. In the context of working with human subjects, that is correct.

Q. And that includes any research about children and

adolescents; isn't that correct?

A. Yes. With regard to human subjects, that is correct.

Q. And you haven't received any grants to support research into endocrine treatments for gender dysphoria; is that correct?

A. That is correct.

Q. And you have not done any original primary research about the treatment of gender dysphoria; is that correct?

A. Not with human subjects; that's correct.

Q. And you haven't performed any original primary research into the frequency of gender -- into how frequently gender dysphoria occurs; is that correct?

A. I have not done primary research involving which -- human subjects on that matter.

Q. And you haven't -- and you have not done any original primary research about the phenomenon of desistance; is that correct?

A. I have not done primary research with human subjects on that condition -- for that condition.

Q. And you've never diagnosed anyone with gender dysphoria; is that correct?

A. That is correct.

Q. And you've previously testified under oath that you've only provided care to one transgender patient related to the treatment of gender dysphoria; is that correct?

A. I have worked with patients with gender incongruence in the

context of my practice, but as far as providing hormones, there was -- someone with gender dysphoria, there was one.

Q. And it was only to provide that patient with a refill of estrogen; is that correct?

A. There was an evaluation. There was an office visit, and there was necessity for a refill of estrogen in that case.

Q. Okay. And so you did not deny the patient the refill of the estrogen?

A. That's correct.

Q. So you have utilized the Endocrine Society guidelines for the treatment of gender dysphoria once; is that correct?

A. This was -- this preceded the Endocrine Society guidelines.

Q. What year was the treatment of that patient?

A. It was in the early 2000s. It was prior to -- it was prior to 2009, which is when the first Endocrine Society guidelines were published.

Q. In your private practice, Dr. Laidlaw, you do not contract with California Medicaid insurance; is that correct?

A. That's correct.

Q. And you have not spoken with any transgender Florida Medicaid beneficiaries; is that correct?

A. Yeah, not that I'm aware of.

Q. And that would include the plaintiffs in this matter; is that correct?

A. That's correct.

CONTINUED DIRECT EXAMINATION

BY MR. PERKO:

Q. Dr. Laidlaw, you submitted a declaration in this matter, didn't you?

A. I did.

Q. And have you reviewed the declarations -- rebuttal declarations that the plaintiffs submitted in response to your declaration?

A. Yes.

Q. And do you stand by the opinions in your declaration, notwithstanding those rebuttal reports?

A. Yes, I do stand by those opinions.

Q. What were your opinions expressed in your declaration based on?

A. My opinions are based on my education and clinical experience in endocrinology, my work with gender incongruent patients in the context of my practice, including a detransitioner, my extensive evaluation of the scientific literature regarding the treatment of gender dysphoria, gender incongruence for adults and minors, and also my review of all the plaintiffs' declarations and the medical records provided to me.

Q. Dr. Laidlaw, you stated that you had limited experience with gender dysphoria. But have you reviewed the literature with regard to gender dysphoria in the gender-affirming care?

A. I have reviewed the literature extensively over the last at least four years.

Q. And why is that?

A. Well, for a few reasons. One is that these treatments that they advocate for involve hormones and raising hormone levels to sometimes very high levels or very low levels. So I've taken an interest in the risk-and-benefit ratio of these types of treatments, and this is something I do every day in endocrinology.

Furthermore, before my colleagues and I are to follow any sort of treatment protocol, I think it's essential that these studies and so forth are evaluated to determine the risk-benefit profile before any of us use these treatments.

Q. And, Dr. Laidlaw, what exactly is gender dysphoria?

A. Gender dysphoria is -- well, there's a couple of terms that would be helpful. Gender identity is a person's internal or mental sense of being male or female or perhaps some other designation, and there's an incongruence or mismatch in these cases with their physical body. For example, a person may identify as a female but have been born with a male body, and so there is resulting distress and impairment of function. There's different definitions from there on as to how long it lasts and slight differences for adults versus children and adolescents.

