

## PREMIUM REPORTS

# Thousands of Doctors Take Legal Action Against Transgender Mandate

3,000 doctors are suing the Biden administration to avoid being forced to give children 'gender-affirming' care, including hormone therapy drugs and surgery.

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(Illustration by The Epoch Times, Getty Images, Shutterstock)

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By Jacob Burg | December 20, 2023 Updated: December 28, 2023

A group of 3,000 doctors and medical professionals is suing the U.S. Department of Health and Human Services (HHS) over a mandate that broadens the term “sex” in federal civil rights statutes to include “gender identity” and “sexual orientation.”

The group argues that the rule, among other things, forces physicians who see Medicaid patients or receive federal funding to provide “gender-affirming” care to children who want to transition to the opposite sex. This includes prescribing hormone treatments and puberty blockers and performing surgery such as removing girls’ breasts.

The doctors challenging the rule say it will force them to provide that kind of treatment, even if they think it’s medically wrong for the patient or if it goes against their religious beliefs. That makes it unconstitutional, they say.



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As such, the Alliance Defending Freedom (ADF) filed a [lawsuit](#) on behalf of the American College of Pediatricians, an adolescent care obstetrics and gynecology doctor, and Catholic Medical Associates.

The lawsuit, filed on Aug. 26, 2021, asks the court to block HHS from penalizing doctors for refusing to provide gender-altering treatments to children for any reason.

The case initially was dismissed by a lower court when the U.S. Department of Justice (DOJ) filed a [motion](#) claiming that it would honor doctors' constitutional right to refuse such treatments.

However, ADF attorney Chris Schandavel said his clients worry that a dismissed case could mean DOJ officials could reverse the department's stance at any time. So he's seeking an injunction to specifically prevent HHS or any other federal agency from disciplining doctors who refuse to give children such treatments for any reason.

The 6th Circuit of the U.S. Court of Appeals in Cincinnati heard oral arguments on the case on Dec. 6. The appellate court has jurisdiction over federal appeals from cases originating in Kentucky, Michigan, Tennessee, and Ohio.

The court's decision could take up to three months. If denied, plaintiffs could seek review from the U.S. Supreme Court.



A person wearing rainbow socks stands on a stairway during a drag show at a brewery in Louisville, Ky., on June 4, 2021. (Jon Cherry/Getty Images)

## By Order of the President

The HHS mandate in May 2021 followed an [executive order](#) issued four months earlier by President Joe Biden. The order expanded the interpretation of “sex” beyond a person’s biology, to include a person’s declared “gender identity” or “sexual orientation.”

“Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love,” President Biden’s order states. “Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports.

“Adults should be able to earn a living and pursue a vocation knowing that they will not be fired, demoted, or mistreated because of whom they go home to or because how they dress does not conform to sex-based stereotypes. People should be able to access healthcare and secure a roof over their heads without being subjected to sex



discrimination. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.”

Federal agencies indicated that this interpretation would extend into discrimination clauses in the Affordable Care Act (ACA). And that could require doctors to provide treatment to children and adults who identify as transgender and want to undergo a “transition” to a new gender identity, Mr. Schandevael said.

The mandate could apply to any health care providers who receive federal money, such as those accepting patients on Medicaid or with ACA health insurance coverage, also known as Obamacare.



President Joe Biden signs executive orders on health care as Vice President Kamala Harris looks on, in the Oval Office of the White House in Washington on Jan. 28, 2021. (Mandal Ngan/AFP via Getty Images)

This “gender-affirming” care would extend to pediatric services and potentially bring about disciplinary action for physicians refusing for any reason to provide that care to children, Mr. Schandevael said.



The DOJ filed a [motion to dismiss](#) the lawsuit on July 19, 2022, claiming that the HHS hasn't mandated that health care providers "perform all kinds of gender transition services, even providers who have religious objections" and that the lawsuit begins on a "false premise" by suggesting that such a mandate exists.

HHS attorneys assert in the motion that their interpretation of President Biden's executive order means "sex discrimination extends to gender-identity discrimination."



