1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
2 INDIANAPOLIS DIVISION
3 Case Number 1:21-CV-02965-TWP-MPB
4 A.C., a minor child by his next)
friend, mother, and legal)
5 guardian, M.C.,)
Plaintiff,)
6 -vs-)
)
7 METROPOLITAN SCHOOL DISTRICT OF)
MARTINSVILLE; PRINCIPAL, JOHN R.)
8 WOODEN MIDDLE SCHOOL, in his)
official capacity)
9 Defendants.)
-----------------------------------)
10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
11 TERRE HAUTE DIVISION
12 Case Number 2:21-CV-00415-JRS-MG
13 B.E. and S.E., minor children by)
their mother, legal guardian, and)
14 next friend, L.E.,)
Plaintiffs,)
15 -vs-)
)
16 VIGO COUNTY SCHOOL CORPORATION;)
PRINCIPAL, TERRE HAUTE NORTH VIGO)
17 HIGH SCHOOL, in his official)
capacity,)
18 Defendants.)
19
20
REMOTE DEPOSITION OF
21
J. DENNIS FORTENBERRY, M.D., M.S.
22
CONFIDENTIAL
23
March 1, 2022
24
25

1
2
3
4 The remote deposition upon oral examination of
5 J. DENNIS FORTENBERRY, M.D., M.S., a witness
6 remotely sworn by me, Tara Gandel Hudson, RPR, CRR,
7 a Notary Public in and for the County of Hancock,
8 State of Indiana, taken on behalf of the
9 Defendants, with the witness located in
10 Indianapolis, Marion County, Indiana, on the 1st
11 day of March, 2022, scheduled to commence at
12 1:00 p.m., pursuant to the Federal Rules of Civil
13 Procedure with written notice as to the time and
14 place thereof.
15
16
17
18
19
20
21
22
23
24
25

1
APPEARANCES
2 (All appearing remotely.)
3 FOR THE PLAINTIFFS:
A.C., a minor child by his next friend, mother, and
4 legal guardian, M.C., and B.E. and S.E., minor children
by their mother, legal guardian, and next friend, L.E.
5
Kenneth J. Falk
6 ACLU of Indiana
1031 East Washington Street
7 Indianapolis, IN 46202
kfalk@aclu-in.org
8
Kathleen Bensberg
9 INDIANA LEGAL SERVICES, INC.
1200 Madison Avenue
10 Indianapolis, IN 46225
kathleen.bensberg@ilsi.net
11
Megan Stuart
12 INDIANA LEGAL SERVICES, INC.
214 South College Avenue
13 Second Floor
Bloomington, IN 47404
14 megan.stuart@ilsi.net
15
FOR THE DEFENDANTS:
16 Metropolitan School District of Martinsville;
Principal, John R. Wooden Middle School, in his
17 official capacity, and Vigo County School Corporation;
Principal, Terre Haute North Vigo High School, in his
18 official capacity
19 Philip R. Zimmerly
Mark A. Wohlford
20 BOSE McKINNEY & EVANS LLP
111 Monument Circle
21 Suite 2700
Indianapolis, IN 46204
22 317.684.5000
pzimmerly@boselaw.com
23 mwohlford@boselaw.com
24
25

1
INDEX OF EXAMINATION

2 PAGE
3 DIRECT EXAMINATION 5
Questions by Philip R. Zimmerly
4 CROSS-EXAMINATION 78
Questions by Kenneth J. Falk
5 REDIRECT EXAMINATION 85
Questions by Philip R. Zimmerly
6
7
8 INDEX OF EXHIBITS

9 Deposition Exhibit:
10 Exhibit 15 - Supplemental Declaration of 17
James D. Fortenberry, M.D., M.S.
11
Exhibit 16 - B.E. Medical Records 54
12
Exhibit 17 - Declaration of James D. 12
13 Fortenberry, M.D., M.S.
14 Exhibit 18 - A.C. Medical Records 73
15 Exhibit 19 - 1-17-22 letter; from 75
Fortenberry
16
17
18
19
20
21
22
23
24
25

1 (1:06 p.m.)
2 J. DENNIS FORTENBERRY, M.D., M.S.,
3 having been first remotely sworn to tell the truth,
4 the whole truth and nothing but the truth relating
5 to said matter, was examined and testified as
6 follows:
7
8 DIRECT EXAMINATION,
9 QUESTIONS BY PHILIP R. ZIMMERLY:
10 Q Good afternoon, Dr. Fortenberry. Would you
11 please state your name for the record.
12 A James Dennis Fortenberry.
13 Q Hi, Dr. Fortenberry. My name is Phil Zimmerly.
14 I'm counsel for the defendants in two separate
15 actions: One is the Vigo County School
16 Corporation; the other defendant is MSD
17 Martinsville. And we're here today for your
18 deposition. You provided declarations or expert
19 testimony in both of those cases. Is that true?
20 A Yes.
21 Q Have you ever given a deposition before?
22 A No.
23 Q So just a couple of sort of ground rules for
24 today. You understand that you're under oath
25 and you have the obligation to provide truthful

1 and accurate testimony?
2 A Yes.
3 Q Is there any reason why you cannot provide
4 truthful and accurate testimony today?
5 A No.
6 Q You're not under the influence of any drugs or
7 alcohol or medication that would influence your
8 testimony?
9 A None of those things.
10 Q I'm going to presume that if I ask a question
11 and you answer it, that you understood the
12 question that I asked. Is that fair?
13 A Yes.
14 Q If at any point you need to take a break --
15 stretch your legs, get a drink, run to the
16 restroom -- totally fine. My only request would
17 be if there's a question pending, that you
18 answer that question before we take a break. Is
19 that fair?
20 A Fair.
21 Q Dr. Fortenberry, it's my understand that you
22 were one of the founders of the Gender Health
23 Program at Riley's Children Health in 2016. Is
24 that true?
25 A That's correct.

1 Q What are your roles and responsibilities at the
2 Gender Health Program?
3 A At this point, I both provide direct patient
4 services to gender-diverse young people, and I
5 supervise people in training, primarily
6 adolescent medicine fellows, in the care of
7 gender-diverse young people.
8 Q So there's a treatment component but also a
9 training component?
10 A Yes.
11 Q What age of patients does the Gender Health
12 Program provide services?
13 A We have children beginning at age 3 who have
14 been seen in our program and usually up to until
15 around age 21 to 22.
16 Q Is there an average age as to when children
17 would come to the clinic for treatment?
18 A Probably between ages 14 and 16 would be a good
19 average.
20 Q And how does a new patient come to receive
21 treatment at the Gender Health Program? Are
22 they referral-based, or do they initiate their
23 own treatment, or is it a combination of both?
24 A It's a combination of both. The majority are
25 referred by physicians in the state.

1 Q And what percentage of that patient population
2 at the Gender Health Program include patients
3 who have been diagnosed with gender dysphoria?
4 A I'll have to ask for clarification. You mean
5 prior to their arrival at our program?
6 Q Yes. Good point.
7 So prior to their arrival, how many of
8 those patients have been diagnosed with gender
9 dysphoria?
10 A Relatively few. Perhaps 10 percent.
11 Q And after they have been referred or begin
12 receiving treatment at the Gender Health
13 Program, how many -- what percentage of those
14 patients are diagnosed with gender dysphoria?
15 A The majority. The large majority. Perhaps 85,
16 90 percent.
17 Q Is that the primary condition that's being
18 treated at the Gender Health Program, is gender
19 dysphoria?
20 A Yes.
21 Q One of the things I noted in review of the
22 medical records is that the records make a
23 distinction between sex assigned at birth and
24 gender identity. Is it fair to say that sex and
25 gender are different things?

