IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

Christopher Fain, individually and on behalf of all others similarly situated, et al.,

Plaintiffs,

vs. CIVIL ACTION NO. 3:20-cv-00740

William Crouch, et al.,

Defendants.

REMOTE DEPOSITION OF DR. JAMES BECKER

DATE: March 30, 2022
TIME: 7:00 a.m. CST
PLACE: Veritext Virtual Videoconference

REPORTED BY: KELLEY E. ZILLES, RPR (Via Videoconference)
JOB NUMBER: 5096167

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NOTE: The original deposition transcript will be delivered to Attorney Smith, Esq., as the taking attorney.

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(Original exhibits attached to original transcript. Copies attached to transcript copies.)

DR. JAMES BECKER,

duly sworn, was examined and testified as follows:

EXAMINATION

BY ATTORNEY SMITH:

Q. All right. Good morning, Dr. Becker. I want to thank you for your time today. My name is Avatara Smith-Carrington and I'm an attorney with Lambda Legal. I use they/them pronouns, so please feel free to refer to me as Counsel or Counsel Smith as needed. And I represent the plaintiffs in this matter, okay?

A. Okay.

Q. I'm going to explain some rules so that there aren't any surprises today, and more importantly, so that the court reporter can establish a clean record. Let's do our best not to speak over each other. And, Dr. Becker, please use verbal answers so the court reporter can transcribe your answers accurately. Nodding or shaking your head cannot be captured by the court reporter. Is that fair?

A. Yes.

Q. You're aware that this deposition is happening virtually, and that means we are not in a shared physical space. To the extent you have any documents in front of you or you're planning to refer to or look at anything on your computer, besides Exhibit Share of

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course, I will ask that you let me know that you're doing, that you're doing that. Is that fair?
A. That is fair.
Q. We can take a break whenever you need, however, if there is an outstanding question that I have asked that you have not answered, please answer that question before we take a break. Is that fair?
A. Yes, understood.
Q. Great. I think we've already had a little bought with technological issues. If ever those issues come up, so, for example, if you can't hear anything, if the video glitches or anything else, feel free to let us know and we'll try to stop and make sure we accommodate your needs, okay?
A. Yes.
Q. Okay. I will ask you questions and you must answer unless your counsel instructs you otherwise, okay?
A. Yes.
Q. If your counsel objects you still need to answer my questions unless they specifically instruct you not to answer. Do you understand?
A. I understand that.
Q. If you don't understand a question I have asked, please let me know and I'm happy to try to rephrase it

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or make it clear for you. If you answer the question I will assume that you understood. Do you understand?
A. Yes, I understand that.
Q. Great. So, Dr. Becker, how are you doing today?
A. I'm fine.
Q. That's good to hear. Is there anything that would prevent you from testifying truthfully?
A. No, nothing at all.
Q. Okay. First, I'm just going to start off with some questions that are relatively simple. Have you been deposed before?
A. Yes, I have.
Q. Okay. How many times?
A. Perhaps 20 or 25 times.
Q. Okay. Let's see. So you said perhaps 20 or 25 times that you've been deposed?
A. Yes.
Q. Okay. I think what might be best is that we're going to try to run through some of those times that you've been deposed, but we're not going to be able to get through all of them, okay?
A. That's fine.
Q. So let's just try for the last four years or so, is that okay?
A. Yes, it is.

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Q. Okay. So within the last four years, let's see, what would be easiest for you in terms of would it be easier to start with your memory of what was more recent or what was the earliest?
A. I think it would be best to start with the most recent. There have really not been many depositions in the last four years.
Q. Okay.
A. I don't think I could remember them accurately.
Q. Okay. So how many times in the last four years?
A. I think twice in the last four years.
Q. Okay. So let's go with the most recent time, what was the nature of that case?
A. The most recent case that I can recall is a malpractice case in which I testified on behalf of a family who felt that their child did not receive adequate medical care. And I would, this was a case that arose in Kentucky and I was approached by the family and the family's attorney to do an expert opinion on whether appropriate care had been rendered in a timely way.
Q. Okay. And when did that deposition take place?
A. My thought is that it would have been in 2019.
Q. Okay.
A. Likely in the spring.

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Q. And what court was that case in?
A. The court would have been in Kentucky. I don't know that it got that far, I don't think it ever really had a court hearing after that. The deposition was done and I think there may have been a settlement.
Q. Okay. So was it possibly state or federal by chance, would you know?
A. State.
Q. Okay. And then what about the second time in the last four years, what was the nature of that case?
A. The other deposition that I did in the last four years related to a workers' compensation case.
Q. Okay.
A. And it was a case of a patient continuing to seek treatment for a pain problem and the insurer, which was a workers' compensation insurance company, was refusing to cover some necessary treatment for this worker. And so I was asked to offer an opinion about whether the care was appropriate care and whether it should be. And so I was, I was retained by a workers' comp attorney here in West Virginia in that particular case.
Q. And what court was that case in?
A. That would have been here in the State Court and, I'm sorry, I don't recall. If I knew, I think I

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could have extracted the information from the files, but I didn't really anticipate that.
Q. That's no problem. Thank you for that. And just one last question in this line. Can you just, were any of the depositions, so you mentioned that there's possibly been 20 depositions or so?
A. Yes.
Q. Did any of them involve care for transgender people?
A. No, they did not.
Q. Okay. Great. So moving on, have you ever testified in court before?
A. Yes.
Q. Okay. How many times?
A. Twice.
Q. Okay. Let's start with would it be easier to go with the earliest or the most recent?
A. I think probably the earliest would be easier for me.
Q. Okay. And what was the nature of that case?
A. It was a toxic tort case and it was a chemical exposure in a workplace that was said to have caused mental impairment in a worker who was exposed. And I was the examining physician for this patient, several other physicians were also involved, but I was the

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examining physician and I believed that the individual had injury from the chemical exposure and I was asked to testify.
Q. Okay. And when did you give this testimony?
A. It would be pretty difficult for me to recall it off the top of my head. It was sometime in the mid 2000s, I would have done, I would have done this exam probably in 2002 or '03 and the case came up probably in 2005.
Q. Okay.
A. It was the court in Wheeling, West Virginia.
Q. Okay. Thank you for that, you got to my next question. How about the second time, what was the nature of that case?
A. That case was a patient who was diagnosed with mesothelioma which is a form of cancer and that case was heard in Charleston, West Virginia. I testified on behalf of the patient because the patient was referred to me and the plaintiff's attorney was Maroney.
Q. Okay. And are you able to give an approximate timeline for when, when you testified in court for that case?
A. I think it was 2007, but I'm, I'm guessing at that. Again, I'd have to go back and look at records.
Q. Okay. Thank you for that, Dr. Becker. So, Dr.

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Becker, are you aware that you're giving deposition testimony today in a case called Fain versus Crouch?
A. Yes, I am.
Q. Okay. Are you familiar with what this lawsuit is about?
A. In a general sense I'm aware of what it is about. I'm certain I don't know all the details, but in a general sense I understand.
Q. Okay. And what is your understanding of what this lawsuit is about?
A. I think my impression is that this is a lawsuit about access to diagnostic and treatment services for an individual with gender dysphoria and a discussion of our coverage policies in our Medicaid program.
Q. Okay. I'd like to make sure that we're using common vocabulary for some of the questions I'll be asking you today. We'll be talking today about the West Virginia Department of Health and Human Resources, Bureau for Medical Services. If I refer to that governmental entity as BMS, will you know what I mean?
A. Yes, I will.
Q. Okay. We will also be discussing managed care organizations today. Do you know what a managed care organization is?
A. Yes, I do.

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Q. Okay. Do you mind telling me what it is?
A. Managed care organizations in the context of Medicaid are companies that offer services to manage the healthcare access and cost for Medicaid members in the state. So they would, they are more than a third-party administrator, they actually have a level of financial risk associated with taking on a specific population and they're, they're paid in a capitated rate and they have certain flexibility that allows them to try to control costs.
Q. Got it. If I refer to managed care organization by the abbreviation MCO, will you know what I mean?
A. Yes, I will.
Q. And, Dr. Becker, you mentioned capitated rate, can you explain to me what that is?
A. Yes, I'll try to. I'm not a business person, but I can explain it I think.
Q. Okay.
A. The capitated rate is an amount of money that's assigned to the managed care organization to take care of the medical needs of the population and it's calculated based on an average rate of cost for each individual that they cover.
Q. Thank you.
A. If they cover 30,000 people, then you take the

amount of money assigned for the 30,000 and you multiply, you multiply it out and that becomes the rate of money that they get.

Q. Got it. Thank you. Thank you very much for that, Dr. Becker. Okay. We'll be discussing care that transgender people receive for the treatment of gender dysphoria, this care can include hormone replacement therapy, surgery, medical appointments and therapy. If I use gender confirming care during this deposition, will you understand what I mean?

A. Yes, I will.

Q. Okay. We'll also be talking today about the exclusion of care and Medicaid coverage for transgender people. Are you familiar with the exclusion being challenged in the case?

A. I think I am, yes.

Q. Okay. What's your understanding of that exclusion?

A. I think, again, I don't know that I'm an expert on this, but I think it is the fact that some forms of treatment are not covered in the Medicaid system and, and so it falls to the issue of medical necessity.

Q. Okay. If I refer to the exclusion throughout today will you know what I mean?

A. Yes, I think I do.

Q. Okay. So, Dr. Becker, we're going to talk a little bit about your background, okay?

A. Yes.

Q. Dr. Becker, you are the medical director of BMS at the West Virginia Department of Health and Human Resources, correct?

A. That's correct.

Q. All right. And what responsibilities fall under your role within BMS?

A. It's quite a long list, but I'll try to tell you the things that I concentrate on predominantly.

Q. Okay.

A. So I've been there for 14 years and over the 14 years my obligations and responsibilities have evolved a little. Part of my work involves review of coverage decisions for any number of medical treatments or diagnostics. And so I spend quite a bit of my time actually reviewing coverage codes and talking about medical evidence as it relates to these codes.

I also have responsibility for interaction with the medical providers who are enrolled in our system. I spend a fair amount of time on the phone talking to them, explaining our policies, trying to get their participation and get them involved in some of our special projects that we do.

I also review pharmacy and pharmacy cases. Pharmacy appeals come to me with great regularity. We cover about a million prescriptions each month and so there will be some that need to be reviewed, so they do come to me. I have interaction with other agencies like CMS, I have interaction with various support groups that state Medicaid programs rely on, things like the Medicaid Medical Director Network, ASTHO, which is the State Health Officers Organization, a variety of those kind of agencies. So as you can tell, it's highly variable.

Q. Okay.

A. And it's grown. When I first began the only obligation I had when I first began working for Medicaid was to, was to look at files regarding surgical procedures that didn't match normal codes, and that's still a part of my job, but it's not much of a job.

Q. I understand that. And so just a quick follow-up on that. So you said that you've been with BMS for 14 years, am I correct?

A. That's correct.

Q. And have you been with BMS in your capacity now, so as the medical director for 14 years?

A. Yes.

Q. Okay. Dr. Becker, who is your direct

supervisor?

A. My direct supervisor would be Commissioner Beane.

Q. Okay. And how often do you report to her on your work?

A. At least weekly.

Q. Okay.

A. And often more than that. I am onsite in the office, officially I'm there two days a week, and then I do some work by telehealth or, you know, on the computer. And so when I'm there my office is two doors down from her office and it's very easy for me to walk by and talk to her or see her when I get a cup of coffee or something like that, so we regularly converse.

Q. I understand. Do you have standing meetings with Commissioner Beane?

A. I do, every, every Monday afternoon would be the typical schedule and it would be a meeting for about an hour, hour and a half to go over any issues that we have.

Q. Got it. Thank you for that. Dr. Becker, does anyone report to you?

A. Because the way that my position is structured there, I don't have real responsibility for overseeing a lot of people. I don't have anyone who directly reports

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to me whose time sheet I sign off on or anything like that, but there is a group that is a policy team that meets with me every Wednesday morning. And so while I don't have direct responsibility for any of them, they all work in their own units, they do report to me every Wednesday morning on issues that we need to make decisions about.

Q. Okay. Who's part of the, I guess who makes up the policy team that indirectly reports or has those meetings with you?

A. Well, Jennifer Myers is probably one of the key people, Carrie Mallory is a key person, Stacy Hanshaw, Virginia Evans, Richard Ernest, Garland Holley. Do you want me to do an exhaustive list? It's about 12 or 13 people.

Q. That's helpful. Thank you for that, Dr. Becker. Who are the other team members in your specific department?

A. Excuse me, I think I missed the question, did you say who are?

Q. Yes.

A. Depends. I had a nurse practitioner until recently and she has resigned, retired, and we had a psychologist and he has resigned. So I think I would have to report today, I don't have anyone.

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Q. Okay. So is it fair to say then that there were nurse practitioners and at least a psychologist within BMS who regularly met with you?

A. Yes, definitely.

Q. Thank you. And who were those people?

A. They would have been Paula Hamady, she's a nurse practitioner, Ken Devlin, who's a psychologist.

Q. Okay.

A. They specifically met with me. And on the periphery I have a psychiatrist whom we've contracted with to deal with adult, to deal with child and adolescent psychiatric issues, his name is Kelly Melvin, Dr. Melvin. And we have a family practitioner who helps with our pharmacy reviews, her name is Hyla Harvey. Dr. Harvey does most of the difficult pharmacy reviews now.

Q. Okay. I do not think I caught the last name of -- you said Dr. Harvey? I mean the first name of Dr. Harvey.

A. Hyla, H-Y-L-A.

Q. Dr. Becker, have you held a previous job with BMS other than medical director?

A. No, I have not.

Q. Okay. Dr. Becker, we're going to talk about some of your other current positions, okay?

A. Sounds fine to me.

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Q. Dr. Becker, you are the vice dean for governmental affairs and healthcare policy at Marshall University Joan C. Edwards School of Medicine, is that correct?

A. That's correct.

Q. How long have you been in this role?

A. Since 2013, and that would have been November 2013 I came here full-time in that capacity.

Q. Okay. And by came here full-time in that capacity, do you mean came to Marshall University?

A. I've actually been affiliated with Marshall University for almost 30 years.

Q. Okay.

A. But I had spent a number of years in Charleston in healthcare, working in healthcare policy and insurance. I was previously at the insurance commission as the medical director for the insurance commission and prior to that I was the medical director for the workers comp commission.

Q. Okay.

A. And so I've had kind of a back and forth relationship with Marshall, but in 2013 I retired from the insurance commission and the dean asked me to come here and take this position, and that was November 2013.

Q. Okay. Dr. Becker, you are also a professor at

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Marshall University Joan C. Edwards School of Medicine, correct?

A. That's right, I am.

Q. Okay. How long have you been in that role?

A. Well, I just got promoted to professor within the last year.

Q. Okay.

A. So a long time I was an associate professor, and I've actually had that role since 1998.

Q. Okay. So since 1998 you were an associate professor, correct?

A. Yes.

Q. And then you were promoted to professor when?

A. I was promoted within the last year. I think that promotion actually became effective January a year ago, so it would have been January 2021.

Q. Okay. Dr. Becker, do you also maintain a family medicine practice?

A. Yes, I do.

Q. Okay. Is this the same as or different from the clinical practice you maintain at Marshall Health?

A. It's actually the same as the clinical practice that I have here. It is a small family practice setting that I work in in our clinic and I typically have a half a day to a day of time each week in which to see my

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patients. And I recently added on coverage of addiction issues at one of our addiction clinics which is known as PROACT.

