

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

HELEN ROE, a minor, by and through her parent and next friend MEGAN ROE; JAMES POE, a minor, by and through his parent and next friend LAURA POE; AND CARL VOE, a minor by and through his parent and next friend RACHEL VOE,

Plaintiffs,

v.

DON HERRINGTON, in his official capacity as Interim State Registrar of Vital Records and Interim Director of the Arizona Department of Health Services,

Defendant.

Case No. 4:20-cv-00484-JAS

EXPERT REPORT OF DR. DANIEL SHUMER, MD, MPH

Introduction

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-mentioned litigation. I have been asked by Plaintiffs' counsel to provide my expert opinion regarding the Arizona law prohibiting transgender persons born in Arizona from obtaining accurate birth certificates reflecting their sex and gender identity unless they either: (1) submit a written request for an amended birth certificate accompanied by a written statement from a physician that verifies the applicant or applicant's child has "undergone a sex change operation" (also referred to herein as a private administrative process); or (2) obtain a court order.

2. I have actual knowledge of the matters stated herein. If called to testify in this matter, I would testify truthfully and based on my expert opinion.

Qualifications and Experience

3. I am a Pediatric Endocrinologist and Medical Director of the Comprehensive Gender Services Program at Michigan Medicine, University of Michigan. I also serve as the Clinic Director of Child and Adolescent Gender Services at C.S. Mott Children's Hospital, and as an Assistant Professor of Medicine at the University of Michigan, where the major focus of my clinical and research work pertains to transgender adolescents. A true and correct copy of my Curriculum Vitae is attached hereto as **Exhibit A**.

4. I received my medical degree from Northwestern University in 2008. After completing a residency in pediatrics, I began a clinical fellowship in pediatric endocrinology at Harvard University's Boston Children's Hospital. During that clinical fellowship, I completed a Masters of Public Health from Harvard University's T.H. Chan School of Public Health. I finished both the fellowship and my degree in 2015.

5. As a fellow at Harvard, I was mentored by Dr. Norman Spack, a pioneer in transgender medicine who established the Gender Management Services Clinic (GeMS), the first major program in the U.S. to focus on gender-diverse and transgender adolescents. GeMS is located at Boston Children's Hospital. Working at GeMS, I became a clinical expert in the field of transgender medicine within pediatric endocrinology and began conducting research on gender identity and the evaluation and management of transgender children and adolescents.

6. Based on my work at GeMS, I was recruited to establish a similar program focusing on gender-diverse and transgender adolescents at the C.S. Mott Children's Hospital. In October 2015, I founded the hospital's Child and Adolescent Gender Services Clinic.

7. The Child and Adolescent Gender Services Clinic has treated over 600 patients since its founding. I have personally evaluated and treated over 400 patients for gender dysphoria. As the Clinical Director, I oversee the clinical practice, which includes four other physicians, two

clinical social workers, nursing, and administrative staff. I also actively conduct research related to transgender medicine and mental health concerns specific to transgender youth.

8. In addition to my work with transgender children and adolescents, I also treat children and adolescents with differences of sex development (“DSD”), commonly referred to as intersex conditions. I participate in the DSD Clinic’s monthly meetings and approximately 5% of my patients are children and adolescents with DSDs.

9. My academic duties as an assistant professor, include teaching lectures entitled “Puberty,” “Transgender Medicine,” and “Pediatric Growth and Development.” I am also the Director of the Transgender Medicine elective for the University of Michigan Medical School.

10. My recent publications include *Health Disparities Facing Transgender and Gender Nonconforming Youth Are Not Inevitable*, *Pediatrics*, 141(3), 1–2 (2018); *Psychological Profile of the First Sample of Transgender Youth Presenting for Medical Intervention in a U.S. Pediatric Gender Center*, *Psychology of Sexual Orientation and Gender Diversity*, 4(3), 374–382 (2017); *The Effect of Lesbian, Gay, Bisexual, and Transgender-Related Legislation on Children*, *J. of Pediatrics*, 178(5-6.e1), 5–7 (2016); *Advances in the Care of Transgender Children and Adolescents*, *Advances in Pediatrics*, 63(1), 79–102 (2016); *The Role of Assent in the Treatment of Transgender Adolescents*, *Int’l J. of Transgenderism*, 16(2), 97–102 (2015); and *Serving Transgender Youth: Challenges, Dilemmas, and Clinical Examples*, *Professional Psychology: Research and Practice*, 46(1), 37–45 (2015). I have also co-authored chapters of textbooks, including “Medical Treatment of the Adolescent Transgender Patient” in *Gender Affirmation: Medical and Surgical Perspectives*, Eds. Christopher J. Salgado et al., Taylor & Francis Group—CRC Press (2016). A listing of my publications is included in my Curriculum Vitae in **Exhibit A**.

11. I have been invited to speak at numerous hospitals, clinics, and conferences on topics related to clinical care and standards for treating transgender children and youth. For example, in December 2017 I spoke at the Nursing Unit (12-West) Annual Educational Retreat in Michigan on the topic of “Gender Identity at the Children’s Hospital,” and in October 2017, I planned, hosted, and spoke at a conference in Michigan entitled “Transgender and Gender Non-Conforming Youth: Best Practices for Mental Health Clinicians, Educators, & School Staff.”

12. In October 2019, I was invited by the Michigan Organization on Adolescent Sexual Health to speak to community groups across Southeast Michigan on the topic of “Gender Identity in Adolescents – Supporting Transgender Youth.” A listing of my lectures is included in my Curriculum Vitae in **Exhibit A**.

13. I belong to a number of professional organizations and associations relating to (i) the health and well-being of children and adolescents, including those who are transgender; and (ii) appropriate medical treatments for transgender individuals. For example, I am currently a member of the Pediatric Endocrine Society where I serve on the Gender Identity Special Interest Group’s Education Committee. This organization has been central in the development of the guidelines for the treatment of gender dysphoria. A complete list of my involvement in various professional associations is located in my Curriculum Vitae in **Exhibit A**.

14. My opinions contained in this report are based on: (i) my clinical experience as a pediatric endocrinologist treating transgender patients, including adolescents and young adults; and (ii) my knowledge of the peer-reviewed research, including my own, regarding the treatment of gender dysphoria, which reflects the clinical advancements in the field of transgender health. I generally rely on these types of materials when I provide expert testimony, and they include the documents specifically cited as supportive examples in particular sections of this report. The

materials I have relied on in preparing this report are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

15. I have not met or spoken with the Plaintiffs or their parents for purposes of this report. My opinions are based solely on the information that I have been provided by Plaintiffs' attorneys as well as my extensive background and experience treating transgender patients.

16. In the past four years, I have been retained as an expert and provided testimony on behalf of transgender plaintiffs in the following cases: *Dekker, et al. v. Weida et al.*, No. 4:22-cv-0325-RH-MAF (N.D. Fla.); *Boe, et al. v. Marshall et al.*, No. 2:22-cv-184-LCB-CWB (M.D. Ala.); *Roe, et al. v. Utah High School Activities Ass'n, et al.*, No. 220903262 (Third Judicial Dist. in and for Salt Lake County, Utah); *Menefee v. City of Huntsville Bd. of Educ.*, No. 5:18-cv-01481 (N.D. Ala.); *Flack v. Wisc. Dep't of Health Serv.*, No. 3:18-cv-00309 (W.D. Wisc.); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 2:16-cv-00943 (W.D. Wisc.). I also provided expert witness testimony on behalf of a parent in a custody dispute involving a transgender child in the following case: *In the Interest of Younger*, No. DF-15-09887 (Dallas County, Texas).

17. I am being compensated at an hourly rate for the actual time that I devote to this case, at the rate of \$300 per hour for any review of records, preparation of reports or declarations. I will be compensated with a day rate of \$1,920 for deposition and trial testimony. My compensation does not depend on the outcome of this litigation, the opinions that I express, or the testimony that I provide.

Scientific and Medical Understanding of Sex

18. By the beginning of the twentieth century, scientific research had established that external genitalia alone are not always an accurate indicator of a person's sex. Instead, a person's sex is comprised of a number of components, including, among others, internal reproductive

organs, external genitalia, chromosomes, hormones, gender identity, and secondary-sex characteristics. Diversity and incongruence in these components of sex are a naturally occurring source of human biological diversity.

19. Scientific research and medical literature across disciplines demonstrate each component of sex has strong biological ties, including gender identity. For example, there are numerous studies detailing the similarities in the brain structures of transgender and non-transgender people with the same gender identity. In one such study, the volume of the bed nucleus of the *stria terminalis* (a collection of cells in the central brain) in transgender women was equivalent to the volume found in non-transgender women. There are also studies highlighting the genetic components of gender identity. A study of identical twins found that if one twin was transgender that the other twin was far more likely to be transgender, as compared to the general population.

20. The above studies are representative examples of the growing body of scientific research and medical literature in this area of study. There is also ongoing research on the effects of the hormonal milieu *in utero*, and genetic sources for gender identity, among others.

21. Although the specific determinants of gender identity remain unknown, the significance of a person's gender identity as a determinant of that person's sex is widely accepted as the standard in medical practice.

Determination of an Individual's Sex

22. At birth, newborns are assigned a sex, either male or female, based solely on the appearance of their external genitalia. For most people, that assignment turns out to be accurate and their assigned sex matches that person's gender identity. However, for transgender people, their assigned sex does not align with their gender identity.

23. When there is a divergence between these factors, medical science and the well-established standards of care recognize that the person's gender identity is the most important and determinative factor of a person's sex.

24. Gender identity is a person's inner sense of belonging to a particular gender, such as male or female. It is a deeply felt and core component of human identity. Everyone has a gender identity.

25. A person's gender identity is innate, cannot be voluntarily changed, and is not undermined by the existence of other sex-related characteristics that do not align with it. In fact, living in a manner consistent with one's gender identity is critical to the health and well-being of any person, including transgender people.

26. Any attempts "cure" transgender individuals by forcing their gender identity into alignment with their assigned sex are harmful, dangerous, and ineffective. Those practices have been denounced as unethical by all major professional associations of medical and mental health professionals, such as the American Medical Association, the American Psychiatric Association, the American Psychological Association, and the World Professional Association for Transgender Health ("WPATH").

27. For more than four decades, the goal of medical treatment for transgender patients has been to alleviate their distress by bringing their lives into closer alignment with their gender identity. The specific treatments prescribed are based on individualized assessment conducted by medical providers in consultation with the patient's treating mental health provider. As discussed in more detail in the following section, research and clinical experience have consistently shown those treatments to be safe, effective, and critical to the health and well-being of transgender patients.

Standards of Care for the Treatment of Gender Dysphoria

28. Due to the incongruence between their assigned sex and gender identity, transgender people experience varying degrees of gender dysphoria, a serious medical condition listed in both the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* (“DSM-5”) and the World Health Organization’s *International Classification of Diseases* (“ICD-10”). Gender dysphoria is highly treatable and can be effectively managed. If left untreated, however, it can result in severe anxiety and depression, self-harm, and suicidality.

29. The prevailing standards of care for the treatment of gender dysphoria are developed by WPATH—an international multidisciplinary professional association to promote evidence-based care, education, research, advocacy, public policy and respect in transgender health. The most recent WPATH Standards of Care (“SOC”) represent expert consensus for clinicians related to medical care for transgender people, based on the best available science and clinical experience. The purpose of the WPATH SOC is to assist health providers in delivering necessary medical care to transgender people to maximize their patients’ overall health, psychological well-being, and self-fulfillment. The WPATH SOC has been recognized and adopted as the prevailing standard of care by the major professional association medical and mental health providers in the United States, including the American Medical Association, American Academy of Pediatrics, American Psychiatric Association, American Psychological Association, and Pediatric Endocrine Society.

30. The Endocrine Society is a 100-year-old global membership organization representing professionals in the field of adult and pediatric endocrinology. In 2017, the Endocrine Society published clinical practice guidelines on treatment recommendations for the medical management of gender dysphoria, in collaboration with the Pediatric Endocrine Society, the

European Societies for Endocrinology and Pediatric Endocrinology, and WPATH, among others. The guidelines are considered authoritative due to the respect given to these professional associations, the expertise of the authors, and the clarity with which the authors described what data was used in formulating recommendations.

31. Together, the WPATH SOC and the Endocrine Society's clinical practice guidelines constitute the prevailing standards governing the healthcare and treatment of gender dysphoria. Those treatments are safe, effective, and essential for the well-being of transgender young people.

32. Undergoing treatment to alleviate gender dysphoria is commonly referred to as a transition. The transition process typically includes one or more of the following three components: (i) social transition, including adopting a new name, pronouns, appearance, and clothing, and correcting identity documents; (ii) medical transition, including puberty delaying medication and hormone-replacement therapy; and (iii) surgical transition, including surgeries to alter the appearance and functioning primary- and secondary-sex characteristics. The steps that make up a person's transition will depend on that individual's medical and mental health needs.

33. There are no drug interventions or surgical treatments for gender dysphoria required or considered until after the onset of puberty. At the onset of puberty, adolescents diagnosed with gender dysphoria may be prescribed puberty-delaying medications to prevent the distress of developing permanent, unwanted physical characteristics that do not align with the adolescent's gender identity. The treatment works by pausing endogenous puberty at whatever stage it is at when the treatment begins, limiting the influence of a person's endogenous hormones on their body. For example, a transgender girl will experience no progression of physical changes caused by testosterone, including facial and body hair, an Adam's apple, or masculinized facial structures.

And in a transgender boy, those medications would prevent progression of breast development, menstruation, and widening of the hips.

34. Thereafter, at an appropriate time and according to individual patient needs, the treating provider may prescribe cross-sex hormones to induce the puberty associated with the adolescent's gender identity. This treatment is referred to as hormone-replacement therapy. The result of this treatment is that a transgender boy has the same typical levels of circulating testosterone as his non-transgender male peers. Similarly, a transgender girl will have the same typical levels of circulating estrogen as her non-transgender female peers. Those hormones cause transgender adolescents to undergo the same significant and permanent sex-specific physical changes as their non-transgender peers. For example, a transgender boy will develop a lower voice as well as facial and body hair, while a transgender girl will experience breast growth, female fat distribution, and softer skin.

35. When these medications are initiated at the early onset of puberty, their effects can also obviate the need for future surgical treatments such as male chest reconstruction surgery in transgender males, and electrolysis of facial and body hair and feminizing facial surgeries in transgender females.

36. Puberty-delaying medication and hormone-replacement therapy—both individually and in combination—also significantly improve a transgender young person's mental health because those medications ensure their physical appearance more closely aligns with their gender identity. This also decreases the likelihood that a transgender young person will be incorrectly identified with their assigned sex, further alleviating their gender dysphoria and bolstering the effectiveness of their social transition.

37. Social transition and hormone therapy are sufficient to treat gender dysphoria for many transgender people. The 2015 U.S. Transgender Survey revealed that 12% of transgender women did not require vaginoplasty or labiaplasty, 19% did not require augmentation mammoplasty, and 21% did not require facial feminization surgery. The same survey showed that 3% of transgender men did not require chest surgery reduction or reconstruction and 6% did not require a hysterectomy. Based on my clinical experience, those percentages are likely increasing—especially among transgender boys—as transgender young people have greater and more timely access to puberty-delaying medications and hormone-replacement therapy obviating the need for surgical intervention later in life.

38. For transgender people who require surgery to treat their gender dysphoria, the WPATH SOC do not recommend surgical treatment until the age of majority, except for male chest reconstruction surgery. Because of the age requirement, most transgender young people will be unable to access that care, even if they meet all the other criteria for surgery. Turning eighteen years of age only eliminates one barrier; transgender young people are likely to encounter other significant barriers to accessing surgical care for gender dysphoria including, for example, insurance exclusions, expenses associated with recovery, and availability of competent and affirming providers and surgical centers.

Recognition of a Person's Gender Identity as Their Sex

39. From a medical and scientific perspective, there is no basis for requiring that a transgender person undergo surgical treatment before acknowledging a transgender person's gender identity as their sex in every aspect of their lives. That is particularly true with respect to identity documents that contain indications of a person's sex, given the social significance of a birth certificate and its influence on how a transgender person is treated in their daily lives.

40. Contrary to what many laypeople may assume, the medical treatments that transgender people may undergo do not make a transgender person more of a man or more of a woman than they were before. Rather, a person's gender identity is innate and already exists, just as it does for non-transgender people. The only purpose of medical treatments is to help a transgender person express their innate identity and help others recognize that identity; they do not change the person's identity. As such, there is no specific medical step, or series of medical steps, a person must undertake to be recognized as who they are.

41. This is a well-established practice for other medical diagnoses as well. For decades, doctors have recognized that gender identity is determinative of sex for people with DSDs. Like transgender people, the various components of sex do not align in people with DSDs. For example, patients with Congenital Adrenal Hyperplasia (CAH) could have female chromosomes but be born with ambiguous genitalia due to exposure to high levels of testosterone *in utero*—a hallmark of CAH. Studies show that this population of CAH patients are considerably more likely than the general female population to have a male gender identity. CAH presents a simple and salient example, but there are DSDs with more complex clinical presentations, all of which further reinforce that gender identity is the only medically sound and reliable determinant of a person's sex. The focus of medical treatment is on providing whatever medical care is needed for an intersex or transgender individual to live consistent with their gender identity; it is never ethical or appropriate to try to change the person's gender identity, and doing so can cause severe harm.

42. Recognizing that assigning a sex at birth for a newborn with a DSD is little more than an informed prediction, many states have created a streamlined process that allows people with DSDs to correct their birth certificate without requiring invasive, and potentially medically unnecessary, procedures.

Conclusion

43. Requiring a transgender person to undergo a specific treatment or procedure, which may be invasive and medically inappropriate, to correct their identity documents through a private administrative process to reflect the person's gender identity has no basis in the prevailing standards of care, peer reviewed medical literature, or clinical experience.

44. Such a restriction places a particularly onerous burden on transgender young people who are unable to undergo such a surgery until late adolescence or early adulthood, at the earliest. Furthermore, many transgender young people who have timely access to medications may never need or want surgery and therefore never be eligible. Complying with the law at issue in this case would force transgender young people to submit to invasive and medically inappropriate or unnecessary procedures to correct their birth certificate through a private administrative process.

45. Delaying or denying transgender young people an accurate birth certificate also interferes with the effectiveness of treatments for gender dysphoria, including social transition and hormone-replacement therapy. A transgender young person will not get the full benefit—psychological and otherwise—because the sex marker on their birth certificate will prevent them from being treated consistently with their gender identity in every aspect of their life, including school and extracurricular activities. And it compounds that harm by exposing transgender young people to an increased likelihood of mistreatment by disclosing their transgender status. Those harms can have significant negative short- and long-term implications for their overall health and well-being.

I declare under criminal penalty under the laws of Arizona that the foregoing is true and correct.

Signed on the 19th day of April, 2023 in Ann Arbor, Michigan.

A handwritten signature in black ink, appearing to read 'D. Shumer', with a stylized flourish at the end.

Daniel Shumer, M.D.

Exhibit A

Daniel Shumer, MD MPH

Clinical Associate Professor in Pediatrics - Endocrinology

Email: dshumer@umich.edu

EDUCATION AND TRAINING

Education

- 08/2000-08/2003 BA, Northwestern University, Evanston, United States
- 08/2004-05/2008 MD, Northwestern University, Feinberg School of Medicine, Chicago, United States
- 07/2013-05/2015 MPH, Harvard T.H. Chan School of Public Health, Boston, United States

Postdoctoral Training

- 06/2008-06/2011 Residency, Pediatrics, Vermont Children's Hospital at Fletcher Allen Health Care, Burlington, VT
- 07/2011-06/2012 Chief Resident, Chief Resident, Vermont Children's Hospital at Fletcher Allen Health Care, Burlington, VT
- 07/2012-06/2015 Clinical Fellow, Pediatric Endocrinology, Boston Children's Hospital, Boston, MA

CERTIFICATION AND LICENSURE

Certification

- 10/2011-Present American Board of Pediatrics, General

Licensure

- Michigan, Medical License
- Michigan, Controlled Substance
- 08/2015-Present Michigan, Medical License

09/2015-Present Michigan, DEA Registration

09/2015-Present Michigan, Controlled Substance

WORK EXPERIENCE

Academic Appointment

10/2015-9/2022 Clinical Assistant Professor in Pediatrics - Endocrinology,
University of Michigan - Ann Arbor, Ann Arbor

09/2022-Present Clinical Associate Professor in Pediatrics - Endocrinology,
University of Michigan - Ann Arbor, Ann Arbor

Administrative Appointment

07/2019-Present Fellowship Director - Pediatric Endocrinology, Michigan
Medicine, Department of Pediatrics, Ann Arbor

07/2020-Present Medical Director of the University of Michigan
Comprehensive Gender Services Program, Michigan
Medicine, Ann Arbor

*Oversee the provision of care to transgender and gender non-
conforming patients at Michigan Medicine.*

07/2020-Present Education Lead - Pediatric Endocrinology, University of
Michigan - Department of Pediatrics, Ann Arbor

Clinical Appointments

04/2022-05/2023 Medical Director in UMMG Faculty Benefits Appt.,
University of Michigan - Ann Arbor, Ann Arbor

Private Practice

08/2013-09/2015 Staff Physician, Harvard Vanguard Medical Associates,
Braintree

RESEARCH INTERESTS

- Gender dysphoria
- Prader Willi Syndrome

CLINICAL INTERESTS

- Gender dysphoria
- Disorders of Sex Development
- Prader Willi Syndrome

GRANTS

Past Grants

A Phase 2b/3 study to evaluate the safety, tolerability, and effects of Livoletide (AZP-531), an unacylated ghrelin analog, on food-related behaviors in patients with Prader-Willi syndrome

PI

Millendo Therapeutics

04/2019 - 04/2021

HONORS AND AWARDS

National

2014 Annual Pediatric Endocrine Society Essay Competition:
Ethical Dilemmas in Pediatric Endocrinology: competition
winner - The Role of Assent in the Treatment of Transgender
Adolescents

Institutional

2012 - 2015 Harvard Pediatric Health Services Research Fellowship;
funded my final two years of pediatric endocrine fellowship
and provided tuition support for my public health degree

2016 The University of Michigan Distinguished Diversity Leaders Award, awarded by The Office of Diversity, Equity and Inclusion to the Child and Adolescent Gender Services Team under my leadership

2019 Lecturer of the Month, Department of Pediatrics, Michigan Medicine

TEACHING MENTORSHIP

Resident

07/2020-Present Rebecca Warwick, Michigan Medicine (co-author on publication #22)

Clinical Fellow

07/2017-06/2020 Adrian Araya, Michigan Medicine (co-author on publication #22, book chapter #4)

12/2020-Present Jessica Jary, Michigan Medicine - Division of Adolescent Medicine

Medical Student

09/2017-06/2020 Michael Ho, Michigan Medicine

07/2019-Present Hadrian Kinnear, University of Michigan Medical School (co-author on book chapter #3, abstract #3)

07/2019-Present Jourdin Batchelor, University of Michigan

TEACHING ACTIVITY

Regional

08/2018-Present Pediatric Boards Review Course sponsored by U-M: "Thyroid Disorders and Diabetes". Ann Arbor, MI

Institutional

- 12/2015-12/2015 Pediatric Grand Rounds: "Transgender Medicine - A Field in Transition". Michigan Medicine, Ann Arbor, MI
- 02/2016-02/2016 Medical Student Education: Panelist for M1 Class Session on LGBT Health, Doctoring Curriculum. Michigan Medicine, Ann Arbor, MI
- 02/2016-02/2016 Psychiatry Grand Rounds: "Transgender Medicine - A Field in Transition". Michigan Medicine, Ann Arbor, MI
- 03/2016-03/2017 Pharmacy School Education: "LGBT Health". University of Michigan School of Pharmacy, Ann Arbor, MI
- 04/2016-Present Course Director: Medical Student (M4) Elective in Transgender Medicine. Michigan Medicine, Ann Arbor, MI
- 04/2016-04/2016 Rheumatology Grand Rounds: "Gender Identity". Michigan Medicine, Ann Arbor, MI
- 05/2016-05/2016 Lecture to Pediatric Rheumatology Division: "Gender Dysphoria". Michigan Medicine, Ann Arbor, MI
- 07/2016-07/2016 Internal Medicine Resident Education: "Gender Identity". Michigan Medicine, Ann Arbor, MI
- 09/2016-09/2016 Presentation to ACU Leadership: "Gender Identity Cultural Competencies". Michigan Medicine, Ann Arbor, MI
- 10/2016-10/2016 Presentation to Department of Dermatology: "The iPledge Program and Transgender Patients". Michigan Medicine, Ann Arbor, MI
- 02/2017-02/2017 Swartz Rounds Presenter. Michigan Medicine, Ann Arbor, MI
- 02/2017-02/2017 Lecture to Division of General Medicine: "Transgender Health". Michigan Medicine, Ann Arbor, MI

- 02/2017-02/2017 Presentation at Collaborative Office Rounds: "Transgender Health". Michigan Medicine, Ann Arbor, MI
- 10/2017-10/2017 Family Medicine Annual Conference: "Transgender Medicine". Michigan Medicine, Ann Arbor, MI
- 12/2017-12/2017 Presenter at Nursing Unit 12-West Annual Educational Retreat: "Gender Identity at the Children's Hospital". Michigan Medicine, Ann Arbor, MI
- 02/2018-Present Pediatrics Residency Lecturer: "Puberty". Michigan Medicine, Ann Arbor, MI
- 02/2019-Present Medical Student (M1) Lecturer: "Pediatric Growth and Development". Michigan Medicine, Ann Arbor, MI
- 02/2019-Present Doctors of Tomorrow Preceptor: offering shadowing opportunities to students from Cass Technical High School in Detroit. Michigan Medicine, Ann Arbor, MI
- 03/2019-03/2019 Lecture to Division of Orthopedic Surgery: "Transgender Health". Michigan Medicine, Ann Arbor, MI

MEMBERSHIPS IN PROFESSIONAL SOCIETIES

2012 - Present Pediatric Endocrine Society

COMMITTEE SERVICE

National

- 2014 - 2016 Pediatric Endocrine Society - Ethics Committee, Other, Member
- 2017 - present Pediatric Endocrine Society - Special Interest Group on Gender Identity, Other, Member
- 2018 - present Pediatric Endocrine Society - Program Directors Education Committee, Other, Member

Regional

2013 - 2015 Investigational Review Board - The Fenway Institute, Boston, MA, Other, Voting Member

Institutional

2017 - 2019 Department of Pediatrics at Michigan Medicine; Diversity, Equity, and Inclusion Committee, Other, Fellowship Lead

2017 - 2019 University of Michigan Transgender Research Group, Other, Director

VOLUNTEER SERVICE

2014 Camp Physician, Massachusetts, Served at a camp for youth with Type 1 Diabetes

SCHOLARLY ACTIVITIES

PRESENTATIONS

Extramural Invited Presentation Speaker

1. Grand Rounds, Shumer D, Loyola University School of Medicine, 07/2022, Chicago, Illinois

Other

1. Gender Identity, Groton School, 04/2015, Groton, MA

2. Television Appearance: Gender Identity in Youth, Channel 7 WXYZ Detroit, 04/2016, Southfield, MI

3. It Gets Better: Promoting Safe and Supportive Healthcare Environments for Sexual Minority and Gender Non-Conforming Youth, Adolescent Health Initiative: Conference on Adolescent Health, 05/2016, Ypsilanti, MI

4. Gender Identity, Humanists of Southeast Michigan, 09/2016, Farmington Hills, MI

5. Gender Identity, Pine Rest Christian Mental Health Services, 10/2016, Grand Rapids, MI
6. Pediatric Grand Rounds - Hormonal Management of Transgender Youth, Beaumont Children's Hospital, 11/2016, Royal Oak, MI
7. Transgender Youth: A Field in Transition, Temple Beth Emeth, 11/2016, Ann Arbor, MI
8. Transgender Youth: A Field in Transition, Washtenaw County Medical Society, 11/2016, Ann Arbor, MI
9. Pediatric Grand Rounds: Transgender Youth - A Field in Transition, St. John Hospital, 02/2017, Detroit, MI
10. Transgender Medicine, Veterans Administration - Ann Arbor Healthcare System, 05/2017, Ann Arbor, MI
11. Gender Identity, Hegira Programs, 05/2017, Detroit, MI
12. Care of the Transgender Adolescent, Partners in Pediatric Care, 06/2017, Traverse City, MI
13. Conference planner, host, and presenter: Transgender and Gender Non-Conforming Youth: Best Practices for Mental Health Clinicians, Educators, & School Staff; 200+ attendees from fields of mental health and education from across Michigan, Michigan Medicine, 10/2017, Ypsilanti, MI
14. Endocrinology Grand Rounds: Transgender Medicine, Wayne State University, 11/2017, Detroit, MI
15. Care of the Transgender Adolescent, St. John Hospital Conference: Transgender Patients: Providing Compassionate, Affirmative and Evidence Based Care, 11/2017, Grosse Pointe Farms, MI
16. Hormonal Care in Transgender Adolescents, Michigan State University School of Osteopathic Medicine, 11/2017, East Lansing, MI
17. Working with Transgender and Gender Non-Conforming Youth, Michigan Association of Osteopathic Family Physicians, 01/2018, Bellaire, MI

18. Community Conversations, Lake Orion, 01/2018, Lake Orion, MI
19. "I Am Jazz" Reading and Discussion, St. James Episcopal Church, 03/2019, Dexter, MI
20. Gender Identity, Michigan Organization on Adolescent Sexual Health, 10/2019, Brighton, MI; Port Huron, MI
21. Ask The Expert, Stand With Trans, 05/2020, Farmington Hills, MI (Virtual due to COVID)
22. Transgender Medicine, Michigan Association of Clinical Endocrinologists Annual Symposium, 10/2020, Grand Rapids, MI (Virtual due to COVID)
23. Transgender Youth in Primary Care, Michigan Child Care Collaborative (MC3), 10/2020, Ann Arbor, MI (Virtual due to COVID)
24. Lets Talk About Hormones, Stand With Trans, 10/2020, Farmington Hills, MI (Virtual due to COVID)
25. Gender Identity, Universalist Unitarian Church of East Liberty, 04/2021, Virtual due to COVID
26. Unconscious Bias, Ascension St. John Hospital, 05/2021, Virtual due to COVID

PUBLICATIONS/SCHOLARSHIP

Peer-Reviewed Articles

1. Vengalil N, Shumer D, Wang F: Developing an LGBT curriculum and evaluating its impact on dermatology residents, *Int J Dermatol*.61: 99-102, 01/2022. PM34416015

Chapters

1. Shumer: Coma. In Schwartz MW6, Lippincott Williams & Wilkins, Philadelphia, PA, (2012)
2. Shumer, Spack: Medical Treatment of the Adolescent Transgender Patient. In Đorđević M; Monstrey SJ; Salgado CJ Eds. CRC Press/Taylor & Francis, (2016)

3. Kinnear HA, **Shumer DE**: Duration of Pubertal Suppression and Initiation of Gender-Affirming Hormone Treatment in Youth. In FinlaysonElsevier, (2018)
4. Araya, **Shumer DE**: Endocrinology of Transgender Care – Children and Adolescents. In Poretsky; Hembree Ed. Springer, (2019)

Non-Peer Reviewed Articles

1. Shumer D: The Effect of Race and Gender Labels in the Induction of Traits, *Northwestern Journal of Race and Gender Criticism*.NA01/2014
2. Shumer D: A Tribute to Medical Stereotypes, *The Pharos, Journal of the Alpha Omega Alpha Medical Society*.Summer07/2017
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EXHIBIT 2

In the Matter of:

Roe

vs

Herrington

30(b)(6) of ADHS - Krystal Colburn

April 10, 2023



**GRIFFIN GROUP
INTERNATIONAL**

3200 East Camelback Road, Suite 177
Phoenix, Arizona 85018

Roe vs
Herrington

30(b)(6) of ADHS - Krystal Colburn

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

Helen Roe, a minor, by and)	
through her parent and next)	
friend Megan Roe; James Poe, a)	
minor, by and through his)	
parent and next friend Laura)	
Poe; and Carl Voe, a minor, by)	No. 4:20-cv-484-JAS
and through his parent and)	
next friend Rachel Voe,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
Don Herrington, in his)	
official capacity as Interim)	
State Registrar of Vital)	
Records and Interim Director)	
of the Arizona Department of)	
Health Services)	
)	
Defendant.)	
)	

30(b)(6) VIDEO-RECORDED DEPOSITION OF
THE ARIZONA DEPARTMENT OF HEALTH SERVICES - KRYSTAL COLBURN

Phoenix, Arizona
April 10, 2023
8:58 a.m.

REPORTED STENOGRAPHICALLY BY:
DANIELLE C. GRIFFIN, RPR
Certified Reporter
Certificate No. 50926

PREPARED FOR:
ASCII/CONDENSED COPY

(Certified Copy)



I N D E X

WITNESS	Page
KRYSTAL COLBURN	
Examination By Mr. Anderson	8

E X H I B I T S

Deposition Exhibits:	Description	Page
No. 1	Krystal Colburn, Bates Numbers ROE00190 and ROE00191 (2 pages)	15
No. 2	Plaintiffs' Notice of Deposition of The Arizona Department of Health Services Pursuant to FED.R.CIV P.30(B)(6) (7 pages)	19
No. 3	Records Retention Schedule for Arizona Department of Health Services, Division of Public Health Licensing, Bates Numbers ADHS000470 to ADHS000473 (4 pages)	21
No. 4	Amended Complaint, Jury Trial Demanded (34 pages)	25
No. 5	Organizational Chart, Bates Number ADHS000179 (1 pages)	42



E X H I B I T S (Continued)		
Deposition Exhibits:	Description	Page
No. 6	Arizona Department of Health Services, Corrections to Birth Records, Bates Numbers ADHS000393 to ADHS000401 (9 pages)	62
No. 7	Bureau of Vital Records, Desk Procedure for Corrections and Amendments, Bates Numbers ADHS000287 to ADHS000293 (7 pages)	77
No. 8	A.R.S. 36-337, Amending Birth Certificates (2 pages)	83
No. 9	A.R.S. 36-301, Definitions (3 pages)	86
No. 10	Arizona Department of Health Services, Amendments to Birth Records, Bates Numbers ADHS000160 to ADHS000178 (19 pages)	89
No. 11	Arizona Department of Health Services, Amendments to Birth Records, Bates Numbers ADHS000007 to ADHS000023 (17 pages)	100
No. 12	E-mail dated 5/19/20 to Luis Redacted from Krystal Colburn, Bates Numbers ADHS-ESI0006883 and ADHS-ESI0006884 (2 pages)	108
No. 13	Letter dated 5/6/21 to Redacted Redacted from Krystal Colburn, Bates Numbers ADHS-ESI0038623 and ADHS-ESI0038624 (2 pages) CONFIDENTIAL	119



E X H I B I T S (Continued)		
Deposition Exhibits:	Description	Page
1 2 3 4 5	No. 14 E-mail dated 10/24/19 to Redacted Redacted from Krystal Colburn, Bates Numbers ADHS-ESI0034392 to ADHS-ESI0034394 (3 pages)	126
6 7 8	No. 15 E-mail dated 8/9/19 to Redacted Redacted from Redacted Redacted Bates Numbers PR_ADHS_012121 and PR_ADHS_012122 (2 pages)	132
9 10 11	No. 16 E-mail dated 12/6/19 to Redacted Redacted from Redacted Redacted Bates Number ADHS-ESI0026327 (1 page)	156
12 13 14	No. 17 Sample Letter, Bates Number ADHS-ESI0026328 (1 page)	156
15 16 17	No. 18 E-mail dated 5/18/20 to Krystal Colburn and Others from Redacted Redacted Bates Number PR_ADHS_008715	169
18 19 20	No. 19 Arizona Department of Health Services, Court Orders and Subpoenas, Bates Numbers PR_ADHS_008716 to PR_ADHS_008728 (13 pages)	169
21 22 23 24 25	No. 20 E-mail dated 1/24/22 to Krystal Colburn from Redacted , Bates Numbers ADHS-ESI0047419 to ADHS-ESI0047427 (9 pages)	181



1 30(b)(6) VIDEO-RECORDED DEPOSITION OF THE
2 ARIZONA DEPARTMENT OF HEALTH SERVICES - KRYSTAL COLBURN was
3 taken on April 10, 2023, commencing at 8:58 a.m. at the law
4 offices of Osborn Maledon, 2929 North Central Avenue,
5 21st Floor, Phoenix, Arizona, before DANIELLE C. GRIFFIN, a
6 Certified Reporter in the State of Arizona.

7
8 COUNSEL APPEARING:

9
10 For the Plaintiffs:

11 COOLEY LLP
12 By: Mr. Barrett J. Anderson
10265 Science Center Drive
San Diego, California 92121-117

13 NATIONAL CENTER FOR LESBIAN RIGHTS
14 By: Ms. Rachel H. Berg
870 Market Street
Suite 370
15 San Francisco, California 94102-3009

16 OSBORN MALEDON, PA
17 By: Mr. Colin M. Proksel
Ms. Payslie M. Bowman
2929 North Central Avenue
18 Suite 2100
Phoenix, Arizona 85012-2794

19 For the Defendant Department of Health Services:

20 OFFICE OF THE ATTORNEY GENERAL
21 STATE OF ARIZONA
22 By: Ms. Patricia C. LaMagna
2005 North Central Avenue
23 Phoenix, Arizona 85004-1592
24
25



1 COUNSEL APPEARING: (Continued)

2 For the Defendants:

3 STRUCK LOVE BOJANOWSKI & ACEDO, PLC
4 By: Mr. Daniel P. Struck
3100 West Ray Road
Suite 300
5 Chandler, Arizona 85226-2473

6 ALSO PRESENT:

7 Ms. Robin Smart
8 VideoDep, Incorporated
Video Specialist

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1 THE VIDEO SPECIALIST: We are on the record.
2 Today's date is April 10th, 2023. The time is 8:58 a.m.
3 This is the 30(b)(6) video-recorded deposition of the
4 Arizona Department of Health Services given by
5 Krystal Colburn, noticed by counsel for the Plaintiff in
6 the matter of Helen Roe, a minor, through her parent,
7 Megan Roe, et al, versus Don Herrington, et al.

8 This matter is being held in the
9 United States District Court for the District of Arizona.
10 Case Number 4:20-cv-484-JAS.

11 Our location today is the law offices of
12 Osborn Maledon located at 2929 North Central Avenue,
13 Phoenix, Arizona 85012.

14 The certified court reporter is Danielle
15 Griffin of Griffin Group International.

16 My name is Robin Smart. I'm the certified
17 legal video specialist for the firm of VideoDep,
18 Incorporated, located in Phoenix, Arizona.

19 Counsel, please identify yourselves and whom
20 you represent starting with Plaintiff's counsel, please.

21 MR. ANDERSON: My name is Barrett Anderson
22 from Cooley, LLP, on behalf of the Plaintiffs.

23 MS. BERG: Rachel Berg from the National
24 Center for Lesbian Rights on behalf of Plaintiffs.

25 MR. PROKSEL: Colin Proksel of Osborn Maledon



1 for Plaintiffs.

