Filed in Douglas District Court
*** EFILED ***
Case Number: D01CI230007381
Transaction ID: 0020480996
Filing Date: 09/13/2023 02:02:04 PM CDT

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

| | | |
|---|---|---|
| LUKA HEIN,<br><br>Plaintiff,<br><br>v.<br><br>UNMC PHYSICIANS, THE NEBRASKA MEDICAL CENTER, NEBRASKA MEDICINE, NAHIA J. AMOURA, M.D., PERRY JOHNSON, M.D., STEPHAN BARRIENTOS, M.D., and MEGAN SMITH-SALLANS,<br><br>Defendants. | ) | **Case No.: __________**<br><br>**COMPLAINT FOR MEDICAL MALPRACTICE, WAIVER OF PANEL REVIEW, AND DEMAND FOR JURY TRIAL** |

COMES NOW the Plaintiff Luka Hein and states:

1. When Luka was just 16 years-old, her breasts were surgically amputated as the first step in her "gender affirming care" with the Defendants. As more fully described herein, the actions of the Defendants constitute negligence and are violative of Nebraska's Consumer Protection Act. Plaintiff hereby seeks damages as allowed by law.

## I. JURISDICTION, VENUE, PARTIES

2. The District Court has subject matter jurisdiction of this action pursuant to Neb. Rev. Stat. § 24-302 and Neb. Rev. Stat. § 44-2822.

3. Venue is proper in Douglas County, Nebraska, pursuant to Neb. Rev. Stat. § 25-402.01, because it is where the claims arose.

4. Plaintiff Luka Hein is a Nebraska resident. Luka attained the age of 21 years in January 2023 and brings this claim within the tolling protections set forth in Neb. Rev. Stat. § 25-213.

5. Defendant UNMC Physicians is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business in Omaha, Douglas County, Nebraska.

6. Defendant Nebraska Medical Center is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business in Omaha, Douglas County, Nebraska.

7. Defendant Nebraska Medicine is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business in Omaha, Douglas County, Nebraska.

8. According to its articles of incorporation, Nebraska Medicine was formed to facilitate and support the integration of its "controlled affiliates" UNMC Physicians and the Nebraska Medical Center. Nebraska Medicine coordinates and controls (through majority board overlap) ***all*** activities of the controlled affiliates including but not limited to clinical inpatient and outpatient hospital care and physician care.

9. UNMC Physicians, the Nebraska Medical Center and Nebraska Medicine will hereafter be referenced as the "Nebraska Medicine Defendants".

10. At all times material herein, Defendant Nahia "Jean" Amoura, M.D., was an OB/GYN physician licensed in the State of Nebraska and working within the course and scope of her employment with one or more of the Nebraska Medicine Defendants.

11. At all times material herein, Defendant Perry Johnson, M.D., was a physician licensed in the State of Nebraska working within the course and scope of his employment with one or more of the Nebraska Medicine Defendants.

12. At all times material herein, Defendant Stephan Barrientos, M.D., was licensed to practice medicine in the State of Nebraska and was acting within the course and scope of his employment with one or more of the Nebraska Medicine Defendants.

13. At all times material herein, the above-listed Defendants were qualified under the Nebraska Hospital Medical Liability Act, Neb. Rev. Stat. § 44-2801, *et. seq.* In accordance with Neb. Rev. Stat. § 44-2801, Plaintiff affirmatively waives her right to panel review and states that a copy of this Complaint has been served upon the Director of the Department of Insurance for the State of Nebraska.

14. At all times material herein, Defendant Megan Smith-Sallans was a mental health therapist with her principal place of business in Omaha, Douglas

County, Nebraska. Defendant Smith-Sallans held herself out as a mental health therapist with expertise in gender care and worked with Defendants Amoura, Johnson and Barrientos, as well as the Nebraska Medicine Defendants, to cause harm to Plaintiff.

15. The gender care clinic was operated by and staffed with employees from one or more of the Nebraska Medicine Defendants who, at all times material herein, were acting within the course and scope of their employment and whose actions are imputed to said defendants under the doctrine of *respondeat superior*.

16. Defendant Amoura served as gender care clinic director and held herself out to the public as having expertise in gender care. Upon information and belief, Defendant Amoura directed all phases of Plaintiff's care at the gender clinic.

17. Defendant Johnson was a surgeon who worked with the gender clinic and held himself out to the public as having expertise in plastic surgery. As described more fully below, with the advice and consent of Defendants Amoura and Smith-Sallans, Defendant Johnson performed breast removal surgery on the Plaintiff.

18. At all relevant times, Defendant Barrientos was a resident physician who assisted Defendant Johnson with breast removal surgery on the Plaintiff.

## II. DEFENDANTS' SHIFT FROM STANDARD MEDICAL DIAGNOSIS TO THE "AFFIRMING CARE" MODEL

19. The gender clinic's website states that it has earned a "Top Performer" designation from the Human Rights Campaign, a lobbying group that advocates a transgender ideology known as "gender affirming" care. (*See* https://www.nebraskamed.com/transgender-care.)

20. The clinic earned the Top Performer badge because UNMC faculty operate on the "gender affirming" model. This means that UNMC staff do not question a patient's self-diagnosis of transgender identification, no matter their age or the root issues from which they suffer. Rather, UNMC faculty "affirm" the chosen gender identity of the patient and then undertake pharmacological and surgical interventions based on what is known as the "Dutch Protocol".

### A. The Dutch Protocol: A Broken Model Leads to Broken Patients.

21. The Dutch protocol was based on a poorly designed study of transgender patients who received puberty blockers, cross-sex hormones and/or surgery in the early 2000's. The first obvious weakness of the study is that there was no control group. The second flaw was the "cherry picking" of subjects: beginning with 111 adolescents, researchers excluded those whose treatment with puberty-blockers "did not progress well". Thus, the data set excluded precisely those patients who were harmed by or dissatisfied with their treatment. Thirdly, due to poor follow-up the study ended with an even smaller sample of 55 patients. Of these, only forty completed the study. (*See* "The evidence to support medicalized gender transitions in adolescents is worryingly weak", The Economist, April 5, 2023 https://www.economist.com/ briefing/2023/04/05/the-evidence-to-support-medicalised-gender-transitions-in-adolescents-is-worryingly-weak.)

