

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF IDAHO

3

4 ADREE EDMO (a/k/a MASON EDMO),) CASE NO. 1:17-cv-00151-BLW
))
5 Plaintiff,) **EVIDENTIARY HEARING DAY 3**
))
6 vs.))
))
7 IDAHO DEPARTMENT OF))
CORRECTION; HENRY ATENCIO, in))
8 his official capacity; JEFF))
ZMUDA, in his official))
9 capacity; HOWARD KEITH YORDY,))
in his official and individual))
10 capacities; CORIZON, INC.;))
SCOTT ELIASON; MURRAY YOUNG;))
11 RICHARD CRAIG; RONA SIEGERT;))
CATHERINE WHINNERY; and DOES))
12 1-15,))
))
13 Defendants.))
_____))

14

15

16 **TRANSCRIPT OF PROCEEDINGS - VOLUME 3**
BEFORE THE HONORABLE B. LYNN WINMILL
17 **FRIDAY, OCTOBER 12, 2018, 8:37 A.M.**
18 **BOISE, IDAHO**

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21 Proceedings recorded by mechanical stenography, transcript
22 produced by computer.

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P R O C E E D I N G S

October 12, 2018

THE CLERK: The court will now hear Civil Case 17-151, Adree Edmo vs. Corizon, Incorporated, et al., for day three of a motion for preliminary injunction.

THE COURT: Good morning, Counsel.

Before we continue with the examination of Dr. Eliason, Mr. Severson advised me that there was an issue. I'm going to lay out what I understand to be the situation and then have counsel confirm that I have got it right or wrong, correct me where I am wrong, and then I'll indicate how we're going to resolve this. I don't really want to waste a lot of time arguing or getting hung up on that.

My understanding is the defendants have now chosen not to call certain witnesses that were previously identified on their witness list. The defendants had anticipated -- and that the defendants are going to rely upon the declarations that were filed under oath in this proceeding for those same witnesses.

The defendant -- the plaintiffs are concerned that there have been depositions taken of those individuals, and they feel that the untested affidavits, without being able to impeach those individuals, really does not give the court a full sense of what the record is or should be. And apparently you can't reach an agreement as to how to resolve it.

If I have got it right, you can just confirm; if I have got

1 it wrong, let me know where I have got it wrong.

2 MS. RIFKIN: Your Honor, that's correct. We had
3 suggested that, given that defendants are no longer calling
4 certain witnesses that were on their witness list they had
5 intended to call, that we be able to submit written impeachment
6 through submitting their deposition testimony following the
7 hearing. We could lodge the full original deposition
8 transcripts in the same manner that we discussed yesterday with
9 the court and submit the written excerpts as impeachment
10 testimony, but defendants have declined to agree to that
11 proposal.

12 THE COURT: All right. Mr. Hall, Mr. Eaton.

13 MR. HALL: Your Honor, I mean, in all candor, I
14 haven't had a lot of time to think about this, because it's not
15 something we ever contemplated when we put together our
16 stipulation in June of this year where we agreed that in lieu
17 of, or in addition to, live testimony, parties could submit --
18 all parties could submit declarations. And the parties would
19 then have time to depose fact nonretained expert witnesses or
20 retained expert witnesses.

21 We filed a lot of declarations because we knew, with this
22 not being a full trial and having only three days, there was no
23 way to possibly get to all of them. So we submitted those on
24 the record, provided those to plaintiff's counsel in August.
25 And a lot of those, there was no request from the plaintiff to

1 take the depositions of those individuals. They let them lie.

2 They scheduled three depositions of three witnesses we
3 identified as nonretained expert witnesses and fact witnesses,
4 and they decided to take those depositions before we ever
5 included them in our final witness list.

6 My concern right now of allowing them to use the deposition
7 transcript is there was no opportunity or real need at that time
8 to rehabilitate witnesses on the record. They were not
9 identified as witnesses to be called for sure at the trial at
10 that time -- or the hearing.

11 And they weren't trial depositions. They were just
12 discovery depositions. If plaintiffs wanted to rebut the
13 assertions in the declarations, they could have gone about it a
14 different way. They could have scheduled their depositions
15 earlier after receiving them in August. They could have filed
16 motions to strike. They could have filed, you know,
17 contradictory declarations.

18 I just -- I do have a concern about now allowing plaintiffs
19 to submit impeachment testimony by way of a deposition where we
20 have no opportunity to rehabilitate the witness.

21 That's it, Your Honor.

22 THE COURT: Okay. Mr. Eaton.

23 MR. EATON: Your Honor, I don't believe this issue
24 applies to us.

25 THE COURT: All right.

1 MR. EATON: We don't have any declarations other than
2 our expert who will be on the stand.

3 MS. RIFKIN: That's not quite true, Your Honor.

4 THE COURT: Ms. Rifkin, I don't think I need to hear
5 any more. I'm going to allow the -- here is how we're going to
6 resolve it.

7 The plaintiffs -- or the defendants will be put to their
8 choice to either call the witness live or they submit the
9 affidavit. If they submit the affidavit, plaintiffs will be
10 allowed to indicate designations from the -- I don't want to
11 read the entire deposition. Although you can submit it, I'm not
12 going to read it all. I want you to designate those portions --
13 only those portions that you think are impeaching or otherwise
14 contradictory.

15 And then, Mr. Hall, you'll have a chance to cross-designate
16 any items in the depositions that you think are necessary to
17 provide context for what the witness said in the designation --
18 the excerpts designated by the plaintiffs.

19 That's why I'm giving you the choice. If you are going to
20 rely upon the affidavit, then you have to accept the fact that
21 there may be some impeachment that's going to occur from the
22 depositions, but you will have the opportunity to provide
23 context but only context by cross-designation of additional
24 excerpts.

25 I want a complete record. I want to let the parties -- I

1 need to know -- I want information, and I'm not going to stand
2 on formality in the, I guess, search for truth.

3 And so, from that point of view, this thing was put
4 together hurriedly for the hearing. It was not perfect, but I'm
5 going to make it as perfect as I can to make sure both parties
6 have a fair opportunity, the defendant first by being able to
7 choose now.

8 You can call them live, or you can rely upon the
9 declarations. But if you rely on the declarations, the
10 plaintiffs will have a chance to designate portions of the
11 excerpts that they think are impeaching, with the defendant,
12 IDOC, having the opportunity to cross-designate to ensure that
13 the court has a full context.

14 So I think that's the best way we can approach it. I can't
15 resolve it any better than that, but that's how we're going to
16 go forward. All right?

17 MR. HALL: That's fine, Your Honor.

18 MS. RIFKIN: Yes, Your Honor.

19 THE COURT: Mr. Eaton, I believe we had Dr. Eliason on
20 the stand under your examination, as I recall.

21 MR. EATON: Thank you, Your Honor.

22 I believe there is a dispute as to whether our expert,
23 Dr. Garvey, can sit in here during the testimony. I was
24 planning to have her in here. Their experts weren't excluded,
25 and I don't think anyone has been excluded.

1 THE COURT: Well, generally, I'll allow opposing
2 counsel's expert to be in the room just to avoid delay in
3 having -- so they can know what it is they're being called to
4 rebut. But your own expert, your other expert, I'm not sure I
5 feel the same rule would apply.

6 But no one has asked to exclude witnesses, anyway, under
7 Rule 615. So it's all fair game, I guess, until witnesses have
8 been excluded. Nobody made the motion up to this point in time,
9 and I'm not sure it's fair to do it in the middle of the
10 hearing.

11 I guess my inclination is to let everybody in because
12 nobody has been excluded up to this point.

13 MS. RIFKIN: Your Honor, we did not have our experts
14 in the courtroom for testimony. I believe our expert,
15 Dr. Gorton, accidentally came in for the space of a minute. But
16 we did not have our experts sit in on the testimony.

17 Also, Dr. Eliason testified extensively yesterday, and
18 Dr. Garvey was not in the courtroom. And so to the extent that
19 Dr. Garvey is in the courtroom now for a portion of his
20 testimony, I think that --

21 THE COURT: Well, I think under those circumstances,
22 Mr. Eaton -- you know, typically, counsel agree that experts can
23 stay in during the opposing side's expert testimony, but I have
24 never heard anyone argue they should be allowed to do it during
25 their own expert.

1 MR. EATON: Your Honor, I'll defer to the court. We
2 don't need to take any more time on this.

3 THE COURT: All right. No. Let's -- let's have them
4 stay outside the courtroom. Okay?

5 All right. Is Dr. -- oh, you're, here. Sorry. You snuck
6 up on me there, although you were there the whole time. My
7 brain is not connected yet this morning.

8 All right. With that, I'll remind you, Dr. Eliason, that
9 you are still under oath.

10 Mr. Eaton, you may resume your examination.

11 The one thing I would suggest to all counsel is that we
12 kind of cut to the chase as much as you can. I think it's
13 always good early in a hearing or trial to take a little more
14 time with the first few witnesses to make sure I have a general
15 sense of what's going on. I think I have got that.

16 So I think now we should be right and direct to the point
17 both on direct and cross-examination, particularly mindful of
18 the fact that we don't have a lot of time left.

19 So, with that, go ahead and inquire.

20 MR. EATON: Yes. I plan to be quick with this
21 witness, Your Honor.

22 Madam Clerk, could we pull up the computer on the far side.

23 Could you zoom in on the top paragraph.

24 SCOTT ELIASON, M.D., DEFENDANTS' WITNESS, PREVIOUSLY SWORN

25 CONTINUED DIRECT EXAMINATION

1 BY MR. EATON:

2 Q. Dr. Eliason, yesterday we talked about this note.

3 Do you remember that?

4 A. Yes.

5 Q. And this note was regarding your original assessment of
6 gender identity disorder?

7 A. Yes.

8 Q. Okay. I just wanted to bring one thing up quickly.

9 Right next to where I put the line, there is a quote,
10 "Actually, a woman," quote, and then there is another sentence.

11 I was just wondering if you could tell us what Ms. Edmo
12 told you in that regard.

13 A. After where it says "woman"?

14 Q. Yes.

15 A. It says that "He reported only dressing as a female during
16 rare occasions."

17 Q. Okay. Thank you.

18 Now, it's been suggested that all of plaintiff's mental
19 illness issues stem from her gender dysphoria, by plaintiffs.

20 When you assessed Ms. Edmo for SRS in 2016 --

21 MS. SHANBHAG: Objection. I'd move to strike the
22 testimony by counsel as to the characterization.

23 THE COURT: Overruled. I think it's a
24 characterization, frankly, of the questions I have asked the
25 witnesses.

1 So go ahead and proceed.

2 MR. EATON: Thank you.

3 Q. BY MR. EATON: Again, it's been suggested by plaintiffs
4 that all of plaintiff's mental health issues stem from her
5 gender dysphoria.

6 When you assessed Ms. Edmo for sex reassignment surgery in
7 April of 2016, did you agree with such a characterization?

8 A. No.

9 Q. And why is that?

10 A. Because Ms. Edmo also had other mental health disorders.

11 Q. Such as?

12 A. Major depression and alcohol use disorder.

13 Q. Okay. And then I believe yesterday at the end of the day
14 when we left off, you mentioned you appeared by phone for a
15 presentation by Dr. Alviso; is that right?

16 A. That's right.

17 Q. Okay. And who is Dr. Alviso?

18 A. Dr. Alviso is a local doctor. I'm not sure if he is a
19 family doctor or an internist, but he works at the Family
20 Medicine Clinic or Family Medicine Residency of Idaho clinic.
21 And he treats a lot of the transgender population in town,
22 mostly prescribing hormones.

23 Q. Okay. And is he an employee of Corizon?

24 A. No. He is a consultant that Corizon works with sometimes.

25 Q. Okay. And do you know when Corizon started working with

1 Dr. Alviso?

2 A. I think it was in the fall of 2016.

3 Q. Okay. And then I believe we were talking that you
4 mentioned you were going to set up a committee to further
5 address sex reassignment surgeries, and then you talked about
6 some presentations that you had lined up.

7 Do you remember that testimony?

8 A. Yes. Yeah.

9 Q. Okay. And then what happened after that with regard to the
10 committee?

11 A. Yeah. So it was my idea to form this committee of
12 physicians who could determine this. And I set up these
13 trainings. And I had identified multiple physicians.

14 If you pull up the attendance sheet of the Dr. Levine
15 training, I had several physicians that attended that with me.

16 And then the problem is, since that time, they all quit.
17 And, you know, it's a classic correctional medical problem is
18 that retaining staff is really hard to do. Turnover happens a
19 lot. But every single one of those physicians that I have
20 identified all left the company, and so my committee evaporated,
21 basically.

22 Q. And were there some Idaho Department of Correction folks at
23 that presentation?

24 A. Yes. Almost everybody who was on the Management and
25 Treatment Committee attended that training.

1 Q. And so was it your understanding that the Management
2 Treatment Committee then would consider SRS?

3 A. Yes. From there on, that was a consideration that we did
4 in the committee.

5 Q. Okay. And as a Corizon regional psychiatric director, are
6 you familiar with Corizon policies and procedures and practices
7 related to the treatment and care of gender dysphoric inmates?

8 A. Yes.

9 Q. Is sex reassignment surgery as a treatment for gender
10 dysphoria prohibited by Corizon?

11 A. Absolutely not.

12 Q. What treatment options are available for treating a gender
13 dysphoria patient through Corizon?

14 A. All -- all treatment options that are seen as medically
15 necessary.

16 Q. And what would that include?

17 A. So it would include -- I mean, it's not limited to this,
18 but it would include psychotherapy, hormone treatment, surgical
19 procedures.

20 Q. Okay. And are there any Corizon written policies or
21 procedures regarding sex reassignment surgery?

22 A. No.

23 Q. And if there are no policies and procedures, then what's
24 the practice related to sex reassignment assessments?

25 A. It's really left to the clinical judgment of the providers.

1 Q. And do you follow the Idaho Department of Corrections
2 standard operating procedure as well Corizon?

3 A. Yes.

4 Q. There has been some discussion regarding the gender
5 dysphoria Management Treatment Committee at Idaho Department of
6 Corrections.

7 Did the Management Treatment Committee ever deny anything
8 you deemed medically necessary?

9 A. I can't -- I can't think of a single incidence.

10 Q. Okay. And further, is it your understanding that sex
11 reassignment surgery --

12 A. Well, let me -- let me answer that last question in a
13 different way.

14 I mean, there may have been times when a committee member
15 of some sort disagreed, and then the committee would discuss
16 things. But it was never something where somebody didn't either
17 change their mind because of input from the committee. And that
18 was the same case with me.

19 So I never felt like, after discussing something, I felt
20 like it was still medically necessary and they denied it.

21 Q. Fair enough.

22 And is it your understanding that sex reassignment surgery
23 would be available to a patient in the Idaho Department of
24 Corrections' custody if you recommended it was medically
25 necessary?

1 A. Yes.

2 Q. And what's that understanding based on?

3 A. Well, I have had that specific conversation several times
4 with the department where if we felt it was medically necessary,
5 you know, would it be provided. And the answer was yes.

6 And I've had a long relationship with the Idaho Department
7 of Corrections, and I have worked with the department of
8 corrections in other states, too.

9 And what has always been remarkable to me about Idaho is
10 the care that they provide for the people that they house in
11 their prisons. And I think that they are highly professional.
12 And I think if a provider came to them and thought something was
13 medically necessary, they would follow that advice.

14 MR. EATON: I don't want to preempt the court,
15 Your Honor, but I believe you were asking the witness a question
16 the other day, and so I was going to pose that to the witness.

17 Q. BY MR. EATON: And I believe that question, if I understood
18 it correctly, was: What would you change to WPATH to make it
19 work in a correctional setting? Do you have some thoughts on
20 that?

21 A. I do have some thoughts. I'll try to keep them concise.

22 I think even in WPATH, it does allow for flexibility in
23 different housing situations. And so I think you need to apply
24 that flexibility to their standards.

25 And the first thing I would look at is they have a

1 real-life -- a 12-month real-life test of living as your chosen
2 gender identity. And that's, I think, a really crucial step;
3 and I think that prison is not the optimal place for that step.

4 And so there would need to be some sort of prolonged period
5 of incarceration where it had to be really long to say that
6 we're going to do this real-life test in prison. And I don't --
7 I don't have a real number to give you, but I would imagine it
8 would be longer than five years.

9 And it also -- it would need to allow for the level of
10 cooperation with mental and medical staff. Because if the
11 patient is always at odds with medical and mental health staff,
12 frequently engaging in self-harm, frequently getting
13 disciplinary write-ups and things like this, then they wouldn't
14 be a good candidate to go through such a stressful procedure.

15 You know, getting the procedure, there is a lot of medical
16 follow-ups, a lot of bad outcomes that can happen. And you need
17 to have that cooperation to work through those. And if you
18 don't have that, I think that that -- the level of
19 cooperativeness would have to be another criteria that would be
20 in there.

21 And I think those two would really help.

22 And then, lastly, one glaring problem that we have is there
23 is just no clinical evidence that sex reassignment surgery in
24 the inmate population is a safe and effective treatment.

25 You know, in the United States, I think we have had one --

1 a case of one person who has had a sex reassignment surgery as
2 an inmate. And I think this is kind of a unique population that
3 needs to be studied more before we really can say whether it's
4 safe and effective.

5 MR. EATON: Thank you. No further questions.

6 THE COURT: Mr. Hall, do you have any?

7 MR. HALL: No, Your Honor.

8 THE COURT: Ms. Shanbhag.

9 MR. EATON: Madam Clerk, could we take this down.

10 Thank you.

11 CROSS-EXAMINATION

12 BY MS. SHANBHAG:

13 Q. Good morning, Dr. Eliason.

14 A. Good morning.

15 Q. I would like to begin with your April 20, 2016, assessment
16 of Ms. Edmo's request for surgery.

17 Can we pull up Joint Exhibit 1-538. I think we are having
18 a little -- Exhibit 1, page 538. Thank you.

19 And you testified yesterday that when you met with Ms. Edmo
20 on April 20, 2016, that you knew she had attempted to cut off
21 her testicles in September of 2015; is that correct?

22 A. I don't think I worded it that way, but I did know -- like
23 if you see in the note, it says -- in the middle of that top
24 paragraph, it cites that she made attempts to mutilate her
25 genitals this past fall.

1 Q. Right. And at your deposition, you testified that you had
2 seen Ms. Edmo not long after this self-castration attempt;
3 correct?

4 A. In my deposition, I said that I -- say that one more time.

5 Q. At your deposition, you testified that you had seen
6 Ms. Edmo not long after she attempted to castrate her testicles.

7 A. You know, I don't -- I don't remember how soon after I saw
8 her.

9 Q. That's fine. We discussed a January 2016 visit.

10 A. Okay.

11 Q. And during that visit, she reported to you that it was
12 difficult to stop her mind from thinking at night because she
13 had thoughts about castration; correct? Do you remember that?

14 A. Do you have -- do you have that note?

15 Q. I can show you the deposition testimony.

16 A. Yeah. That would be helpful.

17 MS. SHANBHAG: Your Honor, we only have a certified
18 copy for the court, but this deposition was taken over 30 days
19 ago, and I don't believe we received any corrections.

20 MR. EATON: Your Honor, I object. I don't think this
21 is proper impeachment at this point.

22 THE COURT: Well, the witness is just asking to have
23 his memory refreshed as to what --

24 MR. EATON: With the document?

25 THE COURT: Ell, I think what we should do is ask him

1 whether that's his current recollection. If he -- if he says
2 something contrary to the deposition, then you can show him the
3 deposition.

4 So rather than ask him about what he testified to, let's
5 ask him what his current memory is, and we'll proceed from
6 there.

7 Q. BY MS. SHANBHAG: Do you remember Ms. Edmo reporting to you
8 that it was difficult to stop her mind from thinking at night
9 because she had thoughts about castration?

10 A. I don't remember that off the top of my head.

11 THE COURT: What was the date of that interaction?

12 MS. SHANBHAG: January 27, 2016, I believe.

13 THE WITNESS: But we have that note.

14 THE COURT: You're talking about the medical note?

15 THE WITNESS: Yeah. Because if the medical note says
16 that, then it would refresh my memory.

17 Q. BY MS. SHANBHAG: Right. I'm asking about what you
18 testified to.

19 A. Oh, in the deposition?

20 Q. Yes.

21 A. I can't remember. I mean, it was a nine-hour deposition,
22 so...

23 MS. SHANBHAG: May I approach, Your Honor?

24 THE COURT: Yeah.

25 Mr. Severson?

1 Q. BY MS. SHANBHAG: This is the cover of your deposition
2 transcript; correct?

3 A. Correct.

4 Q. And can we go to page 104, please.

5 A. Yes. Okay. I'm there.

6 Q. I would like to direct you to line 12.

7 A. Okay. Line 12? Is that what you said?

8 Q. Yes.

9 A. Okay.

10 Q. Do you mind if I read it to you?

11 A. Sure.

12 Q. Question: "And is there a reason you didn't see her until
13 January of 2016?"

14 Answer: "Well, it sounds like she wasn't in. From my
15 note, it says the inmate reported she had been in Unit 8, which
16 is a different unit, and so there is a different provider
17 there."

18 Question: "And she also -- or you wrote that she noted it
19 is difficult to stop her mind from thinking at night and, quote,
20 'I just have all these thoughts about castrating myself,' end
21 quote; correct?"

22 Answer: "Yes."

23 Do you remember this discussion with Ms. Edmo now?

24 A. Yes.

25 Q. And in response to Ms. Edmo's report --

1 MR. EATON: Your Honor, I'm going to object to
2 foundation. I'm not sure I understand where we're going here.

3 THE COURT: Well, I don't -- I think we are
4 back -- it's really not impeaching. We are just putting in the
5 deposition testimony because the witness has never had an
6 opportunity to say something contrary to what was in the
7 deposition.

8 So I think the better approach is to just go through the
9 same line of inquiry. And if the witness gives you a contrary
10 response from what he provided during the deposition, then it's
11 proper to impeach.

12 So I think, in this instance, simply doing the same thing,
13 showing him the treatment notes and then asking him the same
14 questions, would be the proper way to proceed.

15 So I don't -- I'll sustain the objection. I don't think
16 this is a proper form of impeachment.

17 Let's go ahead and proceed.

18 Q. BY MS. SHANBHAG: And in response to Ms. Edmo's reports
19 that she -- it was difficult to stop thinking about
20 self-castration at night, you prescribed her medication to help
21 her sleep; is that correct?

22 A. Yes.

23 Q. And that prescription was Remeron; right?

24 A. Correct.

25 Q. I would like to go back to the April 20, 2016, note.

1 THE COURT: Is this part of Exhibit 1?

2 MS. SHANBHAG: Exhibit 1, page 538, yes.

3 Q. BY MS. SHANBHAG: You testified yesterday that there were
4 two bases for your conclusion that Ms. Edmo did not meet medical
5 necessity for surgery.

6 Do you remember that?

7 A. Yes.

8 Q. And the first basis you stated was that her mental health
9 concerns were not controlled; correct?

10 A. Yes, correct.

11 Q. And I'm looking at your progress note dated April 20, 2016.
12 And nowhere in this note do you cite mental health concerns as a
13 basis for denying Ms. Edmo's surgery; correct?

14 A. Correct.

15 Q. In fact, at your deposition just two months ago, you
16 testified that you could not remember if your decision to deny
17 Ms. Edmo's surgery was based upon her mental health stability;
18 right?

19 A. I guess I can't remember, but -- I don't remember.

20 Q. But yesterday you said for the very first time that your
21 decision to deny Ms. Edmo's surgery was because of uncontrolled
22 mental health concerns; correct?

23 A. I did say that was one of the two reasons.

24 Q. And you also testified yesterday that the second basis for
25 denying Ms. Edmo's surgery was your belief that she did not meet

1 the criterion regarding 12 continuous months of living in a
2 gender role congruent with a gender identity; correct?

3 A. Yes, in a way.

4 Q. Again looking at the April 20, 2016, note, nowhere in this
5 note do you cite her failure to live in a congruent gender role
6 as a basis for denying her surgery; correct?

7 A. Correct.

8 Q. And at your deposition, you did not mention this reason at
9 all; correct?

10 A. I don't remember.

11 Q. In fact, you admitted yesterday that Ms. Edmo presented as
12 feminine in demeanor and interaction style when you first met
13 with her in June 2012; right?

14 A. Yes. Correct.

15 Q. And I would like to now show Joint Exhibit 1-347.

16 This is one of your progress notes dated April 10, 2013; am
17 I right?

18 A. Yes. Correct.

19 Q. And in this note, in the second part, you note that
20 Ms. Edmo has groomed eyebrows and appears feminine in demeanor
21 and interaction style; right?

22 A. Correct.

23 Q. I would like to show another progress note, Exhibit 1,
24 page 425.

25 And this is a progress note dated April 9, 2014; correct?

1 A. Correct.

2 Q. And in this note, you also write that Ms. Edmo had groomed
3 eyebrows and appears feminine in demeanor and interaction style;
4 correct?

5 A. Correct.

6 Q. I would like to show Joint Exhibit 1, page 452, please.

7 And this is a progress note dated January 28, 2015;
8 correct?

9 A. Correct.

10 Q. And in this note, you again note that Ms. Edmo had groomed
11 eyebrows and appears feminine in demeanor and interaction style;
12 right?

13 A. That is correct.

14 Q. And if we could go back to the April 20, 2016 note which is
15 page 1 -- Exhibit 1-538.

16 You testified yesterday that on April 20, the date you
17 assessed Ms. Edmo for surgery, you documented that her eyebrows
18 were colored in with black pencil, she was wearing foundation
19 and, again, appeared feminine in demeanor and interaction style;
20 correct?

21 A. Correct.

22 Q. And you were also aware that Ms. Edmo had been disciplined
23 multiple times for looking too feminine; correct?

24 A. I was aware that that's what Ms. Edmo told me.

25 Q. So is it your opinion that now, two-and-a-half years after

1 you had documented Ms. Edmo appearing and acting in a feminine
2 demeanor, that she has met the criteria regarding 12 continuous
3 months of living in a gender role congruent with a gender
4 identity?

5 A. I still --

6 Q. That's a yes-or-no answer, please.

7 MR. EATON: I ask that he be able to answer the
8 question, Your Honor.

9 THE COURT: Well, is it your opinion or not?

10 THE WITNESS: It's -- I can't really give a yes or no
11 because I disagree with the criteria in general the way it's
12 kind of presented; right? That's the problem, is that I --

13 MR. EATON: I object to foundation and also --

14 THE WITNESS: I could explain how --

15 THE COURT: No. No.

16 MS. SHANBHAG: I would move to strike counsel's
17 comments.

18 THE COURT: What's the objection?

19 MR. EATON: It misstatements testimony, and it also
20 lacks foundation.

21 THE COURT: Are you objecting to the question --

22 MR. EATON: Yes.

23 THE COURT: -- or the continuing response?

24 MR. EATON: No. The question.

25 THE COURT: Overruled. You know, again, my sense is

1 you would acknowledge that, construed according to the actual
2 WPATH standards, she was living for at least 12 months or
3 attempting to live for at least 12 months as a woman.

4 Your disagreement is that it's not 12 months in the real
5 world. And that's the point you're making?

6 THE WITNESS: That's exactly it, yes.

7 THE COURT: All right. Go ahead, Counsel.

8 THE WITNESS: That's it.

9 Q. BY MS. SHANBHAG: And during your deposition, you did
10 testify that an individual could meet the WPATH criteria even
11 though that person is incarcerated; correct?

12 A. Correct.

13 THE COURT: And as I understand your testimony, it is,
14 for example, someone who is incarcerated for 20 years with no
15 opportunity for parole or a fixed life sentence, that's their
16 real world at that point.

17 But where someone is parole eligible within a number of
18 years, you're saying it's simply not appropriate to do it
19 because they will live in a different world within a number of
20 years; and, therefore, the standard -- WPATH standards need to
21 take that into account?

22 THE WITNESS: Exactly.

23 THE COURT: Counsel, I'm just -- you know, I get a
24 pretty clear sense of what the testimony is. And we can object
25 to foundation, and we can ask questions all we want, but I need

1 to know what the witness is saying.

2 That's my understanding of what he has already testified
3 to. So go ahead. I'm trying to help counsel out here.

4 MS. SHANBHAG: Thank you, Your Honor.

5 Q. BY MS. SHANBHAG: And you testified yesterday that you
6 denied Ms. Edmo's request for surgery in part because you noted
7 she was eligible for parole as of April 20, 2016; is that
8 correct?

9 A. That is correct.

10 MR. EATON: Sorry to keep objecting, Your Honor. But
11 the use of the word "deny" I take exception to. There is
12 nothing -- there is no specific deny --

13 THE COURT: I'm going to overrule the objection. If
14 you feel you never denied it, then you can so indicate.

15 So go ahead. Restate the question, though, if you would,
16 Ms. Shanbhag.

17 Q. BY MS. SHANBHAG: You testified yesterday that you found
18 Ms. Edmo's -- Ms. Edmo did not meet medical necessity for
19 surgery, in part because she was eligible for parole as of
20 April 20, 2016; correct?

21 A. Correct.

22 Q. But you did not reevaluate Ms. Edmo for surgery after she
23 was no longer eligible for parole, did you?

24 A. I didn't.

25 Q. And at your deposition, you testified that your

1 determination that surgery was not medically necessary was not
2 based on any of Ms. Edmo's prior criminal record; right?

3 A. Could you say that again.

4 Q. Sure. Your determination that surgery was not medically
5 necessary for Ms. Edmo was not based on her prior criminal
6 record?

7 A. Correct.

8 Q. And you also testified that your determination that surgery
9 was not medically necessary was not based on her disciplinary
10 history or DORs; correct?

11 A. I -- at my deposition, what did I testify about?

12 Q. That you did not base your decision on Ms. Edmo's
13 disciplinary history.

14 A. Correct.

15 Q. And you also testified that your determination that surgery
16 was not medically necessary, it was not based on a review of her
17 presentence investigation reports; correct?

18 A. Correct.

19 Q. But you did testify that information you relied upon in
20 reaching your decision was the medical record, staff
21 observations, Ms. Edmo's therapist, and her therapist's notes;
22 correct?

23 MR. EATON: Objection. Misstates testimony.

24 THE COURT: Just a moment. Just a moment.

25 Did you testify that way or not? If you disagree, you can

1 so indicate.

2 THE WITNESS: And some other things, but those things
3 were included as well.

4 MS. SHANBHAG: Your Honor, I would like to use
5 Dr. Eliason's deposition testimony.

6 THE COURT: All right. Do we have -- do you have
7 that? All right. So you can show --

8 MS. SHANBHAG: Can we go to page 113, please.

9 THE COURT: Counsel, for the record, again, we are not
10 doing this in the normal course, but I'm publishing the
11 deposition of Dr. Eliason. I'm assuming you either have or will
12 submit the final sealed copy to the court.

13 MS. SHANBHAG: Yes, Your Honor.

14 Q. BY MS. SHANBHAG: Referring to line 6, page 113.

15 A. Okay.

16 Q. Question: "And you also mentioned obtaining collateral
17 sources of information as another factor in determining whether
18 a patient needs sex reassignment surgery.

19 "What collateral sources of information did you rely upon
20 here?"

21 Answer: "I relied upon the previous medical record, staff
22 observations, her therapist, and their notes. And that's it."

23 A. Okay.

24 Q. Is that accurate?

25 A. Yes, that is accurate.

1 Q. And, Dr. Eliason, you also testified at your deposition
2 that gender dysphoria and depression can be related; correct?

3 A. Yes.

4 Q. And you have never diagnosed Ms. Edmo with borderline
5 personality disorder; right?

6 A. Correct.

7 Q. You have also never diagnosed her with PTSD; correct?

8 A. Correct.

9 Q. Can we pull up Joint Exhibit 1, page 538 again.

10 Yesterday you testified about the three specific situations
11 that you believed could meet medical necessity; correct?

12 A. Correct.

13 Q. And in this note here in the assessment portion, you
14 concluded that this inmate does not meet any of those above
15 criteria; right?

16 A. I don't see where I said that.

17 Okay. There we go. Yes.

18 Q. These three examples of what you call medical necessity are
19 not the WPATH criteria for surgery; correct?

20 A. Correct.

21 One of them is very similar --

22 Q. I just asked for a --

23 A. Sorry. Correct.

24 Q. And in fact, you testified at your deposition that you
25 don't know where you got these three examples of medical

1 necessity from; correct?

2 A. Correct.

3 Q. And you did agree at your deposition that attempted
4 self-castration could meet your own example of medical
5 necessity; correct?

6 A. Correct.

7 Q. You also testified that you believed Ms. Edmo's gender
8 dysphoria had risen to another level when you assessed her for
9 surgery; correct?

10 A. Correct.

11 Q. But you made no change to Ms. Edmo's current treatment plan
12 at this visit; correct?

13 A. At this visit, I was -- correct.

14 Q. Can you zoom out a little bit on the note.

15 Your treatment plan for Ms. Edmo on April 20, 2016 -- which
16 is reflected, I believe, in the "P" portion at the bottom; is
17 that right?

18 A. That is correct.

19 Q. Your treatment plan was to continue her sleep and
20 antidepressant medications and for her to return to clinic in
21 three months; right?

22 A. Correct.

23 Q. And you knew that Ms. Edmo attempted to castrate herself
24 again a few months after you determined surgery was not
25 medically necessary; correct?

1 A. Correct.

2 Q. And you have never found gender confirmation surgery
3 medically necessary for any patient diagnosed with gender
4 dysphoria; correct?

5 A. Correct.

6 Q. There was some testimony yesterday from you about
7 contacting Dr. Stephen Levine to lead a day-long training for
8 IDOC and Corizon staff; correct?

9 A. Correct.

10 Q. And you also testified that you knew Dr. Levine was a
11 defense expert for the Massachusetts Department of Correction;
12 correct?

13 A. No.

14 MR. EATON: Objection.

15 THE WITNESS: That is not correct.

16 THE COURT: I'm sorry?

17 MR. EATON: Misstates testimony.

18 THE COURT: Overruled. I mean, the question was asked
19 whether that is what he testified to, and he can either confirm
20 or not.

21 THE WITNESS: Should I answer?

22 THE COURT: Yes.

23 THE WITNESS: So not correct.

24 Q. BY MS. SHANBHAG: I would like to show Dr. Levine's
25 PowerPoint from the training, Joint Exhibit 17, please.

1 Is this Dr. Levine's PowerPoint from the training that you
2 organized, Dr. Eliason?

3 A. Yes, I believe so.

4 Q. Can we please show page 43 of this exhibit.

5 And this is a slide from Dr. Levine's presentation;
6 correct?

7 A. Correct.

8 Q. And after organizing and attending Dr. Levine's training,
9 you then presented a training on gender dysphoria with other
10 Corizon health providers; correct?

11 A. Correct.

12 MS. SHANBHAG: I would like to show Joint Exhibit 20.

13 And, Your Honor, this is an exhibit that it was not
14 included on the parties' original list. It's simply a clearer
15 version of Exhibit 18.

16 THE COURT: I assume there is no objection to using
17 this in lieu of Exhibit 18?

18 MR. EATON: No, Your Honor.

19 THE COURT: All right. Exhibit 20 will be admitted.
20 And I guess we'll keep 18 as part of the record, as well, with
21 the understanding that it's an exact copy of the same exhibit.

22 MS. SHANBHAG: Thank you, Your Honor.

23 (Joint Exhibit 20 admitted.)

24 Q. BY MS. SHANBHAG: And is this the PowerPoint from the
25 training that you presented?

1 A. Yes.

2 Q. Can we move to page 7, please.

3 Did you present the portion titled "Gender Dysphoria: A
4 Psychiatric Perspective"?

5 A. Yes.

6 Q. And that presentation was comprised of seven slides;
7 correct?

8 A. I don't remember.

9 Q. And three of your slides were attributed to Dr. Levine;
10 correct?

11 A. I assume.

12 Q. But you didn't select all of Dr. Levine's slides for this
13 training, did you?

14 A. No. He -- oh, no.

15 Q. I would like to show one of the slides of Dr. Levine's that
16 you chose.

17 Can you show Exhibit 20, page 28, please.

18 This slide is titled "SRS and Suicidal Threats"; correct?

19 A. Correct.

20 Q. And at the bottom or very close to the title, you see
21 Dr. Stephen Levine's name; is that correct?

22 A. Yes.

23 Q. So you trained other providers, in looking at the second
24 bullet point, that "SRS is not conceived as lifesaving, as is
25 repairing a potentially leaking aortic aneurysm, but as

1 life-enhancing, as is providing augmentation for women
2 distressed about their small breasts."