Q. And is gender dysphoria an endocrine disorder?

A. It's not an endocrine disorder. It's a disorder found in

A. No.
Q. And why is that?
A. Well, I think that it's proved by the desistance, particularly with young people. Children have high desistance rates. There are many detransitioners who are adults, including one patient of mine, which proves that this gender identity is not immutable.
Q. Doctor, switching gears a little bit, you say in your declaration that hormone treatment for gender dysphoria can lead to infertility.

Is that always the case?

MR. CHARLES: Objection, Your Honor.

The witness has already stated he's not qualified to opine about this subject.

MR. PERKO: I don't believe that's the case, Your Honor. He's talking about hormone therapy, and he's an endocrinologist.

THE COURT: I'll overrule the objection. I'm going to be the finder of fact.

When Dr. Laidlaw has knowledge because of his actual medical practice, as opposed to having read some stuff over the last four years, you might want to point it out, because he's not going to persuade me very much -- he may persuade me, but he's less likely to persuade me when all he is telling me is what he has read and not what he has applied in his practice.

Q. Psychological conditions?
A. I do not make diagnoses, but we're trained in psychology and psychiatry. It's part of our medical licensing.
Q. Okay. But you are not a practicing psychologist?
A. That's correct.
Q. And you're not a practicing psychiatrist?
A. That's correct.
Q. And you have not met with any of the plaintiffs in this matter --

THE COURT: Mr. Charles, I sat through the voir dire. I'm not going to sit through it again on cross. You get one chance to ask some questions. You've asked those. Let's ask some new ones.

MR. CHARLES: Thank you, Your Honor.

BY MR. CHARLES:
Q. Dr. Laidlaw, you stated you don't follow the WPATH standards of care; is that right?
A. Yes.
Q. But you testified earlier you don't treat gender dysphoria; is that correct?
A. I don't treat gender dysphoria with hormones and surgeries.
Q. Dr. Laidlaw, are you aware that your opposition to gender-affirming care for the treatment of gender dysphoria in youth and adults is contrary to the vast majority of medical associations' recommendations?

A. Yes.
Q. Dr. Laidlaw, can you see the screen share that I've just enabled?
A. Yes, I can.
MR. CHARLES: Your Honor, can you see that as well?
THE COURT: I can. It's hiding under the table up here, but I've got it.
MR. CHARLES: Okay.
BY MR. CHARLES:
Q. Dr. Laidlaw, are you aware that the American Academy of Child and Adolescent Psychiatry supports gender-affirming care for youth?
A. I haven't looked at that specifically.
Q. Okay. And looking at the document here, I'll --
MR. CHARLES: Let me ensure -- Defense Counsel, can you view this document?
MR. PERKO: Yes.
MR. CHARLES: Okay. So I'd like to enter this as Exhibit P1.
BY MR. CHARLES:
Q. This is the -- Dr. Laidlaw, this is the "American Academy of Child and Adolescent Psychiatry Statement Responding to Efforts to Ban Evidence-Based Care for Transgender and Gender-Diverse Youth."
Do you see that?

Q. Yes, let's start with that one.
A. Well, I'm just reading it now for the first time, so it must be -- it was 2019 -- unless they have changed their opinion.
Q. Okay. But you don't have any --
THE COURT: Let me just back up. I'm going to exclude the exhibit. I did require things to be disclosed, and you can't come up to the hearing and bring up a new exhibit that you didn't timely disclose.
MR. CHARLES: Okay.
THE COURT: So Plaintiffs' 1 is excluded.
The scheduling order is ECF No. 32.
MR. CHARLES: Okay. Thank you, Your Honor.
Ms. Markley, you can unpublish, please. Thank you.
BY MR. CHARLES:
Q. Dr. Laidlaw, are you aware that the American Academy of Family Physicians supports gender-affirming care for youth and adults?
A. Supports gender-affirming care for youth and adults?
Q. Yes. Do you need to me to repeat? Did you hear that?
A. They probably do. I don't know their exact statement.
Q. Okay. Are you aware that the American Academy of Family Physicians published a policy statement in July of 2022, approved by their board of directors, entitled "Care for the Transgender and Gender Nonbinary Patient"?