2 MS. BOWMAN: Payslie Bowman, Osborn Maledon,
3 here for the Plaintiffs.

4 MS. LaMAGNA: Patricia LaMagna, assistant
5 attorney general, for the Department of Health Services.

6 MR. STRUCK: Dan Struck for Defendants.

7 THE VIDEOGRAPHER: Thank you, Counsel.

8 The witness may be sworn in, please.

9

10 KRYSTAL COLBURN,
11 a witness herein, having been first duly sworn by the
12 Certified Reporter to speak the truth and nothing but the
13 truth, was examined and testified as follows:

14

15 EXAMINATION

16 BY MR. ANDERSON:

17 Q. Can you please state your name for the record.

18 A. **Krystal Colburn.**

19 Q. Ms. Colburn, good morning. My name is
20 Barrett Anderson. I'm here to just ask you a few questions
21 today.

22 Have you ever had your deposition taken
23 before?

24 A. **No.**

25 Q. Have you ever testified at trial?



1 **A. Yes.**

2 Q. How many times have you testified?

3 **A. I wouldn't be able to give you that answer.**

4 Q. It's a lot?

5 **A. Quite a few.**

6 Q. Quite a few?

7 **A. Yes.**

8 Q. Do you remember generally the subject matters of
9 the cases you testified in?

10 **A. During my various roles at the department, I've**
11 **testified on behalf of the department so that could be**
12 **vital records, medical marijuana, Smoke-Free Arizona.**

13 Q. So in the times you've testified at trial, it's
14 been on behalf of the Arizona Department of Health
15 Services?

16 **A. Yes.**

17 Q. And if I refer to that as ADHS, that -- that's a
18 common term?

19 **A. It is.**

20 Q. Okay. Now, you said that you've testified for
21 ADHS in cases about vital records. Have any of those
22 involved birth certificates?

23 **A. Yes.**

24 Q. And have any of those cases involved changes to
25 birth certificates?



1 **A. Yes.**

2 Q. Have any of those involved changes to the sex
3 listed on the birth certificate?

4 **A. Yes.**

5 Q. About how many cases have you testified in
6 involving that?

7 **A. Specifically the sex on the birth record?**

8 Q. Yes.

9 **A. A couple.**

10 Q. A couple.

11 Were those cases -- were they in state court?

12 **A. The one that comes to mind was administrative.**

13 Q. Administrative.

14 And that's before an administrative law judge
15 in the State of Arizona?

16 **A. Correct.**

17 Q. And was that a case seeking to amend a birth
18 certificate?

19 **A. Yes.**

20 Q. Do you recall what ADHS's position was in that
21 case?

22 **A. Yes.**

23 Q. What was it?

24 **A. We had denied a request to amend a birth record.**

25 Q. And you were called to testify about what subject



1 in that case?

2 **A. The amendment request that we denied.**

3 Q. What was the Court's final ruling in that case?

4 **A. The court ruled that ADHS did not properly deny**
5 **that request, and they made a recommendation that ADHS**
6 **subsequently adopt it.**

7 Q. Was that case in about 2017?

8 **A. Yes.**

9 Q. So, Ms. Colburn, I'm going to start with some
10 basic admonitions here. You've been under oath before so
11 you know what the oath means; is that right?

12 **A. Correct.**

13 Q. It means you're duty bound to tell the truth?

14 **A. Yes.**

15 Q. Is that right?

16 And the whole truth; is that right?

17 **A. Yes.**

18 Q. It requires that you testify truthfully. Now, is
19 there any reason you can't testify truthfully today?

20 **A. No.**

21 Q. Okay. Now, as we go, it's important that we not
22 talk over each other so that the court reporter can get all
23 of our words down.

24 Is that okay for you?

25 **A. Yes.**



1 Q. And I also want to make sure that any answers that
2 you give are verbal. So if -- if it's not verbal, I'll ask
3 you to say it on the record.

4 Is that okay?

5 **A. Okay.**

6 Q. Okay. We'll be asking -- I'll be asking a lot of
7 questions today. If you don't understand, feel free to let
8 me know and I'll rephrase it, otherwise, I'll assume that
9 you understand.

10 Is that okay?

11 **A. Okay.**

12 Q. And after this deposition you'll have the
13 opportunity to look through the transcript, make any
14 changes, but if you do, I just want to let you know that I
15 will then be able to comment about those changes.

16 So if you feel the need to change any of your
17 answers or alter them, it's best to do so on the record
18 today.

19 **A. Okay.**

20 Q. Now, Ms. Colburn, do you understand that today
21 you're testifying in two roles, both for yourself and for
22 the Department?

23 **A. Yes.**

24 Q. Does that mean you understand that you'll be
25 testifying from your personal knowledge in both of those



1 situations?

2 **A. Yes.**

3 Q. Have you testified as a representative in a
4 deposition, a 30(b)(6) deposition? I'll -- let me define
5 what that means. 30(b)(6) means that you are a
6 representative of the ADHS.

7 So if I use that phrase, is that clear to
8 you?

9 I'll -- let -- let me rephrase that.

10 **A. Okay.**

11 Q. Have you testified in a deposition where you were
12 representing ADHS?

13 **A. I have not testified in a deposition before.**

14 Q. Okay. Now, when I ask you a question today, I'd
15 like you to assume that you're answering in both roles
16 unless I specify otherwise.

17 Is that okay?

18 **A. Okay.**

19 Q. And if you feel that you need to answer
20 specifically in one role, you may do so in your answer.

21 **A. Okay.**

22 Q. Are you currently employed by ADHS?

23 **A. Yes.**

24 Q. And what's your current position?

25 **A. I am the bureau chief for the Bureau of Vital**



1 **Records and the assistant state registrar.**

2 Q. Now, are those separate positions?

3 **A. No.**

4 Q. It's a combined position?

5 **A. It is.**

6 Q. How long have you held that position?

7 **A. Ten years.**

8 Q. Have you held any other positions at ADHS?

9 **A. Yes.**

10 Q. And what were those?

11 **A. I have had various roles in program management and**
12 **other programs and started with the department as a program**
13 **project specialist in 2007.**

14 Q. So we'll start from the beginning just to make
15 sure it's clear.

16 You started at the department in 2007?

17 **A. Yes.**

18 Q. And that was as a program --

19 **A. Specialist.**

20 Q. -- specialist?

21 **A. Correct.**

22 Q. What was your next position after that?

23 **A. Program manager.**

24 Q. And about what year was that?

25 **A. Probably 2009 or '10.**



1 Q. 2009.

2 And after you were program manager, what was
3 next?

4 A. Then I moved over as an office chief to vital
5 records.

6 Q. And from that position -- I'm sorry.

7 About what year was that?

8 A. 2013.

9 Q. 2013.

10 MR. ANDERSON: I'm going to go ahead and mark
11 this as Exhibit 1.

12 (Deposition Exhibit No. 1 was marked for
13 identification.)

14 BY MR. ANDERSON:

15 Q. Ms. Colburn, do you recognize this?

16 A. This document specifically, no.

17 Q. I'll represent to you that I had this taken off of
18 your LinkedIn profile.

19 Does that look familiar when you know that?

20 A. The information, yes, but the format, no.

21 Q. The format no.

22 Is this information that you entered into
23 your LinkedIn profile?

24 A. Without having LinkedIn in front of me and
25 assuming that what you're saying is correct, but I -- I



1 don't have LinkedIn in front of me. So...

2 Q. I just thought that this might be an easier way to
3 go through your background.

4 A. Okay.

5 Q. So if you want to flip to the second -- at least
6 the bottom of the first page. It says Smoke-Free Arizona
7 Program Specialist.

8 Is that the role that you started at ADHS in?

9 A. Yes.

10 Q. It says July 2007 to May 2009?

11 A. Yes.

12 Q. Are those the dates that you recall you served in
13 that role?

14 A. Yes.

15 Q. And then next it says, Smoke Free Arizona Legal
16 Liaison, above that?

17 A. Yes.

18 Q. From April 2009 to May 2011?

19 A. Yes.

20 Q. That's -- that's the next -- the program manager
21 position that we're talking about?

22 A. Yes, it is.

23 Q. And then above that is another position with Smoke
24 Free Arizona from May 2011 to May 2013?

25 A. Yes.



1 Q. Is that right?

2 And after that, it says -- this document says
3 May 2013 is when you became bureau chief and assistant
4 state registrar.

5 Is that what you remember about when you
6 became bureau chief?

7 **A. Yes.**

8 Q. Okay. What is -- what does ADHS do? What is its
9 role?

10 **A. ADHS is the Arizona Department of Health Services.**
11 **So they offer various programs and services to improve the**
12 **health and wellness of Arizonans.**

13 Q. Okay. I'd like to go ahead and set that aside for
14 right now.

15 Ms. Colburn, did you prepare for this
16 deposition?

17 **A. Yes.**

18 Q. And what did you do to prepare?

19 **A. I met with my counsel.**

20 Q. And who is your counsel?

21 **A. Patricia LaMagna and Dan Struck.**

22 Q. About how many times did you meet?

23 **A. Just once.**

24 Q. Just once. And when was that?

25 **A. Friday, last Friday.**



1 Q. About how long was that meeting?

2 **A. Couple hours.**

3 Q. Did you review any documents at that meeting?

4 **A. Yes.**

5 Q. Do you recall about -- or do you recall generally
6 what those documents were?

7 **A. They were legal filings related to the case.**

8 Q. Did you bring any of those documents with you
9 today?

10 **A. I did.**

11 Q. You did.

12 Are those the documents in the binder in
13 front of you?

14 **A. Yes.**

15 Q. Okay. During your preparation, did you speak to
16 any other employees of ADHS?

17 **A. No.**

18 Q. Did you do anything else to prepare for the
19 deposition today?

20 **A. Yesterday, I reread some of the documents that was
21 provided to me in the binder in front of me.**

22 Q. Okay. In those legal filings in that binder, does
23 that include the amended complaint in this case?

24 **A. May I reference the specific document?**

25 Q. Yes, please.



1 **A. I always forget what it's called.**

2 Q. Actually, it might be easier if you just told me
3 what the list in the front is, just the documents in the
4 binder.

5 **A. I didn't read all of them, though.**

6 Q. Oh, you didn't read all of them.

7 Can you tell me which ones that you did?

8 **A. The interrogatories.**

9 Q. Okay. Interrogatories. Okay. That's all. Thank
10 you.

11 MR. ANDERSON: I'd like to mark this as
12 Exhibit 2.

13 (Deposition Exhibit No. 2 was marked for
14 identification.)

15 BY MR. ANDERSON:

16 Q. Ms. Colburn, do you recognize this document?

17 **A. Yes.**

18 Q. And what is this?

19 **A. This is the plaintiff's notice of deposition for**
20 **the Arizona Department of Health Services.**

21 Q. And you see on that front page where it says
22 Plaintiff's notice of deposition, "The Arizona Department
23 of Health Services Pursuant to FED.R.CIV P.30(B)(6)"?

24 **A. Yes.**

25 Q. Okay. I'll represent to you that this is the



1 notice to you in your role as representative of the ADHS.

2 So can you go ahead and flip to page number 3
3 of the document where it begins Exhibit A up at the top?

4 **A. I'm there.**

5 Q. And do you recall reviewing Exhibit A, which is
6 three pages long?

7 **A. Yes.**

8 Q. Did you review each of the deposition topics in
9 this document?

10 **A. I have, yes.**

11 Q. And are you prepared to discuss each of those
12 topics today?

13 **A. Yes.**

14 Q. Okay. Do you have a personal basis of knowledge
15 for all of these topics?

16 MR. STRUCK: Form.

17 MR. ANDERSON: You can go ahead and answer.

18 **THE WITNESS: Can you repeat it?**

19 BY MR. ANDERSON:

20 Q. Sure.

21 **A. Thanks.**

22 Q. Given -- given your role with the Department, are
23 you able to answer or talk about these topics from your
24 personal knowledge?

25 **A. Yes.**



1 Q. Okay. Now, we'll go through the specific topics
2 as we go. But for now I'd like to flip to the last page,
3 Topic No. 12. And this says, "THE DEPARTMENT'S policies,
4 practices, and procedures regarding the generation,
5 retention, or destruction of documents."

6 Did I read that correctly?

7 **A. Yes.**

8 Q. And are you prepared to testify on that topic?

9 **A. Yes.**

10 MR. ANDERSON: I'd like to mark this as
11 Exhibit 3.

12 (Deposition Exhibit No. 3 was marked for
13 identification.)

14 BY MR. ANDERSON:

15 Q. Ms. Colburn, do you recognize this?

16 **A. Yes, I do.**

17 Q. And what is this?

18 **A. This is the records retention schedule for the**
19 **Department of Health Services division of licensing.**

20 Q. And what's a record retention schedule?

21 **A. This is a document that is used by the Department**
22 **to determine the length of time that we retain documents.**

23 Q. And did the Department create this document?

24 **A. Yes. I'm not sure -- yes.**

25 Q. Okay.



1 **A. I believe that they did.**

2 Q. And does this -- this sets out the activities of
3 ADHS?

4 **A. Some of them.**

5 Q. Some of them.

6 Regarding -- regarding records retention?

7 **A. Correct.**

8 Q. Okay. If you flip to the second page, it looks
9 like on the left column, there's a number 13 and next to
10 that it says Bureau of Vital Records?

11 **A. Yes.**

12 Q. And I'll ask you a little bit more about what that
13 is a little bit later.

14 But is this the category of files that would
15 pertain to birth certificates?

16 **A. Some of them do, yes.**

17 Q. Some of them.

18 So is this the policy that would apply -- I'm
19 sorry.

20 On the next page, there's a column that says
21 "Certificates of Birth"?

22 Do you see that?

23 **A. Yes, I do.**

24 Q. Is that birth certificate's retention policy?

25 **A. Yes.**



1 Q. And then if you flip one more page, there's
2 something that says "Sealed Records Files."

3 Do you see that in the second row down?

4 A. I do.

5 Q. Would that policy apply to any aspect of birth
6 certificates?

7 A. Yes.

8 Q. And which aspect is that?

9 A. So a sealed record is the original form before an
10 amendment or a correction is made to a record. And so we
11 seal that original form and any evidentiary documents for
12 permanent retention.

13 Q. Okay. And it looks like both the certificates of
14 birth and the sealed records files, the retention period is
15 permanent?

16 A. That is correct.

17 Q. Does that mean the Department always has those
18 records?

19 A. Yes.

20 Q. It never deletes them or destroys them?

21 A. No.

22 Q. Okay. You can set that aside.

23 A. Okay.

24 Q. And I'd also like to ask you a little bit about
25 the Department's e-mail system now.



1 Does every ADHS employee get an e-mail
2 address?

3 **A. Yes.**

4 Q. And the -- the domain of those e-mails addresses
5 is that AZDHS.gov?

6 **A. That's correct.**

7 Q. And ADHS employes use that e-mail as part of their
8 job routine?

9 **A. Yes.**

10 Q. Does ADHS keep those e-mails on a central server?

11 **A. They keep them. I'm not sure the structure behind**
12 **which they keep them.**

13 Q. But the Department does keep them?

14 **A. Yes.**

15 Q. And does the Department keep those e-mails as part
16 of its ordinary business?

17 **A. Yes.**

18 Q. Ms. Colburn, we're here today because the
19 Plaintiff's, my clients, have filed a lawsuit.

20 Are you familiar with that lawsuit?

21 **A. Yes.**

22 Q. Are you familiar with generally what the claims
23 are in the case?

24 **A. Yes.**

25 Q. How did you first learn about the case?



1 **A. It was noticed to the Department of Health**
2 **Services.**

3 Q. Do you remember about when that was?

4 **A. Off the top of my head, no. I know it's been a**
5 **while.**

6 Q. It has.

7 MR. ANDERSON: Go ahead and mark this. I
8 believe that we're now on Exhibit 4.

9 (Deposition Exhibit No. 4 was marked for
10 identification.)

11 **THE WITNESS: Thank you.**

12 BY MR. ANDERSON:

13 Q. And, Ms. Colburn, do you recognize this document?

14 **A. Yes.**

15 Q. And what is this?

16 **A. This is the amended complaint that was filed for**
17 **this case.**

18 Q. Do you recall when the first time was that you saw
19 this?

20 **A. Not specifically, but it would probably have been**
21 **after it was filed and sent to the Department.**

22 Q. Have you had the opportunity to review this
23 complaint in detail?

24 **A. Yes.**

25 MR. STRUCK: Form.



1 BY MR. ANDERSON:

2 Q. So you know based on the -- the allegations in
3 this complaint that the plaintiffs are children?

4 A. Yes, I do know that.

5 Q. And you know that they're transgender children?

6 A. Yes.

7 Q. And you're aware that they're proceeding under
8 pseudonyms in this case; is that right?

9 A. Correct.

10 Q. Do you know why they're proceeding under
11 pseudonyms?

12 MR. STRUCK: Form; foundation.

13 THE WITNESS: I would imagine it's for
14 anonymity.

15 BY MR. ANDERSON:

16 Q. Okay. Do you know why they want anonymity?

17 MR. STRUCK: Form; foundation.

18 THE WITNESS: I don't feel that I could
19 speculate on their personal decisions like that.

20 BY MR. ANDERSON:

21 Q. No need to speculate. I just didn't know if you
22 knew.

23 Okay. You know, to the extent that we talk
24 about the plaintiffs today, we'll refer to them using their
25 pseudonyms, and I would prefer that we not mention their



1 real names on the record if we can avoid it.

2 So without naming them, can you tell me are
3 you familiar with any of them?

4 Do you know who their real identities are?

5 **A. I would have to go back and look at requests that**
6 **were received by the department. We receive thousands of**
7 **requests so I don't memorize everybody's names.**

8 Q. That's fair. That's fair.

9 **A. Okay.**

10 Q. Having reviewed the complaint and being familiar
11 with the case, do you know any of the plaintiffs
12 personally?

13 **A. No.**

14 Q. Do you know any of their family members, their
15 parents personally?

16 **A. No.**

17 Q. Okay. Do you have a general understanding of what
18 the plaintiffs are asking for in this case?

19 MR. STRUCK: Form.

20 **THE WITNESS: Yes.**

21 BY MR. ANDERSON:

22 Q. And can you tell me what -- what your
23 understanding is?

24 **A. They are seeking to amend the sex on their birth**
25 **records.**



1 Q. Now, other than your counsel, have you talked to
2 anybody else about this case?

3 A. Our acting director and prior director.

4 Q. And we'll talk about those individuals in a
5 moment, but anybody else besides the director of ADHS?

6 A. Also my direct supervisor.

7 Q. And who's your direct supervisor?

8 A. Redacted

9 Q. Redacted

10 Okay. Anybody else besides Mr. Redacted

11 A. No.

12 Q. Okay. If you can go ahead and flip back to the
13 notice, and the notice we've marked as Exhibit 2, and
14 that's the document that has all of those topics in them.

15 And when you have that in front of me --

16 A. I do.

17 Q. -- or in front of you, go ahead.

18 Okay. If you go ahead and flip that open to
19 page 3, the beginning of Exhibit A. The first topic there
20 is the department's organizational structure.

21 Do you see that?

22 A. Yes.

23 Q. And are you prepared to testify about that today?

24 A. Yes.

25 Q. Now, earlier you said that ADHS is the agency in



1 charge of vital records.

2 Is that what you said?

3 MR. STRUCK: Form.

4 BY MR. ANDERSON:

5 Q. Is ADHS in front of -- in charge of vital records?

6 A. It is.

7 Q. Is it the sole authority in charge of vital
8 records in the State of Arizona?

9 MR. STRUCK: Form.

10 THE WITNESS: Yes, sir. Yes, it is.

11 BY MR. ANDERSON:

12 Q. And what does ADHS do with vital records?

13 What is its powers over vital records?

14 A. Statutorily, we have the responsibility to
15 register, correct, and amend and preserve all vital records
16 in the State of Arizona.

17 Q. What exactly is a vital record?

18 A. Vital records are birth, death and fetal death
19 certificates registered in the State of Arizona.

20 Q. So a birth certificate would be a vital record?

21 A. Yes.

22 Q. Is there any other kind of vital record related to
23 birth?

24 A. I don't know what -- what you're asking me.

25 Q. Is -- are birth certificates and birth records



1 synonymous or is there some other kind of birth record that
2 ADHS keeps?

3 A. Not that I know of.

4 Q. Okay. So you testified that **Redacted** is your
5 direct supervisor; is that right?

6 A. Yes.

7 Q. Do you report to anybody else besides Mr. **Redacted**

8 A. I also now report to Jennie Cunico. She --
9 Jennifer Cunico. She is our acting -- acting director and
10 also our deputy director.

11 Q. How long has Ms. Cunico been acting director?

12 A. I would have to look at the specific date, but it
13 was the end of December, beginning of January, I believe,
14 of this year.

15 Q. Of this year so --

16 A. '22, '23 --

17 Q. -- about --

18 A. -- transition.

19 Q. That transition?

20 A. Yes.

21 Q. That's about four months?

22 A. Correct.

23 Q. Okay. And before that, who was the director of
24 ADHS?

25 A. Don Herrington was the acting director.



1 Q. And do you recall about how long he was acting
2 director?

3 A. **Maybe five to six months, about.**

4 Q. Five to six months.

5 And who was the director before
6 Mr. Herrington?

7 A. **Cara Christ.**

8 Q. And she was a confirmed director?

9 A. **She was.**

10 Q. Do you recall how long she had served as director?

11 A. **Oh, goodness, probably around eight years give or
12 take.**

13 Q. Eight years, okay.

14 Just doing the math, was there a director
15 before Dr. Christ that you reported to?

16 A. **Not that I reported to, no.**

17 Q. Who was the director before?

18 A. **Will Humble.**

19 Q. Okay. Now you say that you report to the -- the
20 acting director, Ms. Cunico. What are Ms. Cunico's
21 responsibilities as director of ADHS?

22 A. **She is responsible to oversee the operation of all
23 statutorily mandated functions for the Department of Health
24 Services and any other programs and services we offer.**

25 Q. Does she report to the governor?



1 **A. I don't know if she reports to the governor**
2 **directly or one of the governor's team members.**

3 **Q. Do you ever interact directly with the governor in**
4 **your role?**

5 **A. No.**

6 **Q. Do you interact with the governor's office?**

7 **A. No, not typically.**

8 **Q. Do you ever interact with the -- with anybody at**
9 **the state legislature?**

10 **A. No.**

11 **Q. Do you know if acting director Cunico interacts**
12 **with anybody at the state legislature?**

13 **A. She may. We have a legislative liaison position**
14 **at the Department of Health Services, and that person's**
15 **role is to interact with the legislature, answer any**
16 **questions they have, things like that.**

17 **So since that role is at the Department, I**
18 **can conclude that on occasion she may be consulted or asked**
19 **questions.**

20 **Q. Are you familiar with any time that the director's**
21 **been consulted about birth certificate amendments by the**
22 **state legislature?**

23 **A. Jennie, no. I'm not aware of any.**

24 **Q. How about Mr. Herrington?**

25 **A. No. I'm not aware of any.**



1 Q. Okay. And is it Dr. Christ?

2 A. Dr. Christ.

3 Q. How about Dr. Christ?

4 A. I'm not aware of any that she would have been, but
5 in fairness, I'm not told of every conversation that they
6 have. So...

7 Q. Okay. Does the -- or excuse me.

8 In your role, do you ever interact with
9 anybody at the Attorney General's Office?

10 A. Yes.

11 Q. And apart from this particular lawsuit, do you
12 interact with people at the Attorney General's Office?

13 A. Yes.

14 Q. And why would you interact with the Attorney
15 General's Office?

16 A. They are our legal representation for the Bureau
17 of Vital Records and ADHS.

18 Q. Okay. So anything legal related to a vital
19 record, you consult with the attorney general, their
20 office?

21 A. If needed, yes.

22 Q. Go ahead and pull up your -- the -- excuse me,
23 Exhibit 1, which is the LinkedIn document we talked about
24 before. I just want to talk a little bit more specifically
25 about your position.



1 Now, it says here that you direct and oversee
2 the Bureau of Vital Records.

3 What is the Bureau of Vital Records?

4 **A. The Bureau of Vital Records is the bureau at the**
5 **Department of Health Services that oversees the**
6 **registration, preservation, and correcting and amending of**
7 **records -- vital records --**

8 Q. So it's a -- oh, sorry. Didn't mean to interrupt.

9 It -- you would say it's a division of ADHS?

10 **A. It's a bureau within a division.**

11 Q. Bureau within a division, okay.

12 Does any other part of ADHS have any
13 authority over vital records?

14 **A. The director does as the state registrar.**

15 Q. Any other bureaus in the department that have
16 authority over vital records?

17 **A. No.**

18 Q. Any other departments at all?

19 **A. No.**

20 Q. Okay. And if I refer to it as BVR, that's the
21 acronym for Bureau of Vital Records?

22 **A. It is.**

23 Q. Okay. Looking back at Exhibit 1, it also says the
24 Bureau of Vital Records, which includes the office of vital
25 records.



1 Is the office of vital records different than
2 the bureau?

3 **A. It's within the bureau. The office is a team that**
4 **is responsible for the issuance of records.**

5 Q. Now, I wanted to ask you about something called
6 the BVR registry team.

7 Is -- what is the BVR registry team?

8 **A. They are a team within the bureau that registers,**
9 **corrects and amends and issues records.**

10 Q. And is that the same as the office of vital
11 records?

12 **A. Yes.**

13 Q. So they're -- they're the same group of people?

14 **A. Yes.**

15 Q. Okay. And looking back at Exhibit 1, the next
16 sentence under your -- the bureau chief and assistant state
17 registrar position says, "Ensure accurate registration and
18 issuance of birth, death and fetal death certificates."

19 Does that include corrections to birth
20 certificates?

21 **A. Yes.**

22 Q. And would that include amendments to birth
23 certificates?

24 **A. Yes.**

25 Q. Okay. Ms. Colburn, are you the person with



1 ultimate authority at ADHS to decide whether to grant a
2 correct -- a correction to a birth certificate?

3 MR. STRUCK: Form.

4 THE WITNESS: The ultimate authority is the
5 state registrar, which is the director of the agency, but I
6 am deputized to perform those functions.

7 BY MR. ANDERSON:

8 Q. And what does "deputize" mean in this context?

9 A. In this context, I have a deputization document
10 that's issued to me to act in the same stead as the
11 director.

12 Q. That means that you don't have to gain approval
13 from the director to make decisions about birth certificate
14 corrections?

15 A. Correct.

16 Q. And is that also applied to birth certificate
17 amendments?

18 A. Yes.

19 Q. And we'll look back at Exhibit 1. I just want to
20 look a little bit further down in your description. It
21 says: "Managerial responsibilities include oversight of
22 approximately 40 staff," and then it says, "coordination
23 and collaboration with local county health departments."

24 What are local county health departments?

25 A. Those are the county health departments located



1 within the 15 counties in the State of Arizona.

2 Q. And does ADHS have authority over the county
3 health departments?

4 MR. STRUCK: Form.

5 THE WITNESS: In relation to vital records
6 and the functions that they perform for vital records, yes.
7 Generally, we do -- the Department of Health Services does
8 not have authority over the county health departments.

9 BY MR. ANDERSON:

10 Q. And thank you for clarifying.

11 So ADHS has authority over the county health
12 department's issuance of birth certificates; is that right?

13 A. They are allowed to perform functions on our
14 behalf as it relates to vital records.

15 Q. Okay. And would that -- that includes issuing
16 birth certificates?

17 A. It does.

18 Q. Does that include correcting birth certificates?

19 A. Yes. And I want to provide a little bit of a
20 clarification to my previous answer.

21 So they perform some functions on our behalf.
22 They statutorily cannot perform all functions.

23 Q. Okay.

24 A. So some corrections and amendments, they can
25 perform, some issuance they can perform, but not all in its



1 **totality.**

2 Q. Okay. So when your managerial responsibilities
3 include coordination and collaboration, that would involve
4 your working with health departments related to those
5 corrections and amendments?

6 **A. The ones that they are allowed to perform, yes.**

7 Q. Okay. It also says that you work with the Office
8 of Administrative Rules. What is that?

9 **A. The office of administrative rules is located**
10 **within the Arizona Department of Health Services, and they**
11 **coordinate on behalf of all the programs for the agency,**
12 **any legal notices, filings, trackings all of those types of**
13 **functions.**

14 Q. And is that related to -- would -- would they have
15 a role to play in regulations in the State of Arizona?

16 MR. STRUCK: Form.

17 **THE WITNESS: I'm not sure what you mean by**
18 **regulations.**

19 BY MR. ANDERSON:

20 Q. Regulations that apply to vital records, would
21 they have a role to play in those?

22 **A. Well, they -- they also conduct our rule writing,**
23 **so they help the program to write the rules based on the**
24 **statutes that govern the different programs. And so in**
25 **that way, they could play a role in it.**



1 Q. Okay. Next it says -- on Exhibit 1, "Assistant
2 Attorney General's Office."

3 And is that what we just discussed, your work
4 with the Attorney General's Office?

5 A. Yes.

6 Q. Okay. Next it says "National Vital Records
7 Jurisdictional Partners."

8 Who are those jurisdictional partners?

9 A. They are 57 vital records jurisdictions comprised
10 of the states and the territories. There is a national
11 association called NAPHSIS.

12 Would you like me to spell that?

13 Q. Go ahead.

14 A. N-A-P-H-S-I-S.

15 Q. Okay. And NAPHSIS is an organization for all 57
16 of those jurisdictions?

17 A. Correct.

18 Q. And how do you coordinate and collaborate with
19 other jurisdictions?

20 A. There's various situations that can occur that we
21 would do that. NAPHSIS hosts annual meetings, different
22 topics of conferences that I attend. But also in the
23 immediate jurisdictions, we work together.

24 An example would be the Four Corners. We've
25 hosted registration events to help tribal members to help



1 get their delayed birth certificates. So we work together
2 to plan that and host that.

3 We share information across -- across the
4 jurisdictions when applicable. So an example of that could
5 be if a snowbird comes into Arizona and they pass away
6 here, we would then send notice to the jurisdiction for
7 which their birth record exists, so that they can mark that
8 record as deceased for their birth matching process.

9 Q. Okay. So information sharing related to vital
10 records is one role that you work with other jurisdictions
11 on?

12 A. Some information sharing, yes.

13 Q. Some. Okay.

14 Do jurisdictions share best practices related
15 to vital records?

16 MR. STRUCK: Form.

17 THE WITNESS: They may.

18 BY MR. ANDERSON:

19 Q. Are you aware of any time where Arizona has shared
20 information about its amending of birth certificates with
21 other jurisdictions?

22 A. Yes. I'm sure that has happened.

23 Q. Okay. Are you aware of any time where Arizona has
24 collaborated with other states on standards related to sex
25 marker changes on birth certificates?



1 A. I don't know if "collaborated" is the right word,
2 but again, sharing of general practices. Each state has
3 its own set of statues and rules that they have to follow.
4 But there could generally be conversation of, this is how
5 our state handles that situation.

6 NAPHSIS also works to publish what's called
7 model law, which is best practices for vital records for
8 jurisdictions to reference. And so those general
9 conversations do come up.

10 Q. Turning back to Exhibit 1. The next list here is
11 National Center for Health Statistics.

12 What is that?

13 A. The National Center for Health Statistics is part
14 of the CDC, Centers for Disease Control. It's a branch
15 within the CDC. And they gather all of the statistics from
16 the 57 jurisdictions that I mentioned. And then they
17 compile it into the national statistics files that are
18 released for birth, death and fetal death every year. That
19 those files are then used for public health determinates.

20 So if you see published reports that say the
21 death rate for COVID was this percentage or this number,
22 the -- all of those reports that come out on a national
23 level are comprised of those 57 vital records jurisdictions
24 reporting to the National Center for Health Statistics.

25 Q. Looking back at Exhibit 1, the last one here is



1 Other Key Stakeholders.

2 What -- what might that refer to?

3 A. Vital records works with a lot of stakeholders
4 on -- since we register both birth and death records, on
5 the death side that could include funeral homes, medical
6 examiners, medical certifiers, tribal law enforcement.

7 On the birth side, that could include birth
8 recorders at hospitals, midwives, hospital paternity
9 programs, DES, DCS. I'm sorry. Those are our acronyms for
10 Department of Economic Security and Department of Child
11 Safety.

12 Q. Thank you.

13 One other thing that it says in your
14 description here is that you oversee approximately 40 staff
15 members.

16 Are those all 40 within the Bureau of Vital
17 Records?

18 A. Yes.

19 MR. ANDERSON: I'd like to mark this as
20 Exhibit 5.

21 (Deposition Exhibit No. 5 was marked for
22 identification.)

23 THE WITNESS: Thank you.

24 BY MR. ANDERSON:

25 Q. Ms. Colburn, do you recognize Exhibit 5?



1 **A. Yes.**

2 Q. What is it?

3 **A. This is a copy of the Bureau of Vital Records**
4 **organizational chart as of November 2021.**

5 Q. So looking at the upper corner, it says current
6 11/1/2021.

7 That's the date you were looking at?

8 **A. Yes.**

9 Q. Looking at the general structure of BVR
10 represented in this document, is BVR continued to be
11 structured in this way?

12 **A. No.**

13 Q. So is there a new organizational chart for BVR?

14 **A. Yes. They get updated regularly.**

15 Q. Okay. Do you know when the most recent one was
16 updated?

17 **A. Without having access to it, no, but within the**
18 **last month or so.**

19 Q. And when you say that -- that it's different, is
20 that because the individuals listed have changed?

21 **A. The -- yes and no. The individuals listed have**
22 **definitely changed. We have a high turnover rate with**
23 **certain positions, but also the structure of the Bureau has**
24 **changed as well.**

25 Q. Okay. Let's talk about that in just a second



1 about how it's changed.

2 But looking at this document as of
3 November 11th, 2021, it shows that -- that you're up at the
4 top, and that all positions report to you.

5 Is that a fair representation?

6 **A. Yes.**

7 Q. And then looking just to the left, there's another
8 dark, shaded box with the name Nicole Heath in it?

9 **A. Yes.**

10 Q. Why are both your box and Ms. Heath's box dark
11 shaded?

12 **A. Because we're the leaders within the Bureau.**

13 Q. So you're the top two officials in the BVR. Is
14 that fair to say?

15 **A. Yes.**

16 Q. Is Ms. Heath still with the BVR?

17 **A. No.**

18 Q. Do you know when she left?

19 **A. March of '22, I believe.**

20 Q. Sometime after November of 20 -- 2021?

21 **A. Yes.**

22 Q. Do you know why she left?

23 **A. She's a stay-at-home mom now.**

24 Q. About how long did she hold the position shown --
25 I'm sorry. Let -- let's start with that.



1 In this organizational chart, it says that
2 her position is office chief and fraud manager?

3 A. Uh-huh.

4 Q. Is that right?

5 A. Yes.

6 Q. How long did she hold that position?

7 A. Off the top of my head, I can't remember. Over a
8 year.

9 Q. Over a year.

10 Is office chief and fraud manager still a
11 position in the BVR?

12 A. Not a combined position, but the positions do
13 exist.

14 Q. So those positions have been split?

15 A. Yes.

16 Q. And who holds the position of office chief?

17 A. That would be [Redacted] [Redacted] [Redacted]

18 Q. And who holds the position of fraud manager?

19 A. [Redacted] is the deputy bureau chief and fraud
20 manager.

21 Q. Does Ms. [Redacted] and Ms. [Redacted] report to you?

22 A. Yes.

23 Q. And they report directly to you?

24 A. Yes.

25 Q. Now, this organizational chart shows that there



1 are different teams, it -- it looks to me, under program
2 managers.

3 Is the Department still structured that way?

4 A. Similarly, yes.

5 Q. And let's -- starting with the team on the left
6 that has an arrow coming out of Nicole Heath's box, what is
7 that team responsible for?

8 A. Medical marijuana.

9 Q. And looking into the middle box, there's a team
10 that reports to **Redacted** who at the time was Program
11 Manager III? Do you see that?

12 A. Yes.

13 Q. And what was that team responsible for?

14 A. That's part of the registry team.

15 Q. Okay. And then looking over to the far right,
16 there are teams reporting to **Redacted** and **Redacted**

17 What are those teams?

18 A. The team under **Redacted** is what we called
19 QUASI, quality assurance and system integrity. So they
20 educate our system users. They ensure the system is being
21 used properly. They work with our vendor to develop and
22 maintain the system.

23 And then **Redacted** her team oversees the
24 vault operations, policies and procedures, auditing of the
25 team members for consistency and quality.



1 Q. So you said something I want to ask about. Vault
2 operations. What's a vault operation?

3 A. The vault is where we have a -- paper copies of
4 all of the birth and death records dating back to the late
5 1800s. We also have our security paper and some other
6 paper registrations like delayed birth. We also have our
7 indexes and microfilm, things like that.

8 Q. Okay. You also said that -- that Ms. **Redacted**
9 team audits the team for -- and I think you said --
10 consistency?

11 What does auditing for consistency mean?

12 A. So they pull -- we call them pay files. So every
13 customer service representative has a daily pay file where
14 they have to track the orders that they have processed, and
15 so they will randomly select employees and they'll pull
16 that pay file and make sure that the money is all accounted
17 for, the application is there. That they're following
18 our -- our rules that govern -- and the policies and
19 procedures that govern the work that those customer service
20 reps are responsible for.

21 Q. Okay. And does Ms. **Redacted** team audit for
22 anything other than consistency?

23 A. Quality, making sure that our time frames are
24 being met, that we're providing good customer service. All
25 of those kinds of things.



1 Q. Does Ms. **Redacted** team audit the actual work that
2 is performed by anybody at ADHS or just the quality of
3 the -- the customer service?

4 **A. Just the quality. Their direct managers are**
5 **responsible for the work performed by the individual.**

6 Q. Okay. You can set that aside.

7 **A. Okay.**

8 Q. Now, earlier we talked a little bit about how this
9 case involves the plaintiffs who are transgender children.

10 Does ADHS have any training for its employees
11 regarding issues specific to transgender people?

12 **A. Not that I'm aware of.**

13 Q. Have you received any training on issues specific
14 to transgender people?

15 **A. No.**

16 Q. Okay. You haven't had any training on issues
17 specific to vital records related to transgender people?

18 **A. No.**

19 Q. Has anybody ever requested -- anybody at ADHS
20 requested any training on such issues?

21 **A. No.**

22 Q. Okay. For clarity, then, I'd like to just discuss
23 a few relevant terms that I might use throughout the
24 deposition just to make sure that you understand and we're
25 on the same page.



1 Do you know what the phrase "sex assigned at
2 birth" means?

3 A. Yes.

4 Q. Okay. And what does it mean?

5 A. It is the sex determined by the medical
6 professionals when the child is born.

7 Q. And do you know how medical professionals
8 determine sex assigned at birth?

9 A. I -- based on my own experience having children,
10 when the baby was born, the doctor told me what the gender
11 of the -- the sex of the child was. So --

12 Q. And did he do that by examining the child's body?

13 A. Yes.

14 Q. Okay. Do you know what "gender identity" means?

15 A. Yes.

16 Q. And what does it mean?

17 A. It means the identity for which the individual
18 feels that their gender is.

19 Q. And are you aware that gender identity can be
20 different than someone's sex assigned at birth?

21 A. Yes.

22 Q. Do you know what it means to be transgender?

23 MR. STRUCK: Form.

24 THE WITNESS: Yes.

25



1 BY MR. ANDERSON:

2 Q. And what does it mean to be transgender?

3 A. It means that the individual feels, believes, that
4 they are a gender that is different than the sex that they
5 were assigned at birth.

