

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AUGUST DEKKER, et al.,

Plaintiffs,

v.

Case No. 4:22-cv-00325-RH-MAF

JASON WEIDA, et al.,

Defendants.

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**DEFENDANTS' RENEWED MOTION FOR RULE 35 EXAMINATIONS
OF PLAINTIFFS, SUSAN DOE AND K.F., AND
INCORPORATED MEMORANDUM OF LAW**

Pursuant to Rule 35(a) of the Federal Rules of Civil Procedure, Defendants, SECRETARY WEIDA and FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, by and through undersigned counsel, hereby move for an order directing Plaintiffs, SUSAN DOE and K.F., to submit to mental examinations before Defendants' expert, Joshua Sanderson, M.D. The examinations would take place remotely at a mutually agreed upon time and location. Defendants would bear the cost of the examination and otherwise comply with Rule 35.

DISCUSSION

I. Defendants are entitled to a Rule 35 order because the Plaintiffs have placed their mental health “in controversy” and Defendants have “good cause” to examine their mental health.

Rule 35(a)(1) vests district courts with authority to “order a party whose mental or physical condition . . . is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner.” Fed. R. Civ. P. 35(a)(1). “The purpose of a Rule 35 examination is to put both parties on equal footing with respect to the plaintiff’s condition.” *La Shanta Hacking v. United States*, 2021 U.S. Dist. LEXIS 71275, *7 (S.D. Fla. Feb. 15, 2021) (citing *Lerer v. Ferno-Washington, Inc.*, 2007 U.S. Dist. LEXIS 84347, 2007 WL 3513189, at *1 (S.D. Fla. Nov. 14, 2007)). Compulsory medical examinations “are often necessary, even when the plaintiff’s medical records are available, because there are few, if any, acceptable substitutes for a personal physical examination.” *Funez v. Wal-Mart Stores E., LP*, 2013 U.S. Dist. LEXIS 3196, 2013 WL 123566, at *7 (N.D. Ga. Jan. 9, 2013) (citation omitted).

To obtain an order under Rule 35, a party must make a motion and show “good cause.” Fed. R. Civ. P. 35(a)(2)(A). This requires an affirmative showing that the mental or physical condition is “really and genuinely” in controversy and that good cause exists for each particular examination. *Robinson v. Jacksonville Shipyards, Inc.*, 118 F.R.D. 525, 527 (M.D. Fla. 1988) (citing *Schlagenhauf v. Holder*, 379 U.S.

104, 118 (1964))). “Rule 35(a) is to be construed liberally in favor of granting discovery.” *Cody v. Marriott Corp.*, 103 F.R.D. 421, 422 (D. Mass. 1984). *See also Eckman v. Univ. of Rhode Island*, 160 F.R.D. 431, 433 (D.R.I. 1995) (recognizing same and ordering mental examination); *Schlagenhauf*, 379 U.S. at 114 (construing Rule 35 under “the basic premise that the deposition-discovery rules are to be accorded a broad and liberal treatment to effectuate their purpose that civil trials in the federal courts no longer need be carried on in the dark”) (internal quotation marks and citations omitted); *London v. C.R. England, Inc.*, 2006 U.S. Dist. LEXIS 103339, *2 (N.D. Ga. 2006) (“To facilitate discovery Rule 35(a) should be liberally construed in favor of granting discovery.”).

Courts routinely order mental examinations in a wide variety of cases. *E.g.*, *Bovey v. Mitsubishi Motor Mfg. of Am., Inc.*, 2002 U.S. Dist. LEXIS 5701 (C.D. Ill. Apr. 3, 2002) (ordering mental examination because the plaintiff-employee’s alleged emotional distress damages from employment discrimination were a component of her asserted damages, even though employee and employee’s treating mental health care providers had previously been deposed); *Jackson v. Entergy Operations, Inc.*, U.S. Dist. LEXIS 752, at *1 (E.D. La. Jan. 27, 1998) (ordering mental examination even though the plaintiff-employee offered her own treating physicians’ records as an alternative source of evidence); *Ragge v. MCA/Universal Studios*, 165 F.R.D. 605, 609 (C.D. Cal. 1995) (“Because the mental examination provides one of the

few opportunities for a defendant to have access to a plaintiff, and the only opportunity for a defendant to have a plaintiff examined by defendant's expert, some preference should be given to allowing the examiner to exercise discretion in the manner and means by which the examination is conducted.”).

