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**SDHSAA Summer Study Committee
Pierre, SD**

Dear Committee Members,

Thank you for reviewing this letter as part of your deliberations concerning the SDHSAA. Regrettably, I am unavailable to be personally present to testify as I believe this is an extremely important subject.

This is not a short letter as I have worked in the mental illness field prior to practicing law and I have dealt with the subject of mental illness throughout my 32 years of law practice. In addition to representing individuals who suffer from various disorders I have served on the Minnehaha County Board of Mental Illness for nearly 25 years. In those capacities I have encountered the devastating impact of sexual confusion and disorders upon clients and individuals brought before the Board. Some do not survive their condition.

The following is my attempt to frame the issue, identify factors impacting the issue, address current cases, and provide a general recommendation.

A. Issue: Must the SDHSAA establish a policy in regard to a particular psychiatric condition or not? And, if it does establish such a policy, will the policy itself result in physical or emotional harm greater than if no policy existed?

It is my view, based upon a background in psychology, sociology, science, and decades of practice in the subject matter, that, absent scientific fact and foundational moral truths, it is unwise and reckless to lend acceptance to a type of behavior that ultimately is destructive.

If you don't fully comprehend the distinctions and unique psychological challenges which characterize individuals described as "intersex" versus "transsexual" versus "transgender" vs "gender nonconforming", as well as a multitude of other new and developing personal sexual descriptions, then this is not an area about which you should speculate.

What happens when you have the first student who identifies as “multi-gendered”? What will that policy look like? And how will you protect the rights of every other student who is affected by that person?

One thing is certain, once you purport to have adequate knowledge of a subject such that you issue a policy, then your purported expertise will be challenged. The SDHSAA will find themselves answering questions such as I suggested in previous testimony. They don’t need to invite a lawsuit. Consider the following partial list of questions each member will be asked in their deposition:

- “Did you read the WPATH Standard of Care PRIOR TO adopting the Policy?”
- “Did you read and fully understand the Standards of Care which you adopted?”
- “Explain the Standard of Care referenced on page 1, 2, 3, 4, 5,
- “Did you compare and evaluate the Standards of Care with literature that was critical of those Standards?”
- “Did you solely rely upon advice of legal counsel, or did you consult experts in psychiatry and medicine?”
- “Did you consult with experts from various disciplines and opposing viewpoints in formulating your policy?”
- “Did you consult with experienced legal counsel with a background in both State and Federal Constitutional law practice and doctrines?”
- “Did you rely on a supposed theory of ‘sovereign immunity’ in haphazardly formulating a policy?”
- “Were you aware of the psychological frailty and inordinately high suicide rate among individuals with sexual identity issues?”
- “If so, why did you not consider issues a, b, c, and d?”
- “If not, why did you not inquire further before instituting a policy impacting all students?”
- “State for me the definitions and distinctions as related to the following list of gender descriptions.....a to z.....”
- “If you are unable to identify these definitions and distinctions why did you choose one issue to the exclusion of all others?”
- Other questions will focus on whether you were reckless in making this policy as it has an influence upon children who may be in a quandary about these issues...and then lean that direction because the adults encouraged them by giving credibility to the issue.
- Another question will be why you chose to discriminate against people of faith who are forced to be excluded (or are forced to sign an ineffective ‘waiver’) from participation due to their firmly held beliefs. That certainly includes Christians.....but now you are clearly violating the tenets of the Muslim community as well.
- “Did you consider the religious liberties of all parties who would be exposed to and subjected to this special treatment of one individual?”

In today's current climate of political correctness along with pop-science with little to no historical support and little to no scientific support there is no logical reason to venture into the unknown, especially at the risk of exposing the state to substantial lawsuits due to emotionally charged scenarios.

There is NO SCIENCE supporting the perpetuation of these sexual disorders other than self endorsing literature. This is essentially a type of incestuous peer review as opposed to long-term objective and rigorous studies and findings based upon actual scientific testing. That is not to say that the behaviors are falsified, but it is to say that reclassifying the aberrant behavior as "healthy" is simply wrong and detrimental to the well being of the individual.

The only way in which one can accept and embrace these sexual disorders as now somehow reasonable, healthy, acceptable, and frequent is to reject all of the past history identifying the behavior as contrary to nature and outside the realm of normal behavior. Redefining sexuality as whatever anyone desires is to abandon all of the past moral standards as being baseless, when, in fact, the basis and foundation for those moral standards are found in all of history as well as within Judeo / Christian doctrine. There is no logical basis for this dramatic shift to embrace behavior that has always been and still is rare and clearly identified as a mental disorder. That mental illness description continues today as it is defined in the most recent DSM V manual of psychiatric disorders.

I believe one of the reasons there are increasing numbers of sexually confused individuals is due to the fact that norms of moral behavior are being summarily rejected in the media and there are public pronouncements of affirmation of the new behaviors. This conclusion is substantiated by data referenced by Dr. McHugh of Johns Hopkins University in which he cites to non-biased reports of approximately 80% of "transgender" young men rejecting that behavior as they reach early adulthood and are more objective about their actual identity.

The incidence of suicide is estimated to be as much as 20 times greater among those who identify as "transgender" when compared to the general population. This is not solely the result of "bullying" or any other external social input, but rather it is due to the internal despondency which is an expected outgrowth of a rejection of one's own sexuality. I have personally observed this to be true in the transgender individuals I have represented and those who have appeared before me at the Minnehaha County Board of Mental Illness.