22. The authors also excluded one male subject for whom treatment proved fatal. Due to puberty blockers, the patient's penis was too small for "vaginoplasty", so a portion of his intestine was harvested to fashion a faux vagina. When it subsequently became infected (an all-too common complication of "vaginoplasty"), the patient died from necrotizing fasciitis. With only 22 boys in the final analysis, the death would have revealed a fatality rate of 4.5% for male subjects. In any other context, this would have demonstrated that the protocol was a complete failure. (*See* Michael Biggs (2023) "The Dutch Protocol for Juvenile Transsexuals: Origins and Evidence", Journal of Sex & Marital Therapy, 49:4, 348-368, DOI: 10.1080/ 0092623X.2022.2121238 and Abigail Favale, "The Genesis of Gender", at 183-184 (2022).)

23. Finally, the studies were funded by Ferring Pharmaceuticals, the manufacturer of the puberty blocking drug who stood to profit from the study's false, if favorable, conclusions. (*See* "Trans Care Must Also Meet Medical-Scientific Standards" (Dec. 22, 2022) https://www.nrc.nl/nieuws/ 2022/12/30/ook-transzorg-moet-aan-medisch-wetenschappelijke-standaarden-voldoen-a4152945.)

24. With these myriad deficiencies, outside reviewers concluded that the Dutch study was "very low quality", a term of art in the world of academic literature. Based on the well-developed GRADE certainty rating system, "very

low quality" is the worst possible ranking for a study and means, "The true effect is probably markedly different from the estimated effect."

**Table 1. GRADE certainty ratings**

| Certainty | What it means |
|---|---|
| Very low | The true effect is probably markedly different from the estimated effect |
| Low | The true effect might be markedly different from the estimated effect |
| Moderate | The authors believe that the true effect is probably close to the estimated effect |
| High | The authors have a lot of confidence that the true effect is similar to the estimated effect |

(*See* https://bestpractice.bmj.com/info/toolkit/learn-ebm/what-is-grade/.)

25. Follow-up studies purporting to support gender affirming care have also ranked "very low" in the GRADE quality scale. In 2020, the National Institute for Health and Care Excellence (NICE), a British body which reviews the scientific underpinnings of medical treatments, looked at the case for puberty-blockers and cross-sex hormones. The Economist reported: "The academic evidence it found was weak, discouraging and in some cases contradictory . . . . For both classes of drug, NICE assessed the quality of the papers it analysed as 'very low', its poorest rating." (*See* https://www.economist.com/briefing/2023/04/05/the-evidence-to-support-medicalised-gender-transitions-in-adolescents-is-worryingly-weak.)

26. The Ferring-funded, low-quality Dutch study "should have never been used" as justification to scale up the protocol for general use. But like a virus that escapes the lab, the Dutch protocol spread like a contagion due to "runaway diffusion", a phenomenon whereby innovative clinical practices are rushed to market without long-term, carefully controlled ethical research demonstrating that the benefits of the innovation outweigh the risks.

> "Runaway diffusion" is exactly what has happened in pediatric gender medicine. "Affirmative treatment" with hormones and surgery rapidly entered general clinical practice worldwide,

> without the necessary rigorous clinical research to confirm the hypothesized robust and lasting psychological benefits of the practice. Nor was it ever demonstrated that the benefits were substantial enough to outweigh the burden of lifelong dependence on medical interventions, infertility and sterility, and various physical health risks.

(*See* E. Abbruzzese, Stephen B. Levine & Julia W. Mason (2023) "The Myth of Reliable Research in Pediatric Gender Medicine", Journal of Sex & Marital Therapy, 49:6, 673-699, DOI: 10.1080/0092623X.2022.2150346.)

27. As "leaders in ground-breaking research", the Nebraska Medical Center Defendants had the ability and the duty to examine the scientific basis of the gender affirming model. (*See* https://www.unmc.edu/research/.) As Nebraska's premier medical institution, and with millions of research dollars at hand, Defendants owed a duty to Luka–and the hundreds of patients like her–to independently research the underpinnings of the Dutch study before adopting its flawed protocols.

28. The "gender affirming" model represents a seismic shift away from the time-tested standard of care for the proper methodology of diagnosing patients. Reasonably prudent physicians have a duty to independently examine and assess patients utilizing objective tests to rule out other potential causes of a patient's distress before resorting to irreversible procedures like double mastectomy or hysterectomy.

29. This standard practice is sometimes described as "differential diagnosis". The "gender affirming" model jettisons differential diagnosis thereby removing important evaluative tools from medical and mental health professionals' diagnostic arsenal.

### B. The Gender Affirming Model Conditions Vulnerable Patients to Medical Harm with Deceptive Euphemisms and False Promises.

30. Neuroplasticity is the brain's capacity to continue growing and evolving in response to life experiences. "Plasticity is the capacity to be shaped, molded, or altered; neuroplasticity, then, is the ability for the brain to adapt or change over time, by creating new neurons and building new networks." (*See*

https://www.psychologytoday.com/us/basics/neuroplasticity.) The still developing adolescent brain is particularly susceptible to suggestion.

31. Rather than treating gender dysphoria, the affirming model conditions children toward transgender identification by encouraging social transition, chest binding, opposite sex pronouns, cross-sex hormones and surgery. (As a verb, "condition" means "to adapt, modify, or mold so as to conform to an environing culture". *See* https://www.merriam-webster.com/ dictionary/ condition.)

32. Defendants' use of the "gender affirming" model is a dangerous deviation away from the time-tested standard of care for the proper methodology of diagnosing patients. In medicine, an accurate diagnosis is the key to helping rather than harming patients. Without the right diagnosis, a physician cannot provide the right care.

33. By immediately affirming Luka, Defendants developed a type of transgender tunnel vision that blocked out the other factors that were or may have been the cause or causes of Luka's dysphoria. In her critique of England's Tavistock gender clinic, world-renowned pediatrician Dr. Hillary Cass called this "diagnostic overshadowing." (*See* "The Cass Review: Independent review of gender identity services for children and young people: Interim report" https://cass.independent-review.uk/wp-content/uploads/2022/03/Cass-Review-Interim-Report-Final-Web-Accessible.pdf.)

