

Alex Rate (Bar No. 11226)
Marthe Y. VanSickle
ACLU of Montana Foundation, Inc.
P.O. Box 1968
Missoula, MT 59806
Telephone: 406-203-3375
ratea@aclumontana.org
vansicklem@aclumontana.org

Malita Picasso*
Jon W. Davidson*
(admitted only in California)
**American Civil Liberties Union
Foundation**
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: 212-549-2561
Facsimile: 212-549-2650
mpicasso@aclu.org
jondavidson@aclu.org

F. Thomas Hecht*
Tina B. Solis*
Seth A. Horvath*
Nixon Peabody LLP
70 West Madison Street, Suite 5200
Chicago, IL 60601
Telephone: 312-977-4443
Facsimile: 312-977-4405
fthecht@nixon peabody.com
tbsolis@nixonpeabody.com
sahorvath@nixonpeabody.com

Elizabeth Halverson PC
1302 24th Street West #393
Billings, MT 59102
Telephone: 406-698-9929
ehalverson@halversonlaw.net

* Admitted *pro hac vice*

**IN THE THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE**

AMELIA MARQUEZ, an individual; and)
JOHN DOE, an individual;)
)
Plaintiffs,)
)
v.)
)
STATE OF MONTANA; GREGORY)
GIANFORTE, in his official capacity as the)
Governor of the State of Montana; the)
MONTANA DEPARTMENT OF PUBLIC)
HEALTH AND HUMAN SERVICES; and)
CHARLIE BRERERTON, in his official)
capacity as the Director of the Montana)
Department of Public Health and Human)
Services,)
)
Defendants.)

Case No. DV 21-00873

Hon. Colette B. Davies

**PLAINTIFFS' UNOPPOSED
MOTION FOR JUDICIAL NOTICE**

MOTION FOR JUDICIAL NOTICE

Come now, Plaintiffs Amelia Marquez and John Doe (“Plaintiffs”), through undersigned counsel, and hereby request that the Court take judicial notice of Defendants’ Response Brief in Opposition to Motion to Dismiss (“Defendants’ Response Brief”) attached as Exhibit A hereto, which was filed on September 6, 2024 in *Kalarchik, et al. v. State of Montana, et al.*, Cause No. DV 24-261 (Mont. First Judicial Dist., Lewis and Clark County) by, among others, the same defendants as in the instant action (the “Marquez Defendants”), represented by the same counsel as in the instant action. Counsel for the Marquez Defendants has been contacted and does not object to this motion, however affirmatively states that Defendants do not agree that they are taking inconsistent positions. In further support of this Request, Plaintiffs state:

I. Judicial Notice of Defendants’ Response Brief is Warranted.

The Court may take judicial notice of facts that are “not subject to reasonable dispute in that [they are] ... capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” M.R.Evid. 201. Plaintiffs seek to have judicial notice taken of a brief filed by the same defendants as in this case, represented by the same counsel, in a case currently pending in Lewis and Clark County District Court. Plaintiffs seek to have judicial notice taken of that brief for the purpose of making the Court aware that the arguments made by these defendants and their counsel in that other pending case that are inconsistent with the positions they have taken in the instant action. The fact that the Marquez Defendants and their counsel filed the attached Defendants’ Response Brief in the *Kalarchik v. State of Montana* case and the contents of

that filing are not subject to reasonable dispute because the accuracy of the fact that Defendants' Response Brief was filed in that case and the contents of that brief cannot be reasonably questioned. Therefore, taking judicial notice of Defendants' Response Brief is appropriate and warranted.

II. Taking Judicial Notice of Defendants' Response Brief Will Assist the Court in Ruling on Plaintiffs' Pending Motion for Attorney Fees in the Instant Action.

While Plaintiffs maintain their position that this Court should not reconsider the basis for the fee award in this case, *see* Plaintiffs' Reply in Support of Plaintiffs' Motion for Attorneys' Fee ("Plaintiffs' Reply Brief"), Doc. 190, at 3-5, should this Court consider the arguments made by the Marquez Defendants in their Brief in Opposition to Plaintiffs' Motion for Attorney Fees ("Opp. Brief"), filed in the instant action on August 16, 2024 (Doc. 187), that Plaintiffs may not recover attorneys' fees under the private attorney general doctrine, taking judicial notice of Defendants' Response Brief will assist the Court in ruling on Plaintiffs' pending fee motion because of the contradiction between the arguments made in the Opp. Brief and the positions taken in the Response Brief.

In their Opp. Brief, the Marquez Defendants argued that "a claim for injunctive relief simply does not provide a basis for the imposition of attorneys' fees against the state ... because Montana law provides immunity any legislative act or commission by the Montana Legislature." Opp. Brief at 4 (internal quotation marks and citations omitted). The Marquez Defendants also argued in that brief that "[t]he private attorney general doctrine does not apply to ordinary constitutional challenges to a legislative action" and that an award of private attorney general fees is precluded where the State's liability "comes from the actions of the Legislature in enacting an unconstitutional bill." Opp. Brief at 7 (internal quotation marks and citations omitted). The Marquez Defendants further

argued in the Opp. Brief that the *Montrust* case (*Montanans for the Responsible Use of the Sch. Tr. v. State ex rel. Bd. Of Land Comm'rs*, 1999 MT 263, 296 Mont. 402, 989 P.2d 800) “remains the only case in which the Montana Supreme Court awarded or upheld fees against the State under the private attorney general doctrine.” Opp. Brief at 8.

In Defendants’ Response Brief in *Kalarchik*, however, they have argued that the State Defendants in that case (which, again, include the same defendants as in the instant case):

face potential liability to the Plaintiffs for their attorneys’ fees based upon *Montana v. State*, 2024 MT 75, 416 Mont. 175, 546 P.3d 778 and *Barrett v. State*, 2024 MT 86, 416 Mont. 226, 547 P.3d 630. In *Montana*, the Supreme Court awarded the plaintiffs attorneys’ fees for making a constitutional challenge to a statute using the private attorney general doctrine, due to alleged unconstitutional acts by the Legislature.

Defendants’ Response Brief at 5.

This statement in Defendants’ Response Brief directly contradicts the Marquez Defendants’ assertions in the instant case that an award of private attorney general fees is precluded where the State’s liability “comes from the actions of the Legislature in enacting an unconstitutional bill,” Opp. Brief at 7, and that *Montrust* is “the only case in which the Montana Supreme Court awarded or upheld fees against the State under the private attorney general doctrine.” Opp. Brief at 8.

Defendants’ Response Brief also acknowledges that, in *Montana v. State*, the Montana Supreme Court stated that “a strong showing of bad faith” is a factor to be considered “as a guidepost in determining [whether] fees are proper.” Defendants’ Response Brief at 7. The defendants in *Kalrachim* (which, as noted above, include all of the defendants in the instant case) added in Defendants’ Response Brief that *Montana v. State* and *Barrett v. State* “expose the State to

potential liability—either by a finding that the AG acted with frivolousness or bad faith, or that the Legislature acted unconstitutionally.” Defendants’ Response Brief at 6. Thus, the defendants in the instant case again have admitted that the State *can* be held liable for private attorney general fees if the Legislature acted unconstitutionally—a position that contradicts the position they have taken in the instant case. In addition, they have admitted that the State can be liable if there is a showing of actions taken in connection with a lawsuit that were not taken in good faith. As noted in Plaintiffs’ Reply Brief in the instant action, the Court concluded that not only did the defendants in this action not act in accordance with the Montana Constitution but also that the actions taken in defending against Plaintiffs’ claims in the instant action were not taken in good faith. Reply Brief at 7-8.

CONCLUSION

Plaintiffs therefore respectfully request that this Court take judicial notice of Defendants’ Reply Brief filed in *Kalarchik v. State of Montana*. A proposed order is attached.

RESPECTFULLY SUBMITTED this 19th day of September, 2024.