Q. Okay. And how long have you maintained this practice?

A. Ever since I graduated from residency.

Q. Okay.

A. So that would have been 1996. So I still have patients that I see, or I did see and I've seen them as they've grown up from children. And so there is still some that hang on and are willing to tolerate my back and forth work relationships.

Q. Got it. So I think you mentioned a little bit about this, but we'll kind of go through it relatively quickly. Regarding some of your earlier employment history, where did you work before BMS and Marshall University? I'm going to ask if you can walk me through, but I think you mentioned a little bit about it, so I'll try to kind of work backwards from what you've shared, okay?

A. Okay, sure.

Q. Let's see. Dr. Becker, were you a research and clinical toxicologist?

A. Yes, I am.

Q. Okay. Was that a formal position that you had

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as like a -- okay. And when did you, how long were you in that role?

A. Well, that's been part of my career prior to my interest in going to medical school.

Q. Okay.

A. And so the total number of years of work in that category, in that area of toxicology probably sums up to about 15.

Q. Okay.

A. Before I, before I went to medical school I actually came to Marshall to the neuropharmacology department to work in the research laboratory that had been set up by Dr. Mark Simmons. Dr. Simmons and I were working on pain receptors and we were trying to understand more about the chemistry of pain based on the substance B receptor.

But before I worked for him I was a clinical toxicologist in Nashville, I worked for a company called Specialized Assays. I was basically the supervisor I suppose of the clinical toxicology section for them and we handled large amounts of drug testing for employers, for emergency rooms and did gas chromatography and gas chromatography mass spec. A chemist technician is sort of the way I would characterize myself.

Q. Okay.

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A. And then prior to that I had several other situations where I was working at University of Kentucky and previously in Chicago.

Q. Okay.

A. So always in this, always in this particular area of toxicology and research.

Q. Got it. Dr. Becker, were you the medical director for the West Virginia workers' compensation commission?

A. Yes, I was.

Q. And how long were you in that position?

A. I took the position July 1st of 2003.

Q. Okay.

A. And I stayed with them through the transition to Bridge Street Insurance when they prioritized the workers' comp. I left the workers' comp commission to take the private medical directorship for Bridge Street, but I only stayed with them for about a year. I'm not a really good insurance doctor, I'm better at like research and other things like that and better at teaching maybe. So I, I just wasn't very comfortable with that, I left. And that worked out just fine for me because then I went to the insurance commission and got to do things that aligned a little more with my interests.

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Q. Okay. And then you were the medical director at the office of the insurance commission, and how long were you in that position?

A. That would have been a five-year course for me.

Q. Okay. Dr. Becker, am I missing anything?

A. You know, I don't think you're missing anything essential.

Q. Okay.

A. You've kind of captured who I am. In the course of my transition back over here to the University I have taken a great deal of focus, put focus on treating addiction issues, and so I'm the program director for our addiction medicine fellowship.

Q. Okay. And how long have you been --

A. Go ahead. I applied for this in 2019.

Q. Thank you.

A. And then the program was accredited by the ACGME and we had our first year in 2020 of training doctors to be addiction specialists and I continue to do that.

Q. Dr. Becker, where did you attend college?

A. I attended college initially at St. Louis University in St. Louis, Missouri.

Q. Okay. Dr. Becker, did you attend Marshall University Joan C. Edwards School of Medicine for medical school?

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A. Yes, I did. I attended, I took classes prior to going to medical school here at Marshall University and then I applied to the medical school, got accepted to the medical school and attended.
Q. So, Dr. Becker, and just correct me if I'm wrong, so you said you took classes prior to attending medical school at the University, and I'm guessing that was to complete maybe your college degree?
A. Yes.
Q. Okay.
A. Yes, it was for that purpose, Counselor, and also to, to get my brain prepped for studying because it had been a long time since I had attended any structured classes. And I decided that I had to sort of get my brain used to studying before I applied to med school and that, that created an academic record that I could use to apply to medical school. And then med school began in '89 and I graduated in '93.
Q. Okay. And your residency was at Marshall University Joan C. Edwards School of Medicine, correct?
A. That's correct, that was a family medicine residency.
Q. Okay. Dr. Becker, did you have any additional schooling?
A. Other than little, you know, a course here or a

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seminar there, no. I've had, I've had some of these workshops that I've attended, but as far as just formal enroll, pay tuition, take a class, get a grade, have a transcript, no, I can't really identify anything.
Q. Okay. Dr. Becker, we're here to take a deposition of an organizational representative for BMS, do you understand that?
A. Say that again, you broke up there.
Q. Sure, no problem. We're here to take a deposition of an organizational representative for BMS, do you understand that?
A. Yes, I do understand.
Q. And you have been designated to give testimony as the organizational representative for BMS on certain topics that we'll discuss today, do you understand that?
A. Yes, I do.
Q. When were you notified that you would be giving testimony as the organizational representative for BMS on some of the topics plaintiffs have identified?
A. I was probably notified four or five months ago when there was a question in a request that had come to our legal unit and I was, I was told that they might ask me to testify to one or two of the questions.
Q. Okay. What did you do to prepare to testify today as the organizational representative?

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A. The first thing I think I did was review our responses. And I understand that information from my emails has been reviewed and I may be asked about the content of some of my emails or how they, how they affected coverage decisions, so I have been through those, I've looked at those. And I met with our legal representatives, so I met with them and talked about what to anticipate --
MS. BANDY: I just want to object and state that any questions that call for any substantive communications with counsel is protected by the attorney-client privilege. But to the extent that you can answer without disclosing that privilege, you can continue.
Q. So, Dr. Becker, without revealing any discussions with your attorneys, you can proceed.
A. I was going to end on that point that I did talk to the attorneys about the questions and the emails and that was, that's it. It's not really, I don't feel I have anything substantial to disclose.
Q. Okay. Did you review any other notes from previous meetings or conversations, Dr. Becker?
A. Knowing that I was going to testify I sort of looked around at things that I may have looked at related to this subject. So just meeting topics,

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materials that had come to my attention, those certain things, just kind of generally getting a sense of the things that we were discussing. And one other thing, and I hope I'm not disclosing something, I did review an expert witness document that was prepared by Dr. Levine.
Q. Okay. And when did you review the expert witness document prepared by Dr. Levine?
A. Last week or the prior week, it's been within the last two weeks I went through his document.
Q. Okay. And have you ever spoken with Dr. Levine?
A. No, I haven't.
Q. Okay. Dr. Becker, I'm going to bring up an exhibit to show. So if you would just hold for one second, I will let you know when you should be able to access it, okay?
A. Okay.
(Exhibit 1 marked for identification.)
Q. Dr. Becker, please let me know if you can see the marked exhibit folder on Exhibit Share and if you are able to see what has been marked as Exhibit 0001?
A. I'm in Exhibit Share. Currently it says my folder is empty, it has, maybe I need to go over to the files and see if the files are shared files, right?
Q. I think that the -- are you able to find the folder that says, "Deposition of Dr. James Becker"?

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A. Yes, I got that.
Q. Okay. And if you click on the marked exhibits, you should hopefully see Exhibit 0001 in the marked exhibits folder.
MS. BANDY: I think you have to click on the exhibit to refresh it.
A. Yes, I think I see this. This is plaintiff's amended notice of 30(b)(6) deposition.
Q. Okay. So again, I am showing Dr. Becker what has been marked as Exhibit 0001, it is the amended notice of 30(b)(6) deposition. Dr. Becker, please take a moment to review this document. Do you recognize this document, Dr. Becker?
A. Yes, I have seen this document before.
Q. Okay. And have you been told that you have been designated to speak as the organizational representative of BMS in response to certain topics contained in this deposition notice?
A. Yes, I have.
Q. Okay. Great. We'll come back to this document as we get to each topic, okay?
A. Okay.
Q. Okay. Dr. Becker, as an organizational representative did you meet with any Medicaid participants who are transgender to prepare for today?

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A. No, I did not.
Q. Okay. As an organizational representative did you meet with any mental health providers who specialize in care for transgender people to prepare for today?
A. No, I did not.
Q. As an organizational representative did you meet with any mental health providers who provide any care for transgender people to prepare for today?
A. No, I did not.
Q. As an organizational representative did you meet with any medical providers who specialize in care for transgender people to prepare for today?
A. If I can pause that for a moment before I answer. I do work with, I do work with medical providers who provide care to transgender individuals and I have had informal conversation with them about the care needs and evaluation and treatment. So it was not in anticipation of this meeting today, it was not to prepare today, it was simply to expand my understanding.
Q. Okay. As an organizational representative did you meet with any medical providers who provide any care for transgender people to prepare for today?
A. No.
Q. Okay. Dr. Becker, I just wanted to check with you, would you like to take a break or are you okay with

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continuing forward?
A. I'm okay with continuing forward.
Q. Okay. Before we move too far ahead, who are those providers who you have spoken with to expand on your knowledge?
A. One of the providers that I've spoken to is Dr. Yoost, Y-O-O-S-T. Dr. Yoost is in our pediatrics department and she does, primarily she does adolescent gynecology.
Q. Okay.
A. But she's a general pediatrician also, but she does a fair amount of care for populations that might be considered transgender and she is, she's a good person to talk to, and so I occasionally have a conversation with her. I specifically ask her every now and then about medications.
Q. Okay. And what were the conversations you had with Dr. Yoost about with regard to care?
A. So I've talked to her about the WPATH guidelines, she and I have talked about the American Academy of Pediatrics position paper on delaying the onset of puberty, we've talked generally about medications and medication safety for young individuals who are, you know, considering treatment for gender identity issues.

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Q. Okay. Dr. Becker, what do you remember about those conversations?
A. Generally I got, I went in with a specific question and I got the answer to the specific question. She always was very good about giving me a broader range of options for reviewing the management of those folks with gender dysphoria. I felt that she encouraged specialty, these to be managed in specialty care settings like a center of excellence that because she's in a general pediatrics department, she didn't see very many cases, that she did believe that individuals needing care probably should be treated at places with a lot more experience than most doctors are able to offer.
Q. Okay. And you mentioned earlier that you would go to Dr. Yoost with a specific question and Dr. Yoost would provide an answer. I believe you've given an example of one, but do you have any other examples?
A. Well, I guess I have several, several examples I have done. The big case that I had talked to her about and which triggered her giving me a couple of links to guidelines was a case involving a young patient who was in treatment and the treatment was going to consist of implanting a device that would slowly release a Gonadotropin releasing hormone suppressor.
And I went to her because that particular

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medication was only indicated for the treatment of advanced prostate cancer and so I wanted to ask her about her opinion regarding the safety of that kind of approach. It was off label use of the product. So I wanted to ask her about using the medication like that and what precautions and what possible side effects might there be. So that was --

Q. Doctor -- I'm sorry.

A. Go ahead.

Q. No, no, please go ahead.

A. On a variety of different occasions I've asked her who in the community was capable of providing the kind of psychological, psychiatric evaluation and support that might be needed for someone with issues related to gender identity.

Q. Okay. Do you know the name of the device that she mentioned?

A. The device in question is Vantas, V-A-N-T-A-S. I think it's been pulled off the market.

Q. Okay.

A. But at the time it was on the market.

Q. Did Dr. Yoost mention any other off label uses for Vantas?

A. It's used for patients with a diagnosis of precocious puberty, I think she mentioned it.

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Q. Okay.

A. And the discussion we had was around the subject of trying to delay the development of secondary sexual characteristics and give the, give this patient who was a young patient an opportunity to be fully evaluated and seek some counseling before making decisions to move forward. And so we were talking about the safety and efficacy of this approach of using these GnRH agents.

Q. You stated that Dr. Yoost recommended treatment at a center that specializes in this care, correct?

A. Yes.

Q. Would an example of that be a clinic that specializes in treating transgender adolescents?

A. It could, yes.

Q. Did Dr. Yoost believe that transgender adolescents should have access to care for gender dysphoria?

MS. BANDY: I'll object that it asks for what somebody else believes. But to the extent that you can answer, Dr. Becker, you can answer.

A. I think reading between the lines of the conversation, I think Dr. Yoost was advising me to encourage the patient to be treated at a center with a reputation for being able to safely and effectively manage individuals with gender dysphoria and she offered the center in Pennsylvania as a possible option.

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Q. Dr. Becker, do you remember the name of the center in Pennsylvania that Dr. Yoost offered?

A. I don't remember the specific name, but it was, I'm certain it was in Pittsburgh.

Q. Okay. Dr. Becker, you mentioned that you discussed the safety and efficacy of GnRH analogs with Dr. Yoost. Did Dr. Yoost express any views about that?

A. I think that her opinion was that appropriately applied they are probably safe and effective, that they are only really useful for perhaps two years, that patients should not be on them an extended period of time, and I think we may have mentioned that they have some tolerability issues.

Q. Okay. Dr. Becker, do you still have the deposition notice pulled up?

A. I do.

Q. All right. Can you scroll to what is No. 18. Do you have that part in front of you?

A. I think I'm on the path, I have what I identify as No. 18 which starts, "All interrogatory requests, requests for admission." Is that where you want me?

Q. That's where I want you. Dr. Becker, you have been designated to testify about Topic 18. Topic 18 reads, "All interrogatory requests, request for

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admission, request for production of documents directed to Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, Bureau for Medical Services, and any discovery responses, responsive documents, filings or productions by or on behalf of Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, Bureau for Medical Services." Did I read that correctly?

A. You did.

Q. As you discussed at the beginning of the day you have been identified to speak about the following interrogatory. I'm going to at this moment introduce another exhibit, just give me a minute to pull it up.

A. Okay.

(Exhibit 2 marked for identification.)

Q. Dr. Becker, do you see what has been marked as Exhibit 0002?

A. I think I have to back out of this exhibit.

Q. Yes, I would exit out and then if necessary refresh the page.

A. Okay. There it is. So this is Exhibit 0002, "Response to first interrogatories."

Q. I am showing Dr. Becker what has been marked as Exhibit 0002 titled, "Defendants' response to

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plaintiffs' first set of interrogatories to Defendants William Crouch, Cynthia Beane, West Virginia Department of Health and Human Resources, Bureau for Medical Services." Dr. Becker, you have been designated to testify about the response to interrogatory 1. Please take a moment to review this document, specifically the bottom of Page 1 and top of Page 2. Dr. Becker, do you recognize this document?

A. Yes, I do.

Q. Okay. Did you review this document in connection with your testimony as the organizational representative for BMS today?

A. Yes, I did.

Q. On approximately the bottom of Page 1 you'll see text that reads, "One, identify all persons with involvement in or knowledge of the creation, review and maintenance of the exclusion of coverage of gender confirming care and the health plan offered through West Virginia's Medicaid program." I will now read part of the response, and it's on the top of Page 2, "Without waiving these objections, the following individuals have been involved in the process of determining whether coverage is excluded, Dr. James Becker, medical director, West Virginia Bureau for Medical Services." Did I read that correctly?

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A. That's correct.

Q. And are you aware that counsel identified you as the organizational representative to testify about BMS's response to interrogatory No. 1?

A. Yes, I am.

Q. Are you prepared to testify about this interrogatory?

A. Yes.

Q. With respect to interrogatory 1 specifically, what did you do to prepare to testify today?

A. I think primarily I tried to review all of the information exchanged in email regarding the subject, but I also spent a fair amount of time looking at things that may have guided our opinion in regard to coverage. And I am familiar with all the people listed on here as part of the team and the work that they did. So I did a general review and then examined kind of the history of how we got where we are today.

Q. Dr. Becker, as we discussed earlier, you are familiar with the exclusion in the Medicaid plan as it pertains to gender confirming care, correct?