34. Defendants owe a duty of care to independently examine and assess patients, utilizing objective tests, and ruling out other potential causes of a patient's pain before resorting to irreversible procedures like double mastectomy or hysterectomy.

35. Defendants, and each of them, were negligent in failing to question Luka's self-diagnosis, instead "affirming" her toward irreversible chemical and surgical solutions.

36. As set forth more fully below, Defendants negligently "affirmed" Luka's new gender identity during a time in her life when she was going through profound personal upheaval, trauma, and distress – and was simply too young to understand the irreversible implications of the transgender "treatment" recommended, prescribed, and carried out by Defendants.

## IV. DEFENDANTS' MISLEADING DESCRIPTIONS AND FALSE CLAIMS VIOLATE NEBRASKA'S CONSUMER PROTECTION ACT

37. In marketing their services, Defendants use pleasant sounding descriptions such as "masculinizing hormone therapy," "gender affirming hormones," and "gender affirming surgery for chest".

38. The use of "therapy" for these services is deceptive. The plain meaning of "therapy" is "medicinal or curative". The procedures marketed by Defendants are neither. In fact, they are the opposite. Rather than healing, these procedures inflict harm that causes malfunctioning and malformation of the teenage body and brain.

39. Defendants owe a duty to use accurate terminology, not deceptive euphemisms. The use of misleading descriptions, especially to children, is a deceptive trade practice.

40. Defendants deceive gender-distressed patients by leading them to believe that chemical and surgical procedures will medically "transition" them from male to female and vice versa. This is not reality. In fact, it is not medically or biologically possible. Leading patients toward a false horizon is not compassionate or "affirming"; it is deceptive (*See* https://www.merriam-webster.com/dictionary/deceptive "tending or having power to cause someone to accept as true or valid what is false or invalid".)

41. When expert physicians cloaked in the institutional prestige of the Nebraska Medical Center make deceptive claims, they manipulate impressionable patients and their parents into damaging and experimental procedures. That is precisely what happened to Luka and her parents.

42. As it relates to young women (referenced on the gender clinic website as "bodies with ovaries"), "gender affirming hormones" refers to the use of testosterone in large doses to impair and disrupt the natural development of their reproductive system.

43. Normally, physicians do not recommend–let alone prescribe–anabolic steroids to healthy children. But that is precisely what the gender clinic does.

44. Testosterone is an androgenizing anabolic steroid classified as a Schedule III controlled substance by the FDA. The use of testosterone on teen girls is off-label and has not been approved by the FDA.

45. According to the FDA, the use of testosterone carries "serious safety risks affecting the heart, brain, liver, mental health, and endocrine system. Reported serious adverse outcomes include heart attack, heart failure, stroke, depression, hostility, aggression, liver toxicity . . . depression, fatigue, irritability, loss of appetite, decreased libido, and insomnia." (*See* https://www.fda.gov/drugs/drug-safety-and-availability/fda-approves-new-changes-testosterone-labeling-regarding-risks-associated-abuse-and-dependence )

46. Puberty is one of the most important periods of development for both body and mind. To chemically interfere with puberty is to risk the introduction of diseased bodily processes and damage to the still developing adolescent brain.

47. The lack of long-term studies on puberty blockers should be enough to halt their use or recommendation by Defendants. One study showed that puberty blockers damage the developing hippocampus and may have "permanent effects on other brain areas and/or aspects of cognitive function," even after blockers are discontinued. The study showed that puberty blockers impair memory–and the damaging effects might be permanent. In addition, blockers might impair rational decision-making by damaging other parts of the developing brain. (*See* https://ncbi.nlm.nih.gov/pmc/articles/PMC5333793/.)

48. One of those "other" areas is the prefrontal cortex which governs executive functioning (thinking and planning) and is the last area of the brain to fully mature. By damaging the thinking and planning processes of teenagers with chemicals, defendants impair their young patients' ability to fully understand and consent to the very transgender procedures they advocate. Rather than "pausing" puberty to give a teenager time to think, puberty blockers damage their ability to think.

49. Puberty blockers carry FDA "black box" warnings that discuss brain swelling and vision loss. Other side effects include delusions, loss of bone density (osteoporosis), lung disease, sexual dysfunction, genital atrophy, depression, and suicidal ideation.

50. The gender clinic staff erroneously claim that puberty blockers "pause" puberty. Puberty blockers are not a remote control for the human body; they are disease-inducing compounds normally reserved for the chemical castration of sex offenders.

51. “Masculinizing hormone therapy” is another deceptive euphemism for the administration of testosterone to girls. Testosterone is anything but “therapy” for the developing female reproductive system.

52. Instead of curing a diseased condition, testosterone induces the breakdown of a teen girl’s reproductive organs through the loss of estrogen and glucose. The artificial increase of testosterone causes the vaginal epithelium to become dry and hardened. In some cases, the vaginal lining becomes fused, inflamed, painful and prone to infection. (*See* “Effects of High Dose Testosterone Administration on Vaginal Epithelium and Estrogen Receptors of Young Women”, International Journal of Impotence Research 25 (2013): 172-177)

53. Among other dangers, testosterone drug labels warn of serious cardiovascular and adverse psychiatric reactions, increased or decreased libido, headache, anxiety, depression, paresthesia, pulmonary embolism (blood clots in the lungs), and liver disfunction. The label for certain formulations of testosterone state: “Prolonged use of high doses of androgens … has been associated with development of hepatic adenomas [benign tumors], hepatocellular carcinoma [cancer], and peliosis hepatis [blood-filled cavities in the liver]” all potentially “life-threatening complications.” (*See* https://www.pfizermedical information.com/enus/testosterone/ adverse-reactions.)

54. In normal circumstances, a girl’s testosterone should not be above 45 ng/dL. But girls placed on testosterone by gender affirming practitioners might have levels as high as 700 ng/dL. With no studies supporting the long-term use of high-dose testosterone, Defendants placed Luka at an unreasonable risk of harm.

55. Testosterone is known to induce high blood pressure and heart disease in young women. Studies of transitioned females show a nearly five-fold increased risk of myocardial infarction. Other effects include irreversible changes to the vocal cords, development of an Adam’s apple, deepening of the voice, abnormal hair growth, and male pattern balding of the scalp. Additional risks include polycystic ovaries, atrophy of the lining of the uterus, and increased risks of ovarian and breast cancer. (*See* M. Grossman, “Lost in Trans-Nation”, pp. 74-77 (2023).)