A. I have not read that particular document -- Family Practice Document.

Q. Okay. Are you aware that the American Academy of Family Physicians supports gender-affirming care as an evidence-informed intervention that can promote permanent health equity for gender-diverse individuals?

MR. PERKO: Your Honor, I would object for the same reasons. He's essentially reading from an exhibit that was not disclosed.

THE COURT: He's now exploring the witness's knowledge of the situation in the field. The objection is overruled.

BY MR. CHARLES:

Q. Dr. Laidlaw --

A. I'm not a family practice physician, so I don't keep up with --

Q. Just a moment. Sorry. Let me start over.

A. -- the literature of that organization.

Q. I'm sorry. Can you please repeat that?

A. I said I'm not a family practice physician; I'm an endocrinologist, so I don't keep up with whatever they're publishing.

Q. Okay. So I -- let me just ask you one more question about that brief -- or policy statement. Excuse me.

Are you aware that the American Academy of Family Physicians asserts the full spectrum of gender-affirming health

care should be legal and should remain a treatment decision between a physician and their patient?

A. I'm not surprised.

Q. Can -- so does that mean you are or are not aware?

A. I don't read the Family Practice documents, unless they are provided to me.

Q. Dr. Laidlaw, are you aware the American Academy of Pediatrics supports gender-affirming care for youth?

A. Yes.

Q. Dr. Laidlaw, are you aware that the American College of Obstetricians and Gynecologists has recommendations and conclusions that support gender-affirming care for youth and adults?

A. I'm not -- again, I'm not surprised, but I don't read their literature regularly for that purpose.

Q. Okay. Are you aware that the American College of Obstetricians and Gynecologists has conclusions that gender-affirming hormone therapy is not effective contraception?

A. That gender-affirming therapy is not effective contraception?

Q. Correct.

A. I have read that. I'm not sure if it was theirs or someone else who is publishing that. I'm aware of that concept.

Q. Can you repeat your answer? I didn't understand you.

A. I said I haven't read their statements specifically, but

I'm aware of the concept or proposition that gender-affirming hormones are not effective contraception.

Q. Okay. So you're not aware of the American College of Obstetricians and Gynecologists conclusion that it is not effective contraception?

A. I have not read their particular conclusion.

Q. Are you aware that the American College of Physicians, the largest medical specialty society in the world with 160,000 internal medicine and subspecialty members, supports public and private health care coverage of gender-affirming care?

A. I'm not aware that all 160,000 members voted to approve such a thing, but I'm aware that they have issued a statement like that.

Q. You are aware they issued such a statement?

A. Yes.

Q. Are you aware that in 2022, the American College of Physicians issued a brief supporting access to gender-affirming care and opposing discriminatory policies enforced against LGBTQ people and objected, in particular, to the interference with the physician-patient relationship and the penalization of evidence-based care?

A. I may have read that particular statement from that organization.

Q. Are you aware that the American Medical Association supports gender-affirming medical care for youth and adults?

A. Yes.
Q. Are you aware that in April of 2021, the American Medical Association wrote a letter to the National Governors Association objecting to the interference with health care of transgender children?
A. I believe I had come across that headline.
Q. Are you aware that the American Medical Association, in conjunction with GLMA, has issued a brief in support of public and private insurance coverage of gender-affirming care?
A. I'm not a member of the American Medical Association. I think only 20 percent of physicians in the nation are even a member. So I don't follow everything they say, but I do believe I read that document.
Q. Do you have evidence to support your assertion that only 20 percent of medical practitioners in the United States are members of the AMA?
A. I don't have a piece of paper with evidence, but that's my general understanding. I'm not a member.
Q. But you don't have any evidence today to point to to support that assertion?
A. No.
Q. Are you aware that in 2022, the American Medical Association reaffirmed it's resolution in support of private and public health care coverage for the treatment of gender dysphoria as recommended by a patient's physician in Resolution

Number 158.950?

