UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CASSIDY DALLAS *Plaintiff*, v. GEORGIA J. SHEIDY, *et al.*, *Defendants*.	Case No. 1:24-cv-952-MJM

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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TABLE OF ABBREVIATED TERMS

Abbreviation	Definition
ACA	Affordable Care Act
Compl.	Complaint, ECF No. 1
EKG	Electrocardiogram
HCMCA	Health Care Malpractice Claims Act, Md. Code Ann. Cts. & Jud. Pro. §§ 3-2A-01 *et seq*.
HCADRO	Health Care Alternative Dispute Resolution Office
IIED	Intentional Infliction of Emotional Distress
Motion or Mot.	Defendants' Memorandum of Grounds and Authorities in Support of Motion to Dismiss, ECF No. 10-1
Nursing Code	*Code of Ethics for Nurses with Interpretive Statements* (2015) (Compl. ¶ 32 & n.15)
PA	Physician's Assistant
Patient First	Defendants Patient First Corporation and Patient First Maryland Medical Group, P.L.L.C.
Patient First Aberdeen	Patient First Primary and Urgent Care—Aberdeen at 995 Hospitality Way, Aberdeen, MD 21001
PTSD	Post-Traumatic Stress Disorder
R&R	Report and Recommendation
Section 1557	Section 1557 of the ACA, codified at 42 U.S.C. § 18116

PRELIMINARY STATEMENT

Plaintiff Cassidy Dallas, a transgender man with a trauma history, was delirious when they went to Patient First Aberdeen. After losing consciousness and showing other symptoms of severe dehydration, a medical emergency, Mx. Dallas waited 51 minutes for IV fluids. While there, a Patient First nurse misgendered Mx. Dallas; repeatedly touched them without obtaining informed consent; asked unnecessary questions about plaintiff's gender-affirming surgery; told plaintiff that their symptoms were from "messing with" their hormones; and left plaintiff's arm covered in blood. After telling a PA about this conduct, Patient First discharged plaintiff without follow-up into their elevated white blood cell count, leaving a painful bladder infection undiagnosed. These events re-traumatized plaintiff and changed their life. The motion gives three reasons to dismiss the claims arising from this misconduct. Each fails.

First, defendants argue that plaintiff must file an expert affidavit and claim notice with a Maryland agency, HCADRO, as a precondition to suit in federal court. But the motion ignores binding precedent that such requirements "conflict with and are thus supplanted by the Federal Rules of Civil Procedure." *Pledger v. Lynch*, 5 F.4th 511, 518 (4th Cir. 2021). All four judges of this District that applied *Pledger* to the HCMCA denied a motion to dismiss on those grounds. This Court should, too. Defendants' argument also fails because the parties' venue agreement precludes mandatory HCADRO arbitration (Part I.C); the civil rights laws preempt Maryland's prerequisites under the HCMCA (Part I.D); and the HCMCA exempts "informed consent" claims like battery from its expert affidavit requirement (Part I.E).

Second, taking the allegations as true and as a whole, the complaint alleges an ACA claim for sex discrimination. The failure to address plaintiff's severe dehydration for 51 minutes and treat their infection at all was plausibly based on sex given the disparaging comments made

about hormones, misgendering, and medically irrelevant questions about plaintiff's gender affirming surgery. (Part II.A-B.) These facts also allege deliberate indifference. (Part II.C.) The conduct built over time, with each successive Patient First employee on notice of Mx. Dallas's gender identity, as well as the preceding mistreatment and delay. They did not remedy it.

Third, the complaint alleges an IIED claim based on Ms. Sheidy's conduct. Her position of medical authority over plaintiff and knowledge of plaintiff's trauma history, but failure to treat plaintiff for life-threatening dehydration while battering plaintiff and disparaging their trauma and hormone treatment, shows outrageousness. Plaintiff has suffered from documented symptoms of trauma as a result. The Court should deny the motion in its entirety.

FACTUAL BACKGROUND

Plaintiff is a transgender man who uses the pronouns they/them and he/him. (Compl. ¶¶ 2, 10.)[1] They visited Patient First Aberdeen over Labor Day weekend 2023 after feeling hot, dehydrated, and losing consciousness, accompanied by their spouse and a friend. (*Id.* ¶¶ 2, 37-44.) Their spouse disclosed plaintiff's gender identity at an electronic kiosk and separately told a Patient First employee at the check-in desk about plaintiff's transgender status, new name, and pronouns. (*Id.* ¶¶ 45-50.) Plaintiff also shared this information, along with their history of trauma, with each provider they encountered at Patient First. (*Id.* ¶¶ 69, 80, 92, 133.)

Plaintiff's dehydration was a life-threatening medical emergency. As Patient First admits, loss of consciousness indicates severe dehydration, which must be treated right away with IV fluids with electrolytes under the relevant standard of care. (*Id.* ¶¶ 24-30.) In the Patient First Aberdeen waiting room, plaintiff lost consciousness while filling out paperwork that included a

[1] For a variety of reasons, the complaint uses "they/them" pronouns to describe plaintiff. Defendants' choice to use "he/him" pronouns instead (Mot. 2 n.1) is gratuitous and reflects again an improper desire to choose plaintiff's pronouns.

venue agreement (*id.* ¶ 21), and Georgia Sheidy, a nurse and defendant here, performed a sternal rub on plaintiff, (*id.* ¶¶ 57-62). Ms. Sheidy started out by asking if plaintiff was overdosing and suggested that plaintiff was a recovering alcoholic. (*Id.* ¶¶ 52-56.) She touched plaintiff twice in the waiting room without asking if it was okay to touch them, saying, "I know I'm not supposed to do this." (*Id.* ¶¶ 57, 59, 139.) Ms. Sheidy then took plaintiff back to an exam room where the unwanted touching continued. (*Id.* ¶¶ 63-64, 73.) When plaintiff told Ms. Sheidy that they survived an "attempted murder" on account of their transgender status, Ms. Sheidy asked, "Did you attempt to murder yourself?" (*Id.* ¶¶ 69-71.) Ms. Sheidy disputed that plaintiff was dehydrated and told plaintiff they felt this way because they were "messing with" their hormones, which were "discombobulated." (*Id.* ¶ 72.) After these comments, plaintiff's friend went to the nurse's station for help. (*Id.* ¶¶ 74-76.) When no one came, plaintiff's spouse said within earshot of the nurse's station that he would treat plaintiff himself. (*Id.* ¶¶ 77-78.)

Then a second nurse, Ms. Purvis,[2] continued the discriminatory treatment. (*Id.* ¶ 79.) Despite knowing plaintiff's pronouns because plaintiff explained them first, she misgendered plaintiff. (*Id.* ¶ 85.) Ms. Purvis asked about the scars on plaintiff's chest, which were from gender affirming "top surgery," but this had nothing to do with any risk from an EKG. (*Id.* ¶¶ 4, 83-84, 133, 161.) This nurse appeared tense, explaining that they did not want to "offend" plaintiff. (*Id.* ¶ 86.) When she finally gave plaintiff IV fluids after 51 minutes in the facility, Ms. Purvis left blood on plaintiff's arm and the sheet on the exam chair without cleaning it up. (*Id.* ¶¶ 91, 100.)

Finally, a PA, Nicholas Wunder, came to check on plaintiff. (*Id.* ¶ 92.) Mx. Dallas recounted the unequal treatment they received that day. (*Id.*) Mr. Wunder apologized for what happened. (*Id.* at ¶¶ 93-94.) And he reviewed plaintiff's medical records, agreeing with the EKG

[2] The complaint refers to this nurse as "Cindy," as her surname was unavailable. Defendants offer that her name is Cindy Purvis. (Mot. 20-21.) Plaintiff accepts that representation as true to use her surname. *See* L.R. 107(9)(c).

reading of sinus tachycardia (*id.* ¶ 95), another sign of severe dehydration. But he ignored the elevated white blood cell count that a blood test revealed. (*Id.* ¶¶ 106-07.) Patient First did not conduct a urinalysis or other follow-up on the potential for infection. (*Id.* ¶¶ 97-98.) As a result, plaintiff's painful bladder infection went undiagnosed by Patient First, which a different urgent care clinic in Pennsylvania diagnosed and treated. (*Id.* ¶¶ 109-113, 135, 165, 167.)