6 Q. And would you agree that a non-transgender person
7 is somebody whose gender identity is the same as the sex
8 assigned at birth?

9 A. Yes.

10 Q. Okay. Now I would like to ask you a little bit
11 more about birth certificates specifically. So we're going
12 to shift gears just a little bit.

13 Can you tell me what a birth certificate is?

14 A. A birth certificate is registered at the time of
15 birth or thereafter for an individual born in the state of
16 Arizona, specifically since we're talking about Arizona
17 vital records, and it collects the facts of birth and
18 medical information as known at the time of birth.

19 Q. And why does Arizona issue birth certificates?

20 A. We are statutorily mandated to do so, so that's
21 first and foremost, but they are used for many purposes in
22 an individual's life, and so that's why the function exists
23 and statutorily it's assigned to ADHS.

24 Q. Do you know what some of those purposes that
25 people in Arizona use birth certificates for?



1 A. Yes.

2 Q. And can you list some of them?

3 A. Starting at a young age, it can be used to enroll
4 in insurance benefits for the individual, registering for
5 school, registering for sports. When a child is young, as
6 they get older, driver's licenses, passports, the military,
7 if they choose to serve, things like that.

8 Q. Would you agree that a birth certificate is used
9 to verify an identity?

10 A. Yes.

11 Q. And birth certificates include specific
12 information about that person as you've said.

13 Can you tell me a little bit about what
14 details might be included on a birth certificate?

15 A. Yes. I think it's important to distinguish that
16 there is the birth certificate that is printed and has
17 fields on it and then there is the birth record that
18 contains all information that was captured at the time of
19 birth, such as medical information that may not appear on
20 the birth certificate.

21 Q. Okay. And where is the birth record kept?

22 A. That currently is electronically stored as part of
23 the Department's registration systems.

24 Q. Okay.

25 A. And then it takes certain fields and prints them



1 on the birth certificate.

2 Q. And does that information include the individual's
3 name?

4 A. Yes.

5 Q. Their date of birth?

6 A. Yes.

7 Q. The information about their mother?

8 A. Yes.

9 Q. Does a birth certificate include a sex marker?

10 A. Yes.

11 Q. Now, as we've talked about, this case is about sex
12 markers on birth certificates.

13 Are those sometimes called gender markers as
14 well?

15 A. As related to vital records, we use the term
16 "sex." People outside of vital records may use the term
17 "gender."

18 Q. But you -- you've heard people refer to them as
19 gender markers on birth certificates?

20 MR. STRUCK: Form.

21 THE WITNESS: We use the sex field. We don't
22 use gender.

23 BY MR. ANDERSON:

24 Q. Is ADHS aware that people use birth certificates
25 and refer to them as gender markers instead of sex markers?



1 MR. STRUCK: Form.

2 THE WITNESS: Outside of the Department of
3 Health Services, I would imagine that someone may refer to
4 it that way. The general public interchanges gender and
5 sex all of the time, but that's not how we are mandated to
6 capture the information.

7 BY MR. ANDERSON:

8 Q. When you say "mandated," who mandates ADHS to
9 refer to it as a sex marker?

10 A. Our governing regulations use the term "sex."

11 Q. Okay. Now, sex marker can be -- what exactly does
12 a sex marker look like on a birth certificate?

13 A. It has a box and it says sex, and then it is
14 populated with the information for that individual.

15 Q. Is that information a letter?

16 A. It depends on the year of birth. It could be a
17 letter or it could be the entire word spelled out.

18 Q. Okay. And how many options are there in Arizona
19 to fill that information?

20 A. Currently three.

21 Q. And what are those options?

22 A. Male, female, not yet determined.

23 And I'd like to add a little clarity to that
24 too --

25 Q. Please do.



1 A. -- where I said that it depends on the year.

2 Over the course of the evolution of vital
3 records, the National Center for Health Statistics that we
4 previously talked about, they identify the standards for
5 the certificates, and so they will determine what fields
6 are collected and what those options are on those fields.

7 So where I say depending on the year, it's
8 dependent upon those standards and the format of the record
9 at that time.

10 Q. Okay.

11 A. So a record from 1950 looks different than a
12 record from 2023 and how it's laid out.

13 Q. And what -- when you say "standards," what
14 specifically are those standards called?

15 A. They're the -- it's called the standards. They're
16 the standards published by the National Center for Health
17 Statistics. So they'll usually attach a year to it. So
18 the most current standard is the 2003 standard.

19 Q. Okay. And is ADHS mandated to follow those
20 standards?

21 A. Yes, we are.

22 Q. Now, earlier you said there were three possible
23 entries into the sex marker box; is that right?

24 A. Yes.

25 Q. One of them you said was not yet determined.



1 Can you tell me more about that?

2 **A. That would be for individuals that based on the**
3 **anatomy at the time of birth, the doctor is unable to**
4 **determine the appropriate sex for that individual.**

5 Q. Are birth certificates that contain "not yet
6 determined" as the sex marker allowed to stay that way
7 forever?

8 **A. We capture the facts of birth at the time of the**
9 **birth, and that is what remains on the record or within the**
10 **record until it is amended or corrected by the individual**
11 **or guardians of the individual at a later date.**

12 Q. Okay. Could somebody maintain a birth certificate
13 that says not yet determined into adulthood?

14 **A. They could.**

15 Q. But the only way to receive a not yet determined
16 sex marker is if it is the sex assigned at birth?

17 **A. Correct.**

18 Q. Now, when using the birth certificate to verify
19 identity, would you agree that the birth certificate lists
20 details about the person that it names?

21 **A. For the registrar, you mean?**

22 Q. When -- let me be more clear.

23 When an Arizonan is using a birth certificate
24 in order to verify their identity, they are able to do so
25 because of the details that it contains about them?



1 **A. Yes.**

2 Q. Okay. Does ADHS allow Arizonans to obtain copies
3 of their birth certificate?

4 **A. Yes.**

5 Q. And is there a process that they can go through to
6 do that?

7 **A. Yes.**

8 MR. ANDERSON: Okay. I think we've been
9 going about an hour. So if it's okay, we can go ahead and
10 take a break now.

11 **THE WITNESS: Sure.**

12 MR. ANDERSON: Okay. Go off the record.

13 THE VIDEO SPECIALIST: We're going off the
14 record. The time is 9:59 a.m.

15 (Recess taken, 9:59 a.m. to 10:15 a.m.)

16 THE VIDEO SPECIALIST: We're back on the
17 record. The time is 10:15 a.m.

18 BY MR. ANDERSON:

19 Q. Hi, Ms. Colburn. I wanted to ask just a few more
20 questions about BVR and ADHS generally.

21 You said that you interact directly with the
22 interim director; is that --

23 **A. Yes.**

24 Q. Does the interim director have the same powers as
25 director of ADHS?



1 **A. Yes.**

2 Q. So there's nothing that interim director can't do
3 that an ADHS director who's confirmed could do?

4 **A. Not to my knowledge.**

5 Q. And what are your interactions like with the
6 director of ADHS? What do you do on a daily basis?

7 **A. So now that I report to her, there are normal**
8 **employee supervisor interactions. Related to vital**
9 **records, there are certain functions that -- well, one**
10 **function that the director has to sign off on, and that's**
11 **related to delayed birth registrations.**

12 **Before a delayed birth can be denied for**
13 **Native Americans born prior to 1970, specifically, she**
14 **would have to sign off on that denial.**

15 Q. Okay. And because I know you've used the term a
16 few times, what is a delayed birth?

17 **A. A delayed birth is a birth registration that is --**
18 **is registered more than a year after the date of event.**

19 Q. Okay. Do you meet with the interim director every
20 day?

21 **A. No.**

22 Q. Do you communicate with the interim director every
23 day?

24 **A. No.**

25 Q. I know we walked through some of the teams within



1 the BVR, and we talked about those.

2 Are there other teams in ADHS that you're a
3 part of that deal with vital records?

4 **A. Not the vital records themselves, but the data**
5 **from the vital records. We have a statics team that I**
6 **interact with.**

7 Q. Is there something called an enforcement team at
8 ADHS?

9 **A. Yes.**

10 Q. What's the enforcement team?

11 **A. That's made up of the bureau staff as well as the**
12 **assistant director of licensing, [Redacted] who's one of my**
13 **direct super -- my direct supervisors.**

14 Q. Does the enforcement team address issues with
15 vital records like birth certificates?

16 **A. In the past, yes.**

17 Q. Has the enforcement team ever addressed amendments
18 on sex markers in birth certificates?

19 **A. Yes.**

20 Q. Can you remember when?

21 **A. We haven't met in quite sometime. But informally,**
22 **we've discussed amendments that we've recently received for**
23 **the sex field on the certificate.**

24 Q. When you say "informally," what does that mean?

25 **A. During, like, my one on ones with my direct**



1 **supervisor, not as part of the enforcement team.**

2 Q. Okay. And what were the conversations about the
3 sex marker changes?

4 **A. We've received requests to change -- I'm sorry --**
5 **not change -- amend the sex on certain birth records.**

6 Q. And so the conversations were about those specific
7 requests?

8 **A. Yes.**

9 Q. Okay. Were the conversations about whether to
10 grant or deny those amendments?

11 **A. Yes.**

12 Q. Did any of those requests come from transgender
13 people?

14 **A. Not transgender specifically.**

15 Q. Okay. Did any of those come from people who were
16 attempting to amend by submitting a doctor's note?

17 **A. Those -- the one that I'm thinking of was a court**
18 **order.**

19 Q. Court order. Okay.

20 Okay. If you could, go ahead and go back to
21 Exhibit 2, which is that -- the topics list that we've
22 talked about. And we'll be going back to that several
23 times during the deposition so feel free to keep it handy.

24 **A. Okay.**

25 Q. Go ahead and look now at Topic No. 2 on page 3.



1 And you can go ahead and look at Topic 3 and
2 4 as well. I'm not going to read them out loud to save us
3 time, but if you could review them and let me know when
4 you're done.

5 **A. Okay.**

6 **Okay.**

7 Q. Okay. Are you familiar with the topics that are
8 listed here?

9 **A. Yes.**

10 Q. And have you prepared to testify about them today?

11 **A. Yes.**

12 Q. Okay. Flip one more page over to page 4 and look
13 at Topic No. 8. And let me know when you're done.

14 **A. Yes.**

15 Q. Are you also prepared to testify about that topic?

16 **A. Yes.**

17 Q. Okay. You can set that aside for right now.

18 So we've been discussing ways that
19 individuals can seek a change to the sex marker on their
20 birth certificates.

21 Would you agree that -- that there are two
22 ways to do that, a correction and an amendment?

23 **A. Yes.**

24 Q. Other than a correction and an amendment, is there
25 any other way that an individual can seek to change a sex



1 listed on a birth certificate?

2 **A. No.**

3 Q. Okay. So I'd like to ask you now a little bit
4 about both of those ways of -- of seeking a change of a sex
5 marker.

6 But before I do, I'd like to ask you: For an
7 Arizonan who has a birth certificate that reflects their
8 sex assigned at birth and doesn't need to change it, would
9 they ever need to apply for an amendment with ADHS?

10 MR. STRUCK: Form.

11 **THE WITNESS: A person would only apply to**
12 **the Department to correct or amend a record if they felt**
13 **something needed to be changed.**

14 BY MR. ANDERSON:

15 Q. So if somebody was satisfied with a birth
16 certificate that had their sex assigned at birth, they
17 wouldn't ever apply to correct or amend it?

18 MR. STRUCK: Form; foundation.

19 **THE WITNESS: In theory, no. But people do**
20 **odd things that I don't always know or understand, so I**
21 **don't want to say 100 percent.**

22 BY MR. ANDERSON:

23 Q. Have you ever seen an application to correct or
24 amend a birth certificate from somebody who is seeking to
25 change the sex marker, but -- but didn't have a basis to do



1 so? Didn't need it changed?

2 MR. STRUCK: Form.

3 THE WITNESS: We don't ask the reasons behind
4 why people want to make a correction or amendment. That's
5 not part of our -- our duties, so I don't feel that I can
6 answer that.

7 BY MR. ANDERSON:

8 Q. Okay. But you've never received an amendment or a
9 request to correct or amend from a person who -- strike
10 that.

11 Let's go ahead and talk about corrections.

12 Does ADHS have a policy specifically related
13 to correcting birth certificates?

14 A. We have corrections and amendment policies, yes.

15 MR. ANDERSON: Let's go ahead and mark this
16 as Exhibit 6.

17 (Deposition Exhibit No. 6 was marked for
18 identification.)

19 THE WITNESS: Thank you.

20 BY MR. ANDERSON:

21 Q. Do you recognize this?

22 A. Yes.

23 Q. And what is this?

24 A. This is a policy for correcting birth records from
25 the Arizona Department of Health Services Bureau of Vital



1 **Records.**

2 Q. So at the top, that's the Arizona Department of
3 Health Services logo?

4 **A. Yes.**

5 Q. And the subject is corrections to birth records?

6 **A. Yes.**

7 Q. And it's dated May 17th, 2021?

8 **A. Yes.**

9 Q. Is this the current policy about corrections to
10 birth records?

11 **A. Without checking our -- our policy folder, I**
12 **cannot 100 percent answer that question.**

13 Q. Are you aware since May 17th of 2021, of any
14 updates to this policy?

15 **A. Again, without checking our current folder, I**
16 **can't -- I can't answer that question.**

17 Q. Okay. But nothing comes to mind? You're not --
18 sitting right here, you don't know of any specific changes?

19 **A. Again, I'm not comfortable answering that without**
20 **looking at the folder.**

21 Q. Okay. Now, this policy from the ADHS, is this an
22 internal policy to the Department?

23 **A. It could also be used by the county health**
24 **departments, so not only internally used.**

25 Q. Is that -- but did ADHS create this policy?



1 **A. Yes.**

2 Q. And ADHS maintains it?

3 **A. Yes.**

4 Q. And it sets out ADHS's activities related to
5 corrections of birth certificates?

6 **A. Yes.**

7 Q. Now, does a policy like this have a certain name?
8 Is there a certain type of policy, or is it just called an
9 ADHS policy?

10 **A. We refer to them as our policies.**

11 Q. Our policies.

12 Go ahead and look down on the first page
13 where it says "Authority." There, it has an Arizona
14 Revised Statues.

15 Now, what is that referring to?

16 **A. The Arizona Revised Statues as listed here.**

17 Q. Are those laws passed by the legislature?

18 **A. Yes.**

19 Q. And the next one down is Arizona Administrative
20 Code, how is that different?

21 **A. Those are our rules that support the statutes.**

22 Q. And are those rules created by the Arizona
23 Department of Health Services?

24 **A. Yes.**

25 Q. So did ADHS create this policy based on the



1 authorities listed here?

2 **A. Yes.**

3 Q. And it enforces the policy based on those
4 authorities?

5 **A. Can you repeat that again?**

6 Q. ADHS enforces this policy based on the authorities
7 listed here?

8 **A. Yes.**

9 Q. Okay. And would you agree that ADHS policies are
10 consistent with these authorities?

11 **A. Yes.**

12 Q. Now, and go ahead and look, the next section down
13 where it says "Applicability." And it says, "It policy
14 applies to hospitals, the Bureau of Vital Records (BVR) and
15 the County Vital Records Office and other partners listed
16 in this policy."

17 Does ADHS have the authority to make policy
18 for hospitals related to vital statics -- vital records, I
19 should say?

20 MR. STRUCK: Form.

21 **THE WITNESS: I wouldn't say that this**
22 **policy -- that we have the authority to make the policy for**
23 **the hospitals. We have the authority to write policies for**
24 **our governing regulations for which we are responsible and**
25 **for our system use that we are responsible for, and so our**



1 **policies support the functions that we are responsible for.**

2 BY MR. ANDERSON:

3 Q. So when it says the policy applies to hospitals,
4 it means that this is the policy hospitals must follow in
5 order to correct birth records?

6 **A. Correct.**

7 Q. Okay. When it says "other partners listed in this
8 policy," do you know what that's referring to?

9 **A. Not off the top of my head. I would have to go**
10 **through it.**

11 Q. Okay. We'll go through it in just a second. I
12 just wanted to know if you knew of any.

13 And then look next at the section that says
14 "Definitions." So is this the part of the policy where
15 certain terms are defined?

16 **A. Yes.**

17 Q. Go ahead and flip to the next page. The very
18 first term there is "Correction." And here it's defined as
19 "a change made to a registered birth certificate because of
20 a typographical error including misspelling and missing or
21 transposed letters or numbers."

22 Would you agree that this is the definition
23 that also appears in the authorities on the first page?

24 **A. I would have to --**

25 Q. You'd have to --



1 **A.** -- word-for-word look at it.

2 **Q.** Okay.

3 **A.** But it sounds familiar to me.

4 **Q.** What is a typographical error?

5 **A.** That is somebody who's doing the data entry in the
6 record at the time of registration making an error on the
7 keyboard.

8 **Q.** So it's a mistake?

9 **A.** Yes.

10 **Q.** Okay.

11 MR. STRUCK: Belated objection to form.

12 BY MR. ANDERSON:

13 **Q.** Go ahead and flip to page -- I'm sorry, the bottom
14 of page 2. Just look down there. It says policy, and
15 under that it says, "The following individuals may submit a
16 request to correct a birth record."

17 Now flip to page 3.

18 Do you see the list there?

19 **A.** Yes.

20 **Q.** So it's a list of six different individuals.

21 Any of these people can submit a request to
22 correct a birth record?

23 **A.** Yes.

24 **Q.** And that includes number 3 that says, "The
25 registrant, if the registrant is of legal age or married"?



1 **A. Yes.**

2 Q. And number 4 is "A parent of the registrant whose
3 name is listed on the registrant's registered birth
4 record"?

5 **A. Yes.**

6 Q. Go ahead and flip to page number 7.

7 **A. Just a second.**

8 Q. Yeah. That's all right.

9 **A. Okay.**

10 Q. The bottom section, section -- letter D,
11 "Administrative Errors Made By the County Vital Records
12 Office Or the BVR."

13 Does that mean that county vital records
14 offices and BVR can correct typographical errors that
15 they've made on their own?

16 **A. Yes.**

17 Q. They don't need anybody to apply to change those
18 errors?

19 **A. Correct.**

20 Q. Flip back two pages to page number 5. And
21 Section C there in the -- that starts in the middle, "The
22 Registrant, Registrant's Parent, Guardian or a Person Who
23 Has Custody of the Registrant."

24 So is this the section that deals with
25 requests from those individuals?



1 **A. Yes.**

2 Q. And would you agree that this section sets out the
3 procedures that that person must follow in order to request
4 a correction?

5 **A. Yes.**

6 Q. Now, if you'll see on sections 5 -- or excuse me,
7 pages 5 and 6, it's split into two different sections. The
8 first one is "Less Than Ninety (90) Days After Birth," and
9 that's on page 5.

10 Do you see that?

11 **A. Yes.**

12 Q. And then page 6, "Ninety (90) Days Or More After
13 Birth"?

14 **A. Yes.**

15 Q. Why is it split into those two sections?

16 **A. Because there's different requirements based on
17 the length of time.**

18 Q. And do you know what the difference in the
19 requirements is?

20 **A. Without referencing back to the rule, I don't feel
21 that I can conclusively --**

22 Q. Conclusively say?

23 **A. -- answer, but there's typically additional
24 requirements.**

25 Q. Okay. Go ahead and flip to page number 7 and then



1 look at Subsection 2 at the top there. And this is -- this
2 is under the section 90 days or more after birth.

3 Section 2 says, "An evidentiary document that
4 supports the correction to the birth record such as," and
5 then it lists examples.

6 Do you see that?

7 **A. Uh-huh.**

8 Q. And the examples it lists -- and just to be clear,
9 these are documents that a registrant would need to submit
10 to ADHS; is that right?

11 **A. Yes.**

12 Q. The documents that list the hospital medical
13 record, a medical record from a health care provider, a
14 certified blessing.

15 What's a certified blessing?

16 **A. At a church, if a child is dedicated to the church
17 or baptized by the church, the church will certify the
18 baptismal record or blessing record.**

19 Q. Okay. And that -- that's -- a baptismal
20 certificate as well, those are the same idea?

21 **A. Yes, just depending upon the church.**

22 Q. Uh-huh.

23 The next one is immunization record. And
24 what's an immunization record?

25 **A. It's a record from -- for that registrant of all**



1 of their immunizations prepared by a physician.

2 Q. And then Subsection E says, "Another document from
3 an independent source containing information that supports
4 the request to correct the birth record."

5 Is that -- is that a catchall provision?

6 A. It allows for individuals who may have a different
7 document but meets the requirements of the evidentiary
8 document to submit it to make the request for the change.

9 Q. Could that be a letter from a doctor?

10 A. It could be. It says, "b. A medical record from
11 a health care provider." Sometimes that comes in the form
12 of a letter.

13 Q. Okay. So any document -- excuse me, another
14 document from an independent source, it could be any
15 document that ADHS decides meets the standard of an
16 evidentiary document?

17 MR. STRUCK: Form.

18 THE WITNESS: It could be.

19 BY MR. ANDERSON:

20 Q. And who makes the decision at ADHS about whether
21 it meets the evidentiary document standard?

22 A. We -- I would have to reference back our rules to
23 see if it's -- where it's defined, but we do have
24 requirements for what's in the -- in the evidentiary
25 document.



1 Q. But who -- who decides at ADHS whether the source
2 is independent?

3 A. It's a document other than prepared by the
4 registrar, independent of the registrar.

5 Q. And who decides if the information that it
6 contains supports the request?

7 A. The -- any evidentiary documents that the
8 individual feels meets the requirements, they will submit
9 them all to us, and it's all included in a -- a file for
10 that individual and it's routed. So using the policy, our
11 statutes and our rules, the customer service rep reviews
12 what is submitted and then there's a manager reviewal, and
13 then ultimately the deputy bureau chief and the bureau
14 chief review them.

15 Q. Okay. And that would be you?

16 A. Yes.

17 Q. Is there a policy that you're aware of that states
18 whether information is sufficient to support a request to
19 correct a birth record?

20 MR. STRUCK: Form.

21 THE WITNESS: Well, that would be this
22 policy.

23 BY MR. ANDERSON:

24 Q. This policy.

25 Go ahead and flip back one page -- or two



1 pages to the less than 90 days after birth section.

2 Does this section contain a requirement for
3 an evidentiary document?

4 **A. No.**

5 Q. It doesn't?

6 So ADHS doesn't require an evidentiary
7 document if the request to correct is made less than
8 90 days after birth?

9 **A. Correct.**

10 Q. Why does ADHS require an evidentiary document if
11 the correction is requested more than 90 days?

12 **A. Less than 90 days, typically the registrant will**
13 **not have an evidentiary document. They're just a baby and**
14 **they haven't lived life yet. So that's -- they may not**
15 **even have been to the doctor yet in some cases so that**
16 **document may not exist.**

17 **More than 90 days, that document may exist**
18 **and so it needs to be submitted. Yeah.**

19 Q. Okay. If ADHS determines that a request submitted
20 by a registrant or the registrant's parents satisfies this
21 policy, does ADHS have discretion on whether or not to
22 grant or deny it?

23 MR. STRUCK: Form.

24 **THE WITNESS: Can you repeat it again please?**

25 BY MR. ANDERSON:



1 Q. If a request satisfies the policy, is ADHS
2 required to grant the correction?

3 MR. STRUCK: Same objection.

4 **THE WITNESS: If the application includes**
5 **everything and is filled out appropriately, then ADHS would**
6 **grant the correction.**

7 BY MR. ANDERSON:

8 Q. Would grant it.

9 So ADHS can't say that it disagrees with an
10 evidentiary document and deny the request?

11 MR. STRUCK: Form.

12 **THE WITNESS: If the evidentiary document**
13 **does not -- does not support the correction, the correction**
14 **would not be made.**

15 BY MR. ANDERSON:

16 Q. Okay. If ADHS determines that the document does
17 support the correction, does it have the power to deny the
18 request for a correction?

19 **A. As long as the rest of the requirements are met,**
20 **then the correction would be made.**

21 Q. Okay. Does this corrections policy apply to
22 corrections to sex markers listed on birth certificates?

23 MR. STRUCK: Form.

24 **THE WITNESS: This policy would be used to --**
25 **if an application was submitted to correct the sex on a**



1 **record, yes.**

2 BY MR. ANDERSON:

3 Q. In what context would a typographical error occur
4 for a sex marker on a birth certificate?

5 A. We have had errors made by the birth recorders
6 when they are submitting a record for registration. They
7 select the wrong drop-down. The child was determined to
8 be, say, male at birth. All medical records show male, but
9 when they entered into our system, they selected female or
10 not yet determined and that was a typographical error that
11 the hospital birth recorder committed.

12 Q. So typographical error for a sex marker can only
13 occur if the sex entered is different than the individual's
14 sex assigned at birth?

15 A. Can you say that again?

16 Q. A typographical error on a sex marker under this
17 policy would only happen if the sex marker on the birth
18 certificate was different than the sex assigned at birth?

19 A. For the sex field?

20 Q. For the sex field.

21 A. It would be that the wrong sex was selected while
22 they were inputting the information into the record.

23 Q. And the wrong sex means that it's different than
24 the sex assigned at birth for that -- that baby?

25 A. According to the medical professionals, yes.



1 Q. So ADHS wouldn't apply this corrections policy to
2 change a sex marker to be different than a person's sex
3 assigned at birth?

4 MR. STRUCK: Form.

5 **THE WITNESS: Can -- can you say that again?**

6 BY MR. ANDERSON:

7 Q. Yeah. If an individual submitted an application
8 to correct the sex marker to align with -- to be different
9 than their sex assigned at birth, ADHS would not view that
10 as a typographical error?

11 **A. No.**

12 Q. So ADHS would -- would reject that application?

13 **A. For a correction.**

14 Q. For a correction.

15 You can go ahead and set that aside.

16 Are you aware of any other policies or
17 procedures related to corrections on birth certificates
18 that ADHS or BVR has?

19 **A. Corrections?**

20 Q. Uh-huh.

21 **A. No.**

22 Q. Are you -- do you know what a desk procedure is?

23 **A. Oh, yes.**

24 Q. Okay. Does ADHS have a desk procedure on
25 corrections?



1 **A. Yes.**

2 MR. ANDERSON: Go ahead and mark this as
3 Exhibit 7.

4 (Deposition Exhibit No. 7 was marked for
5 identification.)

6 **THE WITNESS: Thank you.**

7 BY MR. ANDERSON:

8 Q. Do you recognize this?

9 **A. Yes.**

10 Q. What is this?

11 **A. This is a desk procedure for corrections and**
12 **amendments.**

13 Q. And what is a desk procedure?

14 **A. A desk procedure is an aid or tool given to the**
15 **customer service rep that tells them step by step how to**
16 **process the application that is submitted to the**
17 **Department.**

18 Q. So this is the -- the actual process that the
19 Department follows when it receives a request to correct?

20 **A. Yes. You can call at a process.**

21 Q. And this -- this desk procedure is created by BVR?

22 **A. Yes.**

23 Q. And it sets out BVR's activities about how to
24 process these applications?

25 **A. Yes.**



1 Q. And BVR maintains this desk procedure?

2 **A. Yes.**

3 Q. So we'll go ahead and start at the top. And it
4 says: Desk procedure for corrections and amendments.

5 So this applies to any requests to change a
6 sex marker on a birth certificate?

7 **A. For corrections and amendments, yes.**

8 Q. And there's no other way to go about changing a
9 sex marker?

10 **A. Correct.**

11 Q. Correct. So any change to a sex marker would --
12 would fall under this desk procedure?

13 **A. Yes.**

14 Q. At the bottom, it says Revision Date, August 28th,
15 2019.

16 Are you aware sitting here right now of any
17 updates to this desk procedure since that date?

18 **A. Without checking in the folder, no.**

19 Q. Okay. So looking at the first section there where
20 it says "Birth Corrections" in bold and underline, would
21 you agree that what's set out underneath that is the
22 process that the staff follows when a request for a birth
23 correction is received?

24 **A. Yes.**

25 Q. And this process starts the moment it says: When



1 a birth certificate is received in person or by mail.

2 Is that fair to say?

3 **A. It says birth correction.**

4 Q. When a birth correction?

5 **A. Not certificate.**

6 Q. Excuse me. When a birth -- birth correction is
7 received, that's when the process starts?

8 **A. Yes. At the time of application.**

9 Q. Okay. And then if you flip to page 2, it says the
10 process ends when the "Staff attaches a split copy of the
11 birth certificate, photocopy of the Affidavit." And it
12 goes on to say, "filed in the Corrections Filing cabinet."

13 Is that -- is that where it ends?

14 **A. Yes.**

15 Q. In the step right above that, it says, "The
16 certificate will be mailed out to the customer within seven
17 (7) days from the date of receipt"?

18 **A. Yes.**

19 Q. Okay. Now, where in this process would the
20 correction go to you for approval? At what point in the
21 process would you view a correction application?

22 **A. Between Steps 10 and 11 where it talks about the
23 change being approved.**

24 Q. Okay. So it says -- number 10 says EBRS.

25 And what is EBRS?



1 **A. Electronic birth registry system.**

2 Q. Is that the electronic system that BVR maintains
3 for vital records?

4 **A. Correct.**

5 Q. Number 10 says, "EBRS will automatically flag the
6 record as 'Waiting For Approval' for a quality review and
7 approval by a supervisor."

8 So that approval by a supervisor, that's
9 referring to the process to go to you?

10 **A. Yes.**

11 Q. Okay. Now this process for submitting a request
12 for a birth correction, is -- is ADHS required to keep that
13 confidential?

14 **A. We keep all of our processes confidential in the**
15 **Bureau of Vital Records.**

16 Q. So anything submitted by an applicant seeking to
17 correct a birth record would remain confidential at ADHS?

18 **A. Yes.**

19 Q. The request for a correction is never made public?

20 **A. No.**

21 Q. And the outcome of the request is never made
22 public?

23 **A. No.**

24 Q. At the end of this process, is this information --
25 if the birth correction is granted, is the information



1 about the request sealed by ADHS?

2 **A. Yes.**

3 Q. Okay. You can set that aside for right now. We
4 will come back to it, though, so --

5 **A. Okay.**

6 Q. -- keep it in a spot you might be able to find it
7 easily.

8 I'd like to move on now to amendments.

9 Earlier, you testified that there was two
10 ways to change a sex marker: One is through a correction,
11 and the other is through an amendment. So we're going to
12 talk about that second part now.

13 Are Arizonans -- are registrants able to
14 request an amendment to their birth certificates?

15 **A. Yes.**

16 Q. And are they able to request amendments to the sex
17 markers on those birth certificates?

18 **A. Yes.**

19 Q. What are the ways that a registrant can request an
20 amendment to a sex marker?

21 **A. By mail or in person. Or online.**

22 Q. Or online.

23 Are there different procedures -- are there
24 different evidentiary documents that a -- that a registrant
25 is able to submit in -- to request an amendment to a sex



1 marker?

2 MR. STRUCK: Form.

3 THE WITNESS: Different meaning a variety of
4 options -- or can you clarify what you're asking, please?

5 BY MR. ANDERSON:

6 Q. Sure. Can an applicant submit a doctor's note in
7 order to support an amendment to a sex marker on a birth
8 certificate?

9 A. Yes.

10 Q. Can a registrant submit a court order?

11 A. Yes.

12 Q. I'd like to go through each of those separately,
13 one by one.

14 A. Okay.

15 Q. So the first option we talked about involves a
16 doctor's letter.

17 Are you familiar with Arizona Revised Statute
18 Section 36-336(A)(3)?

19 A. Yes.

20 Q. Okay. And is that the statutory provision that
21 deals with doctors' letters?

22 A. It doesn't specifically say doctors' letters, I
23 don't believe.

24 Q. Okay.

25 MR. ANDERSON: Go ahead and mark this as



1 Exhibit 8.

2 (Deposition Exhibit No. 8 was marked for
3 identification.)

4 **THE WITNESS: Thank you.**

5 BY MR. ANDERSON:

6 Q. Do you recognize this?

7 **A. Yes.**

8 Q. What is this?

9 **A. This is Arizona Revised Statute 36-337 for**
10 **amending birth certificates.**

11 Q. And when you say that, that's the title of the
12 statute, "Amending Birth Certificates"?

13 **A. Yes.**

14 Q. And is this the section that references -- and
15 I'll direct you down to Section (3)(A), "A written request
16 for an amended birth certificate"?

17 **A. Yes.**

18 Q. If I refer to that as Subsection A-3 as we go,
19 will that be okay with you?

20 **A. Sure.**

21 Q. So Subsection A-3 says:

22 "For a person who has undergone a sex
23 change operation or has a chromosomal count
24 that establishes the sex of the person as
25 different than in the registered birth



1 certificate, both of the following:

2 A written request for an amended birth
3 certificate from the person, or if the person
4 is a child, from the child's parent or legal
5 guardian."

6 That section I just read, a written request,
7 what is that?

8 A. That is the application that the registrant
9 submits to the Department requesting the amendment.

10 Q. Okay. And it goes on in subsection "(b), A
11 written statement by a physician that verifies the sex
12 change operation or chromosomal count."

13 And what is that?

14 A. That would be an attestation from the physician
15 verifying the sex change operation or chromosomal count
16 change for the registrant.

17 Q. And could that be a letter from the doctor?

18 A. It could be.

19 Q. Is it typically in these types of requests a
20 letter from a doctor?

21 A. Typically.

22 Q. I'd like to direct your attention back to up the
23 very -- very first sentence in the statute where it says:
24 "The state registrar shall amend the birth certificate for
25 a person born in the State when the state registrar



1 receives any of the following:" Then it has a colon, and
2 that's when we go down to subsection 3 A.

3 Now the State registrar, is that referring to
4 the director of ADHS?

5 **A. Yes.**

6 Q. And that's the role that you've been deputized to
7 perform?

8 **A. Correct.**

9 Q. And it says, "The state registrar small amend."

10 Does that mean ADHS is required to amend a
11 birth certificate when it receives these documents?

12 **A. If the documents meet the statute, yes.**

13 Q. And who decides if the documents meet the statute?

14 **A. That's part of the review and approval process
15 that I perform.**

16 Q. We read subsection 3A, and it stated that two
17 different documents were required: A written request and a
18 written statement by a physician.

19 So subsection A doesn't require any other
20 documents to be submitted?

21 **A. It requires the application and it -- the
22 physician statement so long as it meets the statute.**

23 Q. So just those two?

24 **A. Well, they also provide other information as part
25 of the application process.**



1 Q. Okay. But the statute only references those two
2 specifically?

3 A. Correct.

4 Q. I'd like to look first at Subsection 3(a) where it
5 references "chromosomal count that establishes the sex of"
6 a "person as different than in the registered birth
7 certificate."

8 Do you see that language in the statute?

9 A. Yes.

10 Q. Is that phrase defined in the statute?

11 A. Without referencing back the definitions at the
12 start of the section, I cannot conclusively answer.

13 Q. Can't conclusively answer.

14 MR. ANDERSON: Moved a little too fast there
15 and ripped my mic off.

16 Let's go ahead and mark that as Exhibit 9.

17 (Deposition Exhibit No. 9 was marked for
18 identification.)

19 THE WITNESS: Thank you.

20 BY MR. ANDERSON:

21 Q. Ms. Colburn, do you recognize this?

22 A. Yes.

23 Q. And what is this?

24 A. These are the definitions for the chapter that
25 applies to the vital records.



1 Q. So these are the definitions you -- you were just
2 referring to?

3 A. Yes.

4 Q. Do you see in this document if it defines the
5 phrase "chromosomal count"?

6 A. No.

7 Q. Do you see if it defines anything related to the
8 sex listed on a birth certificate?

9 A. Glancing through, no, other than the processes
10 that we talked about, like, amend and correction that could
11 apply to amending or correcting the sex.

12 Q. Okay. Do you know if ADHS has defined the phrase
13 "chromosomal count" in any other policy?

14 A. I am not aware off the top of my head, no.

15 Q. What does ADHS understand a chromosomal count to
16 be?

17 A. In the context of 36-337, we would look for that
18 physician statement to identify that the registrant has a
19 chromosomal count that is different than the sex listed on
20 the record.

21 Q. And I -- I guess I wanted to clarify because I'm a
22 little confused. When it says "chromosomal count," is it
23 the number of chromosomes or is it the type of chromosomes
24 that are at issue in this statute?

25 A. The Department did not write the statute, the



1 legislature did. So I cannot suspect what they intended
2 for that to say. We simply look to see whether the
3 physician's statement identifies the registrant's sex is
4 different than what was recorded at the time of birth based
5 on the chromosomal count or not. We would not question the
6 medical professional on chromosomal count and how they
7 interpreted that.

8 Q. Have you ever received an application to amend a
9 sex marker based on this language?

10 A. B, yes, but chromosomal count specifically, no.
11 Not to my knowledge.

12 Q. Okay. I'd like to then just shift back to the
13 other basis under Subsection A-3, which refers to a person
14 who has undergone a sex change operation.

15 Now, looking back at Exhibit 9, which is the
16 definitions, does this statute, the definitions, does it
17 define sex change operation?

18 A. No.

19 Q. Do you know if the phrase "sex change operation"
20 is defined by ADHS in any of its policies?

21 A. Not that I'm aware.

22 Q. Is this under Subsection A-3 the primary basis on
23 which ADHS receives requests to amend?

24 MR. STRUCK: Form.

25 THE WITNESS: Can you be a little more



1 **specific because we do a lot of amendments.**

2 BY MR. ANDERSON:

3 Q. Sure. For requests to amend a sex marker on a
4 birth certificate, what is the most common basis for
5 requesting an amendment?

6 A. It would either be a physician statement
7 indicating that the registrant's sex was changed due to an
8 operation or a surgery or it would be that we received a
9 court order ordering the department to change the sex.

10 **Those are our two common.**

11 Q. Two most common. Okay.

12 Does ADHS have any internal policies related
13 to requests to amend birth certificates?

14 A. **Can you say that again? You said policies?**

15 Q. Sure. Yes. Does ADHS have policies about
16 amending birth certificates?

17 A. **Yes.**

18 Q. Okay.

19 MR. ANDERSON: Let's mark that as Exhibit 10.

20 (Deposition Exhibit No. 10 was marked for
21 identification.)

22 BY MR. ANDERSON:

23 Q. Do you recognize this?

24 A. **Yes.**

25 Q. Is this -- is this an ADHS policy like the one we



1 talked about before with corrections?

2 **A. Yes.**

3 Q. The subject at the top says "Amendments to Birth
4 Records"?

5 **A. Yes.**

6 Q. So is this governing ADHS's policy related to any
7 amendment to a birth certificate?

8 **A. Yes.**

9 Q. And under authority there it says -- you see under
10 Arizona revised statutes, it lists several different bases
11 but one of them says 36-337.