Here, as in the above cases, Rule 35(a)'s criteria are satisfied. Both Plaintiffs have placed their mental health in controversy. Plaintiffs allege that Susan Doe, the 12-year-old daughter of Jane and John Doe, has been diagnosed with gender dysphoria (ECF-1, ¶¶ 191, 200), that the Does “worry about the ... mental health consequences” of the challenged rule (*id.* at ¶203) and that Susan “might engage in self-harm.” *Id.* at ¶ 205. Similarly, Plaintiffs allege that K.F., the 12-year-old son of Jade Ladue and stepson of Josh Ladue, has been diagnosed with gender dysphoria (*id.* at ¶ 225), “has always dealt with anxiety,” (*id.* at ¶ 240), that Jade and Joshua “are incredibly worried about the ... mental health consequences” of the challenged rule (*id.* at ¶ 243), and that they worry about the “unthinkable happening” if K.F.'s hormone treatment is stopped. *Id.* at ¶ 244.

Defendants also have good cause to conduct the mental examinations. Defendants are entitled to confirm whether or not Plaintiffs suffer from gender dysphoria and whether Plaintiffs have undergone appropriate mental health treatment. Defendants are entitled to further explore whether existing conditions, such as PTSD, depression and anxiety, may be the root cause of Plaintiffs' emotional

distress, and whether reversal of their gender affirming treatment will negatively impact their mental health as alleged. As Dr. Laidlaw discussed in his report of October 2, 2022 (ECF-53-20), disentangling other conditions from gender dysphoria can help establish whether these Plaintiffs would benefit from or potentially be harmed by the excluded treatments—in this case, puberty blockers and cross-sex hormones. Likewise, the mental examinations would assess whether the Plaintiffs would be harmed by the excluded coverage, such as the potential for suicidality, as alleged in the Complaint.

More broadly, these examinations can provide specific examples concerning the unnecessary and experimental nature of the excluded treatments. If the examinations show that other, covered medical treatments can help resolve Plaintiffs' emotional distress, then the excluded treatments become unnecessary as to these Plaintiffs. If the examination shows that, given Plaintiffs specific medical histories, the excluded treatments might have unknown side effects or questionable efficacy, then the excluded treatments become experimental as to these Plaintiffs. Accordingly, the proposed examinations should be allowed.

II. Proposed Examination

Defendants propose the following as to the mental health examinations which are necessary given the allegations at issue:

- Time: to be determined based on mutual agreement between the parties.
- Manner: The examinations would take place remotely in a manner consistent with generally accepted psychiatric methods of evaluation and testing. The process will consist of an initial interview of the youth, collateral information from multiple sources, and a review of medical records if applicable that will last approximately 2 hours.
- Scope: A comprehensive psychiatric evaluation to address gender dysphoria and desire to transition medically or surgically would include a full history of when gender dysphoria began, past and present symptoms (clinical scales may be used that are appropriate measures for gender dysphoria), psychiatric history, developmental history, medical history, family history, educational history, social history including but not limited to history of trauma, substance use, and discussion about peer groups and review of stressors, discussion of familial stability as it pertains to patient's support system, past psychiatric care and treatment, as well as mental status examination, and discussion surrounding understanding of consent for medical gender transition.

