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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' REPLY IN SUPPORT
OF RULE 60 (b)(2) MOTION FOR
RELIEF FROM JUDGMENT OR
ORDER AND MOTION TO DISSOLVE
INJUNCTION**

INTRODUCTION

If this litigation were filed today, Plaintiffs' motion for summary judgment would fail. Evidence continues to mount of the ongoing and intense debate over the use of sex-rejecting treatments for adolescents and children. The new evidence materially strengthens Defendants' showing of medically acknowledged, *bona fide* health risks. This Court

should grant relief from judgment or, in the alternative, dissolve its injunction pursuant to Mont. Code Ann. § 27-19-401.

ARGUMENT

I. Defendants’ motion is timely.

Rule 60 provides that a motion for relief from judgment based on newly discovered evidence must be made within a year of “entry of the judgment or order or the date of the proceeding.” M. R. Civ. P. 60(c)(1).¹ The Montana Supreme Court has “consistently held” that “the time for filing an appeal did not begin to run until the clerk of court issued the notice of entry of judgment as required by the then existing Rule 77(d).” *In re Marriage of Bell*, 2000 MT 88, ¶ 14, 299 Mont. 219, 998 P.2d 1163. The same rule applies to Rule 60 timelines; “Since the time for appeal does not begin to run until the notice of entry is filed, neither does the

¹ Plaintiffs attempt to separate out the Court’s summary judgment order from the judgment in the case to bolster their timing argument, arguing that the relevant time period runs from the entry of the summary judgment order, itself. But here, the summary judgment order and the Rule 77(d) notice of final judgment are inextricably bound up together. As the United States Supreme Court has explained in reference to the federal Rule 60, “Any ‘judgment’ will generally involve an ‘order,’ but not all ‘orders’ are ‘judgments.’” *Waetzig v. Halliburton Energy Servs., Inc.*, 604 U.S. 305, 317 (2025). Plaintiffs’ interpretation would simply swallow up the rule, as the time period would always run from the relevant order leading to judgment, rather than the judgment itself. Under this theory, Rule 60 motions based on new evidence could be barred before the litigation itself even has a final judgment.

time to request the court to modify or vacate the order.” *In re Marriage of Bell*, ¶ 14.² The Montana Supreme Court has reiterated *Bell* as recently as this year, discussing *Bell*’s Rule 60 holding and finding that the relevant appellate deadlines began to run from the filing of a Rule 77(d) notice of final judgment rather than from the date of the order under appeal. *Keltz v. KMW Enters., Inc.*, No. DA 26-0197, 2026 WL 1150012, at *2 (Mont. Apr. 28, 2026); *see also Matter of Holmes’ Est.*, 183 Mont. 290, 295, 599 P.2d 344, 347 (1979) (“If the clerk fails to send the notice, the time for a party to appeal an order does not begin to run. This rule applies regardless of actual notice of the entry of the order by the party seeking to appeal the order.”) (internal citations omitted); *In re Marriage of Hopper*, 1999 MT 310, ¶ 22, 297 Mont. 225, 991 P.2d 960 (finding a July 1998 Rule 60 motion timely when the relevant order was entered in 1995 but the Rule 77(d) notice of entry of judgment was not filed until 1998).

The Rule 77(d) notice of entry of final judgment was filed and served in this case on July 14, 2026. Doc. 337. Defendants filed this Rule 60(b)

² The rule was amended in 2011 to extend the deadline from 60 days to a year. *Wittich L. Firm, P.C. v. O’Connell*, 2013 MT 122, ¶ 17, 370 Mont. 103, 109, 304 P.3d 375, 380.

motion for relief on September 4, 2026, well within the one-year limit. In fact, Plaintiffs’ own response acknowledges that July 14, 2026, is the key date for appellate purposes, stating, “Defendants’ time limit to notice their appeal was sixty days from July 14, 2026.” Doc. 345 at 2. As the Montana Supreme Court has explained, this is the relevant date for both an appeal and a motion to modify under Rule 60(b). *In re Marriage of Bell*, ¶ 14; *AAR Constr., Inc. v. Fergus Elec. Coop., Inc.*, 215 Mont. 102, 108, 695 P.2d 819, 823 (1985) (explaining that the time to file a motion to reconsider does not begin until the filing of a Rule 77(d) notice); *In re Marriage of Gudmundson*, 1998 MT 54, ¶ 23, 288 Mont. 70, 955 P.2d 648 (“The District Court correctly noted when it denied Gene’s motion to dismiss the first Rule 60(b) motion that when a party has made an appearance, Rule 77(d), M. R. Civ. P., requires that notice of entry of judgment be served. As such, the sixty-day period did not begin to run until the notice of entry of judgment was filed on November 25, 1996.”).