By: /s/ Alex Rate
Alex Rate

Alex Rate (Bar No. 11226)
Marthe Y. VanSickle
ACLU of Montana Foundation, Inc.
P.O. Box 1968
Missoula, MT 59806
406-203-3375
ratea@aclumontana.org
vansicklem@aclumontana.org

Malita Picasso*
Jon W. Davidson*
(admitted only in California)
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: 212-549-2561
jondavidson@aclu.org

F. Thomas Hecht*
Tina B. Solis*
Seth A. Horvath*
Nixon Peabody LLP
70 West Madison Street, Suite 5200
Chicago, IL 60601
Telephone: 312-977-4443
Facsimile: 312-977-4405
fthecht@nixonpeabody.com
tbsolis@nixonpeabody.com
sahorvath@nixonpeabody.com

Elizabeth Halverson PC
1302 24th Street West #393
Billings, MT 59102
406-698-9929
ehalverson@halversonlaw.net

* Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that I served a true and accurate copy of the foregoing document via eService on counsel for Defendants:

AUSTIN KNUDSEN
Montana Attorney General
THANE P. JOHNSON
MICHAEL D. RUSSELL
Assistant Solicitor General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
Fax: 406-444-3549
thane.johnson@mt.gov
michael.russell@mt.gov

EMILY JONES
Special Assistant Attorney General
Jones Law Firm, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Phone: 406-384-7990
emily@joneslawmt.com

Dated: September 19, 2024

/s/ Alex Rate

Alex Rate
ACLU OF MONTANA, Foundation
P.O. Box 1968
Missoula, MT 59806

EXHIBIT A

Austin Knudsen
Montana Attorney General
Michael Russell
Thane Johnson
Alwyn Lansing
Michael Noonan
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
Phone: (406) 444-2026
Fax: (406) 444-3549
michael.russell@mt.gov
thane.johnson@mt.gov
alwyn.lansing@mt.gov
michael.noonan@mt.gov

Emily Jones
Special Assistant Attorney General
JONES LAW FIRM, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Phone: 406-384-7990
emily@joneslawmt.com

Attorneys for Defendants

MONTANA FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY

JESSICA KALARCHIK, an individual, and
JANE DOE, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

STATE OF MONTANA; GREGORY
GIANFORTE, in his official capacity as the
Governor of the State of Montana; the
MONTANA DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES;
CHARLES T. BRERETON, in his official
capacity as the Director of the Montana
Department of Public Health and Human
Services; the MONTANA DEPARTMENT OF
JUSTICE; and AUSTIN KNUDSEN, in his

Cause No. ADV 24-261
Hon. Michael Menahan

**DEFENDANTS' RESPONSE BRIEF IN
OPPOSITION TO MOTION TO
DISMISS**

official capacity as Attorney General for the
State of Montana,

Defendants,

WORLD PROFESSIONAL ASSOCIATION
FOR TRANSGENDER HEALTH,

Third-Party Defendant.

COME NOW Defendants Gregory Gianforte, Montana Department of Public Health and Human Services, Montana Department of Justice and Austin Knudsen (hereinafter collectively “the State”) and respectfully submit this Response Brief in Opposition to Third-Party Defendant World Professional Association for Transgender Health’s (hereinafter “WPATH”) Motion to Dismiss.

INTRODUCTION AND STATEMENT OF FACTS

For purposes of the Mont. R. Civ. P. 12(6) motion, the State will rely upon all well pled facts as more particularly described in the Answer and Third-Party Complaint. As for the Motion to Dismiss for Lack of Personal Jurisdiction, the State intends to offer evidence elicited from a deposition of Katherine Mistretta that was taken in a companion case entitled *Van Garderen v. State*, DV-23-541 (Missoula County Dist. Ct. 2023). The State will also ask the Court to take judicial notice of the Preliminary Injunction issued in that matter on September 27, 2023. In that Order, the Court stated:

In fact, the evidence in the record suggests that SB 99 would have the opposite effect. At this stage in the proceedings, the Court relies on the WPATH standard of care because it is endorsed and cited as authoritative by leading medical organizations, including the American Medical Association, the American Psychological Association, and the American Academy of Pediatrics, among others.

(*Id.* at 30.)

On June 7, 2024, Defendants deposed Katherine Mistretta, one of the named Plaintiffs in the *Van Garderen* lawsuit. Mistretta is a Nurse Practitioner providing “gender affirming care” in the Bozeman area. Mistretta has been a member of WPATH since 2012. (Mistretta Depo., 7:19-21 (June 7, 2024), relevant excerpts attached as **Exhibit A**.) Mistretta is a WPATH Standards of Care (“SOC”) 7 and 8 certified provider, having completed additional training through WPATH. (7:23-8:1.) For Mistretta to maintain her certification, she must perform continuing education and pass the examination for each revision to the SOC. (13:2-4; 26:9-27:22.) WPATH membership has assisted Mistretta in her Montana practice by providing resources and giving her a network of other providers for collaboration purposes. (9:17-10:6; 22:22-23:20.) Mistretta has used the gender affirming standards of care developed by WPATH with her Montana patients. (23:21-25:20.)

Mistretta uses puberty blockers in her practice. (42:17-43:10.) Mistretta also uses hormone therapy in practice. (44:2-13.) Mistretta, at times, recommends gender-affirming surgery to minor patients. (38:8-10.) And, in sum, Mistretta relies upon WPATH SOC 8 for its treatment criteria and guidelines when providing gender-affirming care for her Montana patients. (47:17-48:5.)

ARGUMENT

I. TAKING THE FACTS MOST FAVORABLE TO THE STATE, THE STATE HAS A COGNIZABLE CLAIM FOR COMMON LAW INDEMNITY AGAINST WPATH.

A party may move to dismiss a complaint for failure to state a claim for relief. Mont. R. Civ. P. 12(b)(6). The District Court should not dismiss a complaint for failure to state a claim unless the Court finds beyond doubt that the claimant cannot prove a set of facts in support of the claim that would entitle the claimant to relief. *Lundeen v. Lake Cnty.*, 2024 MT 120, ¶ 8, 416 Mont. 539, 2024 LEXIS 612. “A claim is subject to dismissal only if either it fails to state a

cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under that claim.” *Puryer v. HSBC Bank USA, N.A.*, 2018 MT 124, ¶ 12, 391 Mont. 361, 419 P.3d 105. The District Court must take all well pleaded allegations as true. *Puryer*, ¶ 10.

The Montana Rules of Civil Procedure permit the filing of a third-party complaint as follows:

A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.

Mont. R. Civ. P. 14(a)(1). The test is not transactional but depends on derivative liability. It must involve an attempt to pass on to the third party all or part of the liability asserted against the defendant. Thus, it must be an assertion of the third-party defendant’s *derivative* liability to the third-party plaintiff.

Further, there must, of course, be some showing under the applicable law that the third party is or may be liable to the defendant. The third-party complaint need not show that recovery is a certainty; it should be allowed to stand, if recovery would be possible under some construction of the facts that might be adduced at trial. 3 *Moore's Federal Practice - Civil* § 14.04 (2024). “A party claiming a right to indemnity must be able to show that its liability to a third party arises only because of the relationship between the first party indemnitee and the second party indemnitor, and not due to any negligence on the part of the first party claiming indemnity.” *Rogers v. W. Airline* (1979), 184 Mont. 170, 176, 602 P.2d 171, 174 (citing *Crosby v. Billings Deaconess Hospital* (1967), 149 Mont. 314, 426 P.2d 217; *Fletcher v. City of Helena* (1973), 163 Mont. 337, 517 P.2d 365).

The doctrines of indemnity and contribution are both founded on equitable principles, but there is a difference. “There is an important distinction between contribution, which distributes the loss among the tortfeasors by requiring each to pay his proportionate share, and indemnity, which shifts the entire loss from one tortfeasor who has been compelled to pay it to the shoulders of another who should bear it instead.” *Slater v. Cent. Plumbing & Heating Co.*, 1999 MT 257, ¶ 32, 297 Mont. 7, 993 P.2d 654. Indemnity is at issue here. “For common law indemnity to apply, there must be ‘an underlying injury sounding in tort’ and ‘the party seeking indemnity must have imputed or derivative liability for the tortious conduct from which indemnity is sought.’” *KaiserKane, Inc. v. N. Am. Roofing Servs.*, No. 1:15-cv-00189-MR-DLH, 2019 U.S. Dist. LEXIS 46099, at *11 (W.D.N.C. Mar. 20, 2019) (citation omitted.) Third-Party Plaintiffs are exposed to potential liability due to WPATH’s negligent misrepresentation.

In this case, Plaintiffs are all relying upon representations and guidance from WPATH that gender affirming care is evidenced based and established in medical science. These representations and guidance, as stated by Dr. Mistretta, are a direct relationship between WPATH and Plaintiffs. Defendants assert that these are misrepresentations to Plaintiffs. Defendants face potential liability to the Plaintiffs for their attorneys’ fees based upon *Montana v. State*, 2024 MT 75, 416 Mont. 175, 546 P.3d 778 and *Barrett v. State*, 2024 MT 86, 416 Mont. 226, 547 P.3d 630. In *Montana*, the Supreme Court awarded the plaintiffs attorneys’ fees for making a constitutional challenge to a statute using the private attorney general doctrine, due to alleged unconstitutional acts by the Legislature:

Rather, we use these examples to amplify the fact that the Legislature was well aware that what they were doing was unconstitutional, which serves as a strong showing of bad faith, a factor we consider as a guidepost in determining that fees are proper here.

