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UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

DR. FREDERICK WILLIAM "ERIC" CUBIN III,	)	
Plaintiff,	)	
vs.	)	Case No. 24-CV-164 -SWS
MARK GORDON, in both his personal and official capacities as Governor of Wyoming,	)	
Defendant.	)	

DEFENDANT'S BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Defendant Wyoming Governor Mark Gordon, in his individual and official capacity, submits this brief in response to Plaintiff's Motion for Preliminary Injunction.

I. Background

Plaintiff Dr. Frederick Cubin was a member of the Wyoming Board of Medicine (Board) from March 1, 2023 to April 22, 2024. (ECF 12-1, Cubin Dec. at ¶ 3). The Board is a statutorily created entity, established as part of the Medical Practice Act (Act). Wyo. Stat. Ann. §§ 33-26-101 *et seq*. The Board is composed of eight (8) members, of which

five (5) must be physicians with varying qualifications, one (1) physician assistant, and two (2) lay members. *Id.* § 33-26-201(a). Board members are appointed by the Governor, but with the consent of the Senate. *Id.* "Board members appointed by the governor shall serve at the pleasure of the governor." *Id.*

On February 28, 2024, while serving as a member of the Board, Dr. Cubin sent an email to the entire Wyoming House of Representatives (House). (ECF 1-1). The genesis of the email was a private dispute between Dr. Cubin and the Wyoming Medical Society (WMS), a voluntary physician's organization. (*Id.*; ECF 1, Compl. ¶¶ 28-29). WMS opposed Senate File 99 (S.F. 99) (2024), a bill prohibiting certain gender-affirming procedures for minors in Wyoming. (ECF 1 ¶¶ 27, 43). Dr. Cubin criticized WMS for opposing the bill and demanded that the organization change its position to "neutral." (ECF 1-1; ECF 1, ¶¶ 22, 27, 30-36; Exs A, A-1). His email to the House followed a flurry of communications between Dr. Cubin, the WMS Board, and Dr. Michael Sanderson.[1] (ECF 1, ¶¶ 31-36; Ex. A, A-1). In those emails, Dr. Cubin expressed the following concern:

> If there are members who are using their position on the [WMS] Board to advance their own political agenda without respect to what's best for the doctors in the state, then I would respectfully ask that WMS remove and replace those Board members with others who can maintain their focus on the true mission of WMS.

(Ex. A-1, Cubin e-mail to Dr. Schamber, February 25, 2024 (fifth page of exhibit)).

In his subsequent email to the House, Dr. Cubin stated that:

> It saddens me very much to have to report that, under their current leadership, the Wyoming Medical Society has been essentially hijacked by the far left.

[1] Dr. Cubin forwarded those emails to the President of the Wyoming Board of Medicine shortly before sending his email to the House. (Ex. A ¶¶ 4-5; ECF 1-1).

> It seems that they have decided to prioritize politics over their stated mission of physician advocacy. In my opinion, they have adopted and embraced "woke" positions that are not congruent with the thoughts and opinions of the majority of their physician members. In essence, I have lost all confidence in their ability or desire to faithfully represent the physicians in this state.

(ECF 1-1 at p. 2). Dr. Cubin also stated "[i]n their opposition to Chloe's Law, the WMS has partnered with Dr. Sanderson, a pediatrician from Sheridan, who is the President of the WyAAP [the Wyoming chapter of the American Academy of Pediatricians]." (*Id.*). Dr. Cubin accused Dr. Sanderson of suppressing the position of another pediatrician organization. (*Id.* at p. 3). Importantly, as licensed practitioners in Wyoming, Dr. Sanderson and the members of the WMS are subject to the licensing, disciplinary and other regulatory authority of the Board. Wyo. Stat. Ann. § 33-26-101 *et seq*.

On April 22, 2024, Governor Gordon sent a letter to Dr. Cubin explaining that Dr. Cubin's email to the House "could give doctors, who are licensed by the Board of Medicine, a reason to be concerned that you might use your position to advocate for a particular position when considering matters that should be considered absent agenda or prejudice." (ECF 1-2, Compl. Exhibit 2). Governor Gordon noted that "Medical professionals should be confident that their licensure, which is their livelihood, will be handled professionally and clinically examined on merits alone." (*Id.*). Governor Gordon also explained that "[e]ven the appearance of bias can be disquieting as well as erode confidence in the Board's presumed impartiality." (*Id.*). Based on these stated concerns, the Governor explained that he believed it was necessary to remove Dr. Cubin from the Board. (*Id.*). On April 23, 2024, Dr. Cubin sent Governor Gordon an email in which he stated in part:

> It was with some sadness that I received a phone call from Drew [Perkins, the Governor's Chief of Staff] today explaining that my services are no longer needed on the Wyoming Board of [M]edicine. I have to say that this phone call was not totally unexpected. However, before anything is made final, I would very much like to make sure that my voice is heard and my side of the story is told.
>
> * * *
>
> I want you to know that my intent was never to get involved in any particular piece of legislation. I simply wanted to make sure that physicians were being appropriately represented by the Wyoming Medical Society.

(Ex. B – Email from Dr. Cubin). After conversations with the Governor's Office, Dr. Cubin resigned from the Board. (ECF 1-1, Compl., ¶ 56).

On August 29, 2024, Dr. Cubin filed suit against Governor Gordon in both his official and individual capacity claiming First Amendment retaliation in violation of his right to freedom of speech and his freedom to petition the Wyoming Legislature. (*See generally* Compl.). He also asserted a corresponding claim under the Wyoming State Constitution. (ECF 1, ¶¶ 94-100).

Then on October 1, 2024, more than five months from his departure from the Board, Dr. Cubin filed his motion for preliminary injunction asking the Court to order the Governor to place Dr. Cubin back on the Board. (ECF 11, 12).

II. Legal Standard for Preliminary Injunction

A preliminary injunction is an "extraordinary remedy that is granted only when the movant's right to relief [is] clear and unequivocal." *First W. Capital Mgmt. Co. v. Malamed*, 874 F.3d 1136, 1145 (10th Cir. 2017) (internal citation and quotation marks omitted). A party seeking preliminary relief must demonstrate: "(1) a substantial likelihood

of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest." *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016) (citation omitted).[2]

The Tenth Circuit recognizes three types of specifically disfavored preliminary injunctions: "(1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits." *O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004) (*O'Centro*). If a plaintiff seeks one of these disfavored categories of injunctions, the plaintiff's claims "must be more closely scrutinized to assure that the exigencies of the case support granting of a remedy that is extraordinary even in the normal course." *Id.* In these cases, the plaintiff must "make a strong showing both with respect to the likelihood of success on the merits and with regard to the balance of harms." *Id.* at 976.

[2] In his motion, Dr. Cubin asserts that the third and fourth factors are merged when the government is a party. (ECF 12 at 9) (citing *Nken v. Holders*, 556 U.S. 418, 435 (2009)). However, *Nken* discussed the relevant factors for a stay of agency action. *Nken*, 556 U.S. at 425-26. As the Supreme Court explained, a stay temporarily suspends "judicial alteration of the status quo," while an injunction alters the legal status quo. *Turner Broad. Sys., Inc. v. F.C.C.*, 507 U.S. 1301, 1301 (1993) (citation omitted). Given the different purposes of a stay compared to injunctive relief, this Court should use the injunction standard as set out in *Diné,* rather than standard espoused by Dr. Cubin.

III. Argument

Dr. Cubin's requested relief meets all the disfavored categories of injunctive relief. Dr. Cubin asks a federal district court to direct the Governor of the State of Wyoming to put him back into a politically-appointed position on a state licensing board – a board whose members are appointed by, and serve at, the pleasure of the Governor.

First, the requested relief would alter the status quo. Dr. Cubin asserts this Court should consider the last peaceable status quo as the time prior to the Governor removing him from the Board. (ECF 12 at 10). "The status quo is not defined by the parties[']existing *legal rights*; it is defined by the *reality* of the existing status and relationships between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights." *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1099 (10th Cir. 1991) (emphasis in original) (overruled on other grounds by *O Centro*, 389 F.3d 973).

Recently the Tenth Circuit discussed injunctions that restore parties to the most recent peaceable status quo. *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1255 (10th Cir. 2024). In *Pryor*, a volunteer coach sought to enjoin the school district from restricting his ability to coach football or accessing facilities at the school district. *Id.* Pryor contested the restrictions and filed for injunctive relief during the pendency of his appeal. *Id.* at 1249. Thus, because the matter was still being contested when plaintiff filed suit, the last peaceable status quo was prior to the restrictions and the injunction was to prohibit the continued enforcement of the restrictions. *Id.* at 1255.

In this case, Dr. Cubin left the Board in late April and then waited until late August to file this suit. (ECF 1, ¶ 56). For more than four months, the peaceable status quo was that Dr. Cubin was not a member of the Board and he did not dispute his departure from the Board. Compelling the Governor to put him back on the Board alters the last peaceable status quo.

Even the requested relief does not alter the status quo, the requested relief is mandatory, rather than prohibitory. Dr. Cubin is asking this Court to direct the Governor to place Dr. Cubin back on Board. (ECF 1 at 18). If this Court granted this relief, it would affirmatively require the Governor to act, making this a disfavored mandatory injunction. *Trial Laws. Coll. v. Gerry Spence Trial Laws. Coll. at Thunderhead Ranch*, 23 F.4th 1262, 1275 (10th Cir. 2022) (recognizing district court injunction was mandatory in nature, requiring application of heightened standard). Finally, it appears that at least to the claims against Governor Gordon in his official capacity, the requested injunction would provide Dr. Cubin all relief he would receive after a trial on the merits.

Because Dr. Cubin requests disfavored relief, Dr. Cubin must not only demonstrate he meets all of the preliminary injunction factors, but he must make a "strong showing both with respect to the likelihood of success on the merits and with regard to the balance of harms." *O Centro*, 389 F.3d at 976. Because Dr. Cubin cannot make the required showing, this Court should deny his motion for preliminary injunction.

A. Substantial likelihood of success on the merits

Dr. Cubin asserts three separate claims against Governor Gordon in both his official and individual capacity. First, he alleges that Governor Gordon's removal constituted

retaliation in violation of his right to free speech. (ECF 1, Compl. ¶¶ 57-79). Second, he alleges that this action also constituted retaliation in violation of his right to petition the Legislature. (Compl. ¶¶ 80-93). Third, he raises substantially similar claims under the Wyoming Constitution. (Compl. ¶¶ 94-100). As explained above, given that Dr. Cubin's request is for disfavored injunctive relief, he must make a "strong showing" on the likelihood of success on the merits. *O Centro*, 389 F.3d at 976.

In his motion, Dr. Cubin argues the Tenth Circuit's modified success on the merits test applies. (ECF 12 at 12 13). The modified test provides that if the other three factors for preliminary injunction are met, then plaintiff may satisfy the success on the merits requirement by showing questions going to the merits are so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation. However, this modified test was expressly rejected by the Tenth Circuit as being inconsistent with *Winter v. Natural Resources Defense Council,* 555 U.S. 7 (2008). *Diné Citizens*, 839 F.3d at 1282. The Tenth Circuit recognized that "any modified test which relaxes one of the prongs for preliminary relief and thus deviates from the standard test is impermissible." *Id*. Thus, Dr. Cubin is required to show a substantial likelihood of success on the merits.

1. Governor Gordon did not violate Dr. Cubin's free speech or petition rights.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. amend. I. "The First Amendment prohibits the government from punishing a person for exercising the right to free speech." *Deutsch v. Jordan*, 618 F.3d 1093, 1097 (10th Cir. 2010). "When the government is the person's

employer, however, the right to free speech is limited in ways that would otherwise be unconstitutional." *Id.* The State has interests in regulating speech as an employer that are significantly different than regulating the general public. *Id.*

"To balance the public employee's right to speak as a citizen on matters of public concern against the government employer's interests in ensuring efficient public service, we use a five-step approach derived from *Garcetti* [*v. Ceballos*, 547 U.S. 410 (2006)] and *Pickering v. Board of Education*, 391 U.S. 563 (1968)." *Fields v. City of Tulsa*, 753 F.3d 1000, 1013 (10th Cir. 2014).

The applicable test comprises five elements:

> (1) whether the speech was made pursuant to an employee's official duties; (2) whether the speech was on a matter of public concern; (3) whether the government's interests, as employer, in promoting the efficiency of the public service are sufficient to outweigh the plaintiff's free speech interests; (4) whether the protected speech was a motivating factor in the adverse employment action; and (5) whether the defendant would have reached the same employment decision in the absence of the protected conduct.

Id. (citation omitted). "The first three inquiries are ordinarily matters of law for the court to decide, while the last two are for the factfinder." *Id.* "Under this analysis, a public employee's speech is unprotected if it was made pursuant to official duties, if it was not on a matter of public concern, or if the balance of interests favors the employer." *Id.*

In his Motion, Dr. Cubin asserts a different test than the *Garcetti/Pinkering* balancing test for his claim that Governor Gordon retaliated against him for exercising his right to petition government. (ECF 12 at 20). Dr. Cubin claims that he must show that "(a) he or she was engaged in constitutionally protected activity; (b) the defendant's actions caused the plaintiff to suffer an injury that would chill a person of ordinary firmness from

continuing to engage in that activity; and (c) the defendant's adverse action was substantially motivated as a response to the plaintiff's exercise of constitutionally protected conduct." (ECF 12 at 20) (quoting *Van Deelen v. Johnson*, 497 F.3d 1151, 1155-56 (10th Cir. 2007) (citing *Worrell v. Henry*, 219 F.3d 1197, 1212 (10th Cir. 2000)).

This is the appropriate standard for government action against the general public. However, the Supreme Court has recognized that claims for retaliation for exercising the right to petition by employees follows the same *Garcetti/Pinkering* state-interest balancing test as free speech claims. *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 390-91 (2011). "The considerations that shape the application of the Speech Clause to public employees apply with equal force to claims by those employees under the Petition Clause." *Id.* at 390. "Petitions, no less than speech, can interfere with the efficient and effective operation of government. A petition may seek to achieve results that contravene governmental policies or impair the proper performance of governmental functions." *Id.* (citation and quotation marks omitted). The Supreme Court noted that "[u]nrestrained application of the Petition Clause in the context of government employment would subject a wide range of government operations to invasive judicial superintendence." *Id.* "The framework used to govern Speech Clause claims by public employees, when applied to the Petition Clause, will protect both the interests of the government and the First Amendment right." *Id.* at 398. Thus, "[w]hen a public employee petitions as a citizen on a matter of public concern, the employee's First Amendment interest must be balanced against the countervailing interest of the government in the effective and efficient management of its internal affairs." *Id.* (citation omitted). "If that balance favors the public employee, the

employee's First Amendment claim will be sustained. If the interference with the government's operations is such that the balance favors the employer, the employee's First Amendment claim will fail even though the petition is on a matter of public concern." *Id*.

For these reasons, the Court should apply the same *Garcetti*/*Pickering* test for both Dr. Cubin's free speech and right to petition claims. In applying this test, the only element that is contested at this time is the third element, the balancing of Dr. Cubin's speech and petition interests against Governor Gordon's interest in executive management and ensuring that members of State licensing boards are not perceived to have any bias or prejudice in the performance of their duties. As noted, this element presents an issue of law. *Fields,* 753 F.3d at 1013.

a. The State's interests outweigh Dr. Cubin's right to free speech and petition interests in this matter.

The only issue at this time is the balancing of Dr. Cubin's speech and petition interests against Governor Gordon's interest in executive management, including ensuring that members of State licensing boards are not perceived to have any bias or prejudice in the performance of their duties.