Alternatively, in a case such as this one, the determination of the amount of attorney fees plays a crucial role in setting the relevant deadlines. In *Ring v. Hoselton*, the Montana Supreme Court considered when a case is completed for the purposes of filing an appeal and Rule 60

motions. The Court explained that a case “should not be appealed until it is totally ready for review.” *Ring v. Hoselton*, 197 Mont. 414, 421, 643 P.2d 1165, 1170 (1982). Similarly, Rule 60(b) relief requires a final judgment, and *Ring* treated an unresolved fee determination as preventing that finality. In *Ring*, after judgment was entered against Aetna on November 6, Aetna filed a Rule 60 motion. *Id.* at 418. It did so even though the district court had not determined the amount of attorney fees, which it did on December 22. *Id.* at 418–19. The Supreme Court held that the relevant date for purposes of Aetna’s Rule 60(b) motion was December 22, explaining “the judgment was not final on November 6, and did not become final until the entry of judgment on December 22, determining the amount of fees.” *Id.* at 422. “Because the November 17 motion under Rule 60 was made before the judgment became final, the motion was premature and may be disregarded.” *Id.* at 424; *see also* M. R. Civ. P. 58(e) (explaining that for purposes of appeal, a judgment is not final until fee issues are resolved).

The fee issue in this case was not resolved until July 7, 2026. Doc. 336. Therefore, under the rule established in *Ring*, the judgment was not final for Rule 60(b) purposes until after the fee issue was determined.

Defendants' September 4, 2026 motion was therefore filed well within the one-year period, whether measuring that period from the July 7 fee determination or the Rule 77(d) notice.

II. Newly discovered evidence compels this Court to act.

Plaintiffs' arguments in their response would be fitting for a trial in this case, one in which they can assert their position in this ongoing and increasingly divided debate on, as WPATH puts it, "how to, or if one should, provide transgender healthcare to adolescents." Doc. 340, Exh. A at 33. Plaintiffs' continued insistence that sex-rejecting treatments for children and adolescents are safe and effective—and indeed that organizations like WPATH continue to stand "on one side of that debate"—serves only to underscore the central factual issue presented by Defendants' motions. There is ongoing debate and new relevant evidence pertaining to the key factual questions at the heart of this litigation, rendering it unsuitable for summary judgment resolution as a matter of law.

Once again, Plaintiffs' own citations betray them. In challenging Defendants' motions, Plaintiffs disagree with Defendants' characterization of WPATH's acknowledgement that there is debate over

whether puberty blockers are fully reversible. Doc. 345 at 8. They do so by asserting WPATH's position that "puberty blockers are fully reversible." Doc. 340, Exh. A at 17. And that is undoubtedly the position that WPATH would take in this debate, despite the fact that in the very paragraph Plaintiffs cite, WPATH admits that "SOC-8 communicates caution with respect to the initiation of treatment using puberty blockers, particularly with respect to their use during earlier versus later pubertal stages and warns about the connection between the use of puberty blockers and poor bone health later in life." *Id.* Here, at the same time WPATH asserts puberty blockers are fully reversible and thus not unsafe for children and adolescents, it acknowledges the ongoing debate about the long-term effects of puberty blockers, even pointing to a specific serious medical consequence—poor bone health later in life. So are puberty blockers fully reversible or not? Do they have no long-term health complications for children and adolescents' bone health or not? These are questions subject to debate even within the short paragraph from WPATH cited by the Plaintiffs themselves, questions that even WPATH appears unable to answer. And they are precisely the kind of contested facts that should be decided at trial, not at summary judgment.

The significance of the new evidence is not merely that it identifies risks Defendants’ experts previously described. The Court discounted those experts because their opinions departed from the purported medical consensus. Doc. 279 at 24. The newly presented acknowledgments bear directly on that rationale by showing that the concerns identified by Defendants are recognized within the professional sources on which the Court’s consensus finding depended.