3 Is that correct?

4 A. That's correct.

5 Q. And this is a direct quote from Dr. Levine's presentation;
6 correct?

7 A. Correct.

8 Q. And you never reevaluated Ms. Edmo for surgery after
9 April 20, 2016; correct?

10 A. Correct.

11 Q. Even though you testified that you had hoped to
12 reconvene -- or reassess and convene a committee, you never
13 actually reevaluated her; correct?

14 A. Incorrect. In person, I never reevaluated her. But on the
15 Management and Treatment Committee, I did.

16 Q. Dr. Eliason, you testified at your deposition that you
17 never reevaluated Ms. Edmo for surgery; correct?

18 A. Well, that is true that I never said --

19 Q. I'm asking for a yes-or-no answer.

20 A. True.

21 Q. Thank you.

22 And you are unaware of any patient in IDOC custody who has
23 been provided gender confirmation surgery; correct?

24 A. That is correct.

25 Q. Yesterday you testified that you're a certified

1 correctional healthcare professional through the National
2 Commission on Correctional Health Care?

3 A. Correct.

4 Q. Can I call that NCCHC?

5 A. Yes.

6 Q. And that means you're familiar with NCCHC policies and
7 recommendations for providing treatment in prison; right?

8 A. Yes.

9 Q. I would like to show Plaintiff's Exhibit 1041.

10 And this is an NCCHC position statement on Transgender,
11 Transsexual, and Gender Nonconforming Health Care in
12 Correctional Settings; right?

13 A. Yes.

14 Q. Are you familiar with this document?

15 A. Yes.

16 MS. SHANBHAG: Your Honor, I would like to move to
17 admit Plaintiff's Exhibit 1041 into evidence.

18 THE COURT: Any objection?

19 MR. EATON: No objection.

20 THE COURT: Exhibit 1041 will be admitted.

21 (Plaintiff's Exhibit 1041 admitted.)

22 MS. SHANBHAG: If we can move to page 2, please.

23 Q. BY MS. SHANBHAG: The last sentence under the position
24 statement, that reads:

25 "The National Commission on Correctional" --

1 THE COURT: Is it possible you could blow that up or
2 call out -- thank you.

3 Q. BY MS. SHANBHAG: The last sentence reads:

4 "The National Commission on Correctional Health Care
5 recommends that the following principles guide
6 correctional health professionals in addressing the
7 needs of transgender patients."

8 Right?

9 A. Correct.

10 Q. And you're familiar with the principles below?

11 A. Yes.

12 Q. And you agree with them; right?

13 A. Yes.

14 Q. As a certified correctional healthcare provider under
15 NCCHC, you follow the NCCHC guidelines for treating patients;
16 right?

17 A. Yes.

18 Q. I would like to direct you to No. 5 of that page.

19 If we could blow that up, please.

20 No. 5 reads:

21 "The management of medical or surgical transgender
22 care should follow accepted standards developed by
23 professionals with expertise in transgender health."

24 Right?

25 A. Correct.

1 Q. Do you see the footnote 1 there after the word "standards"?

2 A. Yes.

3 Q. Will you please turn to the last page of the exhibit, which
4 I believe is page 4. Blow that up on the notes part.

5 Can you read footnote 1, Dr. Eliason.

6 A. Yes. It says:

7 "'Standards of Care for the Health of Transsexual,
8 Transgender, and Gender Nonconforming People, Version
9 7,' available from the World Professional Association
10 for Transgender Health."

11 Q. So these are the WPATH standards of care; correct?

12 A. Correct.

13 Q. And this reflects that NCCHC's specific endorsement of the
14 WPATH standards of care as accepted standards developed by
15 professionals with expertise in transgender health; correct?

16 MR. EATON: Objection. Foundation.

17 MR. HALL: Join.

18 MR. EATON: I don't think there is any testimony that
19 he can speak on behalf of WPATH or NCCHC.

20 MR. SHANBHAG: Your Honor, I asked if he agreed.

21 THE COURT: Overruled. You may answer.

22 THE WITNESS: Correct.

23 Q. BY MS. SHANBHAG: I would like to go to page 3 of this
24 exhibit. Can we zoom in on No. 16.

25 And this reads:

1 "Treatment for genital self-harm or for complications
2 arising from self-treatment should be provided when
3 medically necessary."

4 Right?

5 THE COURT: This is item No. 16, and we're again on
6 Exhibit 1041?

7 MS. SHANBHAG: Page 3, yes, Your Honor.

8 THE COURT: Page 3. Thank you.

9 Q. BY MS. SHANBHAG: And this No. 16 discusses genital
10 self-harm arising from self-treatment; correct?

11 A. Correct.

12 Q. So this document recognizes that patients with gender
13 dysphoria may attempt self-treatment by trying to remove their
14 genitals; correct?

15 A. Correct.

16 Q. So the NCCHC recognizes that patients with gender dysphoria
17 may engage in genital self-harm in attempt to self-treat;
18 correct?

19 MR. EATON: Objection. Foundation. It hasn't been
20 established that he speaks on behalf of the NCCHC.

21 THE COURT: Well, he said that he is a member. If you
22 feel that -- you can indicate whether you think they have
23 indicated as much or not.

24 The objection is overruled.

25 THE WITNESS: That's correct.

1 Q. BY MS. SHANBHAG: And as a certified provider for NCCHC,
2 you're not aware whether the NCCHC has adopted the extra
3 criteria for medical necessity advocated by people such as
4 Osborne and Lawrence; correct?

5 A. That's incorrect. They have -- in the lectures that you
6 attend at NCCHC, they do go into detail specifically talking
7 about the flexibility of the criteria.

8 Q. I'm asking if they have adopted the specific criteria for
9 medical necessity.

10 A. Can you rephrase that one more time?

11 Q. Sure.

12 Has the NCCHC adopted the criteria proposed by Osborne and
13 Lawrence?

14 A. I would say --

15 Q. Yes or no.

16 A. No. No.

17 THE COURT: Could you bring that up again, item 16 on
18 that page. Thank you.

19 Q. BY MS. SHANBHAG: You testified earlier about your proposed
20 new criteria for evaluating gender confirmation surgery;
21 correct?

22 A. Correct.

23 Q. Have you ever proposed these criteria in any publication?

24 A. No. Honestly --

25 Q. Just yes or no.

1 A. No. No.

2 Q. Have you ever proposed your new criteria in any peer-review
3 context?

4 A. No.

5 Q. And you have never published anything regarding gender
6 dysphoria; correct?

7 A. Correct.

8 Q. And Mr. Eaton mentioned Corizon policy regarding gender
9 dysphoria earlier.

10 And you are aware of a Corizon guideline document regarding
11 gender dysphoria; correct?

12 A. I'm not sure which one you're talking about.

13 MR. EATON: Your Honor, I just -- objection to the
14 extent we're getting into a document that has been sealed. I'm
15 concerned that the clinical pathways is where we're going here,
16 and I have concern about discussing that in detail. I don't
17 mind it being mentioned.

18 THE COURT: Well, I can't preclude counsel -- even if
19 it's been sealed, I can't preclude counsel from examining a
20 witness about it. I can clear the courtroom. That's the only
21 thing I can do.

22 In sealing documents, I didn't mean that they would be
23 precluded from the court's consideration or for examination but
24 only that they would not be available for general dissemination
25 or available to the public.

1 So I can't -- if we're going to get into it, we will need
2 to clear the courtroom.

3 MS. SHANBHAG: Your Honor, I will be very vague. I
4 will not get into the specifics.

5 THE COURT: Go ahead.

6 Q. BY MS. SHANBHAG: And this guideline document regarding
7 gender dysphoria does not mention gender confirmation surgery;
8 correct?

9 A. I'm not sure.

10 MS. SHANBHAG: Your Honor, I would like to show the
11 document now, so if we could clear the courtroom.

12 THE COURT: If you are just showing it, I can turn off
13 this projector. How much are you going to -- I mean, are you
14 going to --

15 MR. EATON: Your Honor, I don't think -- if she is
16 just going to show it to the witness, I have no objection if
17 nobody else is going to see it at this point.

18 THE COURT: All right. The projector is off, so you
19 can go ahead and put it on for just the witness.

20 MS. SHANBHAG: One second, Your Honor.

21 Your Honor, may we give the witness the exhibit directly?

22 THE COURT: Yes.

23 Q. BY MS. SHANBHAG: Dr. Eliason?

24 A. Yes.

25 Q. You're looking at Joint Exhibit 14; is that correct?

1 A. That is correct.

2 Q. And this document regarding gender dysphoria, it's a
3 Corizon guideline document; correct?

4 A. Yes.

5 Q. And this document does not mention gender confirmation
6 surgery at all; correct?

7 A. I would have to review it.

8 Q. Please review it.

9 A. That is correct.

10 Q. And do you agree that individuals with gender dysphoria
11 should have access to all necessary types of treatment
12 regardless of whether they are incarcerated; correct?

13 A. Yes.

14 Q. And that one type of treatment for individuals with gender
15 dysphoria is gender confirmation surgery; correct?

16 A. Correct.

17 MS. SHANBHAG: No further questions.

18 THE COURT: Can you put that up on the screen? The
19 jury can't -- do you have it where -- I mean, I guess I have it
20 here. I can look at it. Give me a moment. I may --

21 MS. SHANBHAG: One minute, Your Honor. I can publish
22 it.

23 THE COURT: Well, that's all right. It's 14,
24 Exhibit 14?

25 MS. SHANBHAG: Yes. Yes, Joint Exhibit 14.

1 THE COURT: And just from the page --

2 MS. SHANBHAG: It's a two-page document, I believe.

3 THE COURT: All right. Let me look at it.

4 The question asked was that gender confirmation surgery was
5 not listed as a treatment option?

6 MS. SHANBHAG: Correct.

7 MS. RIFKIN: Your Honor, we can put it up now so that
8 it appears on the screen.

9 THE COURT: I have got it on the screen here.

10 Okay. All right. You're done with your cross?

11 MS. SHANBHAG: Yes.

12 THE COURT: I'm going to ask a few questions. I try
13 to do it -- I sometimes do it at the right time, but this will
14 give both sides a chance on redirect and recross to follow up.
15 And some of these have been covered on cross, and so let me --

16 EXAMINATION

17 BY THE COURT:

18 Q. In the -- I have that exhibit number. I want to say Joint
19 Exhibit 1.

20 On Exhibit No. 1, page 538, you list those three
21 circumstances in which gender confirmation surgery would appear
22 to be justified; at least I think that's what it said.

23 Have I got that right?

24 A. Yeah. Well, what I was trying to do is list some examples.

25 Q. Examples?

1 A. Yeah.

2 Q. All right. The second one was you referred to a severe and
3 devastating gender dysphoria primarily due to genitals.

4 I assume -- again, obviously, I'm not no psychologist or
5 psychiatrist, but I'm assuming that gender dysphoria comes in
6 different forms, and at least form is where one has a strong
7 concern for their genitalia and views it as kind of the enemy of
8 sorts?

9 A. Yes.

10 Q. That lends itself or results in self-castration attempts.
11 Is that what you were referring to?

12 A. Yes. That and just like the pervasiveness of it, you know,
13 where it's just constantly on the mind.

14 In gender dysphoria, oftentimes other interventions take
15 away the dysphoria, such as taking a female haircut or dressing
16 as a female or being called a female name. A lot of times, that
17 decreases the dysphoria to a level where it's sustainable.

18 Q. Does it also reduce the focus on genitalia?

19 A. So sometimes the focus isn't as extreme, you know. And so
20 anytime you make those gender-affirming moves, sometimes that
21 takes away that pain from the genital focus or --

22 Q. So is the thought -- the recent change in policy last
23 Friday, was the thought that that might reduce the pain, as you
24 refer to it, and, therefore, perhaps make gender confirmation
25 surgery unnecessary?

1 MR. HALL: Objection. Foundation. It doesn't speak
2 for IDOC policy.

3 THE COURT: Well, good point, good point. All right.
4 I'll not ask that question.

5 Q. BY THE COURT: Well, then, just -- you know, my real
6 question was: What keeps the plaintiff from falling within that
7 description, that example you gave of when gender conforming
8 surgery would be --

9 A. I do think that that one, No. 2, is where the plaintiff,
10 Ms. Edmo, does primarily meet that criteria. But then, like,
11 when you focus on that, then you have to look at the details.
12 And that's where I believe that doing it on the outside would
13 best suit Ms. Edmo.

14 Q. Okay. So, well, that kind of leads me to another question
15 I had.

16 You indicated that there was the need to have an inmate
17 living 12 months as a -- in a gender-conforming role or a
18 gender -- I'm not sure I'm going to get hung up in the
19 terminology here -- but living as a woman in Ms. Edmo's case in
20 a real-life setting, not in an incarcerated setting. But, of
21 course, that would change if there is long-term incarceration.

22 Now, but does that dynamic or that calculation change when
23 the inmate engages in dangerous behavior while incarcerated,
24 such as self-castration or suicidal ideation?

25 A. I think it could.

1 Q. Okay. But it didn't in Ms. Edmo's case?

2 A. Yeah. In this specific case, I didn't think that it did.

3 The self-castration and those incidences, primarily
4 Ms. Edmo's cases usually happened when Ms. Edmo was going
5 through stress from other reasons; like she was getting a
6 disciplinary infraction and gets sent to Unit 8. And then while
7 there and in a state of being upset, she would engage in this
8 self-harm.

9 And if you look past through her history, she has these
10 different episodes of cutting and suicide attempts, which were
11 her ways to deal with stress.

12 Q. Okay. A prison, particularly for a transgender individual,
13 is going to be a very stressful environment?

14 A. True; yes.

15 Q. That's going to be true today, yesterday, tomorrow, and as
16 long as they are incarcerated?

17 A. Yes.

18 Q. Do you agree?

19 A. Totally.

20 Q. Okay. The last and I think I asked -- I think it was
21 Dr. Ettner -- I'm not sure who all I asked this question of.
22 But one of the challenges is that the defendant clearly has
23 gender dysphoria -- I don't think anyone is disputing that --
24 and then there are a number of other mental health concerns.
25 The ones that are pretty clearly recognized would be depression

1 and anxiety, perhaps substance abuse, which may be a form of
2 self-medication.

3 But there is no way to tell whether those are a function
4 of -- kind of manifestations of -- what's the word -- gender
5 dysphoria impacting her in adverse ways, or is there?

6 A. No. You know, I mean, I honestly think it's disingenuous
7 to say you know specifically where painful symptoms come from,
8 because oftentimes we don't know why we're upset ourselves.

9 Q. But -- okay. I guess my concern is whether or not the
10 requirement -- I think it was the fourth requirement under the
11 WPATH standards -- if, indeed, the mental health concerns are
12 either caused or seriously exacerbated by gender dysphoria, that
13 kind of creates a classic catch-22. She is in need of
14 something, but she can only have it by not being in need of it,
15 which is the catch-22.

16 A. Yeah. It is a little bit of a --

17 Q. How do you get out of that? As a clinician, what's the way
18 you address that?

19 A. You know, it's a challenging thing that we deal with a lot
20 as mental health professionals. Because, you know, you want to
21 try to help them through these different impulses, but
22 oftentimes the thing that they want is the thing that will end
23 up actually maybe being harmful to them.

24 I mean, this is the hardest part of my job, really, is that
25 patients oftentimes want something now that I know in the long

1 run is not a good idea for them.

2 For example, they want to get into the hospital; they want
3 to get sedative medications; they want things that really would
4 help their immediate pain right now, it would make it feel
5 better right now. But in the long run, I know these things are
6 going to be bad for them.

7 So I have to advocate and try to help the patient not do
8 that thing because I know that in the long run, it won't be good
9 for them.

10 And like in Ms. Edmo's case, I feel like Ms. Edmo really
11 wants to have the gender reaffirming surgery right now, but I
12 feel like that would be doing her a disservice.

13 Q. Okay. And I -- a lot of questions about how many inmates
14 have been treated with gender confirmation surgery. My
15 understanding is there has been one in the state of California.

16 Does Corizon provide that contract for the State of
17 California?

18 A. No. At least I don't think Corizon has any prison
19 contracts in California.

20 Q. So there are no inmates in any facility in which Corizon is
21 providing healthcare in which gender confirmation surgery has
22 been selected as a treatment option?

23 A. Yeah. I would be fairly confident in saying yes.

24 THE COURT: All right. Okay. Maybe I'll just leave
25 it at that. All right. I'm sorry.

1 Mr. Eaton, redirect.

2 MR. EATON: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. EATON:

5 Q. You never denied SRS forever for Ms. Edmo; correct?

6 A. Correct.

7 Q. All right. At the time you made your assessment, you
8 indicated it would be continued to be monitored; right?

9 A. That is correct.

10 Q. All right. And is doing SRS, sex reassignment surgery,
11 going to eliminate plaintiff's other mental health issues?

12 A. No.

13 THE COURT: Could I -- I'm going to jump in.

14 You're pretty emphatic on that "no." I asked earlier
15 whether it's possible to sort out what's caused by gender
16 dysphoria, what's not.

17 And you indicated reluctance to be able to say emphatically
18 how you could ever rule that out, but you seem to be ruling it
19 out now.

20 Am I misreading your testimony?

21 THE WITNESS: No.

22 I think you're reading an important nuance in that there
23 are numerous studies that show that in the transgender
24 population, there is a significant amount of comorbid mental
25 health disorders and that that those comorbid disorders tend to

1 continue and not be cured by the --

2 THE COURT: Okay. All right.

3 MR. HALL: I'm sorry. By the what?

4 THE WITNESS: By getting the surgery.

5 MR. HALL: Thank you.

6 Q. BY MR. EATON: And I believe we were talking about
7 Exhibit 14, the clinical pathways for Corizon; right?

8 A. Yes.

9 Q. Counsel talked to you about that?

10 A. Yes.

11 Q. That's -- those are just guidelines; right?

12 A. Yes.

13 Q. Okay. And they are not mandatory?

14 A. I think they are meant to be helpful and help guide through
15 specifically the details of the hormone treatments but by no
16 means limits what you can do.

17 Q. Okay. So it doesn't preclude SRS surgery?

18 A. No.

19 You know, I'm in a leadership role with Corizon as a
20 regional psychiatric director, and I'm in meetings with this.
21 And they take this issue very seriously, and I have never once
22 felt that Corizon was trying to guide us away from recommending
23 surgery.

24 Q. And plaintiff's counsel talked to you about the NCCHC
25 manual or document; right?

1 A. Yes.

2 Q. And I believe they reference a position statement.

3 A. Yes.

4 Q. Is a position statement mandatory guidelines?

5 A. No.

6 Q. And that's where it was referencing WPATH; right?

7 A. Yes.

8 Q. And NCCHC may reference WPATH, but are these -- but those
9 are guidelines that are flexible; right?

10 A. Exactly.

11 Q. Does WPATH have specific guidelines for the correctional
12 setting?

13 A. Well, it does -- in their standards of care, it does
14 include all different types of housing situations. So you could
15 say that that includes correctional environments. But it leaves
16 room for clinical judgment, and it leaves room for flexibility.

17 Q. And the guidelines, say, for vaginoplasty don't
18 specifically address how to apply those in a correctional
19 setting in the WPATH; right?

20 A. Yes.

21 Q. Counsel asked you if you've ever reevaluated plaintiff, and
22 I believe you were trying to elaborate on your answer. Could do
23 that now.

24 A. Yes. So Ms. Edmo did move out of the unit in which I
25 treated, and so I didn't continue to see him, but Ms. Edmo

1 continued to see other providers and then continued to see her
2 therapists, who are on the Management and Treatment Committee,
3 and we reviewed her case at our meetings.

4 Q. And did Ms. Edmo ever send you a concern form after you
5 assessed her in April of 2016 regarding her reevaluation?

6 A. No.

7 Q. Have you ever been asked to do -- by anyone to do a
8 reevaluation of Ms. Edmo?

9 A. No.

10 Q. You were asked about your slides with some other presenters
11 where you included some of Dr. Levine's slides.

12 A. Yes.

13 Q. Are those adopted -- are the Levine slides and what's in
14 them adopted Corizon policy?

15 A. No.

16 Q. And what was your purpose of including those slides?

17 A. You know, Dr. Levine had some really great talking points.
18 And if you look at that one point where it talks about basically
19 equating gender reassignment surgery to the same thing as
20 getting a breast enhancement, Dr. Levine put that in there as
21 kind of a talking point to get the audience thinking about the
22 differences between these things.

23 MS. SHANBHAG: Objection. Lacks foundation.

24 THE COURT: Just a moment. I'm sorry?

25 MS. SHANBHAG: Lacks foundation. He is testifying as

1 to --

2 THE COURT: Just a moment. I'm sorry.

3 Okay. Sustained.

4 You can't speculate as to what Dr. Levine intended when he
5 put something in or didn't. You can obviously testify about
6 what he did put in and your take on it but not what Dr. Levine
7 intended.

8 THE WITNESS: Gotcha.

9 Q. BY MR. EATON: We are talking about your slides, and you
10 incorporated those into your --

11 A. So I was seeing --

12 Q. Hold on. Hold on.

13 A. Sorry.

14 Q. And we are talking about your slides and your presentation.
15 And I'm trying to ask why you incorporated those in there and
16 your understanding about those talking points.

17 A. So I understood that those talking points were meant to be
18 a discussion point and not to equate it as the same as a breast
19 enhancement.

20 Q. And so that was just to present a -- to get people talking?

21 A. It was a --

22 MS. SHANBHAG: Objection. Leading.

23 THE COURT: Sustained. Rephrase.

24 Q. BY MR. EATON: And so why was it presented as a talking
25 point?

1 A. To help the audience participate and to understand.

2 Q. Were you specifically adopting those points?

3 A. No.

4 Q. And with respect to Corizon, there were other trainings
5 besides Levine on gender dysphoria and treatment and care;
6 right?

7 A. Yes.

8 Q. Such as Dr. Alviso's presentation?

9 A. Yes.

10 Q. Does attempted self-castration, in and of itself, qualify
11 you for SRS?

12 A. No.

13 Q. You were asked if you had ever diagnosed Ms. Edmo with PTSD
14 or borderline personality disorder.

15 Do you have any thoughts on whether she has borderline
16 personality disorder traits?

17 A. Yes. I think that that probably does fit Ms. Edmo very
18 well.

19 Q. You were asked about your April 2016 note regarding your
20 SRS assessment by counsel, and they indicated that there were
21 some things that weren't in that note.

22 Do you remember that conversation?

23 A. Okay. Can you say that again.

24 Q. I'm talking about your SRS assessment note that counsel was
25 asking you about.

1 A. Uh-huh. Okay.

2 Q. And I believe they indicated that your specific mention of
3 mental health concerns that you had as why she may not
4 qualify -- one of the reasons that she may not qualify for SRS
5 was not in that note?

6 A. Yes.

7 Q. Okay. But you do, in that note, document her other mental
8 health conditions, including major depressive disorder; right?

9 A. Yes.

10 Q. And as to the living 12 months as a female criteria, you
11 testified in your deposition that you talked over that with
12 Ms. Edmo, didn't you?

13 A. Yes.

14 MS. SHANBHAG: Objection. Leading.

15 THE COURT: Sustained.

16 Q. BY MR. EATON: Did you talk to Ms. Edmo about the 12-month
17 living requirement as a female in the prison setting?

18 A. I don't know if I phrased it exactly like that.

19 Q. Generally, did you --

20 A. Yes.

21 Q. -- talk to her about that?

22 A. Yes.

23 Q. What was that discussion?

24 A. Just the importance of having the real-life test not be in
25 the prison.

1 Q. So the April 2016 note regarding the SRS assessment, does
2 that capture all of your thinking regarding that assessment?

3 A. No.

4 MR. EATON: I don't believe I have any further
5 questions, Your Honor.

6 THE COURT: Any further questions, Ms. Shanbhag?

7 MS. SHANBHAG: Yes. I'll be brief, Your Honor.

8 RECCROSS-EXAMINATION

9 BY MS. SHANBHAG:

10 Q. Dr. Eliason, you're taught in medical school that it's
11 important to document treatment of a patient; correct?

12 A. Correct.

13 Q. And do you agree that the purpose of a physician's progress
14 note is to document treatment of a patient?

15 A. Yes.

16 Q. And you agree it's important for a physician to document
17 diagnoses of a patient in the medical record; correct?

18 A. Yes.

19 Q. And you did diagnose Ms. Edmo with major depressive
20 disorder; correct?

21 A. Correct.

22 Q. And that diagnosis was reflected in your progress notes;
23 correct?

24 A. Correct.

25 Q. But you never documented diagnosing her with borderline

1 personality disorder or exhibiting borderline personality
2 disorder traits; correct?

3 A. That is correct.

4 Q. And earlier you told the court that Ms. Edmo's castration
5 attempts were related to being placed in segregation.

6 Do you know whether Ms. Edmo was, in fact, in segregation,
7 or what you called "Unit 8," when she attempted self-castration?

8 A. I believe --

9 MR. HALL: Object to the form, vague. There were
10 multiple times -- there were twice; correct?

11 THE COURT: Overruled. The question was: Do you know
12 whether Ms. Edmo was, in fact, in segregation, or Unit 8, when
13 she attempted self-castration? The question is: Do you know?

14 THE WITNESS: That was my understanding, yes.

15 Q. BY MS. SHANBHAG: But, in fact, she wasn't in Unit 8, was
16 she?

17 A. Well, it was my understanding that she was.

18 MS. SHANBHAG: No further questions.

19 THE COURT: All right. I have a couple follow-up, and
20 I'll --

21 FURTHER EXAMINATION

22 BY THE COURT:

23 Q. Doctor, it's -- I guess I have been around psychologists
24 and psychiatrists long enough that my sense is that when you're
25 dealing with mental health, it's pretty dicey to say that

1 someone is cured of a mental health problem.

2 That's the word you used, though, when I asked you about,
3 you know, this concern about chicken and egg, that if the gender
4 dysphoria is actually contributing, exacerbating, or even
5 causing other mental health issues. You indicated that studies
6 indicate that after sex reassignment surgery or gender
7 confirmation surgery, that no one is cured.

8 The other question -- the more pointed question is whether
9 there is any studies done indicating whether those mental health
10 concerns have been improved -- not cured, but improved.

11 So is that what you meant, that there is no indication --
12 any studies done to show whether there is any improvement in the
13 mental health?

14 A. I would say that the evidence is just very poor.

15 Q. Okay. All right. That's fair, certainly.

16 Do you have any opinion as to whether sex reassignment
17 surgery would minimize, exacerbate, or have no change on
18 Ms. Edmo's mental health if the procedure were performed
19 tomorrow?

20 In other words, what would her status be in six months, a
21 year, two years from now?

22 A. You know, I guess I couldn't predict. If I had to just
23 leap in one direction and have that done, one thing that I see
24 is I see a problem cooperating with staff very well. And if
25 there were complications, I think it would be a poor outcome.

1 Q. I understand that.

2 A. But if it went smoothly, it could maybe be better.

3 Q. Okay. Of course, why I'm asking that question is to try to
4 get back to my original question, is the catch-22 thing.

5 There is no way we can sort that out, is what you're
6 saying?

7 A. Yeah. Yeah.

8 Q. The other question I was going to ask, I think you or
9 someone indicated that there are 30 inmates under the -- in the
10 custody of the Idaho Department of Corrections who are currently
11 either being treated for or been diagnosed with gender
12 dysphoria.

13 Is that --

14 A. That's my understanding. About there, yeah.

15 Q. So, systemwide, of all the facilities managed by Corizon,
16 do you have any idea what the numbers are?

17 A. Oh, gosh. I don't have any idea, but I think our numbers
18 are going to be fairly --

19 Q. Representative?

20 A. Yeah. And we only have 7,000 inmates in Idaho. So some of
21 Corizon's other states will be a lot bigger.

22 Q. Okay. So there is probably hundreds, maybe even thousands?

23 A. Yeah, very well could be.

24 THE COURT: Okay. All right. Any further follow-up,
25 Counsel, with the questions I have asked?

1 Plaintiff, anything?

2 MS. SHANBHAG: Nothing, Your Honor.

3 THE COURT: Mr. Eaton?

4 MR. EATON: No, Your Honor.

5 THE COURT: Mr. Hall?

6 MR. HALL: No, Your Honor. Thank you.

7 THE COURT: All right. You may step down.

8 Call your next witness.

9 MR. HALL: We were just going to sneak out real quick
10 and use the restroom, if that's okay, Your Honor.

11 THE COURT: We would take -- you know, today is going
12 to be a little different because we are going a little longer to
13 make sure you get all your hours. So we can take a 10-minute
14 break now. We were going to take one in about 20 minutes, but
15 we can do it now.

16 I don't see anybody objecting, so we'll take a 10-minute
17 recess. We'll be in recess.

18 (Recess at 10:02 a.m. until 10:20 a.m.)

19 THE COURT: Call your next witness.

20 MR. EATON: Your Honor, defense calls Dr. Keelin
21 Garvey.

22 THE COURT: Dr. Garvey, please step before the clerk
23 and be sworn.

24 KEELIN GARVEY, M.D., DEFENDANTS' WITNESS, SWORN

25 THE CLERK: Please take a seat in the witness stand.

1 Please state your complete name and spell your name for the
2 record.

3 THE WITNESS: My name is Dr. Keelin Garvey.
4 K-E-E-L-I-N, G-A-R-V-E-Y, M.D.

5 THE COURT: You may inquire.

6 MR. EATON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. EATON:

9 Q. Dr. Garvey, thank you for being here. I understand you
10 flew in from the Boston area.

11 A. Yes, that's correct.

12 Q. All right. Well, I wanted to get into some of your
13 qualifications and experience.

14 Madam Clerk, could we pull up the computer for our table,
15 please.

16 And, Jen, could you pull up the CV for Dr. Garvey.

17 Do you see a document in front of you, Dr. Garvey?

18 A. Yes, I do.

19 Q. What is this document?

20 A. It appears to be my CV.

21 Q. Okay. Why don't we just scroll through it real fast.

22 THE COURT: I don't know what the purpose is of
23 scrolling through it fast, because nobody can read it at that
24 rate, so --

25 Q. BY MR. EATON: I just wanted to -- is it a complete copy of

1 your CV?

2 A. It appears to be, yes.

3 Q. Okay. And this is a document you created?

4 A. Yes.

5 MR. EATON: All right. We would move to admit this
6 into evidence, Your Honor.

7 THE COURT: Any objection?

8 MR. HALL: No objection.

9 THE COURT: The exhibit will be admitted into
10 evidence. I don't know that I have the exhibit number. I'm not
11 sure it was identified.

12 MR. EATON: Exhibit 2032.

13 THE COURT: All right. 2032 is admitted.

14 (Defendants' Exhibit 2032 admitted.)

15 MS. RIFKIN: And, Your Honor, I was just going to ask
16 that we make sure that it's being published or shown when
17 they're talking about exhibits so we have a chance to look at it
18 and object.

19 MR. EATON: It's up right now, Your Honor.

20 THE COURT: There is an -- I'm sorry. I thought there
21 was no objection.

22 MS. RIFKIN: I just -- I expected it to be on the
23 screen where I could see it, Your Honor.

24 THE COURT: Well, don't you have your own monitors
25 there?

1 MS. RIFKIN: Now I do, yes. Thank you.

2 THE COURT: Okay. I will turn it back on, but you
3 should have it on your own monitors.

4 MS. RIFKIN: Thank you.

5 MR. EATON: Are we good?

6 MS. RIFKIN: Yes. I'm sorry.

7 Q. BY MR. EATON: All right. So the court now has your CV,
8 and they can read it and consider it, but I want to just
9 highlight a few of your experiences.

10 Can you briefly tell us your formal education.

11 A. Sure. I received my undergraduate bachelor degree from
12 Yale University. I attended the University of Massachusetts
13 Medical School, where I received my medical doctorate degree.
14 And then I attended Brown University for my general psychiatry
15 residency, followed by a one-year forensic psychiatry fellowship
16 at UC Davis in California.

17 Q. And are you board certified in general adult psychiatry?

18 A. Yes, I am.

19 Q. And are you board certified in forensic psychiatry?

20 A. Yes, I am.

21 Q. And are you a licensed psychiatrist?

22 A. Yes, that's correct. I'm licensed in eight states.

23 Q. Including -- can you list them?

24 A. Massachusetts, Rhode Island, Pennsylvania, Minnesota,
25 Arizona, Florida, Texas, and California.

1 Q. And you mentioned residencies.

2 Did you have experience in the correctional setting during
3 your residency?

4 A. Yes, I did. I was interested in correctional healthcare
5 very early in my career, my training. So I did several
6 electives in correctional healthcare during residency and did a
7 two-month elective in the prison system in Rhode Island.

8 And I also did a two-month elective that involved doing
9 competency to stand trial evaluations, which was not a treatment
10 role; it was an evaluation role, but it also involved going into
11 the correctional system.

12 Q. And did you have a forensic fellowship?

13 A. Yes, I did.

14 Q. Where was that?

15 A. That was at the University of California Davis.

16 Q. And was that in a correctional setting?

17 A. It involved correctional work.

18 Because I was interested in correctional healthcare, I
19 looked at programs specifically that involved more extensive
20 exposure to correctional healthcare. So at University of
21 California at Davis, at that time, we had two about
22 two-and-a-half days per week of correctional treatment work,
23 which was more than a lot of the other fellowships had.

24 Q. And as a psychiatrist, I assume you have a lot of training
25 and education and experience with the DSM-5.

1 A. Yes, I do.

2 Q. And briefly explain what that is.

3 A. Sure. When I was a resident, we were still using the
4 DSM-4 -- you mean explain my experience or explain the DSM-5?

5 Q. Yeah, and what the DSM-5 is.

6 THE COURT: I pretty much know what the DSM-5 is.

7 MR. EATON: All right. Just your experience, then.

8 THE COURT: I'm just concerned about time. Go ahead.

9 MR. EATON: I appreciate it, Your Honor.

10 THE WITNESS: So I trained under the DSM-4. But when
11 the DSM-5 was drafted, I actually was responsible for doing the
12 training on the DSM-5 for my company, MHM, at the time. So I
13 trained all the mental health staff in the Massachusetts system
14 and then also did some national trainings on the DSM-5.

15 Q. BY MR. EATON: And the gender dysphoria is one of the
16 diagnoses in the DSM-5?

17 A. That's correct.

18 Q. Now let's talk a little bit about your experience, your
19 work experience.

20 Can you tell the court briefly what that is.

21 A. Sure. Following my forensic fellowship in California, I
22 took a job in the Massachusetts Department of Correction. I was
23 a staff psychiatrist initially, so that meant that I had a
24 caseload of patients that I followed and provided psychiatric
25 treatment for.

1 About a year into that role, I was promoted to deputy
2 medical director for psychiatry. So I took on some
3 administrative responsibilities, as well, but also maintained my
4 clinical work.

5 And then in August of 2015, I became the chief psychiatrist
6 in the system, still maintaining -- so I had more administrative
7 responsibility, but I still maintained my caseload of patients
8 as well.

9 By that point, it had gotten a little bit smaller, but I
10 had some patients that I had followed the whole seven years of
11 my career in Massachusetts.

12 Q. And as a deputy medical director, what were your duties?

13 A. Primarily still clinical. So most of my time was spent
14 providing clinical treatment to inmates, but I also oversaw the
15 work of other providers.

16 We had about -- anywhere from 11 to 16 or so psychiatrists
17 and nurse practitioners. So they would come to me if they had
18 questions about particular cases. I coordinated peer review and
19 the supervisory review process and just kind of had some general
20 oversight over the system.