A. Yes, I am.

Q. And BMS does not cover surgical care for treatment of gender dysphoria, correct?

A. That's correct.

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Q. Does BMS cover hormone replacement therapy for treatment of gender dysphoria?

A. Yes, we do.

Q. Following up on that, if a claim was submitted and the only code attached was for gender dysphoria, would the care be covered?

A. Yes.

Q. Are there any other forms of gender confirming care that BMS does cover for treatment of gender dysphoria?

A. Not that I'm aware of. Say that again, I may have misunderstood what you're asking.

Q. Sure. Are there any other forms of gender confirming care that BMS does cover for treatment of gender dysphoria?

A. Yes, we do. There are, so we cover the full diagnostic workup, so if there is an evaluation needed, if there were tests to be done, if there are hormone levels to be measured, those are covered. If the person needs some type of testing, psychological testing or counseling services, those are covered. The only services that are not covered are the surgical services.

Q. Dr. Becker, when was the exclusion established?

A. I don't know that I can answer that specifically. There has been a policy and then a change

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in the policy and all I'm aware of at this point is where we stand today on that. I do remember, I do remember a time when we, when we allowed all of the hormone therapies and did not have an edit in place, then there was a change in our system that led to an edit that would restrict availability of hormone therapies based on gender, and then that edit was changed again. And so we, we have gone back and forth on this a little bit and I don't think I was directly involved in the decisions on those.

Q. Okay. You mentioned before that there was the policy and that there was a change in policy. What you were just speaking about with regard to the edit, is that what you were talking about?

A. Yes.

Q. Okay. Your colleague Sarah Young testified that the exclusion was created in approximately 2004, does that sound about right to you?

A. That would be correct. It coincides with the fact that that was the policy when I arrived at the Medicaid system to be their medical director. So I came in in May of 2008, there were not many questions at all about gender affirming care, I believe there probably were one or two, and I was advised by someone that we had a policy.

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Q. Okay.
A. So I agree with her, it probably was 2004.
Q. Okay. Why was it, to the best of your knowledge, why was the exclusion created?
A. I don't know that I can speak to that, but my personal impression is that it arose principally out of the pharmacy questions about administering medications that seemed like they were not aligned with the person's gender. So we had some restrictions on what medications we allow people to receive and we put some edits in place to try to regulate that.
For instance, we don't expect, we don't expect men to fill prescriptions for birth control pills, and so a gender edit gets in place for that. Or if there's a mismatch between hormones that we expect to see in use or, you know, drugs that might be unsafe, we have edits to try to restrict the exposure of a potentially unsafe situation. So I think that was the real reason that things were developed in that respect.
Q. What was considered when the exclusion was originally adopted?
A. I did not have a part in that, so I can't answer.
Q. Okay. Dr. Becker, as the organizational representative for BMS are you aware of whether the

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decision to maintain the exclusion was ever revisited?
A. I'm not aware.
Q. Okay. Dr. Becker, BMS continues to maintain the exclusion today, correct?
A. You're referring to the surgical exclusion?
Q. Mm-hmm, yes.
A. Yes, we do.
Q. Dr. Becker, as the organizational representative for BMS can you explain why BMS has decided to maintain the exclusion today?
MS. BANDY: I just want to place an objection that some of the designated topics were addressed by Sarah Young. I mean, to the extent that it's encompassed within Exhibit 1 of the interrogatories, he can answer, but I just want to place that objection.
ATTORNEY SMITH: Noted.
Q. You can answer.
A. So the way that coverage decisions are made is based on medical necessity. And CMS identifies medical necessity as, it's a difficult, it's a difficult definition, but it's a legal construct that guides the decision for coverage based on evidence of effectiveness and safety for the procedures requested. And so in the sense that surgical procedures have not been included as

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part of the coverage for gender transition in our Medicaid system is because of the lack of evidence of benefit and safety that would merit adopting that coverage. Does that make sense?
Q. I was just thinking through your answer. So just to make sure I understand you correctly, you're stating that the decision to maintain exclusion today is based on medical necessity, and specifically with regard to how CMS, to your knowledge, defines medical necessity?
A. Yes. That and the fact that Medicaid systems are not obligated to cover everything. So Medicaid, our Medicaid system does not cover weight loss programs or foods, our program does not cover dentures for individuals. There's a prioritization of the coverage to meet the need of the majority of the people and make the money cover as much as we need to cover and at the same time maintain a balance. It's not insurance, it's a healthcare plan, and so we can't cover everything, and this is one of the things that we've estimated or said we do not think we can cover this or that there's justification to cover it.
Q. Okay. Dr. Becker, we've been going for a little bit close to an hour at this time. I'm going to suggest that we take a five-minute break or so.

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A. That's fine.
ATTORNEY SMITH: Kelley, can we go off the record.
(A break was taken at 8:14 a.m.)
BY ATTORNEY SMITH:
Q. Dr. Becker, what role do you play in maintaining the exclusion?
A. I suppose my role in maintaining the exclusion is that if a request comes in to expand coverage to include surgical treatment for gender transition, I would be part of the team, maybe an important part of the team looking at the evidence for effectiveness and balancing that against the issues of safety, and I probably would be viewed as a knowledgeable person who would understand the various procedures that would be requested.
Q. If a provider or participant reaches out to make a request to discuss excluded care, is that escalated to you?
A. Yes, it would be.
Q. What would happen next?
A. The first thing that would happen would probably be a courtesy call back to the provider just to make sure that we have all the information that we need to have in order to consider their request, and that call

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would probably include an explanation of what our current policy is. If the provider was adamant that this needs to change or it needs to be treated in some exceptional way, we would ask for additional evidence and documentation to support the argument. And that's how the process would begin, so that would be the next step as an outreach to the provider.

Q. Is there a step that typically follows after that, so after outreach to the provider?

A. Typically we look internally at the data about our cases and see how many cases there are. If I can move away from the gender dysphoria discussion just for a minute, we had a request to cover treatment that was new, perhaps a little experimental for urinary incontinence in women. And so after a call to the provider to find out exactly what they were suggesting, we went ahead and pulled all the data so we could see how many individuals this decision might affect. So we would look and see what our exposure is and then that would help us to determine how many people's lives might be impacted by the decision.

Q. And just so I'm clear on understanding, what exactly do you mean by exposure?

A. How many cases our Medicaid system might be asked to actually cover, because there's a cost on

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anything and we have to, we have to balance it because we only have a certain amount of money to work with each year.

Q. Dr. Becker, do you review prior authorizations regarding surgical care for treatment of gender dysphoria?

A. I would, I don't know that I have.

Q. Okay.

A. That would be something that would come to me most likely.

Q. Because BMS does not cover surgical care for treatment of gender dysphoria, prior authorizations for that care are not approved, correct?

A. I suspect that's true.

Q. And those prior authorizations are denied regardless of the medical necessity of the care, correct?

A. I think they would be initially denied based on our policy.

Q. Do you review denied service appeals regarding hormone replacement therapy for treatment of gender dysphoria?

A. I do.

Q. Do you review denied service appeals regarding surgical care for treatment of gender dysphoria?

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A. I do or would, I don't recall having reviewed any.

Q. Because BMS does not cover surgical care for treatment of gender dysphoria, the appeal would be denied or claim not paid, correct?

A. That's correct.

Q. And the appeal would be denied regardless of medical necessity, correct?

A. Well, that is not necessarily true. If the case involves medical necessity for the surgery, it would get reviewed, but it will probably get an initial denial from the contractor who handles those requests for prior authorization. There is a process in place for cases to come to a higher level of appeal. And so the provider who is, who has determined that this is a necessary procedure can come back around with another request and ask for a higher level appeal and consideration.

Q. So to confirm, you never reviewed, you never reviewed an appeal regarding surgical appeal?

A. I don't recall ever reviewing an appeal for surgical care.

Q. And to go back to your last answer for the question before, that higher level appeal would need to be denied, correct?

A. It would likely be denied.

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Q. Okay. I'm going to introduce another exhibit. And I have another question, Dr. Becker. Are you saying that it could ever be approved?

MS. BANDY: I'm just going to object to the form of the question. But you can answer.

A. I have never had a case for surgical, a surgery request in the situation of gender dysphoria, but I have had cases in which we do not cover some service that came to higher level appeal and then based on the argument for medical necessity did get approved. So what I'm saying is that there is an avenue by which medically necessary services can be delivered, and it happens rarely, but it happens largely through communication with my office.

Q. Notwithstanding the argument for medical necessity, if a request for gender affirming surgery were appealed, it will be denied based on the exclusion, correct?

MS. BANDY: Object to the form.

A. That is correct.

Q. Okay. I'm going to introduce another exhibit.

(Exhibit 3 marked for identification.)

Q. Do you see what has been marked as Exhibit 0003?

A. I do.

Q. I'm showing Dr. Becker what has been marked as

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Exhibit 0003, it is an email with the subject, "Gender dysphoria." Dr. Becker, in the lower right-hand corner of the document do you see Bates stamp DHHRBMS012322?
A. Scroll down a little bit.
Q. Just a little bit.
A. Yeah, there it is, DHHRBMS012322.
Q. Please take a minute to review this email. Do you recognize this email?
A. Yes, I do.
Q. Dr. Becker, I'm going to direct your attention to the message in the middle of the email chain, and I'll read that middle paragraph.
A. Okay.
Q. "I was able to review the recommendations of the American Academy of Pediatrics in regard to treatment of TGD. They do support the use of medication to delay pubertal development. The guideline is filled with precautions about side effects and possible future consequences and makes the point that the effect of these medications is reversible if the medication is stopped. They argue that this approach may give providers and counselors a chance to assure that the patient is fully committed to this change and understands what they are choosing. I think on the basis of that information that I am inclined to approve

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the treatment." Did I read that correctly?
A. Yes, you did.
Q. Who is this email from?
A. Well, it's my email.
Q. Okay.
A. To Commissioner Beane.
Q. Okay.
A. And I believe that I initiated the email chain.
Q. Okay.
A. In response to an appeal request that had come to us from a treatment center in Pennsylvania.
Q. Okay. And, Dr. Becker, I believe that this is the conversation we were talking about earlier with regard to Vantas, correct?
A. I think so. I haven't scrolled back, but it sounds exactly like that.
Q. Would you like to scroll down to read the first message at the bottom?
A. Yeah, that's what I'm going to do here. Yeah, this is the case.
Q. Dr. Becker, in the section that I just read, what did the phrase treatment of TGD mean?
A. Well, I think I intended to say gender dysphoria. I'm not sure exactly what the T was in the typing, maybe it was transitional, I'm not sure, but it

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may have been a typo. GD refers to gender dysphoria.
Q. You state that you would be inclined to approve the treatment, correct?
A. I do, I said I do support the use of medication, or they do, referring to the Academy of Pediatrics, they do. And then later I said I think on the basis of the information that I'm inclined to approve the treatment with a host of warnings to the provider about provider responsibility for monitoring safety and efficacy.
Q. Why did you review the recommendations of the American Academy of Pediatrics?
A. It was one of the, it was one of the guidelines that seemed to take on the subject of delaying the onset of puberty reliably. The Academy of Pediatrics is highly respected and it was my feeling that that was a good place to start in getting advice about using a medication of this type off label.
Q. This research was undertaken by you to aid in determining whether to approve the treatment, correct?
A. That's correct.
Q. Dr. Becker, it was later determined that this care would not be covered for this participant, correct?
A. That's correct.
Q. Who ultimately made that decision?
A. The medication that was requested is delivered

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as a device that time releases the medication, and because it's a device it was not, it turned out it was not a pharmacy appeal. So it had come to me as a pharmacy appeal for coverage, and so in offering that we should cover it, it then went back to the pharmacy unit and I think that the pharmacy office made the determination that this would have to be billed as a medical benefit, not as a pharmacy benefit. And so that, that created a problem because then it becomes the responsibility of the managed care organization which takes care of medical expenses. Pharmacy is carved out of our MCO contracts and we take care of pharmacy, they take care of everything medical.
Q. And just so I'm tracking this and so I understand, you said that the claim had to come through via the medical portion and not the pharmacy portion, correct?
A. Yes. The money to pay for the Vantas would come from the MCO.
Q. Okay. And did the claim ever come through as a medical claim?
A. We would not know that because it would need to go to the MCO that represents the patient.
Q. And just so I'm following along, Dr. Becker, to the best of your knowledge was the coverage for this

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care approved?
A. I don't know because they have, the MCO's have their own medical directors and when it comes to the medical questions, medical coverage questions, they, they make the decisions. So it came in as a pharmacy appeal incorrectly, and even though I was in favor of it, the decision would be made by the MCO.
Q. Let's return to the American Academy of Pediatrics recommendation that you reviewed.
A. Yes.
Q. What do you recall about that recommendation?
A. I just, I don't have it in front of me and I wouldn't have memorized it. So I do remember that it seemed to have a good and clear description of gender dysphoria and the challenge of treating gender dysphoria in young patients, and I do remember that it had a fairly clear statement about the potential benefit of halting the development of pubertal changes and the use of GnRH agents as a possible option for that.
I do recall also that it cautioned that they likely should not be used for more than a few years and that, and that led me to assume that we would be talking about coverage for potentially two years for this individual and then some decision has to be made about other lines of treatment. And it was a well documented

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publication, it was clear to me and, you know, that was the basis for my decision.
Q. Did the American Academy of Pediatrics recommend coverage of puberty delaying treatment be available in at least some cases?
A. I think they did, yes.
Q. Dr. Becker, if a participant has a diagnosis of precocious puberty would BMS approve the use of Vantas for that condition?
A. Yes, we would.
Q. Just not for the treatment of gender dysphoria, correct?
A. Correct. At least it would be approved for gender dysphoria. If the patient -- well, let's put it this way. If this patient had been traditional Medicaid and we were making the decision about coverage of medical cost, my recommendation would have been this is appropriate with proper precautions and we'll go ahead and cover, that would be my recommendation. You can see that in the subsequent trail here of the email.
Q. All right.
A. And that's, it's available, hormone therapy is available with proper indication.
Q. I'm going to introduce another exhibit.
(Exhibit 4 marked for identification.)

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Q. Okay. I believe you should see what has been marked as Exhibit 0004.
A. Yes, I do.
Q. Okay. I'm showing Dr. Becker what has been marked as Exhibit 0004 titled, "Defendants' ninth supplemental response to plaintiffs' first set of requests for production to Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, Bureau for Medical Services." Dr. Becker, you have been designated to testify about the response to request for production 6. Please take a moment to review this document, specifically Page 3. Do you recognize this document?
A. Yes, I do.
Q. Did you review this document in connection with your testimony as the organizational representative for BMS today?
A. I have.
Q. On Page 3 you'll see text that reads, "All documents and communications relating to the exclusion and/or gender confirming care considered by the individuals responsible for adopting and/or maintaining the exclusion in the health plans. Please identify the responsive documents by Bates number, this includes but is not limited to, A, documents and communications

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regarding the safety or efficacy of gender confirming care; B, documents and communications regarding the medical necessity of gender confirming care; and C, documents and communications regarding the costs of gender confirming care." Did I read that correctly?
A. Yes, you did.
Q. And are you aware that counsel identified you as the organizational representative to testify about documents produced by BMS in response to request for production 6?
A. Yes.
Q. Are you prepared to testify about this response?
A. Yes, I think so.
Q. With respect to request for production 6 specifically, what did you do to prepare to testify today?
A. I have reviewed the various documents and research relationships that we had established asking for information to help guide us on the issues of gender dysphoria, gender transitions and the way we apply and other states apply policies.
Q. Please look at that page again while I read the response to request for production 6, "Supplemental response. Upon information and belief seen in the following documents that have previously been produced

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as part of Exhibit 86, DHHRBMS012313 through 012314; DHHRBMS012318; DHHRBMS012322 through 012323; DHHRBMS012333; DHHRBMS012338; DHHRBMS012434 through 012447; DHHRBMS012483 through 012501; DHHRBMS012648 through 012653; DHHRBMS012665 through 012668; DHHRBMS012711 through 012823; DHHRBMS013523 through 013524; DHHRBMS015304; and DHHRBMS015453 through 1589. The following documents are designated confidential, DHHRBMS012649 through 012653; and DHHRBMS012714 through 12823." Did I read that correctly?