WPATH admits that it is “on one side of the debate” about “how to, or if one should, provide transgender healthcare to adolescents,” with other medical professionals on the opposite side of that debate. Doc. 340, Exh. A at 33. WPATH quotes approvingly the statement of the plaintiffs in the Northern District of Texas case for the proposition that “[t]here is currently no international consensus about best practices for the care of children and adolescents with gender dysphoria.” Doc. 340, Exh. A at 32–33. ASPS, a major professional medical society, supports this conclusion, explaining in its physician guidance that “a number of international health systems and professional bodies initiated formal re-examinations of earlier clinical practice assumptions in response to changes in patient presentation and a growing uncertainty about the benefits of medical and

surgical interventions.” (Doc. 340, Exh. B at 1).³ And the Department of Health and Human Services has now extensively documented evidence of the “growing international concern about the use of hormonal and surgical interventions for pediatric gender dysphoria.” Doc. 340, Exh. C at 52,411.⁴

The consequences of the ongoing debate about the bona fide health risks of sex-rejecting treatment of children and adolescents continue to mount. On October 7, 2026, the Montana Department of Public Health and Human Services announced that, in accordance with federal requirements, Montana Medicaid would no longer cover or pay for sex-rejecting treatments for children under 18, including “puberty-blocking medications, hormone therapy, and surgical services that alter primary

³ Plaintiffs ask that this Court not address ASPS’s position because the Court preemptively discussed it in the prior ruling on Defendants’ second Rule 60(b) motion. That discussion, however, was premature and without the benefit of the Defendants’ analysis of the ASPS guidance—which was not available at the time the second Rule 60(b) motion was filed—and without the benefit of the WPATH statements.

⁴ Plaintiffs suggest that Defendants cannot show the “Rule was not previously discoverable despite due diligence.” Doc. 345 at 9. Defendants can make this showing for the simple reason that there was no rule until August 13, 2026. Plaintiffs suggest that Defendants could have just cited to the preliminary rule, as if a proposed, preliminary rule is the same thing as a final rule published in the Federal Register. As this Court is aware, the rulemaking process is lengthy, involving a proposed rule, a notice and comment period, administrative consideration of those comments, and then the production of a final rule. In fact, HHS received “approximately 11,000” comments on the proposed rule. Doc. 340, Exh. C at 52,421.

or secondary sex characteristics, when prescribed, furnished, or performed for gender transition.” *Changes to Gender Dysphoria Coverage in Accordance with New Federal Final Rules*, Exh. E at 1.

The significance of this evidence extends to the Court’s related constitutional conclusions. The nature and extent of the medical risks to children and adolescents are at the heart of Montana’s compelling interest in protecting those children’s health. The Court incorporated its strict scrutiny analysis into its equal protection and speech rulings. Doc. 279 at 44–55. Thus, the changing landscape and new evidence produced by the Defendants warrants reconsideration of the Court’s entire order.

III. Section 27-19-401 is an appropriate remedy.

Plaintiffs argue that relief under Mont. Code Ann. § 27-19-401 would be inappropriate in this case, apparently based solely on the heading of the section. Doc. 345 at 10. This is not the law.

Montana law is clear. “No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.” Mont. Code Ann. § 1-11-103(4)–(5). The language of § 27-19-401 makes no mention of “preliminary” injunctions, and it is the text of the law, not the title, that controls. Unsurprisingly,

Montana courts have not employed the cabined approach Plaintiffs suggest.

In *Jefferson v. Big Horn County*, the Montana Supreme Court confronted an appeal in a case with substantially the same procedural posture as this one. 2000 MT 163, 300 Mont. 284, 4 P.3d 26. The district court entered a preliminary injunction for the plaintiffs, and in 1990 entered a final judgment making that preliminary injunction permanent. *Id.* ¶¶ 5–8. Seven years later, defendants filed motions to dissolve the injunction pursuant to both Rule 60(b) and § 27-19-401 arguing that changing circumstances, in this case about the applicable law, required dissolution of the injunction. *Id.* ¶¶ 9–10. The district court denied the Rule 60 motion but granted the § 27-19-401 motion. *Id.* ¶ 11.

The Supreme Court affirmed. *Id.* ¶ 29. The Court held, “A court may modify or dissolve perpetual injunctive relief based on a subsequent change in the judicial interpretation of a law.” *Id.* ¶ 11. Although *Jefferson* involved a change in law, its explanation of the Court’s continuing equitable authority supports reconsideration when changed circumstances make continued enforcement inequitable. As the Court explained, “An injunction is merely the process by which the court

enforces equity and it has not only the power but the *duty* to modify or annul its injunction as equity demands. A final or permanent injunction is a continuing process over which the equity court necessarily retains jurisdiction in order to do equity.” *Id.* ¶ 27 (quoting *Santa Rita Oil Co. v. State Bd. of Equalization*, 112 Mont. 359, 116 P.2d 1012, 1017 (1941)) (emphasis added). And when the balance of equities changes, whether because of a change in law or because “equity no longer justifies the continuance of the injunction, [the Court] may and *should* free the defendant’s hands from the fetters by which until then its activities have been prevented, thus leaving it free to perform its lawful duties.” *Id.* (emphasis added).