A. I have not read that resolution.

Q. Are you aware, Dr. Laidlaw, that the American Psychological Association has guidelines that support access to gender-affirming care for youth and adults?

A. Yes.

Q. Are you aware that the American Psychological Association opposes gender-identity change efforts as a broad practice described as a range of techniques used by mental health professionals and nonprofessionals with the goal of changing gender identity, gender expression, or associated components of these, to be in alignment with gender role behaviors stereotypically associated with their sex assigned at birth?

A. Yes, I am aware.

Q. Are you aware that the American Psychiatric Association supports gender-affirming medical care for youth specifically?

A. Yes.

Q. Are you aware that the American Psychiatric Association has a position statement from 2018, supporting access to care for transgender and gender-variant individuals broadly?

A. Yes, I believe so.

Q. Are you aware that the Endocrine Society and the Pediatric Endocrine Society take the position that there is a durable biological underpinning to gender identity that should be considered in policy determinations?

A. I would have to read -- I have not read that particular statement from the Endocrine Society. I would like to see that before I make a -- conclude anything.

Q. Okay. Are you aware this determination was included in a position statement published in December of 2020?

A. I have read that position statement.

Q. And are you aware that the Endocrine Society and the Pediatric Endocrine Society take the position that medical intervention for transgender youth and adults is effective, relatively safe when appropriately monitored, and has been established as the standard of care?

A. Well, they wrote that it was not the standard of care in 2017, so they're contradicting themselves.

Q. Dr. Laidlaw, are you aware that that statement is contained in the transgender health position statement issued December 2020?

A. I believe I read that.

Q. And are you aware that the Endocrine Society and the Pediatric Endocrine Society take the position that federal and private insurers should cover such interventions as prescribed by a physician, as well as the appropriate medical screenings that are recommended for all body tissues that a person may have?

A. I believe I read something along those lines.

Q. Are you aware that the Pediatric Endocrine Society supports

gender-affirming care for youth?

A. Yes.

Q. Are you aware they published a position statement to that effect in April of 2021?

A. Yes. I wrote an article describing why their conclusions are false or incorrect.

Q. Are you aware the Pediatric Endocrine Society recommends an affirmative model of care that supports one's gender identity and follows a multidisciplinary approach that includes involvement of mental health professionals, patients and their families. Puberty suppression and/or gender-affirming hormone therapy is recommended within this evidence-based approach on a case-by-case basis as medically necessary and potentially lifesaving.

Are you aware that was contained in the Pediatric Endocrine Society statement?

A. I am aware that it's contained. I don't agree with it, but, yes, I'm aware.

THE COURT: If we're leading up to something, you can go ahead with all of this. If all you're doing is publishing stuff I've already read --

MR. CHARLES: No, Your Honor.

THE COURT: You're welcome to make a closing argument later and to go through all of this, but if -- this is an incredibly inefficient way to publish material.

example, the thyroid is a gland that makes thyroid hormone. When people have very high levels of thyroid hormone, we call that hyperthyroidism. They can have physical effects like fast heart rates, heart palpitations, tremors, but they can also have mental effects like anxiety and even psychosis. This can occur because their body develops too much thyroid hormone, or they may be taking too high of a dose of thyroid hormone.

So I have to distinguish if a mental health condition is related to a hormone imbalance versus a native psychological condition, or both sometimes.

BY MR. PERKO:

Q. Dr. Laidlaw, one final question.

How many patients a year do you treat with hormone treatments?

A. For hormone treatments?

Q. Yes.

A. Well, all of them, for the most part. I'd have to make an estimate. I see about 50 patient visits a week 50 weeks or so out of the year.

MR. PERKO: Thank you, Your Honor. No further questions.

THE COURT: Dr. Laidlaw, I want to ask you a question, and to do it, I need to define a couple of terms. These may not be the best definitions. They are my definition for purposes of my question.