Montana, ¶ 34. This theme continued, but did not succeed in *Barrett*. In *Barrett*, the Supreme Court considered awarding the plaintiff’s attorney’s fees, but ultimately denied the award over the strongly worded dissent by Justice Gustafson joined by Justice McKinnon. *Barrett*, ¶ 51. Justice Gustafson first argued that Plaintiffs need not show that the State’s defense was frivolous or made in bad faith to award fees:

Once again, frivolousness and bad faith are simply guideposts along a path to determine whether the ultimate ‘predicate for an award of fees under the private attorney general doctrine,’ which is ‘when the government, for some reason, fails to properly enforce interests which are significant to its citizens,’ has been met. *W. Tradition P’ship v. AG of Mont.*, 2012 MT 271, ¶ 20, 367 Mont. 112, 291 P.3d 545. Relying solely on a statutory-based determination that frivolousness and bad faith have not been demonstrated is not proper exercise of discretion under the private AG doctrine.

Barrett, ¶ 64. Justice Gustafson then argued that fees were proper for similar reasons as *Montana*:

Here, we do not assert attorney fees are proper because of the Attorney General’s defense of the law, which primarily involved repeated challenges to Plaintiffs’ standing. Rather, attorney fees are proper because of the process through which the unconstitutional bills came to be: patently unconstitutional bills adopted through willful disregard of constitutional obligation.

Barrett, ¶ 69. These two decisions expose the State to potential liability—either by a finding that the AG acted with frivolousness or bad faith, or that the Legislature acted unconstitutionally—to the Plaintiffs based upon the negligent misrepresentation by WPATH to the Plaintiffs.

Taking the well plead facts in the complaint as true, the State can assert a cognizable claim for common law indemnity. The Third-Party Complaint alleges that WPATH conducts business in Montana in that it solicits members in Montana and that there currently exists thirteen active members in Montana who are medical providers including Katherine Mistretta, DNP. WPATH also transacts business in Montana by soliciting Montana Health Care providers for certification as WPATH providers. As will be developed in testimony, Katherine Mistretta is a certified

WPATH provider. WPATH, through its members, certified providers and agents, provides material and services to Montana patients.

WPATH has made representations that minor children can provide informed consent to gender dysphoria treatment. WPATH represents that gender dysphoria treatment is not a symptom of other mental health conditions, and that gender dysphoria treatment is a life-saving treatment for patients who are minors. These representations were relied upon and form the basis of Defendants' cognizable claim against WPATH.

II. WPATH IS SUBJECT TO PERSONAL JURISDICTION IN THE STATE OF MONTANA.

In the state of Montana, individuals or corporations are subject to the jurisdiction of Montana courts through various acts committed. *See* Mont. R. Civ. P. 4(a). As such, Montana Civil Procedure states:

All persons found within the state of Montana are subject to the jurisdiction of Montana courts. Additionally, any person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent of any of the following acts:

- (A) the transaction of any business within Montana;
- (B) the commission of any act resulting in accrual within Montana of a tort action;
- (C) the ownership, use, or possession of any property, or of any interest therein, situated within Montana;
- (D) contracting to insure any person, property, or risk located within Montana at the time of contracting;
- (E) entering into a contract for services rendered or for materials to be furnished in Montana by such person;
- (F) acting as director, manager, trustee, or other officer of a corporation organized under the laws of, or having its principal place of business within, Montana; or

(G) acting as personal representative of any estate within Montana.

Mont. R. Civ. P. 4(b)(1). Following this rule, personal jurisdiction can be further broken down into two categories, general jurisdiction, and long arm jurisdiction. *Edsall Constr. Co. v. Robinson*, 246 Mont. 378, 381, 804 P.2d 1039 (1991). Montana holds general jurisdiction when a party is physically present within the State, or its contacts are pervasive and “found within the State of Montana” Mont. R. Civ. P. 4(b); *see also Simmons Oil Corp. v. Holly Corp.* 244 Mont. 75, 83, 796 P.2d 189, 1990). General jurisdiction is further enumerated for nonresident defendants who “can be ‘found’ within the state for general jurisdiction purposes if the defendant’s activities within the state are ‘substantial’ or ‘systematic and continuous.’” *Bird v. Hiller* (1995), 270 Mont. 467, 471, 892 P.2d 931, 933 (citing *Simmons Oil*, 244 Mont. at 83).

Long arm jurisdiction is established should the party exercise or commit any of the acts enumerated and outlined in Rule 4(b)(1). *Bi-Lo Foods v. Alpine Bank*, 1998 MT 40, ¶ 18, 287 Mont. 367, 955 P.2d 154 (see also Mont. R. Civ. P. 4(b)(1)). Montana Courts determine personal jurisdiction through a two-part test. “First, we must determine if personal jurisdiction exists either by way of the defendant being ‘found’ within the state, or by way of the long-arm statutes. Second, we must determine whether exercising jurisdiction comports with the defendant’s due process rights.” *Id.* at ¶ 15 (citing *Bird*, 270 Mont. at 470; *Edsall Const. Co., Inc.*, 246 Mont. at 381). Should personal jurisdiction not exist under the first step, further analysis under the second step is not necessary. *Edsall*, 246 Mont. at 380.

Once the statutory question has been addressed, the Court turns to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment limits the power of a state court to render valid personal judgment against a nonresident defendant. *Simmons v. State*, 206 Mont. 264, 272, 670 P.2d 1372, 1376 (1983). The Court has ruled that “[d]ue

process requires that a state may exercise personal jurisdiction over the nonresident only so long as there exist ‘minimum contacts’ between the defendant and the forum state” *Id.* at 273.

Thus, under the statutory questions and the due process clause, WPATH, as a third-party defendant, has committed enough acts within this state to be subjected to personal jurisdiction within this state.

A. WPATH CONDUCTS REGULAR BUSINESS IN THE STATE OF MONTANA.

WPATH conducts regular, systematic, and substantial business in the state of Montana. WPATH develops and publishes standards of care for gender dysphoric minors and implements these standards of care through member medical professionals and certified medical professionals including Montana medical professionals. Montana medical professionals use the standards of care published by WPATH to administer puberty blockers, hormone therapy, and surgical procedures. WPATH regularly transacts business in Montana by soliciting members to pay annually to fund WPATH, and currently there are thirteen Montana medical professionals that are members of WPATH. WPATH’s actions are more than enough to demonstrate that Montana Courts have personal jurisdiction over it.

In the case of *Edsall Const. Co., Inv. v. Robinson*, the Court ruled that personal jurisdiction did not exist because the Utah subcontractor who submitted the bid to the Montana general contractor did so over the phone and the contract was to be performed entirely out of state. *Edall*, 246 Mont. at 382-83. Unlike *Edsall Const. Co.*, WPATH regularly solicits members of the Montana medical community, as well as trains certified medical professionals within the State. Plaintiff Katherine Mistretta, a Montana medical professional, is actively taking courses from WPATH within the state to become WPATH certified.

Similarly, in the case of *Great Plains Crop Mgmt., Inc. v. Tryco Mfg. Co.*, the Court ruled that because Tryco had advertised in magazines that could reasonably be expected to reach Montana, mailed brochures into the state, facilitated sales by calling the state and accepting calls from here, as well as shipping several machines into Montana that it was enough to conclude that the state held personal jurisdiction over 554 F. Supp. 1025, 1027 (D. Mont. 1983). Similarly, WPATH makes concerted efforts to solicit and retain members of the Montana medical professional community. With a WPATH membership, WPATH ships printed copies of its International Journal of Transgender Health (“IJTH”) to members of the Montana medical community, which members must pay for. (Katherine Mistretta Deposition P. 9-13 Ln. 12-21) WPATH regularly and substantially conducts business within the state, as members of the Montana medical community pay WPATH to be trained in the standards of care that WPATH publishes, and the medical professionals that complete this transaction must also abide by those standards of care to be a part of WPATH’s community. (See Exhibit 19 Mistretta Deposition P. 156-157 Ln. 20-15.)

