Letters to the Editor

Dear Editors,

There is today a great deal of controversy over the medicalized gender transition of youth. In the United States, the controversies over the proper clinical approach are largely playing out in state legislatures and in the courts. Some Republican-led states have drastically limited or even banned medicalized gender transition for minors, giving rise to lawsuits brought by civil rights organizations on behalf of patients.[1] The legal cases center on the question of whether state legislatures may restrict these medical interventions for youth, or whether such restrictions infringe the rights of youth seeking medical transition. The answers to these questions turn in part on whether these treatments are medically necessary or justifiable. To resolve this last, pivotal question, courts rely upon testimony from expert witnesses, among others. Expert witnesses therefore play a crucial role in these cases. The experts who testify require knowledge not only of current clinical practices in the field of medical gender transition but also of the relevant scientific literature. Under the legal rules governing the admissibility of evidence in federal courts, the judge has the authority to determine who is admitted as an expert witness. In these cases, that determination matters a great deal.[2]

In her article "The Anti-Transgender Medical Industry Expert Industry," Alejandra Caraballo argues for stricter gatekeeping of expert witnesses whose testimony calls into question the medical justifications generally offered in support of medical transition of minors experiencing gender dysphoria.[3] More specifically, she argues that several expert witnesses offering such testimony should either be excluded as witnesses, or that the courts should significantly restrict which parts of their testimony are admissible. Caraballo's central claim is that these witnesses lack the relevant expertise, peddle pseudoscience, and are motivated by anti-trans animus.

In this Commentary, I show that Caraballo's criticisms of particular individuals and organizations rest on misleading assertions, some of which are matters of easily-verifiable fact. Next, I argue that because the central question before the courts is whether medicalization of minor transition is medically necessary or justifiable, it is unreasonable to limit testimony to clinicians who themselves practice or otherwise endorse medicalizing minor transition. Such limits, implicit in Caraballo's interpretation of Rule 702, would make it impossible for courts to hear or take seriously testimony from experts who raise scientifically-founded concerns about the necessity and efficacy of medicalizing minor transition. Caraballo contends that these experts' testimony should be limited or excluded because it departs from the current medical consensus. However, as I will explain below, that consensus is limited and is itself one of the issues at the heart of these cases. To ban or limit the testimony of experts who have raised concerns about medicalization of minor transition would make a mockery of the adjudicative process, a principal purpose of which is to facilitate truth-seeking in the service of justice.

Impugning the Experts

The main thrust of Caraballo's article is captured in its title, "The Anti-Transgender Medical Expert Industry." Her thesis is that in the medical field there is a network of "anti-trans" individuals and organizations whose mission is to undermine the rights of transgender people. They do this, according to Caraballo, by generating pseudoscience which they then inject into the legal domain via the testimony of unqualified expert witnesses. If true, this would be a serious threat to the rights of a vulnerable population and so, "Nothing less than vigorous challenging of pseudo-science in the context of gender affirming care is required to push back against the concerted effort to launder misinformation, pseudo-science, and bias into the courtroom through 'experts'" (p. 688).

These are serious allegations, directed at named entities and individuals, and presented not on a social media platform or in the opening statement of an attorney engaged in courtroom advocacy but in the pages of a peer-reviewed, academic journal. One should therefore expect strong evidence in support of such allegations, in keeping with the usual norms of academic publishing. Those norms require, *inter alia*, that easily-verifiable factual claims be true, that accurate and otherwise adequate citations be provided, that the author avoid unnecessarily inflammatory language, and so on. For reasons of space, I document just a few instances in which Caraballo's paper violates these norms and thereby reveals itself to be little more than courtroom advocacy.

