

5. EXHIBIT 5: Expert Disclosure Report of Jamison Green, Ph.D.
6. EXHIBIT 6: Defendant N.C. Department of Public Safety's Responses to Plaintiffs' First Set of Interrogatories
7. EXHIBIT 7: Copy of *Boyden v. Conlin*, No. 17-cv-264, 2018 U.S. Dist. LEXIS 79753 (W.D. Wis. May 11, 2018) (unpublished order)

Respectfully submitted, this 30th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ James B. Trachtman
James B. Trachtman
Special Deputy Attorney General
N.C. State Bar No. 22360
N.C. Department of Justice
Public Safety Section
P. O. Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6943
Facsimile: (919) 716-6761

E-Mail: jtrachtman@ncdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated above, I electronically filed the foregoing **APPENDIX TO MEMORANDUM OF LAW IN SUPPORT OF NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system which will provide electronic notification to counsel.

DATED: November 30, 2021.

/s/ James B. Trachtman
James B. Trachtman
Special Deputy Attorney General

EXHIBIT 1

Plaintiffs' Objections and Responses to Defendant Department of Public Safety's First Set of Interrogatories, First Request for Admissions And First Request for Production of Documents

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, *et al.*,

Defendants.

No. 1:19-cv-00272-LCB-LPA

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO DEFENDANT
DEPARTMENT OF PUBLIC SAFETY'S FIRST SET OF INTERROGATORIES,
FIRST REQUEST FOR ADMISSIONS AND FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS.**

Pursuant to Federal Rule of Civil Procedure 33, Plaintiffs, by and through undersigned counsel, hereby respond to the Department of Public Safety's ("DPS") First Set of Interrogatories, First Request for Admissions, and First Request for Production of Documents.

GENERAL OBJECTIONS

1. Plaintiffs object to each Interrogatory, Request for Admission, and Request for Production of Documents, as well as the "Definitions" and "Instructions," to the extent they purport to impose requirements beyond those expressed in the Federal Rules of Civil Procedure or the Local Rules for the United States District Court for the Middle District of North Carolina.
2. Plaintiffs object to each Interrogatory, Request for Admission, and Request for

EXHIBIT 1

Production of Documents to the extent they seek information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiffs object to each Interrogatory, Request for Admission, and Request for Production of Documents as duplicative and unduly burdensome to the extent it duplicates a discovery request already propounded on Plaintiffs by another party in this action. Plaintiffs accordingly construe each discovery request to exclude information and documents already produced or objected to.
4. Plaintiffs object to each Interrogatory, Request for Admission, and Request for Production of Documents to the extent it seeks information protected from disclosure by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege or doctrine. Plaintiffs further object to the Document Requests as unduly burdensome and not proportional to the needs of the case to the extent they call for a privilege log of communications between Plaintiffs and Lambda Legal Defense and Education Fund, Inc., Transgender Legal Defense and Education Fund, Inc. Harris, Wiltshire & Grannis LLP, and McDermott, Will & Emery LLP. Plaintiffs accordingly construe each Document Request to exclude documents protected by any privilege, and will produce only responsive, non-privileged documents.
5. Plaintiffs construe the Document Requests to require Plaintiffs to conduct a reasonable search. Plaintiffs expressly reserve the right to not search for, review, or

produce documents if, after further investigation, Plaintiffs determine that the burden of doing so exceeds the benefit of producing such documents.

6. Plaintiffs object to the Document Requests to the extent that they seek documents that are not within Plaintiffs' possession, custody, or control.
7. Plaintiffs object to the Document Requests to the extent that they seek the production of "all documents" pertaining to individuals or entities without limitation as to scope of the Document Request or its subject-matter.
8. Plaintiffs object to the Document Requests to the extent that they do not specify a time period for the Document Request on the grounds that it is overbroad and unduly burdensome and is not reasonably calculated to lead to the discovery of evidence admissible in this action or is otherwise beyond the scope of permissible discovery. Plaintiffs accordingly will construe all requests not specifying a time period to be limited to responsive documents since January 1, 2016. Plaintiffs are prepared to meet and confer with DPS concerning an appropriate time period for the Document Requests.
9. Plaintiffs object to each Interrogatory, Request for Admission, and Request for Production of Documents to the extent they seek information that is equally available to the Department of Public Safety or is otherwise in the public domain.
10. Plaintiffs object to each Interrogatory, Request for Admission, and Request for Production of Documents to the extent that they seek information that is outside the scope of discovery under Rule 26(b)(1) of the Federal Rules of Civil Procedure,

either because it is not relevant to any pending claims or defenses or because it is not proportional to the needs and specific circumstances of the case.

11. Plaintiffs object to each Interrogatory, Request for Admission, and Request for Production of Documents to the extent that they are overly broad or unduly burdensome.
12. Plaintiffs object to each Interrogatory, Request for Admission, and Request for Production of Documents to the extent that it is ambiguous or vague, and reserve the right to assert additional objections whenever ambiguity or vagueness in the Interrogatories, Requests for Admission, and Requests for Production of Documents are subsequently resolved in previously unanticipated ways.
13. Plaintiffs incorporate their general objections into each response set forth below, and do not intend to waive any general objections by stating a specific objection.
14. Plaintiffs reserve all evidentiary objections, including all objections pertaining to the relevance or admissibility of all information provided. To the extent that Plaintiffs respond to the Interrogatory, Request for Admission, and Request for Production of Documents, Plaintiffs do not concede that the information requested is relevant to this action or admissible at trial.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. **To the extent you contend that stand-alone health insurance coverage for gender-confirming care is available on the insurance market, please explain**

the basis for your contention and identify any and all documents and communications supporting your contention.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory as a premature contention interrogatory. At this early stage of discovery, Plaintiffs have not had the opportunity to fully develop their legal theories or obtain documents to support them.

Plaintiffs further state that it is not their burden to show that stand-alone coverage is available on the insurance market. The Department of Public Safety's duty to provide compensation, terms, conditions, or privileges of employment, including health care coverage when provided, on a nondiscriminatory basis is not contingent on the availability of stand-alone coverage.

2. To the extent you contend that the North Carolina Department of Public Safety has statutory authority to offer health insurance for gender-confirming care at Employer-Cost, please identify all statutes which you contend grant such authority and identify any and all documents and communications supporting your contention.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory to the extent it requests a purely legal conclusion regarding the Department of Public Safety's authority to offer health insurance for gender-confirming care. Plaintiffs also object to this interrogatory's use of what appears to be a defined term, "Employer-Cost," without

defining the term. Moreover, Plaintiffs object to this interrogatory as seeking Plaintiffs' counsel's work product regarding a purely legal issue. Plaintiffs object to this interrogatory to the extent that it calls for documents and information which are in the Department of Public Safety's possession and knowledge. Plaintiffs further object to this interrogatory as unduly burdensome to the extent it calls for information about the Department of Public Safety's statutory authority to offer insurance coverage for gender-confirming care that is publicly available. Plaintiffs further object to this interrogatory as a premature contention interrogatory. At this early stage of discovery, Plaintiffs have not had the opportunity to fully develop their legal theories or obtain documents to support them.

Subject to and without waiving their objections, Plaintiffs contend that Title VII mandates that Defendants offer health insurance for gender-confirming care. Title VII provides that “[i]t shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to [their] compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex.” 20 U.S.C. § 2000e-2. In addition, the Supremacy Clause of the Constitution provides in relevant part that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.” U.S. Const. art. VI, cl. 2.

In addition to this federal law, Plaintiffs refer the Department of Public Safety Defendants to the Court's opinion on the motions to dismiss in this case, which noted that the Attorney General's office has concluded that under North Carolina law, state employers

can independently offer insurance coverage so long as it does not duplicate the coverage offered by the State Health Plan. ECF No. 45 at 9-10, n.5.

- 3. Please identify each person known by Plaintiffs to have any knowledge or information of material facts concerning in the Lawsuit, including but not limited to the allegations in the Complaint, the Amended Complaint, or any response or defense thereto. For each person named, state what Plaintiffs believe to be the sum and substance of their knowledge or information and their present or last known address.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Subject to and without waiving their objections, Plaintiffs stand on their initial disclosures and expert disclosures.

- 4. To the extent that Plaintiffs or any of their dependents receive or have ever received primary or supplemental health insurance from any source that provides coverage for care related to gender identity and/or gender transition procedures, please describe with particularity and specificity the referenced health insurance, including, but not limited to, the time period during which each Plaintiff or any of their dependents received health insurance that provided coverage for care related to gender identity and/or gender transition procedures, the specific claims covered by said health insurance for care related to gender identity and/or gender transition procedures, and all documents related to such insurance policy.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory on the ground that it seeks information that is not relevant to any claim or defense. Plaintiffs further object to this interrogatory's lack of a time limitation, which is unduly burdensome, overly broad, and disproportionate to the needs of the case.

Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents relating to Plaintiffs' supplemental coverage, if any, for gender-confirming healthcare while employed by the Department of Public Safety since January 1, 2016, in their response to the Department of Public Safety's Requests for Production. Plaintiffs state that they will supplement this interrogatory response, if necessary, once Plaintiffs' document production is complete.

5. To the extent you contend the State Health Plan, its Board of Trustees, the Treasurer, or the Executive Administrator is an agent of the North Carolina Department of Public Safety, please describe in detail the scope of control or authority which you contend that the North Carolina Department of Public Safety Defendants exercise over the State Health Plan, its Board of Trustees, the Treasurer, or the Executive Administrator; identify any governing statute or law which you contend grants the North Carolina Department of Public Safety authority or control over the state Health Plan, its Board of Trustees, the Treasurer, or the Executive Administrator; and identify any and all documents and communications supporting your contention.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs object to this interrogatory to the extent that it calls for documents and information which are in the Department of Public Safety's possession and knowledge. Plaintiffs further object to this interrogatory as unduly burdensome to the extent it calls for information about the relationship between the Department of Public Safety and the State Health Plan, its Board of Trustees, the Treasurer, or the Executive Administrator that is publicly available, or in the Department of Public Safety's own possession.

Plaintiffs further object to this interrogatory as a premature contention interrogatory. At this early stage of discovery, Plaintiffs have not had the opportunity to fully develop their legal theories or obtain documents to support them.

Subject to and without waiving their objections, Plaintiffs contend that the State Health Plan, its Board of Trustees, the Treasurer, and/or the Executive Administrator are agents of the Department of Public Safety because they act on behalf of the Department of Public Safety in administering health plans for employees of the Department of Public Safety and negotiating contracts with third parties. *See generally* N.C. Gen. Stat. Chapter 135; §§ 135-48.23, 48.30; *see also* First Am. Compl. for Declaratory, Injunctive, and Other Relief, ECF No. 75 ¶¶ 20, 21.

6. Please identify and describe all communications between Plaintiffs and Defendants related to the Exclusion, including, but not limited to, the date(s)

of such communications, each of the makers of such communications, the medium of such communications, and the substance of such communications.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory to the extent that it calls for documents and information which are in the Defendants' possession and knowledge. Plaintiffs further object to this interrogatory as unduly burdensome and duplicative to the extent it requests Plaintiffs to identify and describe documents that were or will be produced in response to the Department of Public Safety's requests for the production of documents.

Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce nonprivileged documents relevant to this interrogatory, if any, in their response to the Department of Public Safety's Requests for Production.

7. Please describe in detail and with specificity all acts of intentional discrimination which you contend the North Carolina Department of Public Safety took against you and identify any and all documents and communications supporting your contention.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory as vague and ambiguous. In particular, the term "intentional" is vague and ambiguous. Plaintiffs further object to this interrogatory as premature to the extent it calls for information that Plaintiffs

expect to learn through the discovery process. Subject to and without waiving their objections, Plaintiffs state that their allegations regarding the Department of Public Safety's intentional discrimination are set forth in Plaintiffs' Amended Complaint (ECF No. 75, ¶¶ 177-187).

8. Please state whether you or any of your dependents have ever enrolled in a Health Care Flexible Spending Account administered through NCFlex or through any other source. In responding to this Interrogatory, please state the time period during which you were enrolled in a Health Care Flexible Spending Account and the contributions you made to the plan during the time periods identified.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents relevant to this interrogatory, if any, in their response to the Department of Public Safety's Requests for Production. Plaintiffs state that they will supplement this interrogatory response, if necessary, once Plaintiffs' document production is complete.

9. Please state whether you or any of your dependents receive or have ever received health insurance from any source that covers gender-confirming healthcare. In responding to this Interrogatory, please state the time period during which you or any of your dependents received health insurance from any source which covered gender-confirming healthcare, identify any claims

covered gender-confirming healthcare made under such health insurance policy, and identify all documents related to such health insurance policy.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory on the ground that it seeks information that is not relevant to any claim or defense. Plaintiffs further object to this interrogatory's lack of a time limitation, which is unduly burdensome, overly broad, and disproportionate to the needs of the case. Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents relating to Plaintiffs' supplemental coverage, if any, for gender-confirming healthcare while employed by University Defendants since January 1, 2016, in their response to the Department of Public Safety's Requests for Production. Plaintiffs state that they will supplement this interrogatory response, if necessary, once Plaintiffs' document production is complete.

10. Please state and describe your efforts, if any, to locate and obtain other or supplemental health insurance coverage for yourself or any of your dependents, other than that provided by the State Health Plan, to cover gender-confirming healthcare. In responding to this Interrogatory, please identify all documents and communications relating or pertaining to your efforts to obtain additional or supplemental health insurance, including any application for health insurance that you submitted to any source.

Response and Objections: Plaintiffs incorporate by reference each of the General

Objections listed above. Plaintiffs object to this interrogatory on the grounds that it is the Department of Public Safety's burden to provide health insurance on a nondiscriminatory basis to its employees and it is not Plaintiff's burden to seek it out. Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents relating to Plaintiffs' supplemental coverage, if any, for gender-confirming healthcare while employed by the Department of Public Safety since January 1, 2016, in their response to Defendants' Requests for Production. Plaintiffs state that they will supplement this interrogatory response, if necessary, once Plaintiffs' document production is complete.

11. Please state the full name, address, corresponding dates of treatment, and the condition for which you sought treatment for each physician, psychiatrist, psychologist, licensed counselor or social worker, hospital, institution, clinic, or other healthcare provider or healthcare facility who has examined, diagnosed, or treated you for any medical condition from January 2016 to present.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory as overbroad and not proportional to the needs of the case to the extent it calls for information related to "any medical condition." Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents relating to care for gender dysphoria sufficient to provide a response to this interrogatory in their response to the

Department of Public Safety's Requests for Production.

- 12. Please identify all persons from whom you have sought any form of treatment or counseling for the emotional distress, mental anguish, worry, anxiety, or stress alleged in your Complaint.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory on the ground that it requests information that is not relevant to any claim or defense, because Plaintiffs are seeking emotional distress damages which are not specific to any Plaintiff's facts, and which stem from the recognition that, as a general matter, experiencing discrimination tends to cause pain. Plaintiffs accordingly do not believe that any other response is required. Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents sufficient to provide a response to this interrogatory in their response to the Department of Public Safety Requests for Production.

- 13. Please state and describe with specificity all non-economic relief (i.e. equitable, injunctive, or declaratory) you are seeking from the North Carolina Department of Public Safety.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Subject to and without waiving their objections, Plaintiffs respond that they are seeking a declaratory judgment that the Department of Public Safety violated Plaintiffs' rights under Title VII by offering employee healthcare coverage as a term, condition, or benefit of employment that contains a targeted Exclusion for "[p]sychological

assessment and psychotherapy treatment in conjunction with proposed gender transformation” and “[t]reatment or studies leading to or in connection with sex changes or modifications and related care.” *See* First Am. Compl. for Declaratory, Injunctive, and Other Relief, ECF No. 75 ¶ 186.

In addition, Plaintiffs are seeking to preliminarily and permanently enjoin the Department of Public Safety, their agents, employees, successors, and all others acting in concert with them, from administering or offering health coverage that categorically excludes coverage for gender-confirming health care.

Plaintiffs are also seeking other legal and equitable or injunctive relief as the Court deems just and appropriate.

14. Please itemize all economic damages you are seeking to recover from the North Carolina Department of Public Safety and identify any and all documents or communications which you contend substantiate your economic damages.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs are seeking to recover out-of-pocket expenses and emotional distress damages which are not specific to any of Plaintiffs’ facts, and which stem from the recognition that, as a general matter, experiencing discrimination tends to cause pain. Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents sufficient to respond this interrogatory in their response to the Department of Public Safety’s Requests for Production.

15. Please identify and describe all facts, documents, and any other evidence supporting or relating to Plaintiffs’ allegation in paragraph 136 of the Complaint that “the NCSHP’s categorical Exclusion ... brands them as second-class citizens and deprives them of their equal treatment and dignity.”

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory to the extent it requests legal conclusions regarding the effect of the State Health Plan’s denial of coverage for gender-confirming care. Plaintiffs also object to this interrogatory as seeking Plaintiffs’ counsel’s work product regarding a legal issue. In addition, Plaintiffs object to this interrogatory as premature to the extent it calls for information that Plaintiffs expect to learn through the discovery process.

Subject to and without waiving these objections, Plaintiffs respond that while discovery is ongoing, the relevant facts supporting Plaintiffs’ allegation are contained within the First Amended Complaint. Plaintiffs will supplement this interrogatory response with new information, if any, they learn through discovery.

16. Please define “medically necessary” as that phrase is used in the Plaintiffs’ Complaint.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to the extent this interrogatory calls for an expert opinion. Subject to and without waiving their objections, Plaintiffs refer the Department of Public Safety Defendants to their First Amended Complaint (ECF No. 75),

in which the phrase “medically necessary” appears approximately 25 times. Without prejudice to Plaintiffs’ ability to further clarify the meaning of that phrase, including as used in any particular instance in the Complaint, Plaintiffs state that they generally use that phrase “medically necessary” to mean health care services or medications needed to diagnose or treat an illness, injury, condition, disease, or its symptoms and that meet generally accepted standards of care.

17. Please describe with particularity and specificity all acts by the North Carolina Department of Public Safety, or any person acting on their behalf, that the Plaintiffs allegations constitute discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory as premature to the extent it calls for information that Plaintiffs expect to learn through the discovery process.

Subject to and without waiving their objections, Plaintiffs state that although discovery is ongoing, at present, the specific acts that Plaintiffs contend constitute discrimination in violation of the Equal Protection Clause are described in the First Amended Complaint. *See* ECF No. 75. Plaintiffs will supplement this interrogatory response with new information, if any, they learn through discovery.

18. Please define the class of “transgender people” that Plaintiffs’ Complaint asserts is entitled to heightened protection under the Fourteenth Amendment to the United States Constitution.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Subject to and without waiving their objections, Plaintiffs contend that government classifications based on sex and transgender status are entitled to at least heightened scrutiny, based on *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 608–13 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, 20-1163, 2021 WL 2637992 (U.S. June 28, 2021). *Grimm* describes transgender people at length. *Id.* at 594–97.

19. Please state the full name, address, corresponding dates of treatment, and the condition for which each Plaintiff sought treatment from any healthcare provider, including, but not limited to, any hospital, institution, clinic, physician, psychiatrist, psychologist, counselor, or social worker between January 1, 2016 and the present for any form of emotional distress that the Plaintiffs allege has been caused by the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this interrogatory on the ground that it requests information that is not relevant to any claim or defense, because, in addition to their out-of-pocket costs, Plaintiffs are only seeking standard emotional distress damages which are not specific to any Plaintiff's facts, and which stem from the recognition that, as a general matter, experiencing discrimination tends to cause pain, humiliation, and distress. Plaintiffs accordingly do not believe that any other response is required.

Subject to and without waiving their objections, pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs will produce documents relevant to treatment for gender

dysphoria in their response to the Department of Public Safety's Requests for Production.

20. Please identify with particularity and describe by type and amount the damages that Plaintiffs claim to have sustained as a result of the alleged acts and omissions of the Defendants.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Subject to and without waiving their objections, Plaintiffs seek to recover out-of-pocket expenses and, pursuant to Federal Rule of Civil Procedure 33(d), will produce documents sufficient to identify the amount of those damages. Plaintiffs are seeking to recover out-of-pocket expenses and emotional distress damages which are not specific to any of Plaintiffs' facts, and which stem from the recognition that, as a general matter, experiencing discrimination tends to cause pain.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION

1. In Paragraph 1 of their Complaint, the Plaintiffs allege that the State of North Carolina provides health care coverage “[a]s part of compensation for employment.” Neither the State Health Plan nor Plaintiffs’ University Employers has promised coverage for all medically necessary treatment as part of this health care coverage.

Response and Objections: Plaintiffs object to this request as vague and ambiguous to the extent that it uses the term “promised” without definition or clarification. Plaintiffs can neither admit nor deny this request because they do not have knowledge of all of the representations that the State Health Plan and the University Employers have made

regarding health care coverage for state employees and their dependents. Plaintiffs further object to this request as irrelevant because their claims do not rest on the proposition that coverage must be provided for all medically necessary treatment; instead, they seek non-discriminatory coverage for medically-necessary treatment. Subject to, and without waiving their general and specific objections, Plaintiffs therefore deny this request on these bases.

2. The United States Constitution does not require the State Health Plan to cover all medically necessary treatment sought by Plan beneficiaries.

Response and Objections: Plaintiffs object to this request to the extent it calls for a legal conclusion. Plaintiffs further object to this request as irrelevant because Plaintiffs' claims do not rest on the proposition that coverage must be provided for all medically necessary treatment; instead, they seek non-discriminatory coverage for medically-necessary treatment. Subject to, and without waiving their general and specific objections, Plaintiffs deny this request on these bases.

3. No federal statute requires the State Health Plan to cover all medically necessary treatment sought by Plan beneficiaries.

Response and Objections: Plaintiffs object to this request to the extent it calls for a legal conclusion. Plaintiffs further object to this request as irrelevant because Plaintiffs' claims do not rest on the proposition that coverage must be provided for all medically necessary treatment; instead, they seek non-discriminatory coverage for medically-necessary treatment. Subject to, and without waiving their general and specific objections,

Plaintiffs deny this request on these bases.

4. **For medical treatment covered by the State Health Plan, the health care provider is reimbursed based on the diagnostic and procedure codes submitted by that provider.**

Response and Objections: Plaintiffs lack sufficient information on which to admit or deny this request, as the operations of a reimbursement from the State Health Plan or one of its third-party administrators to a provider are known to the State Health Plan Defendants, but not to Plaintiffs. Subject to, and without waiving their general and specific objections, Plaintiffs deny this request on that basis. Plaintiffs reserve their right to supplement this interrogatory response should responsive information be provided to Plaintiffs in discovery.

5. **Plaintiffs do not allege that a transgender person with the same diagnosis and procedure code as a non-transgender person receives different coverage for medical treatment from the State Health Plan.**

Response and Objections: Plaintiffs lack sufficient information on which to admit or deny this request, as the process of authorizing or denying coverage of care by the State Health Plan or one of its third-party administrators is known to the State Health Plan Defendants, but not to Plaintiffs. Plaintiffs further state that procedures may be submitted for preauthorization or coverage with multiple procedure codes, and that Plaintiffs require additional information to provide any further response. Subject to, and without waiving their general and specific objections, Plaintiffs therefore deny this request on that basis.

Plaintiffs reserve their right to supplement this interrogatory response should responsive information be provided to Plaintiffs in discovery.

6. Treatment for gender dysphoria is not medically necessary for all transgender individuals.

Response and Objections: Plaintiffs object to this request to the extent it seeks expert opinions. Plaintiffs admit that, like any other medical care, treatment for gender dysphoria is individualized. Plaintiffs otherwise deny this request.

7. Appropriate medical treatment for a patient can differ significantly based on the patient's chromosomal sex (not gender identity).

Response and Objections: Plaintiffs object to this request as vague and ambiguous to the extent that it refers to "chromosomal sex" without definition or clarification. Plaintiffs further object to this request as vague and overbroad to the extent that it refers to "appropriate medical treatment" without clarifying what form of treatment the Department of Public Safety Defendants are referring to. Plaintiffs further object to this request as irrelevant to any issue in this case. Plaintiffs further object to this request to the extent it seeks expert opinions. Subject to, and without waiving their general and specific objections, Plaintiffs therefore deny this request on these bases.

8. Physicians should know the chromosomal sex of a patient before providing medical care, regardless of whether the chromosomal sex is consistent with that patient's gender identity.

Response and Objections: Plaintiffs object to this request as vague and ambiguous

to the extent that it refers to “chromosomal sex” without definition or clarification. Plaintiffs object to this request as vague and overbroad to the extent that it refers to “medical care” without clarifying what form of treatment the Department of Public Safety Defendants are referring to. Plaintiffs further object to this request as irrelevant to any issue in this case. Plaintiffs further object to this request to the extent it seeks expert opinions. Subject to, and without waiving their general and specific objections, Plaintiffs deny this request on these bases, as well as the fact that physicians typically do not inquire into patients’ chromosomal makeup before providing medical care.

9. That the State Health Plan does not deny counseling for depression, anxiety or other medical conditions, even if the patient suffering from these conditions also suffers from gender dysphoria.

Response and Objections: Plaintiffs object to this request as vague and ambiguous in its use of “deny” and “other medical conditions” without defining or clarifying those terms. Plaintiffs state that the requested information is likely to depend on how any particular request is coded when submitted for coverage, and Plaintiffs therefore lack sufficient information to admit or deny this request. Subject to, and without waiving their general and specific objections, Plaintiffs therefore deny this request on these bases.

10. There are no long-term, peer-reviewed published, reliable, and valid research studies documenting the number or percentage of patients receiving gender transition procedures who are helped by such procedures.

Response and Objections: Plaintiffs object to this request as vague and ambiguous

in its use of the terms “long-term,” “reliable,” “valid,” and “helped” without definition or clarification. Plaintiffs further object to this request as vague and overbroad to the extent it necessitates a review of all peer-reviewed literature in order to respond to the request. Plaintiffs further object to this request to the extent it seeks expert opinions. Subject to, and without waiving their general and specific objections, Plaintiffs deny this request on these bases, as well as the fact that there are numerous published, peer-reviewed studies that demonstrate the safety and efficacy of gender-confirming health care as a treatment for gender dysphoria, some of which are cited in the disclosures of Plaintiffs’ expert witnesses.

11. There are no long-term, peer-reviewed published, reliable, and valid research studies documenting the number or percentage of patients receiving gender transition procedures who are injured or harmed by such procedures.

Response and Objections: Plaintiffs object to this request as vague and ambiguous in its use of the terms “long-term,” “reliable,” “valid,” “injured,” and “harmed” without definition or clarification. Plaintiffs further object to this request as vague and overbroad to the extent it necessitates a review of all peer-reviewed literature in order to respond to the request. Plaintiffs further object to this request to the extent it seeks expert opinions. Subject to, and without waiving their general and specific objections, Plaintiffs deny this request on these bases, as well as the fact that there are numerous published, peer-reviewed studies that demonstrate the safety and efficacy of gender-confirming health care as a treatment for gender dysphoria, some of which are cited in the disclosures of Plaintiffs’ expert witnesses.

12. There are no long-term, peer-reviewed published, reliable, and valid research studies documenting the reliability and validity of assessing gender identity by relying solely upon the expressed desires of a patient.

Response and Objections: Plaintiffs object to this request as vague and ambiguous in its use of the terms “long-term,” “reliable,” and “valid,” without definition. Plaintiffs further object to this request as vague and overbroad to the extent it necessitates a review of all peer-reviewed literature in order to respond to the request. Plaintiffs further object to this request to the extent it seeks expert opinions. Plaintiffs further object to this request as irrelevant to any issue in this case. Plaintiffs object to this request to the extent that it mischaracterizes both Plaintiffs’ arguments and the science underlying Plaintiffs’ claims, both of which are described more fully in Plaintiffs’ First Amended Complaint for Declaratory, Injunctive, and Other Relief (ECF No. 75), and in Plaintiffs’ expert reports. Subject to, and without waiving their general and specific objections, Plaintiffs deny this request on these bases.

13. A large percentage of children who question their gender identity will, by age eighteen, decide to align their gender identity with their chromosomal sex.

Response and Objections: Plaintiffs object to this request as vague and ambiguous in its use of the terms “question,” “large percentage,” and “chromosomal sex” without definition or clarification. Plaintiffs further object to this request to the extent it seeks expert opinions. Subject to, and without waiving their general and specific objections, Plaintiffs deny this request on these bases and because it fundamentally misconstrues the

science and medical literature on this issue and is incorrect.

- 14. There are no long-term, peer-reviewed published, reliable, and valid research studies documenting a biological, medical, surgical, radiological, psychological, or other objective assessment of gender identity or gender dysphoria.**

Response and Objections: Plaintiffs object to this request as vague and ambiguous in its use of the terms “long-term,” “reliable,” “valid,” “other objective assessment,” and “biological” without definition or clarification. Plaintiffs further object to this request as vague and overbroad to the extent it necessitates a review of all peer-reviewed literature in order to respond to the request. Plaintiffs further object to this request to the extent it seeks expert opinions. Subject to, and without waiving their objections, Plaintiffs deny this request on these bases, as well as the fact that there are many published, peer-reviewed studies that assess gender identity or gender dysphoria, as well as documenting the biological basis for gender identity.

- 15. A currently unknown percentage and number of patients reporting gender dysphoria suffer from mental illness(es) that complicate and may distort a patient’s judgments and perceptions of gender identity.**

Response and Objections: Plaintiffs object to this request as vague and ambiguous to the extent that it uses the terms “mental illness(es),” “complicate,” “distort,” and “judgments and perceptions of gender identity” without definition or clarification. Plaintiffs object to this request as overbroad and unduly burdensome to the extent it seeks information that cannot be known or readily obtainable. Subject to, and without waiving

their general and specific objections, Plaintiffs deny this request on these bases.

16. No patient should receive gender transition or related procedures without first providing informed consent to his or her treating professionals.

Response and Objections: Plaintiffs object to this request as vague and ambiguous to the extent that it uses the term “related procedures” without definition or clarification. Plaintiffs further object to this request to the extent it seeks expert opinions or calls for a legal conclusion. Subject to, and without waiving their general and specific objections, Plaintiffs admit that gender-confirming health care, as with all health care, should be provided in accordance with prevalent standards of care, including but not limited to the World Professional Association for Transgender Health Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, and the Endocrine Society’s Clinical Practice Guidelines for the Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, as well as in accordance with legal and medical ethical requirements regarding informed consent.

17. A patient’s informed consent requires the consent of the patient after an appropriate discussion of (a) the scientifically verified and documented risks and benefits of the proposed medical treatment, (b) the scientifically verified and documented risks and benefits of alternative treatments and procedures, and (c) the scientifically verified and documented risks and benefits of no treatment.

Response and Objections: Plaintiffs object to this request to the extent it seeks expert

opinions or calls for a legal conclusion. Plaintiffs further object to this request as vague and ambiguous to the extent that it uses the terms “scientifically verified and documented” and “alternative treatments and procedures” without definition or clarification. Subject to, and without waiving their general and specific objections, Plaintiffs admit that gender-confirming health care, as with all health care, should be provided in accordance with standards of care, including but not limited to the World Professional Association for Transgender Health Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, and the Endocrine Society’s Clinical Practice Guidelines for the Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, as well as with legal and medical ethical requirements regarding informed consent.

**SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR
PRODUCTION OF DOCUMENTS**

- 1. Please produce all documents supporting or relating to the facts and allegations set forth in the Complaint and the Amended Complaint, including without limitation all documents that support, contradict, or otherwise relate to Plaintiffs’ alleged claims and damages, and defenses thereto.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants or that are equally available to the Department of Public Safety Defendants from sources other than Plaintiffs, including publicly available sources. Plaintiffs further object to this Document Request as overbroad,

ambiguous, vague, and unduly burdensome to the extent it seeks “*all* documents supporting or *relating to* the facts and allegations set forth in the Complaint and the Amended Complaint.” Plaintiffs further object to this Document Request to the extent that it calls for documents protected by the attorney-client privilege and attorney work product.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents in their possession, custody, or control relating to the denial of coverage for gender-confirming care for the Plaintiffs.

2. Please produce all documents identified in your Rule 26(a) Initial Disclosures.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants or that are equally available to the Department of Public Safety Defendants from sources other than Plaintiffs, including publicly available sources.

Subject to and without waiving their objections, Plaintiffs have produced or will produce the following categories of documents in their possession, custody, or control: (1) records received in response to Lambda Legal’s public records request submitted to the NCSHP on May 20, 2019; (2) records received in response to Equality North Carolina’s public records request submitted to the NCSHP on December 18, 2017; (3) documents confirming each of the transgender Plaintiffs’ gender dysphoria diagnoses and treatment thereof; and (4) out-of-pocket costs incurred obtaining gender-confirming health care.

- 3. Please produce all documents or tangible things identified in Plaintiffs' responses to the foregoing Interrogatories, or which were used or created in answering the same.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants or that are equally available to them from sources other than Plaintiffs, including publicly available sources. Plaintiffs further object to this Document Request to the extent that it calls for documents protected by the attorney-client privilege and attorney work product.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents in their possession, custody, or control.

- 4. Please produce all documents evidencing or relating to Plaintiffs' alleged damages, including without limitation, any analysis of, or communications regarding such alleged damages.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs object to this Document Request as overbroad, ambiguous, vague, and unduly burdensome to the extent it seeks “*all* documents evidencing or *relating to* Plaintiffs' alleged damages, including without limitation, any analysis of, or communications regarding such alleged damages.” Plaintiffs further object

to this Document Request to the extent that it calls for documents protected by the attorney-client privilege and attorney work product.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents evidencing their damages in their possession, custody, or control.

5. Please produce all documents Plaintiffs have received from any source in response to a request for public records made in support of or in connection with the allegations in the Complaint or the Amended Complaint.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request to the extent that it is duplicative of Document Request No. 2. Plaintiffs further object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants or that are equally available to the Department of Public Safety Defendants from sources other than Plaintiffs, including publicly available sources.

Subject to and without waiving their objections, Plaintiffs have produced or will produce the following responsive, non-privileged documents in their possession, custody, or control: (1) records received in response to Lambda Legal's public records request submitted to the NCSHP on May 20, 2019; and (2) records received in response to Equality North Carolina's public records request submitted to the NCSHP on December 18, 2017.

6. **Please produce all documents Plaintiffs have received from any source in response to any written discovery requests or subpoenas Plaintiffs have propounded in the Lawsuit, as well as any informal requests for documents Plaintiffs have made in connection with the Lawsuit.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as unduly burdensome to the extent it seeks documents Plaintiffs have received in response to discovery requests issued to other parties in this matter, which are equally available to the Department of Public Safety Defendants from those other parties. Plaintiffs further object to this Document Request as vague in that the phrase “informal requests for documents” is not defined.

Subject to, and without waiving their objections, Plaintiffs respond that they have not propounded any subpoenas or discovery requests to any non-parties in this matter to date. Plaintiffs stand on their objections with regard to documents received in response to document requests issued to the Defendants, which the other Defendants have also provided to counsel for the Department of Public Safety Defendants.

7. **Please produce all documents which Plaintiffs have produced to the Department of Public Safety in the Lawsuit.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this request as completely duplicative with each of the Department of Public Safety's other document requests.

8. **Please produce any and all medical records of any nature and description whatsoever for each Plaintiff from January 1, 2014 to the present, including, but not limited to, physician records, pharmacy records, hospital records, office notes, lab reports, or statements of opinions from any health care or treatment provider.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs object to the “January 1, 2014 to the present” timeframe as overbroad, unduly burdensome, not proportional to the needs of the case, and seeking irrelevant information. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, not proportional to the needs of the case, and seeking irrelevant information, to the extent it seeks “*any and all*” medical records, regardless of whether they relate to medical care, treatment, or evaluation related to Plaintiffs’ diagnoses of and treatment for gender dysphoria.

Subject to and without waiving their objections, Plaintiffs have produced and will produce records relating to each of transgender Plaintiffs’ gender dysphoria diagnoses and treatment since January 1, 2016.

9. **Please produce any and all claims each Plaintiff has submitted to any health insurance carrier for care related to gender identity and/or gender transition procedures and all Explanations of Benefits or other documents generated in response to those claims.**

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation. Plaintiffs also object to this Document Request as it contains compound, conjunctive, or disjunctive questions in that it seeks both “any and all claims” *and* “all Explanations of Benefits or other documents.”

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents relating to Plaintiffs’ insurance claims, in connection with efforts to seek treatment and insurance coverage for gender-confirming care, in their possession, custody, or control, since January 1, 2016.

10. Please produce the Notice of Determination referenced in paragraph 77 of the Complaint.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents in their possession, custody, or control.

11. Please produce any and all documents and communications reflecting, referencing, or relating to any coverage decision for care related to gender identity and/or gender transition procedures any Plaintiff has received from any source.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as overbroad to the extent that it seeks documents and communications Plaintiffs have received from “*any* source” without limitation. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents requesting and/or appealing denials of coverage for gender-confirming care through NCSHP, to the extent such documents are in their possession, custody, or control, since January 1, 2016.

12. Please produce all communications between any of the Plaintiffs, on the one hand, and the Defendants or any employees, agents, or other persons acting on their behalf, on the other hand, relating to coverage for care related to gender identity and/or gender transition procedures and/or the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications, if any, with the Department of Public Safety Defendants relating to coverage for care related to gender identity and/or gender transition procedures and/or the Exclusion, in their possession, custody, or control, since January 1, 2016.

13. Please produce all communications between Plaintiffs relating to coverage for care related to gender identity and/or gender transition procedures and/or the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs object to this Document Request as overbroad, ambiguous, vague, and unduly burdensome to the extent it seeks “*all* communications . . . relating to coverage for care related to gender identity and/or gender transition procedures and/or the Exclusion.” Plaintiffs further object to this Document Request to the extent that it calls for documents that also contain information protected by the attorney-client privilege and attorney work product. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications regarding denials of gender-confirming care through NCSHP in their possession, custody, or control since January 1, 2016.

14. Please produce all communications between any of the Plaintiffs, on the one hand, and CVS Caremark, or any employees, agents, or other persons acting

on its behalf, on the other hand, relating to coverage for care related to gender identity and/or gender transition procedures and/or the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs object to this Document Request as overbroad, ambiguous, vague, and unduly burdensome to the extent it seeks “*all* communications . . . relating to coverage for care related to gender identity and/or gender transition procedures and/or the Exclusion.” Plaintiffs further object to the extent that the Document Request seeks the production of information or documents equally available to the Department of Public Safety Defendants from sources other than Plaintiffs. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications, if any, with representatives or employees of CVS Caremark relating to coverage for gender identity and/or gender transition procedures through NCSHP and/or the Exclusion, in their possession, custody, or control, since January 1, 2016.

15. Please produce all communications between any of the Plaintiffs, on the one hand, and BCBSNC, or any employees, agents, or other persons acting on its behalf, on the other hand, relating to coverage for care related to gender identity and/or gender transition procedures or the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs object to this Document Request as overbroad, ambiguous, vague, and unduly burdensome to the extent it seeks “*all* communications . . . relating to coverage for care related to gender identity and/or gender transition procedures or the Exclusion.” Plaintiffs further object to the extent that the Document Request seeks the production of information or documents equally available to the Department of Public Safety Defendants from sources other than Plaintiffs. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications, if any, with representatives or employees of Blue Cross Blue Shield of North Carolina relating to obtaining coverage for gender-confirming care for transgender Plaintiffs’ gender dysphoria through NCSHP, in their possession, custody, or control, since January 1, 2016.

16. Please produce all communications between any of the Plaintiffs, on the one hand, and the Department of Public Safety, or any employees, agents, or other persons acting on their behalf, on the other hand, relating to coverage for care related to gender identity and/or gender transition procedures or the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as unduly

burdensome to the extent it seeks communications with the Department of Public Safety Defendants, which the Department of Public Safety Defendants readily have access to. Plaintiffs also object to this Document Request as overbroad, vague, and ambiguous as it would cover communications with “any employees, agents, or other persons acting on [‘Department of Public Safety Defendants’] behalf” regardless of whether Plaintiffs *knew* whether a person was employed by the Department of Public Safety Defendants.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications, if any, in their possession, custody, or control, with persons known by Plaintiffs to be employed by the Department of Public Safety Defendants regarding coverage for care related to gender identity and/or gender transition procedures through NCSHP or the Exclusion.

17. Please produce all nonprivileged communications between any of the Plaintiffs and any other person relating to the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as overbroad to the extent that it seeks communications between Plaintiffs and “any other person” without limitation. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications related to denials of medically necessary care caused by

the Exclusion to the extent such documents are in their possession, custody, or control, from January 1, 2016.

18. Please produce all nonprivileged communications between any of the Plaintiffs, on the one hand, and any other third party, on the other hand, related to any attempt by any of the Plaintiffs to obtain coverage for care related to gender identity and/or gender transition procedures.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as overbroad to the extent that it seeks communications between Plaintiffs and “any other third party” without limitation. Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications seeking to obtain coverage for care related to gender identity and/or gender transition procedures in their possession, custody, or control, from January 1, 2016.

19. Please produce all non-privileged communications, including but not limited to emails and text messages, between Plaintiffs and any person or entity relating to the facts and circumstances set forth in the Amended Complaint.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request to the extent that it is duplicative of Document Request No. 1. Plaintiffs further object to this Document

Request as overbroad to the extent that it seeks communications between Plaintiffs and “any person or entity” without limitation. Plaintiffs further object to this Document Request as overbroad, ambiguous, vague, and unduly burdensome to the extent it seeks “*all* non-privileged communications . . . *relating to* the facts and circumstances set forth in the Amended Complaint.” Plaintiffs further object to this Document Request as overbroad, unduly burdensome, and not proportional to the needs of the case as it contains no time limitation.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged communications regarding the facts set forth in the Amended Complaint in their possession, custody, or control relating to the denial of coverage for gender-confirming health care for the transgender Plaintiffs, from January 1, 2016.

