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Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION;
HENRY ATENCIO, in his official capacity;
JEFF ZMUDA, in his official capacity;
HOWARD KEITH YORDY, in his official
and individual capacities; CORIZON, INC.;
SCOTT ELIASON; MURRAY YOUNG;
RICHARD CRAIG; RONA SIEGERT;
CATHERINE WHINNERY; AND DOES 1-
15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**MOTION FOR RULE 35
EXAMINATION**

COME NOW Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery (“Corizon Defendants”), by and through their counsel of record, Parsons Behle & Latimer, and hereby move this Court pursuant to Fed.R.Civ.P. 35 and 37 and other applicable rules

and laws for an order allowing the Corizon Defendants' expert, Dr. Garvey, to conduct a Rule 35 examination of Plaintiff on August 10, 2018. This motion is brought on an emergency basis because Dr. Garvey has very limited time to conduct this clinical interview between now and the court's expert disclosure deadline of August 31, 2018 due to her personal and professional schedule. Additionally, Dr. Garvey already has flights booked from the Boston area to Boise for the clinical interview on August 10, 2018.

This Motion is made on the grounds and for the reasons that the Plaintiff has placed her physical and mental condition in controversy in this matter. Furthermore, good cause for the Rule 35 examination exists, as Defendants are owed an "even playing field" to address the Plaintiff's mental and physical condition, considering that Plaintiff has already been examined by her own retained experts, who conducted independent interviews and evaluations with Plaintiff and have filed declarations regarding such examinations with this Court in support of Plaintiff's *Motion for Preliminary Injunction*.

This motion is supported by a Memorandum and Declaration of Dylan A. Eaton filed herewith.

DATED this 6th day of August, 2018.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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By: /s/ Dylan A. Eaton
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ADREE EDMO,

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IDAHO DEPARTMENT OF CORRECTION;
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15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**MEMORANDUM IN SUPPORT OF
MOTION FOR RULE 35
EXAMINATION**

Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery (“Corizon Defendants”), by and through their counsel of record, Parsons Behle & Latimer, hereby submit this Memorandum in Support of Motion for Rule 35 Examination.

I. INTRODUCTION

Corizon Defendants bring this emergency motion because they seek under Rule 35 an Order allowing their expert psychiatrist, Keelin Garvey, M.D., to conduct a clinical interview of Plaintiff this Friday, August 10, 2018. Dr. Garvey already has flights from the Boston area to Boise so that she can conduct this interview and arrangements have already been made with IDOC for this interview to take place. Further, she has very limited time to conduct this interview between now and Defendants' expert disclosure deadline on August 31, 2018. Through the meet and confer process, Plaintiff's counsel has been a moving target on their position regarding this clinical interview. Plaintiff's counsel initially outright objected to this clinical interview. Now, it appears Plaintiff's counsel would agree to it, but only if Dr. Garvey agrees to limit her expert opinions prior to conducting this clinical interview. This is not contemplated by Rule 35 and is improper. Defendants should not have to negotiate the scope of their expert's testimony in order to get a clinical interview for the expert. The proposed "time, place, manner, conditions, and scope of the examination" by Dr. Garvey are reasonable and consistent with the clinical interview allowed by this Court for IDOC's expert. IDOC's expert is a licensed clinical expert and Corizon Defendant's expert is a psychiatrist. So, Defendants' experts are in different disciplines and should be allowed to conduct their own interviews within the scope of their different professions just as Plaintiff's separate expert psychologist and psychiatrist have done. In summary, Corizon Defendants respectfully ask the Court to issue an expedited order allowing Dr. Garvey's clinical interview to proceed on August 10, 2018.

II. PERTINENT FACTS

1. Plaintiff has clearly put forth her mental and physical condition in controversy in this case by bringing a lawsuit challenging, among other things, the care and treatment for her

Gender Dysphoria and suing psychiatrist and medical doctors, among others. (See Plaintiff's Second Amended Complaint.)

2. On June 1, 2018, Plaintiff filed a Motion for Preliminary Injunction that was supported by declarations from an expert psychologist, Dr. Ettner, and separately an expert psychiatrist, Dr. Gorton. They each conducted their own separate interviews of Plaintiff to assist with rendering their opinions. (See Dr. Gorton's Declaration, Dkt. 62-1, pp. 55-66 and Dr. Ettner's Declaration, Dkt, 62-1, p. 5-8 discussing their interviews with Plaintiff.) Additionally, Dr. Gorton conducted a physical examination of Plaintiff. (Dr. Gorton Decl., Dkt. 62-1, p. 7-8.)

3. After much discussion between IDOC's counsel and Plaintiff's counsel, a stipulation was entered allowing IDOC's expert clinician to perform a clinical examination of Plaintiff. (Dkt. 79) The Court subsequently issued an order allowing this examination to go forward. (Dkt. 84)

4. On July 27, 2018, counsel for Corizon Defendants emailed Plaintiff's counsel and indicated that Corizon Defendants' expert psychiatrist wanted to conduct a clinical interview as well and also indicated that the expert did not want a representative to be present for the interview because the mere presence of a party representative can influence or affect the interview process so that it is not as objective as possible. (Declaration of Dylan A. Eaton in Support of Corizon Defendants' Motion for Rule 35 Examination (hereinafter "Eaton Decl."), Exhibit A.)

5. On July 31, 2018 at 11:00 a.m., IDOC's expert clinician, Dr. Andrade, started his clinical interview of Plaintiff pursuant to the stipulation and court order of the parties. (See Dkt. 84)

6. On July 31, 2018 at 12:26 p.m. (about 1½ hours after Dr. Andrade's clinical exam had started), Plaintiff's counsel emailed Corizon Defendants' counsel and objected to a second

IME of Plaintiff. Among other things, Plaintiff's counsel suggested (after IDOC's expert had conducted its interview of Plaintiff) that the Corizon Defendants and IDOC Defendants should have conduct one joint IME. (Eaton Decl., Exhibit B.)

7. On July 31, 2018 at 5:19 p.m., Corizon Defendants' counsel emailed Plaintiff's counsel and asked to meet and confer regarding their expert conducting a clinical interview under Rule 35. Among other things, Corizon Defendants' counsel indicated that they were not required to coordinate with IDOC's counsel as they are a separate party, that Corizon Defendants' expert psychiatrist is in a different discipline from IDOC's expert clinician and would, in part, be opining on different areas, that the different professionals would not want to conduct a join interview just as Plaintiff's expert psychologist and psychiatrist did not conduct a joint interview, and pointed out that even if coordination of the IME was a possibility, such was precluded by Plaintiff's counsel not responding to Corizon Defendants' email until after IDOC's IME was underway and almost complete. (Eaton Decl., Exhibit B.)