The third element of the *Pickering* test "can be paraphrased as 'whether the government had an adequate justification for treating the employee differently from any other member of the public based on the government's needs as an employer.'" *Rock v. Levinski,* 791 F.3d 1215, 1219 (10th Cir. 2015) (quoting *Lane v. Franks,* 573 U.S. 228, 242 (2014)). "In performing this balancing, the court should not consider the statement in a vacuum; the manner, time, and place of the employee's expression are relevant, as well as

the context in which the statement arose." *Gardetto v. Mason*, 100 F.3d 803, 815 (10th Cir. 1996) (citing *Connick v. Myers*, 461 U.S. 138, 152-53 (1983)). "Relevant considerations include 'whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.'" *Rock,* 791 F.3d at 1219-20 (quoting *Rankin v. McPherson,* 483 U.S. 378, 388 (1987)). "The employer need not await the detrimental impact before taking action. Preemptive steps to avoid such an impact can be acceptable, and we 'will generally defer to a public employer's reasonable predictions of disruption, as long as the predictions are supported by specific evidence.'" *Id.* at 1220 (quoting *Deschenie v. Bd. of Educ. of Cent. Consol. Sch. Dist. No. 22,* 473 F.3d 1271, 1279 (10th Cir. 2007)).

i. The Governor has a significant State interest in assuring members of State licensing boards perform their functions without perceived or actual bias or prejudice.

This case involves the determination of the State's interest as asserted by the Governor of the State of Wyoming. The Governor in vested with the executive power of the State of Wyoming. Wyo. Const. art. 4, § 1. The Governor "shall formulate and administer the policies of, and shall exercise general supervision, direction and control over the executive branch of state government." Wyo. Stat. Ann. § 9-1-201. One of the duties that the Governor performs in exercising direction and supervision of the executive branch is appointing citizen members to serve on state boards and commissions, including the Board of Medicine.

The Board plays an important role in overseeing the Medical Practice Act. Board members "pass upon the qualifications and determine the fitness of all persons desiring to practice medicine in this state." *Id.* § 33-26-202(a). To that end, the Board is authorized to "[g]rant, refuse to grant, suspend, restrict, revoke, reinstate or renew licenses to practice medicine." *Id.* § 33-26-202(b)(i). The Board also has the authority to investigate allegations and take disciplinary action if a licensee is impaired or has violated the applicable provisions of the Act. *Id.* 33-26-202(b)(ii). The Board has authority to adopt rules to implement the Act, to publish nonbinding advisory opinions or other guidance on the application and interpretation of the Act, and investigate and evaluate complaints against licensees. *Id.* § 33-26-202(b).

The Wyoming Supreme Court has recognized that when the Board sits as a decision maker in discipline matters, licensees are entitled to a fair, unbiased hearing. *Painter v. Abels*, 998 P.2d 931, 938 (Wyo. 2000). Specifically, the Wyoming Supreme Court has provided that "[d]ue process requires that an agency provide a fair trial **without the appearance of bias or prejudice**." *Id.* (emphasis added). Additionally, the Wyoming Supreme Court has noted that in licensing matters, "[f]undamental considerations require not just fairness in fact but also fairness in appearance." *Dorr v. Wyo. Bd. of Certified Pub. Accts.*, 2001 WY 37, ¶ 20, 21 P.3d 735, 745 (Wyo. 2001). While these cases specifically address the need to keep separate prosecutorial and advisory attorneys roles, the importance of providing licensing proceedings free from the appearance of bias or prejudice necessarily apply equally to the Board members who are the ultimate decision makers in contested case proceedings.

This need for board members to avoid even the appearance of bias or prejudice is also contained in Executive Order 1997-4, Executive Branch Code of Conduct. (Ex. C, ¶ 1). The Executive Order applies to public officials, elected officials, appointees, and employees of the Executive Branch. (*Id.* ¶ 2). Specifically, the Code of Ethics prohibits conduct that compromises the integrity of the public office or creates the appearance of impropriety. (*Id.* ¶ 5H). Given the important role of the Board, including its authority to take action on medical licenses, as well as to create rules related to the practice of medicine in the State of Wyoming, it is imperative that Board members are not only free of bias and prejudice, but the appearance of bias or prejudice.

ii. The Governor appropriately determined that Dr. Cubin's email to the House potentially created the appearance of bias or prejudice.

In considering the Governor's interest in ensuring licensing boards operate without perceived or actual bias or prejudice, we then turn the Dr. Cubin's conduct in this case. In reviewing Dr. Cubin's email to the House, it is important to recognize what is contained in that email. Significantly, Dr. Cubin's email was not a statement of how he felt the bill would impact his patients or his practice. Additionally, the email did not simply seek to provide the legislature with additional information Dr. Cubin believed was relevant in considering the bill or provide a statement of his support for the bill. Rather, Dr. Cubin's letter asserted his frustrations with the WMS. (ECF 1-1). Dr. Cubin expressed his sadness that the "Wyoming Medical Society has been essentially hijacked by the far left." (*Id.*). He opined that, "they have adopted and embraced 'woke' positions that are not congruent with the thoughts and opinions of the majority of their physician members." (*Id.*). He provided

examples of positions "established by several very vocal, extremely liberal members of the [WMS] Board." (*Id.*). He speculated that the WMS partnered with Dr. Sanderson, a pediatrician in Sheridan, in presenting its position. (*Id.*). He then accused Dr. Sanderson (and potentially WMS leadership) of ignoring and suppressing other positions in the formation of their opinion. (*Id.*).

Dr. Cubin also stated that while at "face value" he agreed that the Legislature should not do anything to interfere with the doctor-patient relationship, he asserted that there were some instances where public safety would make it appropriate for the Legislature to make rules governing what is and is not acceptable in society. (*Id.*). He then gave examples including physician-assisted suicide. (*Id.*).

In removing Dr. Cubin from the Board, the Governor was not focused on Dr. Cubin's support of S.F. 99. Rather, the Governor focused on the State's interest in ensuring "that the professionals governed by the Board of Medicine have confidence that the board members prosecute their responsibilities on the board in an objective and unbiased way." (ECF 1-2). The Governor explained that Dr. Cubin's "comments on this particular legislation could give doctors, who are licensed by the Board of Medicine, a reason to be concerned that you might use your position to advocate for a particular position when considering mattes that should be considered absent agenda or prejudice." (*Id.*). The letter went on to explain, that "[m]edical professionals should be confident that their licensure, which is their livelihood, will be handled professionally and clinically examined on merits alone." (*Id.*). The Governor noted that "[e]ven the appearance of bias can be disquieting as well as erode confidence in the Board's presumed impartiality." (*Id.*). The Governor,

although recognizing that Dr. Cubin did not speak on behalf of the Board, further explained that "some may not appreciate that your personal comments might not necessarily be those of the Board as a whole." (*Id.*).

While Dr. Cubin may have been providing his own opinion, his role as a member of the Board requires him to be unbiased, fair, and impartial to all Wyoming medical licensees. Given his statements related to specific doctors, including members of the WMS, the Governor acted in good faith in concluding that Dr. Cubin's statements could cause certain medical professionals to be concerned that Dr. Cubin could not be an impartial Board member. The Governor must be able to remove Board members, who by statute serve at his pleasure, when he believes their actions call into question their ability to serve as fair and unbiased decision makers. *See* Wyo. Stat. Ann. § 33-26-201(a).

In his motion, Dr. Cubin asserts that the Governor put forth no reasonable evidence suggesting the Dr. Cubin's letter would negatively impact the Board's performance or ability to investigate and discipline its licensees. (ECF 12 at 18). Dr. Cubin suggests that if the Court does not required this evidence, then the Board physicians must be completely silent about all medical policy matters that go before the Wyoming Legislature. (*Id.*). This argument attempts to restate Dr. Cubin's email. Additionally, this argument attempts to misconstrue the language in the Governor's letter. If Dr. Cubin had simply sent an email asserting his support for the bill and passing on information that he thought was relevant for the Legislature's consideration, then this might be a different case. However, as previously noted that was not the extent of his email.

Dr. Cubin's attacks against Dr. Sanderson and certain members of the WMS appropriately concerned the Governor that "comments on this particular legislation could give doctors, who are licensed by the Board of Medicine, a reason to be concerned that you might use your position to advocate for a particular position when considering matters that should be considered absent agenda or prejudice." (ECF 1-2). Requiring actual evidence of prejudice or bias does not comport with the expectation that Board members act without even the appearance of bias or prejudice. It was not unreasonable for the Governor to determine that Dr. Cubin's negative statements directed at Wyoming medical practitioners could create the appearance of bias or prejudice affecting his role on the Board.

Dr. Cubin is aware of the impact of his statements on at least Dr. Sanderson, who sent him an email on February 29, 2024. In that email, Dr. Sanderson stated that Dr. Cubin had moved from cooperative communication to an attack. (Ex. D – Email from Dr. Michael Sanderson to Dr. Cubin). Dr. Sanderson asserted that Dr. Cubin potentially committed libel for his statements that Dr. Sanderson was involved in forming WMS's position and that neither Dr. Sanderson, nor the WMS cooperatively or intentionally suppressed the position of a separate organization. (*Id.*). Although unnecessary, this email provides additional evidence that Dr. Cubin's email compromised his ability to be perceived as fair and impartial as a member of the Board.

Finally, it is not unreasonable to expect that the Board, responsible for overseeing Wyoming medical practitioners, would want to maintain at least a professional and cordial working relationship with the WMS, the professional organization for Wyoming medical practitioners. Dr. Cubin's email attacking the WMS would have certainly created tension

between the Board and the WMS. The Board's relationship with the WMS is a legitimate State interest that weighs against Dr. Cubin's (and the many similarly situated board members) right to speech and petition.

2. Dr. Cubin is a policy making official and the Governor is entitled to political loyalty.

Dr. Cubin does not appear to be claiming that the Governor removed him from the Board based on differing policy opinions as it relates to S.F. 99. As Cubin noted, the Governor signed S.F. 99 into law. (ECF 1, ¶ 43). However, to the extent that Dr. Cubin is asserting such a basis for his retaliation claims, the Governor also did not violate Dr. Cubin's free speech or petition rights.

The Tenth Circuit recognizes that some government positions are subject to requirements of political loyalty. *Poindexter v. Bd. of Cnty. Comm'rs of Cnty. of Sequoyah*, 548 F.3d 916, 919 (10th Cir. 2008). "To defend against a First Amendment claim on this ground, a public employer has the burden of proving that political loyalty is an appropriate requirement for the effective performance of the public office involved." *Id.* (citations and quotation marks omitted). "The question is not whether any particular political superior . . . actually takes political loyalty into account, but whether the nature of the position would appropriately permit him to do so." *Id.* "In determining whether a position appropriately requires political allegiance, we focus on the inherent powers of the position and the actual duties performed." *Id.* at 920. While this determination is generally a question of fact, "if the job description and duties performed are undisputed, then the district court may resolve the issue as a matter of law." *Id.*; see also *Van Schuyver v. Stitt*,

No. CIV-22-0663-HE, 2023 WL 11763162, at *3 (W.D. Okla. Jan. 18, 2023) (where state official's duties and powers were set by statute, interpretation of the pertinent statutes presents a question of law rather than a question of fact.).

In considering the statutory provisions related to Board members, they are political appointments, appointed by the Governor, but requiring Senate approval. Wyo. Stat. Ann. § 33-26-201(a). Board members "shall serve at the pleasure of the governor." *Id.* A vacancy occurs on the Board if a member "[i]s removed by the governor." *Id.* § 33-26-201(d)(iv). This statutory framework suggests the Governor's authority to implement his policy preferences and initiatives through the appointment and removal process.

As mentioned above, the Board has statutory authority over the practice of medicine in the State. *Id.* § 33-26-202. In addition to granting new licenses and investigating and taking action against existing licensees, the Board also has rulemaking authority for several areas of the Act. *See e.g.*, *id.* § 33-26-202(b)(v). Given the authority of the Board, Board members are policymakers, politically appointed by the Governor, serving at the Governor's pleasure, and subject to removal by the Governor.

As noted by the district court in *Van Schuyver*, "[i]n the context of the operation of the executive branch of state government, there is a substantial interest in the Governor in having the executive branch speak with a single voice to the extent state statutes contemplate that." 2023 WL 11763162, at *4. "Further and more specifically, the Governor has a substantial interest in assuring that appointees of his to state policymaking positions, and who serve at his pleasure, perform their functions in a way consistent with his policy initiatives and agenda." *Id.*

Given the nature of a position on the Board, Dr. Cubin was a policymaking appointee. As such, the Governor had the right to remove him from that position. *Mitchell v. King*, 537 F.2d 385, 391 (10th Cir. 1976) ("[W]e hold that the governor of New Mexico may remove a policymaking appointee such as Mitchell for political reasons, without notice or hearing, and that this power encompasses removal for expressions made by the appointee in contravention of the policy goals of the governor."). For these reasons, even if Dr. Cubin asserts that his departure from the Board was based on a policy disagreement with the Governor, he still cannot prevail on his claims.

Finally, considering that Governor Gordon could remove Dr. Cubin from the Board if he disagreed with his political position, it defies logic that he could not remove Dr. Cubin from the Board for statements that Governor Gordon believed impaired Dr. Cubin's ability to effectively perform as a Board member. The Governor's ability to effectively manage his executive branch functions requires him to make these determinations. This line of cases is instructive of the type of deference that should be provided the Governor in weighing the State's interest when the Governor makes determinations about removal of certain types of employees, including appointed board members. For these reasons, Dr. Cubin fails to establish substantial likelihood of success on the merits and his motion for preliminary injunction should be denied.

B. Dr. Cubin fails to establish irreparable harm.

Dr. Cubin's motion for preliminary injunction should also be denied because he cannot establish irreparable harm. "To constitute irreparable harm, an injury must be certain, great, actual and not theoretical." *Heideman v. S. Salt Lake City*, 348 F.3d 1182,

1189 (10th Cir. 2003) (citations and quotation marks omitted). "[T]he party seeking injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm." *Id.* (citation and quotation marks omitted) (alteration and emphasis in original).

Dr. Cubin asserts that he suffered irreparable harm as a result of his removal from the Board, including the loss of his First Amendment rights. (ECF 12 at 11-12, 23). He provides no other basis or explanation for the irreparable harm, other than "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (ECF 12 at 23) (quoting *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976)).

While courts have generally considered the loss of First Amendments rights to constitute irreparable injury, this Court should consider this standard in context of Dr. Cubin's requested relief. The Tenth Circuit explained that:

> The party seeking injunctive relief must show that the injury complained of is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm. It is also well settled that simple economic loss usually does not, in and of itself, constitute irreparable harm; such losses are compensable by monetary damages.

Schrier v. Univ. of Co., 427 F.3d 1253, 1267 (10th Cir. 2005) (citations, quotations marks, and brackets omitted). "The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs from irreparable injury that will surely result without their issuance." *Id.*

In this instance Dr. Cubin is complaining of his removal from the Board, which occurred in April of 2024. Dr. Cubin failed to provide any information as to why he will be irreparably harmed by continuing to be off the Board during the pendency of this matter.

Additionally, Dr. Cubin's speech is not currently being limited by his continued exclusion from the Board. Rather, his free speech claim is related to the past conduct of removing him from the Board. In his Complaint, Dr. Cubin suggests that his removal, and presumably his continued exclusion, from the Board has caused him to suffer reputational harm, but he fails to assert the exact nature of the harm and how it would not be remedied with monetary damages. (ECF 1, ¶ 99). For these reasons, Dr. Cubin fails to assert irreparable harm that can only be prevented by putting him back on the Board.

C. The balance of harms weighs in favor of the Governor's state interests.

"The third preliminary-injunction factor involves balancing the irreparable harms identified above against the harm that the preliminary injunction causes the [defendant]." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 806 (10th Cir. 2019). "Under the heightened disfavored-injunction standard, the Plaintiffs need to make a strong showing that the balance of harms tips in their favor." *Id.* Here, the balance of harms weighs in favor of the Governor.

1. Granting the injunction will harm the Governor's ability to take action against certain appointed officials.

As noted by the above discussion, Dr. Cubin's free speech and petition rights in this case must be weighed against Governor Gordon's interest in managing executive functions and ensuring citizen licensing boards operate free of the appearance of bias or impropriety. While Dr. Cubin's email may have been in his personal capacity and on a matter of public concern, his statements were directed at his frustration and disagreement with specific doctors, including members of the WMS. (ECF 1-1). Even though Dr. Cubin did not

mention that he was a member of the Board, the Wyoming medical community is small and members of the WMS and Dr. Sanderson are presumably aware of who is appointed to the Board.