12 Do you see that?

13 **A. Yes.**

14 Q. Okay. And I'll represent to you, Ms. Colburn,
15 this isn't the most updated version that we possess of this
16 policy, but I have some questions about it before we move
17 on to the next one.

18 But could you confirm that the date in the
19 upper corner says March 28th, 2019?

20 **A. Yes.**

21 Q. And is that the date this policy would have gone
22 into effect?

23 **A. Yes.**

24 Q. And then it would have been superseded by a later
25 policy on the date that that policy says.



1 Is that how it works?

2 **A. Yes.**

3 Q. Okay. So just to -- to be clear, in the
4 definitions section starting on page 1, this policy does
5 not define the phrase "sex change operation," does it?

6 **A. No.**

7 Q. Okay. If you'll turn with me to page 3. The top
8 there says "Division Primary Position of Responsibility"
9 and then it lists: Bureau chief, assistant state
10 registrar, Bureau of Vital Records.

11 Is that the position that -- that you
12 currently hold?

13 **A. Yes.**

14 Q. And then at the bottom there's a section that says
15 procedure in all capitals, bold, underlined, and then it
16 begins with A.

17 Is that the procedure that different
18 applicants must follow when submitting requests to amend
19 birth certificates?

20 **A. Yes.**

21 Q. Uh-huh.

22 **A. Yes.**

23 Q. Okay. If you go ahead and flip through that
24 section to page number 14. It's a long policy.

25 **A. Okay.**



1 Q. At the bottom there's a section that says
2 "Amendments Where the Registrant's Sex Has Changed."

3 Is this the procedure that at the time this
4 policy was enforced would have applied to requests to
5 change the sex marker on a birth certificate?

6 **A. Yes.**

7 Q. And that first line of that section says, "To
8 request an amendment to a registrant's registered birth
9 record where the registrant has undergone a sex change
10 operation." So this applies to requests submitted under
11 Subsection A-3?

12 **A. Could -- I'm sorry. Can you redirect me to where
13 you just read?**

14 Q. Oh, sure.

15 **A. What page were you on?**

16 Q. The bottom of page 14.

17 **A. Oh.**

18 Q. It's the first sentence of the section "Amendments
19 Where the Registrant's Sex Has Changed."

20 **A. Okay. I'm there.**

21 Q. So just wanted to confirm that this applies to
22 requests under Subsection A-3?

23 **A. Yes.**

24 Q. And continuing to read through that -- that first
25 section, if you flip to page 15, it says: The registrant



1 "or registrant's parent or guardian shall submit to the
2 County Vital Records Office or the BVR."

3 Is that -- did I read that correctly?

4 **A. Yes.**

5 Q. So at this time when this policy was enforced,
6 amendments to birth certificates could be -- dealing with
7 sex markers could be submitted to either county vital
8 records offices or the BVR?

9 **A. Yes.**

10 Q. And then it gives -- under Subsection 1 there, "A
11 letter"... "requesting the amendment" and provides a list of
12 information that has to be included. Is that fair?

13 **A. Yes.**

14 Q. Number 2, then, says "An affidavit."

15 Is that the written statement that we
16 discussed before?

17 **A. No.**

18 Q. Is that part of the requirement for a written
19 statement? An affidavit attesting to the truthfulness?

20 **A. No. Are you referring to the written statement**
21 **from the physician? No. This is --**

22 Q. Oh, I'm sorry. I didn't mean to cut you off. Not
23 the written statement from the physician. I mean a written
24 statement from the applicant.

25 **A. Yes, from the applicant.**



1 Q. Okay. Sorry to clarify.

2 **A. Thank you.**

3 Q. Number 3 says, "A written statement on a
4 physician's letterhead paper" and it goes on.

5 Is that -- that's the -- a written statement
6 from a physician under Subsection A-3?

7 **A. Yes.**

8 Q. And here it says "that the registrant has," and
9 then, "(a) Undergone a sex change operation."

10 That's the same language from Subsection A-3?

11 **A. Yes.**

12 Q. It doesn't provide any additional details about
13 what that means?

14 **A. No.**

15 Q. And looking down just below number 3, there's a
16 bold and italicized section with a star next to it that
17 says "*County Vital Records Offices."

18 Do you see that section?

19 **A. Yes.**

20 Q. All requests involve -- it says, "All requests
21 involving a sex change operation," underlined that phrase,
22 "or chromosomal count," which is also underlined, "shall be
23 reviewed and approved by the BVR."

24 Why were requests involving a sex change
25 operation or chromosomal count sent to be reviewed and



1 approved by the BVR?

2 A. Because, if I'm remembering correctly, the county
3 health departments had a lot of questions about the letters
4 and the language in the letters because they varied, and so
5 they were instructed to send them to BVR so that we could
6 review the physician letters to ensure that they met the
7 requirements in the statute.

8 Q. Was -- at the time was BVR required to provide an
9 approval on every request submitted involving a sex change
10 operation?

11 A. Can you say that again?

12 Q. Sure. BVR reviewed and approved all requests
13 involving a sex change operation under this policy; is that
14 right?

15 A. No, that's not right.

16 Q. Not right.

17 So there were some requests that BVR would
18 not review and approve?

19 A. There -- we directed the counties to follow this
20 procedure. I know that there is at least one instance
21 where the county did not follow the procedure, so I don't
22 want to agree with the statement that you made, because I
23 know they didn't do what they were told to do.

24 Q. Okay. So sometimes the counties wouldn't do what
25 they were told to do?



1 **A. On occasion.**

2 Q. And if a county issued a birth certificate
3 amendment on its own, would that birth certificate be
4 valid?

5 MR. STRUCK: Form.

6 **THE WITNESS: I'm not sure what you mean by**
7 **valid. If they -- if they or the Department, made an**
8 **erroneous error, we would correct that error.**

9 BY MR. ANDERSON:

10 Q. If a county vital record office issued an
11 amendment based on a letter that BVR did not believe met
12 the standard, would that birth certificate amendment be
13 corrected? Would it be changed back?

14 **A. It could be.**

15 Q. It could be.

16 Okay. Is there anything -- is there a policy
17 that says county vital records offices are not allowed or
18 able to apply the standard for a letter from a doctor about
19 a sex change operation without guidance from BVR?

20 **A. Following the incident that happened, we did**
21 **change the policy.**

22 Q. Okay. What -- and I'm curious. What authority
23 does BVR have to direct county offices to send all such
24 requests to the BVR?

25 **A. Statutorily the Bureau of Vital Records,**



1 Arizona -- specifically the Arizona Department of Health
2 Services is responsible to maintain the only system of
3 vital records in the State of Arizona. And so under that
4 authority, we can delegate to the counties what we do and
5 do not want them doing.

6 That, again, follows the statute that tells
7 us that we can -- we are the only system of vital records.

8 Q. Were there any other types of amendments that BVR
9 required county offices to get approval before issuing?

10 A. As a general rule, I will say that if they have a
11 question on any evidentiary document that's submitted to
12 them for any correction or amendment, we routinely help the
13 counties with their de- -- with the decision-making
14 process.

15 Q. For regi- -- for amendments that don't involve a
16 sex marker, are county vital records offices allowed to
17 issue amendments without getting approval from BVR?

18 A. For certain amendments, yes.

19 Q. Go ahead and flip one more page in this document.
20 Page 16 is what I'm looking at now. Kind of in the -- near
21 the top there's an italicized paragraph that starts with
22 the word "Note," and then has a -- statement says "Older
23 birth records." I'd like to just go through this one with
24 you.

25 When it says "Older birth records," what is



1 it referring to?

2 **A. Old birth records.**

3 Q. Is there a certain date that references what --
4 what it means to be old?

5 **A. No.**

6 Q. No. Okay. So the first line says,

7 "If a health care provider or other
8 person responsible for submitting the request
9 to register a birth registration made an
10 error on the registrant's sex when providing
11 the information to register the birth record,
12 the registrant, if of legal age, or the
13 registrant's parent or guardian shall submit
14 the aforementioned requirements to request
15 the amendment."

16 So this is referring to errors in birth
17 registrations? Am I understanding this correctly?

18 **A. Yes.**

19 Q. And it goes on to say,

20 "One exception is the change in content
21 of the letter from the physician. The
22 registrant's physician shall only provide a
23 written statement attesting that the
24 registrant was born a male/female. A copy of
25 a medical record to support the amendment may



1 be submitted but is not required."

2 When it references -- when it references
3 "error" here, is that the same as a typographical error
4 under a corrections policy?

5 **A. Yes.**

6 Q. So why wouldn't a request to amend a birth
7 certificate because of an error be processed under the
8 corrections policy? And why is it referenced here in the
9 amendments policy?

10 **A. I think that it's trying to tell you to process it**
11 **like a correction.**

12 Q. Okay. So --

13 **A. So it's saying no, for old birth records that it's**
14 **not an amendment due to changing of the information. It's**
15 **a typographical error. Go back to the corrections policy.**

16 Q. And it says then that in order to submit a letter
17 for such a correction or an amendment as it -- as it may be
18 referred to, the physician's letter needs only state that
19 the registrant was, quote, "born a male/female"?

20 **A. That's what it says, yes.**

21 Q. Okay. So that -- the BVR at this time when this
22 policy was in effect would accept doctor's note for
23 corrections that simply stated a registrant was born a
24 male/female, one or the other?

25 **A. Yeah. So especially for the older birth records,**



1 that hospital may not even be in existence anymore or the
2 medical physician who attended the birth may have passed.
3 And so this is saying in those circumstances where it was a
4 typographical error that was made, that they can get a
5 letter from a current physician or treating physician that
6 tells us that they were in fact born male when their record
7 indicates female or vice versa.

8 Q. And that -- when you say "born male," you're
9 referring to the sex assigned at birth?

10 A. Yes.

11 Q. So a doctor's letter under the corrections policy
12 simply needs to say that a person was born a male or a
13 female?

14 A. At the time of birth, yes.

15 Q. At the time of birth.

16 And I mentioned -- you can set that aside. I
17 mentioned that ADHS has updated that policy.

18 Would you be familiar with the updated
19 version of that policy if I showed it to you?

20 A. Sure.

21 Q. Okay.

22 MR. ANDERSON: Let's mark that as Exhibit 11.

23 (Deposition Exhibit No. 11 was marked for
24 identification.)

25



1 BY MR. ANDERSON:

2 Q. Do you recognize this?

3 A. Yes.

4 Q. And what is this?

5 A. It is a policy for amendments to birth records
6 from the Arizona Department of Health Services.

7 Q. Just pointing out under "Supersession," which is
8 right at the top of that first page. It says, "This policy
9 supersedes the policy dated 3-28-19."

10 Is the 3/28/19 the policy -- do you remember
11 that from the one we just looked at?

12 A. Yes.

13 Q. So would this be the amendments policy that
14 replaced it?

15 A. Yes.

16 Q. Okay. If you look at the upper-right corner, the
17 date says 8-7-20.

18 Would that be the date that this policy in
19 front of you would have become effective?

20 A. Yes.

21 Q. And as far as you know sitting here, is this the
22 most current policy related to amendments to birth records
23 at ADHS?

24 A. I -- I cannot answer without checking the folder.

25 Q. I'll represent to you that all of the policies



1 that we've talked about except for that one are the ones
2 that were produced in this litigation, so I don't have any
3 newer versions.

4 **A. Yes.**

5 MR. ANDERSON: And just for the record, if
6 there have been newer versions, we would definitely
7 appreciate having those produced in this litigation in case
8 any changes relevant to the litigation have been made.

9 So I'm just going to note that for the
10 record.

11 BY MR. ANDERSON:

12 Q. But understood that -- that -- that as far as you
13 know, this -- this policy at least was in effect as of
14 8/7/20.

15 Okay. I'd like to direct you down to the
16 definitions section. If you could go ahead and flip
17 through and just confirm that this policy still does not
18 contain a definition of the phrase "sex change operation"?

19 **A. That is correct.**

20 Q. Go ahead and flip now to page 15 of this document.
21 And then if you look in the middle of the page "Amendments
22 where the registrant's sex is changed." That's the same
23 section heading that we talked about in the last version of
24 this policy; is that right?

25 **A. Yes.**



1 Q. And now this -- that -- that whole section
2 isn't -- isn't there anymore; is that right?

3 A. There is information from the previous policy that
4 is not here, that is correct.

5 Q. Okay. So this section now has two sentences; is
6 that right?

7 A. Yes.

8 Q. And the first one says: "All amendment inquiries
9 and requests involving sex changes shall be directed or
10 submitted to the BVR Registry Team."

11 The second one says: "Please ask customers
12 to mail their request to the BVR Registry Team or call,"
13 and then it has a number if they have any questions.

14 That's all the section has in it now?

15 A. Yes.

16 Q. Why -- why was the section deleted, removed?

17 A. These, as stated previously, the policies also are
18 used by the county health departments. And there was an
19 instance where they did not process an application
20 correctly. And so we were removing the direction provided
21 to them on how to process that amendment and now direct
22 them to send everything to the Bureau of Vital Records so
23 that we can make sure that their applications are processed
24 according to the governing regulations.

25 Q. So is this policy saying that -- is it removing



1 from county vital records offices the ability to issue
2 amendments to birth records for the sex marker?

3 **A. Yes.**

4 Q. So county -- at this time sitting here now, county
5 vital records offices cannot issue amendments on sex
6 markers on birth certificates?

7 **A. Correct.**

8 Q. You referenced an instance where a sex marker
9 amendment was provided incorrectly.

10 Do you remember about what date that
11 occurred?

12 **A. No. But it would have been shortly after we**
13 **revised the policy or around the time we revised the**
14 **policy.**

15 Q. Do you recall anything about that instance?

16 **A. Some, yes.**

17 Q. What do you recall?

18 **A. That the County made an error and processed an**
19 **amendment when they should not have, and we had to go**
20 **through steps to correct their mistake.**

21 Q. Was that amendment requested by a transgender
22 person?

23 **A. I cannot speculate whether the person was**
24 **transgender or not. I did not know them.**

25 Q. Was the amendment submitted under subsection A-3



1 with respect to a sex change operation?

2 A. I believe that the amendment was to change the
3 sex -- I know that the amendment was to change the sex on
4 the field -- the sex field on the record, but I don't
5 remember specifically what the doctor's letter could have
6 said or not said.

7 Q. Was the -- the error because the doctor's letter
8 was not sufficient to meet the requirements of the statute?

9 A. I believe so. But again, not having the file in
10 front of me, I don't feel comfortable saying 100 percent.

11 Q. I understand. Has the BVR ever removed from
12 county vital records offices the -- the power to issue
13 amendments in any other piece of information on a birth
14 record?

15 A. They do not have authority to issue other types of
16 amendments for different circumstances, yes.

17 Q. Okay. What are some of those circumstances?

18 A. There's a process that we have to do for older
19 records that require us to use the physical copies in the
20 vault. And so because we house those and they don't, they
21 cannot do those processes. There's other statutory
22 functions that lie solely with the Department of Health.
23 And so we do not delegate those to them, like delayed
24 births. There's other record amendments or corrections
25 that could happen that we have to manually do and sign that



1 they don't have -- I have to sign them. So because I'm not
2 at the county, I would have to do those at our office.

3 Q. Okay. Has there ever been a time where the
4 application of a standard has caused BVR to remove from
5 county offices the ability to issue an amendment?

6 A. The application -- can you clarify what you mean
7 by application of a standard?

8 Q. Sure. Applying the definition of a sex change
9 operation to a doctor's letter appears to be -- am I
10 correct? -- appears to be where the questions came from the
11 county offices to the BVR?

12 A. It was -- yes. So they did not receive a lot -- a
13 high volume, and so they just based on volume and
14 experience, they didn't have the necessary experience to
15 apply the statute.

16 Q. Okay.

17 A. They don't have the authority to apply the
18 statutes that lies with the Bureau of Vital Records, and so
19 if we have a question of statute application or
20 interpretation, we work with our administrative counsel
21 assigned to the department, and they don't have that.

22 Q. Got it. So has there ever been a time where the
23 county has been -- county vital records offices have lacked
24 the experience in an area such that BVR removed from them
25 the authority to issue an amendment?



1 MR. STRUCK: Form and foundation.

2 THE WITNESS: Yes.

3 BY MR. ANDERSON:

4 Q. And what was that?

5 A. Again, delayed birth, I've provided that example
6 numerous times. There have been other death amendments and
7 corrections, and that's just during my time. I can't
8 speculate to what has changed in delegation through the
9 whole evolution of vital records.

10 Q. Okay. Now, this is referencing this new policy,
11 the BVR registry team, and I asked you about that a little
12 bit before.

13 The BVR registry team, is it a -- it's -- I'd
14 like to know a little bit more about how it works when it
15 receives these requests to amend a birth certificate -- a
16 sex on a birth certificate.

17 Can you explain to me what happens when an
18 amendment inquiry and request is sent from a county vital
19 records office?

20 A. They will contact a manager or supervisor and say,
21 we have this application, and they could either -- if
22 they're from a far away county, they may mail it to us.
23 Local county may drop it off. They may redirect the
24 individual to apply to us directly. So we could get it
25 that way too.



1 Q. Okay. And would then the BVR begin their ordinary
2 policy for what happens when they receive a request for an
3 amendment to the sex marker?

4 A. Yes.

5 Q. Okay. So it's -- it's simply another way for the
6 BVR to receive a request for an amendment?

7 A. Yes.

8 Q. Okay. Now, did -- did ADHS ever issue a public
9 statement about the change in its amendments to birth
10 records policy when it removed from county offices the --
11 the authority to issue amendments?

12 A. I don't know what you mean by public statement.

13 Q. Sorry. Did ADHS ever post anything on its website
14 saying, "We've amended our policy"?

15 A. Not that I'm aware of.

16 Q. Okay.

17 MR. ANDERSON: Go ahead and mark this as,
18 what are we on now, Exhibit 12.

19 (Deposition Exhibit No. 12 was marked for
20 identification.)

21 THE WITNESS: Thank you.

22 BY MR. ANDERSON:

23 Q. Do you recognize this?

24 A. Yes.

25 Q. And this is an e-mail -- at the top of this



1 document it says it's an e-mail from you, Krystal Colburn;
2 is that right?

3 **A. Yes.**

4 Q. And Krystal Colburn, the e-mail assigned to you is
5 your name at AZDHS.gov?

6 **A. Yes.**

7 Q. And is that your -- your ADHS e-mail account?

8 **A. Yes.**

9 Q. And it says, to **Redacted** is that right?

10 **A. Yes.**

11 Q. And who is Mr. **Redacted**

12 **A. He was a prior employee at the department.**

13 Q. Was he an employee at the time this e-mail was
14 sent which is May 19, 2020?

15 **A. I would presume so, yes.**

16 Q. Do you recall if this e-mail was sent to his ADHS
17 e-mail account?

18 **A. It would have been.**

19 Q. And then the CC line has five more individuals.

20 Do you recognize all five of those?

21 **A. Yes.**

22 Q. And are they all ADHS employees as well?

23 **A. Some currently; some not currently.**

24 Q. At the time this was sent, were they all employed
25 by ADHS?



1 **A. Yes.**

2 Q. The subject line is, "Re: Draft Update to the
3 Birth 014-Amendments to Birth Records."

4 Do you see that?

5 **A. Yes.**

6 Q. And just referring back to the document that we
7 had looked at a minute ago, document Exhibit 11, is this
8 the Birth-014 Amendments to Birth Records policy?

9 **A. Yes.**

10 Q. So is this e-mail about the change to that --

11 **A. Yes.**

12 Q. -- policy? Okay.

13 On the first page of this exhibit, looking
14 down into the middle, it says -- there's an e-mail from
15 Mr. **Redacted** on Tuesday, May 19th, 2020, at 7:49 a.m.

16 Do you see that -- that portion of this
17 e-mail?

18 **A. Yes.**

19 Q. It says, "Good morning **Redacted** I have included a
20 website addition for gender marker change. Would we want
21 to expand the," quote, 'correct a birth certificate,'
22 unquote, or create a new tab to illustrate R9-19-208
23 Amending information in a Registered Birth Record "?

24 Do you see that?

25 **A. Yes.**



1 Q. Just to clarify, R9-19-208, is that referring to
2 an Arizona regulation?

3 A. Yes.

4 Q. Are you familiar with that regulation?

5 A. Yes.

6 Q. And is that the regulation covering corrections to
7 birth certificates?

8 A. I believe so.

9 Q. Okay. And so what is Mr. **Redacted** asking you
10 here? What is he asking -- excuse me, not you.

11 I guess **Redacted** What is he asking
12 **Redacted** to do?

13 A. To make an update on our website.

14 Q. Okay. And what would the expansion for creating a
15 new tab have included as you understood it?

16 A. He's asking to have information for a gender
17 marker change added to the website.

18 Q. Okay. And then directing you up to the top e-mail
19 from you, you -- the first sentence says: "This is not --
20 and "not" is in bold -- "something we can post on our
21 website at this time."

22 And it goes on to say, "There was a bill
23 signed by the Governor providing direction on what" we
24 can -- "what can be posted on our website."

25 Why -- why were you saying that we -- that we



1 -- excuse me. Take a step back.

2 "We" refers to ADHS in this?

3 **A. Yes.**

4 Q. And why were you saying that ADHS could not post
5 that information on the website?

6 **A. Because the governor signed a bill that did not
7 allow state agencies to update the websites.**

8 Q. Did ADHS ever update the website with this
9 amendment to birth records policy?

10 **A. No. We don't have any of our policies posted on
11 our website.**

12 Q. Okay. Did ADHS ever determine under that bill
13 that it could post an update on the website?

14 **A. The bill did not allow us to make any changes.**

15 Q. And is that bill still in effect?

16 **A. I am not sure whether the bill is still in effect
17 or not.**

18 Q. Okay.

19 **A. It -- I don't know how that changed with the new
20 governor.**

21 **I'm sorry. Can I have just a quick moment?**

22 MR. ANDERSON: Oh, yeah. Absolutely.

23 **THE WITNESS: Can you please open this for
24 me?**

25 MR. ANDERSON: Yeah. We can go off the



1 record for just a moment.

2 THE VIDEO SPECIALIST: We're going off the
3 record. The time is 11:28 a.m.

4 (Recess was taken, 11:28 a.m. to 11:29 a.m.)

5 THE VIDEO SPECIALIST: We're back on the
6 record. The time is 11:29 a.m.

7 BY MR. ANDERSON:

8 Q. So I was asking you about this bill that the
9 governor signed. I just want to understand did ADHS ever
10 indicate publicly on its website that -- that it had
11 removed from county vital records offices the authority to
12 make amendments to sex markers?

13 A. No, because it was never posted --

14 Q. Okay.

15 A. -- on there to begin with.

16 Q. You go on to say, "Additionally, this has far
17 reaching implications on our legal cases."

18 What legal cases are you referring to there?

19 A. We had a --

20 THE WITNESS: I don't know how much I'm
21 allowed to say, Trish.

22 BY MR. ANDERSON:

23 Q. I -- yeah. Please don't reveal any confidences
24 that you have with counsel.

25 A. Okay.



1 Q. If you could just give me a general description of
2 the case without revealing what you've talked to your
3 counsel about.

4 A. We had a separate case that included some
5 settlement proposals, and so this would have potentially --
6 could have interfered with that case, and so I advised them
7 not to make any changes.

8 Q. Okay. Is the -- is this lawsuit one of the legal
9 cases that you are referencing there?

10 A. No.

11 Q. Okay. When Mr. **Redacted** refers to expand the
12 correct a birth certificate on the website, is that a
13 section of ADHS's website that includes instructions about
14 how to apply for a correction?

15 A. Yes.

16 Q. What was he proposing adding to that?

17 What was he proposing to expand to that?

18 A. Quite honestly, I'm not sure.

19 Q. Okay. Would the information on ADHS's website
20 that existed at this time have been incorrect given the
21 change in the policy?

22 A. No.

23 Q. No.

24 Would the bill signed by the governor have
25 allowed ADHS to change it if it had been incorrect?



1 **A. That, I'm not sure of.**

2 Q. Okay. Okay. If you can flip back to the desk
3 procedure that we talked about before which is Exhibit
4 Number 7.

5 **A. Okay.**

6 Q. Okay. Are you there?

7 **A. Yep.**

8 Q. This desk procedure as we talked about earlier
9 applies to both corrections and amendments; is that right?

10 **A. Yes.**

11 Q. Go ahead and flip to page 2 of this document. And
12 there in the middle it says "Birth Amendments" in bold and
13 underlined.

14 Do you see that?

15 **A. Yes.**

16 Q. And it starts, "When an Amendment is received in
17 person or by mail, the staff shall follow the same steps as
18 with the Correction."

19 Is that referring to the process related to
20 corrections for birth certificates above?

21 **A. Yes.**

22 Q. Okay. And then it says, "With the exception of
23 the following," and it has a list of steps.

24 So are those -- those are differences between
25 the two policy -- processes?



1 **A. Yes.**

2 Q. Okay. Can you describe or do you know of the
3 primary differences between these two processes?

4 **A. Can you repeat the question?**

5 Q. Sure. What I'm interested in is what are the
6 differences in these policies or processes?

7 **A. It would be the -- with the except for the
8 following listed. That's the difference.**

9 Q. The differences. Okay. Let's just talk about a
10 couple of these things here.

11 Both of these processes -- and take a moment
12 if you need to look at it -- involve the database
13 application for vital events; is that right?

14 **A. Yes.**

15 Q. And that's abbreviated as D-A-V-E or DAVE?

16 **A. DAVE.**

17 Q. We call it DAVE?

18 **A. We call it DAVE.**

19 Q. Okay. So they both involve searching the DAVE
20 program; is that right?

21 **A. Yes.**

22 Q. They both involve using EBRS, which we defined
23 before?

24 **A. Yes.**

25 Q. They -- so it's the -- it's the same programs, the



1 same electronic fields that use for both?

2 **A. Corrections and amendments, yes.**

3 Q. Are the same people handling requests for
4 corrections and amendments?

5 **A. Yes.**

6 Q. Okay. And both processes begin when the request
7 is received by BVR?

8 **A. Yes.**

9 Q. And both end when the amendment is filed in the
10 corrections filing cabinet; is that right?

11 **A. The amendment or correction.**

12 Q. Amendment or correction.

13 And, you know, just looking at number 11
14 under the amendment process, it actually says "in the
15 Corrections Filing cabinet."

16 So they're all filed in the same cabinet?

17 **A. Yes.**

18 Q. And above that on number 10 on page 3, it says,
19 "The certificate will be mailed to the customer within
20 seven (7) days."

21 So the -- the correction or amendment,
22 they're both mailed within the same time frame?

23 **A. Yes.**

24 Q. If you look at number 8, which actually starts on
25 the page before, this says, "To correct the record, staff



1 shall" -- and then if you look down at ix, romanette number
2 9, and romanette number x, those are the same steps in
3 which the amendment is sent to approval by a supervisor; is
4 that right?

5 **A. Yes.**

6 Q. And that's the same approval process that ends up
7 on your desk?

8 **A. Yes.**

9 Q. Okay. Is this process for seeking an amendment to
10 a birth certificate confidential for the applicant?

11 **A. Yes.**

12 Q. The request is never made public?

13 **A. No.**

14 Q. The outcome is never made public?

15 **A. No.**

16 Q. And it's all sealed at the end?

17 **A. Yes.**

18 Q. And the applicant doesn't have to request for it
19 to be sealed?

20 **A. No.**

21 Q. Okay. You can go ahead and set -- set that to the
22 side.

23 Now, if ADHS denies a request for an
24 amendment or a correction, does it inform the registrant
25 that it has done so?



1 **A. Yes.**

2 Q. And how does it usually do that?

3 **A. Through a letter, a denial letter.**

4 Q. A letter.

5 MR. ANDERSON: Let's mark this as Exhibit --
6 is this 13?

7 THE CERTIFIED STENOGRAPHER: Correct.

8 MR. ANDERSON: -- 13.

9 (Deposition Exhibit No. 13 was marked for
10 identification.)

11 **THE WITNESS: Thank you.**

12 MR. ANDERSON: Now, I want to -- so as I was
13 reviewing this, I realized that this may have some
14 information that should be redacted. And so I'm going to
15 say on the record we'll go ahead and mark this
16 confidential.

17 MR. STRUCK: Okay.

18 MR. ANDERSON: And if you would like to
19 reproduce a redacted form, we're totally fine with that.
20 We'll encounter it. So I just want to make that clear on
21 the record.

22 BY MR. ANDERSON:

23 Q. But I just want to ask you: Is this the type of
24 denial letter that ADHS sends when it denies an
25 application?



1 **A. Yes.**

2 Q. Are you familiar with this specific instance
3 without naming the person?

4 **A. Like I said before, I -- I process a lot of**
5 **amendments, so I don't have them all memorized.**

6 Q. Totally okay. Just wanted to make sure.

7 This one is dated May 6, 2021?

8 **A. Yes.**

9 Q. And the second paragraph it refers to in that
10 first line, subsection A-3, 36-337(A)(3)?

11 **A. Yes.**

12 Q. And it lists the two elements of subsection A-3,
13 "Undergone a sex change operation" being the first one.

14 Do you see that under A?

15 **A. Yes.**

16 Q. And then the next paragraph down says, "The
17 specific reason(s) for the denial of your request to amend
18 the gender marker on your birth certificate is as follows,"
19 and then it refers to a physician letter there; right? I'm
20 not going to read -- read that.

21 **A. Correct.**

22 Q. And just to -- just to go back a little bit here.

23 ADHS did use the phrase "gender marker" in
24 this letter; is that right?

25 **A. Yes.**



1 Q. Okay. In that bullet point, it says, "The
2 physician letter" -- I'm going to skip that part -- "does
3 not indicate there was a sex change operation or the
4 chromosomal count establishing a sex different than on the
5 record."

6 So it gives the reason for rejecting the
7 amendment because the letter did not state one of those two
8 things. Is that fair?

9 A. Yes.

10 Q. And is this a good example of a denial on that
11 basis that ADHS would send?

12 A. Yes.

13 Q. Do you know how many about of these letters ADHS
14 has sent?

15 A. No.

16 Q. No. Is it more than ten?

17 A. Yes.

18 Q. Is it more than 50?

19 A. I don't want to guess.

20 Q. Okay. Did ADHS also send e-mails to individuals
21 to inform them that their requests had been denied?

22 A. I'm not aware of an e-mail --

23 Q. Okay.

24 A. -- that I would have sent. Our procedure is to
25 send a letter.



1 Q. Is to send a letter. Okay. Would anyone on ADHS
2 ever inform applicants over the phone whether a request had
3 been denied?

4 A. We frequently get inquiries from registrants
5 asking questions, so they could certainly have answered
6 questions. But I don't know whether they would. I,
7 speaking for myself, have not indicated on the phone
8 whether somebody is denied or approved.

9 Q. So that -- that's a good clarification.

10 A letter would be sent if an official
11 application for an amendment had been submitted to the
12 Department and then denied?

13 A. Yes.

14 Q. If an applicant had called and asked about the
15 requirements, would ADHS have responded to that by an
16 e-mail?

17 A. They potentially could, yeah.

18 Q. Could they have responded to that on a telephone
19 call?

20 A. Yes. Providing information, yes.

21 Q. And in those encounters, does ADHS ordinarily
22 provide the statutory language that is reflected in this
23 letter?

24 A. They could.

25 Q. Okay.



1 MR. ANDERSON: Okay. I think that we can go
2 off the record and break for lunch if that's okay.

3 THE VIDEO SPECIALIST: We're going off the
4 record. The time is 11:41 a.m.

5 (Recess taken, 11:41 a.m. to 12:40 p.m.)

6 THE VIDEO SPECIALIST: We're back on the
7 record. The time is 12:40 p.m.

8 BY MR. ANDERSON:

9 Q. Ms. Colburn, I just wanted to ask a little bit
10 more about the binder in front of you.

11 Did you make any handwritten notes on any of
12 the documents in there?

13 A. No.

14 Q. Okay. Is there anything in that binder -- you
15 said they were filings.

16 Are they all filings on the docket in this
17 case? Are they public filings?

18 And can you go ahead and just flip it open.
19 If you wouldn't just mind reading the table of contents
20 just so we can confirm what they are?

21 A. Sure. Deposition notice, defendant's second
22 supplemental interrogatory responses. E-mails authored by
23 Krystal Coburn produced by Defendant. Documents produced
24 by Defendant.

25 Q. Okay.



1 MR. STRUCK: I'll just say for the record,
2 there's nothing in there that you all don't have.

3 MR. ANDERSON: That we don't have?

4 MR. STRUCK: The only thing you didn't have,
5 Trish sent you, I think, yesterday.

6 MR. ANDERSON: Yesterday. Okay.

7 BY MR. ANDERSON:

8 Q. Was there anything in that binder that you
9 reviewed that refreshed your recollection as to events that
10 have happened in the past?

11 A. No.

12 Q. Okay. So I'd like to return to one of the topics
13 we talked about before lunch, and that's the phrase in
14 subsection A-3, sex change operation.

15 Do you remember that phrase from the statute?

16 A. Yes.

17 Q. Does ADHS know who the people are in Arizona that
18 undergo sex change operations?

19 MR. STRUCK: Form.

20 **THE WITNESS: I don't think I could speculate**
21 **on that for the whole agency.**

22 BY MR. ANDERSON:

23 Q. Okay. Would a transgender person undergo a sex
24 change operation?

25 A. I should clarify. I thought you were asking



1 whether I knew names of people, so that's why I could not
2 answer.

3 Q. Understood.

4 A. Okay.

5 Q. Yeah.

6 Would transgender people undergo sex change
7 operations?

8 A. Yes.

9 Q. Is there anyone else you can think of that would
10 undergo a sex change operation?

11 A. Sometimes there are individuals who are born with
12 potential to different paths of genitalia, so I know that
13 sex operations can happen in those instances.

14 Q. And have you -- are you familiar with the phrase
15 "intersex"?

16 A. Yes.

17 Q. Would that refer to -- to people --

18 A. Yes.

19 Q. -- like those you just described?

20 A. Yes.

21 Q. Okay. So transgender people and intersex people
22 would undergo sex change operations?

23 A. Yes.

24 Q. Can you think of anything else?

25 A. Not that I'm aware of, no.



1 Q. Okay. Go ahead and flip back to Exhibit 2, the
2 notice of deposition topics.

3 A. Okay.

4 Q. I'll direct your attention to page 3, the -- the
5 number 1 -- or excuse me -- number 5 at the bottom. If you
6 could go ahead and read that, and then let me know when
7 you're done.

8 A. Okay.

9 Q. Okay. And flip over and read Topics 6 and 7 as
10 well.

11 A. Okay.

12 Q. Have you reviewed those topics, statements before?

13 A. Yes.

14 Q. And are you prepared to testify on those topics
15 today?

16 A. Yes.

17 Q. Okay.

18 MR. ANDERSON: Let's go ahead and mark
19 Exhibit 14, I believe.

20 (Deposition Exhibit No. 14 was marked for
21 identification.)

22 BY MR. ANDERSON:

23 Q. Ms. Colburn, do you recognize this?

24 A. Yes.

25 Q. Yes. This is an e-mail. At the top it says it's



1 from your ADHS e-mail address; is that right?

2 **A. Yes.**

3 Q. And it's to someone named **Redacted**

4 **A. Yes.**

5 Q. Who is **Redacted**

6 **A. She is the registrar in South Dakota.**

7 Q. South Dakota.

8 So she holds an equivalent position to you
9 but in South Dakota?

10 **A. That's correct.**

11 Q. Okay. It's dated October 24th, 2019?

12 **A. Yes.**

13 Q. Do you see that?

14 And the subject is AZ Statutes. "AZ" refers
15 to Arizona?

16 **A. Yes.**

17 Q. Do you recall why you were e-mailing with
18 Ms. Pokorny about Arizona statutes?

19 **A. No, other than perhaps she asked a question.**

20 Q. Okay. Go ahead and look down at the first page at
21 the bottom. The e-mail from you dated Thursday,
22 October 24th, 2019, at 7:36 a.m.

23 Do you see that one?

24 **A. Yes.**

25 Q. And you say, "Hi, Mariah, I am sharing with you



1 the AZ statutes governing the process to change a sex on a
2 registered birth" certificate -- on registered birth
3 certificates.

4 Do you see that?

5 **A. Yes.**

6 Q. Do you recall Ms. Pokorny asking you whether you
7 would share the Arizona statutes?

8 **A. Not specifically, no.**

9 Q. Okay. But you sent her here a link to the full
10 statute as well as copying the language below.

11 Did I read that correctly?

12 **A. Yes.**

13 Q. And the highlighted language is specific to sex
14 change, and then you included a -- it looks like a section
15 from 36-337 "Amending birth certificates."

16 Do you see that?

17 **A. Yes.**

18 Q. And unfortunately this copy doesn't show
19 highlighting so we can't identify where it was highlighted,
20 but does 33 -- 36-337 includes the sections we discussed
21 earlier today; is that right?

22 **A. Yes.**

23 Q. Okay. And then if you look up on that first page
24 in the middle, Ms. Pokorny responds at 5:41 a.m. saying,
25 "Thank you- just so I'm clear you do not require a court



1 order to do that, just the two statements?"

2 Do you see that?

3 **A. Yes.**

4 Q. And then you respond in the top e-mail and say,
5 "Hi, it's essentially two options. Physician note or court
6 order (we have only received one court order)."

7 Do you see that?

8 **A. Yes.**

9 Q. So you were explaining that 36-337, A-3, allows
10 for physician notes or court orders; is that right?

11 **A. Yes.**

12 MR. STRUCK: Object to the form.

13 BY MR. ANDERSON:

14 Q. Okay. At that time on October 24th, 2019, do you
15 recall having only received one court order for a sex
16 marker change?

17 **A. I don't recall, but if I put it there, then I'm
18 sure that that's what happened.**

19 Q. Okay. The next paragraph you say, "The physician
20 note can contain one of the two statements: Sex change
21 operation, chromosomal count change." And those are the
22 two things that we've talked about in Subsection A-3; is
23 that right?

24 **A. Yes.**

25 Q. Then you say, "When reviewing the physician notes



1 we specifically look for the above language."

2 When you say "we" there, are you referring to
3 the BVR registry team?

4 **A. I'm referring to the entire process that we**
5 **already talked about.**

6 Q. And that's the --

7 **A. The processing and amendment.**

8 Q. Sorry. Okay. That's the process in the desk
9 procedure?

10 **A. Yes.**

11 Q. Okay. And at the -- at the end of that procedure,
12 the person who does the ultimate approval is you; is that
13 right?

14 **A. Yes.**

15 Q. So when doing that approval, does BVR look for
16 those specific language -- those specific phrases in a
17 doctor's note?

18 **A. Yes.**

19 Q. Okay. Is that stated anywhere in ADHS policy that
20 you're aware of?

21 **A. No. I mean, other than it references the statute,**
22 **and so that's the language in the statute, and we follow**
23 **the statutes.**

24 Q. Okay. But the language of the statute's the only
25 basis to apply specifically looking for those phrases?



1 **A. Yes.**

2 Q. And when you write here, "When reviewing the
3 physician notes," the reviewing refers to the process, is
4 there any other part of -- of reviewing that would be
5 included here?