II. Dr. Sanderson's qualifications

The examinations would be performed Joshua Sanderson, M.D. Dr. Sanderson has been a licensed child and adolescent psychiatrist for 6.5 years. He is a Clinical Assistant Professor and Director of the Forensic Psychiatry Program at the

Louisiana State University Health Sciences Center – New Orleans. He is board certified in adolescent psychiatry, forensic psychiatry, and adult psychiatry. He obtained his B.S. in biology, with a minor in chemistry, from Louisiana State University and his M.D. from the Louisiana State University Health Sciences Center – New Orleans.

Dr. Sanderson provides medical direction and clinical services to adolescents at a long-term residential facility. As explained in his declaration attached as Exhibit “A,” Dr. Sanderson is not a gender dysphoria “denier or skeptic.” He has extensive experience treating children and adolescents with gender dysphoria and children and adolescents who identify as transgender. Over the past decade, including his medical school training, adult residency, child and adolescent fellowship, forensic fellowship, and tenure as the program director of forensic psychiatry, he has examined and treated thousands of patients (of all ages) who either experience gender dysphoria or identify as something other than their gender assigned at birth. He has supported all of those patients in their identified gender.

Dr. Sanderson’s curriculum vitae is attached to his declaration.

CONCLUSION

For all of the foregoing reasons, Defendant respectfully requests that the Court grant this Motion and order Plaintiffs, Susan Doe and K.F., to submit to a mental examination before Dr. Sanderson at a mutually agreeable time and location.

Respectfully submitted by:

/s/ Gary V. Perko

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Gary V. Perko (FBN: 855898)

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Dated: January 30, 2023

*Counsel for Defendants Secretary Weida
and Florida Agency for Healthcare Administration*

LOCAL RULE 7.1(B) CERTIFICATION

Pursuant to Local Rule 7.1(B), the undersigned certifies that he conferred with counsel for the parties on January 13, 2022. Plaintiffs oppose the motion.

/s/ Gary V. Perko
Gary V. Perko

LOCAL RULE 7.1(F) CERTIFICATION

The undersigned certifies that this memorandum contains 1,422 words, excluding the case style and certifications; and it complies with the size and font requirements in the local rules.

/s/ Gary V. Perko
Gary V. Perko

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2023, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Gary V. Perko
Gary V. Perko

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DECLARATION OF JOSHUA D. SANDERSON, M.D.

I, JOSHUA D. SANDERSON, M.D., hereby declare as follows:

1. I am over the age of eighteen and submit this declaration based on my personal knowledge and experience.
2. My curriculum vitae is attached to this declaration.
3. I have been a licensed child and adolescent psychiatrist for 6.5 years.
4. As a result, I have extensive experience treating children and adolescents with gender dysphoria and children and adolescents who identify as transgender. Over the past decade, including my medical school training, adult residency, child and adolescent fellowship, forensic fellowship, and tenure as the program director of forensic psychiatry, I have examined and treated thousands of patients (of all ages) who either experience gender dysphoria or identify as

something other than their gender assigned at birth. I have treated patients in both inpatient and outpatient settings as they navigate several different issues related to development, identity, family dynamics, interpersonal relationships, and psychological stress. The issue of personal identity has always been a complex issue that is often multifactorial. Identity is made up of a number of different experiences, inherent characteristics, and family dynamics that requires a biopsychosocial approach in investigating. The examination usually includes obtaining developmental, social, emotional, educational, family, abuse, and trauma histories to better understand the entire individual and the system they are developing in.

5. Of those patients, I have supported all of my patients in their identified gender.

6. I am not a “gender dysphoria denier or skeptic.” I fully believe that gender dysphoria is a very real phenomena and believe that the distress in gender dysphoria can be severe. I disagree with the medical and surgical transition guidelines for gender dysphoria treatment published by, for example, the World Professional Association for Gender Health (WPATH). In particular, on the issue of medical and surgical transition in youth, and on some of the recommendations on the physician guided interview, I have disagreements based on my clinical experience.