A. I think you did. That was really pretty good that you got through that, that's quite a list.

Q. Yeah, it's a long list. To your knowledge is this list of documents and communications considered by the individuals responsible for adopting and maintaining the exclusion correct?

A. To my knowledge it is.

Q. To your knowledge is this list of documents and communications considered by the individuals responsible for adopting and maintaining the exclusion complete?

A. To my knowledge, it is.

Q. Okay. I am going to introduce another exhibit.

(Exhibit 5 marked for identification.)

ATTORNEY SMITH: Unfortunately, Kelley, I think I mistakenly must have just pressed introduce

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exhibit without attaching the Bates stamp. Let me make sure that that's the case.

A. I think I got a document.

Q. Yes. I'm going to try to figure out how to fix something on my end. Dr. Becker, do you see -- well, it hasn't been marked, but this is going to be Exhibit 0005?

A. I see this.

Q. Okay. I'm showing Dr. Becker what has been marked as Exhibit 0005, it is an email with the subject, "Gender dysphoria." In the lower right-hand corner the document is Bates stamped DHHRBMS012338. Do you see that?

A. I do.

Q. I will represent to you that this corresponds to the fifth range of Bates numbers identified in response to RFP6. Please take a moment to review this email. Do you recognize this email?

A. I do, I recognize this case.

Q. Please take a look at the single paragraph where it reads, "We have a case of an 11-year-old who is born male, but identifies female. A nurse practitioner in Pennsylvania is wanting to put the child on medication to block testosterone. I am very uncomfortable with this option in someone so young. Do you think we should

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write some standards for these cases. I think we should insist on a comprehensive multidisciplinary evaluation and a detailed treatment plan before we start down the path. I think we also need some age boundaries." Did I read that correctly?

A. You did.

Q. What was this email about?

A. Well, first of all, the email is sent from me to Commissioner Beane from my office at the University, hence the Marshall.edu. And a request had come in, the office contacted me, and I wasn't actually at the building at the Bureau for Medical Services at the time. I got the information about the case, the case was this 11-year-old male who identifies female and it was just a request to put them on a product that would block testosterone. I believe this is the same Vantas request.

And so in reading that and seeing what they were requesting, my concern arose from the fact that the Vantas was a medication with an indication for prostate cancer and that the individual was young, and recognizing that testosterone is an important hormone for development, I wanted to be very careful we make the right decision about covering these things and recognize what the potential downside might be of that.

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And so it was, it was my reaching out to the commissioner to suggest that we probably need to ask for a fairly comprehensive evaluation and a treatment plan that reflects what we can expect going forward for this patient, so that's what I was attempting to convey in the email.

Q. Was this a new issue for you when it arose through the appeal?

A. This particular issue of delaying the onset of puberty hasn't come up very often and it probably was the first time that I've seen one, particularly one this young, 11 years old.

Q. What was your role in responding to this appeal?

A. My role was to actually make a decision about whether we would approve the appeal. And so I'm expressing my discomfort with this and asking for a bit more support just in terms of guidance and maybe policy. And so that's what I'm reaching out about.

Q. Did you do further research to help consider the appeal?

A. I did. I did fairly extensive research looking into the medication itself, all of it. And, you know, I looked at all the details of delaying the onset of puberty. I called one of our psychiatrists who is a child and adolescent psychiatrist just to ask if he had

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any input, he said it was not something that he does. So that's the level of research that was done. And the commissioner got right back to me I think in another email.

Q. What was the name of the psychiatrist that you reached out to?

A. Dr. Melvin, Dr. Kelly Melvin. He is a psychiatrist at the University, child and adolescent psychiatry, and he is a consultant to Medicaid.

Q. You testified earlier that you reviewed the recommendations of the American Academy of Pediatrics with respect to this appeal. Did you research any other standards of care for treatment of gender dysphoria in adolescents?

A. I don't think that I did.

Q. And you testified that you ultimately came to support allowing access to puberty blocking treatment for this patient, correct?

A. Yes, that was my conclusion.

Q. Dr. Becker, we're going to return to an exhibit that I've previously introduced, okay?

A. Sure.

Q. And I will let you know what the number is. It is Exhibit 0003.

A. Okay.

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Q. I will represent to you this corresponds to the third range of Bates numbers identified in response to RFP6. Do you recall that we discussed this document earlier today?

A. Yes, I do.

Q. This email chain was written in connection with puberty delaying treatment, correct?

A. Yes, that is correct.

Q. And no other forms of gender affirming care such as surgery, correct?

A. That is right.

Q. This email chain was created with reference to review of an appeal of a denial of coverage, correct?

A. Yes, that is correct.

Q. This email chain was not part of a process of considering whether to remove the exclusion from the Medicaid program, correct?

A. When you say remove the exclusion, you're suggesting remove exclusion for surgical?

Q. Yes.

A. No, it was not.

Q. Did BMS review the Endocrine Society guidelines in connection with this email chain?

A. Yes, ultimately we did.

Q. In your review of the Endocrine Society

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guidelines in connection with this email chain, what do you recall?

A. All I recall is that the Endocrine Society also considered delaying the onset of puberty as an appropriate form of treatment for individuals in the diagnosis of gender identity disorder.

Q. Okay. I am going to introduce another exhibit.

(Exhibit 6 marked for identification.)

Q. Dr. Becker, do you see what has been marked as Exhibit 0006?

A. Yes, I do.

Q. I am showing Dr. Becker what has been marked as Exhibit 0006, it is an email with the subject, "Gender dysphoria." In the lower right-hand corner the document is Bates stamped DHHRBMS012333. Do you see that?

A. Yes, I've got it.

Q. Okay. I will represent to you that this corresponds to the fourth range of Bates numbers identified in response to RFP6. Please take a moment to review this email. Do you recognize this email?

A. Yes, I do, that's the further discussion of the case that we had been discussing regarding Vantas.

Q. Please turn to the first full paragraph where it reads, "That is why it's such a difficult decision. The provider quotes guidelines from the Endocrine Society

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and also from the University of California at San Francisco. The argument that they make is that if male puberty is allowed to start the child will develop male appearance and body hair and genital development. They claim treatment needs to begin now. I've gotten three appeals on this case in two weeks. It's University of Pittsburgh Medical Center." Did I read that correctly?

A. Yes, you did.

Q. Did BMS review the University of California at San Francisco guidelines?

A. I'm sure somebody on the team did review them, and I can't say that I specifically reviewed them. I did review the Endocrine Society.

Q. By chance were you made aware of the information within those declines?

A. I'm sure that it was summarized by one of the members of our medical policy team at one of our meetings.

Q. Did you speak with the medical providers for the adolescent seeking this care?

A. I did. The medical provider that I was able to reach actually was the nurse practitioner who had placed the request and the nurse practitioner to my recollection was fairly passionate about their feeling that this child needed to be placed on the Vantas at

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this time in order to stabilize the situation. I recall them saying that the child was maturing rapidly.
Q. So what was the nature of the concern the nurse practitioner was describing to you?
A. You're asking about the nurse practitioner of Pittsburgh?
Q. Yes.
A. Yeah, so the nurse practitioner at Pittsburgh seemed to agree that 11 years old was fairly early to be introducing a GnRH agent, and they still felt that this child because of the early maturation and the development of secondary sexual characteristics was going to encounter greater difficulty transitioning if they did not halt the onset of puberty, and that was why they felt it was compelling to give the child the Vantas implant.
Q. With regard to the University of California at San Francisco guidelines, are you aware of whether the guidelines support providing access to this care?
A. I don't know that I have reviewed them in enough detail to say that. I suspect they do, but I don't know that.
Q. Okay. I'm going to introduce another exhibit.
(Exhibit 7 marked for identification.)
Q. Dr. Becker, before we move on to the next

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exhibit, I have a couple of questions to follow up on. You state in the email the argument that they make is that if male puberty is allowed to start the child will develop male appearance and body hair and genital development, they claimed treatment needs to begin now. What was the nature of the concern the providers were describing with regard to that statement?
A. The providers in Pittsburgh were conveying to me that they believed that those, the development of those male features was an added distress for this child and that it was emotionally distressing for this child to see this happening and they felt that they could minimize that by placing the child on the GnRH blocker.
Q. And did you do any further investigation into that concern?
A. No, I didn't.
Q. Okay. Do you see Exhibit 0007?
A. I do.
Q. Okay. I am showing Dr. Becker what has been marked as Exhibit 0007, it is an email with the subject, "Gender dysphoria." In the lower right-hand corner the document is Bates stamped DHHRBMS012665. Do you see that?
A. I do.
Q. I will represent to you that this corresponds to

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the ninth Bates range identified in RFP6. Please take a moment to review this email. Do you recognize this email?
A. Yes, I do. I think I was involved in the beginning of the discussion and then it got away from me a little bit, but yes.
Q. Okay. Please scroll down to the page with the Bates stamp DHHRBMS012666 where it reads, "Unfortunately Jim and I discussed this case today before I saw your email. I did determine that this isn't coverable through pharmacy services because Vantas is a medical claim, it requires surgical implementation. We were in favor of approving their request, however." Did I read that correctly?
A. You did. I'm having a little difficulty moving the page up here, for some reason my computer doesn't want to do that.
Q. Okay.
A. There we go.
Q. Okay.
A. Okay, now I got back to it. So let me make sure. "Unfortunately Jim and I discussed the case today before I saw your email." Yes, okay, I've seen it and reviewed it a couple of times.
Q. Okay. I will read it again just to make sure

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that I conveyed the portion correctly.
A. Okay.
Q. "Unfortunately Jim and I discussed this case today before I saw your email. I did determine that this isn't coverable through pharmacy services because Vantas is a medical claim that requires surgical implementation. We were in favor of approving their request, however." Did I read that correctly?
A. Yes, you did.
Q. If Vantas was coverable through pharmacy services would it have been approved?
A. It would have.
Q. And you were in favor of approving this care, correct?
A. Yes, I thought it was appropriate care based on what I saw in the guidelines.
Q. I'm going to introduce another exhibit.
(Exhibit 8 marked for identification.)
Q. Do you see what has been marked as Exhibit 0008?
A. Let me refresh the page here. For some reason when I go to refresh it switches pages. Okay. I'm getting some kind of error on this Veritext. Instead of giving me a little arrow that I can move around with, it's giving me a line and -- there's the arrow. Okay, I just got it back. Whatever it was, it's fixed.

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Q. Okay.
A. We won't question it. Okay, now I have 8.
Q. Okay. I am showing Dr. Becker what has been marked as Exhibit 0008, it is an email with the subject, "Gender dysphoria question." In the lower right-hand corner the document is Bates stamped DHHRBMS012318. Do you see that?
A. I do.
Q. I will represent to you that this corresponds to the second Bates range identified in response to RFP6. Please take a moment to review this email.
A. So I've reviewed it.
Q. Do you recognize this email?
A. I do.
Q. Please look at the paragraph where it reads, "We've held off on approving the Vantas implant for this child getting treated at UPMC. Based on conversations with several experts, it is a standard of care." Did I read that correctly?
A. Yes, you did.
Q. Who are the experts you referred to in this email?
A. Well, Dr. Yoost, and I don't think I can recall, I spoke to somebody in endocrine at West Virginia University, but I don't have the name and I didn't put

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the name in there. I don't think I, I don't really recall it, but I probably could resurrect it if needed.
Q. Okay. And just to confirm, those were the only two experts you spoke with?
A. Those are the two, yes.
Q. Turning back to the body of your email, what did you mean by a standard of care?
A. Standard of care is a designation of certain medical care as meeting the criteria to be considered excellent healthcare and appropriate healthcare. If something falls under the standard we rarely recognize it because the person doesn't do as well or doesn't respond. But the standard of care is kind of a broad definition, we know it when we see it and we all strive to deliver care that meets the standard of care.
Q. Please look at the last line in the paragraph that says, "If this child had a diagnosis of precocious puberty, we would allow use of this medicine for that condition." Did I read that correctly?
A. Yes, you did.
Q. And I believe you stated this earlier, but just to confirm, West Virginia Medicaid covers treatment for precocious puberty?
A. That's correct.
Q. What is the average age of a patient who might

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require treatment for precocious puberty?
MS. BANDY: I'll just object to the form of the question. You can answer.
A. I would be, I would be guessing on this, I don't know with entire certainty, but I would guess that the age would be in the 10 to 13 or 14 range.
Q. Could it be younger than that?
A. It's possible.
Q. And just returning to the conversation regarding standard of care. Puberty delaying treatment is within the standard of care, correct?
A. It is, it is. And we fortunately don't see too many cases in which we're dealing with precocious puberty. We see most of the cases where delaying puberty is, the decision is made by endocrinologists, occasionally it's made by an adolescent gynecologist, but the standard of care is, yes, it is, certainly delaying puberty can be identified as a standard of care.
Q. When West Virginia Medicaid participants receive care for precocious puberty, do their parents supply the necessary consent for that treatment?
MS. BANDY: Object to the form.
A. I don't know. I would be guessing, I don't know the answer to that.

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Q. And concerns regarding age for such care have not been raised by BMS, correct?
A. Not to my knowledge.
Q. Okay. I'm going to introduce another exhibit.
(Exhibit 9 marked for identification.)
Q. Do you see what has been marked as Exhibit 0009?
A. I have it on the screen now.
Q. Okay. I am showing Dr. Becker what has been marked as Exhibit 0009, it is an email with the subject, "Vantas for transgender dysphoria." In the lower right-hand corner the document is Bates stamped DHHRBMS012313. Do you see that?
A. Yes, I do.
Q. I will represent to you that this corresponds with the first Bates range identified in response to RFP6. Please take a moment to review this email. Do you recognize this email?
A. Yes, I do.
Q. Dr. Becker, BMS will approve the use of Vantas for treatment of precocious puberty, correct?
A. That's correct. Now let me add to that statement. Now that, now that I am aware that it is a medical treatment, it changes, it changes our capacity to review the cases for that. And so if in fact it is a medical service and the individual is enrolled in an

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MCO, it would not be our decision to approve it. When I say we would, I'm basing it on my opinion that it was appropriate therapy for a case in the past or this particular case of the 11-year-old. So I don't want to confuse that issue.
Q. Vantas can be prescribed off label for treatment of precocious puberty, correct?
A. That's correct.
Q. The same is true regarding treatment of gender dysphoria, correct?
A. Yes, that's correct.
Q. The documents we just reviewed pertaining to request for production 6 were specific to coverage for care for one Medicaid participant, correct?
A. That's correct.
Q. And those materials were specific to puberty delaying treatment for a minor, correct?
A. That's correct.
Q. None of the materials and research considered regarding this individual participant pertain to the exclusion of coverage for surgical care to treat gender dysphoria in adults, correct?
A. That's right.
Q. Okay. Dr. Becker, I think we're going to take a ten-minute break.