56. This is not healing. It is, by definition, harm (i.e., “physical or mental damage”, *See* https://www.merriam-webster.com/dictionary/harm.)

57. “Gender affirming surgery for chest” and “top surgery” are alluring euphemisms for cutting healthy breasts from the chests of distressed teenage girls.

In normal medical parlance, it is known as "double mastectomy" and, until recently, was reserved almost exclusively for the removal of cancerous or pre-cancerous tissue. The side effects include permanent disfigurement, scarring, nerve damage, loss of feeling, loss of erogenous pleasure, and inability to breastfeed an infant.

58. By using deceptive descriptions to market their "services" to impressionable teens, Defendants are in violation of the Nebraska Consumer Protection Act, Neb. Rev. Stat. §15-1601, *et. seq*., which states that, "[D]eceptive acts or practices in the conduct of any trade or commerce shall be unlawful."

59. Due to the Defendants' deceptive acts and practices, Plaintiff was harmed as more fully set forth below. Pursuant to the Consumer Protection Act, Plaintiff seeks recovery of damages, attorneys' fees, and the costs of this action.

## V. DEFENDANTS' "CARE" OF LUKA HEIN

60. Acting on the referral of Defendant Smith-Sallans, and with the approval of Defendant Amoura, Defendants Johnson and Barrientos cut off Luka's healthy breasts as the first medical step in her "gender care".

61. Proceeding straight to breast amputation in a depressed, anxiety-ridden, gender-confused adolescent, who was incapable of understanding the lasting consequences of her decision, constitutes negligence for which Defendants are jointly and severally liable.

### A. Luka's Mental Health Spiral and History of Psychiatric Care.

62. In 2015, when Luka was 13 years-old, her world was upended by the divorce of her parents. Splitting time between two households, life became chaotic. She often felt like she was in the middle of it all and began to question who she was.

63. By 2016, Luka was really struggling in school. She could not concentrate and lost motivation. Anxiety and panic attacks immobilized her. She lost her appetite, became easily angered, started cutting, and expressed suicidal ideation. She began counseling with a therapist and a psychiatrist who diagnosed depression and generalized anxiety disorder. Her psychiatrist put her on antipsychotic medication, but she continued to spiral downward.

64. In February 2017, her mental health deteriorated further and she was placed in a "partial care psychiatric program" where clinicians diagnosed her with depression and generalized anxiety disorder.

65. Around this same time, Luka was groomed online and preyed upon by an older man from out of state who enticed her to send him sexually explicit pictures. When she refused to send more, he threatened her. She became terrified and law enforcement was notified. An upsetting and difficult investigation followed. The entire incident was traumatizing for Luka and her mental health declined further. Her psychiatrist returned her to the intensive partial care psychiatric program in May 2017. During her stay, her antipsychotic medication was increased, and an SSRI was added to her daily regimen.

66. There were additional complicating factors that impacted Luka's mental health. When she entered puberty, she hated menses and was extremely uncomfortable with her developing breasts. Traumatized by the dangerous online encounter, Luka wondered whether it would be best to have no breasts at all. She started researching matters of sexuality online and found transgender influencers who extolled the virtues of hormones and surgery. She ordered a chest binder, transferred from an all-girls school, and changed her name. She began identifying as male and advised her mental health providers, and her parents, that she was transgender. Due to what she had learned online, she believed "top surgery", i.e., having her breasts surgically removed, would ease her mental distress.

### B. Luka Enters the Closed Feedback Loop of Her Affirming Therapist and the UNMC Gender Clinic.

67. At all times material herein, Megan Smith-Sallans worked with Dr. Amoura and the gender clinic as an "affirming" therapist. The tandem of Amoura and Smith-Sallans created a closed feedback system that manipulates patients like Luka to deeper–and more damaging–levels of transgender medical intervention. Smith-Sallans referred patients (including Luka) to Dr. Amoura for transgender care. In turn, Dr. Amoura referred patients (including Luka) back to Smith-Sallans for evaluation of whether they were "ready" for the next step in the transgender process.

68. As of this filing, Defendants have a form online for 13- to 18-year-olds that uses deceptive terms that mask the true nature of the surgeries. (*See* https://www.nebraskamed.com/sites/default/files/documents/transgender/0Fillable%20PT%20questionnaire%2013%2B.pdf.)

***Dr. Jean Amoura / Megan Smith-Sallans, LIMHP***

***13 to 18 years Form***

**Please do your best to fill out the following information. Bring to your appointment and give to the medical personnel once in exam room (not the front desk at check in).**

The form encourages curious teens to select from a variety of transgender surgeries, with no warning to these vulnerable prospective patients of the risks, dangers, and adverse consequences inherent in the listed procedures.

Do you have a desire to have surgery in the future? ☐ yes ☐ no
If yes, what kind of surgery are you interested in? (check all that apply)

☐ Chest reconstruction (top surgery)
☐ Hysterectomy (removal of uterus)
☐ Oophorectomy (removal of ovaries)
☐ Metoidioplasty
☐ Phalloplasty
☐ Breast augmentation (implants)
☐ Orchiectomy (removal of testes)
☐ Vaginoplasty
☐ Tracheal shave
☐ Facial feminization surgery

Other:________________________________________

If there anything else you would like to disclose, please use the space below.

69. In July 2017, Megan Smith-Sallans began meeting regularly with Luka. After just 55 minutes in their initial session on July 18, 2017, Megan Smith-Sallans diagnosed Luka with gender identity disorder and began steering her toward transgender medical treatment with Defendant Amoura at the gender clinic.

70. Defendant Smith-Sallans' snap diagnosis of gender identity disorder after one 55-minute session fails to meet the standard of care for the proper evaluation of gender identity disorder.

71. In August 2017, Megan Smith-Sallans prepared a treatment plan noting a plethora of "precipitating stressors" in Luka's personal life: change in residence, change of school, divorce of parents, family conflict, parental discord, and gender dysphoria.

72. On August 23, 2017, Luka refused to go to school, and her psychiatrist recorded that she was feeling isolated, had worsening depression, felt no peer support, had recently moved from her childhood home, as well as "transgender issues". Her psychiatrist increased her medications, adding Xanax

to her regimen, and referred her back (for the third time in 6 months) to the partial care psychiatric program.