21 Q. And did you treat patients with gender dysphoria in that
22 role?

23 A. I did, yes.

24 Q. Okay. And what was your role in that respect?

25 A. At that point, it was as a treating provider. So somewhere

1 around when I started in 2010 -- I don't remember the exact
2 date, but somewhere around 2010 or 2011, I had a couple of
3 patients that were under my treatment who had gender dysphoria.

4 Q. And then as a statewide -- statewide psychiatric director,
5 did you have -- did you encounter gender dysphoria patients?

6 A. Yes, I did.

7 So in the Massachusetts system at that time, the chief
8 psychiatrist was also the chair of the Gender Dysphoria
9 Treatment Committee. We had a pretty established policy and
10 procedure at that point. So when I took on the role of chief
11 psychiatrist, I became the chair of the Gender Dysphoria
12 Treatment Committee.

13 Q. And about how many inmates had a GD diagnosis around the
14 time you were working in the Massachusetts correctional system?

15 A. I don't remember the exact numbers. I know when I started
16 in that role, we had a smaller group, probably somewhere like 12
17 to 15 or so.

18 In the two years that I was responsible for that treatment
19 committee, it grew fairly rapidly. So we had anywhere, I would
20 say, from 30 to 40 at any given time.

21 The numbers fluctuated because in the Massachusetts system,
22 the Department of Correction also houses what we consider jail
23 detainees for the women's side. So we had a number of trans men
24 that were in and out of the system and not there longer term.

25 So the number tended to vary, but it was about 30 to 40, I would

1 say.

2 Q. And in your role at the Massachusetts state prison system,
3 were treatment options available for inmates diagnosed with
4 gender dysphoria?

5 A. Yes, they were.

6 Q. And what were they?

7 A. They involved every -- every patient in our system,
8 regardless of gender dysphoria or other diagnosis, has a
9 treating clinician if they have any kind of mental health
10 diagnosis.

11 So our gender dysphoria population did each have an
12 individual assigned clinician to address stressors and other
13 kinds of issues therapeutically.

14 We also had -- did hormone -- cross-gender hormone therapy
15 for gender-dysphoric individuals.

16 We set up a system for getting hair removal. So we had
17 both an electrologist that would come into the system and also a
18 dermatologist that we referred to for laser hair removal. And
19 she was the one that made the recommendations for which form of
20 hair removal.

21 We had -- we discussed gender confirmation surgery on
22 case-by-case basis, so it was available as an option.

23 Q. And in your role in this Massachusetts prison setting, were
24 you involved in all aspects of the treatment for gender
25 dysphoria patients?

1 A. I was.

2 So each patient also had an assigned psychiatrist, so I
3 wasn't the one that was individually treating each patient.

4 If the assigned psychiatrist or the assigned clinician had
5 recommendations for the person's treatment, including their
6 gender dysphoria treatment, that those recommendations would
7 come to the committee, and we would discuss them. And then I,
8 along with the other members of the treatment committee, would
9 make decisions about those recommendations.

10 Q. And then as a deputy medical director, you also had some
11 gender dysphoria patients that you were directly working with;
12 correct?

13 A. I did while I was the deputy medical director.

14 When I became the chief psychiatrist, the department of
15 correction had said that I could no longer be the individual
16 treater for those patients because of my role on the treatment
17 committee. But I did have at least a couple at a time up until
18 I became the chief psychiatrist.

19 Q. And very briefly, why is it that you work in a correctional
20 setting or have worked in a correctional setting?

21 A. Well, I think I went into it for reasons that are different
22 from the reasons that kept me in.

23 I initially knew that I was going to go into forensic
24 psychiatry and envisioned a career doing more criminal
25 competency, not guilty by reason of insanity, those types of

1 evaluations.

2 I was always interested in corrections, because I think
3 there is so many seriously mentally ill people that end up in
4 the system. But also, there is a lot of -- there's a lot of
5 depth to working in that environment, that I really enjoyed.
6 But I didn't anticipate staying in corrections for so long. I
7 thought I would kind of do that for a few years.

8 As I got into it, both because of my administrative
9 responsibilities and sort of greater involvement in the whole
10 system -- and also I think largely because of my caseload -- I
11 developed more of an interest in the actual treatment of
12 inmates.

13 I always had an interest, but I had kind of the luxury of
14 working with some people for seven years during my whole time in
15 Massachusetts, so it became more like a calling for me. I
16 really enjoyed working with that population.

17 It's obviously challenging at times, but I had an
18 opportunity to see people really improve their lives while they
19 were incarcerated. Ideally, that would happen without
20 incarceration, but it was very rewarding to see some of the work
21 that we could do in the correctional system.

22 Q. Thank you.

23 And then what's your current work?

24 A. Currently, I'm working for a company called InnovaTel.

25 It's a telepsychiatry company. And we primarily do community

1 mental health, but I was hired to expand into reentry programs
2 and also a smaller correctional systems.

3 So right now, I am the director of forensic psychiatry and
4 correctional psychiatry for InnovaTel. I do clinical work
5 typically four days a week, and that currently involves working
6 with the forensic population of people that are coming out of
7 jail.

8 Q. And when you say "reentry program," what do you mean?

9 A. So it's a program -- so reentry is usually referring to the
10 period of time when individuals are close to getting out of
11 prison or jail and then entering the community.

12 So we focus on a lot of the practical aspects of that.
13 They have case managers that help them get licensure and their
14 driver's license and housing and medical care and all that
15 stuff.

16 And then I'm the treating psychiatrist for them, so I will
17 make changes or continue their psychiatric medication if they
18 are satisfied with it.

19 Q. Okay. And please tell the court about your experience with
20 patient requests for sex reassignment surgery.

21 A. Sure. So in our system, we had a policy that governed --
22 it was a department of correction policy that was written by the
23 Massachusetts Department of Correction. And that governed the
24 process for requesting and evaluating gender confirmation
25 surgery.

1 So in our system, for me to formally evaluate the medical
2 necessity of gender confirmation surgery, it would come in the
3 form of a recommendation from that person's clinician and/or
4 psychiatrist.

5 But part of the -- besides the treatment committee, we also
6 had a supervision group that met also once a month before the
7 treatment committee. And that was where all the clinicians
8 would come and they would talk about their patients, and we
9 would review treatment plans and talk about changes that needed
10 to be made.

11 So, technically, one of the clinicians would have had to
12 make a formal recommendation for gender confirmation surgery for
13 me to formally evaluate. But as of when I left, we had several
14 patients that it was really discussed every time we met because
15 we -- their clinicians felt like they were probably approaching
16 medical necessity and that, at some point in the near future,
17 they would recommend that.

18 So it was an ongoing discussion for -- for several people.

19 Q. And what training and experience do you have with regard to
20 sex reassignment surgery?

21 A. So I had a little bit of training on gender dysphoria in my
22 residency. My training since then has been primarily through
23 conferences.

24 I did attend a WPATH training in Atlanta in January of
25 2016. That was, I believe, a four-day program that was pretty

1 comprehensive.

2 I have read a lot of the primary literature on gender
3 confirmation surgery.

4 And as part of my role in Massachusetts, we had a
5 consultant who joined for an hour of the supervision committee
6 each month and an hour of the treatment committee each month.
7 And he would also provide annual training once a year but did
8 that two hours of supervision every month during our meetings.

9 Q. And how many inmates have received SRS surgery while
10 incarcerated in the United States, if you know?

11 A. There is one that I am aware of.

12 Q. And did you author an expert report in this case?

13 A. In this case, yes, I did.

14 Q. Okay. Could you pull up her expert report, please.

15 MS. RIFKIN: Your Honor, prior to the expert report,
16 we do not believe counsel has laid foundation for the expert
17 opinions that Dr. Garvey has given in this case in her report.

18 THE COURT: Okay. We could have taken that up before
19 the hearing.

20 But have you notified counsel of the specifics?

21 So you're going to object to the report itself?

22 MS. RIFKIN: Well, depending on the opinions that
23 counsel is about to ask, we don't believe he has laid the
24 foundation during this examination yet.

25 THE COURT: Well, are you offering the exhibit at this

1 point? Because it might be better just to go through and get
2 the opinions out, and then we can address any *Daubert* issue or
3 702 issue concerning the opinions.

4 MR. EATON: Your Honor, I was going to ask her to
5 confirm that she wrote the report and that it was accurate and
6 she signed it.

7 THE COURT: Well, I think we can stipulate to that.
8 So let's --

9 MS. RIFKIN: So stipulated.

10 THE COURT: Yeah. And for that matter, I mean, I can
11 receive the opinion or the disclosure but may decline to rely on
12 it or use it depending upon what we hear at this point.

13 So I'm going to give you leeway to use the report, go
14 through and have Dr. Garvey indicate what the opinions are that
15 she wants to offer to the court, and then at that point in time
16 we get an objection from Ms. Rifkin and proceed in that fashion.
17 All right?

18 MR. EATON: Thank you, Your Honor. I was going to ask
19 if the witness would like to have a copy of the report in front
20 of her so that she could reference it.

21 THE COURT: Do you have a copy?

22 THE WITNESS: I don't have one here; so, yes, that
23 would be helpful.

24 MR. EATON: This is Docket 100-2, which is her report.

25 Q. BY MR. EATON: And what records did you review in

1 preparation for preparing your expert report in this case?

2 A. I reviewed Corizon medical and mental health records zero
3 to 1599. I reviewed the second amended complaint and the
4 associated discovery. I reviewed the reports of the plaintiff's
5 experts, Dr. Ettner and Dr. Gorton.

6 I reviewed, as part of the discovery, additional past
7 records of Ms. Edmo, including records from Portneuf Medical
8 Center, Sho-Ban records, Indian Health Service records.

9 There were several reports that had been authored,
10 including a presentence investigation report in 2009 and 2011; I
11 reviewed those. I reviewed a psychosexual evaluation that was
12 done in 2011. And I reviewed a PowerPoint and a document that
13 had been provided by Dr. Alviso as well.

14 Q. Okay. And that was -- those are the documents you reviewed
15 for your report?

16 A. That's correct.

17 Q. And then did you review any documents subsequent to that
18 report?

19 A. I did. I reviewed several depositions, including the
20 deposition of Ms. Edmo; the plaintiff's experts, Dr. Gorton and
21 Dr. Ettner; the deposition and report of Dr. Andrade; the
22 deposition of Dr. Eliason, Dr. Menard, Dr. Alviso.

23 And I believe that was it, that I can recall.

24 Q. And with the additional information that you reviewed, did
25 that change your opinions in this case?

1 A. No, it did not.

2 Q. Did you do a clinical interview with Ms. Edmo?

3 A. I did, yes.

4 Q. And was that audio-recorded?

5 A. It was audio-recorded, yes.

6 Q. And how long did that clinical interview last?

7 A. About 2 hours and 35 minutes.

8 Q. Anything else you have reviewed related to your expert
9 reports and opinions in this case?

10 A. There were a number of articles that I had read previously
11 and reviewed prior to this as well. I think that covers all of
12 the records that I can recall reading.

13 I also read -- there are some declarations that came out
14 recently. So I read those more recently, after I wrote my
15 report also.

16 Q. Okay. In what general areas were you asked to opine in
17 this case?

18 A. I was asked to opine about the treatment that Ms. Edmo
19 received from medical providers that are -- work for Corizon as
20 well as psychiatric providers with Corizon and also to form an
21 opinion about the medical necessity of gender confirmation
22 surgery.

23 Q. And also the gender dysphoria assessment?

24 A. Yes. That was part of the clinical interview.

25 Q. Did you assess whether Ms. Edmo has gender dysphoria?

1 A. Yes, I did.

2 Q. And how did you go about doing that?

3 A. Through my interview, I asked Ms. Edmo about her history
4 and about her current experience. And I -- at that point, I did
5 not have -- at the point that I saw Ms. Edmo for the interview,
6 I did not have the prior pre-prison records, but I talked about
7 her experience and her -- the history that she reported to me.

8 Q. And you have familiarity with diagnosing a person with
9 gender dysphoria?

10 A. Yes, I do.

11 As part of my role in Massachusetts, I was responsible for
12 evaluating every person in the system that reported symptoms of
13 gender dysphoria, whether they were new and entering the system
14 or had been there for a long time, but newly reported symptoms.
15 So I did those evaluations regularly.

16 Q. What determination did you make, if any, about Ms. Edmo?

17 A. At that point, I did diagnose Ms. Edmo with gender
18 dysphoria.

19 Q. And what was the basis for that?

20 A. The basis was Ms. Edmo's report to me of her symptoms
21 currently and her experience of living as a female in prison
22 since 2012.

23 I did include in my report the pieces of information that
24 Ms. Edmo had shared with me from her childhood. I did -- at
25 that point, again, I didn't have the prior records to rely on,

1 but I did have those prior to writing my report.

2 Q. And did you make any determination as to whether she has
3 other mental health disorders?

4 A. I did. I diagnosed Ms. Edmo with major depressive
5 disorder, alcohol use disorder, opioid use disorder, and
6 stimulant use disorder.

7 Q. And are any of those relevant in your determination of
8 gender dysphoria and treatment, therefore, for Ms. Edmo?

9 A. They are -- they are comorbidities, meaning that they're
10 illnesses that are occurring simultaneous with her gender
11 dysphoria. So it is all relevant.

12 It doesn't mean that she doesn't have gender dysphoria, but
13 it is all relevant to her treatment plan.

14 MS. RIFKIN: I'm going to object, Your Honor, to the
15 extent Dr. Garvey is testifying about treatment for gender
16 dysphoria as distinct from her assessment of the diagnosis of
17 gender dysphoria, because she does not have the requisite
18 expertise to opine about treatment.

19 THE COURT: About treatment options?

20 MS. RIFKIN: Yes, Your Honor, about -- about actually
21 assessing what treatment is appropriate for actual patients with
22 gender dysphoria. Rather, she can -- she can testify about what
23 treatment options are discussed in literature that she has
24 reviewed. But as far as how to assess what treatment is
25 necessary for patients, we object to her offering an expert

1 opinion.

2 MR. EATON: May I, Your Honor?

3 THE COURT: Yes.

4 MR. EATON: I mean, she testified about her
5 experience. You can have qualifications through education,
6 training, and experience. And she has testified that she has
7 treated gender dysphoria patients in the Massachusetts
8 correctional setting as a deputy, and then she oversaw and was
9 involved in the treatment decisions at --

10 THE COURT: I'm going to overrule the objection.
11 Certainly, you can get into that on cross, but I don't
12 think -- I'll just overrule the objection at this point.

13 Go ahead and proceed.

14 MR. EATON: Thank you, Your Honor.

15 Q. BY MR. EATON: In your expert opinion, are there treatment
16 options available for a gender dysphoria patient?

17 A. In general?

18 Q. Yes.

19 A. Yes. Treatment --

20 Q. What are those?

21 A. What was that? I'm sorry.

22 Q. What are those options?

23 A. Those options include cross-gender hormone therapy,
24 surgeries, hair removal. Psychotherapy is often recommended to
25 help individuals process some of the stress associated with

1 transition.

2 Q. And did you consider Ms. Edmo's psychiatric treatment?

3 A. Yes, I did.

4 Q. And did you consider the time it took to evaluate gender
5 dysphoria?

6 A. Yes, I did.

7 So I looked at the medical records, the mental health
8 records. And from what I saw in the records, it appeared that
9 Ms. Edmo's first request for an evaluation was around June 1st
10 of 2012.

11 She had her first evaluation for the diagnosis with
12 Dr. Eliason around -- I think it was June 25th, so it was less
13 than a month later. And then was subsequently transferred for a
14 follow up and more extensive evaluation with Dr. Claudia Lake in
15 July of 2012.

16 And then I also reviewed a committee meeting record from
17 the Management Treatment Committee that also reviewed her
18 history as provided during those evaluations and --

19 Q. And what was your determination?

20 A. My determination was that relative to cases that I have
21 seen, that was a fairly quick time to do the evaluation and then
22 approving the hormone therapy and then initiating hormones.

23 Q. And was the diagnostic process for determining GID
24 appropriate?

25 A. Yes, it was.

1 Dr. Eliason did cover what WPATH recommended as part of the
2 evaluation. And then when Claudia Lake saw Ms. Edmo the
3 following month, she went into a lot more depth about the
4 history.

5 Q. And what about the time it took for treatment, including
6 hormones, after the GID evaluation? Do you have an opinion on
7 that?

8 A. Yes. Based on my experience, that was also fairly rapid.

9 At the time that this was happening -- this was 2012 --
10 WPATH standards of care had been updated and had removed some of
11 the criteria that they previously required for hormone
12 treatment.

13 The endocrine guidelines at the time were from 2009 and had
14 not been updated yet. So it was kind of a period of transition
15 where some were still using the older criteria to determine
16 eligibility for hormones, but the standards of care, the WPATH
17 document, had removed some of those criteria.

18 So based on my experience with patients, even now, I think
19 that's a pretty quick turnaround time. I think it was in late
20 August or September that the hormones were first ordered.

21 Q. And with regard to hormones, do you have experience with
22 treatment with hormones?

23 A. Yes.

24 So in our system, we reviewed the treatment plans every
25 month of every individual that was diagnosed with gender

1 dysphoria.

2 We used an outside consultant for our hormone
3 recommendations, so we would -- the initial initiation of
4 hormones would happen per his recommendations. His name is
5 Dr. Joshua Safer. So I would approve the referral to Dr. Safer,
6 who would provide recommendations.

7 The medical provider responsible for each patient would be
8 responsible for ordering the medication, but we reviewed
9 everyone's treatment regimen at almost every month's meeting in
10 a supervision group. Some were on a fairly stable regimen, so
11 there wasn't a lot of discussion.

12 Q. And do you have education, training, and experience in
13 hormone treatment?

14 A. I do.

15 I have attended the WPATH conference in January of
16 2017 -- I might have said 2016 before. It was January -- I
17 think it was 2017.

18 And I have also read a lot of the literature about
19 hormones. I have read the Endocrine Society guidelines and the
20 Center for Excellence guidelines and, again, reviewed all of the
21 treatment plans for the individuals in the Massachusetts system
22 and looked at their hormone regimen.

23 Q. And do you have an opinion as to whether the hormone
24 therapy provided to Ms. Edmo was appropriate?

25 A. I do. Yes, I think that the hormone therapy was

1 appropriate.

2 The general method of providing hormone treatment involves
3 an estrogen and then an antiandrogen to block testosterone. So
4 she was started on both.

5 They appear to have been titrated, according to her report.
6 And the medical records that I saw did address what kind of
7 symptoms she was having or what kind of response she was having
8 to the hormone therapy.

9 But the regimen she was started on and then the continued
10 adjustments were consistent with what I have seen in other cases
11 of people with hormone therapy.

12 Q. Okay. I would like to turn to your SRS evaluation for sex
13 reassignment surgery.

14 At the outset, do you believe sex reassignment surgery can
15 be appropriate treatment for inmates under certain
16 circumstances?

17 MS. RIFKIN: I would like to renew my objection
18 specifically as to Dr. Garvey's opinion on gender confirmation
19 surgery on the basis that she has never treated a patient,
20 evaluated a patient, recommended a patient for gender
21 confirmation surgery.

22 THE COURT: Mr. Eaton?

23 MR. EATON: Your Honor, again, it can be qualified by
24 education, training, and experience. She indicated that she has
25 some education, I believe her testimony was, regarding treatment

1 options for gender dysphoria including sex reassignment surgery.
2 She has indicated that she has gone to WPATH trainings regarding
3 sex reassignment surgery. She has indicated that she, as a
4 deputy and as the chief psychiatrist, also had experience with
5 sex reassignment surgery options.

6 THE COURT: I'm going to overrule the objection. It
7 goes to the weight of the witness's testimony and opinion.
8 Obviously, someone who has done all the things that Ms. Rifkin
9 pointed to, presumably their opinion has more weight. But I
10 think by training and by some of the roles that she has played
11 in the various prison settings, I think she is qualified to
12 offer an opinion. And through cross-examination, you can test
13 that as well.

14 So the objection is overruled.

15 Q. BY MR. EATON: Also, do you have any certifications in a
16 correctional setting?

17 A. I do. I'm a certified correctional health professional by
18 the National Commission on Correctional Health Care.

19 Q. And what does that mean?

20 A. It's a certification that involves taking a test, studying
21 policies and procedures in correctional systems. And you
22 maintain it on an annual basis, attend their conferences
23 typically as well.

24 Q. And would WPATH and sex reassignment surgery come up in
25 those conferences?

1 A. It typically does. I presented at several conferences
2 myself, so I did present at the National Commission on
3 Correctional Health Care on gender dysphoria treatment in
4 correctional settings.

5 I have also presented at the American Correctional
6 Association conference and the American Academy of Psychiatry
7 and the Law on gender dysphoria treatment in correctional
8 settings.

9 Q. And that would include sex reassignment surgery?

10 A. Yes. That's often the -- we talk about all the treatment
11 forms and the evaluation process, but that's often what people
12 want to hear about the most, because there are a lot of
13 questions about it. So I do talk about that in my training.

14 And every training that I have done involves pretty
15 significant discussion with the audience, so everyone sort of
16 shares their experience and their methods of assessing this.

17 Q. Okay. We need to move quickly here. But there has been
18 discussion by plaintiff's experts that the regret loss
19 after -- the regret after sex reassignment surgery is 1 to 2
20 percent.

21 I guess -- sorry. We are just cramped for time here, so
22 I'm monitoring time.

23 First of all, what is your opinion as to whether the
24 evaluation by Dr. Eliason on sex reassignment surgery was
25 appropriate or not?

1 A. I believe that it was appropriate. I have read his
2 evaluation from that time and then also his deposition and the
3 declaration of the person that he had consulted with, I think
4 Mr. Clark.

5 So I do -- I believe that he was using his clinical
6 judgment to apply decision-making and making that decision for
7 Ms. Edmo.

8 Q. Can you elaborate on that a little bit.

9 A. Sure.

10 So he did consider Ms. Edmo's self-castration attempts and
11 that, and he sought consultation with additional medical
12 professionals with Corizon and also with Jeremy Clark, who I
13 believe is a WPATH member.

14 He -- and from reading the deposition, too, he appeared to
15 be considering her current clinical status and made the
16 determination that he didn't think it was medically necessary at
17 that time.

18 Q. I will ask you in a second whether you -- about whether you
19 think she is qualified for a sex reassignment surgery now.

20 But before we discuss that, as I was mentioning a minute
21 ago, plaintiff's experts have been talking about this 1 to 2
22 percent regret rate.

23 Very briefly, do you -- after sex reassignment surgery,
24 very briefly, what are your opinions on that?

25 A. I believe that those numbers are quoted commonly, but they

1 don't reflect the totality of the literature. I have read the 1
2 to 2 percent regret rate in the literature as well. However,
3 there are significant problems with the quality of the data,
4 primarily involving a significant number of people that are lost
5 to follow-up.

6 So many of the studies are quoted, that 1 to 2 percent
7 comes from the people that they were able to follow up. But in
8 many cases, up to half or even more of the sample had been lost,
9 and their results are not counted in this 1 to 2 percent. We
10 don't have any data on the people that were not followed up.

11 So I believe that those numbers don't represent the full
12 picture.

13 Q. All right. And so where did you -- did you come to an
14 opinion about whether Ms. Edmo is -- currently satisfies the
15 criteria for sex reassignment surgery now?

16 A. I -- my opinion was that gender confirmation surgery is not
17 medically necessary at this time for Ms. Edmo.

18 Q. And what's the basis for that?

19 A. The basis was three different factors.

20 One was the discrepancy between some of her self report of
21 her history and the records that demonstrated that she did not
22 appear to be presenting as female in the community prior to
23 being incarcerated.

24 Now, there can be a lot of different reasons for that
25 inconsistency, but that's an important part that needs to be

1 fleshed out further with her treating clinicians.

2 I also believe that her other medical -- her other mental
3 health comorbidities are not sufficiently well controlled. She
4 is actively self-injuring. At the time that I saw her, she said
5 she had cut herself as recently as one month prior. She said
6 that she was doing that with feelings of dysphoria.

7 But as a mental health professional, self-injury in any
8 form is never considered a healthy or productive coping
9 mechanism. So in my career as a mental health professional, we
10 try to work with people to develop better coping strategies so
11 that they don't engage in self-injury in any form.

12 So, in my opinion, that is not going to go away if she does
13 have gender confirmation surgery. I would like to see her
14 develop further coping skills that she would be able to use
15 following the surgery so that she is not engaging in self-injury
16 after the surgery.

17 And then third reason that I cited was that WPATH still
18 includes the 12-month real-life experience, and they provide --
19 in the standards of care document, they provide a rationale for
20 continuing to include that. And it lists the importance of the
21 person experiencing all of the things that they are going to
22 experience on the outside -- so family response to their social
23 transition or their physical transition, work response, family
24 parties, all sorts of things that you would encounter in your
25 life.

1 Ms. Edmo is not -- is not serving a life sentence. She is
2 going to be getting out of prison, I believe, in July of 2021.
3 I think there is a lot of -- there is challenges to using her
4 time in a men's prison as this real-life experience because it
5 doesn't offer her the opportunity to actually experience all
6 those things she is going to go through on the outside.

7 Q. And, in fact, does WPATH address that rationale for the
8 12-month experience?

9 A. They do. So --

10 Q. And what does it say?

11 A. It says that -- they included that and they didn't take it
12 out of the Standards of Care 7 because they felt that it was
13 important for people to experience all of those social issues
14 and settings that they are going to experience after they have
15 the surgery.

16 So to go through those first as a socially transitioned or
17 hormone-treated individual prior to undergoing gender
18 confirmation surgery.

19 Q. So I just want to make sure I didn't skip over it, but you
20 utilized, in part, the WPATH criteria for sex reassignment
21 surgery?

22 A. Right.

23 So the WPATH standards of care document has a section where
24 it talks about these as being flexible clinical guidelines. So
25 I used the criteria that they have outlined and applied my

1 experience and clinical judgment to each of the criteria to come
2 up with a answer about her medical necessity.

3 Q. Is the WPATH the end-all and be-all of resources that a
4 provider will consider for sex reassignment surgery?

5 A. I think it's commonly cited. I do use it. I've read the
6 whole document several times. I attended the training. It
7 doesn't have the quality of evidence behind its recommendations
8 that I typically see with a treatment guideline.

9 So if I'm looking at a treatment guideline for depression,
10 generally researchers will grade the level of evidence behind
11 each recommendation. So even if you look at the Endocrine
12 Society guidelines for hormone therapy, they use the grading
13 system -- that's what it's called -- to rank the levels of
14 recommendation as a suggestion or a recommendation based on the
15 quality of the evidence. And they also give a number for the
16 quality of the evidence.

17 The WPATH standards of care document lists references, but
18 it doesn't have that evidence-based grading system. So behind
19 each of their recommendations, I'm not sure how much data there
20 actually is to support that particular recommendation.

21 And for that reason, I think it's important that they are
22 interpreted flexibly and that we are allowed to use clinical
23 judgment and use them as a guideline.

24 Q. And I know in your report, you go through some of the
25 poor-quality studies; correct?

1 A. Yes.

2 Q. Okay. And can you briefly go through some of the CMS
3 study.

4 A. Sure. So I used the CMS reference because it was a very
5 thorough review of all of the evidence and studies that had been
6 done as of that point.

7 I am aware that CMS refers -- is usually dealing with the
8 elderly and people that have disabilities. But prior to drawing
9 their conclusion about their population, they reviewed all of
10 the studies and made determinations about the quality of the
11 evidence.

12 They cited several issues with the quality of the evidence,
13 including sometimes small sample sizes, different methodology,
14 different outcomes that were studied, and significant loss of
15 follow-up where the loss to follow a population is not analyzed
16 in any way.

17 And they made recommendations about doing additional
18 research that would more carefully look at the population that
19 is lost, to follow up to determine what factors are unique to
20 them.

21 Q. And was there a consideration by the CMS about whether
22 WPATH should be adopted?

23 A. Yes. I believe it was in response to a question. There is
24 an open call for questions, and someone asked if they adopt
25 WPATH as a controlling guideline.

1 They made a decision that they would not adopt WPATH as the
2 controlling guideline because they did not feel like the
3 evidence was strong enough and that they wanted to allow other
4 providers to either use WPATH or use their own standards based
5 on their decision-making.

6 Q. Okay. And you mentioned the APA.

7 Why is that?

8 A. The APA was another -- this was an academic now resource
9 that was looking at the data to determine whether there was
10 enough to develop a practice guideline.

11 They also concluded that there were issues with the quality
12 of the data and the quality of the evidence, including the
13 numbers on regret. And they concluded that there was enough
14 information to make -- to draft recommendations but not to
15 formally develop a practice guideline because their threshold
16 for developing a practice guideline was not met with the quality
17 of the data.

18 Q. So why would we bring up these deficiencies in the WPATH?

19 A. Because I think it's important to recognize that it is a
20 valuable resource, but it's not -- it's not so definitive that
21 we can equate their recommendations with success.

22 So it doesn't have -- it doesn't consider the correctional
23 population specifically. There is a section where they briefly
24 address institutional settings.

25 But there is no data -- as we have talked about before,

1 there is only one person we know in the system that has had
2 gender confirmation surgery while incarcerated. So we don't
3 have any data.

4 Until we get that data, we just need to be cautious in
5 using the guidelines, using what we know about what makes
6 someone a good candidate, and be able to apply our clinical
7 judgment.

8 Q. So you briefly went over -- is it criteria 1 of the WPATH
9 that is persistent, well-documented gender dysphoria is one of
10 the criteria for sex reassignment surgery?

11 A. Yes.

12 Q. Okay. And so if you're assessed with gender dysphoria,
13 then, in your opinion, do you automatically satisfy those
14 criteria?

15 A. In my opinion, no.

16 Q. And why is that?

17 A. When I'm making a diagnosis of gender dysphoria, often it's
18 an individual who has not sought any treatment for that prior.
19 Some people have never heard of it and maybe just learning about
20 it and kind of exploring it.

21 Giving the diagnosis often allows them to progress in their
22 treatment. They might have opportunities to participate in
23 groups or get additional property items and be able to feminize
24 to the degree it's allowed in the system. So it kind of gives
25 them the opportunity to explore it with very little harm.

1 However, as you get into more and more irreversible and
2 permanent treatments, my opinion is that the threshold for
3 conclusively making the diagnosis is higher.

4 So you can never be certain of a diagnosis, but when I'm
5 treating someone and doing an evaluation, I always request prior
6 treatment records. We are not always able to get them, but when
7 I do, I always use them in making my determination.

8 When I reviewed Ms. Edmo's prior records, I saw the
9 inconsistencies in her report. That didn't change my opinion
10 about her diagnosis. But prior to recommending irreversible
11 surgeries, that needs to be explored further. She needs to be
12 able to speak with her clinicians about why there is that
13 discrepancy.

14 Q. So you mentioned the North Idaho Correctional Institution
15 records as page 31 of your report.

16 And why did you mention those records?

17 A. So that was at a facility that she was at. I believe it
18 was part of probation on a prior charge. She was there for, I
19 believe, about six months.

20 And there was no mention that I saw in those records of her
21 presenting as female or entering the system as female. And
22 there was no -- no mention of using any female pronouns or
23 describing her as appearing female.

24 Q. You also mentioned the Portneuf Medical Center records.

25 Why is that?

1 A. Those were the -- her two hospitalizations for her suicide
2 attempts; one was in 2010, and one was in 2011.

3 When I'm reviewing records --

4 Q. Just for the record, that's prior to her incarceration;
5 correct?

6 A. Correct. Yeah, prior to her incarceration.

7 When I am reviewing records, I put a lot of value in what
8 the patient says at that time, because sometimes their
9 recollection of what they say or what they were experiencing is
10 not completely consistent with the records.

11 So when I reviewed those records, she reported the reasons
12 for her suicide attempts as related to relationship issues,
13 alcohol use, inability to find a job and some financial
14 problems, and kind of general life difficulties.

15 She didn't mention gender at that time, at either of those
16 times of admission, as being a contributing factor. And also, I
17 have worked in inpatient units, and we -- when we are meeting
18 with people, we do a mental status exam, and you describe the
19 appearance of the person.

20 I didn't see any description of her presenting as female
21 during that time, which differs from her report to me that she
22 was presenting as female at that time period.

23 Q. And you go through some other records on page 31 and 32.

24 Did any of those suggest that she was living as a female at
25 that time?

1 A. No. I reviewed the Sho-Ban Tribe Counseling and Family
2 Services records and then some other Indian Health Services
3 records, and I didn't see any mention of her presenting as
4 female or reporting any gender issues.

5 Q. And why did you review the psychosexual evaluation, number
6 5 on page 32?

7 A. That was a very comprehensive evaluation of her past sexual
8 activity that was ordered because of the nature of her offense.
9 So it was very comprehensive.

10 There was also a polygraph examination involved with a
11 prepolygraph interview. But some of what she reported there did
12 differ from her report to me.

13 This is a quote. It says: "He denied ever
14 cross-dressing." This is a quote from the report. And also,
15 the report said that Ms. Edmo had reported that she had sexual
16 contact with two females in the past, which is different from
17 what she told me during my interview.

18 Q. Okay. I would like to move on to the next criteria.

19 Is there anything else significant you want to mention
20 there?

21 A. Just the part about the photographs. I saw a declaration
22 from, I believe, a parole officer or probation officer who
23 worked with Ms. Edmo prior to this incarceration and had
24 confirmed that Ms. Edmo didn't present with feminized appearance
25 during any of those contacts.

1 Q. And I believe you indicated another criteria that is not
2 met in Ms. Edmo's case regarding sex reassignment surgery is
3 that her medical and mental health concerns are not well
4 controlled; is that right?

5 A. Yes, that's correct.

6 Q. Okay. And you briefly mentioned self-injury. Can you
7 elaborate on that a little bit.

8 A. Sure. So self-injurious behavior is done for a variety of
9 reasons, but it's almost always associated with a history of
10 trauma. It can be a component of a personality disorder or
11 depression; but, again, it's often associated with trauma.

12 It's never seen by a mental health professional as being an
13 effective or healthy coping strategy. And it's always -- for
14 anyone that engages in self-injurious behavior, if I am their
15 treating provider, that's going to be a main point of our
16 treatment plan.

17 It's especially important -- if Ms. Edmo does undergo
18 gender confirmation surgery, that's going to be a very stressful
19 undertaking, both physically and socially. And she will need to
20 have strong, effective coping strategies to manage all of those
21 issues.

22 And she -- in my opinion, she hasn't demonstrated that she
23 has effective coping strategies that she would be able to use
24 after the surgery.

25 Q. I'm going to move on to the next criteria. Do you have any

1 other comments, though, as to criteria 4?

2 A. I didn't include this, but I talked it about elsewhere in
3 my report, is her substance abuse history. I diagnosed her with
4 alcohol use disorder, opioid use disorder, and stimulant use
5 disorder.

6 In my almost 10 years of experience in corrections, I saw a
7 lot of people who were sober during their incarceration but then
8 immediately relapsed.

9 So I didn't talk about it here because I know she -- I
10 don't see any evidence that she has been actively using
11 substances, and some people do even while they are incarcerated.
12 But I think it's an important thing to consider also, because I
13 haven't seen that she has spent a lot of time doing substance
14 abuse treatment. I know she had at one point been discharged
15 from one of those treatment programs.

16 And that's also going to be something that she is going to
17 have to manage when she gets out, because she was -- she told me
18 that she was pretty much consumed in substance abuse prior to
19 her incarceration.

20 Q. Okay. And then I wanted to give you a brief chance to
21 elaborate on why she doesn't satisfy criteria No. 6, the 12
22 months living as a female.

23 A. Sure. So WPATH, in their section about the 12-month
24 criteria, they note that sometimes providers have to get
25 collateral information to verify that someone has lived through

1 the 12-month experience.

2 In my opinion, the time prior to incarceration has -- I
3 have a lot of questions about whether she was presenting as
4 female, because the records just don't support that.

5 But also, she was so active with her substance abuse, that
6 the true clinical meaning behind this recommendation to
7 experience life in her preferred gender could not be met while
8 someone is actively using substances to that degree.

9 And in a men's prison, I think it's very complicated. I'm
10 sure it's been challenging for her, as well, but it doesn't
11 allow her to live through the social events and work and kind of
12 general life on the outside that she is going to live once she
13 gets out.