6 **A. No.**

7 Q. Okay. Okay. You can set that aside.

8 Do you know -- did ADHS ever consider whether
9 or not to accept language that was different than that in
10 the statute for doctor's notes under Subsection A-3?

11 **A. We've always followed the statutes.**

12 Q. Always followed -- has ADHS ever considered
13 alternative ways to say the phrase "sex change operation,"
14 for example?

15 MR. STRUCK: Form.

16 **THE WITNESS: There are different**
17 **arrangements of words that doctors have used that indicate**
18 **a sex change operation.**

19 BY MR. ANDERSON:

20 Q. Okay. When you say "different arrangements of
21 words," can you give me an example?

22 **A. Not off the top of my head, but we essentially**
23 **review the letter to make sure that the doctor is**
24 **indicating that the individual had an operation or a**
25 **surgery that changed the sex of the individual from what it**



1 was at the time of birth to what it is now.

2 Q. Okay.

3 MR. ANDERSON: I'd like to mark this as
4 Exhibit 15.

5 (Deposition Exhibit No. 15 was marked for
6 identification.)

7 BY MR. ANDERSON:

8 Q. Ms. Colburn, do you recognize this e-mail?

9 A. Yes.

10 Q. And what is this?

11 A. This is an e-mail that Hannah Garcia sent to
12 **Redacted**

13 Q. And who is Hannah Garcia?

14 A. Hannah Garcia is a researcher who works in the
15 division of licensing services.

16 Q. And that division is within the ADHS?

17 A. Correct.

18 Q. So she's an ADHS employee?

19 A. Yes.

20 Q. And did she send this from her ADHS e-mail?

21 A. Yes.

22 Q. And we've talked about Mr. **Redacted** before. He's an
23 ADHS supervisor?

24 A. Yes.

25 Q. And he received this, it looks like, at his ADHS



1 e-mail?

2 **A. Yes.**

3 Q. And this is dated August 9th, 2019; is that right?

4 **A. Yes.**

5 Q. And the subject line is gender transition
6 approvals/denials?

7 **A. Yes.**

8 Q. Do you recall as of October of 2019, whether the
9 department was discussing gender transition and
10 approvals/denials?

11 **A. They were because that's what the e-mail**
12 **indicates.**

13 Q. Right. Do you recall there being any meetings
14 about that?

15 **A. I believe that was part of the -- one of the**
16 **enforcement meetings.**

17 Q. Mr. **Redacted** was part of the enforcement team?

18 **A. Yes.**

19 Q. Do you recall the subject of the meetings with the
20 enforcement team specifically?

21 **A. We didn't have specific subjects.**

22 Q. Okay. They would just happen regularly?

23 **A. Yes.**

24 Q. Okay. Do you recall the meeting at which you
25 discussed gender transition approvals and denials?



1 A. Not specifically.

2 Q. Okay. Do you remember how the topic came up?

3 A. I would venture to guess we either had a letter or
4 needed to review a letter or potentially a case that was
5 going on.

6 Q. Okay. Do you remember who specifically was at
7 this enforcement meeting?

8 A. I believe it was the people that I already
9 mentioned beforehand including Redacted

10 Q. Redacted

11 You would have been there?

12 A. Yes.

13 Q. And can you remind me who else was on the
14 enforcement team?

15 A. Probably either the office chief or deputy bureau
16 chief.

17 Q. So the -- the meeting was -- was four people?

18 A. The meetings happened every week. They were
19 regularly scheduled. So if someone was out of the office,
20 they wouldn't have attended. It wasn't just one singular
21 meeting.

22 Q. Okay. The -- sorry.

23 A. And we would talk about any pending cases that we
24 had. So if we had a pending case or a letter we needed to
25 review, we would take it to that meeting.



1 Q. Okay. Were there any notes kept at those
2 meetings?

3 A. No.

4 Q. Do you recall any agendas that were circulated for
5 those meetings ahead of time?

6 A. No.

7 Q. Okay. So the number 1 page on this document
8 doesn't have any text in the body of the e-mail; is that
9 right?

10 A. Correct.

11 Q. But it has an attachment to the e-mail?

12 Do you see that?

13 A. Yes.

14 Q. GenderTransition.docx. Is that the name of it?

15 A. Uh-huh. Yes.

16 Q. Go ahead and flip the page to page ending in Bates
17 Number 12122.

18 Is this the attachment that's referred to in
19 that e-mail?

20 A. Yes.

21 Q. And do you recognize this document?

22 A. I have seen it before.

23 Q. When did you see it?

24 A. I think shortly after it was created.

25 Q. Was it sent to you?



1 A. I don't remember whether it was sent to me or if I
2 saw a printed copy.

3 Q. And were -- did you see it in a particular
4 meeting?

5 A. Not that I recall.

6 Q. Did Mr. [Redacted] give it to you?

7 A. I feel like that's more likely to have happened.

8 Q. Okay.

9 A. He's very informal, so we didn't have a lot of
10 regularly scheduled meetings.

11 Q. Do you recall why you had received it?

12 A. The intent, I believe, for what he was having
13 Hannah do was look at the letters that we had accepted and
14 denied as part of our process for processing the amendment
15 requests and to ensure that we were consistently applying
16 the statute.

17 Q. So these are examples of phrases from letters that
18 ADHS had accepted and denied?

19 A. Yes.

20 Q. Have you ever spoken to Ms. Garcia about this
21 document?

22 A. No.

23 Q. Have you ever spoken to Mr. [Redacted] about this
24 document?

25 A. I believe briefly, we did.



1 Q. And do you remember what that discussion was
2 about?

3 A. Essentially that he was wanting to make sure that,
4 again, the Bureau was consistently and accurately applying
5 the statute, which is why he had Hannah to put this
6 together. And he felt that we did, and so to continue the
7 activities as we were processing them.

8 Q. Okay. Was Mr. **Redacted** attempting to create a set of
9 guidelines for ADHS to use when processing doctors'
10 letters?

11 MR. STRUCK: Form.

12 THE WITNESS: I don't believe that was his
13 intent, but I wasn't part of his decision-making process to
14 initiate this, so I don't know if I can speak to that.

15 BY MR. ANDERSON:

16 Q. Do you know if he gave this document to your
17 customer service representatives, for example?

18 A. He does not communicate with them in that level
19 of -- of details, so, no.

20 Q. Did he ask you to communicate this to anybody else
21 in the department?

22 A. No.

23 Q. Do you know if he used this document to instruct
24 the Department about whether or not to -- or excuse me --
25 how to accept and deny letters?



1 **A. I'm not sure what you mean by "instruct the**
2 **Department."**

3 **Q. Did he -- do you know if he provided this document**
4 **to anybody else in the Department?**

5 **A. Not to my knowledge, but I wouldn't necessarily**
6 **know if he did.**

7 **Q. Did he tell you to use this document to guide your**
8 **approvals of corrections and amendments?**

9 **A. No.**

10 **Q. Do you know if ADHS employees ever on their own**
11 **created lists of what they considered acceptable and**
12 **unacceptable letters from doctors?**

13 **A. Not to my knowledge.**

14 **Q. If you discovered that -- that one of those lists**
15 **existed, would you take any action to -- to prevent it?**

16 **A. Yes.**

17 **Q. Okay. And why would you do that?**

18 **A. Well, I would definitely consult with our legal**
19 **counsel, because we -- the Department has the position that**
20 **we aren't to inform doctors what their best medical opinion**
21 **is because that is what they are trained to do. It is not**
22 **what we are trained to do. We are obligated to match it to**
23 **the statute, and that's where our purview ends.**

24 **Q. Okay. So when a doctor's note accompanies an**
25 **application to amend and BVR puts it into the process that**



1 we've described, who is the first one that looks at the
2 doctor's note to determine whether it satisfies the
3 statute? Who would be the first person in that process
4 that -- that reviews the doctor's note to make sure it's
5 consistent?

6 **A. That would be a supervisor level.**

7 Q. A supervisor level of the BVR registry team?

8 **A. Yes.**

9 Q. Go ahead and look back at Exhibit No. 5 --

10 **A. Okay.**

11 Q. -- which is the org chart.

12 I'm sorry. I know it's not easy to flip
13 through things there.

14 **A. That's okay.**

15 Q. I see that you have it in front of you. So this
16 is -- this is the organizational chart. And I know that
17 you said it's been changed a little bit.

18 But is the -- the structure of the teams, is
19 it roughly the same now as it was then?

20 **A. Yes.**

21 Q. And did you say that the middle section is the BVR
22 registry team?

23 **A. Yes.**

24 Q. So the supervisors that you referenced that would
25 first look at the letter, what level would they be at in



1 this org chart?

2 **A. The Program Manager II.**

3 Q. That would be Jenissa Lucio and Ramirez Allen
4 Paul?

5 **A. No. Allen would not be a part of this process.**

6 Q. I see. He's -- he's a PS -- PPS II supervisor,
7 not a Program Manager II?

8 **A. Yes, sir.**

9 Q. Okay. So there's -- there were two individuals
10 that might look at doctors' notes to assess them?

11 **A. Yes.**

12 Q. If they found -- where would the doctor's note
13 next go?

14 Who would be the next person to assess
15 whether it was consistent with the statute?

16 **A. To the customer service rep prepares the file.
17 They send it to the Program Manager II, who makes sure that
18 all of the components are in there. And then it would go
19 to the Health Program Manager III.**

20 Q. And that here is Katina Lugo?

21 **A. Correct.**

22 Q. And Ms. Lugo would also look at the letter to
23 determine if it con- -- was consistent with the statute?

24 **A. Yes.**

25 Q. And then where would it go from there?



1 **A. It may or may not go to the office chief and then**
2 **over to myself.**

3 Q. So it could in this org chart have gone to
4 Ms. Heath?

5 **A. Yes.**

6 Q. But it didn't have to go to Ms. Heath. It could
7 have gone to you directly?

8 **A. Correct.**

9 Q. Okay. But ultimately it ended on your desk; is
10 that right?

11 **A. Yes.**

12 Q. Okay. Would the doctor's note be accompanied by
13 any sort of comments from the people who had reviewed it
14 before about whether they believed it satisfied the
15 statute?

16 **A. It may or may not.**

17 Q. Okay. If one of the people in the process before
18 you decided the letter didn't satisfy the statute, would it
19 still come to your desk for approval?

20 **A. Yes.**

21 Q. Okay. So you made the decision whether or not to
22 deny or approve regardless of what people before had done?

23 **A. Correct.**

24 Q. Okay. So if they -- would they send a
25 recommendation about whether to approve or deny to you?



1 **A.** Not a recommendation, just an observation maybe if
2 it was language they haven't seen before, or if it was
3 language they had seen before and knew that it would be
4 accepted or denied, they may make a note.

5 **Q.** Okay. If it was language that they had not seen
6 before, how would the -- how would the Department go about
7 determining whether it was consistent with the statute?

8 **A.** Through reading the letter and matching it to the
9 language of the statute. If needed, we would reach out to
10 our administrative counsel.

11 **Q.** And when you say "administrative counsel," do you
12 mean the lawyers at the AG's office?

13 **A.** Yes.

14 **Q.** Okay. Would you ever consult with any medical
15 professionals about whether language was consistent with
16 sex change operation?

17 **A.** No.

18 **Q.** Did you ever consult with any advocacy
19 organizations about whether -- certain medical advocacy
20 organizations about whether certain language matched sex
21 change operation?

22 **A.** No.

23 **Q.** Did you ever consult with a transgender people
24 about that?

25 **A.** No.



1 Q. Okay. Let's go back to Exhibit 15, which has that
2 list on it we were just talking about.

3 And I'd like to look first at the top section
4 where it says "accepted." I'll give you a second here.
5 I'm sorry.

6 A. Okay. Okay.

7 Q. Under this section, I count one, two, three,
8 four -- I count six bullet points of quoted phrases.

9 Did I count that right?

10 A. Yes.

11 Q. And those are all phrases you said ADHS had
12 previously accepted in doctor letters -- doctors' letters
13 submitted under subsection A-3?

14 A. Yes.

15 Q. Does ADHS continue to accept these phrases in
16 doctor's letters today?

17 A. Yes.

18 Q. So looking at the fourth bullet point down, which
19 starts "Have reviewed/evaluated the patient's medical
20 history and they have" -- has -- and I pause there and
21 assume that that meant had -- continuing, "appropriate
22 medical treatment for transition to the new sex," unquote,
23 and then in parentheses, "(male/female)."

24 How did ADHS determine that that phrase
25 matches the phrase sex change operation in the statute?



1 A. I'm not super comfortable answering that question
2 just because I don't have the doctor's letter in front of
3 me. A lot of times, which I think is why it's quote --
4 quotations here is that was part of the letter, not the
5 letter in its entirety.

6 So there could have been other information
7 within the letter that could further support while -- why
8 it was accepted. But this phrase itself establishes that
9 it is the doctor of the patient. And that they are -- have
10 the knowledge based on the medical history and their
11 treatment to transition to the new sex.

12 Q. Okay. This list, it doesn't include any comment
13 that says that that phrase appeared with any other phrase;
14 right?

15 A. I don't understand the question.

16 MR. STRUCK: Form.

17 BY MR. ANDERSON:

18 Q. Right. It -- it just -- it simply quotes that --
19 that language. It doesn't say that this was in addition to
20 other language in the letter?

21 A. It doesn't say that it was or wasn't.

22 Q. Okay. The other -- just -- just to look at the
23 first bullet point, the first bullet point says, quote,
24 male -- "Female to Male Gender Reassignment Surgery,"
25 unquote?



1 **A. Yes.**

2 Q. Do you see that?

3 The second bullet says, quote, "Sex
4 Reassignment Surgery," unquote?

5 **A. Yes.**

6 Q. How did the department determine that those
7 matched the phrase "sex change operation"?

8 **A. So the surgery piece matches the operation piece
9 of the statute, and then the sex change is captured from
10 the female to male. And then sex reassignment change;
11 meaning, changing the sex, reassigning it. So that's the
12 sex change operation.**

13 Q. So to take those one at a time. ADHS interprets
14 "operation" to mean surgery?

15 **A. Yes.**

16 Q. How did ADHS determine that operation means
17 surgery?

18 MR. STRUCK: Form.

19 **THE WITNESS: Through our guidance with our
20 legal counsel.**

21 BY MR. ANDERSON:

22 Q. Did ADHS consult with any medical professionals
23 when coming to that conclusion?

24 **A. Not that I'm aware of.**

25 Q. Did it consult with anyone other than legal



1 counsel in coming to that conclusion?

2 **A. No.**

3 Q. Is that determination that operation is the
4 same -- or can be interpreted to mean surgery written down
5 in any ADHS policy?

6 **A. No. Not that I'm aware of.**

7 Q. Was it communicated to ADHS staff in any way?

8 **A. I would say for the -- from the manager level and
9 above that we talked about as part of their verbal training
10 when putting the files together and routing them for
11 review, we had conversations.**

12 Q. So it was passed on verbally?

13 **A. Yes.**

14 Q. Can you think of any time where it was written in
15 a document or an e-mail or any sort of guideline?

16 **A. Not that comes to mind. I wasn't provided any
17 written forms of it when I acquired the position so -- and
18 in my time I'm not aware of any.**

19 Q. Okay. Looking down to the bullet number -- that's
20 not numbered -- the fifth bullet down where it says,
21 "Appropriate clinical treatment for gender transition to
22 the new gender (male/female) including both hormone therapy
23 and sex reassignment surgery."

24 That bullet point includes the word
25 "surgery"; is that right?



1 **A. Yes.**

2 Q. And sex reassignment as well?

3 **A. Yes.**

4 Q. And the last bullet point says "Irreversible
5 Reassignment Surgery"?

6 **A. Yes.**

7 Q. How did the department determine that irreversible
8 reassignment meant sex change in this instance?

9 **A. Again, without having the full letter in front of
10 me, I don't want to speculate whether there was other
11 context in the letter that indicated what gender was
12 assigned at birth to what gender they were requesting to
13 amend to. So I don't feel I can answer that.**

14 Q. Did the -- reading this, did the department
15 determine irreversible reassignment related to sex
16 reassignment though?

17 Is that -- is that a fair interpretation?

18 **A. Potentially combined with other content in the
19 letter.**

20 Q. So given that context, looking back at that fourth
21 bullet point that we started at, which says: Has review --
22 "Have reviewed/evaluated," would that statement standing
23 alone, without any other statement about surgical
24 procedures, would that statement standing alone be approved
25 by ADHS as part of a doctor's note under Subsection A-3



1 today?

2 A. I really can't answer that because I don't have a
3 full file in front of me. We don't just look at one
4 quotation and make a decision. We look at the file in its
5 entirety. I could deny it because they didn't meet the
6 requirements of the application. They could be denied
7 because they didn't submit the form of payment.

8 Like, there's a lot of other reasons besides
9 one quotation that was pulled out of a letter and not
10 having the full letter.

11 Q. That's fair. So I'd like you to assume that
12 everything else about the amendment application satisfies
13 ADHS's requirements in the statute.

14 Assume that the only thing that you're
15 determining is that the doctor's letter has this phrase,
16 the one that starts "Have reviewed evaluated," and the
17 doctor's letter does not say anything about an operation or
18 surgery, would this phrase suffice to meet Subsection A-3
19 under ADHS's position today?

20 MR. STRUCK: Form.

21 THE WITNESS: If it did -- if nothing else in
22 the letter -- no other information was included, this
23 bullet does not include anything to indicate operation or
24 surgery so that would not be accepted.

25 BY MR. ANDERSON:



1 Q. Okay. Has ADHS ever considered accepting this
2 type of language in the place of sex change operation?

3 MR. STRUCK: Form.

4 **THE WITNESS: Can you repeat that?**

5 BY MR. ANDERSON:

6 Q. Sure. Under the -- under what we just discussed
7 where this is the only phrase the doctor uses. He doesn't
8 use operation or surgery. Has ADHS ever considered whether
9 this phrase would satisfy "sex change operation"?

10 **A. Not to my knowledge because it wouldn't meet the**
11 **statute.**

12 Q. Okay. So you testified that ADHS considers
13 operation to also include surgery.

14 Does ADHS believe that operation includes
15 anything else than the surgery or is surgery the only
16 phrase that would work in place of operation?

17 MR. STRUCK: Form.

18 **THE WITNESS: I would say that ADHS accepts**
19 **surgery or operation.**

20 BY MR. ANDERSON:

21 Q. Okay.

22 **A. Either word.**

23 Q. Okay. There -- there's not another phrase that
24 might take the place of that?

25 **A. Not that I'm aware of.**



1 Q. Would "procedure" just standing alone work?

2 **A. I don't want to speculate on that.**

3 Q. Okay. If -- if a doctor's letter came to you that
4 said, for instance, looking at this last bullet point on
5 the top "Irreversible Reassignment Surgery," if a doctor's
6 note came to you that just said irreversible reassignment
7 procedure, how would you go about determining whether
8 that -- that satisfied Subsection A-3?

9 MR. STRUCK: Form.

10 **THE WITNESS: I would probably send that to**
11 **our administrative counsel because, like I said, these are**
12 **just small quotations take -- taken out of a longer letter**
13 **that we normally see, and so I would read the letter in its**
14 **totality and then if I had still had a question about it, I**
15 **would seek our legal counsel.**

16 BY MR. ANDERSON:

17 Q. Okay. Has ADHS ever considered whether or not it
18 would accept a doctor's note that used the phrase, quote,
19 "Irrevocably committed to the gender change process,"
20 unquote, in the place of sex change operation?

21 MR. STRUCK: Form.

22 **THE WITNESS: I don't believe that the agency**
23 **would accept that because it's not indicating surgery or**
24 **operation.**

25 BY MR. ANDERSON:



1 Q. Okay. Would ADHS -- has ADHS ever considered
2 accepting a doctor's note that used the phrase, quote,
3 "Permanent and irreversible steps to change their gender
4 and remain who they say they are," unquote?

5 MR. STRUCK: Form.

6 THE WITNESS: No. Again, it doesn't include
7 sex change operation or a variation of operation to
8 surgery, but I will say we have accepted letters with that
9 language when accompanied by a court order. So I don't
10 want to say we've never accepted it when we've received a
11 court order telling us to change the gender and then we
12 will do it that way because of the court order.

13 BY MR. ANDERSON:

14 Q. Okay. That's -- that's fair enough. Under
15 Subsection A-3, though, just to clarify, this language
16 would not be accepted by ADHS?

17 A. Correct.

18 Q. Okay. Looking back at this list, I'd like to now
19 shift down to where it has the section that says denied.

20 And I counted the bullets there, and I think
21 that there are five of them. Are these phrases, at least
22 the ones in quotations, that ADHS has not accepted in
23 doctors' notes under Subsection A-3?

24 A. Yes.

25 Q. Does ADHS accept any of those phrases today?



1 **A. Yes.**

2 Q. Which one? Can you point out which one ADHS would
3 accept today?

4 **A. The first one.**

5 Q. So the first one is, quote, "Confirmation Chest
6 Masculinization Surgery," unquote, and then has the comment
7 "without any statement of Reassignment Surgery."

8 That's -- that's the one you're pointing to?

9 **A. Yes.**

10 Q. So ADHS would accept a doctor's note under
11 Subsection A-3 that used the phrase "Confirmation Chest
12 Masculinization Surgery"?

13 **A. Yes.**

14 Q. When did ADHS decide to accept that as a proof of
15 sex change operation?

16 **A. Sometime after the date of this document as a
17 result of litigation. I don't remember the exact date.**

18 Q. Okay. Has ADHS ever indicated to -- take back the
19 word "indicated."

20 Has ADHS ever publicly stated that it would
21 accept confirmation chest masculinization surgery as
22 evidence of a sex change operation?

23 **A. I don't know what you mean by "publicly."**

24 Q. Has it issued a public statement saying "we would
25 accept this" in a doctor's note under Subsection A-3?



1 **A. No.**

2 Q. Okay. Has it ever informed applicants who are
3 seeking amendments that this phrase would work in a letter
4 under Subsection A-3?

5 **A. I don't feel I can answer that because I don't**
6 **know every customer that could potentially call in and**
7 **potentially talk to one of our managers. So I don't want**
8 **to speculate.**

9 Q. Did ADHS inform the managers in the BVR that this
10 phrase would be accepted in doctor's notes?

11 **A. Yes.**

12 Q. And how did it inform the managers?

13 **A. Verbally following the litigation decision.**

14 Q. Does ADHS expect that its managers would tell
15 applicants who call and inquire about amendments that this
16 type of surgery would satisfy the statute?

17 **A. If the applicant asked, we would tell them.**

18 Q. Is there any written policy or guideline that
19 states that confirmation chest masculinization surgery
20 would satisfy sex change operation under Subsection A-3?

21 **A. No.**

22 Q. Of these five bullet points, we've talked about
23 the first one, are you aware if ADHS accepts any of the
24 phrases quoted in the remaining four today?

25 **A. I'm not sure what Hannah meant by bullets 2 and 5**



1 so I don't want to speculate on those since I'm not the
2 author of the document, but for bullets 3 and 4 -- you were
3 asking if we would accept those today, correct?

4 Q. Correct.

5 A. Just making sure I don't lose track of the
6 question.

7 Q. Yeah.

8 A. No. We would not accept that.

9 Q. Okay. Under that last bullet point it says,
10 "Listing any surgeries without any statement of
11 Reassignment Surgery," and I take your point that we're not
12 sure what -- what Ms. Garcia was referring to here.

13 Other than confirmation chest masculinization
14 surgery, are there other types of surgeries that you are
15 aware of that ADHS has considered to be sex change
16 operations under Subsection A-3?

17 A. Not that I can think of off the top of my head.

18 Q. Okay. There's no other surgeries that have come
19 up in -- in your verbal instructions to managers that you
20 would -- that ADHS allows these letters to include?

21 A. No. Really the instruction that we have is to
22 match it to the statute.

23 Q. And actually I'd like to ask you about that
24 because you said "match it to the statute."

25 When you say "match," you're not saying the



1 exact words; is that right?

2 **A. Correct. Like I explained, we need to make sure**
3 **that the letter indicates that the registrant is changing**
4 **the gender, which is the sex change piece of it, and then**
5 **operation that they had surgery to have the operation that**
6 **changes the gender.**

7 Q. So matching here is -- is making sure those two
8 concepts are included in the doctor's note?

9 **A. Correct.**

10 Q. Go ahead and -- you can set that aside for right
11 now.

12 Are you aware -- and I understand you're
13 involved with NAPHSIS. Are you aware that there are other
14 states that allow sex marker amendments on birth
15 certificates based on an individual's self attestation?

16 **A. I believe so, but I couldn't tell you what states.**

17 Q. Okay. Have you ever -- have ADHS ever considered
18 accepting an individual self attestation in order to
19 support an amendment to a sex marker?

20 **A. No, because the statute doesn't allow for that.**

21 Q. Okay. So ADHS has never accepted a
22 self attestation in the past?

23 **A. No.**

24 Q. Are you aware of a time when ADHS or individuals
25 at ADHS were considering preparing new guidelines on the



1 meaning of sex change operation?

2 A. I'm not aware of any.

3 MR. ANDERSON: Let's mark Exhibits 16 and 17.
4 I got two here. That's 16. That one's 17. That one's 16
5 and that is 17.

6 (Deposition Exhibit Nos. 16 and 17 were
7 marked for identification.)

8 BY MR. ANDERSON:

9 Q. All right. Ms. Colburn, do you recognize both of
10 these documents?

11 A. No, I was not involved in this.

12 Q. Okay. Looking at the -- the first page, this is
13 an e-mail from someone named **Redacted Redacted** and it's to
14 someone named **Redacted**.

15 Do you know who **Redacted** is?

16 A. Yes.

17 Q. And who is **Redacted**

18 A. Colby was the prior assistant director for
19 licensing services at the Department.

20 Q. How long was -- and I -- I would say Ms. **Redacted**
21 but I'm not sure.

22 A. It's Mr.

23 Q. Mr.

24 A. How long was he in that position?

25 Q. Correct.



1 A. I would say a handful of years.

2 Q. Okay.

3 A. Maybe five, six.

4 Q. And he was in that position in December of 2019
5 when this e-mail exchanged; true?

6 A. Yes.

7 Q. Okay. And as you look at the second e-mail down,
8 the one dated Wednesday, August 21, 2019, it has
9 Mr. Bauer's e-mail address there, and that's his ADHS
10 government e-mail address?

11 A. Yes.

12 Q. Okay. So in that e-mail, the August 21st e-mail,
13 Mr. Bower says, "Hi Michael. We have pulled the
14 information we discussed at our meeting a few weeks ago."

15 I'm going to stop there. And I'm going to
16 say are you familiar and with a meeting between Mr. Bower
17 and **Redacted** a few weeks before August 21, 2019?

18 A. I was not at the meeting. I remember hearing that
19 Colby, and I believe **Redacted** was there too, but I
20 can't -- I don't remember for sure, but that they were
21 going to have a meeting to try and work with the community
22 to see how the statute could potentially be changed by the
23 legislature to better align with how society has evolved to
24 since that statute was enacted, but I wasn't part of the
25 meeting. And I don't know what came of the meeting.



1 Q. Okay. And when you say "the statute that was
2 enacted," are you talking about subsection A-3?

3 A. Yes.

4 Q. So at the meeting, as you recall, it was
5 Mr. Bower, Mr. [Redacted] Mr. [Redacted]

6 Can you recall if anyone else was at that
7 meeting?

8 A. I no idea because I wasn't there.

9 Q. Okay. Did Mr. Colby report back to you on what
10 happened at that meeting?

11 A. No.

12 Q. Did Mr. [Redacted]

13 A. No.

14 Q. Did either of them take notes from that meeting?

15 A. I have no way to know that.

16 Q. Okay. You have not reviewed any notes prior to
17 this deposition?

18 A. No.

19 Q. Okay. Okay. Back to the exhibit.

20 "We have pulled the information we discussed
21 at our meeting a few weeks ago," and he continues, "and are
22 prepared to move forward. I was wondering if you could
23 send me the letter that was used in your case for reference
24 as well?"

25 What -- do you know what he's referring to



1 when he says that, "are prepared to move forward"?

2 **A. No.**

3 Q. Okay. Looking at the e-mail above that from
4 Mr. Redacted back to Mr. Bower -- and this one is dated
5 December 6th, 2019. He says, "Hello Colby, I wanted to
6 follow up and see where we are in the process of the
7 guidelines for gender affirmation transition and birth
8 certificate gender marker changes."

9 He's referring there to a process of
10 guidelines for gender affirmation transition.

11 Are you aware of any process for creating
12 guidelines on gender affirmation transition?

13 **A. No.**

14 Q. Are you aware of any discussion about a guidelines
15 for birth certificate gender marker changes?

16 **A. No.**

17 Q. Okay. Does -- I'm sorry.

18 **A. No. That's it.**

19 Q. Does BVR have a desk procedure related
20 specifically to gender marker changes?

21 **A. No.**

22 Q. Does BVR have any specific policies directly
23 related to gender marker changes?

24 **A. Just what we've reviewed --**

25 Q. Just what --



1 **A. -- so far.**

2 Q. He then says -- Mr. [Redacted] says, "I've attached a
3 sample letter as well."

4 And if you see at the top, it says,

5 "Attachments:

6 TEMPLATE_GenderMarkerLetter_AZBirthCert.PDF."

7 Did I read that correctly?

8 **A. Yes.**

9 Q. Okay. Then let's go ahead and flip to the next
10 exhibit, Exhibit 17.

11 Is this that attachment?

12 **A. I presume so.**

13 Q. Okay. Just to -- to clarify, if we look at
14 Exhibits 16 and 17, in the lower right-hand corner, do you
15 see that there's a series of letters and numbers?

16 **A. Yes.**

17 Q. Do you agree that the -- Exhibit 16 is the number
18 right before Exhibit 17?

19 **A. Yes.**

20 Q. They're consecutive?

21 **A. Yes.**

22 Q. Okay. So I'll represent these were produced
23 together as a -- as a set.

24 **A. Okay.**

25 Q. So I just wanted to make sure we clear about that.



1 I am not -- not putting different documents in front of
2 you.

3 **A. Yes.**

4 Q. So if we look at Exhibit 17.

5 MR. STRUCK: I just want to note for the
6 record that there's a Bates Number page that's skipping --
7 it's missing in between these two documents. I don't know
8 what it says or what it is -- well, but I withdraw that.
9 I'm sorry.

10 MR. ANDERSON: Yeah. I'm sorry.

11 MR. STRUCK: No. That's my fault. I just
12 lost the first one. They're sequential.

13 MR. ANDERSON: They are? Okay. I wanted to
14 just clarify that.

15 MR. STRUCK: Yeah.

16 BY MR. ANDERSON:

17 Q. Okay. And so looking at this letter, if you look
18 at the top, it says "[MUST BE ON PRACTICE LETTERHEAD]."

19 So does this look to you to be a template for
20 a doctor's letter under subsection A-3?

21 **A. Yes.**

22 Q. And if you look down at the very bottom, there's a
23 footnote, a small case A that says: "[A]This is the work
24 around for the discriminatory" Arizona Revised Statute
25 Section 36-337(A)(3).



1 Do you see that?

2 **A. Yes.**

3 Q. And that footnote refers to the last full
4 paragraph of this letter.

5 Do you see up -- where that small case A is?

6 **A. Yes.**

7 Q. And that paragraph says , "In these efforts,
8 [he/she] has had a sex change operation and asks that the
9 sex on [his/her] birth record be updated from [male/female]
10 to [male/female]."

11 That's what that paragraph says?

12 **A. Yes.**

13 Q. So when it -- when it begins with "In these
14 efforts," it's referring to the paragraph above; is that
15 right?

16 MR. STRUCK: Foundation.

17 **THE WITNESS: I assume so. I did not write**
18 **the template.**

19 BY MR. ANDERSON:

20 Q. Right. So that paragraph, just to make sure that
21 we're reading it together, it says:

22 "[PATIENT NAME] has had appropriate
23 clinical treatment for transition to
24 [male/female]. [He/She] has been taking
25 cross-sex hormone replacement therapy for



1 [duration]. And in this. has undergone an
2 operation (i.e., an organized and concerted
3 activity involving a number of people --
4 mainly medical providers, behavioral health
5 specialists and pharmacists) to change
6 [his/her] sex from [male/female] to
7 [male/female]."

8 Do you see that paragraph?

9 **A. Yes.**

10 Q. Is that defining operation as taking cross-sex
11 hormone replacement therapy?

12 MR. STRUCK: Foundation.

13 **THE WITNESS: Again, I'm not the author of**
14 **the document, so I don't know what they intend -- if they**
15 **intended that or not.**

16 BY MR. ANDERSON:

17 Q. Okay. Would -- I'll put it like this: Would ADHS
18 interpret the phrase "appropriate clinical treatment for
19 transition to [male/female]" as satisfying subsection A-3
20 today?

21 **A. Only appropriate clinical treatment?**

22 Q. Correct.

23 **A. No.**

24 Q. Would ADHS interpret taking cross-sex hormone
25 replacement therapy for a period of time on its own as



1 sufficient to satisfy Subsection A-3?

2 **A. No.**

3 Q. Okay. But reading this letter, which uses the
4 phrase "sex change operation," would that be sufficient,
5 this letter as a -- as a whole?

6 MR. STRUCK: Object to the form.

7 **THE WITNESS: If the doctor is attesting that**
8 **the individual had a sex change operation, yes.**

9 BY MR. ANDERSON:

10 Q. Okay. Are you aware if -- are you aware what
11 Mr. Bower did with this letter when he received it?

12 **A. No.**

13 Q. Did he forward it to you?

14 **A. No. I don't remember --**

15 Q. Did he discuss it -- oh, I'm sorry.

16 **A. -- seeing it.**

17 Q. You don't remember seeing it?

18 **A. Huh-uh.**

19 Q. Did he discuss it as you -- as far as you know
20 with anyone else at the Department?

21 **A. I have no idea.**

22 Q. Okay. Did Mr. **Redacted** ever mention this -- that
23 particular letter to you?

24 **A. No.**

25 Q. Okay. As far as you know, have there been any



1 further discussions with Mr. Redacted

2 **A. Not that I'm aware of.**

3 Q. Okay. And did ADHS ever distribute a sample
4 letter of what a doctor's note under Subsection A-3 could
5 say?

6 **A. Not that I'm aware of.**

7 Q. Okay. You can go ahead and put that to the side
8 now.

9 I'd like to ask you now a little bit about
10 what ADHS does after it receives a letter under Subsection
11 A-3.

12 Does ADHS do anything to verify a letter that
13 states that somebody has undergone a sex change operation?

14 **A. What do you mean by "verify"?**

15 Q. Does ADHS contact the doctor?

16 **A. No.**

17 Q. Does ADHS have any standards for whether or not
18 the doctor who performed the operation is required to be
19 the one writing the letter?

20 MR. STRUCK: Form.

21 **THE WITNESS: What do you mean by standards?**

22 BY MR. ANDERSON:

23 Q. Would ADHS accept a doctor's letter written by a
24 different doctor who did not perform the operation saying
25 that the individual had undergone a sex change operation?



1 **A. I don't think we would know that.**

2 Q. If the letter said, "I, Doctor, did not perform,
3 but I can attest that the individual underwent a sex change
4 operation," would ADHS accept that letter?

5 **A. I don't think I've ever seen that.**

6 Q. You've never seen that before?

7 **A. No.**

8 Q. If you saw a letter like that, would you -- what
9 would you do?

10 **A. I would contact our legal counsel.**

11 Q. Okay. Would you consult with any medical
12 professionals?

13 **A. Maybe, if legal counsel advised us to.**

14 Q. Okay. Have they ever advised you to consult with
15 medical professionals?

16 MR. STRUCK: We'll object to the form.

17 MR. ANDERSON: I'm sorry. You're right.

18 Withdrawn. I apologize.

19 BY MR. ANDERSON:

20 Q. Without revealing any conversations from
21 counsel -- well, strike that.

22 Is the doctor writing the letter, does ADHS
23 require the doctor writing the letter to attest that they
24 performed any sort of physical inspection of the individual
25 to confirm a sex change operation?



1 **A. That's not required in the statute so they may or**
2 **may not include it, but that wouldn't be a factor in the**
3 **determination.**

4 Q. Okay. If a registrant undergoes more than one sex
5 change operation, is that person required to submit more
6 than one letter?

7 **A. No, one letter would be fine.**

8 Q. Okay. Does ADHS review any medical records to
9 assess whether a sex change operation was performed?

10 **A. No. Even if somebody did, we would still request**
11 **a letter, not their medical records.**

12 Q. Okay. And ADHS doesn't require that applicants
13 submit to physical inspection by anybody that's retained by
14 ADHS?

15 **A. Oh, no.**

16 Q. Okay. I'd now like to move on from Subsection A-3
17 to what I believe is the last avenue for amending birth
18 certificates, which you mentioned before is court orders;
19 is that right?

20 **A. Yes.**

21 Q. So just to clarify, we've covered corrections.
22 We've covered doctor's letters under Subsection A-3, both
23 related to chromosomal count and sex change operations, and
24 this is the fourth basis, which is court orders.

25 Are there any others that -- that we haven't



1 talked about?

2 **A. Not that I'm aware of.**

3 Q. Okay. Let's look back at the statute which is --
4 let me be clear -- Exhibit 8.

5 **A. Okay.**

6 **MS. LaMAGNA: Okay.**

7 BY MR. ANDERSON:

8 Q. If you look down -- this is Subsection A-4. So
9 it's about a third of the way down the page, has the
10 number 4, and says, "A court order ordering an amendment to
11 a birth certificate."

12 Do you see that?

13 **A. Yes.**

14 Q. So that's -- that's finishing up the phrase if the
15 state -- "when the state registrar receives any of the
16 following"; is that right?

17 **A. Yes.**

18 Q. Is there anything more to Subsection A-4 that you
19 see here?

20 It's just that sentence?

21 **A. It's just that sentence.**

22 Q. It doesn't have a list of documents the court
23 should consider when determining whether to grant a sex
24 marker change?

25 **A. It does not have any documents for which the court**



1 **should consider for any field to be amended.**

2 Q. Does it -- does it contain a -- any sort of
3 guidance for a court that's considering an amendment
4 request for a sex change -- sex marker change?

5 **A. No.**

6 Q. Okay. You can set that aside.

7 Has ADHS adopted any policies related
8 specifically to court orders on birth certificate
9 amendments?

10 **A. Just what we've talked about in the other**
11 **policies.**

12 Q. Does ADHS have a policy on court orders and
13 subpoenas?

14 **A. I believe so.**

15 Q. Okay.

16 MR. ANDERSON: Let's mark this as Exhibit 18,
17 and this one as 19.

18 (Deposition Exhibit Nos. 18 and 19 were
19 marked for identification.)

20 MR. STRUCK: Is this -- this is 20?

21 MR. ANDERSON: 18.

22 MS. LaMAGNA: 18 and 19.

23 MR. ANDERSON: Yeah, 18 and 19. The cover
24 e-mail is 18.

25



1 BY MR. ANDERSON:

2 Q. So looking at this e-mail, this is an e-mail from
3 **Redacted** -- and that's the **Redacted** we've discussed,
4 who's an employee or was an employee at ADHS?