73. Luka was in the partial care program until September 7, 2017. The progress notes from the program are replete with references to family conflict, social isolation, anxiety, depression, and difficulty attending school. The treating therapists spent their time addressing "family relationships, strategies to decrease anxiety at home, and strategies to complete homework". The partial care program psychiatrist prescribed ADHD medication and diagnosed Luka with: (1) severe recurrent major depression without psychotic features; (2) generalized anxiety disorder; and (3) attention deficit disorder without hyperactivity.

74. Though Luka's primary issues in the partial care psychiatric program revolved around family turmoil and school difficulties, when she resumed meeting with Smith-Sallans, Defendant's focus shifted back to gender identity.

75. On September 19, 2017, Megan Smith-Sallans "explored more of client's gender history", encouraged Luka to attend an LGBTQ support group, and discussed chest-binding. She also encouraged online activity where Luka "found more information about transgender people and began reading and listening to their stories."

76. In October 2017, Megan Smith-Sallans recorded that Luka felt overwhelmed by the custody arrangements and ongoing family issues. She reported that Luka was lonely at her new school and had "anxiety around starting her period as well as chest dysphoria". Rather than counsel Luka through these difficulties, Megan Smith-Sallans referred her to the gender clinic for "top surgery".

### C. Breaching the Standard of Care, Defendants Johnson and Barrientos Perform Irreversible Double Mastectomy as the First Step in Luka's Gender Care.

77. On her very first visit to the gender clinic in January 2018, when she was just 15 years old, Defendants Johnson and Amoura put Luka on the fast track for breast removal surgery. The first to meet with Luka was Defendant Johnson. Despite never having seen Luka before, he immediately diagnosed "gender identity disorder" and began planning for double mastectomy.

78. Tellingly, Defendant Johnson noted in that initial visit: "***Typically, we would wait until the patient is a little bit older, but this would be influenced by the potential negative impact psychologically on the patient by prolonging the transition***." Nothing in Luka's mental health or medical records indicated any "potential negative psychological impacts" of delaying the amputation of her breasts.

79. Defendant Johnson also recorded: "Ultimately, this would be decision between Luka, his [sic] parents, and their therapist. ***I would require a letter from the patient's therapist regarding the appropriateness of the operation and the appropriateness of the timing of the procedure.*** Again, those decisions are going to be made in what is Luka's best interest as determined by Luka, his [sic] parents, and their therapist."

80. After meeting with Defendant Johnson, Luka and her parents met with Defendant Amoura who recorded in the official medical record that the reason for the appointment was an "endocrine disorder". This was false. Luka's endocrine system was functioning perfectly. Defendant Amoura's plan to disrupt the healthy functioning of Luka's endocrine system in order to "treat" a mental health disorder was not reasonable and fell below the standard of care for an OB/GYN physician.

81. From January to July 2018, Luka continued to meet with Megan Smith-Sallans who "affirmed" her toward a surgical solution for her mental distress. During this time, Megan Smith-Sallans was wholly negligent in failing to explore with Luka how to resolve her chest dysphoria by becoming more comfortable with her developing body.

82. When Luka's parents expressed hesitancy about breast removal surgery, it was implied that if they did not consent, Luka would take her own life. This was a manipulative tactic to get Luka's parents on board with surgery. Luka had no suicidal ideation for almost one year prior to surgery. From September 2017 to July 2018, Megan Smith-Sallans recorded time and again in her notes: "***Suicide Risk: Not Evident***". Trusting that the Defendants were experts in gender care, Luka's parents consented to surgery.

83. On July 3, 2018, Luka was seen by Dr. Johnson for a preoperative evaluation for "transgender mastectomy". In that note, he claimed to have documentation from Luka's therapist attesting to the appropriateness of the operation for Luka "***even at this young age***."

84. While Megan Smith-Sallans authored a letter dated June 25, 2018, it did not attest to the appropriateness of double mastectomy for Luka at the "young age" of 16. Megan Smith-Sallans merely stated what Dr. Johnson already knew: Luka had a desire for "top surgery". The letter contained no recommendation for surgery and no statement that the planned surgery was in Luka's best interest.

85. Rather than confirming that Luka was a good candidate for breast removal surgery, multiple red flags in Megan Smith-Sallans's letter should have given Dr. Johnson pause: dysphoria around puberty and chest development; online immersion into "transgender topics"; multiple partial hospitalizations for psychiatric care; transferring high schools; the fact that she had not first been tried on testosterone; psychiatric diagnoses of anxiety disorder and ADD; multiple psychotropic medications; and a traumatic history of sending nude photos to an adult man, as well as the ensuing police involvement and forensic interviews. This litany of psycho-social factors should have caused a reasonably prudent plastic surgeon to not perform a double mastectomy on such a troubled teenage patient.

86. Dr. Johnson reviewed the following risks of plastic surgery: "infection, bleeding, scarring, loss of the nipple-areolar skin grafts, the possibility of suboptimal aesthetic result," with Luka and her parents. But Dr. Johnson failed to discuss the most consequential risk of double mastectomy at 16: that Luka might regret the loss of her breasts when she was older and more mature in her thinking. Dr. Johnson also failed to advise Luka that historically most gender-questioning adolescents become comfortable in their bodies by the time they are through their teen years.

### D. Defendant Johnson Amputates Luka's Breast and Claims to Transform Her from Female to Male.

87. On July 26, 2018, Dr. Johnson was training resident physician Dr. Stephan Barrientos in plastic surgery at UNMC. On that date, Drs. Johnson and Barrientos surgically removed the healthy breasts of 16-year-old Luka Hein. After surgery, the pathology report showed no lesions, masses or nodules were identified. In other words, the pathology report confirmed that Drs. Johnson and Barrientos permanently removed the healthy breasts from a 16-year-old girl who,

due to her age and confounding psycho-social situation, was incapable of consenting to this irreversible procedure.