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A. That's fine.
(A break was taken at 9:25 a.m.)
BY ATTORNEY SMITH:
Q. Dr. Becker, as the organizational representative for BMS are you a participant in the Medicaid evidence based decisions project?
A. Yes, I am.
Q. Okay. If I refer to the project as MED, will you know what I mean?
A. Yes.
Q. What is MED?
A. MED is a group of researchers who are organized at Oregon Health & Sciences University, it's a center for evidence based policy. They sell their services in performing research on medical questions to various Medicaid programs, so we contract with them.
Each year we pay a membership fee to participate in their work. We can submit topics, we receive reports, we participate in policy discussions with them, and occasionally we get to travel to a meeting somewhere, a larger meeting for a few days, but COVID has kind of knocked out those meetings. We use them as a resource when we're trying to answer some of the more complicated questions about our program. And I think MED probably has 15 states at any one time represented

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in their membership. So it's a good opportunity to exchange ideas with other states.
Q. Okay. Well, I'm going to introduce another exhibit.
(Exhibit 10 marked for identification.)
Q. Okay. Do you see what has been marked as Exhibit 0010?
A. Yes, I do.
Q. Okay. It is an email with the subject, "MED report on gender dysphoria." In the lower right-hand corner the document is Bates stamped DHHRBMS012648. Do you see that?
A. I do.
Q. I will represent to you that this corresponds to the eighth Bates range identified in response to RFP6. Please take a minute to review the email which is the first page. Do you recognize this email?
A. I do recognize it.
Q. I am now going to read the message, "Jennifer forwarded me the MED report on gender dysphoria. The link is in the attachment, the report is 35 pages. I pulled highlights from the report and attached to this email." Did I read that correctly?
A. Yes, you did.
Q. Okay. Please scroll down and review the

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attachment to this email. You should see Bates stamp DHHRBMS012649 on the first page. Do you see that?
A. Yes, I do.
Q. The subject of this attachment is, "Additional services for treatment of gender dysphoria, evidence, federal guidelines, coverage policies and reimbursement." I will represent to you that this corresponds to the second Bates range identified in RFP6. This document has been marked confidential by defendants. Dr. Becker, do you recognize this review and policy report? And please feel free to scroll up and down if you need to.
A. I recall this document. I'm not sure that I reviewed it in any detail, but yes, I recall the document and I've seen others on other topics similar to this.
Q. Okay. I am going to introduce another exhibit, okay?
A. Sure.
(Exhibit 11 marked for identification.)
Q. Okay. Do you see what has been marked as Exhibit 0011?
A. Yes, I do.
Q. Okay. It is an email with the subject, "Topics." In the lower right-hand corner the document

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is Bates stamped DHHRBMS012711. Do you see that?
A. Yes, I do see it.
Q. I will represent to you that this corresponds to the tenth Bates range identified in response to RFP6. Please take a moment to review this email, which I believe is just the first several pages, so the first three pages.
A. Yeah.
Q. Do you recognize this email?
A. I do recognize it.
Q. Okay. Please scroll down and review the attachment to this email. There are going to be two attachments, but we'll start with the first one, okay. Can you please scroll to the document with the subject, "Treatment for gender dysphoria, guidelines and payor policies summary." And then on the first page of that in the lower right-hand corner the document Bates stamp is DHHRBMS012714 in the lower right-hand corner. Do you see that?
A. I do see that.
Q. Okay. I will represent to you that this corresponds to the tenth Bates range identified in response to RFP6. This document has been marked confidential by defendants. Do you recognize this review and policy report?

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A. I do.
Q. Okay. Dr. Becker, scroll to Page 7 of the report. At the bottom of the report you should, at the bottom of Page 7 you should see Bates number DHHRBMS012722.
A. Page 7?
Q. Yes. And you can go by the pages in the actual report.
A. Yeah. Okay, yes, a summary.
Q. Yes. And do you see Bates No. DHHRBMS012722 in the bottom right-hand corner?
A. I accidentally advanced a little bit further. Let me get back there. Yes, there we go.
Q. Okay. And just to confirm, do you see the Bates number I read off?
A. I do.
Q. Okay. I'm going to read the last line within the paragraph under summary, "The majority of payor policies and guidelines follow the standards of care set forth by the World Professional Association for Transgender Health." Did I read that correctly?
A. You did.
Q. Okay. We are going to scroll to the second attachment that came with this email. If it's easier, I believe that if you use, if you kind of highlight the

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bottom of the viewer it's going to be 99 out of 113, that will start the first page of the next report.
A. Okay.
Q. Were you able to get to the first page of the second report?
A. I'm just about there.
Q. Okay.
A. You said it's 99, right?
Q. It's going to be 99 out of 113, that's the sum total of all the pages in this document series.
A. Okay.
Q. But what you should see on the first page of the second attachment would be, "Puberty suppression for adolescents with gender dysphoria."
A. Okay.
Q. And the Bates number is DHHRBMS012809. Do you see that?
A. Bear with me.
Q. Okay. No problem.
A. I'm almost there. I'm trying not to overrun this.
Q. I understand.
A. It's a long file.
MS. CYRUS: Excuse me, Avatara or the court reporter, this is Lou Ann Cyrus, I just have a question

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about the program. Is there a way as opposed to scrolling, is there a way you can just put in the page of the exhibit that you want to go to or is it just you have to scroll? I was trying to play around with it and couldn't figure out how to do it if it exists.
ATTORNEY SMITH: I think, I don't know if you can do that in the actual, on the actual platform. I think the only way to actually do that would be to do it, you would have to download and do it that way where it would pop up in Adobe.
MS. CYRUS: Okay, I gotcha. Thank you.
ATTORNEY SMITH: No problem.
A. I'm at the report now.
Q. Okay. So, Dr. Becker, do you see the title on the second report, "Puberty suppression for adolescents with gender dysphoria"?
A. I do.
Q. Okay. In the lower right-hand corner the document is Bates stamped DHHRBMS012809. Do you see that?
A. Yes, I do.
Q. I will represent to you that this corresponds to the tenth Bates range identified in response to RFP6. This document has been marked confidential by defendants. Dr. Becker, do you recognize this report?

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A. Yes, I do.
Q. Okay. Would you scroll to Page 1 of the report. At the bottom of the report you should see on Page 1 Bates No. DHHRBMS012810.
A. I do see that.
Q. I'm going to read the first bullet point within, well, within the section guidelines, "The Endocrine Society and the World Professional Association For Transgender Health (WPATH) recommends puberty suppression for adolescents who meet these minimum criteria." Did I read that correctly?
A. Yes, that's correct.
Q. Okay. I'm going to read the fourth bullet point within the guideline section, "Recommendations are based on reversibility, harms of refraining from treatment, and evidence of improved outcomes from uncontrolled observational studies." Did I read that correctly?
A. Yes, you did.
Q. Okay. I'm going to introduce another exhibit.
(Exhibit 12 marked for identification.)
Q. All right. Do you see what has been marked as Exhibit 0012?
A. Yes, I do.
Q. Okay. It is an email with the subject, "Transgender issues, FW: Medicaid brief for WV." In the

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lower right-hand corner the document is Bates stamped DHHRBMS012434. Do you see that?
A. I do.
Q. I will represent to you that this corresponds to the sixth Bates range identified in response to RFP6. Please take a moment to review the email which is on the first page. Do you recognize this email?
A. I don't think it was directed to me, but I do recognize it since in going over things we, this may have been in the mix of emails that I saw related to gender dysphoria that may have somehow tracked to me.
Q. Okay. Please scroll down and review the attachment to this email.
A. Okay.
Q. You should now be looking at the document with the subject, "Ensuring nondiscrimination for transgender people in the West Virginia Medicaid program." In the lower right-hand corner the document is Bates stamped DHHRBMS012435. Do you see that?
A. I do.
Q. Okay. I will represent to you that this corresponds to the sixth Bates range identified in response to RFP6. Do you recognize this document?
A. Only from my record review, I don't know that it ever came to my direct attention.

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Q. Let's scroll to Page of the document.
A. Okay.
Q. And just in case you haven't seen, the pages for this document are at the top on the right-hand side.
A. Got it.
Q. Okay. The bottom page should read the following Bates No. DHHRBMS012441. Do you see that?
A. Yes, I do.
Q. Okay. I'm going to read the bold line near the top of the page, "Transition-related care coverage does not impose significant costs while significantly enhancing the well-being of beneficiaries." Did I read that correctly?
A. Yes, you did.
Q. Okay. I'm going do introduce the next exhibit.
(Exhibit 13 marked for identification.)
Q. Do you see what has been marked as 0013?
A. Yes, I do.
Q. It's an email with the subject, "Medicaid talking points." In the lower right-hand corner the document is Bates stamped DHHRBMS012483. Do you see that?
A. Yes, I do.
Q. Okay. I will represent to you that this corresponds with the seventh Bates range identified in

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response to RFP6. Please take a moment to review this email. Do you recognize this email?
A. Only from my review. I think I, I think I connect this back to the prior email material, is that right?
Q. I'm sorry?
A. Yeah, it looks like the attachments connect back to the prior document that we reviewed.
Q. So actually, Dr. Becker, this email has separate attachments, so there are going to be four attachments that we'll look at.
A. Oh, okay, that's fine.
Q. So it has four attachments, we're going to scroll down to the first one, okay?
A. All right, gotcha.
Q. So the subject line for the first attachment should read, "New York State Department of Health, office of health insurance programs, criteria standards for the authorization and utilization, management of hormone therapy and surgery for the treatment of gender dysphoria." In the lower right-hand corner you should see Bates stamp DHHRBMS012485. Do you see that?
A. Yes, I do.
Q. Okay. I will represent to you that this corresponds with the seventh Bates range identified in

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response to RFP6. Do you recognize this document?
A. Yes, again, from review.
Q. Okay. We're going to scroll down to the next attachment. You should see the subject, "Gender affirmation surgery"?
A. I do.
Q. Okay. And in the lower right-hand corner the document Bates stamp is DHHRBMS012489. Do you see that?
A. I do.
Q. Okay. I will represent to you that this corresponds to the seventh Bates range identified in response to RFP6. Do you recognize this document?
A. Yes, again, from review.
Q. Okay. We're going to scroll to the next attachment. The next attachment is untitled, but you should see the Bates stamp DHHRBMS012498.
A. Okay.
Q. Okay. I will represent to you that this corresponds to the seventh Bates range identified in response to RFP6. Do you recognize this document?
A. Yes.
Q. Okay. I'm going to read the first line, "Where state Medicaid programs have assessed the costs of covering transition related care, minimal costs have been observed." Did I read that correctly?

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A. Yes, you did.
Q. Okay. You're going to scroll to the next and final attachment that's part of this email. You should see the subject, "Famous for transgender Medicaid beneficiaries"?
A. Yes, I have it.
Q. In the lower right-hand corner the document is Bates stamped DHHRBMS012500. Do you see that?
A. Yes, I do.
Q. Okay. I will represent to you that this corresponds to the seventh Bates range identified in response to RFP6. Do you recognize this document?
A. It's familiar I think from review.
Q. Okay. On the first page I'm going to read the third bullet point under, "Medical basis." Do you see that third bullet point?
A. I do see it.
Q. Okay. "No significant impact on healthcare costs. Several studies have found that the cost of eliminating transgender exclusions is minimal or nonexistent and can lead to long-term savings." Did I read that correctly?
A. Yes, you did.
Q. All right. I'm going to introduce another exhibit.

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(Exhibit 14 marked for identification.)
Q. Do you see what has been marked as 0014?
A. I do.
Q. It is an email with a subject, "Transgender research." In the lower right-hand corner the document is Bates stamped DHHRBMS015304. Do you see that?
A. I do see it.
Q. Okay. I will represent to you that this corresponds to the 12th Bates range identified in response to RFP6. Please take a moment to review the email. Do you recognize this email?
A. I do, it's from one of my nurses.
Q. And specifically which nurse?
A. Stacy Hanshaw.
Q. Okay. I'm going to introduce another exhibit.
(Exhibit 15 marked for identification.)
Q. Do you see what has been marked as 0015?
A. Yes, I do.
Q. Okay. It is an email with the subject, "Gender dysphoria." In the lower right-hand corner the document is Bates stamped DHHRBMS013523. Do you see that?
A. I do see that.
Q. I will represent to you that this corresponds to the 11th Bates range identified in response to RFP6. Please take a moment to review this email. Do you

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recognize this email?
A. Yes, I do.
Q. Dr. Becker, you used the word consensus, and just so you know, it's going to be around the middle of the page.
A. Let's see here.
Q. And I can actually read that part to you, "Thanks, Carrie. That seems to be the consensus in private insurance, I appreciate the info. What is the position of PEIA?" Did I read that correctly?
A. Yes, you did.
Q. Okay. You used the word consensus. Were you indicating that the consensus among private insurance companies seems to be that treatment for gender dysphoria can be medically necessary?
A. I don't know if I know what I was considering at the time of that particular response. Give me a minute to look at what was being said and hopefully I can reconstruct what I was thinking when I said the word. It's kind of a, kind of one of those general expressions.
I think my choice of the word consensus was to say the private insurance world is increasingly paying attention to the need for treatment for gender dysphoria and that policy, that we at the time, this is 2020, at

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the time were seeing an increase coverage of services generally around gender dysphoria. But I don't know that I was specifically addressing coverage for surgery or any other specific issue, I was simply saying there is more attention paid to this in the policies of the health insurance world.

Q. Okay. I'm going to, I'm going to introduce another exhibit.

(Exhibit 16 marked for identification.)

Q. Do you see what has been marked as 0016?

A. I do.

Q. And this is an email with the subject, "Surgery for gender transition." In the lower right-hand corner of the first page the document is Bates stamped DHHRBMS015453. Do you see that?

A. I do see that.

Q. Okay. I will represent to you that this corresponds to the 13th Bates range identified in response to RFP6. Please take a moment to review this email. Do you recognize this email?

A. Yes, I do. I wrote this information originally to try to get some information from our colleagues at the MED group.

Q. Let's scroll to the first attachment that was a part of this email. Do you see the attachment with the

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subject, "Which U.S. states Medicaid programs provide coverage for gender affirming hormone therapy and gender affirming genital surgery for transgender patients? A state-by-state review and a study detailing the patient experience to confirm coverage of services"?

A. I do see that.

Q. Okay. In the lower right-hand corner the document is Bates stamped DHHRBMS015455. Do you see that?

A. Yes.

Q. I will represent to you that this corresponds to the 13th Bates range identified in response to RFP6. Do you recognize this document?

A. Yes, I do.

Q. Let's scroll to Page 418. You can find the page numbers on the top left, it kind of rotates between top left and top right.

A. You did say 418?

Q. Yes.

A. Okay.

Q. Okay. You should see Bates No. DHHRBMS015463 at the bottom of the page.

A. Yes, I do.

Q. Okay. I'm going to read the second sentence in the first full paragraph on the right. Do you see where

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I'll most likely be reading from, where I'll start reading from?

A. Yes, "Given"?

Q. Yes. "Given the abundance of empiric data that supports the benefit to patient quality of life and cost savings to state healthcare systems, it is hard to understand why some states would make such services inaccessible under Medicaid." Did I read that correctly?

A. Yes, you did.

Q. Okay. We're going to scroll to the next attachment. Do you see a document with the title, "Medicaid coverage for gender affirming care"?

A. Yes, I do.

Q. Okay. In the lower right-hand corner the document is Bates stamped DHHRBMS015468. Do you see that?

A. I do see that.

Q. I will represent to you that this corresponds to the 13th Bates range identified in response to RFP6. Do you recognize this document?

