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Delivered Via Email

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Florida Board of Osteopathic Medicine  
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Re: **Written Comment in Opposition to Proposed Rules 64B8-9.019 and 64B15-14.014, Prohibiting Treatment of Gender Dysphoria in Minors**



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Miami, FL  
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Kirk Bailey  
*Political Director*

Kara Gross  
*Legislative Director*

Dear Chairs Diamond and Schwemmer and members of Boards of Medicine and Osteopathic Medicine:

The ACLU of Florida is a nonpartisan organization whose mission is to protect, defend, strengthen, and promote the constitutional rights and civil liberties of all people in Florida. On behalf of our 180,000 members and supporters in Florida, we submit these written comments in opposition to the proposed changes to Rules 64B8-9.019 and 64B15-14.014, which seek to prohibit treatment for gender dysphoria in minors.<sup>1</sup>

We echo the many comments and concerns raised in opposition by numerous LGBTQ and allied organizations, healthcare providers, medical associations, parents, and LGBTQ youth, and we briefly provide the following:

### **The Proposed Rules Harm Florida's Youth**

We respectfully request that the Boards of Medicine and Osteopathic Medicine reject the proposed rule changes, which serve no legitimate purpose and are harmful to minors. In order to protect Florida's youth who experience gender dysphoria – and are already feeling isolated and ostracized – from further harm, we urge you to ensure that they are able to access the critical healthcare they need, and that is recommended by every leading medical association.<sup>2</sup>

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<sup>1</sup> The Florida State Board of Medicine and Board of Osteopathic Medicine proposed rules would eliminate access to gender-affirming healthcare for adolescents not currently receiving this healthcare. The Board of Osteopathic Medicine's rule would permit care for those enrolled in specific clinical trials.

<sup>2</sup> The nation's leading healthcare organizations support gender-affirming medical care for transgender people. These professional medical organizations represent more than one million healthcare providers, and include the American Academy of Pediatrics, American Medical Association, American College of Obstetricians and Gynecologists, Endocrine Society, Pediatric Endocrine Society,



The proposed rules run contrary to the overwhelming evidence that demonstrates the positive health impacts of gender-affirming medical care for trans youth. The nation's leading healthcare organizations support gender-affirming care for transgender and gender non-conforming people. If these new proposed rules ultimately enter into effect, Floridians who are not currently receiving gender-affirming care would not be able to access this healthcare.

Evidence-based studies show how critical gender-affirming medical care is for transgender youth, and prohibiting gender-affirming medical care for transgender adolescents may be life-threatening. Care providers, doctors, and leading medical associations have been clear that gender-affirming medical care is safe, effective, evidence-based, and overwhelmingly leads to positive health outcomes for youth.

Earlier this year, more than three hundred Floridian health care professionals who work with transgender youth published an open letter in the Tampa Bay Times condemning prohibitions on gender-affirming care. Guidance from the governor and surgeon general, the experts wrote, "misrepresents the weight of the evidence, does not allow for personalized patient and family-centered care, and would, if followed, lead to higher rates of youth depression and suicidality."

In order to protect Florida's youth, we urge the government not to prohibit evidence-based treatments that can help reduce the risk of youth depression and suicidality, among many other conditions.

### **The Proposed Rules Appear to Infringe on Parental Rights**

Florida Statutes expressly prohibit the government from infringing on a parent's fundamental right to direct the upbringing, healthcare and mental health of their children. There has been significant touting on behalf of the governor with regard to the importance of so-called "parental rights," yet the proposed rules are directly at odds with these fundamental rights.

Chapter 1014.02, Florida Statutes, provides that "it is a fundamental right of parents to direct the upbringing, education, and care of their minor children."

Similarly, Chapter 1014.03, further provides:

*Infringement of parental rights.—The state, any of its political subdivisions, any other governmental entity, or any other institution may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means. (Emphasis added.)*

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the World Professional Association for Transgender Health (WPATH), and others.



There has been no demonstration on behalf of the Boards of Medicine and Osteopathic Medicine that the proposed rules are “reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means.” Accordingly, we request that the proposed rules be rejected.

**There is No Legitimate Rationale for the Proposed Rules - This is Evident as the Prohibited Treatments are Allowed for Minors Not Experiencing Gender Dysphoria**

The proposed rules have elicited some confusion – there does not seem to be any reasonable or rational grounds for allowing some individuals to benefit from this healthcare and denying the same healthcare to others – and we are hoping the Boards can clarify the following:

- Why are puberty blockers and hormone therapies allowed for minors who are not experiencing gender dysphoria yet being prohibited for minors who are experiencing gender dysphoria?<sup>3</sup>
- What is the justification for the differential treatment?
- Are puberty blockers and hormone therapies safer for minors when used to treat precocious puberty and other conditions than they are when used to treat gender dysphoria?
- Why is a minor who is not experiencing gender dysphoria allowed to have chest surgery with their parent’s consent yet a minor experiencing gender dysphoria is not allowed to have the same chest surgery with their parent’s consent?
- What is the justification for the differential treatment?
- Is chest surgery safer for minors who are not experiencing gender dysphoria than it is for those who are experiencing gender dysphoria?