These events caused new and exacerbated symptoms of trauma. As explained in more detail below, within eight weeks of visiting Patient First Aberdeen, tests showed that plaintiff likely had PTSD, severe anxiety, and moderate depression. (*Id.* ¶ 115, 120-122.) Plaintiff was prescribed increased doses of two medications to treat these symptoms (*id.* ¶ 118), increased visits with therapists (*id.* ¶¶ 116-17), and started intravenous and nasal treatment with ketamine (*id.* ¶¶ 124-25). Plaintiff has experienced flashbacks from this visit, straining their working life, marital intimacy, and ability to safely seek medical care. (*Id.* ¶¶ 6, 115, 123, 126, 154-55.)

LEGAL STANDARD

"Under Rule 12, to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Pledger*, 5 F.4th at 520 (cleaned up).[3] "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable, and that a recovery is very remote and unlikely." *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 171 (4th Cir. 2016) (cleaned up).[4]

[3] Defendants simply assert that plaintiff did not follow the pre-suit requirements without filing any evidence in support. Accordingly, the motion to dismiss should not be construed as a motion for summary judgment, as there is no evidence besides the complaint, documents incorporated into the complaint, or facts of which the Court may take judicial notice. *See Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 606 (4th Cir. 2015). Plaintiff reads defendants to mean that the complaint had to allege satisfaction of these requirements.

[4] Were the Court to grant the motion as to any claim, dismissal should be without prejudice and with leave to replead. "Dismissal with prejudice should be reserved for complaints with deficiencies that are 'truly incurable.'" *Stokes v. Hudson*, 2024 WL 1406045, 2024 U.S. Dist. LEXIS 60432, at *2 (D.S.C. Apr. 2, 2024) (cleaned up) (quoting *McLean v. United States*, 566 F.3d 391, 401 (4th Cir. 2009) (abrogated on other grounds)).

ARGUMENT

I. The Pre-Suit Requirements of the HCMCA Do Not Apply.

Defendants claim that the Court must dismiss for "failure to comply with" the pre-suit requirements of Maryland's HCMCA. (Mot. 4.) "The short answer to this assertion is that defendants are mistaken." *Severe v. United States*, 2021 WL 4521345, 2021 U.S. Dist. LEXIS 190889, at *41 (D. Md. Oct. 1, 2021). Pre-suit "state-law certification requirements . . . are inconsistent with the Federal Rules of Civil Procedure, and thus displaced by those rules in federal court." *Pledger*, 5 F.4th at 514. This rule reflects "a 'growing consensus' among federal circuit courts". *Martin v. Pierce Cty.*, 34 F.4th 1125, 1129 (9th Cir. 2022) (citing *Pledger*, 5 F.4th at 518). Neither an expert certificate nor an administrative notice is necessary to sue here.

A. An Expert Certificate is Not a Prerequisite to Suit in Federal Court.

Defendants' argument that medical malpractice claims must be "certified by a qualified expert" before a suit in federal court may proceed (Mot. § I.C) ignores *Pledger*. There, a federal prisoner brought a medical malpractice claim in federal court. West Virginia's Medical Professional Liability Act requires malpractice plaintiffs to "serve on each named provider, at least thirty days before filing suit, a notice of the claim . . . and a 'screening certificate of merit' by a qualifying health care provider evaluating the claim," among other things. *Pledger*, 5 F.4th at 516 (citing W. Va. Code § 55-7B-6(b)). The government moved to dismiss because plaintiff "had not done so," and the district court adopted an R&R advising dismissal. *Id.*

The Fourth Circuit reversed dismissal of the malpractice claim. *Id.* at 514. The court applied the two-part test from *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance*, 559 U.S. 393 (2010), asking (1) whether the Federal Rules of Civil Procedure "answer the question in dispute" by requiring that "a medical malpractice plaintiff must provide pre-suit expert support for his claim," and (2) if any such Rule is invalid under the Rules Enabling Act or

Constitution. *Pledger*, 5 F.4th at 518-19. The court found the broad and specific instructions of Rules 8, 9, 11, and 12 irreconcilable with West Virgnia's pre-suit expert requirements and found no basis to invalidate the Federal Rules. *Id.* at 520-21.

The same is true here. Maryland's pre-suit expert certification requirement is similar to West Virgnia's. *Compare* Md. Code Ann., Cts. & Jud. Proc. § 3-2A-04(b)(1)(i)(1) (LexisNexis 2023) (plaintiff must serve "a certificate of a qualified expert . . . within 90 days from the date" of administrative complaint to sue) *with* W.Va. Code Ann. § 55-7B-6(b) (plaintiff must "serve on each named provider, at least thirty days before filing suit . . . a 'screening certificate of merit' by a qualifying health care provider evaluating the claim"). As a result, courts applying *Pledger* to Maryland's HCMCA have uniformly held its pre-suit requirements inapplicable in federal court and denied a motion to dismiss on those grounds. *See Charette v. Wexford Health Sources, Inc.*, 2022 WL 4449306, 2022 U.S. Dist. LEXIS 173183, at *16 (D. Md. Sep. 23, 2022); *Leupolu v. Okoluku*, 2022 WL 4017308, 2022 U.S. Dist. LEXIS 159037, at *5-6 (D. Md. Sep. 1, 2022); *Rodriguez v. United States*, 2022 WL 3156234, 2022 U.S. Dist. LEXIS 141513, at *13 & n.2 (D. Md. Aug. 8, 2022); *Severe*, 2021 U.S. Dist. LEXIS 190889, at *41-42; *DeBlois v. Corizon Health, Inc.*, 2021 WL 3142003, 2021 U.S. Dist. LEXIS 140286, at *16, *22 (D. Md. July 23, 2021); *see also Mummert v. United States*, 2023 WL 6990480, 2023 U.S. Dist. LEXIS 190216, at *7-9 (M.D. Pa. Oct. 23, 2023) (denying motion to dismiss premised on plaintiff not "submitting the claim to the Maryland [HCADRO] . . . and supplying a qualified expert certificate").[5]

[5] Plaintiff has found two cases post-dating *Pledger* that dismissed medical malpractice claims for not following the HCMCA's procedures. Neither cite *Pledger*, and an incarcerated *pro se* plaintiff brought both. *See Thornton v. Cindy*, 2022 WL 13725854, 2022 U.S. Dist. LEXIS 192284, at *8 (D. Md. Oct. 20, 2022); *Conaway v. Watts*, 2021 WL 3741398, 2021 U.S. Dist. LEXIS 159789, at *5 n.2 (D. Md. Aug. 19, 2021) (statement that hypothetical medical malpractice claim would be dismissed "were [plaintiff] to raise any"). These opinions are not persuasive because they conflict with *Pledger* and do not apply *Shady Grove*.

Defendants cite two cases holding that the HCMCA pre-suit requirements apply in federal court. (*See* Mot. 4 (citing *Rowland v. Patterson*, 882 F.2d 97 (4th Cir. 1989) and *Lewis v. Waletzky*, 576 F. Supp. 2d 732 (D. Md. 2008)).) *Rowland* merely noted that the Fourth Circuit held that the HCMCA arbitration precondition applies in federal court in *Davison v. Sinai Hospital of Baltimore, Inc.*, 462 F. Supp. 778 (D. Md. 1978), *aff'd*, 617 F.2d 361 (4th Cir. 1980).[6] *See Rowland*, 882 F.2d at 99. *Lewis* also followed *Davison*, explaining that there "[t]he Maryland district court, affirmed by the Fourth Circuit," held the HCMCA requirements enforceable in federal court, which was "precedent the Court will follow." 576 F. Supp. 2d at 738. But *Davison* is not good law after *Pledger*. So *Rowland* and *Lewis* are not good law, either.

To be sure, "the Fourth Circuit did not explicitly overrule *Davison* in *Pledger*." *Rodriguez*, 2022 U.S. Dist. LEXIS 141513, at *13 n.2. The court did not need to decide whether the HCMCA "would apply in federal court" to resolve the question presented by West Virginia law. *Pledger*, 5 F.4th at 523. "Nonetheless, the Court revealed something of its view." *DeBlois*, 2021 U.S. Dist. LEXIS 140286, at *22; *accord Charette*, 2022 U.S. Dist. LEXIS 173183, at *18; *Rodriguez*, 2022 U.S. Dist. LEXIS 141513, at *13 n.2. The Fourth Circuit noted that while *Davison* affirmed dismissal for failure to follow the HCMCA arbitration process, it "did so without discussion, simply adopting a district court ruling that had analyzed the question under . . . *Erie* instead of . . . *Hanna*." *Pledger*, 5 F.4th at 523. The Fourth Circuit "f[ou]nd the district court's reasoning in that case unconvincing, as it predates *Shady Grove* and offers no 'satisfactory response to the clear conflict between the federal pleading rules' and state law". *Id.* (quoting *Gallivan v. United States*, 943 F.3d 291, 296 (6th Cir. 2019)).