In this case, while the alleged irreparable harm to Dr. Cubin is the infringement of his free speech, the actual harm he points to is not the ability to engage in speech, but the fact that he was removed from the Board for his speech and presumably the fact he continues to be excluded from the Board. That harm must be weighed against the harm of his perceived bias or prejudice in sitting on the Board that is responsible for prosecuting and adjudicating license matters and engaging in rule making and other functions of the Board. The balancing these interests weighs in favor of the Governor's interest in maintaining medical practitioner trust in the impartiality of all members of the Board.

2. Granting the injunction would interfere with Governor's ability to manage his executive branch functions.

Granting the injunction would allow a federal district court to substitute its judgment for that of the Governor in determining whether Dr. Cubin's speech could be perceived as creating bias or prejudice in his service to the Board or otherwise disrupt executive branch functions. Board members serve at the pleasure of the Governor, and the Governor should be able to expect the highest level of professional behavior from his appointed board members. This is especially true in areas where board member behavior may negatively reflect on their board duties and responsibilities. The Governor is best suited to determine what conduct thwarts the State's interest in maintaining unbiased and fair state licensing boards, including the need for appointed members who are free of perceived bias and

prejudice. Unlike other instances of state licensing board members speaking on matters related to their enabling statutes, Dr. Cubin did not just speak to the Legislature about his support for S.F. 99. Rather, Dr. Cubin used his letter to vilify specific Wyoming doctors, who are subject to the Board's authority. Additionally, Dr. Cubin's statements were specifically critical of the WMS, potentially damaging the relationship between the Board and the WMS. It these actions, not his support for S.F. 99 (which the Governor signed), that prompted his removal from the Board.

As a result, Dr. Cubin has not made the required "strong showing" that this factor weighs in his favor. *O Centro*, 389 F.3d at 975-76. For these reasons, the balance of harms weighs in Governor Gordon's favor.

D. Placing Dr. Cubin back on the Board would adversely affect the public interest.

The last preliminary injunction factor requires that the injunction not be against the public interest. *Free the Nipple-Fort Collins*, 916 F.3d at 807. In this case, the Governor has a significant interest in ensuring that licensing board members are free of actual or perceived bias or prejudice in the performance of their important roles. Additionally, requiring Governor Gordon to put Dr. Cubin back on the Board could erode the confidence of not only medical licensees but all Wyoming licensees subject to the jurisdiction of State licensing boards. If the Governor is not allowed to remove Dr. Cubin in this instance, then when can he remove a licensing or other appointed board member? Most removals will come as a result of some statement or action by the board member that the governor (and not just Governor Gordon, but any subsequent governor) believes is improper. If this Court grants this injunction, then when can a governor have any confidence that he can remove

a board member (or even a cabinet-level employee) without facing not only potential money damages, but having a federal court put that person back on the applicable board or position of employment? In the face of having to explain his or her decision making to a federal district court, it is likely that a governor will be more likely to allow bad behavior than use his or her statutorily granted removal authority. Such action would have a negative effect on the general operation of the executive branch. For these reasons, the public interest weighs against granting a preliminary injunction.

IV. Conclusion

For all the above stated reasons, Dr. Cubin has failed to establish that he is entitled to the extraordinary relief of being reinstated to the Board. The Court should deny Dr. Cubin's Motion for Preliminary Injunction.

Dated this 25th day of October, 2024.

/s/Brandi L. Monger
Brandi Monger, WSB #6-3731
Deputy Attorney General
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Attorneys for Governor Gordon

CERTIFICATE OF SERVICE

I do hereby certify that on this 25th day of October, 2024, a true and correct copy of the foregoing was served as indicated below:

D. Stephen Melchior
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Cheyenne, WY 82001
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[✓] CM/ECF

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/s/Jessica Curless
Jessica Curless, Paralegal
Office of the Wyoming Attorney General

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

DR. FREDERICK WILLIAM "ERIC" CUBIN III,	)	
Plaintiff,	)	
v.	)	Case No. 24-CV-00164
MARK GORDON, in both his personal and official capacities as Governor of Wyoming,	)	
Defendants.	)	

AFFIDAVIT OF VALERIE MOCKENSTURM, PA-C

Valerie Mockensturm, PA-C, being first duly sworn, hereby deposes and states as follows:

1. I have personal knowledge of all matters set forth herein.

2. I am a duly-licensed certified physician assistant practicing in Casper, Wyoming.

3. I have served as a member of the Wyoming Board of Medicine since March 1, 2017.

4. I am currently the President of the Wyoming Board of Medicine, a position I have held since April 29, 2023.

5. At approximately 6:54 p.m. on February 28, 2024, Eric Cubin, M.D. forwarded to me an email string with the subject line "SF 99", a true and correct copy of which is attached hereto as Exhibit "A-1".

6. At approximately 10:43 a.m. on May 29, 2024, Eric Cubin, M.D. sent an email with the subject line "My resignation", to several members of the Wyoming Board of Medicine, including me, a true and correct copy of which is attached hereto as Exhibit "A-2".

EXHIBIT A

7. At approximately 10:44 a.m. on May 29, 2024, Eric Cubin, M.D. forwarded to several members of the Wyoming Board of Medicine, including me, an email to members of the Wyoming House of Representatives with the subject line "Chloe's Law and WMS", a true and correct copy of which is attached hereto as Exhibit "A-3".

8. At approximately 10:44 a.m. on May 29, 2024, Eric Cubin, M.D. forwarded to several members of the Wyoming Board of Medicine, including me, an email string with the subject line "Re: SF 99", a true and correct copy of which is attached hereto as Exhibit "A-4".

DATED this 10 day of October, 2024.

Mockensturm, PAC
Valerie Mockensturm, PA-C

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

The foregoing Affidavit of Valerie Mockensturm, PA-C was subscribed and sworn to before me by Valerie Mockensturm, PA-C this 10th day of October, 2024.

Witness my hand and official seal

CONNIE J. SCHEPP - NOTARY PUBLIC
COUNTY OF LARAMIE
STATE OF WYOMING
MY COMMISSION EXPIRES MAR 31, 2025

Connie J Schepp
Notary Public

My commission expires:

Date: Wed, Feb 28, 2024 at 6:54 PM
Subject: Fwd: SF 99
To: <vkgoen@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: Eric Cubin <ecubin@gmail.com>
Date: February 28, 2024 at 8:16:47 AM MST
To: Michael Sanderson <sanderman08@gmail.com>
Cc: Angus McAlpin <angusmcalpin@gmail.com>, Berton Toews <btoewsmd@gmail.com>, Dee Engle <dengle8@yahoo.com>, Donald Kirk <dkirk@starvalleyhealth.org>, Ghazi Ghanem <ghazighanem@gmail.com>, Giovannina Anthony <giovannina@giovmail.com>, Israel Stewart <itstewartmed@gmail.com>, JJ Chen MD <jjchencheyenne@gmail.com>, Jim Hutchison <jimrhutchison@gmail.com>, Jonna Cubin <dubby77@gmail.com>, Kris Schamber <schambam@gmail.com>, Kristina Behringer MD <kilikinastina@gmail.com>, Luke Goddard <lukegoddard@sheridanhospital.org>, Mansell7 <mansell7@aol.com>, Matt Mitchell <matt010164@gmail.com>, Mattson Mathey <mattsonmathey@gmail.com>, Paul Johnson MD <pejohnson76@yahoo.com>, Rafael Homer <rhomer@uw.edu>, "Rinker Dr. Erica" <eldobbs@gmail.com>, Robert Kanard <rrk317@bresnan.net>, Robert Monger <robertmonger@gmail.com>, "Ronald L. Malm" <rmalm@uwyo.edu>, Sarah Durney MD <sarah_durney@hotmail.com>, Sheila Bush <sheila@wyomed.org>, Sierra Gross <sierragross@sheridanhospital.org>, Spencer Weston <swestonmd@gmail.com>, Stephen Brown <sbrownwyoming@yahoo.com>, Tracey Haas <drtraceyhaas@gmail.com>, bhughfitz@aol.com, caf2941@aol.com, carsonwalkerwyo@gmail.com, ebsschubert@icloud.com, heith.waddell@gmail.com, htaggart@uw.edu, kevinhelling@gmail.com, larry lauridsen MD <larry.lauridsen@gmail.com>, nick.healey@huschblackwell.com
Subject: Re: SF 99

All,

I am sorry to continue to fill your inboxes with emails in regard to this issue. However, time is of the essence and I think we all need to know what to expect from the WMS leadership and Executive Director in the next few days.

For those of you that may not be aware, SF 99 unanimously passed the Senate Labor Committee and subsequently passed all readings in the Senate. The bill is now in the House of Representatives where should be considered in committee and on the floor this week. It seems quite likely that the bill will pass the legislature.

What we all need to know right now is, specifically, what can we expect to see from WMS in regard to this bill over the next several days? Will WMS continue to publicly oppose SF 99 or will you be presenting a neutral position?

Eric Cubin

On Feb 26, 2024, at 10:25 PM, Eric Cubin <ecubin@gmail.com> wrote:

Dr. Sanderson,

Thank you so much for sending this reply. I say thank you because I believe it is a perfect illustration of what I have been talking about and why I'm so concerned.

First, while I appreciate your assessment of the difference between these two professional societies in your specialty, I'm not convinced that the positions of the American College of Pediatrics should be discounted wholesale because they may not conform to the tremendous political pressure of the day. Is it the position of the WMS that the information and directives set forth by the AAP should be taken as gospel and the positions of the ACP should be ignored and suppressed? If so, when did the WMS adopt this stance and who was involved in that discussion? Do we have a conflict of interest among our leadership in WMS? Having briefly reviewed the information provided on the websites of both of the pediatric professional societies, my guess is that many WMS members would actually prefer the guidance provided by the ACP than the AAP - but we've never asked them. In any case, it is really bad policy to only present one side of an argument without presenting contrary opinions when trying to effect social policy.

Second, you state in your reply that the ACP formed as an alternative to the AAP. Why did that happen? Did they stray from their mission of providing optimal care for patients and advocating for their members? This is exactly what I'm concerned could happen to the WMS if the leadership continues to take unnecessary positions on controversial issues. This is particularly true when it is done without polling the WMS membership.

As for the issue of gender affirming care for children in our state, once again, I would humbly request that the WMS adjust its position to a more neutral stance. This request applies not only to the lobbying efforts that are currently being undertaking during the legislative session, but also to the publications that you put forth on behalf of the WMS. I have to admit that I was shocked when I saw "Gender Affirming Care" featured

EXHIBIT A-1

prominently on the cover of the Spring 2023 edition of "Wyoming Medicine". I have to believe that I'm only one of many of your members who noticed this and felt as though we were being misrepresented my WMS and its leadership.

Once again, I want to say thank you to everyone who is receiving this email. Thank you for what you do and thank you for seriously considering these concerns.

God Bless,
Eric Cubin

On Feb 25, 2024, at 9:39 PM, Michael Sanderson <sanderman08@gmail.com> wrote:

Dr. Cubin,

Speaking as a pediatrician and not as the WyAAP president, simply to provide context to those who don't have the years of experience in pediatrics…

On the contrary, it is widely apparent to nearly everyone in the field of Pediatrics that the American College of Pediatricians is the politically motivated organization. Their clear deviation from overwhelming scientific consensus on a variety of social issues supports this, including their position in support of corporal punishment for children, their support for the barbarism of conversion therapy for homosexuality and transgenderism, their forwarding of what they claim is a connection between homosexuality and pedophilia, and their opposition to sex education on the basis that it promotes sexually promiscuity. At one point they even supported the use of blanket training. All of these positions have been thoroughly discredited or disproven by excellent science, yet they continue to advocate for them…except the blanket training. They are not taken seriously amongst the vast majority of pediatricians. Also I am not aware of any active chapter of the ACP in Wyoming.

The American College of Pediatricians formed as an alternative to the AAP. Now, speaking as the WyAAP president, admittedly , I think it is accurate to state that the National AAP membership can be quite politically and culturally liberal. We WyAAP leaders sometimes find ourselves educating AAP leadership on the conservative cultural norms from places like Wyoming. Despite this reality, speaking as a politically conservative person, I can say that I have never seen the National AAP put bias above science when it comes to patient care. They have always placed patient care and best patient outcomes as their highest priority. I understand that you are simply trying to make the point that there is room for more than one perspective here, and I agree with that. We should continue to welcome questions and deliberation on topics such as these.

Thanks for making your other points.

Mike Sanderson, M.D., F.A.A.P.
Northeast Wyoming Pediatric Associates, P.C.
Clinical Assistant Professor, University of Washington School of Medicine, Department of Pediatrics
(307) 675-5555
sanderman08@gmail.com

On Sun, Feb 25, 2024 at 8:59 PM Eric Cubin <ecubin@gmail.com> wrote:
Dr. Sanderson,

In a genuine effort to gain a better understanding of both sides of this issue, I think I have discovered the root cause of our misunderstanding. It seems that there are multiple professional societies in the field of pediatrics. While you do accurately represent the position of the American Association of Pediatricians, you have failed to mention the position of the American College of Pediatricians. It seems that these two professional societies have dramatically different positions on the topic.

For ease of access, here is a link to the ACP position statement that was updated in February 2024:

You are being redirected...
acpeds.org <favicon

In addition, the ACP published this article on the topic in 2018:

You are being redirected...
acpeds.org favicon

Why is it that the positions of these two specialty specific professional organizations are at such variance on the topic? Could the reason be that there really is no consensus based on data and available evidence? Is it possible that the AAP is more of a political organization and the ACP is more focused on science? Which society is right? Are they both wrong? If the evidence was as clear as you make it seem, then there would be consensus. I do not believe that we should only present one side of this issue to the WMS Board and ask them to make a decision based on that.

In regard to my position on the Board of Medicine… while it is true that I do sit on that Board, I want to make two things very clear. First, all of the statements and communications that I have sent to this group represent my personal beliefs and do NOT represent the positions or views of the Board of Medicine. Furthermore, these communications are solely intended to address my concerns with the WMS Board of Directors and select members of a professional organization of which I am a paid member in good standing. Second, in more general terms with regard to the Board of Medicine, it is the role of the Board of Medicine to ensure patient safety in this State through an effective licensing program and to fairly and appropriately discipline holders of medical licenses when they are found to be in violation of the Wyoming Medical Practice Act. I do not endeavor to make the rules which are to be enforced. It is much better, particularly on politically charged issues such as this, for the legislature and Governor to make the rules that are to be enforced by the Board of Medicine. If anyone has any concerns regarding the Board of Medicine I would encourage you to reach out to the Executive Director with these concerns. His name is Kevin Bohnenblust and he does a fantastic job.

As for the social inertia of this movement, I would agree with you that I haven't seen this to a huge degree in Wyoming - yet. On the national level, however, the inertia on GAC is undeniable. As a Wyomingite, I think it might be the wise for us to do what we can to stop that wave from hitting us when it does make its way toward the Continental Divide. Why would we even let it get its foot in the door when we don't fully understand the downstream consequences. I think there is significant wisdom in a wait and see approach until we get a more complete sense of the risks and benefits of these interventions.

At a minimum, based on the lack of consensus and the ACP position statements detailed above, WMS should not be taking anything but a neutral position on gender affirming care in children in Wyoming.

On another somewhat different, but very important, note… It is probably best for WMS (any organization for that matter) to avoid taking unnecessary positions on issues that are divisive amongst their membership. It is particularly bad when a vocal minority finds its way onto the Board and then creates position statements that don't reflect the opinions the majority of the members. Going forward, if WMS finds itself in a position where we must take a controversial position, once again, I implore you to poll your members before developing and coming forth with that statement.