14 Q. And then, briefly, you talk about alternative supplementary
15 approaches to treatment of gender dysphoria, and I believe you
16 referenced the Osborne and Lawrence article.

17 Can you briefly explain to the court why you referenced
18 that.

19 A. Sure. So this was -- there is not a lot of literature
20 that's written directly about the correctional environment when
21 it comes to gender confirmation surgery.

22 When I present on this, a lot of people have the same
23 questions about, you know, how to determine medical necessity.
24 And the general theme is that people want to do the right thing,
25 and they don't want to harm people.

1 This was one of the few articles I have seen that does
2 directly talk about the correctional population as being
3 different from the general population. They do note that we
4 should never exclude gender confirmation surgery in a prison
5 setting.

6 Obviously, there are going to be cases before we have
7 really good data, and we're going to use those cases to develop
8 the data. But until then, they made recommendations for having
9 additional criteria.

10 Now, I haven't seen these criteria specifically adopted
11 anywhere, but I think it was -- it's important because it
12 note -- they do talk about the limitations of the standards of
13 care document in the correctional setting. And they think it's
14 an oversimplification to just say that we should do exactly the
15 same thing inside as we do outside.

16 Q. And did you analyze any of those criteria under the Osborne
17 and Lawrence article as to Ms. Edmo?

18 A. I did. I'm just going to refer to my report here.

19 So should I list the criteria? I know it's in my report,
20 but --

21 Q. Why don't you say it briefly, and then just tell them,
22 quickly, what your opinions are.

23 A. Okay. There are some that she -- like, one of them is
24 willingness to live in a women's prison after. If she did have
25 the surgery, that's where she would be housed. So that's kind

1 of an easy one. She said that she would be willing to live
2 there.

3 They also talked about a satisfactory disciplinary record
4 and the capacity to cooperate with providers. That's something
5 that Ms. Edmo struggles with. I won't get into the disciplinary
6 reports too much, but I'm more concerned about her ability to
7 work with her treatment providers because that's going to be an
8 essential component if she does have the surgery, that she is
9 going to need the support and need to discuss what she is
10 experiencing as she is making that transition.

11 At this point, she hasn't demonstrated that she is able to
12 do that and to process her experience with her treatment
13 providers.

14 Q. Okay. And did you come to a conclusion as to whether the
15 treatment and care provided by Corizon and its medical
16 providers, was it appropriate and within the applicable
17 standards of care?

18 A. Yes, I believe that it was within standard of care.

19 Q. Is attempted self-castration an automatic qualifier for
20 gender confirmation surgery?

21 A. In my opinion, no, it's not.

22 Q. Why is that?

23 A. Again, mental health providers don't see any form of
24 self-harm as being productive or healthy regardless of what's
25 driving the self-harm.

1 Now, I have worked in prison for almost 10 years. I have
2 seen very extreme forms of self-harm that were not driven by
3 suicidal ideation or by a desire to permanently alter themselves
4 but were driven by all sorts of factors that are unique to the
5 correctional system.

6 I think that it's -- demonstrates that Ms. Edmo had -- did
7 not -- has not developed coping strategies to deal with
8 distress. If she has the surgery, she is still going to deal
9 with distress. She had a lot of distress in her life prior to
10 entering the system, and I want to see her develop strategies
11 that don't involving harming herself in any capacity.

12 Q. Do you have an opinion as to whether her mental health
13 issues are solely related to gender dysphoria?

14 A. In my opinion, they are not solely related to gender
15 dysphoria.

16 Q. And why is that? What's that based on?

17 A. I have reviewed her past records prior to incarceration.
18 Again, she did not report having gender issues at that point.
19 Despite her report to me that she was living as a female, I
20 haven't seen that in the records.

21 At the time of her suicide attempts -- and she had two very
22 serious attempts; one was by an overdose on a very lethal
23 medication and another was by cutting; it was a very serious
24 cut. And at the time of those suicide attempts, she reported
25 issues with alcohol, relationships, kind of general life

1 dissatisfaction.

2 She also reported to me that she had a history of
3 depression going back to childhood. She -- when I asked her
4 directly if she believes that she has major depression as well
5 as gender dysphoria, she said she believes that she has both.

6 Now, I recognize it's very difficult to sort those out,
7 sort out which dysphoric feelings are related to the gender
8 dysphoria and which ones are depression. But I do believe there
9 is enough evidence there to say that she has gender dysphoria
10 and major depression.

11 Q. Would that be part of your job as a mental health
12 professional and psychiatrist, to help sort that out?

13 A. Yes, absolutely.

14 Q. Okay. Do you have opinions as to the risk of suicide after
15 SRS, for Ms. Edmo?

16 A. There is limited data on that. There is a Swedish study by
17 Cecilia Dhejne -- I'm probably saying that wrong. It's
18 D-H-E-J-N-E. That was a population-based cohort study, so they
19 didn't --

20 MS. RIFKIN: Your Honor, I'm going to object.

21 Opposing counsel repeatedly objected to our experts speculating
22 about a risk of suicide or harm to Ms. Edmo after -- after
23 surgery. And I believe that their answers were limited as a
24 result of those objections. And now they are eliciting the same
25 opinion from their expert.

1 THE COURT: Well, I don't recall they were precluded
2 from offering the opinion.

3 MR. EATON: I don't believe -- I think that's right,
4 Your Honor.

5 MS. RIFKIN: Withdrawn, Your Honor.

6 THE COURT: All right. Proceed.

7 THE WITNESS: So that study looked at a sample of a
8 little over 300, I believe, patients who had had gender
9 confirmation surgery over a 30-year period.

10 It compared that sample to general population, so it did
11 not give us, like, before and after kind of comparison, which
12 would be really helpful.

13 But compared to the general population of people that don't
14 have gender dysphoria, postsurgery patients had a 19 times
15 higher risk of suicide. They concluded that that means that we
16 need to continue to provide mental health and medical care
17 following surgery, but I have not seen the data to support that
18 gender confirmation surgery cures people of their suicidality.

19 Q. BY MR. EATON: Again, what are your opinions as to the
20 suicide risk after SRS for Ms. Edmo?

21 A. Based on her current coping strategies, I would be
22 concerned about her suicide risk after surgery if she doesn't
23 work with mental health and begin to develop more effective
24 coping strategies for the stress that she is going to
25 experience.

1 Q. Do you think her suicide risk will decrease with SRS?

2 A. I don't think it will decrease at her current state.

3 Q. And do you think her cutting will decrease at her current
4 state after SRS?

5 A. I think it might temporarily, but I would be worried.
6 Because on the street, she was using alcohol and drugs as a
7 coping mechanism. And then inside, now she is using cutting. I
8 would be worried about that returning and/or the substance abuse
9 returning as a coping strategy.

10 Q. Finally, what are the harms if Ms. Edmo were to get surgery
11 now?

12 A. Well, I think that's what everyone is concerned about.
13 We'd all like to see her succeed. If she has it now when we
14 haven't sorted out some of these questions and helped her to
15 develop better coping strategies, I'm worried that it would not
16 be a success and that she would be at risk of having
17 complications, both physically and psychiatrically.

18 Q. Can you elaborate on that a little bit.

19 A. I think, again, she doesn't have the proper coping
20 strategies. This is going to -- gender confirmation surgery is
21 a significant life event. For the right candidate, it can be
22 very effective and associated with very low regret.

23 I'm not convinced that she is the right candidate at this
24 point, and that's why I recommend that we need -- she needs --
25 we need to sort out -- I mean her treatment providers need to

1 sort out some of the discrepancies with her history provided,
2 also help her to develop better coping strategies that she will
3 use following the surgery, and then sort out the real-life
4 experience. But this is something where WPATH doesn't give a
5 lot of guidance in terms of the correctional setting.

6 MR. EATON: Your Honor, I would move to admit her
7 report into evidence for consideration of the court.

8 THE COURT: Same objections?

9 MS. RIFKIN: Same objections.

10 THE COURT: I'll admit it. But as I've indicated, I
11 think the witness has expertise. It goes to the weight, not the
12 admissibility of the exhibit -- or of the opinion.

13 So I'll overrule the objection and admit the report. It's
14 technically hearsay. But since all the reports are coming in,
15 I'm going to admit this exhibit as well.

16 What's the number on that again?

17 MS. RIFKIN: Your Honor, may I just -- we had a
18 stipulation with counsel that the expert reports would not
19 actually be offered as exhibits into evidence.

20 THE COURT: Oh, then I stand corrected. I thought
21 they were.

22 MS. RIFKIN: That is why we did not offer our
23 exhibits. They have been filed in the case --

24 THE COURT: Okay.

25 MS. RIFKIN: They have been filed in the case --

1 THE COURT: Okay.

2 MS. RIFKIN: -- but not as evidence at the hearing.

3 THE COURT: All right. I will not admit, then, the
4 exhibit. Often counsel will stipulate the exhibits -- the
5 reports come in, but they are hearsay. The opinions should be
6 offered in court under cross-examination, not by way of a
7 written document unless the parties agree for all parties that
8 they will come in.

9 So, assuming that's all correct, the report will not be
10 admitted. All right?

11 MR. EATON: That's fine, Your Honor, as long as it's
12 the same for all parties.

13 THE COURT: It is.

14 MR. EATON: I thought they had all been admitted.

15 THE COURT: Well, I guess I thought they had as well,
16 but I'm going to trust Ms. Rifkin is not misleading me that
17 she's never really offered that. I thought it was a joint --
18 that they were joint exhibits, but I didn't look that carefully
19 at all of them.

20 MR. HALL: Right. And I would like a point of
21 clarification as to whether Ms. Rifkin's position is limited
22 only to the retained experts. We have filed nonretained expert
23 declarations, which was our understanding completely pursuant to
24 our stipulation, that those would be considered and admissible
25 pursuant to our stipulation in addition to or in lieu of live

1 testimony.

2 MS. RIFKIN: Yes, Your Honor. That is correct for the
3 nonexpert declarations.

4 And for the declarations, the stipulation was they were
5 already on file with the court in support of and opposition to
6 the briefs. My distinction is that they are hearsay, and so
7 they cannot be considered as evidence by the court unless the
8 actual evidence was established at the hearing.

9 They are in the court's file. We don't object to the court
10 considering them.

11 THE COURT: Okay. Does that clarify it, Mr. Hall?

12 MR. HALL: Yes, as to the nonretained --

13 THE COURT: Right.

14 MR. HALL: -- as long as the limitations on
15 plaintiff's retained expert declarations are the same, that they
16 are not admitted into evidence.

17 MS. RIFKIN: That's correct.

18 THE COURT: All right. Let's go ahead and proceed.

19 Cross.

20 CROSS-EXAMINATION

21 BY MS. RIFKIN:

22 Q. Good morning, Dr. Garvey.

23 A. Good morning.

24 Q. In your -- just before counsel ended his direct, he asked
25 you about potential harms to Ms. Edmo. And you said: "We would

1 all like to have her succeed."

2 Do you remember that?

3 A. Yes.

4 Q. Who is the "we" that you were referring to when you said
5 "We'd all like to have her succeed" and went on to describe with
6 "we"?

7 A. I guess I'm generally referring to mental health
8 professionals. I mean, her treatment team, I'm sure her
9 plaintiff's experts.

10 Q. You're not a treater of Ms. Edmo; correct?

11 A. That's correct.

12 Q. But you identify very closely with Ms. Edmo's treaters
13 employed by Corizon at IDOC; that's why you used the word "we";
14 correct?

15 A. No. I wouldn't say that.

16 Q. Dr. Garvey, you have never previously been qualified as an
17 expert in any court regarding treatment of gender dysphoria;
18 correct?

19 A. No. This is the first case that I have been involved in
20 that's gone to court.

21 Q. Until today, you have never testified in court as an expert
22 regarding treatment of gender dysphoria, any kind of treatment
23 of gender dysphoria; correct?

24 A. That's correct.

25 Q. In fact, prior to this case, you have never been retained

1 and provided an expert report regarding any aspect of treatment
2 of gender dysphoria; correct?

3 A. I was retained but not disclosed, so I can't speak about
4 the details.

5 Q. You didn't provide an expert report; correct?

6 A. Correct. It was dismissed prior to getting to that point.

7 Q. You have never published any peer-review article relating
8 to treatment of gender dysphoria; correct?

9 A. I was acknowledged in an article --

10 Q. Please answer the question.

11 A. No. I -- I have not published in a peer-review journal on
12 gender dysphoria.

13 Q. And the acknowledgement, you were talking about a
14 newsletter that someone wrote and, at the end, said thank you
15 with a number of individuals for talking to me; is that fair?

16 A. No, that's not fair.

17 That individual had attended one of my talks and talked to
18 me after the talk and developed this article in collaboration.
19 So he sent it to us, a couple of us. And I reviewed it and gave
20 him some feedback.

21 Q. This article, you're talking about a newsletter; right?
22 It's not a peer-reviewed publication? I want to be clear for
23 the court.

24 A. It's in the American Academy of Psychiatry, in a
25 newsletter; that's correct.

1 Q. Newsletter.

2 You have never completed any peer-review research relating
3 to treatment of gender dysphoria; correct?

4 A. That's correct. Most of my career has been --

5 Q. Please just answer the question.

6 A. That's correct.

7 Q. You have never served on the board of any organization that
8 relates to treatment of gender dysphoria; correct?

9 A. Outside of the Department of Correction in Massachusetts,
10 that would be correct.

11 Q. And your only university or graduate-level teaching
12 experience regarding treatment of gender dysphoria was a single
13 lecture at Brown University; correct?

14 A. I provided a lecture at Brown University.

15 Q. One lecture; correct?

16 A. It was to the forensic fellowship program. There is only
17 one fellow at a time. Yes, that's correct.

18 Q. And that was your only university or graduate-level
19 teaching experience regarding treatment of gender dysphoria;
20 correct?

21 A. Well, I presented at three conferences, including an
22 academic conference.

23 Q. You're talking about correctional conferences.

24 Those aren't university or graduate-level teaching courses,
25 are they?

1 A. They are typically sponsored by a university. And the CME
2 that's given out is from the university. So I'm not sure if
3 technically that counts as being university.

4 Q. Okay. We'll move on.

5 You said your training on treating gender dysphoria
6 consists of attending a WPATH conference. And you can't
7 remember whether it was 2016 or 2017; correct?

8 MR. EATON: Objection. Misstates the testimony.

9 Q. BY MS. RIFKIN: That's one -- that was one part of your
10 training?

11 THE COURT: State the question one more time and
12 then -- so counsel can object. It kind of got garbled. Go
13 ahead.

14 MS. RIFKIN: Sure.

15 THE COURT: Because of the objection. Go ahead.
16 Restate the question.

17 Q. BY MS. RIFKIN: You stated that one of the bases of your
18 training for treating gender dysphoria was attending a WPATH
19 conference, and you can't remember whether it was 2016 or 2017;
20 correct?

21 A. It was January of 2016.

22 Q. And another bases of your training was attending a talk on
23 gender dysphoria at the July 2017 National Commission on
24 Correctional Health Care conference; is that correct?

25 A. I attended a talk by Dr. Timothy Beach from California at

1 that conference, yes. And then I also received two hours a
2 month of supervision with Dr. Stephen Levine as part of the
3 Gender Dysphoria Treatment Committee and supervision group.

4 Q. And that plus reading literature, that's your training on
5 treating gender dysphoria; correct? That's the universe?

6 A. Well, and treating the patients that I had prior to
7 becoming involved in the committee.

8 Q. In your report, you wrote that you received monthly formal
9 consultation from Dr. Stephen Levine plus additional extended
10 in-person training; correct?

11 A. That's correct.

12 Q. The monthly formal consultation was your participation on
13 the Massachusetts Department of Corrections Gender Dysphoria
14 Treatment Committee with three other members, including
15 Dr. Levine; correct?

16 A. It was that, and it was also the supervision group, which
17 had a larger number of members. He participated in that and the
18 treatment committee. So both.

19 Q. He was a consultant to each of these groups, so he would
20 call into each of these groups' meetings for one hour for each
21 meeting; correct?

22 A. Yes. And we would review cases with him and ask his
23 opinion. He would provide --

24 Q. And the extended in-person training that you refer to in
25 your report, you testified in your deposition that was actually

1 a one-day training you attended where the Massachusetts
2 Department of Corrections brought Dr. Levine in to provide a
3 training; correct?

4 A. There is one that I can recall. So I believe that that's
5 correct.

6 Q. That was your extended in-person training; correct?

7 A. Well, extended beyond the monthly, because it was longer,
8 and it was in person.

9 Q. Your only experience directly treating any patient who has
10 received gender confirmation surgery was with a patient who was
11 in a hospital program for somewhere between three to seven days
12 when you were doing your residency; correct?

13 A. That patient, yes. I have other patients that had gender
14 dysphoria, but that was the only postsurgical one. Other than I
15 think I mentioned in the deposition, too, there was a patient in
16 the Massachusetts system who had had a surgery that didn't go
17 well, and I believe it was done in another country.

18 Q. You were not that person's direct clinical treater,
19 assigned clinical provider, as I think you mentioned earlier;
20 correct?

21 A. I was the supervisor for the nurse practitioner that was
22 treating her. So I did the supervision over her treatment.

23 Q. So I'm going to ask my question again.

24 Your only experience directly treating any patient who has
25 received gender confirmation surgery was with a patient who was

1 in a hospital program for somewhere between three to seven days
2 when you were doing your residency; correct?

3 A. To the best that I can recall, that's correct.

4 Q. And you have never made any recommendation that a patient
5 with gender dysphoria receive gender confirmation surgery;
6 correct?

7 A. At this point, I have not. But, again, we discussed it on
8 several patients that --

9 Q. I'm going to ask you --

10 THE COURT: Let me -- I think that question is pretty
11 much yes or no.

12 Restate the question, if you would.

13 And try to answer counsel's questions very directly. We
14 can move this much more quickly. Mr. Eaton will have a chance
15 to allow you to clarify and elaborate on redirect. But for our
16 purposes here on cross, answer the questions yes or no, if they
17 can be answered that way.

18 Would you restate the question, Ms. Rifkin.

19 MS. RIFKIN: Sure. Thank you.

20 Q. BY MS. RIFKIN: And you have never made any recommendation
21 that a patient with gender dysphoria receive gender confirmation
22 surgery; correct?

23 A. Yes.

24 Q. And you have never written a letter of referral for gender
25 confirmation surgery; correct?

1 A. Correct. That would be -- that wasn't part of my role in
2 prison because it would have been through the committee. So I
3 have --

4 Q. I'm going to ask you, once again, to answer my question
5 that I'm asking you.

6 A. Yes, that's correct.

7 Q. You have never done long-term follow-up care with a patient
8 who has had gender confirmation surgery; correct?

9 A. Yes.

10 Q. Prior to your work that defendants paid you for in this
11 case, you had never personally assessed any patient with gender
12 dysphoria as to the medical necessity of gender confirmation
13 surgery; correct?

14 A. Again, the process in the system that I --

15 Q. I'm going to ask you to answer my question, please.

16 THE COURT: Just a moment.

17 Again, answer the question yes or no. Again, Mr. Eaton
18 will have a chance to allow you to elaborate later. But if the
19 question can be answered fairly yes or no, it should be.

20 Restate the question one more time, if you would,
21 Ms. Rifkin.

22 Q. BY MS. RIFKIN: Prior to your work defendants paid you for
23 in this case, you had never personally assessed any patient with
24 gender dysphoria as to the medical necessity of gender
25 confirmation surgery; correct?

1 A. I mean, again, the process that -- I would say I didn't do
2 a formal evaluation specifically for that purpose, that's
3 correct.

4 MS. RIFKIN: I'm going to move to strike that as
5 nonresponsive.

6 THE COURT: I think it is responsive. Let's go ahead
7 and put another question.

8 But, again, yes or no if you can.

9 Go ahead.

10 Q. BY MS. RIFKIN: You had never done an in-person evaluation,
11 including a clinical interview, to assess any patient with
12 gender dysphoria as to the medical necessity of gender
13 confirmation surgery; correct?

14 A. Yes, that's correct.

15 Q. And at the time of your deposition approximately three
16 weeks ago, you had billed defendants more than approximately
17 \$60,000 for your work on this case; correct?

18 A. I have an hourly rate, and I reviewed many records and
19 spent a long time on the report. So that is the rate that I
20 charge; correct.

21 Q. And your interview -- so you had billed defendants, as of
22 the time of your deposition three weeks ago, approximately
23 \$60,000 for your work on this case; correct?

24 A. I don't remember exactly how many hours I had. I think
25 that sounds a little bit --

1 THE COURT: The question is the dollar amount, not the
2 hours.

3 THE WITNESS: Mm-hmm. Right.

4 Q. BY MS. RIFKIN: At your deposition, you testified that you
5 had spent between 75 to 85 hours to be averaged at 80 -- at \$600
6 an hour, so that's \$48,000, plus \$6,000 per day for your two-day
7 trip to Idaho to interview Ms. Edmo; correct?

8 A. Yes, that sounds approximately correct.

9 Q. And \$48,000 and \$12,000, that's \$60,000; correct?

10 A. That sounds correct.

11 Q. And, in fact, for the record to be very clear, your
12 interview with Ms. Edmo was the first time you had ever done any
13 clinical interview of a patient as to the medical necessity of
14 gender confirmation surgery; correct?

15 A. Specifically for that purpose, correct.

16 MS. RIFKIN: Your Honor, I'll continue with my
17 questioning, but I would like to put on the record that we once
18 again move to strike and exclude the opinions by Dr. Garvey as
19 to the medical necessity of gender confirmation surgery for
20 Ms. Edmo. She does not have any experience to support her
21 opinions in this case.

22 THE COURT: As counsel pointed out, Rule 702 and 703
23 indicates that the expertise can be based upon training,
24 experience, and education. And given her role as a psychiatrist
25 working within the prison setting, I think she can offer an

1 opinion.

2 But you have done a good job of pointing out some
3 weaknesses in the resume, and that's something the court
4 obviously will consider, but it does not preclude her from
5 testifying.

6 Go ahead and proceed.

7 Q. BY MS. RIFKIN: Dr. Garvey, your experience with gender
8 dysphoria comes almost exclusively, based on what you told us
9 during the direct, from your participation on the Massachusetts
10 Department of Corrections Gender Dysphoria Treatment Committee
11 and Supervision Group; correct?

12 A. That's been most of my experience, yes.

13 Q. And you were part of that group for two years; correct?

14 A. Correct. I had -- I believe it was around 2013, I did a
15 couple of preliminary evaluations that I presented to the group.
16 So --

17 Q. I'm going to ask you, once again, to listen to my question
18 and please answer my question.

19 You were a part of that group for two years; correct?

20 A. I was a part of the group for two years. I had gone to
21 meetings prior to that.

22 Q. For the time that you served in the capacity as a member of
23 the Massachusetts Department of Corrections Gender Dysphoria
24 Treatment Committee and Supervision Group, IDOC's expert in this
25 case, Dr. Andrade, was also part of that treatment committee;

1 correct?

2 A. Yes, that's correct.

3 Q. As well as Massachusetts Department of Corrections outside
4 consultant, Dr. Levine; correct?

5 A. Correct.

6 Q. And there were four members of the treatment committee;
7 correct?

8 A. Or five. There was a Department of Correction
9 representative who was a health service division director, so
10 sort of the person that oversaw our contract. Sometimes she had
11 an additional health services representative there. And then
12 also the general medical director for my company was also part
13 of that group.

14 Q. The treatment committee?

15 A. The treatment committee, yes.

16 Q. You testified at deposition you couldn't quite remember; it
17 might be five. Dr. Andrade testified that there were four.

18 Does four to five members of the treatment committee sound
19 correct to you?

20 A. It does. It was up to the Department of Correction who
21 else would be allowed. So I know that a health services
22 division director was part of it. Sometimes she sends someone
23 in her place, and sometimes she might have brought someone with
24 her.

25 So, yeah, that sounds correct.

1 Q. So you, Dr. Andrade, IDOC's expert in this case, and
2 Dr. Levine, who has been referenced extensively in this case,
3 you were three of the four or five members of the Massachusetts
4 Department of Corrections Gender Dysphoria Treatment Committee;
5 correct?

6 A. Yes, that's correct.

7 Q. And that's where, as you testified a few moments ago,
8 besides attending one WPATH conference and another presentation
9 at a conference, you testified that the majority of your
10 training came from those group meetings and Dr. Levine's
11 supervision; correct?

12 A. And from reading a lot of the literature, yes.

13 Q. And you and Dr. Andrade in the Massachusetts Department of
14 Corrections, you worked close together; correct?

15 A. I did. At some point, he was promoted within the company
16 and was no longer in Massachusetts in a large capacity, but he
17 was still part of the Gender Dysphoria Committee.

18 Q. And within the Gender Dysphoria Committee, you testified
19 that one of your roles was to go out and provide a second
20 interview as to a gender dysphoria diagnosis; correct?

21 A. Correct.

22 Q. And while Dr. Andrade was serving in the role on the Gender
23 Dysphoria Treatment Committee, you and he would go together to
24 conduct those assessments; correct?

25 A. Correct. Most of the time, we did, yes.

1 Q. So you and Dr. Andrade worked very closely together in the
2 Massachusetts Department of Corrections; wouldn't you agree?

3 A. In the gender dysphoria, yes.

4 Q. And you have done at least three presentations together
5 relating to gender dysphoria at a corrections -- at corrections
6 conferences?

7 A. Yes, that's correct.

8 Q. And both of you, then, as part of your role on the Gender
9 Dysphoria Treatment Committee received your supervision from
10 Dr. Levine; correct?

11 A. Yes. He was a consultant, and he provided recommendations,
12 and we ran cases by him. It wasn't really a supervisory role,
13 more of a consultant.

14 Q. So when you described earlier in your testimony here today
15 that Dr. Levine was a supervisor of this group and provided
16 supervision regarding treatment of gender dysphoria, that's not
17 quite accurate; correct?

18 A. Yeah. I guess I might have misspoken there.

19 He was retained by, I believe, the Department of Correction
20 as a consultant, so we ran cases by him. He offered -- he did
21 the one annual training, but he did a lot of training within
22 those meetings also.

23 Q. So his was a training role, or it was a consulting role?

24 A. A little of both.

25 Q. All right. If we can show Plaintiff's Exhibit 1030,

1 please.

2 You and Dr. Andrade gave a conference presentation together
3 that you titled "Tax Dollars at Work, Treating Inmates With
4 Gender Dysphoria"; correct?

5 A. Correct. As I explained in the deposition --

6 Q. I'm going to just --

7 THE COURT: Just answer counsel's question.

8 THE WITNESS: Correct, but the title is in quotes for
9 a reason.

10 MS. RIFKIN: Move to strike.

11 THE COURT: Well, I'll strike the response.

12 I'll again caution the witness to listen to counsel's
13 question. That's why you'll have redirect in a moment when
14 Mr. Eaton will have a chance to correct and clarify that, but
15 answer the questions directly as they are asked.

16 Proceed.

17 Q. BY MS. RIFKIN: You were the one who came up the title of
18 this presentation; correct?

19 A. Yes, that's correct.

20 Q. And you testified in your deposition you wanted it to be
21 catchy; correct?

22 A. For this conference, that was usually a necessity.

23 Q. You testified in your deposition that you wanted the title
24 to be catchy; correct?

25 A. That sounds correct, yes.

1 Q. And you and Dr. Andrade wrote a summary of your
2 presentation for the conference program; correct?

3 A. I think there was an abstract in the --

4 Q. I would like --

5 A. -- conference program.

6 MS. RIFKIN: Before we move on, I would like to admit
7 Plaintiff's Exhibit 1030, Your Honor.

8 THE COURT: Any objection?

9 MR. HALL: No objection, Your Honor.

10 MR. EATON: No objection.

11 THE COURT: 1030 will be admitted.

12 (Plaintiff's Exhibit 1030 admitted.)

13 MS. RIFKIN: I would like to show Plaintiff's Exhibit
14 1029.

15 Q. BY MS. RIFKIN: This was the meeting at which you and
16 Dr. Andrade presented this presentation; correct? The APA, the
17 American Academy of Psychiatry and the Law meeting in 2017?

18 A. Yes, that's correct.

19 Q. All right. If we can go to the next page. And can we
20 please zoom in on the bottom half of this page.

21 Under the summary you wrote with Dr. Andrade:

22 "For the correctional mental health professional who
23 treats gender dysphoria, however, this means
24 navigating a minefield of advocates on one side and
25 disapproving taxpayers on the other, while maintaining

1 focus on the psychosocial complexity and unique needs
2 of the individual inmate. Careful exploration of
3 trauma and ambivalence, and consideration of the
4 irreversibility of highly desired forms of treatment,
5 are often represented by plaintiffs' experts as
6 negligence and discrimination. Advocacy groups call
7 for gender dysphoric inmates to receive treatment that
8 mirrors the community. These advocates emphasize
9 inmate patients' rights and deemphasize important
10 distinctions between community-dwelling gender
11 dysphoric individuals and those serving life sentences
12 for violent crimes."

13 This is what you and Dr. Andrade wrote as the summary of
14 your presentation, isn't it?

15 A. Yes, that's correct.

16 Q. In your deposition, you testified that in addition to the
17 WPATH standards of care, you rely on the NCCHC, the National
18 Commission on Correctional Health Care, guidelines for treatment
19 of dysphoria; correct?

20 A. I considered those, yes.

21 Q. You testified that the guidelines you use or rely upon when
22 treating gender dysphoria are the WPATH standards of care and
23 the NCCHC guidelines; correct?

24 A. Yes, that's correct.

25 Q. And you're aware -- you're familiar with the NCCHC

1 guidelines; correct?

2 A. Yes. I haven't read them recently. But, yes, I'm
3 relatively familiar with them.

4 Q. Why don't we -- can we bring those up for Dr. Garvey. I
5 believe it's Plaintiff's Exhibit 1041. Thank you.

6 Do these look like guidelines you have reviewed,
7 Dr. Garvey?

8 A. Yes. There is more to it, but let me just look at it
9 quickly.

10 THE COURT: Do you wish to see the other pages or
11 just --

12 THE WITNESS: Sure. Do you have the other pages?
13 Right. Okay. Yeah. There is usually -- there are a couple of
14 sections.

15 MS. RIFKIN: Can you just flip through the pages so
16 Dr. Garvey can see.

17 THE WITNESS: Okay. Yeah. I wasn't able to read all
18 of them, but that does look like the document that I have seen.

19 Q. BY MS. RIFKIN: You -- you testified that you rely on these
20 when you're treating patients with gender dysphoria; correct?

21 A. Yes, that's correct.

22 Q. And as an expert in treating patients with gender
23 dysphoria, then, you're pretty familiar with these guidelines,
24 aren't you?

25 A. I am familiar with these, yes.

1 Q. And these NCCHC guidelines specifically incorporate the
2 WPATH standard of care as the standard of care for treating
3 gender dysphoria in corrections settings; correct?

4 A. Yes, they do refer to WPATH. Yes.

5 Q. Can we go to page 2 of this exhibit, please. Can we zoom
6 in on No. 5.

7 These NCCHC guidelines say that the management of medical
8 or surgical transgender care should follow accepted standards
9 developed by professionals with expertise in transgender health.

10 In the accepted standards, there is one reference, and
11 that's to the WPATH standard of care, isn't it?

12 A. It is. The WPATH does talk about using them flexibly,
13 so --

14 Q. I'm going to ask you --

15 THE COURT: Again, just answer the question.

16 THE WITNESS: Yes, that's correct.

17 THE COURT: All right. Thank you.

18 Q. BY MS. RIFKIN: So because you've used these and you're
19 familiar with these and you're presenting yourself as an expert
20 on treating gender dysphoria, and you're certified by the
21 National Commission on Correctional Health Care, you understand
22 that this represents the statement from the National Commission
23 on Correctional Health Care that WPATH standards are the
24 accepted standards for treatment of patients in corrections; is
25 that -- is that fair?

1 A. That's correct.

2 MR. EATON: Misstates testimony.

3 THE COURT: I'm sorry?

4 MR. EATON: Misstates the document.

5 THE COURT: Well, there is a lot packed into that.

6 MR. EATON: And compound.

7 MS. RIFKIN: I can break it down, Your Honor.

8 THE COURT: Go ahead.

9 MS. RIFKIN: I'm happy to break it down.

10 Q. BY MS. RIFKIN: You testified earlier -- counsel asked you
11 whether you had a CCHP; is that correct?

12 A. Yes, that's correct.

13 Q. And that is a certification from the National Commission on
14 Correctional Health Care; correct?

15 A. Yes, that's correct.

16 Q. And you testified in deposition that you thought that was
17 important for you to get in order to be better suited to provide
18 correctional healthcare; is that right?

19 A. Yes. I think it's important.

20 Q. And it's not a board-certified -- it's not a
21 board-recognized certification; right?

22 A. No. I'm board certified also, but it's an additional.

23 Q. You are not board certified in correctional healthcare;
24 correct?

25 A. There is not a board certification in correctional

1 healthcare. For -- it's a component of forensic psychiatry,
2 which I am board certified in.

3 Q. So as having to become a CCHP, you had to sit for an exam
4 and pay a fee to get that certification; is that accurate?

5 A. Yes, that's correct.

6 Q. And you had to be familiar with the NCCHC standards; is
7 that accurate?

8 A. Yes, that's correct.

9 Q. You had to understand what they mean; is that accurate?

10 A. Yes.

11 Q. Okay. So based on your certification by NCCHC and your
12 testimony that you rely on these standards when treating
13 patients with gender dysphoria, is it fair that you understand
14 that this represents NCCHC's statement that the WPATH standards
15 of care should be followed as the accepted standards for
16 treating patients in a correctional setting?

17 MR. EATON: Objection. Compound, misstates the
18 document, and foundation.

19 THE COURT: The witness can testify she either does or
20 does not understand it that way.

21 THE WITNESS: So it has some of the same weaknesses as
22 the WPATH. I mean, again, WPATH --

23 MS. RIFKIN: That is not my question.

24 THE COURT: All right. I think the witness is saying,
25 no, she doesn't accept it unqualifiedly. So I'm going to allow

1 her to explain that. Because there's -- this is not the kind of
2 question that I think can fairly just be answered yes or no.
3 It's just too compound or complex.

4 So I'm going to give the witness a chance to explain why it
5 is that you think this does not constitute kind of the accepted
6 standard of care.

7 THE WITNESS: So I'm familiar with this, and I am
8 aware that they cite WPATH as the reference. When I use WPATH
9 and apply it to correctional systems, I use it as the flexible
10 document that it says that it is.

11 I think there are some weaknesses in the NCCHC guidelines,
12 as well, in that they also don't talk about the specific
13 components of applying the standards to the correctional
14 setting.

15 I think they are very strong in other areas in terms of
16 safety and other kinds of, you know, making sure that staff are
17 trained, but they also don't get into the specifics about
18 applying WPATH standards of care to the correctional
19 environment.

20 I think I also said previously that there isn't -- I'm not
21 aware of any kind of competing set of guidelines. So I use
22 what's available, which is the NCCHC and WPATH, and I apply
23 clinical judgment to the WPATH standards.

24 THE COURT: All right. So what I hear you saying is
25 that you have -- you feel that there is some inadequacy to these

1 NCCHC standards.

2 But I think the question is: Do you recognize that they
3 are kind of -- that they are the only developed standards for
4 treating patients with gender dysphoria?

5 And I think you acknowledged that when you said there is
6 nothing competing. Do you acknowledge this is the only standard
7 that's been published or put out by any reputable organization?

8 THE WITNESS: It's the only one that I'm aware of,
9 yes.

10 THE COURT: All right. Go ahead.

11 MS. RIFKIN: Can we --

12 THE COURT: Counsel, we are probably close to taking
13 another break, but I'll let you go for another five, maybe ten
14 minutes but not more than that before we take a break.

15 Q. BY MS. RIFKIN: All right. In you -- in the direct
16 testimony, you talked about a CMS decision that talked about
17 WPATH standards.

18 Do you recall that discussion with Mr. Eaton?

19 A. Yes.

20 THE COURT: Okay. I have not been very thoughtful of
21 Ms. Hohenleitner's almost impossible role in this courtroom.
22 Let's try to speak a little more slowly and not speak over each
23 other. All right.