8. In the afternoon of August 1, 2018, a meet and confer conference via telephone occurred with counsel for all parties to discuss Corizon Defendants' request for its expert psychiatrist to conduct an IME of Plaintiff and Plaintiff's counsel's objections. Plaintiff's counsel clarified they were not outright objecting to a second IME by Corizon Defendants' expert, but in the same breath also asserted that a second IME by a co-defendant is contrary to the law. Plaintiff's counsel also insisted that Corizon Defendants' expert could not ask the same or similar questions to that of IDOC's expert and could only opine on areas separate from IDOC's expert. Corizon Defendants' counsel responded that they are separate defendants represented by separate counsel and entitled to their own expert with a separate IME and allowed to opine about similar and separate issues. Corizon Defendants' counsel also indicated that their expert is a psychiatrist with

medical education, training and experience and would be focused on an IME and ultimately offering opinions within the scope of her profession, which is distinct from IDOC's expert. Counsel for both Defendants pointed out that Plaintiff's counsel had separate psychologist and psychiatrist experts who performed separate interviews, and who had separate opinions, but also other opinions that overlapped. Counsel for Plaintiff initially stated that they were not familiar with Plaintiff's experts' declarations, but then acknowledged there was overlap of opinions between their experts after consulting with another attorney more familiar with their experts' declarations. The parties concluded that Corizon Defendants' counsel would submit a proposed stipulation and draft order for an IME by Corizon Defendants' expert and then Plaintiff's counsel would respond as to whether they would so stipulate by the end of that week. (Eaton Decl., ¶ 5.)

9. On August 2, 2018, Corizon Defendants' counsel emailed a draft stipulation for a Rule 35 Examination and proposed order to Plaintiff's counsel. The proposed stipulation was similar to the stipulation entered between IDOC Defendants and Plaintiff's counsel for IDOC's expert clinician in that, consistent with F.R.C.P. 35 it specified the "time, place, manner, conditions, and scope of the examination, as well as the person ...who will perform it." As with the stipulation with IDOC's counsel, it outlined the general areas of inquiry and indicated that the scope would be within Dr. Garvey's profession as a psychiatrist and noted areas covered would be geared toward whether the medical care was appropriate, standard of medical care, and other areas within her profession. As with the IDOC stipulation, it limited the interview to 3 hours and, even though it is not stated as allowed under Ruel 35, agreed that Plaintiff could have a party representative present and that the interview would be recorded. (Eaton Decl., Exhibit C.)

10. On August 3, 2018, Plaintiff's counsel responded to the proposed stipulation and order for Corizon Defendants' expert's IME stating, in relevant part "We will agree to your expert

conducting a recorded Rule 35 exam of our client, so long as the exam is limited to the areas necessary for your expert's medical opinions, which you stated are: the medical standards of care and whether Ms. Edmo's treatment meets those standards, as well as the appropriate medical treatment and care for Ms. Edmo, including whether sex reassignment surgery is medically necessary. We do understand that certain areas may overlap during the clinical interview but the ultimate **medical opinions are limited to the above areas.** Please modify your proposed stipulation accordingly. We are happy to discuss this further." (emphasis added) (Eaton Decl., Exhibit D.)

11. Later in the day on August 3, 2018, Corizon Defendants' counsel responded by asking Plaintiff's counsel, "You state 'please modify your proposed stipulation accordingly.' What specifically do you have an issue with and suggest needs to be modified in my proposed stip?" Additionally, Corizon Defendants' counsel responded by stating,

"I note that we are not 'limiting' our expert opinions as your email below suggests and to require such is improper. Further, we are not even required to disclose the areas of our expert's opinions at this time. Our expert will offer opinions within the scope of her profession and qualifications just as Plaintiff's expert Dr. Gorton has purported to do. Rule 35 only requires we disclose the scope of the clinical interview, not disclose or limit areas of expert opinions. The proposed stip is completely within the scope of our expert's profession and reasonable. And, we offered that you may have a representative present for the interview even though Rule 35 does not state that is allowed. Please advise by tomorrow if we have an agreement or not. If you have any reasonable proposed language for me to consider regarding the "time, place, manner, conditions, and scope of the examination" as contemplated under Rule 35, let me know by tomorrow as well. Otherwise, I will file a motion on Monday ..."

(Eaton Decl., Exhibit D.)

12. On August 5, 2018, Plaintiff's counsel again attempted to limit Dr. Garvey's clinical interview and responded that they "propose that the stipulation state that the scope of your

expert's examination is limited to issues involving medical standards of care and the appropriate medical treatment and care for Ms. Edmo....” (Eaton Decl., Exhibit E.)

13. Corizon Defendants' expert psychiatrist, Dr. Garvey, currently has reserved flights from the Boston area to Boise to conduct the clinical interview of Plaintiff on August 10, 2018. Due to her personal and professional schedule and Defendants' expert disclosure deadline of August 31, 2018, she needs to conduct the interview of Plaintiff on August 10, 2018. Arrangements for this clinical interview to occur on August 10, 2018 have already been made with IDOC. (Eaton Decl., ¶ 9.)

III. LAW AND ANALYSIS

Under Fed.R.Civ.P. 35(a)(1), “(t)he court where the action is pending may order a party whose mental or physical condition – including blood group – is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.” Pursuant to subsection (a)(2) of Rule 35, “The order may be made only on motion for good cause and on notice to all parties and the person to be examined; and must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.”

As with other rules of discovery, Rule 35 should be construed liberally in favor of an examination, but the Court must “balance the right of the party to be examined to avoid personal invasion against the moving party's right to a fair trial.”

All of the prerequisites are met to allow Dr. Garvey to conduct a clinical interview of Plaintiff on August 10, 2018.

First, Plaintiff's mental and physical health are in controversy in this case thus allowing for an IME. Indeed, Plaintiff has raised the issue of treatment and care for Gender Dysphoria and sued mental health and medical professionals related to these claims. (See Plaintiff's Second Amended Complaint.) Plaintiff does not challenge that this is at issue and, notably, has disclosed her own experts who conducted separate clinical interviews and physical examinations in order to render their own opinions.

Second, Dr. Garvey is an appropriate and suitable examiner. She is a licensed psychiatrist and has experience, among other things, in assessing and treating patients with Gender Dysphoria, including patients incarcerated in prisons. Plaintiff has not challenged that Dr. Garvey is appropriate to conduct a clinical interview of Plaintiff.

Third, the proposed clinical interview by Dr. Garvey is reasonable as to "time, place, manner, conditions, and scope of the examination." In fact, the proposed clinical interview has similar scope and conditions as was in the clinical interview approved and ordered by this Court for the IME performed by Dr. Andrade, including a three-hour limitation on the interview that will occur at the prison and allowing a non-attorney representative to be present (but not interfere) with the interview, and allowing the interview to be audio recorded. The proposed scope of the interview is indeed well within the scope of a reasonable interview by a psychiatrist in that it will generally cover the following areas:

- History of Present Illness
- Past Psychiatric History
- Past Medical History
- Social and Developmental/Trauma History and current social relationships/support
- Gender Identity History
- Sexual and Relationship History
- Employment History
- Family History
- Substance Abuse History

- Criminal/Legal History
- Current/Past Prison Functioning including but not limited to: disciplinary reports, program involvement, employment
- Discussion of hopes/expectations for GD treatment
- Mental Status Examination

The scope of this interview is consistent with the clinical interview allowed by Dr. Andrade, IDOC's expert clinician.