**The Treatments For Gender Dysphoria That The Proposed Rule Change Would Ban Are Generally Accepted Professional Medical Standards**

Gender-affirming medical care is essential, life-saving health care for transgender people.

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<sup>3</sup> For adolescents who have just started or are well into puberty, their first gender affirming medical treatment is often the use of medications that temporarily pause puberty—known as “puberty delaying medication” or “puberty blockers.” These medications have been used to treat both transgender and non-transgender young people for more than 30 years and have been shown to be safe and effective. Puberty delaying medications are entirely reversible and can be stopped at any time, at which time endogenous puberty resumes after being temporarily paused.



The proposed rule change would prohibit minors from accessing puberty blockers, hormone therapy, and gender-affirming surgeries (which are extremely rare in minors). The Agency for Health Care Administration (AHCA), in its June 2022 report, inaccurately described these treatments for gender dysphoria as “experimental and investigational.” That conclusion is incorrect and is based on selective medical evidence from purported experts whose opinions have been explicitly rejected by numerous courts in other states. Reliance on this purported expert opinion would be arbitrary and capricious, which constitutes an “invalid exercise of delegated legislative authority.” § 120.52(8)(e), Fla. Stat. Numerous courts when presented with testimony from these purported experts have rejected their claims and ruled against states seeking to prohibit or preclude these treatments for gender dysphoria.

For example, one of AHCA’s five cited experts, James Cantor, PhD, testified on behalf of the State of Alabama in its attempt to ban all gender-affirming medical care for minors. The U.S. District Court for the Northern District of Alabama “gave his testimony regarding the treatment of gender dysphoria in minors very little weight” based in part on his lack of experience treating minors for gender dysphoria. Opinion and Order Granting Preliminary Injunction, *Ecknes-Tucker v. Marshall*, No. 22 Civ. 184, Docket No. 107, at 12 (N.D. Ala. May 13, 2022). That court found that Alabama officials “produce no credible evidence to show that transitioning medications are ‘experimental.’” *Id.* at 17. The court further found that “the uncontradicted record evidence is that at least twenty-two major medical associations in the United States endorse transitioning medications as well-established, evidence-based treatments for gender dysphoria in minors,” *id.*, and “the record shows that medical providers have used transitioning medications for decades to treat medical conditions other than gender dysphoria” *id.* at 18.

Other experts cited by AHCA have also had their purported expertise rejected by courts in similar circumstances. There is a cottage industry of purported experts who repeatedly provide opinions in support of states seeking to prevent gender-affirming medical care, and a repeated pattern of courts rejecting these cherry-picked opinions. Florida’s state agencies will likely run into the same problems as state agencies in Alabama, Arkansas, and Texas. Reliance on minority positions that contradict the overwhelming weight of professional medical opinion would be arbitrary and capricious. We ask the Boards of Medicine and Osteopathic Medicine to not make the same mistake as those other states by relying on outcome-driven minority opinions.

### **The Title of the Proposed Rules Is Misleading to the Public**

Finally, we note the proposed rule is misleadingly titled “Standards of Practice for the Treatment of Gender Dysphoria in Minors.” For the purpose of government transparency, because the rule outlines *prohibitions* on treatment for gender dysphoria, we request that rule be renamed to make that clear to the public. A more apt title would be, “Prohibiting Treatment for Gender Dysphoria in Minors.”

### **Conclusion**

For all these reasons, we respectfully request that you reject the proposed rule changes to Rules 64B8-9.019 and 64B15-14.014. Floridians do not want big government interfering with private medical decisions and preventing Florida's youth from accessing critical healthcare. Additionally, parents should not have to travel out of state with their children in order to provide them with safe, effective, and medically approved health care to treat their gender dysphoria. These proposed rules harm youth and their families and serve no legitimate interest.

Thank you for your consideration of the above and please do not hesitate to contact me at [kgross@aclufl.org](mailto:kgross@aclufl.org) if you have any questions or would like any additional information.



Sincerely,

A handwritten signature in black ink that reads "Kara J. Gross". The signature is written in a cursive, flowing style.

Kara Gross  
Legislative Director  
& Senior Policy Counsel