88. Despite the biological reality that Luka was still female, Dr. Johnson claimed that by surgically removing her breasts he transformed Luka from female to male. In an affidavit contained in the official UNMC medical record, he stated, under penalty of perjury:

> I have treated Luka O. [Hein] for the purpose of completing gender transition and a permanent sex designation change from female to male. This treatment included a bilateral mastectomy and male chest reconstruction, as well as post-operative care. The procedure irreversibly altered Luka O. [Hein]'s body by removing breast tissue, and in accord with the standards and guidelines of the World Professional Association Health, American Medical Association, American Psychiatric Association, American Psychological Association, and the American College of Obstetricians and Gynecologists. In my professional medical opinion and judgment, the sex designation change of Luka O. [Hein] has been permanently changed to male. Please contact me if you have questions or require additional information.

89. Defendants Johnson's and Barrientos's surgery was in direct violation of the then-existing American Society of Plastic Surgeons' recommendation that, due to their emotional maturity, girls should be "at least 18 years of age" for aesthetic breast surgery. (*See*, American Society of Plastic Surgeons, *Policy Statement Breast Augmentation in Teenagers* (approved 2004, reaff'd 2015).) Although Luka was not seeking augmentation, the need for emotional and physical maturity to ensure a sound decision applies even more poignantly to a mentally distressed teenage patient.

90. By rushing Luka to surgery without first placing her on hormone treatments for at least one year, Defendants violated even the pro-transgender World Professional Association for Transgender Health ("WPATH") standard of care for breast removal surgery. (*See* https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf.)

91. In November 2018, Luka was placed on testosterone by Dr. Jean Amoura who failed to fully explain the serious harm that testosterone would

wreak on Luka if she were to stay on it for an extended time. Luka ended up being on testosterone for four years.

### E. Defendant Amoura Recommends Hysterectomy and Places Luka on Testosterone Causing Additional Damage to Her Over the Next 4 Years.

92. In addition to transgender care, Defendants held Dr. Amoura out as an expert in obstetrics and gynecology. About a year after starting Luka on testosterone, Dr. Amoura recommended to Luka that she surgically remove her uterus in a partial hysterectomy as the next step in her "transition".

93. Normally, hysterectomy (partial or total) is reserved for women whose reproductive systems are so dysregulated that the benefits of surgery outweigh the considerable risks and consequences. Among other things, hysterectomy permanently sterilizes the patient and creates hormonal imbalances that require long-term medical follow-up. Rather than healing her of a diseased condition, it was Dr. Amoura's plan to surgically amputate Luka's healthy uterus, leaving her sterile and even more medically dysregulated.

94. Luka's parents voiced tremendous concern about hysterectomy and immediately asked to meet with Dr. Amoura. As Luka sat outside the meeting at the medical center, she heard the discussion between Dr. Amoura and her parents escalate. Her father told Dr. Amoura: "Lots of kids have mental health issues. That doesn't mean we sterilize them!" Rejecting Dr. Amoura's recommendation, Luka's parents refused to consent, and the hysterectomy was not performed.

95. However, Dr. Amoura continued Luka on testosterone causing substantial damage to her mental and physical health. Though Luka initially felt exhilaration when placed on testosterone, eventually she began to experience troubling symptoms. After 4 years, Luka quit taking testosterone in late 2022 due to heart irregularities, aching joints, and pelvic pain. By the time she stopped, Luka had deteriorated physically and mentally, to the point that on many days she could not function or even get out of bed.

96. On January 10, 2023, Luka announced to Dr. Amoura in a telehealth visit that she no longer identified as male. She told Dr. Amoura that she was having pain all over her body and had stopped testosterone. Luka also told Dr. Amoura that she did not think she was old enough to have consented to the transgender "treatments" she received as a minor. Rather than offering any type

of medical assistance, Dr. Amoura replied, "I guess this is just part of your gender journey." Her only recommendation was for Luka to seek mental health counseling.

### F. Defendants' Failure to Warn of Desistance, Adverse Mental Health Outcomes, and the Dangers of Testosterone.

97. Given the rapid onset of Luka's gender dysphoria, as well as the well-documented psychosocial factors complicating her thinking, Defendants had no evidence that Luka's transgender identity was a stabilized lifelong condition that would not reverse itself after she matured.

98. Given that Luka had no documented suicidal ideation for 11 months prior to surgery, Defendants were negligent in suggesting to Luka's parents that if they did not consent, she might take her own life.

99. Defendants knew or should have known that Luka was in a demographic of girls who were exploring transgender identity based on the influence of social media. As such, Defendants were negligent in failing to explore and factor in the influence of social media that clouded Luka's decision-making.

100. Defendants failed to meet the standard of care by recommending and/or performing irreversible transgender procedures when Luka may have been swept up in a social contagion and/or unduly influenced by social media.

101. Defendants' departure from standard diagnostic principles to the "gender affirming" model constitutes a breach of the standard of care for properly diagnosing patients.

102. Defendants knew or should have known of the Dutch studies that formed the foundation of the "gender affirming" model. Defendants failed to exercise reasonable care by not independently evaluating the Dutch protocols before adopting them wholesale and putting their patients at an unreasonable risk of harm.

103. With no evidence that she was at imminent risk of harm, physically or mentally, Defendants were negligent in advising Luka and her parents that breast amputation was medically necessary.

104. Defendants failed to meet the standard of care by not developing a differential diagnosis that considered, and then addressed, other potential causes

of Luka's newly formed identity before recommending and/or performing irreversible breast removal surgery.

105. Defendants were negligent in recommending and/or performing breast surgery while Luka was suffering from significant psychosocial co-morbidities and had not first been placed on testosterone for a minimum of one year.

106. Defendants were negligent in failing to disclose to Luka and her parents that the studies supporting "affirming care" are methodologically weak, ideologically slanted and of poor academic quality.

107. Defendants were negligent in failing to adequately disclose, discuss with, or warn Luka and her parents that most trans-identifying teens desist (i.e., no longer identify as transgender) by the time they are through adolescence. "In children who express gender discordance, the majority will experience reintegration of gender identity with biological sex by the time of puberty ***in the absence of directed medical or societal intervention***. This is supported by nearly a dozen published studies over the past forty years." (*See* "Deficiencies in Scientific Evidence for Medical Management of Gender Dysphoria" https://journals.sagepub.com/doi/10.1177/0024363919873762.)

108. Multiple studies have reported that, for the vast majority of children, gender incongruence does not persist. Even the pro-transgender group WPATH notes a persistence rate between 6% and 27%. Almost every follow-up study of gender-questioning children shows that by the end of puberty, most children cease to want to transition. (*See*, James M. Cantor, *Transgender and Gender Diverse Children and Adolescents: Fact-Checking of AAP Policy*, Journal of Sex & Marital Therapy, 46(4), 307–313 (2019).)