24 MS. RIFKIN: Thank you, Your Honor. And I apologize.

25 Q. BY MS. RIFKIN: So you recall that discussion; correct?

1 A. Sorry. Say that -- remind me which discussion.

2 Q. You discussed with Mr. Eaton a CMS decision about
3 coverage -- about coverage of surgery for gender dysphoria.

4 A. Yes.

5 Q. Do you recall that?

6 The decision that you were talking about, that was actually
7 a decision by CMS about whether they would issue an affirmative
8 coverage decision saying that surgery would affirmatively be
9 covered for the Medicare population; correct?

10 A. That's correct.

11 Q. And you're aware that there -- two years prior to that,
12 there was a decision by the Department of Health and Human
13 Services also talking about surgery and coverage of surgery to
14 treat gender dysphoria; correct?

15 A. Yes. That was where they did away with the exclusion
16 against treating surgery. And then this was to look at whether
17 it would automatically be covered, and they concluded it would
18 be on a case-by-case basis.

19 Q. It was -- and I want to be really clear here. It was a
20 conclusion about whether it would automatically be covered for
21 the Medicare population; correct?

22 A. That's correct, based on their review of the literature in
23 general, not specific to the Medicare population. Their
24 conclusions were drawn --

25 MS. RIFKIN: I'd move to strike.

1 THE COURT: Again, listen carefully to the question.
2 The question was: Was there a conclusion about whether it would
3 be automatically covered for the Medicare population?

4 THE WITNESS: That's correct.

5 Q. BY MS. RIFKIN: And Ms. Edmo is not part of the Medicare
6 population, as far as you know? That's what you testified at
7 your deposition; correct?

8 A. I am not aware of her being part of the Medicare
9 population.

10 Q. All right. If we can show Plaintiff's Exhibit 1026,
11 please.

12 This is the decision by the Department of Health and Human
13 Services on May 30, 2014. And this is where the board
14 determined to end an exclusion. They had a blanket exclusion on
15 covering surgery -- gender confirmation surgery; right?

16 A. Yes, that's correct.

17 Q. And they just --

18 MR. HALL: Objection. Hearsay.

19 MR. EATON: Join.

20 THE COURT: It's not being offered for the truth of
21 the matter asserted but just to cross-examine the witness about
22 her knowledge of the standard? I'm not sure --

23 MS. RIFKIN: And about her testimony about these CMS
24 decisions and what the Department of Health and Human Services
25 and CMS --

1 THE COURT: I don't know how we cannot get in -- I
2 mean, we have talked all around about this decision. I don't
3 know how we can't look at the original document -- not for the
4 truth of the matter asserted, but how it bears upon all of the
5 discussion we have already had.

6 I'll overrule --

7 MR. HALL: I'll object on foundation as well. I don't
8 think there is any testimony as to what this is or counsel's
9 representations.

10 MR. EATON: Join.

11 Q. BY MS. RIFKIN: Dr. Garvey, you understand when I -- we
12 just talked about two different decisions.

13 You described a decision, right, about CMS not issuing an
14 affirmative coverage decision saying it would affirmatively
15 cover all surgeries for the Medicare population; correct?

16 A. That's correct.

17 Q. And I asked you if you were aware of a preceding decision
18 that eliminated the ban on covering surgery which they had
19 prior; right?

20 A. Yes. I'm aware of that.

21 Q. And this is that document; correct?

22 A. I haven't -- I can't --

23 THE COURT: Let's take a break and give her a copy,
24 and she can review it and come back and tell us if it's that
25 document or not.

1 MS. RIFKIN: Okay.

2 THE COURT: I mean, if, in fact, it's something other
3 than what we have been talking about, then I think Mr. Hall or
4 Mr. Eaton is perfectly right to object.

5 If it's exactly what we have been talking about, then I
6 think we are wasting time over something that is really pretty
7 inconsequential, and we have already been all through it through
8 other witnesses, anyway.

9 One thing, Ms. Rifkin, Exhibit 1029, you didn't offer it.
10 Now, you don't need to offer an exhibit when you're using it
11 only for impeachment purposes. But between now and when we come
12 back, if you want that admitted into evidence, you need to
13 formally move for its admission. That's Exhibit 1029.

14 All right. We'll be in recess for 15 minutes.

15 (Recess at 11:57 a.m. until 12:20 p.m.)

16 THE COURT: For the record, we have reconvened. I'll
17 remind you, Dr. Garvey, you are still under oath.

18 You may resume your cross-examination, Ms. Rifkin.

19 MS. RIFKIN: Yes. Before I resume, I would like to
20 move Plaintiff's Exhibit 1029 into evidence.

21 THE COURT: Is there any objection?

22 MR. EATON: I don't believe so, Your Honor.

23 MR. HALL: No, Your Honor.

24 THE COURT: 1029 will be admitted.

25 (Plaintiff's Exhibit 1029 admitted.)

1 Q. BY MS. RIFKIN: Dr. Garvey, in your expert report in this
2 case, you discussed -- you specifically cited Dr. Ettner, the
3 plaintiff's expert's report and her discussion of the CMS
4 overturning Medicare's policy barring coverage for
5 transition-related surgeries in May 2014.

6 Do you recall discussing that?

7 A. Yes, I do.

8 Q. It's on page 27 of your report?

9 A. Okay.

10 Q. All right. So if we can go back to Plaintiff's Exhibit
11 1026, please.

12 This is the decision, the Department of Health and Human
13 Services decision, you were referencing on page 27 of your
14 report, correct, about Dr. Ettner's discussion? You talked
15 about this 2014 decision and then the subsequent decision?

16 A. This is discussing that decision, yes. I'm not sure if I
17 had seen -- I have seen a couple of different versions of it.
18 But, yes, I believe so. This was to do away with the exclusion
19 of the treatment.

20 Q. All right. And if we can turn to page 15 of this exhibit.
21 Can we please zoom in on the paragraph that starts "We
22 conclude," down through the next heading.

23 This was the decision to overturn the surgery. And the
24 Department of Health and Human Services concluded that:

25 "The APA has shown that the NCD statement that

1 transsexual surgery is unsafe and has a high rate of
2 complications is not reasonable in light of the
3 evolution of surgical techniques and the studies of
4 outcomes discussed in the new -- in the unchallenged
5 new evidence presented here."

6 That was part of their decision in May 2014; correct?

7 A. That's correct. Again, this was to do away with the
8 exclusion. So they disagreed that the research was not -- did
9 not support doing the surgery in general.

10 Q. In fact, they concluded and it's summarized in the heading
11 that begins -- the very next heading:

12 "The new evidence indicates that transsexual surgery
13 is an effective treatment option in appropriate
14 cases."

15 Correct?

16 A. Correct. And I agree it is an effective treatment option
17 in appropriate cases.

18 Q. Okay. And they cited -- there is a footnote to this
19 heading, footnote 22.

20 And CMS cited to the WPATH standards in that footnote;
21 correct?

22 A. I'm just going to look at it quickly.

23 You're talking about the one that says, "We do not read the
24 new evidence as necessarily" --

25 Q. You don't need to read it, Dr. Garvey. I'm asking you

1 about the footnote 22.

2 THE COURT: It's been blown up on the screen for you
3 there, too.

4 THE WITNESS: Okay. I'm reading it. What was the
5 question?

6 Q. BY MS. RIFKIN: The question is whether footnote 22 that's
7 cited for new evidence indicates that transsexual surgery is an
8 effective treatment option in appropriate cases.

9 Then there is a footnote, whether that footnote refers to
10 WPATH standards of care.

11 A. Yes. The footnote discusses appropriate cases and refers
12 to WPATH.

13 Q. If we can put up Joint Exhibit 15, please.

14 THE COURT: Do you intend to offer Exhibit 1026?

15 MS. RIFKIN: Yes, Your Honor. Thank you for the
16 reminder.

17 THE COURT: Any objection?

18 MR. EATON: Yes, I would object. We offered -- tried
19 to offer the CMS records previously, and the court said no, that
20 it's hearsay.

21 MS. RIFKIN: Well, Your Honor, Dr. Garvey referenced
22 this, and they affirmatively brought it out on their direct.

23 THE COURT: You have been able, through
24 cross-examination, to highlight what you need to from the
25 document. So I don't think we need to admit the entire

1 document.

2 So I'll sustain the objection.

3 Q. BY MS. RIFKIN: All right. So these are the WPATH
4 standards of care. And there has been talk about the
5 applicability of these to people in prisons.

6 Let's go to page 73 of this exhibit, please. Can we please
7 blow up the bottom half of the page.

8 You're familiar with this section of the WPATH standard of
9 care; right, Dr. Garvey?

10 A. Yes, I'm familiar with it.

11 Q. You said you have read the WPATH standards multiple times;
12 correct?

13 A. Yes.

14 Q. And these begin by saying:

15 "The standards of care in their entirety apply to all
16 transsexual, transgender, and gender nonconforming
17 people, irrespective of their housing situation."

18 Correct?

19 A. That's what it says, yes.

20 Q. It goes on to say that:

21 "People should not be discriminated against in their
22 access to appropriate health care based on where they
23 live, including institutional environments, such as
24 prisons, or long-/intermediate-term health care
25 facilities."

1 That's the next sentence; correct?

2 A. Yes.

3 THE COURT: Counsel, is that -- that's part of the
4 WPATH?

5 MS. RIFKIN: Yes, Your Honor.

6 THE COURT: All right. Exhibit 15?

7 MS. RIFKIN: Yes. Page 73, Your Honor.

8 Q. BY MS. RIFKIN: And then it states:

9 "Health care for transsexual, transgender, and gender
10 nonconforming people living in an institutional
11 environment should mirror that which would be
12 available to them if they were living in a
13 noninstitutional setting within the same community."

14 Correct?

15 A. That's what it says, yes.

16 Q. And you agree with that statement, don't you?

17 A. I would like to see more detail. That's where I don't
18 agree with every statement in this section, because there
19 are --

20 Q. Dr. Garvey, I'm asking you about this -- the sentence that
21 I just read, the last sentence of this paragraph.

22 Do you agree that healthcare for transsexual, transgender,
23 and gender nonconforming people living in an institutional
24 environment should mirror that which would be available to them
25 if they were living in a noninstitutional setting within the

1 same community? Do you agree with that statement?

2 A. I agree that all treatment options that are available in
3 the community should be available.

4 I wouldn't use the word "mirror" because that does not take
5 into account unique aspects of the correctional environment.
6 There are some things that we have to make treatment decisions
7 on that are not a treatment decision outside. So, actually, to
8 say that it mirrors the community would leave out some important
9 pieces of the treatment.

10 Q. So you disagree with this sentence; is that accurate?

11 A. I agree that all the options should be available. I do
12 disagree with the sentence as written, yes.

13 Q. So it's your opinion that if a person inside a prison with
14 gender dysphoria, if surgery would be medically required to
15 treat that person if they were in the community, that doesn't
16 mean that they should get it if they are in prison? Is
17 that -- is that your opinion?

18 A. No, that's not my opinion.

19 MR. HALL: Objection. Vague.

20 THE COURT: I'm sorry. What?

21 MR. HALL: Objection. Compound, vague. But she
22 answered.

23 THE COURT: All right.

24 MR. HALL: I'll withdraw.

25 THE COURT: I'll take the objection as withdrawn.

1 Go ahead.

2 THE WITNESS: That's not my opinion, no.

3 Q. BY MS. RIFKIN: The next sentence is:

4 "All elements of assessment and treatment as described
5 in the standard of care can be provided to people
6 living in institutions. Access to these medically
7 necessary treatments should not be denied on the basis
8 of institutionalization or housing arrangements."

9 MR. EATON: I'm going to object as vague. Institution
10 is defined as prison or long-/intermediate-term --

11 MS. RIFKIN: I didn't ask a question.

12 THE COURT: Counsel, she is just reading from the
13 document. You can say the document is vague, but there is no
14 question yet. So if there is an objection, it's overruled.

15 Proceed.

16 Q. BY MS. RIFKIN: Do you agree that access to the medically
17 necessary treatments described in the standard of care should
18 not be denied on the basis that somebody is in prison?

19 A. Yes. I just want to make sure because of the double
20 negative.

21 I agree that they should not be denied based on being in
22 prison, yes. I do agree with that sentence.

23 Q. If we can turn to the -- can we zoom out, please. Can we
24 turn to the next page, page 74.

25 This is the second part of this section of applicability of

1 the standards of care to people living in institutional
2 environments that you're familiar with; right, Dr. Garvey?

3 A. Yes.

4 Q. Can we zoom in on the paragraph "Reasonable
5 accommodations," please.

6 I would like to direct your attention to the last sentence
7 of this paragraph, Dr. Garvey.

8 "Denial of needed changes in gender role or access to
9 treatments, including sex reassignment surgery, on the
10 basis of residence in an institution are not
11 reasonable accommodations under the standard of care."

12 Is it your understanding that somebody housed in prison
13 cannot meet criteria No. 6 for surgery, 12 months of living in a
14 congruent role of their preferred gender identity?

15 A. No, that's not my opinion.

16 Q. So it's your opinion that somebody living in a prison can
17 satisfy that criteria of living for 12 months in a role
18 congruent with their preferred gender identity?

19 A. Yes, on a case-by-case basis.

20 It's easier to do that in someone that is going to be
21 serving a life sentence, but I think on a case-by-case basis, it
22 could be met even for someone that's not serving a life
23 sentence. It would probably have to incorporate elements of the
24 community, like family involvement and things like that, but I
25 do believe it's possible.

1 Q. What about interacting with people at a job? Would
2 that -- would that be part of what qualifies you for that 12
3 months of congruent living?

4 A. Well, this is where I wish that there was more guidance on
5 how to apply that standard. This section, I think, should talk
6 about that.

7 Q. I'm asking for you -- I'm sorry. I'm asking for your
8 opinion, Dr. Garvey, your opinion of how somebody in prison --
9 which you said they can do -- can meet that 12-month
10 requirement. And you said on a case-by-case basis, in certain
11 situations, for example, family.

12 And I'm asking: On a case-by-case basis, can having a job
13 count towards that 12 months of living in a congruent role?

14 A. It's possible. It won't give the same experience as having
15 a job in the community. I think, again, it's all case by case.

16 Q. In your opinion, if that job involves interacting with
17 nonincarcerated persons, does that make it more like the
18 community?

19 A. It's possible.

20 Q. When you say "it's possible," have you thought about that
21 before?

22 A. Well, I have had patients -- in my experience in
23 Massachusetts, we had patients on a work release, so they did go
24 out into the community and work. So it is something that I
25 thought about. That particular -- those particular patients

1 were getting out soon and not seeking surgery. So I wasn't
2 thinking about it then specifically regarding the real-life
3 experience.

4 But since then, since I know that people do go out into the
5 community and have jobs with people in the community, I think
6 it's possible.

7 Q. Because you didn't evaluate it -- because for those
8 patients, you didn't evaluate whether surgery was medically
9 necessary for them; correct?

10 A. For those patients, they were not looking for surgery.

11 Q. For those patients, you didn't evaluate whether surgery was
12 medically necessary for them; correct?

13 A. None of them requested surgery, or we did talk about
14 surgery, but they did not want surgery.

15 Q. All right. I would like to turn to page 67 of the WPATH,
16 this exhibit, the WPATH standards of care.

17 Do you see the section titled "Rationale for a
18 preoperative, 12-month experience of living in an
19 identity-congruent gender role"?

20 A. Yes, I do.

21 Q. Okay. If we can please -- well, that works.

22 I would like to direct your attention to the second
23 paragraph that's up on the screen.

24 "The duration of 12 months allows for a range of
25 different life experiences and events that may occur

1 throughout the year..." and gives some examples.

2 Do you see that?

3 A. Yes, I do.

4 Q. This sentence doesn't say the duration of 12 months must
5 include every type of different life experience that somebody
6 can have in a year, does it?

7 A. It doesn't.

8 I see this as a clinically relevant experience. So, no, I
9 don't think you have to check a bunch of boxes and make sure
10 they have gone on a vacation and done all of those things. But
11 this, to me, speaks to the rationale behind the clinical
12 experience of experiencing the identified gender prior to
13 undergoing surgery.

14 So I don't think all those boxes need to be checked, but it
15 has to be a clinically meaningful experience.

16 Q. A clinically meaningful experience would be interacting
17 with people in a preferred gender role and understanding how
18 they interact back with you, understanding the both positive and
19 negative interactions you might have living like that.

20 Do you agree with that?

21 A. I think that that can happen to a degree, but there is
22 going to be another social adjustment that happens in the
23 community. So that's certainly part of it. It's not going to
24 completely mimic what the adjustment will be in the community.

25 Q. Is it your opinion that if somebody in the community

1 is -- wants sex reassignment surgery and it's medically
2 necessary, but they may transition to a new job at some point in
3 the future or move to a different state at some point in the
4 future -- let's say from California to North Dakota or Texas,
5 where they might interact with people with different sets of
6 ideas -- they should be denied sex reassignment surgery because
7 if they move to Texas or North Dakota, it might be a social
8 adjustment for them?

9 A. You're asking if that's my opinion that they should be
10 denied?

11 Q. That's right. Because they may move to a different
12 community in the future where that -- there might be a social
13 adjustment for them as a post-op transsexual person.

14 A. No, that's not my opinion.

15 Q. You have never treated any people with gender dysphoria
16 outside of prison other than that single patient for that three-
17 to seven-day period during your residency; correct?

18 A. No, that's not correct.

19 I had a patient more recently who had gender dysphoria and
20 was looking for -- she was in a rural part of the country and
21 was very young and didn't have access to resources. So we
22 talked about what resources were available.

23 Q. Was that in the last three weeks, between the time of your
24 deposition and today?

25 A. No. I think I mentioned this in my deposition. This was a

1 patient in a community mental health setting.

2 Q. How long did you treat that patient?

3 A. I was only in that location for about six months. So about
4 six months, maybe a little bit less.

5 Q. Okay. So besides those two patients that you've told us
6 about with gender dysphoria you have interacted with the
7 community, you haven't treated other people with gender
8 dysphoria in the community, have you?

9 A. No. I think I mentioned also that I had a therapy patient
10 who was sort of exploring gender but that hadn't -- hadn't
11 identified fully, but we were doing therapy and working
12 primarily on other things.

13 So other than that, no.

14 Q. Are you making a determination or offering an expert
15 opinion about whether it's easier to be a transgender person
16 outside of prison or inside of prison?

17 A. No, I'm not.

18 Q. You would agree that you don't have a basis based on
19 experience to provide that opinion; correct?

20 A. I'm not sure that -- I mean, I -- I haven't seen any
21 definitive comparative studies, so I wouldn't offer an opinion
22 on that, no.

23 Q. You would agree that you don't have the basis to provide an
24 expert opinion as to whether it's easier to be a transgender
25 person inside a prison or outside a prison; correct?

1 MR. HALL: Objection. Relevance. She hasn't offered
2 the opinion, so --

3 THE COURT: Just a moment. I'll allow it. I'm not
4 going to let you to go much further than this. But given the
5 testimony about -- by both Dr. Garvey and Dr. Eliason about the
6 need for 12 months outside of the prison setting, I think it's
7 fair cross.

8 Do you want to restate the question for the witness?

9 MS. RIFKIN: Sure.

10 Q. BY MS. RIFKIN: You would agree that you don't have a basis
11 for providing an expert opinion as to whether it's easier to be
12 a transgender person inside a prison versus outside a prison;
13 correct?

14 A. No. I mean, in my 10 years of correctional experience, I
15 know a lot about the differences for individuals in general
16 inside prison and outside but not specific to the gender
17 dysphoria population.

18 Q. In your report, you stated, quote:

19 "Gender confirmation surgery should not be outright
20 prohibited in a correctional environment. But until
21 more data is available, it is appropriate for
22 correctional healthcare professionals to use caution
23 in making determinations regarding gender confirmation
24 surgery."

25 Correct?

1 A. Yes. What page are you on? That sounds familiar, but I
2 just want to get to where you are.

3 THE COURT: Is that from Dr. Garvey's written report?

4 MS. RIFKIN: Yes, Your Honor.

5 THE COURT: All right.

6 MS. RIFKIN: We will come back to that. I don't want
7 to waste time looking for it now.

8 Q. BY MS. RIFKIN: But, Dr. Garvey, you agree that sex
9 reassignment surgery is a safe, effective, and widely accepted
10 treatment for gender dysphoria; correct?

11 A. Yes, I do -- for the correct candidate, yes.

12 Q. You testified in your deposition that sex reassignment
13 surgery is a safe, effective, and widely accepted treatment for
14 gender dysphoria; correct?

15 A. Yes, it is, in general. Yes, I believe that.

16 Q. And you agree that disputing the medical necessity of sex
17 reassignment surgery based on assertions to the contrary is
18 unsupportable; correct?

19 A. Yes.

20 Q. But you also opine that better and more data is needed for
21 the results of surgery for inmates in order to approve these
22 surgeries; correct?

23 A. Yes.

24 Q. And in your report, you cite to the American Psychiatric
25 Association Task Force's 2012 report on the treatment of gender

1 identity disorder; correct?

2 A. Yes. Let me find it.

3 Q. You can just -- do you recall whether you --

4 A. Yes.

5 Q. -- cited to that article?

6 A. I recall, yes.

7 Q. You characterized this report as concluding that the
8 quality of evidence pertaining to sex reassignment surgery is
9 low; correct?

10 A. Correct. I remember saying that, yes.

11 Q. Can we show Defendant's Exhibit 2033, please.

12 Is this the report you were referring to in your -- or the
13 paper you were referring to in your expert report, Dr. Garvey?

14 A. I haven't read through the whole thing. It looks to be the
15 one that I was referring to.

16 Q. Do you need to review the entire article to know whether
17 it's the one you cited in your report?

18 A. No. The authors and the date and the journal are correct.

19 Q. If we can zoom in on the second-column paragraph of the
20 page, please.

21 All right.

22 "The American Psychiatric Association Task Force
23 concluded that current evidence was judged sufficient
24 to support recommendations for adults in the form of
25 an evidence-based APA practice guideline with gaps in

1 the empirical data supplemented by clinical
2 consensus."

3 They wrote that, right.

4 A. Further in the report, they explain that the evidence --

5 Q. Dr. Garvey, is this --

6 A. That's correct. That's part of the report, yes.

7 Q. If we can turn to page 2, please. I'm not sure how
8 possible it will be to blow this up, but I'll try. Can we sort
9 of move towards -- I'll circle it, so hopefully we can blow it
10 up.

11 All right. You cited these -- this article in your expert
12 report to make a point that you do not believe the data and
13 evidence -- quality of evidence pertaining to sex reassignment
14 surgery is of high enough quality in your opinion; correct?

15 A. Yes. I believe there is some deficiencies in the data.
16 And I don't know if I can speak more to what this article
17 states, but they also talked about --

18 Q. I'm just asking why you -- I'm asking if I'm right about
19 why you included it, if I'm fairly --

20 A. Yes. Yeah. Having reviewed the literature myself, the
21 small sample sizes, the different methodologies with lack of
22 control groups and the very high number of people that are lost
23 to follow-up are concerns to me about the quality of the data.

24 Q. In your expert report, you didn't discuss the APA's
25 observation in this paragraph that, given the very nature of

1 GID, such trials or even unblinded trials with random assignment
2 to treatment groups are not likely to be forthcoming due to a
3 lack of feasibility and/or ethical concerns.

4 You didn't cite that part of the article in your report;
5 correct?

6 A. I didn't cite the whole -- I mean, I put a part of the
7 article that was relevant. I read the further discussion.

8 Q. All right. Can we pull up page 24, please.

9 Later in this article, the American Psychiatric Association
10 Task Force stated that:

11 "For some important aspects of transgender care, it
12 would be impossible or unwise to engage in more robust
13 study designs."

14 Do you see that?

15 A. I do. I mean, you're only showing parts of the article.
16 There is other further discussion about this.

17 Q. It's similar to quoting just one quote in a report, isn't
18 it?

19 All right. If we can zoom out again, please. I think
20 we're going to have to go piece by piece with the sentence.

21 Do you see that last sentence here that's blown up?

22 "Although few systematic studies of suicide among
23 gender-transitioning persons have" --

24 I think the word "not" is a typo there, but --

25 -- "have not been conducted" --

1 And I'll just read the rest:

2 -- "the case report literature suggests that this is a
3 relatively rare outcome."

4 Do you agree with that, that the case reports suggests that
5 suicide among gender-transitioning persons is a relatively rare
6 outcome?

7 MR. HALL: Hold on. Your Honor, we can't see the
8 portion that's being read.

9 MS. RIFKIN: And this is a defendants' exhibit, 2033.

10 THE WITNESS: I'm sorry. What is your question?

11 Q. BY MS. RIFKIN: Whether you agree that the study -- that
12 the case report literature, which you said you reviewed,
13 suggests that suicide among gender-transitioning persons is a
14 relatively rare outcome.

15 MR. EATON: Your Honor, I'm going to object. I know
16 it's hard for counsel to have the sentence all together, but
17 there is also a comment by counsel where there was "not" in the
18 sentence, and then she said I think that's a mistake. So it's
19 confusing --

20 MS. RIFKIN: That's fine.

21 MR. EATON: -- question in that regard.

22 MS. RIFKIN: I'm not sure this is going to help,
23 but --

24 THE COURT: Well, zoom in on the bottom left-hand
25 corner, read through it, and then just shift to the top

1 right-hand corner. I think that will work. Okay.

2 Q. BY MS. RIFKIN: All right.

3 "Although few systematic studies of suicide among
4 gender-transitioning persons have not been conducted,
5 the case report literature suggests that this is a
6 relatively rare outcome."

7 A. I see that, yes.

8 Q. Do you understand what that sentence means?

9 THE COURT: Could you keep up the next part of that?

10 MS. RIFKIN: I'm sorry.

11 THE COURT: Counsel, just so I'm clear, then it goes
12 on to say that this other study found an increased risk of death
13 by suicide and of suicide attempts among subjects who had
14 received sex reassignment surgery relative to age-matched
15 population controls. But that's, again, comparing the general
16 population with those who received sex reassignment surgery, not
17 those who received sex reassignment surgery compared to other
18 gender-dysphoric members of the population?

19 MS. RIFKIN: Those were my next questions, Your Honor.

20 THE COURT: All right.

21 MS. RIFKIN: I'll just move straight to those.

22 Q. BY MS. RIFKIN: Dr. Garvey, in your -- in the direct, you
23 cited this study actually -- I believe the Dhejne article -- and
24 you said there was a -- that article found a 19 percent rate
25 that -- suicide rate for individuals who had undergone sex

1 reassignment surgery had a relatively increased suicide rate, 19
2 percent, compared to the general population; correct?

3 A. It was death by suicide. So the increased rate of suicide
4 attempts was not as significantly increased as the death by
5 suicide. The death by suicide rate was 19 times higher than the
6 general population.

7 Sorry. Go ahead.

8 Q. Do you know the -- the suicide rate for transgender
9 individuals compared to the general population?

10 THE COURT: Transgender without sex reassignment
11 surgery?

12 MS. RIFKIN: All transgender individuals.

13 THE WITNESS: No. That's why, as I have talked
14 about --

15 Q. BY MS. RIFKIN: I'm just asking you to answer the question.
16 No? You said, no, you don't know that?

17 A. Of completed suicide, I haven't found a reference for that.
18 I'm talking about completed suicide, not the suicide attempts
19 part.

20 Q. So you haven't heard the -- that it's approximately 44
21 times the rate of the general population? You're unfamiliar
22 with that?

23 A. For suicide attempts or completed suicide?

24 Q. You believe that's suicide attempts?

25 A. That sounds probably close for suicide attempts but not --

1 completed suicide is a much more rare event. So I haven't heard
2 of 44-fold increase in completed suicide. I don't think that
3 that's accurate.

4 Q. You agree that the 19 times -- you agree that the
5 completed -- the rate of completed suicides for all transgender
6 individuals is significantly higher than the gender -- than the
7 general population; correct?

8 A. Of completed suicides? That's what -- I guess I don't have
9 a reference for that number. Completed suicides is, again, a
10 very rare event compared to suicide attempts. So I don't know
11 what the baseline rate of completed suicide for gender-dysphoric
12 individuals is.

13 Q. So you agree, then, that this 19 times figure that you
14 cited, that doesn't tell us anything about -- anything
15 clinically significant about the effect of sex reassignment
16 surgery on the transgender population specifically as to
17 completed suicides; correct?

18 A. It does not tell us the effects. It tells us that of that
19 cohort, which was a representative sample with no one lost to
20 follow-up, there was a 19 times increased risk. So it does not
21 tell us -- that could be lower. It could be lower than the
22 risk might have been.

23 THE COURT: But, again, it's 19 times when compared to
24 the general population, not the gender-dysphoric population;
25 correct?

1 THE WITNESS: Correct. So I use that sample because I
2 see people argue that gender confirmation surgery will cure
3 people of their suicidality.

4 To me, this doesn't tell us anything about the effect of
5 gender confirmation surgery on completed suicide. It does tell
6 us that it doesn't do -- it doesn't eliminate completed suicide
7 because we know that a significant number complete suicide.
8 They might --

9 MS. RIFKIN: You have answered my question. Thank
10 you, Doctor.

11 THE WITNESS: Okay.

12 Q. BY MS. RIFKIN: So in deposition, you agreed that
13 you -- you did not understand either of plaintiff's experts in
14 this case, Dr. Gorton or Dr. Ettner, to be positing that gender
15 confirmation surgery for Ms. Edmo would be treatment in order to
16 solve potential suicidality; correct?

17 A. From what I recall -- I think I didn't remember this part
18 of Dr. Gorton's report. But with Dr. Ettner, she had written
19 that Ms. Edmo was at increased risk of suicide if she didn't
20 have the surgery. I think that's what we had talked about.

21 Q. But you agreed that you understood both plaintiff's experts
22 to be determining that surgery is necessary to treat Ms. Edmo's
23 gender dysphoria; they were not suggesting this is prescribed to
24 treat her suicidality directly; correct?

25 A. Right. But Dr. Ettner had said that she was at increased

1 risk for suicide if she doesn't have the surgery. So, to me,
2 those are kind of saying a similar thing.

3 If she -- if Dr. Ettner's report said that Ms. Edmo was at
4 high risk for suicide if she didn't have the surgery.

5 THE COURT: Just to be clear, I think counsel's
6 original question was whether you understood that Dr. Ettner and
7 Dr. Gorton were not opining that this would cure any other
8 non-gender-dysphoria problems which may make her suicidal. They
9 weren't suggesting it would cure her; you agree with that?

10 THE WITNESS: I guess I think the suggestion that her
11 risk of suicide is higher if she doesn't have the surgery --

12 THE COURT: That's not -- that wasn't the question.
13 It's whether they suggested it would cure her of any other
14 suicidal problems attributed to non-gender-dysphoric concerns.

15 THE WITNESS: Right. That, to me -- so they don't
16 state it, but saying that her -- that she is at high risk of
17 suicide if she doesn't have the surgery, to me, does suggest
18 that the surgery might do away with her suicidality.

19 Q. BY MS. RIFKIN: Is it possible that they were suggesting
20 that the surgery might alleviate rather than necessarily
21 eliminate her risk of suicide? Do you think that's fair?

22 MR. EATON: Objection. Speculation.

23 THE WITNESS: Yeah. I'm not sure what --

24 THE COURT: I'm going to overrule the objection.

25 Again, just so we're clear, I mean, we're not -- we're talking

1 about curing mental health concerns.

2 Did you think, explicitly or implicitly, Dr. Gorton or
3 Dr. Ettner were suggesting that the gender confirmation surgery
4 would cure her other mental health issues?

5 THE WITNESS: I guess I wouldn't say it was suggesting
6 that it would cure, necessarily.

7 THE COURT: That's what the question was. So the
8 answer is, no, you did not understand that?

9 THE WITNESS: No, not from what I recall.

10 THE COURT: Proceed.

11 Q. BY MS. RIFKIN: You testified in your deposition that you,
12 when examining Ms. Edmo, found it difficult to separate
13 Ms. Edmo's depressive symptoms from her gender dysphoric
14 symptoms; correct?

15 A. That sounds familiar. I think that's true for a lot of
16 people with gender dysphoria. And Ms. Edmo told me herself that
17 she thinks she has depression and gender dysphoria.

18 Q. You testified in your deposition that you -- while
19 examining Ms. Edmo, you, yourself, found it difficult to
20 separate Ms. Edmo's depressive symptoms from her gender
21 dysphoric symptoms; correct?

22 A. That sounds correct.

23 Q. And you testified that that's common when people have
24 gender dysphoria and major depressive disorder; correct?

25 A. That sounds correct.

1 Q. And it's fair that you do not know how much of Ms. Edmo's
2 depression is related to her gender dysphoria; correct?

3 A. I think that's correct, yes.

4 Q. And would it also be fair to state that you don't know how
5 much of Ms. Edmo's suicidality -- that is, increased suicide
6 risk -- is related to her gender dysphoria; correct?

7 A. That's correct. I --

8 Q. That's -- that's what I asked.

9 You assessed Ms. Edmo, you told us, as having gender
10 dysphoria; correct?

11 A. Correct.

12 Q. And you added to your diagnosis of Ms. Edmo for gender
13 dysphoria the phrase "posttransition"; correct?

14 A. Correct.

15 Q. And you explained in your deposition that that means that
16 she has made changes towards living in her preferred gender;
17 correct?

18 A. Correct.

19 Q. You believe Ms. Edmo has presented as female since 2012;
20 correct?

21 A. Yes. From the records that I reviewed, that seems to be
22 correct.

23 Q. And that was six years ago; would you agree?

24 A. Yes, that's correct.

25 Q. And you agree that, given that Ms. Edmo has been on

1 feminizing hormones since 2012, you do not expect that she will
2 have many more physical changes associated with the hormones;
3 correct?

4 A. Correct.

5 Q. You agree that presently Ms. Edmo continues to experience
6 gender dysphoria; correct?

7 A. Correct.

8 Q. When you evaluated Ms. Edmo, you did not see any evidence
9 of psychosis or any kind of obsessional sort of thinking with
10 her; correct?

11 A. That's correct.

12 Q. In your review of Ms. Edmo's medical records, you didn't
13 see any evidence of psychosis in her records; correct?

14 A. That's correct.

15 Q. You concluded that her insight appeared fair and her
16 judgment appeared to be reasonably intact; correct?

17 A. That's correct.

18 Q. And at the time of your evaluation of Ms. Edmo, you didn't
19 see any evidence that she was making negative choices, such as
20 being uncooperative; correct?

21 A. That's correct.

22 Q. You did not attribute Ms. Edmo's gender dysphoria to
23 hysteria, psychosis, malingering, or exaggeration; correct?

24 A. Correct.

25 Q. You believe that Ms. Edmo's substance use disorders are in

1 full, sustained remission in a controlled environment; correct?

2 A. Correct.

3 Q. And you also assess Ms. Edmo as having major depressive
4 disorder at the moderate level; correct?

5 A. Correct.

6 Q. You explained in your deposition, there is a mild level, a
7 moderate level, and a severe level of major depressive disorder;
8 correct?

9 A. That's correct. And with the information that I had, that
10 was the --

11 Q. I was just asking you --

12 A. Sure. Yes, that's correct.

13 Q. And you assessed Ms. Edmo as not having severe major
14 depressive disorder but as having moderate major depressive
15 order [sic]; correct?

16 A. Correct. And that gets to where it's difficult to --

17 Q. Thank you for the answer.

18 In your deposition, you testified that you don't know why
19 Ms. Edmo attempted to cut off her genitals; correct?

20 A. Correct.

21 Q. You don't believe Ms. Edmo is being manipulative by
22 attempting to castrate herself or cutting on her arm; correct?

23 A. No. I don't think that she is doing it intentionally to be
24 manipulative, no.

25 Q. You also testified that you do not know whether providing

1 gender confirmation surgery would do anything to relieve
2 Ms. Edmo's experience of gender dysphoria; correct?