God Bless,

Eric Cubin

On Feb 25, 2024, at 6:27 PM, Michael Sanderson <sanderman08@gmail.com> wrote:

Hello all, and Dr. Cubin,

Thanks to everyone for the dialog and to Dr. Cubin for reformatting and detailing your argument. I thought I should make my position more fully to represent the WyAAP.

To further add credibility to the Board's position on this point, as the President of the WyAAP, I can tell you that there is near unanimity amongst Wyoming pediatricians on our agreement with the position the WyAAP and the WMS holds on the issue of GAC for minors. Referring to Dr. Schamber's statement, and paraphrasing, that the Board prefers to weigh policy positions to some degree in favor of the opinions and positions of the physicians within specialties that are most involved and impacted by said policies, this context may add understanding.

As to the science in support of offering certain aspects of GAC to minors, social conservatives like me must learn to reckon with the fact that there is enough evidence to support the use of "puberty blockers" and in limited circumstances, hormone replacement therapy (HRT) in minors for the purposes of GAC. For instance, a "good" quality prospective study often cited in this argument found that minors who had initiated puberty blockers or HRT were 60% less likely to experience depression and 73% less likely to experience suicidality. I very much disagree with this information being used as a coercive measure to pressure parents into consenting to GAC; I am also very cynical on the notion that Wyoming doctors are doing this. Regardless of whether or not I "like" this finding, or any feeling that I have about whether, in the long term, we will or won't find that medical GAC treatment has resulted in the best outcomes for Wyoming minors, my ethics as a physician require me to put aside my own biases and operative according to the best science available.

Specifically, on the subject of puberty blockers, I find it quite the double standard for opponents of the use of puberty blockers in minors for the purposes of GAC to cite the potential medical risks, including decreased bone mineral density and possible decreased fertility, as too significant and therefore prohibitive to/for their use, while not protesting their use in central precocious puberty. The only real "organic" risk of allowing central precocious puberty to proceed untreated, is, after all, short stature. The main reason we treat central precocious puberty is the social and emotional ramifications, and to a very limited degree, physical ramifications, that come from a person living with short stature in our society. One must admit to the similarity between the justifications for their use in both situations, while acknowledging that our conservative society seems to find one reason acceptable and the other unacceptable. The use of puberty blockers also achieves two specific goals that opponents of GAC ask us to seek - to "slow things down" by allowing for more time to explore gender identity, access psychosocial supports, and develop coping skills, and to reduce the need for surgery in the future.

I won't argue the point further, as there is already enough information at the hands of anyone who takes the time to look that there is enough science to support medical treatment for GAC and at the same time a lacking in the breadth and depth of that science that leaves many questions open. It is for this reason that the WyAAP will continue to forward the position that as the science either matures, or changes, Wyoming physicians who care for children are in the best position to operate this science, on an individualized, case by case basis, for each patient who comes to see us. However, as a member of the Wyoming Board of Medicine, who finds himself responsible for penalizing physicians for malpractice and unprofessional behavior, I would hope that you would find yourself just as well versed on the science and rationale behind the support of GAC for minors from the American Academy of Pediatrics, The American Medical Association, The American Academy Of Child and Adolescent Psychiatry, and the other professional societies involved, as you are in the science and limited professional opinion that opposes GAC for minors. If the Wyoming Legislature passes this bill, it will, by necessity, force Wyoming physicians to break the ethical standard of treating patients according to the best science available at the risk of their license. Please remember this if you find yourself sitting in judgement against Wyoming physicians who may come before your Board for being put into this position by the Wyoming Legislature. I would also refer you to the policy statements from the AAP below, which will provide you with the wealth of science that supports the position I've stated.

2018 Policy Statement on Gender Affirming Care from the AAP:

https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected

2023 Reaffirmation of Policy Statement from the AAP:

https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy

Finally, to address your concern that medicine may be overreacting to a possible social contagion of gender questioning, I would like to make the case to you that from the perspective of a Wyoming pediatrician who sees 3000-3500 patient encounters per year, this simply is not true in our state. The last 5 years of my practice

have resulted in exactly 2 patient encounters where a minor was interested in seeking gender affirming medical care. The two individuals who were interested in this care had suffered years of bullying, ostracization, and physical mistreatment, as well as the collateral psychological and emotional issues that come along with all of that. They had also already completed years of mental health counseling and medical treatment for their depression and anxiety. All Wyoming pediatricians can attest to this Wyoming reality. I would strongly disagree with the notion that in our state, there is some kind of social inertia that pushes children and adolescents forward into gender questioning and GAC; on the contrary, my strong impression is that it is the exact opposite and that for nearly every Wyoming gender-questioning minor, they have by simple necessity overcome a great deal of social inertia against their gender-questioning to arrive at their identity. It is for this reason that I also felt that SF 99, which was built from the experience of a single Californian minor in a Californian system within a Californian social context, cannot adequately address the situation on the ground in a state like Wyoming.

Dr Cubin - Thanks, it's been a long time since we connected, I hope you and your family are well. Say hello to Marc for me - he's one of my favorite people and I'm thrilled he made the decision to come home...although I can't deny I was hoping Sheridan would snatch him up!

Mike Sanderson

On Sun, Feb 25, 2024 at 3:35 PM Eric Cubin <ecubin@gmail.com> wrote:

> Dr. Schamber,
>
> Thank you for taking the time to consider this issue further and for expanding the audience so I can more clearly express my position to the Board.
>
> Before I begin I would like to say that, in my opinion, the Board has put the Executive Director in a very difficult position. Mrs. Bush has been a personal friend of mine for decades, literally since high school. Now she is in a position where she is given directives from the Board and is tasked with advocating for those positions. When the positions handed to her from the Board are at variance with the opinion of majority of the members of the society for which she is the Executive Director, that puts her in a tough spot. In this particular instance, I directed my concerns toward her and perhaps that was misguided. To
>
> that end, I am sorry and I humbly offer my apologies to Sheila. That being typed, I do believe that WMS has taken a serious misstep and the fault for that falls squarely on the Board as I will discuss below.
>
> As you all know, the topic of "gender affirming care" is extraordinarily controversial, particularly when it comes to treatment of children. When it comes to issues such as this, it would probably be best if the WMS took a position similar to their position on abortion which, according to the WMS website, is "WMS continues to remain neutral". If WMS is going to take a position on a hot-button issue such as this, it would be best if you actually polled your members before coming forth with "our" position. For better or worse, I do not believe that the majority of your members are in favor of gender affirming care for children. I believe that there is a very vocal minority who are pushing this issue, some which seem to have found their way onto your Board. Before we go any further down this path, I would implore you to poll your membership. If it is truly your desire to represent the physicians in this state, poll them. Let's find out where they stand.
>
> WMS has historically been a well respected and powerful organization in our state. They achieved that position by actually representing the thoughts and beliefs of their members. If the Board elects to go rogue and grind a political axe, then WMS will very likely lose members and the strength that comes with numbers. In addition, your members tend to be active in their communities and have relationships with the legislators that ultimately make these difficult decisions. When your members start talking about how WMS no longer represents their beliefs, that will completely undermine your credibility and ability to effectively lobby on our behalf.
>
> Specifically related to gender affirming care in children… The strongest argument that I've heard in favor of allowing this, as Dr. Sanderson referred to in his testimony, is that the legislature should not do anything to interfere with the doctor patient relationship. At face value, I agree with that wholeheartedly. That being said, there are some instances in which, for the safety of the public, it would be completely appropriate and reasonable for the legislature to make rules governing what is and is not acceptable in our society. For example, if a physician moved into our state and started performing physician-assisted suicide, would it be the position of the WMS that that should be allowed because it falls under the doctor-patient relationship? Please also consider, for a moment, the example of child abuse. We are all legally and morally required to report any instance in which we suspect child abuse. Why? Is that government overreach? Does that violate the doctor-patient relationship? While arguably the answer is yes, the moral obligation overrides the established patient-physician relationship.
>
> "Gender affirming care" with the use of puberty blockers and hormones in a patient with normal physiology takes a patient who is physiologically normal and makes them physiologically abnormal. How can that be viewed as anything but harmful? This is particularly true in young people who are impressionable

and whose frontal lobes are not completely myelinated, rendering them insufficiently developed to make decisions such as these. This may have negative effects on them later in life. When it comes to gender affirming care in children, as a society and profession, we can protect children by not allowing them to engage in it. If nothing else, perhaps we should consider waiting a few more years before we as a state permit this, to evaluate the experiences of states such as California where this is widely accepted and in some cases even promoted.

The evidence and medical data on gender affirming care is all over the board. Unfortunately, much of the data on both sides is politically charged and it is difficult to decipher exactly what is true and what is not true. It is entirely possible, at this point, that the whole transgender movement is a social contagion with roots in mental illness. It is also possible that hormone replacement and puberty blockers could have long term harmful effects on young people. By all means, as a society, we need to do everything that we can to ensure the safety and health of all children. It is my position that underlying mental illness in young people needs to be addressed completely and treated effectively, Treating mental illness does not include the use of hormone therapy. There are vocal advocates of this movement who would have citizens believe that children have mental illness due to gender dysphoria and that the proper treatment is medicine and surgery which subjects children to irreversible changes to their bodies. Wouldn't a more reasonable approach be to support youth with compassionate mental health evaluation and targeted mental health treatment until they reach the age of consent?

At the end of the day, we live in a conservative state. This is a state where people still know the difference between right and wrong, and the difference between men and women. It is completely appropriate for our elected officials who represent the citizens of our state to make rules governing what is and is not acceptable in instances where actions are being taken that could be harmful to our youth. Perhaps there are physicians who would choose not to come to Wyoming to practice because gender affirming care is not allowed for children. It's also possible that there are physicians who wouldn't come here because it is allowed. All of us who choose to live and work here do it for one reason or another. We all know what it means to live in Wyoming and be Wyomingites. I don't believe that we should promote fringe social policies that could result in harm to children in an effort to attract physicians who would participate in causing that harm.

Quite frankly, the WMS Board missed the mark with this position. Perhaps we would all be better served if the WMS Board elected to adjust its position on this issue or at least make sure that what you are representing is actually what your membership believes. If there are members who are using their position on the Board to advance their own political agenda without respect to what's best for the doctors in the state, then I would respectfully ask that WMS remove and replace those Board members with others who can maintain their focus on the true mission of WMS.

In regard to direct communication with the Board and Dr. Sanderson, I would welcome that. My cell phone is (307) 262-7148. Please feel free to reach out.

On a final note, I would like to say thank you to everyone who is on this email. Thank you for spending your time and energy trying to make a difference. Thank all of you physicians for taking care of the people of this Great State. Thank you Sheila for effectively lobbying on our behalf. While I do hold strong opinions about this issue, I believe that we can all disagree without being disagreeable. At the end of the day, we are all on the same team. I wish you all the very best!

Sincerely,

Eric Cubin

On Feb 23, 2024, at 10:00 AM, Kris Schamber <schambam@gmail.com> wrote:

Dr. Cubin,

I agree with Sheila that the WMS board discussed this in detail during our board meeting and she did not misrepresent our position. We had a great discussion and certainly there were disagreements. We did not present a supporting viewpoint, because that was not the position of the board for this particular bill. I would like to remind you that any individual, including yourself, has the right, and the ability, to testify in these hearings.

I noticed from your original email to Sheila that the video of the legislative testimony was sent to you from another source. I trust that you watched the testimony in its entirety. You will find that Sheila's remarks were exactly as stated in her follow-up email. I also found it alarming that the accusation by some in the legislature that Dr. Sanderson is actively harming patients as an agent of big pharma, and the blatant childish disrespect represented by one of the committee members plugging their ears so as to not hear Dr. Sanderson's testimony. I suppose it's fortunate then that this hearing was recorded so these details can be witnessed by all.

As I've said many times before, and to you specifically in prior emails, our positions are not made on simple, personal and party line political stances. It's actually much more difficult to debate the subtleties and nuance, and then develop a position that respects diverse member views, while adhering to our mission, vision, and tenets. If

we do not function this way, then we are nothing more than an extension of a partisan political party.

I urge you to consider for a moment, that any support, oppose, or neutral stance does not give the full perspective or context to one's stance. I don't believe that the individuals, parents, physicians, or others that support gender affirming care are willfully trying to mutilate or hurt children. Consider Dr. Sanderson for example. He is an extremely hard-working, white Christian male that cares deeply about his children, those children that he treats and refers, and his entire community. He was testifying yesterday, advocating for medicine and his patients, removing himself from any of his own personal or political beliefs.

I would love to discuss this with you in person, and Dr. Sanderson has indicated the same. You can also speak with your local representatives, Dr.'s Mitchell, Helling, and Schubert, all of whom were present during our recent board meeting. It may even be helpful for you to have the opportunity to discuss these controversial topics with our full board. Our entire board is CC'd on this email in the name of full transparency and to limit any further misrepresentations. As Sheila said, all members are welcome to join our board meetings, and in fact we had at least one non-board member do so during our most recent board meeting.

I look forward to further correspondence.

Kris
President, WMS Board of Trustees

–
Kristopher Schamber, MD, FACP
Sheridan Memorial Hospital
Medical Director, Primary Care
Medical Director, Home Health & Hospice
University of Washington School of Medicine
Clinical Instructor
Clinic: 307.675.2690
Office: 307.675.5884
Cell: 307.871.2868
Email: schambam@gmail.com
Email: kristopherschamber@sheridanhospital.org

On February 22, 2024 at 8:01:48 AM, Sheila Bush (sheila@wyomed.org) wrote:

Dr. Cubin,

Thank you for your email. Dr. Sanderson was representing the Wyoming Chapter of the American Academy of Pediatrics as their president. I introduced myself as the director and representative of the state medical society. I separately stated that I was seated next to Dr. Sanderson who was there to speak on behalf of the WY-AAP with whom I also am contracted, through WMS, to serve as their representative and director.

I'm pleased to see you were forwarded the link to the hearing. Hopefully you heard and listened to not only my testimony but also to the comments and questions from the committee along with their tone. I am eager to hear your thoughts and to learn, specifically, what about my testimony you think so many doctors would find disagreement.

My testimony acknowledged that the clinical guidance within the specialty of pediatrics, published in October of 2018 and reaffirmed in August of 2023, is to not perform gender reassignment surgeries on minors, and that our organization recognizes and respects that our membership remains divided on other aspects of gender affirming care. I also reiterated that our members are not divided in their historic, and continued, opposition to the overreach of government into the practice of medicine. I testified that WMS would always stand staunchly in support of allowing medicine to debate and decide the best care for their patients and that the legislature lacked the education, training, and expertise to prescriptively dictate clinical practice.

I understand that you hold a different personal opinion than many of our other members on gender affirming care. WMS leadership debated many of these topics at their board meeting, which you and all other members were invited to attend. The unanimous direction I was given was to again oppose these legislative efforts in keeping with our organization's opposition to government overreach, and on the grounds of protecting autonomy in physician decision making. The board also gave weight to the expertise and positions of our members practicing in primary care and who care for these patients as it has historically been our practice to look first to the specialty or specialties most impacted by any legislative proposal. For this particular policy, those WMS members are our pediatricians and family physicians.

I'm certain you can appreciate the difficulty WMS faces in finding consensus on every policy position within an organization of more than 1,000 members. Our board is handed a great challenge in this and they work diligently to be fair, to hear all voices and to ensure they are transparent in the process. I serve at their pleasure and take my guidance directly from them. I would encourage you to employ the tools available to you through the WMS governance structure to get more involved and ensure your voice and perspective is included in the various ways WMS advocates to promote and protect medicine in Wyoming.

I am sincere in my offer to talk in more depth with you about this, or any other aspect of the state medical society that you believe could be improved. I don't actually think that WMS is as far afield as you might think we are. That said, I'm open to hearing your perspectives and insights and welcome the conversation.

Best regards,

Sheila Bush
Executive Director
T: 307.635.2424 | Direct: 307.263.1738
C: 307.630.8602

WYOMING MEDICAL SOCIETY

On Wed, Feb 21, 2024 at 9:10 PM Eric Cubin <ecubin@gmail.com> wrote:
Sheila....