1 A Yes.
2 Q How would you define "sex"?
3 A I base that on the identification given to a
4 person associated with their genitals that are
5 typically described at birth.
6 Q Here's a quote that I took from Dr. Mazur, the
7 Yale School of Medicine. Let me know if you
8 agree or disagree with this statement. She
9 defines "sex" as:
10 "In the study of human subjects, the term
11 'sex' should be used as a classification
12 generally as male or female according to the
13 reproductive organs and functions that derive
14 from the chromosomal complement, generally XX
15 for female and XY for male."
16 Would you agree with that statement?
17 A Yes.
18 Q Is it true that biological males and biological
19 females have different reproductive organs?
20 A I think we need to clarify that because I'm not
21 sure what your meaning of biological male and
22 female refers to.
23 Q So I guess what I'm referring to as a biological
24 male is someone who was born with a penis.
25 A Being born with a penis does not equal being

1 male. A penis is a penis associated with a
2 particular genetic inheritance. A vulva is a
3 vulva, without a sex associated with it,
4 associated with a particular genetic
5 inheritance.
6 Q How would you define "gender"?
7 A People do define that differently. My personal
8 definition has to do with each person's
9 experience of their/themselves relative to their
10 sex.
11 Q When you say "relative to their sex," what do
12 you mean by that?
13 A Because those young people have no -- have been
14 identified with a sex. Their experience of
15 their gender is often compared to the sex that
16 was assigned at birth.
17 Q There's a quote from the same doctor,
18 Dr. Carolyn Mazur, at the Yale School of
19 Medicine. Let me know whether or not you agree
20 or disagree with this statement. In defining
21 "gender," she states:
22 "In the study of human subjects, the term
23 'gender' should be used to refer to a person's
24 self-representation as male or female or how
25 that person's responded to by social

1 institutions on the basis of the individual's
2 gender presentation."
3 Do you agree with that statement?
4 A I think it's incomplete; so I disagree with it.
5 Q What would you add or take away from it?
6 A So the thing that I would add is that gender is
7 an experience. It's an internal experience
8 first; and then the presentation of that gender
9 follows which is included in Dr. Mazur's
10 definition.
11 And the interaction of that presentation
12 and the experience creates the third aspect, or
13 the second aspect in Dr. Mazur, which is the
14 social definition of "gender."
15 Q One other term that is not really involved with
16 this case but I'm just interested to hear your
17 definition or how you would define it is the
18 term "sexual orientation." How would you define
19 that term?
20 A It's generally identified as the representation
21 of the people or persons that an individual is
22 attracted to sexually.
23 Q There are a couple of documents that we'll be
24 using as exhibits today. Do you have those
25 documents that I sent to counsel? They are

1 Exhibits 15 -- they are marked Exhibits 15
2 through 19 in the pdf names.
3 A I do have them.
4 Q The first document I'd like to ask you a
5 question about or just refer to is Exhibit 17
6 which is the declaration that you provided in
7 the A.C. Martinsville case?
8 A Okay.
9 (Deposition Exhibit 17 was presented for
10 identification.)
11 Q I just want to ask you about some of the
12 statements in that. In paragraph 8 you make the
13 statement -- and just -- I suppose just so the
14 record is clear, is this a declaration that you
15 assigned as sworn testimony in the A.C. v. MSD
16 Martinsville case?
17 A Yes.
18 Q And there's a statement in paragraph 8. This is
19 the second-to-last sentence in that paragraph
20 where you state:
21 "Gender transition is the process whereby
22 the transgender person lives as a member of the
23 sex of their gender identity."
24 In dealing with gender dysphoria, is it
25 true that gender transition is a process?

1 A Yes.
2 Q And in your opinion, what length of time must
3 someone go through that process before they are
4 considered transgender?
5 A I think that's not an answerable question
6 because of the variability of the duration and
7 the different steps that people take, and
8 there's no absolute outcome that would qualify
9 as transgender.
10 Q So is it fair to say that making that
11 determination would require a case-by-case
12 analysis with regard to each individual?
13 A In general, yes, although each individual knows
14 when that's happened for them.
15 Q Is it possible for someone to be considered
16 transgender in an immediate decision such that,
17 you know, perhaps they were -- they have been
18 listed as biological female or their sex
19 assigned at birth was female, and just in the
20 matter of a day, they can make the decision that
21 they are -- that their gender identity is male?
22 A I don't have any experience of descriptions of
23 that particular experience of gender for it to
24 be that instantaneous.
25 Q How would you define the term "transgender"?

1 A I'll use the commonly used definition which is
2 the sense of a gender experience that's
3 different than that expected to be associated
4 with the sex assigned at birth.
5 Q And the sex assigned at birth would differ based
6 on the sexual anatomy of that particular
7 individual at birth?
8 A The sex assigned at birth would be defined by
9 the anatomy that was recorded at birth.
10 Q Are all individuals who identify as transgender,
11 do you expect them to receive gender dysphoria
12 diagnoses?
13 A No. Not all individuals who identify as
14 transgender or gender "nonbinary" -- which is an
15 alternative term that's important -- not
16 everyone experiences dysphoria associated with
17 it.
18 Q You used the term "gender binary" and said that
19 that was an important term. Can you tell me
20 what that term refers to?
21 A "Gender nonbinary." So the reference to
22 "transgender" means the movement from one
23 category of gender which is assumed to be binary
24 into the other. That's the basis of the word
25 "trans." People who identify as nonbinary don't

1 recognize their gender as belonging to either of
2 those categories.
3 Q Going back to your declaration in the
4 Metropolitan School District case, in
5 paragraph 12, you state: "Gender dysphoria is
6 an accepted diagnosis for individuals with a
7 gender identity that differs from social gender
8 expectations associated with the person's
9 birth-assigned sex."
10 Is that consistent with what you've
11 testified just a few moments ago?
12 A Yes.
13 Q In paragraph 20 of your declaration, you state
14 that:
15 "Gender dysphoria is a recognized condition
16 codified in the American Psychiatric
17 Association's Diagnostic and Statistical Manual
18 of Mental Disorders (DSM-V) at 302.85 (64.0)
19 [sic], and the World Health Organization's
20 International Classification of Diseases 10
21 (ICD/10) Version that became active on
22 October 1, 2021, at F64.2. These are both
23 standard classifications of mental and physical
24 disorders used worldwide."
25 Is it true that gender dysphoria is a

1 diagnosis for a mental and physical disorder?
2 A Yes, as specified in those manuals.
3 Q For new patients, what sort of timeline would
4 one expect before a gender dysphoria diagnosis
5 is rendered?
6 A Typically, the timeline follows that suggested
7 by these guidelines, diagnostic criteria of at
8 least six months.
9 Q Is it common for such a diagnosis of gender
10 dysphoria to be made during an initial visit or
11 consult?
12 A Yes.
13 MR. FALK: Objection. "Initial visit or
14 consult" with whom? Because many of these
15 patients are being referred by other doctors.
16 MR. ZIMMERLY: Let me ask a different
17 question.
18 BY MR. ZIMMERLY:
19 Q When someone comes to the Gender Health Program
20 at Riley Children's Health, is it common for
21 there to be a diagnosis of gender dysphoria
22 during that initial consult?
23 A Yes.
24 Q And how do you account, with regard to that
25 six-month period, as being one of the guidelines

1 that you would look at?
2 A Our interpretation of that six-month period is
3 drawn from information provided by the young
4 person themselves, by their parents, and
5 corroborated by their parents. So we
6 established the timeline as part of our
7 evaluation. We don't observe it.
8 Q When someone is diagnosed with gender dysphoria,
9 what length of treatment would you expect for
10 the treatment of that condition?
11 A There's not an outer bound placed on that
12 treatment in terms of the time of treatment.
13 Q Is there an expected amount of time such that a
14 person would be receiving treatment for gender
15 dysphoria or not?
16 A So I'll need to clarify a little because gender
17 dysphoria does improve with treatment. The time
18 course for that is variable.
19 Q And does gender dysphoria ultimately resolve
20 with treatment?
21 A In many cases, yes.
22 Q I'm going to ask you to turn to a different
23 exhibit. This is Exhibit 15 --
24 (Deposition Exhibit 15 was presented for
25 identification.)

