

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WHITMAN-WALKER CLINIC, INC., *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

Case No. 1:20-cv-1630

**DECLARATION OF RANDY PUMPHREY, D.MIN., LPC, BCC
SENIOR DIRECTOR OF BEHAVIORAL HEALTH, WHITMAN-WALKER HEALTH**

I, Randy Pumphrey, declare:

1. I am the Senior Director of Behavioral Health at Whitman-Walker Clinic, Inc., d/b/a Whitman-Walker Health (“Whitman-Walker”).

2. After earning a B.S. in American Studies, I received Masters of Divinity and Doctor of Ministry degrees from Wesley Theological Seminary. I initially worked as a Board Certified Chaplain at St. Elizabeth’s Hospital (which became the Commission on Mental Health Services for the District of Columbia and the Psychiatric Institute of Washington), and subsequently received my Professional Counselor Licensure in 1997.

3. I have worked in mental-health and substance-use-disorder treatment since 1984, initially as an intern at Washington Hospital Center, then with St. Elizabeth’s Hospital. In 1998 I became the Clinical Director of the Lambda Center, a joint partnership between the Psychiatric Institute of Washington and Whitman-Walker Clinic. I joined Whitman-Walker’s staff in 2007 as the Manager of Mental Health Services, and became Senior Director of Behavioral Health in 2015.

In addition to managing Whitman-Walker's behavioral-health services, I maintain a panel of patients for whom I provide direct care. A copy of my curriculum vitae is attached as **Exhibit A**.

4. I am submitting this Declaration in support of Plaintiffs' motion for a preliminary injunction to prevent the revised regulation under Section 1557, published by the U.S. Department of Health and Human Services ("HHS") on June 19, 2020 (the "Revised Rule"), from taking effect.

5. As the Senior Director of Behavioral Health, I oversee Whitman-Walker's robust portfolio of mental-health services, and substance-use-disorder-treatment services. Our mental-health services include individual and group psychotherapy, psychiatry, and peer counseling. For individuals struggling with substance misuse, we offer individual and group counseling and support, and Medically-Assisted Treatment (MAT). In 2019, we provided mental-health or substance-use-disorder-treatment services to 2,912 patients. Our psychiatrists, psychologists, licensed psychotherapists, and trained peer counselors have a special mission to the lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) community, and also to individuals living with HIV and their families and caregivers.

6. Many if not most of the individuals in our very diverse behavioral-health-patient population face considerable stigma and discrimination—as people living with HIV, as sexual or gender minority people, as people of color—and many of them struggle with internalized stigma and with acute or lower-level but persistent trauma. Many of them have experienced difficulty in finding therapists or other mental-health or substance-use-disorder professionals who are understanding and welcoming of their sexual orientation, gender identity, or struggles with HIV. We frequently receive phone calls and other inquiries from people seeking non-discriminatory, welcoming assistance with their substance use, depression, anxiety, or other challenges. Many of

these individuals have suffered from traumatizing encounters with hostile or disapproving health care professionals.

7. The Revised Rule's elimination of protections from discrimination based on gender identity, sexual orientation, transgender status, failure to conform with sex stereotypes, or LEP status, along with its expansion of religious exemptions, will result in more discrimination against LGBTQ patients, LEP patients, and patients living with HIV at other clinics, doctors' offices, hospitals, pharmacies, and other health care facilities outside Whitman-Walker. This increase in discrimination will harm the patients I serve and the patients whose care I supervise by directly harming their mental and behavioral health, discouraging access to mental and behavioral health care, and harming the patient-provider relationship, resulting in poor outcomes.

8. Experiencing discrimination in health care settings can have pronounced negative impacts on patients' mental and behavioral health. For example, a 2019 report by the Williams Institute at UCLA found that experiencing discrimination in health care settings is a unique risk factor for heightened suicidality among transgender individuals, a population already at heightened risk compared with the general population.¹ Conversely, nondiscrimination protections prohibiting discrimination in health care based on gender identity or transgender status have been associated with a decrease in suicidality among transgender and other gender minority individuals.² This is consistent with what I have observed over my years of experience in mental and behavioral health.

¹ See Jody L. Herman et al., The Williams Institute, *Suicide Thoughts and Attempts Among Transgender Adults* (2019), <https://williamsinstitute.law.ucla.edu/publications/suicidality-transgender-adults/>.