Ouch! Do you think that Dr. Sanderson's views represent the majority of your members?

Would it be out of the question to ask WMS to present physicians from both sides of an issue if you are going to take a position on a political issue such as this?

Eric

Good morning Eric.
I just wanted to keep you in the loop on testimony from WMS given this morning. The good news is the bill passed the Senate Labor Health Committee unanimously.

https://www.youtube.com/live/lztrjpvN-RI?si=4-tIbqVZu_8pCayb&t=1970



Senate Labor, Health & Social Services Committee, February 21, 2024

www.youtube.com

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Mike Sanderson, M.D., F.A.A.P.
Northeast Wyoming Pediatric Associates, P.C.
Clinical Assistant Professor, University of Washington School of Medicine, Department of Pediatrics
(307) 675-5555
drsanderson@newpakids.com
sanderman08@gmail.com

From: Eric Cubin <ecubin@gmail.com>
To: Valerie Morris <vkgoen@gmail.com>; Michael A. Jording, MD <mike_jording@yahoo.com>; Emily McGrady <emilymcgrady@yahoo.com>; A. Dozier Tabb MD <adtabb@vcn.com>; Melinda Poyer <ladydoc31@aol.com>; Kevin Helling <kevinhelling@gmail.com>
Sent: Wednesday, May 29, 2024 at 10:43:13 AM MDT
Subject: My resignation

All,

It seems that what transpired and resulted in me being removed from the Board has finally made its way to the media. An article was published yesterday in the Cowboy State Daily that fell a little bit short in explaining what exactly transpired. For that reason, I wanted to reach out to each of you to let you know the truth. I will also be sending you the background emails so you can make your own judgements on the merits of my removal.

When I was in Inuvik, NWT, hunting I received a phone call from the Governor's Chief of staff, Drew Perkins. Drew proceeded to tell me that because of my advocacy for SF99 (Chloe's Law), the Governor had decided that I needed to be removed from the Board. While on the phone with Drew, I received a simultaneous official email from the Governor notifying me that I had been officially removed from the Board. When I saw that email, I replied and asked if they would at least afford me the opportunity to resign. They agreed to let me do that.

For the record, I was never asked or given the opportunity to present my side of the story.

While I cannot prove it, I have been given a strong indication that Sheila Bush and the folks at the Wyoming Medical Society were the impetus for all of this.

If any of you have any questions about what happened, please feel free to reach out. In the meantime, I will be forwarding you 2 emails. One of those emails is the email that I sent to the members of the House of Representatives after WMS had tried to keep me from speaking up for nearly a week. The second email contains a string of emails between myself, Sheila Bush,. and the WMS Board. In it, you will see that I implore them to poll their membership before the go before the legislature and report that the doctors of this state generally are in favor of providing "gender affirming care" to children. With that particular email, please start at the bottom and read your way to the top. It is an interesting read and gives a good illustration of what is actually going on with WMS.

It is important for me to tell all of you that it was truly a pleasure to serve with you. You are all wonderful people and I want to sincerely thank you for all of the time and energy that you spend ensuring that the people of Wyoming have safe, high quality health care professionals to take care of them. I wish you all the best!

God Bless,
Eric Cubin

EXHIBIT A-2

From: Eric Cubin <ecubin@gmail.com>
To: Valerie Morris <vkgoen@gmail.com>; Michael A. Jording, MD <mike_jording@yahoo.com>; A. Dozier Tabb MD <adtabb@vcn.com>; Melinda Poyer <ladydoc31@aol.com>; Kevin Helling <kevinhelling@gmail.com>
Sent: Wednesday, May 29, 2024 at 10:44:02 AM MDT
Subject: Fwd: Chloe's Law and WMS

Begin forwarded message:

From: Eric Cubin <ecubin@gmail.com>
Subject: Chloe's Law and WMS
Date: February 28, 2024 at 10:01:25 PM MST
To: Lane.Allred@wyoleg.gov, Ocean.Andrew@wyoleg.gov, Bill.Allemand@wyoleg.gov, Abby.Angelos@wyoleg.gov, Dalton.Banks@wyoleg.gov, John.Bear@wyoleg.gov, Ryan.Berger@wyoleg.gov, Landon.Brown@wyoleg.gov, Donald.Burkhart@wyoleg.gov, Andrew.Byron@wyoleg.gov, Forrest.Chadwick@wyoleg.gov, Ken.Chestek@wyoleg.gov, Ken.Clouston@wyoleg.gov, Jon.Conrad@wyoleg.gov, Barry.Crago@wyoleg.gov, Bill.Henderson@wyoleg.gov, Bob.Davis@wyoleg.gov, John.Eklund@wyoleg.gov, Jeremy.Haroldson@wyoleg.gov, steve.harshman@wyoleg.gov, Scott.Heiner@wyoleg.gov, Ben.Hornok@wyoleg.gov, Mark.Jennings@wyoleg.gov, Chris.Knapp@wyoleg.gov, Lloyd.Larsen@wyoleg.gov, JT.Larson@wyoleg.gov, Martha.Lawley@wyoleg.gov, Tony.Locke@wyoleg.gov, Chip.Neiman@wyoleg.gov, Sandy.Newsome@wyoleg.gov, Bob.Nicholas@wyoleg.gov, Tony.Niemiec@wyoleg.gov, Ember.Oakley@wyoleg.gov, Jared.Olsen@wyoleg.gov, Pepper.Ottman@wyoleg.gov, Jerry.Obermueller@wyoleg.gov, David.Northrup@wyoleg.gov, kevin.ohearn@wyoleg.gov, Trey.Sherwood@wyoleg.gov, Rachel.Rodriguez-Williams@wyoleg.gov, Sarah.Penn@wyoleg.gov, Ken.Pendergraft@wyoleg.gov, Daniel.Singh@wyoleg.gov, Karlee.Provenza@wyoleg.gov, Allen.Slagle@wyoleg.gov, Scott.Smith@wyoleg.gov, Albert.Sommers@wyoleg.gov, Clark.Stith@wyoleg.gov, Liz.Storer@wyoleg.gov, Tomi.Strock@wyoleg.gov, Clarence.Styvar@wyoleg.gov, Reuben.Tarver@wyoleg.gov, Tamara.Trujillo@wyoleg.gov, Tom.Walters@wyoleg.gov, Jeanette.Ward@wyoleg.gov, Art.Washut@wyoleg.gov, Cyrus.Western@wyoleg.gov, John.Winter@wyoleg.gov, Cody.Wylie@wyoleg.gov, Mike.Yin@wyoleg.gov, dan.zwonitzer@wyoleg.gov, Dave.Zwonitzer@wyoleg.gov

My name is Eric Cubin. I am a physician in Casper. I am writing you today for a couple reasons. This email was originally written with the intent of sending it to the cosponsors of SF 99, Chloe's law. After considering it for some time, I've decided to expand the audience to the entire House of Representatives because I think you all need to know what is happening.

First and foremost, I want to say thank you. Thank you for spending your time and energy in an effort to keep Wyoming the last great place!

Second, I'm writing you because of SF 99, Chloe's Law. There is a situation that has arisen that I want to make you aware of. In addition, I would like to present each of you with some information that you may not otherwise be provided.

It saddens me very much to have to report that, under their current leadership, the Wyoming Medical Society has been essentially hijacked by the far left. It seems that they have decided to prioritize politics over their stated mission of physician advocacy. In my opinion, they have adopted and embraced "woke" positions that are not congruent with the thoughts and opinions of the majority of their physician members. In essence, I have lost all confidence in their ability or desire to faithfully represent the physicians in this state.

Please allow me to give you an example. WMS seems to have teamed up with the American Association of Pediatricians in opposing SF 99. Quite frankly, I refuse to believe that the majority of physicians in this very conservative state agree with this position - and we were never polled. This position was

EXHIBIT A-3

established by several very vocal, extremely liberal members of the Board. The position was then made public as though it actually represents the thoughts and beliefs of physicians in Wyoming when, in fact, that is probably not true.

In their opposition to Chloe's Law, the WMS has partnered with Dr. Sanderson, a pediatrician from Sheridan, who is the President of the WyAAP. Dr. Sanderson has effectively delivered the position of his organization but he has failed to tell you that there is another pediatric professional society that has taken an opposite position, the American College of Pediatricians (ACP). It turns out, the ACP put out a position statement that was revised February 5th, 2024, which reads in part:

"The ACPeds cannot condone the social affirmation, medical intervention, or surgical mutilation of children and adolescents identifying as transgender or gender nonconforming."

You can find the full text to their position statement at:

https://acpeds.org/position-statements/mental-health-in-adolescents-with-incongruence-of-gender-identity-and-biological-sex

The ACP created another germane position statement in 2018 which is worth reviewing and can be found at:

https://acpeds.org/position-statements/gender-dysphoria-in-children

You need to know that Dr. Sanderson (and presumably the WMS leadership) were aware of these ACP positions and yet they were ignored and suppressed when the WMS position was established. Further, I presume that you have only been provided with the WMS/AAP position and not the ACP position statements. As I have communicated to the entire WMS Board, it is not acceptable to only present one side of an issue in an effort to effect change in social policy.

For further illustration of the WMS's embracing of the woke transgender movement, I would also invite you to look at their Spring 2023 issue of "Wyoming Medicine" magazine. In this particular issue they feature "Gender Affirming Care" on the cover and in a feature article. I have no idea why the WMS has elected to take this unnecessary position that is so clearly contrary to the viewpoint of the majority of their members.

You can find the Spring 2023 edition of "Wyoming Medicine" here:

https://www.wyomed.org/wp-content/uploads/2023/05/23-WMS-0012_Spring2023_digital.pdf

I want to be very clear that the WMS membership was never polled on their opinions of "Gender Affirming Care" even though I have implored the leadership to do so. It feels very much like the leadership at WMS has inserted their opinions in hopes that the WMS membership would not notice or speak up.

At this point, the strongest argument that I've heard in favor of killing this bill, as Dr. Sanderson referred to in his Senate testimony, is that the legislature should not do anything to interfere with the doctor patient relationship. At face value, I agree with that wholeheartedly. That being said, there are some instances in which, for the safety of the public, it would be completely appropriate and reasonable for the legislature to make rules governing what is and is not acceptable in our society. For example, if a physician moved into our state and started performing physician-assisted suicide, should that be allowed because it falls under the doctor-patient relationship?

Another example that I would offer for your consideration is that of child abuse. All physicians are legally and morally required to report any instance in which we suspect child abuse. Why? Is that government overreach? Does that violate the doctor patient relationship? Obviously, we all do that to protect our youth. "Gender affirming care" with the use of puberty blockers and hormones in a patient with normal

physiology takes a patient who is normal and makes them abnormal. How can that be viewed as anything but harmful? This is particularly true in young people who are impressionable and whose brains have not developed sufficiently to make decisions such as these - and it will likely have negative effects on them later in life. When it comes to gender affirming care in children, we can protect them by not allowing them to engage in it.

I think it is important for you to know that I have aggressively tried to address this situation with the WMS Board over the last couple days. I was given an assurance earlier today that the WMS Board will be holding an executive session of some kind to determine if they will be changing their position from opposing this bill to a neutral position. At this time, I have not been given any assurance that the WMS will be changing their position, so I feel the need to advocate on my own behalf by coming to you directly with this information. It is entirely possible that when this bill is considered in committee and on the floor that the WMS position may have been changed to neutral. Up to this point, however, they have not changed their position to neutral.

From the perspective of a Wyoming doctor who actually practices medicine at the very hospital where he was born, I can tell you that this is a good bill. Please do not kill it, combine it, or amend it into oblivion. This is very clearly an instance where it is completely appropriate and reasonable for all of you to stand up and say "we don't do that here".

Thank you again for all that you are doing for the citizens of Wyoming and for considering my concerns. I hope that you find the information presented above helpful in promoting and passing SF 99. Please feel free to reach out to me if you have any questions or concerns.

God Bless,
Eric Cubin MD, MS

From: Eric Cubin <ecubin@gmail.com>
To: Valerie Morris <vkgoen@gmail.com>; Michael A. Jording, MD <mike_jording@yahoo.com>; A. Dozier Tabb MD <adtabb@vcn.com>; Melinda Poyer <ladydoc31@aol.com>; Kevin Helling <kevinhelling@gmail.com>
Sent: Wednesday, May 29, 2024 at 10:44:11 AM MDT
Subject: Fwd: SF 99

Begin forwarded message:

From: Eric Cubin <ecubin@gmail.com>
Subject: Re: SF 99
Date: February 28, 2024 at 10:23:27 PM MST
To: Kristina Behringer MD <kilikinastina@gmail.com>
Cc: Michael Sanderson <sanderman08@gmail.com>, Sarah Durney MD <sarah_durney@hotmail.com>, Angus McAlpin <angusmcalpin@gmail.com>, Berton Toews <btoewsmd@gmail.com>, Dee Engle <Dengle8@yahoo.com>, Donald Kirk <dkirk@starvalleyhealth.org>, Ghazi Ghanem <ghazighanem@gmail.com>, Giovannina Anthony <giovannina@giovmail.com>, Israel Stewart <ltstewartmed@gmail.com>, JJ Chen MD <jjchencheyenne@gmail.com>, Jim Hutchison <jimrhutchison@gmail.com>, Jonna Cubin <dubby77@gmail.com>, Kris Schamber <schambam@gmail.com>, Luke Goddard <lukegoddard@sheridanhospital.org>, Mansell7 <Mansell7@aol.com>, Matt Mitchell <matt010164@gmail.com>, Mattson Mathey <mattsonmathey@gmail.com>, Paul Johnson MD <pejohnson76@yahoo.com>, Rafael Homer <rhomer@uw.edu>, "Rinker Dr. Erica" <eldobbs@gmail.com>, Robert Kanard <rrk317@bresnan.net>, Robert Monger <robertmonger@gmail.com>, "Ronald L. Malm" <rmalm@uwyo.edu>, Sheila Bush <sheila@wyomed.org>, Sierra Gross <sierragross@sheridanhospital.org>, Spencer Weston <swestonmd@gmail.com>, Stephen Brown <sbrownwyoming@yahoo.com>, Tracey Haas <drtraceyhaas@gmail.com>, bhughfitz@aol.com, caf2941@aol.com, carsonwalkerwyo@gmail.com, ebsschubert@icloud.com, heith.waddell@gmail.com, htaggart@uw.edu, Kevin Helling <kevinhelling@gmail.com>, larry lauridsen MD <larry.lauridsen@gmail.com>, nick.healey@huschblackwell.com

WMS Leadership.

I have to say that the silence is deafening. I very much appreciate those members who have spoken up, but I have not yet heard anything from the leadership about how this time sensitive issue is going to be addressed.

From my perspective, WMS and the leadership have lost their way. Many members have been bullied into accepting a woke social agenda that they do not agree with and this is what is being put forth as WMS positions. I can no longer stand for that. Since my voice is not being heard, I am left with no choice but to advocate for myself and my beliefs. I have so desperately implored you to poll your members if you are going to take position on these controversial issues, but that seems to have fallen on deaf ears.

I agree with Dr. Ghanem that WMS has historically been a powerful advocate for physicians in terms of insurance issues, access to health care, tort reform, and many other issues. I genuinely hope that WMS can and will continue to do that in the future. That being said, WMS would be best served if you all elect to completely abandon your socially charged "gender affirming care" agenda and focus on the things really matter to your members.

Respectfully,
Eric Cubin

On Feb 28, 2024, at 9:52 AM, Kristina Behringer <kilikinastina@gmail.com> wrote:

Good morning,
We will make arrangements for the board members to discuss this issue further and determine our next best steps. Further details for board members to follow.
Respectfully,
Kristina
Sent from my iPhone

On Feb 28, 2024, at 9:20 AM, Michael Sanderson <sanderman08@gmail.com> wrote:

All,

I would agree that from my perspective, WMS members are watching closely to see if the WMS board of trustees will demonstrate leadership on this issue despite the partisan headwinds.