Even in the case of *State ex rel. Goff v. District Court*, the court ruled that even though the defendant was never physically present within the state of Montana, telephone and mail negotiations were significant factors in demonstrating personal jurisdiction. 157 Mont. 495, 499, 487 P.2d 292 (1971). Similarly, WPATH regularly communicates with its members in the state of Montana. (Mistretta Deposition P. 13-15 Ln. 10-14) As advertised on their website, members that pay WPATH receive a member-to-member networking via an online discussion forum, as well as official WPATH emails which they regularly receive. (Mistretta Deposition P. 13-15 Ln. 10-14) WPATH more than meets the statutory standards for conducting regular acts of business within the state of Montana.

B. WPATH REGULARLY CONTRACTS WITH MEDICAL PROFESSIONALS IN THE STATE.

There are currently thirteen Montana medical professionals that are members of WPATH. (See Exhibit 3 Mistretta Deposition P. 20-21 Ln. 22-24) And as such, each of those medical professionals must agree to and abide by WPATH's code of conduct. Medical professionals that seek to join WPATH must apply to the organization, complete an application, and pay the membership fee. (Mistretta Deposition P. 9-13 Ln. 12-21) Once a member, they receive voting rights and privileges. (See published By-Laws attached as Exhibit 1, and WPATH Code of Conduct as Exhibit 2). In addition, according to the 2016 WPATH By-Laws, under section 2 in regard to contracts, conveyances and other legal instruments, the bylaws outline that the Board of Directors have the power to designate officers and agents who have the power to execute any instrument on behalf of the Association. (See published By-Laws attached as Exhibit 1, and WPATH Code of Conduct as Exhibit 2).

Under Montana law, the relationship between a nonprofit and its members is contractual in nature. *Appeal of Two Crow Ranch*, 159 Mont. 16, 494 P.2d 915 (1972) (see also *Model Land & Irrigation Co. v. Madsen*, 87 Colo. 166, 285 P. 1100 (1930); *King v. Farmers Electric Coop.*, 56 N.M. 552, 246 P.2d 1041). In the case of *Appeal of Two Crow Ranch*, the Court ruled that bylaws of a corporation, the articles of incorporation, the statute under which it was incorporated, and the member's application constituted a contract between the member and the corporation. *Mont.* at 23. Similarly, WPATH as a nonprofit holds articles of incorporation and requires its members to submit an application. And all of this takes place in the state of Montana for those members that are medical professionals in this state.

The Court ruled in the case of *State ex rel. Goff v. District Court*, that even though primary negotiations were had in Utah, they continued on the telephone and via the mail in Montana. 157

Mont. at 499. The delivery would have been made in Montana, and the first mortgage or lien on the membership would have followed the membership to Montana. *Id.* As such, the Court determined the locus of the contract was in Montana and established personal jurisdiction. *Id.* Similarly, any outreach between WPATH and the Montana medical practitioners would place the locus of the contract in Montana. Since Montana medical practitioners pay to become members within the state, then once more it would put the locus of the contract between Montana medical practitioners and WPATH in the state of Montana.

C. WPATH HAS COMMITTED TORTS IN THE STATE.

WPATH has committed torts in Montana through conspiring to commit misrepresentation and negligent misrepresentation with its Montana members and certified providers. The Montana courts have long held that committing a tortious act within the state does fall under the requirements for long-arm jurisdictional control. *See Bullard v. Rhodes Pharmacal Co.*, 263 F. Supp. 79 (D. Mont. 1967); *McGee v. Riekhof*, 442 F. Supp. 1276 (D. Mont. 1978). In the case of *Bullard v. Rhodes Pharmacal Co.*, the plaintiff, a Montana resident, brought an action against an Ohio corporation for a product causing damage to her respiratory system. 263 F. Supp. 79, 81 (D. Mont. 1967). The Court held that personal jurisdiction existed because the plaintiff had purchased the product in Montana and used the product in Montana. *Id.* at 83. Similarly here, Montana medical practitioners purchase and buy into the WPATH standards of care which they use within the state.

In the case of *Scanlan v. Norma Projektil Fabrik*, a personal injury action was filed against a Swedish ammunition manufacturer. 345 F. Supp. 292 (D. Mont. 1972). Here, the manufacturer did not have a place of business within the U.S., nor did the plaintiff purchase the ammunition in Montana. *Id.* at 293. However, because the injury-causing event was in the state of Montana, the

court ruled there existed personal jurisdiction. *Id.* Because Montana medical practitioners are using WPATH standards of care in the state to administer surgical procedures and administer drugs, then any harm committed through those medical practitioners using WPATH standards establish personal jurisdiction.

Additionally, in the Montana case of *McGee v. Riekhof*, a plaintiff had eye surgery done in Utah. 442 F. Supp. 1276 (D. Mont. 1978). After the surgery, the doctor regularly communicated with him via telephone conversations and told him he could return to work; he returned to work and on his first day back he re-injured his eye. *Id.* at 1277. There, the court ruled that the doctor communicating over the telephone provided a new diagnosis. *Id.* at 1278. WPATH uses its standards of care to help Montana medical practitioners craft and diagnose gender dysphoria in the state. Therefore, the State has an interest in deterring such interstate medical practices.

D. UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, THE STATE MAY EXERCISE PERSONAL JURISDICTION.

WPATH maintains sufficient contacts within the state to satisfy the Due Process clause. The Ninth Circuit has developed a standard of review to determine whether a nonresident maintains minimum contacts within the forum state to satisfy due process. *Simmons*, 206 Mont. at 272. The Ninth Circuit has ruled “if the nonresident defendant’s activities within a state are ‘substantial’ or ‘continuous and systematic,’ there is a sufficient relationship between the defendant and the state to support jurisdiction even if the cause of action is unrelated to the defendant’s forum activities.” *Minuteman Aviation v. Swearingen*, 237 Mont. 207, 210, 772 P.2d 305 (1989). Furthermore, the Ninth Circuit uses a three-pronged approach in determining whether general jurisdiction applies:

- (1) the nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum thereby invoking its laws.
- (2) the

claim must be one which arises out of or results from the defendant's forum-related activities. (3) exercise of jurisdiction must be reasonable.

Id. Here, WPATH conducts regular transactions with Montana medical practitioners. The WPATH standards that Montana medical practitioners use in their medical practices put this directly in the forum state and thereby invoke Montana laws. The State holds a reasonable and inherent duty to protect citizens from medical malpractice and therefore, it is reasonable that the State of Montana exercises jurisdiction over WPATH.

In the case of *Int'l Shoe Co. v. Washington*, the United States Supreme Court ruled that in order to determine due process, one must look toward the quality and nature of the activity in relation to the administration of laws, which is the purpose of the due process clause. 326 U.S. 310, 319, 66 S. Ct. 154 (1945). Additionally, should the corporation in question exercise and use the privilege of conducting activities within a state and enjoy the protection of the laws of that state, then that exercise of the privilege may give rise to obligations. *Id.* Here, WPATH seeks to craft standards of care for medical practitioners to use in their practices. As such, those medical practices are pervasive and outline surgical procedures and the administration of drugs. It is through those standards that WPATH regularly conducts activities within the state of Montana and therefore has an obligation to the health and wellbeing to the Montanans those standards affect.

CONCLUSION

Taking all well plead facts as true, the State has readily established a set of facts that give rise to its cognizable claim against WPATH for common law indemnity. The State faces the real risk of a contingent liability for Plaintiffs' attorneys' fees in light of the Supreme Court's decisions in *Mont. v. State*, 2024 MT 75, 416 Mont. 175, 546 P.3d 778 and *Barrett*, 2024 MT 86.

WPATH's activities satisfy the statutory requirements to fall under the personal jurisdiction of Montana courts. Those activities include conducting regular and substantial

business with Montana medical practitioners, contracting Montana medical practitioners, and committing tortious acts in Montana. As such, the Court should not hesitate to find personal jurisdiction and allow the State to pursue relief against WPATH.

DATED this 6th day of September, 2024.

Austin Knudsen
MONTANA ATTORNEY GENERAL

/s/ Thane Johnson

Thane Johnson
Michael Russell
Alwyn Lansing
Michael Noonan
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

Emily Jones
Special Assistant Attorney General
JONES LAW FIRM, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101

ATTORNEYS FOR DEFENDANTS

Exhibit 19

WPATH Medical Mentorship Agreement

Mentor Name (print): Jennifer Slovis, MD

Email: jennifer.l.slovis@kp.org

Mentee Name (print): Katy Mistretta

Email: kmistretta@bozemancreekfamilyhealth.com

This document is to clarify the agreement for Mentorship requested by the above Mentee with the above Mentor for the purpose of completing the Mentorship requirement (10 hours or more) for the WPATH GEI Certification Program.