The equities in this case have changed. Defendants have provided, and continue to provide, undeniable evidence of an ongoing, deeply divided debate over the *bona fide* health risks of sex-rejecting treatments for children and adolescents. The Court discounted Defendants’ expert testimony because it departed from what the Court understood to be the medical consensus. Doc. 279 at 24. The new evidence directly challenges that premise by documenting professional acknowledgment of the very risks those experts identified.

The Court’s determination is out of step with the new evidence provided by Defendants and with the debate on this issue around the country; other courts have recognized substantial medical disagreement concerning the risks and benefits of these treatments. *See, e.g., T.D. by & through Dolney v. Wrigley*, 2026 ND 162, ¶ 106 (noting “the debate among medical experts about the potential serious and irreversible risks associated with providing gender-affirming treatment to minors” and chronicling those risks); *Poe by & through Poe v. Drummond*, 149 F.4th 1107, 1131 (10th Cir. 2025) (recounting the permanent health risks and the divide in the medical community over “gender-affirming” treatments for children and adolescents); *Brandt by & through Brandt v. Griffin*, 147 F.4th 867, 883 (8th Cir. 2025) (en banc) (recounting health risks found by the district court); *E.N. v. Kehoe*, 726 S.W.3d 679, 688–89 (Mo. 2026) (recognizing ongoing disagreement among medical and ethical experts concerning the treatments’ risks and benefits).

The Court should grant the motion to dissolve the injunction pursuant to § 27-19-401. This is an alternative path to relief, based on the same underlying errors that also justify relief under Rule 60(b). This Court’s summary judgment decision, its denial of the Defendants’

previous Rule 60(b) motions, and its ultimate entry of final judgment in favor of Plaintiffs all rest on the conclusion that there exists no serious debate about medically acknowledged, *bona fide* health risks associated with sex-rejecting treatments of children and adolescents. That conclusion is even more untenable now. The debate over these treatments is raging in this country and around the world. The consequences of that debate to Montana law cannot be decided by a summary judgment motion. Only a trial can provide the evidence testing necessary to answer these questions. The Court should grant Defendants' Rule 60(b)(2) motion, vacate the May 23, 2025 judgment (Doc. 281), and vacate the underlying May 13, 2025 summary-judgment order (Doc. 279). Alternatively, the Court should dissolve the injunction pursuant to Mont. Code Ann. § 27-19-401.

CONCLUSION

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

DATED this 15th day of October 2026.

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/s/ Michael D. Russell

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MONTANA DEPARTMENT OF JUSTICE

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Exhibit E



Montana Healthcare Programs Provider Notice

October 7, 2026

Effective October 13, 2026

Informational

All Providers

Changes to Gender Dysphoria Coverage in Accordance with New Federal Final Rules

The Montana Department of Public Health and Human Services (DPHHS) is notifying providers of a change to Montana Medicaid HMK *Plus* and HMK/CHIP coverage and payment policy for certain services provided for gender transition. Beginning October 13, 2026, DPHHS will no longer cover or pay for certain pharmaceutical and surgical services when they are prescribed, furnished, or performed for gender transition for Medicaid HMK *Plus* members under the age of 18 and HMK/CHIP members under the age of 19. Surgical services were previously only available for HMK/CHIP members at age 18. Affected services include puberty-blocking medications, hormone therapy, and surgical services that alter primary or secondary sex characteristics, when prescribed, furnished, or performed for gender transition. This policy change comes as new federal rules limit Medicaid and CHIP payment for certain services.

This policy applies to the purpose for which a medication, service, or procedure is provided. The same medication, service, or procedure may remain covered when it is medically necessary and otherwise covered for another medical condition.

LIMITED TRANSITION PERIOD FOR HORMONE THERAPY

A limited transition-period authorization may be available for eligible members who were receiving hormone therapy for gender dysphoria as of October 13, 2026. This transition period ends on April 13, 2027.

For eligible members, federal Medicaid and CHIP matching funds may remain available for hormone therapy for up to six months after October 13, 2026, subject to the federal rule, prior authorization, and all other applicable program requirements.

The limited transition period is available only to eligible members who were receiving hormone therapy as of October 13, 2026. It does not apply to puberty-blocking medications.

This notice does not establish a clinical tapering protocol. Providers should use their clinical judgment and work with members regarding individualized treatment planning.