² See Alex McDowell et al., *Association of Nondiscrimination Policies with Mental Health Among Gender Minority Individuals*, *JAMA Psych.* (May 6, 2020), <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2765490>.

9. The Revised Rule, by signaling that discrimination based on sexual orientation, gender identity, and transgender status is now permitted in health care settings, will on its own invoke increased fear and trauma among LGBTQ patients. Our clinic is likely to see an increased demand for mental-health services and behavioral-health services as a result. Patients will likely come to our care more distressed than they would otherwise due to the increased discrimination invited by the Revised Rule.

10. I and the providers and other behavioral-health staff that I supervise at Whitman-Walker have learned from patients about many incidents of discrimination or mistreatment based on a patient's actual or perceived sexual orientation, gender identity, or transgender status in other behavioral-health settings. For instance:

- a. A transgender teenager was hospitalized after a suicide attempt. Hospital staff refused to address the teenager by the young person's preferred pronouns and gender throughout the teenager's hospital stay. This was experienced by the teenager as disapproval and contempt for the young person's gender identity. This discrimination exacerbated the teenager's acutely fragile state when the teenager was so desperately in need of health care providers' support and health care services that were free of judgment.
- b. A facility that specializes in inpatient mental health and substance-use-disorder treatment, and which has explicit non-discrimination policies, nonetheless has significant trouble from nurses on weekend shifts (when the facility uses pool nurses rather than regular employees), who express strong disapproval of LGBTQ patients based on their religious beliefs or cultural upbringing. Despite the facility's non-discrimination policies, LGBTQ

patients encounter hostility, expressions of disapproval, and lack of responsiveness to their needs or requests from these nurses. For patients hospitalized for mental or substance-use disorders, these experiences can activate their disorders.

- c. As I previously noted, behavioral health staff that I supervise often receive calls or other communications from LGBTQ persons expressing desperation about finding a therapist or substance use professional who will not discriminate against them because of their sexual orientation or gender identity.
- d. Our behavioral-health providers who regularly interview our transgender patients to assess their stage of gender transition and readiness for gender-affirming surgical procedures, or who provide psychotherapy for these patients, report that the large majority of the patients they meet with—as many as four out of every five—report incidents of mistreatment or discrimination by health care providers and staff at hospitals, other clinics, doctor’s offices, and other facilities.
- e. A patient who was employed by a church consulted his health care provider. One of the nurses called his church and told them he was gay and living with HIV. As a result, he was fired and lost his pension, forcing him to live on a severely limited income.

11. These incidents reveal that many health care providers and other staff harbor explicit or implicit biases against LGBTQ people. Because of legal requirements, health care facility non-discrimination policies, and professional norms, many of them have kept their personal beliefs and feelings in check. By signaling that discrimination based on sexual

orientation, gender identity, and transgender status is permissible under federal law, the Revised Rule is very likely to result in many more incidents of discrimination and greater harm to LGBTQ individuals struggling with mental health or substance use issues, including the patients whom I treat and whose treatment I supervise.

12. Behavioral-health treatment assumes, and requires, trust between the patient and provider, and full and frank disclosure by the patient of all potentially relevant information about their life, including their sexual orientation, sexual and affectional experiences, and gender identity. I, and the providers that I supervise at Whitman-Walker, frequently work with patients who have concealed some or all aspects of their sexual and affectional orientation or history, or gender identity, from non-Whitman-Walker therapists or other behavioral health providers, often to the patients' harm. The Revised Rule will very likely discourage LGBTQ people and others needing treatment from fully disclosing relevant information to their therapists or counselors, or to those helping them with substance-use issues, which will likely increase their distress and undercut the effectiveness of their treatment.

13. For persons with traditionally stigmatized sexual orientation—such as gay, lesbian, or bisexual people—or who are transgender or gender expansive, competent mental-health services, or services for treatment of substance-use disorders, require an accepting—indeed, an affirming—attitude towards their sexual orientation or gender identity by their provider. Discriminatory behavior, statements, or attitudes expressed by a provider are a tremendous barrier to effective care. It is critical that a patient feel empowered and supported in fully disclosing their sexuality and gender identity to their counselor, therapist, psychologist, or psychiatrist. Without a trusting patient-provider relationship and full disclosure of all possibly relevant feelings and facts by the patient, effective treatment is unlikely to be possible. This is critical for good medical care

as well. The kind of discrimination permitted by the Revised Rule will erode patient-provider trust among the patients our clinic serves, making it more difficult for patients at Whitman-Walker to achieve successful outcomes in their care.