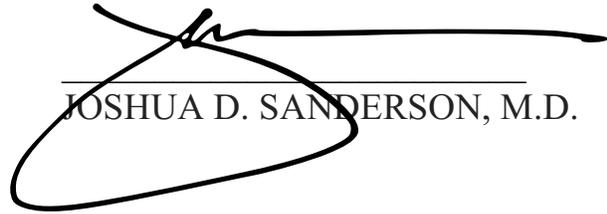
7. I believe the focus of care for individuals with gender dysphoria should be to engage them in exploratory therapy, to harness a system of support for them, and to provide compassionate care during a particularly vulnerable stage of development. Due to the complex nature of identity, the immaturity of the developing brain, and the fact that a thorough examination often elicits alternative motivations, causes, and complicating factors, I believe that medical and surgical transition should at least be delayed until adulthood, when youth have completed the psychosocial stage of development with a solidified sense of identity, have neurodevelopmentally matured, and when they can provide true informed consent.

8. I am well aware of the literature and recommendations for individuals who experience gender dysphoria.

9. I am also aware that the controlling issue in this case is whether at-issue treatments for gender dysphoria—puberty blockers, cross-sex hormones, surgeries, etc.—are experimental. I believe that such treatments are experimental. There is a lack of long-term studies that analyze the effects of these treatments. Those effects, especially on minors, could outweigh the treatments' benefits and cause negative health complications.

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

Executed this 29th day of January, 2023.



JOSHUA D. SANDERSON, M.D.

Joshua David Sanderson, MD

Joshua.Sanderson.MD@gmail.com

Work Address:

1750 St. Charles Ave. St. 609
New Orleans, LA 70130
(504)-232-1087

Academic Appointments

July 2017 – September 2022 Louisiana State University Health Sciences Center – New Orleans
Clinical Assistant Professor; Forensic Psychiatry Program Director

Education/Post Graduate Training

July 2016 – June 2017 Louisiana State University Health Sciences Center – Shreveport
Forensic Psychiatry Fellowship

July 2014 – June 2016 Louisiana State University Health Sciences Center/Children’s Hospital
Child and Adolescent Psychiatry Fellowship
Harris Infant Mental Health Fellowship

July 2011 – June 2014 Louisiana State University Health Sciences Center/Ochsner Medical Center
Adult Psychiatry Residency

August 2007 – May 2011 Louisiana State University New Orleans – School of Medicine
M.D., May 2011

August 2003 – May 2007 Louisiana State University
B.S. in Biology, May 2007
Minor in Chemistry

Medical Licensure

National Provider Identifier: 1033418835 (Active)

Louisiana State Board of Medical Examiners Medical License Number: MD.206434 (Active)

DEA Registration Number: FS4156685 (Active)

CDS License Number: CDS.043720-MD (Active)

Board Certification

American Board of Psychiatry and Neurology Board Certification in Adult Psychiatry, September 2015

American Board of Psychiatry and Neurology Board Certification in Forensic Psychiatry, October 2017

American Board of Psychiatry and Neurology Board Certification in Child & Adolescent Psychiatry, September 2019

Bibliographies

“Assessment of Obesity.” Handbook of Childhood Psychopathology and Developmental Disabilities Assessment

Articles

Quality Improvement on the Acute Inpatient Psychiatry Unit Using the Model for Improvement

“What’s in a Name? Disputes about Sexual Identity on a Child and Adolescent Psychiatric Unit”

Teaching Activities

- 2017 – 2022 Louisiana State University Health Sciences Center – New Orleans
Duties: Lecture and supervise residents and fellows on child, adolescent, and forensic psychiatry rotations.
- 2016 – 2017 Louisiana State University Health Sciences Center – Shreveport
Duties: Lecture students rotating monthly on mood and psychotic disorders. Evaluate student case reports and clinical performance.
- 2016 – 2017 Louisiana State University Health Sciences Center – Shreveport
Duties: Supervise and evaluate adult psychiatry residents performing their clinical skills examinations.