5 A. Yes.

6 Q. Sorry. Is **Redacted** still at ADHS?

7 A. She is.

8 Q. Okay. And at the time this was sent, May 18th,
9 2020, she was still employed -- or is employed at this
10 time?

11 A. Yes.

12 Q. And the e-mail is to you and then four other names
13 there, and are those four names all ADHS employees as well?

14 A. They were all previous employees.

15 Q. Previous.

16 And were they employees at the time this
17 e-mail was sent?

18 A. Yes.

19 Q. And the -- the subject is "Draft Revision - Court
20 Order and Subpoena Policy.

21 Was ADHS revising its court order and
22 subpoena policy at this time?

23 A. That appears to be the case.

24 Q. Do you recall this process of going through and
25 revising the court order subpoena policy?



1 **A. Not specifically.**

2 Q. So do you remember why this court order policy had
3 to be revised?

4 **A. No.**

5 Q. Okay. Go ahead and turn then to page -- or
6 Exhibit 19.

7 And is this the -- I'm sorry. On Exhibit 18,
8 that e-mail from Ms. **Redacted** -- Ms. **Redacted** did have an
9 attachment; is that right?

10 **A. Yes.**

11 Q. And that's:
12 "BIRTH 003 - Court Orders - 5-18-20.doc"?

13 **A. Yes.**

14 Q. Go ahead and flip then to Exhibit 19.

15 Is this a draft version of a court order and
16 subpoenas policy?

17 **A. Yes.**

18 Q. And in the upper-right corner it looks like --
19 under section it says "Birth Registry," and then under
20 number it says 003?

21 **A. Yes.**

22 Q. Is that how ADHS determines the name of a policy,
23 birth 003 would be --

24 **A. Yes.**

25 Q. Okay. And this matches the template -- this



1 matches the format of the other policies we've talked about
2 before?

3 **A. Yes.**

4 Q. Okay. And under "Supersession" it says, "This
5 policy supersedes the policy dated 8-29-19."

6 Do you see that?

7 **A. Yes.**

8 Q. So this is a draft of a policy that's in front of
9 you in this exhibit?

10 **A. Yes. I'm sorry. I wasn't sure if that was the**
11 **question.**

12 Q. No -- no worries.

13 And so this is a -- this is the same kind of
14 policy that ADHS creates and maintains for itself?

15 **A. Yes.**

16 Q. And that sets out its activities?

17 **A. Yes.**

18 Q. Go ahead and look to the "Purpose," and the
19 purpose there it says is "To provide guidance on how to
20 review and process court orders and subpoenas"; is that
21 correct?

22 Did I read that right?

23 **A. Yes.**

24 Q. So this policy applied to court orders submitted
25 under Subsection A-4?



1 **A. Yes.**

2 Q. Okay. And -- and I don't -- well, to confirm, if
3 you look under authority where it says Arizona revised
4 statutes, do you see in that list kind of over to the
5 right, it does say 36-337, A-4?

6 **A. Yes.**

7 Q. Okay. If you look down under "Definitions," it's
8 about -- it's -- moves over to the next page as well.

9 Do you see a definition of the phrase "sex
10 change operation" in here?

11 **A. No.**

12 Q. Okay. So if you flip over to the second page --
13 and I realize there's no page numbers on the actual
14 document so I'll refer to the Bates Numbers. Those are
15 those numbers in the lower right-hand corner.

16 **A. Okay.**

17 Q. So this is the document ending in 87 -- or the
18 page ending in 8717. It says -- under where it says
19 "Policy," I'm sorry. Backing right up to -- right above
20 that, "Division Primary Position of Responsibility,"
21 that's -- that lists your position there; is that right?

22 **A. Correct.**

23 Q. So you were responsible for enforcing this policy?

24 **A. Yes.**

25 Q. And then under the policy it says, "A court order



1 used as an evidentiary document must be an original
2 certified copy (raised seal or ink stamp) or an
3 electronically certified copy" (as per Arizona statute.)

4 Do you see that?

5 **A. Yes.**

6 Q. So under this policy which applies to court
7 orders, the court order must be the original certified
8 copy; is that correct?

9 **A. Yes.**

10 Q. If you look to the next page -- let's go two more
11 pages to where it ends with 8719 on the lower right-hand
12 corner.

13 **A. Okay.**

14 Q. There's a -- Section B says "Types of Court
15 Orders."

16 Do you see that?

17 **A. Yes.**

18 Q. And the first one there is "Guardianship Orders,"
19 and if you flip a page, it says "Court Order Name Change,"
20 and then there are other examples of court orders; is that
21 right?

22 **A. Yes.**

23 Q. Do you see any of these court orders that are
24 regarding sex marker amendment?

25 **A. No.**



1 Q. Is there any of these type of orders that are
2 listed here that would -- would cover orders regarding sex
3 marker amendments?

4 A. Likely not, but name -- I have seen name change
5 and sex changes on the same court order before.

6 Q. Okay. So let's look under -- let's go to the page
7 that ends in 8720 where it says, "Court Ordered Name Change
8 (Registrant)"?

9 A. Yes.

10 Q. Does this section here, Section 2, have any
11 information or provide any guidance for what to assess on a
12 court order with regard to a sex marker change?

13 A. No.

14 Q. Okay. Are there any other policies that might
15 provide guidance on what information should be in a court
16 order on a sex marker change that -- that ADHS maintains?

17 A. Not that I'm aware of.

18 Q. Now, just to be clear, what -- what procedure
19 would BVR follow if it receives an amendment application
20 that attaches a court order under Subsection A-4?

21 A. The same --

22 MR. STRUCK: Form.

23 THE WITNESS: Sorry. The same desk procedure
24 that we already talked about. It's that same process.

25 BY MR. ANDERSON:



1 Q. The one in Exhibit 7? We don't have to get it
2 out --

3 **A. Yes.**

4 Q. -- but is that -- and you're welcome to confirm.
5 I don't mean to prevent you from confirming, but I just
6 want to make sure.

7 **A. Yes.**

8 Q. Okay. So that instead of a doctor's note with
9 that, the applicant would submit a court order; is that
10 right?

11 **A. Yes.**

12 Q. Okay. So in order to do that, the applicant would
13 first have to go to a court to obtain the order?

14 **A. Yes.**

15 Q. So who are the people that would request
16 amendments -- without -- not specific names -- who are the
17 people that request amendments to the sex listed on their
18 birth certificates using a court order rather than a
19 doctor's note?

20 **A. Who requests the amendment? It could be the**
21 **registrant themselves if they're of legal age, or it could**
22 **be the registrant's parent or guardian if they're a minor.**

23 Q. Okay. Would a transgender person be somebody who
24 would request a court order for a sex change amendment, a
25 sex marker amendment? Excuse me.



1 **A. Yep.**

2 Q. Okay.

3 **A. Yes.**

4 Q. Yeah. Would -- it's okay.

5 Would a transgender person who has not
6 undergone a sex change operation be somebody who would use
7 Subsection A-4 to apply for an amendment?

8 **A. Can you repeat the first part again?**

9 Q. Sure.

10 Would a transgender person who has not
11 undergone a sex change operation as the mark -- as the
12 Department defines it be eligible to use Subsection A-4?

13 **A. That would be up to the court to decide that they**
14 **were provided sufficient information to -- to grant the**
15 **amendment, but we wouldn't ask for any -- for a doctor's**
16 **note in addition to the court order.**

17 Q. Okay. Other than transgender people, can you
18 think of any other category of person who would be seeking
19 a gender marker change under Subsection A-4?

20 **A. Not -- not the sex field, no.**

21 Q. Okay. Are you aware that in the past, ADHS would
22 only accept court orders under Subsection A-4 for sex
23 marker amendments if accompanied by a doctor's letter?

24 MR. STRUCK: Object to the form. Time frame.

25 **THE WITNESS: I'm aware that in the past,**



1 under previous guidance before, we had a case that changed
2 the decision that we did not accept court orders to change
3 the sex on a record, then we had litigation and now we do.

4 BY MR. ANDERSON:

5 Q. Okay. So now ADHS does accept court orders
6 without doctor's letters?

7 A. Correct.

8 Q. Is that change reflected in any ADHS policy that
9 you can think of?

10 A. I would have to go back through all of them and
11 compare them.

12 Q. Okay. So sitting here, you can't -- you can't
13 name one off the top of your head?

14 A. No.

15 Q. Okay. Is it reflected in any ADHS or BVR
16 procedure?

17 A. Again, without comparing what was prior to that
18 date and after, I -- I can't answer that.

19 Q. Okay. Did ADHS ever issue a public statement
20 saying that now it accepts court orders without an
21 accompanying doctor's note?

22 A. Not a public statement, no.

23 MR. STRUCK: Belated objection to form.

24 MR. ANDERSON: Okay. I think that we are at
25 a good spot for a break.



1 MR. STRUCK: Okay.

2 MR. ANDERSON: We'll go off the record.

3 THE VIDEO SPECIALIST: We're going off the
4 record. The time is 1:52 p.m.

5 (Recess taken, 1:52 p.m. to 2:13 p.m.)

6 THE VIDEO SPECIALIST: We're back on the
7 record. The time is 2:13 p.m.

8 BY MR. ANDERSON:

9 Q. Hi, Ms. Colburn. If you could take Exhibit 19 one
10 more time, just what we were talking about just a little
11 bit ago. It's the draft court orders and subpoenas policy.

12 Are you familiar with whether or not this
13 policy was finalized?

14 A. Off the top of my head, no.

15 Q. Okay. Do you recall if -- if it has changed
16 substantively since this date?

17 A. No.

18 MR. STRUCK: And I'm going to object to the
19 form. It is a draft.

20 MR. ANDERSON: Okay.

21 BY MR. ANDERSON:

22 Q. Are you aware if there's a more recent version
23 than this?

24 A. Without checking our policies folder, I can't
25 accurately answer that.



1 MR. ANDERSON: Okay. But I'm -- just, again,
2 for the record, if there is a more recent copy, we would
3 ask that it be produced.

4 MR. STRUCK: And just for the record, we
5 didn't -- we didn't produce this pursuant to this case.

6 Was this part of the public records request?

7 MR. ANDERSON: Yes.

8 MR. STRUCK: Okay.

9 MR. ANDERSON: Yes, it was.

10 MR. STRUCK: All right.

11 BY MR. ANDERSON:

12 Q. Okay. If we could go back to Exhibit 2, which is
13 that list of topics. And go ahead and flip to page 5, just
14 the last one. If you could read number 11, and then let me
15 know when you're done.

16 A. Okay.

17 Q. All right. Are you prepared to testify on this
18 topic?

19 A. Yes.

20 Q. Does ADHS track the number of requests that it
21 receives to change the sex listed on a birth certificate?

22 A. No.

23 Q. Does ADHS track the number of sex markers that it
24 actually has changed on birth certificates?

25 A. No.



1 Q. Is there a way for ADHS to assess whether or
2 not -- the number of changes that have been made on birth
3 certificates in a particular year?

4 **A. We can have our IT department pull reports for us.**

5 Q. Okay.

6 MR. ANDERSON: I'd like to mark this as
7 Exhibit 20.

8 (Deposition Exhibit No. 20 was marked for
9 identification.)

10 BY MR. ANDERSON:

11 Q. Do you recognize this?

12 **A. Yes.**

13 Q. This is an e-mail, the top e-mail is from Robert
14 Lane who has an AZDHS.gov e-mail account; is that right?

15 **A. Yes.**

16 Q. And who's Robert Lane?

17 **A. Robert Lane was the prior Office of Administrative
18 Counsel and Rules that we spoke about, he was their chief.**

19 Q. Chief. Okay. And so he was employed by -- at
20 this time, January 24th, 2022, by ADHS?

21 **A. Yes.**

22 Q. And this e-mail, the top e-mail is to you at
23 Krystal Colburn?

24 **A. Yes.**

25 Q. And that would have been to your ADHS e-mail



1 account?

2 **A. Yes.**

3 Q. The subject here is "Amendments to Gender - Data
4 Needed"; is that right?

5 **A. Yes.**

6 Q. Let's go ahead and flip down to the first e-mail
7 on the chain just to get a sense of what it's about. And
8 that is the page that ends in 47422, which is about four
9 pages in.

10 **A. Okay.**

11 Q. If you see the e-mail starting in the middle of
12 the page dated Friday, January 21st, 2022, at 9:05 from
13 you. It says, "Hi, Team, Rob Lane needs some data for the
14 Director and Governor's office."

15 Do you see that?

16 **A. Yes.**

17 Q. The next one is, "Please provide the total number
18 of amendments performed on the gender field in calendar
19 year" 2021 and calendar year 2022.

20 Do you see that?

21 **A. Calendar year 2020?**

22 Q. I'm sorry. Did I say 2022?

23 **A. Yes.**

24 Q. Sorry. I'll reread that.

25 "Calendar 2021 and calendar year 2020"; is



1 that correct?

2 **A. Yes.**

3 Q. Okay. Do you know why the Governor's Office
4 needed that data?

5 MR. STRUCK: Foundation.

6 **THE WITNESS: I believe that it was for a**
7 **request to amend the sex field to something other than**
8 **male, female, or not yet determined.**

9 BY MR. ANDERSON:

10 Q. So earlier we talked about the three different
11 options for the sex field, and -- and you're saying that
12 there was a consideration that there might be a new option
13 rather than those three?

14 **A. Not a consideration, a request to list nonbinary.**

15 Q. Nonbinary. Would -- that would be a fourth
16 option?

17 **A. Yes.**

18 Q. Okay. Do you know if that request ever went
19 anywhere?

20 **A. Yes, I know whether it did. I don't know if I'm**
21 **allowed to release that information about those**
22 **individuals.**

23 Q. Okay. At this time, Arizona birth certificates
24 are not allowed to list nonbinary in the sex field; is that
25 right?



1 **A. No, that is not right.**

2 Q. Nonbinary is an option now on birth certificates?

3 **A. There are birth certificates that list nonbinary.**

4 Q. Okay. Would -- if -- if an applicant submitted an
5 application to amend a birth certificate under Subsection
6 A-3 today, could they request a nonbinary gender sex
7 marker?

8 MR. STRUCK: Object to the form.

9 **THE WITNESS: That would be something that I**
10 **have to talk to administrative -- or legal counsel about.**
11 **The requests that we have received for nonbinary have been**
12 **court orders, they have not been based on a physician**
13 **statement.**

14 BY MR. ANDERSON:

15 Q. So the nonbinary sex markers have been adopted
16 only under Subsection A-4?

17 **A. Correct.**

18 Q. Okay. Can you tell me about how many have been
19 amended under that?

20 **A. Less than five.**

21 Q. Okay. If you look at this chain, let's go up --
22 flip back a page to the one ending in 47421. And in the
23 middle of that page is an e-mail -- I'm sorry. I'll wait
24 until you're there.

25 **A. Yes.**



1 Q. -- from Katina Lugo, and that's from her ADHS
2 e-mail account?

3 A. Uh-huh.

4 Q. Dated Friday, January 21, 2022 at 1:57 p.m.

5 Do you see that?

6 A. Yes.

7 Q. She's e-mailing to Robert Lane and then cc'ing
8 you, **Redacted** and Nicole Heath; is that right?

9 A. Yes.

10 Q. So there's all ADHS employees on this e-mail?

11 A. Those are ADHS employees, yes.

12 Q. And they were at the time?

13 A. Yes.

14 Q. Ms. Lugo says, "Here are the numbers: 2020 a
15 total of 233," that's 233 changes to the gender field were
16 completed. "2021 a total of 229 changes to the gender
17 field were completed."

18 As far as you know, have those numbers --
19 have -- have there been any changes to those numbers? Are
20 those numbers still accurate?

21 MR. STRUCK: Form and foundation.

22 THE WITNESS: To the best of my knowledge
23 without rerunning a report, I don't know if they've
24 changed.

25



1 BY MR. ANDERSON:

2 Q. You have no reason to believe they've changed?

3 A. No.

4 Q. Okay. Does ADHS have the ability to run the same
5 analysis on changes to the gender field for 2022?

6 A. Yes.

7 Q. And where is that data stored?

8 A. In the electronic birth registry system.

9 Q. And that's the EBRS?

10 A. Yes.

11 Q. Okay. If you look at the top of this page, it
12 looks like there's the e-mail there from Don Herrington,
13 and if you can flip to the page right before to see the top
14 of that e-mail, which is Friday, January 21st, 2022, at
15 2:19 p.m.

16 Do you see that?

17 A. Yes.

18 Q. And we've talked about Mr. Herrington before?

19 A. Yes.

20 Q. On this date, was he the interim -- or acting
21 director of ADHS?

22 A. Yes.

23 Q. He says -- and this is the top of 47421. He says,
24 "That seems very high, almost one each business day. Could
25 there be any explanation other than a sex change



1 operation?"

2 Do you see that?

3 **A. Yes.**

4 Q. And Ms. Lugo, we'll go back a page, she responds
5 at 3:13 p.m., "We do have some cases where the
6 registrant's" -- "registrant's gender was incorrectly
7 documented when the birth was registered."

8 When she says that, do you understand her to
9 be referring to typos -- typographical errors like we
10 discussed before?

11 **A. Correct.**

12 Q. She continues to say, "For those, a medical record
13 is provided to make a correction to the gender. These are
14 still routed for approval to ensure accuracy."

15 When she says "routed for approval," do you
16 know what she is talking about there?

17 **A. The same process that I previously described.**

18 Q. Okay. And "routed for approval" would mean they
19 would end up on your desk?

20 **A. Correct.**

21 Q. And when she says "to ensure accuracy," do you
22 know what she means by the -- by that?

23 **A. To ensure that the file is complete and accurate.**

24 Q. And is that the same review process that we've
25 been talking about?



1 **A. Yes.**

2 Q. And then go ahead and flip to the first page of
3 this exhibit ending in 47419. There's an e-mail from you
4 dated -- or it's dated Monday, January 24th, 2022, at
5 8:54 a.m., and you're responding to Rob Lane. You say,

6 "We don't track that level of processing
7 data. So we would have to go back and open
8 the sealed records to view the documents and
9 assess the reason for making the gender
10 amendment. Anecdotally though, I would say
11 an error during registration at the time of
12 birth is far less common than a court order
13 or doctor's letter due to sex change
14 operation."

15 Do you see where you say that?

16 **A. Yes.**

17 Q. And that's consistent with what you testified
18 earlier that the most common bases for changing sex markers
19 are doctors' notes and court orders?

20 **A. Yes.**

21 Q. Okay. Do you recall what anecdotes you're
22 referring to here?

23 **A. I don't understand your question.**

24 Q. In -- in your sentence you say "Anecdotally,
25 though." So you are referring to some anecdotes, some



1 stories?

2 **A. No. I think my intent was just saying with how --**
3 **reviewing each file and going off of my memory.**

4 Q. So had you -- did you gain the impression from
5 speaking to other people at BVR that this was the case?

6 **A. No, that would be based on my review of all the**
7 **files.**

8 Q. Of the files.

9 So the approvals that would come to your
10 desk?

11 **A. Yes.**

12 Q. You were basing your comment here off of your
13 experience approving and denying corrections --

14 **A. Yes.**

15 Q. -- and amendments? Okay.

16 Okay. You can set that aside.

17 Does ADHS have a basis to know how many
18 transgender people there are in Arizona that have birth
19 certificates?

20 **A. No.**

21 Q. Okay. Does ADHS know how many transgender people
22 are born every year in Arizona?

23 **A. No.**

24 Q. Does ADHS know how many transgender people in
25 Arizona would like to amend the sex listed on their birth



1 certificates but have not?

2 **A. No.**

3 Q. Does ADHS know how many transgender people who are
4 now alive who have not undergone a sex change operation as
5 ADHS interprets that term to mean under Subsection A-3?

6 **A. Can you repeat that question again?**

7 Q. Sure. Does ADHS know how many transgender people
8 who are alive now have not undergone a sex change
9 operation?

10 **A. No.**

11 Q. Does it think that there are less than 40 of those
12 people?

13 MR. STRUCK: Object to the form and
14 foundation.

15 **THE WITNESS: I would not begin to speculate**
16 **on a number.**

17 BY MR. ANDERSON:

18 Q. Okay. Does ADHS know how many transgender people
19 yet to be born in Arizona who may never need to undergo a
20 sex change operation?

21 MR. STRUCK: Foundation.

22 **THE WITNESS: I could not begin to guess**
23 **that.**

24 BY MR. ANDERSON:

25 Q. Okay. If we can go back to Exhibit Number 2,



1 which is the list of topics. Go ahead and flip to page 4.

2 **A. Okay.**

3 Q. If you could look at topics 9 and 10, and then let
4 me know when you're done.

5 **A. Okay.**

6 Q. Are you prepared to testify on these topics today?

7 **A. Yes.**

8 Q. Okay. And in preparing for these topics, did you
9 review the interrogatory responses submitted by the
10 defendant to plaintiffs' requests?

11 **A. Yes.**

12 Q. If you could, pull up Exhibit Number 8, which is
13 36-337. It's the statute that we've been talking about
14 today.

15 **A. Okay.**

16 Q. Do you have personal knowledge as to when this
17 statute was enacted by the state legislature?

18 **A. No.**

19 Q. Okay. Has it been in this format since you've
20 worked in your current position at BVR?

21 **A. Correct.**

22 Q. Has it changed at all?

23 **A. No. Just one second actually.**

24 Q. Yeah. Sure. And I can be more specific.

25 Has Subsection A-3 changed at all?



1 **A. No.**

2 Q. Okay.

3 **A. Thank you.**

4 Q. We'll cut to the chase.

5 Do you know where the phrase "sex change
6 operation" came from in the statute?

7 **A. The legislature.**

8 Q. The legislature.

9 Do you know the person in the legislature
10 that wrote it?

11 **A. No.**

12 Q. Okay. Has ADHS applied Subsection A-3 to sex
13 marker amendments during your time as -- at the BVR?

14 **A. Yes.**

15 Q. And it's applied it consistently during your time?

16 MR. STRUCK: Form.

17 **THE WITNESS: Yes.**

18 BY MR. ANDERSON:

19 Q. Okay. Does ADHS have a position on what the goals
20 of Subsection A-3 were or are currently?

21 MR. STRUCK: Form and foundation.

22 **THE WITNESS: Does ADHS have a goal? Is that
23 what you said?**

24 BY MR. ANDERSON:

25 Q. Does it have a -- does it have a position on what



1 the goals are?

2 **A. What position on the goals? No. In general, ADHS**
3 **is not in the position to -- to have a position or have a**
4 **goal based on what the legislature decides. We are just**
5 **the enactors of what we are given.**

6 Q. Okay. Now, as you know from reviewing the
7 interrogatories, the defendant in this case has indicated
8 that there's a "'governmental interest in maintaining and
9 ensuring" -- and I'm reading now from Topic Number 9 -- a
10 "'governmental interest in maintaining and ensuring the
11 truthfulness, completeness, and correctness of information
12 in vital records and statistics."

13 Are you familiar with that alleged
14 governmental interest?

15 **A. Yes.**

16 Q. And we've spent some time today talking about
17 completeness, truthfulness, accuracy. So I want to ask you
18 just a few more questions about those.

19 **A. Okay.**

20 Q. Before we do, though, are you aware of any other
21 governmental interest that the department has in enforcing
22 Subsection A-3?

23 MR. STRUCK: Form.

24 **THE WITNESS: No.**

25 BY MR. ANDERSON:



1 Q. Okay. So truthfulness, completeness, correctness,
2 that's the governmental interest that the department has
3 identified for enforcing Subsection A-3?

4 A. Yes.

5 Q. Let's take them one by one starting with
6 truthfulness.

7 What does truthfulness mean in the context of
8 a birth certificate?

9 MR. STRUCK: Object to the form.

10 THE WITNESS: That the information that is on
11 the record is true and complete to the best of our
12 knowledge.

13 BY MR. ANDERSON:

14 Q. So truthfulness, would it -- is it fair to say
15 that -- that it is information actually pertaining to the
16 person that it's purportedly about?

17 Is that fair?

18 MR. STRUCK: Form.

19 THE WITNESS: All vital records are
20 information about the registrant.

21 BY MR. ANDERSON:

22 Q. Uh-huh. So when -- how is truthfulness, as a
23 concept, advanced by requiring an individual to submit a
24 doctor's note that says that they've undergone a sex change
25 operation?



1 MR. STRUCK: Form.

2 THE WITNESS: By an individual submitting a
3 doctor's note to change the sex on their record, it's
4 indicating that just as we have other changes that we make
5 based on evidentiary documents, it's an evidentiary
6 document supporting the truthfulness, the accuracy, of what
7 is being requested to be amended.

8 BY MR. ANDERSON:

9 Q. Is a doctor's note that says that an individual
10 has undergone a sex change operation the only way the
11 Department believes that it can maintain a truthful birth
12 certificate --

13 MR. STRUCK: Form and foundation.

14 BY MR. ANDERSON:

15 Q. -- for a sex marker change?

16 MR. STRUCK: I'm sorry. Form and foundation.
17 I didn't mean to interrupt.

18 MR. ANDERSON: No, that's okay.

19 BY MR. ANDERSON:

20 Q. What I'm trying to get at is I'm trying to
21 understand in -- under Subsection A-3 with the doctor's
22 note that says "undergone a sex change operation," how does
23 the Department view that as ensuring truthfulness of a
24 birth certificate?

25 MR. STRUCK: Form.



1 **THE WITNESS:** It -- the doctor's note is
2 that -- that evidentiary document supporting the amendment
3 request.

4 BY MR. ANDERSON:

5 Q. So the Department -- and -- the Department
6 understands that a doctor's note saying sex change
7 operation is an evidentiary document that meets the needs
8 of truthfulness; is that right?

9 **A. Yes.**

10 Q. Okay. Did the Department -- has the Department
11 ever considered whether a different kind of doctor's note
12 could also advance and maintain the truthfulness of a birth
13 certificate in a sex marker change?

14 MR. STRUCK: Form.

15 **THE WITNESS:** The statute doesn't allow for
16 that.

17 BY MR. ANDERSON:

18 Q. Okay. Okay. Another -- another word that -- that
19 we've talked about today is completeness, the completeness
20 of a birth certificate.

21 What does completeness mean for a birth
22 certificate?

23 MR. STRUCK: Form.

24 **THE WITNESS:** That all of the fields would be
25 complete and filled out.



1 BY MR. ANDERSON:

2 Q. Okay. So completeness with respect to a sex
3 marker is -- would -- wouldn't you agree that it's
4 satisfied as long as there is information in that bucket?

5 MR. STRUCK: Form.

6 **THE WITNESS: It would be complete if it was**
7 **filled out.**

8 BY MR. ANDERSON:

9 Q. If it was filled out.

10 So the only time a birth certificate sex
11 marker would be incomplete would be if there was nothing at
12 all in that box on the birth certificate?

13 MR. STRUCK: Form.

14 **THE WITNESS: As you're reading the question,**
15 **yes.**

16 BY MR. ANDERSON:

17 Q. Okay. I'm just trying to understand how
18 completeness plays a role in sex marker changes under
19 Subsection A-3.

20 **A. Well, I think you're splitting the words out. And**
21 **when they're all read together, it reads slightly different**
22 **than when you're splitting them out.**

23 Q. Okay. When completeness is read, truthfulness,
24 completeness, and correctness, what does -- how does that
25 change? How does it read slightly differently?



1 A. When we're processing a record for registration or
2 correcting or amending, we're looking at the file in its
3 totality. So that what I mean when we're reading it all
4 together. Is the information true and accurate and
5 complete? Is that doctor's letter missing any information
6 that would not be -- that could change how its interpreted?
7 Then it might not be complete. But is the field complete
8 because it has a value in it, yes.

9 Q. I see. So the completeness applies to the
10 application as well as the birth certificate itself?
11 You're looking at the completeness of the application?

12 A. Yes.

13 Q. Okay. Can you explain how -- how a doctor's note
14 that uses the phrase "undergone a sex change operation"
15 advances the goals of completeness with respect to birth
16 certificates?

17 MR. STRUCK: Form.

18 THE WITNESS: Well, it would meet the
19 statutory requirements, so it would allow us to make that
20 amendment for the totality of the record be truthful and
21 complete and accurate.

22 BY MR. ANDERSON:

23 Q. Okay. I -- I realize that we've talked about them
24 together, and we've talked about the first two separately.
25 So I just want to ask about the last one to make sure that



1 we're complete in our questions here. And the last one is
2 correctness.

3 So correctness with respect to
4 Subsection A-3, the correctness of a sex marker, can you
5 explain to me how Subsection A-3 advances that interest?

6 MR. STRUCK: Form.

7 **THE WITNESS: Well, we want to make sure that**
8 **the record is correct and accurate. So if the letter**
9 **provided to us meets the statute, we will amend the record**
10 **so that it is -- has the correct information.**

11 BY MR. ANDERSON:

12 Q. And if the -- if the application satisfies
13 Subsection A-3 and ADHS determines that it does and amends
14 the birth certificate, would that amended birth certificate
15 be truthful, complete, and correct?

16 **A. Yes.**

17 Q. Okay. When it comes to the accuracy of a sex
18 marker on a birth certificate, is it ADHS's position that
19 the sex marker must match the person's sex aligned -- sex
20 assigned at birth?

21 MR. STRUCK: Form.

22 **THE WITNESS: Can you say that again?**

23 BY MR. ANDERSON:

24 Q. Sure. Are the only accurate sex markers those
25 that are the sex assigned at birth, or can a birth



1 certificate be truthful, accurate, and correct even if the
2 sex it lists is not the sex assigned at birth for that
3 individual?

4 MR. STRUCK: Form.

5 THE WITNESS: Well, we wouldn't know that
6 unless they applied to us to amend it. So we would be
7 operating under the under- -- assumption that it was
8 complete, accurate, and truthful because we didn't know
9 otherwise.

10 BY MR. ANDERSON:

11 Q. Okay. Let me ask this in a different way.

12 If an individual applies for an amendment
13 under Subsection A-3 and satisfies all of the requirements
14 and obtains an amendment, the sex listed on their birth
15 certificate would be different than their sex assigned at
16 birth; is that right?

17 A. Yes.

18 Q. But that birth certificate, that amended birth
19 certificate, would still be truthful, complete, and
20 correct; is that right?

21 A. Yes.

22 Q. Okay. So I'll ask a similar question, and that,
23 is, if a person has applied for an amendment and submitted
24 a court order under Subsection A-4 and obtained that
25 amendment and it resulted in an app- -- certificate with a



1 sex listed that did not reflect the sex assigned at birth,
2 it was different than the sex assigned at birth, would that
3 amended birth certificate be truthful, complete, and
4 accurate?

5 **A. Yes.**

6 Q. Okay.

7 MR. ANDERSON: I'd like to go ahead and go
8 off the record and take a break real quick.

9 THE VIDEO SPECIALIST: We're going off the
10 record. The time is 2:42 p.m.

11 (Recess taken, 2:42 p.m. to 2:54 p.m.)

12 THE VIDEO SPECIALIST: We're back on the
13 record. The time is 2:54 p.m.

14 BY MR. ANDERSON:

15 Q. Ms. Colburn, just a few more questions for you.

16 Before the break, we were talking about
17 truthfulness, completeness, and correctness of documents.
18 So I want to ask you about a different type of situation.

19 Are you aware that transgender people can
20 present in public as a gender that is different than their
21 sex assigned at birth?

22 **A. Yes.**

23 Q. And by "present," I mean a person whose sex
24 assigned at birth is male can dress and act and go by
25 pronouns of a female?



1 **A. Yes.**

2 Q. And are you aware that transgender people can
3 obtain identity documents without a proof of a surgical
4 procedure in other -- from other agencies?

5 MR. STRUCK: Form.

6 **THE WITNESS: Yes.**

7 BY MR. ANDERSON:

8 Q. And one of those agencies is the Arizona
9 Department of Transportation driver's license; is that
10 right?

11 **A. That's what came to mind, yes.**

12 Q. Yeah. Are you aware that they can obtain U.S.
13 passport without a proof of surgery?

14 MR. STRUCK: Form; foundation.

15 **THE WITNESS: That one, I'm not aware of.**

16 BY MR. ANDERSON:

17 Q. Not aware of that. That's okay. But you are
18 aware of the driver's licenses that an individual could
19 obtain without a proof of a sex change operation?

20 **A. Yes.**

21 Q. Okay. Now, if an individual, a transgender
22 individual has a driver's license that says that they are
23 one sex, but a birth certificate that remains their sex
24 assigned at birth, does the Department believe that that
25 birth certificate is still truthful, complete, and



1 accurate?

2 MR. STRUCK: Object to the form.

3 THE WITNESS: We would believe that it is
4 until we are told otherwise.

5 BY MR. ANDERSON:

6 Q. Okay.

7 A. Through the application process that we've talked
8 a lot about today.

9 Q. Does the Department believe that that birth
10 certificate accurately identifies that person?

11 MR. STRUCK: Object to the form.

12 THE WITNESS: Again, until we receive an
13 application indicating otherwise, yes, we would believe
14 that the birth record on file represents the individual.

15 BY MR. ANDERSON:

16 Q. Okay. If the Department received an application
17 from that person that did not have a doctor's note -- or
18 excuse me -- it did have a doctor's note, but that doctor's
19 note did not say sex change operation. It said the same
20 thing that that person had given to the Arizona Department
21 of Transportation, would the Department reject that
22 application?

23 MR. STRUCK: Form.

24 THE WITNESS: If the file in its -- excuse
25 me. Okay. I thought I was going to sneeze, but I guess



1 not.

2 BY MR. ANDERSON:

3 Q. That's okay.

4 A. If the file received by the Department did not
5 contain a letter that met the statutory requirement, then
6 it would be denied, and we would not be able to amend the
7 record.

8 Q. Okay. And at that point, the Department would
9 still consider the birth certificate as it existed with the
10 sex assigned at birth to be truthful, complete, and
11 accurate?

12 A. Following our governing regulations, yes.

13 MR. ANDERSON: Okay. No further questions.

14 MR. STRUCK: All right. We'll read and sign.

15 THE VIDEO SPECIALIST: This concludes today's
16 video-recorded deposition. The time is 2:57 p.m.

17 (The deposition concluded at 2:57 p.m.)

18

19

KRYSTAL COLBURN

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CERTIFICATE OF CERTIFIED REPORTER

BE IT KNOWN that the foregoing proceedings were taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the foregoing pages are a full, true, and accurate record of the proceedings, all done to the best of my skill and ability; that the proceedings were taken down by me in shorthand and thereafter reduced to print under my direction; that I have complied with the ethical obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206 J(1)(g)(1) and (2).

I CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

Review and signature was requested; any changes made by the witness will be attached to the original transcript.

Review and signature was waived/not requested.

Review and signature not required.

Dated at Phoenix, Arizona, this 5th day of May, 2023.

_____/s/ Danielle C. Griffin_ _
DANIELLE C. GRIFFIN, RPR
Certified Reporter
Arizona CR No. 50926

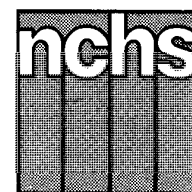
* * * * *

I CERTIFY that GRIFFIN GROUP INTERNATIONAL, has complied with the ethical obligations set forth in ACJA 7-206 (J)(1)(g)(1) through (6).

_____/s/ Pamela A. Griffin_____
GRIFFIN GROUP INTERNATIONAL
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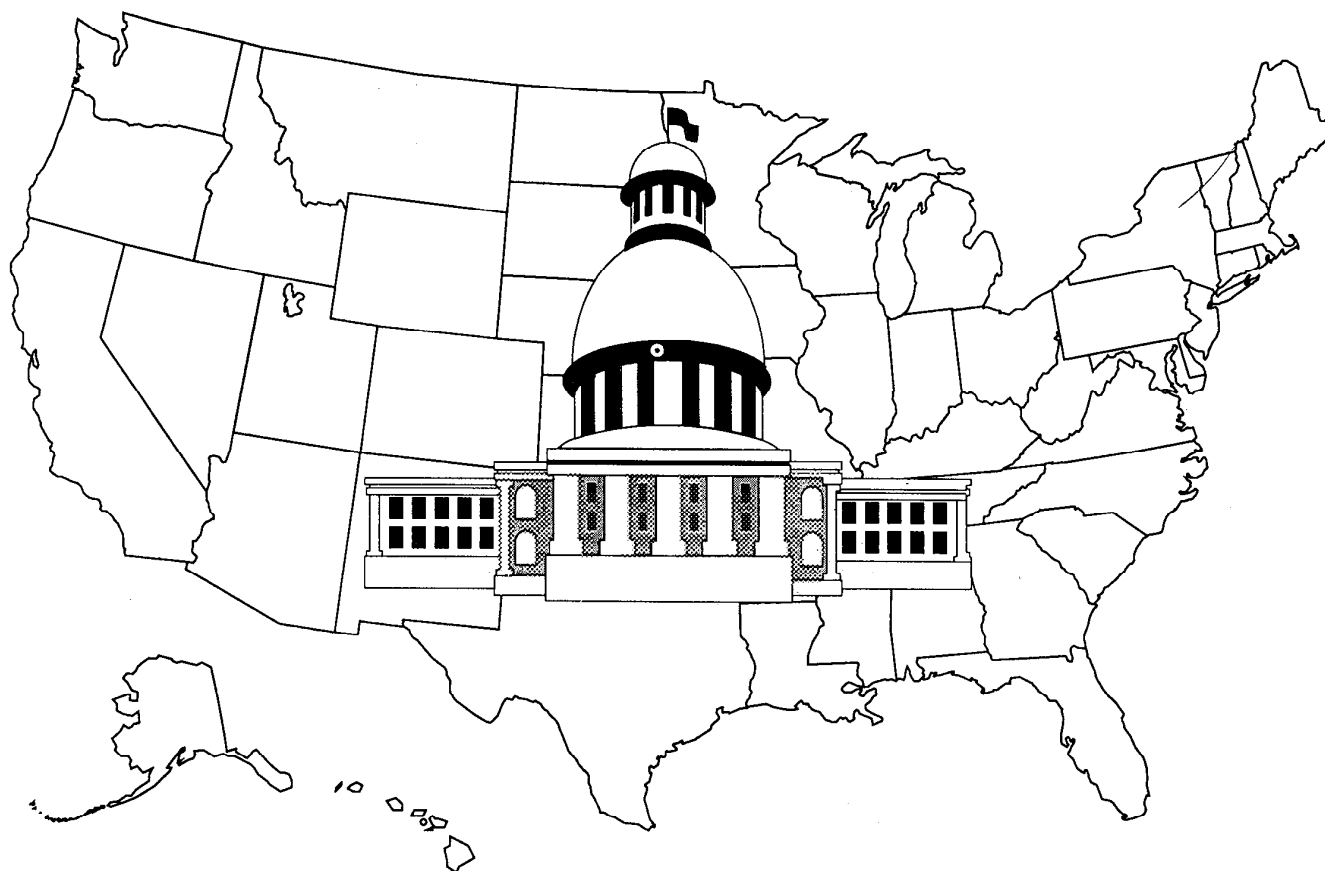


EXHIBIT 3



Model State Vital Statistics Act and Regulations

From the CENTERS FOR DISEASE CONTROL AND PREVENTION/National Center for Health Statistics



1992 Revision



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Centers for Disease Control and Prevention
National Center for Health Statistics



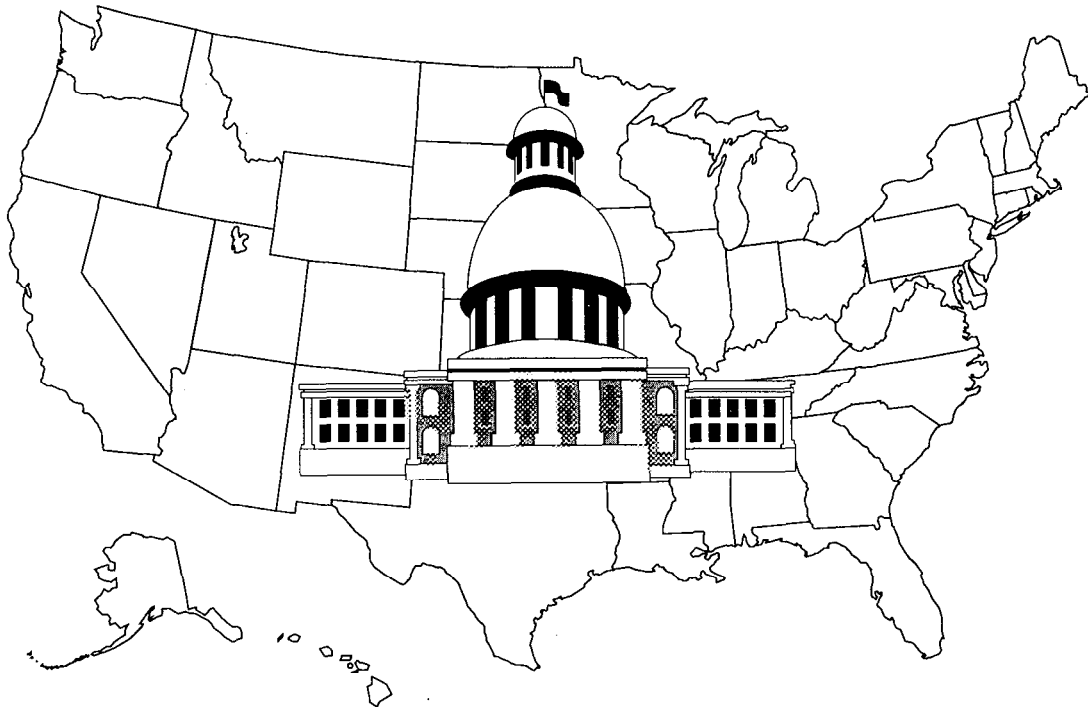
Approved and Recommended by the
Association for Vital Records and Health Statistics
Centers for Disease Control and Prevention
United States Public Health Service

This document has also been submitted to the Council of State Governments for inclusion in *Suggested State Legislation*.
At the time of publication, their action is pending.