20. Please produce all documents and communications demonstrating the participation of Dale Folwell, if any, in determining the coverage provided by the Health Benefit Plans.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as vague in that the phrase “demonstrating the participation of” is not defined. Plaintiffs also object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants or that are equally available to the Department of Public Safety Defendants from sources other than Plaintiffs, including publicly available sources.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents, if any, in their possession, custody, or control.

21. Please produce all documents and communications demonstrating the participation of Dee Jones, if any, in determining the coverage provided by the Health Benefit Plans.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as vague in that the phrase “demonstrating the participation of” is not defined. Plaintiffs also object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants, or that are equally available to the Department of Public Safety Defendants from sources other than Plaintiffs, including publicly available sources.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents, if any, in their possession, custody, or control.

22. Please produce all documents and communications demonstrating the participation of Dale Folwell, if any, in determining whether to reinstate the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as vague in that the phrase “demonstrating the participation of” is not defined. Plaintiffs also object to the extent that the Document Request seeks the production of information or documents

already in the possession, custody, or control of the Department of Public Safety Defendants, or that are equally available to the Department of Public Safety Defendants from sources other than Plaintiffs, including publicly available sources.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents, if any, in their possession, custody, or control.

23. Please produce all documents and communications demonstrating the participation of Dee Jones, if any, in determining whether to reinstate the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as vague in that the phrase “demonstrating the participation of” is not defined. Plaintiffs also object to the extent that the Document Request seeks the production of information or documents already in the possession, custody, or control of the Department of Public Safety Defendants, or that are equally available to the Department of Public Safety Defendants from sources other than Plaintiffs, including publicly available sources.

Subject to and without waiving their objections, Plaintiffs will produce responsive, non-privileged documents, if any, in their possession, custody, or control.

24. Please produce all affidavits, declarations, statements, or interview notes obtained by the Plaintiffs or their agents in connection with the Lawsuit.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request to the extent

that it calls for documents protected by the attorney-client privilege and attorney work product. Plaintiffs further object to this request to the extent it calls for the disclosure of information and documents outside the scope of the disclosures required by Rule 26.

Subject to and without waiving their objections, Plaintiffs will disclose responsive, non-privileged documents in their possession, custody, or control in accordance with the timing and scope of disclosures required by Rule 26.

25. Please produce all journals, diaries, statements, notes, or other documents created by any of the Plaintiffs that relate to the Exclusion.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request to the extent that it calls for documents protected by the attorney-client privilege and attorney work product. Plaintiffs further object to this Document Request to the extent it requests the production of entire documents of an extremely personal nature on the basis that some part of them relates to the Exclusion and is thus unduly burdensome, disproportionate to the needs of the case, and calculated to harass, embarrass, or annoy Plaintiffs.

Subject to and without waiving their objections, Plaintiffs will produce those portions of documents, if any, that are responsive, non-privileged, and in their possession, custody, or control.

26. Please produce all journals, diaries, statements, notes, or other documents created by any of the Plaintiffs that relate to any of the Plaintiffs' mental or

emotional suffering in connection with the acts and omissions of the Defendants that allegedly give rise to Plaintiffs' claims.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this Document Request as duplicative of Document Request No. 25. Plaintiffs further object to this Document Request to the extent that it calls for documents protected by the attorney-client privilege and attorney work product. Plaintiffs further object to this Document Request to the extent it requests the production of entire documents of an extremely personal nature on the basis that some part of them relates to the Exclusion and is thus unduly burdensome, disproportionate to the needs of the case, and calculated to harass, embarrass, or annoy Plaintiffs. Plaintiffs further object to this Document Request on the ground that it requests information that is not relevant to any claim or defense, because Plaintiffs are seeking emotional distress damages which are not specific to any Plaintiff's facts, and which stem from the recognition that, as a general matter, experiencing discrimination tends to cause pain. Plaintiffs accordingly do not believe that any other response is required. Subject to and without waiving their objections, Plaintiffs will produce those portions of documents, if any, that are responsive, non-privileged, and in their possession, custody, or control.

27. Please produce all documents provided to, prepared by, or prepared for any expert witness who is expected to testify at trial, as well as a current curriculum vitae for such expert.

Response and Objections: Plaintiffs incorporate by reference each of the General Objections listed above. Plaintiffs further object to this request as unduly burdensome and outside the scope of discovery as seeking all documents “prepared by” any expert without limitation as relevant or related to this case and without limitation as to time. Plaintiffs further object to this request to the extent it seeks production of documents outside the scope of expert discovery permitted by Federal Rule of Civil Procedure 26, including documents protected against discovery by Fed. R. Civ. P. 26(a)(3) and 26(b)(4).

Subject to and without waiving their objections, Plaintiffs have produced and will produce responsive, non-privileged documents, if any, in their possession, custody, or control.

Dated: August 2, 2021

Respectfully submitted,

/s/ Dana Caraway
Dana Caraway

Plaintiff

/s/ Amy E. Richardson

Amy E. Richardson
N.C. State Bar No. 28768
Lauren E. Snyder
N.C. State Bar No. 54150
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-504-9833
Facsimile: 202-730-1301
arichardson@hwglaw.com

Deepika H. Ravi*
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street N.W., 8th Floor,
Washington, D.C. 20036
Telephone: 202-730-1300
Facsimile: 202-730-1301
dravi@hwglaw.com

Michael W. Weaver*
MCDERMOTT WILL & EMERY
444 W. Lake St., Suite 4000
Chicago, IL 60606
Telephone: 312-984-5820
Facsimile: 312-984-7700
mweaver@mwe.com

Tara Borelli*
Carl S. Charles*
LAMBDA LEGAL DEFENSE
AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30318-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
tborelli@lambdalegal.org

Omar Gonzalez-Pagan* LAMBDA
LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th
Floor New York, NY
10005 Telephone: 212-
809-8585
Facsimile: 212-809-0055
ogonzalez-pagan@lambdalegal.org

David Brown*
Alejandra Caraballo*
Noah E. Lewis*
TRANSGENDER LEGAL
DEFENSE AND EDUCATION
FUND, INC.
520 8th Ave, Ste. 2204
New York, NY 10018
Telephone: 646-993-1680
Facsimile: 646-993-1686
dbrown@transgenderlegal.org

Counsel for Plaintiffs

* Appearing by special appearance pursuant to L.R. 83.1(d).

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2021, I caused a copy of the foregoing document to be served upon the following parties via electronic mail:

Alan McInnes
Assistant Attorney General
NORTH CAROLINA DEPARTMENT OF JUSTICE
amcinn@ncdoj.gov

John G. Knepper
LAW OFFICE OF JOHN G. KNEPPER, LLC
John@KnepperLLC.com

James Benjamin Garner
General Counsel
NORTH CAROLINA DEPARTMENT OF THE STATE TREASURER
Ben.Garner@nctreasurer.com

Kevin G. Williams
BELL, DAVIS & PITT, P.A.
kwilliams@belldavisritt.com

Mark A. Jones
BELL, DAVIS & PITT, P.A.
mjones@belldavisritt.com

Zach Padget
Assistant Attorney General
zpadget@ncdoj.gov

/s/ Amy E. Richardson
Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-504-9833

Facsimile: 202-730-1301
arichardson@hwglaw.com

EXHIBIT 2

**Deposition of State Health Plan
Executive Administrator
Dee Jones**

EXHIBIT 2



Deposition of:
Dee Jones

August 3, 2021

In the Matter of:

Kadel, et al vs. Folwell

Veritext Legal Solutions

800-734-5292 | calendar-dmv@veritext.com |

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IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, et al.,)	
)	
Plaintiffs,)	
)	No. 1:19-cv-272-LCB-LPA
V.)	
)	
DALE FOLWELL, et al.,)	
)	
Defendants.)	
_____)	

DEPOSITION
OF
DEE JONES

IN HER INDIVIDUAL CAPACITY
and
30(b)(6) DESIGNEE FOR NC STATE HEALTH PLAN

AUGUST 3, 2021

THIS TRANSCRIPT IS NOT COMPLETE
PORTIONS OF THIS TRANSCRIPT AND/OR EXHIBITS
MAY BE DESIGNATED CONFIDENTIAL/ATTORNEYS EYES ONLY
AFTER REVIEW OF TRANSCRIPT BY ATTORNEYS WITHIN 30
DAYS OF DATE OF DEPOSITION PER PROTECTIVE ORDER

PNC PLAZA DOWNTOWN
301 Fayetteville Street, Suite 1700
Raleigh, North Carolina

Reported by: Michelle Maar, RDR, RMR, FCRR

Page 2

1 APPEARANCES:
2 On behalf of the Plaintiffs:
3 HARRIS, WILTSHIRE & GRANNIS
4 By: Deepika H. Ravi
5 1919 M Street NW, 8th Floor
6 Washington, DC 20036
7 Dravi@hwglaw.com
8 HARRIS, WILTSHIRE & GRANNIS
9 By: Amy E. Richardson
10 1033 Wade Avenue, Suite 100
11 Raleigh, NC 27605
12 Arichardson@hwglaw.com
13 Lambda Legal Defense and Education Fund
14 By: Tara Borelli
15 730 Peachtree Street NE, Suite 640
16 Atlanta, GA 30318
17 Tborelli@lambdalegal.org
18
19 On behalf of Defendants Dale Folwell, Dee Jones, and the NC
20 State Health Plan for Teachers and State Employees:
21 BELL, DAVIS & PITT
22 By: Alan M. Ruley
23 Mark A. Jones
24 100 N. Cherry Street, Suite 600
25 Winton-Salem, NC 27101
Aruley@belldavispitt.com
Mjones@belldavispitt.com
LAW OFFICE OF JOHN G. KNEPPER
By: John G. Knepper
1720 Carey Avenue, Suite 590
Cheyenne, WY 82001
John@knepperLLC.com
NORTH CAROLINA STATE HEALTH PLAN/NORTH CAROLINA
DEPARTMENT OF THE STATE TREASURER
By: James Benjamin Garner
Kendall M. Bourdon
Joel Heimbach
3200 Atlantic Avenue
Raleigh, NC 27604
Ben.garner@nctreasurer.com
Kendall.bourdon@nctreasurer.com
Joel.heimbach@nctreasurer.com

Page 3

1 APPEARANCES CONTINUED:
2 On behalf of Defendant State of North Carolina Department
3 of Public Safety:
4 NORTH CAROLINA DEPARTMENT OF JUSTICE
5 By: Alan McInnes (via teleconference)
6 114 W. Edenton Street
7 Raleigh, NC 27603
8 AmcInnes@ncdoj.gov
9
10 On behalf of Defendants UNC at Chapel Hill, NC State
11 University, and UNC at Greensboro:
12 NORTH CAROLINA DEPARTMENT OF JUSTICE
13 By: Zachary A. Padget(via teleconference)
14 114 W. Edenton Street
15 Raleigh, NC 27603
16 Zpadget@ncdoj.gov
17
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21
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1 P R O C E E D I N G S
2 D E E J O N E S ,
3 called as a witness and having been first duly sworn,
4 was examined and testified as follows:
5 * * *
6 MS. RAVI: All right. Before we begin, will
7 counsel for the State Health Plan Defendants stipulate that
8 Ms. Jones' answers during today's deposition will be
9 binding on the State Health Plan?
10 MR. JONES: So stipulated.
11 MS. RAVI: And will counsel for the State Health
12 Plan Defendants stipulate to the authenticity of all
13 documents produced by Ms. Jones, the State Health Plan, and
14 Mr. Folwell?
15 MR. JONES: So stipulated as to authenticity.
16 MS. RAVI: Thank you.
17
18 EXAMINATION
19 BY MS. RAVI:
20 Q. Good morning, Ms. Jones. My name is Deepika
21 Ravi. I represent the plaintiffs in this matter.
22 Have you ever had your deposition taken before?
23 A. Yes.
24 Q. And are you able to hear me okay --
25 A. Yes.

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1 Q. -- with this mask?

2 A. Yes.

3 Q. I would like to go over a few ground rules -- you

4 may have heard these before -- so we're on the same page.

5 As you know, the court reporter is taking down

6 your answers today. So I'll ask that you give verbal

7 answers to my questions because she can't record a nod of

8 the head, for example. Is that fair?

9 A. Yes.

10 Q. I'll ask that you try to wait until my questions

11 are finished before you start your answer -- again, because

12 the court reporter will have trouble transcribing if we

13 talk over each other. Is that fair?

14 A. Yes.

15 Q. I may ask you a question today that you don't

16 understand. If that's the case, please tell me. And I'll

17 try to rephrase. Will you do that?

18 A. Yes.

19 Q. And if you don't ask me to rephrase, I'll assume

20 that you understood the question. Is that fair?

21 A. Yes.

22 MR. RULEY: Objection, form.

23 BY MS. RAVI:

24 Q. We're going to take a few breaks today. If you

25 need a break sooner, please let me know. I'll finish my

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1 line of questioning, and we'll take a break when you need

2 one. Okay?

3 A. Yes.

4 Q. If it happens to be the case that later today you

5 remember some additional information or different

6 information in response to a question I asked earlier,

7 please just let me know. And we can give you the

8 opportunity to add to or clarify your answer.

9 Will you do that?

10 A. Yes.

11 Q. All right. Do you understand that you've taken

12 on oath to tell the truth today?

13 A. Yes.

14 Q. And do you understand that that's the same oath

15 that you would take if you were testifying in court?

16 A. Yes.

17 Q. All right. Is there anything inhibiting your

18 ability today to give full, honest, and complete answers?

19 A. No.

20 Q. All right. What did you do to prepare for your

21 deposition today?

22 A. I reviewed documentation that had been produced

23 and worked with counsel on prepping for questions.

24 Q. All right. What documents did you review?

25 A. The e-mails and general Plan information.

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1 Q. Okay. Anything else?

2 A. That's pretty broad.

3 Q. What did you do to prepare for your deposition

4 today in your role as the Plan's 30(b)(6) designee?

5 A. Same.

6 Q. Same? Nothing further in preparation?

7 A. Nothing further.

8 Q. Did you review the topics listed in the

9 Plaintiffs' Deposition Notice to the Plan's 30(b)(6)

10 Designee?

11 A. Yes.

12 Q. You did? And did you speak with anyone to

13 develop your knowledge on these topics?

14 A. No.

15 Q. You did not?

16 A. Just counsel and the review process.

17 Q. All right.

18 A. And I would say one more is CVS, there was a

19 question that I had for CVS.

20 Q. CVS?

21 A. Uh-huh.

22 Q. Where did you go to school?

23 A. I graduated from North Carolina State University.

24 Q. And what did you study there?

25 A. Accounting and Business Management.

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1 Q. Okay. What year did you graduate?

2 A. 1986 and 1987.

3 Q. Did you attend any grad school?

4 A. Yes.

5 Q. Where did you go for that?

6 A. University of Phoenix Online.

7 Q. Okay. And what did you study there?

8 A. MBA with an Accounting Concentration.

9 Q. What year did you graduate?

10 A. 2007.

11 Q. Okay. Do you have any other degrees?

12 A. No.

13 Q. Do you have any other certifications?

14 A. No.

15 Q. Okay. Where did you work after you received your

16 MBA from the University of Phoenix?

17 A. I was working at Time Warner Cable at the time.

18 Q. What was your role there?

19 A. I had numerous roles there, mostly financial,

20 back-office operations, and real estate and facilities.

21 And I was a controller at one point.

22 Q. Okay. Anything else?

23 A. No.

24 Q. Okay. And what was your title there at Time

25 Warner?

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1 A. Controller, Senior Director of Support
2 Operations, Senior Director of Real Estate and Facilities.
3 Q. And how long did you work at Time Warner?
4 A. Eleven and a half years.
5 Q. Okay. Where did you work after that?
6 A. Department of Administration.
7 Q. Okay. Was that the North Carolina Department of
8 Administration?
9 A. Yes.
10 Q. What was your title there?
11 A. Chief Operating Officer.
12 Q. Okay. And what were your responsibilities?
13 A. To oversee all the advocacy groups, there were
14 four or five, maybe six advocacy groups, and to oversee the
15 operations, to include real estate, facilities,
16 maintenance, the Eugenics Program, which was a different
17 issue, and other operational activities.
18 Q. What were those other operational activities?
19 A. Let me check my memory here. Procurement -- I'll
20 have to think on that.
21 Q. All right. How long did you work at the North
22 Carolina Department of Administration?
23 A. Eighteen, nineteen months.
24 Q. All right. And where did you work after that?
25 A. North Carolina Department of Health and Human

Page 11

1 Services.
2 Q. Okay. And what was your title there?
3 A. I started off as a Special Assistant to the
4 Secretary, Special Projects.
5 Q. Okay. Any other titles in that job?
6 A. Director of Medicaid Operations, and then COO for
7 the Division of Health Benefits.
8 Q. All right. Any other titles in that job?
9 A. No.
10 Q. Let's start with your role as Special Assistant.
11 What were your responsibilities in that role?
12 A. I was in that role for a short period of time
13 before I went to Medicaid, basically some operational
14 projects, so evaluation of the Controller's Office, to
15 evaluate the organizational structure and the business
16 processes.
17 I also evaluated the use and participation of
18 DocuSign, to see if the organization could implement that.
19 And then there was a postage and mail project that was
20 relatively small.
21 Q. What about in your role as Director of Medicaid
22 Operations, what were your responsibilities there?
23 A. Under my umbrella was Provider Relations,
24 Membership, so the appeals for providers and appeals for
25 membership. That was probably it.

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1 Q. Okay. And what about in your role as COO?
2 A. It started off the operation for Division of
3 Health Benefits. And my primary responsibility was the
4 1115 Waiver production, which was a statutory requirement.
5 Q. All right.
6 A. So building the organization, finding places to
7 sit, things like that.
8 Q. And any other responsibilities as COO?
9 A. No.
10 Q. How long in total did you work at the Department
11 of Health and Human Services for North Carolina?
12 A. Two years.
13 Q. Where did you work after that?
14 A. Department of State Treasurer -- oh, well, sorry,
15 Cansler Collaborative Resources.
16 Q. What was your title there?
17 A. Consultant.
18 Q. And your responsibilities in that role?
19 A. I had a couple of clients, basically assist in
20 whatever projects they wanted me to look into. So I looked
21 into some contracts, evaluated business processes, and made
22 recommendations.
23 Q. Okay. Anything else?
24 A. No.
25 Q. All right. And how long did you work there?

Page 13

1 A. Seven months.
2 Q. Where did you work after that?
3 A. Department of State Treasurer.
4 Q. Is that where you currently work?
5 A. Yes.
6 Q. What is your current title?
7 A. Executive Administrator or Executive Director,
8 used interchangeably.
9 Q. All right. If I refer to the North Carolina
10 State Health Plan for Teachers and State Employees as the
11 Plan today, will you know what I'm talking about?
12 A. Yes.
13 Q. Apart from the title of Executive Administrator,
14 used interchangeably with Executive Director, have you held
15 any other roles in this current job?
16 A. No.
17 Q. And how long have you held the role of Executive
18 Administrator?
19 A. Four years and one month.
20 Q. Okay. What are your responsibilities in that
21 role?
22 A. At a high level, it's to operationalize the
23 policies as directed by the Treasurer and the Board of
24 Directors or Board of Trustees.
25 Q. Okay. That's at a high level?

Page 14

1 A. Uh-huh.
 2 Q. Any other responsibilities at a high level?
 3 A. No.
 4 Q. Okay. What does it mean for you to
 5 operationalize those policies at a more granular level?
 6 A. So under my responsibility, I have the Plan
 7 Integration, which is all the technology integration
 8 between our vendors.
 9 And then we have a Finance and Data Analytics
 10 Group. We have a Contracting and Compliance Group,
 11 Communications. We have Legal.
 12 And let's see, who am I missing here? I think
 13 that's it.
 14 Q. Are you familiar with the operation of the Plan?
 15 A. Yes.
 16 Q. Are you familiar with the design of the Plan?
 17 A. Yes.
 18 Q. Are you responsible for management of the Plan?
 19 A. Please define management of the Plan. It's a
 20 broad term.
 21 Q. Is it fair to say, would you describe yourself as
 22 responsible for management of the Plan?
 23 A. Yes.
 24 Q. All right. Is the Plan self-funding?
 25 A. Yes.

Page 15

1 Q. And in 2016, did the Plan's benefits coverage
 2 provide for blanket exclusions for treatment of gender
 3 dysphoria?
 4 A. Yes.
 5 Q. I would like to show you what I'm marking as
 6 Plaintiffs' Exhibit 1.
 7 (Exhibit 1 is marked for identification.)
 8 MS. RAVI: I'll give you a moment to review the
 9 document. I know it's lengthy.
 10 MR. RULEY: You've seen it before.
 11 THE WITNESS: I've seen it once or twice.
 12 BY MS. RAVI:
 13 Q. Do you recognize this document?
 14 A. I do.
 15 Q. What is this?
 16 A. It is the 80/20 PPO Plan Benefits Booklet for the
 17 period January 1 through December 31 of 2016.
 18 Q. Would you turn to the page marked as PLAN
 19 DEF2711.
 20 In the 2016 Plan Year, did the Plan exclude from
 21 coverage treatment or studies leading to or in connection
 22 with sex changes or modifications and related care?
 23 A. Yes.
 24 Q. If you could turn to the page marked PLAN
 25 DEF2699.

Page 16

1 In the 2016 Plan Year, did the Plan exclude from
 2 coverage psychological assessment and psychotherapy
 3 treatment in conjunction with proposed gender
 4 transformation?
 5 A. Yes.
 6 Q. If I refer to these two exclusions from coverage
 7 today as the exclusions, will you know what I'm talking
 8 about?
 9 A. Yes.
 10 Q. All right. When was this exclusion language
 11 added to the Plan documents?
 12 A. As I understand it, back into the '90s in some
 13 capacity.
 14 Q. And with the exception of Plan Year 2017, has the
 15 exclusion been in place continuously since it was
 16 introduced?
 17 A. As I understand it, yes.
 18 Q. And is that correct for the 80/20 PPO Plan?
 19 A. Yes.
 20 Q. Is that also correct for the 70/30 PPO Plan?
 21 A. Yes.
 22 Q. And for the High-Deductible Health Plan?
 23 A. Yes.
 24 Q. Who is eligible to enroll in the State Health
 25 Plan?

Page 17

1 A. State employees, teachers, public school
 2 teachers, employees of the University Systems of North
 3 Carolina, employees of the Community College System,
 4 lawmakers, and former lawmakers, some charter schools, some
 5 municipalities, and, of course, state agencies.
 6 Q. Okay. And by that, you mean employees of charter
 7 schools, municipalities, and state agencies?
 8 A. Yes.
 9 Q. Anyone else?
 10 A. No.
 11 Q. And what is the plan year?
 12 A. January 1 through December 31st.
 13 Q. All right. Can you generally describe the
 14 process by which the Plan determines benefits for a
 15 subsequent plan year?
 16 A. We start with the existing benefits. And unless
 17 there are any material, or changes that the Plan has
 18 decided to add, it will be the same booklet or same
 19 benefits going forward.
 20 Q. How does the Plan decide whether to make changes
 21 going forward?
 22 A. Starting with the overarching goal of providing
 23 healthcare for its members, and recognizing that we are a
 24 government plan, and recognizing that we have limited
 25 funding all provided by taxpayers, we start with that.

Page 18

1 And then if there are requests for changes, then
 2 we evaluate them in a different, in a manner that is in
 3 keeping with those overarching goals.
 4 Q. Where do those requests for changes come from?
 5 A. Members of the public. It can come from a board
 6 member. And it can come from Blue Cross, our TPA. And it
 7 can come from a staffer.
 8 Q. Anyone else?
 9 A. That's generally where it comes from.
 10 Q. How are those requests evaluated?
 11 A. Again, it starts with the overarching goal of
 12 providing public health for the most number, the biggest
 13 number of people.
 14 We serve 740,000 plus members. And we don't take
 15 that responsibility lightly.
 16 I'm a fiduciary. So when I walk through the
 17 door, I don't get to pick and choose who I cover. I cover
 18 everybody. And we evaluate those benefits in that light.
 19 Q. What criteria are used to evaluate proposed
 20 benefit changes?
 21 A. We'll look at the cost of the benefit, what is
 22 the size of the population that the benefit might cover,
 23 and what is the efficacy of the benefit, how much, how much
 24 success is there with the treatment or how much health does
 25 it improve.

Page 19

1 And, again, we don't have a big clinical staff.
 2 We use a lot of research from Blue Cross or CVS or our
 3 actuary or our board. And we'll get information from a
 4 variety of sources. And then we'll propose a
 5 recommendation.
 6 Q. Okay. Any other criteria used to evaluate
 7 proposed changes?
 8 A. Those are the primary criteria. But if something
 9 else were to come up and be relevant, then we would use
 10 that criteria as well.
 11 Q. Can you think of an example of a time when
 12 something else has come up and been relevant?
 13 A. Yes. I think probably the easiest to explain
 14 would be digital mammography. That was instituted I
 15 believe in early '17. And digital mammography was not
 16 covered without a member having to pay out of pocket for it
 17 prior to that.
 18 And the efficacy with digital mammography is it
 19 serves -- women make up more than 50 percent of the Plan's
 20 population. So, therefore, a benefit that serves that many
 21 people and has a long-term trajectory of lowering costs
 22 because of catching breast cancer earlier -- which it does
 23 because it's targeted at women with dense breast issue and
 24 it can catch that, that millimeter size much earlier than
 25 the traditional mammography -- and so that's a benefit that

Page 20

1 is something that we have implemented.
 2 And, again, it serves the vast majority of the
 3 membership. And it's, now it's recognized as preventative
 4 care. And it is, again, proven to save costs on the back
 5 end.
 6 Q. How often does the Plan decide what benefits to
 7 cover for a subsequent plan year?
 8 A. We make the decision in February of a, of the
 9 previous year because it takes like 10 months to get it
 10 implemented for the next plan year.
 11 Q. So does that occur on an annual basis?
 12 A. We, we hear from the public every month as to
 13 potential, whatever they want to say. We have a public
 14 comment period at every board meeting. So whatever we
 15 hear, we accumulate. And some things we've heard many
 16 times. Some things are brand new, so we have to go and
 17 reevaluate.
 18 Q. So you said you typically make the decision in
 19 February for the subsequent plan year?
 20 A. Yes.
 21 Q. When does the process begin for the subsequent
 22 plan year?
 23 A. We present in November, typically to the board,
 24 and say, you know, these are the recommendations. But
 25 that's typical. It doesn't have to be that way.

Page 21

1 It depends on when we have the information we need
 2 and what our timeline for different board meetings may be.
 3 But we have to present it in advance of the
 4 decisionmaking meeting. So that's, hence, the November time
 5 frame. And then we typically would have a February board
 6 meeting for finalization.
 7 Q. So the February board meeting is the
 8 decisionmaking meeting?
 9 A. Yes, typically.
 10 Q. And what is your role in this process as the
 11 Plan's Executive Administrator?
 12 A. My job is to work with the Treasurer to set an
 13 agenda. And then depending on what we've decided to put on
 14 the agenda, we prepare the materials for that, for that
 15 agenda.
 16 Q. When you say we prepare the materials, who
 17 prepares those?
 18 A. My staff.
 19 Q. How often does the Plan's Board of Trustees meet?
 20 A. We're required to meet four times per year. But
 21 oftentimes we meet more than that.
 22 Q. Does the Plan's Executive Administrator attend
 23 all board meetings?
 24 A. I do. Me, personally, I do.
 25 Q. And in the past, has that also been the case?

Page 22

1 A. I believe that would be generally the case. But
 2 I can't say for certain if my predecessors through the
 3 years have attended all board meetings.
 4 Q. Are certain coverage exclusions mandated by North
 5 Carolina law?
 6 A. There are a couple.
 7 Q. Okay. In December of 2016, did the Plan's Board
 8 of Trustees vote to suspend the exclusion for the 2017 Plan
 9 Year?
 10 A. Yes.
 11 Q. And when did the Plan begin those discussions to
 12 lift that exclusion?
 13 A. It was August of that year.
 14 Q. What prompted those discussions to start?
 15 A. The 1557 Rule that was put out related to ACA in
 16 May of 2016.
 17 Q. Okay. Any other factors that prompted that
 18 discussion to start?
 19 A. That was the starting point. And then the
 20 downstream of that was if you, the feeling or understanding
 21 that if you don't implement it, then you have, you put your
 22 federal funding at risk, if there is any federal funding.
 23 Q. Are you familiar with the Segal company?
 24 A. Yes.
 25 Q. What is Segal?

Page 23

1 A. They're an actuary and consulting firm.
 2 Q. And was Segal retained by the Plan?
 3 A. Yes.
 4 Q. When was that?
 5 A. Segal has worked for the Plan for quite a number
 6 of years. I'm not -- certainly back in 2016 they were.
 7 And prior to that, I'm not sure how many years.
 8 Q. Okay. In 2016, did the Plan ask Segal for a
 9 financial estimate for the annual cost to the Plan of
 10 covering treatment and services for gender dysphoria
 11 beginning with Plan Year 2017?
 12 A. Yes.
 13 Q. And to whom did the Plan make that request at
 14 Segal?
 15 A. It would have been to the leading, the
 16 management, Segal management.
 17 Q. Do you know who was in Segal management at the
 18 time?
 19 A. I do not. Currently, it's Stu Wall. He might
 20 have been the person back then as well.
 21 Q. When did the Plan make that request of Segal?
 22 A. I would imagine in June or July of 2016.
 23 Q. I'm handing you what has been marked as
 24 Plaintiffs' Exhibit 2.
 25 (Exhibit 2 is marked for identification.)

Page 24

1 MS. RAVI: I'll give you a moment to review.
 2 (Brief pause in the proceeding)
 3 BY MS. RAVI:
 4 Q. Have you had a chance to review the document?
 5 A. Yes.
 6 Q. Are you familiar with this document?
 7 A. I am.
 8 Q. What is this?
 9 A. This is a memo from Segal to the Plan's previous
 10 executive administrator as the request for the transgender
 11 cost estimate.
 12 Q. What is the date on this memo?
 13 A. November 29, 2016.
 14 Q. Who received this memo?
 15 A. I'm sorry?
 16 Q. Who received this memo?
 17 A. My assumption would be Mona Moon because of who
 18 the memo is written to.
 19 Q. Did anyone else receive this memo at the Plan?
 20 A. I can't say.
 21 Q. Do you know?
 22 A. I don't know.
 23 Q. Did anyone outside the Plan receive this memo?
 24 A. Not according to the memo.
 25 Q. Do you know if anyone else did outside the Plan?

Page 25

1 A. No.
 2 Q. Was anyone else at the Plan asked to analyze
 3 Segal's cost estimate in this memo?
 4 A. The Plan had a financial analyst at the time.
 5 And he would have worked with Segal to try to understand
 6 their estimate.
 7 Q. Who was that person?
 8 A. Mark Collins.
 9 Q. Would anyone else have worked with Segal to try
 10 to understand this estimate?
 11 A. Certainly Mona Moon would have, and I assume
 12 Lotta Crabtree, as they worked on this project through that
 13 summertime.
 14 Q. Anyone else?
 15 A. I don't know.
 16 Q. To your knowledge, did anyone at the Plan analyze
 17 Segal's cost estimate?
 18 A. Rephrase the question.
 19 Q. Do you know if anyone else at the Plan in 2016
 20 analyzed the estimate provided by Segal?
 21 MR. RULEY: Objection, form.
 22 THE WITNESS: I believe I said earlier Mark
 23 Collins was part of the analysts, the analysis of this
 24 discussion.
 25 ////

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<p>1 BY MS. RAVI:</p> <p>2 Q. All right. Anyone else?</p> <p>3 A. I don't know.</p> <p>4 Q. I'm on the first page of the memo, which is</p> <p>5 marked PLAN DEF6964.</p> <p>6 And under the second paragraph, the memo states</p> <p>7 that past experience from various counties that have</p> <p>8 provided coverage long enough to have data to review have</p> <p>9 shown the prior estimates to be overstated.</p> <p>10 Is that right?</p> <p>11 A. I'm sorry -- where are you?</p> <p>12 Q. The bottom of the second paragraph.</p> <p>13 A. Oh. Okay.</p> <p>14 Q. Do you see that language there?</p> <p>15 A. I do.</p> <p>16 Q. Okay. What were those prior estimates?</p> <p>17 A. I do not know.</p> <p>18 Q. Did the Plan ask Segal about this statement?</p> <p>19 A. I do not know.</p> <p>20 Q. Did the Plan challenge Segal's statement?</p> <p>21 A. I don't know.</p> <p>22 Q. All right. I'm under Key Assumptions now. And I</p> <p>23 am in the second paragraph, Prevalence, under Key</p> <p>24 Assumptions.</p> <p>25 The memo states that approximately .58 percent of</p>	<p>1 Plan members whom Segal expects to use what it refers to as</p> <p>2 transgender benefits?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did the Plan challenge Segal's estimate of</p> <p>5 the number of Plan members who Segal expected to use</p> <p>6 transgender benefits?</p> <p>7 A. I don't believe so.</p> <p>8 Q. And I'm now under Financial Impact on the same</p> <p>9 page. The memo states we have estimated the annual cost to</p> <p>10 range from 350,000 to 850,000.</p> <p>11 Is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So looking now at the Total Using Benefits</p> <p>14 Cost in this chart, is it correct that the cost range</p> <p>15 provided is 344,000 dollars, I'm sorry, 344,013 dollars to</p> <p>16 862,292 dollars?</p> <p>17 A. Yes.</p> <p>18 Q. Does PMPM refer to per member per month?</p> <p>19 A. Yes.</p> <p>20 Q. So the total cost per member per month is between</p> <p>21 6 cents and 15 cents. Is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And the memo states based on approximately 3.2</p> <p>24 billion dollars of premiums, the cost for the North</p> <p>25 Carolina State Health Plan is estimated to be .011 percent</p>
Page 27	Page 29
<p>1 adults in the United States self-identify as transgender.</p> <p>2 Is that correct?</p> <p>3 A. That's what it says.</p> <p>4 Q. And in the next paragraph, it states a prevalence</p> <p>5 range of .35 percent to 1.03 percent for North Carolina.</p> <p>6 Is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Is that Segal's estimated prevalence of adults in</p> <p>9 North Carolina who identify as transgender?</p> <p>10 A. According to their statement there, yes.</p> <p>11 Q. And it states at the very bottom of this page, of</p> <p>12 those who identify as transgender, between .1 percent and</p> <p>13 .5 percent have taken some steps to transition from one</p> <p>14 gender to another.</p> <p>15 Is that right?</p> <p>16 A. Based on the study from 2007, yes.</p> <p>17 Q. Turning over to the next page, PLAN DEF6965, so</p> <p>18 it states we would expect 8 to 24 members to use</p> <p>19 transgender benefits.</p> <p>20 Is that right?</p> <p>21 MR. RULEY: Sorry, where are you?</p> <p>22 MS. RAVI: The top of the page.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MS. RAVI:</p> <p>25 Q. Okay. Is that Segal's estimate for the number of</p>	<p>1 to .027 percent of premium.</p> <p>2 Is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Did the Plan assess how coverage of gender</p> <p>5 dysphoria treatment would affect premium amounts?</p> <p>6 A. Rephrase.</p> <p>7 Q. Did the Plan ask Segal to clarify or provide</p> <p>8 additional detail on this estimate?</p> <p>9 A. I believe what we have is what we have.</p> <p>10 Q. I'm handing you what has been marked as</p> <p>11 Plaintiffs' Exhibit 3.</p> <p>12 (Exhibit 3 is marked for identification.)</p> <p>13 MS. RAVI: And I'll give you a moment to review.</p> <p>14 (Brief pause in the proceeding)</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MS. RAVI:</p> <p>17 Q. Have you had a chance to review it?</p> <p>18 A. Yes.</p> <p>19 Q. Are you familiar with this document?</p> <p>20 A. Yes.</p> <p>21 Q. What is this?</p> <p>22 A. It's a memo from someone at WUNC asking about the</p> <p>23 cost of gender dysphoria treatments. And it talks about</p> <p>24 Segal's report.</p> <p>25 And then my predecessor explained that not</p>

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1 covering would put at risk substantial funding, federal
 2 funding that the Plan receives, stated here between 15 and
 3 20 million dollars in federal retiree drug subsidy.
 4 Q. I'm on the page marked as PLAN DEF29555, do you
 5 have that in front of you?
 6 A. Yes.
 7 Q. In the last paragraph, Ms. Moon states that the
 8 estimated 350,000 to 850,000 cost associated with the
 9 benefit change is approximately .011 to .027 percent of the
 10 Plan's total premiums.
 11 Is that right?
 12 A. That is correct.
 13 Q. And based on this, she estimates the premiums
 14 would increase by less than .03 percent.
 15 Is that right?
 16 A. Yes.
 17 Q. Did the Plan challenge Ms. Moon's statement here?
 18 A. I do not believe so.
 19 Q. Okay. Did anyone at the Plan further discuss
 20 this statement with Ms. Moon?
 21 A. No.
 22 Q. All right. I'm handing you what has been marked
 23 as Plaintiffs' Exhibit 4.
 24 (Exhibit 4 is marked for identification.)
 25 MS. RAVI: I'll give you a moment to review.

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1 (Brief pause in the proceeding)
 2 BY MS. RAVI:
 3 Q. Have you had a chance to review it?
 4 A. I have.
 5 Q. Are you familiar with this document?
 6 A. Yes.
 7 Q. What is this?
 8 A. This is a memo to myself and a couple of my
 9 direct reports providing notification that there was a
 10 board meeting in December of 2016 where the exclusion was
 11 removed. And it was basically for one year.
 12 And so we needed to evaluate for the upcoming
 13 2017, the 2018 Plan Year. And it included some basic
 14 materials.
 15 Q. And what are those basic materials that are
 16 included?
 17 A. The Segal consulting memo that we just reviewed,
 18 the presentation from the board meeting in December of
 19 2016, the Blue Cross Corporate Medical Policy for Gender
 20 Confirmation Surgery and Hormone Therapy, the Minutes from
 21 the December 1, 2016 Board of Trustees meeting. That
 22 appears to be all.
 23 Q. All right. Did you request that Ms. Smart send
 24 you these materials in August of 2017?
 25 A. I did not.