Fourth, a second IME by a co-defendant is allowed. Through the meet and confer process, it appears that Plaintiff's counsel may have walked back their initial outright objection to a second clinical interview of Plaintiff. Nevertheless, a second clinical interview is not precluded and is allowed. *E.g. Peters v. Nelson*, 153 F.R.D. 635, 639 (N.D. Iowa 1994)(holding that rule 35 language "does not limit the number of examinations" and allowing tests by two specialists – a psychiatrist and a neuropsychologist); *Continental Cas. Co. v. U.S.*, 2004 WL 2216528, * 3 (N.D. Cal. 2004)(allowing an orthopedic exam and a neurologic exam and holding that if a complex injury is at issue, then it is appropriate to seek opinions from several medical specialists.) In this case, Plaintiff's expert psychologist and psychiatrist each performed their own separate interviews and have rendered their own separate opinions which overlap in some areas and do not in others. Therefore, Plaintiff is in no position to challenge separate clinical interviews by IDOC's expert clinician and Corizon Defendants' expert psychiatrist because Plaintiff's experts did the same thing.

Corizon Defendants do not admit they need to have an expert in a different discipline who will offer different opinions to justify a second IME. Corizon Defendants are a separate party represented by separate counsel and, therefore, entitled to their own experts who should be allowed their own IMEs, if needed, even if they are going to opine on similar issues.

Nevertheless, there are differences between IDOC's and Corizon Defendants' experts. IDOC's expert Dr. Andrade is a clinical expert, license independent clinical social worker, and current director of clinical operations. Whereas, Corizon Defendants' expert is a psychiatrist who has education, training and experience in psychiatry and has an M.D. Hence, while some of the questioning in the Rule 35 clinical interview will overlap (just as Plaintiff's counsel admits their two experts opinions overlap in some regard), Dr. Garvey's clinical interview will largely be geared toward psychiatric and medical care and treatment (i.e., the scope of her profession), which likely would not be addressed by Dr. Andrade. Hence, there is definitely a need for these two experts to perform their own separate clinical interviews as they are in different professions and focused on different areas.

The crux of what appears to be the primary issue between Plaintiff's counsel and Corizon Defendants' counsel is Plaintiff's counsel's improper attempt to require that Dr. Garvey's expert opinions be limited as a condition to allowing the IME. Indeed, Plaintiff's August 3, 2018 email to Corizon Defendants' counsel said they would agree to the IME if Dr. Garvey's "opinions are limited" to area of standard of medical care. (Eaton Decl., Exhibit D.) There is nothing in Rule 35 that requires an expert to disclose, let alone, limit her opinions before an IME. (Defendants are not required to disclose expert opinions in this case until August 31, 2018.) Rule 35 simply requires disclosure of the expert and the "time, place, manner, conditions, and scope of the examination." Fed.R.Civ.P. 35(a)(2)(B). Corizon Defendants' counsel has made all of these requisite disclosures, which are reasonable and similar to Dr. Andrade's clinical interview that was approved by the Court. Further, while Dr. Garvey has concerns about allowing Plaintiff to have a representative present for her clinical interview because it could interfere with the objectivity of the interview, she has agreed to go along with the same process as was allowed with Dr. Andrade

and allow Plaintiff to have a paralegal representative present. It simply makes no sense that an expert has to limit her opinions before they have had an opportunity to conduct the examination and review the discovery that would be needed before offering such opinions.

Plaintiff's counsel's email on August 5, 2018 now proposes "the scope of your expert's examination is limited to issues involving medical standards of care and the appropriate medical treatment and care for Ms. Edmo." This really is just a backdoor way of still trying to limit Dr. Garvey's opinions by precluding what she can explore and what questions she can ask at the outset. Dr. Garvey's opinions and the clinical interview should not be limited as long as it is generally within the scope of her profession and related to Plaintiff's claims, the defenses thereto, and Plaintiff's experts' opinions. *See Gavin v. Hilton Worldwide Inc.*, 291 F.R.D. 161, 165-67 (N.D. Cal. 2013)(allowing the examiner to proceed on a contested line of questioning since the court would not "micro-manage the examination and expected the examiner to "act professionally"); *Franco v. Boston Scientific Corp.*, 2006 WL 3065580, *2, 2006 U.S. Dist. LEXIS 81425, *5 (N.D.Cal. Oct. 27, 2006) (declining to exclude "historical matters" from IME because defendant was entitled to explore what effects were attributable to termination, and what effects were due to "long history of depression and psychological problems"); *see also Letcher v. Rapid City Regional Hosp., Inc.*, 2010 WL 1930113, **6-7, 2010 U.S. Dist. LEXIS 46959, **15-18 (D.S.D. May 12, 2010) ("The court notes that the entire reason for the IME is to assess whether (plaintiff) really does suffer from a mental condition, whether that condition constitutes a disability if it does exist, and whether defendants caused (plaintiff) severe emotional distress by their actions. (Plaintiff's) complaint places her mental condition in controversy, as she concedes, and therefore, the court will not limit (the examiner's) exploration of the very issues she herself has placed before the court"). While Dr. Garvey will likely explore topics related to psychiatric medical standard of

care, she should not be limited to that line of questioning. She should be allowed to explore any issues within her qualifications, including as a psychiatrist and correctional psychiatric expert, and should be allowed to interview Plaintiff in a manner that would relate to any of Plaintiff's claims in this case, any of the defenses, and any of Plaintiff's experts' opinions. Further, she should not be precluded from offer rebuttal or impeachment testimony. Plaintiff's proposal seems to do just that and is unduly limiting on Dr. Garvey's assessment of this case.

Additionally, Dr. Garvey's clinical interview will be recorded and also observed by a representative for Plaintiff. Therefore, if Plaintiff's counsel takes issue with the clinical interview or Dr. Garvey's opinions, Plaintiff will have an opportunity to challenge such at a later date. There is no basis to do so at this point as the Rule 35 clinical exam is getting scheduled.

For this matter, the court just needs to be comfortable that the examiner is suitable and that there are reasonable conditions and scope of the examination. Such is the case here, especially since the conditions and the scope proposed for Dr. Garvey's clinical interview are very similar to the court's order previously entered as to IDOC's expert's clinical interview.

IV. CONCLUSION

In summary, Corizon Defendants ask that the Court issue an order allowing their expert psychiatrist to conduct a clinical interview under Rule 35 on August 10, 2018 as stated in the proposed order (Eaton Decl., Exhibit F.)

DATED this 6th day of August, 2018.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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By: /s/ Dylan A. Eaton
Dylan A. Eaton

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Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery

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IDAHO DEPARTMENT OF CORRECTION;
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SCOTT ELIASON; MURRAY YOUNG;
RICHARD CRAIG; RONA SIEGERT;
CATHERINE WHINNERY; AND DOES 1-
15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

DECLARATION OF DYLAN A. EATON

I, Dylan A. Eaton, declare as follows:

1. I am more than eighteen years of age and I am legally competent to make this declaration. I have personal knowledge of the facts set forth herein, and can testify as to the truth

of the statements contained herein if called upon as a witness at the trial of this action.