1 Q -- which is your supplemental declaration in the
2 Vigo County case.
3 A Okay.
4 Q Paragraph 4, you make the statement:
5 "As explained in my previous declaration,
6 treatment for gender dysphoria varies based on
7 individualized assessments and medical need."
8 Is it true that treatment for gender
9 dysphoria is based on individualized
10 assessments?
11 A Yes.
12 Q And who ultimately is responsible for making
13 those individualized assessments?
14 A The outcomes of those in terms of decisions are
15 shared between the clinician, the patient, and
16 the parent.
17 Q When you say "the outcomes are shared," is that
18 different than the assessment itself, or are you
19 using those terms interchangeably?
20 A The assessment is shared, as are the outcomes.
21 The decision's based on the assessments.
22 Q And who is responsible for making the
23 individualized assessments?
24 A I'm a little unclear about your meaning here.
25 Q Well, I suppose what do you mean by that? When

1 you say, "The treatment for gender dysphoria
2 varies based on individualized assessments and
3 medical need," what do you mean by the use of
4 the term "individualized assessments"?
5 A So each patient that comes to the clinic is
6 individually interviewed and examined by a
7 clinician. Additional information is obtained
8 from a parent. The results of those interviews
9 are then shared among all of those people,
10 discussed; treatment alternatives are discussed;
11 and treatment decisions are based on the
12 outcomes of the discussions.
13 Q And so in making that individualized assessment,
14 is it true that that requires a case-by-case
15 analysis with regard to each particular patient?
16 A Yes.
17 Q In the next sentence of that paragraph 4, you
18 state:
19 "Treatment is not a single process, nor are
20 there specific steps that all individuals will
21 complete."
22 What do you mean by that?
23 A It means that we provide different kinds of
24 treatment options, especially at the beginning.
25 We provide support for the young person as part

1 of our treatment in terms: We provide support
2 for findings, counseling, mental health support
3 on the facts indicated.
4 And so there are a variety of things that
5 can happen at any given visit, and different
6 parts of those, different choices may be made
7 subsequently.
8 Q So no one size fits all with regard to the
9 treatment of gender dysphoria?
10 A I think that's accurate even though there are
11 some commonalities in the things that we do, for
12 sure.
13 Q When making that individualized assessment, is
14 it important for the physician to meet and speak
15 with the patient?
16 A Yes.
17 Q In making that individualized assessment, is it
18 also important for the physician to take into
19 account concerns that are expressed by that
20 patient?
21 A Yes.
22 Q Is it fair to say that the treatment for gender
23 dysphoria is an evolving area where new
24 standards are in development?
25 A I think that's fair to say.

1 Q For example, at Riley at the Gender Health
2 Program, it's been in place since 2016. Have
3 all recommended treatments stayed the same
4 during the last six years, or have they changed
5 as more information is gathered?
6 A The basis of treatments are very much the same
7 over the duration of the time the program has
8 been in place.
9 Q When you say "the basis of treatments," what do
10 you mean by that? What has remained unchanged?
11 A So the essential element of supporting the young
12 person in their gender expression; the review of
13 important other kind of mental health issues
14 that may be associated with the gender
15 experience; the use of hormones or puberty
16 blockers; and the support -- the ongoing support
17 for accommodations in schools with driver's
18 licenses; with name and gender marker changes --
19 those are all elements of the service that we
20 provide.
21 Q In terms of -- am I correct in understanding
22 that the incidence of adolescent females or
23 adolescent -- adolescent individuals who are
24 assigned the sex of female at birth identifying
25 as transgender female to male has grown

1 exponentially in the last six to ten years?
2 A I'm going to correct your terms a little bit.
3 The proportion of birth-assigned females who are
4 seeking care in specialty services like our
5 clinic, the proportion accounted for by
6 birth-assigned females has increased over about
7 a 15-year period.
8 It's been a worldwide increase. It's not
9 clear what that represents.
10 (A discussion was held off the record to
11 correct technical issues.)
12 Q Have there been any studies with regard to that
13 shift as it deals with the growth in that area
14 for individuals with sex assigned at birth of
15 female?
16 A There have been some studies that have purported
17 to examine that with -- to examine the
18 hypothesis that this is a social contagion
19 heavily influenced by social media platforms.
20 It's become a popular perspective over the past
21 five years or so.
22 Q Have you yourself studied that phenomenon in any
23 way?
24 A No.
25 Q Do you have an opinion one way or the other?

1 A Yes.
2 Q What is your opinion?
3 A The data to support that particular social
4 contagion hypothesis is extraordinarily weak and
5 has been refuted by at least some additional
6 research, although some of the research is
7 fairly small.
8 Q With regard to treatment for gender dysphoria,
9 one of the treatments that you mention in your
10 declarations are puberty blockers. Are any of
11 the plaintiffs in either of these actions being
12 provided with puberty blockers?
13 A No.
14 Q Another one of the treatments that you referred
15 to in your declarations is hormone treatment.
16 Let's turn to paragraph 6 of your supplemental
17 declaration in the Vigo County case.
18 You make the statement in the
19 second-to-last sentence:
20 "Hormone therapy initiates anatomical and
21 physiological changes in body contour,
22 appearance, and sex-based characteristics to
23 match that of the individual's experienced
24 gender."
25 In that statement, what do you mean by the

1 term "sex-based characteristics"?
2 A Usually the things that would become evident at
3 puberty. Facial hair, for example; breast
4 growth; changes in genitals; onset of menses;
5 body proportions; body contours such as fat
6 distribution.
7 Q In terms of the hormone therapy to initiate
8 changes with regard to sex-based characteristics
9 to match that of the individual's experienced
10 gender, is it correct to say that those
11 individuals who are transitioning from female to
12 male, they are seeking to have characteristics
13 that would be associated with those who are
14 male?
15 A There's two parts to that. They are seeking to
16 disguise aspects that they associate with being
17 female, and they are seeking some
18 characteristics that are associated with being
19 male.
20 Q So with regard to -- I don't know if you used
21 the word "hiding," but addressing those things
22 that are associated with female, that would be
23 the onset of menses or having a period?
24 A So that would be addressed with one form of
25 hormones which would be to suppress menstrual

1 bleeding, but it would also be associated with
2 activities like binding of the chest and the
3 breasts to create an appearance of a flat chest.
4 Q And the more affirmative actions, there's one
5 that's sort of hiding characteristics, but
6 there's one where they're gaining new
7 characteristics. That would be the growth of
8 facial hair to be perceived as male. Are there
9 others?
10 A Prior to that, many people will just change the
11 way they wear their hair, change their clothing,
12 change even the way they speak to create a more
13 masculine appearance.
14 Q I suppose that leads to my next question that I
15 had with regard to paragraph 7 of Exhibit 15
16 which is your supplemental declaration.
17 You make the statement -- this is the
18 second sentence:
19 "Gender-affirming hormone therapy with
20 testosterone produces secondary sex
21 characteristics such as voice deepening, beard
22 growing, fat redistribution, and increased
23 muscularity, and enlargement of the clitoris."
24 You may have already answered this based on
25 your prior question, but when you use the term

1 "secondary sex characteristics," what do you
2 mean by that?
3 A All of those parts that would have been changed
4 by puberty.
5 In this case, the capacity to develop a
6 beard; to change the genitals; the appearance of
7 the genitals; to change the way the body
8 looks -- those are all qualities that are
9 affected by testosterone.
10 Q Is it true that the use of a hormone treatment
11 like testosterone can't change certain aspects
12 of the outward anatomy of a subject?
13 A It is true. It has relatively little effect on
14 breast size once the breasts have developed.
15 For people who have already gone through
16 puberty, it won't change their height. Their
17 height is more or less fixed by that point.
18 Q And hormone treatment won't alter the fact that
19 an individual who is born with a vagina still
20 has a vagina and someone who is born with a
21 penis still has a penis; is that true?
22 A That's correct. So they still have a vulva, a
23 vagina, a cervix, a uterus, fallopian tubes,
24 ovaries.
25 Q That would be true for someone whose sex

1 assigned at birth was female?

2 A Correct.

3 Q Is it also true that a physician will still need

4 to account for those aspects of an individual's

5 biological sex in providing treatment?

6 A Yes.

7 Q For example, with regard to the students at

8 issue here, they will continue to need to

9 receive care for menses?

10 A Yes.

11 Q And, likewise, these students who are female

12 transitioning to male are advised of the

13 potential impact that testosterone may have on

14 their own fertility and ability to bear

15 children; is that true?