14. The COVID pandemic has greatly increased the fear and apprehension in our community. Many LGBTQ people, including many of our patients, who have lived through the HIV/AIDS era are feeling re-traumatized by a new pandemic. During the first three months of the pandemic and related shutdown, we have seen a significant numbers of our substance use clients relapse. Many people's fear of encountering discrimination in health care settings has been heightened. Our substance use patients who are struggling and are LGBTQ have expressed reluctance to use city-operated treatment facilities because they fear hostility and discrimination from other patients and staff at those facilities. The issuance of the Revised Rule, with its message that LGBTQ discrimination is permitted, and its extensive, approving discussion of anti-transgender sentiments among health care providers, could not have come at a worse time.

15. In addition, our staff have experienced major operational challenges in responding to COVID-19 – including shifting behavioral-health services to telemedicine and temporary suspension of some services. This is a particularly difficult time to respond to increased demand for our services stemming from increased fear of discrimination encouraged by the Revised Rule.

16. I and Whitman-Walker provide referral services for patients who need specialist care that we do not provide—including inpatient behavioral health care as well as specialist medical care. We also receive many outside requests for recommendations for LGBT-welcoming, non-discriminatory therapists and substance-use professionals in the community. The Revised Rule will make it significantly more difficult for us locate and monitor appropriate referrals, and patients will suffer as a result. Even more concerning, our behavioral-health patients who may

need hospitalization for a mental-health or substance-use crisis, or may need specialist medical care, will be in greater danger of encountering discrimination at inpatient behavioral health facilities or when they seek medical care outside Whitman-Walker—which may make their care at Whitman-Walker more difficult and perhaps less successful.

17. All Whitman-Walker employees, and all volunteers who serve as peer counselors or otherwise are involved in any way with our behavioral-health services, are asked to commit to our mission, which is to be welcoming to and understanding of every patient, regardless of sexual orientation, gender identity, race or ethnicity, income or educational background, or life experience. We welcome staff and volunteers from a wide range of religious, spiritual, cultural, and philosophical perspectives, but patient needs must always be paramount. The overly broad religious exemptions in the Revised Rule threaten to substantially harm patients who are already vulnerable to stigma and discrimination. The message that health care providers' religious preferences or beliefs take priority over patient needs also violates fundamental professional ethical standards that apply to all licensed therapists, psychologists, psychiatrists, and substance-use-disorder-treatment professionals, including myself.

18. The Revised Rule removes or substantially weakens protections for LGBTQ individuals vulnerable to discrimination in health care settings. The inevitable increase in discrimination against LGBTQ individuals in health care settings that will follow from the Revised Rule will make it harder for us to care for our patients at the Whitman-Walker Clinic.

[Signature on next page.]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 30 day of June, 2020.


Randy Pumphrey, D.MIN., LPC, BCC

EXHIBIT A

Curriculum Vitae of Randy Pumphrey, D.Min., LPC, BCC

Randy W. Pumphrey D.Min, LPC, BCC
2016 Perry Street NE
Washington, D.C. 20018
(Whitman Walker Health Office) 202-939-7679
Whitman-Walker email: rpumphrey@whitman-walker.org
Private Practice (cell) 202-369-4252
(e-mail) rpumphreylpc@verizon.net

PROFESSIONAL EXPERIENCE

Senior Director of Behavior Health at Whitman Walker Health (January 2015 to present)