2. I am duly licensed to practice law in the State of Idaho and before this Court. I am an attorney of record for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery in the above-referenced action.

3. Attached as Exhibit A hereto is a true and correct copy of email from me to Plaintiff's counsel, dated July 27, 2018.

4. Attached as Exhibit B hereto is a true and correct copy of correspondence between Plaintiff's counsel and me, dated July 31, 2018.

5. In the afternoon of August 1, 2018, a meet and confer conference via telephone occurred with counsel for all parties to discuss Corizon Defendants' request for its expert psychiatrist to conduct an IME of Plaintiff and Plaintiff's counsel's objections. As best as I can recall, I summarize this conference as follows: Plaintiff's counsel clarified they were now not outright objecting to a second IME by Corizon Defendants' expert, but in the same breath also asserted that a second IME by a co-defendant was contrary to the law. Plaintiff's counsel also insisted that Corizon Defendants' expert could not cover the same or similar areas in the clinical interview that were covered by IDOC's expert and could only opine on areas separate from IDOC's expert. Corizon Defendants' counsel responded that they are separate defendants represented by separate counsel and should be entitled to their own expert with a separate IME and allowed to opine about similar and separate issues. Corizon Defendants' counsel also indicated that their expert is a psychiatrist with psychiatric and medical education, training and experience and would be focused on an IME and ultimately offering opinions within the scope of her profession. Counsel for both Defendants pointed out that Plaintiff's counsel had separate psychologist and psychiatrist experts who performed separate interviews, and who had separate opinions, but also other opinions

that overlapped. Counsel for Plaintiff initially stated that they were not familiar with Plaintiff's experts' declarations, but then acknowledged there was some overlap of opinions between their experts after consulting with another attorney more familiar with Plaintiff's experts' declarations. The parties concluded the meet and confer concluding that Corizon Defendants' counsel would submit a proposed stipulation and draft order for an IME by Corizon Defendants' expert and then Plaintiff's counsel would respond as to whether they would so stipulate by the end of that week.

6. Attached as Exhibit C hereto is a true and correct copy of an email I sent to Plaintiff's counsel on August 2, 2018 with Dr. Garvey's CV and a proposed stipulation for a Rule 35 clinical interview by Dr. Garvey attached thereto. Dr. Garvey approved of this proposed stipulation related to her clinical interview.

7. Attached as Exhibit D hereto is a true and correct copy of my correspondence with Plaintiff's counsel on August 3, 2018 regarding Plaintiff's response to my proposed stipulation for a Rule 35 clinical interview by Corizon Defendants' expert, Dr. Garvey.

8. Attached as Exhibit E hereto is a true and correct copy of Plaintiff's counsel's email to me on August 5, 2018 regarding the proposed stipulation as to Dr. Garvey's clinical interview.

9. Dr. Garvey has reserved flights from the Boston area to Boise to conduct a Rule 35 clinical interview of Plaintiff on August 10, 2018. Due to her personal and professional schedule and Defendants' expert disclosure deadline of August 31, 2018, she needs to conduct the interview of Plaintiff on August 10, 2018. Arrangements for this clinical interview to occur on August 10, 2018 have already been made with IDOC.

10. Attached as Exhibit F hereto is a true and correct copy of Corizon Defendant's Proposed Order Granting Corizon Defendants' Motion for a Rule 35 Examination by its expert, Dr. Garvey.

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

DATED this 6th day of August, 2018.

/s/ Dylan A. Eaton

Dylan A. Eaton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

EXHIBIT A

Lauri A. Ehredt

From: Dylan A. Eaton
Sent: Friday, July 27, 2018 12:11 PM
To: Lori Rifkin
Cc: Deborah Ferguson; Craig Durham; Shaleen Shanbhag; Julie Wilensky; Krista Zimmerman; Jessica Valdenegro; Marisa Crecelius; Brady Hall; J. Kevin West; Lauri A. Ehredt
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Lori,

Our expert psychiatrist would like to conduct a clinical interview of Edmo as well on August 10th.

Our expert does not want a representative for Edmo to be present for the interview because the mere presence of a party representative can influence or effect the interview process so that it is not as objective as possible, among other things. The language in Rule 35 doesn't allow a representative to be present and the caselaw cited in IDOC's motion on this issue also supports this.

Are you fine with this being arranged?

Dylan



A Professional
Law Corporation

Dylan A. Eaton • Attorney at Law
Parsons Behle & Latimer
800 West Main Street, Suite 1300 • Boise, Idaho 83702
Main 208.562.4900 • Direct 208.562.4911 • Fax 208.562.4901

parsonsbehle.com • DEaton@parsonsbehle.com • vCard

From: Lori Rifkin <lrifkin@hadsellstormer.com>
Sent: Tuesday, July 24, 2018 4:47 PM
To: Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Shaleen Shanbhag <sshahnbhag@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Dylan A. Eaton <deaton@parsonsbehle.com>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>
Subject: Re: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Marisa,

We can send you release executed by me on behalf of Adree today, but are working on getting a copy executed by her directly.

Lori Rifkin

EXHIBIT B

Dylan A. Eaton

From: Dylan A. Eaton
Sent: Tuesday, July 31, 2018 5:19 PM
To: Lori Rifkin
Cc: Deborah Ferguson; Craig Durham; Shaleen Shanbhag; Julie Wilensky; Krista Zimmerman; Jessica Valdenegro; Marisa Crecelius; Brady Hall; J. Kevin West; Lauri A. Ehredt; Norma Molina; Dan Stormer
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Lori,

I need to meet and confer with you on this issue. Are you available to talk tomorrow afternoon?

I am happy to provide additional information regarding our Rule 35 IME request. However, I read your email below to be outright objecting to any IME by our expert. Is that correct?

We are not required to coordinate with IDOC's expert's IME and their expert is in a different profession than Corizon Defendants' expert. Corizon Defendant's expert is a psychiatrist. I doubt IDOC's expert would want another professional and expert present during his IME. Further, Corizon Defendant's expert will also be opining on different areas and, therefore, is entitled to their own clinical interview. Additionally, the timing of your email below is suspect in that it was sent after IDOC's expert's IME had started and was likely complete today. I emailed you last week and you did not respond until today. Therefore, even if there was an opportunity to coordinate on today's IME by IDOC's expert, that opportunity was precluded by your delayed response. Also, I do not believe your experts, Dr. Gorton (psychiatrist) and Dr. Ettner (psychologist), interviewed Ms. Edmo at the same time. Is that right? In any event, your objection noted below is precluding Corizon Defendants' ability to prepare a proper defense in this case and we will take this matter up with the court if we are not able to resolve this issue quickly.