16 A That's correct. They are counseled for that

17 prior to the initiation of testosterone, and

18 it's regularly reviewed as part of their ongoing

19 care.

20 Q Another potential treatment that you've

21 discussed in your declarations, including your

22 supplement declaration, is surgical

23 intervention. Is that true?

24 A Yes.

25 Q And you've indicated in your supplemental

1 declaration that surgical intervention is not
2 generally a treatment option until age 18 in
3 Indiana. Is that true?
4 A That's correct.
5 Q In particular, if you turn to paragraph 13 of
6 your declaration, in paragraph 13, you make this
7 statement:
8 "In particular, absent extenuating
9 circumstances and approval of the hospital
10 ethics committee, to my knowledge, no physicians
11 practicing in Indiana will perform
12 gender-affirming genital surgery on the minor
13 plaintiffs in this case."
14 Why is that?
15 A I think there are several reasons. The first is
16 that the current standards of care defined by
17 the World Professional Association for
18 Transgender Health don't support genital surgery
19 under the age of 18.
20 As a corollary to that, many physicians
21 wouldn't refer people under the age of 18 for
22 genital surgery.
23 And as a third point, many insurance
24 companies use those guidelines to help them
25 decide what they will approve in terms of

1 payment, and so genital surgery is typically not
2 covered by many providers.
3 Q So putting insurance to the side, with regard to
4 the first two groups, the WPATH and individual
5 physicians, what is the position behind WPATH's
6 position in not recommending that for children
7 under the age of 18?
8 A I think that it has to do with the -- to the
9 extent of surgery required. They are demanding
10 surgeries; they are technically complex; they
11 often require more than one procedure; and the
12 writers of the guidelines have really assigned a
13 higher level of accountability associated with
14 those procedures.
15 Q A higher level of accountability for who?
16 A For the -- for the providers for that part of
17 counseling young people about options.
18 Q Do you have your own sort of opinion about --
19 putting aside whether it's legal or recommended
20 in Indiana under the age of 18, do you have your
21 own opinion as to surgical intervention under
22 the age of 18?
23 A I do.
24 Q And what is that?
25 A There are definitely individuals for whom

1 surgical intervention would clearly contribute
2 to their well-being, particularly chest surgery.
3 Q In that (indiscernible) cutoff at the age of 18,
4 is there an aspect of this that has to do with
5 reaching the age of majority and being able to
6 give legal consent?
7 A Yes, I think that's accurate. That's the way
8 the guidelines are defined in terms of the age
9 of majority in the nation or the region of
10 question.
11 Q Is -- one of the considerations in terms of
12 being able to make that decision, does it have
13 to do with the risk of involuntary sterilization
14 with that kind of treatment?
15 A No, I think not because that would be -- it
16 depends on the surgical procedure; so at some
17 point we will have to clarify that. But, in
18 general, if a procedure would require
19 sterilization, that would be part of the consent
20 process.
21 Q Well, in terms of -- I suppose my question was
22 unclear.
23 So with regard to genital surgery, can that
24 lead to involuntary sterilization?
25 A Yes, some of those procedures require a

1 vaginectomy.
2 MR. FALK: I'm just going to interpose an
3 objection a little bit late. I'm sorry. I
4 don't know what the term "involuntary" means in
5 that context. I think the doctor is indicating
6 that there has to be a consent process for the
7 actual procedure.
8 So with that objection --
9 BY MR. ZIMMERLY:
10 Q Is it possible that the use of puberty blockers
11 can place an individual at risk of
12 sterilization?
13 A No, I think that's not true.
14 Q What about the use of hormone therapy? Can that
15 place an individual at risk of sterilization?
16 A That is a possible outcome; however, I think the
17 data suggests that fertility will be retained
18 if, in this case, testosterone were removed.
19 And then just add one other point is that
20 fertility is always possible if the person's
21 eggs or ovaries are preserved prior to the
22 initiation of any procedure.
23 Q So in this case or the two cases, the parties
24 dispute whether a particular student should have
25 access to a restroom that is different than

1 their sex assigned at birth. And in your
2 supplemental declaration, paragraph 19, you make
3 the statement -- and this is the second
4 sentence:
5 "For these reasons and those in my
6 November 22, 2021, declaration, it remains my
7 opinion that the plaintiffs' health and
8 well-being is best served through free access to
9 the restroom and locker room facilities at
10 school as consistent with their male gender."
11 In that statement, what do you mean by
12 "free access"?
13 A Used by choice and need, I suppose.
14 Q And with regard to B.E. and S.E. in the Vigo
15 County case, the two separate physical spaces at
16 issue are the restroom and the locker room.
17 Does your opinion regarding to those physical
18 spaces make any distinction between the restroom
19 and the locker room?
20 A No, I think not.
21 Q And why not?
22 A I assume that some of the facilities of a locker
23 room are also present as part of -- also include
24 restroom facilities.
25 Q In your view or your opinion, why is it

1 important for each of these students to have
2 access to the boys' restroom?
3 A Well, the first important point is that they are
4 boys, and that's really the most central reason
5 for that.
6 Q When you say "they are boys," are you making
7 that statement from a medical perspective or a
8 legal perspective?
9 A A medical perspective.
10 Q And how would you define "boy"?
11 A That's what they told us they were.
12 Q So it's based on their definition of "boy"?
13 A Absolutely.
14 Q So is it true that any student who identifies as
15 a boy should be allowed to use the boys'
16 restroom?
17 A It's a step beyond a medically substantiated
18 perspective; so I hesitate to respond.
19 Would you be able to clarify that a little
20 more?
21 Q I guess I'm trying to figure out where you're
22 drawing the lines.
23 As I understand your testimony, your
24 definition of a particular individual,
25 particularly these plaintiffs, as them being

1 boys is based on what they have told you; that
2 they have told you that they are boys and,
3 therefore, they are boys.
4 I guess my question is with regard to other
5 individuals, other students, if they identify as
6 boys, should they have access to the boys'
7 restroom?
8 A Yes.
9 Q Going back to my initial question, I'd asked you
10 why it's important for each of these students to
11 have access to the boys' restrooms, and you said
12 the first primary point was that they are boys.
13 Then we kind of went, you know, on kind of a
14 bunny trail and asked some questions there.
15 Were there other considerations as to why
16 you believe it's important that they have access
17 to the boys' restroom?
18 A From a medical perspective, I've outlined a
19 number of reasons why that access supports their
20 mental health presently and in the future.
21 Q And so -- is there anything else?
22 A No.
23 Q And so if I understand that second point, it's
24 so that those students feel affirmed in their
25 gender identity. Is that a fair statement?

1 A Yes.
2 Q Would your answer be the same with regard to why
3 it's important for B.E. and S.E. to have access
4 to the boys' locker room?
5 A Yes.
6 Q So same two reasons?
7 A I think the thing you might add, there are
8 less -- there's less information in the medical
9 literature about locker rooms than there is
10 bathrooms, but it's important for social
11 affirmation to be seen as a boy in the place
12 boys would be seen.
13 Q Have you done any studies as to whether or not
14 or do you have an opinion as to whether or not
15 there may be a negative impact on students who
16 have -- who are female sex assigned at birth who
17 are changing in front of other students in a
18 male locker room?
19 A There are not any studies that I'm aware of that
20 particularly address that.
21 Many young people are modest about their
22 bodies no matter who's present.
23 Q Do you have an opinion as to what standard a
24 school should adopt in making the decision as to
25 whether to allow a student to have access to a

1 restroom that does not align with their sex
2 assigned at birth?
3 A I think I voiced that, which is recognition of
4 the young people's expressed gender and a
5 concern for their well-being, both currently and
6 in the future.
7 Q Do you believe there's a certain amount of time
8 that should pass, before a student who claims
9 that they are transgender, before they should be
10 allowed access to a restroom that does not align
11 with their sex assigned at birth?
12 A I don't have an opinion about that.
13 Q Do you have an opinion as to whether or not
14 certain sort of benchmarks should be met before
15 a student is allowed access to a restroom that
16 doesn't align with their sex assigned at birth?
17 A Yeah. And that's consistent with what I've said
18 before.
19 Q What are those benchmarks?
20 A Exactly what the person tells you.
21 Q Do you believe that school should allow for
22 gender fluidity such that students should be
23 allowed to go back and forth between restrooms?
24 A Yes. And the reason that I would say that is
25 because many students experience restrooms as