[6] Although the arbitration precondition has since been superseded by an amendment permitting opt-outs. (*See* Mot. 5 n.3.)

And "other language in the case suggests the Fourth Circuit did not intend to cabin its holding to West Virginia's statute." *Charette*, 2022 U.S. Dist. LEXIS 173183, at *18 (noting that the holding covers "requirements *like* West Virginia's" (quoting *Pledger*, 5 F.4th at 523) (emphasis added)). Indeed, the Fourth Circuit later found erroneous two dismissals for failure to follow the expert certification requirement under Virginia's analogous statute after *Pledger*. *See Dunn v. U.S. Dep't of Veterans Affairs*, 2022 WL 898037, 2022 U.S. App. LEXIS 8139, at *1 n.* (4th Cir. Mar. 28, 2022) (per curiam); *Zupko v. United States*, 2022 WL 256343, 2022 U.S. App. LEXIS 2464, at *1-2 (4th Cir. Jan. 26, 2022) (per curiam). District courts in the Fourth Circuit have likewise rejected pre-suit requirements in other States.[7]

B. An Administrative Notice is Not a Prerequisite to Suit in Federal Court.

Defendants point to the HCMCA requirement that medical malpractice plaintiffs file a notice of claim with HCADRO as a separate barrier to suit. (*See* Mot. §§ I.A, B.) Since *Pledger*, the Fourth Circuit has also found "in error" a district court's dismissal for not following West Virginia's "pre-suit notice and certification requirement for medical negligence cases," leaving little doubt that *Pledger*'s holding covers pre-suit notice requirements. *Nellson v. Doe*, 2023 WL 3336689, 2023 U.S. App. LEXIS 11463, at *18 n.3 (4th Cir. May 10, 2023). Courts have denied motions to dismiss rejecting both arguments together. *See Mummert*, 2023 U.S. Dist. LEXIS 190216, at *7-9; (plaintiff did not give notice to HCADRO or file expert certificate);

[7] *See, e.g.*, *Jackson-Shakespeare v. Novant Healthcare Inc.*, 2023 WL 8809291, 2023 U.S. Dist. LEXIS 226939, at *3-6 (W.D.N.C. Dec. 20, 2023); *Moreno v. Ahmed*, 2023 WL 3948291, 2023 U.S. Dist. LEXIS 101363, at *70-71 (M.D.N.C. June 12, 2023), *R&R adopted*, 2023 U.S. Dist. LEXIS 125728 (M.D.N.C. July 21, 2023); *Johnson v. W. Va. Univ. Bd. of Governors*, 2022 WL 908496, 2022 U.S. Dist. LEXIS 56876, at *36-37 (S.D. W. Va. Mar. 28, 2022) (Johnston, C.J.) ("*Pledger*'s holding is categorical . . ."); *McCoy v. Liberty Mut. Ins.*, 2022 WL 487006, 2022 U.S. Dist. LEXIS 28811, at *4 (D.S.C. Feb. 17, 2022); *Hancock v. United States*, 2022 WL 291627, 2022 U.S. Dist. LEXIS 17792, at *16 (S.D. W. Va. Jan. 7, 2022), *R&R adopted*, 2022 U.S. Dist. LEXIS 16884 (S.D. W. Va. Jan. 31, 2022); *Doe v. Raleigh Gen. Hosp., LLC*, 2021 WL 4496230, 2021 U.S. Dist. LEXIS 188510, at *11 (S.D. W. Va. Sep. 30, 2021); *Saylon v. United States*, 2021 WL 3160425, 2021 U.S. Dist. LEXIS 138452, at *9-10 (E.D.N.C. July 26, 2021).

Charette, 2022 U.S. Dist. LEXIS 173183, at *12 (plaintiffs neither submitted a "claim to HCADRO" nor "filed a certificate of qualified expert"); *Rodriguez*, 2022 U.S. Dist. LEXIS 141513, at *11 (denying motion to dismiss even though plaintiff did not "submit this claim—[or] a certificate of qualified expert—to the Maryland" HCADRO).

Even analyzed separately, the Federal Rules displace the pre-suit notice requirement just as they displace the pre-suit expert requirement. At least one court has considered these requirements as "distinct concepts." *Tederick v. LoanCare, LLC*, 2023 WL 6465404, 2023 U.S. Dist. LEXIS 177429, at *20 (E.D. Va. Oct. 2, 2023). But that court's *Shady Grove* analysis came out the same way on pre-suit notice. The question at step one was "whether a plaintiff must give notice to the would-be defendant before he may file and maintain suit under" West Virginia law. *Id.* The court found that the Federal Rules of Civil Procedure answer that question: "Rule 3 'requires only the filing of a complaint to commence an action—nothing more.'" *Id.* at *21 (quoting *Albright v. Christensen*, 24 F.4th 1039, 1046 (6th Cir. 2022)). By creating a "mandatory prerequisite" to provide pre-suit notice, West Virginia's statute "conflicts with Rule 3 by adding . . . procedural steps for commencing a suit beyond those that Rule 3 contemplates." *Id.* at *24 (quoting *Martin*, 34 F.4th at 1131). At step two, the court found no basis to reject the Federal Rules. *Id.* at *25 (citing *Pledger*, 5 F.4th at 521). "Because the pre-suit notice requirement . . . conflicts with Rule 3 and Rule 3 is valid, Rule 3 controls," and "[f]ailure to plead pre-suit notice does not mandate dismissal". *Id.* So too here.

Even were the court to "wade into the 'murky waters' of an *Erie* analysis to determine whether [the HCMCA] affords a substantive or procedural right," *id.*, the pre-suit notice requirement is procedural, not substantive. The HCMCA itself states that outside of two sections (Md. Code Ann., Cts. & Jud. Proc. §§ 3-2A-08A, -09), its provisions "shall be deemed

procedural in nature and may not be construed to create, enlarge, or diminish any cause of action not heretofore existing, except the defense of failure to comply with the procedures required under this subtitle," *id.* § 3-2A-10. Maryland's highest court has construed the pre-suit requirements to be procedural, not substantive, after the Fourth Circuit certified a question to it arising from the *Lewis* case defendants cite. *See Lewis v. Waletzky*, 31 A.3d 123, 135 (Md. 2011). The pre-suit requirements "do not define the standard of care to be applied; nor do they prescribe how liability is to be determined," but rather "control[] access to Maryland courts." *Id.* at 134.

The broader statutory context confirms this. The HCMCA states that claims that exceed "the limit of the concurrent jurisdiction of the District Court"—that is, the Maryland *state* court—shall be governed by its requirements, and a "suit of that type may not be brought or pursued in any court of this State" except on those terms. Md. Code Ann., Cts. & Jud. Proc. § 3-2A-02(a)(1)-(2); *see also id.* § 3-2A-01(c) (defining "court" as a "circuit court for a county"). Unlike a geographical limitation (*in* this State), the language "of this State" denotes sovereignty and refers to Maryland state courts, not federal courts. *Cf. FindWhere Holdings, Inc. v. Sys. Env't Optimization, LLC*, 626 F.3d 752, 755 (4th Cir. 2010) (venue agreement's use of courts "of the State" unambiguously refers to sovereignty). Accepting defendants' argument that the HCMCA applies wholesale in federal court would invert *Shady Gove* because the HCMCA mandates use of the Maryland rules of civil procedure, Md. Code Ann., Cts. & Jud. Proc. § 3-2A-02(d), which claim to displace the Federal Rules, (*see* Mot. § I.C). That just underscores why both HCMCA pre-suit requirements are procedural, and the Federal Rules dispense with them in federal court.

C. The Venue Agreement Precludes HCADRO Arbitration.

Even if the HCMCA's pre-suit arbitration process governed actions in federal court (and it does not), defendants cannot invoke it anyway because they agreed with plaintiff that "any and

all claims or lawsuits . . . shall be brought in the city/county and state where the Patient First medical center(s) at which [the patient] received those services is located or the appropriate federal court having jurisdiction over that city or county." (Compl. ¶ 21.) This clause prevents Patient First from requiring plaintiff to arbitrate claims through the HCADRO because HCADRO is neither "in the city/county" where Patient First Aberdeen is, nor is it a "federal court having jurisdiction" like this Court.