This agreement is for Mentorship under the WPATH GEI Certification Program only. Completion of this requirement is not a guarantee or assurance of any other part of the WPATH GEI Certification Program and the Mentee is responsible for identifying and meeting the additional requirements through WPATH.

The Mentee and Mentor agree and understand that the term Mentee is used by WPATH to describe what similar organizations in health fields refer to as "Consultants" rather than "Supervisor" and "Supervision." All parties to this contract understand and agree that the Mentor does not necessarily have access to the Mentee's case notes or files and for the purposes of this contract is not responsible for any of the Mentee's clinical patient load and clinical decision making. The Mentor only provides case consultation on the limited number of patient cases that the Mentee chooses to seek consultation for GEI WPATH Certification.

The Mentoring will include de-identified case discussions that will help the Mentor evaluate the Mentee's competency through demonstration of understanding the *WPATH Competency-Based Domains* (Caregiver/Care Receiver Relationship, Content Knowledge, Interdisciplinary Practice, and Professional Responsibility); their ability to discuss how care could have been improved; their ability to discuss how care could have been more compromised. Mentees will be expected to demonstrate their competency and understanding of the SOCv7 in clinical practice, be willing to follow WPATH ethics, and be able to adhere to WPATH's mission and vision. If the Mentee is unable to fulfill any of these tasks within the 10 hours of mentorship, the Mentor will notify the Mentee that they may require further mentorship experience.

The Mentor will provide feedback (midway through the mentoring relationship) to each Mentee. It will be expected that each Mentee will participate in giving their fellow colleagues feedback as well. At the completion of the Mentoring relationship, the Mentor will complete an assessment of the Mentee and will review this tool with them before submitting to WPATH to add to their file as evidence of completion of the Mentoring requirement. In the event that the Mentor encounters issues with their Mentee's capabilities in the items listed above, the Mentor will bring their concerns to the WPATH GEI Medical Mentor Group Leadership for discussion prior to completing the mentoring process.

The 10-hours will be delivered via group video conferencing. Each Mentoring group will be a max of 10 Mentees. Each Mentee will be required to present a minimum of one straightforward case and one complex case to present to the group, both HIPPA compliant. Depending on the Mentor group size, Mentees will have the opportunity to present more than 2 cases. Mentees must agree to be recorded as all sessions will be recorded in the event Mentees need to miss sessions, sessions will only be available to the group and only until the group sessions are completed.

Both parties have agreed that the charge for the Medical Mentoring is **\$250 for 10 hours of group mentoring.** Mentees will be randomly assigned by the Mentor to present their de-identified cases prior to the start of the group mentoring. Once the dates are scheduled and the Mentee is assigned a date to present, it will be up to each Mentee to trade dates if needed. All Mentees are required to complete a minimum of 8 hours via the live group mentoring platform and will be required to review the taped mentoring session and send written feedback to the presenting Mentee and Mentor to complete the 10 hours requirement. All absences must be cleared by the Mentor no later than 24 hours prior to the mentoring sessions.

All Mentees must agree to general rules of engagement and be willing to abide by any mentor group specific rule(s) which will include but are not limited to the following:

- Allow everyone a chance to speak
- Listen respectfully and actively
- Criticize ideas, not individuals
- Commit to learning, not debating
- Avoid blame, speculation, inflammatory language
- Avoid assumptions about others, especially based on their perceived social group

During the life of this contract the Mentee agrees to keep state licensure and professional liability insurance current and in force. If the Mentee allows any of the above to lapse, WPATH should be notified by emailing wpath@wpath.org and this contract may be terminated at the sole discretion of the Mentor. In such case, any monies that have been paid are non-refundable and this could also mean that the hours accumulated from the time of lapse could be voided. The Mentee also agrees to inform the Mentor if a complaint, grievance or lawsuit is filed against the Mentee during the term of this contract.

Mentee agrees to send a copy of their license, their malpractice insurance, and this signed contract to wpath@wpath.org for filing. The mentee agrees to register and pay the \$250 fee to the WPATH via their online member account. All of these must be in place for the mentoring to commence.

Mentee Signature: 

Date: 2/5/21

WPATH GEI Medical Mentor Agreement – February 2021



WPATHGEI GLOBAL
EDUCATION
INSTITUTE

WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

Certificate of Achievement

Presented to

KATHERINE MISTRETTA, DNP

WPATH GEI SOC8 Certified Member

This certificate was completed on

5th November, 2023

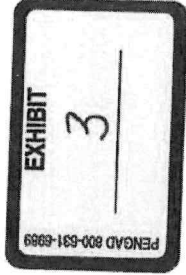
The member above has successfully completed all requirements within WPATH GEI SOC8 Certification Program.

WPATH
WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

WPATH.ORG

Authentication ID: 59C72XJQ3T

Exhibit 3



MEMBER SEARCH RESULTS

14 RESULTS:

Member Name	Specialty	City	State	Profile
Polly Becker		Missoula	MT	VIEW PROFILE
Andrea Fiscus	Psychology	Billings	MT	VIEW PROFILE
Amy Goffena, FNP	Endocrinology, Nurse Practitioner	Billings	MT	VIEW PROFILE
Eliot Graham, LCPC	Behavioral Health, Counseling, Education, LGBTQ Therapy, Professional Counselor	Missoula	MT	VIEW PROFILE
Erin Grantham, MD	Surgery: Urology	Billings	MT	VIEW PROFILE
Anne Harris, LCPC, MA	Behavioral Health, Counseling, LGBTQ Therapy, Marriage and Family Therapy, Professional Counselor, Sexology/Sex Therapy/Sex Research	Missoula	MT	VIEW PROFILE
Alex Holter, LCPC, MS	Behavioral Health, Counseling, Graduate Student, LGBTQ Therapy, Professional Counselor	East Helena	MT	VIEW PROFILE
Megan Jones, CNM	Graduate Student, Gynecology, LGBTQ Therapy, Nursing	Billings	MT	VIEW PROFILE
Kristin Mayer		Billings	MT	VIEW PROFILE
Katherine Mistretta, DNP	Internal Medicine (Family Practice)/ Primary Care	Bozeman	MT	VIEW PROFILE
James Parrott, MA	Education, Psychology	Helena	MT	VIEW PROFILE
Anna Louise Peterson, EDD, LCPC	Counseling	Missoula	MT	VIEW PROFILE
Tanya Richem, LCPC, MS	Behavioral Health, Counseling, Marriage and Family Therapy, Professional Counselor, Sexology/Sex Therapy/Sex Research	Choteau	MT	VIEW PROFILE
Deborah Robert, LCPC, MA	Behavioral Health, Counseling, LGBTQ Therapy, Professional Counselor	Glendive	MT	VIEW PROFILE

Exhibit 1

**THE WORLD PROFESSIONAL ASSOCIATION
FOR TRANSGENDER HEALTH, INC.
A NONPROFIT EDUCATIONAL ORGANIZATION**

BYLAWS

ARTICLE I. NAME

The name of this organization shall be the World Professional Association for Transgender Health, Inc. (WPATH), formerly known as the Harry Benjamin International Gender Dysphoria Association, Incorporated (HBIGDA), hereinafter referred to as “the Association.”

ARTICLE II. PURPOSE

The Association’s stated purpose is to provide a mechanism whereby professionals from various subspecialties of such disciplines as medicine, psychology, and the law may interact and communicate with each other to share research and clinical practice experience affecting the health and well-being of transsexual, transgender, and gender-nonconforming people.

The Association will promote meetings of interested professionals from a variety of professions and will encourage the dissemination of knowledge and best practice guidelines regarding gender dysphoria, transsexualism, and transgender health and well-being in general, to the professions and to the general public.

ARTICLE III. OFFICES

Section One. Incorporation. The Association is incorporated in the State of Texas.

Section Two. Principal Office. The Association will have a legal office (“WPATH Office”) associated with the business address of the Executive Director and /or the location where the day-to-day business functions of the Association are conducted.

ARTICLE IV. GOVERNMENT

Section One. Voting Membership. The Full, Honorary, and Emeritus members of this Association shall be the voting membership.

Section Two. Board of Directors. The administrative body of this Association shall be the Board of Directors, which includes seven (7) at large members, one (1) student liaison (non-voting), and the five (5) Officers of the Association. One (1) additional voting Board member shall represent each duly authorized Regional Affiliate of the Association. All members of the Board of Directors must also be members in good standing of the voting membership.