The first individual Caraballo names is Dr. Stephen Levine, who is a Clinical Professor of Psychiatry at

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Case Western Reserve School of Medicine. Caraballo characterizes Levine as "one of the most prolific anti-transgender medical expert [sic] in the country" due to his role as expert witness in a number of cases dating back at least to 2012 (p. 689). This is how Caraballo describes Levine's involvement in one early case: "Levine got his initial start *serving as an expert to deny medical care* to trans people in the case of Michelle Kosilek…" (italics mine p. 689). The reference is to *Kosilek v. Spencer*, a case involving Michelle Kosilik, a transgender woman inmate serving life in prison in Massachusetts for strangling her wife.[4] Kosilik was receiving hormone treatment and mental health services but was denied genital surgery by the Massachusetts Department of Correction (DOC). Kosilik sued, claiming that the DOC was violating her Eighth Amendment right against cruel and unusual punishment. Expert witnesses testifying on Kosilek's behalf argued that surgery was medically necessary, their primary concern being that Kosilik was at high risk of suicide absent surgery; the DOC's witnesses argued surgery was not medically necessary and that the care Kosilek had been receiving was sufficient to treat her Gender Identity Disorder.[5] Notwithstanding Caraballo's suggestion to the contrary, Dr. Levine did not testify for DOC, the party seeking to deny the surgery. Rather, he was appointed by the court as an independent expert to help assess the conflicting expert testimony. Levine testified that neither Kosilik's experts nor those testifying for DOC were outside the bounds of professional practice and opinion. Moreover, when asked to put aside considerations of prison security, the cost of the surgery, and any other strictly non-medical considerations, Levine "opined that a prudent professional would *not* deny Kosilek sex reassignment surgery."[6] In other words, the legal record demonstrates that in this case, which Caraballo herself cites, Levine decidedly did not "serve[ ] as an expert to deny medical care to trans people."[7]

Later in the same paragraph Caraballo asserts, "Despite claims to the contrary, Stephen Levine has not published peer-reviewed research in the relevant field and he relies solely on anecdotal data from his own books and prior work with patients with gender dysphoria" (p. 689). It is easy to confirm that this claim is plainly false. Levine has in fact published many relevant peer-reviewed papers in the field, including papers focusing directly on the scientific evidence underlying pediatric medical transition.[8] To make matters worse, later in her paper Caraballo accuses Levine of running a "conversion therapy practice," presumably in reference to the clinic at which he works (p. 690-691). Caraballo offers no evidence whatsoever to support her allegation that Levine engages in this wrongful and perhaps even illegal practice.[9]

For reasons of space, I will offer just one more example in urging that special care and skepticism be applied to Caraballo's scholarship: Caraballo claims that in 1981 Johns Hopkins psychiatrist Dr. Paul R. McHugh and feminist scholar Janice Raymond, "lobbied the Centers for Medicaid and Medicare…to declare gender affirming procedures as Experimental" (p. 689). Caraballo's supporting reference for this claim is an unpublished 2013 Masters thesis (p. 689, n. 18). Oddly, the thesis says *nothing at all* about either McHugh or Raymond lobbying the Centers for Medicaid and Medicare. If there is support for Caraballo's claim, it is not found in the references she provides.[10]

"Pseudo-scientific Organizations in the Anti-Trans Space"?

Having impugned the expertise and motives of several named physicians, Caraballo turns her attention to organizations she claims peddle "pseudo-science." Her main target is the Society for Evidence-Based Gender Medicine (SEGM).[11] Caraballo advances two related and highly misleading claims about SEGM. First, she claims, "SEGM posits that the level of medical evidence for the treatment of gender dysphoria in youth is of 'low quality'…" (p. 690) Next, she claims that SEGM, "cite[s] to the results of [its] own advocacy efforts in the UK NHS, and the Swedish Karolinska Hospital which has been subject to substantial public pressure to restrict access to gender affirming care" (id).