"[F]orum-selection clauses using geographical limitations permit the case to be filed with any court, whether state or federal, that is *located within the contractually described geographical boundary*." *Bartels v. Saber Healthcare Grp., LLC*, 880 F.3d 668, 676 (4th Cir. 2018) (emphasis in original). *Bartels* was a class action of nursing home residents against the corporate owner of their nursing homes for "fail[ing] to deliver the contractually promised care" and meet the staffing levels required by state law. *Id.* at 671. Their residency agreement had a forum-selection clause stating that "the county in which the Facility is located shall be the sole and exclusive venue for any dispute between the parties . . ." *Id.* at 671-72. Plaintiffs at the Franklin Manor nursing home in Franklin County, North Carolina, sued in county court. *Id*. at 672. Defendants removed to federal court. *Id*. Plaintiffs moved to remand, arguing that the venue agreement precluded suit in federal court because there was "no federal courthouse in Franklin County," and the district court granted the motion. *Id.*

On appeal, the Fourth Circuit agreed that the "operative forum-selection clause precludes removal to federal court." *Id.* at 679.[8] Defendants argued that the agreement's use of "county" should encompass courts with jurisdiction over that county but located outside it. *Id.* at 674. The Fourth Circuit rejected that, explaining that defendants would have the court "re-write the

[8] But the court vacated the district court's order for further proceedings to determine which defendants the agreement bound. *Id.* at 682.

clause" to add "*or the county in which a federal courthouse is located that has jurisdiction over the county in which the Facility is located*" to the end. *Id.* And it noted that "every circuit court to have addressed this issue" held that contractual language commanding that litigation shall take place "in" a specific county limits actions to tribunals physically present there. *Id.* at 675.

Here, the geographic limitation functions in a comparable way to foreclose the HCADRO as a mandatory forum. Like the language in *Bartels* requiring actions to be brought in "the county in which the Facility is located," the language of the Patient First venue agreement with plaintiff states that claims "shall be brought in the city/county and state" where Patient First Aberdeen "is located," and it adds the language that was missing in *Bartels* to make a federal court with jurisdiction over that "city or county" another option. (Compl. ¶ 21.) Patient First Aberdeen is in the city of Aberdeen in Harford County, Maryland. (Compl. ¶ 14.) But HCADRO is in Baltimore, not Harford County.[9] And HCADRO is not a federal court.

The venue agreement's language requiring plaintiff's claims to "be brought in the city/county and state" where Patient First Aberdeen is located—Aberdeen, Harford County, Maryland—is not disjunctive; it does not permit a party to bring a claim *either* in a court within the "city/county" *or* somewhere outside that city/county but within the same State. If any claims could be litigated anywhere in the State where the Patient First facility is located, the "city/county" limiter would be superfluous. *See, e.g.*, *PaineWebber, Inc. v. Rutherford*, 903 F.2d 106, 109 (2d Cir. 1990). And any ambiguity in the venue agreement should be construed against the drafter, Patient First. *See Gerschick v. ECPI Coll. of Tech., L.C.*, 2009 WL 10689485, 2009

[9] The Court can take judicial notice of HCADRO's Baltimore address without converting to a motion for summary judgment. *See Maryland Manual On-Line*, https://msa.maryland.gov/msa/mdmanual/25ind/html/42healc.html (last accessed May 7, 2024).

U.S. Dist. LEXIS 147276, at *9 n.1, *11-12 (E.D. Va. Aug. 6, 2009) (granting plaintiff's motion to remand under forum selection clause defendant drafted); (Compl. ¶¶ 21, 57-58).

As in *Bartels*, defendants would have the Court re-write the venue agreement to permit claims to "be brought in the city/county ~~and~~ **or** state" where the treating facility is located or the "appropriate federal court**, state agency, or arbitral panel** having jurisdiction over that city or county." But of course, the Court's "role is limited to enforcing the contract as written." *Bartels*, 880 F.3d at 674. Simply put, "[b]ecause there is no [HCADRO] in [Harford] County, the plain language of the forum-selection clause precludes" forced arbitration there. *Id.* at 676.

D. Federal Civil Rights Laws Preempt the HCMCA's Pre-Suit Requirements.

Even if the HCMCA's pre-suit procedures bypassed the venue agreement and bound parties in federal court (and they do not), they would not apply to an ACA claim premised on Title IX. Section 1557 itself contains no exhaustion requirement. *See* 42 U.S.C. § 18116 (2024). And Title IX "has no administrative exhaustion requirement and no notice provisions. Under its implied private right of action, plaintiffs can file directly in court . . . and can obtain the full range of remedies". *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009) (internal citations omitted); *see also Cannon v. Univ. of Chi.*, 441 U.S. 677, 706 n.41 (1979).

Sidestepping this authority, defendants argue that "constitutional claims," as well as the Section 1557 claim, "fall within the scope of the" HCMCA because those claims are intentional torts. (Mot. 6.) But exhaustion of state administrative remedies is not a prerequisite to bringing constitutional claims in a Section 1983 suit. *See Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982). And the ACA would preempt any condition precedent that could "prevent the application" of Section 1557 by foreclosing a federal action. *See* 42 U.S.C. § 18041(d). A "state law also is pre-empted if it interferes with the methods by which the federal statute was designed

to reach this goal." *UnitedHealthcare of N.Y., Inc. v. Lacewell*, 967 F.3d 82, 96 (2d Cir. 2020) (cleaned up). Funneling federal civil rights claims through a state administrative agency as a condition to suit in federal court would defeat the purpose of Section 1557 to provide a federal forum. That is another reason to doubt that the HCMCA's procedures apply in federal court at all.

E. The HCMCA Exempts Informed Consent Claims Like Battery.

Even if an expert certificate were necessary to sue in federal court (and it is not), it is unnecessary for the battery claims under the HCMCA's own terms, which create an exception from the expert certificate requirement where "the sole issue in the claim is lack of informed consent". Md. Code Ann., Cts. & Jud. Proc. § 3-2A-04; *see Wilcox v. Orellano*, 115 A.3d 621, 625 (Md. 2015) ("No certificate or report need be filed if the sole issue is lack of informed consent."). Here, the three battery claims (Counts 2, 3, and 4) each allege touching of plaintiff without "informed consent". (Compl. ¶¶ 139, 143, 148.) Even when informed consent claims sound in negligence, they do not need expert evidence on the standard of care because "[w]hether a physician has fulfilled his duty to disclose . . . is to be determined by reference to a general standard of reasonable conduct and is not measured by a professional standard of care." *Sard v. Hardy*, 379 A.2d 1014, 1022 (Md. 1977). As a result, the HCMCA exempts the battery claims from its pre-suit requirements.

II. The Complaint Plausibly Pleads Sex Discrimination Under the ACA.

A. The Complaint Plausibly Alleges Discrimination Based on Sex.

"To prevail on a section 1557 claim, a plaintiff must show that: 1. Defendant is a health program or activity that receives federal funds, and 2. Plaintiff was subjected to discrimination in healthcare services on the basis of sex." *Fain v. Crouch*, 618 F. Supp. 3d 313, 330-31 (S.D. W. Va. 2022), *aff'd sub nom. Kadel v. Folwell*, Nos. 22-1721, 22-1927, 2024 U.S. App. LEXIS 10294 (4th Cir. Apr. 29, 2024) (en banc). Defendants do not dispute that the complaint alleges

the first element. (*See* Mot. 8.) Instead, they contend that the complaint does not "allege discriminatory conduct". (Mot. 12.) It does. Two cases alleging discriminatory conduct against a transgender patient are instructive. *See Jolley v. Riverwoods Behav. Health, LLC*, 2021 WL 6752161, 2021 U.S. Dist. LEXIS 252456 (N.D. Ga. Aug. 30, 2021); *Rumble v. Fairview Health Servs.*, 2015 WL 1197415, 2015 U.S. Dist. LEXIS 31591 (D. Minn. Mar. 16, 2015).