Dr. Michael Sanderson

On Wed, Feb 28, 2024 at 8:37 AM sarah durney <sarah_durney@hotmail.com> wrote:
I think Dr. Cubin accurately expresses views and sentiments of many of our members. It would be worthwhile revisiting this issue quickly and considering an adjustment of our position stance.

Sarah Durney

Sent from my iPhone

On Feb 28, 2024, at 8:17 AM, Eric Cubin <ecubin@gmail.com> wrote:

All,

I am sorry to continue to fill your inboxes with emails in regard to this issue. However, time is of the essence and I think we all need to know what to expect from the WMS leadership and Executive Director in the next few days.

For those of you that may not be aware, SF 99 unanimously passed the Senate Labor Committee and subsequently passed all readings in the Senate. The bill is now in the House of Representatives where should be considered in committee and on the floor this week. It seems quite likely that the bill will pass the legislature.

What we all need to know right now is, specifically, what can we expect to see from WMS in regard to this bill over the next several days? Will WMS continue to publicly oppose SF 99 or will you be presenting a neutral position?

Eric Cubin

On Feb 26, 2024, at 10:25 PM, Eric Cubin <ecubin@gmail.com> wrote:

EXHIBIT A-4

Dr. Sanderson,

Thank you so much for sending this reply. I say thank you because I believe it is a perfect illustration of what I have been talking about and why I'm so concerned.

First, while I appreciate your assessment of the difference between these two professional societies in your specialty, I'm not convinced that the positions of the American College of Pediatrics should be discounted wholesale because they may not conform to the tremendous political pressure of the day. Is it the position of the WMS that the information and directives set forth by the AAP should be taken as gospel and the positions of the ACP should be ignored and suppressed? If so, when did the WMS adopt this stance and who was involved in that discussion? Do we have a conflict of interest among our leadership in WMS? Having briefly reviewed the information provided on the websites of both of the pediatric professional societies, my guess is that many WMS members would actually prefer the guidance provided by the ACP than the AAP - but we've never asked them. In any case, it is really bad policy to only present one side of an argument without presenting contrary opinions when trying to effect social policy.

Second, you state in your reply that the ACP formed as an alternative to the AAP. Why did that happen? Did they stray from their mission of providing optimal care for patients and advocating for their members? This is exactly what I'm concerned could happen to the WMS if the leadership continues to take unnecessary positions on controversial issues. This is particularly true when it is done without polling the WMS membership.

As for the issue of gender affirming care for children in our state, once again, I would humbly request that the WMS adjust its position to a more neutral stance. This request applies not only to the lobbying efforts that are currently being undertaking during the legislative session, but also to the publications that you put forth on behalf of the WMS. I have to admit that I was shocked when I saw "Gender Affirming Care" featured prominently on the cover of the Spring 2023 edition of "Wyoming Medicine". I have to believe that I'm only one of many of your members who noticed this and felt as though we were being misrepresented my WMS and its leadership.

Once again, I want to say thank you to everyone who is receiving this email. Thank you for what you do and thank you for seriously considering these concerns.

God Bless,
Eric Cubin

On Feb 25, 2024, at 9:39 PM, Michael Sanderson <sanderman08@gmail.com> wrote:

Dr. Cubin,

Speaking as a pediatrician and not as the WyAAP president, simply to provide context to those who don't have the years of experience in pediatrics…

On the contrary, it is widely apparent to nearly everyone in the field of Pediatrics that the American College of Pediatricians is the politically motivated organization. Their clear deviation from overwhelming scientific consensus on a variety of social issues supports this, including their position in support of corporal punishment for children, their support for the barbarism of conversion therapy for homosexuality and transgenderism, their forwarding of what they claim is a connection between homosexuality and pedophilia, and their opposition to sex education on the basis that it promotes sexually promiscuity. At one point they even supported the use of blanket training. All of these positions have been thoroughly discredited or disproven by excellent science, yet they continue to advocate for them…except the blanket training. They are not taken seriously amongst the vast majority of pediatricians. Also I am not aware of any active chapter of the ACP in Wyoming.

The American College of Pediatricians formed as an alternative to the AAP. Now, speaking as the WyAAP president, admittedly , I think it is accurate to state that the National AAP membership can be quite politically and culturally liberal. We WyAAP leaders sometimes find ourselves educating AAP leadership on the conservative cultural norms from places like Wyoming. Despite this reality, speaking as a politically conservative person, I can say that I have never seen the National AAP put bias above science when it comes to patient care. They have always placed patient care and best patient outcomes as their highest priority. I understand that you are simply trying to make the point that there is room for more than one perspective here, and I agree with that. We should continue to welcome questions and deliberation on topics such as these.

Thanks for making your other points.

Mike Sanderson, M.D., F.A.A.P.
Northeast Wyoming Pediatric Associates, P.C.
Clinical Assistant Professor, University of Washington School of Medicine, Department of Pediatrics
(307) 675-5555
sanderman08@gmail.com

On Sun, Feb 25, 2024 at 8:59 PM Eric Cubin <ecubin@gmail.com> wrote:

> Dr. Sanderson,
>
> In a genuine effort to gain a better understanding of both sides of this issue, I think I have discovered the root cause of our misunderstanding. It seems that there are multiple professional societies in the field of pediatrics. While you do accurately represent the position of the American Association of Pediatricians, you have failed to mention the position of the American College of Pediatricians. It seems that these two professional societies have dramatically different positions on the topic.
>
> For ease of access, here is a link to the ACP position statement that was updated in February 2024:
>
> You are being redirected...
> acpeds.org <favicon.ico>
>
> In addition, the ACP published this article on the topic in 2018:
>
> You are being redirected...
> acpeds.org fav
>
> Why is it that the positions of these two specialty specific professional organizations are at such variance on the topic? Could the reason be that there really is no consensus based on data and available evidence? Is it possible that the AAP is more of a political organization and the ACP is more focused on science? Which society is right? Are they both wrong? If the evidence was as clear as you make it seem, then there would be consensus. I do not believe that we should only present one side of this issue to the WMS Board and ask them to make a decision based on that.

In regard to my position on the Board of Medicine… while it is true that I do sit on that Board, I want to make two things very clear. First, all of the statements and communications that I have sent to this group represent my personal beliefs and do NOT represent the positions or views of the Board of Medicine. Furthermore, these communications are solely intended to address my concerns with the WMS Board of Directors and select members of a professional organization of which I am a paid member in good standing. Second, in more general terms with regard to the Board of Medicine, it is the role of the Board of Medicine to ensure patient safety in this State through an effective licensing program and to fairly and appropriately discipline holders of medical licenses when they are found to be in violation of the Wyoming Medical Practice Act. I do not endeavor to make the rules which are to be enforced. It is much better, particularly on politically charged issues such as this, for the legislature and Governor to make the rules that are to be enforced by the Board of Medicine. If anyone has any concerns regarding the Board of Medicine I would encourage you to reach out to the Executive Director with these concerns. His name is Kevin Bohnenblust and he does a fantastic job.

As for the social inertia of this movement, I would agree with you that I haven't seen this to a huge degree in Wyoming - yet. On the national level, however, the inertia on GAC is undeniable. As a Wyomingite, I think it might be the wise for us to do what we can to stop that wave from hitting us when it does make its way toward the Continental Divide. Why would we even let it get its foot in the door when we don't fully understand the downstream consequences. I think there is significant wisdom in a wait and see approach until we get a more complete sense of the risks and benefits of these interventions.

At a minimum, based on the lack of consensus and the ACP position statements detailed above, WMS should not be taking anything but a neutral position on gender affirming care in children in Wyoming.

On another somewhat different, but very important, note… It is probably best for WMS (any organization for that matter) to avoid taking unnecessary positions on issues that are divisive amongst their membership. It is particularly bad when a vocal minority finds its way onto the Board and then creates position statements that don't reflect the opinions the majority of the members. Going forward, if WMS finds itself in a position where we must take a controversial position, once again, I implore you to poll your members before developing and coming forth with that statement.

God Bless,

Eric Cubin

On Feb 25, 2024, at 6:27 PM, Michael Sanderson <sanderman08@gmail.com> wrote:

Hello all, and Dr. Cubin,

Thanks to everyone for the dialog and to Dr. Cubin for reformatting and detailing your argument. I thought I should make my position more fully to represent the WyAAP.

To further add credibility to the Board's position on this point, as the President of the WyAAP, I can tell you that there is near unanimity amongst Wyoming pediatricians on our agreement with the position the WyAAP and the WMS holds on the issue of GAC for minors. Referring to Dr. Schamber's statement, and paraphrasing, that the Board prefers to weigh policy positions to some degree in favor of the opinions and positions of the physicians within specialties that are most involved and impacted by said policies, this context may add understanding.

As to the science in support of offering certain aspects of GAC to minors, social conservatives like me must learn to reckon with the fact that there is enough evidence to support the use of "puberty blockers" and in limited circumstances, hormone replacement therapy (HRT) in minors for the purposes of GAC. For instance, a "good" quality prospective study often cited in this argument found that minors who had initiated puberty blockers or HRT were 60% less likely to experience depression and 73% less likely to experience suicidality. I very much disagree with this information being used as a coercive measure to pressure parents into consenting to GAC; I am also very cynical on the notion that Wyoming doctors are doing this. Regardless of whether or not I "like" this finding, or any feeling that I have about whether, in the long term, we will or won't find that medical GAC treatment has resulted in the best outcomes for Wyoming minors, my ethics as a physician require me to put aside my own biases and operative according to the best science available.

Specifically, on the subject of puberty blockers, I find it quite the double standard for opponents of the use of puberty blockers in minors for the purposes of GAC to cite the potential medical risks, including decreased bone mineral density and possible decreased fertility, as too significant and therefore prohibitive to/for their use, while not protesting their use in central precocious puberty. The only real "organic" risk of allowing central precocious puberty to proceed untreated, is, after all, short stature. The main reason we treat central precocious puberty is the social and emotional ramifications, and to a very limited degree, physical ramifications, that come from a person living with short stature in our society. One must admit to the similarity between the justifications for their use in both situations, while acknowledging that our conservative society seems to find one reason acceptable and the other unacceptable. The use of puberty blockers also achieves two specific goals that opponents of GAC ask us to seek - to "slow things down" by allowing for more time to explore gender identity, access psychosocial supports, and develop coping skills, and to reduce the need for surgery in the future.

I won't argue the point further, as there is already enough information at the hands of anyone who takes the time to look that there is enough science to support medical treatment for GAC and at the same time a lacking in the breadth and depth of that science that leaves many questions open. It is for this reason that the WyAAP will continue to forward the position that as the

science either matures, or changes, Wyoming physicians who care for children are in the best position to operate this science, on an individualized, case by case basis, for each patient who comes to see us. However, as a member of the Wyoming Board of Medicine, who finds himself responsible for penalizing physicians for malpractice and unprofessional behavior, I would hope that you would find yourself just as well versed on the science and rationale behind the support of GAC for minors from the American Academy of Pediatrics, The American Medical Association, The American Academy Of Child and Adolescent Psychiatry, and the other professional societies involved, as you are in the science and limited professional opinion that opposes GAC for minors. If the Wyoming Legislature passes this bill, it will, by necessity, force Wyoming physicians to break the ethical standard of treating patients according to the best science available at the risk of their license. Please remember this if you find yourself sitting in judgement against Wyoming physicians who may come before your Board for being put into this position by the Wyoming Legislature. I would also refer you to the policy statements from the AAP below, which will provide you with the wealth of science that supports the position I've stated.

2018 Policy Statement on Gender Affirming Care from the AAP:

https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected

2023 Reaffirmation of Policy Statement from the AAP:

https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy

Finally, to address your concern that medicine may be overreacting to a possible social contagion of gender questioning, I would like to make the case to you that from the perspective of a Wyoming pediatrician who sees 3000-3500 patient encounters per year, this simply is not true in our state. The last 5 years of my practice have resulted in exactly 2 patient encounters where a minor was interested in seeking gender affirming medical care. The two individuals who were interested in this care had suffered years of bullying, ostracization, and physical mistreatment, as well as the collateral psychological and emotional issues that come along with all of that. They had also already completed years of mental health counseling and medical treatment for their depression and anxiety. All Wyoming pediatricians can attest to this Wyoming reality. I would strongly disagree with the notion that in our state, there is some kind of social inertia that pushes children and adolescents forward into gender questioning and GAC; on the contrary, my strong impression is that it is the exact opposite and that for nearly every Wyoming gender-questioning minor, they have by simple necessity overcome a great deal of social inertia against their gender-questioning to arrive at their identity. It is for this reason that I also felt that SF 99, which was built from the experience of a single Californian minor in a Californian system within a Californian social context, cannot adequately address the situation on the ground in a state like Wyoming.

Dr Cubin - Thanks, it's been a long time since we connected, I hope you and your family are well. Say hello to Marc for me - he's one of my favorite people and I'm thrilled he made the decision to come home...although I can't deny I was hoping Sheridan would snatch him up!

Mike Sanderson

On Sun, Feb 25, 2024 at 3:35 PM Eric Cubin <ecubin@gmail.com> wrote:

> Dr. Schamber,
>
> Thank you for taking the time to consider this issue further and for expanding the audience so I can more clearly express my position to the Board.
>
> Before I begin I would like to say that, in my opinion, the Board has put the Executive Director in a very difficult position. Mrs. Bush has been a personal friend of mine for decades, literally since high school. Now she is in a position where she is given directives from the Board and is tasked with advocating for those positions. When the positions handed to her from the Board are at variance with the opinion of majority of the members of the society for which she is the Executive Director, that puts her in a tough spot. In this particular instance, I directed my concerns toward her and perhaps that was misguided. To
>
> that end, I am sorry and I humbly offer my apologies to Sheila. That being typed, I do believe that WMS has taken a serious

misstep and the fault for that falls squarely on the Board as I will discuss below.

As you all know, the topic of "gender affirming care" is extraordinarily controversial, particularly when it comes to treatment of children. When it comes to issues such as this, it would probably be best if the WMS took a position similar to their position on abortion which, according to the WMS website, is "WMS continues to remain neutral". If WMS is going to take a position on a hot-button issue such as this, it would be best if you actually polled your members before coming forth with "our" position. For better or worse, I do not believe that the majority of your members are in favor of gender affirming care for children. I believe that there is a very vocal minority who are pushing this issue, some which seem to have found their way onto your Board. Before we go any further down this path, I would implore you to poll your membership. If it is truly your desire to represent the physicians in this state, poll them. Let's find out where they stand.

WMS has historically been a well respected and powerful organization in our state. They achieved that position by actually representing the thoughts and beliefs of their members. If the Board elects to go rogue and grind a political axe, then WMS will very likely lose members and the strength that comes with numbers. In addition, your members tend to be active in their communities and have relationships with the legislators that ultimately make these difficult decisions. When your members start talking about how WMS no longer represents their beliefs, that will completely undermine your credibility and ability to effectively lobby on our behalf.

Specifically related to gender affirming care in children… The strongest argument that I've heard in favor of allowing this, as Dr. Sanderson referred to in his testimony, is that the legislature should not do anything to interfere with the doctor patient relationship. At face value, I agree with that wholeheartedly. That being said, there are some instances in which, for the safety of the public, it would be completely appropriate and reasonable for the legislature to make rules governing what is and is not acceptable in our society. For example, if a physician moved into our state and started performing physician-assisted suicide, would it be the position of the WMS that that should be allowed because it falls under the doctor-patient relationship? Please also consider, for a moment, the example of child abuse. We are all legally and morally required to report any instance in which we suspect child abuse. Why? Is that government overreach? Does that violate the doctor-patient relationship? While arguably the answer is yes, the moral obligation overrides the established patient-physician relationship.

"Gender affirming care" with the use of puberty blockers and hormones in a patient with normal physiology takes a patient who is physiologically normal and makes them physiologically abnormal. How can that be viewed as anything but harmful? This is particularly true in young people who are impressionable and whose frontal lobes are not completely myelinated, rendering them insufficiently developed to make decisions such as these. This may have negative effects on them later in life. When it comes to gender affirming care in children, as a society and profession, we can protect children by not allowing them to engage in it. If nothing else, perhaps we should consider waiting a few more years before we as a state permit this, to evaluate the experiences of states such as California where this is widely accepted and in some cases even promoted.