- Works with the Chief Health Officer, Executive Director of the Health Center and the Chief Program Officer to strategically develop behavioral health programs, including recruitment and operational alignment with other health care services.
- Provides vision, leadership and strategic development to the behavioral health staff ensuring integration of services across the health center.
- Acts as member of Leadership Team, demonstrating leadership principles that encourage active feedback and an engaged workforce
- Develops and oversees programs for provision of behavioral health care, providing specific goals for implementation to other Behavioral Health staff.
- Monitors behavioral care outcome information, including: census data, Peer Review data, third-party related data and other metrics provided by Quality Improvement and Informatics to ensure appropriate response and program development.
- Monitors productivity, third-party revenue, and trends in health care delivery to ensure Behavioral Health programs are responsive to current payment methodologies and ready for future changes in health care reform.
- Collaborates with Administrative staff on various tasks including: grant funding, marketing and communication materials, development and fundraising, and community relations.
- Builds successful professional relationships with local community groups, business leaders, health care facilities and other organizations, acting as liaison and spokesperson for behavioral matters.
- Oversees the operations of all behavioral programs to ensure adherence to Whitman-Walker policies and compliance with local and Federal law.
- Ensures that behavioral health programs are being delivered by appropriately licensed and credentialed providers.
- Provides direct behavioral health care to clients
- Works with the Chief Medical Officer and Senior Director of Health Care Operations to strategically develop behavioral health programs, including recruitment and operational alignment with other health care services.
- Provides vision, leadership and strategic development to the behavioral health staff ensuring integration of services across the health center.
- Acts as member of Leadership Team, demonstrating leadership principles that encourage active feedback and an engaged workforce
- Develops and oversees programs for provision of behavioral health care, providing specific goals for implementation to other Behavioral Health staff.
- Monitors behavioral care outcome information, including: census data, Peer Review data, third-party related data and other metrics provided by Quality Improvement and Informatics to ensure appropriate response and program development.
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- Builds successful professional relationships with local community groups, business leaders, health care facilities and other organizations, acting as liaison and spokesperson for behavioral matters.
- Oversees the operations of all behavioral programs to ensure adherence to Whitman-Walker policies and compliance with local and Federal law.
- Ensures that behavioral health programs are being delivered by appropriately licensed and credentialed providers.
- Provides direct behavioral health care to clients

Behavioral Health Manager for Mental Health at Whitman Walker Health (August 2007 to December 2014.)

- Hire and Manage all Mental Health clinicians
- Provide individual administrative and clinical supervision to eight staff therapists and Master Level clinical interns
- Conduct individual and group psychotherapy (group topics include – Sexual Compulsion in Gay Men, Long Term Survivors of HIV, Stress Management with HIV)
- Manage department budgets
- Manage grant budgets
- Conduct community workshops on a variety of Mental Health issues and topics
- Operate as Deputy Behavioral Health Director in absence of Behavioral Health Director
- Provide administrative direction and supervision to the Mental Health Department

Private Practice – Psychotherapy and Spiritual Directions (October 2007 to present)

- Individual and couple's therapy with focus on co-occurring disorders, relationship issues – including love addiction and love avoidance, sexual compulsion, anxiety, depression, loss and grief, HIV, trauma and issues related to sexual orientation acceptance.
- Spiritual Direction – work in tandem with other therapists to deal with psycho-spiritual conflicts with their clients. Deal directly with client struggling to find meaning and acceptance through a variety of spiritual practice.

Director of The Lambda Center: Behavioral Healthcare for the LGBTQ community.

A partnership between The Psychiatric Institute of Washington and Whitman-Walker Clinic (September 1998 to July 2005 and The Psychiatric Institute of Washington from July 2005 to August 2007.)

- Hire and supervise all clinical staff
- Direct an interdisciplinary treatment team working with lesbian, gay, bisexual and transgender adult clients.
- Manage the operation of an Inpatient detoxification and mental health stabilization program, a Partial Hospitalization program, and an Intensive Outpatient program.
- Supervise Master's level interns in Counseling Psychology and Community Counseling as well as Master level counseling staff for LPC licensure.
- Conduct individual, group psychotherapy, a full spectrum of co-occurring recovery groups, process oriented topic groups as well as skills groups dealing with life management skills, cognitive impairments, emotional regulation, living with HIV/AIDS, spirituality, grief and loss, relational issues, family dynamics, sexual identity integration and gender identity integration.
- Orient all new hospital staff on issues of cultural competency.
- Successfully led Lambda Center through three Joint Commission Surveys, DCRA annual surveys, CMS surveys, APRA certification surveys and Tricare surveys.
- Education and community relations through seminars, national conferences, grand rounds and workshops that teach mental health and addiction treatment professionals about therapeutic interventions with the gay, lesbian, bi-sexual and transgender communities.

Chaplain

The Psychiatric Institute of Washington, Washington, D.C., (July 1986 –March 2005).