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1 Q. Why did she send them to you?
 2 A. She was at the Plan in December of 2016 and was
 3 aware of the decision at the time and knew that it was
 4 going to be, that the exclusion removal was going to sunset
 5 in December or January 1, 2018. And she wanted to make me
 6 aware of it, as I had been at the Plan for just over a
 7 couple of months at that time.
 8 Q. Who is David Cozart?
 9 A. He's a former Plan staffer.
 10 Q. And Ms. Caroline Smart, at the time, was the
 11 Interim Senior Director of Plan Integration. Is that
 12 right?
 13 A. She is now the Senior Director of Plan
 14 Integration.
 15 Q. Let's turn to the pages marked PLAN DEF6966 to
 16 6989. Do you recognize this document?
 17 A. I do.
 18 Q. What is this?
 19 A. This is a PowerPoint presentation that would have
 20 been presented at the December 2, 2016 Board of Trustees
 21 meeting.
 22 Q. Who prepared this presentation deck?
 23 A. Plan leadership.
 24 Q. Who are they?
 25 A. At the time, I would imagine Caroline Smart, Beth

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1 Horner, Lotta Crabtree. Mona Moon would have had
 2 substantial influence on this. Mark Collins probably had
 3 substantial influence on this document.
 4 Q. Anyone else?
 5 A. Beyond that, I don't know.
 6 Q. And who received a copy of this presentation deck
 7 at the time, around the December 2016 board meeting?
 8 A. At the time, the board members would have
 9 received a copy of it.
 10 Q. Anyone else?
 11 A. Plan staff.
 12 Q. Who in Plan staff would have gotten a copy?
 13 A. The leaders. Beyond that, I wouldn't know.
 14 Q. And when you say the leaders, the individuals you
 15 just mentioned as having influence over this document?
 16 A. Yes.
 17 Q. Did the Plan's Board of Trustees meet on December
 18 1, 2016?
 19 A. The 1st and 2nd.
 20 Q. All right. And was the Plan's Executive
 21 Administrator at the time present at those board meetings?
 22 A. I don't know for sure. But, yes, I believe she
 23 was.
 24 Q. Could you flip to the end, which is PLAN DEF6988.
 25 Is it correct that Plan staff recommended removing

<p style="text-align: right;">Page 34</p> <p>1 the blanket exclusions for coverage of gender dysphoria 2 treatment? 3 A. Yes, for the Plan Year 2017. 4 Q. And is it correct that Plan staff stated that 5 removing those blanket exclusions would result in provision 6 of medically necessary services for treatment of gender 7 dysphoria? 8 A. That's what the document says. 9 Q. Is that what Plan staff recommended? 10 A. Yes. 11 Q. Did Plan staff ever retract that position 12 regarding medical necessity? 13 A. Not that I'm aware of. 14 Q. If you could flip back to Page PLAN DEF6968. 15 This slide sets forth the DSM-5 criteria for a 16 diagnosis of Gender Dysphoria. 17 Is that right? 18 A. Yes. 19 Q. Is the Plan familiar with the DSM-5? 20 A. Yes. 21 Q. Is it right that Plan staff relied on the DSM-5 22 in making its recommendation to the Board of Trustees? 23 A. It appears that was what was used for this 24 presentation. 25 Q. Does the Plan challenge the DSM-5 criteria for a</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Yes. 2 Q. And turning to the next page, PLAN DEF6970, does 3 this set forth the WPATH Standards of Care criteria for 4 gender confirmation surgery? 5 A. Yes. 6 Q. Is the Plan familiar with the WPATH Standards of 7 Care? 8 A. Yes. 9 Q. And is it correct that the Plan staff relied on 10 the WPATH Standards of Care in making its recommendation to 11 lift the exclusion? 12 A. Yes. 13 Q. Does the Plan challenge the WPATH Standards of 14 Care? 15 A. No. 16 Q. And today does the Plan have a position on the 17 validity of the WPATH Standards of Care? 18 A. No. 19 Q. Has the Plan ever withdrawn its reliance on the 20 WPATH Standards of Care? 21 A. No. 22 Q. If you could turn to the next slide, which is 23 PLAN DEF6971. This slide describes the American Medical 24 Association Resolution 122. 25 Is that right?</p>
<p style="text-align: right;">Page 35</p> <p>1 diagnosis of Gender Dysphoria? 2 A. It doesn't appear so. 3 Q. It doesn't appear so from this document? 4 A. From this document, yes. 5 Q. Today, does the Plan challenge those criteria? 6 A. No. 7 Q. Does the Plan today have a position on the 8 validity of the DSM-5? 9 A. No. 10 Q. Has the Plan ever withdrawn its reliance on the 11 DSM-5 set forth in this presentation? 12 A. No. 13 Q. If you could turn to the next page, which is PLAN 14 DEF6969. 15 This slide references the World Professional 16 Association for Transgender Health Standards of Care for 17 Medical Treatment of Gender Identification Disorder. 18 Is that right? 19 A. That is correct. 20 Q. And if I refer to this as the WPATH Standards of 21 Care, will you know what I'm talking about? 22 A. I will. 23 Q. So this slide sets forth the WPATH Standards of 24 Care criteria for gender confirmation surgery. 25 Is that right?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Yes. 2 Q. And the slide states that the AMA Resolution was 3 issued in 2008. 4 A. Yes. 5 Q. And it states that the AMA Resolution describes 6 the WPATH Standards of Care, elements of care for 7 transgender people as a medical necessity. 8 Is that right? 9 A. Yes. 10 Q. Okay. Is the Plan familiar with AMA Resolution 11 122? 12 A. To the extent it's listed here for gender 13 dysphoria, yes. 14 Q. Is the Plan otherwise familiar with the AMA 15 Resolution 122 outside of this presentation? 16 A. Not that I'm aware of. 17 Q. And Plan staff relied on AMA Resolution 122 in 18 making its recommendation to lift the exclusion. 19 Is that right? 20 A. It's clear that it was part of a recommendation. 21 Q. Did they rely on it in making their 22 recommendation? 23 A. I can't say for sure. 24 Q. And it's cited in this presentation to the board? 25 A. Yes.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Does the Plan challenge AMA Resolution 122?</p> <p>2 A. No.</p> <p>3 Q. Does the Plan have a position on its validity?</p> <p>4 A. No.</p> <p>5 Q. And has the Plan ever withdrawn its reliance on</p> <p>6 AMA Resolution 122?</p> <p>7 A. No.</p> <p>8 Q. If you could turn to the page marked PLAN</p> <p>9 DEF6985.</p> <p>10 Does this slide accurately describe the State</p> <p>11 Health Plan's blanket exclusions for coverage of gender</p> <p>12 dysphoria in effect for the 2016 Plan Year?</p> <p>13 A. Yes.</p> <p>14 Q. And if you turn to the next slide, this slide</p> <p>15 reflects the Segal company's estimate that adding coverage</p> <p>16 for gender dysphoria will cost approximately 350,000 to</p> <p>17 850,000 annually.</p> <p>18 Is that right?</p> <p>19 A. Yes.</p> <p>20 MS. RAVI: Can we go off the record?</p> <p>21 (Off the record)</p> <p>22 MS. RAVI: Back on the record.</p> <p>23 BY MS. RAVI:</p> <p>24 Q. Other than your attorney, did you speak with</p> <p>25 anyone during the break?</p>	<p style="text-align: right;">Page 40</p> <p>1 2016 Financial Report followed a pattern similar to prior</p> <p>2 reports, with the ending cash balance 220 million higher</p> <p>3 than the budgeted amount?</p> <p>4 A. Yes.</p> <p>5 Q. Did he report that Plan expenses were below</p> <p>6 projection and that income was higher than expected?</p> <p>7 A. Yes.</p> <p>8 Q. And did he report that, in summary, the Plan's</p> <p>9 financials are currently outperforming the budget?</p> <p>10 A. Yes.</p> <p>11 Q. If you could turn to document PLAN DEF12814 to</p> <p>12 12822. Do you recognize this document?</p> <p>13 A. Yes.</p> <p>14 Q. What is this?</p> <p>15 A. It's the Meeting Minutes from the Board of</p> <p>16 Trustees meeting on December 2, 2016.</p> <p>17 Q. And I'm now on Page PLAN DEF12815, under the</p> <p>18 heading Gender Dysphoria Condition and Treatment.</p> <p>19 Who is Patti Forest?</p> <p>20 A. She was the Plan's Medical Director.</p> <p>21 Q. And did she present to the board at its December</p> <p>22 2, 2016 meeting?</p> <p>23 A. Yes.</p> <p>24 Q. Did Dr. Forest report that AMA Resolution 122</p> <p>25 issued in 2008 removes the financial barriers of care for</p>
<p style="text-align: right;">Page 39</p> <p>1 A. No.</p> <p>2 Q. We're still on Exhibit Number 4.</p> <p>3 If you could turn to the pages marked PLAN</p> <p>4 DEF12810 through 12813.</p> <p>5 Do you recognize this document?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. This is the Minutes from the Board of Trustees</p> <p>9 meeting on December 1, 2016.</p> <p>10 Q. About the middle of the page, DEF12810, where it</p> <p>11 says State Health Plan and Department of State Treasurer</p> <p>12 Staff, does that list other attendees at this meaning?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Mark Collins?</p> <p>15 A. The Plan's Financial Analyst at the time.</p> <p>16 Q. Did Mr. Collins present to the board at its</p> <p>17 December 1st meeting?</p> <p>18 A. He normally does -- yes, he did.</p> <p>19 Q. And I'm now on PLAN DEF12811, under October 2016</p> <p>20 Financial Report.</p> <p>21 Did Mr. Collins report to the board that a higher</p> <p>22 than expected membership increase accounted for an increase</p> <p>23 in Plan revenue?</p> <p>24 A. Yes.</p> <p>25 Q. And did he report to the board that the October</p>	<p style="text-align: right;">Page 41</p> <p>1 transgender patients?</p> <p>2 A. Yes.</p> <p>3 Q. And did she report to the board that the American</p> <p>4 College of Physicians and American College of Obstetricians</p> <p>5 and Gynecologists Committee have also endorsed coverage for</p> <p>6 transgender healthcare services?</p> <p>7 A. Yes.</p> <p>8 Q. I'm now at the bottom of PLAN DEF12815 to 12816,</p> <p>9 under Proposed Benefit Change.</p> <p>10 Who is Lotta Crabtree?</p> <p>11 A. She was the Plan's Deputy Executive Administrator</p> <p>12 and Legal Counsel at the time.</p> <p>13 Q. Did Ms. Crabtree present to the board at its</p> <p>14 December 2nd meeting?</p> <p>15 A. Yes.</p> <p>16 Q. Did she report that the Plan's current benefit</p> <p>17 provides blanket exclusions for the treatment of gender</p> <p>18 dysphoria, including treatment or studies regarding sex</p> <p>19 changes or modifications, psychological assessments, and</p> <p>20 psychotherapy treatment?</p> <p>21 A. Where are you?</p> <p>22 Q. If you turn to PLAN DEF12816, at the top of the</p> <p>23 page.</p> <p>24 A. Can you repeat the question?</p> <p>25 Q. Yes. Did Ms. Crabtree report that the Plan's</p>

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1 current benefit provides blanket exclusions for the
 2 treatment of gender dysphoria, including treatment or
 3 studies regarding sex changes or modifications,
 4 psychological assessments, and psychotherapy treatment?
 5 A. Yes.
 6 Q. And did she report that the annual cost of
 7 coverage provided by the Plan's actuarial consultant is
 8 approximately 350,000 to 850,000?
 9 A. Yes.
 10 Q. And is that the Segal company's estimate?
 11 A. Yes.
 12 Q. Did she report that the Plan would adopt the Blue
 13 Cross Blue Shield of North Carolina's medical policy, which
 14 includes the requirement in support of medical necessity?
 15 A. She did.
 16 Q. And did Ms. Crabtree report that the Plan
 17 recommend approval of coverage for the treatment of gender
 18 dysphoria by removing the blanket exclusions resulting in
 19 the provision of medically necessary services for the
 20 treatment of gender dysphoria?
 21 A. Yes.
 22 Q. How did the board act on the Plan's
 23 recommendation to approve coverage for treatment of gender
 24 dysphoria?
 25 A. The board removed the exclusion for one year, for

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1 Plan Year 2017.
 2 Q. Who is Dr. Paul Cunningham?
 3 A. He's a former board member and physician.
 4 Q. Did Dr. Cunningham move to recommend that the
 5 State Health Plan remove the blanket exclusions?
 6 A. Yes.
 7 Q. And who is Dr. Aaron McKethan?
 8 A. He is an actuary, a data-analytics person, a
 9 former board member.
 10 Q. Did Dr. McKethan offer a resolution to Dr.
 11 Cunningham's motion?
 12 A. Yes.
 13 Q. I'm now on PLAN DEF12817, the second full
 14 paragraph.
 15 Does this paragraph accurately reflect Dr.
 16 McKethan's proposed resolution, the paragraph starting Dr.
 17 McKethan offered a resolution to?
 18 A. Sorry, what was the question?
 19 Q. Does this text here -- starting with paragraph
 20 Dr. McKethan offered a resolution to -- does this
 21 accurately reflect the text of that proposed resolution?
 22 A. Yes.
 23 Q. And does this accurately reflect the reason that
 24 Dr. McKethan requested that the exclusion be suspended for
 25 Plan Year 2017 only?

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1 A. Yes.
 2 Q. Was this resolution the reason that the exclusion
 3 was suspended for the 2017 Plan Year only?
 4 A. Can you repeat, rephrase your question?
 5 Q. Was this resolution the reason that the exclusion
 6 was lifted for only the 2017 Plan Year?
 7 A. Yes. The board voted on this resolution
 8 language.
 9 Q. Okay. And what was the outcome of that vote?
 10 A. The outcome was in favor of removing the
 11 exclusion for the Plan Year 2017.
 12 Q. And following this recommendation from Plan
 13 staff, were Plan staff ever subsequently asked to make a
 14 recommendation as to coverage for treatment of gender
 15 dysphoria?
 16 A. No.
 17 Q. Why not?
 18 A. Staff did not -- they notified me that it was
 19 supposed to come up, right, per the previous document. And
 20 that was their reminder that we should look at it for 2018.
 21 Q. Did Plan staff ever make another recommendation
 22 as to coverage for treatment of gender dysphoria?
 23 A. No.
 24 Q. And did Plan staff ever retract their
 25 recommendation reflected in this Crabtree presentation at

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1 the December 2nd board meeting?
 2 A. No.
 3 Q. How much did the Plan spend in 2017 as a result
 4 of lifting the exclusion?
 5 A. If I'm not mistaken, it was around 400,000
 6 dollars.
 7 Q. Okay. I'm handing you what has been marked as
 8 Exhibit 5.
 9 (Exhibit 5 is marked for identification.)
 10 MS. RAVI: And I'll give you a moment to review.
 11 (Brief pause in the proceeding)
 12 BY MS. RAVI:
 13 Q. Have you had a chance to review?
 14 A. A part of it, yeah.
 15 Q. Do you recognize this document?
 16 A. I do.
 17 Q. What is this?
 18 A. It's the Objections and Responses of Defendant
 19 North Carolina State Health Plan for Teachers and State
 20 Employees to Plaintiffs' First Request for Admissions,
 21 Interrogatories, and Requests for Production of Documents
 22 and Things.
 23 Q. And did you verify the answers to the Plaintiffs'
 24 First Set of Interrogatories to the State Health Plan?
 25 A. I did.

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1 Q. Turn to Page 15 of the document.
 2 Is that your signature there under the
 3 verification?
 4 A. It is.
 5 Q. Please turn to Pages 4 to 5. I'm looking at the
 6 Request for Admission Number 6 and its Response.
 7 So this request asks whether the cost of gender
 8 confirming healthcare for Calendar Year 2017 did not exceed
 9 the cost estimate provided by Segal Consulting in its
 10 November 29, 2016 memo.
 11 Is that correct?
 12 A. That's correct.
 13 Q. And the Plan states in response that it's unclear
 14 what the Segal cost estimates refer to.
 15 Is that right?
 16 A. That is correct.
 17 Q. And it refers to, the response refers to payment
 18 requests from medical providers, the allowed payments
 19 authorized after discounts negotiated with medical
 20 providers, or the amounts paid by the State Health Plan
 21 after other deductibles and co-insurance payments are
 22 applied.
 23 Is that right?
 24 A. Yes.
 25 Q. I'm looking now at Page 5, the second full

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1 paragraph.
 2 As to payment requests from medical providers, the
 3 Plan states that information provided from Blue Cross Blue
 4 Shield of North Carolina for the 2017 Plan Year indicates
 5 that 784,923.28 was billed to the State Health Plan for
 6 medical treatment that Blue Cross Blue Shield indicated
 7 would have been excluded had the coverage exclusion remained
 8 in effect.
 9 Is that right?
 10 A. Yes.
 11 Q. So is it correct that in Plan Year 2017, the Plan
 12 received this amount, 784,923.28, in payment requests from
 13 medical providers?
 14 A. No.
 15 Q. What does this statement mean?
 16 A. It means the provider charges were 785,000
 17 dollars.
 18 Q. And how do provider charges differ from provider
 19 requests?
 20 A. Provider charges have no basis particularly
 21 because they're always well overstated.
 22 The Plan incurred 504,000 dollars, rounded, in
 23 allowed expenses.
 24 Q. What is the difference between allowed expenses
 25 and the amount listed above, 784,000?

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1 A. The discount that Blue Cross provides.
 2 Q. So after discounts negotiated, the amount in
 3 allowed expenses was 504,406.04?
 4 A. Yes.
 5 Q. And that was for treatment that would have been
 6 excluded had the coverage exclusion remained in effect?
 7 A. Yes.
 8 Q. And after reductions, I'm sorry, after Plan
 9 participants or other insureds paid their portion, the Plan
 10 paid 404,609.26.
 11 Is that right?
 12 A. That is correct.
 13 Q. All right. And other Plan participants and other
 14 insurers paid the balance of that difference between
 15 404,000 and 504,000?
 16 A. Yes.
 17 Q. To the Plan's knowledge, other than this amount
 18 of 404,609.26, did it incur any other costs for coverage of
 19 treatment of gender dysphoria in 2017?
 20 A. I think that could be difficult to assess because
 21 there were some coverages that have been covered all along,
 22 like counseling, that may or may not have been incorporated
 23 into these numbers, which could have been, so that would
 24 inflate the cost if they were, you know, using diagnosis
 25 codes, et cetera. But counseling has generally not been

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1 prohibited.
 2 Q. As a result of lifting the exclusion for the 2017
 3 Plan Year, are there any other costs that were incurred
 4 that the Plan is aware of?
 5 A. No.
 6 Q. Okay.
 7 A. Other than what I just mentioned.
 8 Q. Was counseling covered before the Plan lifted the
 9 exclusion for the 2017 Plan Year?
 10 A. Yes.
 11 Q. So as a result of lifting the exclusion for the
 12 2017 Plan Year, was approximately 404,000 dollars what the
 13 Plan incurred in costs as a result of lifting that
 14 exclusion?
 15 A. That which was specifically designated for gender
 16 dysphoria, yes. But there were counseling, probably there
 17 were counseling charges that were not listed as gender
 18 dysphoria. So there could have been a higher cost.
 19 Q. Were those counseling charges covered prior to
 20 the lifting of the exclusion?
 21 A. Yes.
 22 Q. Okay.
 23 A. And they are still covered today.
 24 Q. Was Blue Cross Blue Shield of North Carolina
 25 tracking gender dysphoria claim activity in 2017?

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1 A. They removed the exclusion at our request. And
 2 then it depends on how providers coded their claims.
 3 Q. And was Blue Cross Blue Shield of North Carolina
 4 tracking that claim activity?
 5 A. Through coding, yes.
 6 Q. Was Blue Cross Blue Shield of North Carolina
 7 tracking gender dysphoria call activity?
 8 A. Call activity? Please describe or --
 9 Q. Is the Plan aware of what call activity is?
 10 A. You're talking about to their Customer Call
 11 Center?
 12 Q. Correct.
 13 A. Yeah -- I don't know.
 14 Q. You don't know if they were tracking that?
 15 A. No. I don't, we don't tell them how to do their
 16 business.
 17 Q. I'm handing you what I've marked as Plaintiffs'
 18 Exhibit 6.
 19 (Exhibit 6 is marked for identification.)
 20 MS. RAVI: I'll give you a moment to review.
 21 (Brief pause in the proceeding)
 22 BY MS. RAVI:
 23 Q. Do you recognize this document?
 24 A. I do.
 25 Q. What is this?

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1 A. It's an e-mail from Susan Murray to Mona and
 2 Lotta at the Plan describing the call activity.
 3 So they were, in fact, in some way able to track,
 4 specifically for gender dysphoria, who was calling and how
 5 much had been billed to date.
 6 Q. And is the how much had been billed to date the
 7 claim activity?
 8 A. Yes.
 9 Q. Turning to the page marked PLAN DEF61647, as of
 10 January 22, 2017, what was the total amount that Blue Cross
 11 Blue Shield reported as paid for gender dysphoria claim
 12 activity?
 13 A. 287.57.
 14 Q. And turning to the subsequent Page PLAN DEF61646,
 15 as of February 16, 2017, what was the amount that Blue
 16 Cross Blue Shield reported as paid for gender dysphoria
 17 claim activity?
 18 A. 1733.66.
 19 Q. And turning to the next page, PLAN DEF61645, what
 20 was the amount paid as of February 27, 2017?
 21 A. 2172.41.
 22 Q. All right. At a certain point, did you start
 23 receiving these claim reports directly from Blue Cross Blue
 24 Shield?
 25 A. I don't recall.

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1 Q. I'm handing you what I've marked as Plaintiffs'
 2 Exhibit 7.
 3 (Exhibit 7 is marked for identification.)
 4 MS. RAVI: I'll give you a moment to review.
 5 (Brief pause in the proceeding)
 6 BY MS. RAVI:
 7 Q. Are you familiar with this document?
 8 A. Yes.
 9 Q. What is this?
 10 A. It's an e-mail from Susan Murray to me and staff
 11 about gender dysphoria claims and activity and volume of
 12 members for the Plan Year to Date 2017.
 13 Q. And does it have an attachment?
 14 A. It does.
 15 Q. Okay. Turning to PLAN DEF9070, is this the
 16 attachment to the e-mail you received?
 17 A. Yes.
 18 Q. Does the right most column on this page, PLAN
 19 DEF9070, indicate the Plan Paid Amount for gender dysphoria
 20 claims?
 21 A. Yes.
 22 Q. What is this amount?
 23 A. 194,739.74.
 24 Q. And what does that amount reflect? What does the
 25 column indicate?

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1 A. The total amount that the Plan paid after the
 2 discounts and member coverage.
 3 Q. And the column Total Covered After Discount, how
 4 is that different from the Plan Paid Amount?
 5 A. The difference would be the member share, cost
 6 share.
 7 Q. And turning to PLAN DEF9071, does that column,
 8 Member Liability/COB/Other, indicate the member share?
 9 A. Yes.
 10 Q. In January of 2017, is it correct that the Plan
 11 Paid Amount for gender dysphoria claims was 2628.84?
 12 A. Yes.
 13 Q. Okay. And does this chart show payments on
 14 claims paid through October 31, 2017?
 15 A. Correct.
 16 Q. And the total amount listed through October 31,
 17 2017 you said was 194,739.74.
 18 Is that correct?
 19 A. Correct.
 20 Q. Does the Plan receive reports from Blue Cross
 21 Blue Shield tracking claim activity for all its covered
 22 benefits?
 23 A. Only when asked. We get claims data. And we can
 24 run our own reports, depending on what we're trying to
 25 analyze.

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1 Q. When does the Plan ask?

2 A. When we need to look, review something.

3 Q. What are some examples of something that would be

4 typically reviewed such that the Plan would request a

5 report for claim activity?

6 A. Well, 85 percent of our costs come from 15

7 percent of our membership. So we would maybe run reports

8 on, you know, what is the incidence of diabetes. It's one

9 of our highest cost and affecting the most number of

10 members.

11 So, again, it's less about individual niche

12 groups. It's not about that at all. It's about where is

13 our high costs. And the Plan is a health benefit, that we

14 need to serve all members.

15 So we would be evaluating maybe diabetes and

16 where that incidence of coverage is. Is it, are they in

17 the hospitals? Are they not adhering to medications?

18 We would evaluate, you know, who needs, how is

19 insulin being adhered to. That's a big focus.

20 We've run an opioid analysis to make sure that,

21 for example, to see if North Carolina has an opioid problem

22 within the State Health Plan membership, you know, relative

23 to the Governor's Stop Act, or DOJ, Attorney General's Stop

24 Act, and to see if that's, again, an incidence or a problem

25 within the State Health Plan.

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1 We look at adherence to medications in general.

2 That's maybe more CVS.

3 So whatever we need to analyze at a particular

4 point in time.

5 Q. Turning to reinstatement of the exclusion for the

6 2018 Plan Year next, did anyone at the Plan discuss whether

7 to permit the coverage of gender dysphoria treatment to

8 sunset at the end of the 2017 Plan Year?

9 A. Repeat the question.

10 Q. Did anyone at the Plan discuss whether to let the

11 coverage of gender dysphoria treatment, to let it sunset at

12 the end of the 2017 Plan Year?

13 A. What we discussed was it's a board decision. And

14 it's either going to go, it's either going to be sunset or,

15 if the board brings it up, then it will be evaluated,

16 whatever that motion they bring up.

17 Q. Did anyone at the Plan discuss whether to let it

18 sunset or to bring it up before the board?

19 A. Anyone -- can you repeat the question?

20 Q. Sure. Did anyone at the Plan discuss whether to

21 let the gender dysphoria coverage sunset versus bringing

22 the issue before the board?

23 A. Not as an action.

24 Q. When you say not as an action, could you clarify

25 what that means?

Page 56

1 A. There was nobody that said oh, we should let it

2 sunset, oh, we should push it forward and bring it up for

3 vote.

4 Q. I'll hand you what I've marked as Plaintiffs'

5 Exhibit 8.

6 (Exhibit 8 is marked for identification.)

7 BY MS. RAVI:

8 Q. Do you recognize this document?

9 A. Generally, yes.

10 Q. Have you seen it before?

11 A. I have not seen it with the track changes.

12 Q. What is this document?

13 A. It appears to be a draft of a resolution relative

14 to the coverage that suggests that the state will follow

15 the law and, if the, there's any repeal of the law or

16 notice by the Department of Health and Human Services that

17 this benefit will no longer be required to be provided

18 under federal law.

19 Q. And looking at the document marked PLAN DEF35963,

20 does this appear to be the cover e-mail attaching that

21 document?

22 A. It does.

23 Q. What is the date on the cover e-mail?

24 A. January 23, 2017.

25 Q. So turning to the attachment PLAN DEF44771, who

Page 57

1 drafted this document?

2 A. I do not know. But based on the e-mail, it would

3 appear that some combination of Blake Thomas and Lotta

4 Crabtree.

5 Q. And why was this resolution drafted?

6 A. My guess is there is -- well, it's not really a

7 guess -- it's based on following the law and whether or not

8 the coverage is mandated or not. That was the general

9 reason for covering it in the first place was because of

10 the risk of losing federal funding.

11 Q. And the resolution states that the Board of

12 Trustees approve medically necessary coverage of gender

13 transition services for the 2017 Benefit Year.

14 Is that right?

15 A. That's what it says, yes.

16 Q. And it states that that was in response to a

17 final rule issued by the Department of Health and Human

18 Services?

19 A. Yes.

20 Q. Turning to the fourth WHEREAS clause, it states

21 that the State Treasurer recommends that this benefit only

22 be offered so long as it is required to be offered under

23 federal law.

24 Is that correct?

25 A. Yes.

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1 Q. Did you discuss this recommendation with the
2 State Treasurer?
3 A. No.
4 Q. Is it correct that care must be medically
5 necessary to be covered by your Plan?
6 A. Yes. But the Plan does not cover all medically
7 necessary treatment.
8 Q. At the time of this draft resolution, was it the
9 Plan's position that gender transition services were
10 medically necessary care?
11 MR. RULEY: Objection, form.
12 THE WITNESS: Again, a lot of things are
13 medically necessary that the Plan doesn't cover. And a lot
14 is not, it's maybe a little bit of a loaded word. But that
15 is what it says here.
16 BY MS. RAVI:
17 Q. I'm sorry -- could you clarify when you say that
18 is what it says here?
19 A. It says here in the resolution that the board
20 approve medically necessary coverage.
21 Q. Medically necessary coverage of gender transition
22 services?
23 A. Yes.
24 Q. Regarding the position on whether or not gender
25 transition services are medically necessary coverage, has

Page 59

1 the Plan revised that position since the date of this draft
2 resolution?
3 A. I wouldn't say the Plan has revised that
4 position. I think the Plan just has other opinions about
5 whether or not all those, the WPATH and the other studies
6 are accurate.
7 And having seen through research myself, albeit
8 not saved, just looking into gender transformation care, it
9 has not been, it's been clear to me that there are
10 different opinions widely stated.
11 Q. You said looking into the WPATH Standards and
12 other studies, what are those other studies?
13 A. The DM one you mentioned and the, whatever the
14 other one was we talked about earlier, the American
15 Psychological Association.
16 Q. Any other studies you're referring to?
17 A. No. The three you've mentioned.
18 Q. And when you say the research you've done
19 yourself, what was that research?
20 A. I looked through appropriate medical journals
21 online to see for my own knowledge, as I was new to the
22 Plan, for my own knowledge about transition surgery and
23 coverage and medical necessity.
24 And it was very difficult for me to find a
25 blanket statement in any of the coverage, in any of the

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1 documents that I looked at or the online sites that I
2 looked at.
3 Q. What medical journals and online sites did you
4 look at?
5 A. I looked at Kaiser, I looked at Milliman, looked
6 at the New England Journal of Medicine to name a few that I
7 can think of.
8 Q. Any others?
9 A. Not that I remember.
10 Q. And turning to the second WHEREAS clause of this
11 draft resolution, it states that the estimated annual cost
12 for the coverage of gender dysphoria treatment is between
13 350,000 and 850,000 dollars.
14 Is that right?
15 A. Uh-huh. Yes.
16 Q. Did the Plan's Board of Trustees hold a meeting
17 in January of 2017?
18 A. Yes.
19 Q. And at that meeting, did the board take up a vote
20 to continue lifting the exclusion for the 2018 Plan Year?
21 A. No.
22 Q. Did the board discuss the issue?
23 A. I do not know.
24 Q. Were any materials presented to the board on this
25 issue?

Page 61

1 A. I don't know.
2 Q. Did the Board of Trustees hold a meeting in March
3 of 2017?
4 A. I believe so. I don't remember all the dates
5 right off the top of my head since I wasn't there.
6 Q. At that meeting, did the board take up a vote to
7 continue lifting the exclusion for the subsequent plan
8 year?
9 A. I do not believe so.
10 Q. Did the board discuss the issue?
11 A. I do not believe so.
12 Q. And were any materials presented to the board?
13 A. I don't believe so.
14 Q. Did the Board of Trustees hold a meeting in June
15 of 2017?
16 A. Possibly.
17 Q. What about in July of 2017?
18 A. No.
19 Q. When was the next board meeting after the March
20 2017 board meeting for 2017?
21 A. It was in September.
22 Q. So January 2017, March, and then September?
23 A. Yes.
24 Q. And at the September 2017 board meeting, did the
25 board take up a vote to continue lifting the exclusion for

Page 62

1 the 2018 Plan Year?

2 A. No.

3 Q. Did the board discuss the issue?

4 A. There were public comments.

5 Q. Were any materials presented to the board on this

6 issue?

7 A. No.

8 Q. Did the board receive a request to continue

9 lifting the exclusion for the subsequent plan year?

10 A. I believe Ames Simmons made the request. He's a

11 public, through public comment.

12 Q. After the 2017 board meeting, when was the next

13 Board of Trustees meeting?

14 A. Which 2017 meeting are you referring to?

15 Q. After the September 2017 board meeting, when was

16 the next one?

17 A. I believe it was in November 2017.

18 Q. Okay. And did the board take up a vote to

19 continue lifting the exclusion at that meeting?

20 A. No.

21 Q. Did it discuss the issue?

22 A. It was discussed in public comments, similarly to

23 September.

24 Q. And were any materials presented to the board on

25 that issue?

Page 63

1 A. No.

2 Q. Other than the ones we've talked about, did the

3 Plan's Board of Trustees hold any other meetings in 2017?

4 A. No.

5 Q. Did the Board of Trustees ever take up a vote in

6 2017 to continue lifting the exclusion for the 2018 Plan

7 Year?

8 A. No.

9 Q. Okay. Was there any board meeting from January

10 2018 to the present where this issue has been discussed?

11 A. It's been discussed in public comment numerous

12 times, along with people who want hearing aids and other

13 such benefits.

14 Q. Is Blue Cross Blue Shield of North Carolina the

15 Plan's third-party administrator?

16 A. Yes.

17 Q. In anticipation of the sunseting of the gender

18 dysphoria coverage at the end of 2017, did the Plan provide

19 Blue Cross Blue Shield with revisions to the 2018 Plan

20 Benefits Booklets?

21 A. The Plan updated its own benefits booklets and

22 provided Blue Cross with a decision memo on the fact that

23 they needed to put the exclusions back in play.

24 Q. What was that decision memo?

25 A. It's an called an ADM.

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1 Q. What does ADM stand for?

2 A. Administrative Decision Memo.

3 Q. What was the date of that memo?

4 A. I do not know.

5 Q. Approximately what month would it have been

6 provided to Blue Cross?

7 A. It would have had to have been provided in

8 December, so that it would be ready for the -- let me

9 rephrase that.

10 It would likely have been in December for the

11 January Plan, for the January '18 Plan Year. But it is

12 possible that it was in January because you can re-process

13 claims.

14 Q. So likely around December 2018, January?

15 A. Yes.

16 Q. I apologize -- December 2017, January 2018?

17 A. Correct.

18 Q. All right.

19 MS. RAVI: Could we go off the record?

20 (Off the record)

21 BY MS. RAVI:

22 Q. We were discussing Blue Cross Blue Shield of

23 North Carolina and the Plan's instruction to Blue Cross

24 Blue Shield regarding the reinstated exclusion for the 2018

25 Plan Year.

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1 Did Blue Cross Blue Shield of North Carolina state

2 that it would need the Plan to hold it harmless if the Plan

3 did not continue coverage for the 2018 Plan Year?

4 A. Yes.

5 Q. And did the Plan discuss this with Blue Cross

6 Blue Shield?

7 A. Oh, yes.

8 Q. What was discussed?

9 A. Whether or not we felt it was necessary to I

10 guess worry about it or not. We chose -- we just didn't

11 think -- they're our third-party administrator. They're

12 just, they were just kind of doing what they needed to do

13 business, to cover their business processes. And we chose

14 to not worry about it.

15 Q. When you say we chose to not worry about it, what

16 does that mean?

17 A. We're going to, they're going to, we're going to

18 hold them harmless if someone were to raise issue, and we

19 would own that.

20 Q. So did the Plan sign the requested

21 indemnification agreement?

22 A. I don't remember.

23 Q. Who at the Plan was discussing Blue Cross Blue

24 Shield's request?

25 A. Can you repeat that?

Page 66

1 Q. Who at the Plan was discussing Blue Cross Blue
2 Shield's request to be held harmless?
3 A. Plan staff. And I'm sure that would require the
4 input from the Treasurer and probably legal counsel.
5 Q. Who was legal counsel?
6 A. At the time, that would have been Sam Hayes,
7 General Counsel, Andrew Norton, as Plan Counsel.
8 Q. Anyone else in terms of local counsel?
9 A. There could have been others involved that I
10 wasn't aware of.
11 Q. In terms of Plan staff who discussed this, who
12 all was that?
13 A. It would have been, besides myself, Caroline
14 Smart, Ted Enarson. I don't remember who was there. Beth
15 Horner.
16 Q. Anyone else?
17 A. That's probably it.
18 Q. All right. And to the Plan's knowledge, did it
19 agree to hold Blue Cross Blue Shield of North Carolina
20 harmless?
21 A. I believe so, yes.
22 Q. All right.
23 MS. RAVI: Can we go off the record?
24 (Off the record)
25 MS. RAVI: Back on the record.

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1 THE WITNESS: If I could make a clarifying
2 statement from the previous discussions?
3 I misspoke when I said that we actually did sign
4 the hold harmless or indemnification for Blue Cross Blue
5 Shield. We did not and cannot. State law prohibits us from
6 doing that.
7 MS. RAVI: All right. Thank you.
8 BY MS. RAVI:
9 Q. I'll hand you what I've marked as Plaintiffs'
10 Exhibit 9.
11 (Exhibit 9 is marked for identification.)
12 BY MS. RAVI:
13 Q. Are you familiar with this document?
14 A. I am.
15 Q. What is it?
16 A. It's an e-mail sent, it's essentially a press
17 release from the Treasurer. And I'm obligated to send it
18 to our board members, as I do all press releases.
19 Q. Who is Lorraine Munk?
20 A. My Executive Assistant.
21 Q. Did you request that Ms. Munk send this e-mail on
22 your behalf?
23 A. Yes.
24 Q. Had you seen a copy of this statement previous to
25 this e-mail?

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1 A. As I said, it was a press release. So yes, I had
2 seen it. And it's our obligation to send it to the board,
3 all press releases.
4 Q. Did you edit the statement before it went out?
5 A. No.
6 Q. Did anyone else edit this statement?
7 A. We copy it straight, we put forward the press
8 release.
9 Q. Who drafted the press release?
10 A. It would have been in the Treasurer's Office.
11 Q. Who in the Treasurer's Office?
12 A. I'm not aware. I know who is in the Treasurer's
13 Office, but I'm not aware who drafted the statement.
14 Probably the Communications Director.
15 Q. Who is the Communications Director?
16 A. Frank Lester.
17 Q. Is the Plan aware of anyone having edited this
18 statement?
19 A. No.
20 Q. And the statement was sent on your behalf. Is
21 that right?
22 A. Yes.
23 Q. And the statement makes reference to the medical
24 uncertainty of the procedure it references.
25 Is that right?

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1 A. That is correct.
2 Q. What was the basis for that reference?
3 A. This is the Treasurer's words. I'm not aware of
4 what he was referring to. I don't disagree with it. But
5 these are his words.
6 Q. All right. Are you aware of the Treasurer's
7 basis for this statement?
8 A. No.
9 Q. Does the Plan believe the treatment for gender
10 dysphoria is medically uncertain?
11 A. Yes.
12 Q. When did this view develop?
13 A. Please repeat.
14 Q. When did this view develop?
15 A. I would say over several years. In 2016, it's
16 very clear that while the presentations had a lot of
17 supporting documentation, the basis of the sunseting or
18 the removal of the exclusion was based on the 1557 Rule and
19 the need to keep the federal funding.
20 And the Plan at the time, the staff used and put
21 forth all sorts of other information when we just went
22 through.
23 But since that time, we have new staff, we have a
24 small staff, we manage contracts, and we have limited
25 clinical staff.

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1 But the people we work with, and as I already
 2 mentioned the journals or whatever that I have reviewed and
 3 discussions we've had with current and former board
 4 members, there's a lot of uncertainty on whether or not the
 5 treatments are effective. And in some cases, maybe they
 6 are. But there's discussion in the space of the, more the
 7 psychological effects and how much it's important there
 8 versus the surgery, the transition surgery.

9 Q. And what was the basis for Treasurer Folwell's
 10 statement regarding the medical uncertainty?

11 MR. RULEY: Objection, form.

12 THE WITNESS: I don't know.

13 BY MS. RAVI:

14 Q. Did Treasurer Folwell discuss this statement with
 15 you?

16 A. No.

17 Q. Did Treasurer Folwell discuss this statement with
 18 anyone at the Plan?

19 A. I'm not aware of any conversations he had with
 20 anybody at the Plan.

21 Q. And does this statement from October 25th reflect
 22 the views of the State Health Plan?

23 A. Parts of it might, such as the legal and medical
 24 uncertainty.

25 The Franciscan Alliance opinion came out in

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1 December of 2016. And we know there were various cases in
 2 Texas I believe.

3 So, again, I think there's legal uncertainty. I
 4 think there's medical uncertainty. And our thoughts kind
 5 of went down that direction.

6 Plus the fact that this is such, as we already
 7 went through, the Blue Cross spreadsheet that was part of
 8 the record, where it's such a small part of the Plan
 9 membership that this benefit would apply to. It's a niche.
 10 I call that a niche, a small population of people.

11 And the Plan can't cover every requested benefit
 12 for every single niche that comes forward, niche
 13 population. It happens all the time.

14 You know, I have to turn down parents who want a
 15 special feeding benefit for their infant children who can't
 16 process food normally.

17 I have to turn down hearing aids for a much
 18 larger population of people because they're so expensive.
 19 There's plenty of efficacy there, right? It helps people
 20 hear. But the fact that they have to change hearing aids
 21 every five to six years or more frequently, I can't afford
 22 that as a Plan.

23 Because if I -- I have to serve a whole entire
 24 population with a very finite amount of money. And so the
 25 only thing I can really cover is the current state of

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1 benefits and any benefits that might apply to a broad swath
 2 of the population with a not guaranteed but a strong
 3 proponent of lower costs in the future.

4 And so that's where legal and medical uncertainty
 5 -- I don't have to cover medically necessary treatment. We
 6 cover a lot of it. But in this case, we don't.

7 Q. Prior to this statement coming out on October 25,
 8 2018, did Plan staff discuss the legal uncertainty that's
 9 referenced here?

10 A. Yes.

11 Q. Did Plan staff discuss the medical uncertainty
 12 that's referenced here?

13 A. Yes.

14 Q. Let's turn back to Exhibit 5. And if you can
 15 turn to Page 10 of this document.

16 Plaintiffs' Interrogatory Number 3 asks the Plan
 17 to discuss the factual basis for each governmental interest
 18 that the Plan contends supports the exclusion.

19 Is that right?

20 A. Yes.

21 Q. And is it correct, turning to the next page, the
 22 Plan states that the Plan has not identified any valid,
 23 reliable, peer-reviewed longitudinal studies that support
 24 the efficacy of the plaintiffs' desired treatment?

25 A. I'm sorry -- where are you?

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1 Q. I am at the bottom of Page 11, last paragraph.

2 A. Okay.

3 That would be true.

4 Q. Is a peer-reviewed, longitudinal study that
 5 supports the efficacy of treatment a prerequisite for the
 6 Plan to cover a proposed benefit?

7 A. Not necessarily. When we evaluate, as I think we
 8 said earlier, it's a holistic review. There's no single
 9 pathway to coverage. It has to be a broad swath of
 10 membership, that there's a benefit for multiple people.

11 There's a cost component to it. There's a
 12 downstream cost component to it. There's got to be some
 13 common -- not experimental for sure.

14 There's got to be some common understanding in
 15 the medical community that it is a treatment that will
 16 produce a downstream effect that's positive.

17 So, you know, it's very difficult to come back
 18 and say well, peer-reviewed, longitudinal studies -- I'm
 19 not a clinician and I'm not a researcher, so it's, you
 20 know -- but to the extent that we have not found any real
 21 evidence that it's absolutely black and white, this
 22 particular issue.

23 You know, I think it goes, well, it should go
 24 without saying this is not a personal issue for me. I
 25 don't get, I have no personal opinion about this.

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1 Because I walk through the front door at the
 2 office, and I'm a fiduciary. This is all about the cost
 3 and maintaining this benefit for 740,000 people who expect
 4 it every single day and the retirees that have an
 5 expectation of the benefit when they retire.
 6 And so every decision I make -- and I'm speaking
 7 for myself -- is about that. It's all about that every
 8 day.
 9 It breaks my heart 9 times out of 10 when I have
 10 to decline a benefit, 9 times out of 10.
 11 When I see people that need hearing aids, I would
 12 love to give them a hearing aid, I would love to.
 13 I have nothing against transgender people. I
 14 would be more than happy to provide the benefit. But it's
 15 not my decision. I'm a fiduciary first. And I'm
 16 responsible for 740,000 people. This is not personal.
 17 This is all about money very simply put.
 18 I've been charged with reducing the costs of the
 19 Plan to operate since the day I started. And we have done
 20 just that.
 21 You know, there's some discussions about how much
 22 money the Plan has saved. Well, it's because we've worked
 23 really hard to do that. We've taken out all extraneous
 24 benefits.
 25 We used to cover benefits for a small population

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1 of really healthy people for an app that was, I think we
 2 paid 4000 dollars a person. It was the healthy people who
 3 were doing it. It wasn't achieving anything for health.
 4 So we canceled the benefit. It was a small, very small
 5 population, health management benefit.
 6 But that is what we do every day. And I have to
 7 make choices that are awful sometimes. And it gives me no
 8 great pleasure, but it is my responsibility.
 9 Q. Turning back to the peer-reviewed studies we
 10 discussed, did the Plan conduct a search for those studies?
 11 A. I did not. I don't believe the Plan did.
 12 Q. Okay. The Plan's response also states that
 13 during the pendency of this case, the American Journal of
 14 Psychiatry issued a correction to an article.
 15 Do you see that here?
 16 A. I do.
 17 Q. What was that article?
 18 A. I don't know -- not right this moment.
 19 Q. To the Plan's knowledge, has Treasurer Folwell
 20 reviewed that article and the correction referenced here?
 21 A. I do not know.
 22 Q. Has Plan staff reviewed the article?
 23 A. Possibly, but I do not know.
 24 Q. And has the Board of Trustees reviewed that
 25 article?