Regards,
Dylan

From: Lori Rifkin <lrifkin@hadsellstormer.com>
Sent: Tuesday, July 31, 2018 12:26 PM
To: Dylan A. Eaton <deaton@parsonsbehle.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Shaleen Shanbhag <sshahbhag@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <lehredt@parsonsbehle.com>; Norma Molina <nmolina@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Dylan,

We object to a second IME of Plaintiff. We note that Corizon waited until after the Court issued its IME order to notify Plaintiff that Corizon would be requesting its own IME rather than raising this earlier, either during the meet and confer process concerning IDOC's request for an IME (a meet and confer process in which Corizon participated), or when this issue was before the Court. The circumstances suggest this was deliberate, given that your email was sent 26 minutes after notice of the Court's IME order. It is not clear to us why Defendants could not have worked together to conduct one joint IME and Corizon never suggested during the meet and confer process that it would be conducting its own

IME. Nor did Corizon make any objections to the conditions for the IME requested by IDOC or stipulated to by IDOC and Plaintiff. You have further not provided any of the information required by Rule 35 in requesting an IME. Given that IDOC's IME will be audio recorded, Corizon will have access to that recording.

Sincerely,

Lori Rifkin

Hadsell Stormer & Renick LLP
626-585-9600
lrifkin@hadsellstormer.com

From: Dylan A. Eaton <DEaton@parsonsbehle.com>
Sent: Friday, July 27, 2018 11:11 AM
To: Lori Rifkin <lrifkin@hadsellstormer.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Shaleen Shanbhag <sshanbhag@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <LEhredt@parsonsbehle.com>
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Lori,

Our expert psychiatrist would like to conduct a clinical interview of Edmo as well on August 10th.

Our expert does not want a representative for Edmo to be present for the interview because the mere presence of a party representative can influence or effect the interview process so that it is not as objective as possible, among other things. The language in Rule 35 doesn't allow a representative to be present and the caselaw cited in IDOC's motion on this issue also supports this.

Are you fine with this being arranged?

Dylan



A Professional
Law Corporation

Dylan A. Eaton • Attorney at Law
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parsonsbehle.com • DEaton@parsonsbehle.com • vCard

CONFIDENTIALITY NOTICE: This electronic mail message and any attachment(s) are confidential and may also contain privileged attorney-client information or work product. The message is intended only for the use of the addressee. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you may not use, distribute, or copy this communication. If you have received the message in error, please immediately notify us by reply electronic mail or by telephone at 801.532.1234, and delete this original message.

EXHIBIT C

Lauri A. Ehredt

From: Dylan A. Eaton
Sent: Thursday, August 2, 2018 3:08 PM
To: Shaleen Shanbhag
Cc: Deborah Ferguson; Craig Durham; Lori Rifkin; Julie Wilensky; Krista Zimmerman; Jessica Valdenegro; Marisa Crecelius; Brady Hall; J. Kevin West; Lauri A. Ehredt; Norma Molina; Dan Stormer
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)
Attachments: Rule 35 Exam - Order - PBL.PDF; Rule 35 Exam - Stip - PBL.PDF; Garvey, Keelin CV July 2018.pdf

Shaleen,

Thanks for your email. Please see the attached proposed stipulation and order for the Rule 35 exam by our expert. Please let me know if you will stipulate by the end of this week. If I do not hear from you, I will proceed with filing a motion.

Among other things, we represent separate defendants from the IDOC defendants. Corizon Defendants (medical providers) are entitled to their own expert who can conduct her own clinical interview. Additionally, Corizon defendant's expert is a psychiatrist, not a clinician, as with IDOC's expert. They are different professions. Plaintiff's experts have disclosed two separate experts (a psychologist and a psychiatrist) who opine on similar issues as well as on some separate issues. Plaintiff's own experts conducted their own separate interviews of Plaintiff. Defendants are allowed to similarly proceed with their experts.

Thanks,
Dylan

From: Shaleen Shanbhag <sshahbhag@hadsellstormer.com>
Sent: Thursday, August 2, 2018 2:56 PM
To: Dylan A. Eaton <deaton@parsonsbehle.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <lehredt@parsonsbehle.com>; Norma Molina <nmolina@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Dylan:

During our meet and confer call yesterday, you informed us that you would provide, by this morning, a draft stipulation containing your proposed parameters for the clinical interview you are requesting of our client. You also stated that you would identify the issues that your expert psychiatrist anticipates opining on that are distinct from those of IDOC's expert. We have yet to hear from you on either of these issues. Unless we receive this information shortly, we will be unable to confer with co-counsel and give you our position by the end of the week.

Shaleen Shanbhag
Hadsell Stormer & Renick LLP
128 N. Fair Oaks Avenue
Pasadena, CA 91103
(626) 585-9600
sshahbhag@hadsellstormer.com

KEELIN GARVEY, MD, CCHP
11 Broadcommon Road # 306
Bristol, RI 02809
(508) 735-7911
keelingarvey@gmail.com

MEDICAL LICENSURE

Massachusetts
Rhode Island
Minnesota
Pennsylvania
Arizona
Florida
Texas
California

BOARD CERTIFICATION

Psychiatry (May 2010)
Forensic Psychiatry (June 2011)

EMPLOYMENT

September 2017-present

Medical Director, Forensic Psychiatry
InnovaTel Telepsychiatry
Erie, PA

August 2015-September 2017

Statewide Psychiatric Medical Director,
Massachusetts Partnership for Correctional Healthcare
(MPCH)

- *Coordinating all psychiatry services and recruitment/hiring of psychiatric staff for the Massachusetts prison system*
- *Providing direct clinical care to inmates with serious mental illness*
- *Facilitating weekly reviews of complex clinical cases with emphasis on risk assessment and optimizing treatment*
- *Reviewing all nonformulary medication requests*
- *Providing consultation to psychiatric staff regarding need for higher level of care or hospitalization*
- *Voting member of Pharmacy and Therapeutics committee*
- *Chair of Gender Dysphoria Treatment Committee, responsible for evaluation and treatment of all individuals in the custody of the Massachusetts Department of Correction diagnosed with or reporting symptoms of Gender Dysphoria*

August 2011-August 2015

Deputy Medical Director, MPCH

- *Coordinated psychiatry services for the Massachusetts prison system, and participated in recruiting efforts*

- *Provided clinical supervision to several advanced practice nurses, and consultation to all psychiatry staff on complex cases*
- *Participated in the Pharmacy & Therapeutics Committee*
- *Provided direct clinical care to a large population of inmates with serious mental illness (SMI)*

July 2010-August 2011

Psychiatrist, Old Colony Correctional Center
MHM Services, Inc.
Bridgewater, MA

- *Provided psychiatric care to a large population of inmates with serious mental illness (SMI)*
- *Provided clinical leadership to a large group of mental health professionals*

MEDICAL AND PSYCHIATRIC TRAINING

July 2009-June 2010

Forensic Psychiatry Fellowship
University of California, Davis
Sacramento, CA

- *Performed violence/sexual violence risk assessment services at Napa State Hospital*
- *Provided clinical psychiatric care to jail inmates*
- *Conducted court-ordered and private assessments of competency to stand trial and sanity*
- *Performed psychological measures of malingering*

April 2008-April 2009

Chief Resident, Adult Psychiatry Residency
Alpert Medical School, Brown University
Providence, RI