This revision replaces the 1977 Revision of the Model State Vital Statistics Act and Model State Vital Statistics Regulations (PHS 78-1115).

Model State Vital Statistics Act and Regulations

From the CENTERS FOR DISEASE CONTROL AND PREVENTION/National Center for Health Statistics



1992 Revision

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Centers for Disease Control and Prevention
National Center for Health Statistics

Hyattsville, Maryland
February 1994
DHHS Publication No. (PHS) 94-1115

National Center for Health Statistics

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Preface

The U.S. vital registration and statistics system exemplifies cooperation between the Federal and State Government at its best. Even though the legal responsibility for the registration of vital events rests with the individual States, the States and the National Center for Health Statistics (the Federal partner) work together to build a uniform system that produces records to satisfy the legal requirements of individuals and their families and also to meet statistical and research needs at the local, State, and national levels. The cooperation includes the development and promotion of standard certificates and reporting forms, training and quality control programs, and model legislation.

This is the fifth revision of the Model State Vital Statistics Act (the first was in 1907) and the second revision of the Model State Vital Statistics Regulations (the first was in 1977). The Model Act and Regulations provide detailed guidance to State registrars of vital statistics and State legislators who are considering revision of their own State vital statistics laws and regulations. The Model Act and Regulations serve to promote uniformity among States in definitions, registration practices, disclosure and issuance procedures, and in many other functions that comprise a State system of vital statistics.

A major goal of this revision of the Model Act and Regulations is to ensure the vital statistics laws allow States to easily incorporate technological advances in records and information management. Special emphasis was given to the language within the revision in order that it can serve as a model for the next 10-15 years. The wording used will allow States to make use of emerging technology that will continue to impact the vital statistics system without having to change their law.

In developing this revision, input was sought not only from State vital records and statistics offices but also from other persons and organizations, including Federal agencies, which have an interest in the registration system either as a source of legal records or a source of statistical data. The expert testimony and comments from these interested persons and organizations provided invaluable assistance in developing the revision and should help guarantee that the vital statistics system continues to serve the interests of its many users, especially the general public.

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Acknowledgment

The Working Group Would Like to Thank the Following Organizations That Provided Input to the Revision
Testimony heard:

American Association of Motor Vehicle Administrators
American Bar Association
American College of Obstetricians and Gynecologists
American Council of Life Insurance
American Health Information Management Association (formerly, American Medical Record Association)
American Medical Association
Centers for Disease Control and Prevention, Division of Surveillance and Epidemiology
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National Funeral Directors Association
National Genealogical Society
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U.S. Office of Child Support Enforcement

Contents

Preface	iii
Working group to revise the model State vital statistics act and model State vital statistics regulations.	iv
Acknowledgment	v
1. Definitions	2
2. Office of vital statistics and statewide system of vital statistics.	2
3. Regulations	2
4. Appointment of State registrar of vital statistics	3
5. Duties of State registrar	3
6. Content of certificates and reports	3
7. Birth registration	3
8. Infants of unknown parentage; foundling registration	4
9. Delayed registration of birth.	5
10. Judicial procedure to establish facts of birth	5
11. Certificates of adoption	6
12. Certificates of birth following adoption, legitimation, court determination of paternity, and paternity acknowledgment	6
13. Death registration	7
14. Delayed registration of death.	8
15. Reports of fetal death	8
16. Reports of induced termination of pregnancy	9
17. Vital reports	9
18. Authorization for final disposition	9
19. Marriage registration	9
20. (Divorce, dissolution of marriage, or annulment) registration	10
21. Amendment of vital records	10
22. Preservation of vital records	11
23. Disclosure of information from vital records or vital reports	11
24. Copies from the system of vital statistics	11
25. Fees	12
26. Persons required to keep records	13
27. Duties to furnish information.	13
28. Matching of birth and death certificates.	13
29. Penalties	14

30. Applicability	14
31. Severability	14
32. Uniformity of interpretation	14
33. Short title	14
34. Repeal	15
35. Time of taking effect	15
Model State Vital Statistics Regulations	20

MODEL STATE VITAL STATISTICS ACT

NOTE: Where the need for variation was apparent, parentheses, “(),” have been placed around the word or phrase. In cases where recommendations were considered optional, brackets, “[],” have been placed around the word or phrase.

Section 1. Definitions

- (a) “Dead body” means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death occurred.
- (b) “Fetal death” means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy. The death is indicated by the fact that after such expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.
- (c) “File” means the presentation and acceptance of a vital record or report provided for in this Act for registration by the (Office of Vital Statistics).
- (d) “Filing, date of” means the date a vital record is accepted for registration by the (Office of Vital Statistics).
- (e) “Final disposition” means the burial, interment, cremation, removal from the State, or other authorized disposition of a dead body or fetus.
- (f) “Induced termination of pregnancy” means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant, and which does not result in a live birth. This definition excludes management of prolonged retention of products of conception following fetal death.
- (g) “Institution” means any establishment, public or private, which provides in-patient or out-patient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law.
- (h) “Live birth” means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.
- (i) “Physician” means a person authorized or licensed to practice medicine or osteopathy pursuant to the laws of this State.
- (j) “Registration” means the process by which vital records are completed, filed, and incorporated into the official records of the (Office of Vital Statistics).
- (k) “System of vital statistics” means the registration, collection, preservation, amendment, and certification of vital records; the collection of other reports required by this Act; and activities related thereto including the tabulation, analysis, publication, and dissemination of vital statistics.
- (l) “Vital records” means certificates or reports of birth, death, marriage, (divorce, dissolution of marriage, or annulment) and data related thereto.
- (m) “Vital reports” means reports of fetal death and induced termination of pregnancy and data related thereto.
- (n) “Vital statistics” means the data derived from certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, (divorce, dissolution of marriage, or annulment) and related reports.

Section 2. Office of Vital Statistics and Statewide System of Vital Statistics

There is hereby established in the (State public health administrative agency) an (Office of Vital Statistics) which shall install, maintain, and operate the only system of vital statistics throughout this State. The (Office of Vital Statistics) shall be provided with sufficient staff, suitable offices, and other resources for the proper administration of the system of vital statistics and for the preservation and security of its official records.

Section 3. Regulations

The (State public health administrative agency), hereinafter referred to as “State Agency,” is authorized to adopt, amend, and repeal regulations for the purpose of carrying out the provisions of this Act.

Section 4. Appointment of State Registrar of Vital Statistics

The (State Health Officer) shall appoint the State Registrar of Vital Statistics, hereinafter referred to as “State Registrar,” in accordance with (applicable civil service laws and regulations).

Section 5. Duties of State Registrar

- (a) The State Registrar shall:
 - (1) Administer and enforce the provisions of this Act and the regulations issued hereunder, and issue instructions for the efficient administration of the system of vital statistics.
 - (2) Direct and supervise the system of vital statistics and the (Office of Vital Statistics) and be custodian of its records.
 - (3) Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the operation of the system of vital statistics.
 - (4) Conduct training programs to promote uniformity of policy and procedures throughout the State in matters pertaining to the system of vital statistics.
 - (5) Prescribe, with the approval of the State Agency, furnish and distribute such forms as are required by this Act and the regulations issued hereunder, or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration.
 - (6) Prepare and publish reports of vital statistics of this State and such other reports as may be required by the State Agency.
 - (7) Provide to local health agencies copies of or data derived from certificates and reports required under this Act, as he or she shall determine are necessary for local health planning and program activities. The State Registrar shall establish a schedule with each local health agency for transmittal of the copies or data. The copies or data shall remain the property of the (Office of Vital Statistics), and the uses which may be made of them shall be governed by the State Registrar.
- (b) The State Registrar may establish or designate offices in the State as provided by regulation to aid in the efficient administration of the system of vital statistics.
- (c) The State Registrar may delegate such functions and duties vested in him or her to employees of the (Office of Vital Statistics) and to employees of any office established or designated under Section 5(b).

Section 6. Content of Certificates and Reports

- (a) In order to promote and maintain nationwide uniformity in the system of vital statistics, the forms of certificates and reports required by this Act, or by regulations adopted hereunder, shall include as a minimum the items recommended by the Federal agency responsible for national vital statistics.
- (b) Each certificate, report, and other document required by this Act shall be prepared in the format approved by the State Registrar.
- (c) All vital records shall contain the date of filing.
- (d) Information required in certificates, forms, records, or reports authorized by this Act may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the State Registrar.

Section 7. Birth Registration

- (a) A certificate of birth for each live birth which occurs in this State shall be filed with the (Office of Vital Statistics), or as otherwise directed by the State Registrar, within 5 days after such birth and shall be registered if it has been completed and filed in accordance with this section.
- (b) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate, certify that the child was born alive at the place and time and on the date stated either by signature or by an approved electronic process, and file the certificate as directed in Section 7(a). The physician or other person in attendance shall provide the medical information required by the certificate within 72 hours after the birth.

- (c) When a birth occurs outside an institution,
 - (1) the certificate shall be prepared and filed by one of the following in the indicated order of priority, in accordance with regulations promulgated by the State Agency:
 - (a) the physician in attendance at or immediately after the birth, or in the absence of such a person;
 - (b) any other person in attendance at or immediately after the birth, or in the absence of such a person;
 - (c) the father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.
 - (2) the State Agency shall by regulation determine what evidence may be required to establish the facts of birth.
- (d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this State, the birth shall be registered in this State and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this State, the birth shall be registered in this State, but the certificate shall show the actual place of birth insofar as can be determined.
- (e) For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise provided by State law or determined by a (court of competent jurisdiction) prior to the filing of the birth certificate. The information about the father shall be entered as provided in Section 7(f).
- (f)
 - (1) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless:
 - (a) paternity has been determined otherwise by (a court of competent jurisdiction), or
 - (b) the mother and the mother's husband execute joint or separate affidavits attesting that the husband is not the father of the child. Affidavits shall be notarized, and signatures of the mother and of the husband shall be individually notarized on any joint affidavit. In such event, information about the father shall be omitted from the certificate, or
 - (c) the mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, and the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the putative father shall be shown as the father on the certificate.
 - (2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.
 - (3) In any case in which paternity of a child is determined by (a court of competent jurisdiction), the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.
 - (4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.
 - (5) Affidavits referenced in this section shall be filed with the State Registrar.
- (g) Either of the parents of the child, or other informant, shall verify the accuracy of the personal data to be entered on the certificate in time to permit the filing of the certificate within the 5 days prescribed in Section 7(a).
- (h) Certificates of birth filed after 5 days, but within one year from the date of birth shall be registered on the standard form of live birth certificate in the manner prescribed above. Such certificates shall not be marked "Delayed." The State Registrar may require additional evidence in support of the facts of birth.

Section 8. Infants of Unknown Parentage; Foundling Registration

- (a) Whoever assumes the custody of a live-born infant of unknown parentage shall report on a form and in a manner prescribed by the State Registrar within 5 days to the (Office of Vital Statistics) the following information:

- (1) the date and city and/or county of finding;
 - (2) sex and approximate birth date of child;
 - (3) name and address of the person or institution with whom the child has been placed for care;
 - (4) name given to the child by the custodian of the child; and
 - (5) other data required by the State Registrar.
- (b) The place where the child was found shall be entered as the place of birth.
- (c) A report registered under this section shall constitute the certificate of birth for the child.
- (d) If the child is identified and a certificate of birth is found or obtained, the report registered under this section shall be placed in a special file and shall not be subject to inspection except upon order of (a court of competent jurisdiction) or as provided by regulation.

Section 9. Delayed Registration of Birth

- (a) When a certificate of birth of a person born in this State has not been filed within one year, a delayed certificate of birth may be filed in accordance with regulations of the State Agency. No delayed certificate shall be registered until the evidentiary requirements as specified in regulation have been met.
- (b) Such birth shall be registered on a delayed certificate of birth form, and show on its face the date of registration. The delayed certificate shall contain a summary statement of the evidence submitted in support of the delayed registration.
- (c) No delayed certificate of birth shall be registered for a deceased person.
- (d) (1) When an applicant as defined by regulation does not submit the minimum documentation required in the regulations for delayed registration or when the State Registrar has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not register the delayed certificate of birth and shall advise the applicant of the reasons for this action, and shall further advise the applicant of his or her right to seek an order from (a court of competent jurisdiction).
- (2) The State Agency may by regulation provide for the dismissal of an application which is not actively pursued.

Section 10. Judicial Procedure to Establish Facts of Birth

- (a) If the State (Agency, Registrar) refuses to file a certificate of birth under the provisions of Section 7 or 9, a petition signed and sworn to by the petitioner may be filed with (a court of competent jurisdiction) for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.
- (b) Such petition shall be made on a form prescribed and furnished or approved by the State Registrar and shall allege:
- (1) that the person for whom a certificate of birth is sought was born in this State;
 - (2) that no certificate of birth of such person can be found in the (Office of Vital Statistics) or (the office of any local custodian of birth certificates);
 - (3) that diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Sections 7 or 9 of this Act and Regulations adopted pursuant thereto;
 - (4) that the State Registrar has refused to file a certificate of birth, and;
 - (5) such other allegations as may be required.
- (c) The petition shall be accompanied by a statement of the State Registrar made in accordance with Sections 7 or 9 and all documentary evidence which was submitted to the State Registrar in support of such registration.
- (d) The court shall fix a time and place for hearing the petition and shall give the State Registrar () days notice of said hearing. The State Registrar or his authorized representative may appear and testify in the proceeding.
- (e) If the court finds, from the evidence presented, that the person for whom a certificate of birth is sought was born in this State, it shall make findings as to the place and date of birth, parentage, and such other findings as may be required and shall issue an order, on a form prescribed and furnished or approved by the State Registrar, to establish

a court order certificate of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

- (f) The clerk of court shall forward each such order to the State Registrar not later than the tenth day of the calendar month following the month in which it was entered. Such order shall be registered by the State Registrar and shall constitute the court order certificate of birth.

Section 11. Certificates of Adoption

- (a) For each adoption decreed by (a court of competent jurisdiction) in this State, the court shall require the preparation of a certificate of adoption on a form prescribed and furnished by the State Registrar. The certificate of adoption shall include such facts as are necessary to locate and identify the certificate of birth of the person adopted or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the court as to the date and place of birth of such person; shall provide information necessary to establish a new certificate of birth of the person adopted; shall identify the order of adoption; and shall be certified by the clerk of court.
- (b) Information necessary to prepare the certificate of adoption shall be furnished by each petitioner for adoption or his or her attorney. The (social service agency) or any person having knowledge of the facts shall supply the court with such additional information as may be necessary to complete the certificate of adoption. The provision of such information shall be prerequisite to the issuance of a final decree in the matter by the court.
- (c) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original certificate of adoption and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.
- (d) Not later than the () day of each calendar month or more frequently, as directed by the State Registrar, the clerk of the court shall forward to the State Registrar certificates of adoption, reports of annulment of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the State Registrar shall require.
- (e) When the State Registrar shall receive a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside this State, he or she shall forward such certificate or report to the State Registrar in the State of birth.
- (f) If the birth occurred in a foreign country, and the child was not a citizen of the United States at the time of birth, the State Registrar shall prepare a "Certificate of Foreign Birth" as provided by Section 12(h). If the child was born in Canada, the State Registrar shall also send a copy of the certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in that country.
- (g) If the child was born in a foreign country but was a citizen of the United States at the time of birth, the State Registrar shall not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedures for obtaining a revised birth certificate for their child through the United States Department of State.

Section 12. Certificates of Birth Following Adoption, Legitimation, Court Determination of Paternity, and Paternity Acknowledgment

- (a) The State Registrar shall establish a new certificate of birth for a person born in this State when he or she receives the following:
- (1) A certificate of adoption as provided in Section 11 or a certificate of adoption prepared and filed in accordance with the laws of another State or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.
 - (2) A request that a new certificate be established as prescribed by regulation and such evidence as required by regulation proving that such person has been legitimated, or that (a court of competent jurisdiction) has determined the paternity of such a person, or that both parents have acknowledged the paternity of such person and request that the surname be changed from that shown on the original certificate.
- (b) When a new certificate of birth is established, the actual city and/or county and date of birth shall be shown. The new certificate shall be substituted for the original certificate of birth in the files, and the original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment shall not be

subject to inspection except upon order of (a court of competent jurisdiction) or as provided by regulation or as otherwise provided by State law.

- (c) Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation.
- (d) Upon receipt of a report or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of (a court of competent jurisdiction) or as provided by regulation.
- (e) Upon written request of both parents and receipt of a sworn acknowledgment of paternity signed by both parents of a child born out of wedlock, the State Registrar shall reflect such paternity on the certificate of birth in the manner prescribed by regulation if paternity is not already shown on the certificate of birth.
- (f) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section, and the date and place of birth have not been determined in the adoption or paternity proceedings, a delayed certificate of birth shall be filed with the State Registrar as provided in Section 9 or Section 10 of this Act before a new certificate of birth is established. The new birth certificate shall be prepared on the delayed birth certificate form.
- (g) When a new certificate of birth is established by the State Registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this State shall be sealed from inspection or forwarded to the State Registrar, as he or she shall direct.
- (h) The State Registrar shall, upon request, prepare and register a certificate in this State for a person born in a foreign country who is not a citizen of the United States and who was adopted through (a court of competent jurisdiction) in this State. The certificate shall be established upon receipt of a certificate of adoption from the court decreeing the adoption, proof of the date and place of the child's birth, and a request from the court, the adopting parents, or the adopted person if 18 years of age or over that such a certificate be prepared. Such certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth. A statement shall also be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued. After registration of the birth certificate in the new name of the adopted person, the State Registrar shall seal and file the certificate of adoption which shall not be subject to inspection except upon order of (a court of competent jurisdiction) or as provided by regulation or as otherwise provided by State law.

Section 13. Death Registration

- (a) A certificate of death for each death which occurs in this State shall be filed with the (Office of Vital Statistics), or as otherwise directed by the State Registrar, within 5 days after death or the finding of a dead body and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.
 - (1) If the place of death is unknown but the dead body is found in this State, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation. If the date cannot be determined by approximation, the date found shall be entered and identified as such.
 - (2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be registered in this State and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this State, the death shall be registered in this State but the certificate shall show the actual place of death insofar as can be determined.
 - (3) In all other cases, the place where death is pronounced shall be considered the place where death occurred.
- (b) The funeral director or person acting as such who first assumes custody of the dead body shall file the certificate of death. He or she shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification from the person responsible therefor. The funeral director or person acting as such shall provide the death certificate containing sufficient information to identify the decedent to the certifier within 48 hours after death.
- (c) The medical certification shall be completed within 48 hours after receipt of the death certificate by the physician in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by the

(Post-Mortem Examinations Act). In the absence or inability of said physician or with his or her approval, the certificate may be completed by his or her associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided such individual has access to the medical history of the case, and death is due to natural causes. The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.

- (d) When inquiry is required by the (Post-Mortem Examinations Act), the (medical examiner, coroner) in the jurisdiction where death occurred or the body was found shall determine the cause of death and shall complete and sign the medical certification within 48 hours after taking charge of the case.
- (e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician at the institution who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process, and, with the permission of the person responsible for the medical certification, release the body to the funeral director or person acting as such. The funeral director or person acting as such must in all cases obtain the medical certification from the person responsible for its completion or obtain assurance that the medical certification has been provided to the State Registrar by an approved electronic process.
- (f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by regulation. The attending physician or (medical examiner, coroner) shall give the funeral director or person acting as such notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician or (medical examiner, coroner).
- (g) Upon receipt of autopsy results or other information that would change the information in the cause-of-death section of the death certificate from that originally reported, the certifier shall immediately file a supplemental report of cause of death with the (Office of Vital Statistics) to amend the record.
- (h) When a death is presumed to have occurred within this State but the body cannot be located, a death certificate may be prepared by the State Registrar only upon receipt of an order of (a court of competent jurisdiction) which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "Presumptive" and shall show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the decree.

Section 14. Delayed Registration of Death

- (a) When a death occurring in this State has not been registered within the time period prescribed by Section 13, a certificate of death may be filed in accordance with regulations of the State Agency. Such certificate shall be registered subject to such evidentiary requirements as the State Agency shall by regulation prescribe to substantiate the alleged facts of death.
- (b) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the State Registrar has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not register the delayed certificate of death and shall advise the applicant of the reasons for this action, and shall further advise the applicant of his or her right to seek an order from (a court of competent jurisdiction).
- (c) Certificates of death registered one year or more after the date of death shall be marked "Delayed" and shall show on their face the date of the delayed registration.

Section 15. Reports of Fetal Death

Each fetal death of 350 grams or more, or if weight is unknown, of 20 completed weeks gestation or more, calculated from the date last normal menstrual period began to the date of delivery, which occurs in this State shall be reported within 5 days after delivery to the (Office of Vital Statistics) or as otherwise directed by the State Registrar. All induced terminations of pregnancy shall be reported in the manner prescribed in Section 16 and shall not be reported as fetal deaths.

- (a) When a fetus is delivered in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the report.
- (b) When a fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the report.

- (c) When a fetal death required to be reported by this section occurs without medical attendance at or immediately after the delivery, or when inquiry is required by the (Post-Mortem Examinations Act), the (medical examiner, coroner) shall investigate the cause of fetal death and shall prepare and file the report within 5 days.
- (d) When a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this State or when a fetus is found in this State and the place of fetal death is unknown, the fetal death shall be reported in this State. The place where the fetus was first removed from the conveyance or the fetus was found shall be considered the place of fetal death.

Section 16. Reports of Induced Termination of Pregnancy

Each induced termination of pregnancy which occurs in this State, regardless of the length of gestation, shall be reported to the (Office of Vital Statistics) within 5 days by the person in charge of the institution in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution, it shall be reported by the attending physician.

Section 17. Vital Reports

The reports required under Sections 15 and 16 are statistical reports to be used only for medical and health purposes. A schedule for the disposition of these reports may be provided by regulation.

Section 18. Authorization for Final Disposition

- (a) The funeral director or person acting as such who first assumes custody of a dead body shall, prior to final disposition of the body, obtain authorization for final disposition of the body. The physician or (medical examiner, coroner) when certifying the cause of death also shall authorize final disposition of the body on a form or in a format prescribed by the State Registrar. If the body is to be cremated, additional authorization for cremation must be obtained from the (medical examiner, coroner) on a form or in a format prescribed by the State Registrar.
- (b) Prior to final disposition of a fetus, irrespective of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from the parents authorization for final disposition. Such authorization shall be on a form or in a format prescribed by the State Registrar.
- (c) With the consent of the physician or (medical examiner, coroner) who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition,
- (d) An authorization for final disposition issued under the law of another State which accompanies a dead body or fetus brought into this State shall be authority for final disposition of the body or fetus in this State.
- (e) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made shall inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by authorization for final disposition.
- (f) Each person in charge of any place for final disposition shall include in the authorization the date of disposition and shall return all authorizations to the funeral director or person acting as such within 10 days after the date of disposition. When there is no person in charge of the place for final disposition, the funeral director or person acting as such shall complete the authorization. At the close of each month the funeral director or person acting as such shall transmit to the State Registrar, in the State where death occurred, all authorizations received during the month.
- [(g) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. Such authorization shall be issued by the State Registrar to a licensed funeral director or person acting as such, upon proper application.]

Section 19. Marriage Registration

- (a) A record of each marriage performed in this State shall be filed with the (Office of Vital Statistics) and shall be registered if it has been completed and filed in accordance with this section and regulations adopted by the State Agency.
- (b) The (official) who issues the marriage license shall prepare the record in the form prescribed or furnished by the State Registrar upon the basis of information obtained from (one of) the parties to be married.

- (c) Each person who performs a marriage shall certify the fact of marriage and return the record to the (official) who issued the license within () days after the ceremony. (This record shall be signed by the witnesses to the ceremony.) (A signed copy shall be given to the parties.)
- (d) Every (official) issuing marriage licenses shall complete and forward to the (Office of Vital Statistics) on or before the () day of each calendar month the records of marriages returned to such official during the preceding calendar month.
- (e) A marriage record not filed within the time prescribed by statute may be registered in accordance with regulations adopted by the State Agency.
- [(f) Provision for a recording fee may be added here if desired.]

Section 20. (Divorce, Dissolution of Marriage, or Annulment) Registration

- (a) A record of each (divorce, dissolution of marriage, or annulment) (decreed, ordered) by any court in this State shall be filed by the (clerk of court) with the (Office of Vital Statistics) and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or his or her legal representative in the form prescribed or furnished by the State Registrar and shall be presented to the (clerk of court) with the petition. In all cases the completed record shall be prerequisite to the entry of the (decree, order).
- (b) The (clerk of court) shall complete and forward to the (Office of Vital Statistics) on or before the () day of each calendar month the records of each (divorce, dissolution of marriage, or annulment) (decree, order) entered during the preceding calendar month.
- [(c) Provision for a recording fee may be added here if desired.]
- [(d) Provision for adoption of regulations by the State Agency may be added here if desired.]

Section 21. Amendment of Vital Records

- (a) A certificate or report registered under this Act may be amended only in accordance with this Act and regulations adopted by the State Agency to protect the integrity and accuracy of vital records.
- (b) A certificate or report that is amended under this section shall indicate that it has been amended, except as otherwise provided in this section or by regulation. A record shall be maintained which identifies the evidence upon which the amendment was based, the date of the amendment, and the identity of the person making the amendment. The State Agency shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year of the event without the certificate or record indicating that it has been amended.
- (c) Upon receipt of a certified copy of an order of (a court of competent jurisdiction) changing the name of a person born in this State and upon request of such person or his or her parents, guardian, or legal representative, the State Registrar shall amend the certificate of birth to show the new name.
- (d) Upon receipt of a certified copy of an order of (a court of competent jurisdiction) indicating the sex of an individual born in this State has been changed by surgical procedure and whether such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.
- (e) When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the State Registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of appeal to (a court of competent jurisdiction).
- (f) When a certificate or report is amended under this section by the State Registrar, the State Registrar shall report the amendment to any other custodian of the vital record and their record shall be amended accordingly.

When an amendment is made to a certificate of marriage or (divorce, dissolution of marriage, or annulment) by the local official issuing the marriage license or the court which entered the decree of (divorce, dissolution of marriage, or annulment), copies of such amendment shall be forwarded to the State Registrar.

Section 22. Preservation of Vital Records

To preserve vital records, the State Registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in the (Office of Vital Statistics). Such reproductions when verified and approved by the State Registrar shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by regulation.

Section 23. Disclosure of Information from Vital Records or Vital Reports

In accordance with Section 24 of this Act and the regulations adopted pursuant thereto:

(a) To protect the integrity of vital records or vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or part of any such record or report unless authorized by this Act and by regulation or by order of (a court of competent jurisdiction). Regulations adopted under this section shall provide for adequate standards of security and confidentiality of vital records.

(b) Disclosure of information which may identify any person [or institution] named in any vital record or report may be made only pursuant to regulations which require submission of written requests for information by researchers and execution of research agreements that protect the confidentiality of the information provided. Such agreements shall prohibit the release by the researcher of any information that might identify any person [or institution] other than releases that may be provided for in the agreement. For purposes of this Act, research means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

Nothing in this Act prohibits the release of information or data which would not identify any person [or institution] named in a vital record or report.

- (c) Appeals from decisions of custodians of vital records, as designated under authority of Section 5(b), who refuse to disclose information from records as prescribed by this section and regulations issued hereunder, shall be made to the State Registrar whose decisions shall be binding upon such custodians.
- (d) When 100 years have elapsed after the date of birth, or 50 years have elapsed after the date of death, marriage, or (divorce, dissolution of marriage, or annulment), the records of these events in the custody of the State Registrar shall become available to the public without restriction, in accordance with regulations which shall provide for the continued safekeeping of the records.
- (e) The Federal agency responsible for national vital statistics may be furnished such copies of records, reports, or data from the system of vital statistics as it may require for national statistics. To furnish such records, reports, or data the State (Agency, Registrar) shall enter into an agreement with the Federal agency indicating the statistical or research purposes for which the records, reports, or data may be used. Such agreement will also set forth the support to be provided by the Federal agency for the collection, processing, and transmission of such records, reports, or data. Upon written request of the Federal agency, the State (Agency, Registrar) may approve, in writing, additional statistical or research uses of the records, reports, or data supplied under the agreement.
- (f) Federal, State, and local governmental agencies may, upon request, be furnished copies of records or data from the system of vital statistics, provided that such copies or data shall be used solely in the conduct of their official duties.
- (g) The State Registrar may, by agreement, transmit copies of records and other reports required by this Act to offices of vital statistics outside this State when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall specify the statistical and administrative purposes for which the records may be used and the agreement shall further provide instructions for the proper retention and disposition of such copies. Copies received by the (Office of Vital Statistics) from offices of vital statistics in other States shall be handled in the same manner as prescribed in this section.

Section 24. Copies from the System of Vital Statistics

In accordance with Section 23 of this Act and the regulations adopted pursuant thereto:

- (a) The State Registrar [and other custodian(s) of vital records authorized by the State Registrar to issue certified copies] shall, upon receipt of an application, issue a certified copy of a vital record in his or her custody or a part thereof to the registrant, his or her spouse, children, parents, or guardian, or their respective authorized representative. Others may be authorized to obtain certified copies when they demonstrate that the record is needed

for the determination or protection of his or her personal or property right. The State Agency may adopt regulations to further define those who may obtain copies of vital records filed under this Act.

- (b) All forms and procedures used in the issuance of certified copies of vital records in the State shall be uniform and provided or approved by the State Registrar. All certified copies issued shall have security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection.
- (c) Each copy or abstract issued shall show the date of registration and copies or abstracts issued from records marked “Amended” shall be similarly marked and show the effective date. Copies issued from records marked “Delayed” shall be similarly marked and shall include the date of registration and a description of the evidence used to establish the delayed certificate. Any copy issued of a “Certificate of Foreign Birth” shall indicate this fact and show the actual place of birth and the fact that the certificate is not proof of United States citizenship for the adoptive child.
- (d) A certified copy or other copy of a death certificate containing the cause of death information shall not be issued except as follows:
 - (1) Upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives; or
 - (2) when a documented need for the cause of death to establish a legal right or claim has been demonstrated; or
 - (3) when the request for the copy is made by or on behalf of an organization that provides benefits to the decedent’s survivors or beneficiaries; or
 - (4) upon specific request by local, State, or Federal agencies for research or administrative purposes approved by the State (Agency, Registrar); or
 - (5) when needed for research activities approved by the State (Agency, Registrar); or
 - (6) upon receipt of an order from a court of competent jurisdiction ordering such release.
- (e) A certified copy of a vital record or any part thereof, issued in accordance with subsections (a), (b), and (c) shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, or a certificate of foreign birth, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.
- (f) Nothing in this section shall be construed to permit disclosure of information contained in the “Information for Medical and Health Use Only” section of the birth certificate or the “Information for Statistical Purposes Only” section of the certificate of marriage or certificate of (divorce, dissolution of marriage, or annulment) unless specifically authorized by the State (Agency, Registrar) for statistical or research purposes. Such data shall not be subject to subpoena or court order and shall not be admissible before any court, tribunal, or judicial body.
- (g) When the State Registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she shall withhold issuance of any copy of that certificate pending an administrative hearing to determine whether fraud or misrepresentation has occurred. The State Registrar shall offer the registrant or the registrant’s authorized representative notice and opportunity to be heard. If upon conclusion of the hearing no fraud or misrepresentation is found, copies may be issued. If upon conclusion of the hearing, fraud or misrepresentation is found, the State Registrar shall remove the certificate from the file. The certificate and evidence shall be retained but shall not be subject to inspection or copying except upon order of (a court of competent jurisdiction) or by the State Registrar for purposes of administering the vital statistics program.
- (h) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record except as authorized in this Act or regulations adopted hereunder.

Section 25. Fees

- (a) The State Agency shall prescribe by regulation the fee to be paid for the following services:
 - (1) Certified copies of certificates or records, or for a search of the files or records when no copy is made, or for copies or information provided for research, statistical, or administrative purposes;
 - (2) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgment, or court order;

- (3) the filing of a delayed registration of a vital event;
 - (4) the amendment of a vital record, [provided that no fee shall be charged for an amendment completed within one year after the filing of the record]; and
 - (5) other services as determined by regulation.
- [(b) In addition to the fee prescribed by regulation for a certified copy of a certificate or record, the State Registrar shall collect an additional fee of \$ ____ for each copy requested to be deposited in the State Vital Statistics Improvement Fund. Funds collected pursuant to this section shall be used to modernize and automate the system of vital statistics in this State. Such funds shall not be used to supplant existing funding which is necessary for the daily operation of the system of vital statistics.]
- (c) Fees collected under this section by the State Registrar shall be deposited in the (general fund, special vital statistics fund) of this State, according to the procedures established by (the laws governing collection, the State Treasurer). [Fees for special programs, research, and the State Vital Statistics Improvement Fund shall be retained in a nonlapsing fund for the improvement of the system of vital statistics.]

Section 26. Persons Required to Keep Records

- (a) Every person in charge of an institution shall keep a record of personal data concerning each person admitted or confined to such institution. This record shall include such information as required for the certificates of birth and death and the reports of fetal death and induced termination of pregnancy required by this Act. The record shall be made at the time of admission from information provided by the person being admitted or confined, but when it cannot be so obtained, the information shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.
- (b) When a dead body or fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be recorded.
- (c) A funeral director, embalmer, sexton, or other person who removes from the place of death, transports, or makes final disposition of a dead body or fetus, in addition to filing any certificate or other report required by this Act or regulations promulgated hereunder, shall keep a record which shall identify the body, and such information pertaining to his or her receipt, removal, delivery, burial, or cremation of such body as may be required by regulations adopted by the State Agency.
- (d) Records maintained under this section shall be retained for a period of not less than () years and shall be made available for inspection by the State Registrar or his or her representative upon demand.

Section 27. Duties to Furnish Information

- (a) Any person having knowledge of the facts shall furnish such information as he or she may possess regarding any birth, death, fetal death, induced termination of pregnancy, marriage, or (divorce, dissolution of marriage, or annulment), upon demand of the State Registrar.
- (b) Any person or institution that in good faith provides information required by this Act or regulations shall not be subject to any action for damages.
- [(c) Not later than the tenth day of the month following the month of occurrence, the administrator of each institution shall send to the (Office of Vital Statistics) a list showing all births and deaths occurring in that institution during the preceding month. Such lists shall be on forms provided by the State Registrar.]
- [(d) Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the (Office of Vital Statistics) a list showing all dead bodies embalmed or otherwise prepared for final disposition or dead bodies finally disposed of by the funeral director during the preceding month. Such list shall be made on forms provided by the State Registrar.]

Section 28. Matching of Birth and Death Certificates

To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the State Registrar is hereby authorized to match birth and death certificates, in accordance with regulations which require

proof beyond a reasonable doubt the fact of death, and to post the facts of death to the appropriate birth certificate. Copies issued from birth certificates marked deceased shall be similarly marked.

Section 29. Penalties

- (a) A fine of not more than \$10,000 or imprisonment of not more than 5 years, or both, shall be imposed on:
- (1) Any person who willfully and knowingly makes any false statement in a certificate, record, or report required by this Act, or in an application for an amendment thereof, or in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof; or
 - (2) any person who, without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by this Act or a certified copy of such certificate, record, or report; or
 - (3) any person who willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by this Act or certified copy thereof so made, counterfeited, altered, amended, or mutilated, or which is false in whole or in part, or which relates to the birth of another person, whether living or deceased; or
 - (4) any employee of the (Office of Vital Statistics or any office designated under Section 5(b)) who willfully and knowingly furnishes or processes a certificate of birth, or certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception; or
 - (5) any person who without lawful authority possesses any certificate, record, or report, required by this Act or a copy or certified copy of such certificate, record, or report knowing same to have been stolen or otherwise unlawfully obtained.
- (b) A fine of not more than \$1,000 or imprisonment of not more than one year, or both, shall be imposed on:
- (1) Any person who willfully and knowingly refuses to provide information required by this Act or regulations adopted hereunder; or
 - (2) any person who willfully and knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this Act; or
 - (3) any person who willfully and knowingly neglects or violates any of the provisions of this Act or refuses to perform any of the duties imposed upon him or her by this Act.