- Served as consultant with hospital administration to create an integrated spiritual program for a free standing Psychiatric hospital.
- Conduct weekly worship as well as special holiday celebrations for the Children's unit, the Adolescent unit and the Adult units.
- Facilitate weekly spiritual resource groups, process groups, dual diagnosis step groups, and conduct individual pastoral counseling.
- Consult with treatment staff regarding the religious and spiritual issues of clients within a variety of specialized programs including — intensive care, dual diagnosis, Gay and Lesbian, the Center for Post Traumatic Syndrome and Child / Adolescence.
- Assess the spiritual needs of clients upon referral.
- Designed assessment tool used by the hospital.
- Grand Round presentations "Mind, Body, Spirit -- The Healing Formula," "The Emerging Spirit - The Integration of Spirituality in Mental Health Care," "Spirituality in the Treatment of Gay and Lesbian persons."

Administrative Chaplain for the Acute Psychiatric Hospital

Commission on Mental Health Services, Saint Elizabeths Campus, D.C., (July 1987 - August 1998).

- Coordinate and manage pastoral staff providing spiritual care for the Acute Psychiatric Hospital.
- Conduct individual and group pastoral counseling and spiritual direction to clients suffering with a full range of psychiatric disorders and dual diagnosis.
- Educate and counsel persons living with HIV infection/AIDS, addiction recovery and sexual identity integration.
- Teach interns and residents therapeutic and sensitivity issues with lesbian/gay/bisexual/transgender persons.
- Facilitate and lead workshops for hospitals and churches dealing with "Spirituality and Recovery," "Living with AIDS," "Meditation," "Visitation and Referral," and "Sensitivity to the Mentally Ill."
- Create group therapy forum for staff who had survived recent loss to work through issues of grief and loss.
- Conceptualized and implemented new pastoral care procedures to increase our direct patient care and maximize pastoral effectiveness.
- Monitor clinical record keeping.
- Clinical experience in Acute Care, Dual Diagnosis, Geriatric, Forensic, Long Term Chronic Care and Out-patient Day Programs. Clinical Supervision of pastoral interns and residents.
- Train, delegate, and schedule pastoral staff; residents, and interns.
- Perform weekly worship, preach, and distribute the Sacraments.

Pastoral Assistant

First United Methodist Church, Bradbury Heights, Washington D.C., (Oct. 1984-May 1985).

- Designed and implemented an educational program for youth.
- Participated on all church committees.
- Created and preached a special Advent worship series and taught the Lenten Bible study.

Youth Minister

Korean United Methodist Church of Washington D.C., (Oct. 1981 -Jan. 1983).

- Designed a Christian education program for trans-generational children.
- Conducted a weekly English worship service.
- Created and counseled a United Methodist youth group.
- Trained Korean parents as Sunday school teachers.

EDUCATION

Doctorate of Ministry; Wesley Theological Seminary, September 1991 to May 1997.
Thesis: "A Spiritual Recovery Program Informed by Process Theology."

Clinical Training: Clinical Pastoral Education

- The Commission on Mental Health, Washington, D.C.
2 Basic units, 2 Advanced units, and 9 Supervisory units, June 1985 – August 1988.
- The Washington Hospital Center, Washington, D.C.
1 Basic unit, September 1984 - May 1985.

Masters of Divinity; Wesley Theological Seminary, Sept. 1981 to May 1985.
Focus on Pastoral Care and Counseling.
Chair of the Arts Committee and Co-creator of the Liberation Resource Committee.

Bachelor of Science; Towson University, Towson Maryland, September 1979 to May 1981.
Major: American Studies with a concentration in American literature and Human development,
Honors: Cum Laude.
Outdoors adventure club, Orientation department team leader.

Associates of Arts Degree

Anne Arundel Community College, Maryland, Sept. 1977 to May 1979.
Major: American Studies
Honors: Magna Cum Laude

Additional continued education in a variety of mental health issues including – CBT, Ethics, Post Induction Therapy, Inner Child integration and Shame and Pain Reduction, Sexual Compulsion, Love Addiction, and Trauma

CREDENTIALS and PROFESSIONAL ASSOCIATIONS

- Licensed Professional Counselor in the District of Columbia. PRC1134 Exp.12/31/1998.
- Board Certified by the Association of Professional Chaplains, May 1990 (Retired Status)
- Ordained Elder in the United Methodist Church, June 1989.
- DC Behavioral Health Association Board, Secretary second term

LANGUAGES

Proficient at intermediate level signed English

REFERENCES:

UPON REQUEST