

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BRIANNA BOE, et al.,

Plaintiffs,

v.

STEVE MARSHALL, et al.,

Defendants.

No. 2:22-cv-00184-LCB-CWB

**NOTICE REGARDING MOTION TO QUASH FILED BY NON-PARTY
WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER
HEALTH**

Non-party World Professional Association for Transgender Health (WPATH) writes to provide the Court with an update on recent developments pertinent to its pending Motion to Quash Rule 45 Subpoenas (Doc. 208) (“Mot.”), which is under submission with the Court.¹

As is discussed in WPATH’s reply in support of the motion (“Reply”) (Doc. 236), the State of Florida recently adopted a rule barring Medicaid reimbursement for certain gender-affirming care. In connection with a lawsuit challenging the constitutionality of that rule, Florida served a non-party subpoena on WPATH (and

¹ As is described in the Joint Notice filed February 7, 2023 (Doc. 240), while the Motion to Quash was originally filed by WPATH and two other organizations, those two organizations have now resolved their dispute with the State.

21 other organizations) seeking many of its internal documents through requests similar to those at issue here. The subpoenaed organizations filed a motion to quash in the District Court for the District of Columbia, and Judge Nichols issued an order that appeared to substantially narrow Florida's requests. *See* Reply at 8-9. Among other items, the court ordered WPATH to produce “[d]ocuments sufficient to show how it established guidelines or, if it has not established guidelines, its policy position (if any) on gender-affirming care for gender dysphoria.” *See* Doc. 236-4 (Jan. 26, 2023 order).

The following developments occurred after WPATH filed its reply in this case. In response to Judge Nichols' order, WPATH produced documents that were sufficient to show the process its used to establish its guidelines regarding gender-affirming care, but not the detailed substance of any internal deliberations. Florida deemed this production deficient and sought the district court's intervention. On February 28, 2023, Judge Nichols clarified that:

In producing documents sufficient to show “how” [WPATH] established guidelines or policy positions on gender-affirming care for the treatment of gender dysphoria, [WPATH] shall produce documents sufficient to show both (a) the process by which any such guidelines . . . were adopted, and (b) the substantive materials and opinions that were considered and relied upon, as well as the materials and opinions that were considered and rejected, in adopting the guidelines or policy positions. This includes, but is not limited to, documents that would be sufficient to show what studies were considered in adopting the guidelines or policy positions and why a

particular study was relied upon or rejected. It also includes documents that would be sufficient to show whether any dissenting views were otherwise acknowledged, whether such views were considered in adopting guidelines or policy positions, and why such views were rejected.

Lannin Reply Decl. Ex. 1.

Because Judge Nichols' second order required the production of materials evidencing WPATH's internal deliberations and squarely infringed its First Amendment interests, WPATH appealed the order to the United States Court of Appeals for the District of Columbia Circuit. WPATH also moved the district court to stay its order pending appeal, which the district court denied. WPATH subsequently filed an emergency motion with the D.C. Circuit asking that court to stay proceedings in the district court, including WPATH's obligations to produce information in response to the court's order. Following expedited briefing, the D.C. Circuit granted that emergency motion on March 8, 2023, concluding "the stringent requirements for a stay pending appeal" were satisfied. Lannin Reply Decl. Ex. 2. As a result of these developments, Judge Nichols' orders requiring WPATH to produce information to the State of Florida are now stayed.

WPATH respectfully submits that these developments are relevant to its Motion to Quash now pending with this Court, given that Alabama is seeking from WPATH the same types of internal materials that the D.C. Circuit has now

concluded WPATH does *not* need to provide Florida pending appeal of that district court's order.

Dated: March 15, 2023

Respectfully submitted,

/s Barry A. Ragsdale

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s Barry A. Ragsdale
Of Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BRIANNA BOE, et al.,

Plaintiffs,

v.

STEVE MARSHALL, et al.,

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No. 2:22-cv-00184-LCB-CWB

**DECLARATION OF CORTLIN H. LANNIN IN SUPPORT OF NOTICE
REGARDING MOTION TO QUASH FILED BY NON-PARTY WORLD
PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH**

I, Cortlin H. Lannin, hereby declare as follows:

1. I am an attorney in the law firm of Covington & Burling LLP, counsel for World Professional Association for Transgender Health (“WPATH”). The matters set forth herein are true and correct of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.
2. Attached hereto as **Exhibit 1** is a true and correct copy of the order issued by the district court on February 28, 2023, Document No. 26, in connection with *In re Subpoenas Served on American Academy of Pediatrics, et al.*, No. 23-mc-00004-CJN (D.D.C.).