ARTICLE V-A. BOARD OF DIRECTORS AND OFFICERS

Section One. General Powers. The affairs of the Association shall be managed by its Board of Directors, who will be elected by the membership, except as noted below,

Section Two. Number, Tenure, and Qualifications. The number of At-large Directors shall be seven (7). Each At-large Director shall serve for a term of four (4) years or until a successor has qualified. At-large Directors may succeed themselves without limitation for one term, for a total of eight (8) years. However, an At-large Director is not prohibited from serving as an Officer or as a Regional Affiliate Organization Director after eight years of Board service. Similarly, after eight years on the Board and two years off the board, any former Director is again eligible to be nominated and elected to another Board term. At-large Directors serve the entire Association, and may not represent regional or other member blocks. At-large Directors may not serve as Regional Directors simultaneously while serving as an At-large Director. No person may hold or run for two or more positions on the Board at the same time.

Section Three: Regional Directors. Regional Affiliate Organizations of the Association may be formed to further professional communication, education and training, and policy efforts within a specific geographic region or country to provide greater attention to local members and local issues than is possible or practical to be tended to by the entire

WPATH Membership. Regional Affiliates may elect one (1) representative Director to the WPATH Board for a term of two (2) years in elections that are conducted within the specific region, such that only voting members from that region shall elect the Regional Director. Regional Directors may be re-elected for two (2) subsequent consecutive terms for the total service duration of six (6) years, after which they are not precluded from running for an At-large Director position or an Officer position with the Association. They may also run for election again as a Regional Director after standing down for at least one two (2) year term.

Section Four: Regional Affiliate Leadership. Regional Affiliate Organizations shall be constituted by a local leadership. Each Regional Affiliate Organization shall have its own operating agreement with WPATH. Regional Affiliate Organizations must be approved by the WPATH Board of Directors. Upon the chartering of the Regional Affiliate Organization, such entity must be re-approved every two (2) years by the WPATH Board of Directors to remain recognized as an Affiliate Organization. It is recommended that Regional Organizations be led by at least two Co-chairs from the region. Directors and Co-chairs may be volunteers from the time of Affiliate establishment to the time of the next regular Regional election, as determined by the Regional leadership. Thenceforward, Regional Officers and Directors shall be elected by the Regional Membership every two (2) years thereafter. Regional Affiliate Co-chairs may also establish other supporting positions as needed to operate the Organization. Regional Affiliate Organizations are responsible for conforming to the relevant laws governing professional educational associations in the country where they are constituted, and may establish their internal governance entirely according to local law or custom, including the capacity to refer to themselves as a WPATH Region, Regional Affiliate, or Regional Chapter, or other

appropriate nomenclature in conformance with local law or custom governing non-governmental organizations (NGOs).

Section Five. Regular meetings. Biennial meetings of the full Board of Directors shall be held with prior notice to the membership, usually at the time of the meeting of the membership at the biennial international symposium.

Section Six. Special meetings. Special meetings of the full Board of Directors may be called by or at the request of the Association President or any four (4) Directors.

Meetings of the Board may be conducted by long-distance conference telephone or any electronic media conferencing including the Internet or Intranet, or by any other meeting method as may be available and practical. The meeting at the time and place of the biennial meeting of the membership shall be held with the physical presence at the meeting site of a majority of the full Board of Directors.

Section Seven. Notice. Notice of any special meeting of the Board of Directors shall be given at least seven days previously thereto by written notice delivered personally by mail, fax or E-mail to each Director at their address as shown by the records of the Association. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. An initial agenda for the meeting shall be provided in the notice.

Section Eight. Quorum. A majority of the duly elected Board of Directors shall constitute a quorum for the transaction of business of any meeting other than Executive Committee meetings.

Section Nine. Manner of Acting. The act of the majority of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law or by these bylaws.

Section Ten. Compensation. Directors, or Regional Co-chairs, as such, shall not receive any stated salaries for their services, but by resolution of the Board of Directors, any Director may be indemnified for expenses and costs, including attorney's fees actually and necessarily incurred by them in connection with a claim asserted against them by action in court or otherwise by reason of their being or having been such Director or Co-chair, except in relation to matters as to which they shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

Section Eleven. Term of Office. The term of office (inauguration and termination) is roughly four (4) years for the at-large Directors and roughly two (2) years for Officers and for Regional Affiliate Directors or Regional Affiliate Co-chairs. Terms for Officers and all Directors or Co-chairs shall be fixed to the time of the biennial international meeting. In the event that no such meeting occurs within 30 months of the previous such meeting, the existing Board of Directors will set the time for the inauguration of the new term for new Directors.

Section Twelve. Removal. Any Director or Officer elected or appointed by the membership may be removed by the Board of Directors whenever, in their judgment, the best interests of the Association would be served thereby. Removal of a Director or Officer requires a two-thirds majority vote of the full Board of Directors (including all At-large and Regional Directors seated on the Board).

Section Thirteen. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term except in the case of a vacancy in the Presidency, in which case, the President-Elect will become President, and the then vacant position of President-Elect will remain vacant until an election is authorized by the Board. In the case of the simultaneous vacancy of the President and President-Elect positions, the Board of Directors may appoint an interim President to complete the unexpired portion of the term.

Section Fourteen. Executive Committee. The Executive Committee composed of the Association Officers and Executive Director may meet to conduct the routine business of the Association when the Association and the Board of Directors are not meeting as a whole. The Executive Director serves as an ex-officio member of the Executive Committee. Substantive business, such as any major restructuring or dissolution of the Association, as decided by the Board of Directors, will be brought for a vote of the entire Board of Directors or the entire Association, as appropriate. Decisions affecting any particular geographic region in which a Regional Affiliate Organization is constituted shall not be made by the Directors without participation in the decision by the Regional Affiliate's elected or appointed Director.

ARTICLE V-B. OFFICERS

Section One. Officers. The Officers of the Association shall be a President, President-Elect, Past President, a Treasurer, and a Secretary. The President, Past President, and President-Elect cannot succeed themselves, but there is no limit as to the number of times

an individual may hold these offices. No person may hold or run for two or more positions on the Board at the same time.

Section Two. President. The President shall be the principal Executive Officer of the Association and shall, in general, supervise and control all of the business and affairs of the Association. They shall preside at all meetings of the members, Executive Committee, and Board of Directors. They may sign, with the Treasurer and/or Executive Director or any other proper Officer of the Association authorized by the Board of Directors, any deeds, mortgages, bonds, contract, or other instruments that the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws, or by statute to some other Officer or agent of the Association; and, in general, they shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. They will serve a term of office of roughly two (2) years (as described above).

Section Three. President-Elect. In the absence of the President, or in the event of their inability or refusal to act, the President-Elect, shall perform the duties of the President, and when so acting shall have all the powers of and shall be subject to all the restrictions on the President. The President-Elect shall perform such other duties as from time to time may be assigned to them by the President or Directors. They will automatically assume the Presidency for roughly a two-year term upon completion of their term as President-Elect (as described above).

Section Four. Treasurer. The Treasurer shall have general oversight responsibility of the financial matters executed by the Executive Director of the Association. They will, in conjunction with the Executive Director, be responsible for the preparation of the budget

and financial reports to the Board of Directors on an annual basis. They will have signature authority on all financial accounts of the Association. In addition, the Treasurer will, in consultation with the Board, order an audit of the financial records of the Association at any time. Overall, the Treasurer will insure the fiscal responsibility of the Association. They will serve a term of roughly two (2) years and may succeed themselves only once for a total term of four (4) consecutive years.

Section Five. Secretary. The Secretary will monitor the activity of Committees, and, in general, perform such other duties as from time to time may be assigned to them by the President or by the Board of Directors. They will serve a term of roughly two (2) years (as described above) and may succeed themselves only once for a total of four (4) consecutive years.

Section Six. Past President. When the President's term expires, they will become the immediate Past President for a term of roughly two (2) years.