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1 A. Possibly, but I do not know.
 2 Q. All right.
 3 A. If you'll recall, though, this says the Plan has
 4 not identified any valid or reliable -- so to the extent
 5 that we are reviewing articles, as I mentioned earlier,
 6 when I'm reviewing the journal, the New England Journal of
 7 Medicine and Kaiser and Milliman, those types of reviews,
 8 there's been nothing that makes this in my mind 100 percent
 9 clear.
 10 Q. Going back to the paragraph that starts with
 11 Second on the same page, the Plan states that it remains
 12 unaware of any objective test to identify individuals
 13 suffering from gender dysphoria who will benefit from the
 14 hormonal and surgical treatments sought here.
 15 Is that right?
 16 A. That is correct. The Plan remains unaware of any
 17 objective test -- yes.
 18 Q. Is an objective test to identify individuals who
 19 will benefit from the proposed treatment a prerequisite for
 20 the Plan to cover a proposed benefit?
 21 A. As I've stated before, it's a holistic review.
 22 And so if there are, in fact, objective tests,
 23 then that might be taken into consideration.
 24 Q. Has the Plan conducted a search for such
 25 objective tests?

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1 A. If it were to become necessary, then the Plan
 2 would make a search.
 3 But we do not find it necessary because of the
 4 things I've already discussed -- about the small volume of
 5 patients being a niche group, that we wouldn't be able to
 6 afford to offer the benefit.
 7 Q. So to the Plan's knowledge today, has the Plan
 8 conducted a search in the past for such tests?
 9 A. No.
 10 Q. And the Plan states that for minors, the Plan is
 11 unaware of any methodology to reliably distinguish between
 12 children for whom gender dysphoria will resolve without
 13 hormonal therapy or surgical intervention and those for
 14 whom it will not.
 15 Is that right?
 16 A. Yes.
 17 Q. Was the Plan's unawareness of this methodology
 18 for children also its justification for excluding this care
 19 for adults?
 20 A. I can't say.
 21 Q. Is the Plan aware?
 22 A. Of?
 23 Q. Of this methodology.
 24 A. For minors?
 25 Q. Uh-huh.

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1 A. No.

2 Q. Okay. Does the Plan contend that this concern

3 it's identified regarding minors apply to withholding the

4 same care for individuals who are in late adolescence?

5 A. It generally becomes a moot point because the

6 Plan is not considering to offer the benefit.

7 The Plan does not offer the benefit, so we're not

8 distinguishing between, right now, at this point, between

9 minors and adults.

10 Q. Is the Plan's unawareness of methodology to

11 reliably distinguish between children for whom gender

12 dysphoria will resolve without hormonal therapy or surgical

13 intervention and those for whom it will not, is the Plan's

14 unawareness of that methodology one of the reasons for

15 which it excludes coverage?

16 A. I think I just said no.

17 Q. And the Plan states that the FDA has not approved

18 any drugs for treatment of gender dysphoria.

19 Is that right?

20 A. That is correct.

21 Q. Do the Plan documents specify that the FDA must

22 approve medical drugs as a prerequisite for coverage?

23 A. The Plan does not -- only -- the Plan does not

24 cover non-FDA approved drugs except for in the case of

25 cancer. And I think that's probably the only, only space.

Page 79

1 Q. And the FDA does not regulate surgical

2 procedures. Is that right?

3 A. I'm not a clinician, so I don't know that -- I'm

4 not sure that that's correct. But I believe that -- I

5 don't know the answer to that.

6 Q. Other than the statements made in response to

7 Plaintiffs' Interrogatory 3, are there any other

8 governmental interests that the Plan contends support the

9 exclusion?

10 A. Any other -- can you rephrase that?

11 Q. Yes. So Plaintiffs' Interrogatory Number 3 asks

12 the Plan to identify the governmental interests that the

13 Plan contends support the exclusion.

14 Other than those identified in its response, are

15 there any other governmental interests that the Plan

16 contends supports the exclusion?

17 MR. RULEY: Objection, form.

18 THE WITNESS: I'm still not real clear -- I mean

19 -- where -- is that in here?

20 BY MS. RAVI:

21 Q. So Interrogatory Number 3 asks the Plan to

22 describe the factual basis for each governmental interest

23 that you contend supports the exclusion.

24 A. I think I'm struggling a little bit with the

25 definition of governmental interest.

Page 80

1 Q. Are there any governmental interests identified

2 in response to this interrogatory?

3 A. So other than FDA, is that what you're asking

4 for?

5 Q. Other than the statement made in response to

6 Interrogatory Number 3.

7 A. Then --

8 MR. RULEY: Objection, form.

9 THE WITNESS: Again, I don't -- no, I don't know.

10 BY MS. RAVI:

11 Q. Okay. Let's turn back to Page 10, actually Pages

12 9 to 10 of this document.

13 Plaintiffs' Interrogatory 2 asks the Plan to

14 describe the financial sustainability of the State Health

15 Plan.

16 Is that right?

17 A. Yes.

18 Q. And turning over to Page 10, the Plan references

19 several policies or decisions to improve the Plan's

20 long-term sustainability that have been proposed, adopted,

21 or implemented since 2017.

22 Is that right?

23 A. That is correct.

24 Q. Listed under Response (a), the Plan references an

25 increased use of a Medicare Advantage plan.

Page 81

1 A. Yes.

2 Q. And it states that this change is expected to

3 generate 590 million dollars in savings over three years.

4 Is that right?

5 A. I don't see the 590 -- oh, right there. Thank

6 you. Appreciate that.

7 Yes, that is correct.

8 Q. And under (b), it states elimination of the

9 subsidy for retiree healthcare benefits for members hired

10 after January 2021.

11 Is that right?

12 A. Yes.

13 Q. How much is that expected to save?

14 A. Well, out of the OPEB liability, it will be

15 billions. But it is not calculable without that.

16 It's probably in the 300, for the retirees,

17 again, probably 300 dollars per member per month. But,

18 again, it's pretty difficult to calculate that.

19 Q. Under (c), the Plan references competitive

20 bidding for third-party administration services for the

21 Plan.

22 Is that right?

23 A. Correct.

24 Q. And the Plan estimates that this will save at

25 least 20 million dollars per year.

Page 82

1 Is that right?

2 A. Correct.

3 Q. And under (d), the Plan references the Clear

4 Pricing Project.

5 Is that correct?

6 A. Correct.

7 Q. How much is that expected to save?

8 A. In its full state of, of action, if we were to

9 achieve the full goal, we would save probably 300 million

10 dollars.

11 Q. All right. I'll hand you what I've marked as

12 Exhibit 10.

13 (Exhibit 10 is marked for identification.)

14 BY MS. RAVI:

15 Q. Are you familiar with this document?

16 A. I am.

17 Q. What is this?

18 A. It is a Disclosure of Expert Witnesses Who Do Not

19 Provide a Written Report Pursuant to -- a citation -- by

20 Defendants Dale Folwell, Dee Jones, and the North Carolina

21 State Health Plan for Teachers and State Employees.

22 Q. As of December 2017, what was the amount of the

23 Plan's unfunded liability?

24 A. December 2017? It's not calculated as of the end

25 of the year. It's more as of 6-30. I want to say that was

Page 83

1 probably 42 billion.

2 Q. And what is that amount today?

3 A. 28.8 as of 6-30-20. And there will be a new

4 calculation for 6-30-21.

5 Q. Okay.

6 A. Expected to go up.

7 Q. And as of December 2017, what was the amount of

8 the Plan's cash reserves?

9 A. Probably around, it was about a billion dollars.

10 We've tried to keep it around that level -- although it has

11 grown up a little bit.

12 Q. And what is that amount today?

13 A. It's still around a billion.

14 Q. Does the Plan have an annual budget?

15 A. Yes.

16 Q. What are the major components of that budget?

17 A. Plan revenues, employer and employee components,

18 claims costs, which are both medical and pharmacy, pharmacy

19 netted by refunds, Medicare Advantage costs, fully insured

20 costs, and then the admin costs.

21 Q. Is it fair to say that the major components of

22 the Plan's annual budget are revenues, the money coming in,

23 and costs, the money going out?

24 A. Very much so.

25 Q. Are there any other major components of the

Page 84

1 Plan's annual budget?

2 A. The Plan has an opportunity for a, in statute, an

3 opportunity to transition money back to the Retired Health

4 Benefit Trust Fund if the balance warrants.

5 Q. Is the Plan's unfunded liability a component of

6 its annual budget?

7 A. Can you rephrase?

8 Q. Does the Plan's unfunded liability factor into

9 its annual budget?

10 A. It's sort of the opposite. The unfunded

11 liability is a calculation based on the 100-year run-out of

12 claims costs.

13 So, yes, so the budget or the actual numbers, not

14 the budget, but the actual numbers inform the unfunded

15 liability calculation. But it also has a trend rate. It's

16 got a discount rate component. It's got a migration

17 component to it, movement between Plans. And it's got an

18 age component. And it's got then, again, the volume of

19 retirees.

20 Q. Okay. And your disclosure states, and I recall

21 you testified earlier, that approximately 15 percent of

22 Plan participants incur 85 percent of the cost of

23 treatment?

24 A. Uh-huh.

25 Q. Does that figure apply to all Plan participants?

Page 85

1 A. Yes.

2 Q. So looking at all enrollees in the Plan, 15

3 percent of those enrollees account for 85 percent of the

4 cost of treatment?

5 A. Correct.

6 Q. Can an individual enrolled in the State Health

7 Plan request that the State Health Plan change the pronoun

8 associated with that enrollee?

9 A. Please rephrase.

10 Q. Can an individual that's enrolled in the State

11 Health Plan request that the Plan change in its records the

12 pronoun that's associated with that individual?

13 A. The member can change his or her own pronoun.

14 Q. How does that process occur?

15 A. The member logs in to eBenefits or calls into the

16 call center, benefit-focused call center, and either

17 changes it him or herself, or requests that it be changed.

18 Q. Okay.

19 A. It's not validated.

20 Q. What does that mean for it not to be validated?

21 A. You could put in whatever you want. There's two

22 options, male or female.

23 And if I were female and put in female, I could

24 do that. Or if I wanted to put in male, I can do that. If

25 I make an error, I can do that too.

Page 86

1 Q. And you said an individual can either log in and
 2 change that themselves or they can make a request that the
 3 Plan make that change?
 4 A. No. They call into the call center, talk to a
 5 call center rep who will record the call. And then they
 6 can be requested to make that change.
 7 Q. To whom is that request made?
 8 A. The call center rep.
 9 Q. If a call center rep gets that kind of request,
 10 what happens next?
 11 A. They comply with the request.
 12 Q. And how does that process occur?
 13 A. They go into the system and check yes or no or
 14 male or female or exactly -- I guess it's male or female.
 15 Q. And prior to going into the system, is any
 16 validation requested?
 17 A. Absolutely. Whatever -- like the member would
 18 call in, and there would be validation questions from the
 19 call center rep back to the member to confirm any number of
 20 demographic statistics.
 21 Q. What are those validation questions?
 22 A. I don't know them specifically. But it's
 23 something that would be similar to what we all do, which is
 24 your address, your full name, possibly your Social Security
 25 number, you know, phone numbers, whatever, to try to --

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1 they're a vendor. I don't tell them how to do their job.
 2 I just tell them they have to validate it. It's not my
 3 obligation how to exactly do it.
 4 Q. So is it fair to say that validation is with
 5 respect to making sure that the person calling in and
 6 making this request is who they say they are?
 7 A. Yes.
 8 Q. Does the Plan require proof of any enrollee's
 9 chromosomes before it goes into the system and complies
 10 with that question?
 11 A. No.
 12 Q. Does it require proof of an enrollee's anatomy?
 13 A. No.
 14 Q. And does it require proof of an enrollee's DNA?
 15 A. No.
 16 Q. Everything we just talked about with regard to
 17 changing the pronoun in the system, does that also apply to
 18 a request to change an individual enrollee's gender marker
 19 in the system?
 20 A. We don't track gender markers in the system other
 21 than male or female. We only have but two options right
 22 now.
 23 Q. Is participation in the Plan required for state
 24 agency employees?
 25 A. No. They have a choice. I mean the benefit

Page 88

1 booklet is laid out and given to every new employee. And
 2 they can make a choice as to whether or not they want the
 3 benefit, can afford the benefit, or if the benefit covers
 4 what they need to have covered.
 5 Q. Is it correct that individuals cannot receive
 6 coverage under the Plan unless they are employed by a state
 7 agency or participating local agency?
 8 A. They could be a dependent of someone on the State
 9 Health Plan.
 10 Q. So an individual to receive coverage must either
 11 be employed by a state agency or be a dependent of somebody
 12 who is?
 13 A. Correct. And that dependency would be validated
 14 through a qualifying documentation.
 15 Q. How is an individual's eligibility for
 16 participating in the Plan determined?
 17 A. First of all, it's laid out in statute. But,
 18 again, it's just be an employee of an employing unit that
 19 is participating in the Plan is the simplest way to put it.
 20 Q. And who makes that determination?
 21 A. General Assembly.
 22 Q. Does someone review an enrollee's request to
 23 participate in the Plan to confirm that they are, in fact,
 24 employed by a state agency?
 25 A. Yes. We have what we call Health Benefit

Page 89

1 Representatives that are at every employing unit and/or
 2 agency office. And they assist any new member, new
 3 employee with the benefits enrollment.
 4 Q. And how are eligible employees enrolled in the
 5 Plan?
 6 A. Again, they can go into the system either on
 7 their own or call in and be enrolled by a call center
 8 representative.
 9 Q. Do participating employers play a role in getting
 10 eligible employees enrolled in the Plan?
 11 A. Yes. The HBR is very much responsible for
 12 helping the member. But it's still on the member or the
 13 employee to enroll in a timely fashion. There's a 30-day
 14 window for which a new employee has to be enrolled. That's
 15 the window. And that's in statute.
 16 Q. And you said that a Health Benefits
 17 Representative can provide assistance in that process.
 18 A. Correct.
 19 Q. What about participating employers, do they play
 20 a role in this process?
 21 A. In what way?
 22 Q. Do participating employers play a role in the
 23 process of getting an eligible --
 24 A. Only through the fact that they have an HBR
 25 available.

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1 Q. Do participating employers have any role in
 2 determining eligibility?
 3 A. To the extent that it's either a new hire and
 4 they're working more than 30 hours a week as a full-time
 5 employee, but other than that, no.
 6 Q. Do participating employers provide enrollment
 7 forms?
 8 A. Yes.
 9 Q. Do they transmit those enrollment forms to the
 10 Plan?
 11 A. If there's, if it's -- first of all, we do mostly
 12 electronic enrollment. So they might provide a computer
 13 for someone to enroll. I'm not -- we don't manage what the
 14 employers do as to how exactly they do it.
 15 But I know of some that will provide a computer
 16 for an employee who does not necessarily work in a desk
 17 job. But they are, they help them get enrolled. But
 18 that's, again, on the HBR and the agency or the employer.
 19 Q. Okay. And do participating employers deduct
 20 premiums from their employees' salary?
 21 A. The State Controller deducts the premiums from
 22 the salary. But it's the local HR people who are
 23 responsible for getting it right into the system, the HR
 24 payroll system.
 25 There are 408 employing units, for example, that

Page 91

1 constitutes, like 108 are local education authorities, so
 2 all the public school systems. Each one of them has a
 3 payroll system. So we have integration from 408 different
 4 locations into our system. And they're all different.
 5 We have the Beacon agencies, which represent the
 6 state agencies if you will. The educational systems are
 7 just very different. General Assembly has their own
 8 payroll system.
 9 And so all of that comes in. And each employing
 10 unit is responsible for getting the accurate information
 11 into their own payroll system.
 12 And then Blue Cross does the billing. We'll send
 13 them an aggregated bill to know how much, how many active
 14 members are on the payroll, on the Plan for a particular
 15 month. We bill in advance. And then the money gets moved
 16 around electronically.
 17 Q. And who determines whether the exclusion remains
 18 in the Plan?
 19 A. Say that again please.
 20 Q. Who determines whether the exclusion remains in
 21 the Plan?
 22 A. The board.
 23 MS. RAVI: Can we go off the record?
 24 (Off the record)
 25 MS. RAVI: Back on the record.

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1 BY MS. RAVI:
 2 Q. You testified earlier that Plan staff discussed
 3 the statement regarding the legal and medical uncertainty
 4 of coverage for gender dysphoria treatment.
 5 Is that right?
 6 A. Yes.
 7 Q. When was this discussed among Plan staff?
 8 A. When?
 9 Q. Yes.
 10 A. We discuss all kinds of things every single day
 11 about coverage for everything we offer. And so to pinpoint
 12 a day, I couldn't possibly do it.
 13 Q. Are you aware of any specific day on which Plan
 14 staff discussed the medical uncertainty of coverage for
 15 gender dysphoria treatment?
 16 A. Not at all.
 17 Q. Are you aware of who would have discussed this
 18 issue?
 19 A. It may have been like Caroline Smart and I might
 20 have talked about it. As I mentioned, I think I mentioned
 21 these same names earlier, Ted Enarson, Caroline Smart,
 22 either Andrew or Kendall, again, just general
 23 conversations, what we've heard, what we know.
 24 We're not clinicians. I have a very, very, very
 25 small staff. And we mostly manage contracts. And so we do

Page 93

1 a lot of research. We have, you know, a big engine, but we
 2 still don't have a lot of expertise. And so we rely on our
 3 own thought.
 4 And then we research what we find out, you know,
 5 what we need to research, we reach out to resources --
 6 because we have Blue Cross to reach out to, we have CVS to
 7 reach out to -- to gain knowledge. So, again, that's what
 8 we do every single day.
 9 Q. What year would you have discussed with Caroline
 10 and Ted and the other Plan staff you mentioned, what year
 11 would you have discussed the legal and medical uncertainty
 12 of gender dysphoria treatment?
 13 A. It would have had to have been no earlier than
 14 2017, June forward if you will. And then it would have
 15 probably been into 2018.
 16 Q. Okay. Was this discussed after 2018?
 17 A. Possibly.
 18 Q. When would that have been?
 19 A. No particular time.
 20 Q. Is the Plan aware of whether after 2018 this
 21 issue would have been discussed?
 22 A. As I said before, we discuss everything. We
 23 discuss all sorts of issues every single day.
 24 So there's just no possible way I can respond to
 25 a particular issue -- no matter the fact that it is your

Page 94

1 important issue.

2 But I have important issues that come up every

3 single day with populations after, especially during board

4 meetings, when different populations want to come and ask

5 for another treatment. So we have them come up every board

6 meeting.

7 And so it is not possible to talk about which day

8 did we talk about what topic. It's just not going to

9 happen.

10 Q. So the Plan is aware that in, starting June 2017

11 into 2018, the statement regarding legal and medical

12 uncertainty of gender dysphoria treatment was discussed --

13 A. Absolutely.

14 Q. -- in that period?

15 A. So I will say more specifically, you know, again,

16 after this, one of the very first e-mails I got from former

17 counsel to Lotta Crabtree was from Ashley Gellahan.

18 And while he's an attorney, so I can't divulge

19 some of the information, we all became very much aware of

20 the Franciscan Alliance opinion. And we've been aware of

21 opinions throughout. And so -- Bostock last year.

22 So believe me, this comes up a lot in a lot of

23 settings, in a variety of settings. And it's just not

24 possible to talk about specific ones.

25 Q. So is it fair to say that, speaking in the period

Page 95

1 after 2018, the Plan is not aware of any specific time when

2 the medical uncertainty of gender dysphoria treatment was

3 discussed?

4 A. That may be fair.

5 Q. And you mentioned that the Plan has resources

6 that it can reach out to for information on this topic.

7 You said that Blue Cross Blue Shield is one of those

8 resources and CVS.

9 Are there any other resources?

10 A. Those are our main go-tos. Segal, we talk to

11 Segal. They have consulting staff that includes

12 clinicians.

13 Q. Any other resources for the topic of gender

14 dysphoria treatment?

15 A. No.

16 Q. All right. And you testified earlier that you,

17 yourself, did some research into the medical necessity of

18 gender dysphoria treatment.

19 Is that right?

20 A. Yes.

21 Q. You said that you researched Kaiser, Milliman,

22 and the New England Journal of Medicine.

23 Is that right?

24 A. Yes.

25 Q. How did you decide to look at those resources?

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1 A. Having been at the state for a while, I'm very

2 much aware of Kaiser being kind of a go-to resource, as

3 well as Milliman, and the New England Journal of Medicine.

4 Again, there's articles published. Again, once

5 you get started on some of those distribution lists, you

6 get stuff all the time. And there's no possible way to

7 read all of it.

8 Q. When did you do this research?

9 A. I don't know. It could have been any day, any

10 time of day, any week over the last several years.

11 Q. So between June of 2017, when you started at the

12 Plan, and today, can you pinpoint any specific time when

13 you did this research?

14 A. Probably in the fall, I would say in the fall of

15 2017. Because, quite frankly, the topic had never entered

16 my mind. So that would, I would say that was a good time

17 for it, and then maybe during 2018, again, as we're

18 learning about more of the activities around it -- but, no.

19 Q. Let's start with fall of 2017. Did you speak

20 with anyone about what resources would be helpful to look

21 into regarding the medical necessity of gender dysphoria

22 treatment?

23 A. We talked to Blue Cross and CVS and Segal during

24 that time frame.

25 Q. How did you find the resources that you reviewed?

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1 A. I reached out to Segal, Blue Cross, and CVS.

2 They are our partners. They all have clinical staff. And

3 that's where we get our, a lot of our clinical feedback.

4 Q. Did you save your research?

5 A. What's that?

6 Q. Did you save your research?

7 A. No.

8 Q. Why not?

9 A. Because I wasn't researching to write a white

10 paper.

11 Q. So is it correct that that research has not been

12 produced to the plaintiffs at this point?

13 A. Right. General curiosity.

14 Q. In the fall of 2017, how long did you spend

15 researching these issues?

16 A. Several hours maybe.

17 Q. And you said maybe again in 2018. How long did

18 you spend in 2018?

19 A. Probably less.

20 Q. Did you share your research with anyone?

21 A. The staff discussed it. They may have researched

22 as well. And, again, it was more general conversation.

23 Q. Who at the, in the staff did you share your

24 research with?

25 A. Caroline, Ted, Beth. It's my leadership team, we

Page 98

1 talk about everything.

2 Q. And you said they may also have researched?

3 A. Uh-huh.

4 Q. Are you aware of what research they did?

5 A. No. I said they may have also researched. So I

6 don't know if they did or didn't.

7 Q. Speaking of Kaiser, what resources did you look

8 at for Kaiser?

9 A. I just searched gender dysphoria, transition

10 surgery.

11 Q. Did you review articles?

12 A. Uh-huh.

13 Q. From Kaiser?

14 A. Uh-huh.

15 Q. Okay. What were those articles?

16 A. I don't know.

17 Q. Do you remember the date of the articles?

18 A. Time range that we've already established. And

19 it would have been current because I'm also aware of the

20 changing atmosphere or landscape. I've seen articles that

21 are from -- so, for example, in that PowerPoint

22 presentation, there was references to 2008, which is quite

23 some time ago. So I was looking for something more

24 current. So I would have looked for more current articles.

25 But there's nothing that I have or remember or

Page 99

1 produced in that space.

2 Q. So with regard to your research for Kaiser, you

3 reviewed articles --

4 A. Uh-huh.

5 Q. -- from Kaiser? Do you recall the names of those

6 articles?

7 A. No.

8 Q. Do you recall the date of any of them?

9 A. No.

10 Q. What were the key points made in those articles?

11 A. Everybody has got an opinion about the validity

12 and the efficacy of the treatment, whether or not it should

13 be warranted for people under 18, for kids, if you will.

14 It was a question of whether or not people would

15 want to, did it help the emotional and mental illness

16 issues that surround gender transformation or gender

17 dysphoria rather.

18 And there is, of course, evidence of those who

19 have transitioned and then went back and, or didn't go back

20 but regretted it rather.

21 Q. Who from Kaiser made those statements?

22 MR. RULEY: Objection to form.

23 THE WITNESS: I said I don't know.

24 BY MS. RAVI:

25 Q. Did you look at anything other than articles

Page 100

1 related to Kaiser?

2 A. No.

3 Q. Did what you looked at discuss the DSM-5?

4 A. No.

5 Q. Did it discuss the WPATH Standards of Care?

6 A. No. And, you know, the Plan doesn't necessarily,

7 the Plan staff today does not necessarily hold with the

8 same conclusions that were made by Plan staff back in 2016.

9 It's a different group of people.

10 And so I would say that we don't necessarily have

11 the same opinion, not to mention the fact that the basis

12 for the argument back in 2016 was the 1557 Rule and the

13 fear of or concern of losing federal dollars.

14 So it, from looking through all of the e-mails,

15 it, that was the crux of the issue, of the coverage.

16 And it appeared that there were varying, well,

17 through the document that we already looked through, that

18 there were just several pages of information that supported

19 the conclusion to add the benefit, to remove the exclusion.

20 So, again, the crux of the issue was the 1557

21 Rule.

22 So at this point, you know, the team back at that

23 time went down the path of supporting the 1557 Rule and

24 removing the exclusion using some of those other sources.

25 But I don't -- the Plan staff today, I'm not sure

Page 101

1 that we have the same view of WPATH and DSM.

2 And I'm not a clinician, so I can't offer anything

3 further. But, again, that's them and then. And today it's

4 a different day.

5 Q. Who on Plan staff is different from Plan staff in

6 December of 2016?

7 A. So key people. Key people were Mona Moon is no

8 longer part of the Plan staff. Lotta Crabtree is no longer

9 part of the Plan staff. Blake Thomas, who is, he's one of

10 the attorneys, he's not at the department anymore. Mark

11 Collins is not there anymore.

12 And we have structured, the Plan is structured

13 differently. There was a small group that did everything

14 back in those, in the 2016 time frame. And now there's a

15 much broader perspective.

16 Q. Who replaced Mona Moon?

17 A. Me.

18 Q. Who replaced Lotta?

19 A. We didn't directly replace Lotta. We did it

20 differently.

21 Q. Who replaced Blake?

22 A. Kendall. It was Andrew Norton first and then

23 Kendall.

24 Q. And Mark Collins?

25 A. Slightly different but her, slightly different

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1 role, but I would say we have two people, we have a real
 2 actuary, Charles Seifert. And we have a financial analyst,
 3 Tamera McNeal.
 4 Q. And you said it's a different perspective with
 5 regard to how issues are approached with current Plan
 6 staff --
 7 A. Uh-huh.
 8 Q. -- as opposed to Plan staff in 2016.
 9 A. Uh-huh.
 10 Q. Can you clarify that?
 11 A. In 2016, there was Mona and Lotta and Caroline.
 12 And they seemed to make all the decisions and were
 13 supported by staff and maybe some of the clinical
 14 perspective that -- they actually had more clinicians back
 15 in those days.
 16 Today, we are a flatter staff. And we have a very
 17 diverse group of experience and background and skill sets.
 18 And so we bring them all to the table.
 19 And we work through -- again, our focus, at the
 20 direction of the Treasurer, is about making sure the Plan is
 21 in existence tomorrow, in five years, in ten years.
 22 And that's really hard to do when we're being
 23 funded at a 4 percent or better or less level, and our trend
 24 rates are at 7 percent. The math just doesn't work.
 25 Q. With regard to the Plan's current staff, is there

Page 103

1 anyone on the Plan's current staff who would be involved in
 2 discussions regarding legal or medical uncertainty about
 3 treatment for gender dysphoria who is a doctor?
 4 A. No. Nobody on Plan staff is a doctor.
 5 Q. Is there anyone on Plan staff discussing these
 6 issues who is a clinician?
 7 A. We have a nurse and a pharmacist.
 8 Q. Who are they?
 9 A. The nurse is Sonja Dunn. And the pharmacist is
 10 Stephanie Craycroft-Andrews.
 11 Q. Are either Stephanie or Sonja experts in the
 12 field of transgender healthcare?
 13 A. No.
 14 Q. Is anyone on the Plan staff today an expert in
 15 that field?
 16 A. No. We would not ever, we would not hire someone
 17 that is -- we would need -- if we were hiring someone that
 18 is an expert in a field, it's not going to be someone who
 19 is an expert in a very small field that we don't cover.
 20 And because of the fact that I'm not covering
 21 niche groups, I'm unlikely to cover in the current, today
 22 or tomorrow or next week -- as long as I'm part of the Plan
 23 and we're still trying to focus on costs, then that's just
 24 not going to, it's not going to be my focus.
 25 As I said before and I'll say it again, this is

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1 not personal. This is not something that I get to make a
 2 choice about. Because if I had every single group that
 3 comes in to ask for a benefit, if I covered that, then I
 4 would be completely, completely avoiding my fiduciary
 5 responsibility to cover basic health. That's what the Plan
 6 Benefits Booklet says, right?
 7 The Plan Benefits Booklet identifies every single
 8 thing I cover. And it provides healthcare. We want every
 9 member of the Plan to have good healthcare. We want the --
 10 and the reality is we have a lot of members who have
 11 diabetes. We have a lot of members who have orthopedic
 12 issues. We have a lot of members who have RA. We have
 13 really a lot of members who have cancer. And they want to
 14 be, they want to be covered.
 15 And so it's really difficult for me to just say,
 16 you know, I can take this group of 25 and this group of 10
 17 and these -- if you add all that up -- I'll, I'll totally
 18 admit that the cost of this benefit is not going to break
 19 the Plan, never was, never will.
 20 But it -- I can't do it for that group and not do
 21 it for the group that wants it for their infants, for, you
 22 know, for a certain feeding formula for that infant group,
 23 and I can't do it for the hearing aid group, and I can't do
 24 it for the group that really wants acupuncture.
 25 Because once you start adding those, then I have

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1 to keep going. Everybody who comes in and wants a benefit,
 2 I'll have to do it because I can't discriminate.
 3 I'm not discriminating. This is about what the
 4 Plan can afford in the environment that we're in today --
 5 which is I have a General Assembly that's funding me at 4
 6 percent when my trend rate is 7 plus. And that's not even
 7 absolutely certain.
 8 I have a 28.8 billion unfunded liability for
 9 retiree healthcare that I, myself, am ready to have in a few
 10 years.
 11 And so, you know, this is all about being a
 12 government plan. And I don't get to, I don't get to pick
 13 and choose. I'm not a commercial plan.
 14 So let's start with that. A commercial plan, they
 15 have revenues, right? You go out and sell widgets, and you
 16 sell a lot of widgets, and then you decide how much you want
 17 to put into the benefit. And you can have your member, your
 18 staff, your employees pay.
 19 I would bet most employers -- I was paying 100
 20 bucks when I was at Time Warner. I was paying for the
 21 family, and I wasn't fully subsidized.
 22 At the State Health Plan, we've got people who, a
 23 whole lot of employees have to work one week out of a month
 24 just to cover their Health Plan for their family.
 25 And the effort to just institute a 25 dollar

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1 premium for the 70/30 Plan and a 50 dollar premium for the
2 80/20 Plan was a herculean effort. They had never paid
3 anything until 2018. Employees had never paid anything
4 until 2018 -- which is crazy. I mean I get that.
5 But we can't just keep adding costs to the Plan.
6 And the General Assembly, in the 2016 budget, I
7 think it's 2016-94, something like that, said you got to
8 stop, you've got to control your costs, you're not getting
9 more than 4 percent, and you can't go over.
10 So what happens when I spend more than I've got?
11 I've got to charge employees. And I got to charge employees
12 who, you know, read the, you know employees don't make
13 market rates. They just don't.
14 And so it is a very tight -- I mean I live in a
15 box. And there's not a lot of room in the box to move
16 because I have the General Assembly describing what I can
17 do. You know, it's all -- eligibility, it's all in statute.
18 My funding is all in statute, in the budget bill. And
19 that's one box.
20 I work with vendors who I have to make them work
21 together. And, quite frankly, as big as we are, I got at
22 least one vendor that's not real cooperative. And it's
23 really annoying. But it doesn't matter -- apparently, to
24 some vendors, it doesn't matter that we're the biggest
25 Health Plan, you know, one of the biggest in the nation.

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1 And it may sound big and like we can get all this
2 buying power. We don't have all the buying power. The
3 hospitals and the providers that work in the hospitals are
4 killing us all from a cost standpoint.
5 And so it's, you know, my focus is to be able to
6 reduce family premiums 100 bucks. That's my, that is one of
7 my biggest goals right now. And that is the only way I'm
8 going to get an uptick -- to bill 100 dollars -- I'm paying
9 right now 720 dollars for three people. That's a lot of
10 money. And I am grateful that I can afford it. But for
11 your average teacher, they can't afford that.
12 And I'm going to have to reduce the family premium
13 100 bucks at a minimum to make somebody take it up.
14 And so until I can take that kind of money out of
15 the Plan and at the same time shore up the Retiree Health
16 Benefit Trust Fund for the unfunded liability and make up
17 trend -- oh, by the way, they're not covering COVID costs
18 right now. The General Assembly is not interested in giving
19 us back our money for COVID.
20 So people ask me why carry a billion dollar
21 budget, cash, cash balance? It's to make up for things like
22 that. Like a bad flu season, which we're going to have,
23 we're going to have it if we're not careful about vaccines
24 and COVID's still raging.
25 I mean that's what I have to live with every day

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1 I walk in the door. And it is, like I said before, it
2 breaks my heart that I can't cover everybody.
3 I mean I have to deny people who enrolled 10 days
4 later than the deadline. Sorry, can't do it. Statute says
5 30 days, can't do it.
6 I have to deny people that, that have no money to
7 cover their spouse, who then got a job, who forgot to take
8 themselves off the Plan within the 30 day window, made it 45
9 days, and I can't, and I can't let them go.
10 So this is, this is not about doing -- I am not in
11 a position to do what I would like to do or anybody I work
12 with to do what I want to do.
13 This is about I work for the taxpayers of North
14 Carolina. And I work for the Treasurer. And I work for
15 every single member, 740,000 plus members and their
16 dependents, every single day. And that's some weight.
17 That's some weight.
18 And I empathize with everybody who comes in the
19 door all day long. I just can't do everything for
20 everybody.
21 And so if someone wants to sign up for the Health
22 Plan to get good healthcare, to cover their diabetes, to
23 cover their cancer, to cover their primary care visits,
24 we're a great Health Plan. But we're not going to be the
25 Health Plan for everybody. And that's just not how we were

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1 ever set up. It's never been set up to do that.
2 Sorry, that was a long-winded answer.
3 Q. Since you started at the Plan, what benefits has
4 the Plan added to its Plan booklets?
5 A. We have added some insignificant benefits,
6 generally speaking. We have made, we've moved forward with
7 some mental health parity, a couple of mental health parity
8 benefits that we needed to make sure we were in compliance.
9 Which every now and again -- I think, as I
10 mentioned already, that we use the previous benefit roster,
11 if you will, as we move into the next benefit year --
12 sometimes, we, the Plan and Blue Cross get a little
13 off-kilter.
14 As I've already said, we intentionally differ on
15 some benefits, but not on all of them. And so we will do a
16 somewhat routine righting of the ship.
17 And there are small things that we have added,
18 but I wouldn't necessarily call many of them substantial
19 benefits. It may be coverage for a, you know, a water
20 bottle, hot water bottle. That would be something small.
21 We're definitely focused on mental health parity.
22 Right now, those are really important for us to make sure
23 we're aligned with.
24 I think I already mentioned the digital
25 mammography, but that was before I started.

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1 We are considering continuous glucose monitors.
 2 Again, it has not been approved, so I'm just, it's
 3 considered. But that would be to try a different mechanism
 4 for payment.
 5 Again, we have a lot of diabetics. So a
 6 continuous glucose monitor is already covered under the
 7 medical benefits. We're not adding it, we're just
 8 changing, we're adding a different mechanism for payment,
 9 putting it under the pharmacy benefit, to see where we get
 10 the greatest adherence.
 11 Q. And any others that you recall?
 12 A. Not that I can -- I feel like I'm forgetting one.
 13 But if it comes to me, I will -- I can't think of it,
 14 anything else right now.
 15 Q. And since you have joined the Plan, is there
 16 anywhere where Plan staff have documented the Plan's
 17 position as to the medical necessity of treatment for
 18 gender dysphoria?
 19 A. Since I've been at the Plan, no.
 20 Q. So turning back to the research you did in 2017,
 21 maybe 2018, regarding Kaiser, are you aware of whether
 22 Kaiser covers treatment for gender dysphoria as medically
 23 necessary?
 24 A. I don't know. And it would not be top of my
 25 mind.

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1 Q. Is that something you looked into in your
 2 research?
 3 A. I don't recall.
 4 Q. What resources did you look at from Milliman in
 5 late 2017 into 2018?
 6 A. Same thing, same as I did with Kaiser. I just
 7 researched, I searched for gender dysphoria and see what
 8 articles come up.
 9 And, again, I have -- I'm sure it doesn't matter
 10 to you -- but my day is very challenging. And I've got
 11 like 10 minutes to do stuff. I have very small amounts of
 12 time.
 13 And I'm not trying to diminish the importance,
 14 but I've got to find stuff quick. And I've got to find it
 15 and it's got to be quick and get to the point. Not a lot
 16 of medical journals do that. So you have to kind of read
 17 the executive, the excerpt.
 18 So, again, it's got to be quick and dirty. I'm
 19 doing it very fast. And I'm trying to get as much in my
 20 head.
 21 Q. And you said you searched for articles regarding
 22 Milliman, where were you researching?
 23 A. On the Milliman website.
 24 Q. Do you recall the dates of what you looked at?
 25 A. No.

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1 Q. Do you recall if what you looked at discussed the
 2 WPATH Standards of Care --
 3 A. No.
 4 Q. -- for gender dysphoria?
 5 You said you reviewed articles from Milliman's
 6 website. Is that right?
 7 A. Articles, writings, white papers -- again,
 8 probably at a high level.
 9 Q. Could you clarify what you mean by high level?
 10 A. Not in depth.
 11 Q. So is it the case that you were researching at a
 12 high level or reviewing at a high level?
 13 A. Reviewing would be a good word.
 14 Q. Okay. Anything else that you looked at from
 15 Milliman?
 16 A. No.
 17 Q. What is Milliman?
 18 A. Think tank, healthcare think tank.
 19 Q. Do they provide analysis of medical certainty
 20 regarding certain treatment?
 21 A. Maybe.
 22 Q. Did you look into that when you were doing this
 23 research?
 24 A. Maybe.
 25 Q. Do you recall?

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1 A. I don't know.
 2 Q. Is the Plan aware of Milliman's position on
 3 blanket exclusions on coverage for gender dysphoria
 4 treatment?
 5 A. I'm not. I can't speak for the Plan on that
 6 particular thing. Meaning I know what I -- I'm not -- it's
 7 -- not me personally, I'm not familiar.
 8 Q. Okay. And speaking as the Plan's 30(b)(6)
 9 designee, you are not aware if the Plan is aware --
 10 A. I'm not aware.
 11 Q. What resources did you look at for the New
 12 England Journal of Medicine?
 13 A. What I have access to -- which is not a lot. You
 14 have to pay big bucks for that.
 15 Q. What do you have access to?
 16 A. Just high level, what, when you search the New
 17 England Journal of Medicine, you get the abstracts
 18 generally speaking.
 19 Q. So you have access to the Journal's abstracts of
 20 its articles?
 21 A. Yes.
 22 Q. Did you review anything beyond the abstracts?
 23 A. No. You've got to pay for that. We've got to
 24 watch our costs.
 25 Q. Which abstracts did you review?

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1 A. I don't know.

2 Q. Do you remember the date on any of them?

3 A. No.

4 Q. Do you remember who wrote any of them?

5 A. No. At the time, I was just looking for personal

6 knowledge, not for preparing for a deposition.

7 Q. Do you recall if those, if the abstracts you

8 reviewed made any mention of DSM-5?

9 A. No. I didn't know what it was at the time.

10 Q. Did they make any mention of the WPATH Standards

11 of Care?

12 A. I wouldn't have known at the time.

13 Q. Have you read the section of the DSM-5 relating

14 to gender dysphoria?

15 A. No. I don't think so.

16 Q. Have you read the WPATH Standards of Care?

17 A. I don't think so.

18 Q. What about AMA Resolution 122?

19 A. I don't believe so.

20 Q. And are you familiar with the Endocrine Society's

21 Clinical Practice Guidelines for Endocrine Treatment of

22 Gender Dysphoric Persons?

23 A. No.

24 Q. Other than the research you mentioned in you said

25 late 2017, possibly into 2018, have you since researched

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1 the issue of medical necessity of gender dysphoria

2 treatment?

3 A. No.

4 Q. Have you done any research on what the medical

5 community has to say about this issue since that time?

6 A. No.

7 Q. And you testified this morning about your

8 education and your work background. Do you recall that?

9 A. Yes.

10 Q. Is it correct that you are not an expert in

11 treatment protocols for transgender individuals?

12 A. I'm not an expert. I'm not a clinician.

13 Q. So is it correct that you're not an expert in

14 treatment protocols for transgender individuals?

15 A. That is correct.

16 Q. Have you ever published on this issue?

17 A. No.

18 Q. And have you ever provided any kind of medical

19 treatment to transgender patients?

20 A. Have I personally ever provided medical

21 treatment? Please rephrase that question.

22 Q. Have you ever been involved in the treatment of

23 an individual who self-identifies as transgender?

24 A. Me personally?

25 Q. Yes.

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1 A. That would -- I can't fathom the question. I'm

2 not a clinician.

3 Q. Other than Kaiser, the New England Journal of

4 Medicine, and Milliman, were there any other resources that

5 you looked at in 2017, going into 2018?

6 A. I'll say no.

7 Q. Okay. All right.

8 MS. RAVI: Could we go off the record?

9 (Off the record)

10 MS. RAVI: I have no further questions at this

11 point.

12 Thank you, Ms. Jones.

13 MR. RULEY: Okay. Can we take like 5 or 10

14 minutes? Let me look back over my notes. I didn't know

15 you were going to finish.

16 MS. RAVI: We'll reserve if we have any redirect

17 after.