109. Defendants were negligent in failing to adequately disclose, discuss with, or warn Luka and her parents that the mental health of transgender patients often worsens after surgery. In the only long-term follow-up study of transgender surgery, Swedish researchers followed a group of patients for 30 years (1973 to 2003).

110. Defendants knew or should have known of the longitudinal Swedish study that found: "***Persons with transsexualism, after sex reassignment, have considerably higher risks for mortality, suicidal behaviour, and psychiatric morbidity than the general population.***" (*See* https://pubmed.ncbi.nlm.nih.gov/21364939/.)

111. Defendants knew or should have known of the Swedish study but

failed to disclose, discuss with, or warn Luka and her parents of the known adverse outcomes many transgender surgical patients experience. Because the Swedish study cut against the narrative of "affirming" care, it was not discussed with Luka and her parents.

112. Defendants were negligent in failing to adequately disclose, discuss with, or warn Luka and her parents of many health risks associated with long-term use of testosterone. Defendants also failed to disclose that there were no long-term studies of females on high-dose testosterone.

113. Defendant Smith-Sallans was negligent in providing evaluations of Luka's readiness for transgender therapies when she was not a neutral evaluator and was in a therapeutic relationship with Luka

114. Defendants Amoura, Johnson and Barrientos were negligent in relying upon Defendant Smith-Sallans's evaluations when they knew or should have known that she was not a neutral evaluator and was in a therapeutic relationship with Luka.

## VI. NEGLIGENCE OF DEFENDANTS JOHNSON AND BARRIENTOS

115. Defendants Johnson and Barrientos held themselves out to the public, and to Luka, as experts in transgender breast surgery. To her detriment, Luka relied on the "expertise" of said defendants.

116. In addition to the particulars previously set forth, Defendants failed to meet the standard of care by:

a. Surgically amputating Luka's breasts when she was not old enough to understand the ramifications thereof or consent thereto;
b. Surgically amputating Luka's breasts when her parents had been manipulated into consenting;
c. Surgically amputating Luka's breasts as the very first step in her transgender care;
d. Using surgical means to treat a mental health disorder;
e. Failing to wait and see if Luka's gender dysphoria would resolve with time;
f. Failing to properly diagnose Luka;
g. Failing to develop a differential diagnosis;

h. Failing to assess and rule out other potential causes of Luka's gender distress before amputating her breasts;
i. Using deceptive terminology and making false representations about the necessity for and nature of breast removal surgery;
j. Relying on Defendant Smith-Sallans' assessment as authorization for breast removal surgery;
k. Disregarding Luka's confounding psychosocial factors and utilizing breast removal as the solution to Luka's distress;
l. Failing to research the Dutch protocol for gender affirming care before adopting it in practice;
m. Failing to disclose rates of desistance to Luka and the weakness of studies purporting to support gender affirming care;
n. Failing to warn Luka that the mental health of patients does not improve with surgery;
o. Failing to refer Luka to an independent mental health therapist for an unbiased evaluation before performing breast removal surgery;
p. Failing to obtain a proper pre-operative mental health evaluation;
q. Failing to question Luka's self-diagnosis of trans-identification before amputating her breasts;
r. Failing to explore with Luka how to resolve her chest dysphoria by becoming more comfortable with her developing body;
s. Breaching the American Society of Plastic Surgeons recommendation that Luka be 18 years of age for breast surgery;
t. Rushing Luka to breast surgery before one year of testosterone;
u. Representing that breast removal was medically necessary to resolve her gender dysphoria;
v. Performing breast removal surgery when there was no evidence that Luka had a stable lifelong transgender identity;
w. Failing to advise Luka of the significance of breastfeeding and that breast removal would deprive her of the profound benefits thereof.

117. To the extent they were agents or employees, the negligence of Defendants Johnson is imputed to the Nebraska Medicine Defendants under the doctrine of *respondeat superior*.

## VII. NEGLIGENCE OF DEFENDANT AMOURA

118. Defendant Amoura held herself out to the public, and to Luka, as an expert in gender care. To her detriment, Luka relied on the "expertise" of the Dr. Amoura in directing her care at the gender clinic.

119. In addition to the particulars previously set forth, Defendant failed to meet the standard of care by:

a. Recommending medical and surgical means to treat a mental health disorder;
b. Failing to properly diagnose Luka;
c. Failing to properly oversee Luka's care at the gender clinic;
d. Failing to assess and rule out other potential causes of Luka's gender distress before double mastectomy;
e. Failing to wait and see if Luka's gender distress would resolve with time;
f. Using deceptive terminology and making false representations;
g. Conditioning Luka to accept transgender interventions;
h. Referring Luka to Defendant Smith-Sallans knowing she would automatically approve Luka for breast removal surgery and testosterone therapy;
i. Failing to obtain a proper pre-operative mental health evaluation;
j. Referring Luka to Defendant Smith-Sallans knowing she was not a neutral evaluator;
k. Referring Luka to Defendant Johnson for breast removal as the first step in her transgender care;
l. Approving Luka for breast surgery before one year of testosterone;
m. Disregarding Luka's confounding psychosocial factors and focusing only on gender identity as the cause of Luka's distress;
n. Inducing an endocrine disorder into Luka's previously healthy body by placing her on testosterone for 4 years;
o. Failing to refer Luka to an independent mental health therapist for an unbiased evaluation before recommending breast removal surgery;
p. Failing to refer Luka to an independent mental health therapist for an unbiased evaluation before prescribing long-term testosterone;
q. Failing to advise Luka and her parents that the use of testosterone in healthy teenage girls was off-label and not approved by the FDA;

r. Failing to warn Luka of the physical and mental health risks of transgender interventions;
s. Making deceptive claims to Luka about the benefits of transgender interventions;
t. Manipulating Luka with misleading claims about the benefits of testosterone without fully disclosing the risks of long-term use;
u. Failing to adequately disclose, discuss with, or warn Luka and her parents of many of the health risks associated with long-term use of testosterone;
v. Failing to explore with Luka how to resolve her chest dysphoria by becoming more comfortable with her developing body;
w. Representing to Luka that transgender interventions were medically necessary to treat her gender dysphoria;
x. Recommending irreversible transgender interventions when there was no evidence that Luka had a stable lifelong transgender identity;
y. Recommending irreversible transgender procedures when Luka may have simply been swept up in a social contagion and/or unduly influenced by social media;
z. In suggesting to Luka's parents that if they did not consent, Luka might take her own life when she was not suicidal;
aa. Failing to advise Luka of the significance of breastfeeding and that breast removal would deprive her of the profound benefits thereof.