Honors

- 2003-2007 Alpha Lambda Delta National Honor Society
2003-2007 National Society of Collegiate Scholars
2003-2007 Chancellor's Aide Scholarship
2003-2007 Dean's List
2005, 2006 Dean Arthur R. Choppin Memorial Honors Academic Achievement Award
2003-2007 Phi Eta Sigma, National Honor Society
2006 Phi Kappa Phi, National Honor Society
2003-2007 TOPS Honors Award

Work Experience

- 2021 – Present Acadiana Treatment Center
Duties: Provide medical direction and clinical services to adolescents at a long-term residential facility
- 2018 – Present Pinecrest Supports and Services Center
Duties: Provide clinical services to a specific population of individuals with intellectual and developmental disabilities.
- 2017 – Present Deputy Coroner Work in St. Tammany, Lafayette, and Jefferson Parishes
Duties: Administer independent examinations of hospitalized patients to determine necessity of emergent psychiatric inpatient hospitalization.
- 2017 – Present Civil Court Testimony
Duties: Testify weekly in judicial commitment hearings for patients hospitalized on the acute inpatient psychiatric floor at University Medical Center.
- 2017 – 2022 Louisiana State University Health Sciences Center
Department of Psychiatry – Clinical Assistant Professor
Duties: Provide clinical services, teach, and supervise residents in the psychiatry program for infant, child, adolescent, adult and forensic cases.
- 2017 – 2022 Metropolitan Human Services Department
Duties: Provide clinical psychiatric care for youth in community outpatient clinics.
- 2020 – 2022 Bossier Minimum, Steve Hoyle, and Bayou Dorcheat Correctional Centers
Duties: Provide clinical services for inmates requiring psychiatric treatment. Evaluated inmates for competency to stand trial and insanity through court appointments.
- 2017 – 2020 Rayburn and Laborde Correctional Centers
Duties: Provide clinical services for inmates requiring psychiatric treatment.

- 2018 – 2019 Ochsner St. Charles Behavioral Hospital
Duties: Provide sole coverage for all psychiatric care. Perform history, physicals, and psychiatric evaluations for incoming patients. Provide medication management for established patients.
- 2015 – 2018 Northlake Behavioral Health Hospital
Duties: Provide sole coverage for all psychiatric care. Perform history, physicals, and psychiatric evaluations for incoming patients. Provide medication management for established patients.
- 2016 Beacon Behavioral Health Hospital
Duties: Provide sole coverage for all psychiatric care. Perform history, physicals, and psychiatric evaluations for incoming patients. Provide medication management for established patients.
- 2013 – 2015 Louisiana State University Interim Louisiana Hospital Emergency Room Moonlighting
Duties: Provide sole coverage for all psychiatric care required at both Interim Louisiana and DePaul Hospitals.
- 2003 – 2007 Louisiana State University, Department of Immunology, Stephania Cormier Ph.D.
Duties: Researching exposure during early neonatal life to environmental factors (allergens, pollutants, and viruses) and their possible link to respiratory disease in the adult.

Leadership

General Education Committee Representative

Duties: Attend weekly meetings to discuss ways to improve the residency program and entertain any issues brought up by residents or attendings. Presented summary of these points with possible solutions to residency coordinator and program director.

Ochsner Class Representative

Duties: Create monthly Ochsner call schedule for PGY II residents. Manage complications with coverage to assure that psychiatric services were always available despite absence or illness.

Child and Adolescent Psychiatry Fellowship Chief Resident

Duties: Create monthly Children's Hospital call schedule. Manage fellowship concerns.

Head of the Medical Subcommittee of the Brett Thomas Doussan Foundation

Duties: Foster relationship between Children's Hospital and the foundation. Help plan, organize, and institute fundraisers. Provide medical advice and help write monthly newsletters.

Host Committee Member for Zero To Three

Duties: Help organize and plan the annual national convention conference. Coordinate speakers, activities, and itinerary for the event.

MQRC Committee Member

Duties: Provide oversight in areas relating to patient safety and clinical quality of care for the University Health Shreveport hospital staff.