A. I do.

Q. Okay. Dr. Becker, let's return to Exhibit 0015.

A. Back to?

Q. Exhibit 0015.

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A. Okay. The PEIA document?

Q. Yes.

A. Okay.

Q. Just a quick question. Did you share the information in this document with anyone?

A. I didn't share it in writing. I suppose that the information that was there was at least mentioned in the meetings, in the policy meetings that we had. And since our staff from our policy team, medical policy team participate in some of the other meetings regarding coverage, particularly our proc code meetings, it may have been shared in that level. I don't recall specifically quoting this email to anyone, but it wouldn't surprise me if it wasn't talked about with the group.

Q. Okay. And let's return to Exhibit 0016.

A. Okay.

Q. Let's scroll to the last attachment.

A. What is that titled?

Q. It's the attachment with the title, "Medicaid coverage for gender affirming care."

A. Okay.

Q. You mentioned earlier that you recognized this document. Do you know what it is?

A. I don't.

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Q. Okay.
A. I'm here. Okay. So I'm on this and I see what it is, but I don't know what it is.
Q. Okay. I think we're going to take another short break for about ten minutes, is that okay with you, Dr. Becker?
A. That would be fine.
Q. Okay.
(A break was taken at 10:21 a.m.)
BY ATTORNEY SMITH:
Q. Dr. Becker, could you please return to Exhibit 0001.
A. Okay.
Q. Okay. We're going to scroll down --
A. Not the one we were on, right?
Q. Not the one we were on, it's the first exhibit that was introduced.
A. Okay.
Q. Okay. We're going to scroll down to No. 12. Have you been able to reach it?
A. Yeah, I'm there.
Q. Okay. You have been designated to testify about Topic 12. I'm going to read Topic 12 into the record, "Any research, consideration and/or analysis by or on behalf of you regarding providing access to gender

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confirming care for West Virginia Medicaid participants." Did I read that correctly?
A. You did.
Q. Okay. You testified earlier that the exclusion for gender affirming care is based on concerns about safety, correct?
A. Yes, partly safety, partly efficacy and partly the limitations of our system to cover.
Q. Okay. What studies were reviewed by BMS about the safety of gender affirming surgery that supports the exclusion?
A. It would take me a while to look at those studies. I'm not really prepared I think to talk to those studies in detail. I feel I had the resources to share with you, but I don't have those resources before me, so I didn't come in prepared to actually give you those particular studies.
Q. When were those resources reviewed?
A. We have reviewed resources regarding this subject probably for five, six, seven years, and not on any specific schedule, there was not a work group to specifically study changes in the evidence. So there was no single focused effort that said let's go out there and look and see if we need to change our policy on this. It is many, many subjects come through our

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office and need to be researched, this was not one of them that came to us with any great frequency.
Q. What peer review literature did BMS review regarding the gender affirming surgeries?
A. Again, I give the same answer, we reviewed publications in that regard, but I did not prepare myself today to share those specific topics with you. We did look at peer reviewed literature.
Q. Okay. Who did you speak to about the safety of this care?
A. The only people that I have spoken to about the safety of this care have been individuals involved with me either through the Medicaid Medical Director Network or individuals at MED project.
Q. So have you spoken to any providers who routinely provide gender affirming surgery?
A. No, I haven't.
Q. How about any transgender people who have received this form of care?
A. No, I haven't.
Q. Any researchers who routinely perform scholarly research about these surgeries?
A. No, I haven't.
Q. Anyone who routinely researches the patient outcomes with regard to safety of these types of

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surgeries?
A. To some extent I have gotten that information through the Medicaid Medical Director Network.
Q. Okay. So the information that you've received through the Medicaid Director Network, has that provided you with the opportunity to speak to administrators of other Medicaid programs in other states?
A. Yes, it has.
Q. Okay. Have you spoken to Medicaid directors in other states who have decided to provide coverage for this care about the safety of doing so?
A. Yes, I have.
Q. Do you remember which medical directors you've spoken to or what states they are medical directors in?
A. Sure. I've talked to people in states including Arkansas, Oklahoma, Colorado, Washington State, Oregon, New York, Connecticut, Maryland, Pennsylvania and probably some other states. Those are states that I have pretty close contact with through the Medicaid Medical Director Network. And I, I spoke frequently to the then director of Medicaid in Colorado Judy Zerzan about their decision to cover surgeries, so I get some information from her and probably some reference to some articles.
Q. Okay. In your conversations with Judy Zerzan do

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you remember any of the conclusions that she shared with you?
A. Well, they concluded that opening up coverage for the surgery was an appropriate thing to do with the Colorado population, and so they produced a pretty robust coverage package.
Q. Let's take a quick five-minute break.
A. Okay.
(A break was taken at 10:40 a.m.)
BY ATTORNEY SMITH:
Q. Dr. Becker, previously I asked a couple questions about literature that you've reviewed. Quick question, if we were to take a longer break would you be able to pull some of the literature that you mentioned you reviewed?
A. I could try.
Q. Okay.
A. I mean, I will try. There are probably some articles that I can lay my hands on pretty quickly.
Q. Okay.
A. And, you know, I think, I think part of the reason that this is, that I'm a little bit surprised and confused by this is that through the Medicaid program I've really operated mostly under the principle that we do not cover cosmetic surgeries and that that being the

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policy, consideration of much of what is in the list of those surgeries that are used for transition seem as though they are cosmetic, and hence therefore enhancing appearance.
Q. Okay.
A. That being the case, they don't, you know, and having only a few cases that we're even aware of in our Medicaid system, it just doesn't get the kind of attention. Do you see what I'm saying?
Q. How much time would you need to pull some of the literature that you referred to?
A. Well, maybe an hour. I have to call, what I will do, I'm not in my office, I will need to call somebody and hope I can reach them at the Medicaid office.
Q. And then, Dr. Becker, is there anything on the list of literature that you reviewed or on the list in general that you were talking about with regard to surgical procedures that wouldn't be cosmetic?
A. There may be. I mean, if you stick to the strict plastic surgery definition of it, it would be reconstructive, reconstructive usually is following injury or illness, and so it's a little tricky for me to envision that, but possibly, yeah.
Q. Dr. Becker, can you provide me with a list of

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the surgeries you're speaking about?
A. We made a list. I can reach out to Carrie Mallory, we made a list of surgeries and I'll be glad to try to pull that and get it to you. Sorry, I didn't mean to derail this deposition for us.
Q. Okay. I think we'll move on to a couple of other questions. You testified earlier that the exclusion for gender affirming surgical care was based on concerns about a lack of evidence of merit, correct?
A. Yes.
Q. If I refer to that as efficacy, is that an accurate shorthand?
MS. BANDY: I just want to place an objection that Dr. Becker was not designated as the representative on Topic No. 10, that Sarah Young has already provided testimony on that, but I just want to place that on the record.
ATTORNEY SMITH: Understood.
Q. You can answer.
A. Yeah, I think efficacy is an appropriate term.
Q. Okay. What studies did BMS review about the efficacy of gender affirming surgical procedures?
A. Again, I don't have those specifically listed. You saw the communications that we've done over the years trying to obtain reviews, positions from other

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groups. We've obtained information from other states about their policy and, you know, that's been the basis of this conversation.
Q. Okay. Would the same answer apply to what other peer reviewed literature you reviewed regarding the efficacy of gender affirming surgical procedures?
A. I think so, yes.
Q. Did you speak to anyone with knowledge about the efficacy of this care?
A. Of this care, is that what you said?
Q. Yes.
A. Yes, we did. It's a limited number of people who were available to speak on this subject, but yes, we have talked to people.
Q. Okay. Which people did you speak to?
A. Well, I'll always come back around to Dr. Yoost here at the University since she knows the population very well, but I've also talked to Dr. Chaffin who's a gynecologist here in the community, he provides some care, Dr. David Chaffin. Dr. Kelly Melvin, he is a psychiatrist boarded in child and adolescent psychiatry. And those would be the main, main contacts.
Q. Okay. So starting with Dr. Yoost, does Dr. Yoost perform these surgeries?
A. She does not, she's a pediatrician.

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Q. Okay. Moving to Dr. Chaffin, does Dr. Chaffin perform these surgeries?
A. Yes, he does.
Q. What specific surgeries does Dr. Chaffin perform?
A. That I don't know. I can reach out to him and ask him.
Q. Okay. Moving to Dr. Melvin, does Dr. Melvin perform these surgeries?
A. He does not, he's a psychiatrist. He does initial evaluation and recommends for treatment, but he does not do the surgeries.
Q. Moving back to Dr. Chaffin, how many surgeries has Dr. Chaffin performed?
A. I cannot answer that question for you.
Q. When was the last time Dr. Chaffin performed one of these surgeries?
MS. BANDY: Object to the form of the question.
A. I would not know, I would need to reach out to Dr. Chaffin to get that information.
Q. Have you spoken to any providers who routinely provide these type of services, so besides Dr. Chaffin have you spoken to any other providers who would routinely provide these types of services?

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A. No, I have not and I'm not aware of who they are.
Q. Have you spoken to any researchers who routinely perform scholarly research about these surgeries?
A. No, I have not.
Q. Have you spoken to anyone who routinely researches the patient outcomes for these types of surgeries?
A. No, I have not.
Q. And just to confirm and kind of go along the route of questioning here, have you spoken to any researchers who routinely perform scholarly research on the efficacy of these surgeries?
A. No, I have not.
Q. Have you spoken to anyone who routinely researches the patient outcomes for efficacy regarding these surgeries?
A. No, I have not.
Q. Okay. Did you speak to administrators of other Medicaid plans in other states who have decided to provide coverage for this care about efficacy of these treatments?
A. Only in a general sense and not with any data in front of me. But yes, I have talked to other state medical directors, not their Medicaid directors, but

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their medical directors and have gotten their impression of the decision to add these services.
Q. Okay. Which ones?
A. Again, it's not a systematic list, it would be Maryland, Pennsylvania, David Kelly from Pennsylvania, Ohio, Tennessee. Do you want the names of these folks?
Q. So, actually, let's, as you're going through that list let's stop at each one and I'll ask you a follow-up question.
A. Okay.
Q. So with regard to Maryland who did you speak with?
A. I don't know that I recall the name of the person on their team.
Q. How many times did you speak with them about this specific, about the efficacy of these treatments?
A. Probably one time.
Q. Okay. And what specifically did you discuss?
A. What we discussed is the decision to include coverage for these procedures and what their general impression was of the, of the uptake on that and how many cases they were actually seeing.
Q. Okay. And what did they say with regard to efficacy?
A. Well, I think that they seemed content, but

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again, this is a conversation, not, not a systematic review of what they're doing. And so their impression was that it was necessary that they had the services and that they did it and that they were satisfied that they had done it and had good guidelines for it.
Q. Okay. I think the next one was Pennsylvania?
A. Pennsylvania, that would be David Kelly. David Kelly is their medical director, the services flow through their MCO's, and Dr. Kelly seems satisfied that the policy that they had was working for them.
Q. Ohio?
A. I don't know if Ohio decided to cover it. Mary Applegate is the medical director there and I think she was in one of the conversations also, but I don't know if they cover the transition surgery, I would have to go back and look.
Q. Going back to Pennsylvania, what policy does Pennsylvania have?
A. I don't know. This is not, this is out of the range that I had prepared for in this conversation today. I mean, this can all be determined, but it wasn't exactly what I anticipated.
Q. I think the next state you mentioned was Tennessee?
A. Yes, Tennessee.

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Q. Who did you speak with?
A. Vaughn Frigon is their medical director, and Vaughn and his colleague David Collier would have been the folks that I talked to. I believe that they made a decision to cover it. Again, it --
Q. I'm sorry, Dr. Becker, I think you broke up, at least on my end. Can you repeat that?
A. Yeah, sure. So what I was saying is I think that, I think that Tennessee is covering the surgeries now, but I don't know what policy they put in place in that regard and I don't know how happy they are with it.
Q. Okay. What was the next state on the list, I think we stopped at Tennessee?
A. Yeah, I think we stopped at Tennessee. I'm trying to recall this by heart from a conversation in Washington, D.C. about this. I know I had a conversation with Judy Zerzan in Colorado where this has been covered. I think they actually, according to Judy they had written a comprehensive policy at their Medicaid that goes back to 2012 and they were very happy with theirs and they have studied the efficacy and the outcomes. Although I don't know that I've read the report, I've heard her speak about it.
Q. Okay. So just to confirm, Judy didn't share this report with you?

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A. No. I may have gotten the report, but it's years ago.
Q. Okay. And what exactly did Judy say about the efficacy?
A. She said that she was in favor of it and glad that they had adopted this policy.
Q. Okay. Is there another state on that list?
A. I'm sure there are other states on the list. I'm reluctant to put them out there because there are 45 medical directors in these meetings and these are sidebar meetings to talk about it. I just feel like it's not, it's not in our best interest or yours perhaps to speculate about these conversations. The fact is we tried really hard to get information about the wisdom of and the experience with adopting standards that allow for transition surgery.
Q. Let's look at, Dr. Becker, we're going to move on to the next question. Did BMS retain anyone to analyze the efficacy of gender affirming surgery?
A. We did not.
Q. Okay. Has BMS considered anything else relating to the efficacy of gender affirming surgery that we have not already discussed?
A. Not that I'm aware of.
Q. Earlier before when we were talking about safety

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with regard to gender affirming surgeries you also listed some of the Medicaid directors, some of the states that you had spoken with. I want to return to that list and kind of go to a couple of the states that you listed, if you remember.
A. Okay. I'll try my best.
Q. Okay. The first state that, or one of the states you listed was Oklahoma?
A. Yes.
Q. Okay. Who did you speak with in Oklahoma?
A. Mike Herndon. Mike Herndon is a good friend of mine in the Medicaid system, he is now retired, he was the medical director for Oklahoma for years and also director for patient centered outcomes resurgence too. And Mike and I had numerous conversations about the challenge in figuring out how to incorporate gender dysphoria services into a Medicaid program.
Q. Were any of the conversations specific to safety though?
A. I think we talked about the notion of complications and main complications being infection and the other complication being things like urethral strictures and such following the gynecologic surgery.
Q. I believe you also mentioned Maryland?
A. Yes. Maryland has gone through a couple

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transitions, I don't think they have the same medical director in Maryland at this point, but we talked and because they're a state close to us, I'm curious about how they set their policy. I think they opened the codes for the surgical transition, to the best of my knowledge they're satisfied with that.
Q. Do you remember some of the other states that you previously listed?
A. I know that Washington State has done presentations on gender dysphoria and treatment strategies, I know that Oregon has done those, and I'm trying to think if there are any others. This is kind of off, off the top of my head. That's what I can recall.
Q. That's okay, Dr. Becker. Why don't we start with Washington. What do you remember with regard to their presentations on surgical procedures and specifically safety?
A. Well, the time frame for this would have been in the mid 2015, '16 I would say is when this information would have been presented. They presented a program at one time on comprehensive care for those with gender dysphoria. I don't have a copy of the PowerPoint, I don't know if we can retrieve anything like that, but they did talk about the various options and they did

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talk about candidates for surgical intervention.
Q. You also mentioned Oregon?
A. Yes.
Q. What did you learn with regard to safety and gender affirming surgeries?
A. Well, Oregon has the papers and rather than, and we have those included in the documents that have been provided here. So the folks at the Oregon MED work very closely with the State of Oregon on policy development, so rather than speculate about it, I feel like we could pull up their documents and see if there are sections in their documents that support the safety.
Q. Okay.
A. It's in part of the documents that you and I have been reviewing.
Q. Okay. And do both Oregon and Washington provide gender confirming surgeries through their Medicaid programs?
A. As far as I know they do, yes.
Q. And with regard to some of the conversations you've had with folks from Oregon and Washington, have any of those conversations been on, or with regard to the conversations you've had with people from Oregon, have any of those conversations been on the safety of surgical procedures?