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**The administration has given every indication that they plan to enforce this gender-identity mandate as broadly as possible.**

*Chris Schandavel, attorney, Alliance Defending Freedom*

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(adfllegal.org)

But, they write, this doesn't indicate that doctors opposed to providing gender-altering treatments "fall within the scope of unlawful gender-identity discrimination, and HHS has consistently affirmed that the Religious Freedom Restoration Act and other religious defenses may be raised, on a case-by-case basis, to a charge of discrimination."

But for Mr. Schandavel and the doctors he represents, that's not enough.

"Outside of the courtroom, in their public statements, the administration has given every indication that they plan to enforce this gender-identity mandate as broadly as possible," he said.

“They have given every indication that they plan to come after doctors, like our doctors, that we’re representing in this case.”

Mr. Schandavel cites a [notice](#) dated March 2, 2022, from the HHS Office for Civil Rights (OCR) that invites patients and parents to file complaints with the OCR if they feel they have been denied “gender-affirming” care.

“As a law enforcement agency, OCR is investigating and, where appropriate, enforcing Section 1557 of the Affordable Care Act cases involving discrimination on the basis of sexual orientation and gender identity in accordance with all applicable law,” the notice reads.



The Department of Health and Human Services building in Washington on July 22, 2019. (Alastair Pike/AFP via Getty Images)

“This means that if people believe they have been discriminated against in a health program or activity that receives financial assistance from HHS, they can file a complaint.”

Mr. Schandavel said that doctors who ADF represents shouldn’t have to just take the DOJ at its word and just hope that it won’t violate the doctors’ rights.

“We should be able to get a court to say that their rights are protected,” He said.

“Our doctors have every reason to fear that if they say no, that they’re not going to [perform a sex-change operation] that the federal government is going to try to take away their federal funding based on that conscientious practice of medicine.”

## Concerned Pediatricians

Pediatricians represented by Mr. Schandavel are wary of “gender-affirming” care for children for reasons beyond personal convictions, he said.

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**Dr. Van Meter contended that the research used to validate pediatric gender-altering treatments is often ‘cherry-picked.’**

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Dr. Quentin Van Meter, a pediatrician and pediatric endocrinologist with five decades of experience, said he read “the broad medical literature across the spectrum on the subject” and came to a decision that he can live with his code of medical ethics.

Dr. Van Meter contended that the research used to validate pediatric gender-altering treatments is often “cherry-picked”—researchers make conclusions that don’t support the data collected.

Proponents of helping children try to alter their gender identity argue that access to such childhood procedures lowers the rate of suicide among minors who identify as transgender.

They often cite a 2020 [study](#), published by the American Academy of Pediatrics, that purportedly establishes that link.





A child walks on Waikiki beach in Honolulu, Hawaii, on Sept. 6, 2001. (Mike Nelson/AFP via Getty Images)

A 2019 [study](#) published in the American Journal of Psychiatry studied the same phenomenon—the alleged lowered risks of suicide for children receiving “gender-affirming” care.

In that study’s conclusions, researchers argued that children receiving gender-altering procedures have much higher levels of anxiety and mood disorders before treatment than other children. They wrote that these procedures, such as hormone blockers or surgery, lowered the need for anxiety and mood care once the child received treatment affirming a new gender.

However, that study drew ire from other researchers, who sent letters to the journal’s editors challenging the statistical methodology employed in the study.

“Upon request, the authors reanalyzed the data,” according to a correction published by the American Journal of Psychiatry on Aug. 1, 2020. “The results demonstrated no advantage of surgery in relation to

subsequent mood or anxiety disorder-related health care visits or prescriptions or hospitalizations following suicide attempts in that comparison.”

Dr. Van Meter said he believes that “the scientific validity of what they’re basing their treatment protocol on is based on so little valid science that it must cease and desist immediately.”

## The Swedish Approach

Dr. Van Meter also pointed to recent changes to the official position of the governments of Sweden and Norway on the issue.

Sweden, which has had broad tolerance for the LGBT community, recently reversed its previous official position on “gender-affirming” care for minors through its National Board of Health and Welfare (NBHW), saying “the risks outweigh the benefits at this point.”

“Uncertain science and newly acquired knowledge means that the National Board of Health and Welfare now recommends restraint when it comes to hormone treatment,” a translation of the NBHW announcement reads.



