

1 So it's the -- whatever care capabilities a medical  
2 treatment facility cannot provide due to a lack of  
3 specialty or expertise or volume, TRICARE has been  
4 established as the provider for family members,  
5 dependants, even the service members because not all  
6 service members live within a military post, fort,  
7 wing or things like that. So we have service members  
8 that live out in the community.

9 So TRICARE has established a network of  
10 providers and capabilities to augment the active duty  
11 military treatment facilities for the healthcare.

12 Q. Does TRICARE function essentially as an  
13 insurance provider?

14 A. I honestly can't answer that question, ma'am.  
15 I don't know.

16 Q. Have you had occasion to interact with  
17 TRICARE in connection with issues relating to the Open  
18 Service policy?

19 A. I have only asked the TRICARE representatives  
20 what coverage is provided by law.

21 Q. And so you have not been involved in setting  
22 any policy with TRICARE about what kinds of procedures  
23 for transgender service people would be covered?

24 A. I have not personally been involved in any  
25 coverage policy for TRICARE. That would be through

1 the Defense Health Agency.

2 Q. Okay. And you haven't had any interactions  
3 with the Defense Health Agency about that, it sounds  
4 like?

5 A. The only interactions I would have is --  
6 would be to ask questions on how does the process  
7 work.

8 Q. All right. So while you interact on a fairly  
9 regular basis with Health Affairs and the Defense  
10 Health Agency, it sounds like you don't interact  
11 regularly with anybody associated with TRICARE?

12 A. To be honest, ma'am, up until now, we haven't  
13 had the need. Those questions haven't arisen. So  
14 this is all very new and evolving. So as this evolves  
15 and we have questions, then I will go to TRICARE.  
16 Actually, I would go to the Defense Health Agency to  
17 ask specifically because the Defense Health Agency is  
18 the intermediary with TRICARE because TRICARE falls  
19 under the Defense Health Agency.

20 Q. Okay. Aside from your work on the  
21 implementation of the Open Service policy, have you  
22 been involved in any activities in implementing other  
23 new policies during your time in the position that  
24 you've had with the assistant deputy for health  
25 policy?

1 A. Yes, ma'am.

2 Q. Okay. And what new policies have you been  
3 involved in?

4 A. Right now we are -- just published an  
5 Air Force policy guidance memorandum for our  
6 line-of-duty healthcare, provide input on the policy  
7 development for the DH- -- Defense Health Agency  
8 requirements as, again, they stand up, and what is the  
9 policy requirements.

10 Right now we're specifically working on a  
11 manpower issue that the Defense Health Agency has  
12 reached out to the services to provide what they call  
13 SME, subject matter experts, to fulfill the  
14 requirements for the Defense Health Agency. We're  
15 taking a look at that.

16 I participate in policy development for the  
17 joint executive committee, the health executive  
18 committee, and the benefits executive committee. I  
19 help write policy on the integrated disability  
20 evaluation system for our wounded warriors.

21 Q. Let me try to refine the question a little  
22 bit.

23 A. Okay.

24 Q. So what I'm really trying to understand is  
25 what role you've had in the roll-out of new policies.

1 So when an entirely new policy is announced, I'm  
2 trying to understand what your involvement has been,  
3 if any, with those kinds of new policies.

4 A. Okay. So any new policy that's being  
5 established, it will come through my office, and we'll  
6 take a look at it, review it to see if it meets the  
7 requirements of why the policy is being established  
8 and if we have the capability within the Air Force to  
9 meet the policy requirements. Is this -- is this  
10 executable as written.

11 I also have a personal interest. Because I  
12 was a reservist, I want to make sure our reserve and  
13 guard components are represented within the policy.

14 Q. Okay. And so which new policies have you  
15 worked on helping to roll out?

16 A. The one that we're currently working on right  
17 now is the refinement of inputs into the -- with  
18 another DoD instruction. It's 1300.32 -- 1332.18, and  
19 it's the integrated disability evaluation system. And  
20 we're trying to provide input into that as we refine  
21 commanders' role for members that have a disability or  
22 a potentially disqualifying condition and their  
23 ability to retain members through the process.

24 Q. Okay. So is it fair to call that the  
25 "disability evaluation system policy"?

1           A. I'd rather it be referred to as the DODIs of  
2 which it's named so it provides a little bit of  
3 clarity. But I work on probably 30 to 40 policy  
4 issues a week. So the other services have at least  
5 three to four people in this position and for the Air  
6 Force side. So it's hard to nail down everything.

7           Q. Okay. Let me shift gears for a moment and  
8 ask you if you did anything to prepare to testify  
9 today? And that's just a "yes" or "no" question.

10          A. Yes.

11          Q. Okay. And what did you do? And when you  
12 answer that question, please don't tell me about any  
13 specific conversations that you had with your counsel.

