

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
Nashville Division**

L.W., by and through her parents and next friends, Samantha Williams and Brian Williams, et al.,

*Plaintiffs,*

and

UNITED STATES OF AMERICA,

*Plaintiff-Intervenor*

v.

JONATHAN SKRMETTI, in his official capacity as the Tennessee Attorney General and Reporter, et al.,

*Defendants.*

**Civil No. 3:23-cv-00376**

**Judge Richardson**

**Judge Newbern**

**DECLARATION OF DAVID BETHEA, ESQ. IN SUPPORT OF PLAINTIFFS’  
REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

I, David Bethea, Esq., hereby declare:

1. I am an attorney at the law firm Akin Gump Strauss Hauer & Feld LLP, co-counsel for the Plaintiffs in the above-captioned matter. I have been admitted *pro hac vice* to practice before this Court, and I submit this declaration in support of Plaintiffs’ Reply in Support of Motion for Preliminary Injunction (the “Reply”).

2. The purpose of this declaration is to provide the Court with copies of certain documents referenced in the Reply. Plaintiffs have excerpted Exhibit D—which is quite lengthy—to include only those portions related to Plaintiffs’ arguments in the Reply. Plaintiffs are happy to provide a complete copy off this document at the Court’s request.

3. Attached hereto as Exhibit A is a true and correct copy of a Civil Investigative

Demand issued by the Office of the Attorney General and Reporter for the State of Tennessee to VUMC Center for Transgender Health on November 2, 2022.

4. Attached hereto as Exhibit B is a true and correct copy of a Civil Investigative Demand issued by the Office of the Attorney General and Reporter for the State of Tennessee to VUMC Center for Transgender Health on March 14, 2023.

5. Attached hereto as Exhibit C is a true and correct copy of a second Civil Investigative Demand issued by the Office of the Attorney General and Reporter for the State of Tennessee to VUMC Center for Transgender Health on March 14, 2023.

6. Attached hereto as Exhibit D is a true and correct copy of the trial transcript in *Brandt v. Rutledge*, Case No. 4:21-CV-00450-JM (E.D. Ark.), excerpted to include portions of the testimony of Stephen B. Levine, M.D.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 1, 2023

Respectfully Submitted,

s/ David Bethea  
David Bethea

**CERTIFICATE OF SERVICE**

I hereby certify that on June 1, 2023, the undersigned filed the foregoing Declaration of David Bethea, Esq. in Support of Plaintiffs’ Reply in Support of Motion for Preliminary Injunction via this Court’s electronic filing system, which sent notice of such filing to the following counsel of record:

<p>Steven J. Griffin Clark L. Hildabrand Trenton Meriwether Ryan N. Henry Brooke A. Huppenthal Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 3720 (615) 741-959 steven.griffin@ag.tn.gov clark.hildabrand@ag.tn.gov trenton.meriwether@ag.tn.gov ryan.henry@ag.tn.gov brooke.huppenthal@ag.tn.gov</p>	<p>Adam K. Mortara Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Cameron T. Norris (BPR# 33467) Consovoy McCarthy PLLC 1600 Wilson Blvd., Suite 700 Arlington, VA 22209 (703) 243-9423 cam@consovoyccarthy.com</p>
<p>Coty Montag Tamica Daniel Gloria Yi Alyssa C. Lareau United States Department of Justice Federal Coordination and Compliance Section 950 Pennsylvania Avenue NW – 4CON Washington, DC 20530 (202) 305-2994 Coty.Montag@usdoj.gov Tamica.Daniel@usdoj.gov Gloria.Yi@usdoj.gov Alyssa.Lareau@usdoj.gov</p>	<p>Ellen Bowden McIntyre Rascoe S. Dean U.S. Attorney’s Office (Nashville) 719 Church Street Suite 3300 Nashville, TN 37203 (615) 736-2125 (615) 401-6626 (fax) ellen.bowden2@usdoj.gov rascoe.dean@usdoj.gov</p>

s/ Stella Yarbrough  
Stella Yarbrough, BPR No. 033637  
ACLU Foundation of Tennessee  
P.O. Box 120160  
Nashville, TN 37212  
Tel.: 615-320-7142  
syarbrough@aclu-tn.org

# Exhibit A



**STATE OF TENNESSEE  
OFFICE OF ATTORNEY GENERAL AND REPORTER**

**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER )  
HEALTH and affiliated entities or )  
providers ) CIVIL INVESTIGATIVE DEMAND  
)**

IN LITIGATION OR CONTEMPLATED LITIGATION PURSUANT TO  
TENN. CODE ANN. §§ 71-5-181 TO -185

TO: VUMC Center for Transgender Health  
7060-B Highway 70 South  
Nashville, TN

This Civil Investigative Demand (“CID”) is to investigate possible violations of the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 to -185. Pursuant to Tenn. Code Ann. § 8-6-401, there is reasonable cause to indicate the State of Tennessee will be a party litigant.

This CID is issued pursuant to Tenn. Code Ann. §§ 8-6-401 to -408 and is subject to enforcement and possible sanctions upon failure to comply. In accordance with Tenn. Code Ann. § 8-6-407, all testimony or materials obtained by the Attorney General pursuant to this CID are confidential and shall not be publicly divulged by the Office of the Attorney General and Reporter except in the discharge of the duties of the office or in legal proceedings in which the state is a party.

Disclosure of protected health information under this CID is permitted in response to legitimate law enforcement inquiry pursuant to 45 C.F.R §§ 164.103 and 164.512(f).

PLEASE TAKE NOTICE that you are hereby commanded to produce all documents requested in Attachment B to this CID at the offices of the State of Tennessee Attorney General and Reporter, John Sevier Building, 500 Dr. Martin L. King, Jr. Blvd. North, Nashville, TN 37243, or any other place designated by the Attorney General and Reporter, no later than fifteen calendar days after receipt of this CID.

This CID should include the following attachments:

- CID Attachment A: Instructions and Definitions
- CID Attachment B: Requested Documents
- CID Attachment C: Certification and Verification Affidavit
- CID Confidential Attachment: List of Patients

If this CID is missing any of the above listed attachments, or if you have any questions regarding the scope, meaning or intent of this CID, please contact Tony Hullender at (423) 634-6025.

ISSUED BY Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, in Nashville, Tennessee, on this, the 2<sup>nd</sup> day of Nov, 2022.



---

JONATHAN SKRMETTI  
Attorney General and Reporter



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**DESIGNATION OF REPRESENTATIVES  
FOR THE PURPOSE OF ISSUING OR SERVING  
A CIVIL INVESTIGATIVE DEMAND**

I, Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, hereby designate Tony Hullender as my authorized agent and representative for the purpose of giving oath, taking testimony under oath, inspecting and copying documents, and otherwise performing whatever acts are necessary and proper concerning:

IN THE MATTER OF: The investigation of Vanderbilt University Medical Clinic for Transgender Health

Further, I designate Marian Schmidt, Tristina Craft and any law enforcement officer as agent(s) for the purpose of serving whatever demands are necessary in this investigation.