To "posit" is to theorize or speculate about something. SEGM does not posit that evidence for the relevant treatment of gender dysphoria in youth is of low quality. Rather, it simply reports this conclusion, which has been reached by several different independent entities on the basis of rigorous scientific scrutiny. First, the authors of the U.S.-based Endocrine Society Clinical Practice Guideline rate the quality of evidence underlying their clinical recommendations of puberty blockers and cross-sex hormones to be "low" or "very low."[12]

Second, in 2020 the National Health Service (NHS) commissioned the UK National Institute for Health and Care Excellence (NICE) to conduct systematic reviews of the evidence underlying the prescription of puberty blockers and cross-sex hormones in youth. The two reviews focused on whether these treatments were effective in treating "gender dysphoria, impact on mental health and quality of life." Both reviews concluded that, "The quality of evidence for these outcomes was assessed as very low certainty using modified GRADE."[13]

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Third, in 2022 Sweden's National Board of Health and Welfare released a report updating their national guidelines for the care of children and adolescents with gender dysphoria. The report is based on Sweden's own systematic review of the evidence. The summary states that, "NBHW deems that the risks of puberty suppressing treatment with GnRH-analogues and gender-affirming hormonal treatment currently outweigh the possible benefits, and that the treatments should be offered only in exceptional cases" and that "[t]o ensure that new knowledge is gathered, the NBHW further deems that treatment with GnRH-analogues and sex hormones for young people should be provided within a research context…"[14] The systematic review itself notes that "GnRHa treatment in children with gender dysphoria should be considered experimental treatment of individual cases rather than standard procedure."[15]

Fourth, in 2020, the Finnish Health Authority issued new guidelines recommending that first-line treatment for gender dysphoria in youth should be psychosocial support, psychotherapy, and treatment for possible comorbid psychiatric disorders. Transition of minors involving blockers or hormones is reserved only for a subset of carefully defined and rigorously screened patients. With respect to the question of evidence, the recommendations — — based on Finland's own reviews — state that, "[i]n light of available evidence, gender reassignment of minors is an experimental practice."[16]

These findings are not the result of SEGM's "advocacy" — which, it should be noted, Caraballo fails to document or even describe. Nor are they the work of any other "anti-trans" or "pseudoscientific" organization. The UK, Sweden, and Finland all score higher than the US on measures of LGBTQ+ acceptance and have highly-regarded health care systems.[17] In short, Caraballo's attribution of the conclusions of scientific work conducted by legitimate researchers across several countries to "pseudo-scientific organizations in the anti-trans space" is wrong and misleading. In mischaracterizing both the source and content of these scientific conclusions, Caraballo not only shoots the messenger but grossly mischaracterizes the message.

Evidentiary Question-Begging

Rule 702 is a federal rule of evidence that sets out the requirements for an individual to qualify as an expert witness. In any given case, the judge uses that rule to determine who qualifies as an expert on a particular subject. Rule 702 sets out four factors for consideration:

1. The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
2. The testimony is based on sufficient facts or data;
3. The testimony is the product of reliable principles and methods; and
4. The expert has reliably applied the principles and methods to the facts of the case.[18]

These four factors were incorporated into Rule 702 in 2000 following an important Supreme Court case called *Daubert v. Merrell Dow*.[19] In *Daubert*, the Court provided new guidance for federal judges to follow in assessing the qualifications of proposed expert witnesses. Rule 702 as amended in 2000 largely reflects that guidance.[20]

Caraballo suggests more than once that a witness's departure from what she characterizes as "medical" or "scientific" consensus should give the court or opposing counsel reason to discount or exclude the witness's testimony under Rule 702 (p. 687, 689). There are at least two problems here. The first is that there is no scientific consensus on the state of the evidence underlying medicalized gender transition.[21] As shown above, several countries depart significantly from the approach taken in the US. The second is that, even if there were a consensus, the *Daubert* decision states that "'[g]eneral acceptance' is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence…"[22] Indeed, one of the main points of the *Daubert* decision was to reject "general acceptance" as a "necessary precondition" for admissibility of expert testimony in federal courts.[23] By focusing on "scientific consensus" as the standard for reliability of expert testimony, Caraballo essentially ignores the *Daubert* decision's core holding. It is easy to see why "general acceptance" is too strict a requirement. It would exclude from the start expert testimony that, despite being inconsistent with generally-held opinion or consensus, proves to be consistent with the truth.