- *Created and managed call schedule for more than 50 residents working at six different hospitals*
- *Liaison between residents and administration*
- *Coordinated orientation for incoming residents and recruitment of new residents*

July 2005-June 2009

Adult Psychiatry Residency
Alpert Medical School, Brown University
Providence, RI

- *Provided inpatient and outpatient clinical care*
- *Performed emergency psychiatric evaluations in both medical and psychiatric emergency departments*
- *Conducted court-ordered evaluations of competency to stand trial*
- *Provided psychiatric consultation services to medical and surgical teams*

August 2001-June 2005

University of Massachusetts Medical School
Medical Degree
Worcester, MA

OTHER QUALIFICATIONS

Certified Correctional Health Professional (CCHP), National Commission on Correctional Health Care

Certified Buprenorphine Physician, American Society of Addiction Medicine

ADDITIONAL WORK EXPERIENCE

- | | |
|---------------------|---|
| July 2006-June 2009 | Butler Hospital Patient Assessment Services
Providence, RI <ul style="list-style-type: none">• <i>Performed emergency psychiatric evaluations and admissions of adults and children in psychiatric emergency department</i>• <i>Provided emergency medical management of 180-bed inpatient psychiatric facility</i> |
| July 2006-June 2009 | Rhode Island Hospital Acute Psychiatric Services
Providence, RI <ul style="list-style-type: none">• <i>Performed emergency psychiatric evaluations and admissions of adults and children in medical emergency department</i> |
| July 2006-June 2009 | Miriam Hospital Department of Psychiatry
Providence, RI <ul style="list-style-type: none">• <i>Performed emergency psychiatric evaluations and admissions in medical emergency department</i>• <i>Provided acute psychiatric consultation to medical and surgical teams in tertiary care hospital</i> |

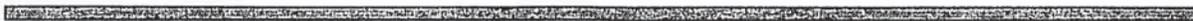
UNDERGRADUATE EDUCATION

August 1996-June 2000	Yale University BA, Molecular, Cellular & Developmental Biology New Haven, CT
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AWARDS & HONORS

2008 Rapoport Fellowship Award, American Academy of Psychiatry and the Law
• *Award given to 6 Residents nationally in recognition of demonstrated interest in psychiatry and the law*

First Prize Psychiatry Residency Research Poster, 12th Annual Research Symposium on Mental Health Sciences, Alpert Medical School of Brown University, March 27, 2008.



PSYCHOLOGICAL TESTING EXPERIENCE

- Structured Interview of Reported Symptoms (SIRS)
- Miller Forensic Assessment of Symptoms Test (M-FAST)
- Structured Inventory of Malingered Symptomatology (SIMS)
- Test of Malingered Memory (TOMM)
- Violence Risk Appraisal Guide (VRAG)
- Sex Offender Risk Appraisal Guide (SORAG)
- Hare Psychopathy Checklist-Revised (PCL-R)
- Historical, Clinical, Risk Management-20 (HCR-20)

ARTICLES

Garvey K, Penn J, Campbell A, Esposito-Smythers C, Spirito A. Contracting for Safety with Patients: Clinical Practice and Forensic Implications. *Journal of the American Academy of Psychiatry and the Law* 37(3): 2009.

Recupero P, Price M, **Garvey K**, Daly B, Xavier S. Restraint and seclusion in psychiatric treatment settings: regulation, case law, and risk management. *Journal of the American Academy of Psychiatry and the Law* 39(4): 2011.

BOOK CHAPTER

Garvey K, Newring K, Parham R, Pinals D (2013). The Roles and Limitations of Evidence-Based Psychotherapy in Correctional Settings, Volume II. In O. Thienhaus & M. Piasecki (Eds.), *Correctional Psychiatry Practice Guidelines and Strategies* (pp. 1-1 to 1-29). Kingston, NJ: Civic Research Institute.

PROFESSIONAL ORGANIZATIONS

American Psychiatric Association
American Academy of Psychiatry and the Law
Rhode Island Psychiatric Society
Rhode Island Psychiatric Society, Member in Training Representative 2007-2009
Rhode Island Suicide Prevention Sub-Committee, 2007-2009

NATIONAL PRESENTATIONS

- 1) "Contracting for Safety with Patients: Clinical Practice and Forensic Implications," American Academy of Psychiatry and the Law, Seattle, Washington, October 2008
- 2) "Dissociative Identity Disorder: Disease or Drama?" American Academy of Psychiatry and the Law, Baltimore, Maryland, October 2009

- 3) "Assaults on an Inpatient Service: Legal, Ethical and Administrative Considerations," American Academy of Psychiatry and the Law, Baltimore, Maryland, October 2009
- 4) "Gender Dysphoria: Recommendations for a Successful Program," National Commission on Correctional Health Care, Boston, Massachusetts, July 2016
- 5) "Stepping Up the Right Way: Best Practices in the Treatment of Persons with Serious Mental Illness who have Contact with the Criminal Justice System," Webinar hosted by National Council for Behavioral Health, July 2017
- 6) "'Tax Dollars at Work': Treating Inmates with Gender Dysphoria," American Academy of Psychiatry and the Law, Denver, Colorado, October 2017 (*Please note that the title of this presentation is in quotes as it does not reflect the opinion of the presenters*)

FUTURE SCHEDULED PRESENTATIONS:

- 1) "Gender Dysphoria: A New Challenge for Corrections and Timely Solutions," American Correctional Association, Minneapolis, Minnesota, August 2018
- 2) "Forensic Telepsychiatry: Why Aren't You Doing It?" American Academy of Psychiatry and the Law, Austin, Texas, October 2018

NATIONAL POSTER PRESENTATIONS

- 1) "'Contracting for Safety' with Adolescents: Is this an Empirically-Based Practice?" American Academy of Psychiatry and the Law, Miami, Florida, October 2007
- 2) "Antipsychotic Medication Use in the Rhode Island Prison System," American Academy of Psychiatry and the Law, Seattle, Washington, October 2008
- 3) "Restraint & Seclusion in Psychiatric Treatment Settings: A Review & Analysis of Case Law," American Academy of Psychiatry and the Law, Baltimore, Maryland, October 2009
- 4) "Psychiatric Advanced Directives: A State by State Review," American Academy of Psychiatry and the Law, Baltimore, Maryland, October 2009

OTHER PRESENTATIONS AND LECTURES

- Developed and provided DSM-5 training for all mental health staff in the Massachusetts Partnership for Correctional Healthcare, and for all psychiatry and psychology staff working for MHM Services, Inc., a national provider of correctional health services
- Provided training on the treatment of Gender Dysphoria to Bridgewater State Hospital social work and psychology interns and MPCH medical and mental health providers
- Participation in didactic program for Brown University forensic psychiatry fellowship, lecturing on Gender Dysphoria in the correctional setting

J. Kevin West, ISB #3337
Email: KWest@parsonsbehle.com
Dylan A. Eaton, ISB #7686
Email: DEaton@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901

Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; AND DOES 1-15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**STIPULATION FOR ENTRY OF
ORDER ALLOWING RULE 35
EXAMINATION**

COME NOW Plaintiff and Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery (collectively referred to as the "Corizon Defendants"), by and through their counsel of record, hereby stipulate for entry of an *Order* to allow the Corizon Defendants to

conduct a Rule 35 examination of Plaintiff. The parties have met and conferred again on that issue and now hereby stipulate for the entry of an *Order* as follows:

The examination will take place at 9:00 a.m. on August 10, 2018, at the Idaho State Correctional Institution (“ISCI”) in the visiting courtroom/parole hearing room, located at 13500 S. Pleasant Valley Road; Kuna, Idaho 83634. The examination will last no longer than three (3) hours.