3 A. I don't have the transcript of the deposition in front of
4 me. I mean, I -- I think the concern is the outcome following
5 the surgery, not that it wouldn't necessarily -- I guess I
6 don't -- I don't know. There are -- when I did Ms. Edmo's
7 interview, I didn't have her --

8 Q. I'm going to stop you and ask you my question again.

9 You also testified at your deposition that you do not know
10 whether providing gender confirmation surgery would do anything
11 to relieve her experience of gender dysphoria; correct?

12 A. Correct.

13 Q. Ms. Edmo has been -- and although, as you just told us,
14 you're not able to understand why Ms. Edmo attempted to castrate
15 herself, you believe that this issue has to be addressed before
16 she can have gender confirmation surgery; correct?

17 A. That and her other forms of self-injury, yes, because it is
18 a maladaptive coping strategy that would not do her well
19 following surgery.

20 Q. So before Ms. Edmo can have gender confirmation surgery to
21 remove her genitals that give rise to gender dysphoria, she has
22 to stop wanting to cut them off? Is that your testimony?

23 A. The patients that I have reviewed and considered for gender
24 confirmation surgery were not --

25 Q. I'm sorry.

1 A. -- engaging in --

2 Q. You haven't evaluated any patients for gender confirmation
3 surgery. You told us that multiple times; correct?

4 MR. EATON: Objection. Misstates testimony.

5 THE COURT: Is that correct?

6 THE WITNESS: The distinction I was trying to make --
7 and I was cut off -- is that we discussed it at every monthly
8 meeting. I didn't formally do an evaluation, but we were
9 discussing their treatment plans and reviewing the people that
10 looked like they were heading towards medical necessity for
11 gender confirmation surgery. So that was discussed on a monthly
12 basis.

13 And the people that were close, in looking like it was
14 going to be approved at some point, were functioning relatively
15 well, were not engaging in active self-injury in any form.

16 Q. BY MS. RIFKIN: You agree, based on your experience with
17 gender dysphoria, that gender dysphoria can take different forms
18 for different people? Not every person with acute gender
19 dysphoria wants to cut off their genitals themselves; correct?

20 A. It seems to be relatively rare outside of prison. So, yes,
21 I'm sure that that's true. Not everyone wants to cut off their
22 genitals.

23 Q. And you -- counsel asked you if attempting to self-castrate
24 automatically meant you get sex reassignment surgery, and you
25 said no; correct?

1 A. Correct. But --

2 Q. But you seem to view -- I want to understand this. In your
3 opinion, you view trying to cut off your testicles as
4 disqualifying for sex reassignment surgery; correct?

5 A. I wouldn't say "disqualifying."

6 Q. But you have to stop trying to do that in order to then get
7 the surgery you're trying to perform on yourself; correct?

8 A. So the point I'm making is that she needs to be able to use
9 healthy coping strategies to deal with stress. Doing that is
10 not a healthy coping strategy.

11 Q. So you're a medical doctor; right?

12 A. Yes.

13 Q. And in medical school, you study cancer; is that fair?

14 A. Yes.

15 Q. Treatments for cancer, like chemotherapy and radiation?

16 A. Yes.

17 Q. Were you trained that in order for a patient with a tumor
18 to have a procedure that would remove the tumor, first they have
19 to think about themselves how to reduce the tumor and not be
20 anxious about the tumor in order to have chemotherapy or
21 radiation?

22 MR. EATON: Object to the form.

23 THE WITNESS: I haven't seen --

24 THE COURT: Just a moment. Just a moment. Overruled.

25 THE WITNESS: I haven't seen a patient attempt to

1 remove their own tumor, so I don't -- I guess I don't really see
2 that comparison.

3 Q. BY MS. RIFKIN: Have you ever seen a patient who was denied
4 any treatment for their tumor?

5 A. I can't recall.

6 Q. Do you think it's possible that if a patient was denied
7 treatment for a tumor that they knew was growing inside them and
8 would kill them, they might try to cut it out themselves?

9 MR. EATON: Object to form.

10 THE COURT: Just a moment.

11 I'll overrule the objection, but I think the point is made,
12 Counsel. You might want to just move on.

13 MS. RIFKIN: I'll move on.

14 THE COURT: You can answer that question.

15 THE WITNESS: I'm sorry. Can you repeat the question?

16 MS. RIFKIN: I'll move on.

17 Q. BY MS. RIFKIN: Ms. Edmo has been compliant with her
18 hormone therapy for the past six years; correct?

19 A. Yes. From the records I read, yes, that looks correct.

20 Q. Ms. Edmo meets with the psychiatrist assigned to her when
21 she is given an appointment; correct?

22 A. Yes.

23 Q. And it's your understanding that Ms. Edmo doesn't attend
24 meetings with Clinician Stewart, that her primary assigned
25 clinician right now, because she feels that Clinician Stewart is

1 not qualified to treat gender dysphoria; correct?

2 A. Yes, that's my understanding.

3 Q. And in deposition, you were not able to identify any other
4 members of Ms. Edmo's treatment team who she refuses to meet
5 with; correct?

6 A. I think I mentioned that there were some groups that she
7 was refusing to participate in.

8 Q. But as far as members of her treatment team actually
9 assigned to her -- her psychiatrist, other doctors, Dr. Alviso
10 who she sees once a year -- you don't -- you're not aware of any
11 times she has refused to meet with them; correct?

12 A. With those individuals, no.

13 THE COURT: Counsel, I would just -- both sides have
14 about an hour, a little over an hour left of your total time. I
15 just want to let both counsel know so you can think accordingly
16 as to how you plan the rest of the afternoon.

17 Go ahead, Ms. Rifkin.

18 MS. RIFKIN: Okay. Thank you, Your Honor.

19 Q. BY MS. RIFKIN: In your deposition, you could not identify
20 any studies that you are relying on for your opinion that there
21 is a risk that Ms. Edmo may regret gender confirmation surgery;
22 correct?

23 A. Yes, that's correct.

24 Q. You agreed that peer-review articles typically report
25 statistics of regret for gender confirmation surgery as being

1 very low; correct?

2 A. Yes. I think I already discussed my concern with the
3 quality of those numbers.

4 Q. I would like you to turn to --

5 Do we have Dr. Garvey's report that we're able to show?

6 Okay. I would like to show Dr. Garvey's report and turn to page
7 43. If we can blow up sort of the top two paragraphs, please.

8 You opined in your report that you disagree with Ms. Edmo's
9 allegation that defendants failed to enact appropriate standards
10 and procedures that would have prevented the harm that she has
11 experienced; correct?

12 A. Correct.

13 Q. And even though you're not a lawyer, you opined that
14 Corizon has not been deliberately indifferent because it has not
15 disregarded an excessive risk to an inmate's health or safety;
16 correct?

17 A. Correct.

18 Q. You opined that despite Ms. Edmo's -- what you call
19 dissatisfaction with her treatment, defendants are not
20 disregarding risk to her health or safety; correct?

21 A. Correct.

22 Q. You believe that concerns that Ms. Edmo is at risk of grave
23 harm without sex reassignment surgery, including suicide, are
24 unfounded; correct?

25 A. Are you reading this from my report?

1 Q. No. I'm asking you.

2 A. So can you repeat that.

3 Q. You believe that concerns that Ms. Edmo is at risk of grave
4 harm without sex reassignment surgery, including suicide -- you
5 believe those concerns are unfounded; correct?

6 A. Yeah. This gets to the discussion about suicide as a --
7 surgery as a treatment for suicide.

8 Q. It gets to the treatment -- surgery as a treatment for
9 gender dysphoria, which may alleviate risk of suicide.

10 But you don't believe that; right?

11 A. I haven't seen evidence that firmly supports that, so I
12 have concerns about making that conclusion.

13 Q. You're aware that in 2016 and 2017, there were three
14 suicides at ISCI, the institution where Ms. Edmo was housed;
15 correct?

16 MR. HALL: Objection. Foundation --

17 MR. EATON: Objection.

18 MR. HALL: -- relevance. Objection. Foundation,
19 relevance.

20 THE COURT: Sustained.

21 Q. BY MS. RIFKIN: You are opining that you do not believe
22 Ms. Edmo is at increased risk of suicide because defendants will
23 not provide her sex reassignment surgery; correct?

24 A. I believe that Ms. Edmo's risk of suicide is critically
25 increased because of her history of suicide attempts and her

1 self-injury. I do not believe that it is caused by the
2 treatment that she has or has not received.

3 Q. Can we show Plaintiff's Exhibit 1042, please.

4 You testified that you are a certified correctional
5 healthcare provider under NCCHC; correct?

6 A. Correct.

7 Q. And NCCHC does an audit, a court-mandated audit, of ISCI,
8 the institution where Ms. Edmo is housed as a result of the
9 court lawsuit.

10 Can we turn to page 35 of this exhibit, please.

11 MR. HALL: Objection. Foundation.

12 MR. EATON: Join.

13 THE COURT: Well --

14 MS. RIFKIN: Your Honor, this -- you will see this is
15 directly relevant.

16 THE COURT: I think it's premature to object yet.
17 Let's find out what we're getting at and what --

18 MS. RIFKIN: Can you please zoom in for the
19 recommendation.

20 THE COURT: Well, just a second. If the objection is
21 to foundation -- I mean, I presided over the *Balla* case. I
22 assume I can take judicial notice of anything that's been filed
23 in that proceeding. I'm not sure -- I'm not sure how far I'm
24 going to let Ms. Rifkin go with it, but I'm not sure the
25 objection is that it's not truly what it purports to be.

1 MR. HALL: Your Honor, I object on the grounds of
2 relevance and hearsay as well.

3 THE COURT: Okay. Well, that might be a good
4 objection, but --

5 MR. EATON: Join.

6 THE COURT: -- I'm assuming you are not objecting that
7 this isn't, in fact, the special master's report in *Balla*.

8 But let's see where we're going to go with it, and then
9 I'll sustain the objection or not depending upon -- if you were
10 offering it for the truth of the matter asserted, it's going to
11 be hearsay, and I won't allow it.

12 If you're using it to impeach the witness in some fashion,
13 that may be appropriate if this witness has ever seen it or is
14 aware of it. Otherwise, I don't know how you can use it.

15 But go ahead and --

16 MR. HALL: Your Honor, may I ask a question in lieu of
17 an objection?

18 THE COURT: In aid of objection. If you ask in lieu
19 of objection, that means you weren't going to make the
20 objection, so just to be clear. But, yeah, you may.

21 MR. HALL: Dr. Garvey, have you ever seen this
22 document?

23 THE WITNESS: I have not.

24 MR. HALL: Thank you.

25 MS. RIFKIN: Your Honor --

1 THE COURT: Ms. Rifkin, just give me a proffer as to
2 how you intend to use it.

3 MS. RIFKIN: Sure.

4 THE COURT: Because I'm not seeing how it's relevant
5 to the proceeding.

6 MS. RIFKIN: Two reasons, Your Honor. Dr. Garvey, in
7 her report -- I just went through the opinions that she
8 offered -- and she opined that defendants -- she disagrees with
9 the allegation that defendants failed to enact appropriate
10 standards and procedures that would have prevented the harm that
11 she has experienced.

12 She testified that she reviewed IDOC and Corizon's -- the
13 policies and procedures regarding inmates with gender dysphoria,
14 and she believes they are not deliberately indifferent and they
15 don't disregard an excessive risk to inmates' health or safety.

16 That's her opinion she is offering in this case. And I
17 think information, especially if she didn't review it before
18 offering that opinion, is directly relevant about the harm to
19 inmates with gender dysphoria at the institution where Ms. Edmo
20 is housed.

21 THE COURT: All right. Well, she has acknowledged
22 that she, in fact, has not reviewed it. So the fact that there
23 is --

24 MS. RIFKIN: So I'll ask a question about the general
25 information.

1 THE COURT: Yes, just as to what she has reviewed or
2 not reviewed.

3 Q. BY MS. RIFKIN: Did you review any information in order to
4 form your opinions about defendants' policies and procedures and
5 the risk they pose to gender-dysphoric inmates at ISCI -- did
6 you review any information about the three inmates who committed
7 suicide, two of whom had a gender dysphoria diagnosis and one of
8 whom was dealing with sexual identification issues? Did you
9 review that when you offered this opinion?

10 MR. EATON: Objection.

11 MR. HALL: Objection. Misstates facts -- assumes
12 facts not in evidence.

13 MS. RIFKIN: So if they are going to object that this
14 misstates facts --

15 THE COURT: Just a moment. Just a moment. Let's tie
16 ourselves to what the report actually says.

17 She has indicated she didn't review it. So if you want to
18 ask if she was aware of those facts as reported in the report --
19 not your characterization, but as reported in the report -- then
20 let's move on.

21 MS. RIFKIN: Okay.

22 Q. BY MS. RIFKIN: Are you aware that this report noted that
23 ISCI had had three suicides in the past year, in October 2016,
24 in February 2017, and in August 2017?

25 A. No, I'm not -- I was not.

1 Q. Are you aware that this report stated that one notable
2 aspect of these suicides is that two of the inmates had a
3 diagnosis of gender dysphoria and the third was associated with
4 the GD inmate community and was exploring sexual identification
5 issues?

6 MR. HALL: Objection. Hearsay.

7 MR. EATON: Join.

8 THE COURT: Well, it's -- I think for impeachment
9 purposes, it's not being offered to prove the truth, but whether
10 she was aware there was a report out there that said this.

11 This goes to the credibility of the opinions offered, not
12 the substance. I'm obviously not going to rely upon the truth
13 of those statements but only on the extent to which they call
14 into question the thoroughness of the opinion offered or the
15 evaluation that went into the opinion that was offered.

16 So were you aware of those facts?

17 THE WITNESS: I was not, no.

18 THE COURT: All right. Let's proceed. Move on.

19 MS. RIFKIN: No further questions at this time,
20 Your Honor.

21 THE COURT: All right. Mr. Eaton.

22 I have some questions, but I think they are not -- I'm not
23 going to take the time, given where we are and how thorough we
24 have covered all of this.

25 So go ahead, Mr. Eaton.

REDIRECT EXAMINATION

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BY MR. EATON:

Q. Dr. Garvey, are you the only expert psychiatrist in this case?

A. I believe so, yes.

Q. And you're a board-certified psychiatrist; right?

A. Correct.

Q. And so you are able to opine about standards of care and appropriate care of a psychiatrist; right?

A. Yes, that's correct.

Q. And that would be including Dr. Eliason?

A. Yes, correct.

Q. And unlike plaintiff's experts, you have experience working and treating in a correctional setting; correct?

A. Yes, in three different states.

Q. And is the treatment of gender dysphoria treatment committees that we have talked about, is that unique in a correctional setting?

A. I think some states haven't organized in that fashion, but it's becoming more and more common. So that's a pretty -- it's becoming a more standard way of making treatment decisions.

Q. And you had a treatment committee -- a Gender Dysphoria Treatment Committee that you were on and presided over at times in Massachusetts; right?

A. Yes, that's correct.

1 Q. And at issue in this case, in part, is a treatment -- a
2 management treatment care committee that oversaw gender
3 dysphoria; right?

4 A. Correct.

5 Q. And so you have expertise in the correctional setting
6 regarding that unique set of facts; right?

7 A. Correct, yes.

8 Q. All right. Why do you believe you're qualified to render
9 opinions on SRS?

10 A. Because of my experience in treating patients and also the
11 literature that I have reviewed and the WPATH training that I
12 attended and kind of ongoing attention to standards and my
13 experience on the gender dysphoria treatment committee where I
14 reviewed the treatment plans of every individual in the state
15 who had gender dysphoria and conducted the initial evaluation
16 for -- a confirmatory evaluation for every patient that entered
17 the system that reported gender issues.

18 Q. And I believe you were asked about have you ever written a
19 recommendation for SRS and weren't allowed to explain your
20 answer at that time.

21 Would you like to do that now?

22 A. Sure. So in our -- in our system in Massachusetts, the
23 process would be that a clinician treating the patient made a
24 formal recommendation to the treatment committee, who would then
25 evaluate that recommendation and make a decision.

1 In the supervision group that also met monthly, we talked
2 about the total treatment plan for everyone that was being
3 treated for gender dysphoria. And including in that -- included
4 in that was a discussion of gender confirmation surgery for
5 certain individuals.

6 We discussed it. The clinicians would discuss what their
7 thought process was and what concerns they still had that had
8 led them to not yet recommend surgery. But that was an ongoing
9 discussion for several patients, that we talked about the
10 readiness and the medical necessity of the surgery.

11 Q. So I need to move on and give Mr. Hall time.

12 But you wanted to -- did you want to mention anything about
13 your "Tax Dollars at Work" title?

14 A. Yes.

15 MS. RIFKIN: Objection. Leading.

16 THE COURT: Overruled.

17 THE WITNESS: Just to clarify, that title was taken
18 from a news article. And the reason that I used it is because I
19 wanted to draw attention to the fact that this was still a
20 perception in the community that this is -- comes down to
21 nothing but money.

22 So it was in quotes. They incorrectly eliminated the
23 quotes in the program, but that was definitely not my sentiment.
24 And the point of using that title was to draw attention to the
25 fact that some people still viewed it that way.

1 MR. EATON: Your Honor, I would like to move to admit
2 Defendants' 2033 that was discussed with plaintiff's counsel.

3 THE COURT: I had a note to inquire about that.

4 Is there any objection, since it was used in
5 cross-examination?

6 MS. RIFKIN: No, Your Honor.

7 THE COURT: Exhibit 2033 will be admitted.

8 (Defendants' Exhibit 2033 admitted.)

9 Q. BY MR. EATON: And I believe, lastly, you were asked by
10 plaintiff's counsel about suicide and related to gender
11 dysphoria and sex reassignment surgery. I believe you were
12 trying to qualify your answer.

13 Did you want to do that now?

14 A. Yes. I don't remember the exact question. But the article
15 that I cited in my report by Cynthia Osborne and Anne Lawrence
16 talked about the lack of data to support claims that gender
17 confirmation surgery will decrease suicidality.

18 And the study, the Cecilia Dhejne -- I'm probably saying
19 that wrong -- study does show that there is elevated, above
20 general population, risk of completed suicide following sex
21 reassignment surgery.

22 I am not comparing that to patients that have gender
23 dysphoria and have not had surgery. I cited it to point out
24 that there is still a high risk of suicide following the
25 surgery.

1 Q. And finally and very quickly, there was a discussion about
2 your diagnosis of moderate -- sorry. I'm blanking on --

3 THE COURT: Depressive disorder, I think.

4 MR. EATON: Thank you, Your Honor. Yes.

5 Q. BY MR. EATON: And I believe you wanted to clarify the
6 distinction between moderate and severe.

7 A. Sure. It's a matter of the severity of the symptoms.

8 As I have said, it is difficult to completely separate the
9 gender dysphoria from the depression. So that was -- with the
10 available information that I had at that time, that was my best
11 estimate of the severity.

12 MR. EATON: Thank you. No further questions.

13 MR. HALL: No questions, Your Honor.

14 MS. RIFKIN: Just one, Your Honor.

15 THE COURT: That's all I'll give you. Go ahead.

16 RECCROSS-EXAMINATION

17 BY MS. RIFKIN:

18 Q. Dr. Garvey, during the time that you served on the
19 Massachusetts Department of Corrections Gender Dysphoria
20 Treatment Committee and supervisory group, surgery -- that group
21 did not recommend surgery or did not -- I'm sorry -- did not
22 provide surgery to any gender dysphoric inmate in the
23 Massachusetts Department of Corrections; correct?

24 A. Define "surgery." It can be used to discuss a lot of
25 different things.

1 Q. During the time that you served on the Massachusetts
2 Department of Corrections Gender Dysphoria Treatment Committee
3 and supervisory group, that committee did not provide genital
4 reconstruction surgery to any inmate with gender dysphoria in
5 the Massachusetts Department of Corrections; is that right?

6 A. There has only been one that I'm aware of in the country.
7 And during that two-year period that I was on the committee,
8 no -- that is correct, there was not that surgery.

9 MS. RIFKIN: No further questions, Your Honor.

10 THE COURT: All right. Doctor, you may step down.
11 Thank you.

12 Counsel, it troubles me that we don't have any data
13 comparing suicide rates -- we obviously have suicide rates of
14 the general population, and apparently somebody has done suicide
15 rates of people who have had gender confirmation surgery.

16 But there seems to be distinctions between suicide attempts
17 and successful suicide. And I know, of course, you can't do a
18 double-blind study because of ethical concerns of a placebo
19 group. But are there any statistics, any studies done to just
20 try to compare, as best we can, apples and apples rather than
21 apples and oranges about suicide rates among the general
22 incarcerated or nonincarcerated gender-dysphoric community
23 compared to those who have had -- I'm going to assume that if
24 there was, somebody would have offered it.

25 But it's frustrating that we seem to have all the studies

1 in the world except the one we need.

2 All right. I'm just whining. I apologize.

3 Defense may call their next witness.

4 MR. HALL: Your Honor, may we have a three-minute
5 break to use the restroom and grab --

6 THE COURT: Yes. We'll take a ten-minute break. Did
7 you say 20-minute break?

8 MR. HALL: I said three-minute, in fact. We'll make
9 it five.

10 THE COURT: I'm not going to go there. We'll take a
11 ten-minute break or until everybody is back. We'll be in
12 recess.

13 (Recess at 1:29 p.m. until 1:42 p.m.)

14 THE COURT: You may call your next witness.

15 MR. HALL: Defendants call Dr. Joel Andrade.

16 THE COURT: Dr. Andrade, would you step before the
17 clerk and be sworn.

18 JOEL ANDRADE, Ph.D., DEFENDANTS' WITNESS, SWORN

19 THE CLERK: Please take a seat in the witness stand.

20 MR. HALL: Move a little faster, please.

21 (Laughter.)

22 THE CLERK: Please state your complete name and spell
23 your name for the record.

24 THE WITNESS: Joel Andrade, A-N-D-R-A-D-E.

25 DIRECT EXAMINATION

1 BY MR. HALL:

2 Q. Doctor, do you recognize the exhibit marked as Defendants'
3 Exhibit 2021?

4 That's not counted against my time, is it?

5 Do you see that there, Doctor?

6 A. Yes.

7 Q. Is that your resume?

8 A. Yes.

9 Q. Is that true and correct?

10 THE COURT: Can we stipulate to the admission as we
11 have the others?

12 MS. RIFKIN: Yes, Your Honor.

13 THE COURT: The exhibit will be admitted.

14 (Defendants' Exhibit 2021 admitted.)

15 Q. BY MR. HALL: Doctor, do you recognize this document here
16 marked as Defendants' Exhibit 2021?

17 A. Yes.

18 Q. Is that a list of publications and journals that you
19 reviewed and relied upon in this case?

20 A. Yes.

21 MR. HALL: Move to admit, Your Honor.

22 THE COURT: Any objection?

23 MS. RIFKIN: Well, I think it's hearsay, the same as
24 the underlying report, Your Honor.

25 MR. HALL: I can ask him if he has reviewed every

1 single one, Your Honor.

2 THE COURT: I'm going to allow it. I -- you have got
3 to move on. And I assume you had it in advance. If there was
4 some misrepresentation, that could have been pointed out.

5 MS. RIFKIN: Your Honor, if we're moving to admit that
6 document which contains the Medicare decision, Plaintiff's
7 Exhibit 1026 that we talked about at length with Dr. Garvey, I
8 would just move to admit Plaintiff's Exhibit 1026, as well,
9 which is referenced by Dr. Andrade in that document.

10 THE COURT: I apologize. 1026 was the --

11 MS. RIFKIN: 2014 decision eliminating --

12 THE COURT: From the Medicaid?

13 MS. RIFKIN: Yes. And Dr. Andrade just testified he
14 relied upon it, and counsel moved to admit that list.

15 MR. HALL: I don't know why we need to admit it,
16 Your Honor.

17 THE COURT: Well, you need a reference or why do I
18 need to see all the studies that have been done?

19 MR. HALL: That's fine, Your Honor. Withdrawn.

20 THE COURT: Let's just not admit that and move on.

21 MR. HALL: Okay. Doctor --

22 Your Honor, I'm going to lead in the interest of time here
23 to lay some foundation.

24 THE COURT: I'll give you a lot of leeway.

25 MR. HALL: Thank you.

1 Q. BY MR. HALL: Doctor, you have your doctorate of philosophy
2 in social work; correct?

3 A. Yes.

4 Q. And you have a master's in social work as well; correct?

5 A. Yes.

6 Q. And you are licensed -- you are a licensed independent
7 clinical social worker in the State of Massachusetts and
8 Florida; correct?

9 A. Yes.

10 Q. Okay. And you are also a certified correctional healthcare
11 professional; correct?

12 A. Yes.

13 Q. You have an MH designation after that. I don't think
14 that's been put on the record.

15 Would you briefly state what that MH designation is.

16 A. Yes. NCCHC, the National Commission on Correctional Health
17 Care, has two levels of accreditation, the CCHP and then the
18 higher level for different disciplines for physicians, for
19 administrators, and for mental health professionals,
20 psychologists, psychiatrists, psychologists. And that's the
21 designation I have.

22 Q. Okay. Thank you, Doctor.

23 Your employment experience over the last 10 years has
24 consisted of working as a mental health professional in the
25 correctional industries in Massachusetts; correct?

1 A. Yes.

2 Q. Okay. Describe for me your roles and duties that you've
3 held over the last 10 years.

4 A. Okay. Really, two main roles. The first was the clinical
5 director and program manager of the Massachusetts contract. So
6 oversaw all mental health services in the State Department of
7 Correction in Massachusetts, including being the chair of the
8 Gender Dysphoria Supervision Group and member of the Gender
9 Dysphoria Treatment Committee.

10 My other role and my current role, I work for MHM Services
11 as the director of clinical operations. So I'm based from home
12 out of the corporate office, actually, in Virginia, and I travel
13 to wherever the company has contracts. We have about 17
14 different contracts, so I travel to all those contracts.

15 Q. In your employment, have you had the opportunity to provide
16 treatment to gender-dysphoric inmates?

17 A. Yes.

18 Q. Okay. And have you provided assessments in your employment
19 for the diagnosis of gender dysphoria?

20 A. Yes.

21 Q. Approximately how many?

22 A. In my role in Massachusetts, I would evaluate individuals
23 and confirm diagnosis. So well over 100, hundreds of patients.

24 Q. And have you also been involved in assessments for the
25 appropriateness of certain treatment options for

1 gender-dysphoric inmates?

2 A. Yes.

3 Q. And does that include hormone therapy?

4 A. Yes.

5 Q. Approximately how many times have you been involved in
6 that?

7 A. In dozens of cases.

8 Q. And have you made referrals for hormone therapy?

9 A. Yes.

10 So the process was the treatment committee would approve
11 hormone therapy, and we would refer to an endocrinologist for
12 the specific medications to be given. But we would evaluate and
13 approve based on the person's gender dysphoria to help alleviate
14 the dysphoria.

15 Q. And would that require you to have familiarity with the
16 individual's treatment history and mental health records?

17 A. Yes.

18 Q. And have you had an opportunity in your employment to
19 provide -- excuse me -- assessments to gender-dysphoric patients
20 in a correctional institution for the appropriateness of sex
21 reassignment surgery or gender-confirming surgery?

22 A. Yes.

23 Q. Okay. Approximately how many times?

24 A. Approximately six individual assessments for gender
25 affirming surgery, and two were approved. There are specifics

1 to each of those cases.

2 Q. You said two approved; correct?

3 A. Yes.

4 Q. Okay. Did you make recommendations, as part of that
5 process, that it was appropriate for those two individuals to
6 receive gender-confirming surgery?

7 A. Yes.

8 Q. Okay. And in providing your opinions and your assessment
9 in that process, did you rely upon the WPATH standards of care?

10 A. Yes.

11 Q. Are you familiar with the WPATH standards of care?

12 A. Yes.

13 Q. Have you received training in the WPATH standards of care?

14 A. I've attended WPATH conference and, as part of the
15 treatment committee, consistently reviewed the standards of
16 care, which were updated while I was on the treatment committee.
17 So the previous standards and now the seventh version, yes.

18 Q. Have you attended other conferences besides WPATH where you
19 received training on treatment of gender-dysphoric inmates?

20 A. Yes. I regularly attend and present at NCCHC, National
21 Commission on Correctional Health Care; ACA, which is the
22 American Correctional Association. I have also attended and
23 presented at the American Psychiatric Association conference,
24 and AAPL, which is the American Academy of Psychiatry and Law
25 conference.

1 Q. Thank you, Doctor.

2 I have marked here Joint Exhibit 15, page 28.

3 Do you recognize this document?

4 A. Yes.

5 Q. Is it your understanding that this is the WPATH standards
6 of care criteria for competency of mental health professionals?

7 A. Yes.

8 Q. And have you reviewed those criteria before?

9 A. Yes.

10 Q. And do you meet each of those criteria?

11 A. Yes.

12 Q. Now, Doctor, you have been retained in this case by the
13 defendants; correct?

14 A. Yes.

15 Q. And as part of your retention, have you been asked to
16 assess Mrs. Edmo's mental health?

17 A. Yes.

18 Q. And have you done so?

19 A. Yes.

20 Q. And in -- did you have an opportunity to meet Ms. Edmo?

21 A. Yes.

22 Q. And was that through a clinical interview?

23 A. Yes.

24 Q. And did that occur in approximately late July or early
25 August of this year?

1 A. Yes. July 31st.

2 Q. And did you have an opportunity to interview Ms. Edmo about
3 her prior preincarceration history?

4 A. Yes.

5 Q. Including mental health history?

6 A. Yes.

7 Q. And was part of your role to make an assessment as to
8 whether or not Ms. Edmo has any mental health concerns?

9 A. Yes. That was part of the evaluation.

10 Q. And were you asked to diagnose Ms. -- well, see if Ms. Edmo
11 met the diagnosis for gender dysphoria?

12 A. Yes.

13 Q. And were you asked to assess her for the appropriateness of
14 gender-confirming surgery?

15 A. Yes.

16 Q. Okay. And did you do that?

17 A. Yes.

18 Q. Prior to rendering your opinions, did you review documents?

19 A. Yes.

20 Q. Doctor, my office provided you with a whole list of
21 documents. In the interest of time, I just want to read a few
22 and have you say yes or no as to whether or not you reviewed
23 them prior to you issuing your opinions in this case. Okay?

24 A. Yes.

25 Q. Did you review the preincarceration mental health records

1 from the Sho-Ban Tribe?

2 A. Yes.

3 Q. From Portneuf Medical Center?

4 A. Yes.

5 Q. Bannock County Jail?

6 A. Yes.

7 Q. Did you review the presentence investigation report?

8 A. Yes.

9 MR. HALL: And that's Exhibit 2010. And, Your Honor,
10 to the extent it's not already on the record by stipulation, I
11 would like to confirm that that is admitted.

12 THE COURT: Exhibit 2010, did you say?

13 MR. HALL: 2010, correct.

14 THE COURT: It is not.

15 MR. HALL: It was agreed to be admitted subject to our
16 joint stipulation and motion under seal.

17 THE COURT: Any objection? That's the presentence
18 report.

19 MS. RIFKIN: Oh --

20 THE COURT: Or the confidential PSI documents. I
21 assume it was the state presentence report.

22 MR. HALL: Correct, Your Honor.

23 MS. RIFKIN: Well, the agreement was that it would be
24 submitted to the court under seal. The agreement was not that
25 it was admitted under seal.

1 We object to the relevancy of any of this document based on
2 the -- based on the testimony that Ms. Edmo's preincarceration
3 history is not applicable. But that objection is for the
4 record.

5 THE COURT: And the objection is overruled.

6 Exhibit 2010 -- I think the -- I don't know how you can
7 exclude certain portions of Ms. Edmo's total medical and
8 psychological evaluation. It just has to be considered. Now,
9 some is more important than others, but the exhibit is admitted.
10 2010 is admitted.

11 (Defendants' Exhibit 2010 admitted.)

12 Q. BY MR. HALL: Doctor, do you believe that it's important in
13 your -- as part of your assessment to review all relevant
14 preincarceration mental health and medical records?

15 A. Yes.

16 Q. And does that also extend to presentence investigations
17 that are conducted and go into topics regarding mental health
18 and psychosexual evaluations?

19 A. Yes.

20 Q. Okay. And you did review the PSI report; correct?

21 A. Yes.

22 Q. And you have reviewed the records of incarceration,
23 including the mental and medical health records, approximately
24 1500 pages that were provided to you; is that correct?

25 A. Yes.

1 Q. And did you review the MTC meetings?

2 A. Yes.

3 Q. Did you review the incident reports?

4 A. Yes.

5 Q. The DORs?

6 A. Yes.

7 Q. The C notes and offender summaries?

8 A. Yes.

9 Q. Parole records?

10 A. Yes.

11 Q. Did you speak to anyone prior to issuing your report in
12 your opinions other than Ms. Edmo?

13 A. I spoke to two clinicians that work at the facility, Krina
14 Stewart, and I'm forgetting the other person's name right now,
15 but two mental health professionals that worked with Ms. Edmo.

16 I also met briefly with the warden for about a half-hour
17 interview the day I was onsite.

18 Q. Was the other mental health clinician -- excuse me --
19 interviewed Laura Watson?

20 A. Yes.

21 Q. And what was your understanding as to their role in
22 providing treatment or clinical contact to Ms. Edmo?

23 A. Both had been involved in treating Ms. Edmo in the past and
24 were very familiar with policies, procedures of the facility.

25 Q. I want to talk about your opinions in this case, Doctor.

1 You're familiar with the DSM criteria for gender dysphoria?

2 A. Yes.

3 Q. And did you apply that during your review of Ms. Edmo and
4 the clinical interview?

5 A. Yes.

6 Q. And does Ms. Edmo, in your opinion, meet the diagnosis for
7 gender dysphoria?

8 A. Yes, she does.

9 Q. Did you determine as to whether or not Ms. Edmo meets the
10 diagnosis for any other mental health disorders under the DSM?

11 A. Yes.

12 Q. Okay. And was one of those borderline personality
13 disorder?

14 A. Yes.

15 Q. Doctor, do you recognize the document marked as Plaintiff's
16 Exhibit 1036, page 1?

17 A. Yes.

18 MS. RIFKIN: Objection. Foundation, hearsay.

19 THE COURT: Just a moment.

20 Okay. The question is whether he reviewed it. It's not
21 been offered yet. So let's see where it goes, and then you can
22 restate your objection.

23 Q. BY MR. HALL: Doctor, do you recognize the document here
24 marked as Plaintiff's Exhibit 1036?

25 A. Yes.

1 Q. Okay. What are we looking at? What is this?

2 A. This is the diagnostic criteria in the DSM-5 for --

3 MS. RIFKIN: Objection, Your Honor.

4 THE WITNESS: -- borderline personality disorder.

5 MS. RIFKIN: It is not just that. It is one with the
6 circles on it.

7 THE COURT: Counsel, if you want to offer a clean
8 copy, that may be different. But if there is any emphasis given
9 to any portion of it, it shouldn't be admitted in that form.

10 MR. HALL: Right. This is a version that was provided
11 by plaintiff's counsel as an exhibit.

12 THE COURT: Well --

13 MS. RIFKIN: An exhibit for a witness who is not
14 testifying.

15 MR. HALL: That's fine.

16 Q. BY MR. HALL: Dr. Andrade, are you familiar with the
17 criteria for diagnosis of borderline personality disorder?

18 A. Yes.

19 Q. Okay. And do you believe that Ms. Edmo meets those
20 criteria?

21 A. I do.

22 Q. And which of those criteria do you believe that Ms. Edmo
23 meets?

24 A. There were nine criteria for borderline personality
25 disorder. And in my evaluation, I -- my opinion was that she

1 met criteria for five, which is the diagnostic criteria for
2 borderline personality disorder.

3 Q. Do you believe that she met the criteria for a pattern of
4 unstable and intense interpersonal relationships?

5 A. Yes.

6 MS. RIFKIN: Leading, Your Honor.

7 THE COURT: Sustained.

8 Q. BY MR. HALL: What criteria do you believe that she met?

9 A. I believe she met criteria -- I have listed it in my
10 report. Am I able to --

11 Q. Would it refresh your recollection to have a copy of the
12 DSM criteria for borderline personality disorder?

13 A. Yes.

14 MR. HALL: Your Honor, may I provide this to the
15 witness?

16 THE COURT: Yes.

17 Mr. Severson.

18 I assume, Ms. Rifkin, you have a copy of that as well.

19 MR. HALL: Plaintiff's exhibit.

20 MS. RIFKIN: I'm sorry. I thought he was providing
21 his report.

22 THE COURT: That's what I thought it was, too.

23 MS. RIFKIN: Not -- the exhibit we've been talking
24 about is hearsay.

25 MR. HALL: That's fine. Is there an objection, then,

1 to that?