1 places of "I don't feel safe."
2 Q And for students who are nonbinary or identify
3 as nonbinary, do you have an opinion as to what
4 benchmarks you would expect to be in place that
5 govern that situation with regard to their
6 selection of a restroom?
7 A I think it would rest on their selection.
8 Q In rendering your opinion in this matter, did
9 you take into account the privacy interests of
10 the plaintiffs?
11 A I'm not sure I know what you mean by that.
12 Q Was, I suppose, privacy sort of included in the
13 calculus of whether or not each of these
14 plaintiffs should be allowed access to the male
15 restrooms?
16 A Yes, in the sense that choice is something that
17 incorporates the concept of privacy in terms of
18 spaces like restrooms.
19 Q If S.E. or B.E. said that "they don't want to be
20 known as trans or in the LGBTQ community in
21 school or public," how would that desire for
22 anonymity be aided by them gaining access to the
23 boys' restrooms and locker rooms?
24 A I think that would just be their direct
25 expression of being boys.

1 Q Do you believe that S.E.'s and B.E.'s mental
2 health would be served by allowing them to
3 disrobe in the open space of the locker room in
4 front of other students?
5 A By their choice, yes.
6 MR. FALK: Phil, it's been an hour and 15
7 minutes. Do you want to take a break?
8 (A recess was taken between 2:14 p.m. and
9 2:22 p.m.)
10 BY MR. ZIMMERLY:
11 Q When you were talking about having access to the
12 restroom and locker room, I believe your
13 testimony -- part of your testimony was that --
14 was that so that these students can have social
15 approval, given that there were boys where boys
16 are expected to be. Is that fair? Is that an
17 accurate account of your testimony?
18 A Yes.
19 Q And when you're talking about social approval,
20 who are we seeking approval from?
21 A Others. Because being in a boys' restroom,
22 means you're a boy, and that would be violated
23 if you were in the girls' restroom and you're a
24 boy.
25 Q Have you studied the potential impact that might

1 occur to a student if they changed their clothes
2 in a locker room in front of other students with
3 a different sex assigned at birth?
4 A I've not done that study. I don't believe that
5 study's been done. As part of my larger
6 practice, I have supported many young people who
7 identify as male but who have a condition called
8 "gynecomastia," which is an appearance of
9 breasts, who are uncomfortable in changing in a
10 locker room. So it's possible to be
11 uncomfortable changing in front of others even
12 if you're -- even with a complete sense you're
13 in the right space.
14 Q If S.E. and B.E. were to disrobe or shower in
15 front of other students in the girls' restroom,
16 would that allow them to be outed as
17 transgender?
18 A Yes, probably.
19 Q Is it possible that the peer reactions in that
20 setting may also cause them shame?
21 A Based on stories of my patients, the discomfort
22 felt in female bathrooms is far larger than any
23 that they experience in male bathrooms.
24 Q What about with regard to locker rooms?
25 A I don't think I have a reference point for that.

1 Q There was a statement made in one of the
2 articles that you referenced or that was
3 referenced in your declarations. It was in an
4 article by Myeshia Price-Feeney, Amy Green, and
5 Samuel Dorison. The title of the article is
6 "Impact of Bathroom Discrimination on Mental
7 Health Among Transgender and Nonbinary Youth."
8 Are you familiar with that article?
9 A Yes, I am.
10 Q And one of the statements in the conclusions
11 that I'd like your opinion on is that they
12 conclude:
13 "Offering gender-neutral bathrooms,
14 avoiding restrictive policies, and providing
15 private places to change clothes in locker rooms
16 may not only improve mental health for these
17 youths but could potentially save TGNB youths'
18 lives."
19 Do you have an opinion as to why their
20 conclusion was that providing private places to
21 change clothes in locker rooms may help to
22 improve mental health and save lives?
23 A I think they are referring to --
24 MR. FALK: I'm sorry. I hate Zoom. I was
25 trying to object.

1 I'm just going to interpose an objection
2 just because that's an incomplete reading of the
3 conclusion. Further on, the conclusion states,
4 I'm quoting:
5 "School administrators and teachers should
6 explicitly support the right of students to use
7 a bathroom that matches their identity and
8 efforts to establish gender-neutral facilities
9 on campus."
10 I just want to have that as before the
11 doctor -- as he responds.
12 Thank you.
13 THE WITNESS: Ken, you sort of put words in
14 my mouth.
15 MR. FALK: I'm sorry. That's what lawyers
16 do. I apologize.
17 You may continue. Go ahead and answer,
18 Doctor. I'm sorry.
19 BY MR. ZIMMERLY:
20 Q As I interpreted that statement by them with
21 regard to providing private places to change
22 clothes, and for specific reference to locker
23 rooms, is that that would provide privacy to
24 those students and improve their mental health
25 and potentially save their life -- save lives as

1 it pertains to locker rooms. Do you think I'm
2 misunderstanding their conclusion with regard to
3 that?
4 A A bit. Because I think they are also, in
5 general, referring to privacy across the board
6 for young people in terms of their bodies.
7 Q Are you aware of whether S.E. and B.E., if
8 either of those students was engaged in
9 self-harm via cutting and/or had suicidal
10 ideation in the summer before school started in
11 the 2021-2022 school year?
12 A I cannot remember the specific reference to that
13 in the record.
14 Q Okay. What about with regard to A.C.? Do you
15 know whether A.C. has a history of self-harm or
16 suicidal ideation prior to the beginning of the
17 school year?
18 A I believe that it had been noted as part of
19 the -- of that young person's experience.
20 Q Have you rendered any opinion as to whether
21 access to bathrooms and locker rooms at this
22 school, whether that's prompted any feelings of
23 self-harm or suicidal ideation by any of these
24 students?
25 A I think both S.E. and B.E. have noted the stress

1 that's been associated with the interactions
2 with the school and the issue with bathroom
3 access.
4 Q And is that based on something that they have
5 said to you?
6 A That was indicated in the medical record.
7 Q Something in the medical record, but you're
8 relying on the medical record for that, not
9 based on your personal interaction with either
10 of those two students?
11 A That was reviewed in the interactions -- the
12 limited interactions that I've had with those
13 two patients.
14 Q In providing --
15 (Reporter request for clarification.)
16 Q In providing your opinions in this matter with
17 regard to restroom access and/or locker room
18 access, did you take into consideration the
19 privacy interests of other students who use the
20 boys' restrooms and/or locker rooms at the
21 school?
22 A I did not.
23 Q Have you conducted any studies with regard to
24 whether an individual's exposure to the sexual
25 anatomy of someone from the opposite sex during

1 middle school has any impact on that individual?
2 A Not personally conducted research of that
3 nature.
4 Q Are you familiar with any studies in that
5 regard?
6 A Not as you've described it.
7 Q Have you conducted any studies with regard to
8 whether an individual's exposure to the sexual
9 anatomy of someone from the opposite sex during
10 high school -- during high school has any impact
11 on that individual?
12 A I'm aware of research that addresses exposure to
13 household nudity up through adolescence without
14 finding specific harms associated with it absent
15 of other issues, but I believe that exposure to
16 other peers has not been addressed in that same
17 fashion other than people associated with
18 naturism, nudism, where that is also a family
19 experience, typically, for young people.
20 Q So you would have no opinion with regard to
21 whether there was harm or not harm with regard
22 to other students -- middle school students or
23 high school students that were being exposed to
24 the physical anatomy of these plaintiffs?
25 A Yeah, I think that's accurate.