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A. I doubt that. I think that the conversations are always more general conversations. What I mean by that is that some parts of the country experience a larger number of individuals reporting gender dysphoria, seeking treatment for it and seeking surgical procedures. And the providers who are available to offer those kind of interventions, whether they're endocrine or whether they're surgical, are in greater numbers in other areas than they are here in West Virginia. We're pretty short on doctors I am sure who are able to adequately manage these cases.
And that was part of the point that Dr. Yoost was making to me when I was talking to her about these is that she believes that, she expressed to me that she believes individuals with this condition need to really be safe at a center where there's great expertise with the best doctors.
Q. You mentioned that there is a shortage of providers in the state, what is this based on?
A. I base it on what I hear in my clinics and what I hear from the residents around our program. And some folks who do presentations for us on gender dysphoria talk about the difficulty of finding providers who are familiar enough and are able to make the appropriate referrals.

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Q. Okay. Some West Virginia Medicaid participants receive care out of state, correct?
A. They do.
Q. Okay. I think we can move on to some of the next questions in the next topic. I'm going to bring up another exhibit.
(Exhibit 17 marked for identification.)
Q. Dr. Becker, as we discussed earlier today, you have been identified to speak about the following request. So do you see Exhibit 0017?
A. Let me try refreshing.
MS. BANDY: Mine actually popped up at the top of the list, it actually populated at the top because it has two zeroes.
A. Got it.
Q. So you see it now?
A. I do.
Q. Okay. I'm showing Dr. Becker what has been marked as Exhibit 0017 titled, "Defendants' response to plaintiffs' first set of request for admissions." But I'll read the actual title, it's, "Defendants' response to plaintiffs' first set of requests for admissions to Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, Bureau for Medical Services." Dr. Becker, you have been

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designated to testify about the response to request for admission 1. Please take a moment to review this document, specifically the bottom of Page 1. Do you recognize this document?
A. I do.
Q. Okay. Did you review this document in connection with your testimony as the organizational representative for BMS today?
A. Yes, I did.
Q. Okay. On approximately the bottom of Page 1 you'll see text that reads, "Admit that gender confirming care can be medically necessary care for the treatment of gender dysphoria." The response provided, "Upon information and belief, experts may differ in opinion as to whether gender confirming care is medically necessary both in general and with respect to a particular patient. This request is admitted with the understanding that this area of treatment continues to evolve." Did I read that correctly?
A. You did.
Q. And are you aware that counsel identified you as the organizational representative to testify about BMS's response to request for admission 1?
A. Yes.
Q. Are you prepared to testify about this response?

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A. I think so.
Q. With respect to request for admission 1 specifically, what did you do to prepare for, what did you do to prepare to testify today?
A. To prepare to testify today I simply went back and looked at the various definitions I suppose of medical necessity. I was asked about medical necessity and I get asked about it quite often in my role, and so I did some preparation on that. I looked at the emails that had been sent and I looked back at the way we phrase things in our responses wherever we're asked to determine medical necessity in the field. This preparation was just general conversation and review of other positions we've taken.
Q. And conversation with who?
A. Some of the conversation was with my counsel.
Q. Okay.
A. Riley Romeo, that's who I worked with in crafting this response, and then our representatives.
Q. Okay. And which representatives?
A. Kim Bandy.
Q. Oh, okay. You're talking, okay.
A. I'm talking about Kim Bandy, Lou Ann Cyrus particularly.
Q. Okay. Dr. Becker, the response to request for

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admission 1 accurately describes the position of BMS on the medical necessity of treatment for gender dysphoria, correct?
A. That's correct.
Q. The last sentence of the response to request for admission 1 states, "This request is admitted with the understanding that this area of treatment continues to evolve." Please scroll down to Page 4. Are you on Page 4?
A. I'm getting there.
Q. Okay.
A. Page 4.
Q. Okay. Do you see the date August 27, 2021 on that page?
A. Oh, okay. There it is on the text, yes, on the 27th day of August 2021.
Q. Okay. Since this response was served on August 27, 2021 has anything about the science evolved?
A. None that I'm aware of.
Q. I'm going to introduce another exhibit.
(Exhibit 18 marked for identification.)
Q. Doctor, are you familiar with InterQual?
A. Yes, I am.
Q. Okay. Do you see Exhibit 0018? And it also might be at the top again of the marked exhibits folder.

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A. Yeah, I've got the document.
Q. Okay. So this is an InterQual sheet with the subset, "Gender affirmation surgery and requested service vaginoplasty for gender affirmation surgery." InterQual criteria is nationally accredited criteria for determining medical necessity for procedures, correct?
MS. BANDY: Object to the form.
A. Yes, it is.
Q. I'm sorry, I didn't catch your answer, Dr. Becker?
A. Yes, it is, that's what we use it for.
Q. Okay. What is the importance of using nationally accredited criteria?
A. Well, it creates consistency in standard.
Q. Does BMS use InterQual?
A. BMS does use InterQual and InterQual is used by our contractor for reviewing requests for surgery.
Q. And who is your contractor for reviewing requests for surgery?
MS. BANDY: Object to form.
A. The contractor would be Kepro.
Q. Okay. How does BMS use InterQual criteria?
MS. BANDY: Object to form.
A. InterQual criteria is one of the documents, one of the standards that we review against in determining

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necessity for prior authorization.
Q. InterQual is used on the fee for service side of Medicaid, correct?
MS. BANDY: Object to form and object to the line of questioning, that it's not within the topic areas designated.
Q. You can answer.
A. Yes, it does get used on the fee for service side.
Q. How is InterQual criteria factored into decision making regarding whether care is medically necessary?
MS. BANDY: Object to form.
A. In my experience with it, it's used as one of the indicators that the requested service has been reviewed and meets some standards. My role sometimes is in deciding where InterQual doesn't really apply. So I do get, I do get cases in which there are disputes based on incorrect application of InterQual, just for your information is one, one of the things that we subscribe to and rely on.
Q. What are some cases where InterQual criteria would not apply?
MS. BANDY: Object to form.
A. Typically InterQual criteria don't apply when the diagnosis is wrong. And so cases that come to me at

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times have had a diagnosis assigned and then the InterQual criteria is applied, but the diagnosis turns out to not be the diagnosis and then the patient is deprived of services or receives services that were not really necessary in the case. And so it's one, as I said earlier, it is one element of information to help guide us on the decision about diagnosis and procedure requests.

Q. As an organizational representative for BMS have you reviewed InterQual criteria regarding the medical appropriateness of surgical care for treatment of gender dysphoria?

A. No, I have not.

Q. Okay. Let's scroll to Page 3 of 8. You can see the pages at the bottom, on the bottom right-hand corner.

A. Okay.

Q. The Bates number is DHHRBMS015402. Do you see that?

A. I do.

Q. Okay. Scrolling up to 2, I'm just going to read the first sentence, "Delaying treatment for those with gender dysphoria is not a reasonable treatment option." Did I read that correctly?

A. Yes, you did.

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Q. Okay. Please scroll to Page 5 out of 8. The bottom right-hand corner has Bates No. DHHRBMS015404.

A. Yes.

Q. I'm going to read the top sentence, the sentence at the top of the page, "This is a procedure that can be performed for either medically necessary or cosmetic purposes. The criteria as written are intended solely for use in determining the medical appropriateness of this procedure and do not cover this procedure when performed for cosmetic reasons." Did I read that correctly?

A. You did.

Q. Okay. Dr. Becker, BMS only provides coverage for medically necessary care and/or services, correct?

MS. BANDY: Object to form.

A. That's correct.

Q. And BMS provides coverage for hormone replacement therapy, correct?

MS. BANDY: Object to form.

A. Yes, when medically necessary.

Q. If a request for hormone replacement therapy was submitted with only a gender dysphoria diagnosis code, it would be covered, correct?

MS. BANDY: Object to form.

A. Yes, my understanding is it will be covered.

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Q. And hormone replacement therapy can be treatment for gender dysphoria, correct?

A. Yes, it can.

Q. Is it fair to say then that BMS recognizes that at least some forms of gender confirming care, which can include hormone replacement therapy, can be medically necessary care for treatment of gender dysphoria?

A. Yes, that's true.

Q. Okay. I would like to take a break, but while we're on a break, Dr. Becker, could you start gathering the materials that you said you reviewed?

A. I will, I will make a call. Like I say, I'm not in the office, I'll call and try to get my folks to gather that.

MS. BANDY: And can I just ask for a clarification of the request that prompted the, the request that you are trying to look at those documents, just so I know what the request was?

ATTORNEY SMITH: Okay. It was in connection to Topic 12 and Dr. Becker essentially stated that there were materials that he reviewed, but couldn't remember what exactly the names or titles of those materials were. So that's the reason for this request.

MS. BANDY: Was there a specific question that he was responding to at the time, do you know?

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ATTORNEY SMITH: Yeah, I'm pretty sure I asked what the names of those articles were or like who they were written by.

MS. BANDY: Okay. So is it a request for materials he reviewed?

ATTORNEY SMITH: And it was specific to the safety and efficacy of gender affirming surgeries.

MS. BANDY: Okay. Thank you.

ATTORNEY SMITH: Okay.

BY ATTORNEY SMITH:

Q. Dr. Becker, how much time do you need?

A. Well, I suggested I need an hour, but I think at the end of an hour I may just be able to give you an answer and not the articles, so I'll do my best. You were asking about articles that were reviewed and not reviewed in the last couple of weeks, these were articles that have been reviewed over time as we've been looking at the gender dysphoria policies.

Q. Okay.

ATTORNEY SMITH: All right. Let's go off the record.

MS. BANDY: Well, I just wanted to place one more thing on the record. I note that Topic 12 asks for, "Any research, consideration or analysis by or on behalf of you regarding providing access to gender

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confirming care for West Virginia Medicaid participants." To the extent that you're seeking articles specifically addressing safety and efficacy, I would just object that that's not the same as the topic as written, so I just want to put that on the record as well.

ATTORNEY SMITH: All right. Let's go off the record. And, Dr. Becker, take as much time as you need.

THE WITNESS: Okay. Thank you.

(Discussion held off the record.)

(A break was taken at 11:37 a.m.)

BY ATTORNEY SMITH:

Q. We're going to read a stipulation that was drafted during the break and then just ask one question at the end to confirm what we've drafted reflects your understanding, okay?

A. That sounds fine to me.

Q. All right. "Stipulation of plaintiffs and defendants. Pursuant to Local Rule of Civil Procedure 11.2, plaintiffs and defendants hereby stipulate as follows: On March 30th, 2022, Dr. James Becker provided deposition testimony on certain topics in this case as an organizational representative for the Department of Health and Human Resources, Bureau of Medical Services

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pursuant to Federal Rule of Civil Procedure 30(b)(6). Plaintiffs and defendants enter the stipulation to clarify the testimony that Dr. Becker provided in that capacity.

Defendants stipulate there are no documents of which they are aware that were considered in adopting and/or maintaining the exclusion of gender confirming care in the West Virginia Medicaid program. Defendants' response to plaintiffs' request for production 6 which was served on plaintiffs on March 25, 2022, and which was marked as Plaintiff's Exhibit 4 during the deposition of Dr. Becker as an organizational representative, provides the complete list of the materials considered in connection with appeals of denials of coverage for gender confirming care were reviewed as background research by individuals who considered those appeals.

The deposition testimony that Dr. Becker provided on March 30th, 2022 regarding other materials he considered, which were not identified in the responses to request for production 6 and Plaintiff's Exhibit 4 to this deposition, relates solely to materials Dr. Becker considered while reviewing appeals of services denied for treatment of gender dysphoria or for other reasons, but not for the purposes of adopting

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and/or maintaining the exclusion in the health plans in the West Virginia Medicaid program."

Dr. Becker, did what I read, was what I just read a correct and true understanding of your understanding of what happened?

A. Yes, it is.

Q. Okay.

A. Yes. This is, the more we talked the more concerned I became about the fact that I was, these were, materials I referred to were not connected to any consideration of the surgery exclusion.

Q. Okay. At this time I have no further questions for you, Dr. Becker.

ATTORNEY SMITH: But I reserve the right to ask further questions if defense counsel questions the witness, so I'll pause there.

MS. CYRUS: Thank you. I have no questions of Dr. Becker and we will have him read.

ATTORNEY SMITH: And we'll note on the record that because Walt was unable to join today and because he'll still need to sign as local counsel and because he has not been able to review the stipulation, we simply need to hold open the deposition and so we can confirm Walt's agreement to the stipulation. So we'll be happy to confirm that the deposition is closed once

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we can file the stipulation.

MS. CYRUS: No problem whatsoever.

ATTORNEY SMITH: Okay.

(Proceedings concluded for the day at 2:53 p.m., 03-30-2022)

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

I hereby certify that I reported the Zoom deposition of Dr. James Becker on the 30th day of March 2022, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was reserved.

WITNESS MY HAND AND SEAL THIS 30th day of March 2022.

Kelley E Zilles

Kelley E. Zilles, RPR
Notary Public, Washington County, Minnesota
My commission expires 1-31-2025

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

April 12, 2022

To: Kimberly M Bandy, Esq.

Case Name: Fain, Christopher, et al. v. Crouch, William, et al.

Veritext Reference Number: 5096167

Witness: Dr. James Becker Deposition Date: 3/30/2022

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5096167
CASE NAME: Fain, Christopher, et al. v. Crouch, William
DATE OF DEPOSITION: 3/30/2022
WITNESS' NAME: Dr. James Becker

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Dr. James Becker

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5096167
CASE NAME: Fain, Christopher, et al. v. Crouch, William
DATE OF DEPOSITION: 3/30/2022
WITNESS' NAME: Dr. James Becker

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Dr. James Becker

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 5096167

PAGE/LINE(S) / CHANGE /REASON

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_____ _____
Date Dr. James Becker

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

_____
Notary Public

_____
Commission Expiration Date

h

z

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.

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5096167
CASE NAME: Fain, Christopher, et al. v. Crouch, William
DATE OF DEPOSITION: 3/30/2022
WITNESS' NAME: Dr. James Becker

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

5/16/2022
Date

Dr. James Becker

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this 16 day of May, 2022.

Lisa J Maynard
Notary Public

July 22, 2026
Commission Expiration Date

LISA J MAYNARD
Notary Public Official Seal
State of West Virginia
My Comm. Expires Jul 22, 2026
1600 Medical Center Drive Suite 3407 Huntington WV 25701

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, individually and on behalf of all others similarly situated, *et al.*, *Plaintiffs,* v. WILLIAM CROUCH, *et al.*, *Defendants.*	CIVIL ACTION NO. 3:20-cv-00740 HON. ROBERT C. CHAMBERS

PLAINTIFFS' AMENDED NOTICE OF 30(b)(6) DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs, individually and on behalf of the proposed classes, will take the deposition of Defendant West Virginia Department of Health and Human Resources, Bureau for Medical Services through its corporate representatives most knowledgeable about the topics listed herein at the following dates and times, and continuing thereafter until completed:

1. **Frederick Lewis**, February 25, 2022, beginning at 9:00 a.m. E.T.
2. **Sarah Young**, March 11, 2022, beginning at 9 a.m. E.T.
3. **Secretary Crouch**, March 17, 2022, beginning at 11:30 a.m. E.T. to 4 p.m. E.T.
4. **Secretary Crouch**, March 18, 2022, beginning 12:30 p.m. E.T. until completion
5. **Commissioner Beane**, as a Rule 30(b)(6) designee and in her individual capacity, March 29, 2022, 9:00 a.m. E.T.
6. **Dr. Becker**, March 30, 2022, 8:00 a.m. E.T. to 4:00 p.m. E.T.