2 THE COURT: There is. I thought you were providing
3 him with his report.

4 MS. RIFKIN: Yes. It's not what you represented.

5 MR. HALL: I'm sorry. It was the criteria for
6 borderline personality disorder.

7 MS. RIFKIN: I believe the witness stated it was in
8 his report, not in the document.

9 THE COURT: That's what I was thinking it was, too.

10 Counsel, we have got to get through this.

11 MR. HALL: I understand.

12 THE COURT: I'm going to give you some more leeway to
13 proceed. I don't think this -- you can get at it in
14 cross-examination.

15 MR. HALL: Right.

16 THE COURT: So just list the five -- you don't know
17 what the five are that you thought applied?

18 THE WITNESS: Not off the top of my head. I listed
19 all nine --

20 THE COURT: In your report?

21 THE WITNESS: -- in my report and identified which
22 five I thought she met the criteria for.

23 MS. RIFKIN: And so we don't object to him refreshing
24 with his report. But a document --

25 THE COURT: That's what I thought we were doing.

1 Mr. Eaton, you need -- or, Mr. Hall, you need to proceed in
2 that fashion. So let's move -- move along.

3 Q. BY MR. HALL: Okay. Doctor, do you -- do you have concerns
4 with whether or not Ms. Edmo meets the criteria for SRS?

5 A. Yes.

6 Q. Okay. And are you familiar with the criteria for sex
7 reassignment surgery under the WPATH?

8 A. Yes.

9 Q. Okay. And do you recognize Joint Exhibit 15, page 66?

10 A. Yes.

11 Q. Okay. And are these the criteria under the WPATH for sex
12 surgery?

13 A. Yes.

14 Q. Doctor, do you believe that Ms. Edmo has met all of the
15 criteria under the WPATH for surgery?

16 A. Not all.

17 Q. Do you believe that she has met criteria No. 1?

18 A. I think there are -- I have questions about whether she
19 has. And my concerns are that she -- her persistent,
20 well-documented history is while incarcerated but not prior to
21 her incarceration.

22 So that raises concerns for me because she has only
23 presented full time, as the WPATH standards recommend, for at
24 least 12 months in a correctional setting.

25 So my concern would be if she had surgery in a correctional

1 setting, you know, she has an understanding of how that would
2 play out because she has presented as female for several
3 years -- since 2012, at least -- but if she were then to
4 transition to the community where she has not presented full
5 time as female, that she wouldn't know what to expect.

6 Q. Doctor, in your review of the records, did you see any
7 documentation that would corroborate Ms. Edmo's claim that she
8 lived full time as a woman prior to her incarceration?

9 A. I did not see any.

10 Q. And, Doctor, do you believe that Ms. Edmo's borderline
11 personality disorder traits are well controlled at this time?

12 A. I have concern, other mental health concerns. One is her
13 borderline personality disorder and also, in my opinion, her
14 unresolved trauma which we talked about during our interview,
15 which she attributes her early childhood trauma, potentially, to
16 either her gender dysphoria at the time resulted in the sexual
17 abuse; or, because she was sexually abused, she then became an
18 adult transgender woman.

19 And I think there are things she needs to work out in
20 therapy in the short and long term before she can make a really
21 well-informed decision about surgery.

22 Q. What are those things that you believe Ms. Edmo should work
23 out in therapy before surgery is appropriate?

24 A. I think resolving her understanding of her early-life
25 sexual abuse.

1 Like I said, she attributes -- she goes back and forth
2 whether she caused the abuse herself because of her feminine
3 presentation, or the result of the abuse is growing up to be a
4 transgender woman.

5 I think that's something she needs to work on in therapy to
6 hopefully understand that she was a 9-year-old child that was
7 sexually victimized by a much older person; and her gender --
8 that's not her fault, you know, that that was someone that
9 sexually abused her.

10 I think the symptoms of her borderline personality
11 disorder, so her -- one is intense interpersonal relationships,
12 that she needs to work on that issue, too. Because I think,
13 right now, she has the belief, based on her time living in
14 prison as a woman, that surgery will fulfill a lot of her hopes,
15 where I'm not confident that that would be true when she
16 completes her sentence and reintegrates into society.

17 My hope would be it does, but I'm not confident in that.
18 And I want her to be able to make that decision on her own when
19 she is able to feminize in the community for an extended period
20 of time.

21 Q. So, Doctor, looking back at Joint Exhibit 15, page 66, do
22 you believe that Ms. Edmo meets the criteria for No. 4, if
23 significant medical or mental health concerns are present, they
24 must be well controlled?

25 A. No. I think that's a concern.

1 Q. Do you believe that surgery will cure Ms. Edmo of her
2 coexisting mental health concerns?

3 A. No.

4 Q. Why not?

5 A. Well, the cure for unresolved trauma and borderline
6 personality disorder is psychotherapy. There are a lot
7 of -- there is a lot of research on outcomes for folks with
8 unresolved trauma and borderline personality disorder.

9 DBT, dialectical behavioral therapy, or CBT, cognitive
10 behavioral therapy, are interventions that have shown good
11 efficacy. And I think those --

12 MS. RIFKIN: Your Honor, this is beyond the scope of
13 any opinions in Dr. Andrade's report.

14 THE COURT: Well, we're back to reports.

15 Mr. Hall, do you have --

16 MR. HALL: I think these matters were addressed in the
17 deposition.

18 THE COURT: Well, as I've said, if the opinions were
19 expressed in the deposition or in the report, they are fair
20 game. If not, then I'm not going to allow it.

21 So I don't have access to either. So, Mr. Hall, you need
22 to point out where that is in the expert report or the
23 deposition.

24 MR. HALL: Why don't we move on from there,
25 Your Honor.

1 THE COURT: You can come back to this, if need be.

2 MR. HALL: Thank you.

3 Q. BY MR. HALL: Doctor, do you believe that if Ms. Edmo is
4 provided with surgery, that it could be potentially harmful to
5 her?

6 A. Yes.

7 Q. In what ways?

8 A. My concern is that she has not feminized in the community;
9 she has expressed to various people that she has, which raises
10 concerns for me regarding her understanding of how she presented
11 in the community before.

12 So I would want her to continue along the path she is on,
13 continue with therapy while incarcerated, transition to the
14 community, hopefully have the supports, still, you know, present
15 as female, as the WPATH standards recommend, in all realms of
16 life.

17 To this point, she has only presented as female while
18 incarcerated. So in the community, I think it would be very
19 different for her. My hope is it would all work out, and then
20 she would decide surgery makes sense, and it would help her in
21 the long run.

22 MR. HALL: Thank you, Doctor. No further questions at
23 this time.

24 THE COURT: I assume -- Mr. Eaton, you have no
25 questions?

1 MR. EATON: No questions, Your Honor.

2 THE COURT: Cross, Ms. Rifkin.

3 MS. RIFKIN: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. RIFKIN:

6 Q. Dr. Andrade -- I am saying that right; correct?

7 A. Yes.

8 Q. Okay.

9 THE COURT: Is it Dr. "An-drade" or "An-drad-ee"?

10 THE WITNESS: I respond either way. I say "An-drade,"
11 but a lot of people say "An-drad-ee."

12 THE COURT: Okay.

13 MS. RIFKIN: I try hard to pronounce it the right way.

14 THE WITNESS: Right. It's Portuguese, and it's gotten
15 very Americanized as "An-drade."

16 Q. BY MS. RIFKIN: All right. Dr. Andrade, your experience
17 with gender dysphoria comes almost exclusively from your
18 participation on the Massachusetts Department of Corrections
19 Gender Dysphoria Treatment Committee and Supervision Group;
20 correct?

21 A. Yes.

22 Q. And for the time that you served in that capacity,
23 Corizon's expert in this case, Dr. Garvey, was also part of that
24 treatment committee; correct?

25 A. For a portion of that time, yes.

1 Q. As well as Massachusetts Department of Corrections outside
2 consultant, Dr. Levine; correct?

3 A. Yes.

4 Q. You testified in your deposition there were four members of
5 the treatment committee; correct?

6 A. Yes.

7 Q. You, Dr. Garvey, and Dr. Levine were three of the four
8 members of that committee; correct?

9 A. Dr. Garvey for a short period of time.

10 Q. Two years; right?

11 A. Yes.

12 Q. How long were you on the committee?

13 A. Eight.

14 Q. So for two years, you, Dr. Garvey, and Dr. Levine were
15 three of the four members of the treatment committee where you
16 gained almost all of your experience with gender dysphoria;
17 correct?

18 A. Yes.

19 Q. As part of your role on the treatment committee, if a
20 prisoner was given a preliminary diagnosis of gender dysphoria,
21 you would interview them to confirm the diagnosis; correct?

22 A. Yes.

23 Q. The -- and you would often do these interviews with
24 Dr. Garvey or her predecessor on the committee; correct?

25 A. Correct.

1 Q. And the majority of the interviews that you and Dr. Garvey
2 conducted with the actual patient to confirm gender dysphoria
3 diagnosis were around 15 minutes; correct?

4 A. The majority. I mean, there was a wide range, but most
5 were very straightforward. The person met criteria, so we
6 didn't need much more time than that.

7 Q. And outside of confirming diagnoses of gender dysphoria,
8 you personally have never provided any treatment for gender
9 dysphoria directly as a clinician to patients; correct?

10 A. Prior to my time on the committee and supervision group;
11 correct.

12 Q. At present, outside of confirming diagnosis of gender
13 dysphoria, you have never provided any treatment for gender
14 dysphoria directly as a clinician to patients; correct?

15 A. That's very difficult to answer. I can explain.

16 Q. Well, can you give me a "yes" or a "no" answer, please.

17 A. Not based on that question, I don't think I can.

18 Q. Do you recall giving me an answer in your deposition?

19 A. Not specifically. I mean, the way you are asking the
20 question, to provide treatment on the treatment committee, we
21 were the only folks that could approve treatment. So
22 that's -- we approved all treatments. So I never --

23 THE COURT: The question was whether, outside of
24 confirming the diagnosis, have you ever provided any treatment
25 for gender dysphoria directly?

1 THE WITNESS: And the treatment committee was the
2 group that provided all the treatment -- approved all treatment
3 into --

4 THE COURT: They approved it. But did they provide
5 the treatment? That was the question.

6 THE WITNESS: Okay. Right. I wasn't the primary care
7 clinician, no.

8 Q. BY MS. RIFKIN: So outside of confirming diagnoses of
9 gender dysphoria, you have never provided any treatment for
10 gender dysphoria directly as a clinician to patients; correct?

11 A. Any -- right. Psychotherapy, no.

12 Q. Or any other treatment for gender dysphoria directly as a
13 clinician to patients; correct?

14 A. Correct.

15 Q. Within the Massachusetts Department of Corrections, you
16 have never been the primary care clinician treating any patient
17 with gender dysphoria; correct?

18 A. Correct.

19 Q. And earlier, on the direct testimony, you discussed two
20 patients within the Massachusetts Department of Corrections that
21 you said you approved surgery for; correct?

22 A. Correct.

23 Q. You actually -- you actually only recommended that surgery
24 with a requirement that prior to receiving that surgery, they
25 had to live in a women's facility, a women's prison, for

1 approximately 12 months before they could receive that surgery;
2 correct?

3 A. Yes.

4 Q. So you added that requirement in order -- as a precursor
5 for them receiving surgery; correct?

6 A. I mean, it's much more complicated than that, so it's
7 more --

8 Q. You added that requirement; right? Before they could get
9 surgery, you and the treatment committee required that they live
10 in the women's prison for approximately 12 months before you
11 would actually provide surgery; correct?

12 A. It's a very complicated -- I mean, each case was very
13 complicated.

14 Can I explain further?

15 Q. No. I would like a yes or a no.

16 A. Can you repeat the question.

17 Q. For these two inmates, before -- the treatment committee,
18 before they could actually be provided surgery, you required
19 that they live in a female prison for approximately 12 months
20 before they would actually be provided surgery; correct?

21 THE COURT: You will have a chance to explain.
22 Mr. Hall will give you a chance to elaborate.

23 THE WITNESS: Okay. Yes.

24 THE COURT: Was that a requirement you imposed?

25 THE WITNESS: Yes.

1 Q. BY MS. RIFKIN: And you were aware at the time that you
2 imposed that requirement that the Massachusetts Department of
3 Corrections houses prisoners according to their genitals;
4 correct?

5 THE COURT: If you know.

6 THE WITNESS: For the majority, yes. But there were
7 some patients that lived in both at different times during
8 incarceration. So the majority, yes; like, 99.9 percent were
9 based on genitals.

10 Q. BY MS. RIFKIN: And, in fact, while you were still working
11 with the Massachusetts Department of Corrections, the
12 Massachusetts Department of Corrections did not allow either of
13 these prisoners to move to a women's prison facility; correct?

14 A. Correct.

15 Q. And so the effect of the requirement that you added that
16 they live in a female facility for 12 months prior to receiving
17 surgery was that they haven't gotten surgery; correct?

18 A. At this point, I don't know. I mean, this -- at the time I
19 left, we were in -- they asked us if there were any
20 alternatives; we said no. And then I had not heard back from
21 the Department of Correction.

22 Q. And when did you leave?

23 A. July 1st.

24 Q. Of this year?

25 A. Yes.

1 Q. And when was the recommendation that these individuals be
2 provided surgery if, and only if, they had lived in a women's
3 facility for approximately 12 months? When was that made?

4 A. The initial was late 2017, November-ish -- October-November
5 2017.

6 Q. So as far as you're aware, seven months after you made this
7 recommendation that they needed to live in a facility for an
8 additional 12 months before having surgery, they haven't been
9 moved, so that 12-month period couldn't even start ticking;
10 correct?

11 A. Yes.

12 Q. And that requirement that they move to a female facility,
13 that is not in the WPATH; correct -- the WPATH standards of
14 care?

15 A. Well, the WPATH standards of care say you can be flexible
16 on a case by case.

17 So, yes, I think we were -- in requiring this, I think we
18 were consistent with WPATH.

19 Q. The WPATH standards of care actually state that surgery
20 should never be denied based on a housing situation, such as
21 which prison you're housed at; correct?

22 A. Correct.

23 Q. Other than the two individuals we have been discussing, you
24 have never approved any other patients for surgery to treat
25 gender dysphoria; correct?

1 A. Correct.

2 Q. And you personally have only ever treated one patient who
3 has had gender confirmation surgery; correct?

4 A. Treated or been involved with the treatment committee?

5 Q. Treated, as a clinician.

6 You have never been the actual treating clinician for a
7 patient who has had gender confirmation surgery? That's only
8 happened once; correct?

9 A. I have never been the treating clinician, no.

10 Q. So you have never been a treating clinician for a patient
11 who has had gender confirmation surgery?

12 A. Correct.

13 Q. You testified in your deposition that you define "medically
14 necessary" as it relates to gender dysphoria as, quote, "If any
15 intervention can alleviate the dysphoria, it would be deemed
16 medically necessary."

17 Do you recall that?

18 A. Yes.

19 Q. Is it your opinion that sex reassignment surgery cannot
20 alleviate Ms. Edmo's gender dysphoria?

21 A. It's my opinion that there are other complicating factors
22 that need to be answered first.

23 Q. Is it your opinion that sex reassignment surgery cannot
24 alleviate Ms. Edmo's gender dysphoria?

25 THE COURT: The question is whether it cannot. Is it

1 your opinion that it cannot alleviate Ms. Edmo's gender
2 dysphoria?

3 THE WITNESS: No.

4 Q. BY MS. RIFKIN: So, to clarify the record, you're saying
5 it's not your opinion that sex reassignment surgery cannot
6 alleviate Ms. Edmo's gender dysphoria? You're not offering the
7 opinion -- let me just state it again.

8 THE COURT: Yeah. So is it your opinion that it
9 could?

10 THE WITNESS: I don't know. I mean, based on all
11 available information, I think there are things that need to --
12 she needs to work through first before that decision could be
13 made.

14 THE COURT: Well, no. The question is whether the
15 gender-confirming surgery, whether in your opinion it could
16 solve her gender dysphoria.

17 THE WITNESS: Right. I don't think I can answer,
18 because it could exacerbate it.

19 THE COURT: You're not ruling it out, though?

20 THE WITNESS: Right.

21 Q. MS. RIFKIN: You're aware, aren't you, that Ms. Edmo has
22 never been diagnosed by anyone besides you as having borderline
23 personality disorder?

24 A. Yes.

25 Q. And you agree that IDOC and Corizon have not been treating

1 Ms. Edmo for borderline personality disorder for the last six
2 years; correct?

3 A. No.

4 THE COURT: You don't agree with that?

5 THE WITNESS: I don't.

6 THE COURT: Okay. If they have not diagnosed her with
7 that, they have not been specifically treating her for that,
8 although some of the treatment -- I don't know if "modalities"
9 is the right word -- may, in fact, have been beneficial to
10 someone with that condition; is that what you're saying?

11 THE WITNESS: I'm saying they didn't officially
12 diagnose her with that. But in talking with clinicians, they
13 identified traits of borderline personality disorder and were
14 treating her for those.

15 THE COURT: For those -- all right. For those
16 elements but not --

17 THE WITNESS: Yes.

18 THE COURT: -- the condition itself?

19 THE WITNESS: I mean, to identify the traits, I think
20 they didn't formally diagnose.

21 THE COURT: Okay.

22 THE WITNESS: Which, in my report, I talk about that
23 they --

24 THE COURT: Okay. Go ahead.

25 Q. BY MS. RIFKIN: It's your opinion, correct, that in the six

1 years that Ms. Edmo has been incarcerated and treated in IDOC,
2 her Corizon and IDOC mental health treaters missed a diagnosis
3 of borderline personality disorder for Ms. Edmo?

4 A. It's my opinion they did not officially document the
5 diagnosis.

6 Q. You testified -- in your deposition in response to the
7 question, "Is it your testimony that in the six years of
8 treating her, her mental health treaters within the Department
9 of Correction and Corizon missed the diagnosis of borderline
10 personality disorder?" you testified, "Right. I did not see the
11 diagnosis in the record."

12 Do you remember that?

13 A. Right. I did not see it documented.

14 Q. You agree that Ms. Edmo experiences distress over her
15 genitals; correct?

16 A. Yes.

17 Q. And you agree that this can be acute distress; correct?

18 A. Yes.

19 Q. And it's your opinion that at the time she tried to
20 castrate herself, she was experiencing so much distress, that
21 she thought that would alleviate the distress; correct?

22 A. Yes.

23 Q. But you're testifying that you're not able to opine that
24 gender-affirming surgery would lessen her gender dysphoria?

25 A. Correct.

1 Q. In your own experience, only individuals diagnosed with
2 gender dysphoria have attempted to cut off their genitals;
3 correct?

4 A. No.

5 Q. All right. I would like to show the witness his
6 deposition.

7 THE COURT: Mr. Severson -- well, can you show it on
8 the evidence presenter, or do you want --

9 MS. RIFKIN: I think we don't have it on there,
10 Your Honor, but I do have multiple copies of it, a certified
11 copy -- actually, we have the original.

12 THE COURT: If we have the original, let's publish
13 that, but let's not go through the formality of it. I'll just
14 direct Ms. Bracke to publish it.

15 MR. HALL: I don't think the witness has had an
16 opportunity to review and sign that, so the same stipulation.

17 THE COURT: Then it's not -- oh, all right. I thought
18 you said that it -- I thought it had been reviewed. So it will
19 be under the same order that I indicated we follow yesterday or
20 the day before; if there is any areas where the witness
21 disagrees and would have corrected the deposition if he had had
22 a chance to review it, then we'll point that out as we go along.

23 Q. BY MS. RIFKIN: If you could please turn to page 146 of
24 your deposition.

25 We have another copy. Does the court want a copy?

1 THE COURT: No. That's fine.

2 Q. BY MS. RIFKIN: All right. Are you on page 146, Doctor?

3 A. Yes.

4 Q. If I can direct your attention to line 10.

5 A. Yes.

6 Q. Question: "Have you directly treated any patients who have
7 attempted to cut off their genitals?"

8 "MS. CRECELIUS: Object to form."

9 Answer: "As part of my work in Massachusetts, yes."

10 Question: "How many?"

11 Answer: "Less than ten, more than five."

12 Question: "How many of those individuals were diagnosed
13 with gender dysphoria?"

14 Answer: "Oh, all right. So many."

15 "MS. CRECELIUS: Answer her question."

16 Answer: "Well, can we go back?"

17 Question: "Yes."

18 Answer: "The first question of attempting to cut off their
19 genitals, yes, less than ten, more than five. And I believe all
20 were diagnosed with gender dysphoria."

21 That's what your deposition testimony states; correct?

22 A. Yes. But I -- yeah. I remember talking about two other
23 groups of patients that have attempted.

24 Q. To cut off their genitals?

25 A. I would have to review, like, more than just the one page.

1 Q. All right. We'll move on.

2 When you reviewed Ms. Edmo's prior medical records, did you
3 see -- you concluded that she did not present as a woman in the
4 community.

5 Is that what you responded on direct?

6 A. Yes.

7 Q. Did you see notes in one of the records when she was
8 brought after her suicide attempt that she was wearing nail
9 polish?

10 A. I did not see that.

11 Q. Did you -- you were provided with the photos of Ms. Edmo at
12 the time she was booked into the Idaho Department of
13 Corrections?

14 A. I believe so.

15 Q. Did you see that one of those photos noticed that -- noted
16 that both of her ears were pierced?

17 A. No, I did not notice that.

18 Q. Would you agree that it's more typical in our society, in
19 our culture here, that women wear nail polish versus men?

20 A. Yes.

21 Q. Would you agree that in our culture, it's more typical that
22 women have both ears pierced, versus men?

23 A. Yes.

24 Q. But you didn't note those signifiers of Ms. Edmo's
25 femininity in her prior medical records and her photo when she

1 was booked; correct?

2 A. I reviewed a lot of records and did not see evidence of her
3 feminizing, no.

4 Q. It's your opinion in this case, same as in Massachusetts,
5 that if Ms. Edmo was going to have surgery, she has to live for
6 12 months in a women's prison, isn't it?

7 A. It's my opinion that if -- if the court did approve
8 surgery, that it would be in her best interest for her to
9 transition to a female facility first, to ensure that she
10 understands what the facility is like, whether she will be able
11 to acclimate, have a peer group.

12 Q. You've answered the question, Doctor.

13 Are you aware of Idaho Department of Corrections policy as
14 far as housing of inmates?

15 A. I have seen a policy.

16 Q. Have you seen their newest policy issued last Friday?

17 A. No.

18 Q. Are you aware that that policy and the email distributing
19 it emphasize that inmates in IDOC will continue to be housed
20 primarily based on genitals?

21 A. No. I haven't seen it.

22 Q. You have never published any research related to gender
23 dysphoria in a peer-reviewed journal; correct?

24 A. Correct.

25 Q. You have never published any peer-reviewed work related to

1 gender dysphoria; correct?

2 A. Correct.

3 Q. You taught a class at Bridgewater State University on human
4 behavior in a social environment, where you reviewed every
5 section of the DSM and all diagnostic criteria; correct?

6 A. Yes.

7 Q. And as part of that class reviewing all of the DSM, you
8 reviewed gender dysphoria or what was then called "gender
9 identity disorder"; correct?

10 A. Yes.

11 Q. Other than that, you have never taught any other university
12 or graduate classes related to gender dysphoria; correct?

13 A. Correct.

14 MS. RIFKIN: Your Honor, at this time, we would move
15 to strike and exclude Dr. Andrade's opinions related to
16 treatment of gender dysphoria and specifically his assessment of
17 whether Ms. Edmo is -- whether gender reassignment surgery is
18 medically necessary for Ms. Edmo, given that he has never
19 treated a patient who has had this the surgery. He does not
20 have the requisite experience or training to offer these
21 opinions.

22 THE COURT: Okay. It's noted. I'll overrule the
23 objection for the same reasons stated earlier with regard to
24 Dr. Garvey.

25 I think it goes to the weight, not the admissibility of the

1 opinion. Dr. Andrade has the training and -- as a psychiatrist,
2 I think, to offer opinions, but I think you have made your point
3 about the lack of actual experience in treatment.

4 So the objection is noted and overruled, but I'll consider
5 your arguments concerning the weight of the testimony.

6 MS. RIFKIN: Okay.

7 THE COURT: Proceed.

8 Q. BY MS. RIFKIN: And just for clarification, Dr. Andrade,
9 you are not a psychiatrist; correct?

10 A. Correct.

11 Q. What is your licensure?

12 A. Licensed independent clinical social worker, with a
13 doctorate in social work.

14 Q. Dr. Andrade, under the IDOC policy that you've reviewed,
15 were you qualified as a gender identity disorder evaluator who
16 could assess somebody for surgery?

17 A. The policy I saw said "psychologist." So, no.

18 MS. RIFKIN: No further questions, Your Honor.

19 THE COURT: Redirect.

20 MR. HALL: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. HALL:

23 Q. Dr. Andrade, in your profession, are you permitted within
24 your scope to recommend hormone treatment for a transgender
25 gender-dysphoric patient?

1 A. Yes.

2 Q. But do you actually administer those hormones?

3 A. No.

4 Q. And is it within the scope of your practice to provide an
5 assessment for gender-confirming surgery?

6 A. Yes.

7 Q. But do you actually perform that surgery?

8 A. No.

9 Q. So mental health providers like yourself make
10 recommendations for treatment but don't actually perform all
11 those treatments; is that correct?

12 A. Correct.

13 Q. Doctor, I want to talk to you about these two individuals
14 for whom you recommended surgery for in Massachusetts.

15 You were asked whether or not you had recommended that they
16 be housed first for a year in a female prison; correct?

17 A. Yes.

18 Q. Okay. What was your rationale for making that
19 recommendation?

20 A. For both, both were serving life sentences. Massachusetts
21 only has one female prison, so they would have to acclimate to
22 that one female prison.

23 Both were well engaged in the male prisons they were housed
24 at, involved in programming, education, extracurricular
25 services, and were functioning well. We worked with them over

1 the years and, over time, believed they met criteria for surgery
2 but wanted to be sure that when they had the surgery, they were
3 able to acclimate into that female facility and live a happy
4 life better than they had in the male facility.

5 In both -- at the time, talking with both, both agreed to
6 do that. One said, "I don't need to. I'm 100 percent confident
7 the surgery will be effective. I don't need to, but I'll go
8 along."

9 The other said --

10 MS. RIFKIN: Objection. Hearsay.

11 THE COURT: Sustained.

12 Q. BY MR. HALL: What was your understanding as to those two
13 inmates' feelings about your recommendations?

14 MS. RIFKIN: Same objection.

15 MR. HALL: It doesn't call for statements of these
16 other --

17 THE COURT: Overruled. You may go ahead.

18 MS. RIFKIN: Lack of foundation.

19 THE COURT: Sustained. I'd need to know what the
20 basis is for the witness to have an understanding.

21 Q. BY MR. HALL: Did you have communications with these
22 individuals about your treatment recommendations, particularly
23 that they be housed in a female facility prior to surgery?

24 A. Yes. Both were based on extensive interviews.

25 Q. Okay. From your interviews, did you gain an understanding

1 as to what their feelings or thoughts were on that?

2 A. Yes. We processed this as a possibility with each. And
3 one understood and had -- was ambivalent and thought it would be
4 a good decision to try living at the female facility first.

5 The other basically said, "I'll go along with that, but I
6 don't think it's necessary, but I will if it gets me a step
7 closer to surgery."

8 Q. Did you believe, in your professional opinion, that that
9 recommendation that you made for those two individuals was in
10 their best interest?

11 A. Yes.

12 Q. Okay. And why?

13 A. Our concern for both -- again, both were serving life
14 sentences, well integrated at the male facility -- that if they
15 had genital surgery, gender-affirming surgery, and now living in
16 a male facility was no longer an option and they became
17 depressed and did not find the peer group, did not acclimate the
18 way they expected -- because neither, obviously, had ever been
19 inside a female facility -- that their risk for suicide would go
20 up; they would be ostracized, and we will have done harm.

21 Q. Is it your opinion that wearing nail polish on one occasion
22 is consistent with living full time as a woman in the community?

23 A. No.

24 Q. Is it your opinion that piercing your ears is consistent
25 with living full time as a woman in the community?

1 A. No.

2 Q. You're not recommending right now, Doctor, that Ms. Edmo be
3 transferred to a female facility, are you?

4 A. No.

5 Q. Okay. And why not?

6 A. As I said before, I think there is a lot of work she needs
7 to do in therapy prior to mental health providers feeling
8 comfortable that she is ready for surgery.

9 Q. And in your profession, Doctor, does a patient have to have
10 a diagnosis of borderline personality disorder in order for
11 treatment aimed at some of those traits to be appropriate?

12 A. No.

13 Q. Why not?

14 A. In my experience, mental health professionals,
15 psychiatrists tend not to diagnosis personality disorders,
16 especially in corrections, as often as they should.

17 The base rate of personality disorders is very high in
18 corrections, and I think treatment providers, especially
19 psychiatrists --

20 MS. RIFKIN: Objection. Outside the scope of
21 expertise. He is not a psychiatrist or a psychologist, and he
22 is testifying about why they do or do not diagnose these.

23 THE COURT: Was that a foundation --

24 MR. HALL: He has experience.

25 THE COURT: I'm sorry?

1 MR. HALL: He has experience working with
2 psychologists and psychiatrists.

3 THE COURT: Well, I think we need to lay it more
4 clearly that there is a foundation that, in fact, he has had
5 experience and that that experience has caused him to be able to
6 observe what psychiatrists and psychologists would require.

7 Q. BY MR. HALL: Doctor, do you have experience with working
8 psychiatrists and psychologists regarding patients who are
9 diagnosed or not diagnosed with borderline personality disorder?

10 A. With all mental health professionals -- and a licensed
11 mental health professional is also able to diagnose and treat.
12 In my experience with all mental health professionals in
13 corrections and outside -- so master's level, doctorate level,
14 psychologists, and psychiatrists -- underdiagnose --

15 MS. RIFKIN: Move to strike. I believe the witness
16 can opine within his licensure. He is now generalizing about
17 all mental health professionals.

18 THE COURT: Well, but he's only -- well -- I'll
19 overrule the objection, but I took it only as his testimony
20 concerning his own level of licensure.

21 So -- but don't -- we don't need to hear what your thoughts
22 are on what's appropriate in other areas.

23 Go ahead.

24 Q. BY MR. HALL: Doctor, in your license, do you believe that
25 it is -- it is necessary to have a patient diagnosed with

1 borderline personality disorder in order to treat their symptoms
2 that may be consistent with the criteria for that diagnosis?

3 A. No.

4 Q. Okay. Why not?

5 A. Because personality disorders are enduring patterns of
6 inner experience and behavior that clinical staff are trained to
7 treat the symptoms. The symptoms together then meet the
8 criteria for the diagnosis.

9 So it's like trauma. Just because someone has a trauma
10 history doesn't mean they meet criteria for PTSD. That doesn't
11 mean we're not going to treat someone who has a trauma history
12 and relate it to the trauma they have experienced.

13 So we are treating symptoms.

14 Q. Doctor, I believe that you were asked by counsel whether or
15 not it's your understanding if the defendants have been treating
16 Ms. Edmo's traits for borderline personality disorder; is that
17 correct?

18 A. Can you repeat. Sorry.

19 Q. You were asked a question as to whether or not defendants
20 have been treating Ms. Edmo's traits for borderline personality
21 disorder.

22 Do you remember that?

23 A. Yes.

24 MS. RIFKIN: Objection. Misstates the record.

25 Q. BY MR. HALL: Do you remember being asked that? Is that

1 your recollection?

2 A. Yes.

3 Q. Okay.

4 THE COURT: The objection is overruled. Go ahead.

5 Q. BY MR. HALL: Is it your understanding that the defendants
6 have been attempting to treat Ms. Edmo's traits that are
7 consistent with borderline personality disorder?

8 A. Yes.

9 Q. And how have they been trying to do that?

10 A. So the constellation of symptoms she has for borderline
11 personality disorder -- some are behavioral, some self-injury;
12 she has talked recently about cutting, that that's a behavior
13 she has engaged in -- clinical staff work with her on that.

14 Her intense interpersonal relationships, which is one of
15 the criteria for borderline personality disorder, is something
16 that I talked with clinical staff about that they have worked
17 with Ms. Edmo on.

18 So those are two of the main symptoms that she has met
19 criteria for.

20 Q. Is it your understanding that clinicians at the Department
21 of Corrections have attempted to -- or have recommended that
22 Ms. Edmo undergo various therapy or groups?

23 A. Yes.

24 Q. Okay. And is it your understanding that Ms. Edmo has
25 repeatedly refused to undergo those groups?

1 A. Yes, that's my understanding.

2 Q. Do you think that Ms. Edmo should engage in those groups?

3 A. Yes.

4 MR. HALL: No further questions.

5 THE COURT: Recross. Any recross?

6 MS. RIFKIN: Yes, Your Honor.

7 RECROSS-EXAMINATION

8 BY MS. RIFKIN:

9 Q. You have offered the opinion, Dr. Andrade, that without
10 transferring to a women's prison first and without engaging in
11 these groups, you don't think Ms. Edmo has an appropriate
12 understanding of how gender reassignment surgery may or may not
13 affect her life; correct?

14 A. In general, yes.

15 Q. And in your report, you talked about -- you suggested that
16 she may have the idea that it's going to be a magic pill that
17 will solve all her problems; correct?

18 A. I don't think I said "magic pill," did I?

19 Q. In your report, you talked about your concern -- as you've
20 talked about here today, your concerns that Ms. Edmo doesn't
21 understand that she would continue to face challenges after
22 transitioning through sex reassignment surgery; correct?

23 A. Correct.

24 Q. Do you recall asking Ms. Edmo in your exam of her the
25 question: "Without surgery, how would you rate dysphoria with

1 regard to your genitals, on a 1-to-10 scale, not having it?"

2 A. Yes.

3 Q. Do you recall that she answered "10"?

4 And you asked: "All the time?"

5 And she said: "Yes."

6 And you asked her: "If you had surgery, what do you think
7 it would be?"

8 And she answered: "Lower than 10."

9 Do you remember that?

10 A. Yes.

11 Q. And you asked her: "10 is highest. Would it be, like, 8?"

12 And she responded: "Lower than 10 -- 7, 6, 5, 4, can't say
13 exactly."

14 Do you recall that?

15 A. Yes.

16 Q. Do you recall that you asked her: "You don't think it's
17 just going to make everything better?"

18 And she asked: "Yes" -- she answered: "Yes, I understand
19 it can't just make everything better. But after surgery, I will
20 be in a better place to handle other things."

21 Do you recall that?

22 A. Yes.

23 Q. And do you recall that, in response, you said: "In a
24 correctional setting, you often hear the answer -- people have
25 this magical idea that everything will be better. Good to hear

1 that you know there isn't something that will fix everything."

2 And she responded: "Right. Wish there were, but there
3 isn't."

4 Do you recall that?

5 A. Yes.

6 MS. RIFKIN: No more questions.

7 THE COURT: Anything else?

8 MR. HALL: No further questions, Your Honor.

9 THE COURT: All right. You may step down. Thank you,
10 Dr. Andrade.

11 Call your next witness.

12 MR. HALL: Defendants do not have any more witnesses,
13 Your Honor.

14 THE COURT: Mr. Eaton, do you confirm that?

15 MR. EATON: No more witnesses, Your Honor.

16 THE COURT: Any rebuttal witnesses?

17 We can take a short break and then come back. I assume
18 each side might have half an hour, roughly. So we can take a
19 short break, and you can consider whether you, A, have other
20 witnesses and, B, want to spend any time on closing argument.

21 My inclination -- I, frankly, find posthearing briefs to be
22 more helpful, but I don't want to foreclose you from making an
23 oral argument as well.