In *Rumble*, the plaintiff brought a sex discrimination claim under the ACA against a hospital and a physician's employer alleging that "he received worse care . . . because of his status as a transgender man" during an emergency room visit and later admission. 2015 U.S. Dist. LEXIS 31591, at *2. The plaintiff had been experiencing pain and inflammation in "his reproductive organs" and dysuria, so he went to the emergency room. *Id.* at *5-6. At the check-in desk, he handed over his driver's permit, which "incorrectly identified him as female," but he "communicated his gender identity when he answered the clerk's preliminary questions." *Id.* at *7 (cleaned up). All the same, the clerk said that Fairview had "female on file" and gave the patient a wristband with the initial, "F." *Id.*

While the patient waited in pain in an exam room, his mother went looking for staff and asked them to bring pain medication. *Id.* A doctor arrived hours later and asked pointed questions about the patient's sexual history. *Id.* at *9-10. The patient asked for the doctor to be gentle during a physical exam because he was in "extreme pain," but the doctor repeatedly "jabbed" the affected area with his fingers. *Id.* at *10. The doctor said he "didn't know what the male hormones [the plaintiff] was taking were doing to [the patient's] body" or "how much swelling was due to the hormones." *Id.* at *11. Plaintiff cried out in pain asking the doctor to stop the exam, but the doctor continued until the patient's mother yelled for him to stop. *Id.*

Afterward, the patient was admitted to the hospital, where a doctor said that he "could have died." *Id.* at *12-13. But Mr. Rumble suffered other demeaning treatment. A treating physician wiped the gloves he was using to examine the plaintiff's genitals on the patient's bed, and, without changing gloves, touched the plaintiff's face. *Id.* at *14. Other nurses "seemed tense" when they came into his room. *Id.* at *14-15 (cleaned up). The initial course of antibiotics wasn't working, but after plaintiff's mother intervened again to propose STI screening—which, despite the intrusive sexual questions, the hospital had not conducted—the treatment then changed, and the patient improved. *Id.* at *15-16. After the visit, plaintiff's emergency room bill stated that "the diagnosis is inconsistent with the patient's gender" in all capital letters. *Id.* at *16. As a result, Mr. Rumble would not "visit a hospital or doctor's office alone" again. *Id.* at *17.

Defendants moved to dismiss for failure to allege discriminatory treatment or intent, and the court denied the motion. *Id.* at *40-41. It reasoned that although defendants did not "expressly mock or criticize" the plaintiff's transgender status, the unnecessary questions about plaintiff's sex life and "disparaging comments about [the patient's] use of hormones" were plausibly "made as indirect, offensive references about Plaintiff's gender identity." *Id.* at *42 (cleaned up). And the plaintiff had plausibly alleged an "assaultive exam." *Id.* Taken together, the court found that this alleged a "denial of benefits of appropriate medical care." *Id.* at *43. The court noted that a doctor stands in a "position of authority" over a patient, especially during a genital exam. *Id.* at *44. And the court rejected defendants' argument that because the plaintiff eventually received treatment, he must not have been denied "the benefits of medical care." *Id.* It explained that an ACA plaintiff need not allege a complete denial of "medical care or attention"; some denial of benefits or discrimination suffices. *Id.* at *44-45.

Jolley was similar. Ms. Jolley was a transgender woman suffering from chronic daily headaches, "depression[,] and suicidal ideation" who entered a mental health facility in Georgia. 2021 U.S. Dist. LEXIS 252456, at *2. Upon arrival, she "informed Defendant of her transgender status and of the pronouns she preferred to be used." *Id.* The patient was strip searched by cisgender male nurses who mocked the plaintiff. *Id.* at *2-3. Although the patient "attempted to cover her breasts that she developed from hormone treatment," the nurses "required her to drop her arms" so they could examine her breasts, and after redressing, they continued to "pat her down" on intimate areas. *Id.* at *3. The patient was admitted for chronic headaches, but nurses twice refused to treat her with the prescribed medication for that condition, calling her "Mr." *Id.* at *3-4. Another employee at the facility "saw Plaintiff hyperventilating in her room and brought her to the nurses' station," looking for a nurse to administer pain medication while misgendering the patient. *Id.* at *4. Ms. Jolley "met with a patient advocate to complain about her mistreatment . . . and denial of medications," but the advocate rudely dismissed her without corrective action. *Id.* at *4-5. These events took place over the course of a single overnight visit. *Id.* at *1, *4.

The defendant in *Jolley* likewise moved to dismiss for failure to state a claim under the ACA, and the court denied the motion. *Id.* at *6, *10-11. The court held that the complaint alleged that plaintiff had been "denied the benefits of" and "subjected to discrimination" in healthcare services. *Id.* at *11. The complaint alleged that plaintiff was "denied the benefits" of healthcare when "she was denied her CDH and estrogen medication and medical assistance for her conditions." *Id.* And the complaint alleged that plaintiff was "subjected to discrimination" in undergoing a strip search where the facility's nurses "made direct comments about Plaintiff's transgender status" and "joked about it" all "while allegedly denying her treatment and/or medication." *Id.* at *11-12.

The complaint here alleges common elements of the facts held to state an ACA claim in *Rumble* and *Jolley*. Like the patient in *Jolley*, Mx. Dallas came to the facility with a preexisting mental health diagnosis that they shared. (Compl. ¶¶ 69-70.) Like the patient in *Rumble*, Mx. Dallas was suffering from symptoms that included painful urination. (Compl. ¶¶ 5, 165.) And more than that—unlike the prior plaintiffs, Mx. Dallas repeatedly lost consciousness, including in the Patient First Aberdeen waiting room. (Compl. ¶¶ 1-2, 51-52, 60-62.) Just as Ms. Jolley did, Mx. Dallas explained their "pronouns and gender identity . . . to each healthcare provider they encountered". (Compl. ¶ 133; *see also id.* ¶¶ 69, 80.) Mr. Rumble clarified his gender identity in response to "preliminary questions" at check-in, 2015 U.S. Dist. LEXIS 31591, at *7, and here, plaintiff's spouse did the same, twice: first at an electronic kiosk, marking plaintiff's gender identity from a drown-down menu (Compl. ¶¶ 45-49), and again by speaking with a Patient First employee at the check-in desk (*id.* ¶ 50).

Ms. Sheidy's statements during her exam were similarly "pointed" in a way that suggests an "attempt to embarrass . . . rather than to diagnose". *Rumble*, 2015 U.S. Dist. LEXIS 31591, at *10, *42. Like the intrusive questions about sexual history in *Rumble*, what defendants characterize as Ms. Sheidy's "inquiry into Plaintiff's medical history" (Mot. 14) began by asking plaintiff whether they were overdosing and suggesting that plaintiff was an alcoholic (Compl. ¶¶ 53-56). When plaintiff explained that they survived an attempted murder and had a trauma history as a result (like how Mr. Rumble asked for the doctor to be gentle), Ms. Sheidy asked, "Did you attempt to murder yourself?" (Compl. ¶¶ 69-71.) As in *Rumble*, Ms. Sheidy "made disparaging comments about [plaintiff's] use of hormones," 2015 U.S. Dist. LEXIS 31591, at *42—dismissing dehydration and faulting plaintiff for "messing with" their

"discombobulated" hormones instead, (Compl. ¶¶ 3, 72, 152). And the complaint, as in *Rumble* and *Jolley*, alleges an "assaultive exam." (Compl. ¶¶ 3, 4, 57, 59, 73, 133-34, 142-43, 147-49.)[10]

Although Mx. Dallas was not strip searched at Patient First, they "took their shirt off" for an EKG reading, at which point the second Patient First nurse asked what plaintiff's top surgery scars were from. (Compl. ¶ 83; *see id.* ¶¶ 84-85.) In *Jolley*, the defendants focused on the trans woman's breasts, affected by hormone therapy, and here, Ms. Purvis likewise focused on plaintiff's gender affirming chest procedure. (Compl. ¶¶ 83-84.)[11] Ms. Purvis misgendered plaintiff like the nurses in *Jolley* and the bracelet in *Rumble* did. (Compl. ¶ 85.) She "seemed tense" like the nurses in *Rumble*, saying that she did not want to "offend" plaintiff. (*Id.* ¶ 86).