Caraballo could have written an article devoted to the impartial application of federal rules of evidence in cases addressing pediatric gender transition. Had that been her project, she might have proposed standards that apply to both sides of the legal disputes concerning medicalization of minor gender transition, and then offered examples of how those standards would operate in a neutral fashion to sort the wheat from the chaff – the methodologically sound testimony from the methodologically unsound testimony.

But she did not do this. In her article, Caraballo does not so much as reference the expert witnesses and

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sources of evidence brought before the court on behalf of plaintiffs who, at base, are asking judges to find that puberty blockers, cross-sex hormones, or surgery are medically necessary treatments for gender dysphoric youth. Caraballo also does not consider whether plaintiffs' experts may have undisclosed biases or conflicts of interest of the sort that she maintains are ubiquitous among the experts for the other side. It is therefore not implausible that Caraballo's actual but unstated preferred legal standard for admissibility of expert testimony is a rule that will allow expert testimony that supports the legal conclusions she and her clients hope the courts will reach, but no others. In deciding *Daubert,* the U.S. Supreme Court explicitly rejected such an approach, telling judges that in applying rules of evidentiary relevance and reliability to expert witness testimony, "The focus, of course, must be solely on principles and methodology, not on the conclusions they generate."[24] It appears that despite scholarly pretenses to the contrary, Caraballo's article constitutes little more than courtroom advocacy by other means.