18 MR. RULEY: It won't take more than 10 minutes.

19 Are you going to have any questions, Alan?

20 MR. MCINNES: I don't know.

21 I'm going to defer to Zach, if he has --

22 MR. PADGET: I don't. I'm not going to have any.

23 MR. MCINNES: Okay. All right. Then I won't

24 either.

25 Actually, I take that back. I may have a couple

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1 -- if that's okay.

2 MS. RAVI: Alan, I think we're taking another 5

3 to 10 minute break, and then we'll be back.

4 (Off the record)

5 MR. RULEY: I have just a few follow-up questions

6 for you.

7

8 EXAMINATION

9 BY MR. RULEY:

10 Q. Would you find Exhibit 1 please. Would you turn

11 to Page 50 please.

12 Page 50 is titled What Is Not Covered? Is that

13 right?

14 A. That is correct.

15 Q. And are these basically exclusions, a list of

16 exclusions?

17 A. Yes.

18 Q. And would you look at the fourth bullet point.

19 A. Yes.

20 Q. What is that exclusion?

21 A. Any experimental drug or any drug or device not

22 approved by the Food and Drug Administration (FDA) for the

23 applicable diagnosis or treatment.

24 Q. Then turning the page to Page 51, the fourth

25 bullet point from the bottom, what is that exclusion?

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1 A. Surgical procedures for psychological or
2 emotional reasons.

3 Q. And would those exclusions also potentially apply
4 to coverage for gender dysphoria?

5 A. Yes.

6 Q. Earlier, you mentioned HBRs. What are they again
7 please?

8 A. Health Benefit Representatives. They are
9 actually defined in statute. And they work at the various
10 employing units. I mentioned there are 408. They are
11 liaisons to the Plan. So the Plan teaches them, keeps them
12 apprised of the benefits being offered. But they're
13 responsible for their employer's employees and getting them
14 enrolled and making sure they understand the processes.

15 Q. So are they employed by the State Health Plan or
16 by others?

17 A. By the others.

18 Q. All right. Thank you.

19 On costs -- would you get Exhibits 6 and 7 please.
20 Looking at Exhibit 6, for example, look at the
21 first e-mail on Exhibit 6, Page DEF61647, the January 22,
22 2017 e-mail.

23 A. Yes.

24 Q. And that reports, as of 1-21, a total paid of
25 287.57.

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1 A. Yes.

2 Q. And then if you look on Exhibit 7, for the month
3 of January 2017, the Plan Paid Amount is 2628.84, correct?

4 A. Correct.

5 Q. So a discrepancy. Do you know or does the Plan
6 have information on what the actual numbers were?

7 A. I think in a word, no. It's very difficult for
8 the Plan to understand these costs simply because it
9 depends on whether a provider provided the coding and
10 diagnosis codes of gender dysphoria.

11 CVS' numbers are not included in this, so that we
12 don't know.

13 So, again, we don't have visibility or access to
14 some of this information that Blue Cross has. We don't have
15 access to provider contracts, et cetera. So I think there's
16 some fundamental discrepancies.

17 But there are also some timing discrepancies. So
18 a, this, on the e-mail, 61647, the amount of 287.57 might
19 have been for one claim.

20 The January 2017 number of 2628.84 might have been
21 the full January compliment of Plan Paid Amount, but it was
22 run somewhere around 90 days later.

23 So the timing of all this -- I mean to look at
24 something on January 22, 2017, on 61647, is meaningless
25 because of the timing.

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1 MR. RULEY: No further questions.
2 Thank you very much.

3
4 EXAMINATION

5 BY MR. MCINNES:

6 Q. Ms. Jones, my name is Alan McInnes. I represent
7 the North Carolina Department of Public Safety in this
8 matter. I have just a couple questions for you.

9 First question, are you aware of any state
10 agencies that offer healthcare insurance to their employees
11 outside of the State Health Plan?

12 A. No. I'm not.

13 Q. Okay. And would you be aware of any state
14 agencies that were offering healthcare insurance to its
15 employees outside of the State Health Plan?

16 A. So if I might clarify -- each of the state
17 agencies have the ability to offer supplemental plans.

18 And so if an agency is offering a supplemental
19 plan, there's cancer insurance, there's accident insurance,
20 of course, the supplemental fully, you know, dental and
21 vision.

22 But from a comprehensive health plan, I'm not
23 aware of any state agency offering such. I don't believe
24 they can.

25 Q. Comprehensive healthcare insurance and

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1 prospectus, are the state agencies required by statute to
2 provide them through the State Health Plan?

3 A. Yes.

4 Q. Okay. In, in your research, are you aware of any
5 supplemental healthcare insurance that is offered only for
6 gender dysphoria treatment?

7 A. No. I'm not aware of any.

8 MR. MCINNES: That's all the questions I have.

9 MR. PADGET: Nothing from me.

10 MS. RAVI: Could we go off the record?
11 (Off the record)

12 MS. RAVI: I have no further questions today.
13 Thank you very much for your time, Ms. Jones.

14 THE WITNESS: Thank you. Appreciate it.
15 (Deposition concluded at 2:58 p.m.)
16
17
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25

Page 122

1
2 CERTIFICATE OF REPORTER
3
4 STATE OF NORTH CAROLINA AT LARGE, to wit:
5
6 I, Michelle Maar, RDR, RMR, FCRR, the officer before
7 whom the foregoing deposition was taken, do hereby certify
8 that the witness whose testimony appears in the foregoing
9 deposition was duly sworn by me, that the testimony of said
10 witness was taken by me to the best of my ability and
11 thereafter reduced to writing under my direction;
12 That I am neither counsel for, related to, nor
13 employed by any of the parties to the action in which this
14 deposition was taken, and further that I am not a relative
15 or employee of any attorney or counsel employed by the
16 parties thereto, nor financially or otherwise interested in
17 the outcome of the action.
18
19
20 Michelle Maar
21
22 Michelle Maar, Court Reporter
23
24 Notary Public #201628400102
25 My Commission expires October 4, 2021

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1 Alan M. Ruley, Esq.
2 Aruley@belldavispitt.com
3 August 16, 2021
4 RE: Kadel, Et Al v. Folwell
5 8/3/2021, Dee Jones (#4714238)
6 The above-referenced transcript is available for
7 review.
8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.
12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com
16
17 Return completed errata within 30 days from
18 receipt of testimony.
19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.
21
22 Yours,
23 Veritext Legal Solutions
24
25

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1 Kadel, Et Al v. Folwell
2 Dee Jones (#4714238)
3 ERRATA SHEET
4 PAGE ___ LINE ___ CHANGE ___
5 _____
6 REASON _____
7 PAGE ___ LINE ___ CHANGE ___
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21 REASON _____
22 _____
23 _____
24 Dee Jones Date
25

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1 Kadel, Et Al v. Folwell
2 Dee Jones (#4714238)
3 ACKNOWLEDGEMENT OF DEPONENT
4 I, Dee Jones, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.
10 _____
11 _____
12 Dee Jones Date
13 *If notary is required
14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20__.
16
17
18 _____
19 NOTARY PUBLIC
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<p>words 69:3,5 work 9:15 10:3,5 10:21,24 12:10,13 12:25 13:2,4 21:12 70:1 90:16 102:19,24 105:23 106:20,20 107:3 108:11,13,14,14 115:8 118:9 worked 7:23 23:5 25:5,9,12 74:22 working 9:17 90:4 world 35:15 worry 65:10,14,15 wpath 35:20,23 36:3,6,10,13,17,20 37:6 59:5,11 100:5 101:1 112:2 114:10,16 write 97:9 writing 122:11 writings 112:7 written 4:21 24:18 82:19 wrote 114:4 wunc 29:22 wy 2:19</p>	<p>65:3 81:25 82:25 84:11 93:9,10 94:21 109:11 years 10:4 12:12 13:19 22:3 23:6,7 69:15 71:21 81:3 96:10 102:21,21 105:10 young 4:9</p>
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days

after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT 3

Plaintiffs' First Set of Requests for Production of Documents and Things to Defendant State of North Carolina, Department of Public Safety

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, in his official capacity as
State Treasurer of North Carolina, *et al.*,

Defendants.

Case No. 1:19-cv-00272-LCB-LPA

**PLAINTIFFS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO
DEFENDANT STATE OF NORTH CAROLINA,
DEPARTMENT OF PUBLIC SAFETY**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs Maxwell Kadel; Jason Fleck; Connor Thonen-Fleck; Julia McKeown; Michael D. Bunting, Jr.; C.B., by his next friends and parents, Michael D. Bunting, Jr. and Shelley K. Bunting; Sam Silvaine; and Dana Caraway (collectively, "Plaintiffs") hereby serve the following requests for production of documents and things ("Requests") on Defendant State of North Carolina, Department of Public Safety ("Defendant" or "DPS"). Plaintiffs request that Defendant produce, and permit inspection, sampling, testing, and/or copying of the documents described herein, in accordance with the definitions and instructions set forth herein to counsel for Plaintiffs. Defendant's answers to these Requests shall be made within thirty (30) days of service of these Requests. Plaintiffs request electronic service

of Defendant's written responses to tborelli@lambdalegal.org, and all responsive documents in their native format to enoel@mwe.com. To the extent that any native files cannot be delivered electronically, Plaintiffs request service of those files to:

Attn: Erica D. Noel, Esq.
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, NW, Washington, DC 20001-1531

These Requests are continuing in nature and impose upon Defendant the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

As used herein, the following terms shall have the meanings indicated below:

1. "Action" means the above-captioned case proceeding in the United States District Court for the Middle District of North Carolina, *Kadel, et al. v. Folwell, et al.*, Case No. 1:19-cv-00272-LCB-LPA (M.D.N.C.).
2. "Answer" includes any answer filed by Defendant in this Action, including the answer filed in this Action by Defendant on April 16, 2021, and any answer that Defendant may file in the future.
3. "BCBSNC" refers to Blue Cross and Blue Shield of North Carolina, in its capacity as the North Carolina State Health Plan's third-party administrator.
4. "Board" or "Board of Trustees" refers to the Board of Trustees for NCSHP.
5. "Communication" means any written, oral, or electronic exchange or transmission of information by any means, including face-to-face conversation, in-person

meeting, mail, telephone, electronic mail, facsimile, instant message, social media, and the Internet.

6. “Complaint” includes any complaint filed by Plaintiffs in this Action, including the Amended Complaint filed on March 9, 2021, and any complaint that Plaintiffs may file in the future.

7. “CVS” refers to CVS Caremark, in its capacity as the North Carolina State Health Plan’s Pharmacy Benefit Manager for the 70/30 Plan, the 80/20 Plan, and the High Deductible Health Plan.

8. “Defendant,” “you,” and “your” means State of North Carolina, Department of Public Safety, its respective agencies, officers, agents, employees, administrators, attorneys, representatives, contractors, consultants, investigators, and all other persons and entities working or purporting to act on behalf of, or in concert with, or in participation with any of them who have knowledge of any of the matters that are the subject of this action.

9. “Diagnostic Code” means an International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) code and/or an International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) code.

10. “Document” means the complete original or a true, correct, and complete copy and any non-identical copies of any written, recorded, or graphic material, no matter how produced, recorded, stored, or reproduced, including any writing, letter, envelope, telegram, electronic mail, attachment to electronic mail, facsimile, message, instant

message, voicemail, meeting minute, memorandum, statement, book, publication, record, survey, map, study, report, handwritten note, drawing, working paper, chart, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, microfiche, photograph, index, scientific notebook, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, and any other data compilation in your possession, custody, or control. The term “Document” includes, without limitation, Communications. A draft, version, or non-identical copy is a separate Document within the meaning of this term.

11. The “Exclusion” consists of any exclusion from coverage in the Health Plans that are offered through NCSHP for medical or mental health-related care involving Gender-Confirming Healthcare. The Exclusion includes, but is not limited to, exclusions of coverage for “[p]sychological assessment and psychotherapy treatment in conjunction with proposed gender transformation” and/or “[t]reatment or studies leading to or in connection with sex changes or modifications and related care.”

12. Unless otherwise specified, “Gender-Confirming Healthcare” means any healthcare, physical, mental, or otherwise, administered or prescribed for the treatment of gender dysphoria, related diagnoses, or gender transition. Gender-Confirming Healthcare includes but is not limited to “[p]sychological assessment and psychotherapy treatment in conjunction with proposed gender transformation” and “[t]reatment or studies leading to or in connection with sex changes or modifications and related care,” as used in the Health Plans offered by NCSHP.

13. “Health Plans” includes any health plan offered through NCSHP, including but not limited to the 70/30 plan for employees; the 80/20 plan for employees; the high deductible health plan for employees; and the COBRA plan for former employees.

14. “Initial Disclosures” means Defendant’s Initial Disclosures served pursuant to Federal Rule of Civil Procedure 26(a)(1), and any amendments or supplements thereto.

15. “Interrogatory” means any request served pursuant to Federal Rule of Civil Procedure 33.

16. “NCSHP” refers to the North Carolina State Health Plan for Teachers and State Employees.

17. “Person” means any natural person, partnership, association, corporation, joint venture, trust, community group, government or subdivision of any government (including any instrumentality, bureau, department, office, or agency of any government), not-for-profit enterprise, or other business entity, and all present and former officers, directors, agents, administrators, managers, representatives, contractors, consultants, employees, or other persons acting or purporting to act on behalf of such person.

18. “Procedure Code” means a Current Procedural Terminology (CPT) code, and/or a Healthcare Common Procedure Coding System (HCPCS) code, and/or an International Classification of Diseases, Tenth Revision, Procedure Coding System (ICD-10-PCS) code.

19. The terms “in relation to,” “relating to,” and “regarding” mean discussing, describing, reflecting, regarding, involving, including, containing, mentioning, demonstrating, illustrating, analyzing, studying, reporting, referring to, related to, showing, supporting, embodying, identifying, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, pertaining to, associated with, with reference to, about, on the subject of, or in any way logically or factually connected with the matter discussed, in whole or in part.

20. “Request for Admission” means any request served pursuant to Federal Rule of Civil Procedure 36.

INSTRUCTIONS

21. These Requests are intended to cover all responsive information in your possession, or subject to your custody and control, whether directly or indirectly.

22. Unless otherwise specified, the time period covered by these Requests is January 1, 2014, to the present. If it is necessary to refer to periods of time prior to January 1, 2014, in order to respond to a Request, please do so.

23. These Requests are continuing in nature, up to and during the course of trial. Defendant’s responses to these Requests are to be promptly supplemented or amended if, after the time of its initial responses, Defendant learns that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e). Plaintiffs will object to any attempt to

introduce evidence to the Court that should have been but was not disclosed in the responses or supplementation of the responses.

24. All requested Documents are to be produced in the order and manner in which they are currently maintained by Defendant, including producing them with images of their original file folders and file jackets or covers, and indicating the division, department, and/or individual from whose files the Document is being produced.

25. Documents relevant and responsive to the Requests shall be gathered from all professional as well as personal files, computers, and electronic devices, including personal and professional email, instant messaging, and cloud-based storage accounts.

26. All Documents are to be produced in electronic form pursuant to the protocol that may be agreed to among the parties.

27. If Defendant objects to any part of a Request, Defendant shall specify each part of the Request to which Defendant objects; set forth with specificity the grounds for objecting to each such part of the Request, including the reasons; state whether any responsive materials are being withheld on the basis of that objection pursuant to Federal Rule of Civil Procedure 34(b); and otherwise respond to all parts of the Request to which Defendant does not object.

28. If Defendant withholds any Document responsive to these Requests under a claim of privilege, Defendant shall, for each such withheld Document, provide a description of the Document and a statement of the basis upon which the privilege

asserted is claimed. Such description(s) shall be sufficiently detailed to permit Plaintiffs and the Court to evaluate the claim(s) of privilege.

29. In the event that any Document was formerly in the possession, custody, or control of the Defendant and has since been lost or destroyed, that Document is to be identified in writing as follows: (a) addressor, addressee, and Person who prepared or authorized the Document; (b) date of preparation or transmittal; (c) subject matter; (d) number of pages, attachments, or appendices; (e) all Persons to whom distributed; (f) date of loss or destruction; and (g) if destroyed, the manner of destruction, reason for destruction, Persons authorizing destruction, and Persons destroying the Document.

30. For purposes of interpreting or construing the scope of these Requests, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

- a. Construing “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural, and the plural form to include the singular;
- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term “including” to mean “including but not limited to” and construing the term “all” to mean “any and all,” and vice versa;

- e. Construing the term “each” to include “every,” and construing “every” to include “each”;
- f. Construing the use of a verb in any tense as the use of the verb in all other tenses;
- g. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.

31. **Plaintiffs request that Defendant’s written responses specify which Bates numbers are responsive to each Request, in compliance with Federal Rule of Civil Procedure 34(b)(2)(E)(i)’s requirement to “organize and label” all responsive Documents “to correspond to the categories in the request[s]” below.** This instruction applies to all Requests regardless of whether it is expressly included in any Request below.

DOCUMENT REQUESTS

1. All Documents relating to Plaintiff Caraway’s Communications, inquiries, requests for coverage, or complaints regarding coverage for Gender-Confirming Healthcare. This Request includes but is not limited to:

- a. All Communications to and from Plaintiff Caraway relating to coverage for Gender-Confirming Healthcare;
- b. All Documents and Communications regarding Plaintiff Caraway’s requests for Gender-Confirming Healthcare, including but not limited to Communications

among DPS and any other Defendant, and/or among DPS's employees, entities, agents, representatives, contractors, vendors, and/or consultants of DPS.

2. All Documents and Communications, with any internal or external person or entity, relating to the provision or non-provision of Gender-Confirming Healthcare to Defendant's employees and their dependents.

3. All Documents relating to research, consideration, and/or analysis of the cost of covering Gender-Confirming Healthcare through supplemental coverage or any other option for providing access to Gender-Confirming Healthcare, including all Documents that you identify in your response to Plaintiffs' Interrogatory No. 1.

4. All Documents provided to and all Communications with the Board of Trustees, or any employee, agent, or consultant thereof, relating to the Exclusion and/or Gender-Confirming Healthcare.

5. All Documents provided to and all Communications with the North Carolina Treasurer's office, or any employee, agent, or consultant thereof, relating to the Exclusion and/or Gender-Confirming Healthcare.

6. All Documents provided to and all Communications with the NCSHP, or any employee, agent, or consultant thereof, relating to the Exclusion and/or Gender-Confirming Healthcare.

7. Documents sufficient to show all insurance coverage of any kind, including but not limited to any form of health insurance, purchased by Defendant for employees apart from the coverage offered through NCSHP.

8. All Documents that Defendant may identify in its Initial Disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii).

9. All Documents Defendant considered, relied upon, or intends to rely upon, in support of its admissions and/or denials of any of the allegations contained in the Complaint.

10. All Documents which Defendant considered, relied upon, or intends to rely upon, in answering each Interrogatory and each Request for Admission in this Action.

11. To the extent not requested above, all Documents that Defendant may rely upon to support its defenses against Plaintiffs' claims in this Action.

12. With respect to each expert named by Defendant in this Action, produce each deposition or trial transcript where University Defendant's experts provided testimony and any article listed in the expert's CV and bibliography.

* * *

Dated: April 19, 2021

/s/ Amy E. Richardson

Amy E. Richardson
N.C. State Bar No. 28768
Lauren E. Snyder
N.C. State Bar No. 54150
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Deepika H. Ravi*
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street N.W., 8th Floor,
Washington, D.C. 20036
Telephone: 202-730-1300
Facsimile: 202-730-1301
dravi@hwglaw.com

Michael W. Weaver*
MCDERMOTT WILL & EMERY
444 W. Lake St., Suite 4000
Chicago, IL 60606
Telephone: 312-984-5820
Facsimile: 312-984-7700
mweaver@mwe.com

Tara Borelli*
Carl S. Charles*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30318-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
tborelli@lambdalegal.org

Omar Gonzalez-Pagan*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
Telephone: 212-809-8585
Facsimile: 212-809-0055
ogonzalez-pagan@lambdalegal.org

David Brown*
Alejandra Caraballo*
Noah E. Lewis*
TRANSGENDER LEGAL DEFENSE
AND EDUCATION FUND, INC.
520 8th Ave, Ste. 2204
New York, NY 10018
Telephone: 646-993-1680
Facsimile: 646-993-1686
dbrown@transgenderlegal.org

Counsel for Plaintiffs

*Appearing by special appearance pursuant to L.R. 83.1(d)

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2021, I caused a copy of the foregoing document to be served upon the following party via U.S. Mail and email:

Alan D. McInnes
Assistant Attorney General
N.C. State Bar No. 20938
N.C. Department of Justice
Public Safety Section
P. O. Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6529
Facsimile: (919) 716-6761
amcinnes@ncdoj.gov

Counsel for Defendant State of North Carolina, Department of Public Safety

Dated: April 19, 2021

/s/ Amy E. Richardson
Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

EXHIBIT 4

Declaration of Wayne Goodwin

EXHIBIT 4

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION
FILE No. 1:19-CV-00272-LCB-LPA

MAXWELL KADEL,

Plaintiff,

v.

JASON FLECK, *et al.*,

Defendants.

**DECLARATION OF
GEORGE WAYNE GOODWIN**

I, George Wayne Goodwin, more commonly known as Wayne Goodwin, hereby declare under penalty of perjury as follows:

1. I am an adult over the age of 18 years, have never been adjudged incompetent, suffer from no mental or emotional illness, and make this declaration of my own free will, stating facts of which I have personal knowledge.

2. I am not a named Defendant herein. I have been retained by counsel for the North Carolina Department of Public Safety (“Defendant DPS” or “DPS”) as an expert in connection with the above-captioned litigation. A true, correct, and authentic copy of my expert report is attached hereto as Exhibit 1 and incorporated herein by reference (the “Report”).

3. As more fully discussed in the Report, Defendant DPS has no control over or ability to override the State Defendants’ actions vis-a-vis the State Health Plan offered

EXHIBIT 4

to the Plaintiffs and similarly-situated State employees. As currently interpreted by the Attorney General of North Carolina, North Carolina law prohibits State agencies, including Defendant DPS, from providing any general health insurance policies or health insurance coverage other than what is offered through the State Health Plan, including supplemental health insurance policies for gender confirming care. Further, those State agencies of the North Carolina government, including Defendant DPS, are unable to provide the options identified in the Expert Disclosure Report from Jamison Green, Ph.D. for coverage of gender confirming care to transgender employees and their eligible dependents who are transgender and other persons eligible for coverage. Given the statutory and other limitations applicable to Defendant DPS and current interpretations of law by the Attorney General, there do not appear to be any allowed solutions or strategies that Defendant DPS can avail itself of to provide insurance coverage of gender confirming care for transgender employees and qualified dependents without either potentially violating North Carolina state law or potentially violating federal law.

FURTHER DECLARANT SAYETH NOT.

EXHIBIT 4

Pursuant to 28 U.S.C. § 1746(2), I verify under penalty of perjury that the foregoing Declaration is true and correct in substance and in fact to the best of my knowledge and belief.

This the 21st day of November, 2021.

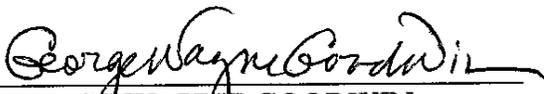

GEORGE WAYNE GOODWIN

EXHIBIT 4

EXHIBIT 4A

Expert Report of Wayne Goodwin

EXHIBIT 4A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, et al.,

Plaintiffs,

v.

DALE FOLWELL, et al.,

Defendants.

No. 1:19-cv-00272-LCB-LPA

**EXPERT DISCLOSURE REPORT OF
GEORGE WAYNE GOODWIN**

I. PRELIMINARY STATEMENT

1. I, George Wayne Goodwin, more commonly known as Wayne Goodwin, have been retained by counsel for the North Carolina Department of Public Safety (“Defendant DPS” or “DPS”) as an expert in connection with the above-captioned litigation.

2. I have actual knowledge of the matters stated and would testify as such if called as a witness. I reserve the right to supplement or amend this report based on any future information that is provided to me, including but not limited to information produced by Plaintiffs or Defendants in discovery or in response to Plaintiffs’ and Defendants’ expert disclosures.

3. This report contains my opinions and conclusions, including that: As currently interpreted by the Attorney General of North Carolina, North Carolina law prohibits State agencies, including Defendant DPS, from providing any general health insurance policies or health insurance coverage other than what is offered through the State Health Plan, including supplemental health insurance policies for gender confirming care. Further, that those State

EXHIBIT 4A

agencies of the North Carolina government, including Defendant DPS, are unable to provide the options identified in the Expert Disclosure Report from Jamison Green, Ph.D. for coverage of gender conforming care to transgender employees and their eligible dependents who are transgender and other persons eligible for coverage.

II. QUALIFICATIONS AND BACKGROUND

A. Qualifications

4. I am the owner and founding member of Seaboard Strategic Consulting, LLC, a limited liability company registered in the State of North Carolina. Through this business and beginning in 2017, I regularly consult with individuals, corporations of all sizes, small and large businesses, and professional organizations pertaining to matters of insurance regulation.

5. I served as the 10th elected Commissioner of Insurance for the State of North Carolina, elected statewide in 2008 and 2012. My service as Insurance Commissioner spanned eight (8) years. Prior to that role I served as the Assistant Commissioner of Insurance and the Assistant General Counsel for the North Carolina Department of Insurance. In total I worked and was employed by the State of North Carolina as a state insurance regulator within the North Carolina Department of Insurance for twelve (12) years. During that time and as a member of the Council of State (North Carolina's highest-level Executive Branch constitutional officers), I developed familiarity with the relationship between State agencies and the North Carolina State Health Plan, more specifically the interaction between the Department of Insurance and Defendant DPS and other Defendants. More generally through my years of activity and leadership within the National Association of Insurance Commissioners (NAIC), I also learned about insurance matters (including health insurance) between and among the States and also the states with the federal

government – including but not limited to accessibility, affordability, and the insurance marketplace – and was an active member and participant on the NAIC’s Health Insurance and Managed Care (B) Committee and the Market Regulation and Consumer Affairs (D) Committee, among other committees interested in health insurance matters and health insurance products for consumers. Further, during that time and thereafter I was involved in the implementation of and the State’s response to ratification of the federal Affordable Care Act and its interplay with North Carolina’s health insurance market.

6. Further, I also served four terms – eight (8) years – as an elected Member of the North Carolina General Assembly and had the occasion from the vantage point of that platform to follow the interplay between the North Carolina State Health Plan and State agencies, including the subject of the State Health Plan for State employees and other persons eligible for coverage.

7. In addition to my private consultant work and public service in two branches of State government, I have been a licensed member of the North Carolina State Bar and practicing attorney in good standing since 1992 (presently 29 years). Much of that work has involved insurance law in one aspect or another.

8. In 1992, I received my J.D. (Juris Doctor) from the University of North Carolina School of Law and that same year received my law license from the State of North Carolina after passage of the State Bar exam. In 1989, I received my B.A. with Honors from the University of North Carolina, graduating as both a Morehead Scholar and a U.S. Senate/William Randolph Hearst Scholar.

9. For a greater in-depth description of my professional work – most specifically a more granular overview of my duties and accomplishments as North Carolina’s Insurance

Commissioner and recognition as an insurance expert by North Carolina case law while serving in that office – I hereby incorporate by reference a true and correct copy of my Curriculum Vitae, which is attached hereto as Exhibit A.

B. Materials Considered in Preparing This Report

10. I have specifically reviewed the Complaint; the Amended Complaint; Defendant NC Department of Public Safety's Responses to Plaintiffs' First Requests for Admission; Defendant NC Department of Public Safety's Responses to Plaintiffs' First Set of Interrogatories; Defendants University of North Carolina at Chapel Hill, North Carolina State University, and University of North Carolina at Greensboro's (the "University Defendants") Memorandum in Support of the Motion to Dismiss; the Memorandum Opinion and Order (denial of Motion to Dismiss)(regarding University Defendants); and the Expert Disclosure Report of Jamison Green, Ph.D.

11. Further, I have reviewed relevant portions of Chapters 58 and 135 of the North Carolina General Statutes. In particular, I have reviewed N.C. Gen. Stat. 116-17.2, which provides in relevant part:

Notwithstanding any other provisions of law relating to the salaries of employees of The University of North Carolina, the Board of Governors of the University of North Carolina is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. **This plan shall not include those benefits provided to employees under Articles 1, 3B, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation.**

(Emphasis added).

12. I have also reviewed the advisory opinions from North Carolina's Attorney General dated November 2, 1995,¹ October 3, 2001, and March 26, 2002. All three opinions are attached hereto as Attachments B, C, and D. In the November 2, 1995 opinion, the Attorney General opined that N.C.G.S. 116-17.2 prohibits the Flexible Benefits Plan for State Employees ("NC Flex") from duplicating benefits provided by the Teachers' and State Employees' Comprehensive Major Medical Plan ("the State Health Plan"). In the October 3, 2001 opinion, the Attorney General opined that certain types of voluntary indemnity plans for State employees were not duplicative and were therefore permitted under this statute. In the March 26, 2002 opinion, the Attorney General opined that a cafeteria plan for the University that allowed pre-tax premiums for dependent health coverage would be duplicative and was therefore prohibited by the statute. In that opinion, the Attorney General reasoned that providing such benefits to University employees "would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits."

13. In preparation for this report, I have also generally reviewed a few recent reports pertaining either to updates on the dual subjects of health insurance and gender-confirming healthcare or the status of government jurisdictions that prohibit transgender insurance exclusions. These reports and documents are:

"Can you help me find a plan that covers gender reassignment surgery?", Slade (2019). <https://support.stridehealth.com/hc/en-us/articles/360056563234-Can-you-help-me-find-a-plan-that-covers-gender-reassignment-surgery->

Cohen, Wess A et al. "Navigating Insurance Policies in the United States for Gender-affirming Surgery." *Plastic and reconstructive surgery. Global open* vol. 7,12 e2564. 11 Dec. 2019, doi:10.1097/GOX.0000000000002564

¹ The November 2, 1995 opinion is mistakenly referenced as November 3, 1995 in the October 3, 2001 opinion.

“Health insurance coverage for gender-affirming care of transgender patients.” American Medical Association (2019).

“Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care.” Movement Advancement Project (MAP). (6 Apr 2021)

Keith, Katie. “15 States and DC Now Prohibit Transgender Insurance Exclusions.” Georgetown University Health Policy Institute (30 March 2016). [Chirblog.org/15-states-and-dc-now-prohibit-transgender-insurance-exclusions/](https://chirblog.org/15-states-and-dc-now-prohibit-transgender-insurance-exclusions/)

Killian, Joe. “In North Carolina, the battle for transgender people’s medical coverage heads to court.” NC Policy Watch. (12 March 2019) <http://www.ncpolicywatch.com/2019/03/12/in-north-carolina-the-battle-for-transgender-peoples-medical-coverage-heads-to-court/print/>

Landman, Keren. “Fresh Challenges to State Exclusions on Transgender Health Coverage.” National Public Radio (NPR). 12 March 2019. <https://www.npr.org/sections/health-shots/2019/03/12/701510605/fresh-challenges-to-state-exclusions-on-transgender-health-coverage>

Further, I also reviewed contemporary updates on the focused subject of transgender health care access and insurance coverage. Those updates are:

BlueCross BlueShield of North Carolina. “Corporate Medical Policy. Gender Affirmation Surgery and Hormone Therapy.” (Last Review of policy by BCBSNC: March 2021) [gender_affirmation_surgery_and_hormone-therapy](#)

Cecil, Adam. “How to Shop for Health Insurance as a Transgender Person.” PolicyGenius.com. 24 Sept 2015. <https://www.policygenius.com/blog/how-to-shop-for-health-insurance-as-a-transgender-person/>

Dawson, Lonna. “Should insurers cover gender reassignment surgery?”, The Week (Apr. 9, 2017) <https://theweek.com/articles/687877/should-insurers-cover-gender-reassignment-surgery>

“Finding Insurance for Transgender-Related Healthcare,” Human Rights Campaign. (Accessed 21 Apr 2021) <https://www.hrc.org/resources/finding-insurance-for-transgender-related-healthcare>

Johnson, Emily. “Does Medicare cover gender reassignment surgery?” Medical News Today (5 Aug 2020). <https://www.medicalnewstoday.com/articles/medicare-gender-reassignment#types-of-surgery>

Mosser, Dr. Scott. Gender Confirmation Center. “Dr. Mosser’s Guide: How to get your MTF/N or FTM/N surgery covered by insurance.”
<https://www.genderconfirmation.com/get-insurance-approval/>

Padula, William V., et al. “Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis.” *J Gen Intern Med* 31(4):394-401 (19 Oct 2015).

Spade, Dean. “Medicaid Policy & Gender-Confirming Healthcare for Trans People: An Interview with Advocates.” *Seattle Journal for Social Justice*, Vol. 8, Issue 2 (2010).

I also reviewed several articles related to the PATIENT PROTECTION AND AFFORDABLE CARE ACT, 42 U.S.C. § 18001 *et seq.* (2010) (referenced hereinafter as either “the Affordable Care Act” or “ACA”), particularly as it may interplay with employers generally. To that end, in addition to specific portions of the ACA, I further reviewed and relied upon the following:

Cauchi, Richard. “ACA Requirements for Medium and Large Employers to Offer Health Coverage – Applicable in part to states, state legislatures and local governments as employers.” National Conference of State Legislatures (NCSL). 22 June 2016.
https://www.ncsl.org/documents/health/aca_requirements_for_employers.pdf

Congress.gov. H.R. 34 – 21st Century Cures Act. Published December 2016.

“Individual Coverage Health Reimbursement Arrangements (HRAs).” Healthcare.gov. (downloaded 27 April 2021) <https://www.healthcare.gov/small-businesses/learn-more/individual-coverage-hra/>

Norris, Louise. “Can My Employer Reimburse My Individual Health Insurance Premiums? Both Small and Large Employers are Allowed to Reimburse Employees for Premiums.” VeryWellHealth. (11 December 2020)
<https://www.verywellhealth.com/employer-reimbursal-of-individual-premiums-4065150?print>

Proctor, Patrick. “Can Employers Reimburse Employees for Health Insurance?” Business News Daily. (27 Nov. 2020)
<https://www.businessnewsdaily.com/15934-reimburse-employees-for-health-insurance.html>

14. In preparation of this report, I relied on my education and training, my lengthy experience as a state insurance regulator and most specifically as North Carolina's Commissioner of Insurance, and my twenty-nine (29) years of experience as an attorney and public official (both elected and appointed) engaged in matters involving insurance law in North Carolina.

15. The knowledge I have relied upon in preparing this report is the same type of knowledge that experts in my field of practice and study regularly rely upon when forming opinions. I may wish to supplement these opinions or the bases for them because of new publications or additional presently-unknown or presently non-recollected facts, or in response to statements and issues that may arise in my area of expertise.

C. Prior Testimony

16. To the best of my recollection, I most recently testified in two federal trials and in two State court trials *unrelated to the field of insurance regulation* but pertaining to (a) North Carolina's Congressional and legislative redistricting, and (b) North Carolina judicial partisan primaries. Those trial appearances occurred between 2017 and 2020. In addition to appearing in those trials, I also participated in the related pre-trial depositions. *On the intertwined subjects of insurance and state insurance regulation*, I was previously identified as an expert witness by University Defendants in the instant Kadel case and provided a report with exhibits but at the present time have not been deposed or otherwise testified. Also, I testified in approximately 2018 as a combination fact witness and expert witness in a separate matter. For that case, I was deposed during the discovery phase of a federal trial pertaining to litigation between a hospital system and a health insurance carrier (and perhaps the North Carolina Department of Justice), but I did not appear at trial. Further, to the best of my knowledge, during approximately 2017-2018, I testified in the State criminal trial of a former bail bondsman, in that instance in my sole capacity as the

former Insurance Commissioner during the time of that person's licensure. To the best of my knowledge, any and all other prior depositions or hearing/trial testimony by me occurred more than four years ago during my time, and in the regular course and scope of my service, as Insurance Commissioner.

D. Compensation

17. I am being compensated at an hourly rate for actual time devoted, at a rate of \$350 per hour, billed in 15-minute increments, and a rate of \$375 per hour, also billed in 15-minute increments, for that time, if any, participating in a deposition, court hearing, or trial pertaining to the present case.

18. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

III. EXPERT OPINIONS

A. Defendant DPS – like other State agencies in North Carolina – at the time in question did not have either the option or authority to provide health insurance coverage for gender-confirming care.

19. Based upon my review of the pleadings and other court documents, the Plaintiffs' expert witness report (Jamison Green, Ph.D.) and materials referenced above in Section B of my report, including my review of the applicable sections of Chapter 58 and Chapter 135 of the North Carolina General Statutes (namely, Article 3B, § 135-48 *et seq.*); and my own experiences (twelve years as a state insurance regulator, eight of those years as NC Insurance Commissioner; four years as an insurance regulatory consultant; and 29 years as a North Carolina attorney with eight years

in the North Carolina legislature), it is my opinion that Defendant DPS has no authority or control over the State Health Plan or its terms or exclusions.

20. Specifically, the North Carolina State Health Plan offers and administers comprehensive group health insurance to eligible teachers and other North Carolina state employees. *See, e.g.*, N.C. Gen. Stat. § 135-45.2. Because the State Health Plan is self-funded and empowered by statute to determine, define, adopt, and remove healthcare benefits and exclusions – as also alleged in the Plaintiffs’ Complaint -- Defendant DPS is required to act within the confines of the State Health Plan’s authority and control. In forming my opinions herein, it is imperative that I consider *High Rock Lake Partners, LLC v. N.C. Dep’t of Transp.*, 366 N.C. 315, 318, 735 S.E.2d 300, 303 (2012). “Its form, shape, and authority are defined by the Act by which it was created.” *Id.* “It is as powerless to exceed its authority as is a robot to act beyond the limitations imposed by its own mechanism.” *Id.* at 318-19, 735 S.E.2d at 303 (citation omitted). Moreover, that case holds that a state agency “possesses only those powers expressly granted to it by our legislature or those which exist by necessary implication in a statutory grant of authority.” *Id.* at 319, 735 S.E.2d at 303 (citing *Lee v. Gore*, 365 N.C. 227, 230, 717 S.E.2d 356, 359 (2011)).

21. Moreover, the State Treasurer, not Defendant DPS, administers and operates the State Health Plan and sets benefits for all State employees and their qualifying dependents, subject to approval by the State Health Plan Board of Trustees. N.C. Gen. Stat. §§ 135-48.30; 135-48.20 (“Board of Trustees established.”); *see also*, N.C. Gen. Stat. §§ 135-48.1 (4,5,14) The State Health Plan Board of Trustees – not Defendant DPS or other State agencies – has the duties and powers to approve benefit programs; approve premium rates, co-pays, deductibles, etc.; develop a strategic plan for the State Health Plan; *et al.* N.C. Gen. Stat. §135-42.22. Further, State Health Plan

benefits are provided pursuant to contracts between the State Health Plan and claims processors, not between Defendant DPS (or other State agencies). *See*, N.C. Gen. Stat. § 135-48.32.

22. It is my additional opinion that Defendant DPS has no independent authority or control over the pharmacy benefits, mental health benefits, and medical care offered to covered individuals under the State Health Plan – including teachers, other North Carolina state employees, and their qualified dependents. More specifically, the lack of authority or control over these benefits by Defendant DPS is derivative of the State Health Plan’s offer of and power over these health care plans. *See*, N.C. Gen. Stat. §§ 135-1 *et seq.*

23. Further, in addition to the above, and based on my experiences and recollections during my service as North Carolina Insurance Commissioner, Defendant DPS is precluded from offering any health plan alternatives. *See*, N.C. Gen. Stat. §§ 116-117.2, 150B-51(b)(2); NC Const. Art. III, § 11; N.C.Gen. Stat. §§ 135-48.2(a), 48.22, 48.23, 48.30(a), 48.42(a). More directly, it appears no statute provides requisite authority for Defendant DPS to offer any other health plan other than the State Health Plan, even if Defendant DPS desired to do so – including for medical treatments related to gender, gender identity, nonconformity with sex stereotypes, transgender status, and gender transition.

24. It is also my opinion that Defendant DPS cannot provide health insurance coverage for gender-conforming health care. The authority to provide such is within the purview of the State Treasurer, the Executive Administrator of the State Health Plan, and the Plan’s Board of Trustees.

25. It is my understanding that the private third party administrator (TPA) for the State Health Plan does offer coverage for gender confirming care as part of other plans not associated

with the State Health Plan. However, the State Health Plan includes a categorical exclusion prohibiting that coverage in the Plan. The State Treasurer, the Executive Administrator of the State Health Plan, and the Plan's Board of Trustees – not Defendant DPS – and the State legislature have the formal authority and ability to lift that exclusion. *See, supra*, and N.C. Gen. Stat. §§ 135-48.2(a); 135-48.3

26. On information and belief, persons seeking health insurance coverage for gender dysphoria-related or gender-conforming care (including surgery) in states that do not prohibit the exclusion often voluntarily purchase separate, high-deductible, full coverage health insurance plans from the *private* health insurance market to supplement their employer-sponsored health insurance plan that does not provide coverage for gender dysphoria and gender-conforming care. To the best of my knowledge, there are no standalone health insurance plans *solely* offering health insurance coverage for gender dysphoria, etc. Persons seeking that coverage often obtain it by acquiring a secondary, full health insurance care plan of their own choosing and expense.² In any event, the Defendant DPS would not be able under the current interpretation of North Carolina statute to provide either sort of coverage for gender conforming care. While the 2001 memorandum from North Carolina's Attorney General concludes that State employers can offer voluntary indemnity health plans to State employees insofar as they do not duplicate the State Health Plan's benefits, based upon my experience and recollection, that conclusion refers to supplemental policy coverages such as accidental death and dismemberment, cancer, critical illness, disability, heart attack, and long-term care insurance, for example -- again so long as those

² Theoretically and subject to other applicable rules and requirements, and on information and belief, Plaintiffs herein could have declined coverage by the State Health Plan during open enrollment after becoming aware of the exclusion so that whatever separate plan they found and paid for on their own was their only health insurance plan. That would not alter the prohibition faced by Defendant DPS.

coverage plans do not compete with the State Health Plan. *See, e.g.*, N.C. Gen. Stat. §§ 116-17.2 [“This (flexible compensation) plan shall not include those benefits provided to employees under Articles 1, 3B, and 6 of Chapter 135 of the General Statutes.”]