The evidence and medical data on gender affirming care is all over the board. Unfortunately, much of the data on both sides is politically charged and it is difficult to decipher exactly what is true and what is not true. It is entirely possible, at this point, that the whole transgender movement is a social contagion with roots in mental illness. It is also possible that hormone replacement and puberty blockers could have long term harmful effects on young people. By all means, as a society, we need to do everything that we can to ensure the safety and health of all children. It is my position that underlying mental illness in young people needs to be addressed completely and treated effectively, Treating mental illness does not include the use of hormone therapy. There are vocal advocates of this movement who would have citizens believe that children have mental illness due to gender dysphoria and that the proper treatment is medicine and surgery which subjects children to irreversible changes to their bodies. Wouldn't a more reasonable approach be to support youth with compassionate mental health evaluation and targeted mental health treatment until they reach the age of consent?

At the end of the day, we live in a conservative state. This is a state where people still know the difference between right and wrong, and the difference between men and women. It is completely appropriate for our elected officials who represent the citizens of our state to make rules governing what is and is not acceptable in instances where actions are being taken that could be harmful to our youth. Perhaps there are physicians who would choose not to come to Wyoming to practice because gender affirming care is not allowed for children. It's also possible that there are physicians who wouldn't come here because it is allowed. All of us who choose to live and work here do it for one reason or another. We all know what it means to live in Wyoming and be Wyomingites. I don't believe that we should promote fringe social policies that could result in harm to children in an effort to attract physicians who would participate in causing that harm.

Quite frankly, the WMS Board missed the mark with this position. Perhaps we would all be better served if the WMS Board elected to adjust its position on this issue or at least make sure that what you are representing is actually what your membership believes. If there are members who are using their position on the Board to advance their own political agenda without respect to what's best for the doctors in the state, then I would respectfully ask that WMS remove and replace those Board members with others who can maintain their focus on the true mission of WMS.

In regard to direct communication with the Board and Dr. Sanderson, I would welcome that. My cell phone is (307) 262-7148. Please feel free to reach out.

On a final note, I would like to say thank you to everyone who is on this email. Thank you for spending your time and energy trying to make a difference. Thank all of you physicians for taking care of the people of this Great State. Thank you Sheila for effectively lobbying on our behalf. While I do hold strong opinions about this issue, I believe that we can all disagree without being disagreeable. At the end of the day, we are all on the same team. I wish you all the very best!

Sincerely,

Eric Cubin

On Feb 23, 2024, at 10:00 AM, Kris Schamber <schambam@gmail.com> wrote:

Dr. Cubin,

I agree with Sheila that the WMS board discussed this in detail during our board meeting and she did not misrepresent our position. We had a great discussion and certainly there were disagreements. We did not present a supporting viewpoint, because that was not the position of the board for this particular bill. I would like to remind you that any individual, including yourself, has the right, and the ability, to testify in these hearings.

I noticed from your original email to Sheila that the video of the legislative testimony was sent to you from another source. I trust that you watched the testimony in its entirety. You will find that Sheila's remarks were exactly as stated in her follow-up email. I also found it alarming that the accusation by some in the legislature that Dr. Sanderson is actively harming patients as an agent of big pharma, and the blatant childish disrespect represented by one of the committee members plugging their ears so as to not hear Dr. Sanderson's testimony. I suppose it's fortunate then that this hearing was recorded so these details can be witnessed by all.

As I've said many times before, and to you specifically in prior emails, our positions are not made on simple, personal and party line political stances. It's actually much more difficult to debate the subtleties and nuance, and then develop a position that respects diverse member views, while adhering to our mission, vision, and tenets. If we do not function this way, then we are nothing more than an extension of a partisan political party.

I urge you to consider for a moment, that any support, oppose, or neutral stance does not give the full perspective or context to one's stance. I don't believe that the individuals, parents, physicians, or others that support gender affirming care are willfully trying to mutilate or hurt children. Consider Dr. Sanderson for example. He is an extremely hard-

working, white Christian male that cares deeply about his children, those children that he treats and refers, and his entire community. He was testifying yesterday, advocating for medicine and his patients, removing himself from any of his own personal or political beliefs.

I would love to discuss this with you in person, and Dr. Sanderson has indicated the same. You can also speak with your local representatives, Dr.'s Mitchell, Helling, and Schubert, all of whom were present during our recent board meeting. It may even be helpful for you to have the opportunity to discuss these controversial topics with our full board. Our entire board is CC'd on this email in the name of full transparency and to limit any further misrepresentations. As Sheila said, all members are welcome to join our board meetings, and in fact we had at least one non-board member do so during our most recent board meeting.

I look forward to further correspondence.

Kris
President, WMS Board of Trustees

--
Kristopher Schamber, MD, FACP
Sheridan Memorial Hospital
Medical Director, Primary Care
Medical Director, Home Health & Hospice
University of Washington School of Medicine
Clinical Instructor
Clinic: 307.675.2690
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On February 22, 2024 at 8:01:48 AM, Sheila Bush (sheila@wyomed.org) wrote:

> Dr. Cubin,
>
> Thank you for your email. Dr. Sanderson was representing the Wyoming Chapter of the American Academy of Pediatrics as their president. I introduced myself as the director and representative of the state medical society. I separately stated that I was seated next to Dr. Sanderson who was there to speak on behalf of the WY-AAP with whom I also am contracted, through WMS, to serve as their representative and director.
>
> I'm pleased to see you were forwarded the link to the hearing. Hopefully you heard and listened to not only my testimony but also to the comments and questions from the committee along with their tone. I am eager to hear your thoughts and to learn, specifically, what about my testimony you think so many doctors would find disagreement.
>
> My testimony acknowledged that the clinical guidance within the specialty of pediatrics, published in October of 2018 and reaffirmed in August of 2023, is to not perform gender reassignment surgeries on minors, and that our organization recognizes and respects that our membership remains divided on other aspects of gender affirming care. I also reiterated that our members are not divided in their historic, and continued, opposition to the overreach of government into the practice of medicine. I testified that WMS would always stand staunchly in support of allowing medicine to debate and decide the best care for their patients and that the legislature lacked the education, training, and expertise to prescriptively dictate clinical practice.
>
> I understand that you hold a different personal opinion than many of our other members on gender affirming care. WMS leadership debated many of these topics at their board meeting, which you and all other members were invited to attend. The unanimous direction I was given was to again oppose these legislative efforts in keeping with our organization's opposition to government overreach, and on the grounds of protecting autonomy in physician decision making. The board also gave weight to the expertise and positions of our members practicing in primary care and who care for these patients as it has historically been our practice to look first to the specialty or specialties most impacted by any legislative proposal. For this particular policy, those WMS members are our pediatricians and family physicians.
>
> I'm certain you can appreciate the difficulty WMS faces in finding consensus on every policy position within an organization of more than 1,000 members. Our board is handed a great challenge in this and they work diligently to be fair, to hear all voices and to ensure they are transparent in the process. I serve at their pleasure and take my guidance directly from them. I would encourage you to employ the tools available to you through the WMS governance structure to get more involved and ensure your voice and perspective is included in the various ways WMS advocates to promote and protect medicine in Wyoming.
>
> I am sincere in my offer to talk in more depth with you about this, or any other aspect of the state medical society that you believe could be improved. I don't actually think that WMS is as far afield as you might think we are. That said, I'm open to hearing your perspectives and insights and welcome the conversation.

Best regards,

Sheila Bush
Executive Director
T: 307.635.2424 | Direct: 307.263.1738
C: 307.630.8602

WYOMING
MEDICAL
SOCIETY

On Wed, Feb 21, 2024 at 9:10 PM Eric Cubin <ecubin@gmail.com> wrote:

Sheila....

Ouch! Do you think that Dr. Sanderson's views represent the majority of your members?

Would it be out of the question to ask WMS to present physicians from both sides of an issue if you are going to take a position on a political issue such as this?

Eric

Good morning Eric.
I just wanted to keep you in the loop on testimony from WMS given this morning. The good news is the bill passed the Senate Labor Health Committee unanimously.

https://www.youtube.com/live/IztrjpvN-RI?si=4-tIbqVZu_8pCayb&t=1970



Senate Labor, Health & Social Services (
February 21, 2024

www.youtube.com

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Mike Sanderson, M.D., F.A.A.P.
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From: Mark Gordon
To: Eric Cubin; drew.perkins@wyo.gov
Cc: Betsy.Anderson@wyo.gov
Subject: RE: My position on WBOM
Date: Tuesday, April 23, 2024 3:14:57 PM

Dear Dr. Cubin,

I apologize for not being able to return your email yesterday, which was especially busy. Nevertheless, I wanted to thank you for sending along your insightful correspondence and supporting materials. Please know I appreciate and respect your perspective as well as thank you for your service. Your family knows well, as indeed you point out, the challenge of public service and the frustrations of politics. For the record, it is refreshing to see principles adhered to even in the face of difficult winds. I look forward to the opportunity to talk about this matter and others when you get back. In the meantime, I wish you a wonderful and successful hunting trip. Please give my best to Jerad. Good hunting to you both!

Sincerely,

Mark

-----Original Message-----
From: Eric Cubin <ecubin@gmail.com>
Sent: Monday, April 22, 2024 1:50 PM
To: mark.gordon@wyo.gov; drew.perkins@wyo.gov
Subject: My position on WBOM

Governor Gordon and Mr. Perkins,

It was with some sadness that I received a phone call from Drew today explaining that my services are no longer needed on the Wyoming Board of medicine. I have to say that this phone call was not totally unexpected. However, before anything is made final, I would very much like to make sure that my voice is heard and that my side of the story is told.

For what it's worth, I have gone out of my way for decades to avoid getting involved in politics. I am much better suited for the practice of medicine. In this particular case, however, there was a significant injustice and misrepresentation on behalf of the Wyoming medical Society. Specifically, the Wyoming medical Society came out with a position that did not represent the majority of the physicians in the state - without polling the physicians. They then reported to represent all of the physicians in the state. I went through all of the normal, appropriate, channels. I implored the leadership of the Wyoming Medical Society to poll its members before coming out with a position. I did not ever request that they change their position to in favor of a bill. Rather, I requested that they stay neutral until they poll their members. I would like to forward you both the emails that will very clearly illustrate what happened here.

I want you to know that my intent was never to get involved in any particular piece of legislation. I simply wanted to make sure that physicians were being appropriately represented by the Wyoming Medical Society.

Exhibit B

Unfortunately, I am currently in the only place on the planet more desolate than Carbon County, Tuktoyaktuk Northwest Territories. My good friend, Jerad Stack, and I are here for two weeks hunting muskox and grizzly bears. Obviously, I will be off the grid and without significant communication capabilities. I am writing this email as we load snowmobiles. I am sorry that I will not be readily available for some time, but I look forward to communicating with you as soon as we get back. I also apologize that I don't have the luxury of time to make sure that my language is perfect.

Governor, I would very much appreciate the opportunity to talk to you about what has happened here. In the meantime, I will forward you the emails so that you can see that my efforts were only designed at getting the Wyoming Medical Society to appropriately represent its members.

I wish you both all the best and I look forward to further communication.

God Bless,
Eric Cubin

Sent from my iPhone

STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR

STATE CAPITOL
CHEYENNE, WY 82002

December 9, 1997

MEMORANDUM

TO: AGENCY HEADS

FROM: Steve Chadderdon

SUBJECT: Executive Order on Ethics

PRIORITY: High

SUMMARY: Attached is the final Executive Order on Ethics. It is effective as of December 15, 1997. We anticipate that it will take until July 1st to have all employees trained. It is important, however, to make sure that each employee receives a copy. In order to facilitate this you should have the employees sign a document saying that they have received and read a copy of the Executive Order on Ethics. A form for this purpose can be obtained from the Attorney General's Office.

There are several agencies working on putting together a comprehensive training program which you may want to use in training your employees. If you are interested, you can contact Gay Woodhouse at the Attorney General's Office.

I also understand that the Attorney General's Office will have a small group to review issues relating to the Executive Order on Ethics. The group will function to provide consistent advice regarding ethical issues as they arise and will also serve as a resource to you, so you will know how similar issues were handled by other agencies.

Exhibit C

E-MAIL: governor@missc.state.wy.us
WEB PAGE: www.state.wy.us

TELEPHONE: (307) 777-7434
TDD: (307) 777-7860 FAX: (307) 632-3909

STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR

STATE CAPITOL
CHEYENNE, WY 82002

STATE OF WYOMING

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER

1997- 4

Pursuant to the authority vested in the Office of the Governor of the State of Wyoming, I, Jim Geringer, Governor of the State of Wyoming, hereby issue this Executive Order adopting the following Executive Branch Code of Ethics in the interest of better serving the citizens of the State of Wyoming through the provision of ethical standards applicable to all public officials, elected officials, appointees, and employees of the Executive Branch of the State of Wyoming. This Code of Ethics does not apply to employees of the University of Wyoming or community colleges.

STATE OF WYOMING

EXECUTIVE BRANCH CODE OF ETHICS

1. Purpose. Those who serve the people of the State of Wyoming should do so with integrity. Neither impropriety nor the appearance of impropriety should occur. This Code of Ethics is intended to serve as a yardstick by which the conduct of all who serve in the Executive Branch of the State of Wyoming can be measured.

E-MAIL: governor@missc.state.wy.us
WEB PAGE: www.state.wy.us

TELEPHONE: (307) 777-7434
TDD: (307) 777-7860 FAX: (307) 632-3909

2. Scope. This Code of Ethics is applicable to all employment-related activities of public officials, elected officials, appointees and employees of the Executive Branch of the State of Wyoming. The term "public employees" shall be used in this Code of Ethics to include all public officials, appointees (whether or not they receive compensation) and employees of the Executive Branch. This Code of Ethics extends, but does not supersede, those duties and standards of conduct which are delineated in constitution, statute, or rule. In the event of any conflict between this Code of Ethics and any applicable constitution, statute, or rule, the constitution, statute, or rule shall prevail.

3. Statement on Gender Pronouns. Throughout this Code of Ethics, gender pronouns are used interchangeably. In cases where there is one individual holding a particular office, the gender pronoun applicable to the person holding that office as of the date of this writing has been used. In all other instances, the drafters have attempted to utilize each gender pronoun in equal numbers, with random distribution.

4. Administration of this Code of Ethics. This Code of Ethics shall be administered by each agency of the State of Wyoming in accordance with the following:

A. No agency shall delete any part of this Code of Ethics.

B. An agency head who receives an allegation of a violation of this Code of Ethics shall promptly investigate to determine whether the allegation is true. Allegations which are found to be *de minimis* in nature shall be handled accordingly. If the allegation is true, the agency head shall take appropriate action. For permanent employees, such actions shall be in accordance with the State of Wyoming Personnel Rules.

C. Allegations concerning violations of this Code of Ethics by an agency head or appointee shall be investigated by the Governor or his designee. Allegations which are found to be *de minimis* in nature shall be handled accordingly. If the allegation is true, the Governor or his designee shall take appropriate action.

5. **General Responsibilities**. All public employees shall:

A. Uphold the Constitutions of the United States and of the State of Wyoming.

B. Abide by the laws of the United States and of the State of Wyoming.

C. Carry out the policies and objectives of the State of Wyoming as established by statute, executive order, or rule, while adhering to established standards for work and performance.

D. Work in cooperation with other public employees, and act within the scope of the authority delegated to them.

E. Protect and conserve all property owned, held by, or leased to the State of Wyoming, including public records. [See Wyo. Stat. §§ 16-4-201 through 205.]