The clinical interview will be conducted by Keelin Garvey, M.D. (psychiatrist), whose CV is attached hereto. The general scope of the clinical interview will include:

- History of Present Illness
- Past Psychiatric History
- Past Medical History
- Social and Developmental/Trauma History and current social relationships/support
- Gender Identity History
- Sexual and Relationship History
- Employment History
- Family History
- Substance Abuse History
- Criminal/Legal History
- Current/Past Prison Functioning including but not limited to: disciplinary reports, program involvement, employment
- Discussion of hopes/expectations for GD treatment
- Mental Status Examination

These areas may cover any past time period up through the date of the clinical interview. The clinical interview will generally cover information to assist Dr. Garvey who may opine in various areas, such as those covered by Plaintiff’s psychiatric expert Ryan Gorton, M.D., and may include, but not be limited to, whether the care and treatment provided by the medical defendants and other prison medical providers was appropriate, standard of medical and psychiatric care, and appropriate current treatment and care for Plaintiff. The topics of hormone therapy and Sex Reassignment Surgery, among others, likely will be covered. There will be no physical exam conducted during this clinical evaluation and no testing. Dr. Garvey reserves the right to ask

questions on other topics that come up during the interview within the scope of her profession and that relate to Plaintiff's claims in this case and Plaintiff's expert disclosures, and matters relevant to Plaintiff's medical and mental health.

The interview will be audio recorded. Plaintiff will be permitted to have one (1) non-attorney representative present during the interview. Plaintiff will select and identify a paralegal to attend as the non-attorney representative. That representative may monitor the interview, but shall not participate in or disrupt it. The representative will not obstruct the interview and will not assert objections to the questions asked or examination performed, although Plaintiff and counsel reserve the right to assert objections following completion of the examination. Plaintiff will designate the name of the representative to counsel for the Corizon Defendants 24 hours in advance of the interview.

Plaintiff's concerns about the clinical interview are alleviated by the presence of a non-attorney representative, the recording of the interview, and Dr. Garvey's written Rule 35(b) report. Accordingly, the parties hereby stipulate and request that the Court enter the proposed *Order* provided to the Court on July 24, 2018.

Dated this ____ day of August, 2018.

HADSELL STORMER & RENICK, LLP

By: _____
Lori Rifkin
Counsel for Plaintiff

Dated this ____ day of August, 2018.

PARSONS BEHLE & LATIMER

By: _____
Dylan A. Eaton
Counsel for Defendants Corizon Inc., Scott Eliason,
Murray Young, and Catherine Whinnery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of August, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(Counsel for Plaintiff)

Amy Whelan
Julie Wilensky
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
(Counsel for Plaintiff)

Brady J. Hall
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
*(Counsel for Defendants Kevin Kempf,
Richard Craig, Rona Siegert, and Howard
Keith Yordy)*

Lori E. Rifkin
Dan Stormer
Shaleen Shanbhag
HADSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com
(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

EXHIBIT D

Lauri A. Ehredt

From: Dylan A. Eaton
Sent: Friday, August 3, 2018 5:50 PM
To: Shaleen Shanbhag
Cc: Deborah Ferguson; Craig Durham; Lori Rifkin; Julie Wilensky; Krista Zimmerman; Jessica Valdenegro; Marisa Crecelius; Brady Hall; J. Kevin West; Lauri A. Ehredt; Norma Molina; Dan Stormer
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

I note that we are not "limiting" our expert opinions as your email below suggests and to require such is improper. Further, we are not even required to disclose the areas of our expert's opinions at this time. Our expert will offer opinions within the scope of her profession and qualifications just as Plaintiff's expert Dr. Gorton has purported to do. Rule 35 only requires we disclose the scope of the clinical interview, not disclose or limit areas of expert opinions. The proposed stip is completely within the scope of our expert's profession and reasonable. And, we offered that you may have a representative present for the interview even though Rule 35 does not state that is allowed. Please advise by tomorrow if we have an agreement or not. If you have any reasonable proposed language for me to consider regarding the "time, place, manner, conditions, and scope of the examination" as contemplated under Rule 35, let me know by tomorrow as well. Otherwise, I will file a motion on Monday ...

Thanks,
Dylan

From: Dylan A. Eaton
Sent: Friday, August 3, 2018 5:10 PM
To: Shaleen Shanbhag <sshahbhag@hadsellstormer.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <lehredt@parsonsbehle.com>; Norma Molina <nmolina@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Thanks for the email. You state "please modify your proposed stipulation accordingly." What specifically do you have an issue with and suggest needs to be modified in my proposed stip?

From: Shaleen Shanbhag <sshahbhag@hadsellstormer.com>
Sent: Friday, August 3, 2018 4:59 PM
To: Dylan A. Eaton <deaton@parsonsbehle.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <lehredt@parsonsbehle.com>; Norma Molina <nmolina@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Dylan,

Thank you. We appreciate that you have reconsidered your position on the presence of a non-attorney representative at the requested exam.

We will agree to your expert conducting a recorded Rule 35 exam of our client, so long as the exam is limited to the areas necessary for your expert's medical opinions, which you stated are: the medical standards of care and whether Ms. Edmo's treatment meets those standards, as well as the appropriate medical treatment and care for Ms. Edmo, including whether sex reassignment surgery is medically necessary.

We do understand that certain areas may overlap during the clinical interview but the ultimate medical opinions are limited to the above areas. Please modify your proposed stipulation accordingly. We are happy to discuss this further.

Shaleen Shanbhag
Hadsell Stormer & Renick LLP
128 N. Fair Oaks Avenue
Pasadena, CA 91103
(626) 585-9600
sshanbhag@hadsellstormer.com

NOTICE: This email and all attachments are CONFIDENTIAL and intended solely for the recipients as identified in the "To," "Cc" and "Bcc" lines of this email. If you are not an intended recipient, your receipt of this email and its attachments is the result of an inadvertent disclosure or unauthorized transmittal. Sender reserves and asserts all rights to confidentiality, including all privileges that may apply. Pursuant to those rights and privileges, immediately delete and destroy all copies of the email and its attachments, in whatever form, and immediately NOTIFY the sender of your receipt of this email. Do not review, copy, forward, or rely on the email and its attachments in any way. NOTICE: NO DUTIES ARE ASSUMED, INTENDED, OR CREATED BY THIS COMMUNICATION.