1

19 Q Let's turn and talk a little bit about A.C. In
20 the declaration that you provided for A.C. which
21 we have marked as Exhibit 17 --
22 A Okay.
23 Q -- do you have that in front of you?
24 A I do.
25 Q Is this a declaration that you provided sworn

1 testimony through in the A.C. v. MSD of
2 Martinsville case?
3 A Yes.
4 Q In your declaration, paragraph 9, you make the
5 statement:
6 "In preparing this declaration" --
7 I'm sorry. I'll let you get there.
8 A Got it.
9 Q Paragraph 9:
10 "In preparing this declaration, I reviewed
11 the complaint in this case as well as the
12 medical and mental health records of the
13 plaintiff from Riley Hospital."
14 Is that true?
15 A Yes.
16 Q What specific medical records do you recall
17 reviewing for A.C.?
18 A Specifically the record of his visits to the
19 Riley Gender Health Clinic.
20 Q I didn't see any reference to participating in
21 the care of A.C. Have you participated in the
22 care of A.C.?
23 A No.
24 Q Have you had any direct discussions with A.C.?
25 A No.

1 Q Have you had any discussions with A.C.'s mother?
2 A No.
3 Q You've not spoken with A.C. about A.C.'s use of
4 the restrooms at MSD Martinsville or the use of
5 the health clinic restrooms?
6 A No.
7 Q You've not spoken with A.C. about what
8 individualized harm A.C. believes will occur if
9 A.C. is not allowed full access to the boys'
10 restroom?
11 A That's right.
12 Q Have you performed an individualized assessment
13 as to the severity of the harm to A.C. if A.C.
14 is not allowed access to the boys' restroom and
15 locker room?
16 A No.
17 Q Have you performed an individualized assessment
18 of the reduction of that alleged harm if A.C. is
19 allowed access to the boys' restroom?
20 A No.
21 Q In paragraph 16 of your declaration in the A.C.
22 matter, second sentence, you make the statement:
23 "However, recent research conducted by the
24 Centers for Disease Control and Prevention show
25 that up to 1.9 percent of high school students

1 identify as transgender or gender nonbinary."
2 In your declaration -- your original
3 declaration submitted in the Vigo County case, I
4 believe that you testified that 1.9 percent of
5 high school students identify as transgender and
6 didn't make reference to gender nonbinary. Is
7 there a reason for that change?
8 A No, other than trying to be more specific and
9 inclusive with language.
10 Q In paragraph 27 of the A.C. declaration -- your
11 declaration in the A.C. case --
12 A Okay.
13 Q -- you make a statement, three sentences in:
14 "Hormone therapy to feminize or masculinize
15 the body is considered by many, but not all,
16 young people."
17 Who ultimately makes the decision as to
18 whether or not hormone therapy is instituted?
19 A As I think with all of these cases, it's a joint
20 decision based on the young person's preference;
21 the parents' support of that choice if the
22 person is under age 18; and the provider's
23 assessment.
24 Q You mentioned that the age ranges of children
25 who receive care at the Gender Health Clinic

1 range from 3 to 21. Does that -- does the type
2 of treatment and decisions regarding treatment
3 differ with regard to younger children than it
4 does the adolescent children?
5 A Yes, completely.
6 Q Turn back to paragraph 27.
7 A Okay.
8 Q The sentence -- you make the statement:
9 "It is important to note that these mental
10 health issues, the depression and anxiety,
11 primarily are most often responses to social
12 hostility, rejection, discrimination, emotional
13 abuse, bullying, and physical violence
14 associated with society's rejection of the
15 person's expressed gender."
16 What are you basing that statement on?
17 A An amalgam of research literature that suggest
18 that these mental health conditions are not --
19 wouldn't have existed or wouldn't have existed
20 in the same way without the kind of treatment
21 that they've received in terms of their gender
22 expression.
23 Q Is it true that there may be other causes for
24 feelings of depression and anxiety in any given
25 patient?

1 A Yes --
2 Q And what other --
3 A -- absolutely.
4 Q What other causes could those involve?
5 A Depression is a common experience with many
6 young people. These are young people; so they
7 are not immune from all the other kinds of
8 things that young people face that are
9 associated with depression.
10 Q Is that also true for anxiety?
11 A Yes.
12 Q And does the cause for any particular depression
13 or anxiety depend on each particular patient?
14 A Yes, although there are predictable risk factors
15 that can be associated with the experience with
16 depression.
17 Q What do you mean by that?
18 A So things like gender identity would be one;
19 things like a history of abuse could be one;
20 sexual orientation could be one -- those are the
21 kinds of things that might be associated with
22 depression or anxiety.
23 Q And would that require an individualized
24 assessment for that particular patient to
25 determine the cause and treatment?

1 A Yes.
2 Q Did you perform an individualized assessment for
3 A.C.?
4 A No.
5 Q Did you perform an individualized assessment for
6 B.E. or S.E.?
7 A As noted, yes, I participated in that
8 assessment.
9 MR. FALK: Phil, do you want to take a
10 five-minute break?
11 (A recess was taken between 3:26 p.m. and
12 3:34 p.m.)
13 BY MR. ZIMMERLY:
14 Q In A.C., the declaration of A.C.,
15 Dr. Fortenberry, if you'd turn to paragraph 37.
16 A Give me a sec.
17 Okay.
18 Q In this paragraph, you're talking about:
19 "Use of public facilities corresponding to
20 one's lived gender experience and expression
21 being integral to social recognition of
22 identity."
23 In the last sentence of this paragraph, you
24 make a statement:
25 "In fact, recent research shows that among

1 transgender and gender nonbinary young people
2 denied access to school bathroom facilities
3 consistent with their gender identity,
4 85 percent reported depression, 60 percent
5 seriously considered suicide, and about
6 33 percent reported a past-year suicide
7 attempt."
8 What specifically are you referencing with
9 regard to those numbers?
10 A I think I got the wrong exhibit.
11 Q I'm sorry. It's Exhibit 17.
12 A Mm-hmm.
13 Q The declaration in the A.C. v. MSD Martinsville
14 case.
15 A Okay.
16 Q What paragraph?
17 A Paragraph 37.
18 MR. FALK: The top of page 12, Doctor.
19 A I'm referring to a specific study that showed
20 that among young people who had been denied
21 access to the school bathroom facilities that
22 reflected their gender, the majority had
23 depression or considered suicide, and then about
24 a third had a past-year suicide attempt. That's
25 an association, not a cause.

1 BY MR. ZIMMERLY:
2 Q Were you involved in that study?
3 A I was not.
4 Q Do you know whether or not those numbers with
5 regard to the reported percentages were any
6 different if access was allowed to public
7 facilities?
8 A That was the comparison in that study. So
9 people that were denied were compared to people
10 that didn't have that experience.
11 Q Were there any cisgender kids that were included
12 in that study?
13 A I don't think so.
14 Q Paragraph 39, just go down on page 12, you make
15 the statement:
16 "In my clinical experience, reserving a
17 specific bathroom or locker room solely for the
18 use of the transgender or gender-nonbinary
19 person when there are other sex-specific
20 restrooms available for everyone else often
21 fails to solve issues of bathroom access at
22 school."
23 Are there instances where providing a
24 specific bathroom or locker room has resolved
25 issues of bathroom access at school?

1 A I would say that some patients report that being
2 a satisfactory solution for them.
3 Q Paragraph 46.
4 A Okay.
5 Q Your statement:
6 "Testosterone initiation has not been
7 discussed or prescribed, although testosterone
8 may be proscribed to some patients at this age."
9 I believe that the age of the student is
10 13. Is that your understanding?
11 A That's correct. Yes.
12 Q And what -- when would it be appropriate to
13 proscribe testosterone to a patient at that age?
14 A We, in fact, do prescribe testosterone. I think
15 this is a typo in the declaration. It should be
16 "prescribed."
17 Q Oh, I'm sorry. Yes.
18 A So we do, in fact, prescribe testosterone for
19 patients of this age.
20 Q And how is that determination made?
21 A Part of it is the patient's interest in the
22 topic; and where they are in terms of being
23 willing to start that treatment; as well as the
24 support and permission of the parent of a
25 patient this age.