ARTICLE V-C: EXECUTIVE DIRECTOR

The Executive Director serves as the operating officer of the Association and carries out or oversees the day- to-day work of the Association. The Executive Director is selected by the Board of Directors and may be paid a professional fee negotiated by them. Under the broad approval of the Board of Directors, the Executive Director implements the policies and plans of the Association and serves as an information representative to external and internal sources. The Executive Director maintains a working relationship with the President to whom they are directly responsible. The Executive Director works closely with the Board of Directors and with the Committee Chairs and Regional Co-Chairs in such a way as to develop the services of the

Association. The Executive Director must provide effective and efficient management resulting in productive performance and constructive growth of the Association. The Executive Director is responsible for the management and administration of the budget, and collects dues from the membership. They will have signature authority on all financial accounts of the Association. The Executive Director will also perform certain duties of Secretary of the Association by ensuring that records of the meetings of the Board of Directors and Officers, as well as the minutes of the biennial general membership meetings, are properly taken and maintained by office staff, and by ensuring that notices are duly given in accordance with the provisions of these bylaws or as required by law. The Executive Director is responsible for overseeing the web site of the Association, production and distribution of correspondence or newsletters to the membership as determined by the Board of Directors, as well as the updating and maintaining of the membership list. The Executive Director shall attend all meetings of the Executive Committee and Board of Directors (unless excused), and shall both inform and advise the Board on all business matters of the Association; however, as an employee of the Association, they are not entitled to a vote in any matters considered for decision by the Board.

ARTICLE VI. MEMBERSHIP

Section One. Honorary Members. The Board of Directors may, from time to time, designate persons as honorary members of the Association. Such persons will have full voting rights in the Association and the requirement to pay dues to the Association will be waived.

Section Two. Full Membership.

- a. Persons may apply or be nominated for membership in the Association.
- b. A person who is nominated must also complete an application form and meet all of the requirements contained in points c and d below.
- c. Applicants must be able to demonstrate a relevant professional qualification in any discipline of:
 - Medicine
 - Law
 - Marriage and Family Therapy
 - Psychology
 - Psychotherapy
 - Speech/ Voice Therapy
 - Sexology
 - Social Work
 - Sociology
 - Education
 - or other relevant discipline in the field of transsexual, transgender, or gender-nonconforming people's health, well-being and care,or, experience and background in these disciplines or any other related profession or discipline which contributes to the well-being of transsexual, transgender, and/or gender-nonconforming people,
- d. Applicants must also include a payment of their annual membership fee as prescribed by the Board of Directors with their application. On approval of their membership such payment will be transferred into the hands of the Association.
- e. Approval for membership may be given by the Executive Director or any designated member of the Board as proposed by the Executive Committee.
- f. Persons approved will be regarded as full members with full voting rights.
- g. If a person wishes to appeal a membership decision, they should contact the office of the Executive Director.

Section Three. Emeritus Membership. Persons who are retired may become Emeritus members and be eligible for a reduced membership fee upon providing evidence of retirement. Emeritus members must have been full members of the Association before retirement for at least five consecutive years immediately before applying for Emeritus membership. Emeritus members have full voting rights.

Section Four. Student Members. Persons applying for membership in this Association, and proving status as a registered student in a terminal degree program pertaining to transgender health, upon nomination by a full member of the Association, and upon payment of student dues as set by the Board of Directors, will be regarded as student members of the Association. Student members do not have voting rights unless they have attained approved status as a Full member and therefore qualify to vote.

Section Five. Supporting Members. Other persons applying for membership in the Association who do not have any relevant professional connection with the field, yet pay dues as prescribed by the Board of Directors, will be regarded as supporting members of the Association without voting rights. Group memberships, if approved, will also be classified as supporting members.

Section Six. Regional Affiliate members. Regional Affiliate members automatically become members of WPATH, and WPATH members automatically become members of any Regional Affiliate that is duly constituted in their home region. Regional Affiliate membership criteria is the same as that for WPATH membership, as described in this Article (Article VI. MEMBERSHIP). Regional Affiliate members shall pay membership dues to WPATH in an amount established by the Board of Directors. In some cases, depending on the Regional Affiliate operating agreement with WPATH, certain funds may be remitted to the Regional Affiliate to assist in supporting the Affiliate's work on

behalf of its members. Such funds may not accrue to Affiliate leadership as income or unauthorized expense reimbursement, but should be maintained in a bank account for the purpose of supporting the business interests of the Affiliate, as determined by its members. Full records of expenses and membership income must be available to the WPATH Office upon request, within three (3) weeks of such request.

Section Seven. Membership Committee. The Board of Directors may appoint a membership committee that may have the duty to recommend to the Board of Directors criteria for membership, membership categories, dues, and the mechanism whereby members may be suspended or expelled.

ARTICLE VII. EXECUTION OF INSTRUMENTS

Section One. Payments. Orders for payment of money shall be signed in the name of the Association and an authorization for payment must be signed by the President, Treasurer, or Executive Director. All payments in excess of \$3,000 (U.S.) or the equivalent must be signed or approved in writing by two of the above.

Section Two. Contracts, conveyances, and other instruments. The Board of Directors shall have power to designate the Officers and agents who shall have authority to execute any instrument on behalf of this Association. When the execution of any contract, conveyance or other instrument has been authorized by the Board of Directors without specification of the executing officer, the President, Treasurer or Executive Director may execute the same in the name and behalf of the Association, and may affix the corporate seal thereto.

ARTICLE VIII. DUES

Section One. Annual dues. The annual dues for honorary members will be waived; the annual dues for all membership categories will be determined by the Board of Directors. Dues must be paid by the renewal date specified or the member will be dropped from membership.

ARTICLE IX. MISCELLANEOUS

Section One. Books and records. The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors. Regional Affiliate Co-chairs shall maintain records of Affiliate business meetings, and any Director elected by a Regional Affiliate shall document all joint business of the Affiliate and of the Association in which they participate in memoranda that shall become the property of the Affiliate Office, with copies delivered promptly to the WPATH Office.

Section Two. Fiscal year. The fiscal year of the Association shall be determined based on good accounting and bookkeeping practices.

Section Three. Corporate seal. The Board of Directors shall provide a corporate seal with the name of the Association thereon.

Section Four. Waiver of Notice. Whenever any notice is required to be given under the provision of the Texas Non-Profit Corporation Act, or under the provisions of The Articles of Incorporation or the Bylaws of the Association, a waiver thereof, in writing, signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE X. ENACTMENT OF THESE BYLAWS

These Bylaws shall take effect upon approval of the majority vote of eligible voting members.

ARTICLE XI. AMENDMENTS

Section One. Amendment to Bylaws. The current Bylaws shall be posted on the Association's web site for members. These Bylaws may be altered, amended or repealed by vote of the voting membership at such time, place, and by such methods as directed by the Board of Directors. Any proposed alterations, amendments, or suggested repeals of the Bylaws must be approved by majority vote of the membership's eligible votes cast, upon recommendation by the Board of Directors. Members may submit suggested amendments to the Board of Directors for consideration.

ARTICLE XII. VOTING

Section One. Vote required. All votes taken by the Board of Directors and by the voting membership shall require a majority of votes cast unless otherwise specified by these Bylaws. In the case of votes taken by the Board of Directors, a quorum of directors must be present before the vote is taken, except as specified as above. However, in the case of a vote by the Board of Directors to remove an officer, a two-thirds vote of the directors is required. All votes taken by the membership shall be conducted by electronic ballot using either email or the Association web site or another web site approved by the Executive Director and Executive Committee. A majority of ballots cast determines the outcome.

ARTICLE XIII. COMMITTEES

Section One. Appointment. Committees may be established by the Board of Directors. Committees should include at least three (3) persons, including, if possible, one (1)

member of the Board of Directors. Other committee members, including the Chair, must be members of the voting membership of the Association. Committees may invite, as non-voting committee members, consultants who may or may not be members of the voting membership of the Association. The President and Secretary shall serve as ex-officio members of all committees. The recommendation to the Board of Directors to appoint a committee, and its members, may be made by any voting member of the Association and may be submitted to any Director to be brought to the attention of the full Board of Directors.

Section Two. Powers. Committees established by the Board of Directors may not act for, on behalf of, or instead of, the Board of Directors, or voting membership of the Association. Committees should make every effort to keep the membership informed concerning their activities. Committees' recommendations will be presented to the Secretary, who will present them to the Board of Directors. The Board of Directors, where empowered to do so by these Bylaws, may act on the Committee recommendations. The Committee membership, recommendations, and the acts of the Board of Directors must be reported to the voting membership of the Association at the time of, or before, the next scheduled general membership voting occasion. Committee recommendations approved by the Board of Directors, and requiring a vote by the voting membership of the Association, shall be sent to the voting membership of the Association at the time of the next scheduled voting. A special voting occasion may be called for earlier by the Board of Directors.

ARTICLE XIV. MEMBERSHIP LISTS

The Executive Director will maintain a complete mailing list of the membership of the Association, which is also capable of being sorted to separately identify members of each Regional Affiliate Organization. Except where a member has specifically asked for exclusion of their name and/or address, the contact list will be available to any member of the Association.