27. As part of the analysis of the “non-compete” components of North Carolina law vis-à-vis the State Health Plan and the question about the DPS’s ability to offer dependent health insurance coverage separate and apart from the State Health Plan, the 26 March 2002 Attorney General memorandum states plainly and directly that “[t]his competition would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits.” That declaration in tandem with existing North Carolina statutes referenced above support my opinion that Defendant DPS does not have the authority to go outside the State Health Plan in providing health coverage. That authority rests with others, but ultimately the North Carolina General Assembly. *See, supra*, and N.C. Gen. Stat. §§ 135-48.2(a); 135-48.3

B. Although multiple private health insurance plans and some public State health insurance plans nationally do allow health insurance coverage for gender-confirming services and treatments, North Carolina’s State Health Plan does not. Notwithstanding, the North Carolina General Assembly has within its authority to prohibit transgender health insurance exclusions.

28. There are private health insurance options that do provide coverage for medically-necessary transition-related care, including gender-confirming surgeries and treatments. Major *private* insurers have designed insurance products that do not contain transgender exclusions in response to private sector demand for inclusive coverage and the determination that such coverage is cost-effective and affordable when spread out over large pools of policyholders.

29. Further, on information and belief the governing legislative entities of fifteen (15) States and the District of Columbia prohibited transgender insurance exclusions as of 2016. North Carolina is not one of those States – in other words, North Carolina allows health insurance policies

in the private and public sectors to exclude coverage for gender dysphoria and health care specifically related to transgender persons. Unless carved out specifically, North Carolina General Assembly enactment of a prohibition of transgender insurance exclusions would affect the State Health Plan covering North Carolina state employees and qualified dependents. *See*, N.C. Gen. Stat. § 135-48.3 (“The General Assembly reserves the right to alter, amend, or repeal this Article.”)

C. Dr. Green’s reference in Section III, A. of Green’s report to “employer options when health insurance plan maintains exclusion for gender confirming care” does not appear to consider a health plan solely administered by a State government nor are these actual options that Defendant DPS can implement lawfully according to State law. Some of Dr. Green’s proposed “employer options” could conceivably place Defendant DPS in violation of state law if acted upon or federal law if not acted upon.

30. As it relates to Dr. Green’s expert report, the specific strategies referred to as “employer options” on information and belief are prohibited for State agencies by North Carolina state law or are not contemplated by the State of North Carolina. *See*, Green Report, Paragraphs 22-24.

31. More specifically regarding Paragraph 22 in Dr. Green’s report, Green asserts that “A strategy that several employers have used is to purchase a separate, inclusive plan in which their transgender employees or their dependents may enroll as a coverage option.” That Green strategy is neither viable nor legal for Defendant DPS to consider because of the existing restrictions placed on all State agencies – including the Defendant DPS – prohibiting the offer of any other health insurance plan for State employees, their dependents, and State retirees other than the State Health Plan. *See, inter alia*, N.C. Gen. Stat. § 150B-51(b)(2); NC Const. Art. III, § 11; §§ 135-48.2(a), 48.22, 48.23, 48.30(a), 48.42(a); 2002 WL 1018929 (N.C.A.G.). Further, to the best of my knowledge and as stated previously in this report -- the undersigned is not aware of and

does not recall any health insurance plan that *only* covers gender-confirming healthcare. In my opinion, accordingly, this is not an “employer option” for Defendant DPS.

32. Paragraph 23 in Dr. Green’s report faces a similar hurdle. Dr. Green assert that “[a]nother strategy ... is to establish a fund administered by the employer’s Human Resources/Benefits department to which transgender employees or covered dependents submit their receipts to receive reimbursement of uncovered medical expenses.” (Dr. Green goes on to say the City of Berkeley, California and health sector organizations and nonprofit corporations have utilized that employer strategy.) In addition to North Carolina’s statutory prohibitions referenced above and elsewhere in the undersigned’s present report, in my opinion and to the best of my knowledge there is no allowance for this as an option by Defendant DPS as an employer. It seems that this alleged employer option posited by Dr. Green would violate the State of North Carolina’s non-compete provisions vis-à-vis the State Health Plan, underscored and magnified by the fact that in Dr. Green’s strategy seemingly relies upon the same State funding source as the State Health Plan. If Defendant DPS provided their agency employees a reimbursement option from a standalone fund for persons diagnosed with gender dysphoria (or a similar fund established for any other covered person for any other diagnosis for that matter) – a fund created *separately* from the State Health Plan which is offered to every state employee -- then a reasonable interpretation is that Defendant DPS would be providing a coverage option or benefits *in competition with* the State Health Plan and not contemplated by either the legislature or persons administering the State Health Plan. In my opinion, accordingly, this is not an “employer option” for Defendant DPS.

33. Paragraph 24 in Dr. Green’s report – which proposes an option much like those already discussed above – faces a similar wall as well, a wall constructed by State statute and

outside the authority or ability of Defendant DPS to choose differently. Dr. Green asserts that a “third solution also available to employers is to provide an affected employee with a stipend for the purpose of purchasing an individual plan in the marketplace that does not contain exclusions for gender confirming care.” Providing a stipend for the purpose of covering medical expenses not otherwise covered by the State Health Plan could also reasonably be interpreted as providing coverage options or benefits in competition with the State Health Plan. Accordingly, and for the reasons stated previously in my report, this is not an “employer option” for Defendant DPS.

34. As it further relates to Paragraphs 23 and 24 of Dr. Green’s report and its remedies proposed therein, the undersigned would be remiss in not recognizing the potential interaction with both the federal Affordable Care Act (ACA) and the 21st Century Cures Act. Dr. Green’s opinion that the Defendant DPS could either establish a fund for reimbursement of employees’ uncovered medical expenses or provide them with a stipend to cover such expenses is contemplated by the federal Affordable Care Act. In particular, as of January 1, 2020 and pursuant to federal law, employers can offer an Individual Coverage Health Reimbursement Arrangement (ICHRA). However, if Defendant DPS were to request that employees document medical expenses relating to gender confirming care in order to provide them with funds for that coverage (either as a stipend or as a reimbursement), such an arrangement would constitute an ICHRA or a Health Reimbursement Arrangement (“HRA”). As a result, the ACA would require those arrangements to be offered as part of an integrated health plan. IRS Notice 2013-54. As explained above, the only group health plan Defendant DPS is permitted to offer is the State Health Plan, which specifically excludes such gender-confirming coverage. Thus, Defendant DPS would have to offer the stipend or expense reimbursements without tying them to an integrated health plan, thus not only violating the interpretation of North Carolina’s non-compete provisions but also violating the

ACA and subjecting them to penalties (of up to \$100 per employee per day that the offering is in place). 26 U.S.C. § 4980D.

35. As for Dr. Green's proposed option in Paragraph 25 for an employer to purchase a policy extension or "rider," Dr. Green's report does not apparently identify any public State agency in that Green's experience that utilizes such an option nor does it identify any such riders available to Defendant DPS (and I am aware of none). Further, Defendant DPS is prohibited from purchasing a rider or extension because Defendant DPS is precluded from offering any health plan alternatives. (The undersigned is also not aware of any health insurance policy that singly and solely covers for gender dysphoria and gender-confirming health care.) In my opinion, if Defendant DPS chose to act in furtherance of Dr. Green's recommendations, then the Defendant DPS would be acting in excess of its statutory authority or jurisdiction of the agency. *See, supra*, N.C. Gen. Stat. § 150B-51(b)(2); NC Const. Art. III, § 11; §§ 135-48.2(a), 48.22, 48.23, 48.30(a), 48.42(a); et al.

36. The solutions provided by Dr. Green within Green's report do not appear to contemplate an employer who is controlled by or subject to full oversight by another entity (other than the health insurance plan itself) regarding provision of health insurance to employees and dependents. In this instance, the North Carolina General Assembly and other Defendants ultimately control the health insurance coverages offered by Defendant DPS.

37. In my opinion, based on relevant State statutes and the herein referenced memoranda from the Attorney General, as well as my long-time experience as North Carolina's Commissioner of Insurance (and Assistant Insurance Commissioner, legislator, and attorney), and other reasons outlined above, and to the best of my knowledge, Defendant DPS is not able to adopt

any of the employer strategies that Dr. Green says are presently available to Defendant DPS because Defendant DPS is not authorized to adopt them.

IV. CONCLUSION

38. In summary, given the statutory and other limitations applicable to Defendant DPS and current interpretations of law by the Attorney General, on information and belief there do not appear to be any allowed solutions or strategies that Defendant DPS can avail itself of to provide insurance coverage of gender confirming care for transgender employees and qualified dependents without either potentially violating North Carolina state law if acted upon or potentially violating federal law if not acted upon. In my opinion, Defendant DPS has no control over or ability to override the State Defendants' actions vis-à-vis the State Health Plan offered to the Plaintiffs and similarly-situated State employees. I may supplement these opinions in response to future information that is provided to me, including but not limited to information produced by Plaintiffs in discovery or in response to Plaintiffs' expert disclosures or further research and analysis.

39. I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed this the 11th day of July 2021.

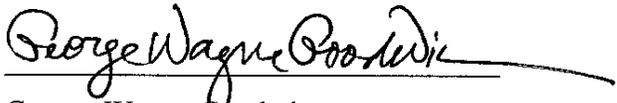

George Wayne Goodwin

EXHIBIT A

EXHIBIT 4A

WAYNE GOODWIN

Attorney / former NC Insurance Commissioner / former state insurance regulator & legislator
Home address: 8306 Wycombe Lane North Raleigh, Raleigh, NC 27615
Business address: P.O. Box 27841, Raleigh NC 27611
seaboardstrategicconsulting@gmail.com / cell phone (910) 997-1301 / Twitter @WayneGoodwinNC

EXECUTIVE SUMMARY

Attorney (1992-present; active and licensed throughout; Juris Doctor and B.A. with Honors)

CEO / President / Legal, Insurance, and Regulatory Consultant / Small Business Owner (1998-present)

Chairman, NC Democratic Party (2017-2021, two terms); other NCDP executive and/or policymaking leadership positions (1982-present)

Elected Official (Legislature, 1996-2004; Statewide / **NC Insurance Commissioner** + Council of State, 2008-2016)

Various positions at NC Department of Insurance (2005-2016)

Appointed Official on miscellaneous NC Boards, Commissions, Councils (1992-2016)

Director: Service and/or leadership positions on multiple Boards of Directors of private, non-profit, for-profit, and/or philanthropic Boards of Directors (1992-present)

WORK HISTORY (partial)

- 03/2017 to Present **President and Chief Executive Officer**
Seaboard Strategic Consulting, LLC – Raleigh, NC
Small consulting business founded by Goodwin after serving 12 years as a state insurance regulator, 8 years as a legislator, and 25 years as an attorney
- Provided legal, regulatory, compliance, and/or political consultation services for insurance, finance, and related industries for clients in NC, regionally, and nationally
 - Recruited business partnerships for non-insurance businesses with insurance companies
 - Provided legal services – including legal research, document drafting, legal opinions, and participation as an expert witness in insurance-related cases
 - Attended National Association of Insurance Commissioners (NAIC) meetings and other national, regional, state-based or business-hosted conferences, seminars for a multitude of professional associations (e.g., accounting, actuarial, insurance agents and brokers, legal, medical) on numerous occasions throughout each year, and produced reports and memoranda for clients
 - Moderated seminars, panels, and programs throughout the year for national insurance, legal, and non-profit clients; fellow panelists included national and state elected or appointed government officials, as well as insurance regulatory experts
 - Prepared and taught CLE and CE courses on insurance, government, legal, legislative, political, and regulatory topics

EXHIBIT 4A

- 11/2020 to Present **Managing Director**
National Trusted Group (NTG Consultants) – West Palm Beach, FL
Independent contractor/not employee
- Tracked and managed insurance consulting services provided by 15+ other independent contractor/directors and professionals associated with NTG Consultants located across the United States; participated in varied management and strategic decisions and conference calls/meetings for NTG and its clients
 - Provided consultation services for insurance, finance, and related industries for clients regionally and nationally
 - Moderated seminars, panels, and programs throughout the year for national insurance, legal, and non-profit clients; fellow panelists included national and state elected or appointed government officials, as well as insurance regulatory experts
 - Provided legal services – including legal research, document drafting
 - Attended National Association of Insurance Commissioners (NAIC) meetings and other national, regional, and state-based conferences, seminars for a multitude of professional associations (e.g., accounting, actuarial, insurance agents and brokers, legal, medical) numerous times throughout each year

- 01/2017 to Present **Director (advisory board of directors)**
National Trusted Group (NTG Consultants) – West Palm Beach, FL
independent contractor, not employee
- Provided consultation services for insurance, finance, and related industries for clients regionally and nationally
 - Provided legal, regulatory, compliance, and/or political consultation services for insurance, finance, and related industries for clients in NC, regionally, and nationally
 - Moderated seminars, panels, and programs throughout the year for national insurance, legal, and non-profit clients; fellow panelists included national and state elected or appointed government officials, as well as insurance regulatory experts
 - Provided legal services – including legal research, legal analysis, document drafting
 - Attended National Association of Insurance Commissioners (NAIC) meetings and other national, regional, and state-based conferences, seminars for a multitude of professional associations (e.g., accounting, actuarial, insurance agents and brokers, legal, medical) numerous times throughout each year

- 02/2017 to 02/2021 **Chairman**
(2nd term ended
27 Feb 2021) **North Carolina Democratic Party**
Elected to two terms, and simultaneously served as a member of the Democratic National Committee (DNC); *full-time, volunteer position*
- Helped raise \$56+ Million for NCDP activities and operations in North Carolina
 - Organized 100 counties and various caucuses in each county

- Recruited candidates to run for legislative, judicial, and executive branch offices statewide – including the most diverse slate of candidates for any political party in North Carolina history and the first time a North Carolina political party had candidates running in every legislative district
- Managed the Executive Director of the NC Democratic Party, and assisted in ongoing Party operations at state headquarters in Raleigh, hiring staff; \$1.8 Million annual operational budget
- Assisted in oversight, renovation, and preservation of the historic 100+ year old building
- Presided over statewide executive committee meetings and state conventions with between 500 and 2000 attendees multiple times each year
- Served as one of two Co-Chairs of the NC delegation to the 2020 Democratic National Convention
- Served as an active member of the Association of State Democratic Committees (ASDC)
- Held regular press conferences and participated in myriad global, national, state, and local news media interviews over a 4-year period – including multiple interviews for CNN, Charlotte Observer, Fox News, MSNBC, National Public Radio (NPR), the New York Times, Raleigh News & Observer, Spectrum News, Wall Street Journal, Washington Post, WRAL-TV, et al.
- Strategized with elected officials and candidates in all three branches of government at state level and two branches of government at the federal level
- Delivered (and wrote) speeches of varying lengths to groups of all sizes – subject matter often inspirational or motivational, educational
- Participated as a petitioner, plaintiff, and/or witness in many federal election law cases or administrative filings for the Federal Elections Commission and the NC State Board of Elections, and more often than that helped attorneys in NC and nationally develop legal strategies

01/2019 to 11/2019 **Director (Advisory Board of Directors) – independent contractor**
e-Maxx Assurance Group – Peabody, MA
 e-Maxx provides captive insurance solutions – where members take control of their own destiny with coverages and achieve lower costs through risk technology platforms, proactive loss prevention and safety programs, claims oversight and litigation management.

01/2017 to 05/2019 **Director (Advisory Board of Directors) - independent contractor**
Insurance Care Direct – Deerfield Beach, FL
 Insurance Care Direct is one of the nation’s largest health and life insurance agencies, and the largest privately held health and life insurance firm. Goodwin was the first member of its Advisory Board of Directors.

01/2009 to 01/2017 **NC Commissioner of Insurance**

NC Department of Insurance (NC DOI) – Raleigh, NC

Served eight years and two terms as the statewide-elected Insurance Commissioner

- Regulated 1500 insurance companies and other entities, and 500,000+ licenses
- Managed and re-organized a state agency of 415 employees with a wide array of responsibilities (including lawyers, actuaries, accountants, consumer specialists, experts in property & casualty and life & health insurance, medical experts, government relations liaisons, law enforcement officers, engineers, firefighters, and approximately 1000 volunteers)
- Managed an annual budget of \$37 Million for a state agency of over \$500 Million in revenue generated annually
- Created, crafted, and co-developed public policy regarding health insurance, property & casualty insurance, workers comp insurance, captive insurance, Medicare Part D/Seniors Health Insurance Information Program (SHIP) outreach, etc.
- Made decisions, issued orders, and negotiated matters regarding insurance rates, refunds, rebates, restitution that saved NC individuals, families, and businesses at least \$2.4 Billion; issued orders and made decisions affecting Billions of dollars in interstate commerce annually
- Created North Carolina's first captive insurance program – which resulted in hundreds of new businesses and hundreds of millions of dollars in new revenue for the State; under Goodwin's leadership, North Carolina was first recognized as the new leader in captive insurance programs and in providing private, commercial businesses additional insurance coverage options
- Assisted consumers, patients, doctors, hospitals, and other providers regarding insurance coverage disputes, etc.
- Created the Smart NC program that provided health insurance guidance for new consumers of health insurance up to and after passage of the Affordable Care Act
- Chaired the national Anti-Fraud Task Force of the National Association of Insurance Commissioners for several years, and bolstered the fight against insurance fraud within North Carolina and seeking tools to enhance prevention, investigation, and prosecution of fraud cases
- Provided guidance to state and federal lawmakers
- Served on the Executive Committee of the National Association of Insurance Commissioners (NAIC), with a focus on transparency, fair ratemaking, consumer protection, reasonable state-based regulation, competition, and interstate relations; frequently presented state positions on insurance matters to Governors, Members of Congress, and the President of the United States
- Received special individual recognition from the President of the United States in the White House Oval Office for helping recover

\$156 Million for certain North Carolina health insurance consumers, a record amount at the time for the statutory provisions involved

- Served as NAIC-appointed member of the Board of Directors for the *Interstate Insurance Product Regulation Commission*, (approx. 2010-2012) The Interstate Insurance Product Regulation Commission is an organization that promotes standards for life insurance products in the United States. The Commission was created in 2000 by members of the National Association of Insurance Commissioners
- Deliberated and helped decide - as one of 10 members of the Council of State - the direction of State property purchases, leases, and sales valued at hundreds of Millions of dollars annually
- Participated in high-level business recruitment and regulatory discussions with companies (not just insurance businesses, but also financial institutions, manufacturers, high-tech enterprises, software designers, etc.) in New York City, Chicago, Atlanta, Austin, Dallas, Miami, Charlotte, Washington DC, etc.
- Achieved among the lowest average auto insurance premiums in the USA and maximized competition among auto insurance carriers; on Goodwin's watch his decisions resulted in North Carolina being recognized as having the lowest average auto insurance premiums in the nation for the very first time
- Presided as hearing officer or judge that held court on insurance company/industry rate filings – including two hearings on major homeowners' insurance filings; Goodwin presided over the first homeowners' insurance hearing in North Carolina in 22 years
- Provided input, approvals, research, and opinions on certain legal filings
- Held the dual post of State Fire Marshal, worked with 54,000 firefighters, law enforcement, etc. on matters of public safety, building codes, etc.
- Received the "Defender of Justice Award" from the NC Justice Center; the "Jim Long/SHIP Award", etc.

09/2005 to 12/2008

Assistant Commissioner of Insurance

NC Department of Insurance – Raleigh, NC

- Assisted my predecessor by directly managing 125 employees, including regional offices across the State, and providing general management of all 415 employees of the Department of Insurance
- Assisted and advised on Council of State matters
- Presented to various legislative committees and task forces of the Governor, and to stakeholder groups and associations interacting with the Department
- Drafted legislation across an array of Department responsibilities
- Provided government relations counsel to the Insurance Commissioner
- Presided over administrative hearings involving insurance regulatory matters, interacted with private sector attorneys, issued rulings both on motions and also orders and related decisions as hearing officer

- Served as Assistant State Fire Marshal, interacting with 1200 fire departments and myriad stakeholders

04/2005 to 09/2005 **Assistant General Counsel**

NC Department of Insurance – Raleigh, NC

- Interpreted laws, rulings and regulations, and reviewed contracts for the NC Insurance Commissioner
- Served as a Hearing Officer regarding issues like licensing, rebating
- Developed strategies and arguments in preparation for presentation of cases.
- Answered legal discovery
- Gathered responses to public records requests, reviewed them, suggested redactions where legally necessary
- Drafted legislation

01/1997 to 12/2004 **State Representative**

North Carolina General Assembly – Raleigh, NC

- Elected to four terms, serving multiple counties
- Served as Chairman or Vice Chairman of various committees and study commissions, including a Judiciary Committee
- Sponsored legislation regarding economic development, public education, public safety, infrastructure, government reforms, insurance regulatory matters, access to courts, etc.
- Received many awards and recognition for my work, including the NCAE A+ Legislator Award

09/1992 to 04/2005 **Attorney (private practice)**

Goodwin Law Offices, P.A. (and predecessor firms, and Law Offices of Woodrow W. Gunter, II) – Rockingham and Hamlet, NC

- Interpreted laws, rulings and regulations for individuals and businesses
- Represented individuals, families, businesses and the local domestic violence shelter on civil legal matters, particularly vis-a-vis insurance companies; primarily focused on torts, workers compensation disputes, contracts, business law, mediation, grant applications, government matters
- Appeared before District and Superior Courts, NC Court of Appeals, federal district courts, and various administrative law hearings, including the NC Industrial Commission
- Served as a (then-)certified mediator and court-appointed arbitrator

09/1992 to 01/2000 **Adjunct Professor**

Richmond Community College – Hamlet, NC

- Taught classes in Business Law, Criminal Procedure, and American Government
- Maintained office hours to help students with questions and educational support
- Developed and implemented lesson plans, quizzes, tests, and projects that covered all required topics

- Distributed course syllabus and answered student questions regarding standards, material, grading, and progression

PUBLICATIONS AND SCHOLARLY WORKS

Since 1989, Goodwin has authored, co-authored, or co-edited many published works of an academic, scholarly, legal, or journalistic nature. They include an award-winning honors thesis at the University of North Carolina-Chapel Hill regarding the 1988 U.S. Presidential election; a limited edition book honoring North Carolina constitutional scholar and historian John Sanders; an entry in the *Congressional Record* sponsored by then-U.S. Senator and former Governor Terry Sanford; an award-winning multi-part newspaper series about early-20th century North Carolina Governor Cameron Morrison; a multi-part newspaper series about the American Council of Young Political Leaders conference in the Philippines; a multi-part newspaper series about the 1996 Democratic National Convention; an in-depth essay about young lawyer-legislators in the *Lawyers Weekly*; and many regulatory articles and op-ed columns between 2009 and 2016 in insurance and professional journals, including one published by the NC Institute of Medicine; and quarterly publications for North Carolina independent insurance agents and North Carolina firefighters; and in other associations that interact (or interacted) with the North Carolina Department of Insurance. Goodwin has also authored educational materials for CLE courses he taught.

EDUCATION

- 1992 **J.D.: Law**
University of North Carolina School of Law - Chapel Hill, NC
- 1989 **B.A. with Honors: Political Science**
University of North Carolina at Chapel Hill - Chapel Hill, NC
- Morehead Scholar (now called Morehead-Cain Scholars)
 - William Randolph Hearst/U.S. Senate Youth Scholar (only 2 awarded per state)
 - Won the Wiley Mangum Gold Medal for Oratory (best orator in the senior class)
 - Received the Governor Terry Sanford Award for Best Political Science Honors Thesis
 - Senator/Member, The Dialectic and Philanthropic Literary Societies
 - Attended as special-invited guest of a NATO conference at the U.S. Air Force Academy

PROFESSIONAL LICENSES

North Carolina State Bar, continuously since 1992

FAMILY AND MISCELLANEOUS PERSONAL FACTS (SHORT VERSION)

- Native of Hamlet, Richmond County, NC
- Father was a farmer, grocer, and disabled, and Anson County native; Mother was textile worker and teacher's assistant, and Richmond County native
- Graduated Valedictorian of Richmond Senior High School Class of 1985

- Student Body President, Richmond Senior High School (1984-85)
- Attended Governor's School (West) in Mathematics (1984)
- Worked for UNC School of Government (1989-1992)
- Intern and assistant to then-Director of the State Bureau of Investigation (1989)
- Served as an appointee on miscellaneous State boards, councils, study commissions
- President, Richmond County Bar Association (multiple terms, 1990s)
- Member, I-73 Committee – which helped with strategies and successful approval of the NC leg of Interstate 73/74 in the 1990s, a tremendous economic and commercial boost to the central part of the State, including socio-economically depressed areas
- Honorary degree from Pfeiffer University (after leading the 2003 legislative effort to incorporate Misenheimer, NC, location of the main campus)
- First statewide-elected official from Hamlet, NC
- Member, NC Bar Association (1992-present)
- Member, Tenth Judicial District Bar and Wake County Bar Associations (2010-present)
- Married 22 years to former State Representative Melanie Wade Goodwin until her passing from a long battle with cancer in Sept 2020
- Two children: Madison (college freshman) and Jackson (7th grader)

REFERENCES

Provided upon request.

- *Current as of 1 April 2021*

EXHIBIT B

EXHIBIT 4A



Attorney General

Josh Stein

Robocall Hotline: (844) 8-NO-ROBO
All Other Complaints: (877) 5-NO-SCAM
Outside NC: 919-716-6000

Application of Certain Prohibitions Contained in 116-17.2 & 143-34.1(d)

November 3, 1995

Mr. Dennis Ducker Director Retirement Systems Division Department of State Treasurer 325 North Salisbury Street Raleigh, North Carolina 27603-1385

Re: Advisory Opinion to Dennis Ducker, Deputy State Treasurer, from the Office of the Attorney General, Administrative Division, Service to State Agency Section, Concerning the Application of Certain Prohibitions Contained in N.C. Gen. Stat. §§ 116-17.2 and 143-34.1(d) to the Proposal to Include Supplemental Life Insurance, Accidental Death and Dismemberment Insurance, and Supplemental Disability Insurance in the Statewide Flexible Benefits Program Created by Executive Order No. 66.

Dear Mr. Ducker:

We are writing in response to your letter of October 11, 1995, to Attorney General Michael F. Easley. In that letter, you noted that Executive Order No. 66 created within the Office of State Personnel an Employee Flexible Benefits Program for all State Employees, including employees of the University of North Carolina. The program created by Executive Order No. 66, called "NC Flex," is designed to implement the provisions of N.C. Gen. Stat. §§ 116-17.2 and 143-34.1(d), and will become effective of January 1, 1996. You also noted that N.C. Gen. Stat. §§ 116-17.2 and 143-34.1(d) both expressly exclude from coverage under the flexible benefits plan "those benefits provided to employees [and officers] under [Article 1A of Chapter 120 of the General Statutes, and] Articles 1, 3, and 6 of Chapter 135 of the General Statutes." [The provisions in brackets are contained in N.C. Gen. Stat. § 143-34.1(d) only.] You asked for an opinion as to whether the inclusion of supplemental life insurance, accidental death and dismemberment insurance, and supplemental disability insurance in NC Flex will violate the prohibitions contained in these two statutes.

The quoted provisions of N.C. Gen. Stat. §§ 116-17.2 and 143-34.1(d) prohibit NC Flex from duplicating the benefits provided by the Legislative Retirement System of North Carolina, the Teachers' and State Employees' Retirement System of North Carolina, the Teachers' and State Employees' Comprehensive Major Medical Plan, and the Disability Income Plan of North Carolina. The reason for this prohibition is readily apparent: each of these plans is designed to provide basic benefits of uniform design to the employees covered by it. Moreover, participation in each of the plans is mandatory (except to the extent that N.C. Gen. Stat. § 135-39.5B allows for employees to enroll in an alternative prepaid hospital and medical benefit plan approved by the Executive Administrator and Board of Trustees of the Major Medical Plan in consultation with the Committee on Employee Hospital and Medical Benefits). Additionally, each of these plans is funded, in whole or in part, by employer contributions made by the State of North Carolina, through its various departments and agencies. It is certainly in the State's best interest not to have optional employee benefit plans that duplicate or compete with the benefits offered by these plans. Nor is it in the best interests of employees to contribute to flexible compensation and benefit options that merely duplicate the benefits they already receive from the Statesponsored plans.

The question remains, then, whether the supplemental life insurance, accidental death and dismemberment insurance, and supplemental disability insurance that are planned for inclusion in NC Flex will duplicate the benefits offered by the Legislative Retirement System of North Carolina, the Teachers' and State Employees' Retirement System of North Carolina, or the Disability Income Plan of North Carolina. In our opinion, they will not. As you have described them, the group life insurance, the group accidental death and dismemberment insurance, and the group supplemental  English to

EXHIBIT 4A

EXHIBIT C

EXHIBIT 4A

2001 WL 1783598 (N.C.A.G.)

Office of the Attorney General

State of North Carolina

October 3, 2001

*1 Mr. Carl Goodwin
Director
Risk Control Services
Office of State Personnel
116 West Jones Street
Raleigh, North Carolina 27603-8004

Re: Advisory Opinion: N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d) Ability of NC Flex to Offer a Voluntary Indemnity Plan and Voluntary Alternative Indemnity Plans for Dependant Health Care Coverage.

Dear Mr. Goodwin:

You have asked, by letter dated July 26, 2001, for our opinion regarding whether the statutes that govern the Teachers' and State Employees' Comprehensive Major Medical Plan ("the State Health Plan") and the Statewide Flexible Benefits Program ("NC Flex") would permit NC Flex to offer the following types of plans for State employees:

- (1) A voluntary indemnity plan that provides hospital confinement, short-stay, rehabilitation unit, surgical, heart attack, stroke, coma, paralysis, ambulance, and wellness benefits; and
- (2) A voluntary indemnity health plan that provides health benefit alternatives to employees for dependant health care coverage.

For reasons set out below, it is our opinion that NC Flex may offer the voluntary indemnity plan described in (1) above. Whether NC Flex could offer a voluntary indemnity health plan that provides health benefit alternatives to employees for dependant health care coverage would depend on the specific provisions of the plan in question.

N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d), which authorize the creation of a flexible benefits program for employees of the University of North Carolina and for State employees, expressly provides:

This plan shall not include those benefits provided to employees [and officers] under [Article 1A of Chapter 120 of the General Statutes and] Articles 1, 3, 4, and 6 of Chapter 135 of the General Statutes.

(The provisions in brackets are contained in N.C. GEN. STAT. § 143-34.1(d) only.) As we noted in our November 3, 1995, advisory opinion to Ronald G. Penny, former State Personnel Director, these provisions prohibit NC Flex from duplicating the benefits offered by the Legislative Retirement System of North Carolina, the Teachers' and State Employees' Retirement System of North Carolina, the State Health Plan, and the Disability Income Plan of North Carolina. We further noted that the reasons for this are readily apparent: it is in the State's best interest not to have optional employee benefit plans that duplicate or compete with the benefits offered by these plans, each of which is designed to provide basic benefits of uniform design to the employees covered by it. Similarly, it is not in the best interests of employees to contribute to flexible compensation and benefit options that merely duplicate the benefits already received from State-sponsored plans.

The question remains, then, whether the proposed plans you have described in your letter will duplicate the benefits offered by the State Health Plan pursuant to Chapter 135, Article 3, of the North Carolina General Statutes. With regard to the first proposal you described *Æ* offering indemnity coverage *Æ* you provided information on the plan description submitted to your office in response to Request for Proposal #100908. These materials show schedules of payments that would be provided under the plan.

EXHIBIT 4A

Upon review of these materials, it appears that the benefits offered under this plan, which are provided as set dollar amounts rather than as indemnification of a participant's actual deductible, coinsurance and copayment expenses, do not duplicate the benefits offered by the State Health Plan. Rather, this plan would simply provide for payments of set amounts upon certain occurrences, such as hospitalization, heart attacks, etc. The benefit offered by this plan, then, are not unlike the benefits offered by the accidental death and dismemberment plans that NC Flex has offered. In our opinion, then, NC Flex is not prohibited by N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d) from offering the voluntary indemnity plan that provides hospital confinement, short-stay, rehabilitation unit, surgical, heart attack, stroke, coma, paralysis, ambulance, and wellness benefits described in the materials you sent with your letter.

*2 With regard to your other question *Æ* whether NC Flex can offer a voluntary indemnity health plan that provides health benefit alternatives to employees for dependant health care coverage *Æ* we have not been provided with a specific description of any proposed plan or plans. It is my understanding that there is not, in fact, any specific plan under consideration. We are not in a position, then, to offer an opinion as to whether any possible plan might be prohibited by N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d). We can only note that NC Flex cannot offer any plan that duplicates benefits offered to employees by the State Health Plan. This, of course, raises the issue, which we understand to be a part of your question, of whether dependant health care benefits are "benefits provided to employees" within the meaning of N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d). It is our opinion that they are.

It is true that dependant coverage is optional under the State Health Plan. That is, an employee can elect to cover or not cover his or her dependants through the State Health Plan. It is also true that dependant coverage is paid for solely by the employee premiums, without any contribution from the State. Nevertheless, we believe that dependant coverage is still a benefit provided to employees within the meaning of N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d). Clearly, it is a benefit to employees to make dependant coverage available in the same plan in which the employee participates and on the same terms.

Moreover, as we have noted, N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d) prohibit competition with the State Health Plan. Without question, dependant health care coverage offered by NC Flex would compete with the State Health Plan. It would decrease the number of dependant participants in the State Health Plan. Because the benefits offered by NC Flex would be available only to active State employees and not retirees, the smaller pool of participants remaining in the State Health Plan would most likely also be a less-healthy pool. This is particularly true if pre-existing condition restrictions enabled only the employees with healthier dependants to take advantage of a plan offered by NC Flex. This would almost certainly have the effect of driving up dependant care premiums for those who remain in the State Health Plan. In our opinion, this is precisely the type of competition that the General Assembly intended to prohibit in N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d). Accordingly, we believe that dependant health care benefits are "benefits provided to employees" within the meaning of N.C. GEN. STAT. §§ 116-17.2 and 143-34.1(d).

For the foregoing reasons, it is our opinion that NC Flex may offer the indemnity plan described in materials sent with your July 26, 2001, letter. Further, we cannot offer an opinion as to whether NC Flex can offer a voluntary indemnity health plan that provides health benefit alternatives to employees for dependant health care coverage without seeing the specific provisions of any such plan.

Very truly yours,

*3 Ann Reed
Senior Deputy Attorney General
Alexander McC. Peters
Special Deputy Attorney General

2001 WL 1783598 (N.C.A.G.)

EXHIBIT 4A

EXHIBIT D

EXHIBIT 4A

2002 WL 1018929 (N.C.A.G.)

Office of the Attorney General

State of North Carolina

March 26, 2002

Re: Advisory Opinion; N.C. Gen. Stat. § 116-17.2 and § 143-34.1(d); ability of the University System to offer dependant health coverage

*1 Leslie Winner
Vice President and General Counsel
University of North Carolina
Post Office Box 2688
Chapel Hill, North Carolina 27515

Dear Leslie:

This letter is in response to your inquiry in which you ask whether the University, or some of its campuses, may offer a cafeteria plan which allows pre-tax premiums for dependent health coverage. You ask that we review this issue in light of our opinion to Carl Goodwin of the Office of State Personnel dated October 3, 2001, which discusses whether a pre-tax dependent health coverage plan violates the non-compete mandate of N.C. Gen. Stat. § 116-17.2 and § 143-34.1(d). You also asked that we research the legislative rationale for this non-compete restriction.

As you are aware, in our opinion to Mr. Goodwin we opined that a flexible benefit plan "cannot offer a plan that duplicates benefits offered to employees by the State Health Plan." We went on to indicate that Mr. Goodwin's inquiry raised the issue of whether dependent health care benefits are subject to the non-compete restrictions set out in N.C. Gen. Stat. § 116-17.2 and § 143-34.1(d). We indicated that in our opinion they are.

In interpreting the non-compete restrictions contained in N.C. Gen. Stat. § 116-17.2 and § 143-34.1(d), we focused on the prohibition against a cafeteria plan including those benefits provided to employees under various Articles of Chapter 135, including Article 3 of that chapter, which covers providing employee and family healthcare coverage. It has been suggested that the word "provided" limits the non-compete restrictions to those benefits which the State pays for. We disagree. We believe it is clear from the language of the statutes that the word "provide" Leslie Winner means making the benefit available to the employee. The benefit is provided under the Comprehensive Major Medical Plan even when the employee fully funds the cost of the benefit. G.S. § 135-40(b), the undertaking section for the Major Medical Plan, also refers to "providing" benefits for the State's employees and certain of their dependants, and it is clear the State does not pay for all of the benefits. For example, long-term care benefits are authorized as an optional program for qualified employees, retired employees and their dependants. The State pays nothing towards these costs. Nonetheless, G.S. § 135-40(b) refers to benefits provided and made available through the Plan. Established case law counsels us not to interpolate or superimpose restrictions not contained in a statute on the statute. *State ex rel. Utilities Com. v. Edmiston*, 291 N.C. 451, 232 S.E.2d 184 (1977). Interpreting "provide" to mean "make available on a fully funded basis" is a restriction not contained in the statute. Additionally, a construction of a statute which operates to defeat or impair the object of the statute must be avoided if that can reasonably be done. *State v. Ham*, 287 N.C. 76, 213 S.E.2d 291 (1975). Our review of the legislative interactions surrounding the non-compete provisions of G.S. § 143-34.1(d) supports the conclusion that a cafeteria plan for the University or some of its constituent campuses that allows pre-tax premiums for dependant health coverage impairs the object of the statute.

*2 In the course of researching the origins and legislative history of these statutes, we did not locate any legislative minutes directly discussing the non-compete restrictions. However, in reviewing the events surrounding the establishment of the State's flexible benefits plan we did discover documents which we believe are relevant. As you are aware, the initial responsibility

EXHIBIT 4A

for studying the feasibility of establishing and maintaining a flexible benefits plan for State employees was assigned to the Office of State Budget and Management. The Office of State Budget contracted with the accounting firm of Coopers and Lybrand to provide recommendations concerning structure and plan design. Coopers and Lybrand's final report, issued August 20, 1993, recommended a single statewide plan encompassing all employees and utilizing a central administration. The Office of State Budget moved forward with this design concept, and the Governor formalized the statewide, centrally-administered coordination effort with Executive Order #66, issued December 5, 1994.

During the debate over removing the sunset provision from the NC Flex bill, the Director of the State Health Plan and the lead fiscal analyst staffing the legislative committee to which the bill was assigned emphasized the need for the non-compete provision. Additionally, they produced figures which showed that the dependent coverage cost is indirectly subsidized by the amount saved on the employee - only claims. *Since the employee-only claims paid are less than the premiums paid by the State, the rate for dependent coverage is reduced by the surplus.* Furthermore, siphoning off younger, healthier dependents from the pool that includes retirees and their dependents would almost certainly drive up the cost of dependent coverage. As we previously stated, and as the legislative interactions confirm, this is precisely the type of competition the General Assembly intended to prohibit. Accordingly, based on the clear Leslie Winner language of N.C. Gen. Stat. § 116-17.2 and § 143-34.1(d) and our research into their history, we conclude that the University, or some of its constituent campuses, cannot offer a cafeteria plan that allows pre-tax premiums for dependent health coverage. This competition would impair the object of the statute, which was to establish a single statewide plan that did not compete with existing benefits.

We trust this information has been helpful and answers your inquiry. Do not hesitate to contact us if you have any additional questions.

Very truly yours,

Ann Reed
Senior Deputy Attorney General
Alexander McC. Peters
Special Deputy Attorney General

2002 WL 1018929 (N.C.A.G.)

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EXHIBIT 5

Expert Report of Jamison Green, Ph.D.

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, *et al.*,

Defendants.

No. 1:19-cv-00272-LCB-LPA

**EXPERT DISCLOSURE REPORT OF
JAMISON GREEN, PH.D.**

I. PRELIMINARY STATEMENT

1. I, Jamison Green, Ph.D., have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation.

2. I have actual knowledge of the matters stated and would so testify if called as a witness. I reserve the right to supplement or amend this report based on any future information that is provided to me, including but not limited to information produced by Defendants in discovery or in response to Defendants' expert disclosures.

3. This report contains my opinions and conclusions, including: that employers of all sizes whose health insurance plans contain an exclusion for gender confirming care have a variety of viable options that can be utilized to provide their transgender employees with access to that care.

II. QUALIFICATIONS AND BACKGROUND

A. Qualifications

4. I am the owner and founding member of Transgender Strategies Consulting, LLC, a limited liability company registered in the State of Washington. Through this business, I regularly consult with corporations of all sizes, small businesses, professional organizations, local, state, and federal government agencies, and education institutions concerning transgender health care access issues and other workplace issues.

5. In 2011, I received a Ph.D. in Law from the Manchester Metropolitan University in Manchester, England. The research for my degree focused on extensive analysis of a family law case at the intersection of law and medicine that continues to impact the lives of gender-diverse people around the world and how this intersection has manifested historically in both the United States and European law and policy. A true and correct copy of my Curriculum Vitae is attached hereto as Exhibit A.

6. I have taught a doctoral-level course in Transgender Experience, Identities, Policies and Communities. I am also a current member of the Ethics Faculty of the Global Education Initiative of the World Professional Association for Transgender Health (“WPATH”).

7. For over 25 years, I have provided training and policy consulting services on transgender issues, specifically focused on helping employers provide health care access and ensure social equity in business and professional contexts. These contexts include but are not limited to medical providers in hospitals, medical schools, and clinical settings, providing professional continuing education to legal professionals,

psychologists, marriage and family therapists, licensed clinical social workers, law enforcement officers, and clergy members.