Sincerely,
Moti Gorin

References

1. In the United States, in the pediatric medical context medicalization of gender transition involves some combination of gonadotropin-releasing hormone (GnRH) analogues ("puberty blockers"), cross-sex hormones, and surgery. This is usually referred to as "gender-affirming care." To date, there are generally two types of state laws and policies that restrict the availability of medical treatments for gender dysphoric minors. First, some states have imposed bans, such as the statutes enacted in Mississippi, Utah, South Dakota, Iowa, among others. See H. B. No. 1125 (Mississippi 2023); S.B. 16 (Utah 2023); H.B. 1080 (South Dakota 2023); S.F. 538 (Iowa 2023). Second, state health agencies have issued policies banning payment for gender transition medical treatment, such as the regulation issued by Florida's Agency for Healthcare Administration. See, e.g., 59G-1.050 General Medicaid Policy (Florida 2022).
2. Though I cannot argue for it here, I oppose legislative bans on gender-affirming care, in part because I believe that responsibility for establishing evidence-based clinical guidelines rests not on politicians but on medical professionals. Nevertheless, it is important that opposition to bans be formed on the basis of good reasons and not on mischaracterizations of the relevant parties or the underlying scientific evidence.
3. A. Caraballo, "The Anti-Transgender Medical Industry Expert," *The Journal of Law, Medicine & Ethics* 50, no. 4 (2022): 687-692.
4. *Kosilek v. Spencer*, 774 F.3d 63 (1st. Cir. 2014).
5. Kosilek' had been diagnosed with Gender Identity Disorder, which has since then been replaced in the DSM-IV by Gender Dysphoria. American Psychiatric Association, "Gender Dysphoria" in *Diagnostic and Statistical Manual of Mental Disorders,* at 542 (5th ed., 2013).
6. *Kosilik v. Spender*, 889 F.Supp.2d 190, 228 (D. Mass. 2012).
7. Kosilik lost her case and the surgery was denied. Kosilik sued again and in 2018 DOC relented. Kosilik received the surgery in 2021 and now resides in a women's prison.
8. S. B. Levine, "Psychiatric Diagnosis of Patients Requesting Sex Reassignment Surgery," *Journal of Sex & Marital Therapy* 6 (1980): 164-173; S. B. Levine, L. M. Lothstein, "Transsexualism or the Gender Dysphoria Syndrome" *Journal of Sex & Marital Therapy* 7 (1982): 85-113; L. M. Lothstein and S. B. Levine, "Expressive Psychotherapy with Gender Dysphoria Patients," *Archives General Psychiatry* 38 (1981): 924-929; S. B. Levine and R. Shumaker "Increasingly Ruth: Towards "Understanding Sex Reassignment Surgery" *Archives of Sexual Behavior* 12 (1983): 247-61; S. B. Levine, "Letter to the Editor: Follow-up on Increasingly Ruth," *Archives of Sexual Behavior* 13 (1984): 287-9; S.J. Bradley et al., "Interim Report of the DSM-IV Subcommittee for Gender Identity Disorders," *Archives of Sexual Behavior* 20, no. 4 (1991): 333343; S. B. Levine et al., "An Essay on the Diagnosis and Nature of Paraphilia," *Journal of Sex & Marital Therapy* 16, no. 2 (1990): 89-102; S. B. Levine, "Gender-Disturbed Males," *Journal of Sex & Marital Therapy* 19, no. 2 (1993): 131-141; S. B. Levine (chairman), et al., "Standards of Care of the Harry Benjamin International Gender Dysphoria Association," 5th revision, 1998, *International Journal of Transgenderism, available at* <http://www.symposion.com/ijt> reprinted by the Harry Benjamin International Gender Dysphoria Association, Minneapolis, Minnesota; S. B. Levine, " The Newly Revised Standards of Care for Gender Identity Disorders," *Journal of Sex Education & Therapy* 24 (1993): 117-127; S. B. Levine and L. Davis, "What I Did for Love: Temporary Returns to the Male Gender Role," *International Journal of Transgenderism* 6, no. 4 (2002); S. B. Levine " Real-Life Test Experience: Recommendations for Revisions to the Standards of Care of the World Professional Association for Transgender Health International Journal of Transgenderism," 11, no. 3 (2009): 186-193; S. B. Levine and A. Solomon "Meanings and Political Implications of "Psychopathology" in a Gender Identity Clinic: Report of 10 Cases," *Journal of Sex and Marital Therapy* 35, no. 1 (2009): 40-57; S. B. Levine, "Reflections of an Expert on the Legal Battles Over Prisoners with Gender Dysphoria," *J Am Acad Psychiatry Law* 44 (2016): 236–45; S. B. Levine, "Ethical Concerns About the Emerging Treatment of Gender Dysphoria," *Journal of Sex and Marital Therapy* 44, no. 1: 29-44. 2017. S. B. Levine, "The Psychiatrist's Role in Managing Transgender Youth: Navigating Today's Politicized Terrain," CMEtoGO Audio Lecture Series, May 2017; S. B. Levine "Transitioning Back to Maleness," *Archives of Sexual Behavior* 47, no. 4 (2017): 1295-1300; S. B. Levine, "Informed Consent for Transgender Patients," *Journal of Sex and Marital Therapy* 45, no. 3 (2019): 218-229; S. B. Levine, "Reflections On The Clinician's Role with Individuals Who Self-Identify as Transgender," *Archives Sexual Behavior* 50, no. 8 (2021): 3527-3536; S. B. Levine, et al., "Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults," *Journal of Sex & Marital Therapy* 48, no. 7 (2022): 706-727; S. B. Levine, et al., "What are we Doing to these Children? Response to Drescher, Clayton, and Balon Commentaries on Levine et al., 2022," *Journal of Sex & Marital Therapy* 49, no. 1 (2023): 115-125.
9. Levine's clinic is located in a suburb of Cleveland, Ohio, whose City Council in 2022 passed a resolution banning conversion therapy, with the mayor expected to sign the measure into law.
10. On the other hand, Caraballo did accurately report Dr. McHugh's age (I checked) in disparaging his expertise — he is indeed "over 90 years old." See <https://portraitcollection.jhmi.edu/portraits/mchugh-paul-r>.
11. SEGM is a registered 501(c) (3) non-profit organization "of over 100 clinicians and researchers concerned about the lack of quality evidence for the use of hormonal and surgical interventions as first-line treatment for young people with gender dysphoria." See <https://segm.org/about_us>.
12. W. C Hembree, et al., "Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline," *The Journal of Clinical Endocrinology & Metabolism* 102, no. 11 (2017): 869–3903.