From: Dylan A. Eaton <DEaton@parsonsbehle.com>
Sent: Thursday, August 2, 2018 2:08 PM
To: Shaleen Shanbhag <sshanbhag@hadsellstormer.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <LEhredt@parsonsbehle.com>; Norma Molina <nmolina@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Shaleen,

Thanks for your email. Please see the attached proposed stipulation and order for the Rule 35 exam by our expert. Please let me know if you will stipulate by the end of this week. If I do not hear from you, I will proceed with filing a motion.

Among other things, we represent separate defendants from the IDOC defendants. Corizon Defendants (medical providers) are entitled to their own expert who can conduct her own clinical interview. Additionally, Corizon defendant's expert is a psychiatrist, not a clinician, as with IDOC's expert. They are different professions. Plaintiff's experts have disclosed two separate experts (a psychologist and a psychiatrist) who opine on similar issues as well as on some separate issues. Plaintiff's own experts conducted their own separate interviews of Plaintiff. Defendants are allowed to similarly proceed with their experts.

Thanks,
Dylan

From: Shaleen Shanbhag <sshanbhag@hadsellstormer.com>
Sent: Thursday, August 2, 2018 2:56 PM
To: Dylan A. Eaton <deaton@parsonsbehle.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall

EXHIBIT E

Lauri A. Ehredt

From: Shaleen Shanbhag <sshahbhag@hadsellstormer.com>
Sent: Sunday, August 5, 2018 8:13 PM
To: Dylan A. Eaton
Cc: Deborah Ferguson; Craig Durham; Lori Rifkin; Julie Wilensky; Krista Zimmerman; Jessica Valdenegro; Marisa Crecelius; Brady Hall; J. Kevin West; Lauri A. Ehredt; Norma Molina; Dan Stormer
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

Dylan,

We propose that the stipulation state that the scope of your expert's examination is limited to issues involving medical standards of care and the appropriate medical treatment and care for Ms. Edmo. We are amenable to discussing this issue further.

If you wish to file your motion without meeting and conferring with us further, that is your decision.

Shaleen

From: Dylan A. Eaton <DEaton@parsonsbehle.com>
Sent: Friday, August 3, 2018 4:50 PM
To: Shaleen Shanbhag <sshahbhag@hadsellstormer.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <LEhredt@parsonsbehle.com>; Norma Molina <nmolina@hadsellstormer.com>; Dan Stormer <dstormer@hadsellstormer.com>
Subject: RE: Stipulation and Order Re: Rule 35 exam (Edmo v. IDOC)

I note that we are not "limiting" our expert opinions as your email below suggests and to require such is improper. Further, we are not even required to disclose the areas of our expert's opinions at this time. Our expert will offer opinions within the scope of her profession and qualifications just as Plaintiff's expert Dr. Gorton has purported to do. Rule 35 only requires we disclose the scope of the clinical interview, not disclose or limit areas of expert opinions. The proposed stip is completely within the scope of our expert's profession and reasonable. And, we offered that you may have a representative present for the interview even though Rule 35 does not state that is allowed. Please advise by tomorrow if we have an agreement or not. If you have any reasonable proposed language for me to consider regarding the "time, place, manner, conditions, and scope of the examination" as contemplated under Rule 35, let me know by tomorrow as well. Otherwise, I will file a motion on Monday ...

Thanks,
Dylan

From: Dylan A. Eaton
Sent: Friday, August 3, 2018 5:10 PM
To: Shaleen Shanbhag <sshahbhag@hadsellstormer.com>
Cc: Deborah Ferguson <DAF@fergusondurham.com>; Craig Durham <durhamlaw@outlook.com>; Lori Rifkin <lrifkin@hadsellstormer.com>; Julie Wilensky <JWilensky@nclrights.org>; Krista Zimmerman <krista@melawfirm.net>; Jessica Valdenegro <jessicav@hadsellstormer.com>; Marisa Crecelius <marisa@melawfirm.net>; Brady Hall <Brady@melawfirm.net>; J. Kevin West <KWest@parsonsbehle.com>; Lauri A. Ehredt <lehredt@parsonsbehle.com>;

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION;
HENRY ATENCIO, in his official capacity;
JEFF ZMUDA, in his official capacity;
HOWARD KEITH YORDY, in his official
and individual capacities; CORIZON, INC.;
SCOTT ELIASON; MURRAY YOUNG;
RICHARD CRAIG; RONA SIEGERT;
CATHERINE WHINNERY; AND DOES 1-
15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**ORDER ALLOWING RULE 35
EXAMINATION**

This matter having come before this Court on the Corizon Defendants' Motion for Rule 35 Examination, pursuant to Rule 35 of the Federal Rules of Civil Procedure, and good cause appearing therefore;

IT IS HEREBY ORDERED that Corizon Defendants' Motion for Rule 35 Examination is hereby GRANTED. Specifically, the Plaintiff will submit to a Rule 35 examination by Corizon Defendants' expert, Keelin Garvey, M.D., and this Court hereby grants leave for the Corizon Defendants to conduct the examination of the Plaintiff's medical and mental condition, consistent with Rule 35 and the manner, scope, and procedure as follows:

The examination will take place at 9:00 a.m. on August 10, 2018, at the Idaho State Correctional Institution (“ISCI”) in the visiting courtroom/parole hearing room, located at 13500 S. Pleasant Valley Road; Kuna, Idaho; 83634. The examination will last no longer than three (3) hours.

The clinical interview will be conducted by Keelin Garvey, M.D. (psychiatrist). The general scope of the clinical interview will include:

- History of Present Illness
- Past Psychiatric History
- Past Medical History
- Social and Developmental/Trauma History and current social relationships/support
- Gender Identity History
- Sexual and Relationship History
- Employment History
- Family History
- Substance Abuse History
- Criminal/Legal History
- Current/Past Prison Functioning including but not limited to: disciplinary reports, program involvement, employment
- Discussion of hopes/expectations for GD treatment
- Mental Status Examination

The scope of the Rule 35 examination may cover any period of time up through the date of the clinical interview. Psychiatric, mental, and medical care and treatment; hormone therapy; Sex Reassignment Surgery; and correctional practices are among the areas that may be covered in Dr. Garvey’s clinical interview. Dr. Garvey’s clinical interview may cover any topics within the scope of her education, training and experience, including as a licensed psychiatrist and correctional psychiatrist, in order to evaluate and address Plaintiff’s claims in this case, any of the defenses, and any of Plaintiff’s experts’ opinions.

Dr. Garvey will not conduct a physical exam or any psychological testing on Plaintiff Edmo.

The interview will be audio recorded. Plaintiff will be permitted to have one (1) non-attorney representative present during the interview. Plaintiff will select and identify a paralegal to attend as the non-attorney representative. That representative may monitor the interview, but shall not participate in or disrupt it. The representative will not obstruct the interview and will not assert objections to the questions asked or examination performed, although Plaintiff and counsel reserve the right to assert objections following completion of the examination. Plaintiff will designate the name of the representative to counsel for the Corizon Defendants 24 hours in advance of the interview.

//end of text//

Dylan A. Eaton
Parsons, Behle & Latimer
Counsel for Defendants Corizon, Inc., Scott Eliason, Murray Young, and Catherine Whinnery