This, the 2<sup>nd</sup> day of Nov, 2022.

\_\_\_\_\_  
JONATHAN SKRMETTI  
Attorney General and Reporter



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILY UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT A**

**INSTRUCTIONS AND DEFINITIONS FOR THE PRODUCTION OF DOCUMENTS**

All documents must be provided in compliance with the following:

1. All responses to this CID shall be sent or delivered by hand-delivery, a nationally recognized delivery service, or in a mutually agreeable electronic format to:

Tony Hullender (423) 634-6025  
Senior Assistant Attorney General  
Civil Medicaid Fraud  
Office of Tennessee Attorney General  
100 Martin Luther King Blvd.  
Chattanooga, TN 37402

**Responses to this CID are not complete or valid without the return of the Certification and Verification Affidavit (CID Attachment C), executed under oath in the presence of a notary.**

2. The terms of this CID, including any deadlines, may not be modified except by express written agreement by the Senior Assistant Attorney General named in Instruction #1. Additionally, any questions regarding these forms, the scope of any request, any instruction or any definition shall be directed to the same Deputy Attorney General.
3. If any document requested was previously in your possession, custody, or control but is no longer in your possession, custody or control, or no longer exists, state for each such document:
  - (a) the type of document;

- (b) whether it is missing, lost, has been destroyed or has been transferred to the possession, custody, or control of other persons;
  - (c) the circumstances surrounding and the authorization for, the disposition described in the (b) above;
  - (d) the dates or approximate date of the disposition described in (b) above;
  - (e) the identity of all persons having knowledge of the circumstances described in (c) above; and
  - (f) the identity of all persons having knowledge of the document's contents
4. With respect to each document produced, identify the person producing the document.
  5. If you withhold any document on claim of privilege or other protection recognized by applicable law, you must provide a privilege log describing the documents in detail and stating the privilege, the basis of the privilege, and identify the documents to which the privilege attaches. Failure to provide an appropriate log will be deemed a waiver of the claimed privilege or protection. All documents withheld on claim of privilege or other protection remain subject to the preservation obligations described in paragraph 9 below.
  6. All uses of the conjunctive should be interpreted as including the disjunctive and vice versa in order to bring within the scope of this CID any information or documents that might otherwise be construed as outside of its scope.
  7. Words in the singular should be read to include the plural and vice versa.
  8. Each document request contemplates production of the entire document without abbreviation, deletion, or redaction.
  9. If you have a document retention or destruction program, you are asked to suspend it immediately. Regardless of whether you have a document retention or destruction program, you should take precautions to ensure that relevant information, in both hard copy and electronic form, is not destroyed or altered, whether by operation of routine document retention or destruction policies or otherwise. These measures should be applied to and include information that is processed and stored electronically, including active data, archival data, and backup data; to the extent data available in these forms is responsive to this CID.
  10. Copies may be submitted in lieu of originals as long as the person and/or entity named in this CID indicates that the documents are copies, the location of the originals, and the reason for the substitution of copies. All originals must be retained as set forth in the Certification and Verification Affidavit. Additionally, you must sign the Certification and Verification Affidavit, agreeing that the documents are authentic for the purposes of Tennessee law.
  11. The Confidential Attachment to this CID contains individually identifiable health information known as Protected Health Information ("PHI"), the disclosure of which is governed by the

Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. 104-191, and the HIPAA Privacy Rule, 45 CFR §§ 160 and 164. The PHI contained in the Confidential Attachment shall be handled as required by the HIPAA Privacy Rule, shall only be used for purposes of this CID, and may only be disclosed to VUMC’s counsel, and their respective employees and support personnel.

12. “Vanderbilt University Medical Clinic for Transgender Health” or “VUMC” refers to Vanderbilt University Medical Center and its Clinic for Transgender Health and its Vanderbilt Pediatric & Adolescent Transgender Health division, as well as any affiliated entity, or any entity sharing ownership and/or management with VUMC, or any affiliated entities or entities otherwise providing medical care or healthcare services to TennCare patients.
13. “Document” or “Documents” means any written, printed, typed, electronically produced or graphic matter of any kind or nature however produced or reproduced, currently in your possession, custody, or control, including any writings, drawings, graphs, charts, photographs, sound recordings, images, phono-records, and other data and data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.
14. “Identify” with respect to an individual means to state that person’s full name and position, and with respect to a company or entity to state the company’s or entity’s correct legal name and address.
15. “Relating” or “relating to” means to make a statement about, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject.
16. “Relevant time period” means **January 1, 2018, through the present.**
17. “TennCare” means the Bureau of TennCare and all TennCare Managed Care Organizations including, but not limited to, AmeriGroup, AmeriChoice, BlueCare, United Healthcare, and TennCare Select.
18. “You “and “your” includes VUMC and all parent and subsidiary entities and includes all of each entity’s officers, managers, employees, agents, board members, and other representative, including individuals or groups acting on each individual and entity’s behalf.



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT B**

**REQUESTED DOCUMENTS**

1. Produce medical records for the patients listed in the Confidential Attachment to this CID. Responsive documents should include, but not be limited to, intake forms, parental consent forms, patient charts, history and physical notes, assessments, referrals, treatment plans, medication logs, prescription information, progress notes, lab reports, x-rays, diagnostic tests, any other clinical records related to the provision of services to the listed patients and any treatment provided or diagnosis made by the health care providers.
2. For the dates of service listed in the Confidential Attachment to this CID, produce all superbills.



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER HEATH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT C**

**CERTIFICATION AND VERIFICATION AFFIDAVIT  
OF THE DESIGNATED RESPONSIBLE PERSON**

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn upon oath, depose and say as follows:

1) I am the person responsible for the supervision and/or the preparation and assembly of the documents, together with any and all appendices and attachments thereto, sought by the Tennessee Attorney General and Reporter in this Civil Investigative Demand (“CID”). These documents, appendices and attachments were prepared and assembled in accordance with the instructions and definitions contained in Attachment A, appended to the CID.

2) If the responses include copies of documents, attachments, and appendices in lieu of originals, the documents submitted are true and exact copies. Any such copies are authentic for purposes of Tennessee law. If the responses do include copies, I hereby agree to retain the originals under my care, custody, and control. I will not destroy or alter the originals without the express written consent of the Attorney General or his appointed designee.

3) I understand that my obligation to provide information pursuant to the above-referenced CID is continuing in nature and I shall forthwith notify the Attorney General, in writing, of any representations that have been made or that might have been made in accordance with the CID which require updating, correction, or modification, and will provide the Attorney General with any documents that I discover, create, or gain possession of that are responsive to this CID.

4) I hereby certify, upon personal knowledge and **under penalty of perjury pursuant to Tenn.Code Ann. §§ 39-16-702 and 39-16-703**, that the responses to this CID have been completed with true and accurate information and that the responses are in no way misleading or calculated to withhold information that is available to me and that is requested.