3. Attached hereto as **Exhibit 2** is a true and correct copy of the order granting Appellants' emergency motion for a stay pending appeal issued by the United States Court of Appeals for the District of Columbia Circuit on March 8, 2023, in *In re Subpoenas Served on American Academy of Pediatrics, et al.*, No. 23-7025 (D.C. Cir.).

I declare under penalty of perjury that the foregoing is true and correct. This declaration is executed this 14th day of March, 2023, in San Francisco, California.



Cortlin H. Lannin

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| IN RE SUBPOENAS SERVED ON AMERICAN ACADEMY OF PEDIATRICS, <i>et al.</i> , | Misc. Case No. 23-MC-00004 (CJN) |
| AUGUST DEKKER, <i>et al.</i> , <p style="text-align: center;">Plaintiffs,</p> v. JASON WEIDA, <i>et al.</i> , <p style="text-align: center;">Defendants.</p> | Northern District of Florida Case No. 4:22-cv-325-RH-MAF |

ORDER

For the reasons discussed in detail at the February 27, 2023 telephonic hearing, it is hereby

ORDERED that the fourth paragraph of the Court’s January 26, 2023 Order relating to the production of documents is clarified as follows:

In producing documents sufficient to show “how” the Nonparty Groups established guidelines or policy positions on gender-affirming care for the treatment of gender dysphoria, the Nonparty Groups shall produce documents sufficient to show both (a) the process by which any such guidelines or policy positions were adopted, and (b) the substantive materials and opinions that were considered and relied upon, as well as the materials and opinions that were considered and rejected, in adopting the guidelines or policy positions. This includes, but is not limited to, documents that would be sufficient to show what studies were considered in adopting the guidelines or policy positions and why a particular study was relied upon or rejected. It also includes documents that would be sufficient to show whether any dissenting views were otherwise acknowledged, whether such views were considered in adopting guidelines or policy positions, and why such views were rejected.¹

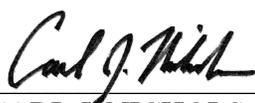
¹ The Court refers the AHCA and the Nonparty Groups to its oral instructions at the February 27, 2023 hearing for further clarification of its previous Order.

It is further **ORDERED** that the World Professional Association for Transgender Health, the Endocrine Society, and the American Academy of Pediatrics shall submit to depositions on the following terms:

1. Each organization shall designate a single corporate representative of their choosing to appear for deposition on behalf of each respective organization.
2. The depositions shall take place at a mutually agreeable time, but each deposition must be held no later than three days prior to the discovery deadline set by the United States District Court for the Northern District of Florida.
3. A deposition may take place over Zoom if the organization so chooses.
4. Each deposition shall be limited to no more than three hours on the record, but the AHCA may for good cause move for additional time.
5. The deposition topics shall be limited to the topics covered in the Court's Order for the production of documents, as clarified by this Order. Specifically, the depositions shall cover the following topics:
 - a. The organization's total number of members.
 - b. How the organization establishes guidelines or policy positions.
 - c. The organization's guidelines or policy position on gender-affirming care for gender dysphoria.
 - d. How the organization established its guidelines or policy position on gender-affirming care for gender dysphoria (as clarified by this Order and the Court's oral instructions).
 - e. Official communications with the organization's membership concerning its guidelines or policy position on gender-affirming care for gender dysphoria.

The Court retains jurisdiction to enforce this Order.

Date: February 28, 2023



CARL J. NICHOLS
United States District Judge

EXHIBIT 2

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-7025

September Term, 2022

1:23-mc-00004-CJN

Filed On: March 8, 2023

In re: Subpoenas Served On American
Academy of Pediatrics, et al.,

American Academy of Pediatrics, et al.,

Appellants

v.

Jason Weida,

Appellee

BEFORE: Pillard, Childs, and Pan, Circuit Judges

ORDER

Upon consideration of the emergency motion for a stay pending appeal, the opposition thereto, and the reply, it is

ORDERED that the emergency motion for stay be granted. Appellants have satisfied the stringent requirements for a stay pending appeal. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2021).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Lynda M. Flippin
Deputy Clerk