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13. See <https://cass.independent-review.uk/nice-evidence-reviews />.
14. National Board of Health and Welfare, Sweden, *Care of Children and Adolescents with Gender Dysphoria: Summary* (2022): at 3, *available at* <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2022-3-7799.pdf>; J.F. Ludvigsson, et al., "A Systematic Review of Hormone Treatment for Children with Gender Dysphoria and Recommendations for Research," *Acta Paediatrica* (2023): 1-14, *available at* <https://onlinelibrary.wiley.com/doi/epdf/10.1111/apa.16791>.
15. Ludvigsson, *supra* note 14, at 1.
16. PALKO / COHERE Finland, *Medical Treatment Methods for Dysphoria Related to Gender Variance in Minors* (2020) at 8, *available at* <https://palveluvalikoima.fi/documents/1237350/22895008/Alaik%C3%A4iset_suositus.pdf/c987a74c-dfac-d82f-2142-684f8ddead64/Alaik%C3%A4iset_suositus.pdf?t=1592317701000>.
17. A. R. Flores, "Social Acceptance of LGBTI People in 175 Countries and Locations," (2021), *available at* <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Global-Acceptance-Index-LGBTI-Nov-2021.pdf>.
18. Fed. R. Evid. 702.
19. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
20. Fed. R. Evid. 702 advisory committee note.
21. See, for example, United Kingdom, *The Cass Review, Independent Review of Gender Identity Services for Children and Young People: Interim Report* (Feb. 2022), *available at* <https://cass.independent-review.uk/publications/interim-report/>; J. Block, "Gender Dysphoria in Young People is Rising — and so is Professional Disagreement," *British Medical Journal*, February 23, 2023, *available at* <https://www.bmj.com/content/380/bmj.p382>; E. Bazelon, "The Battle Over Gender Therapy, *New York Times*, March 17, 2023, *available at* <https://www.nytimes.com/2022/06/15/magazine/gender-therapy.html>.
22. *Daubert*, 509 U.S. at 597.
23. *Daubert*, 509 U.S. at 597; *see also* 588-89.
24. *Daubert*, 509 U.S. at 595. ,

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The Author Responds

Dear Editors,

Since my article was initially published, federal trial courts around the country have continued to bolster my original position that many of the anti-trans experts used by states to criminalize access to gender affirming care are unqualified to provide testimony, should have their testimony limited, or were given little weight.[1] This is consistent with experience that many of these anti-trans experts are testifying based on "ideology rather than science."[2] When anti-trans experts are properly examined and challenged via *Daubert*, they are inevitably shown to lack the relevant qualifications to offer expert opinions in court. Rather than engage in the merits, Prof. Moti Gorin resorts to logical fallacies and hyper fixation on minor errors rather than the broader argument.

In *Brandt v. Rutledge,* the district court found "[m]ost of the State's expert witnesses, Professor Mark Regnerus, Dr. Stephen Lappert, and Dr. Paul Hruz, were unqualified to offer relevant expert testimony and offered unreliable testimony.[3] Their opinions regarding gender-affirming medical care for adolescents with gender dysphoria are grounded in ideology rather than science. This is born out in the decisions themselves. In *Dekker v. Weida*, the court found that "Dr. Paul Hruz, joined an amicus brief in another proceeding asserting transgender individuals have only a 'false belief' in their gender identity — that they are maintaining a "charade" or "delusion'" and that "Dr. Patrick Lappert — a surgeon who has never performed gender-affirming surgery — said in a radio interview that gender-affirming care is a "lie," a "moral violation," a "huge evil," and "diabolical."[4] In finding Dr. Hruz "not qualified to offer expert opinions on the diagnosis of gender dysphoria," the court in *Kadel v. Folwell* cited Dr. Hruz's callous remarks about trans youth that "[s]ome children are born in this world to suffer and die."[5]