1 That would also be consistent with evidence
2 that the young person had completed puberty at
3 that point or the majority of pubertal growth.
4 Q So I don't know that I heard you completely.
5 Is the decision to be made in terms of
6 prescribing testosterone based on whether or not
7 puberty has been completed or not?
8 A Yes. The major issue with that is that starting
9 testosterone or completing pubertal growth --
10 starting testosterone will stop any additional
11 growth. And so even attaining one or two
12 additional centimeters of height is important to
13 some young people.
14 But if they have already finished their
15 puberty, then it's not a consideration. They
16 are not going to grow anymore.
17 Q Okay. Paragraph 47 is the statement:
18 "Support for use of male bathrooms
19 consistent with the plaintiffs' experience,
20 gender, and gender identity is a standard
21 element of our clinical protocols in terms of
22 its relevance to each patients' health and
23 safety."
24 Am I correct in understanding that across
25 the board, that support for use of male

1 restrooms is what you would -- is your position
2 with regard to a situation like this?
3 A No, that wouldn't be correct. We assess their
4 use; we assess their sense of safety; and we
5 assess whether we can support their -- the use
6 of their facilities that they are most
7 comfortable and safe in.
8 Q And have you done such an individualized
9 assessment for A.C.?
10 A I participated in that assessment -- well, not
11 for A.C. Sorry. I shifted back to the other
12 boys. Not for A.C.
13 Q Okay. If you turn to what we've marked as
14 Exhibit 18 --
15 (Deposition Exhibit 18 was presented for
16 identification.)
17 Q -- which is the A.C. medical records that have
18 been provided.
19 A So -- okay.
20 Q This is a -- I believe about a 15-page document.
21 When you say that you reviewed the medical
22 records of A.C., are these the records that you
23 are referring to when you prepared your
24 declaration?
25 A Yes.

1 Q Were there any other records that you reviewed?
2 A No.
3 Q On the third page of this document --
4 Well, before we get there, let's go ahead
5 to the second page. There's a reference to
6 Laura Erickson as the one providing care. Who
7 is Laura Erickson?
8 A She is a nurse practitioner who works in the
9 gender program.
10 Q In the third page, there is a -- under Clinic
11 Office Records, there's these bold sections
12 Menstrual History, Patient Medical History, and
13 then Mental Health.
14 Do you see that?
15 A Yes.
16 Q In that paragraph, there's a statement:
17 "Going to school is a big anxiety trigger.
18 Experiences a lot of bullying at school. No
19 supportive teachers at school. Has to use the
20 clinic bathroom, as he's not allowed to use the
21 boys' bathroom and doesn't feel comfortable
22 using the girls' bathroom. Offered help with
23 bathroom use, and he said it's not that
24 troublesome to go to the clinic."
25 Do you have any personal knowledge as to

1 that conversation between A.C. and Nurse
2 Practitioner Erickson?
3 A I don't.
4 Q Do you know whether or not A.C. told Nurse
5 Practitioner Erickson that it wasn't that
6 troublesome to go to the clinic?
7 A I don't know. I --
8 Q If you turn to the last document that we've
9 marked as an exhibit, Exhibit 19.
10 (Deposition Exhibit 19 was presented for
11 identification.)
12 A Okay.
13 Q Did you discuss A.C.'s treatment plan with Nurse
14 Practitioner Erickson?
15 A I did.
16 Q And when did you discuss the treatment plan?
17 A Probably in about the date of this note, maybe a
18 few days before. So roughly the middle of
19 January.
20 Q What do you recall about that conversation?
21 A Her sense of where the young person was in terms
22 of gender transition, how the initial interview
23 had gone, and just really her perspectives on
24 the young person.
25 Q In terms of the preparation of this letter, is

1 this something you prepared, or is this
2 something that Nurse Practitioner Erickson
3 prepared?
4 A I prepared it after speaking with her. She was
5 heading out; she was on vacation. And there was
6 some sense of urgency to have this letter in
7 terms of resolving this issue; so I provided it
8 as a clinic provider, which is the kind of
9 coverage that I would often provide for a
10 colleague.
11 Q Okay. Was there a physical examination done by
12 Nurse Practitioner Erickson?
13 A Yes, I think there was.
14 Q Five paragraphs down, you make the statement:
15 "It's important to note that the trajectory
16 of treatment is highly individualized."
17 Is that sort of a common theme; that these
18 assessments with regard to treatment have to be
19 made on a case-by-case basis?
20 A It is. And it's -- to me, it was particularly
21 important to note that the use of testosterone
22 was not something that would automatically be
23 expected as part of this care.
24 And if I remember right, the school had
25 specifically requested information regarding the

1 use of testosterone.

2 Q In terms of --

3 With regard to A.C., is it because A.C. is

4 not yet through puberty that the decision with

5 regard to testosterone would perhaps not yet be

6 prescribed for her, or what's the distinction

7 between A.C. and the students from Vigo County?

8 A The distinction is that, as best I have, that

9 A.C. himself has not raised the issue, raised

10 the question of testosterone at this point.

11 MR. ZIMMERLY: I think that's it in terms

12 of questions. If you'll just give me one second

13 to call my co-counsel to make sure he doesn't

14 have any other questions for me to ask you, I'll

15 be right back.

16 THE WITNESS: Okay.

17 (A discussion was held off the record.)

18 MR. ZIMMERLY: I don't have any other

19 questions.

20 Dr. Fortenberry, I'm so thankful for your

21 time today. Thank you for listening to my

22 questions and answering my questions and wish

23 you the best.

24 MR. FALK: Let's take a break.

25 (A recess was taken between 3:52 p.m. and

1 4:11 p.m.)
2 MR. FALK: Doctor, I'm required as a lawyer
3 to now say, "I have a few questions." Okay?
4 All lawyers say it. We don't necessarily have a
5 good sense of what the word "few" means, but
6 we'll get it a shot. Okay?
7 CROSS-EXAMINATION,
8 QUESTIONS BY KENNETH J. FALK:
9 Q At the beginning of your deposition -- and I
10 might have gotten this wrong -- but you made a
11 comment concerning the plaintiffs --
12 MR. FALK: Excuse me for a second. Let me
13 close my office door.
14 I'm sorry.
15 BY MR. FALK:
16 Q You made a comment about continuing
17 menstruation. So, first, focusing on B.E. and
18 S.E., are they still menstruating at this point?
19 A I don't believe so. I think that's been
20 addressed both with medication as well as an
21 effective testosterone that they have been on.
22 Q And then focusing on A.C., is A.C. menstruating
23 at the current time?
24 A No. Again, we've received a specific medication
25 to suppress their bleeding, which is a standard

1 part of our clinical service.
2 Q You were asked a question about the Price-Feeney
3 article and a conclusion concerning
4 gender-neutral bathrooms. Do you remember those
5 questions?
6 A Yes.
7 Q And what is your understanding that that article
8 was saying about who should have the option of
9 utilizing gender-neutral bathrooms or
10 gender-neutral places to change?
11 A I think they were referring to young people in
12 general having that option, with gender-diverse
13 young people being fully included in that -- in
14 that access to spaces that felt safe.
15 Q So if a cisgender student felt uncomfortable in
16 a locker room -- I think you alluded to students
17 who might have gynecomastia -- they should have
18 the option of having a private space if they
19 want it?
20 A I've supported that for many young people.
21 Q Regardless of whether they are transgender or
22 not?
23 A Yes.
24 Q Now, from reviewing the medical records and your
25 knowledge of the plaintiffs, they have all --

1 have they all expressed distress, depression,
2 and anxiety concerning having to use either
3 female restrooms at school or a gender-neutral
4 nurse's restroom?
5 A Yeah, I think they have all -- I think that has
6 been recorded in all of their medical records
7 and more than one time for all of them.
8 Q Is that consistent -- I'm sorry.
9 Is that consistent with the literature
10 concerning how transgender youth react when not
11 allowed to use bathrooms associated with their
12 gender identity?
13 A Yeah, I think the literature suggests that the
14 large majority feel distress over that kind of
15 discrimination and the lack of access that it
16 represents.
17 Q And is that consistent with your experience in
18 treating all the patients you've treated
19 throughout your career?
20 A Yes, absolutely. It's by far more common an
21 experience than to not experience.
22 Q Far more common to experience that sort of
23 mental distress?
24 A Absolutely.
25 Q And similarly, had your review of the records

1 and your knowledge of their care and knowledge
2 of them regarding B.E. and S.E., have they
3 expressed distress, depression, anxiety, over
4 having to use or not being able to use the male
5 locker room?
6 A Yeah. As best I can tell, we've voiced --
7 they've voiced that consistently for the times
8 that we interacted with them in our clinic.
9 Q And, again, is that sort of mental distress
10 expressed by a transgender person about not
11 being able to use a locker room consistent in
12 this case with his gender identity consistent
13 with the literature as you understand it?
14 A Yes, it can. And both in the United States and
15 Canada, studies from Australia, from Western
16 Europe, come to the same conclusion along those
17 lines.
18 Q And is it consistent with your experience,
19 again, in the breadth of your treatment of these
20 youth over the years you've treated them?
21 A Yes. Yeah.
22 Q You've indicated the medical records indicate
23 the three plaintiffs all meet the diagnostic
24 criteria for gender dysphoria; is that correct?
25 A Correct.