14          A. I met with my counsel.

15          Q. Okay. And how many times did you meet with  
16 your counsel to prepare?

17          A. We met twice.

18          Q. Okay. And who was present at those meetings?

19          A. The team that you see here.

20          Q. Okay. When were the two meetings that you  
21 had?

22          A. The first one was Friday, this past Friday,  
23 and the second one was Tuesday.

24          Q. All right. And how long did you meet on  
25 Friday, if you recall?

1 A. Five hours.

2 Q. And what about on Tuesday?

3 A. About four hours.

4 Q. Okay. Now, here's another "yes" or "no"  
5 question. Did you review any documents during those  
6 meetings?

7 A. Yes.

8 Q. How many documents did you review during  
9 those meetings?

10 A. One.

11 Q. What was it?

12 A. I'm trying to think of the number. It was a  
13 document from Lieutenant Colonel David Miller. It was  
14 an E-mail.

15 Q. Okay. And what was the substance of the  
16 E-mail if you recall?

17 MR. PARKER: Objection. Calls for  
18 attorney-client material to the extent you're asking  
19 about a conversation that we had about a specific  
20 document.

21 MS. LAPORTE: Right. No. I'm not asking  
22 about that.

23 Q. So all I'm trying to understand is what --  
24 I'm trying to learn what the document was that you  
25 looked at. So can you identify the document?

1 A. Can I have a moment?

2 Q. To discuss it with your counsel?

3 A. Yes, ma'am.

4 Q. Sure. If this relates to a question of  
5 privilege, absolutely.

6 MR. PARKER: Claire, would it make sense to  
7 take a sidebar if we're going to have a conversation  
8 here about this? We've been going for an hour.

9 MS. LAPORTE: Yes, that's fine. Why don't we  
10 just reconvene in about five minutes.

11 MR. PARKER: Okay.

12 MS. LAPORTE: Thanks.

13 (A recess was taken 10:03 a.m. to 10:14 a.m.)

14 BY MS. LAPORTE:

15 Q. Okay. So I think, while I was asking you  
16 about the Miller E-mail that you reviewed during your  
17 deposition preparation, can you tell me what that  
18 document is?

19 MR. PARKER: Objection. Calls for  
20 information protected by the attorney-client  
21 privilege.

22 MS. LAPORTE: So I'm just asking her to  
23 identify a document. Can you explain the basis for  
24 the privilege claim?

25 MR. PARKER: To the extent you're going to

1 ask the witness the documents that were discussed in  
2 discussions with her attorney, that information would  
3 be covered by the attorney-client relationship and  
4 covered by the privilege.

5 MS. LAPORTE: So, in other words, you're  
6 saying that even the identity of the document is  
7 protected?

8 MR. PARKER: Yes.

9 MS. LAPORTE: Okay.

10 Q. All right. And are you going to follow the  
11 instruction of counsel not to --

12 MS. LAPORTE: Well, so are you instructing  
13 her not to answer that?

14 MR. PARKER: Yes.

15 BY MS. LAPORTE:

16 Q. And are you going to follow that instruction?

17 A. Yes, ma'am.

18 Q. Okay. All right. Let me return to something  
19 that we talked about before, and that is TRICARE. Are  
20 active duty service members required to enroll in the  
21 TRICARE health plan?

22 A. The active duty members themselves are  
23 covered 100 percent -- 100 percent of their healthcare  
24 is covered by DoD. They can enroll family members  
25 into various TRICARE plans. There's TRICARE Prime,



1 TRICARE Remote. So the members themselves does not  
2 have to enroll in TRICARE, but if they have a family  
3 member, they would need to enroll their family member  
4 into a TRICARE program.

5 Q. Are there ever types of specialty care that  
6 are not provided to an active duty service member by  
7 someone within the military health system?

8 A. There could be.

9 Q. And in that situation, how is the care paid  
10 for?

11 A. I'm not familiar with the billing process,  
12 ma'am.

13 Q. Well, in the case of a transgender airman who  
14 needs some kind of service that isn't typically  
15 provided at a medical treatment facility, do you know  
16 how it's handled for that airman to get that care?

17 A. If the care can't be provided at a medical  
18 treatment facility, and it depends on the type of care  
19 the airman would need, they could be referred to a  
20 local TRICARE provider in the civilian sector.

21 Q. And so TRICARE, in addition to providing  
22 coverage, also has a network of providers?

23 A. There are TRICARE providers identified, yes,  
24 ma'am, within each network.

25 Q. Okay. And so can someone who's a TRICARE

1 provider also be a provider for Aetna and other  
2 civilian health plans, or are they specific to  
3 TRICARE?

4 A. To be honest, ma'am, I don't know  
5 specifically about how that works.

6 Q. Okay. Do you have any understanding of who  
7 is responsible for deciding whether a particular type  
8 of service will be covered by TRICARE in the event  
9 that an active duty service member needs something  
10 that cannot be provided at a military treatment  
11 facility?