A mother and her children walk across a rainbow zebra crossing in Stockholm on Aug. 11, 2013. (Christine Olsson/AFP via Getty Images)

The Swedish Agency for Health Technology Assessment and Assessment of Social Services created “a literature review in which all relevant studies on the effect and safety of hormone treatments have been reviewed.”

The agency wrote that “it appears that it is not yet possible to draw any definite conclusions about the effect and safety of the treatments based on scientific evidence.”

The announcement cited the department head of the NBHW, Thomas Lindén, as saying, “The conclusion is that very little knowledge has been gained about the effects and safety of the [pediatric ‘gender-affirming’] treatments since 2015.”

When releasing its guidance on pediatric “gender-affirming” care in 2015, the NBHW emphasized the need for rigorous clinical work to justify the prescribed treatment plans for children experiencing gender dysphoria.



Gender dysphoria, according to the American Psychiatric Association, “refers to psychological distress that results from an incongruence between one’s sex assigned at birth and one’s gender identity.”

It continues, “Though gender dysphoria often begins in childhood, some people may not experience it until after puberty or much later.”

The Swedish agency wrote that in seven years, the clinical work didn’t actually justify these treatment protocols.

After compiling studies on gender identity and the start and stop of treatment, “it is not possible to determine how common it is for people who undergo gender-affirming treatment to later change their mind about their gender identity, cancel the treatment, or regret it in some aspect,” the NBHW report stated.

The NBHW also acknowledges that some patients who have been identifying as transgender try to reverse the changes as part of a “detransition.”



Testosterone medication, which is injected into fatty tissue, is often given to females who want to become manly, in northern California on Aug. 26, 2022. (John Fredricks/The Epoch Times)

Mr. Lindén said, “For the group that regrets or cancels a started treatment, there may be a risk that the treatment has led to poorer health or quality of life.”

Based on the research, the NBHW’s “overall conclusion is that the risks of puberty-inhibiting and gender-affirming hormone treatment for those under 18 currently outweigh the possible benefits for the group as a whole.”

The Swedish board now recommends pediatric gender-altering care only in “exceptional cases.” It still emphasizes the importance of taking gender dysphoria seriously and giving children psychiatric treatment and suicide prevention care while determining the best long-term treatment plan.

## ‘When Ideology Takes Over Science’

Although Sweden has reassessed its medical recommendations and emphasized evidence-based medical practices, some in the U.S. medical industry are working to prevent doctors from discussing the risks and benefits of pediatric gender-altering procedures, Dr. Van Meter said.



**It is a scary circumstance when ideology takes over science. And it just should not happen.**

*Dr. Quentin Van Meter, pediatrician and pediatric endocrinologist*

(Courtesy of ACP)

“There has been no debate—no debate allowed; it has been squashed,” he said. “Those of us with the contrary opinions have actually not been allowed to be published, except in very relatively obscure medical journals.”

Some doctors and researchers with undecided opinions on the topic of pediatric “gender-affirming” care are afraid to question its merits for fear of losing their jobs, their ability to publish research, and, in essence, their careers, he said.

“The journals are in lockstep with this right at this point in time. It is a scary circumstance when ideology takes over science. And it just should not happen,” Dr. Van Meter said.



A screen grab from the documentary screening of "Gender Transformation: The Untold Realities," in New York on June 15, 2023. (Samira Bouaou/The Epoch Times)

“My fear is that tens or hundreds of thousands of kids are going to have interventions which will harm them irreparably in the meantime. And my heart goes out to those families. Most kids are just going to the wrong place, and having the wrong things done.”

Many children who identify as transgender are suffering mental health crises, he said. It’s important to provide “compassionate care”



for those experiencing an “incongruence of their gender identity and their biological sex,” he added.

Mr. Schandavel said that the scientific impasse on childhood gender-altering procedures presents a unique opportunity for American doctors and for organizations that support those treatments for children, such as the Academy of American Pediatricians (AAP), to consider a change of policy.

Officials at the AAP declined to comment.

“I think the European countries are learning from their own mistakes, which is good and smart,” Mr. Schandavel said.

“But we here in the U.S. have an opportunity to learn from the mistakes of others and to reverse course before we harm hundreds of thousands of poor kids.”

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