The context in which people with sexual confusion most often arise is when they engage in self destructive behaviors. The current Diagnostic and Statistical Manual of psychiatric disorders continues to identify "transgender" behavior as a mental illness by virtue of the fact that it is still a diagnosis (transgender dysphoria) and it is still a basis for various mental illness disability claims.

B. Existing Action:

It is my observation that the current policy of the SDHSAA is based upon aberrant trends over the past 10 to 20 years along with pop-psychology and unsupported clinical findings. This rejects millenia of accepted social norms and reliable and scientific factual information.

C. Potential consequences:

The current policy of the SDHSAA appears to be a misguided and dangerous endorsement of psychiatric issues which have acquired a cult like following. The life and death consequences of endorsing this behavior is real. People really do take their own lives over these matters.

Wisdom dictates that if you seek out the truth of a matter, but are still uncertain, then you refrain from acting until the truth is clear. If your actions are merely a “belief” and you act upon that belief, then you must be ready to accept the consequences of your actions.

If actions are based upon mere anecdotes which conflict with thousands of years of factual observations AND those actions conflict with religious doctrine which has stood the test of time, then you invite disaster to be visited upon someone at a high price to that person.....even though there may be no personal impact upon yourself as you will never know of your role in the destructive consequences. You might look politically correct at the time, but the unfounded actions taken today may lead to personal destruction for someone else.

It is one thing to consider these actions in the abstract. It is quite a different thing to pick up the remnants of a human life which suffers years of despair, or consumes a fatal overdose, or hangs oneself, or uses a gun to stop the pain they feel inwardly. Stop for a moment and consider the actual scene of one of these deaths. I have personally seen hundreds of individuals suffering from various mental disorders. I have expressed deep compassion for them and sought to address their pain. Others never make it to a place of help. They simply succeed in their suicide. These scenes of suicide occur dozens of times each year in Minnehaha County alone. I hear of the regularly occurring suicides and see the specifics contained in the year end reports.

Gender “dysphoria”, as it is now called, typically is not the result of the actions of others, but is the internal despair associated with a rejection of physical realities and DNA / hormonal realities. I have represented individuals experiencing this condition and I have conducted hearings addressing the suicidal ideation of people in this situation. Each of my interactions with people experiencing such a Gender disorder / dysphoria have been due to the misguided affirmation or encouragement of either friends, family or physicians. These cases typically have little to do with others rejecting the person, but rather are the result of their own personal and internal turmoil and self rejection. Each of these many cases have culminated in psychiatric

commitments due to the individuals attempt to end their life to stop the internal emotional pain.

It is sometimes said that “...the road to hell is paved with good intentions.” That is an apt adage in this case as the original intention of accommodating individuals who are sincerely struggling with gender confusion do not need a state sponsored organization to speak to the issue when in fact that state agency has no solid information upon which to base their policy.

CURRENT CASES:

Just as individuals have a right to bring lawsuits years into their adult life when they realize they suffered sexual abuse as a child, there are now lawsuits concerning ill-advised sex surgeries and therapies visited upon individuals during their childhood. In other cases a young person’s regrets turn into “dysphoria / gender dysphoria” (extreme depression) and dysphoria often times turns into suicide.

Injury that forms the basis of a lawsuit can take the form of physical or emotional injuries. Consider the following cases which are now or will soon be pending:

- Injury to “Non-Transgender” students: The Minnesota policy as of 2014 failed to provide adequate protection for the privacy rights of other students, thus giving a higher importance to the privacy and identity of some students over others. That is the quagmire of the 14th Amendment “Equal Protection Clause”. That is also applicable to our existing situation in South Dakota.

- Currently, the more notable Federal District Court case is in Virginia, G.G. v. Gloucester County Public School Board. In that case Judge Robert Doumar has already dismissed the part of the transgender student’s case which was relying on Title IX as the Court found the school’s policy of maintaining separate restrooms for different sexes was NOT a violation of Title IX. That Judge has also denied a preliminary injunction requested by the student which seems to indicate the Court’s likely ruling against the student as to all claims.

- A case now going to trial in South Carolina was brought by Pam and Mark Crawford of Greenville, SC. They are suing doctors who performed a surgery upon the “intersex” child they adopted.....nine years ago. The basis for the lawsuit is that the child now identifies as a boy even though his male organs were removed. They are also suing the state in its capacity as guardian of the child at the time of the surgery. The suit is a combination of medical malpractice and general injury to the child as the State abused its authority in failing to properly care for the child which was in its custody. In such a case the statute of limitations would not bar their claim as it is only now that the damages are fully known.

There is NO affirmative duty which the SDHSAA has to step into an area of ill defined medical and psychiatric conditions. A cursory examination of the existing cases and controversies makes it abundantly clear that this is a mine field which has no clear course and is not presently understood well enough to take a position of authority.

D. Recommendation

It is my recommendation that the SDHSAA rescind its transgender policy and refrain from instituting any policy concerning these issues. This subject area is beyond the scope of their duties and has only recently become a media target of well intentioned but misunderstood advice. Such issues are best addressed within families and competent counselors.

Your actions today have real consequences. An endorsement of a false belief is far more likely to lead to suffering or suicide as opposed to remaining neutral toward the subject and allowing people to quietly sort out these weightier issues within their own life and family. Any policy adopted by the SDHSAA, OTHER THAN NO POLICY, will be wrong.

I urge the committee to recommend the SDHSAA rescind their existing policy and refrain from imposing a policy concerning the matters referenced above.

**Very truly yours,
HAUGAARD LAW OFFICE, PC**

**Steven G. Haugaard
State Representative (District 10)**