12 A. If an active duty member comes into an MTF --

13 Q. And an "MTF" is a medical treatment facility?

14 A. Yes. So if an active duty member comes into  
15 an MTF and they require care and that medical  
16 treatment facility does not have the specialists that  
17 are needed or, you know, the physician or mental  
18 health behaviorist or whoever it is that can provide  
19 that care, they would be referred into the civilian  
20 sector to a provider that accepts TRICARE. So they  
21 would be referred by either their primary care  
22 physician...

23 Q. And in a situation like that, the care has to  
24 be something that's covered by TRICARE; right?

25 A. Yes, ma'am.

1 Q. Do you know who decides what's covered?

2 A. The only thing I'm familiar with as far as  
3 the coverage, what TRICARE authorizes, is the CFR, the  
4 Code of Federal Regulations. I think it's 199. --  
5 it's a big document.

6 Q. Okay. So there is a federal regulation that  
7 discusses what is covered by TRICARE and what isn't?

8 A. Yes, ma'am. It's called a CFR, Code of  
9 Federal Regulations.

10 Q. I've heard of it.

11 A. I was explaining the acronym.

12 MS. LAPORTE: No. No. I appreciate it.  
13 It's funny for lawyers to hear about the CFR because,  
14 of course, we all have to spend a lot of time thinking  
15 about it.

16 Could you mark this as the next exhibit,  
17 please.

18 (Deposition Exhibit 2 was marked for  
19 identification.)

20 BY MS. LAPORTE:

21 Q. So what has been marked Exhibit 2 I'll just  
22 represent is a couple of pages from the TRICARE  
23 website indicating what TRICARE is, and I'd like to  
24 just have you turn to the second page of Exhibit 2,  
25 which relates to gender dysphoria services that are

1 offered by TRICARE. Do you see that?

2 A. Yes, ma'am.

3 Q. And it indicates there that counseling and  
4 hormone therapy are covered but surgery isn't. Do you  
5 see that?

6 A. Yes, ma'am.

7 Q. Okay. And so in a situation where a service  
8 member might need some kind of surgery that isn't  
9 typically provided at a medical treatment facility and  
10 wants to get it through the process that you've just  
11 described using TRICARE, how would that work given the  
12 fact that there is not coverage under what is stated  
13 at least on the TRICARE website?

14 A. I just had 1,000 thoughts going through my  
15 head. Could you state the question again.

16 Q. Yes. In a situation where a service member  
17 might need some kind of treatment that can't be  
18 provided at a medical treatment facility and wants to  
19 get it through the --

20 A. Uh-huh.

21 Q. -- process that you just described of going  
22 out into the civilian health world, how would that  
23 work given the fact that gender dysphoria services for  
24 surgery aren't covered?

25 MR. PARKER: Objection. Calls for

1 speculation.

2 BY MS. LAPORTE:

3 Q. You can still answer that one.

4 A. That would have to be something that I  
5 wouldn't -- I don't know for sure, ma'am. It would  
6 have to be approved through the Defense Health Agency.

7 Q. Okay. And would that be through a waiver  
8 process?

9 A. There are -- the Defense Health Agency does  
10 have a waiver process for surgical procedures that  
11 cannot be performed in the medical treatment facility  
12 that may be required for the member's healthcare.

13 Q. Okay. And in a situation like that, does the  
14 waiver end up meaning that somehow the care is covered  
15 even though under the TRICARE policy it says that it's  
16 not?

17 A. Yes.

18 Q. Okay. And do you know whether, in gender  
19 confirmation surgeries that are currently being  
20 received by transgender people in the services, do you  
21 know whether those are being covered by TRICARE  
22 through the process that we just discussed?

23 A. I am familiar with the Defense Health Agency  
24 reviewing waiver requests from the services, and I  
25 understand or have been informed that the Defense

1 Health Agency has approved several waiver requests for  
2 surgical procedures to be done.

3 Q. And so I'm correct in figuring out that the  
4 way that it works for a surgery that can't be done at  
5 a medical treatment facility is that it is done  
6 through TRICARE but through a waiver; is that right?

7 A. Some surgeries, yes, ma'am.

8 MS. LAPORTE: Okay. All right. So you  
9 mentioned earlier that there was a working group in  
10 which you were a plus one, and you also mentioned an  
11 announcement by Ash Carter in 2016.

12 Let me have this marked as the next exhibit.

13 (Deposition Exhibit 3 was marked for  
14 identification.)

15 BY MS. LAPORTE:

16 Q. All right, Ms. Soper. Is Exhibit 3, which is  
17 entitled "MEMORANDUM FOR SECRETARIES OF THE MILITARY  
18 DEPARTMENTS," is that the announcement in 2015 that  
19 you were referring to earlier in your testimony?

20 A. Yes, ma'am.

21 Q. Okay. And that memorandum indicated that "No  
22 Service member shall be involuntary separated or  
23 denied reenlistment or continuation of active or  
24 reserve service on the basis of gender identity."  
25 Were you aware before this announcement was made that