Most importantly, even though Mx. Dallas complained of dehydration and appeared to be repeatedly losing consciousness—as Ms. Sheidy's sternal rub of plaintiff suggested (Compl. ¶¶ 61-62)—Patient First administered no IV fluids to plaintiff for 51 minutes (*id.* ¶ 91). Like Ms. Jolley, who was denied pain medication for the chronic headaches that were the basis for admission, plaintiff was denied IV fluids with electrolytes, which the life-threatening emergency of severe dehydration called for. (*Id.* ¶¶ 2, 24-30.) Instead, like in *Rumble* and *Jolley*, a third party had to search for the nurse's station to get attention for the patient: Mx. Williams requested another nurse (Compl. ¶ 75) and, when plaintiff's eyes rolled back in their head, their spouse approached the nurse's station and stated that he would treat plaintiff himself, (*id.* ¶¶ 77-78). Like the doctor that wiped his medical gloves on the patient's bed in *Rumble*, here, when plaintiff

[10] To be sure, the complaint here does not allege that plaintiff was battered during a genital exam or a strip search, but a battery is a nonconsensual offensive touching "upon any part of the body of another person." *Johnson v. Valu Food, Inc.*, 751 A.2d 19, 21 (Md. Ct. Spec. App. 2000).

[11] Patient First again litigates the merits by arguing that there are "medical reasons" that a "medical provider placing EKG leads on a patient's chest would have . . . for inquiring about surgical scars." (Mot. 21.) But Ms. Purvis did not phrase the question to concern cardiac history, so its medical relevance is a disputed fact issue.

finally received an IV, blood dripped onto their arm and chair, which Patient First made no attempt to remove. *Compare Rumble*, 2015 U.S. Dist. LEXIS 31591, at *14 *with* (Compl. ¶ 100).

On top of this, when Mx. Dallas saw the PA, they described what happened and received an apology, but Patient First did not screen for plaintiff's bladder infection. (Compl. ¶¶ 92-98.) The PA claimed that Ms. Sheidy had left the building before correcting himself to say that he did not actually know that. (*Id.* ¶ 94.) Despite having a record of plaintiff's elevated white blood cell count, pointing to infection (*id.* ¶¶ 106-7), the PA did not conduct or direct any follow-ups to determine whether an infection was present, even though Patient First admits that "[r]epeated dehydration can cause urinary tract infections," (*id.* ¶ 28). As a result, a painful bladder infection went undiagnosed by Patient First, causing plaintiff to suffer needlessly and experience the humiliation of trying to find a safe restroom at highway stops every 20 or 30 minutes. (*Id.* ¶¶ 109-113.) The assistant's role appeared to be to mollify plaintiff and discharge them, with only a more polite bedside manner to distinguish him from the patient advocate in *Jolley*. Because of this conduct, Mx. Dallas, like Mr. Rumble, now fears medical visits. (*Id.* ¶¶ 6, 124.)

B. Defendants' Conduct Arguments Dispute the Facts.

Eschewing an analysis of their conduct as a whole, defendants take each category of conduct in isolation and dispute the complaint's allegations rather than take them as true. (Mot. §§ II.B(1)-(4).) That approach is not the law. *See Rumble*, 2015 U.S. Dist. LEXIS 31591, at *49. And each of these four siloed defenses fails on its own anyway.

First, rather than take as true the allegation that Ms. Sheidy "told Mx. Dallas that they were not dehydrated" because their hormones were "discombobulated" (Compl. ¶¶ 3, 72, 152), defendants recast the statements as "acknowledging" that plaintiff might be dehydrated and "suggesting that Plaintiff's use of testosterone may have *contributed* to Plaintiff's dehydration".

(Mot. 13). But the complaint does not allege that. (*See* Compl. ¶ 72.) If defendants believe that, then Ms. Sheidy can testify about her statements at trial—which dismissal at the pleading stage prevents. And if Ms. Sheidy sincerely believed plaintiff was dehydrated, she would have treated them for dehydration. But defendants admit she did not "provide treatment." (Mot. 20.)

Defendants also try to rewrite Ms. Sheidy's question ("Did you attempt to murder yourself?" (Compl. ¶ 71)) as a benign evaluation of whether plaintiff "had attempted suicide" as part of a necessary medical history, (Mot. 13-14). But that reflexive statement disputed what Mx. Dallas was communicating and turned the allegation around on plaintiff in pointed language. Defendants' arguments about Ms. Sheidy's comments do little more than challenge their actual wording and tone, a dispute inappropriate for resolution at the pleading stage.

Second, defendants claim that misgendering cannot constitute discrimination under the ACA and that Ms. Purvis's misgendering of plaintiff was unintentional. (Mot. § I.B.2.) But courts addressing allegations of misgendering "have almost uniformly found the practice hostile, objectively offensive, and degrading." *Stanley v. City of N.Y.*, 71 Misc. 3d 171, 184 n.5 (N.Y. Sup. Ct. Dec. 23, 2020) (cleaned up) (collecting cases). Defendants graft on new facts not alleged in the complaint, claiming that Ms. Purvis "apparently apologized multiple times for her mistakes" and that her misgendering of plaintiff was "[i]nadvertent". (Mot. 14.) Those are more arguments past the pleading stage. And those new facts are irrelevant anyway: as explained below (in Section II.C), the requisite intent for deliberate indifference is knowledge, not malice. Properly viewed in its entirety, Ms. Purvis's conduct—just part of Patient First's conduct—included misgendering plaintiff, asking about scars from plaintiff's gender-affirming surgery, dismissing plaintiff's distress as mere offense, and leaving plaintiff's arm and bedsheet bloodied. That course of conduct is plausibly based on plaintiff's transgender status.

The motion also cites the out-of-circuit *Joganik* R&R and claims that the court there "dimiss[ed the] Section 1557 Title IX claim". (Mot. 14 (citing *Joganik v. E. Tex. Med. Ctr.*, No. 6:19-CV-517-JCB-KNM, 2021 WL 6694455, at *11 (E.D. Tex. Dec. 14, 2021)).) But the magistrate judge recommended "that Defendant's motion to dismiss the Section 1557 claim be denied" as to the lead plaintiff. *Joganik*, 2021 U.S. Dist. LEXIS 251682, at *32. Those plaintiffs proceeded *pro se* and *in forma pauperis*. *Id.* at *1. The court "note[d] that Plaintiffs' complaint is comprised of fourteen pages of rambling, scattered arguments . . ." *Id.* at *3 (cleaned up). But the court gave the lead plaintiff "one last opportunity to amend . . . limited in scope to her Section 1557 claim." *Id.* at *32. In the final attempt, the amended complaint did "not address the § 1557 claim" and instead alleged that the judge should "thank God for Plaintiff, the bravest transwoman of God," called for a judge's jailing for "killing souls with his greed," and shared plaintiff's desire to "rule over the West Portal of Angels." *Joganik*, 2022 WL 21758569, 2022 U.S. Dist. LEXIS 247170, at *2-4 (E.D. Tex. Oct. 6, 2022) (cleaned up). These allegations are absent here, and this case does not suggest that misgendering is inactionable.[12]

Third, defendants argue that there is no link between transgender discrimination and Ms. Sheidy's repeated battery of plaintiff because the allegation that cisgender patients in comparable situations would not be battered is conclusory. (Mot. § I.B.3.) The *Rumble* court rejected the same argument that plaintiff needed to allege specific facts showing that cisgender patients were treated differently at the pleading stage. 2015 U.S. Dist. LEXIS 31591, at *46. In any event, the complaint does allege how Patient First treats other patients: they have "the right

[12] Defendants' reliance on *Jennings* is unavailing as well. (Mot. 14 (citing *Jennings v. Univ. of N. Carolina*, 482 F.3d 686, 696 (4th Cir. 2007) (en banc)).) There, the Fourth Circuit rejected the defendants' argument that repeated inquiries into students' sex lives were "simple teasing and offhand comments" and vacated dismissal of plaintiff's claims at summary judgment. 482 F.3d at 691, 696 (cleaned up).

to consent to" any touching. (Compl. ¶ 58.) Viewing her conduct as a whole, Ms. Sheidy's transphobic statements and failure to treat plaintiff with IV fluids after losing consciousness provide a plausible basis to infer that the batteries were based on plaintiff's transgender status.