8. In the course of this work, I extensively researched, investigated, and proposed to employers many different solutions and strategies that employers can utilize to ensure their transgender employees or dependents have access to health insurance coverage that includes gender confirming care. I also worked with employers of all sizes to provide transgender employees with equal dignity, rights, and access to health care as a core benefit of employment, including helping employers to remove blanket exclusions from their health benefit plans and policies, and to procure access when the exclusions could not be removed.

9. I have consulted with several government bodies regarding the text of non-discrimination laws and regulations impacting transgender and gender-diverse people, most notably the City and County of San Francisco, the California Department of Fair Employment and Housing and the Health Ministries of British Columbia, Norway, Sweden, France, Kazakhstan, and Kyrgyzstan.

10. I have been elected three times to the Board of Directors of WPATH, a nonprofit, educational organization with an interdisciplinary professional membership of over 2,100 physicians, nurses, psychologists, attorneys, scientific researchers, and others whose professional work impacts the lives of transgender, gender diverse and gender-nonconforming people worldwide. I was elected to two four-year terms as an at-large director, and once to a six-year term as President of WPATH. Because of the timing of elections and global conferences, my board service extended to a total of 15 years.

11. Since 1979, WPATH has promulgated the internationally accepted Standards of Care for the Health of Transgender and Gender-Nonconforming People and holds biennial scientific symposia in which the latest research in this topic is presented and discussed. WPATH has been acknowledged as the leading authority in the field of transgender health by the American Medical Association, American Psychiatric Association, American Psychological Association, and many other professional groups. In addition, the World Health Organization, the United States Department of State, the U.S. Department of Health and Human Services, and many state and federal courts cite WPATH as the leading authority on scientific, medical, and social policy matters pertaining to transgender and gender-nonconforming people.

12. I am a co-author of the latest revision of the WPATH Standards of Care, Version 7 (2012), and I am a lead author of the Ethics section in the forthcoming Version 8. I have also served as the chair of several WPATH standing committees: The Public Policy, Advocacy, and Liaison Committee, the Legal Issues Committee, and the Ethics Committee. I have also served as a member of the Communications Committee and the Bylaws, Policy and Procedures Committee.

13. I have published several academic articles and book chapters on the topic of transgender health, rights, and related policy concerns, and my monograph, *Becoming a Visible Man*, won the 2005 prize for Best Book in Transgender Studies from the Center for Lesbian and Gay Studies at City University of New York. It is used as a text in numerous university courses in a variety of disciplines and has just been released in a revised second edition (Vanderbilt University Press, 2020).

14. I have received numerous awards and certificates of recognition from professional associations and governmental bodies for my contributions to transgender health and rights.

B. Materials Considered in Preparing This Report

15. I have reviewed the Complaint for Declaratory, Injunctive, and Other Relief, ECF No. 1; and the proposed First Amended Complaint for Declaratory, Injunctive, and Other Relief, ECF No. 62-1.

16. In preparing this report, I relied on my education and training, my research experience, and my over 25 years of professional consulting, teaching, and training of employers, agencies, organizations, states, and nations about ensuring transgender health care access and insurance coverage.

17. The knowledge I have relied upon in preparing this report is the same type of knowledge that experts in my field of practice and study regularly rely upon when forming opinions. I may wish to supplement these opinions or the bases for them because of new publications or in response to statements and issues that may arise in my area of expertise.

C. Prior Testimony

18. I have not testified as an expert at trial or by deposition within the last four years.

D. Compensation

19. I am being compensated at an hourly rate for actual time devoted, at a rate of \$400.00 per hour, billed in 15-minute increments.

20. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

III. EXPERT OPINIONS

A. Employer Options When Health Insurance Plan Maintains Exclusion for Gender Confirming Care

21. It is my opinion that there are a variety of solutions available to employers of varying sizes when the employer's main health insurance plan maintains an exclusion for gender confirming care.

22. A strategy that several employers have used is to purchase a separate, inclusive plan in which their transgender employees or their dependents may enroll as a coverage option. I am personally aware of several employers who have done this, including the American Friends Service Committee and the United Unitarian Association from the nonprofit sector, as well as small professional organizations.

23. Another strategy that several employers have used is to establish a fund administered by the employer's Human Resources/Benefits department to which transgender employees or covered dependents submit their receipts to receive reimbursement of uncovered medical expenses. The City of Berkeley, California has utilized this method, as have some health sector organizations and nonprofit corporations.

24. A third solution also available to employers is to provide an affected employee with a stipend for the purpose of purchasing an individual plan in the marketplace that does not contain exclusions for gender confirming care.

25. Another strategy available to some employers is to purchase a type of policy “extension” —informally called a “rider”—that would attach to the employer’s current plan structure and offer coverage of the care being sought by transgender employees. That rider would be invoked whenever the benefits are accessed. I am personally aware of several differently sized companies that have used this option, including Genentech, a biotechnology company with 14,000 employees, as well as companies from the insurance and technology sectors. The availability of this option may vary, but it should be researched by employers seeking solutions for exclusions of gender confirming care in their health plans.

IV. CONCLUSION

26. In summary, there are several viable solutions or strategies that employers have historically and can presently avail themselves of to provide insurance coverage of gender confirming care for transgender employees and qualified dependents. I may supplement these opinions in response to information produced by Defendants in discovery or in response to Defendants’ expert disclosures.

27. I declare under penalty of perjury that the foregoing is true and correct.
Executed this 1st day of March, 2021.



Jamison Green, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2021, I caused a copy of the foregoing document and all attachments to be served upon the following parties via email:

John G. Knepper
LAW OFFICE OF JOHN G. KNEPPER, LLC
P.O. Box 1512
Cheyenne, WY 82003
John@KnepperLLC.com

James Benjamin Garner
NORTH CAROLINA DEPARTMENT OF
STATE TREASURER
3200 Atlantic Avenue
Raleigh, NC 27604
Ben.Garner@nctreasurer.com

Kevin Guy Williams
Mark A. Jones
BELL DAVIS & PITT, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029
kwilliams@belldavispitt.com
mjones@belldavispitt.com

*Counsel for Dale Folwell; Dee Jones;
N.C. State Health Plan for Teachers and
State Employees; and State of North
Carolina, Department of Public Safety*

Dated: March 1, 2021

Zach Padget
Kimberly D. Potter
NC DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
zpadget@ncdoj.gov
kpotter@ncdoj.gov

*Counsel for Defendants University of
North Carolina at Chapel Hill; North
Carolina State University; and University
of North Carolina at Greensboro*

/s/ Amy E. Richardson
Amy E. Richardson, N.C. SBN 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
P: 919-429-7386 | F: 202-730-1301
arichardson@hwglaw.com

Counsel for Plaintiffs

Exhibit A

EXHIBIT 5

Jamison Green, Ph.D.

Author, Educator, Public Speaker, Expert Policy Consultant

5421 NE 51st CIR., Vancouver, WA 98661

510-393-4785 Mobile • 360-312-4522 Skype • jgreenphd1@gmail.com

Education

- Ph.D., Equalities Law, 2011, Manchester Metropolitan University, England.
- M.F.A., English/Creative Writing (fiction), 1972, University of Oregon.
- B.A., English, 1970, University of Oregon, Eugene, Oregon.

Employment

- President, Jamison Green & Associates, Transgender Training & Policy Consulting for Business, Education and Government, 2007 – present (self-employment). Since 2018 dba Transgender Strategies Consulting, LLC. Advise HR and legal staff, plus train managers and co-workers of transitioning employees regarding transgender non-discrimination policies and workplace best practices for diversity and inclusion for many major corporations across the country. Guided the evolution of the Human Rights Campaign (HRC) Foundation’s Workplace Project’s Corporate Equality Index (CEI) with respect to transgender-inclusive healthcare benefits; developed educational materials, and conducted live trainings and webinars for HRC to distribute to employers to guide their implementation of these programs. Wrote several commissioned papers and reports (see Publications section). Delivered numerous invited lectures, training sessions, and keynote speeches in the U.S., Europe, Africa, and Asia. Created guidelines for all Macy’s and Bloomingdale’s retail employees on respectful treatment of transgender customers, co-workers, and managers/supervisors, plus a more detailed guide for HR managers. Conducted transgender trainings for the Securities & Exchange Commission in two cities, and comprehensive diversity & inclusion training for all employees at the Presidio Trust.
- Adjunct Professor in the Ph.D. program in Human Sexuality at California Institute of Integral Studies, San Francisco, 2014 – 2016. Taught hybrid (asynchronous online & live classroom) courses in transgender history, experience, and culture, and in gender in society. Advised students in research and dissertation processes.
- International Guidelines Manager, Center of Excellence for Transgender Health, Department of Family and Community Medicine, University of California, San Francisco, 2011 – 2014. Conducted independent research to analyze all existing healthcare protocols for transgender people, and produce a gap assessment report; establish baseline status of services available and mechanisms for knowledge dissemination in Kyrgyzstan, Peru, South Africa, and the U.S., and planned and executed a conference with health ministry representatives, physicians, and NGO representatives to determine what health disparities existed in each region. Developed practical strategies to address disparities and the unique problems they produce in each of the four environments/cultures. Underwritten by the Open Society Foundations.

EXHIBIT 5

Employment (cont'd)

- Primary Care Protocols Manager, Center of Excellence for Transgender Health, Department of Family and Community Medicine, University of California San Francisco, 2009 – 2011. Conducted gap analysis among available primary care protocols developed for transgender care, organized a 9-member Medical Advisory Board, drafted prototype text for physicians to review and approve, designed concept for interactive online resource for primary care physicians unfamiliar with transgender health concerns. Underwritten by the California Endowment.
- President-Elect, World Professional Association for Transgender Health (WPATH), 2011 – 2014, serving as President 2014 – 2016, and as Past-President 2016 – 2018.
Board Member, WPATH (formerly HBIGDA), elected to two terms of service, 2003 – 2007 and 2007 – 2011.
 - Author of all WPATH policy statements; co-author of *WPATH Standards of Care*.
 - Media spokesperson for the Association.
 - Chair of the Public Policy, Advocacy & Liaison Committee (2007-2014).
 - Member of the Communications Committee, Legal Issues Committee, and Policy & Procedures Committee (2009-2018).
 - Chair of the Ethics Committee (2014-2018); Co-Chair of Ethics Committee, 2019+; member of the Global Education Initiative (GEI) Steering Committee and faculty.
 - Member of the Standards of Care Committee and core writing group (2009-2021).
 - As President, serve as an *ad hoc* member of all Association committees, organize an international Scientific Symposium (in Amsterdam, June 2016) for over 1000 physician, mental health, legal, social scientist, and NGO providers of services to transgender people concerned about transgender health and rights.
 - Specific accomplishments during my presidency: Changed the Association's business model to one more beneficial for and responsive to its members; membership tripled during the second half of my term due to programs I either initiated or coaxed into realization, after 36 years of slow, inconsistent growth. Example programs: instituted a Development Committee, created a fund-raising campaign to meet a challenge grant from an NGO in the UK to fund translations of the *Standards of Care* (now available in 19 languages, with more to come), moved from university-housed, volunteer association management to professional medical association management company, implemented tiered membership dues model to allow more professionals from the global south to join, divided the membership into regions to more efficiently handle political and geographic issues that affect only a portion of the membership, while still encouraging global communication about scientific or treatment-related issues, and drove the Association to institute a certification program for professionals in the field of transgender health to increase the number of knowledgeable providers and improve available care. Arguably, these two years have seen the most dramatic changes for the organization since its inception in 1979.
- Adjunct Instructor, Queer Psychology, John F. Kennedy University & Extension, 2006 – 2011. Co-taught courses with a psychologist for grad students and licensed clinicians.

EXHIBIT 5

Employment (cont'd)

- Director, Technical Publications, Visa U.S.A. 2005 – 2007. Managed a staff of 9 writers; distributed assignments, monitored performance, provided development opportunities, conducted annual performance reviews, and determined salary increases within specified departmental budget, resolved any conflicts within or outside the group. My team wrote and maintained Visa card processing system software documentation, guides for other unique software development projects, and the 2000+ page Visa Operating Regulations, which is contractually committed to be revised and re-released every 6 months, in hard copy, to every Visa card issuing and/or acquiring bank or financial institution globally. This is a high-visibility and high stakes project (because of its cost), which my staff was able to accomplish virtually without errors.
- Faculty, San Francisco State University, Summer Institute on Sexuality, Social Inequality, and Health, National Sexuality Resource Center, 2005. Taught a 4-week classroom course on “Moral Panics” to ~25 post-graduate students. Lectured, assigned readings and papers; read & graded papers; delivered constructive feedback.
- Technical Writing Specialist, Visa International and Visa U.S.A., 1999 – 2005. As an individual contributor, created Visa’s Y2K Response Plan for the Development Division. Produced business documentation (internal to banks) for Visa Gift Card, Visa Payroll Card, and other similar specialty cards, legal notices, and a stand-alone card processing system to be implemented in Ukraine.
- Diversity Consultant (self-employed, occasional) specializing in sexuality & gender issues in colleges, universities, corporations, and government agencies, 1989 – 2007. Columnist, PlanetOut.com, “Visible Man” 1999 – 2005.
- Consulting Technical Writer (freelance, through a broker): Banking/Financial, Medical Device Development and Manufacturing companies, Computer Hardware and Software Design and Manufacturing, on contract with IBM, NEC, Visa International, Inc., and Visa, U.S.A., 1992 – 1999.
- Manager, System Software Documentation, Sun Microsystems, Inc., Mountain View, CA, 1988 – 1991. Managed staff of 12 writers; reduced customer complaints about documentation by 90%.
- Vice President of Operations, Paperback Software International, Inc., Berkeley, CA, 1986 – 1988. Managed all product production, documentation, artwork, order fulfillment, shipping, receiving, writing and editorial functions; provided guidance for staff of 14. Reduced production costs by 30%, and defective product returns from 40% to 5%. Promoted to Vice President from Director of Publications position in 10 months.
- Manager of Publications & Engineering Services, North Star Computers, San Leandro, CA, 1983 – 1986. Managed staff of 19, including writers, an editor, 7 draftsmen, and 3 creative artists. Oversaw engineering change control process and the transfer of technology from engineering to manufacturing. Team’s publications won several design awards from the Society for Technical Communications.

EXHIBIT 5

Employment (cont'd)

- Technical & Marketing Writer, Publications Manager, Cooper Medical / Cooper LaserSonics, San Leandro & Mountain View, CA, 1979 – 1982. Wrote operation & service manuals for intraocular microsurgery systems, surgical lasers; regulatory notices; regulatory affairs documentation; product newsletters (with physicians). Took all photographs to illustrate manuals. Publications won recognition from the American Medical Writer's Association. Directed photo shoots for marketing brochures and trade show exhibits.
- Legal and Technical Writer, and Affirmative Action Representative, The Bank of California, San Francisco, 1978 – 1979. Analyzing President Johnson's Executive Order instituting affirmative action, I independently wrote an Affirmative Action Plan for the Bank, which was under a consent decree for discrimination against women and minorities. The plan showed how the Bank would respond to each requirement stated in the Executive Order; it was approved by several Executive Vice Presidents of the Bank. The Vice President of Affirmative Action Compliance and I flew to Los Angeles to present the plan to representatives of the U.S. Treasury Department for review, where it was accepted as meeting the requirements.
- Instructor of Legal Writing, Summer Institute, Lewis and Clark College School of Law, Portland, Oregon, 1977. Taught in a special program for women and minority candidates who were admitted to first year of law school on the condition that they successfully passed the Summer Institute Program. Students took abbreviated versions of traditional law courses: Contracts, Torts, Criminal Law, Civil Procedure, and Legal Writing. Assigned readings from texts for the other courses and developed writing assignments based on those readings; evaluated students' writing problems and gave constructive feedback to help them build skills. Ultimately, instructors evaluated each student's performance and estimated their capability to succeed in law school. When the other instructors, who were traditional law professors at the college, realized that I didn't have a law degree, they strongly encouraged me to go to law school, saying I was "a natural."
- Construction Cable Splicer, Pacific Northwest Bell Telephone Co., Portland, Oregon, 1973-1976. Spliced telephone cables in all kinds of weather, and all kinds of physical settings: buried plant (b-boxes or trenches), underground (manholes), and aerial (climbing ladders or poles, or using "cherry-picker" truck). On-call 24 hours. Selected to train for underwater splicing and was assigned to various special projects requiring advanced problem-solving and analytical skills.

EXHIBIT 5

Publications

- *Becoming a Visible Man*, Second Edition, Vanderbilt University Press, 2020.
- “History, Societal Attitudes, and Contexts” in *Gender Confirmation Surgery: Principles and Techniques for an Emerging Field*. Loren S. Schechter, editor. Springer Nature, Switzerland. 2020.
- *Navigating Trans*+ and Complex Gender Identities*. London and New York: Bloomsbury. 2019. Co-authored with Rhea Ashley Hoskin, Cris Mayo, and sj Miller.
- “Doctor Livingstone, You Presume” in *Glimmerings: Trans Elders Tell Their Stories*, Margot Wilson and Aaron Devor, Editors. Victoria, B.C.; Transgender Publishing, an imprint of Castle Carrington Publishing. 2019.
- “What *do* you want us to call you?” Co-authored with Dallas Denny and Jason Cromwell. *TSQ: Transgender Studies Quarterly*, Vol. 5, No. 1, pp. 100-110, February 2018. DOI: 10.1215/23289252-4291812
- "Employment Issues: A Personal View" in *The Transgender Handbook*, Walter Pierre Bouman and Jon Arcelus, Editors. New York; Nova Science Publishers, Inc. 2017.
- Legal issues for transgender people: a review of persistent threats. *Green J. Sex Health*. 2017 Oct;14(5):431-435. DOI: 10.1071/SH17104.
- Comparing self-and provider-collected swabbing for HPV DNA testing in female-to-male transgender adult patients: a mixed-methods biobehavioral study protocol. Reisner SL, Deutsch MB, Peitzmeier SM, White Hughto JM, Cavanaugh T, Pardee DJ, McLean S, Marrow EJ, Mimiaga MJ, Panther L, Gelman M, Green J, Potter J. *BMC Infect Dis* 2017 Jun 23;17(1):444. DOI: 10.1186/s12879-017-2539-x
- Winter S, De Cuypere G, Green J, et al. “The Proposed ICD-11 Gender Incongruence of Childhood Diagnosis: A World Professional Association for Transgender Health Membership Survey. *Archives of Sexual Behavior*. 2016 Oct;45(7):1605-14. DOI: 10.1007/s10508-016-811-6. Epub 2016 Aug 4.
- “Transgender: why should we care?” *The Lancet*. Published online June 17, 2016, DOI: [http://dx.doi.org/10.1016/S0140-6736\(16\)30840-6](http://dx.doi.org/10.1016/S0140-6736(16)30840-6)
- Winter S, Diamond M, Green J, et al. “Transgender people: health at the margins of society.” *The Lancet*. Published online June 17, 2016, DOI: [http://dx.doi.org/10.1016/S0140-6736\(16\)000683-8](http://dx.doi.org/10.1016/S0140-6736(16)000683-8)
- “Medicare May Cover Transsexual Surgery” *LGBT Health*, Vol. 1, No. 4, Dec. 2014.
- Deutsch MB, Green J, Keatley J, et al. “Electronic Medical Records and the Transgender Patient: Recommendations from the World Professional Association for Transgender Health EMR Working Group.” (2013) *Journal of the American Medical Informatics Association*. Published Online First, 30 April 2013. DOI: 10.1136/amiajnl-2012-001472.
- “If I Follow The Rules, Will You Make Me a Man?: Patterns in Transsexual Validation” (2012). *University of La Verne Law Review*: vol. 34 (November), 23-87.

EXHIBIT 5

Publications (cont'd)

- Pasha Mikalson, MSW, Seth Pardo, PhD, Jamison Green, PhD (2012): *First, Do No Harm: Reducing Disparities for Lesbian, Gay, Bisexual, Transgender, Queer and Questioning Populations in California. The California LGBTQ Reducing Mental Health Disparities Population Report*, Equality California and Mental Health America of Northern California.
- *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, Version 7*. (2011) Minneapolis, MN: World Professional Association for Transgender Health; co-author.
- Foreword to *Transfigurations* (photos) by Jana Marcus. Aptos, CA: 7Angels Press, 2011.
- *Forces in Motion: Law, Medicine, the Media, and the Religious Right in Kantaras v Kantaras* (dissertation in partial qualification for the degree of Ph.D. in Equalities Law (2011); held in The British Library).
- *Guide to Organizing for Transgender Health*, authored for the Transgender Law Center, San Francisco, 2008.
- *Transgender Rights in the U.S.A*, lead author for the National Sexuality Resource Center, San Francisco State University, funded by the Ford Foundation, 2008.
- Katherine Rachlin, PhD, Jamison Green, MFA, & Emilia Lombardi, PhD (2008): "Utilization of Health Care Among Female-to-Male Transgender Individuals in the United States," *Journal of Homosexuality*, 54:3, 243-258.
- "Evolutionary Changes," in the anthology *Love, Castro Street: Reflections of San Francisco*, editors Katherine V. Forrest and Jim Van Buskirk. Alyson Books, New York, 2007.
- "Part of the Package: Ideas of masculinity among male-identified transpeople." *Men and Masculinities*, 7 (3), 291-299 (2005).
- *Becoming a Visible Man*, Vanderbilt University Press, 2004.
- "Centering: An Alternative Perspective" co-published simultaneously in *Journal of Bisexuality*, Vol. 3 No. 3 /4, pp. 277-285; and *Bisexuality and Transgenderism: InterSEXions of the Others* (eds: Jonathan Alexander and Karen Yescavage), Harrington Park Press, an imprint of Haworth Press, 2003.
- "The Art and Nature of Gender" presented at the Third International Congress on Sex and Gender, Oxford, England, September 21, 1998; published in *Transgender Tapestry*, Spring 1999, pp. 41-48; appears as a chapter in *Unseen Genders: Beyond the Binaries*, Haynes & McKenna (eds.), Peter Lang Publishing, New York, April 2001.
- "Introduction" to *Transgender Equality: A Handbook for Activists and Policy Makers* by P. Currah & S. Minter, published by the National Gay & Lesbian Task Force and the National Center for Lesbian Rights, June 2000.
- "In the Body of a Man" published in *Cupido Magazine* (Norway) and in the anthology *Male Lust*, edited by Kay, Nagle, and Gould, Haworth Press, March 2000.
- "FTM—An Emerging Voice" (article) appearing as a chapter in *Current Concepts in Transgender Identity*, Dallas Denny, Ed., Garland Publishers, New York, 1998.

EXHIBIT 5

Publications (cont'd)

- “Look! No, Don’t! – The Visibility Dilemma for Transsexual Men” (article) appearing as a chapter in *Reclaiming Genders: Transsexual Grammars at the Fin de Siècle*, edited by Dr. Stephen Whittle and Ms. Kate More, Cassell, London & Washington D. C., June 1999; first presented as a paper at the 2nd International Congress on Sex and Gender Issues, June 21, 1997, King of Prussia, PA.
- “Gender Identity and Bisexuality” (co-authored with Dallas Denny, M.A.), chapter appearing in *Bisexuality: the psychology and politics of an invisible minority*, edited by Beth Firestein, Sage Publications, 1996.
- “Getting Real About FTM Surgery” (article) *Chrysalis, The Journal of Transgressive Gender Identities*, Vol. 2, No. 2, July 1995.
- “Investigation into Discrimination Against Transgendered People” A Report from the City & County of San Francisco Human Rights Commission, September 1994.

Public Speaking • Representative Lectures

Keynote Speeches (example venues; partial list)

- 2019 Coming Out, New York! Conference, New York, NY
- 2018 Kyiv Trans Conference, Kyiv, Ukraine
- 2016 Moving Trans History Forward, University of Victoria, Victoria, B. C.
- 2015 Harry Benjamin Resource Center International Conference, Oslo, Norway
 - Gender Expansion Conference, Missoula, MT
 - Your True Gender Conference, San Luis Obispo, CA
- 2014 Intelligence Community LGBT Summit, NSA HQ, Baltimore, MD
 - Kaiser Permanente Adult Transgender Mental Health Training, Lafayette, CA
- 2013 Transactions3, Transgender Health Conference, Waterford, Ireland
- 2012 Trans Rights as Human Rights & Implications for Transgender Health (Care), Linköping University Hospital, Linköping, Sweden
- 2011 First Event, Transgender Community of New England, Boston, MA
- 2010 Trans Health and Policy Conference, Cape Town, South Africa
- 2009 Southern Comfort Conference, Atlanta, GA
- 2006 National Coming Out Day, U.C. Davis School of Law
 - Campus Diversity Events, University of Missouri
- 2005 Southern Comfort Conference, Atlanta, GA
- 2004 Transsexual Disclosure; 6th Int’l Congress on Sex & Gender Issues, Manchester, England
 - National Coming Out Day, University of Michigan, Ann Arbor
- 2003 Portland Pride, Portland, OR
 - Medical and Social Change Conference, Oslo, Norway

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Keynote Speeches (cont'd)

- 2001 Transcending Boundaries, Yale University
 - National Coming Out Day, University of Oregon
 - InterSEXions: 5th Int'l Congress on Sex & Gender Issues, Perth, Australia
- 2000 First National Transgender Day of Remembrance, U.N. Plaza, San Francisco
 - San Diego Pride, San Diego, CA
 - San Francisco Pride Main Stage, San Francisco, CA
- 2000 Millennium March on Washington, Washington, D.C. — first and only trans man invited to speak at this national event
- 1995 First FTM International Conference of the Americas, San Francisco, CA

Lectures (example titles and venues; partial list)

- 2019 “Perspectives on Evolving and Ethical Transgender Care” – one of two featured presenters from other countries at a public meeting with physicians and clinicians from the national hospital and transgender community leaders held at Ráðhús Reykjavíkur (city hall) in Reykjavik, Iceland
- 2018, 2019, 2020 “Trans Men’s History: Finding our place in the world” – Camp Lost Boys retreat, sessions in Los Angeles, CA area, Denver, CO area, and Atlanta, GA area
- 2015 “Making the Case for Transgender Health and Rights: Gender Recognition in the Courts and in Prison” Wayne Morse Center for Law and Politics, Public Affairs Speaker Series, University of Oregon School of Law, Eugene, OR
 - “Walking the Blurred Line: Understanding Current Laws, Trends and Best Practices Impacting Transgender Workers” CLE Program sponsored by Pepper Hamilton LLP, Philadelphia, PA
- 2014 “Transgender Health: What’s Law Got To Do With It?” – Bill Smith Memorial Lecture, School of Law, University of California, Davis
- 2013 “Transgender Experience: Identities, Policies, Communities” – Public Lecture Series, California Institute of Integral Studies
 - “Transgender Health Access Issues” – LGBT Law Clinic, University of Mississippi School of Law
 - “Opportunities and Challenges in Transgender Lives” – Opening plenary lecture at Transgender HealthCARE Conference, University of Rochester (NY) School of Medicine
- 2012 “The Transgender Experience” – Faculty Diversity Lecture Series, California Institute for Integral Studies
- 2006 “Visibilité des FTMs” – Bibliotheque du Cité annual symposium, Lyon, France
- 2005 “Winning Trans Health” – Washington State Department of Public Health
- 2004 “Perspective on Development of FTM Community” – 6th International Super-Slim Conference on Politics of Gender / Sexuality, National Central University, Taiwan

EXHIBIT 5

Lectures (cont'd)

- 2002 Hawaii International Social Sciences Conference, Honolulu, HI
- American Assn. of Sex Educators, Counselors, and Therapists, Miami, FL
- Health In Difference 4, LGBT Health Conf., Sydney, Australia
- 2001 "Transgender Awareness for Law Enforcement" – mandatory City of Berkeley Police Department training, Emeryville, CA
- 2000 "Transsexual Issues" – Paris, France & Stockholm, Sweden
- 1999 "Transgender Issues" – Sexuality Conference for U.C. System LGBT Students, held at U.C. Santa Barbara campus
- "Pride is the Absence of Fear" – Regional Pride Month event, Lucent Technologies, IL
- 1996 "Unity Among Minorities" – Louisville Gender Society and Fairness Campaign, KY
- 1992 "Discrimination" – University of San Francisco School of Law, SF Bay Area Chapter of the National Lawyers Guild, San Francisco, CA

Workshops/Panels (example titles and venues; partial list)

- 2018 & 2019 "Beyond Transition: Needs of Post-Transition and Non-Transitioning Employees" with Donna Rose – Out & Equal Workplace Summit conferences in Seattle, Washington and Washington, D.C.
- 2015 "Rigid or Flexible? – Will the Real WPATH Standards of Care Please Stand Up" with André Wilson – Philadelphia Trans Health Professional Conference, Philadelphia, PA; repeated at the Gay & Lesbian Medical Association conference, Portland, OR
- 2008-2015 "Transgender Insurance Coverage" – Gay & Lesbian Medical Association
- 2007-2014 "Transgender Leadership" – Out & Equal Workplace Summit Pre-Conference All-Day Workshop
- 2006 "Transgender Insurance Coverage" – Gay & Lesbian Medical Association, San Francisco, CA
- "Building Bridges Transgender Speaker Training" – Out & Equal Workplace Summit, Pre-conference Institute (all-day), Chicago, IL
- "Why Bi? – Understanding Bisexuality as a Workplace Issue" – Out & Equal Summit, Chicago, IL
- 2002 Transfeminisms Conference, U.C. Santa Cruz, CA
- 2000 "Increasing Awareness of Transgender Health Concerns" American Public Health Assn.
- 1999 "Transsexual Education for Medical Professionals" – Kaiser and Alta Bates Hospitals, Northern CA

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Workshops/Panels (cont'd.)

- 1998 “Transgender Education and Inclusion” Workshops for GLB organizations in Stockholm and Malmö, Sweden
- “Sexual Orientation & Gender Identity: Issues for Practice and Research” – 106th Convention of the American Psychological Association, San Francisco, CA

Selected Media Appearances

- “No Ordinary Man” documentary directed by Chase Joynt and Aisling Chin-Yee. Produced by Sarah Spring. Parabola Films, Canada, 2020.
- “The Data Trail” by Elizabeth Gehrman. *Harvard Medicine*, Winter 2020 issue. <https://hms.harvard.edu/magazine/lgbtq-health/data-trail>
- “Where Justice Ends” documentary about incarcerated trans people, directed by George Zuber, Buddha Dog Productions, 2019.
- “Meet Jamison Green, the Trans Health Care Pioneer You Didn’t Learn About in History Class” by Kate Sosin for Logo. <http://www.newnownext.com/jamison-green-trans-health-care-pioneer/10/2019/>
- “Get to Know Your Trans Co-Workers” by Riley Griffin. Bloomberg Businessweek, March 21, 2019. <https://www.bloomberg.com/news/features/2019-03-21/trans-people-describe-discrimination-support-in-the-workplace>
- “Finding Kim” documentary directed by Aaron Bear, 2016.
- “Transgender When Transgender Wasn’t Cool” Esquire Magazine, November 2015.
- “Sense8” cameo with spoken lines in episode 1. Wachowski Siblings, Netflix, 2015.
- “The Transgender Tipping Point” TIME Magazine, May 29, 2014.
- “Just Gender” documentary directed by George Zuber, Buddha Dog Productions, 2019.
- “Growing Old Gracefully: The Transgender Experience” documentary directed by Joe Ippolito, 2012.
- “Trans” documentary (www.transthemovie.com), 2012.
- McQuade, Aaron (27 September 2011, GLAAD.org). ["Transgender Advocate Jamison Green Speaks About Policy Work and Education"](#). Retrieved 13 January 2020.
- Serbia National Television hour-long interview with 3 physicians, 2008.
- “Transparenting” here! Family. Family-focused LGBT cable television segment, 2005.
- “When an employee switches gender, what’s a company to do?” interview & photo, USA Today Money section “Cover story,” June 10, 2005.
- “The Opposite Sex: Rene’s Story” documentary film for Showtime, airing multiple times since its release in 2004.
- “Changing Sexes: Female-to-Male” documentary for the Discovery Channel airing frequently from 2003 to 2009.

EXHIBIT 5

Selected Media Appearances (cont'd)

- “Pride.01: The Magazine for Gay Pride In the USA” feature on TransAmerica, the emergence of the transgender community, pp. 95-98, 2001.
- Fuji Television, live in Tokyo, Japan, April 22; several newspaper interviews in Japan (articles published in June, 2000) and NHK television interview in conjunction with the release of the film “Boy’s Don’t Cry” in Japan.
- Radio interview on GayBC, www.gaybc.com (British Columbia), Jan. 25, 2000.
- Featured in the article “Whose Movement Is It?” by Mubarak Dahir in *the Advocate* magazine, May 25, 1999, page 50.
- Radio interview with live translation with Columbia National Radio, February 4, 1999; followed by television interview later that month.
- Biographical photo essay published in *Now* magazine, England, September 1998 and *Interviú* in Spain and Columbia, South America, in January, 1999.
- Article in the December 23, 1998 issue of *Focus Magazine*, Tokyo, Japan, pp. 39-40.
- Radio, television, and print media in Sweden in conjunction with a lecture tour conducted in September/October 1998. Airtime in September and November; print exposure in October and November, 1998, and television aired in Norway in November, 1999.
- “A Self-Made Man” three-page interview article in the San Francisco Chronicle, September 21, 1997; can be found on the web site www.sfgate.com.
- “You Don’t Know Dick: Courageous Hearts of Transsexual Men” a documentary film by Northern Light Productions, Boston, MA, released in 1997, winner “Best Documentary” at the New England Film Festival and the New York Lesbian & Gay Film Festival, and awarded a “Golden Apple” by the National Educational Media Network.
- NHK Public Television, Japan, interview, September 26, 1996.
- NDR Television, Berlin, interview with Lea Rosh for ARTE, broadcast throughout France and Germany, June 1996.
- Asahi National Broadcasting Co., Ltd., Japan, interview, April 1996.
- “Transsexual Menace” a documentary film by Rosa Von Praunheim, Germany, 1996. (Filmed in USA).
- “The Body Lies” by Amy Bloom, interview (and photo by Amy Arbus) *New Yorker* magazine, July 18, 1994, pp. 38-49.
- “Kate Bornstein: Adventures in the Gender Trade” a documentary film by Susan Marengo and Jay Mason, Filmmakers Library, Inc., New York, 1993.
- “The Blank Point: What is Transsexualism?” a documentary film by Xiao-Yen Wang, Beijing-San Francisco Film Group, 1991.

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Awards & Honors

- 2020 WPATH Harry Benjamin Lifetime Distinguished Service Award.
- 2020 Legacy Award from the Transgender Legal Defense and Education Fund, NYC.
- 2019 Lou Sullivan Award, part of the 2019 Torch Awards in association with the National Transgender March in Washington, D.C.
- 2014 Pioneer Award from Fantasia Fair, the world's longest-running transgender conference (40th anniversary year) in Provincetown, MA.
- 2013 Profiles of Excellence recognition from ABC7/KGO TV News.
- 2011 Lifetime Achievement Award from FTM International, presented at the Philadelphia Trans Health Conference.
- 2010 Pioneer Award, TransFaith Summit 2010 and the Freedom Center for Social Justice.
- 2009 Vanguard Award, Transgender Law Center, San Francisco, for "leading when no one else did," accompanied by Certificates of Honor and Recognition from the California State Senate, California State Assembly, San Francisco Board of Supervisors, Mayor, City Attorney, and City Treasurer, and the Mayor of the City of Oakland.
- 2009 Transgender Advocacy Award, National LGBT Bar Association.
- 2009 Distinguished Service Award, Association of Gay & Lesbian Psychiatrists, APA, for "contributions to LGBT mental health."
- 2006 Inspiration Award, Ingersoll Gender Center, Seattle LGBT Center, Seattle, WA.
- 2006 Gender Odyssey Award, recognizing "significant contributions for our collective communities" at the FTM 2006 Gender Odyssey Conference, Seattle, WA.
- 2005 Lambda Literary Award Finalist: *Becoming a Visible Man*/Transgender category.
- 2004 Sylvia Rivera Prize for Best Book in Transgender Studies (for *Becoming a Visible Man*), awarded by the Center for Lesbian and Gay Studies (CLAGS), City University of New York.
- 2000 Renaissance Transgender Education Association Individual Achievement Award, October 7, 2000, Philadelphia, PA.
- 2000 Outreach Institute of Gender Studies Award, recognizing "substantial contributions of learning and education in the area of sexuality and gender issues... [specifically] transgenderism and transsexualism."
- 1999 FTM International Pride Award for "his compassion, courage, vision, and integrity" from FTM International, Inc., San Francisco, CA (presented in October, 1999 at the FTM Forward Motion Conference in Los Angeles, CA).

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Awards & Honors (cont'd)

- Named as one of the GLBT movement's 25 "Best and Brightest Activists" in *The Advocate*, August 17, 1999.
- 1998 Virginia Prince Award for "lifetime contribution to the gender community," from the International Foundation for Gender Education, Waltham, MA.
- 1996 Community Leader Award, "for his countless endeavors to make us all free and proud to be who we are" from ETVC, San Francisco, CA (the nation's largest regional transgender community group, which changed its name in 1999 to Transgender San Francisco, or TGSF).
- 1995 Trinity Award, for "extraordinary acts of love and courage," recognizing leadership in the FTM community, from the International Foundation for Gender Education, Waltham, MA.
- 1995 Transgender Pioneer Award, for contributions to the law by a non-lawyer (for 1992 through 1994 work on the transgender protective ordinance in San Francisco) from the International Conference on Transgender Law and Employment Policy, Houston, TX.

Community Service Positions

- Founding Board Member, Transgender Law & Policy Institute (TLPI), 2001 – present.
- Board Member, TransYouth Family Allies, 2007 – 2011.
- Member, Human Rights Campaign Business Council, 2002 – 2007.
- Founding Board Member and Chair, Gender Education & Advocacy, 2000 – present.
- President of FTM International (FTMI), 1991 – 1999.

Significant Accomplishments

- Assisted the San Francisco Human Rights Commission in its investigation into discrimination against transgender people in May, 1994. Won contract to write the Commission's report from that investigation, which was issued in September, 1994. This report remains the most succinct and comprehensive statement of transgender issues, and what should be done, from a municipal standpoint, to address them.
- Appointed to work with City Attorney to draft language for the City & County's Transgender Protective Ordinance (1994; Ordinance in effect as of January, 1995).
- Invited to work with SFPD staff to create and conduct transgender awareness training for the San Francisco Police Academy. Delivered this training to every Academy class from 1995 – 2005, resulting in reduced police abuse of transgender citizens and better cooperation between police and community.

EXHIBIT 5

Significant Accomplishments (cont'd)

- Advised San Francisco City & County regarding discrimination in health care coverage for transgender and transsexual people. Negotiated with Health System Service Board to remove exclusions and institute coverage for transsexual-related treatment for City & County employees, dependents and retirees (1996 – 2000). Benefits became available in 2001.
- Posited that trans-inclusive health coverage would not increase costs to employers. Utilization data from the City & County of San Francisco available in 2005 proved this assertion to be true; this information has been used by numerous corporate employers to provide benefits for millions of covered lives, influencing state insurance regulators to rule that transgender exclusions must be removed from plans sold in their states, and that affirmative benefits must be available.
- Invited to join the Human Rights Campaign Foundation's Business Council (2002), to advise the Human Rights Campaign (HRC) on transgender workplace equality. Resigned in 2007 when HRC lobbyists approved eliminating gender identity and expression from the Employment Non-Discrimination Act. Consultant to the HRC Workplace Project (2008 – 2015) guiding their efforts to secure health insurance coverage for transgender and transsexual people for medically necessary care.
- Appointed by the American Psychiatric Association as an advisor to the Gender Identity Disorder Task Force for the DSM-V revision effort, 2009 – 2010.
- Contributed to the literature review and WPATH amicus brief that were instrumental in achieving the May 30, 2014 decision by a review panel at the U.S. Dept. of Health & Human Services to eliminate the Medicare exclusion of transition-related care that had been in place since 1989, based on information provided in 1981.
- Participated in joint invitational meeting with representatives of WHO, WPATH, GATE, UCSF Center of Excellence for Transgender Health, and other international group representatives to deliberate upon and find consensus on the removal of Transsexualism from the International Classification of Diseases chapter on mental health and the creation of a revolutionary new chapter on conditions related to sexual health, which was approved by WHO in 2019 and will be implemented globally in 2022. Wrote the report *WPATH Consensus Process Regarding Transgender and Transsexual-Related Diagnoses in ICD-11*, released by WPATH in July 2013.
- Contributed to the March 13, 2014 report by Dr. Jocelyn Elders, et al., *Transgender Military Service*, from the Palm Center at SFSU, funded by the Tawani Foundation.
- First American trans person to be elected President of WPATH in its 40-year history. Established clinical professional training; instituted professional association management; restructured dues to allow more students and professionals from economically marginalized countries to become members; developed ethics committee; promoted board member training for organizational and fiduciary responsibility (see further accomplishments within WPATH as described on page 2 above).

EXHIBIT 5

Advisory Boards

- Institute for Transgender Economic Advancement – promoting gender authenticity in the workplace and community-based initiatives to empower economic development.
- Out and Equal Workplace Advocates – Transgender Advisory Committee.
- Jim Collins Foundation – helping to fund surgery for economically disadvantaged trans people.
- Human Rights Campaign Foundation Business Council (2002-2007).

Active Memberships

American Society on Aging

National LGBT Bar Association

National Writers Union (NWU, Pacific Northwest Chapter)

World Professional Association for Transgender Health (WPATH)

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EXHIBIT 6

Defendant N.C. Department of Public Safety's Responses to Plaintiffs' First Set of Interrogatories

EXHIBIT 6

attorney for The Department, on the grounds that such information is protected by the attorney work product doctrine.