F. Be honest and fair in performing public service.

G. Strive to be honorable, courteous, and dedicated to advancing the public good.

H. Avoid conduct that compromises the integrity of the public office or creates the appearance of impropriety.

6. Prohibited Activities. Except as provided in Section 7, no public employee shall engage in:

A. Any activity which constitutes a conflict of interest with her employment. Such prohibited conduct includes, but is not necessarily limited to:

i. Using public office or public employment for personal gain.

ii. Taking official action in a matter in which the public employee has a close personal or financial relationship to a party.

iii. Engaging in activities which conflict with the public employee's official position of employment.

iv. Except as allowed by state law or State of Wyoming Personnel Rules, giving preferential treatment to any person.

v. Except when functioning as an advocate for a client or an agency, making decisions which are not independent and impartial.

B. Conduct which constitutes an abuse of authority. [See Section 7G (Allowed Activities) of this Code of Ethics, for a discussion of activities such as fund raising for recognized organizations which take place on the public employee's own time, which generally do not constitute an abuse of authority.] Conduct which constitutes an abuse of authority includes, but is not necessarily limited to:

i. Using or allowing the use by any private party of official information obtained through or in connection with the public employee's employment by the State of Wyoming, unless such information is available to the general public or unless dissemination is permitted by law.

ii. Awarding, participating in a decision to award or participating in the administration of a State of Wyoming contract, if the employee or any person with whom the employee has a close personal or financial relationship [this includes all members of the public employee's immediate family] is a party to the contract.

iii. Except as provided for in Sections 7A and 7B (Allowed Activities) of this Code of Ethics, acceptance or solicitation by a supervisor of contributions or gifts from subordinate employees. A supervisor may neither solicit nor accept gifts directly or indirectly, for herself or for another person.

iv. Accepting meal expense, lodging or reimbursement for travel or expenses incident to travel on official business from any source other than the State of Wyoming without approval of the agency head. Under no circumstances should a state employee accept items of this nature or gifts if the employee or his agency is involved in an adversarial proceeding with the outside contributing source.

C. Outside employment or any other outside activity which is incompatible with the full and proper discharge of the public employee's duties and responsibilities to the State of Wyoming. [For this reason, all honoraria, fees for speaking engagements, and other such compensation received because of the public employee's position with the State of Wyoming must be deposited in the General Fund.] Activities incompatible with the public employee's duties include, but are not necessarily limited to:

i. Accepting any fee, compensation, gift, payment of expense or any other thing of monetary value in circumstances which create the appearance of a conflict of interest or impropriety, whether or not such conflict of interest or impropriety actually exists.

ii. Receiving a salary or any other thing of monetary value from a private source as compensation for the public employee's services to the State of Wyoming. [This section does not apply to appointees to boards and commissions who do not receive a salary from the State.]

D. The use of or allowing the use of property owned or held by the State of Wyoming [including leased property] for any purpose other than carrying on the official business of the State of Wyoming. Prohibited activities include:

i. Selling or soliciting for personal gain any product or service such as cosmetics, food items, or household goods and services, during official office hours in or on property owned or held by the State of Wyoming. The agency head may make written exceptions to this prohibition, for solicitation on behalf of non-profit organizations.

ii. Transacting personal business during work hours to the extent that it interferes or detracts from the employee's performance of his duties.

iii. Unless required for official business and previously approved by the public employee's supervisor, the use of any facility or building owned or leased by the State of Wyoming as the principal residence or address of any business other than the agency by whom the public employee is employed.

7. Allowed Activities. A public employee may, notwithstanding the provisions of Section 6 above:

A. Solicit or accept voluntary gifts of nominal value or nominal donations. Examples of permissible gifts include voluntary gifts made upon the occasion of marriage, illness, or retirement, or made for charitable or civic purposes.

B. Solicit or accept any thing of monetary value from a friend, parent, spouse, child or other close relative when it is clear from

the circumstances that the motivation for the action is a personal or familial relationship.

C. Accept loans from banks or other financial institutions on *customary terms of finance for the proper and usual activities of* the public employee, such as home mortgage loans.

D. Accept unsolicited advertising or promotional material of nominal value, such as pens, pencils, note pads, and calendars.

E. Engage in a reasonable amount of communication with family members, day care providers, medical professionals, and similarly situated individuals during the work day. [It is incumbent upon each public employee to learn from her supervisor what is considered reasonable in a particular situation.]

F. Engage in teaching, lecturing, or writing for compensation, when those activities are not related to the public employee's employment by the State of Wyoming. [Each public employee should seek approval from her supervisor prior to engaging in such teaching, lecturing, or writing for compensation.]

G. In his private capacity, solicit persons or organizations to obtain goods, services, grants, or loans on behalf of a recognized charitable or fraternal organization.

8. Requests for Approval of Activities. In all cases enumerated above where a public employee is advised to consult with his supervisor prior to engaging in an activity, and in every instance where the public employee is not certain whether a particular activity is allowed by the Code of Ethics, he should consult with his supervisor prior to engaging in the questioned activity. If the public employee requests a written response from the supervisor, the supervisor should respond in writing. This Code of Ethics provides that:

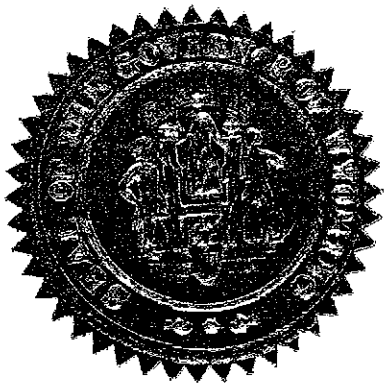
A. No public employee shall be penalized for inquiring of her supervisor regarding prior approval of an activity in which she wishes to engage.

B. If a public employee inquires regarding an activity in which he wishes to engage and his supervisor informs him that engaging in such activity would violate this Code of Ethics, and the public employee then engages in such activity, his supervisor may take appropriate disciplinary action. For permanent employees, such actions shall be in accordance with the State of Wyoming Personnel Rules.

9. Elected Officials. Elected officials occupy their positions as a result of political election. As such, they may participate in political activities. Elected officials must disclose items or services received from outside sources[1] which have a value of $250 or more.[2] The disclosure shall be made by filing a list of the items or services received during each calendar year with the Secretary of State. The filing shall be made by February 15 of the following year. The list shall be divided into items which will be retained by the elected official as a private gift and items which will be left as property of the State of Wyoming when the elected official leaves office.

This Order shall be effective on December 15, 1997, and shall remain in effect until amended.

Given under my hand and the Executive Seal of the State of Wyoming this 3rd day of December, 1997.



Jim Geringer
Governor of the State of Wyoming

[1]Items do not include inherited items. Outside sources do not include family members.

[2]Donations to a political campaign reported pursuant to WYO. STAT. § 22-25-106 are exempt from this reporting requirement.

From: **Michael Sanderson** sanderman08@gmail.com
Subject: Re: SF 99
Date: February 29, 2024 at 7:21 AM
To: sarah durney sarah_durney@hotmail.com
Cc: Eric Cubin ecubin@gmail.com, Kristina Behringer MD kilikinastina@gmail.com, Angus McAlpin angusmcalpin@gmail.com, Berton Toews btoewsmd@gmail.com, Dee Engle Dengle8@yahoo.com, Donald Kirk DKirk@starvalleyhealth.org, Ghazi Ghanem ghazighanem@gmail.com, Giovannina Anthony giovannina@giovmail.com, Israel Stewart ltstewartmed@gmail.com, JJ Chen MD jjchencheyenne@gmail.com, Jim Hutchison jimrhutchison@gmail.com, Jonna Cubin dubby77@gmail.com, Kris Schamber schambam@gmail.com, Luke Goddard lukegoddard@sheridanhospital.org, Mansell7 mansell7@aol.com, Matt Mitchell matt010164@gmail.com, Mattson Mathey mattsonmathey@gmail.com, Paul Johnson MD pejohnson76@yahoo.com, Rafael Homer rhomer@uw.edu, Rinker Dr. Erica eldobbs@gmail.com, Robert Kanard rrk317@bresnan.net, Robert Monger robertmonger@gmail.com, Ronald L. Malm rmalm@uwyo.edu, Sheila Bush sheila@wyomed.org, Sierra Gross sierragross@sheridanhospital.org, Spencer Weston swestonmd@gmail.com, Stephen Brown sbrownwyoming@yahoo.com, Tracey Haas drtraceyhaas@gmail.com, bhughfitz@aol.com, caf2941@aol.com, carsonwalkerwyo@gmail.com, ebsschubert@icloud.com, heith.waddell@gmail.com, htaggart@uw.edu, Kevin Helling kevinhelling@gmail.com, larry lauridsen MD larry.lauridsen@gmail.com, nick.healey@huschblackwell.com

Dr. Cubin,

I have read the email you have sent to Wyoming lawmakers on this issue. The board should see it as well. Your engagement on this issue has, in my opinion, moved from cooperative conversation to an attack. You have committed libel by stating that, first, I was actively involved in forming the WMS position on this, and second, that I myself and the WMS board, cooperatively and intentionally suppressed the position of a separate organization. Neither of these are true and they were shared in an effort to discredit and defame both myself and the WMS board. I cannot speak to why the American College of Pediatrician's position was or was not represented to the WMS board - I was never involved in the forming of the position for the WMS. I did not represent the American College of Pediatrician's position because I am neither a member of the ACP nor their representative.

I would recommend to the WMS board that all further communications regarding this matter move into a thread involving only the WMS board members and adjacent WMS staff. To be clear, Dr. Cubin, this would not involve me.

Dr. Michael Sanderson

On Wed, Feb 28, 2024 at 10:46 PM sarah durney <sarah_durney@hotmail.com> wrote:

> Dear Dr. Cubin and Board Members,
>
> Thank you for your thoughtful and well articulated concerns. I would recommend that the board reconvene on this issue to reconsider our official stance on this bill. Dr. Cubin has reiterated many of the concerns I hear from other physicians.
>
> I would also encourage the members of the board to listen to the full discussion at the committee.
>
> To speak to the data and the science and to some of the previous discussion points, I will include some thoughts below. These sentiments are my own, and also representative of other members in the Northwest Counties.
>
> 1. "Trust the doctors. They practice to the highest moral and ethical standards."
> Patients/ citizens have lost faith in medicine and science over time and we do not hold the sacred keys to knowledge that we did prior to the internet/knowledge explosion. Patients and citizens are able to connect with each other, share stories, and collect their own data.
>
> Our ability to advocate for the best interests of our patients has been-at times-and can be influenced by outside self-invested forces. One of the most glaring errors we, as physicians, fell into in the recent past was the national drive to treat pain. As we added pain as the 6th vital sign in a noble effort to ameliorate suffering, we blindly followed recommendations from our pharmacy reps and CMS and thereby became complicit in creating an opioid epidemic, which led to thousands of deaths, addictions, and great societal cost. After the disaster ensued, it became apparent that our efforts were harming patients and ultimately legislatures stepped in to create prescribing and educational boundaries to prevent ongoing harm.
>
> Is it possible for "medicine" to be swayed by culture or outside influences into advocating for practices which go contrary to our patients best interests-especially in a noble effort to treat suffering? Recent history supports this.
>
> 2. "We don't perform these surgeries in WY. (…so stop talking about surgery … the implication behind this statement)." Just because we do not currently perform top and bottom surgery on minors- at this time- does not mean we should abandon the ethical discussion or anticipate a day when a qualified practitioner becomes licensed in WY and offers this procedure.
>
> For many citizens and doctors in WY, the issue is an ethical question of consent. How can a minor who has not fully developed their frontal lobe able to consent to gender transition?
>
> I recently spoke with a physician who practiced in a large healthcare system in a progressive state. He felt pressured into performing hysterectomy on patients with gender dysphoria even though he questioned removing healthy functioning organs. He left the practice and the state because of this issue. His hope is that WY would honor rights of conscience, and he too questions the moral ethics of sex surgeries in minors.
>
> A quick google search reveals the price of sex change surgeries in the US around $50,000. To say there is no monetary incentive seems naive.
>
> Ultimately, we cannot ignore the downstream ethical questions regarding sex change surgery in minors when contemplating the ramifications of gender affirming care (GAC) in minors.
>
> 3. "GAC in minors is a reasonable treatment for gender dysphoria because it improves their underlying depression and suicidal risk."
>
> From my reading, patients with gender dysphoria have a higher incidence of adverse childhood events and are more vulnerable to depression, anxiety, and questioning their identity and gender. This cohort also demonstrates a higher rate of autism spectrum disorders which lead to very literal and concrete thought making them more likely to consider hormone blockers cross sex hormones, and surgery. A 2011 Sweedish study showed that gender reassignment adults over 30 years showed a suicide rate 19 times higher than the general population 10 years out. They also had 3 times the rate of overall mortality and psychiatric inpatient care. Many physicians question the validity of GAC dogma that affirming care prevents suicide (2 year study demonstrating positive results vs 30 year study which demonstrated negative results).
>
> GAC proponents state that mental health conditions arise from GD, but this is unproven, and many physicians question whether the opposite is indeed true.
>
> GAC is "affirming care." There has been much discussion in psychiatric circles regarding the idea of only affirmative counseling. GAC frequently is initiated outside our exam rooms by counselors and through the educational system. If we leave children with GD alone (expectant management), 85% of patients will re-identify with their birth gender by adulthood. One study reported that 100% of adolescents patients started on puberty blockers will desire to continue on to cross sex hormones. Clearly there is potential for harm. In an effort to ameliorate suffering with medications and surgery, are we subconsciously stepping back from the hardship of compassionately walking with our vulnerable patients through their hardest moments and just throwing another costly medical treatment at them which causes harm in the long term. (sterility, increased suicidality, voice change, disfigurement, overall increased morbidity and mortality). …But it's okay because they consented… At very least, these patients should have ample time to submit malpractice suits, but to what end? Will monetary damages ever replace their lost ability to become pregnant/breast feed and reintegrate with their birth gender? The potential harms are great and the benefit is yet to be fully determined. We should learn from other countries who have reconsidered their programs and pulled back into a research only structure.
>
> In addition, recent numbers of transgender identifying youth have climbed precipitously. Gender transition appears to have a significant component of a social contagion as we see higher trends year over year, and this was part of the reason Great Britain pulled back and continued their program only through sponsored studies.
>
> 4. "We are willing to accept the risks of puberty blockers (PB) and cross sex hormones (CSH) in patients with precocious puberty but not for gender dysphoria (GD.)"
>
> As a family physician, I have prescribed all of these medications at different times. I have treated transgender adults. These medications do impose risk. I have personally cared for women who started estrogen who then developed breast cysts and microcalcifications, blood clots, stroke, hypertension, mood instability, and migraines… just to name a few. We also quantify overall breast cancer risk by including years of contraceptive use. I have had patients take lupron who developed depression, horrible bone pain, hair loss. Men with polycythemia, aggression, and blood clots when taking testosterone. There is significant risk.
>
> Contrary to the above statement, I have referred several children to endocrinology with PB and congenital short stature and none of those patients were treated medically with PB. This number of children with treated precocious puberty is likely very small and that discussion pales in regard to the bigger picture of GAC, which is affecting higher and higher rates of children every year.
>
> So many docs I have talked with lean on the Hippocratic Oath which states, "First, do no harm."
>
> 5. "Anyone who speaks out in opposition to GAC is bigoted and transphobic." This may not have been spoken overtly, but some of the docs I've talked with feel that if they speak up, they will be labeled as such, and this is contrary to their passionate desire to be the voice for the marginalized and the oppressed. Those doctors who I have spoken with are compassionate and deeply care about the wellbeing and safety of their patients. I have not heard them speak disparagingly about youth with GD. They are sincerely concerned about the lifelong ramifications of this treatment.
>
> 6. "The pediatricians in WY are in agreement and support GAC." Did a survey go out? What is the exact breakdown of this statement and what questions were asked? I know a pediatrician in WY who is not in support of PB, Cross sex hormones, and gender reassignment surgery in minors.
>
> Additionally, this statement omits the sentiments of primary care physicians who treat a large portion of children in our state. Family physicians could offer unique perspectives in regard to the risks of hormonal therapy in children and adolescents as we are familiar with these medications in other populations and have experience with the side effects

Exhibit D