Fourth, defendants argue that plaintiff received timely treatment and that transgender status was not the "but-for cause" of any delay. (Mot. § I.B.4.) The complaint alleges that despite plaintiff's loss of consciousness and other signs of severe dehydration, it "took at least 51 minutes from plaintiff's arrival at Patient First to receive" IV fluids. (Compl. ¶ 91.) Defendants are correct that the complaint is not claiming that plaintiff received no attention or treatment of any kind for 51 minutes. (Mot. 16-17.)[13] But that is no basis for dismissal. "Section 1557 does not require the plaintiff to demonstrate that he received no medical care or attention. Rather, the statute simply requires that the plaintiff demonstrate that he was denied the benefits of a health program or activity, or discriminated against." *Rumble*, 2015 U.S. Dist. LEXIS 31591, at *44-45 (citations omitted). The complaint meets this by alleging throughout that plaintiff was "offered no treatment" *for dehydration* "for 51 minutes" (Compl. ¶ 3)—no IV fluids and no water, (*see id.* ¶¶ 91, 101, 133).[14] And Patient First did not investigate signs of infection, leaving plaintiff's bladder infection undiagnosed. (*Id.* ¶¶ 4-5, 106-07, 135.)

The complaint alleges that sex was a but-for reason for the differential treatment of Mx. Dallas. At its core, Ms. Sheidy told plaintiff they were not dehydrated because their symptoms were caused by testosterone therapy, and Patient First, through its nurses, failed to

[13] Defendants also dispute the complaint's allegation of a 51-minute delay in receiving IV fluids by arguing that a medical record they have not provided to the Court as an exhibit suggests that an IV infusion may have started after 29 minutes. (Mot. 21.) That is a quintessential fact issue unfit for resolving at the pleading stage.

[14] Plaintiff intends to clarify the language in this sentence from paragraph three by adding the italicized words in an amended complaint forthcoming after initial discovery into the corporate and employment relationships between defendants. This wording correction does not affect the present motion because plaintiff need not allege that they received no treatment for the claim to survive. *See Rumble*, 2015 U.S. Dist. LEXIS 31591, at *44-45.

give plaintiff IV fluids or water for nearly one hour because of that, even after they lost consciousness in their care. This is precisely the kind of "trans broken arm syndrome" treatment that misattributes "the patient's gender identity . . . to be the cause of a medical complaint". (Compl. ¶ 7, n.3.) The plaintiff was also misgendered, asked, "[d]id you attempt to murder yourself?" when describing an anti-trans hate crime they suffered, asked questions about their gender-affirming top surgery irrelevant to an EKG reading, repeatedly touched without consent, and discharged without follow-up into an infection that went untreated. (*Id.* ¶¶ 71, 133.)[15]

Defendants' other cases (Mot. 15-16) are also distinguishable. *Doe* from a few weeks ago does not help defendants. (*See* Mot. 16 (citing *Doe v. Bd. of Regents*, No. ADC-23-3100, 2024 WL 1657339 (D. Md. Apr. 17, 2024)).) There, Magistrate Judge Copperthite denied the motion to dismiss. 2024 U.S. Dist. LEXIS 70557, at *2. That plaintiff is a college student contending that an investigation into whether he sexually assaulted another student violated Title IX. *Id.* at *2-6. The Court cited language from other cases that a plaintiff must allege "patterns of decision-making that also tend to show the influence of gender" in disciplinary proceedings. *Id.* at *10 (cleaned up). The motion's other cases are similar. *See Doe v. State Univ. of N.Y.*, 2021 WL 1209563, 2021 U.S. Dist. LEXIS 62022, at *21-22 (E.D.N.Y. Mar. 30, 2021) (dismissal where student simply alleged that he "was disadvantaged in the disciplinary proceedings because he was male"); *Salau v. Denton*, 149 F. Supp. 3d 988, 999 (W.D. Mo. 2015) (complaint implausible

[15] Defendants rely on *Sheppard* to argue that the complaint fails to allege but-for causation, but its facts are distinguishable. (*See* Mot. 16-17 (citing *Sheppard v. Visitors*, 993 F.3d 230, 236–38 (4th Cir. 2021)).) There, a male student sued his school under Title IX alleging sex discrimination in facing discipline for his part in an assaultive fracas with his ex-girlfriend and another student to recover items stolen from his dorm room. *Id.* at 232-33. The allegations of differential treatment referred only to the other participants, who were not similarly situated because one committed assault and another larceny while the third student did nothing wrong. *Id.* at 237. *Sheppard* holds only that different disciplinary outcomes based on different acts and evidence is not but-for discrimination based on sex. *Id.* at 237-38.

without alleging "comments that demonstrate gender-biased animus" or "patterns of decision-making that tended to show the influence of gender").[16]

But those patterns need not involve facts beyond the plaintiff's purview: "[i]t is well-known that civil rights statutes exist . . . to protect a single individual from a statutory violation without the invariable need to prove a systemic and pervasive problem." *Basta v. Novant Health Inc.*, 56 F.4th 307, 317 (4th Cir. 2022) (cleaned up). And the complaint here does more than just allege that plaintiff received substandard treatment and was transgender, therefore, sex discrimination occurred. It adds what was missing in these prior cases: comments tending to show that gender influenced the differential treatment, such as misgendering, misattribution of dehydration symptoms to hormone therapy, and unnecessary questions about gender-affirming surgery. For all these reasons, plaintiff plausibly alleges sex discrimination under the ACA.

C. The Complaint Plausibly Pleads Deliberate Indifference.

The complaint also alleges deliberate indifference. (*Contra* Mot. § II.A.) Deliberate indifference "requires a plaintiff to plausibly plead that a defendant (1) *knew* that harm to a federally protected right was substantially likely and (2) *failed to act* on that likelihood." *Basta*, 56 F.4th at 317 (cleaned up). "The deliberate-indifference inquiry is nuanced and fact-intensive—precisely the province of the jury." *Bone v. Univ. of N.C. Health Care Sys.*, 2022 WL 138644, 2022 U.S. Dist. LEXIS 7937, at *189 (M.D.N.C. Jan. 14, 2022) (cleaned up).

Defendants argue that they may face liability for sex discrimination under the ACA only if, following Title IX, they had "actual notice" of discrimination. (*See* Mot. 9-12 (citing *Gebser v.*

[16] *Jones* was a Title VII case in which the plaintiff did not allege participation in a protected activity or temporal proximity closer than two months between the protected activity and the adverse action. *Jones v. Cecil Cty.*, 2024 WL 1329269, 2024 U.S. Dist. LEXIS 55791, at *11 (D. Md. Mar. 28, 2024). Here, the temporal proximity between the comments and substandard treatment was minutes, not months. And Ms. Jones claimed discrimination while affirmatively alleging that "other individuals with . . . a similar alleged disability as her were not terminated despite being similarly situated." *Id.* at *13. That defect is absent here.

Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998)).) The *Rumble* court explained that under *Gebser*, "a plaintiff *may* use Title IX to hold [an entity] liable for an employee's harassment . . . if an 'appropriate person,' or 'an official who at a minimum has authority to address the alleged discrimination and to institute correctives measures on the recipient's behalf, has actual knowledge of discrimination in the recipient's programs, and fails adequately to respond.'" 2015 U.S. Dist. LEXIS 31591, at *59-60 (quoting *Gebser*, 524 U.S. at 290) (cleaned up). "An official need not have 'substantial supervisory authority' within an organization" for liability to attach; it's enough that the individual "be someone with some discretion at a 'key decision point' in the administrative process." *Sparks v. Henry Ford Health Sys.*, 2024 WL 1228965, 2024 U.S. Dist. LEXIS 50491, at *15-16 (E.D. Mich. Mar. 21, 2024) (cleaned up). "Courts have applied this requirement to include nurses and hospital staff who have authority to take corrective measures." *Sparks*, 2024 U.S. Dist. LEXIS 50491, at *16 (collecting cases); *see also, e.g.*, *Ganzzermiller v. Univ. of Md. Upper Chesapeake Med. Ctr.*, 2019 WL 4751457, 2019 U.S. Dist. LEXIS 169559, at *18 (D. Md. Sep. 30, 2019) (denying summary judgment given genuine dispute over whether "doctors and nurses had discretion to make the 'key decision'" under *Gebser*); *Rumble*, 2015 U.S. Dist. LEXIS 31591, at *62-63 (denying motion to dismiss where doctor and nursing assistant failed to stop assaultive exam). The complaint alleges deliberate indifference for (1) the nurses and (2) the PA.