Exhibit 2



WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

WPATH Code of Conduct Policy

Revised April 2021

The mission of the World Professional Association for Transgender Health (WPATH) is to promote evidence-based care, education, research, public policy, and respect in transgender health. We envision a world wherein people of all gender identities and gender expressions have access to evidence-based healthcare, social services, justice, and equality.

In line with good governance and operational protocols, all WPATH Participants are required to follow the following Code of Conduct. WPATH Participants include any member or non-member who is a volunteer, attendee, staff person, speaker/faculty member, invited or otherwise, contractor, sponsor, or similar with WPATH and/or its affiliated regional organizations.

We promote free and full discussion of scientific ideas in a respectful environment. We expect cooperation from all WPATH Participants to help ensure a safe, collegial, and professional environment and atmosphere for everyone. WPATH work and activities should take place in a friendly manner where everyone's behavior creates a welcoming, safe, and open place to share ideas and engage in open discussion without threat of intimidation or public humiliation. We expect all Participants to be respectful in person and online towards others. We suggest that critiques be delivered in a non-threatening manner.

Where applicable, photography, recording, or reproduction of any kind is **not** permitted without the explicit consent of any person and/or of the author/presenter/copyright-holder(s) of the material being photographed, recorded or reproduced.

We expect all WPATH Participants to behave in a collegial manner and to use language that is respectful, non-pathologizing and consistent with human rights standards, considering its ever shifting and complex contextual and cultural character. Ultimately, this caution applies equally to the delivery of transgender health services and all other formal and informal settings in which human interaction takes place. Please refer to our [Language Policy](#).

We are committed to providing a harassment-free experience for everyone, regardless of gender identity and expression, sex or secondary sex characteristics, sexual orientation,

physical and cognitive ability, physical appearance, age, body size, race, ethnicity, political affiliation or religion. Harassment and inappropriate behavior in any form will not be tolerated.

Harassment includes offensive verbal comments and other forms of using disrespectful and pathologizing language inconsistent with human rights standards, deliberate intimidation, stalking, following, harassing, photography or recording without explicit consent, sustained disruption of talks or other events, inappropriate physical contact, and unwelcome sexual attention.

This Code of Conduct applies in every space and occurrence to all WPATH Participants, in every role.

If any WPATH Participant is known to be in or have been in violation of the Code of Conduct, WPATH and its affiliated regional organizations reserve the right to remove the party from the event, activity, organization, role, membership, etc. without any refund of fees paid. Due diligence will be applied to investigate and confirm the violation of the Code of Conduct before action is taken. The Executive Committee of the Board representing WPATH or its affiliated regional organization, will review the complaint, and make a decision regarding the appropriate action to be taken, or forward the complaint for further review to an assigned committee. The Participant will be notified in writing of the action taken by WPATH.

If you wish to report a WPATH Participant (member, non-member, volunteer, attendee, staff person, speaker/faculty member, invited or otherwise, contractor, or sponsor, etc.) for a violation of this Code of Conduct, please contact the WPATH office immediately at wpath@wpath.org. If you prefer to reach our Executive Director directly, please contact Blaine Vella at blaine@wpath.org.

Your engagement with WPATH as a WPATH Participant, as defined above, and availability of this document for review, is considered your agreement to the terms of the WPATH Code of Conduct Policy, revised April 2021, all other versions of this policy are to be replaced by this one, dated April 2021.

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CERTIFICATE OF SERVICE

I, Michael D. Russell, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief in Opposition to the following on 09-06-2024:

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: Jessica Kalarchik, Jane Doe
Service Method: eService

Marthe VanSickle (Attorney)
PO Box 1968
Missoula MT 59806
Representing: Jessica Kalarchik, Jane Doe
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: Austin Knudsen, Montana Department Of Justice, State of Montana, Gregory Gianforte,
Charles T Brererton, Montana Department of Public Health and Human Services
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620
Representing: Austin Knudsen, Montana Department Of Justice, State of Montana, Gregory Gianforte,
Charles T Brererton, Montana Department of Public Health and Human Services
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Austin Knudsen, Montana Department Of Justice, State of Montana, Gregory Gianforte,
Charles T Brererton, Montana Department of Public Health and Human Services
Service Method: eService

Michael Noonan (Govt Attorney)
215 N SANDERS ST

HELENA MT 59601-4522

Representing: Austin Knudsen, Montana Department Of Justice, State of Montana, Gregory Gianforte, Charles T Brererton, Montana Department of Public Health and Human Services
Service Method: eService

Emily Jones (Attorney)

115 North Broadway
Suite 410

Billings MT 59101

Representing: Austin Knudsen, Montana Department Of Justice, State of Montana, Gregory Gianforte, Charles T Brererton, Montana Department of Public Health and Human Services
Service Method: eService

Seth A. Horvath (Attorney)

70 West Madison Street, Suite 5200
Chicago IL 60602

Representing: Jessica Kalarchik
Service Method: eService

F. Thomas Hecht (Attorney)

70 West Madison, Suite 5200
Chicago MT 60605

Representing: Jessica Kalarchik
Service Method: eService

Jon W. Davidson (Attorney)

125 Broad Street, 18th Floor
New York NY 10004

Representing: Jessica Kalarchik
Service Method: eService

Malita Vencienzo Picasso (Attorney)

125 Broad Street, 18th Floor
New York NY 10004

Representing: Jessica Kalarchik
Service Method: eService

Robert M. Farris-Olsen (Attorney)

401 N. Last Chance Gulch
Helena MT 59601

Representing: World Professional Association For Transgender Health
Service Method: eService

Tina B. Solis (Attorney)

70 West Madison Street, Suite 3500
Chicago IA 60601

Representing: Jessica Kalarchik
Service Method: Email

Electronically signed by Kara Thompson on behalf of Michael D. Russell
Dated: 09-06-2024

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 09-19-2024:

Thane P. Johnson (Govt Attorney)

215 N SANDERS ST

P.O. Box 201401

HELENA MT 59620-1401

Representing: Gianforte, Gregory As Governor Of State Of Montana, Brereton, Charles as DPHHS Director, Montana Department of Health and Human Services

Service Method: eService

Michael D. Russell (Govt Attorney)

215 N Sanders

Helena MT 59620

Representing: State of Montana, Gianforte, Gregory As Governor Of State Of Montana, Brereton, Charles as DPHHS Director, Montana Department of Health and Human Services

Service Method: eService

Emily Jones (Attorney)

115 North Broadway

Suite 410

Billings MT 59101

Representing: State of Montana, Gianforte, Gregory As Governor Of State Of Montana, Brereton, Charles as DPHHS Director, Montana Department of Health and Human Services

Service Method: eService

Thane P. Johnson (Attorney)

215 N SANDERS ST

P.O. Box 201401

HELENA MT 59620-1401

Representing: State of Montana

Service Method: eService

Elizabeth A. Halverson (Attorney)

1302 24th Street West #393

Billings MT 59102

Representing: Amelia Marquez

Service Method: eService

Malita Vencienzo Picasso (Attorney)
125 Broad Street, 18th Floor
New York NY 10004
Representing: Amelia Marquez
Service Method: eService

Marthe VanSickle (Attorney)
PO Box 1968
Missoula MT 59806
Representing: Amelia Marquez
Service Method: eService

Jon W. Davidson (Attorney)
125 Broad Street, 18th Floor
New York NY 10004
Representing: Amelia Marquez
Service Method: eService

Akilah Maya Deernose (Attorney)
1121 Knight St.
Helena MT 59601
Representing: Amelia Marquez
Service Method: eService

Seth A. Horvath (Attorney)
70 West Madison Street, Suite 5200
Chicago IL 60602
Representing: Amelia Marquez
Service Method: eService

Meier, Adam, As Director Of Dphhs (Defendant)
Service Method: Email

John Doe I (Plaintiff)
Service Method: Email

Austin Miles Knudsen (Attorney)
P.O. Box 624
Culbertson MT 59218
Representing: State of Montana, Gianforte, Gregory As Governor Of State Of Montana, Montana
Department of Health and Human Services
Service Method: Email

John Knight (Attorney)
150 North Michigan Avenue Suite 600
Chicago IL 60601
Representing: Amelia Marquez
Service Method: Email

F. Thomas Hecht (Attorney)
70 West Madison Street, Suite 3500
Chicago IL 60601
Representing: Amelia Marquez
Service Method: Email

Tina B Solis (Attorney)
70 West Madison Street Suite 3500
Chicago IL 60601
Representing: Amelia Marquez
Service Method: Email

Electronically Signed By: Alexander H. Rate
Dated: 09-19-2024