120. To the extent she was an agent or employee, the negligence of Defendant Amoura is imputed to the Nebraska Medicine Defendants under the doctrine of *respondeat superior*.

## VIII. NEGLIGENCE OF DEFENDANT SMITH-SALLANS

121. Defendant Smith-Sallans held herself out to the public, and to Luka, as an expert in mental health. To her detriment, Luka relied on the "expertise" of the Defendant.

122. In addition to the particulars previously set forth, Defendant failed to meet the standard of care by:

a. Failing to provide proper mental health therapy to address Luka's significant co-morbidities before referring her for irreversible therapies at the gender clinic;

b. Failing to recognize the conflict of interest inherent in serving as Luka's therapist and evaluator;
c. Recommending surgical means to treat a mental health disorder;
d. Recommending breast removal surgery before Luka had been on one year of testosterone;
e. Disregarding Luka's confounding psychosocial factors and focusing only on gender identity as the solution to Luka's distress;
f. Failing to properly evaluate Luka's mental health prior to approving her for surgery and testosterone therapy;
g. Referring Luka to the gender care clinic for breast surgery as the very first medical step in her gender care;
h. Failing to disclose rates of desistance to Luka and the weakness of studies purporting to support gender affirming care;
i. Failing to question Luka's self-diagnosis of trans-identification;
j. Failing to warn Luka of the physical and mental health risks of transgender interventions;
k. Failing to advise Luka and her parents that the use of testosterone in healthy teenage girls was off-label and not approved by the FDA;
l. Conditioning Luka to accept transgender interventions by encouraging her to socially transition, bind her chest, use different pronouns, and spend time online;
m. Making deceptive claims to Luka about the benefits of transgender interventions without fully disclosing the substantial risks thereof;
n. Failing to research the Dutch protocol for gender affirming care before adopting it in practice;
o. Representing to Luka that medical transgender interventions would help her mental health;
p. Recommending irreversible transgender interventions when there was no evidence that Luka had a stable lifelong transgender identity;
q. Recommending irreversible transgender procedures when Luka may have been swept up in a social contagion and/or unduly influenced by social media;
r. In suggesting to Luka's parents that if they did not consent, Luka might take her own life when defendant knew Luka was not suicidal;

s. Acting as an advocate for transgender intervention rather than serving Luka as a dispassionate, independent mental health therapist and evaluator;
t. Failing to advise Luka of the significance of breastfeeding and that breast removal would deprive her of the profound benefits thereof.

123. To the extent she was an employee or agent of the Nebraska Medicine Defendants, the negligence of Defendant Smith-Sallans is imputed to said defendants under the doctrine of *respondeat superior*.

## IX. DEFENDANTS' FAILURE TO OBTAIN A FREE AND FULLY INFORMED CONSENT

124. By not providing Luka and her parents with full information on the consequences of breast removal, the dangers of long-term testosterone therapy, rates of desistance, and the poor mental health outcomes related to transition surgeries, Defendants failed to obtain a truly informed consent from Luka and her parents before recommending and/or performing irreversible transgender interventions.

125. By using deceptive descriptions and making misleading claims about the nature of their "gender affirming" therapies, Defendants conditioned Luka to accept their recommendations of transgender intervention.

126. In so doing, Defendants manipulated the consent process and failed to obtain and free and fully informed consent from Luka and her parents.

127. To imply to Luka's parents that breast removal surgery was necessary to prevent Luka from taking her own life was undue duress and manipulated the consent process. Under the law, consent to a medical procedure must be both fully informed and freely given. In Luka's case, it was neither. This unethical manipulation makes Luka's parents victims of a dishonest process, every bit as much as Luka.

128. Regardless of the information Defendants provided to Luka, due to her age and confounding mental health issues, she was simply unable to consent to breast amputation and the administration of testosterone.

129. To the extent these Defendants were employees or agents of the Nebraska Medicine Defendants, their actions are imputed to them under the doctrine of *respondeat superior*.

## CONCLUSION AND DEMAND FOR RELIEF

130. As a proximate result of the actions of the Defendants, and each of them, Luka's breasts were surgically amputated, leaving her physically and psychologically scarred. If she has not also suffered the loss of her fertility, Luka has lost her ability to breastfeed thereby depriving her of the maternal benefits of nursing. Luka's future children will be deprived of the natural bonding effects and nutritional benefits of breastfeeding.

131. As a proximate result of the actions of the Defendants Amoura, Smith-Sallans, and the Nebraska Medicine Defendants, Luka was placed on testosterone for 4 years which caused the disruption of her endocrine system, heart damage, deepening of her voice, pain in her vocal cords, joints, lumbar spine, hands, wrists, elbows and pelvic area, as well as permanent dysregulation of her reproductive organs.

132. As previously set forth, Defendants' actions violate the Nebraska Consumer Protection Act, Neb. Rev. Stat. §15-1601, *et. seq*. Luka relied upon the misrepresentations of the Defendants. As a proximate result of Defendants' deceptive acts and practices, Plaintiff suffered harm.

133. Due to Defendants' actions, Luka is now a medical orphan. Having been subjected to irreversible surgery and a four-year cascade of testosterone, doctors simply have no idea now how to help her. Having broken her, Defendants have no idea how to fix her.

134. Luka hereby makes claim for the following damages:

a. Physical pain and mental suffering, past and future;

b. Medical expenses, past and future;

c. Permanent impairment of her earning capacity;

d. Inconvenience and loss of enjoyment of life; and

e. Permanent scarring, injury and disability.

WHEREFORE, Plaintiff demands trial by jury and prays for judgment against Defendants, and each of them, for her damages, reasonable attorneys' fees, and the costs of this action.

LUKA HEIN, Plaintiff

By: */s/ Jefferson Downing*

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