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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

MOLLY CROSS, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.	Dept. No. 4 DV-32-2023-541 Hon. Jason Marks **DEFENDANTS' BRIEF IN SUPPORT OF RULE 60(B)(2) MOTION FOR RELIEF FROM JUDGMENT OR ORDER**

INTRODUCTION

Under Rule 60(b)(2), Defendants again seek relief from this Court's Order Re: Cross-Motions for Summary Judgment (Doc. 279) (the "Order"). Since Defendants' last request for relief, (Docs. 293; 294; 302),

the U.S. Department of Health and Human Services released its *Supplement to Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices. Peer Reviews and Replies*, **attached as Exhibit A** ("the Supplement"). This new publication is newly discovered evidence that directly contradicts both this Court's findings and earlier denial of Defendants' requested Rule 60 relief. Because the Supplement constitutes "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)" this Court should grant Defendants' requested relief from judgment.

FACTUAL BACKGROUND

This past summer, Defendants moved for Rule 60 relief because the federal government published a letter related to its *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* publication. (Doc. 294 at 1–3.) Defendants argued this letter "marked a dramatic shift with the Nation's health department recognizing the risks and advising medical practitioners to take action." (*Id.* at 19.) Following briefing, the Court responded to Defendants' arguments for relief that the federal government's letter "simply urges providers to read the HHS Review and relies on the HHS Review's conclusions." (Doc. 308 at 4). This

Court, however, previously rejected those conclusions because it contended "the HHS Review simply 'summarized, synthesized, and critically evaluated the *existing literature* on the best practices for promoting the health and well-being of children and adolescents with distress related to their sex or to social expectations associated with their sex.'" (Doc. 308 at 4) (quoting Doc. 274, at Ex. A, at 11) (cleaned up).

On November 19, 2025, the federal government followed up its Review with the Supplement. The Supplement consists of revisions to the original Review and new material. Ex. A at 3. The Supplement now includes a revised Appendix 4; the identities and biographies of the contributors; seven solicited peer reviews and responses; two unsolicited peer reviews and responses; and minor editorial revisions, including "typographical fixes, small alterations of wording and formatting, incorporation of some publications that appeared after the Review was first published, web archive links for items in the bibliography, and the addition of a table of contents to Appendix 4." *Id.*

LEGAL STANDARD

Under Montana Rule of Civil Procedure 60(b), "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment" for "(2) newly discovered evidence that, with reasonable

diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." *In re Marriage of Remitz*, 2018 MT 298, ¶ 11, 393 Mont. 423, 431 P.3d 338. If a "trial court refuse[s] to set aside the judgment, only a slight abuse of discretion need be shown to warrant reversal." *ECI Credit, LLC v. Diamond S Inc.*, 2018 MT 183, ¶ 14, 392 Mont. 178, 422 P.3d 691.

ARGUMENT

"[D]isagreement is common in science, and debate should be welcomed." Ex. A, at 62. The Supplement is newly discovered evidence because it establishes: (1) the authors of the Review; (2) the peer review process; and (3) revisions to the Review, including added studies. When deciding a Rule 60 Motion, courts consider whether:

> (1) the alleged newly discovered evidence came to the moving party after trial; (2) it was not a want of due diligence which precluded its earlier discovery; (3) the materiality of the new evidence is so great that it would probably produce a different result on retrial; and (4) the new evidence is not merely cumulative, not tending only to impeach or discredit witnesses in the case.

In re B.B., 2001 MT 285, ¶ 40, 307 Mont. 379, 37 P.3d 715. Each factor "must be considered by the District Court." *Fjelstad v. State Through Dep't of Highways*, 267 Mont. 211, 220, 883 P.2d 106 (1994) (modified on other grounds by *Byrum v. Andren*, 2007 MT 107, 337 Mont. 167, 159

P.3d 1062). Under these four factors, Defendants warrant relief from the Order.

I. The State meets factors 1 and 2.

First, the federal government published the Supplement on November 19, 2025. That publication was after the Court issued the Order, so Defendants never had the chance to raise this new information or brief it until now. The delay in argument does not rest on Defendants' lack of due diligence in discovering this material. On the contrary, Defendants have kept and continue to keep the Court informed of federal developments which impact this litigation. Plainly, the State meets factors 1 and 2.

II. The Supplement contains materially new evidence that would produce a different result at trial.

The federal government released the Supplement following an extensive peer review process and further revisions. These revisions include "individual replies to seven solicited peer reviews" and "two unsolicited peer reviews." Additions including "publications that appeared after the Review was first published." And finally, the authors are now listed.

The most important new information from the Supplement is the identity of each contributor. While parties independently knew of some contributors, like Drs. Farr Curlin or Michael Laidlaw, other contributors were wholly unknown to the parties. "[L]egal standards for medical practice and procedure cannot be based on political ideology, but, rather, must be grounded in the methods and procedures of science and in the collective professional judgment, knowledge and experience on the medical community." *Armstrong*, 1999 MT 261, ¶ 62, 296 Mont. 361, 989 P.2d 364. The contributors to the Review, announced in the Supplement, include healthcare researchers, published professors on gender identity and related topics, ethicists, and public health policy researchers. The contributors hail from esteemed universities across the United States. And the Supplement confirms their "collective professional judgment, knowledge, and experience." This Court found "there is no genuine dispute" about where the American medical community stands on medicalized gender treatment (MGT). (Doc. 279 at 21.) Now that the author's names are public knowledge, this Court's findings doubtful reign true.