Affiant's Signature: \_\_\_\_\_

To be completed by Affiant:
Name: _____
Title: _____
Address: _____ _____ _____
Telephone Number: _____
Facsimile Number: _____



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**RETURN**

I affirmatively state that I have served the preceding Civil Investigative Demand by

\_\_\_\_\_ upon:

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on this, the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



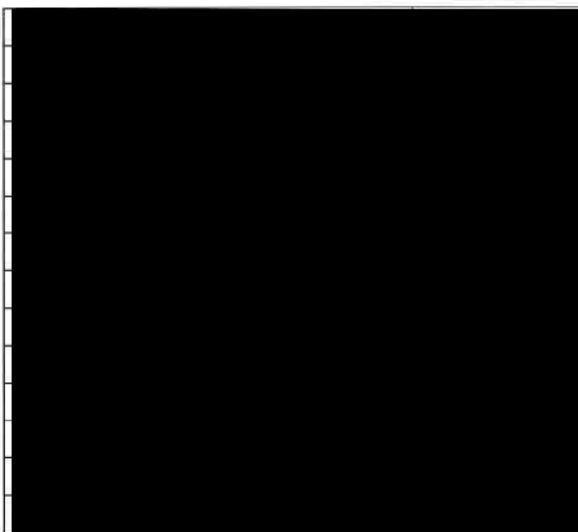
**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER YOUTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID CONFIDENTIAL ATTACHMENT**

<b>Recipient Full Name</b>	<b>Recipient DOB</b>	<b>Date of Service</b>
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present



	January 1, 2018 to present
	January 1, 2018 to present
January 1, 2018 to present	

\*IF APPLICABLE

# Exhibit B



STATE OF TENNESSEE  
OFFICE OF ATTORNEY GENERAL AND REPORTER

IN THE MATTER OF:

The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER )  
HEALTH and affiliated entities or )  
providers ) **CIVIL INVESTIGATIVE DEMAND**  
)

IN LITIGATION OR CONTEMPLATED LITIGATION PURSUANT TO  
TENN. CODE ANN. §§ 71-5-181 TO -185

TO: VUMC Center for Transgender Health  
7060-B Highway 70 South  
Nashville, TN

This Civil Investigative Demand ("CID") is to investigate possible violations of the Tennessee False Claims Act ("TFCA"), Tenn. Code Ann. § 4-18-101, *et seq.* Pursuant to Tenn. Code Ann. § 8-6-401, there is reasonable cause to indicate the State of Tennessee will be a party litigant.

This CID is issued pursuant to Tenn. Code Ann. §§ 8-6-401 to -408 and is subject to enforcement and possible sanctions upon failure to comply. In accordance with Tenn. Code Ann. § 8-6-407, all testimony or materials obtained by the Attorney General pursuant to this CID are confidential and shall not be publicly divulged by the Office of the Attorney General and Reporter except in the discharge of the duties of the office or in legal proceedings in which the state is a party.

Disclosure of protected health information (“PHI”) under this CID is permitted in response to a legitimate law enforcement inquiry pursuant to 45 C.F.R §§ 164.103 and 164.512(f).

PLEASE TAKE NOTICE that you are hereby commanded to produce all documents requested in Attachment B to this CID at the offices of the State of Tennessee Attorney General and Reporter, John Sevier Building, 500 Dr. Martin L. King, Jr. Blvd. North, Nashville, TN 37243, or any other place designated by the Attorney General and Reporter, no later than fifteen calendar days after receipt of this CID.

This CID should include the following attachments:

CID Attachment A: Instructions and Definitions  
CID Attachment B: Documents Requested  
CID Attachment C: Certification and Verification Affidavit  
CID Confidential Attachment: List of Patients

If this CID is missing any of the above listed attachments, or if you have any questions regarding the scope, meaning or intent of this CID, please contact Steven Griffin at (615) 741-9598.

ISSUED BY Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, in Nashville, Tennessee, on this, the 12 day of March, 2023.

  
\_\_\_\_\_  
JONATHAN SKRMETTI  
Attorney General and Reporter



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**DESIGNATION OF REPRESENTATIVES  
FOR THE PURPOSE OF ISSUING OR SERVING  
A CIVIL INVESTIGATIVE DEMAND**

I, Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, hereby designate Steven Griffin as my authorized agent and representative for the purpose of giving oath, taking testimony under oath, inspecting and copying documents, and otherwise performing whatever acts are necessary and proper concerning:

IN THE MATTER OF: The investigation of Vanderbilt University Medical Clinic for Transgender Health

Further, I designate Marian Schmidt, Tristina Craft, and any law enforcement officer as agent(s) for the purpose of serving whatever demands are necessary in this investigation.

This, the 14 day of March, 2023.

  
\_\_\_\_\_  
JONATHAN SKRMETTI  
Attorney General and Reporter



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT A**

**INSTRUCTIONS AND DEFINITIONS FOR THE PRODUCTION OF DOCUMENTS**

All documents must be provided in compliance with the following:

- 1. All responses to this CID shall be sent or delivered by hand-delivery, a nationally recognized delivery service, or in a mutually agreeable electronic format to:

Steven Griffin (615) 741-9598  
Assistant Attorney General  
Health Care Division  
Office of Tennessee Attorney General  
P.O. Box 20207  
Nashville, TN 37202

**Responses to this CID are not complete or valid without the return of the Certification and Verification Affidavit (CID Attachment C), executed under oath in the presence of a notary.**

- 2. The terms of this CID, including any deadlines, may not be modified except by express written agreement by the Assistant Attorney General named in Instruction #1. Additionally, any questions regarding these forms, the scope of any request, any instruction or any definition shall be directed to the same Deputy Attorney General.
- 3. If any document requested was previously in your possession, custody, or control but is no longer in your possession, custody, or control, or no longer exists, state for each such document:
  - (a) the type of document;

- (b) whether it is missing, lost, has been destroyed, or has been transferred to the possession, custody, or control of other persons;
  - (c) the circumstances surrounding and the authorization for, the disposition described in the (b) above;
  - (d) the dates or approximate date of the disposition described in (b) above;
  - (e) the identity of all persons having knowledge of the circumstances described in (c) above; and
  - (f) the identity of all persons having knowledge of the document's contents
4. With respect to each document produced, identify the person producing the document.
  5. If you withhold any document on claim of privilege or other protection recognized by applicable law, you must provide a privilege log describing the documents in detail and stating the privilege, the basis of the privilege, and identify the documents to which the privilege attaches. Failure to provide an appropriate log will be deemed a waiver of the claimed privilege or protection. All documents withheld on claim of privilege or other protection remain subject to the preservation obligations described in paragraph 9 below.
  6. All uses of the conjunctive should be interpreted as including the disjunctive and vice versa in order to bring within the scope of this CID any information or documents that might otherwise be construed as outside of its scope.
  7. Words in the singular should be read to include the plural and vice versa.
  8. Each document request contemplates production of the entire document without abbreviation, deletion, or redaction.
  9. If you have a document retention or destruction program, you are asked to suspend it immediately. Regardless of whether you have a document retention or destruction program, you should take precautions to ensure that relevant information, in both hard copy and electronic form, is not destroyed or altered, whether by operation of routine document retention or destruction policies or otherwise. These measures should be applied to and include information that is processed and stored electronically, including active data, archival data, and backup data; to the extent data available in these forms is responsive to this CID.
  10. Copies may be submitted in lieu of originals as long as the person and/or entity named in this CID indicates that the documents are copies, the location of the originals, and the reason for the substitution of copies. All originals must be retained as set forth in the Certification and Verification Affidavit. Additionally, you must sign the Certification and Verification Affidavit, agreeing that the documents are authentic for the purposes of Tennessee law.
  11. The Confidential Attachment to this CID contains individually identifiable health information known as Protected Health Information ("PHI"), the disclosure of which is governed by the

Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. 104-191, and the HIPAA Privacy Rule, 45 CFR §§ 160 and 164. The PHI contained in the Confidential Attachment shall be handled as required by the HIPAA Privacy Rule, shall only be used for purposes of this CID, and may only be disclosed to VUMC’s counsel, and their respective employees and support personnel.