I'm going to refer to natal identity as the identity at birth, and then I'm going to refer to gender identity as a person's perceived identity, the identity the person believes is the correct identity for the person.

Here's my question. In your opinion, is it ever appropriate for any medical professional in any specialty to support a person's decision to live in the person's gender identity instead of in the person's natal identity?

THE WITNESS: Ever under any circumstances, is that what you are saying?

I think my determination is that, in general, the risks of the hormones that are required and surgeries outweigh the benefits for the majority of people. I recognize there's some small degree of adults, perhaps, who are living this way. There are risks to mental health and things like that. So I'm not opposed to personal autonomy, but I am concerned about risks versus benefits, particularly for minors and youth.

THE COURT: So is the answer no?

THE WITNESS: I guess no.

THE COURT: Questions to follow up on mine?

MR. PERKO: No, Your Honor.

MR. CHARLES: No, Your Honor.

THE COURT: Thank you, Dr. Laidlaw. That concludes your testimony.

THE WITNESS: Thank you.

irreparable harm. It's their burden to establish irreparable harm for the four individual plaintiffs. We've got declarations from the four individual plaintiffs, but we don't have any of the treating physicians for any of the four individual plaintiffs providing any opinions to this Court.

We have Dr. Laidlaw who is an endocrinologist who prescribes hormones and puberty blockers.

THE COURT: And has an opinion about sex reassignment surgery. What is his expertise to talk about these surgeries?

MR. JAZIL: Your Honor, he's someone who's tracking the literature. He is advising people who go into his clinic. And I take Your Honor's point that if it's something that he's not experienced with as a clinician, you're going to give it little weight.

THE COURT: And he's a doctor who says a person with gender dysphoria should not be treated in a way affirmative of the person's perceived gender by any medical professional. So a psychiatrist, psychologist, therapist should never say to a natal male, for example, that it's okay to live as a female.

Now, how far off the standard, the general view in the medical profession, is that?

MR. JAZIL: Your Honor, two points on that: One, his answer there was a little confusing. He -- and Your Honor asked a follow-up question to him. When he initially gave an answer, he said, I could think of possibly some instances where it would

Exhibit 6

American Psychiatric Association Ethics Committee Opinion

Question: May a psychiatrist give an opinion about an individual in the public eye when the psychiatrist, in good faith, believes that the individual poses a threat to the country or national security?

Answer: Section 7.3 of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (sometimes called "The Goldwater Rule") explicitly states that psychiatrists may share expertise about psychiatric issues in general but that it is unethical for a psychiatrist to offer a professional opinion about an individual based on publicly available information without conducting an examination. Making a diagnosis, for example, would be rendering a professional opinion. However, a diagnosis is not required for an opinion to be professional. Instead, when a psychiatrist renders an opinion about the affect, behavior, speech, or other presentation of an individual that draws on the skills, training, expertise, and/or knowledge inherent in the practice of psychiatry, the opinion is a professional one. Thus, saying that a person does not have an illness is also a professional opinion. The rationale for this position is as follows:

1. When a psychiatrist comments about the behavior, symptoms, diagnosis, etc., of a public figure without consent, the psychiatrist violates the fundamental principle that psychiatric evaluation occurs with consent or other authorization. The relationship between a psychiatrist and a patient is one of mutual consent. In some circumstances, such as forensic evaluations, psychiatrists may evaluate individuals based on other legal authorization such as a court order. Psychiatrists are ethically prohibited from evaluating individuals without permission or other authorization (such as a court order).

2. Psychiatric diagnosis occurs in the context of an evaluation, based on thorough history taking, examination, and, where applicable, collateral information. It is a departure from the methods of the profession to render an opinion without an examination and without conducting an evaluation in accordance with the standards of psychiatric practice. Such behavior compromises both the integrity of the psychiatrist and of the profession itself.