While Dr. Steven Levine was found to be qualified in these cases, his own prior statements have featured prejudiced statements that are as equally egregious as those of Dr. Lappert and Dr. Hruz. In expert reports submitted to state legislatures and courts, Dr. Levine has made the bigoted unsupported assertion "that transgender individuals commonly become strongly narcissistic, unable to give the level of attention to the needs of another that is necessary to sustain a loving relationship." based only on citations to his own anecdotal experience.[6]

Contrary to Gorin's assertion, Dr. Levine engages in and is supportive of conversion therapy because he literally sits on the advisory board of the "Gender Exploratory Therapy Association,"[7] an organization which pushes "gender exploratory therapy" that many view as conversion therapy.[8] Additionally, Dr. Levine maintains views gender identity not as fixed from birth but as a result of pathology and that any outcome where a person lives openly as transgender is one to be avoided. As Florence Ashely put it "[w]hen you begin from the premise that trans identities are suspect and often

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rooted in pathology, your therapeutic approach soon becomes indistinguishable from conversion practices."

Gorin's lengthy defense of SEGM did not include a disclosure that he spoke at their conference in October 2023. Regardless, SEGM uses the term "low quality" in efforts to advocate for the criminalization of gender affirming care and lists off the typical countries of the UK, Finland, and Sweden as demonstrating that the evidence behind gender affirming care for trans youth is of "low quality." What Gorin does not contextualize is that SEGM relies on the lay public to misunderstand what "low quality" means within the GRADE system. What these systematic reviews have found is that the studies underlying gender affirming care are not randomized controlled trials or that sample sizes were much smaller. Randomized clinical trials are impossible to do in this context because it would be both unethical and logistically impossible due to the effects of hormones and the extremely small population of trans youth.[9] However, taken together they indicate the best treatment options available since psychotherapy alone has not been shown to be effective in mitigating gender dysphoria, an admission made by Stella O' Malley of Genspect.[10]

An issue that looms large over these experts is the lucrative experts fees that many of these experts earn for their work. For instance, an investigative report indicated that Dr's Hruz, Lappert, and Levine received $40,000 each in the *Brandt* case in Arkansas.[11] Dr. James Cantor is serving as an anti-trans expert on 24 separate cases after he was recruited by SPLC designated hate group Alliance Defending Freedom.[12] Dr. Cantor's testimony involving trans issues earns him a $10,000 bonus for in person testimony. This is despite the fact a court in Alabama gave his testimony "very little weight."[13] Taken together, experts like Cantor can reasonably be estimated to take in close to $1 million over the course of these trials. That does not account for consulting fees, speaking engagements etc. that they may earn separately such as experts who earned $34,650 on Florida's controversial and biased report on gender affirming care.[14] Experts The purpose of experts fees is to compensate an expert for their time spent away from their *primary professional work*, not to serve as the *primary source of their income*. These doctors are supposed to be relevant medical professionals that serve as experts, not *professional* experts.

Finally, the idea that gender affirming care should be the excepted from both common sense and the rules of evidence around *relevant* expertise is preposterous. No rational court would seek the opinion of a podiatrist on the medical standards of open-heart surgery.[15] Why should gender affirming care be considered differently where non-practitioners of a field testify on the relevant standards, they themselves do not practice? The answer to that is the stigmatization of and prejudice against this particular field of medicine that Gori believes shouldn't even exist. Courts are not in the business of making judgments about the existence of entire fields of medicine, rather, they solely acknowledge the standards adopted by medical and scientific bodies as supported by relevant expert testimony. In the case of gender affirming care, it's unanimous that it is the standard of care for the treatment of gender dysphoria in trans people.