12. “Vanderbilt University Medical Clinic for Transgender Health” or “VUMC” refers to Vanderbilt University Medical Center and its Clinic for Transgender Health and its Vanderbilt Pediatric & Adolescent Transgender Health division, as well as any affiliated entity, or any entity sharing ownership and/or management with VUMC, or any affiliated entities or entities otherwise providing medical care or healthcare services to patients enrolled in the State of Tennessee Comprehensive Medical and Hospitalization Program (“State Health Plan”).
13. “Document” or “Documents” means any written, printed, typed, electronically produced or graphic matter of any kind or nature however produced or reproduced, currently in your possession, custody, or control, including any writings, drawings, graphs, charts, photographs, sound recordings, images, phono-records, and other data and data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.
14. “Identify” with respect to an individual means to state that person’s full name and position, and with respect to a company or entity to state the company’s or entity’s correct legal name and address.
15. “Relating” or “relating to” means to make a statement about, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject.
16. “Relevant time period” means **January 1, 2018, through the present.**
17. “State Health Plan” means the State of Tennessee Comprehensive Medical and Hospitalization Program, including specific group plans within the larger comprehensive plan, such as the State Plan, the Local Education Plan, or the Local Government Plan, and all of their claims administrators, including, but not limited to, BlueCross BlueShield of Tennessee and Cigna.
18. “You” and “your” includes VUMC and all parent and subsidiary entities and includes all of each entity’s officers, managers, employees, agents, board members, and other representative, including individuals or groups acting on each individual and entity’s behalf.

**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT B**

**REQUESTED DOCUMENTS**

1. Produce medical records for the patients listed in the Confidential Attachment to this CID. Responsive documents should include, but not be limited to, intake forms, parental consent forms, patient charts, history and physical notes, assessments, referrals, treatment plans, medication logs, prescription information, progress notes, lab reports, x-rays, diagnostic tests, any other clinical records related to the provision of services to the listed patients and any treatment provided or diagnosis made by the health care providers.
2. For the dates of service listed in the Confidential Attachment to this CID, produce all superbills.
3. Produce all communications—including emails and training materials—which explain guidelines, policy and procedures, coverage limitations, and recommendations on the submission of claims to the State of Tennessee Health Plan and/or its claims administrators by VUMC Center for Transgender Health providers or VUMC providers treating VUMC Center for Transgender Health patients for all services related to transgender health, including but not limited to:
  - a. Laboratory testing
  - b. Hormone Therapy
  - c. Supprelin Implants
  - d. Leuprolide Acetate injections
  - e. Mastectomies
  - f. Hysterectomies
  - g. Orchiectomies
  - h. Tracheal Surgery
  - i. Rhinoplasty
  - j. Speech Pathology

- k. Vaginoplasty
- l. Cystourethroscopy

- 4 Provide any documents related to medical record abstraction data, *i.e.*, DRG, ICD 10 diagnosis codes, etc., for each facility claim submission including any physician or other staff communications regarding an appropriate code selection for services rendered to all patients listed in the Confidential Attachment to this CID.
- 5 Provide any and all documentation related to any claim denials or requests for reconsiderations for payments made on behalf of VUMC for all patients listed in the Confidential Attachment to the CID.



IN THE MATTER OF:

The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER HEATH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )

CID ATTACHMENT C

**CERTIFICATION AND VERIFICATION AFFIDAVIT  
OF THE DESIGNATED RESPONSIBLE PERSON**

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn upon oath, depose  
and say as follows:

1) I am the person responsible for the supervision and/or the preparation and assembly of the documents, together with any and all appendices and attachments thereto, sought by the Tennessee Attorney General and Reporter in this Civil Investigative Demand (“CID”). These documents, appendices and attachments were prepared and assembled in accordance with the instructions and definitions contained in Attachment A, appended to the CID.

2) If the responses include copies of documents, attachments, and appendices in lieu of originals, the documents submitted are true and exact copies. Any such copies are authentic for purposes of Tennessee law. If the responses do include copies, I hereby agree to retain the originals under my care, custody, and control. I will not destroy or alter the originals without the express written consent of the Attorney General or his appointed designee.

3) I understand that my obligation to provide information pursuant to the above-referenced CID is continuing in nature and I shall forthwith notify the Attorney General, in writing, of any representations that have been made or that might have been made in accordance with the CID which require updating, correction, or modification, and will provide the Attorney General with any documents that I discover, create, or gain possession of that are responsive to this CID.

4) I hereby certify, upon personal knowledge and **under penalty of perjury pursuant**

to **Tenn.Code Ann. §§ 39-16-702 and 39-16-703**, that the responses to this CID have been completed with true and accurate information and that the responses are in no way misleading or calculated to withhold information that is available to me and that is requested.

Affiant's Signature: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

To be completed by Affiant:
Name: _____
Title: _____
Address: _____ _____ _____
Telephone Number: _____
Facsimile Number: _____



**IN THE MATTER OF:**

<b>The investigation of</b>	)	
<b>VANDERBILT UNIVERSITY MEDICAL</b>	)	
<b>CENTER FOR TRANSGENDER</b>	)	<b>CIVIL INVESTIGATIVE DEMAND</b>
<b>and affiliated entities or providers</b>	)	

**RETURN**

I affirmatively state that I have served the preceding Civil Investigative Demand by

\_\_\_\_\_ upon:

TO: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

on this, the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



**IN THE MATTER OF:**

The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER YOUTH ) **CIVIL INVESTIGATIVE DEMAND**  
and affiliated entities or providers )

**CID CONFIDENTIAL ATTACHMENT**

<b>Recipient Name</b>	<b>Recipient DOB</b>	<b>Dates of Service</b>
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present
		January 1, 2018 to present





# Exhibit C



STATE OF TENNESSEE  
OFFICE OF ATTORNEY GENERAL AND REPORTER

IN THE MATTER OF:

The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER )  
HEALTH and affiliated entities or )  
providers ) CIVIL INVESTIGATIVE DEMAND )

IN LITIGATION OR CONTEMPLATED LITIGATION PURSUANT TO  
TENN. CODE ANN. §§ 71-5-181 TO -185

TO: VUMC Center for Transgender Health  
7060-B Highway 70 South  
Nashville, TN

This Civil Investigative Demand (“CID”) is to investigate possible violations of the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 to -185. Pursuant to Tenn. Code Ann. § 8-6-401, there is reasonable cause to indicate the State of Tennessee will be a party litigant.