CLAIMS PROCESSING

Effective for dates of service on or after October 13, 2026, claims for puberty-blocking medications or surgical procedures are not covered when the medication or procedure is prescribed, furnished, or performed for gender transition for a Medicaid member under age 18 or an HMK/CHIP member under age 19.

Effective for dates of service on or after October 13, 2026, claims for hormone therapy are not covered when the medication is prescribed or furnished for gender transition for a Medicaid member under age 18 or an HMK/CHIP

member under age 19, except for eligible hormone-therapy claims approved under the limited transition-period process.

MEMBERS WHO REACH AGE 18 (OR AGE 19 FOR HMK/CHIP)

The federal prohibition applies only to Medicaid members under age 18 and HMK/CHIP members under age 19. A member who has reached that age on the date of service is outside the prohibition, and claims for that member are payable on ordinary terms, including claims for hormone therapy after April 13, 2027.

Member age will be evaluated as of the date of service. A member who reaches age 18 (or age 19 for HMK/CHIP) before the end of the transition period will not experience an interruption in coverage.

All claims remain subject to existing Medicaid and HMK/CHIP requirements, including medical necessity, provider enrollment, billing requirements, and any other applicable authorization requirements.

DETERMINING THE PURPOSE OF A SERVICE

Because this federal policy turns on the purpose for which a service is provided, DPHHS will identify affected claims using diagnosis, procedure, and drug codes. The same medication or procedure remains payable when it is provided for another purpose — for example, a GnRH agonist prescribed for central precocious puberty, endometriosis, or another covered indication, or hormone therapy prescribed at physiologic replacement doses to treat a diagnosed endocrine condition.

Providers should document the indication in the medical record and on the claim. Where a claim is denied and the service was provided for another covered purpose, the denial may be addressed through the Department's existing claims review and administrative review processes.

PRIOR AUTHORIZATION

Providers must obtain prior authorization before submitting claims for hormone therapy during the limited transition period.

For pharmacy-benefit prior-authorization requests, contact the Mountain Pacific Drug Prior Authorization Unit at (800) 395-7961 or fax (800) 294-1350.

Prior authorization for physician-administered drugs billed through the medical benefit can be requested by faxing a request to Health Resources Division at (406) 444-1861.

SERVICES NOT CHANGED BY THIS POLICY

This policy does not change coverage of medically necessary mental and behavioral health services, including services for gender dysphoria, when otherwise covered by Montana Medicaid HMK *Plus* or HMK/CHIP.

This policy also does not change coverage of medications, services, or procedures that are medically necessary and otherwise covered when used to treat another covered medical condition.

DETRANSITION TREATMENT AND TREATMENT OF COMPLICATIONS

This policy does not change the Department's obligation under § 53-6-101(14), MCA, and § 53-4-1005(6), MCA, to provide coverage for detransition treatment, under equivalent cost-sharing policies, to members who were enrolled when gender transition treatment was provided and who received benefits under that coverage. That obligation is not limited by the member's age.

Treatment of complications caused or exacerbated by a previously furnished procedure is likewise outside the scope of the federal prohibition and remains covered when otherwise medically necessary.

AUTHORITY

This policy implements the federal final rule titled Medicaid Program; Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children, CMS-2451-F, Federal Register document no. 2026-16508, published August 13, 2026.

The applicable federal provisions are 42 CFR §§ 441.800-441.802 for Medicaid, including the State plan requirement at 42 CFR § 441.802(a) and the tapering provision at 42 CFR § 441.802(c), and 42 CFR § 457.476 for CHIP.

The federal rule restricts the use of federal Medicaid and CHIP funding for the affected services. DPHHS is implementing the coverage and payment policy described in this notice. Providers should follow future DPHHS policy guidance, claims-processing instructions, and prior-authorization criteria.

Contact and Website Information

For pharmacy prior authorization submissions, access the Medicaid Provider Portal - Mountain Pacific or call the Mountain Pacific drug prior authorization team at (800) 395-7961 or fax (800) 294-1350.

If you have questions, please contact Health Resources Division at (406) 444-4455, or HSHSRDBenefitQuestions@mt.gov

For claims questions or additional information, contact Montana Provider Relations at (800) 624-3958 or (406) 442-1837 or email [Montana Provider Relations Helpdesk](#).

Visit the [Montana Healthcare Programs Provider Information website](#) to access your provider type page. Choose Resources by Provider Type in the left-hand menu.

Visit the [Contact Us page](#) on the Provider Information website for additional DPHHS contact numbers.

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Dated: 10-15-2026