First, the complaint alleges that Ms. Sheidy and Ms. Purvis knew that harm to plaintiff's constitutional rights was substantially likely, had authority to prevent that harm, and did not act to do so. Mx. Dallas told each that they were trans, gave their pronouns, and shared their trauma history at the outset of the exams. (*See* Compl. ¶¶ 69, 80, 133.) And Ms. Sheidy knew or should have known that plaintiff could have severe dehydration because she saw plaintiff lose

consciousness and performed a sternal rub as a result. (*Id.* ¶¶ 51-62.) Ms. Sheidy had authority to offer the plaintiff IV fluids or water because another nurse, Ms. Purvis, did so. (*Id.* ¶¶ 90, 99, 101.) But rather than treat plaintiff promptly with IV fluids or water, Ms. Sheidy asked plaintiff, "Did you attempt to murder yourself?" (*id.* ¶ 71), touched plaintiff repeatedly without consent (*id.* ¶¶ 59, 73), wrongly claimed that plaintiff was "ok" (*id.* ¶ 65), and told plaintiff they were "messing with" their hormones (*id.* ¶ 72). Rather than ask pointed questions, Ms. Sheidy could have respected the patient's gender identity per the Nursing Code (*id.* ¶¶ 32-36), obtained consent before touching plaintiff, and treated plaintiff with IV fluids or water. She did not. Similarly, knowing plaintiff's pronouns and trauma history, Ms. Purvis knowingly misgendered plaintiff, asked unnecessary questions about their top surgery, said they did not want to "offend" plaintiff, and made no effort to clean bloodstains from her puncturing of plaintiff's arm. (*Id.* ¶¶ 83-86, 100.) Ms. Purvis had authority to treat the plaintiff like other patients under the Nursing Code but chose not to.

Second, even if Patient First's nurses lacked authority to prevent a violation of plaintiff's federal rights, the PA did. Mr. Wunder knew that a violation was substantially likely: he heard how Patient First's nurses had treated Mx. Dallas already. (Compl. ¶¶ 92-93.) He appeared to have corrective authority by offering an apology and telling plaintiff they would not see Ms. Sheidy again. (*Id.* ¶¶ 93-94.) His authority can also be inferred from his review of plaintiff's medical record, where he noted agreement with the EKG's return of tachycardia. (*Id.* ¶¶ 87-89, 95.) He could have ordered a urinalysis to rule out infection given plaintiff's elevated white blood cell count and signs of severe dehydration. (*Id.* ¶¶ 28, 106-07, 114.) But "nobody" at Patient First followed up with a urinalysis, and plaintiff's bladder infection went undiagnosed as

a result. (*Id.* ¶¶ 4, 135, 165, 167.) These facts allege deliberate indifference from all three providers. *See Jolley*, 2021 U.S. Dist. LEXIS 252456, at *14.

III. The Complaint Plausibly Pleads Intentional Infliction of Emotional Distress.

Defendants argue that the complaint does not state an IIED claim arising from the conduct of either Patient First Aberdeen nurse. (Mot. § III.) The complaint does not allege IIED premised on the actions of Ms. Purvis. (*Compare* Compl. ¶ 152 *with* Mot. 20-21.) But it does state an IIED claim from Ms. Sheidy's conduct. (*See* Compl. ¶¶ 151-156.) To plausibly allege an IIED claim: "(1) The conduct must be intentional or reckless; (2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; (4) The emotional distress must be severe." *Wright v. Audisio*, 2022 WL 4608332, 2022 U.S. Dist. LEXIS 179625, at *6 (D. Md. Sep. 30, 2022) (cleaned up). IIED claims under Maryland law mirror the elements from the Second Restatement of Torts. *See Reagan v. Rider*, 521 A.2d 1246, 1246 (Md. 1987). The complaint alleges each element.

First, Ms. Sheidy's conduct was at least reckless. Recklessness is a "deliberate disregard of a high degree of probability that the emotional distress will follow." Restatement (Second) of Torts § 46 cmt. i (Am. Law Inst. 1975). Ms. Sheidy saw plaintiff lose consciousness and knew about their trans status and trauma history. (Compl. ¶¶ 51-62, 69-70, 152-53.) And Ms. Sheidy sensed plaintiff's initial distress by taking their hand. (*Id.* ¶ 57.) It is plausible to infer that she knew that distress would follow asking if plaintiff "attempted to murder" themself, calling their hormones "discombobulated," and not treating them.

Second, Ms. Sheidy's conduct was extreme and outrageous given her position of medical authority and plaintiff's disclosure of a trauma history. "[T]he relationship between the parties, and the susceptibility of the plaintiff to emotional distress, are important factors in the outrageousness calculus." *Drejza v. Vaccaro*, 650 A.2d 1308, 1317 (D.C. 1994); *see* Restatement

(Second) of Torts § 46 cmt. e ("actual or apparent authority over the other, or power to affect his interests" supports outrageousness); *id.* cmt. f ("actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition" supports outrageousness). Courts have found the element met where law enforcement mocked victims of crimes. *See, e.g.*, *Snyder v. Smith*, 7 F. Supp. 3d 842, 872-74 (S.D. Ind. 2014) (detective asking sexual assault victim if they "asked for" it); *Brandon v. Cty. of Richardson*, 624 N.W.2d 604, 621-22 (Neb. 2001) (officer "developed a negative attitude toward" plaintiff because of his gender dysphoria and referred to him "as an 'it'" in interview about sexual assault). A nurse treating a delirious patient stands in a similar position of trust and authority. (Compl. ¶ 153.) And Ms. Sheidy knew that plaintiff had a trauma history, making them susceptible to distress.

Finally, plaintiff's emotional distress is plausibly severe and causally linked to Ms. Sheidy's conduct based on medical changes documented after plaintiff's visit to Patient First Aberdeen. "To successfully plead a claim for IIED, a plaintiff must allege facts demonstrating 'severe' emotional distress, but the distress 'need not produce total and emotional or physical disablement.'" *Does v. Bd. of Educ.*, 644 F. Supp. 3d 149, 161-62 (D. Md. 2022) (cleaned up). "Moreover, severity must be measured in light of the outrageousness of the conduct." *Id.* (cleaned up). "[M]edical evidence . . . is an important factor in determining the severity of the distress." *Reagan*, 521 A.2d at 1250; *see, e.g.*, *Does*, 644 F. Supp. 3d at 162 (denying motion to dismiss IIED claim where complaint alleged symptoms including "anxiety, stress, nightmares, difficulty in social interactions, embarrassment, and reputational damage that has required ongoing mental health counseling").

Here, the allegations of medical evidence show demonstrable adverse mental health consequences from Ms. Sheidy's conduct. Plaintiff, who had a preexisting PTSD diagnosis

(Compl. ¶¶ 69, 80, 115, 152) has experienced new and exacerbated symptoms after visiting Patient First Aberdeen including flashbacks, severe anxiety, depressed mood, suicidal ideation, social withdrawal, anhedonia, and selective mutism and catatonia, (*id.* ¶¶ 115, 119). Less than eight weeks after their visit to Patient First, plaintiff scored a 19 on the GAD-7 general anxiety scale (ranging from 0 to 21), indicating severe anxiety (*id.* ¶¶ 120, 155); a 14 on the PHQ-9 patient health questionnaire for depression, suggesting moderate depression (*id.* ¶¶ 121, 155); and a 54 on the PTSD Checklist for DSM-5 (ranging from 0 to 80), reflecting probable PTSD (*id.* ¶¶ 122, 155). Plaintiff has sought counseling from three providers (*id.* ¶ 154), including by increasing visits to a psychiatric nurse practitioner to every two to three weeks, up from monthly or every other month, and with a licensed mental health counselor to twice weekly from weekly (*id.* ¶¶ 116-117, 154). Following their visit to Patient First, plaintiff was prescribed increased dosages for hydroxyzine (for anxiety, panic, and flashbacks), to 10-20 mg twice daily from as-needed, and sertraline (for depression and anxiety), to 75 mg daily from 50 mg daily. (*Id.* ¶¶ 118, 154.) And plaintiff has started an experimental treatment with ketamine: at least six sessions of intravenous administration in a clinic (*id.* ¶¶ 124, 155) and at-home using a nasal spray (*id.* ¶¶ 125, 155). Plaintiff's distress has decreased their availability for work through their therapy practice, and they have experienced a loss of marital intimacy. (*Id.* ¶¶ 123, 126, 136, 155.) The spike in symptoms, therapy visits, and dosages happened as soon as plaintiff returned home (*id.* ¶ 154), and plaintiff has flashbacks from the trip to Patient First Aberdeen, remembering the smell of Ms. Sheidy's perfume as she touched and taunted them for being trans, (*id.* ¶ 6). The complaint states an IIED claim.

CONCLUSION

The Court should deny the motion altogether.

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Respectfully submitted,

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