This CID is issued pursuant to Tenn. Code Ann. §§ 8-6-401 to -408 and is subject to enforcement and possible sanctions upon failure to comply. In accordance with Tenn. Code Ann. § 8-6-407, all testimony or materials obtained by the Attorney General pursuant to this CID are confidential and shall not be publicly divulged by the Office of the Attorney General and Reporter except in the discharge of the duties of the office or in legal proceedings in which the state is a party.

Disclosure of protected health information under this CID is permitted in response to

legitimate law enforcement inquiry pursuant to 45 C.F.R §§ 164.103 and 164.512(f).

PLEASE TAKE NOTICE that you are hereby commanded to produce all documents requested in Attachment B to this CID at the offices of the State of Tennessee Attorney General and Reporter, John Sevier Building, 500 Dr. Martin L. King, Jr. Blvd. North, Nashville, TN 37243, or any other place designated by the Attorney General and Reporter, no later than fifteen calendar days after receipt of this CID.

This CID should include the following attachments:

CID Attachment A: Instructions and Definitions

CID Attachment B: Requested Documents

CID Attachment C: Certification and Verification Affidavit

If this CID is missing any of the above listed attachments, or if you have any questions regarding the scope, meaning or intent of this CID, please contact Tony Hullender at (423) 634-6025.

ISSUED BY Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, in Nashville, Tennessee, on this, the 14 day of March, 2023.

  
\_\_\_\_\_  
JONATHAN SKRMETTI  
Attorney General and Reporter



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**DESIGNATION OF REPRESENTATIVES  
FOR THE PURPOSE OF ISSUING OR SERVING  
A CIVIL INVESTIGATIVE DEMAND**

I, Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, hereby designate Tony Hullender as my authorized agent and representative for the purpose of giving oath, taking testimony under oath, inspecting, and copying documents, and otherwise performing whatever acts are necessary and proper concerning:

IN THE MATTER OF: The investigation of Vanderbilt University Medical Clinic for Transgender Health

Further, I designate Marian Schmidt, Tristina Craft, and any law enforcement officer as agent(s) for the purpose of serving whatever demands are necessary in this investigation.

This, the 14 day of March, 2023.

  
JONATHAN SKRMETTI  
Attorney General and Reporter



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILY UNIVERSITY MEDICAL )  
CLINIC FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT A**

**INSTRUCTIONS AND DEFINITIONS FOR THE PRODUCTION OF DOCUMENTS**

All documents must be provided in compliance with the following:

1. All responses to this CID shall be sent or delivered by hand-delivery, a nationally recognized delivery service, or in a mutually agreeable electronic format to:

Tony Hullender (423) 634-6025  
Senior Assistant Attorney General  
Civil Medicaid Fraud  
Office of Tennessee Attorney General  
100 Martin Luther King Blvd.  
Chattanooga, TN 37402

**Responses to this CID are not complete or valid without the return of the Certification and Verification Affidavit (CID Attachment C), executed under oath in the presence of a notary.**

2. The terms of this CID, including any deadlines, may not be modified except by express written agreement by the Senior Assistant Attorney General named in Instruction #1. Additionally, any questions regarding these forms, the scope of any request, any instruction or any definition shall be directed to the same Deputy Attorney General.
3. If any document requested was previously in your possession, custody, or control but is no longer in your possession, custody, or control, or no longer exists, state for each such document:
  - (a) the type of document;

- (b) whether it is missing, lost, has been destroyed or has been transferred to the possession, custody, or control of other persons;
  - (c) the circumstances surrounding and the authorization for, the disposition described in the (b) above;
  - (d) the dates or approximate date of the disposition described in (b) above;
  - (e) the identity of all persons having knowledge of the circumstances described in (c) above; and
  - (f) the identity of all persons having knowledge of the document's contents
4. With respect to each document produced, identify the person producing the document.
  5. If you withhold any document on claim of privilege or other protection recognized by applicable law, you must provide a privilege log describing the documents in detail and stating the privilege, the basis of the privilege, and identify the documents to which the privilege attaches. Failure to provide an appropriate log will be deemed a waiver of the claimed privilege or protection. All documents withheld on claim of privilege or other protection remain subject to the preservation obligations described in paragraph 9 below.
  6. All uses of the conjunctive should be interpreted as including the disjunctive and vice versa in order to bring within the scope of this CID any information or documents that might otherwise be construed as outside of its scope.
  7. Words in the singular should be read to include the plural and vice versa.
  8. Each document request contemplates production of the entire document without abbreviation, deletion, or redaction.
  9. If you have a document retention or destruction program, you are asked to suspend it immediately. Regardless of whether you have a document retention or destruction program, you should take precautions to ensure that relevant information, in both hard copy and electronic form, is not destroyed or altered, whether by operation of routine document retention or destruction policies or otherwise. These measures should be applied to and include information that is processed and stored electronically, including active data, archival data, and backup data; to the extent data available in these forms is responsive to this CID.
  10. Copies may be submitted in lieu of originals as long as the person and/or entity named in this CID indicates that the documents are copies, the location of the originals, and the reason for the substitution of copies. All originals must be retained as set forth in the Certification and Verification Affidavit. Additionally, you must sign the Certification and Verification Affidavit, agreeing that the documents are authentic for the purposes of Tennessee law.
  11. The Confidential Attachment to this CID contains individually identifiable health information known as Protected Health Information ("PHI"), the disclosure of which is governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191,

and the HIPAA Privacy Rule, 45 CFR §§ 160 and 164. The PHI contained in the Confidential Attachment shall be handled as required by the HIPAA Privacy Rule, shall only be used for purposes of this CID, and may only be disclosed to VUMC's counsel, and their respective employees and support personnel.

12. "Vanderbilt University Medical Clinic for Transgender Health" or "VUMC" refers to Vanderbilt University Medical Center and its Clinic for Transgender Health and its Vanderbilt Pediatric & Adolescent Transgender Health division, as well as any affiliated entity, or any entity sharing ownership and/or management with VUMC, or any affiliated entities or entities otherwise providing medical care or healthcare services to TennCare patients.
13. "Document" or "Documents" means any written, printed, typed, electronically produced or graphic matter of any kind or nature however produced or reproduced, currently in your possession, custody, or control, including any writings, drawings, graphs, charts, photographs, sound recordings, images, phono-records, and other data and data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.
14. "Identify" with respect to an individual means to state that person's full name and position, and with respect to a company or entity to state the company's or entity's correct legal name and address.
15. "Relating" or "relating to" means to make a statement about, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject.
16. "Relevant time period" means **January 1, 2015, through the present.**
17. "TennCare" means the Bureau of TennCare and all TennCare Managed Care Organizations including, but not limited to, AmeriGroup, AmeriChoice, BlueCare, United Healthcare, and TennCare Select.
18. "You" and "your" includes VUMC and all parent and subsidiary entities and includes all of each entity's officers, managers, employees, agents, board members, and other representative, including individuals or groups acting on each individual and entity's behalf.

