

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

CODY FLACK, *et al.*,  
*individually and on behalf of all others*  
*similarly situated,*

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF  
HEALTH SERVICES, *et al.*,

Defendants.

Case No. 3:18-cv-00309-wmc  
Judge William Conley

**PLAINTIFFS' MOTION TO STRIKE THE DECLARATION AND EXCLUDE  
TESTIMONY OF MICHELLE OSTRANDER, Ph.D.**

Plaintiffs respectfully move the Court to (1) strike Defendants' expert witness declaration of Michelle Ostrander, Ph.D., and the documents attached thereto, for failing to comply with the basic requirements of Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure for failing to include "a complete statement of all opinions the witness will express and the basis and reasons for them," and exclude her testimony under Rule 37(c)(1) based on this noncompliance; and (2) exclude Dr. Ostrander's purported expert testimony, which is wholly contained in the four Hayes, Inc. reports attached to her declaration, which she did not author and are inadmissible hearsay, as inadmissible under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

In support of this motion, Plaintiffs submit the accompanying memorandum of law. Because the brief references documents and deposition testimony that Defendants have designated as confidential, Plaintiffs are filing the complete brief under seal, as well as a

redacted version showing non-confidential portions of the brief, to comply with their obligations under the protective order in this case.

Dated: June 4, 2019

Respectfully submitted,

/s/ Joseph J. Wardenski

Joseph J. Wardenski

Jennifer I. Klar

Orly T. May

Alexa T. Milton

RELMAN, DANE & COLFAX PLLC

1223 19th Street, NW, Suite 600

Washington, DC 20036

Telephone: (202) 728-1888

Facsimile: (202) 728-0848

jwardenski@relmanlaw.com

jklar@relmanlaw.com

omay@relmanlaw.com

amilton@relmanlaw.com

Robert Theine Pledl

DAVIS & PLEDL, S.C.

1433 N. Water Street, Suite 400

Milwaukee, WI 53202

(414) 488-1354

rockpled@gmail.com

Abigail Coursolle

Catherine McKee

NATIONAL HEALTH LAW PROGRAM

200 N. Greensboro Street, Suite D-13

Carrboro, NC 27510

Telephone: (919) 968-6308

Facsimile: (919) 968-8855

coursolle@healthlaw.org

mckee@healthlaw.org

*Attorneys for Plaintiffs*