1 Q You were asked some questions by Mr. Zimmerly
2 about your view about whether students should
3 have access to boys' restrooms who say they are
4 boys. Do you remember those questions?
5 A Mm-hmm.
6 Q Regardless of your opinion about that -- and
7 we'll talk about that in a second -- the
8 plaintiffs in this case, in addition to saying
9 they are boys, have been diagnosed with gender
10 dysphoria, which requires them to have over a
11 long period of time manifested certain -- taking
12 certain positions as to their view of themselves
13 and manifested those as well as showing
14 emotional distress; is that correct?
15 A Yes.
16 Q In a situation where a student just out of the
17 blue pops into school one day -- and, obviously,
18 this is not the situation of the plaintiffs
19 here -- but just pops into school one day and
20 says, "I want to use the boys' restroom even
21 though my assigned sex at birth was female,"
22 what should the school do?
23 A In my opinion, they should have a procedure in
24 place for recognizing that student and
25 supporting them, and then supporting them for

1 any additional services that might be helpful.
2 Q And would that procedure also involve making
3 sure that the student meets certain diagnostic
4 criteria?
5 A No. I am not committed to the school using
6 diagnostic criteria for access to bathrooms. I
7 think, in my experience, very, very few
8 adolescents would use this as a prank or a whim.
9 The social consequences as we have seen for that
10 kind of behavior are pretty extreme. And so my
11 sense, as I think guidelines for schools have
12 suggested, is that supporting the student in
13 their express gender is their first priority.
14 Q But in any event, the plaintiffs in this case
15 meet diagnostic criteria for gender dysphoria?
16 A And they also engaged in a process for working
17 with the school to make that known.
18 Q And they meet the criteria for gender dysphoria;
19 is that correct?
20 A Yes, completely.
21 Q And just -- I'm about to desist, I believe.
22 You were asked some questions about
23 Exhibit 18 which is the medical record of A.C.,
24 and if you'd turn to that Exhibit 18.
25 A Okay.

1 Q You were asked about an earlier progress note.
2 On page 14, there's a note that looks like from
3 January 7. Do you see that note?
4 A I haven't gotten to it yet, but I'm getting
5 there.
6 Q No problem.
7 Okay. About two thirds of the way down, a
8 couple, three lines above where it says -- see
9 where it says Stressors/Dysphoria?
10 A Yes.
11 Q If you go three lines up, it says:
12 "Still having issues with school bathroom.
13 Letter that we sent did not help with all
14 teachers. Some let him go during class, but
15 it's still hard to use the clinic restroom. He
16 got caught using the boys' bathroom. They have
17 now filed lawsuit with the school."
18 Do you see that?
19 A Yes.
20 Q And is it your understanding that he did not
21 feel that being able to utilize the nurse's
22 clinic restroom was an adequate solution to his
23 need to use the restroom?
24 A I think that would be -- that was my
25 interpretation of that section.

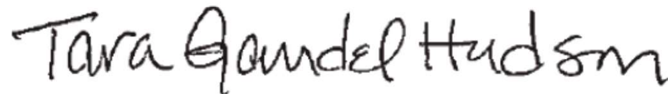
1 Q And, again, that's consistent with both the
2 literature and your experience of treating youth
3 with gender dysphoria; is that correct?
4 A Yeah. And I think it's important to remember
5 that many young people have a pretty good
6 respect for the rules, and so to violate them
7 was a big deal.
8 MR. FALK: Just -- I'm going to turn my
9 sound off for a second. Just consult with my
10 co-counsel to see if there are any other
11 questions.
12 (A discussion was held off the record.)
13 MR. FALK: No further questions.
14 MR. ZIMMERLY: I may just have one or two
15 follow-ups for you, Dr. Fortenberry.
16 REDIRECT EXAMINATION,
17 QUESTIONS BY PHILIP R. ZIMMERLY:
18 Q With regard to this note that we were just
19 looking at, you don't have any personal
20 knowledge as to what specifically A.C. told to
21 Nurse Practitioner Erickson during this
22 January 22 meeting, do you?
23 A No.
24 Q And that's true for the other medical records
25 and other discussions that were held outside

1 your presence? You're relying on other people
2 to provide you with that information. Is that
3 true?
4 A Yes.
5 MR. ZIMMERLY: I have no further questions.
6 One note that I would make is that we
7 reserve rights to a follow-up deposition with
8 regard to other components of this case outside
9 the preliminary injunction phase. There are a
10 number of medical records that we have not yet
11 been able to obtain. I don't know that it would
12 be necessary, but we just make that note.
13 MR. FALK: Thank you.
14 And we'll take signature.
15 Doctor, I forgot to ask you, but as a
16 lawyer I just assume what the right answer is.
17 You have the right to review this
18 deposition. Relive the experience.
19 I'm a little offended that Phil, since this
20 was your first deposition, does not have some
21 sort of prize for you, but I'm sure that's
22 coming.
23 But you can review the deposition. If
24 there are mistakes as to names or what have you,
25 we can fill out an errata sheet. You can waive

1 that right. I would suggest you not waive it.
2 We will both review it, and then we can go over
3 it, if that's okay.
4 THE WITNESS: Okay.
5 MR. FALK: So we will take signature. I'm
6 the only one getting the copy for the
7 plaintiffs. We would like E-Tran.
8 THE REPORTER: You want a copy, and I will
9 send the original to you and not to the doctor?
10 MR. FALK: That is fine. I will get him to
11 sign off on it.
12 (Time noted: 4:25 p.m.)
13 AND FURTHER THE DEPONENT SAITH NOT.
14
15 _________________________________
16 J. DENNIS FORTENBERRY, M.D., M.S.
17
18
19
20
21
22
23
24
25

1 STATE OF INDIANA)
) SS:
2 COUNTY OF HANCOCK)
3 I, Tara Gandel Hudson, RPR, CRR, a Notary
4 Public in and for the County of Hancock, State of
5 Indiana at large, do hereby certify that the
6 deponent, J. DENNIS FORTENBERRY, M.D., M.S., was by
7 me remotely sworn to tell the truth, the whole
8 truth, and nothing but the truth in the
9 aforementioned matter;
10 That the foregoing deposition was taken on
11 behalf of the Defendants, with the witness located
12 in Indianapolis, Marion County, Indiana, on the 1st
13 day of March, 2022, scheduled to commence at
14 1:00 p.m., pursuant to the Federal Rules of Civil
15 Procedure;
16 That said deposition was reported
17 stenographically and transcribed to English under
18 my direction, and that the transcript is a true
19 record of the testimony received remotely of said
20 deponent; and that the signature of said deponent
21 to his deposition was requested;
22 That the parties were represented by their
23 counsel as aforementioned.
24 I do further certify that I am a disinterested
25 person in this cause of action; that I am not a

1 relative or attorney of either party, or otherwise
2 interested in the event of this action, and am not
3 in the employ of the attorneys for either party.
4 IN WITNESS WHEREOF, I have hereunto set my
5 hand and affixed my notarial seal this 4th day of
6 March, 2022.
7



8 Tara Gandel Hudson

____

9

Seal

10 Notary Public, State of Indiana

Commission No. 682534

11 My Commission Expires March 27, 2024
12
13
14
15
16
17
18
19
20
21
22
23
24
25