**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER HEALTH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT B**

**REQUESTED DOCUMENTS**

1. Produce all employment contracts; compensation agreements and Curriculum Vitae for all physicians who rendered services at the Vanderbilt University Medical Center (“VUMC”) Center for Transgender Health during the relevant time period.
2. Produce all Internal Revenue Service Forms, including but not limited to W-2 and 1099 tax forms issued by VUMC between 1/1/2015 through the date of production, to all physicians who rendered services at the VUMC Center For Transgender Health during the relevant period. This shall include any 1099 forms issued to physician groups that VUMC and VUMC Center For Transgender Health providers are affiliated with.
3. Produce all Internal Revenue Service Forms, including but not limited to W-2 and 1099 tax forms issued by VUMC between 1/1/16 through the date of production, to all physicians who rendered services on behalf of VUMC Center For Transgender Health patients who received gender affirming therapy during the relevant time period. This shall include any 1099 forms issued to physician groups that VUMC and VUMC Center For Transgender Health providers are affiliated with.
4. Produce all documents—including emails and training materials—which explain guidelines, policy and procedures, coverage limitations, and recommendations on the submission of claims to TennCare or commercial insurance carriers by VUMC Center for Transgender Health providers or VUMC providers treating VUMC Center for Transgender Health patients for all services related to transgender health, including but not limited to:
  - a. Laboratory testing
  - b. Hormone Therapy
  - c. Supprelin Implants
  - d. Leuprolide Acetate injections

- e. Mastectomies
  - f. Hysterectomies
  - g. Orchiectomies
  - h. Tracheal Surgery
  - i. Cystourethroscopy
  - j. Vaginoplasty
  - k. Rhinoplasty
  - l. Speech Pathology
5. Produce the names of any and all individuals who were referred to the VUMC Center for Transgender Health for health care services during the relevant time period, but who did not receive hormone therapy or other transgender health services from the VUMC Center for Transgender Health, other than an initial office visit.
  6. Produce all documents—including emails sent and received by VUMC Center for Transgender Health—which contain information relating to an insufficient mental health diagnosis for services related to transgender health and gender affirming therapy.
  7. Produce any and all survey submissions received via Vanderbilt Mini Pro Gender Affirming Surgery (VMP-G) link by VUMC Department of Plastic Surgery from patients who were evaluated for or underwent gender affirming surgery.
  8. Produce all documents—including emails and training materials—relating to the VUMC Trans Buddy program, from January 1, 2014, to present.
  9. Produce all employment contracts, compensation agreements, and Curriculum Vitae of any person who served as a volunteer in the Trans Buddy program from January 1, 2014, to present.
  10. Produce all communications to and from the e-mail address [lgbtq.health@vumc.org](mailto:lgbtq.health@vumc.org) from January 1, 2014, to present.
  11. Produce all communications between Dr. Melissa Ciperski and anyone working in the VUMC billing department regarding or related to the billing of transgender health services during the relevant time period.
  12. Produce all communications between Dr. Melissa Ciperski and anyone working at Centerstone regarding or related to a potential gender dysphoria diagnosis of a person receiving mental health treatment at Centerstone during the relevant time period.
  13. Produce all communications between Dr. Shayne S. Taylor and anyone working in the VUMC billing department regarding or related to the billing of transgender health services during the relevant time period.



14. Produce all communications and anyone working at related to a potential gender person receiving mental health during the relevant time

between Dr. Shayne S. Taylor Centerstone regarding or dysphoria diagnosis of a treatment at Centerstone period.

15. Produce a list of all individuals who were employed by VUMC and whose primary location of employment was the VUMC Center for Transgender Health during the relevant time period. For everyone, include their dates of employment.

16. Produce a list of all providers—including their respective departments—who received referrals to evaluate and/or provide care to VUMC Transgender Health patients for gender affirmation care, including but not limited to:

- a. OBGYN
- b. Urology
- c. Plastic Surgery
- d. Mental Health Services
- e. Speech Therapy

17. Provide any documents related to medical record abstraction data, *i.e.* DRG, ICD 10 diagnosis codes, etc., for each facility claim submission, including any physician or other staff communications regarding an appropriate code selection for services rendered to each patient listed in the Confidential Attachment to the CID dated November 2, 2022.

18. Provide any and all documentation related to any claim denials or requests for reconsiderations for payments made on behalf of VUMC for each patient listed in the Confidential Attachment to the CID dated November 2, 2022.





**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER HEATH ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**CID ATTACHMENT C**

**CERTIFICATION AND VERIFICATION AFFIDAVIT  
OF THE DESIGNATED RESPONSIBLE PERSON**

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn upon oath, depose  
and say as follows:

- 1) I am the person responsible for the supervision and/or the preparation and assembly of the documents, together with any and all appendices and attachments thereto, sought by the Tennessee Attorney General and Reporter in this Civil Investigative Demand (“CID”). These documents, appendices and attachments were prepared and assembled in accordance with the instructions and definitions contained in Attachment A, appended to the CID.
- 2) If the responses include copies of documents, attachments, and appendices in lieu of originals, the documents submitted are true and exact copies. Any such copies are authentic for purposes of Tennessee law. If the responses do include copies, I hereby agree to retain the originals under my care, custody, and control. I will not destroy or alter the originals without the express written consent of the Attorney General or his appointed designee.
- 3) I understand that my obligation to provide information pursuant to the above-referenced CID is continuing in nature and I shall forthwith notify the Attorney General, in writing, of any representations that have been made or that might have been made in accordance with the CID which require updating, correction, or modification, and will provide the Attorney General with any documents that I discover, create, or gain possession of that are responsive to this CID.

4) I hereby certify, upon personal knowledge and **under penalty of perjury pursuant to Tenn.Code Ann. §§ 39-16-702 and 39-16-703**, that the responses to this CID have been completed with true and accurate information and that the responses are in no way misleading or calculated to withhold information that is available to me and that is requested.

Affiant's Signature: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

To be completed by Affiant:
Name: _____
Title: _____
Address: _____ _____ _____
Telephone Number: _____
Facsimile Number: _____



**IN THE MATTER OF:**

**The investigation of )  
VANDERBILT UNIVERSITY MEDICAL )  
CENTER FOR TRANSGENDER ) CIVIL INVESTIGATIVE DEMAND  
and affiliated entities or providers )**

**RETURN**

I affirmatively state that I have served the preceding Civil Investigative Demand by

\_\_\_\_\_ upon:

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on this, the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# Exhibit D

1                                   IN THE UNITED STATES DISTRICT COURT  
2                                   EASTERN DISTRICT OF ARKANSAS  
3                                   CENTRAL DIVISION

4 DYLAN BRANDT, et al.,

5                                   Plaintiffs,

6 v.