Exhibit
Ex 0001

7. **Brandon Lewis**, April 5, 2022, 10:00 a.m. E.T.

8. **Jennifer Myers**, April 8, 2022, 9:00 a.m. E.T.

9. **Becky Manning**, April 12, 10:00 a.m. E.T.

If needed, and to the extent any of the designees above are not able to provide the seven hours of testimony on the record provided for under Federal Rules on the dates specified above, Plaintiffs reserve their right to continue the deposition on another date until it is completed.

The depositions will be taken remotely via video teleconference offered by Veritext. The depositions of each designee will continue from day to day until concluded. The depositions will be taken under oath before a certified shorthand reporter or other officer authorized to administer oaths. The deposition will be recorded by stenographic means, and on videotape. The deposition shall be used for discovery purposes and may be used as evidence in this action, including at trial.

The definitions contained in Plaintiffs' First Set of Requests for the Production of Documents apply to this deposition notice. The relevant time period is January 1, 2016 to the present unless otherwise noted below.

Pursuant to Rule 30(b)(6), Deponents provided by Defendant West Virginia Department of Health and Human Resources, Bureau for Medical Services shall be knowledgeable officers, directors, managing agents, or other persons who consent to testify on their behalf concerning the above-captioned matter regarding the following:

1. Your authority to and/or role in establishing eligibility standards for Medicaid providers, determining benefits, and reimbursing providers.

2. Your receipt of federal and/or state funds, including funds from the U.S. Department of Health and Human Services, and all representations made to the federal

and/or state government in the course of securing such funds.

3. Your choice to participate in the Medicaid program.

4. The development, creation, and/or use of the Medicaid Plan.

5. Your efforts to administer the Medicaid Program in West Virginia and/or affirm Your compliance with the Medicaid Act and the Patient Protection and Affordable Care Act.

6. Your relationship with each of the following, including any written or unwritten agreements, policies, practices, and/or procedures, and/or communications as they relate to the provision of healthcare coverage to West Virginia Medicaid participants: Mountain Health Trust, UniCare Health Plan of West Virginia, Inc., The Health Plan, Aetna Better Health of West Virginia, and the Rational Drug Therapy Program.

7. Your role in determining and/or offering healthcare coverage to West Virginia Medicaid participants, including Your authority, responsibility, and duties as they relate to determining and/or offering healthcare coverage to West Virginia Medicaid participants.

8. Healthcare coverage and/or denials through Medicaid for transgender West Virginians generally and Christopher Fain and Shauntae Anderson specifically.

9. The decision to stop excluding hormone therapy from coverage in 2017 and/or Your experience covering and/or denying coverage for hormone therapy before and after 2017.

10. Your policies, practices, and procedures related to the Exclusion, including but not limited to how the Exclusion is developed, approved, and maintained.

11. Any government interests that you contend support the Exclusion, and their factual bases.

12. Any research, consideration, and/or analysis by or on behalf of You regarding providing access to gender-confirming care for West Virginia Medicaid participants.

13. Any research, consideration, and/or analysis by or on behalf of You regarding the legality of the Exclusion.

14. As to healthcare coverage for West Virginia Medicaid participants, Your data and documents systems, including but not limited to hardware configuration, software configuration, network configuration, internet structure, and document and data retention systems.

15. As to healthcare coverage for West Virginia Medicaid participants, Your organizational structure including its units, divisions, and departments.

16. The number of Medicaid participants who are transgender and/or have sought any form of care for the treatment of gender dysphoria.

17. All lawsuits, counterclaims, arbitrations, complaints, or judicial or quasi-judicial actions brought or threatened against You related to the denial of gender-confirming care.

18. All interrogatory requests, requests for admission, and requests for production of documents directed to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services, and any discovery responses, responsive documents, filings, or productions by or on behalf of Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services.

Dated: February 22, 2022

/s/ Walt Auvil

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Attorneys for Plaintiffs

* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on February 22, 2022 with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

Lou Ann S. Cyrus (WVSB # 6558)
Roberta F. Green (WVSB #6598)
Caleb B. David (WVSB #12732)
Kimberly M. Bandy (WVSB #10081)
SHUMAN MCCUSKEY SLICER PLLC
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Attorneys for Defendants William Crouch; Cynthia Beane; and West Virginia Department of Health and Human Resources, Bureau for Medical Services

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Attorneys for Defendant Jason Haught

Dated: February 22, 2022

s/ Walt Auvil
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN; ZACHARY MARTELL; and **BRIAN MCNEMAR,** Individually and on behalf of all others similarly situated,

Plaintiffs,

Civil Action No. 3:20-cv-00740
Hon. Robert C. Chambers, Judge

v.

WILLIAM CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; **CYNTHIA BEANE,** in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; **WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES; TED CHEATHAM,** in his official Capacity as Director of the West Virginia Public Employees Insurance Agency; and **THE HEALTH PLAN OF WEST VIRGINIA, INC.**

Exhibit
Ex 0002

DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES

INTERROGATORIES

1. Identify all persons with involvement in, or knowledge of, the creation, review, and maintenance of the Exclusion of coverage for Gender-Confirming Care in the Health Plans offered through West Virginia's Medicaid Program.

   RESPONSE: Objection. All persons having "knowledge of" any exclusion is overly broad and burdensome and could entail countless people inside and outside of the Defendant WVDHHR. Knowledge of the creation of any exclusion by the individual Managed Care Organizations, as well as review and maintenance of any such exclusion, would be with the individual MCOs.

Without waiving these objections, the following individuals have been involved in the process of determining whether coverage is excluded:

Dr. James Becker, Medical Director, West Virginia Bureau for Medical Services

Jennifer J. Myers, Director of Professional Services, Bureau for Medical Services

Tanya Cyrus, Chief Quality and Integrity Officer, Bureau for Medical Services

Carrie Mallory, Program Manager, Bureau for Medical Services

Karen Burgess, Certified Coder, Office of Program Integrity

Cynthia Shelton, former Director of Operations, Bureau for Medical Services.

2. Describe in detail the factual basis for each governmental interest that Defendants contend supports the Exclusion.

RESPONSE: These Defendants state that they provide coverage that is mandated for coverage by the Centers for Medicare and Medicaid Services (CMS). These defendants are constrained by budgetary/cost considerations.

3. Identify and describe in detail every instance in which a Health Plan offered through West Virginia's Medicaid Program provides partial or full coverage for Gender-Confirming Care of any kind, including but not limited to counseling and/or therapy, hormone therapy, or surgery. Include in you answer the coverage criteria for such care and the date such coverage began.

RESPONSE: Objection. This question seeking "every instance" is overly broad and burdensome. Without waiving the objection, with respect to any gender-confirming care that it is requested through the Managed Care Organizations, these Defendants are not in possession of this information. This question would best be directed to the individual MCOs regarding any care requested through them.

Upon information and belief, counseling is a covered service. These defendants would not necessarily know the reason for counseling and whether it was related to gender-confirming care or some other reason.

To the extent that this Request includes hormone therapy, these defendants object to this question on the basis it is not calculated to lead to the discovery of admissible evidence due to the fact the Plaintiff's claim regarding hormones has been voluntarily dismissed.

Further, without waiving the objection, with regard to hormone therapy, these Defendants do not have a database where they keep track of the information in the manner requested. The data is not kept in a manner which would allow them to identify which patients have requested hormone therapy for gender confirming care. Information is tracked by the medication or drug requested, not the diagnosis or reason for the request. Upon information and belief, there are no gender edits for most estrogen and testosterone containing products, so coverage would not be denied on the basis that the hormone therapy was sought as part of gender-confirming care.

With respect to pharmacy services, please see BMS Provider Manual Chapter 518 Pharmacy Services that can be accessed online at:

https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter_518_Pharmacy_Services%20.pdf

and the most recently updated Preferred Drug List with Prior Authorization Criteria that can be accessed online at:

https://dhhr.wv.gov/bms/BMS%20Pharmacy/Documents/Preferred%20Drug%20List/2021/WV%20PDL%202021.Q3b%20v11.pdf.

Please note that to the extent that the Provider Manual states in section 518.4 that "Other drugs may be limited in quantity, duration, or based on gender. The information regarding these drug products and their limitations is available on the BMS website[,]" the "Drug Limits" list available online was last updated June 1, 2016, and does not reflect the removal of the gender edit for most estrogen and testosterone containing products.

4. Identify all conditions, diagnostic codes, or instances where coverage for hormone therapy is available under the Health Plans offered through West Virginia's Medicaid Program. Include in that identification:
    a. Diagnostic code(s);
    b. Procedure code(s);
    c. Medical necessity criteria.

RESPONSE: These defendants object to this question on the basis it is not calculated to lead to the discovery of admissible evidence due to the fact the Plaintiff's claim regarding hormones has been voluntarily dismissed. Without waiving this objection please see BMS Provider Manual Chapter 518 Pharmacy Services that can be accessed online at:

https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter_518_Pharmacy_Services%20.pdf

and the most recently updated Preferred Drug List with Prior Authorization Criteria that can be accessed online at:

https://dhhr.wv.gov/bms/BMS%20Pharmacy/Documents/Preferred%20Drug%20List/2021/WV%20PDL%202021.Q3b%20v11.pdf.

Please note that to the extent that the Provider Manual states in section 518.4 that "Other drugs may be limited in quantity, duration, or based on gender. The information regarding these drug products and their limitations is available on the BMS website[,]" the "Drug Limits" list available online was last updated June 1, 2016, and does not reflect the removal of the gender edit for most estrogen and testosterone containing products.

5. Identify all conditions, diagnostic codes, or instances where coverage for mastectomy, breast reduction surgery, and chest reconstruction surgery is available under the Health Plans offered through West Virginia's Medicaid Program. Include in that identification:
    d. Diagnostic code(s);
    e. Procedure code(s);
    f. Medical necessity criteria.

RESPONSE: With respect to any such care requested or provided through the Managed Care Organizations, these Defendants are not in possession of this information. This question would best be directed to the individual MCOs.

Please see BMS Provider Manual Chapter 519.16 Surgical Services that can be accessed online at:

https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter%20519%20Practitioner%20Services/Policy_519.16_Surgical_Services.pdf.

6. Describe in detail the factual basis for the decision to no longer exclude coverage for hormone therapy as treatment for gender dysphoria in the Health Plans offered through West Virginia's Medicaid Program.

RESPONSE: Upon information and belief, in or around 2017 it came to the attention of then-Pharmacy Director that claims were being denied based on gender edits that were in place for estrogen and testosterone containing products. After consulting with the Medical Director, a decision was made to remove the gender edits so that the hormone therapy would not be denied on the basis of gender.

7. Identify all persons, including but not limited to persons affiliated with the Rational Drug Therapy Program, who have been involved in the decision to provide coverage for hormone therapy as treatment for gender dysphoria.

RESPONSE: Upon information and belief, former Pharmacy Director Vicki Cunningham and Medical Director Dr. James Becker were involved in removal of the gender edit.

WILLIAM CROUCH,
CYNTHIA BEANE, and
WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES,

By counsel

/s/ Lou Ann S. Cyrus
Lou Ann S. Cyrus, Esquire (WVSB #6558)
Roberta F. Green, Esquire (WVSB #6598)
Caleb B. David, Esquire (WVSB #12732)
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN; ZACHARY MARTELL; and **BRIAN MCNEMAR,** Individually and on behalf of all others similarly situated,

Plaintiffs,

Civil Action No. 3:20-cv-00740
Hon. Robert C. Chambers, Judge

v.

WILLIAM CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department Of Health and Human Resources; **CYNTHIA BEANE,** in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; **WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES; TED CHEATHAM,** in his official Capacity as Director of the West Virginia Public Employees Insurance Agency; and **THE HEALTH PLAN OF WEST VIRGINIA, INC.**

Defendants.

CERTIFICATE OF SERVICE

Now come Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, by counsel, and do hereby certify that on the 27th day of August, 2021, a true and exact copy of **DEFENDANTS RESPONSE TO PLAINTIFF'SFIRST SET OF INTERROGATORIES TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES** was served on counsel via electronic means as follows:

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/s/Lou Ann S. Cyrus
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Roberta F. Green, Esquire (WVSB #6598)
Caleb B. David, Esquire (WVSB #12732)
Kimberly M. Bandy, Esquire (WVSB #10081)
Counsel for William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN; ZACHARY MARTELL; and **BRIAN MCNEMAR,** Individually and on behalf of all others similarly situated,

Plaintiffs,

Civil Action No. 3:20-cv-00740
Hon. Robert C. Chambers, Judge

v.

WILLIAM CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; **CYNTHIA BEANE,** in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; **WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES; TED CHEATHAM,** in his official Capacity as Director of the West Virginia Public Employees Insurance Agency; and **THE HEALTH PLAN OF WEST VIRGINIA, INC.**

Exhibit
Ex 0017

DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES

REQUESTS FOR ADMISSIONS

1. Admit that Gender-Confirming Care can be medically necessary care for the treatment of gender dysphoria.

   RESPONSE: Upon information and belief, experts may differ in opinion as to whether gender-confirming care is medically necessary, both in general and with respect to a particular patient. This Request is admitted with the understanding that this area of treatment continues to evolve.

2. Admit that Defendants partially or fully cover counseling and/or therapy for some diagnoses not related to Gender-Confirming Care.

RESPONSE: Admitted.

3. Admit that Defendants partially or fully cover mastectomy, breast reduction surgery, and chest reconstruction surgery for sone diagnoses not related to Gender-Confirming Care.

RESPONSE: Admitted.

4. Admit that Defendants partially or fully cover hysterectomy and oophorectomy surgical procedures for some diagnoses not related to Gender-Confirming Care.

RESPONSE: Admitted.

5. Admit that Defendants partially or fully cover vaginoplasty procedures for some diagnoses not related to Gender-Confirming Care.

RESPONSE: Admitted.

6. Admit that Defendants partially or fully cover orchiectomy, penectomy, and /or phalloplasty procedures for some diagnoses not related to Gender-Confirming Care.

RESPONSE: Admitted.

7. Admit that the Medicaid Plan only covers care that is medically necessary.

RESPONSE: Admitted. However, these Defendants deny any suggestion that Medicaid covers all care that is medically necessary.

8. Admit that the Medicaid Plan has covered all hormone therapy for the treatment of gender dysphoria from November 2017 to the present.

RESPONSE: It is admitted upon information and belief that from November 2017 to the present, coverage for hormone therapy has not been denied on the basis that it is for treatment of gender dysphoria. Upon information and belief, "hormone therapy for the treatment of gender dysphoria" may broadly involve several separate medications, doses, and formulations, and it is possible that coverage has been denied on other criteria, therefore, it cannot be admitted or denied that "all" such therapy has been covered.

WILLIAM CROUCH,
CYNTHIA BEANE, and
WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES,

By counsel

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Roberta F. Green, Esquire (WVSB #6598)
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Defendants.

CERTIFICATE OF SERVICE

Now come Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, by counsel, and do hereby certify that on the 27th day of August, 2021, a true and exact copy of **DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES** was served on counsel via electronic means as follows:

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