These individuals are not, as may be argued, merely medical professionals that disagree with medical consensus. Rather, they are members of the medical community pushing back against the bully pulpit of ideologically motivated organizations like WPATH or the APA.[1] WPATH and the APA are not *the* medical community, they are tribes within the medical community. Painting one side as the medical community, and the other side as merely medical professionals with disagreements, is not only intellectually bankrupt, but reduces a factual finding to an arbitrary assignment of power. *Armstrong* does not explain how courts determine what the consensus of the medical community is. But that omission is not an invitation for this Court to replace thorough factfinding at trial with baseless assignment of who is the medical community and who are medical professionals with disagreement.

In any event, such arbitrary bifurcation is nowhere within *Armstrong*. The *Armstrong* Court said, "a medically-acknowledged, *bona*

[1] In a Florida Circuit Court, the State of Florida has filed suit against WPATH, AAP, and the Endocrine Society for violating Florida's Deceptive and Unfair Trade Practices Act and Florida's RICO Act, seeking pecuniary damages on behalf of Floridians for false or misleading claims about the safety, reversibility, or efficacy of MGT. Complaint, *State of Florida v. WPATH*, *et al.*, (Filing No. 237207891), **attached as Exhibit B**.

fide health risk." *Armstrong*, ¶ 62. There is nothing about dealing with rival opinions within the medical community; there just must be some medically-acknowledged health risk. The contributors, through the Review and Supplement, raise significant points about MGT's health risks. Those concerns cannot be simply brushed aside on the premise of all medicine carries risk. If MGT poses the risks that the contributors argue, then there is, at minimum, a question of fact about whether there is "a medically-acknowledged, *bona fide* health risk." The contributors placed their professional credibility on the line to express their opinions about the risk of MGT. This is far beyond just "some risk."

Another new piece of evidence is the peer review process presented in the Supplement. The peer review process importantly challenges the findings and ensures the highest efficacy in medical publications. Really these are two pieces of new evidence. First, included in the Supplement are nine peer reviews. And second, there are nine responses to the peer reviews. While these go hand in hand, the two pieces of evidence here are material such that they would change the outcome at trial.

For example, the American Psychiatric Association, through Drs. William M. Byne and Jack Drescher, criticizes that the Review's

"underlying methodology lacks sufficient transparency and clarity for its findings to be taken as face value." (Ex. A, at 7.) Included information, in the APA's opinion, "are either underexplained or absent." (*Id.*) APA listed several specific comments and included additional studies and reports for review and consideration. (*Id.* at 7–10.)

The APA's peer review is new evidence because it specifically evaluates and comments upon the Review, something the APA has no previous commentary on (because it did not previously exist). If the Review was not new, then these comments would be unnecessary. But because the APA believed the Review to be a new contribution to the medical community's understanding of MGT, that organization offered a peer review of the Review. That is indisputably new evidence.

In turn, the Supplement contains specific responses to the APA's peer review. On the contrary to the APA's criticism of the methodological transparency and clarity, the Supplement establishes that two methodologists peer-reviewed the Review using the Preferred Reporting Items for Overviews of Reviews checklist to ensure a robust methodology. (*Id.* at 55–56.) As those methodologists concluded, "the final results are described transparently and are easy to follow." (*Id.* at 56.)

As the Supplement acknowledges, "It is not advisable to assess evidence simply by looking at the conclusions of individual studies, because not all studies are equally reliable." (*Id.* at 61.) So instead of simply analyzing individuals' conclusions, the Supplement specifically follows "a *systematic review* of the evidence, which involves a search for studies using prespecified criteria, an assessment of the individual studies for risk of bias, and a determination of the quality (certainty) of the entire body of evidence for each key outcome." (*Id.*) (citation omitted).

Again, this is new evidence that sheds light on the peer review process for the Supplement. For this specific example, the contributors pull back the veil on the process they used for producing the Review. Although the peer review process touches issues contained in the briefs, never has there been such an in-depth dive into the methodologies and conversations that lead to the final publication.

For the first time, the Supplement describes an "ongoing misinformation campaign against" the Cass Review. Ex. A, at 64. Indeed, some such criticisms "appeared to have been written for the purpose of influencing court cases, as opposed to advancing scientific understanding." Ex. A, at 64 n. 7.

What the Supplement amounts to is a documented record of the development of the medical community's opinions regarding MGT. This cries for fact finding in the trial context. There is competing evidence that, taken together, paints a complicated picture of where the medical community stands on MGT. That picture cannot be erased through summary judgment.

III. The Supplement is not merely cumulative.

The Supplement, as discussed above, involves new evidence. And this new evidence is just that—new, rather than merely cumulative. For the first time, the parties have new names of experts, a now-publicly known peer review process, and revisions incorporating recent scientific studies. None of this new evidence, however, is cumulative because they are independent developments of the available information already before the Court, not just regurgitations of what the parties already presented. For example, for the first time, parties and the Court have a view of what happens behind the curtain. And behind this curtain is not a conman from Nebraska, but rather various members of the medical community contesting and responding to the Review through the peer review process. The points raised and countered are new evidence necessitating more discovery. And that new discovery would yield a

different result at trial, because there is now plainly a question of fact of the consensus of the medical community.

CONCLUSION

For the foregoing reasons, Defendants' Motion should be granted.

DATED this 12th day of December 2025.

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