No. 4:21CV00450 JM

7                                   November 28, 2022  
8                                   Little Rock, Arkansas  
9                                   8:57 AM

10 LESLIE RUTLEDGE, et al.,

11                                   Defendants.

12                                   **TRANSCRIPT OF BENCH TRIAL - VOLUME 5**  
13                                   BEFORE THE HONORABLE JAMES M. MOODY, JR.,  
14                                   UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 On Behalf of the Plaintiffs:

17                   MR. CHASE STRANGIO, Attorney at Law  
18                   MS. LESLIE COOPER, Attorney at Law  
19                   MR. JAMES D. ESSEKS, Attorney at Law  
20                   American Civil Liberties Union  
21                   125 Broad Street, Suite 1800  
22                   New York, New York 10004-2400

23                   MS. BREEAN WALAS, Attorney at Law  
24                   Walas Law Firm, PLLC  
25                   Post Office Box 4591  
                    Bozeman, Montana 59772

                    MR. AVIV S. HALPERN, Attorney at Law  
                    MS. LAURA KABLER OSWELL, Attorney at Law  
                    Sullivan & Cromwell, LLP  
                    1870 Embarcadero Road  
                    Palo Alto, California 94303

Appearances continuing...

1

2

APPEARANCES CONTINUED:

3

On Behalf of the Plaintiffs:

4

MR. ARUN BODAPATI, Attorney at Law  
MS. LAUREN M. GOLDSMITH, Attorney at Law  
Sullivan & Cromwell, LLP  
125 Broad Street, Suite 2424  
New York, NY 10004-2498

5

6

7

MR. DANIEL J. RICHARDSON, Attorney at Law  
Sullivan & Cromwell LLP  
1700 New York Avenue  
Washington, DC 20006

8

9

10

MR. GARY L. SULLIVAN, Attorney at Law  
ACLU of Arkansas  
Legal Division  
904 West 2nd Street, Suite One  
Little Rock, AR 72201

11

12

13

MS. SHARON ELIZABETH ECHOLS, Attorney at Law  
Gill Ragon Owen P.A.  
425 West Capitol Avenue  
Suite 3800  
Little Rock, AR 72201-2413

14

15

16

On Behalf of the Defendants:

17

MR. DYLAN JACOBS, Attorney at Law  
MR. MICHAEL CANTRELL, Attorney at Law  
MS. AMANDA LAND, Attorney at Law  
MS. HANNAH TEMPLIN, Attorney at Law  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201

18

19

20

21

22

23

*Proceedings reported by machine stenography. Transcript prepared utilizing computer-aided transcription.*

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**INDEX - VOLUME 5 (11/28/22)**

<b>WITNESSES FOR THE DEFENDANTS:</b>	<b>Direct</b>	<b>Cross</b>	<b>Redirect</b>	<b>Recross</b>
STEPHEN LEVINE	781	885	955	959

1 (Proceedings continuing in open court at 8:57 AM.)

2 THE COURT: Are y'all ready?

3 MR. JACOBS: Your Honor, Defendants are ready to  
4 call, I guess, our next witness, not our first witness. One  
5 thing I wanted to check in on. So Dr. Regnerus is prepared to  
6 testify remotely tomorrow, and I wanted to ask at what time the  
7 Court could begin tomorrow with the hope that it could begin I  
8 guess as early as we can make it happen. Because Dr. Regnerus  
9 is testifying late in the evening from where he's located, so  
10 just to avoid him having to run into testifying in the wee  
11 hours of the early morning, if we could start as early as we  
12 can. I recognize that --

13 THE COURT: I expect this will likely make everybody  
14 cringe, but courthouse opens at 7:30.

15 MR. JACOBS: Could we -- I think he'd be available  
16 to start at like 8:00.

17 THE COURT: That's fine. That would give everybody  
18 time to get in the building and get settled and we could make  
19 sure stuff is up.

20 MR. JACOBS: Okay. That's all the preliminary  
21 matters that we have.

22 THE COURT: So with an asterisk, you've got my  
23 entire week. What are your thoughts on how long you're going  
24 to take?

25 MR. JACOBS: Our witnesses will be done Thursday and

1 we'll rest on Thursday.

2 THE COURT: I've got two sentencings, one at 1:00  
3 and one at 2:00 on Wednesday. Those usually last 30 minutes,  
4 so we're probably going to work a little later into lunch on  
5 Wednesday.

6 MR. JACOBS: That won't be a problem, Your Honor.

7 THE COURT: And then it looks like I've got a lunch  
8 hearing on the 1st. Okay. That's what is on my schedule other  
9 than you guys. So are we ready to jump back in?

10 MR. JACOBS: We're ready, Your Honor. Defendants  
11 will call Dr. Stephen Levine.

12 THE COURT: Sir, if you could come on the far side  
13 of that silver rail. Good morning.

14 **STEPHEN LEVINE, DEFENDANTS' WITNESS, DULY SWORN**

15 **DIRECT EXAMINATION**

16 BY MR. CANTRELL:

17 Q Good morning, Dr. Levine.

18 A Good morning.

19 Q Can you state your name and spell it for the record.

20 A Stephen, S-t-e-p-h-e-n, Barrett, B-a-r-r-e-t-t, Levine,  
21 L-e-v-i-n-e.

22 Q Thank you. Dr. Levine, can you tell us what academic and  
23 clinical positions that you currently hold?

24 A I am clinical professor of psychiatry at Case Western  
25 Reserve University. I'm a staff psychiatrist in a group

1 Q. And switching back to adults, you've written letters  
2 of authorization for adults seeking gender-affirming  
3 surgeries. Is that correct?

4 A. I have.

5 Q. And you've done that as recently as the past two  
6 years.

7 A. I have.

8 Q. And you've also written letters authorizing hormone  
9 therapy for adult patients with gender dysphoria.

10 A. I have.

11 Q. And these are letters they can take to the  
12 endocrinologist. Is that right?

13 A. Yes.

14 Q. And you have written such letters approving hormone  
15 therapy for minors under 18 in a few cases within the past  
16 five years, haven't you?

17 A. I don't think in the past five years.

18 Q. Okay. Can we turn to Dr. Levine's deposition, page  
19 78?

20 I would like you to read along with me starting on  
21 line 3. So between you and Mrs. Novak, there have been a  
22 handful of cases in the past, say, five years where you  
23 have approved hormone therapy for minor. Is that right?

24 These are particularly fraught difficult  
25 circumstances, yes.

1 A. Yes.

2 Q. Mrs. Novak is someone who works in your medical  
3 practice -- or your psychiatry practice?

4 A. She's a younger colleague of mine.

5 Q. That was your testimony.

6 A. I'm sorry?

7 Q. That was your testimony that I read correctly.

8 A. Yes. I'm just not sure today whether it's five years  
9 or six years now. And in general, there have been a few  
10 very fraught cases where we felt that this is a very  
11 reasonable thing given the severity, the complexity of the  
12 case, and that we would -- we, along with parents, would  
13 hold our breath that this would be of help.