24 So take a short recess, and then you can advise us how you
25 want to proceed.

1 MS. RIFKIN: Okay. We do not have any rebuttal
2 witnesses, Your Honor.

3 THE COURT: All right. Then the evidence is closed.
4 Maybe we can just deal with it now.

5 Do you wish to make a closing argument.

6 MS. RIFKIN: A short one.

7 THE COURT: Defendants, you have time to do it as
8 well. Again, let's take a short break, and then we'll come back
9 and hear closing argument.

10 MR. HALL: Sounds good, Your Honor.

11 THE COURT: All right. We'll be in recess.

12 (Recess at 2:44 p.m. until 3:02 p.m.)

13 THE COURT: Counsel, before we go any further, I had
14 here -- but I can't find it -- a list of the relief requested.
15 I would ask either today, or perhaps by stipulation next week,
16 or at some point, I need to have the lay of the land set a bit.
17 Because the requested relief includes sex reassignment surgery;
18 and on that issue, I don't know how we can hear that on a
19 preliminary injunction.

20 I mean, it's -- you can't -- if I order it, then it's done.
21 And obviously, that's not maintaining the status quo; it's a
22 mandatory injunction. Therefore, it seems to me that can only
23 be resolved in a final hearing, and I have kind of treated this
24 hearing as the final hearing on that issue.

25 Now, if there is some disagreement on that, then that's a

1 bit of a problem because I really have a hard time seeing how I
2 could grant or deny that request under the preliminary
3 injunction standard.

4 The other items, reinstatement of the -- I don't --
5 spironolactone -- I don't know if that's the right
6 pronunciation -- which I assume is the testosterone-suppressing
7 drug, access to gender-appropriate underwear, clothing, and
8 commissary items, that may be moot given the change in policy
9 effective last -- a week ago today. And then a catchall, for
10 any other treatment that a medical professional qualified to
11 assess and treat gender dysphoria determines to be medically
12 urgent, and then some other relief.

13 So that's one of the first issues I have got, is: What
14 relief really does the court need to consider stemming from this
15 hearing? And secondly: What standard applies? And can we even
16 really consider at least the sex reassignment surgery on
17 anything short of a final injunction hearing?

18 So whether you want to address that orally or work it out
19 next week early in the week before any briefs are filed is fine.

20 Then the second thing is: One of the reasons we are late
21 getting back here is we're -- counsel in the case we have set
22 for trial in Pocatello next week just alerted that the client
23 may want to plead guilty straight up without a plea agreement,
24 which means my trial goes away, and perhaps Ms. Hohenleitner is
25 back on course to have the transcript ready by next Friday. But

1 that, again, remains to be seen as well.

2 So we need to work out kind of a schedule. I would assume
3 that we could do pretty much expedited briefing, in any event,
4 subject only to give you some time to wait for the transcript so
5 that you can correlate the draft that you've prepared to the
6 actual excerpts from the trial transcript.

7 So -- and then I have given you X amount of time to present
8 your case, so I am not going to preclude any party from making a
9 closing argument even if the other party would prefer to submit
10 theirs in writing.

11 I find the written submissions more helpful because, you
12 know, I try very hard to make these decisions very, very
13 objective. And although oral argument and closing argument is
14 helpful, I generally want to objectify, and it's much easier to
15 do that just looking at the briefing.

16 So, your option. But I understand the plaintiffs want to
17 give a brief closing argument. I don't know what the defendants
18 want to do. So maybe I ought to hear first.

19 MR. HALL: Your Honor, I just want to clarify that
20 there will be an opportunity to provide a written closing;
21 correct?

22 THE COURT: Absolutely.

23 MR. HALL: Okay. And then providing a statement today
24 orally will not preclude --

25 THE COURT: No.

1 MR. HALL: -- that opportunity? Thank you.

2 MR. EATON: That was my question as well.

3 THE COURT: No. It won't preclude it. I'll expect
4 the briefs to be fairly short. I really want to focus in on the
5 findings of fact and conclusions of law.

6 And I assume you understand I'm not just going to say,
7 well, I adopt one side or the other. What I really want from
8 that findings of fact and conclusions of law is if you were
9 writing the decision, what would you want that decision to say
10 so as to preserve an issue on appeal.

11 Because that's what I'm trying to do, is really make sure
12 that every base is covered. And we think we do a pretty good
13 job of that, but I think it's very helpful to see how you assess
14 that as well. And we'll probably be in the process of at least
15 outlining a decision even before we see what you have submitted.

16 So with that, Ms. Rifkin, were you going to --

17 MS. RIFKIN: Yes, Your Honor.

18 THE COURT: Yes.

19 MS. RIFKIN: Your Honor, I understand, and I will try
20 to keep it short and to the point.

21 The first thing I want to address is what you just raised
22 about the mandatory injunction. We are happy to provide further
23 briefing on this. But the answer is: Yes, you can consider the
24 relief that Ms. Edmo has requested for sex reassignment surgery
25 as a preliminary injunction. It is a mandatory injunction.

1 And under the Ninth Circuit standard, there is a higher
2 standard. You have to prove a stronger likelihood of success.
3 And you also have to make sure that the showing of irreparable
4 harm is serious. But this -- a mandatory injunction in the
5 Ninth Circuit can be issued as a preliminary injunction.

6 Judge Reinhardt specifically stated: Mandatory injunctions
7 are most likely to be appropriate when the status quo is exactly
8 what will inflict the irreparable injury upon complainant.

9 And we are happy to provide further briefing, but the
10 answer is yes. And we believe this is exactly such a situation.

11 What we have heard in the last three days is that there is
12 an undisputed serious medical condition here. There is also
13 undisputed suffering. The DSM definition of gender dysphoria --
14 by definition, this condition is associated with clinically
15 significant distress or impairment in social, occupational, or
16 other important areas of functioning.

17 Every single witness that has testified agrees that
18 Ms. Edmo has gender dysphoria and agrees that it's causing her
19 clinically significant distress. Even defendants acknowledge
20 that it's causing her acute distress. No witness was willing to
21 testify under oath that gender confirmation surgery will not
22 treat Ms. Edmo's gender dysphoria.

23 So the question, I think, for the court is -- in addition
24 to whether the court can issue such relief, the underlying
25 question is: Does the standard of care require that she be

1 provided surgery? Is surgery medically necessary?

2 And the Eighth Amendment -- regardless of what the WPATH
3 standards of care say, the Eighth Amendment provides the answer.
4 It is black-letter Eighth Amendment law that the standard of
5 care is the same in the community and in a prison.

6 The arguments defendants are making is nothing new. It's
7 the same rationale departments of corrections used decades ago
8 to justify refusing to provide incarcerated persons with
9 chemotherapy, surgery, and mental health treatment.

10 The underlying idea -- and we saw this in the slides,
11 Dr. Levine's slides and the slides that defendants and their
12 experts embraced. The underlying idea was that people in prison
13 have committed crimes; they have done bad things; and they
14 should not get the same medical care that good, honest people in
15 the community get.

16 THE COURT: Okay. Just so we're clear -- and I
17 totally agree with you that that should not be a reason for
18 denying someone medical care.

19 The Eighth Amendment standard requires a showing that the
20 failure to treat the condition -- apparently in accordance with
21 the standard of care prescribed in this case by the WPATH
22 standards -- could result in further significant injury or the
23 unnecessary and wanton infliction of pain.

24 So doesn't that become the focus of the case?

25 I mean -- you know, there have been two primary objections

1 to -- by the defendants' experts to the application of the WPATH
2 standards to Ms. Edmo.

3 One has to do with whether or not her mental health
4 concerns are well controlled. And I think that turns upon a
5 very difficult question of whether or not those mental health
6 concerns really are a product of or substantially exacerbated by
7 her gender dysphoria.

8 But the other factor that -- the suggestion that the 12
9 months living in a chosen gender lifestyle should not be allowed
10 in a -- needs to be something other than in a prison setting.

11 What I'm struggling with here is that there are
12 distinguishing characteristics here, but it almost seems to me
13 it turns more on whether -- if she is denied this treatment,
14 whether that is going to result in further significant injury or
15 unnecessary and wanton infliction of pain.

16 The case law, I think, is pretty clear that it's not a
17 malpractice standard; it has to be something more than that. It
18 has to be deliberate indifference coupled with an inmate
19 suffering from further significant injury.

20 If I'm wrong on that as far as the legal standard, how so?

21 But I am troubled when you say that the standard of care is
22 the same in prison as out of the prison. If you're talking in
23 terms of what is the medically indicated standard of care,
24 that's -- I would agree. But if you're saying the standard of
25 care in prison is the same for Eighth Amendment purposes as what

1 the standard of care for medical malpractice is outside a
2 prison, I think I part company with you unless you can show me
3 some case law from the Ninth Circuit or the Supreme Court to
4 indicate I'm wrong.

5 MS. RIFKIN: No, Your Honor. I completely agree with
6 that analysis. I think I'm focusing on the standard of care
7 because I think the undisputed evidence in this case shows that
8 Ms. Edmo is suffering.

9 THE COURT: Okay.

10 MS. RIFKIN: And so I think the irreparable harm prong
11 for the injunction -- I don't think we have heard any
12 evidence -- because every single one of the defendants and their
13 experts testified that Ms. Edmo is not malingering, she is not
14 manipulating, she is not faking it, she is not exaggerating, and
15 she has tried to castrate herself twice. That's very
16 life-threatening harm.

17 So I don't -- there is no evidence, none, that is before
18 the court to suggest that the irreparable harm prong isn't
19 satisfied here.

20 And so I think -- I'm focusing on the only part I think
21 defendants have contested here. Because they don't actually --
22 they don't contest that if this were determined to be medically
23 necessary for Ms. Edmo, that they would provide it.

24 We heard defendants from both IDOC, Mr. Clark, and
25 Dr. Eliason get on the stand and say that their understanding is

1 that IDOC has no problem with providing the surgery to an inmate
2 for whom it is found to be medically necessary.

3 So, really, that's what it -- I think that's the only
4 evidence that it comes down to in this case. And defendants are
5 picking around the edges.

6 The WPATH standards -- they presented two experts who have
7 almost zero experience treating anyone with gender dysphoria and
8 no experience with the surgery, no experience evaluating
9 patients for surgery. And they say: We don't believe the WPATH
10 standards should apply, hypothetically this and hypothetically
11 that.

12 And I think we have established that Dr. Levine, who is not
13 a witness in this case, trained and was very involved in every
14 single -- every single one of defendants' witnesses.

15 Mr. Clark was trained by Dr. Levine, got his slides from
16 Dr. Levine, embraced those slides. Dr. Eliason brought
17 Dr. Levine in; that's who he trained with; he reproduced his
18 slides.

19 And defendants -- both of their experts, remarkably, are
20 from the same correctional system who were trained by
21 Dr. Levine.

22 And I think something very important is that in the
23 *Norsworthy* case, the district court found, after considering
24 Dr. Levine, who was there, and an actual expert in that case --

25 THE COURT: What case is this?

1 MS. RIFKIN: This is *Norsworthy v. Beard*, 87 F.Supp.3d
2 1164.

3 THE COURT: What district?

4 MS. RIFKIN: This is, I believe, the Northern District
5 of California, 2015.

6 THE COURT: By the way, was the one case in California
7 where gender confirmation surgery was performed for an inmate --
8 was that ordered by the court, or was it just a decision made by
9 the department of -- California Department of Corrections?

10 MS. RIFKIN: I believe, Your Honor, that that was a
11 settlement after the court ordered surgery for Michelle
12 Norsworthy that CDCR then paroled. So they did not provide her
13 surgery.

14 But Shiloh Quine had another case. And so the result of
15 the *Norsworthy* case was that CDCR adopted policies that it would
16 provide surgery, and that was the settlement, and it has
17 provided surgery.

18 I'm informed that, according to CDCR attorneys, two more
19 individuals in CDCR have since been provided surgery, but I
20 don't have that as evidence, Your Honor.

21 THE COURT: Okay. All right.

22 MS. RIFKIN: So this court, who was directly
23 considering Levine, found that -- essentially concluded that
24 Levine's apparent opinion that no inmate should ever receive SRS
25 predetermined his conclusion with respect to *Norsworthy*, who was

1 the plaintiff. Therefore, his conclusions are unhelpful in
2 assessing whether she has a serious medical need for surgery.

3 Now, Levine isn't here today. But what you heard from
4 Dr. Eliason, and essentially what you heard from Dr. Andrade and
5 Dr. Garvey, is the same thing. They say -- defendants' defense
6 in this case is: We don't have a ban. Our policy would allow
7 it.

8 But the standard, the criterion that they are suggesting
9 creates a de facto ban on surgery for anyone who isn't serving a
10 life sentence. They say, on the one hand -- Dr. Garvey said
11 that Ms. Edmo wasn't presenting as feminine; there is no
12 evidence she was presenting as feminine prior to prison six
13 years ago. On the other hand, she said, even if she were, the
14 substance abuse history would make that meaningless.

15 So on the one hand, they say that her six years of
16 consistent, persistent gender presentation in prison don't count
17 and can't count toward the standard. On the other hand, they
18 say, and it never could, because nothing -- nothing counts
19 unless it's in the community.

20 THE COURT: Well, I mean, hypothetically, someone
21 could have spent a year having dressed or acted -- having
22 adopted that gender identity and then been arrested. That would
23 have satisfied it. But, generally, you're right. It's going to
24 a rare circumstance where anybody short of a very long prison
25 sentence would ever qualify. That's the point.

1 MS. RIFKIN: That's the point, Your Honor.

2 I mean, it's also important to consider that Ms. Edmo
3 wasn't given a diagnosis of gender dysphoria until after she
4 entered the prison. She testified she didn't know what
5 the -- what the -- what the condition was. And so she has
6 provided testimony that she considered herself effeminate from
7 the time she was small.

8 Whether Dr. Garvey thinks that her shirt was feminine
9 enough as recorded in the record, Dr. Ettner explained to us
10 clearly, that's not the measure of gender identity. The measure
11 of gender identity is how somebody perceives their gender
12 identity.

13 And no one in this case suggested that Ms. Edmo has been
14 manipulative or is faking this or lying. And so regardless of
15 whether she wore a skirt or a shirt or earrings before she
16 entered prison, it is undisputed that for six years, in the face
17 of discipline -- and this is important -- defendants have
18 disciplined her for, quote, "disobeying orders" that were
19 related to appearing feminine. Some of that discipline involved
20 escorting Ms. Edmo to the segregation unit and forcing her to
21 spend time in segregation for this.

22 This is not something that she is doing lightly or has done
23 lightly. And I think that matters.

24 Now, Your Honor asked a question at the end of Dr. Garvey's
25 presentation about whether there are statistics that actually

1 measure suicide rates. There is that information. It's in the
2 exhibit that we did not admit, but it specifically talks about
3 that.

4 We didn't present it with our experts because we didn't
5 anticipate that Dr. Garvey would testify that way. In her
6 report, she specifically says that that 19-times rate number,
7 she acknowledges that the authors of that study say this is not
8 to be confused with saying that gender confirmation surgery
9 increase a risk. This is not to be used to make this argument.
10 This is not what it's saying.

11 She said that in her report, so we did not expect her to
12 opine that as if that somehow mattered in this case.

13 So there is evidence, Your Honor. And I think you'll find
14 that Dr. Ettner actually explained this in her testimony when
15 the record is reviewed. There is substantial evidence, it's
16 uncontroverted evidence that gender confirmation surgery has a
17 significant effect on increasing the mental health of people who
18 receive it.

19 Suicide is the result of decompensating mental health.
20 Dr. Garvey herself testified suicide -- the completed suicide is
21 extremely rare.

22 So, I mean, the information is there, and it's been
23 uncontroverted. Even the experts in this case acknowledge that
24 surgery is a well-established treatment for this condition, and
25 to say otherwise is unethical. I mean, that's what Dr. Garvey

1 stood up and agreed to.

2 So these -- these are red herrings. These are
3 hypotheticals by people. All four witnesses defendants put on,
4 not one of them has any experience with someone who has actually
5 had the surgery; and yet, they speculate that Ms. Edmo will
6 somehow be harmed.

7 Again, these are the kinds of arguments that used to be
8 used in Eighth Amendment cases for things we now consider
9 absolutely common sense. But because this population of people
10 with gender dysphoria, of transgender people, there is still a
11 lot of prejudice, the idea that they are lying, they are
12 manipulating, they are somehow making this up, they have other
13 things going on.

14 Dr. Garvey in her report ruled out transvestic fetishism,
15 which isn't even a disease recognized by the World Health
16 Organization anymore.

17 These are -- these are ignorant. These are ignorant, and
18 they are prejudiced. And it's important that we have come to a
19 point, what Justice Kennedy called "evolving standards of
20 decency," that we understand the harm we are doing to people by
21 leaving them untreated.

22 Dr. Ettner said that in prison, we see the natural
23 progression. Because it's only in prison at this point, because
24 the rest of society knows that you treat this now. That's why
25 there is a CMS decision ending a blanket ban. That's why this

1 is covered by insurance now. Because there are evolving
2 standards and understanding of medical knowledge recognize this
3 as a medical treatment for a medical condition. And that can't
4 be disputed.

5 And this -- I think this ends up being a simple Eighth
6 Amendment question. I think irreparable harm is clear. The
7 medical necessity is clear. And it's a question of do we apply
8 the same standard of care in the community and in prison; and
9 the Eighth Amendment establishes that.

10 I think, in closing -- I know Your Honor knows this because
11 she has been in court for three days, but defendants' expert
12 Dr. Andrade described Ms. Edmo as a young, intelligent woman.

13 And defendants' arguments look at her as if she can't
14 comprehend what she is asking for, even though she has lived as
15 a woman for six years in a male prison.

16 She brought this case on her own, Your Honor. She brought
17 this case pro se. She has been seeking surgery since 2014.
18 This is the second case she has filed to seek it. Ms. Edmo is
19 not confused about her gender identity. This is her real life.

20 Defendants and their experts talk about the sixth
21 criterion, which used to be called "real-life experience." This
22 is Ms. Edmo's real life. But defendants' experts have literally
23 no real-life experience of their own treating this condition.
24 They have no real-life experience with surgery.

25 And I think it's really important that their theoretical

1 disagreements with what is the established standard of care by
2 people who have no experience with this not be allowed to cause
3 a human being to continue what is very real, very acute
4 suffering.

5 THE COURT: Thank you.

6 MS. RIFKIN: Thank you.

7 THE COURT: Counsel, do you wish to --

8 MR. HALL: Your Honor, to the extent there is time
9 after Mr. Eaton gives his closing, I would like to say a few
10 words.

11 THE COURT: All right. Very good.

12 MR. EATON: Your Honor, I would first also -- like
13 Mr. Hall, I wanted to thank you for giving us the summer to
14 conduct discovery and provide a more complete picture of all of
15 this to the court and for the opportunity the last three days,
16 and to close today. We will want to submit a short brief, as
17 well, in closing.

18 You know, it's interesting. When I listened to plaintiff's
19 counsel talk, I didn't hear a whole lot of facts. And what I
20 heard was trying to put Dr. Levine's PowerPoints and slides on
21 trial as a red herring.

22 And what I hear is saying: Look, there has been a lot of
23 prejudice and lying and ignorance in the Department of
24 Corrections previously, but then they -- in kind of talking out
25 of both sides of her mouth, but then said she agreed that

1 we're -- all of our witnesses agreed that Ms. Edmo is not lying
2 and trying to put that on trial.

3 What's on trial is the facts of this case, and I know
4 that's what the court will look at.

5 At the outset, the court was very acute in recognizing two
6 key issues: First, as you've mentioned, the standards for
7 granting a permanent and mandatory injunction; and, second,
8 whether, given Ms. Edmo's numerous mental health issues, SRS is
9 appropriate.

10 Now, as to the second issue, the day-to-day treatment
11 providers all speak with one voice: SRS is not appropriate at
12 this time. It's never been barred entirely. They have been
13 trying to work with her and provide appropriate care and
14 treatment to the extent she will cooperate.

15 There are underlying mental health issues; there is no
16 dispute. And there is no dispute she does have gender
17 dysphoria, but she also has anxiety, she has major depressive
18 disorder, she has depression, and all of that bubble that
19 Mr. Hall put up at the beginning in his opening, all of those
20 issues -- borderline personality disorder. Those are all still
21 there. And if the court ordered sex reassignment surgery, those
22 issues are still going to be there afterwards.

23 Now, this is a complex case and a complex issue. There is
24 poor studies regarding outcomes of sex reassignment surgery.
25 There is a lack of clarity as to the applicability of standards

1 and how to apply them in the correctional setting.

2 THE COURT: Wasn't the -- I couldn't quite pull up the
3 exhibit number, but is it NCCS -- I don't recall --

4 MR. EATON: NCCHC I believe.

5 THE COURT: Yeah, NCCHC. That criteria adopted the
6 WPATH standards and two pages -- I want to say 73 and 74 -- of
7 the WPATH standards seems to clearly say you don't consider
8 housing arrangements, including institutionalization, in
9 applying these standards.

10 Doesn't that provide some clarity?

11 MR. EATON: Well, I believe that that was the
12 recommendation, first of all. I don't believe that was an
13 official adoption. And I would want the court to look at that.
14 That's in evidence.

15 THE COURT: I can do that. I just glanced at it when
16 it was on the screen.

17 MR. EATON: And it was a position -- I believe a
18 position statement, so a recommendation, not an official
19 adoption by the NCCHC.

20 And in any event, the reference to the WPATH still allows
21 for flexibility, and it doesn't provide a lot of helpful
22 guidance on medical necessity. It doesn't provide a lot of
23 helpful guidance on, for instance, how to apply criteria 6 of
24 the sex reassignment surgery criteria as to --

25 THE COURT: What was No. 6?

1 MR. EATON: -- living as a female -- living as a
2 female for 12 months in a correctional setting. So there
3 is -- I believe there is a lack of clarity.

4 But my point is that there is some of this lack of clarity.
5 And because of that, this is, at a minimum, a doubtful case
6 where I can't see how the court can grant a mandatory injunction
7 that is a permanent, irreversible surgery.

8 And, you know, this is just such a case where it was
9 appropriate for Dr. Eliason to exercise his clinical judgment in
10 assessing Ms. Edmo.

11 And I know the court doesn't want to spend a lot of time on
12 the facts, and I know you're aware of them. But what did
13 Dr. Eliason do? He assessed her with gender identity disorder
14 in 2012 to help her, and she said that helped her. And why? To
15 help her get hormones, and she got hormones.

16 What did Dr. Eliason do? He then monitored and saw her
17 periodically over many, many years to help monitor and treat the
18 underlying mental health disorders -- giving her Zoloft,
19 adjusting the medications, and trying to deal with those other
20 issues.

21 And then the mental health providers provided appropriate
22 hormone therapy to her, and she got results that she wanted and
23 helped to decrease her dysphoria; such as developing breasts,
24 the fat distribution, and those kind of things. She found that
25 helpful, and that was because of what Dr. Eliason started.

1 And then when he assessed sex reassignment surgery, what
2 did he do? He talked with her, he staffed it, he documented it.
3 He made up -- he made objective observations. He did an
4 assessment, noted that there was criteria indicated that WPATH
5 was important, and that's why he said he staffed it with a WPATH
6 clinician, and then made a determination.

7 And the determination was not an outright denial forever,
8 but he indicated at that time hormone therapy was appropriate to
9 continue, and should also continue with needed counseling.

10 And she continued to receive treatment and care for the
11 underlying mental health issues. And the clinicians also have
12 been working tirelessly with Ms. Edmo to try to help her. And,
13 unfortunately, she hasn't cooperated with some of the
14 recommendations that they think will help with her underlying
15 mental health conditions.

16 And you've heard our experts say that those need to be
17 resolved or at least much better well controlled before sex
18 reassignment surgery should be on the table.

19 THE COURT: Well, Dr. Ettner and Dr. Gorton, who have
20 been quite involved in the WPATH process, have said what that
21 means is not that we -- that they need to be controlled where
22 they can cooperate and follow up, that sort of thing. Now,
23 there is some concern about that given Ms. Edmo's behavior while
24 incarcerated.

25 But well controlled, I guess I'm struggling with how

1 that -- who is going to measure that? Does it mean something
2 more than just simply controlled enough that we can make sure
3 that she, in fact, cooperates with the surgery and the follow-up
4 and whatnot?

5 Now, you may dispute that given the problems that she has
6 had while incarcerated.

7 MR. EATON: Well, I think, in part, that's why there
8 needs to be a lot of deference to the clinical judgment of the
9 clinicians and the therapists and the medical providers in
10 trying to help work through those things before SRS may be
11 indicated at some other time.

12 Additionally, I think you do bring up a good point, which
13 is when you talk about the WPATH, there is the criteria for an
14 informed consent, and then there is a separate criteria for --
15 that the mental health conditions need to be well controlled.

16 And I think Your Honor picked up on it, but their experts
17 and plaintiffs want to lump those together. And I think that's
18 telling. They don't want to distinguish that you have to have
19 well-controlled mental health issues. They want to say: Well,
20 that's solely just so they can have informed consent, and they
21 just want to make it about psychosis only.

22 And that's not what the WPATH says. It wants to have
23 things in order so that there can be good coping mechanisms
24 before and after surgery, and that there has been time spent in
25 an appropriate community in the outside community before that

1 sex reassignment surgery is performed, so that after, they know
2 what that experience is going to be like. As you heard the
3 experts talk about, that's a clinical point.

4 I also wanted to mention that, you know, the Idaho
5 Department of Corrections and Corizon don't have a blanket
6 policy prohibiting SRS. And, in fact, witnesses from both sides
7 testified that they allow all treatment options and even SRS if
8 it's medically necessary.

9 And so a lot of the cases that are being cited by
10 plaintiff's counsel are cases where there was a blanket
11 prohibition against one of these treatment options, hormones or
12 sex reassignment surgery. That's not this case.

13 As to the other issue that Your Honor picked up on, this is
14 a mandatory injunction, and it's not to be taken lightly. And
15 the Ninth Circuit, in *Garcia v. Google, Inc.*, summarized some of
16 the case law in this regard.

17 "This relief is treated as a mandatory injunction
18 because it orders the responsible party to take
19 action. As we have cautioned, a mandatory injunction
20 goes well beyond simply maintaining the status quo and
21 is particularly disfavored. The district court should
22 deny such relief unless the facts and law clearly
23 favor the moving party. In plain terms, mandatory
24 injunction should not be issued in doubtful cases."

25 This is not a clear case by plaintiffs in any regard. And

1 we feel that defendants have defended this well and on the
2 merits. And in any event, at a minimum, this is simply a
3 doubtful case where a mandatory injunction should not be issued
4 and granted.

5 It's an extraordinary step for a court to order a surgery.
6 That's -- that's -- that's a big deal, and I know the court
7 appreciates that.

8 And, you know, there is case law out there that suggests
9 that asking the court to exercise medical and mental health
10 decisions is not really the place of the court, and that's why
11 there needs to be deference to the medical providers and what
12 they have been -- what they are doing and their judgment.

13 Your Honor is very familiar and aware with the deliberate
14 indifference standard, and this just simply is not a deliberate
15 indifference case. There is no deliberate indifference, and
16 there is no likelihood that they are going to prove that with
17 what they have put on before the court today.

18 As Mr. Hall indicated in his opening, what this really
19 boils down to is a difference of opinion by medical
20 professionals about the treatment. And that is not deliberate
21 indifference.

22 And as Your Honor recognizes, even negligence or gross
23 negligence does not arise to a level of deliberate indifference.

24 You know, I -- the judge also -- the court also needs to
25 decide -- I'm finding my note here. Excuse me.

1 The court also needs to decide that there is a substantial
2 risk of serious harm. And I believe it was -- I think it was
3 telling, among other things, that Dr. Gorton indicated, I
4 believe, if I recall the testimony correctly, that it was absurd
5 that this needed to be an emergent surgery.

6 And even their own experts were suggesting that, you know,
7 it could be now or in six months or there is time. So there is
8 nothing to suggest that there is anything emergent and urgent at
9 this point.

10 And there are concerns about what would happen after her
11 surgery. There is concerns as to suicide. There is concerns as
12 to cutting continuing. Our experts have opined -- like
13 Dr. Garvey opined that the suicidal rate would not be decreased
14 after sex reassignment surgery.

15 THE COURT: Well, did she actually say that it would
16 not be decreased, or she just said there is no information from
17 which she can draw a conclusion on that?

18 MR. EATON: I thought that's what she said, but I
19 agree that there has been a lot of discussion about how
20 the -- it's difficult to tell, and the -- and the studies just
21 are poor out there as to what will happen, which, again, makes
22 this a case where it's a doubtful case, that mandatory judgment
23 should not be issued.

24 THE COURT: Well, in terms of the likelihood of
25 her -- Ms. Edmo resorting again to efforts at self-castration or

1 even suicide --

2 I apologize, Ms. Edmo, for talking about you. It's got to
3 be a little bit discomfoting to have people -- I guess that's
4 what this whole trial is about or hearing is about.

5 But is it -- what significance should we draw from the fact
6 that two efforts were made -- I think one in 2015 and one in
7 2016; I don't know the exact date when the pro se filing was
8 made or when the case was picked up by defense counsel. Is it
9 somewhat significant that after litigation was filed and there
10 was going to be light at the end of the tunnel, that the efforts
11 at self-castration stopped? Is that of any significance, or is
12 there no connection between those dots?

13 MR. EATON: Well, I believe that the defendants'
14 experts testified that the point is that -- with the
15 self-castrations, there is still self-harming behavior, and
16 there is also cutting behavior. And that's very dangerous and
17 shows that there is not good coping mechanisms and that there
18 likely may not be a good result after the surgery. And that's
19 the concern.

20 THE COURT: So you are saying anyone who attempts
21 self-castration is categorically excluded, then, because they
22 don't qualify under that fourth element of the WPATH standards?

23 MR. EATON: No. I think they analyzed it for
24 Ms. Edmo's case specifically. And there is lots of self-harming
25 behavior, and that may be one factor. But she also had

1 self-harming behavior preincarceration, and that there was no
2 mention of gender dysphoria or those type of comments in those
3 preincarceration records. And now she is cutting herself again,
4 and at least our experts indicated that that could be related to
5 borderline personality disorder or other, you know, mental
6 health issues as well.

7 So unless Your Honor has any other comments --

8 THE COURT: No, that's fine.

9 MR. EATON: -- we'll reserve the rest of our -- rest
10 of our argument for briefing.

11 I would just close by saying that we do believe that the
12 motion for preliminary injunction should be denied in all
13 respects, and that there is no proof of likelihood of success on
14 deliberate indifference. And there are concerns about harm
15 after SRS, and Your Honor needs to take that into consideration
16 when you hopefully deny it.

17 Thank you.

18 THE COURT: Thank you.

19 Mr. Hall.

20 MR. HALL: Is there any time remaining?

21 LAW CLERK: Nine and a half minutes.

22 THE COURT: I'll give you 10.

23 MR. HALL: Very generous, Your Honor.

24 I think I heard the words "ignorant" and "prejudiced."
25 That's a first because usually only my wife calls me ignorant.

1 I think that I would like to end where I began, Your Honor,
2 and just highlight that this case is about a difference in
3 medical opinion made by professionals, and that is not
4 deliberate indifference alone.

5 This is not a case where the defendants have denied or
6 refused to recognize the WPATH, which we have referred to as
7 standards. But the WPATH, admittedly, agrees that they are
8 guidelines, that they are flexible guidelines to be provided and
9 to provide recommendations to professionals who have to apply
10 them on these highly complex mental health issues.

11 To say that or use the cancer analogy is not accurate here
12 because, as we know, not everyone who has cancer is eligible, or
13 is it appropriate for them to have chemotherapy.

14 The defendants, their experts, and plaintiff's experts
15 disagree about the appropriateness of the guidelines, about the
16 appropriateness of surgery at this time. And that is not
17 deliberate indifference to have engaged in a thoughtful
18 analysis.

19 And are they the experts on this evolving area of the
20 world? That's -- that's debatable, plaintiff's as well.
21 Plaintiff's experts come from one portion of this debate.

22 They have zero experience in correctional -- in the
23 correctional world; yet, both Dr. Gorton and Dr. Ettner sit on a
24 committee that appears to be prepared to dictate how they should
25 be applied in a correctional institution.

1 And no one with the defendants has said that they should
2 not be applied in a correctional institution. They are just
3 saying: We need to apply that flexibility so that we can do the
4 right thing and do no harm. And they disagree that Ms. Edmo
5 actually meets all the criteria.

6 Your Honor, I fail to see how that is deliberate
7 indifference to any medical need -- to recognize the treatment
8 options, to provide treatment, but to decide that one potential
9 treatment option, one appropriate treatment option is not
10 appropriate at this time.

11 This case is, in essence, asking this court to step in,
12 exercise its own judgment, and determine whether or not it's
13 appropriate, whether she meets the criteria despite this dispute
14 over whether or not it is appropriate at this time.

15 Plaintiffs want to advance an argument that there is only
16 two experts in this world, two individuals in this world who
17 could have done the right thing for Ms. Edmo, that they have the
18 most experience; so, therefore, what they say is right.

19 Now, they never treated Ms. Edmo. They never had that
20 patient-provider relationship. Defendants' employees,
21 defendants' doctors, defendants' mental health clinicians, they
22 did, and they have taken that seriously.

23 I think it would be a dangerous precedent to have the court
24 step in whenever there is a debate as to whether or not a
25 patient in a correctional institution meets the criteria for

1 some standards or guidelines which are ever evolving, whether
2 it's in a cancer case or gender dysphoria case.

3 The Department and its employees need the discretion to be
4 able to do their job, to apply the data that is out there, to
5 apply their experience to the person that they know.

6 This is not a clear-cut, you know, broken tibia case where
7 it's really not in dispute how you treat that. This is a highly
8 complex mental health case. And it requires, even under the
9 WPATH, that flexibility be provided and that, ultimately, those
10 treating physicians or those treating providers be given the
11 discretion to exercise their sound clinical judgment.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Counsel, Mr. Severson reminded me that I think we actually
15 did set out a briefing schedule. If our trial next week goes
16 off and Ms. Hohenleitner can get the brief [sic] as we
17 discussed, then we will just keep those deadlines. If there is
18 a delay -- and I'm not putting any pressure on her because we're
19 going into a trial the next week, as well, and I have got a
20 pretty full docket apart from the trial next week anyway.

21 So if -- I guess the same number of days it takes her
22 beyond that one week to prepare the transcript is the number of
23 days we'll move back on the briefing schedule, just so we don't
24 have to issue any new orders.

25 If you want to reach agreement on something different from

1 that, you can, but that's going to be the presumptive briefing
2 schedule unless you reach an agreement otherwise.

3 And I would, I guess, suggest that you submit your
4 posttrial briefs along with the proposed findings and
5 conclusions, the same schedule.

6 Is there anything else we need to take up at this point?

7 MS. RIFKIN: No, Your Honor. But we do very much
8 appreciate the efforts of the courtroom staff and know that
9 that's a lot of pressure. Thank you.

10 THE COURT: Yeah. I have got the world's greatest
11 staff; I know that for sure. They make me look a lot better
12 than I deserve to look.

13 Anything else from the defendants?

14 MR. HALL: No, Your Honor. Thank you.

15 MR. EATON: No, Your Honor. Thank you.

16 THE COURT: We will -- now, the only thing I would add
17 is we're very much going to put this on the front of our list of
18 things that need to be done. And so we will try to work very
19 hard to get a decision out very quickly once all the briefing
20 and proposed findings and conclusions have been submitted.

21 I don't intend to let this sit. I would hope within a week
22 or two, maybe, after it's submitted, we will try to have
23 something out. But things happen that may make that a little
24 difficult, but that will certainly be our objective.

25 All right. We will be in recess.
(Proceedings concluded at 3:52 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

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I, Tamara Hohenleitner, Federal Official Realtime Court Reporter, in and for the United States District Court for the District of Idaho, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of October, 2018.

/S/ TAMARA I. HOHENLEITNER

TAMARA I. HOHENLEITNER, CSR NO. 619, CRR
FEDERAL OFFICIAL COURT REPORTER

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