3. When psychiatrists offer medical opinions about an individual they have never examined, this behavior has the potential to stigmatize those with mental illness. Patients who see a psychiatrist, especially their own psychiatrist, offering opinions about individuals whom the psychiatrist has not examined may lose confidence in their psychiatrist and/or the profession and may additionally experience stigma related to their own diagnoses. Specifically, patients may wonder about the rigor and integrity of their own clinical care and diagnoses and confidentiality of their own psychiatric treatment.

Psychiatrists, and others, have argued against this position. We address five main arguments against this position:

a. Some psychiatrists have argued that the "Goldwater Rule" impinges on an individual's freedom of speech as it pertains to personal duty and civic responsibility to act in the interest of the national well-being. This argument confuses the personal and professional roles of the psychiatrist. The psychiatrist, as a citizen, may speak as any other citizen. He or she may observe the behavior and work of a public figure and support, oppose, and/or critique that public action. But the psychiatrist may not assume a professional role in voicing that critique in the form of a professional opinion for the reasons discussed above, those being, lack of consent or other authorization and failure to conduct an evaluation.

b. Psychiatrists have also argued that the "Goldwater Rule" is not sound because psychiatrists are sometimes asked to render opinions without conducting an examination of an individual. Examples occur, in particular, in certain forensic cases and consultative roles. This objection attempts to subsume the rule with its exceptions. What this objection misses, however, is that the rendering of expertise and/or an opinion in these contexts is permissible because there is a court authorization for the examination (or an opinion without examination), and this work is conducted within an evaluative framework including parameters for how and where the information may be used or disseminated. In addition, any evaluation conducted or opinion rendered based on methodology that departs from the established practice of an in-person evaluation must clearly identify the methods used and the limitations of those methods, such as the absence of an in-person examination.

c. Psychiatrists have further argued that they should be permitted to render professional expertise in matters of national security and that the "Goldwater Rule" prohibits this important function. While psychiatrists may be asked to evaluate public figures in order to inform decision makers on national security issues, these evaluations, like any other, should occur with proper authority and methods within the confidentiality confines of the circumstances. Basing professional opinions on a subset of behavior exhibited in the public sphere, even in the digital age where information may be abundant, is insufficient to render professional opinions and is a misapplication of psychiatric practice.

d. Some psychiatrists have argued that they have a responsibility to render an opinion regarding public figures based on *Tarasoff* duties to warn and/or protect third parties. This position is a misapplication of the *Tarasoff* doctrine. Actions to warn and/or protect a third party occur in situations in which a psychiatrist is providing treatment to or an evaluation of an individual who poses a risk to others and *Tarasoff* serves as a rationale for a limited sharing of otherwise

confidential or privileged information. However, for information in the public domain, law enforcement agencies that have the same, and perhaps even greater, access to information about the individual are charged with protecting the public.

e. Finally, some psychiatrists have argued that rendering an opinion based on information in the public domain without conducting an examination should be permissible because psychiatrists are often involved in psychological profiling. However, psychological profiling differs markedly from self-initiated public comments as described in this opinion. Psychological profiling occurs when a law enforcement or other authorized agency or authorized party engages a mental health professional to provide information about the characteristics of an individual who might have perpetrated a crime; the behavior of a suspect or other figure; other characteristics of an individual; or a prediction of future risk. The authorization for this work derives from the requester and is not initiated by the psychiatrist. It is also meant to be shared with the requester, and not the general public. Finally, as this work often lacks examination of the individual and relevant data from appropriate collaterals, the psychiatrist must explicitly address the limitations of the methods used in rendering a profile, should not opine about a diagnosis, should not include a diagnostic opinion, and must clearly state the inherent limitations in making predictions about future behavior.

Nothing in this opinion precludes the psychological profiling of historical figures aimed at enhancing public and governmental understanding of these individuals. As Opinion Q.7.a states, this profiling should not include a diagnosis and should be based in peer-reviewed scholarship that meets relevant standards of academic scholarship. Such scholarship should clearly identify the methods used, materials relied upon, and methodologic limitations, including the absence of formal evaluation of the subject of inquiry.

APA Ethics Committee
March 15, 2017