14 Q. And you have cosigned letters for hormone therapy for  
15 minors written by Mrs. Novak, again, approving some minors  
16 for hormone therapy. Is that right?

17 A. Yes, but this has not occurred very recently, Ms.  
18 Cooper.

19 Q. You would not write a letter supporting hormone  
20 therapy for a minor if you did not believe the patient had  
21 gender dysphoria, correct?

22 A. Correct.

23 Q. And you would not write a letter approving a minor  
24 for hormone therapy without first determining that they  
25 had a longstanding, stable gender identity. Is that

1 much more cautious. We will give adolescents hormones,  
2 but not as quickly as the Standards of Care would like.

3 That was your testimony in Keohane.

4 A. I have to say yes.

5 Q. And just to clarify, the Standards of Care you're  
6 referring to in the 7th Edition, is that the WPATH's  
7 Standards of Care 7th Edition?

8 A. Yes.

9 Q. When you were deposed in May of this year in this  
10 case, the Brandt case, you testified, did you not, that  
11 going forward you have not made a decision to no longer  
12 write letters approving hormone therapy for patients under  
13 18 years of age.

14 A. Indulge me a minute. In the previous thing you put  
15 up, my deposition of adolescents was not the definition I  
16 gave to the Judge earlier this morning. It was my  
17 definition of an adolescent is somebody 19 years of age.  
18 And so if you reread that, it would include 18-year-olds  
19 and 19-year-olds.

20 So would you repeat the last question you asked me?

21 Q. Sure. When you were deposed this past May in this  
22 case in Arkansas, you testified that, going forward, you  
23 have not made a decision to categorically not write  
24 letters approving hormone therapy for patients under 18,  
25 correct?

1 A. I don't remember saying that, but if you have that, I  
2 trust you.

3 Q. Yeah. I think we want to put that in the record.  
4 Can we look at deposition page 227?

5 And if you go to line 3, part way through beginning  
6 with the words, "Have you made a decision." Are you with  
7 me? It's highlight.

8 Have you made a decision to no longer consider  
9 hormone therapy for anybody who has not reached their 18th  
10 birthday since you provided those letters?

11 Answer: I've made a decision to be very cautious and  
12 to put a period of time in therapy between me and the  
13 letter.

14 You go on to say more, which you're welcome to read  
15 if you would like, but I want to continue on to another  
16 passage that picks up rather than taking the Court's time  
17 reading a lot of discussion in between.

18 If we could turn to page 228, line 3. Let me know if  
19 you want to review there.

20 MR. CANTRELL: Your Honor, I would like to just,  
21 if we could, take a look at the intervening testimony,  
22 glance at that.

23 MS. COOPER: Sure. We can post that.  
24 Absolutely.

25 THE COURT: I thought you were in the

1 deposition, Mr. Cantrell, but go ahead.

2 BY MS. COOPER:

3 Q. Do you have that in front of you now, Doctor? If you  
4 look at line 3 and read along with me.

5 So I'm not sure if that answers my question. Have  
6 you made a decision to no longer provide letters?

7 Answer: Oh, I'm sorry. No, I haven't made that  
8 decision.

9 Question: So would it be a case-by-case basis if  
10 there were a patient that you felt it was appropriate for  
11 you -- appropriate for, you would consider doing it, say,  
12 a 17-year-old or a 16-year-old?

13 Mr. Cantrell: Object to form.

14 Answer: I don't have a -- yes. The answer to your  
15 question is yes.

16 I'm not going to ask you if that was your testimony  
17 again --

18 A. Thank you.

19 Q. -- since I see how you love those questions.

20 Now, today you testified that you would not recommend  
21 hormone therapy for patients under 18. Do you mean you  
22 would not generally recommend hormone therapy as a general  
23 matter?

24 A. Yes.

25 Q. So there may be exceptional cases where you would

1 still consider it appropriate.

2 A. Yes. These are very fraught circumstances. I think  
3 all of us all over the world recognize that we are under  
4 very difficult circumstances sometimes. We don't know  
5 what to do and we eventually go along with the patient's  
6 sincere desire to try hormones.

7 Q. Now, you talked on direct about an article you wrote  
8 called, *Reconsidering Informed Consent for*  
9 *Trans-identified Children, Adolescents, and Young Adults.*

10 And I just want to ask you a couple of questions  
11 about that article.

12 In this article, you recommend informed content  
13 process that you think providers should undertake before  
14 authorizing medical or surgical transition for minors,  
15 correct?

16 A. Yes.

17 Q. I'd like to pull up a passage from that article to  
18 show you. If we can look at page 2. And I have some  
19 material highlighted. Actually, I would like you to skip  
20 to -- sorry. I wasn't in front of the mic. I would like  
21 to skip to the second highlighted paragraph.

22 A. I know what you're you talking about.

23 Q. We over highlighted. If you'll read along with me in  
24 the second paragraph there.

25 Social transition, hormonal interventions, and

Valarie D. Flora, FCRR, TX-CSR, AR-CCR  
United States Court Reporter  
Valarie\_Flora@ared.uscourts.gov (501) 604-5105

1 MS. TEMPLIN: Apologies.

2 MR. JACOBS: That's what we would suggest. Dr.  
3 Lappert is willing to change around his travel to make that  
4 work. I think we went a little bit longer with Dr. Levine than  
5 we anticipated. We hoped to be able to do both today. So long  
6 as the Court has tomorrow afternoon available, so long as  
7 there's not any objections on that end, I think we could switch  
8 those and get everything done.

9 THE COURT: The only thing I have in my week that's in  
10 y'all's way is the one o'clock 30 minute and the two o'clock 30  
11 minute on Wednesday, then the noon hour on Thursday.

12 MR. JACOBS: Neither of those will be problems on our  
13 end, Your Honor. If that's acceptable to everybody, I think we  
14 will proceed with Dr. Regnerus tomorrow when we get everything  
15 set and then proceed with Dr. Lappert.

16 THE COURT: If we get both of them done tomorrow, how  
17 late do you anticipate going on Thursday?

18 MR. JACOBS: On Thursday, Your Honor, it could be a  
19 full day on Thursday. I just don't know whether it's going to  
20 be sort of an early day out on Thursday or not at this point.

21 THE COURT: I'm just curious.

22 MR. JACOBS: Regardless of this, we'll still be  
23 totally done on Thursday with our witnesses. That won't impact  
24 this at all.

25 THE COURT: All right. Court is in recess until

1 eight o'clock tomorrow.

2 MR. JACOBS: Yes, Your Honor.

3 (Overnight recess at 4:19 p.m.)

4 REPORTER'S CERTIFICATE

5 I certify that the foregoing is a correct transcript from  
6 the record of proceedings in the above-entitled matter.

7 /s/Elaine Hinson, RMR, CRR, CCR Date: December 4, 2022.  
8 United States Court Reporter

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Elaine Hinson, RMR, CRR, CCR, United States Court Reporter  
elaine\_hinson@ared.uscourts.gov (501) 604-5155