4. The Department objects to every Interrogatory that is overly broad, unduly burdensome, harassing, duplicative or that requests documents that are already in the possession of the Plaintiff.
5. The Department objects to every Interrogatory that calls for information that is neither relevant to the subject matter of the pending case nor reasonably calculated to lead to the discovery of admissible evidence in connection with the pending case.
6. The Department objects to every Interrogatory that seeks to impose obligations beyond those required by the Federal Rules of Civil Procedure, as reasonably interpreted and supplemented by local court rules.
7. The inadvertent provision of information or the production by The Department of documents containing information protected from discovery by the attorney-client privilege, work product doctrine or any other applicable privilege, shall not constitute a waiver of such privileges with respect to that information or those or any other documents. In the event that inadvertent production occurs, the Plaintiff shall return all inadvertently produced documents to The Department upon request, and/or shall make no use of the contents of such information or documents nor premise any further discovery on information learned therefrom.
8. The Department incorporates by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request. Moreover, The Department do not waive their rights to amend these responses.
9. The following responses reflect the current state of The Department's knowledge, understanding and belief respecting matters about which inquiry has been made. The Department expressly reserve the right to supplement or modify these responses with such pertinent information as he may hereafter discover and will do so to the extent required by the Federal Rules of Civil Procedure. The Department expressly reserve the right to rely on, at any time, including trial, subsequently discovered documents and/or materials that have been produced promptly upon discovery.
10. Pursuant to statute, prison records are maintained in a classified manner, N.C.G.S. § 148-76, "under the control and direction of the Secretary of Public Safety ['Secretary']," *id.* §

148-74. The records of prisoners in the custody of the Department of Public Safety (“DPS”), Division of Adult Correction (“DAC”) are confidential and are not subject to inspection by the public or the inmate or those acting on behalf of the inmate. *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E.2d 638, *aff’d* 281 N.C. 307, 188 S.E.2d 347 (1972). Except as otherwise noted, all documents referenced herein or provided herein are not in The Department possession or control, but have been provided to the undersigned Assistant Attorneys General at the direction of the Secretary for the limited purpose of the defense of this action under the Defense of State Employees Act, N.C.G.S. § 143-300.2 et seq. All such documents remain classified, confidential, privileged and under the control and direction of the Secretary.

1. Describe in detail all reasons for which Defendant has not made available employee healthcare coverage that is different from or supplemental to the NCSHP and which does not contain an Exclusion.

ANSWER: It’s the State Treasury Department’s responsibility to provide the same coverage to all state employees.

2. Identify any person who is directly responsible for ensuring or coordinating the provision of NCSHP benefits to the employees of Defendant.

ANSWER: Defendant objects to use of the phrase “ensuring or coordinating the provision of NCSHP benefits to the employees” as vague, not defined and imprecise. Without waiving, and subject to the foregoing objection, Defendant states that upon hiring, and annually during the open enrollment period, Health Benefit Representatives provide the benefits information to the employees to give them the information they need to determine if they would like to join the SHP.

3. Describe in detail all processes by which Defendant:
 - a. registers its employees for coverage under the NCSHP, and maintain and end such registrations; and

ANSWER: Upon hiring, and annually during the open enrollment period, Health Benefit Representatives provide the information to the employees to give them the information they need to determine if they

would like to join the SHP. Employees can enroll online through the Integrated HR payroll system. (formerly known as Beacon)

- b. is involved, if at all, with employees' coverage under NCSHP. This includes, but is not limited to, any claims made for coverage under the NCSHP, processing employees' and Defendant's contributions to NCSHP, dealing with employees' under- or over-payments to NCSHP, and/or entering settlement agreements with employees regarding health benefits covered under NCSHP.

ANSWER: DPS would only be involved if an employee loses coverage of the State Health Plan due to non-payment of the employee's premium. This would only occur if an employee goes on leave without pay and there is no monthly paycheck from which the employee's monthly premium is able to be deducted. If the employee wants the coverage to be reinstated before the annual enrollment period, DPS will work with the employee to submit an exception request to the State Health Plan. The State Health Plan is responsible for approving the exception request and reinstating the coverage. DPS has no authority to reinstate the coverage.

4. Identify which steps, if any, in your answer to Interrogatory No. 3, require involvement by personnel of NCSHP and/or the Office of the State Treasurer.

ANSWER: DPS would work with the State Health Plan which is a part of the State Treasurer's Office to submit the exception request as described in 3b and await for the approval or denial to be made by the State Health Plan.

5. Identify any person with whom you consulted and any documents you reviewed in order to provide your answer to Interrogatory Nos. 1, 2, 3, and 4.

**ANSWER: Charlene Shabazz Charlene Shabazz, CPM, SPHR, SHRM-SCP
HR Deputy Director for Safety, Health, WC, Benefits, Time/Leave and IBHS
NC Department of Public Safety**

6. To the extent that you deny any Request for Admission, describe in detail the bases for each denial; and identify any person with whom you needed to consult and any documents you needed to review in order to provide your answer.

ANSWER: NCDPS did not deny any of the Requests for Admissions. See response to Request for Admission No. 4 for the response regarding the inability to admit or deny.

This the 18th day of June, 2021.

**JOSHUA H. STEIN
ATTORNEY GENERAL**

/s/ Alan McInnes _____

Alan McInnes
Assistant Attorney General
N.C. State Bar No. 20938
N.C. Department of Justice
Public Safety Section
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6529
Fax: (919) 716-6761
E-mail: amcinn@ncdoj.gov

CERTIFICATE OF SERVICE

I, Alan McInnes, hereby certify that on this day I served the foregoing **NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** upon the Parties herein by electronic means to counsel of record as follows:

Amy E. Richardson
N.C. State Bar No. 28768
Lauren E. Snyder
N.C. State Bar No. 54150
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Tara Borelli*
Carl S. Charles*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30318-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
tborelli@lambdalegal.org

Deepika H. Ravi*
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street N.W., 8th Floor,
Washington, D.C. 20036
Telephone: 202-730-1300
Facsimile: 202-730-1301
dravi@hwglaw.com

Omar Gonzalez-Pagan*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
Telephone: 212-809-8585
Facsimile: 212-809-0055
ogonzalez-pagan@lambdalegal.org

Michael W. Weaver*
McDERMOTT WILL & EMERY
444 W. Lake St., Suite 4000
Chicago, IL 60606
Telephone: 312-984-5820
Facsimile: 312-984-7700 mweaver@mwe.com

David Brown*
Alejandra Caraballo*
Noah E. Lewis*
TRANSGENDER LEGAL DEFENSE
AND EDUCATION FUND, INC.
520 8th Ave, Ste. 2204
New York, NY 10018
Telephone: 646-993-1680
Facsimile: 646-993-1686
dbrown@transgenderlegal.org

Counsel for Plaintiffs

*Appearing by special appearance pursuant to L.R. 83.1(d)

EXHIBIT 6

This the 18th day of June, 2021.

/s/ Alan McInnes

Alan McInnes
Public Safety Section

EXHIBIT 6

EXHIBIT 7

**Copy of *Boyden v. Conlin*, No. 17-cv-264,
2018 U.S. Dist. LEXIS 79753, *2-*6
(W.D. Wis. May 11, 2018) (unpublished order)**

EXHIBIT 7

Boyden v. Conlin

United States District Court for the Western District of Wisconsin

May 11, 2018, Decided; May 11, 2018, Filed

17-cv-264-wmc

Reporter

2018 U.S. Dist. LEXIS 79753 *; 2018 WL 2191733

ALINA BOYDEN and SHANNON ANDREWS, Plaintiffs,
v. ROBERT J. CONLIN, BOARD OF REGENTS OF
THE UNIVERSITY OF WISCONSIN SYSTEM,
RAYMOND W. CROSS, REBECCA M. BLANK,
UNIVERSITY OF WISCONSIN SCHOOL OF
MEDICINE AND PUBLIC HEALTH, ROBERT N.
GOLDEN, STATE OF WISCONSIN DEPARTMENT OF
EMPLOYEE TRUST FUNDS, and STATE OF
WISCONSIN GROUP INSURANCE BOARD,
Defendants.

Prior History: [Boyden v. Conlin, 2017 U.S. Dist. LEXIS 191306 \(W.D. Wis., Nov. 20, 2017\)](#)

Core Terms

plaintiffs', redress, group health, causation, coverage, administering, discriminate, entities, motion to dismiss, defendants', regulations, empowered, parties, gender, funds, health insurance, marriage license, requested relief, federal funding, recipient, traced, sex, state employee, state official, transgender, challenges, enjoined, damages, agrees

Counsel: **[*1]** For Alina Boyden, Shannon Andrews, Plaintiff: John Anthony Knight, LEAD ATTORNEY, ACLU Foundation, Chicago, IL; Laurence J. Dupuis, LEAD ATTORNEY, ACLU of Wisconsin Foundation, Inc., Milwaukee, WI; Michael Godbe, Nicholas E.

Fairweather, LEAD ATTORNEYS, Hawks Quindel, S.C., Madison, WI.

For Robert J. Conlin, In his individual capacity and his official capacity as Secretary of the Department of Employee Trust Funds, Board of Regents of the University of Wisconsin System, Raymond W. Cross, In his individual capacity and his official capacity as President of the University of Wisconsin System, Rebecca M. Blank, In her individual capacity and her official capacity as Chancellor of the University of Wisconsin-Madison, University of Wisconsin School of Medicine and Public Health, Robert N. Golden, In his individual capacity and his capacity as Dean of the University of Wisconsin School of Medicine and Public Health, State of Wisconsin Department of Employee Trust Funds, State of Wisconsin Group Insurance Board, Defendants: Colin Thomas Roth, State of Wisconsin Department of Justice, Madison, WI; Steven Carl Kilpatrick, Wisconsin Department of Justice, Madison, WI.

Judges: WILLIAM M. CONLEY, District **[*2]** Judge.

Opinion by: WILLIAM M. CONLEY

Opinion

OPINION AND ORDER

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Plaintiffs Alina Boyden and Shannon Andrews are both employees of the State of Wisconsin and transgender women, who assert claims against various state officials and entities for excluding gender transition care from coverage under group health insurance plans for state employees. Before the court is state defendants' motion to dismiss. (Dkt. #28.) For the reasons explained below, the court will grant that motion in part and deny it in part. Specifically, the court will grant the motion based on plaintiffs' lack of legal standing to pursue claims against the Board of Regents of the University of Wisconsin System, Raymond W. Cross and Rebecca M. Blank. The court will also grant the motion to dismiss plaintiffs' claim under the Patient Protection and Affordable Care Act against the Wisconsin Group Insurance Board for failing to allege that it is a recipient of federal funding.¹ In all other respects, the motion is denied.

UNDISPUTED FACTS²

Plaintiffs Alina Boyden and Shannon Andrews are transgender women. Each were assigned male identities at birth, but self-identify as female and have done so throughout their lives. Both have received diagnoses of [*3] gender dysphoria, a widely recognized medical diagnosis marked by "feeling[s] of incongruence between one's gender identity and one's sex assigned at birth, and the resulting stress from that incongruence." (Am. Compl. (dkt. #27) ¶ 31.)

As employees of the State of Wisconsin, plaintiffs

receive state-provided health insurance. Boyden is a graduate student and teaching assistant in the Department of Anthropology at the University of Wisconsin-Madison. Andrews works at the University of Wisconsin School of Medicine and Public Health. Both are employed by the Board of Regents, which is the governing body of the University of Wisconsin System. The Board of Regents is named as a defendant, along with University of Wisconsin-Madison Chancellor Rebecca M. Blank, University of Wisconsin System President Raymond W. Cross, and School of Medicine Dean Robert N. Golden (collectively, "Employer Defendants"). All Employer Defendants have some employment relation to the plaintiffs.

As state employees, the parties agree that plaintiffs are eligible for state group health insurance.³ The Wisconsin Department of Employee Trust Funds ("ETF") administers group health insurance, along with retirement and [*4] other employee benefits. ETF Secretary Robert J. Conlin heads that department. ETF and the secretary oversee implementation of employee health insurance, but they do not set policy. Instead, policymaking -- including the contractual terms for group health insurance -- is delegated to the Wisconsin Group Insurance Board ("GIB"). As an "attached board," GIB is located within ETF, but with separate membership and autonomy from ETF.⁴ GIB made the decision to exclude gender transition-related care from group health

¹ Plaintiffs also agreed in their opposition brief to dismiss: (1) the University of Wisconsin School of Medicine and Public Health as a non-suable entity, and (2) dismiss their claim for punitive damages. (Pls.' Opp'n (dkt. #39) 23 n.11.)

² In resolving a motion to dismiss under [Rule 12\(b\)\(6\)](#), the court takes all of the factual allegations in the complaint as true and draws all inferences in plaintiff's favor. [Killingsworth v. HSBC Bank Nev., 507 F.3d 614, 618 \(7th Cir. 2007\)](#).

³ The court draws facts from the amended complaint, but also takes judicial notice of Wisconsin's statutory scheme to address employee benefits.

⁴ The Governor appoints six of the eleven GIB members, and the remaining seats are filled by the Governor, Attorney General, Secretary of the Department of Administration, Director of the Office of State employment Relations, and the Commissioner of Insurance. The Secretary of ETF is not a member of GIB.

EXHIBIT 7

insurance, and ETF is bound by that decision.

Both plaintiffs receive state group health insurance plans through ETF. Due to GIB's decision to exclude gender transition treatment, both plaintiffs were denied coverage for sex reassignment surgery. Both filed complaints and requested right-to-sue letters from the EEOC. Boyden's efforts to receive treatment are more fully described in this court's earlier order dismissing Dean Health. (Dkt. #44.)

Due to the lack of coverage, Boyden never received surgery. Andrews, however, did not wait for the state to lift the restriction. In 2015, she was medically referred to the Papillon Gender Wellness Center in Pennsylvania, and she received [*5] sex reassignment surgery there that same year. Andrews paid Papillon \$14,750 out-of-pocket, and in February 2016, she filed a claim with her health insurance administrator, Wisconsin Physicians Service Insurance Corporation ("WPS").⁵ WPS denied the claim because of Wisconsin's transition-related care exclusion. It also denied a second claim for reimbursement of additional hospital fees and anesthesia.⁶ Andrews appealed her denial, to no avail, and submitted a complaint to ETF. She has not been reimbursed for the procedure.

OPINION

The parties agree that the School of Medicine and Public Health is not a suable entity and should be dismissed from this case. They also agree that punitive damages are not available under Title VII, and all claims for punitive damages under Title VII and should be dismissed. As for the remainder of their motion,

⁵WPS previously was terminated as a defendant by stipulation. (Dkt. #24.)

⁶In total, Andrews paid \$21,000, but the hospital claimed fees of \$52,467.95.

defendants are trying to perform a sort of "magic trick." By arguing that only GIB is responsible for health insurance, but that neither GIB nor ETF is an employer, defendants are essentially arguing that the State of Wisconsin is entirely immunized from Title VII claims. That is not the case. In addition to challenges to standing and to the Title VII [*6] claims, the court will also address defendants' motion to dismiss the [§ 1983](#) claims against the individual defendants and defendants' challenge to the ACA claims.

I. Article III Standing

To begin, this court is certainly one of limited authority. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, [511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 \(1994\)](#) ("Federal courts are courts of limited jurisdiction."). Most fundamentally, the United States Constitution restricts the jurisdiction of federal courts to the adjudication of "cases" or "controversies." [U.S. Const. art. III, § 2, cl. 1](#). To establish a case or controversy, a plaintiff must (1) have suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *See Spokeo, Inc. v. Robins*, [136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 \(2016\)](#).

Defendants do not challenge the first prong of constitutional standing -- that plaintiffs have suffered an injury in fact. They do challenge the second and third prongs for all defendants, except GIB. Defendants argue that GIB is the *sole* defendant responsible for denying coverage of transition-related care and the *sole* defendant empowered to make coverage decisions. Therefore, defendants argue, plaintiffs' injury is neither caused by the conduct of any other defendant, nor redressable by any other defendant, [*7] meaning that the claims against all other defendants must be

EXHIBIT 7

dismissed for lack of standing.

For reasons explained below, defendants are only partially correct. The Employer Defendants do indeed fall outside the court's jurisdiction and must be dismissed. Based upon the information alleged, however, plaintiffs' injuries can be fairly traced to GIB, ETF and ETF's Secretary Conlin. A judgment against these defendants would also provide the plaintiffs redress.

A. Causation

The causation element of standing demands that the injury be fairly traceable to the challenged action of a defendant, rather than the result of independent action by some third party not before the court. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Article III causation is a fairly modest bar: proximate causation is not required, see Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 134 S. Ct. 1377, 1391 n.6, 188 L. Ed. 2d 392 (2014), nor must the defendant be the only party responsible for the alleged injury, see Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton, 422 F.3d 490, 500 (7th Cir. 2005). Generally, the complaint need only allege that "but for" some act or omission of the defendant, the injury would not have occurred. See, e.g., id. at 501 (plaintiff had standing to sue U.S. Secretary of Interior because the regulable third party would not have harmed plaintiff but for Secretary's inaction).

There are some exceptions even to this "but for" [*8] bar. When the injury is caused by an unconstitutional rule of law, the proper defendant is the state official designated to enforce that rule. See Am. Civil Liberties Union v. The Florida Bar, 999 F.2d 1486, 1490 (11th Cir. 1993) (ACLU) (citing Diamond v. Charles, 476 U.S.

54, 64, 106 S. Ct. 1697, 90 L. Ed. 2d 48 (1986)). For example, if preemptively challenging a criminal statute, the plaintiff should sue the Attorney General's office or the local district attorney. See Wilson v. Stocker, 819 F.2d 943, 947 (10th Cir. 1987); Doe v. Bolton 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973). Likewise, if a statute creates state-enforced civil penalties, a plaintiff may preemptively sue state officials tasked with enforcing that statute. See Planned Parenthood of Wis., Inc. v. Van Hollen, 738 F.3d 786, 794-795 (7th Cir. 2013). This enforcement exception applies even when the challenged rule of law was not created by a legislature. For example, in ACLU, the plaintiff was found to have standing to challenge the constitutionality of the Florida Code of Judicial Conduct (promulgated by the Supreme Court of Florida) by suing the State Bar and the Judicial Qualifications Commission (charged with enforcement of the code). ACLU, 999 F.2d at 1490; see also Buckley v. Ill. Judicial Inquiry Bd., 997 F.2d 224 (7th Cir. 1993) (finding standing for plaintiffs to challenge rules promulgated by the Supreme Court of Illinois, by suing entities charged with enforcing them).

Finally, plaintiffs argue that under Arizona Governing Committee for Tax Deferred Annuity & Deferred Compensation Plans v. Norris, 463 U.S. 1073, 103 S. Ct. 3492, 77 L. Ed. 2d 1236 (1983), the United States Supreme Court recognizes plaintiffs' standing to sue ETF and Conlin. While Norris is inapplicable on its face,⁷ the [*9] court agrees with plaintiffs that the causation element is satisfied when a defendant enforces or administers a challenged policy. In applying this rule, the court separately analyzes the roles of the

⁷ Norris involved a Title VII claim against a state employer, but the facts have little applicability in analyzing the standing issues here given that the defendant in Norris was an Arizona agency most analogous to GIB, for which defendants already concede standing.

Employer Defendants and ETF.

1. Employer Defendants

For legal purposes, plaintiffs are employed by the State of Wisconsin. Much like the divisions of a large corporation, however, the Wisconsin Legislature has seen fit to divide up the employment responsibilities of the state, delegating them to various government agencies. The Employer Defendants are the persons and entities most immediately connected to plaintiffs' day-to-day employment, but appear to play no role in the administration of state health insurance. Health insurance falls under the domain of ETF and GIB. As a result, while plaintiffs urge the court to apply a "but for" test of causation, they do not and cannot allege any acts or omissions by the Employer Defendants that would satisfy this test, nor do they argue that the Employer Defendants are charged with administering the insurance policy at issue here.

Instead, plaintiffs allege that the Employer Defendants did nothing more than hire the plaintiffs, making [*10] them *eligible* for group health insurance through ETF. When employees elected to receive group health insurance, they obtained it through ETF. The Employer Defendants themselves, therefore, played no role in selecting, offering or providing that health insurance.⁸

⁸ If plaintiffs wished to argue that the Employer Defendants could have provided additional insurance options outside of ETF, their arguments are both undeveloped and implausible. From the court's review of Wisconsin statutes and administrative code, it is unlikely that the Employer Defendants *could* offer separate, unapproved insurance plans or provide specific coverage extensions for gender reassignment. Nevertheless, if plaintiffs have a good faith belief that the Employer Defendants have the legal authority to offer benefits without ETF's and GIB's approval, then plaintiffs may certainly seek leave to amend their complaint

As such, plaintiffs are unable to trace causation back fairly to the Employer Defendants, and those defendants must be dismissed for lack of standing.

2. ETF and Secretary Conlin

Although plaintiffs' injury cannot be traced to the Employer Defendants, the court finds that the injury can be fairly traced to ETF. ETF's role as administrator of the group health program makes it and Conlin proper defendants.⁹ While the parties disagree about whether GIB should be considered "part" of ETF for standing purposes, there appears no dispute that GIB sets policy, ETF administers it. Moreover, GIB is an "attached board" "created in the department of employee trust funds." [Wis. Stat. § 15.165\(2\)](#).

As an attached board, GIB is certainly legally distinct from the rest of ETF, and it is free to exercise its rulemaking powers independent from the Secretary of ETF. [Wis. Stat. § 15.03](#). From this, defendants argue that GIB's independent nature means it is not really "part" of ETF, but [*11] the distinction is academic; it does not affect standing. Again, what matters is that while GIB is responsible for contracting with health insurers and setting benefit terms, [Wis. Stat. §§ 40.03\(6\), 40.52\(1\), 40.52\(3\)](#), ETF is the entity actually empowered with administering the policies, [Wis. Stat. §§ 40.03\(2\)\(a\), 40.03\(2\)\(ig\)](#). Indeed, even defendants concede that ETF has a "statutory duty to execute GIB's decision" albeit with "no power to do otherwise." (Defs.'

accordingly.

⁹ As Secretary of ETF, Conlin is vested with all administrative powers and duties of the department. [Wis. Stat. §§ 15.04\(1\)\(a\), 40.03\(2\)](#). In particular, his duties include the administration of group health plans. [Wis. Stat. § 40.03\(2\)\(ig\)](#). Therefore, any injury fairly traceable to ETF is also fairly traceable to Conlin.

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Reply (dkt. #43) 7.) Discretion or not, ETF's execution of the policy makes it a proper defendant.

Reaching for contrary authority, defendants argue that two district court decisions suggest that plaintiffs are able to prove causative injury only if ETF were empowered to craft new policy. However, neither of those decisions change the outcome here. In *Parker v. Stranburg*, No. 14-CIV-24010, 2015 U.S. Dist. LEXIS 80680, 2015 WL 3863804 (S.D. Fla. June 22, 2015), a class of motorists challenged as unconstitutional fines issued by local municipalities. Seeking to recover those fines, the motorists sued the Florida Department of Revenue, but their claims were dismissed for lack of standing. 2015 U.S. Dist. LEXIS 80680, [WL] at *1. Defendants argue that just as the Florida Department of Revenue was statutorily compelled to receive money from municipal fines in *Parker*, so, too, is ETF statutorily compelled to follow [*12] GIB policy. Defendants misunderstand the reasoning of *Parker*. The *Parker* plaintiffs lacked standing not because the Department of Revenue was compelled to accept funds by statute, but because the Department of Revenue's enrichment was a result of the plaintiffs' injury, not a cause. In *Parker*, municipalities caused plaintiffs' injury, afterwards money passively flowed to the Department of Revenue. In contrast, ETF's role in administering the group health plan was part of the *cause* of plaintiffs' injury, not a result of it.

Likewise, *Bloch v. Executive Office of the President*, 164 F. Supp. 3d 841 (E.D. Va. 2016), has no bearing on plaintiffs' standing to sue ETF. Bloch was appointed by President George W. Bush, to serve as a former federal Special Counsel, and later removed from office amidst scandal and criminal proceedings. Bloch sued for improper termination. Since only President Bush had the power to remove Bloch, the *Bloch* court ruled that President Bush himself was the only proper defendant to whom causation could be fairly traced. *Id.* at 848-49

(citing 5 U.S.C. § 1211(b)). If anything, the *Bloch* decision supports plaintiffs' standing to sue ETF here. Just as § 1211(b) of Title 5 of the United States Code empowered President Bush to hire and fire the Special Counsel, so, too, Section 40.51(6) of Wisconsin Statutes empowers the ETF to administer the state group health [*13] program.

B. Redressability

In order to have Article III standing, plaintiffs must also show that their injury is likely to be redressed by a favorable decision. *Spokeo*, 136 S. Ct. at 1547. Again, this is a modest bar on a motion to dismiss; plaintiffs need only plead that there is a substantial likelihood that the relief requested will redress the injury claimed. See *Norton*, 422 F.3d at 501 (citing *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 75 n. 20, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978)). Neither the merits of plaintiffs' claims, nor the likelihood of success, are not relevant for redressability -- only whether the relief requested would alleviate the harm. *Id.* at 502.

Even when the defendant lacks legal authority to prevent or fix the injury, the redressability prong can be met. For example, in *Wolf v. Walker*, 986 F. Supp. 2d 982 (W.D. Wis. 2014), this court allowed same-sex couples to seek redress against their local county clerks for denial of marriage licenses despite the Wisconsin Constitution barring clerks from doing so. See *Wis. Const. Art. XIII, § 13*. Nevertheless, the court found the couples' injury could be redressed by a favorable decision enjoining the clerks from denying marriage licenses. *Wolf v. Walker*, 26 F. Supp. 3d 866, 871 (W.D. Wis. 2014) (dkt. #134) (permanently enjoining clerks "from denying a marriage license to a couple because both applicants for the license are the same sex").

Similarly, as plaintiffs point [*14] out, the Ninth Circuit

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recognized the standing of a judicial candidate to sue the Arizona Commission on Judicial Conduct to challenge the Arizona Code of Judicial Conduct, even though the commission lacked any authority to change the code. See Wolfson v. Brammer, 616 F.3d 1045 (9th Cir. 2010). The Ninth Circuit reasoned that a change in the code was not necessary because the commission could be enjoined from enforcing it. *Id.* (citing Lujan, 504 U.S. at 561-62) (if defendant's action or inaction causes injury, then ordinarily a judgment preventing or requiring the action will redress it).

Following the same reasons, plaintiffs here satisfy the redressability prong with respect to ETF and its secretary. Indeed, a number of possible rulings directed against these defendants would likely afford plaintiffs redress. For example, plaintiffs specifically request compensatory damages and injunctive relief ordering defendants to provide transition-related care. A court order requiring ETF to pay damages for Andrews's surgical costs would provide her redress. Likewise, an order requiring ETF to pay for Boyden's treatment would provide her redress, as would an order that ETF contract for insurance coverage apart from GIB approval.

Conflating redressability with causation, [*15] defendants argue that redressability is absent if the defendants have no power to prevent the plaintiffs' injury. As explained above, redressability does not require a defendant to have *pre-existing* legal authority that will prevent the injury. None of the cases cited by defendants hold otherwise. In Bronson v. Swensen, 500 F.3d 1099 (10th Cir. 2007), a Utah county clerk denied a marriage license to three people in a polygamous relationship. *Id.* at 1103. The *Bronson* plaintiffs then sued the clerk, asserting constitutional challenges to both Utah's civil *and* criminal prohibitions of polygamy. *Id.* at 1101. While the Tenth Circuit held that plaintiffs lacked standing to challenge the constitutionality of the

criminal statute, this was because the county clerk, and her denial of a marriage license, played no role in plaintiffs' claim to redress from the threat of a future criminal prosecution.¹⁰ *Id.* at 1109-1110. Indeed, the threat of criminal prosecution would exist whether or not the court enjoined the clerk to issue a marriage license. *Id.* at 1112.¹¹

Defendants also cite to Okpalobi v. Foster, 244 F.3d 405 (5th Cir. 2001). In that case, plaintiffs sought to enjoin as unconstitutional a Louisiana statute that created a private right of action for recipients of abortions to sue their providers. The plaintiffs, however, [*16] filed suit against the governor and attorney general. The Fifth Circuit dismissed the suit, holding that none of the elements of Article III standing were satisfied since the named defendants had no power to enforce the statute and entry of an injunction against them would not stop individual citizens from pursuing claims in courts.

Unlike the cases cited by defendants, a ruling against ETF could wholly resolve the plaintiffs' injury. Defendants acknowledge as much by arguing that plaintiffs' requested relief, while redressing their injury, would have dire consequences. In particular,

¹⁰ Utah criminalizes and prosecutes polygamous marriage, whether or not state-sanctioned. Bronson, 500 F.3d at 1102 (citing State v. Holm, 2006 UT 31, 137 P.3d 726, 734 (Utah 2006)).

¹¹ The *Bronson* plaintiffs could likely have satisfied the standing requirements by seeking a marriage license, even though the clerk had no power to change the civil code. See e.g. Bostic v. Schaefer, 760 F.3d 352, 370-72 (4th Cir. 2014). Even if plaintiffs wished to challenge the criminal code, they could have sued the Utah Attorney General, even though the attorney general lacked any authority to change the code itself. Bolton, 410 U.S. 179, 93 S. Ct. 739, **EXHIBIT 701**.

defendants argue a court order against any non-GIB defendant would be overly intrusive and overturn the state's statutorily-created insurance model. But this puts the cart before the horse since a motion to dismiss is not the time to analyze the merits, or to even address the appropriateness of the requested relief. [Norton, 422 F.3d at 501](#). Constitutional standing only requires that the requested relief be *capable* of redressing the injury. Plaintiffs' requested relief accomplishes that much; the merits of their claims are for another day.

II. [Section 1983](#) Claim

Defendants also seek dismissal of the [§ 1983](#) Equal Protection claims asserted against [*17] the four individual defendants in both their individual and official capacities. Having dismissed the claims against individual defendants Cross, Blank and Golden for lack of standing, the court need not consider the challenge against them. This leaves plaintiffs' [§ 1983](#) claim against defendant Conlin, the ETF's Secretary.

Defendants contend that plaintiffs fail to allege Conlin's personal involvement with sufficient specificity to proceed against him on an individual capacity claim. In response, plaintiffs contend that they have adequately alleged the "'some causal connection' or 'affirmative link' between the action complained about and the official sued to obtain damages under [§ 1983](#)." (Pl.'s Opp'n (dkt. #39) 18 (quoting [Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 \(7th Cir. 1983\)](#))). Generally emphasizing the state statutory scheme for providing and administering health insurance for state employees already discussed in this opinion, plaintiffs contend that the allegations in the complaint, coupled with reasonable inferences, satisfy the personal involvement requirement, at least at the pleading stage. More specifically, plaintiffs point out that as its Secretary, Conlin is in charge of the administration of ETF, which includes providing health

insurance [*18] coverage to state employees and promulgating all rules required for the administration of health insurance plans. (Pls.' Opp'n (dkt. #39) 19.) The court agrees that these allegations are sufficient to satisfy the personal involvement requirement at the pleading stage.

Defendants also seek dismissal of the claims asserted against Conlin in his official capacity based on immunity under the [Eleventh Amendment](#). A state, its agencies and officials are only subject to suit in federal court if one of the following conditions is present: "(1) a state official is sued for prospective equitable relief under [Ex parte Young, 209 U.S. 123, 159-60, 28 S. Ct. 441, 52 L. Ed. 714 \(1908\)](#); (2) Congress abrogates the State's immunity pursuant to its powers under section 5 of the Fourteenth Amendment; or (3) the State consents and waives its immunity." [Nelson v. Miller, 570 F.3d 868, 883 \(7th Cir. 2009\)](#).

Here, plaintiffs concede that any claim against Conlin in his official capacity would be for injunctive relief. Still, defendants persist that the [Ex parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 \(1908\)](#), exception does not apply because Conlin lacks the authority to grant prospective relief. The requirement, however, is not that exacting. Instead, all that is required is "that the state officer by virtue of his office has some connection with the enforcement of the action." [209 U.S. at 157](#). While the court agrees with defendants that any ordered prospective [*19] relief will almost certainly fall primarily on GIB and ETF to implement, Conlin's position as ETF's Secretary means he has at least "some connection" at the pleading stage to allow the [§ 1983](#) claims to go forward against Conlin in his official capacity.

III. Title VII Claims

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Plaintiffs next assert Title VII discrimination claims against ETF and GIB.¹² In their motion, defendants argue that Title VII claims against ETF should be dismissed because it did not intentionally discriminate against plaintiffs, and that those same claims against both ETF and GIB must be dismissed because neither is an "employer" under Title VII. Since plaintiffs allege sufficient facts to show that ETF acted in some capacity to discriminate against plaintiffs, and both ETF and GIB are "employers" under Title VII, defendants' motion to dismiss those claims is denied.

A. Intentional Discrimination

To state a viable claim under Title VII, a plaintiff must allege that: (1) an employer discriminates against her with respect to compensation, terms, conditions, or privileges of employment; (2) she is a member of a protected class; and (3) the discriminatory decision was made because the individual is a member of that class.

*[*20]* See [E.E.O.C. v. Abercrombie & Fitch Stores, Inc., 135 S. Ct. 2028, 2032, 192 L. Ed. 2d 35 \(2015\)](#).

Defendants do not argue that plaintiffs fail to allege that they are members of a protected class; nor do defendants argue that plaintiffs fail to allege employment discrimination. Instead, defendants argue that plaintiffs' allegations fail to satisfy the first element of a Title VII claim: that ETF committed a discriminatory action.

For defendants, the issue once again is *who* plaintiffs allege discriminated against them. In particular, defendants again argue that ETF took no intentionally

¹² Plaintiffs also asserted claims against the Board of Regents and the School of Medicine, but since the Board of Regents is dismissed for lack of standing and the parties now agree that the School of Medicine is not a suable entity, the court need only analyze the claims against ETF and GIB.

discriminatory action, but that is not at all clear at this stage. While GIB made the decision to discriminate against transgender persons, plaintiffs still allege that ETF had an active role in administering that decision by (1) discriminating against plaintiffs, (2) who were transgender, (3) because they were transgender. For example, when plaintiff Andrews was unable to receive reimbursement for her surgery, she filed appeals with WPS. When WPS denied her appeals, Andrews took the next step: appealing to ETF. (Am. Compl. (dkt. #27) ¶¶ 78-79.) At this stage, it is not yet clear how much discretionary power ETF has during the appeal process, if any, or whether it could act to rectify a policy [*21] that it found illegal under federal law. Since the scope of ETF's role is uncertain, however, the question of ETF's liability is best addressed on a more fulsome record than an initial pleading can afford.

Insofar as defendants argue that plaintiffs must show a specific intention to discriminate, the court also agrees with plaintiffs. When an employment practice involves explicit facial discrimination, as alleged here, the existence of a disparate treatment does *not* depend on the employer's intent. See [Int'l Union v. Johnson Controls, 499 U.S. 187, 199, 111 S. Ct. 1196, 113 L. Ed. 2d 158 \(1991\)](#). Instead, disparate treatment is demonstrated by the terms of the policy itself.¹³ *Id.*; see also [Kentucky Ret. Sys. v. E.E.O.C., 554 U.S. 135, 147-](#)

¹³ Parties argue about the different types of liability under Title VII, but they do not seem to have a real disagreement. Plaintiffs are not making a disparate impact claim, nor do they claim that facial discrimination is a third form of liability. Rather, plaintiffs correctly assert that facial discrimination is a flavor of disparate treatment -- one in which the burden-shifting framework of *McDonnell Douglas* is inappropriate. See [Reidt v. Cty. of Trempealeau, 975 F.2d 1336, 1340-41 \(7th Cir. 1992\)](#) (citing [McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 \(1973\)](#)).

[48, 128 S. Ct. 2361, 171 L. Ed. 2d 322 \(2008\)](#) (describing in an [ADEA](#) context the longstanding rule "that a statute or policy that facially discriminates . . . suffices to show disparate treatment").

B. Employer Status

Defendants also seek dismissal of plaintiffs' Title VII claims on the basis that ETF and GIB are not the plaintiffs' employer. In a prior opinion and order, the court considered whether Dean Health Plan, Inc. was an employer for purposes of Title VII liability, concluding that it was not. (11/20/17 Op. & Order (dkt. #44).) After reviewing the relevant cases -- which were the same as those cited by the [*22] parties in their briefing on the pending motion -- the court concluded that to be an agent under Title VII, "one must be empowered with respect to employment practices, like the right to hire and fire, supervise work, set schedules, pay salary, withhold taxes, *or provide benefits.*" (*Id.* at 6 (emphasis added); *see also id.* at 7 ("If anything, an agency relationship exists between plaintiff's employers and ETF/GIB, as the factual allegations suggest that plaintiff's employers delegated to ETF/GIB the responsibility to determine which series should be covered under all of the offered health insurance plans.")) Here, again for the reasons explained above with regard to standing, defendants GIB and ETF are empowered to provide health insurance benefits to state employees, including plaintiffs. As such, the court finds that both are proper suable entities under Title VII, and will deny the motion to dismiss on this basis.

IV. ACA claims

Finally, plaintiffs assert claims against GIB and ETF for violating [Section 1557 of the Patient Protection and Affordable Care Act \("ACA"\), 42 U.S.C. § 18116\(a\)](#), which prohibits discrimination on the basis of sex.

Defendants seek dismissal of this claim against GIB based on plaintiffs' failure to allege [*23] that GIB is a recipient of federal funds. In addition, defendants seek a stay of this claim pending resolution of another lawsuit challenging this provision of the ACA and related rulemaking proceedings.

A. Receipt of federal funds

While agreeing that an ACA claim may only be brought against recipients of federal funding, plaintiffs argue that "GIB is part of ETF" and that "ETF receives federal funds. (Pls.' Opp'n (dkt. #39) 35.) The parties dispute the extent of the connection between GIB and ETF, but more importantly for purposes of the pending motion, plaintiffs' reliance on the fact that GIB is a part of ETF does not in and of itself bring it within the scope of a covered entity under the ACA. Instead, as explained with respect to a similar requirement for federal funding under the Rehabilitation Act claim, "Congress limited the scope of [§ 504](#) to those who actually 'receive' federal financial assistance because it sought to impose [§ 504](#) coverage as a form of contractual cost of the recipient's agreement to accept the federal funds." [Grzan v. Charter Hosp. of Nw. Indiana, 104 F.3d 116, 120 \(7th Cir. 1997\)](#), *abrogated on other basis by* [Amundson v. Wis. Dep't of Health Servs., 721 F.3d 871 \(7th Cir. 2013\)](#) (quoting [United States Dept. of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 605, 106 S. Ct. 2705, 91 L. Ed. 2d 494 \(1986\)](#)).

The mere allegation that ETF receives federal funding does not, therefore, support a reasonable inference that GIB also [*24] received federal funding. [Grzan, 104 F.3d at 120](#). ("The coverage of the [Rehabilitation Act](#) does not follow federal aid past the intended recipient to those who merely derive a benefit from the aid or receive compensation for services rendered pursuant to a contractual arrangement." (internal citation omitted)).

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On the other hand, as the Seventh Circuit explained in [Schroeder v. City of Chicago, 927 F.2d 957 \(7th Cir. 1991\)](#) -- a case relied on by plaintiffs -- if federal money can be traced to the separate part or division *within* a larger governmental agency then that part or division may be a covered entity under the Rehabilitation Act: "if the office of a mayor received federal financial assistance and distributes it to local departments or agencies, all of the operations of the mayor's office are covered along with the departments or agencies *which actually get the aid.*" [Id. at 962](#) (emphasis added). Accordingly, the court will grant this portion of defendants' motion to dismiss *without prejudice* so that plaintiffs may file an amended complaint *if* they can allege in good faith that GIB actually received federal funding, either from ETF or otherwise.

B. Stay of ACA claim

As for the remaining ACA claim against ETF, defendants seek a stay until the resolution of ongoing litigation [*25] in the Northern District of Texas. *See Franciscan Alliance, Inc. v. Price*, No. 7:16-cv-00108-O (N.D. Tex.). The *Franciscan Alliance* lawsuit challenges the legality of certain regulations adopted by HHS that define the sex discrimination prohibition in the ACA to include gender identity discrimination. The district court previously granted a preliminary injunction, staying enforcement of those regulations. *Id.* (dkt. #69) (N.D. Tex. 1/24/17). More recently, that same court stayed the case pending issuance of new regulations. *Id.* (dkt. #105) (N.D. Tex. 7/10/17). As defendants explain, the Trump administration has signaled that it intends either revise or eliminate the challenged regulations.

In considering whether to grant a stay, the court is to consider: "(1) whether the litigation is at an early stage; (2) whether a stay will unduly prejudice or tactically disadvantage the non-moving party; (3) whether a stay

will simplify the issues in question and streamline the trial; and (4) whether a stay will reduce the burden of litigation on the parties and on the court." [HY Cite Corp. v. Regal Ware, Inc., No. 10-cv-168-WMC, 2010 U.S. Dist. LEXIS 49243, 2010 WL 2079866, at *1 \(W.D. Wis. May 19, 2010\)](#).

In response, plaintiffs point out that they are relying on the language [*26] of the statute itself, rather than regulations under them. According to plaintiffs, their ACA claim does not, therefore, rise and fall with the existence or enforceability of those regulations. Moreover, even if the challenge in *Franciscan Alliance* to the ACA claims is not entirely mooted by the adoption of new regulations, any resulting decision will not be controlling authority in this case. Accordingly, in light of plaintiffs' focus on the ACA language itself, the uncertainty of whether and when the stay in the *Franciscan Alliance* case will be lifted, and when and if the court will ever issue an opinion, a stay is neither likely to simplify the issues in question nor streamline the trial. Moreover, since plaintiffs' Title VII and Equal Protection claims are proceeding, a stay will not reduce the burden of litigation on the parties or on the court in this case. Accordingly, the court will deny defendants' motion to stay.

ORDER

IT IS ORDERED that defendants' motion to dismiss and, alternatively to stay (dkt. #28) is GRANTED IN PART AND DENIED IN PART as set forth above.

Entered this 11th day of May, 2018.

BY THE COURT:

/s/ WILLIAM M. CONLEY

District Judge