Sincerely,
Alejandra Caraballo, Esq.

References

1. *Brandt v. Rutledge*, 4:21CV00450 JM, 2023 WL 4073727 (E.D. Ark. June 20, 2023); *Dekker v. Weida*, 4:22CV325-RH-MAF, 2023 WL 4102243 (N.D. Fla. June 21, 2023); *Doe v. Ladapo*, 2023 WL 3833848, at *2 (N.D. Fla. June 6, 2023); *L.W. by and through Williams v. Skrmetti*, No. 3:23-CV-00376, 2023 WL 4232308 (M.D. Tenn. June 28, 2023), *Koe v. Noggle,* No. 1:23-CV-2904-SEG, 2023 WL 5339281, at *8 (N.D. Ga. Aug. 20, 2023).
2. *Id.* at ¶ 311 citing *Doe v. Ladapo*, 2023 WL 3833848, at *2 (N.D. Fla. June 6, 2023)
3. *Brandt v. Rutledge*, 4:21CV00450 JM, 2023 WL 4073727 (E.D. Ark. June 20, 2023)
4. The judge noted that Dr. Paul Hruz had "fended and parried questions and generally testified as a deeply biased advocate, not as an expert sharing relevant evidence-based information and opinions." *Dekker v. Weida*, 4:22CV325-RH-MAF, 2023 WL 4102243 (N.D. Fla. June 21, 2023)
5. *Kadel v. Folwell*, No. 1:19CV272, 2022 WL 2106270, at *9 (M.D.N.C. June 10, 2022), *order corrected and superseded*, 620 F. Supp. 3d 339 (M.D.N.C. 2022)
6. S. B. Levine, March 12, 2020, Pennsylvania General Assembly, Expert Submission Of Dr. Stephen B. Levine, M.D., *available at* <https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2020_0046_0001_TSTMNY.pdf>.
7. Advisory Board, Gender Exploratory Therapy Association, *available at* <https://www.genderexploratory.com/advisory-board/> (last visited Jun 28, 2023).
8. The similarities in both function and purpose of "gender exploratory therapy" is thoroughly detailed here. Florence Ashley, *Interrogating Gender-Exploratory Therapy*, Perspect Psychol Sci 18 (2023), *available at* <http://journals.sagepub.com/doi/10.1177/17456916221102325> (last visited Jun 28, 2023).
9. These Paid "Experts" Are Crisscrossing The Country To Defend Anti-Trans Laws, HuffPost (2023), *available at* <https://www.huffpost.com/entry/paid-experts-defending-anti-trans-law_n_65021a7ee4b01df7c3b6d513> (last visited Sep 17, 2023).
10. E. Piper, *EXCLUSIVE: "Focus Relentlessly on under 25": Leaked Chats Reveal Influential Gender-Critical Group's Plan to Use Children to Push for Bans on Transitioning*, The Daily Dot (2023), *available at* <https://www.dailydot.com/debug/genspect/> (last visited Sep 2, 2023).
11. *Supra* note 7.
12. *Id.*
13. *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1143 (M.D. Ala. 2022), vacated sub nom. *Eknes-Tucker v. Gov. of Alabama*, No. 22-11707, 2023 WL 5344981 (11th Cir. Aug. 21, 2023)
14. *Supra* note 7. Full disclosure, these witnesses provided a report that impacted my ability to access care when I visit family

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in Florida. I can no longer obtain refills there legally due to restrictions placed on adult care. Additionally, my care in Massachusetts has been severely affected by the large influx of trans people fleeing states such as Florida. While this may be an elective academic indulgence for Gorin, this affects my healthcare directly.

15. The American Medical Association Code of Medical Ethics requires doctors to "[t]estify only in areas in which they have appropriate training and recent, substantive experience and knowledge."

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