Section 30. Applicability

The provisions of this Act also apply to all certificates of birth, death, marriage, and (divorce, dissolution of marriage, or annulment) and reports of fetal death and induced termination of pregnancy previously received by the (Office of Vital Statistics) and in the custody of the State Registrar or any other (custodian of vital records).

Section 31. Severability

If any provision of this Act (or the application thereof to any person or circumstances) is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable.

Section 32. Uniformity of Interpretation

This Act shall be so construed as to effectuate its general purpose to make uniform the laws of those States which enact it.

Section 33. Short Title

This Act may be cited as the "Vital Statistics Act."

Section 34. Repeal

(Section ____ and Section _____, _____ Laws of _____ are hereby repealed; and) all other laws or parts of laws which are inconsistent with the provisions of this Act are hereby repealed.

Section 35. Time of Taking Effect

This Act shall take effect

MODEL STATE VITAL STATISTICS REGULATIONS

This set of Model State Vital Statistics Regulations has been developed to supplement the Model State Vital Statistics Act of 1992 and to serve as a more detailed guide to State and local registration officials who administer the vital statistics system of the United States.

NOTE: Where the need for variation was apparent, parentheses, “(),” have been placed around the word or phrase. In cases where recommendations were considered optional, brackets, “[],” have been placed around the word or phrase.

Contents

I. Duties of State registrar	20
(authorization: section 5 of model act)	
2. Birth registration	21
(authorization: section 7 of model act)	
3. Infants of unknown parentage; foundling registration	22
(authorization: section 8 of model act)	
4. Delayed registration of birth.	22
(authorization: section 9 of model act)	
5. Certificates of birth following adoption, legitimation, paternity determination, and paternity acknowledgment	23
(authorization: section 12 of model act)	
6. Death registration	24
(authorization: section 13 of model act)	
7. Delayed registration of death.	25
(authorization: section 14 of model act)	
8. Disposition of reports of fetal death and induced termination of pregnancy.	25
(authorization: section 17 of model act)	
9. Authorization for final disposition.	26
(authorization: section 18 of model act)	
10. Delayed registration of marriage.	26
(authorization: section 19 of model act)	
II. Amendment of vital records	26
(authorization: section 21 of model act)	
12. Record preservation	28
(authorization: section 22 of model act)	
13. Disclosure of records	29
(authorization: sections 23 and 24 of model act)	
14. Copies of data from vital records	30
(authorization: section 24 of model act)	
15. Fees	31
(authorization: section 25 of model act)	
16. Persons required to keep records	31
(authorization: section 26 of model act)	
17. Matching of birth and death certificates	32
(authorization: section 28 of model act)	

Model State Vital Statistics Regulations

Regulation 1. Duties of State Registrar

(Authorization: Section 5 of the Model Act)

Regulation 1 .1 Media, (Forms, Certificates, Electronic Data Files)

All forms, certificates, records, electronic data files, and reports used in the system of vital statistics are the property of the (State public health administrative agency) -hereinafter referred to as “State Agency”-and shall be surrendered to the State Registrar of Vital Statistics- hereinafter referred to as “State Registrar” -upon demand. The forms prescribed and distributed by the State Registrar for reporting vital statistics shall be used only for official purposes. Only those forms furnished or approved by the State Registrar shall be used in the reporting of vital statistics or in making copies thereof. Electronic data records will be accepted only when standards set by the State Registrar are met.

Regulation 1.2 Requirements for Preparation of Certificates

All forms, certificates, and reports relating to vital statistics must either be typewritten or printed legibly in black, unfading ink, or stored on electronic media approved by the State Registrar. All signatures required shall be entered in black, unfading ink or stored electronically. Unless otherwise directed by the State Registrar, no certificate shall be complete and correct and acceptable for registration:

- (a) That does not contain the certifier’s name typed or printed legibly [under his or her signature];
- (b) that does not supply all items of information called for thereon or satisfactorily account for their omission;
- (c) that contains alterations or erasures;
- (d) that does not contain handwritten signatures as required;
- (e) that is marked “copy” or “duplicate”;
- (f) that is a carbon copy;
- (g) that is prepared on an improper form;
- (h) that contains improper or inconsistent data;
- (i) that contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease; or
- (j) that is not prepared in conformity with regulations or instructions issued by the State Registrar,

Regulation 1.3 Designation of Local Registration Offices

The State Registrar shall determine whether offices other than the (Office of Vital Statistics) are needed in this State to aid in the efficient administration of the system of vital statistics. Such determination shall be based on an evaluation of the most efficient method to meet the needs of the people of this State with respect to the establishment and operation of the system of vital statistics.

If the State Registrar determines that additional offices are necessary, such offices shall be designated with the approval of the State Agency. The duties and responsibilities may be assigned to currently existing offices or special branch offices of the (Office of Vital Statistics) may be established in those areas where they are deemed necessary, or a combination of existing offices and branch offices may be used. In all cases where existing offices are utilized, the employees of such offices shall be subject to the control of the State Registrar when they are performing functions relating to the system of vital statistics.

The State Registrar shall appoint a local registrar for each local registration office so designated. The local registrar shall, with the approval of the State Registrar, appoint one or more deputy local registrars of vital statistics. The deputy local registrar shall perform the duties of the local registrar in the absence or incapacity of such local registrar and shall perform such other duties as may be prescribed. The State Registrar may remove a local registrar or deputy local registrar for cause.

The State Registrar shall delegate such duties and responsibilities to such offices as he or she deems necessary to ensure the efficient operation of the system of vital statistics. These may include any or all of the following:

- (a) The receipt and processing of records of birth and death and reports of fetal death occurring within their registration district. This would include the receipt of these records and reports from the person responsible for their filing, checking them for accuracy and completeness, and forwarding them to the (Office of Vital Statistics) at intervals prescribed by the State Registrar.
- (b) Maintenance of all birth and death records received for filing. These records are considered to be in the custody of the State Registrar and are subject to the same requirements regarding disclosure as are records in the possession of the State Registrar. Records maintained by a local registration office shall be surrendered to the State Registrar upon demand.
- (c) Issuance of certified copies of birth and/or death records. The records from which the certified copies are issued shall be those maintained in the local registration office or shall be provided by the (Office of Vital Statistics). All forms and procedures used to issue the copies shall be provided or approved by the State Registrar. If it is deemed appropriate and feasible, any such office may be provided access to all birth and/or death records filed in this State.
- (d) Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital statistics.
- (e) Performing such other duties as may be prescribed by the State Registrar.

The State Registrar, with the approval of the State Agency, shall determine the responsibilities and duties of each office independently.

Regulation 2. Birth Registration Out-of-Institution Birth-Documentary Evidence

(Authorization: Section 7 of the Model Act)

When a birth occurs in this State outside of a hospital or institution, and the birth certificate is filed before the first birthday, additional evidence in support of the facts of birth may be required.

A certificate for the birth shall be completed and filed upon presentation of the following evidence by the individual responsible for filing the certificate:

- (a) Evidence of pregnancy, such as but not limited to:
 - (1) Prenatal record, or
 - (2) a statement from a physician or other health care provider qualified to determine pregnancy, or
 - (3) a home visit by a public health nurse or other health care provider, or
 - (4) other evidence acceptable to the State Registrar.
- (b) Evidence that the infant was born alive, such as but not limited to:
 - (1) A statement from the physician or other health care provider who saw or examined the infant, or
 - (2) an observation of the infant during a home visit by a public health nurse, or
 - (3) other evidence acceptable to the State Registrar.
- (c) Evidence of the mother's presence in this State on the date of the birth, such as but not limited to:
 - (1) If the birth occurred in the mother's residence,
 - (a) a driver's license, or a State-issued identification card, which includes the mother's current residence on the face of the license/card, or
 - (b) a rent receipt that includes the mother's name and address, or
 - (c) any type of utility, telephone, or other bill that includes the mother's name and address, or
 - (d) other evidence acceptable to the State Registrar.
 - (2) If the birth occurred outside of the mother's place of residence, and the mother is a resident of this State, such evidence shall consist of:
 - (a) An affidavit from the tenant of the premises where the birth occurred, that the mother was present on those premises at the time of the birth, and

- (b) evidence of the affiant's residence similar to that required in paragraph (c)(1) of this regulation, and
 - (c) evidence of the mother's residence in the State similar to that required in paragraph (c)(1) of this regulation, or
 - (4) other evidence acceptable to the State Registrar.
- (3) If the mother is not a resident of this State, such evidence must consist of clear and convincing evidence acceptable to the State Registrar.

Regulation 3. Infants of Unknown Parentage; Foundling Registration

(Authorization: Section 8 of the Model Act)

The report for an infant of unknown parentage shall be registered on a current certificate of live birth and shall:

- (a) Have "foundling" plainly marked in the top margin of the certificate;
- (b) show the required facts as determined by approximation and have parentage data left blank; and
- (c) show the name and title of the custodian in lieu of the attendant.

When a report has been placed in a special file as provided by (Section 8(d) of the Model Act), the State Registrar may inspect such information for purposes of properly administering the vital statistics program.

Regulation 4. Delayed Registration of Birth

(Authorization: Section 9 of the Model Act)

Regulation 4.1 Delayed Certificate of Birth Form

All certificates registered one year or more after the date of birth are to be registered on a delayed certificate of birth form prescribed and furnished by the State Registrar.

Regulation 4.2 Who May Request the Registration of a Delayed Certificate of Birth

Any person born in this State whose birth is not recorded in this State, his or her parent or guardian, or any other person age 18 years or over acting for the registrant and having personal knowledge of the facts of birth may request the registration of a delayed certificate of birth, subject to these regulations and instructions issued by the State Registrar.

Each application for a delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is age 18 years or over and is competent to sign and swear to the accuracy of the facts stated therein; otherwise the application shall be signed and sworn to by one of the parents of the registrant, his or her guardian, or any other person age 18 years or over having personal knowledge of the facts of birth.

Regulation 4.3 Facts to be Established for a Delayed Registration of Birth

The minimum facts which must be established by documentary evidence shall be the following:

- (a) The full name of the person at the time of birth;
- (b) the date of birth and State of birth;
- (c) the full maiden name of the mother; and
- (d) the full name of the father; except that if the mother was not married either at the time of conception or birth the name of the father shall not be entered on the delayed certificate except as provided in Regulation 4.4.

Regulation 4.4 Delayed Registration Following a Legal Change of Status

When evidence is presented reflecting a legal change of status by adoption, legitimation, paternity determination, or acknowledgment of paternity, a new delayed certificate may be established to reflect such change.

The existing certificate and the evidence upon which the new certificate was based shall be placed in a special file. Such file shall not be subject to inspection except upon order of (a court of competent jurisdiction) or by the State Registrar for purposes of properly administering the vital statistics program.

Regulation 4.5 Documentary Evidence - Requirements

To be acceptable for filing, the name of the registrant at the time of the birth and the date and place of birth entered on a delayed certificate of birth shall be supported by at least:

- (a) A hospital record created at the time of birth, or two pieces of acceptable documentary evidence, if the record is filed within 10 years after the date of birth; or
- (b) three pieces of acceptable documentary evidence, if the record is filed 10 years or more after the date of birth.

Facts of parentage shall be supported by at least one document.

Regulation 4.6 Documentary Evidence - Acceptability

The State Registrar shall determine the acceptability of all documentary evidence submitted.

- (a) Documents presented, including but not limited to census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document. Documents must have been established at least one year prior to the date of application. Affidavits of personal knowledge are not acceptable as evidence to establish a delayed certificate of birth.
- (b) All documents submitted in evidence:
 - (1) for persons age 10 years or over, must have been established at least 10 years prior to the date of application, or within 3 years of the date of birth; and
 - (2) for persons under 10 years of age, must be dated at least one year prior to the date of application or within the first year of life.

Regulation 4.7 Abstraction of Documentary Evidence

The State Registrar, or his or her designated representative, shall abstract on the delayed certificate of birth a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

- (a) The title or description of the document;
- (b) the name and address of the custodian;
- (c) the date of the original filing of the document being abstracted; and
- (d) all birth facts required by Regulation 4.3 contained in each document accepted as evidence.

All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.

Regulation 4.8 Verification by the State Registrar

The State Registrar, or his or her designated representative shall verify:

- (a) That no prior birth certificate is on file for the person whose birth is to be recorded;
- (b) that he or she has reviewed the evidence submitted to establish the facts of birth; and
- (c) that the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the document.

Regulation 4.9 Dismissal After 1 Year

Applications for delayed certificates which have not been completed within 1 year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall so advise the applicant and all documents submitted in support of such registration shall be returned to the applicant.

Regulation 5. Certificates of Birth Following Adoption, Legitimation, Paternity Determination, and Paternity Acknowledgment

(Authorization: Section 12 of the Model Act)

Regulation 5.1 Legitimation

If the natural parents marry after the birth of a child, a new certificate of birth shall be prepared by the State Registrar for a child born in this State upon receipt of a sworn acknowledgment of paternity signed by the natural parents of said child together with a certified copy of the parents' marriage record. However, if another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by (a court of competent jurisdiction), or following adoption.

Regulation 5.2 Court Determination of Paternity

A new certificate of birth shall be prepared by the State Registrar for a child born in this State upon receipt of a certified copy of a court determination of paternity, together with a request from the natural mother or person having legal custody of said child that such new certificate be prepared. If the surname of the child is not decreed by the court, the request for the new certificate shall specify the surname to be placed on the certificate.

Regulation 5.3 Acknowledgment of Paternity

- (a) A new certificate of birth shall be prepared by the State Registrar for a child born out of wedlock in this State upon receipt of a sworn acknowledgment of paternity signed by both parents and a written request by both parents that the child's surname be changed on the certificate. However, if another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by (a court of competent jurisdiction), or following adoption.
- (b) In lieu of preparing a new birth certificate under the provisions of Regulations 5.1, 5.2, and 5.3, the original certificate may be altered provided that the fact of alteration is not obvious on the face of the certificate.

Regulation 5.4 New Certificate

The new certificate of birth prepared after adoption, legitimation, court determination of paternity, or acknowledgment of paternity shall be on the form in use at the time of its preparation and shall include the following items and such other information necessary to complete the certificate:

- (a) The name of the child;
- (b) the date and city and/or county of birth as transcribed from the original certificate;
- (c) the names and personal particulars of the adoptive parents or of the natural parents, whichever is appropriate;
- (d) the name of the attendant, printed or typed;
- (e) the birth number assigned to the original birth certificate; and
- (f) the original filing date.

The information necessary to locate the existing certificate and to complete the new certificate shall be submitted to the State Registrar on forms prescribed or approved by him or her.

Regulation 5.5 Existing Certificate to Be Placed in a Special File

After preparation of the new certificate, the existing certificate and the evidence upon which the new certificate was based are to be placed in a special file. Such file shall not be subject to inspection except upon order of (a court of competent jurisdiction) or by the State Registrar for purposes of properly administering the vital statistics program or as otherwise provided by State law.

Regulation 6. Death Registration

(Authorization: Section 13 of the Model Act)

Regulation 6.1 Acceptance of Incomplete Death Certificate

If all the information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director or person acting as such shall file the certificate with all information that is available and satisfactorily account for all the items that are omitted. In all cases the medical certification must be provided by the

person responsible for such certification. If the cause of death is unknown or pending investigation, the cause of death shall be shown as such on the certificate. The person providing the medical certification of cause of death also shall authorize the final disposition of the body.

A supplemental report providing the personal information omitted from the original certificate shall be filed by the funeral director or person acting as such with the State Registrar as soon as possible, but in all cases within 30 days of the date the death occurred.

A supplemental report providing the medical information omitted from the original certificate shall be filed by the certifier with the State Registrar within 30 days. If extended time is needed to get information, the State Registrar shall be notified. The State Registrar may provide for an extension not to exceed 60 days.

The supplemental report(s) shall be made a part of the existing death certificate. Such report(s) shall be considered an amendment, and the death certificate shall be marked "Amended."

Regulation 6.2 Hospital or Institution May Assist in Preparation of Certificate

When a death occurs in a hospital or other institution and the death is not under the jurisdiction of the (medical examiner, coroner), the person in charge of such institution, or his or her designated representative, may initiate the preparation of the death certificate as follows:

- (a) (1) Place the full name of the decedent and the date, time, and place of death on the death certificate and obtain from the attending physician the medical certification of cause of death; or
- (2) place the full name of the decedent and the date, time, and place of death on the death certificate and obtain the pronouncing physician's attestation.
- (b) Present the partially completed death certificate to the funeral director or person acting as such.

Regulation 7. Delayed Registration of Death

(Authorization: Section 14 of the Model Act)

The registration of a death after the time prescribed by statute and regulations shall be registered on the current certificate of death form in the manner prescribed below:

- (a) If the attending physician or (medical examiner, coroner) at the time of death and the attending funeral director or person who acted as such are available to complete the certificate of death, it may be completed without additional evidence and filed with the State Registrar. For those certificates filed one year or more after the date of death, the physician or (medical examiner, coroner) and the funeral director or person who acted as such must state in accompanying affidavits that the information on the certificate is based on records kept in their files.
- (b) In the absence of the attending physician or (medical examiner, coroner) and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the decedent and shall be accompanied by two documents which identify the decedent and his or her date and place of death.

In all cases, the State Registrar may require additional documentary evidence to prove the facts of death.

A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

Regulation 8. Disposition of Reports of Fetal Death and Induced Termination of Pregnancy

(Authorization: Section 17 of the Model Act)

Reports of fetal death and induced termination of pregnancy are statistical reports only. The State Registrar is authorized to dispose of such reports when all statistical processing of the reports has been accomplished. However, the State Registrar may establish a file of such reports so they will be available for future statistical and research projects. Such file shall be retained for as long as the State Registrar deems necessary and it shall then be destroyed. The file may be maintained by photographic, electronic, or other means as determined by the State Registrar, in which case the original report from which the photographic, electronic, or other file was made shall be destroyed.

The provisions of this regulation shall also apply to all records or reports of fetal death or induced termination of pregnancy filed prior to the adoption of this regulation.

Regulation 9. Authorization for Final Disposition

(Authorization: Section 18 of the Model Act)

Regulation 9.1 Removal of Body

Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:

- (a) Obtain assurance from the attending physician that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death and receive permission to remove the body from the place of death; or
- (b) notify the (medical examiner, coroner) if the case comes within his or her jurisdiction and obtain authorization to remove the body.

[Regulation 9.2 Authorization for Disinterment and Reinterment

An authorization for disinterment and reinterment of a dead body shall be issued by the State Registrar upon receipt of a written application signed by the next of kin and the person who is in charge of the disinterment or upon receipt of an order of (a court of competent jurisdiction) directing such disinterment.

Upon receipt of a court order or signed permission of the next of kin, the State Registrar may issue one authorization to permit disinterment and reinterment of all remains in a mass disinterment provided that, insofar as possible, the remains of each body be identified and the place of disinterment and reinterment specified. The authorization shall be permission for disinterment, transportation, and reinterment.

A dead body deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.]

Regulation 10. Delayed Registration of Marriage

(Authorization: Section 19 of the Model Act)

The registration of a marriage after the time prescribed by statute shall be made on the current certificate of marriage form in the manner prescribed below:

- (a) The certificate must be filed with the (appropriate official) where the marriage license was originally issued.
- (b) To be acceptable for registration by the State Registrar the delayed certificate of marriage must be supported by:
 - (1) A copy of the license or of the application for license if the license was granted, and
 - (2) a signed statement from the officiant or the custodian of the records of the officiant and from one witness to the wedding ceremony indicating that a marriage ceremony was performed and the date and place of the marriage.
- (c) In all cases, the State Registrar may require additional documentary evidence to prove the facts of marriage.
- (d) When an applicant does not submit the minimum documentation required for delayed registration or when the State Registrar has cause to question the validity or adequacy of the statements or the documentary evidence, and if the deficiencies are not corrected, the State Registrar shall not register the delayed certificate of marriage and shall advise the applicant of the reasons for this action, and shall further advise the applicant of his or her right to seek an order from (a court of competent jurisdiction).

Regulation 11. Amendment of Vital Records

(Authorization: Section 21 of the Model Act)

Regulation 11 .1 Amendment of Minor Errors on Birth Certificates During the First Year

Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the State Registrar within the first year after the date of birth either upon his or her own observation or query or upon request of a person as defined in Regulation 11.3. When such additions or minor amendments are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the certificate in such a way as not to become a part of any certified copy issued. The certificate shall not be marked "Amended."

Regulation 11.2 All Other Amendments

Unless otherwise provided in these regulations or in the statute, all other amendments to vital records shall be supported by:

- (a) An affidavit setting forth:
 - (1) Information to identify the certificate;
 - (2) the incorrect data as listed on the certificate;
 - (3) the correct data as they should appear; and
- (b) One or more items of documentary evidence which support the alleged facts and were established at least 5 years prior to the date of application for amendment or within 7 years of the date of the event.

The State Registrar shall evaluate the evidence submitted in support of any amendment, and when he or she finds reason to doubt its validity or adequacy, the amendment may be rejected and the applicant advised of the reasons for this action.

Regulation 11.3 Who May Apply

- (a) To amend a birth certificate, application may be made by one of the parents if the registrant is under age 18, the guardian, the registrant if he or she is age 18 years or over, or the individual responsible for filing the certificate.
- (b) To amend a death certificate, application may be made by the next of kin, the informant listed on the death certificate, or the funeral director or person acting as such who submitted the death certificate. Applications to amend the medical certification of cause of death shall be made only by the physician who provided the medical certification or the (medical examiner, coroner).
- (c) Applications for amendment of certificates of marriage shall be made jointly by both parties to the marriage or by the survivor. In the event the marriage to which the application relates was terminated by (divorce, dissolution of marriage, or annulment) on or before the date of application for amendment, the applicant may request amendment only of those items on the certificate of marriage which relate to the applicant.
- (d) Applications for amendment of matters contained in certificates of (divorce, dissolution of marriage, or annulment) which are not part of the (decree, court order) may be made by either party to the marriage so terminated. Applications for amendment of matters contained in certificates of (divorce, dissolution of marriage, or annulment) which are part of the (decree, court order) may only be made by the court which ordered the (divorce, dissolution of marriage, or annulment) upon which the report was made.

Regulation 11.4 Amendment of Registrant's Given Names on Birth Certificates Within the First Year

Until the registrant's first birthday, given names may be amended upon receipt of an affidavit signed by the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.

After one year from the date of birth the provisions of Regulation 11.2 must be followed to amend a given name if the name was entered incorrectly on the birth certificate. A legal change of name order must be submitted from (a court of competent jurisdiction) to change a given name after one year.

Regulation 11.5 Addition of Given Names on Birth Certificates

Until the registrant's seventh birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate upon receipt of an affidavit signed by the parent(s) named on the certificate or the guardian, person, or agency having legal custody of the registrant.

After 7 years the provisions of Regulation 1.1.2 must be followed to add a given name.

Regulation 11.6 Amendment of Cause of Death

The cause of death may be amended only upon receipt of a signed statement or an approved electronic notification from the physician or (medical examiner, coroner) who originally certified the cause of death. In the absence or inability of the physician or with his or her approval, the cause of death may be amended upon receipt of a signed statement or an approved electronic notification from his or her associate physician, or the chief medical officer of the institution in which death occurred, or a (medical examiner, coroner) who assumes jurisdiction of the case provided such individual has access to the medical history of the case. The State Registrar may require documentary evidence to substantiate the requested amendment.

Regulation 11.7 Amendment of the Same Item More than Once

Once an amendment of an item is made on a vital record, that item shall not be amended again except upon receipt of a court order from (a court of competent jurisdiction).

Regulation 11.8 Methods of Amending Certificates

Certificates of birth, death, marriage, and (divorce, dissolution of marriage, or annulment) may be amended by the State Registrar in the following manner:

- (a) Completing the item in any case where the item was left blank on the existing certificate.
- [(b) Preparing a new certificate showing the correct information when the State Registrar deems that the nature of the amendment so requires.

The new certificate shall be prepared on the form used for registering current events at the time of amendment. Except as provided elsewhere in these regulations, the item number of the entry that was amended shall be identified on the new certificate.

In all cases, the new certificate shall show the date the amendment was made and be given the same State file number as the existing certificate. Signatures, if any, appearing on the existing certificate shall be typed on the new certificate.]

- [(c) Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry shall not obliterate such entry.]
- [(d) Completing a special form which shall include the incorrect information as it appears on the original certificate, the correct information as it should appear, an abstract of the documentation used to support the amendment, and sufficient information about the registrant to link the special form to the original record. When a copy of the record is issued, a copy of the amendment must be included.]
- [(e) Amending a record maintained in an electronic file by changing the item(s) to be amended. The date of the amendment must be made a part of the record and the original information must also be retained.]
- [(f) A certificate of birth amended pursuant to the provisions of (Section 21(d) of the Model Act) shall be amended by preparing a new certificate. The item numbers of the entries that were amended shall not, however, be identified on the new certificate or on any certified copies that may be issued of that certificate.]

Regulation 12. Record Preservation

(Authorization: Section 22 of the Model Act)

When an authorized reproduction of a vital record has been properly prepared by the State Registrar and when all steps have been taken to ensure the continued preservation of the information, the record from which such authorized reproduction was made may be disposed of by the State Registrar. Such record may not be disposed of, however, until the quality of the authorized reproduction has been tested to ensure that acceptable certified copies can be issued and until a security copy of such document has been placed in a secure location removed from the building where the authorized reproduction is housed. Such security copy shall be maintained in such a manner to ensure that it can replace the authorized reproduction should the authorized reproduction be lost or destroyed.

The State Registrar shall offer the original documents from which the authorized reproductions are made to the (State Archival Authority). The (State Archival Authority) may be allowed to retain permanently such records provided they

adhere to the restrictions in the vital statistics law related to access to such records. If the (State Archival Authority) does not wish to place such records in their files the State Registrar shall be authorized to destroy the documents. Such destruction shall be by approved methods for disposition of confidential or sensitive documents.

Regulation 13. Disclosure of Records

(Authorization: Sections 23 and 24 of the Model Act)

To protect the integrity of vital records:

- (a) The State Registrar or other custodians of vital records shall not permit inspection of, or disclose information contained in, vital statistics records, or copy or issue a copy of all or part of any such record unless he or she is satisfied that the applicant is authorized to obtain a copy or abstract of such record.
 - (1) Family members doing genealogical research and genealogists representing a family member may obtain copies of records needed for their research. Unless the registrant is deceased, appropriate authorizations shall be required from the registrant or relevant family members as defined in Section 24(a) for the release of the records.
 - (2) The term “authorized representative” shall include an attorney, physician, funeral director, or other designated agent acting in behalf of the registrant or his or her family.
 - (3) The natural parents of adopted children, when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be authorized to obtain copies or abstracts of the record.
- (b) All requests for disclosure of information contained in vital records or reports for research which identifies any person [or institution] shall be submitted in writing to the State (Agency, Registrar).
 - (1) Each request must contain:
 - (a) Objectives of the research;
 - (b) peer review and approval of study protocol for any contact of study subjects;
 - (c) storage and security measures to be taken to assure confidentiality of identifying information, and provision for return or destruction of the information at the conclusion of the research;
 - (d) time frame of the study;
 - (e) acknowledgement and agreement that ownership of all information provided by the State (Agency, Registrar) shall remain exclusively in the State Agency and that use of that information by the researcher constitutes a license only for usage during the course of the research and creates no ownership rights by the researcher; and
 - (f) acknowledgment and agreement that release of identifying information contained in vital records or reports by the researcher to any other person or entity may be made only with prior written approval of the State (Agency, Registrar).
 - (2) All requests shall be reviewed to determine compliance with the following:
 - (a) The request contains all required elements;
 - (b) the request adequately justifies the need for the requested information;
 - (c) the requested information can be provided within the time frame set forth in the request; and
 - (d) the State Agency has adequate resources with which to comply with the request;
 - (3) The State (Agency, Registrar) shall enter into research agreements for all approved research requests. Each research agreement shall specify exactly what information will be disclosed and shall prohibit release by the researcher of any information which may identify any person or institution. Additionally, each research agreement may provide that in the event of breach the principal investigator(s) and collaborator(s) shall be barred from participation in future research agreements and shall pay to the State Agency the sum of \$(5,000.00) per violation of the research agreement.

- (c) For all requests for disclosure of information contained in vital records or reports for research which does not contain identifiers but may identify any person [or institution], a signed agreement must be obtained from the person or entity requesting the information which provides the following assurances:
- (1) The recipient will neither use nor permit others to use the information in any way except for statistical reporting and analysis;
 - (2) the recipient will neither release nor permit others to release the information or any part of the information to any person who is not a member of the organization without approval of the State (Agency, Registrar);
 - (3) the recipient will neither attempt to link nor permit others to attempt to link the data set with individually identifiable records from any other data set;
 - (4) the recipient will neither use nor will allow anyone else to attempt to use the information to learn the identity of any person [or institution] included in the information provided; and
 - (5) if the identity of any person [or institution] is discovered inadvertently, the recipient will not make use of this knowledge; will immediately notify the State (Agency, Registrar); will safeguard or destroy the information which led to the identification of the individual [or institution] as requested by the State (Agency, Registrar); and will inform no one else of the discovery.
- (d) The State Registrar or local custodian shall not issue a certified copy of a record until the applicant has provided sufficient information to locate the record. Whenever it shall be deemed necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may **also** require identification of the applicant or a sworn statement.
- (e) When 100 years have elapsed after the date of birth, or 50 years have elapsed after the date of death, marriage, or (divorce, dissolution of marriage, or annulment), such records in the custody of the State Registrar shall become available to any person upon submission of an application containing sufficient information to locate the record. For each copy issued or search of the files made, the State Registrar shall collect the same fee as is charged for the issuance of certified copies or a search of the files for other records in his or her possession.

[The State (Agency, Registrar) may establish a public room where copies of these records will be made available for viewing. Such records will be made available in photographic or other suitable format and adequate facilities for viewing will be provided. Each person using this facility will be charged a fee of ____ per hour or fraction thereof.]

Regulation 14. Copies of Data from Vital Records

(Authorization: Section 24 of the Model Act)

- (a) Certified copies of vital records may be made by mechanical, electronic, or other reproductive processes.
- (b) Each certified copy issued shall be certified as a true copy by the officer in whose custody the record is entrusted and shall include the date issued, the name of the issuing officer, the registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. In addition, all certified copies of a birth record shall include at a minimum the following information: certificate number, given name(s), surname, generational identifier, date of birth, State and city or county of birth, sex, and date of filing. In addition, all certified copies of a death record shall include at a minimum the following information: given name(s), surname, generational identifier, date of death, date of birth or age, State and city or county of death, sex, and date of filing.
- (c) All certified copies shall include, at a minimum, the following security features:
 - (1) sensitized security paper;
 - (2) background security design;
 - (3) copy void pantograph;
 - (4) consecutive numbering;
 - [(5) engraved border;
 - (6) prismatic printing;
 - (7) erasable fluorescent background inks;

- (8) nonoptical brightener paper;
 - (9) microline;
 - (10) complex colors;
 - (11) security thread;
 - (12) intaglio print;
 - (13) security laminate.]
- (d) Verification of the facts contained in a vital record may be furnished by the State Registrar to any Federal, State, county, or municipal government agency or to any other agency representing the interest of the registrant. Such verifications shall be on a form prescribed and furnished by the State Registrar or on a form furnished by the requesting agency and acceptable to the State Registrar; or, the State Registrar may authorize the verification in other ways when it shall prove in the best interests of his or her office.

Regulation 15. Fees

(Authorization: Section 25 of the Model Act)

- (a) No certified or uncertified copy shall be issued until the fee for such copy is received unless specific approval has been obtained from the State Registrar or otherwise provided for by statute or regulation.
- (b) Fee for services:
 - (1) (a) For a () year search of the files and issuance of a certified abstract of a vital record if found. . . \$ ___
 - (b) For each additional certified abstract of the same vital record issued at the same time \$ ___
 - (2) (a) For a () year search of the files and issuance of a certified or uncertified facsimile of a birth, death, marriage, or divorce record if found. \$ ___
 - (b) For each additional facsimile of the same birth, death, marriage, or divorce record issued at the same time \$ ___
 - (3) For a search of the birth, death, marriage, or divorce files when no record is found or no copy is made the fee per hour or portion thereof of search is \$ ___
 - (4) For a verification of the facts contained in a birth, death, marriage, or divorce record when no copys issued \$ ___
 - (5) For preparation of a new certificate of birth by adoption, legitimation, or paternity determination which does (not) include one certified copy \$ ___
 - (6) For preparing a certificate of foreign birth which does (not) include one certified copy \$ ___
 - (7) For amending a birth, death, marriage, or divorce certificate [one year or more after the event] which does (not) include one certified copy \$ ___
 - (8) For preparing and filing a delayed certificate of birth, death, marriage, or divorce which does (not) include one certified copy \$ ___
 - (9) Additional handling charge for nonroutine, expedited service and all special delivery mail that requires special attention \$ ___
 - (10) A fee may be charged for special services not specified above. The fee shall be the actual cost for providing the service as determined by the State Registrar.

Regulation 16. Persons Required to Keep Records

(Authorization: Section 26 of the Model Act)

Each funeral director shall keep a record containing, as a minimum, the following information about each dead body or fetus the funeral director handles:

- (a) The date, place, and time of receipt;
- (b) the date, place, and manner of disposition;
- (c) if the dead body or fetus is delivered to another funeral director, the date of such delivery and the name and address of the funeral director to whom delivered; and
- (d) the items required by the certificate of death for those deaths for which the funeral director was required to file the certificate.

Regulation 17. Matching of Birth and Death Certificates

(Authorization: Section 28 of the Model Act)

When carrying out the birth and death matching program, the State Registrar shall establish written guidelines which provide the standards for determining a match does exist. These standards shall specify the information about the decedent which should be available and which should be compared to the information on the birth certificate before a match can be made. These items include as a minimum: name of decedent; name of father and maiden name of mother; date of birth or age of decedent; State of birth of decedent; and marital status of decedent. No match shall be made unless there is documented proof of the fact of death.

The date of death, the State where death occurred, and the death certificate number shall be posted to the birth certificate.

**DEPARTMENT OF
HEALTH & HUMAN SERVICES**

Public Health Service
Centers for Disease Control and Prevention
National Center for Health Statistics
6525 Belcrest Road
Hyattsville, Maryland 20782

**OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300**

**BULK RATE
POSTAGE & FEES PAID
PHS/NCHS
PERMIT NO. G-281**

EXHIBIT 4

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

REDACTED

No. 2017C-OVR-0082-DHS

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: May 1, 2017, with the record held open until June 5, 2017.

APPEARANCES: **REDACTED**, Esq. appeared on behalf of **REDACTED** and **REDACTED**. Assistant Attorney General Patricia LaMagna appeared on behalf of the Arizona Department of Health Services, Bureau of Vital Statistics.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

FINDINGS OF FACT

1. On December 16, 2016, Judge Catherine Woods issued an order ordering that the birth certificate of Appellants' child, **REDACTED** be changed to show **REDACTED**'s new gender identity: male.

2. The December 12, 2016 order provides, in relevant part, as follows:

Petitioner **REDACTED**, having filed a Petition for Change of Name for a Minor and an Order Correcting Documents, the Court having fully considered the matter,

THE COURT FINDS:

1. Applicant [], born [], in **REDACTED** Arizona:
2. Applicant and Petitioner are residents of Pima County, Arizona.
3. Good cause exists to grant the Petition.

IT IS THEREFORE ORDERED that Applicant's name is changed from the present name of [] to []

IT IS FURTHER ORDERED that a birth certificate shall be issued showing Applicant's new name and gender and gender identity; **REDACTED**

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

IT IS FURTHER ORDERED that Petitioner and Applicant may correct the gender designation on Applicant’s birth certificate, personal, medical, financial, educational and other public and private documents and records to reflect his correct identity: [REDACTED]

3. On or about December 20, 2016, Appellants’ filed an application with the Arizona Department of Health Services, Bureau of Vital Records to amend the sex on [REDACTED]’s birth certificate from [REDACTED] to [REDACTED]. Appellants submitted a sworn statement from [REDACTED]’s doctor stating that [REDACTED] had undergone “appropriate clinical treatment for gender transition to the new gender of [REDACTED] and is irrevocably committed to this change.”

4. [REDACTED] was born in Arizona.

5. On February 6, 2017, the Arizona Department of Health Services, (hereinafter “Department”), denied the application. The February 6, 2017 denial provides, in relevant part, as follows:

The Arizona Department of Health Services, Bureau of Vital Records (“Department”) is writing to inform you that your Application to Amend your child’s birth certificate, filed on December 20, 2016 (“Application”) has been in part denied. You have requested that the sex designation of [REDACTED] be amended to [REDACTED] on your child’s birth certificate and have submitted a court order regarding such request. However, the order is not sufficient to allow the Department to amend the sex on the registrant’s Arizona birth certificate pursuant to Arizona Revised Statutes (“A.R.S.”) § 36-337 (A)(3); A.A.C. R9-19-208(O). The letter presented to Pima County Superior Court and the Department does not include the language as required by statute, therefore, the Department cannot amend the birth certificate as requested.

If you obtain the required documents, you may re-apply for the amendment.

6. Appellants filed an appeal to the denial.

7. A hearing was held on May 1, 2017 at the Office of Administrative Hearings.

8. At hearing, Appellants presented their own testimony. The Department presented its case through the testimony of Krystal Colbum, Chief of the Bureau of Vital Statistics.

9. The Department’s position is that that A.R.S. § 36-337(A)(3) limits those instances in which the sex of a person can be changed on a birth certificate. The Department contended that the Department cannot amend a birth certificate to change

1 the sex of an individual if the person has not undergone a sex change or does not have
2 a chromosomal count that establishes the sex of the person as different than in the
3 registered birth certificate.

4 10. The Department contended that A.R.S. § 36-337(A) must be read as a
5 whole and each section reflects legislative intent and governing law over each
6 amendment.

7 11. Additionally, the Department argued that under A.R.S. § 36-323, the
8 legislature conferred primary authority on the Department to amend birth certificates
9 and such authority remains with the Department unless specifically conferred upon the
10 superior court.

11 12. Appellants' position was that the Department must change [REDACTED]'s birth
12 certificate to the sex of [REDACTED] pursuant to Judge Catherine Wood's December 12, 2016
13 order. Appellants' position is that the Department must amend a birth certificate when it
14 receives any of numbers (1) through (4) listed in A.R.S. § 36-337(A).

15 13. Appellants' contended that there is a presumption that what the
16 Legislature means, it will say. Appellants' contended that plain and unambiguous text
17 must be followed.

18 14. Appellant contended that under that under A.R.S. § 36-337(A)(4), the
19 Department, "shall amend the birth certificate for a person born in this state when the
20 registrar receives a court order ordering an amendment to a birth certificate."
21 Appellants' argued that there is no limitation in § 36-337(A)(4) on the superior court's
22 power to amend birth certificates.

23 15. Appellants' also contended that while the legislature enacted separate
24 statutes stating under which circumstances courts may order changes to a birth
25 certificate, A.R.S. § 36-337(A)(4) does not override those limits. However, the
26 legislature has not enacted legislation specifying under what circumstances courts may
27 order changes to the sex designation on birth certificates. Appellants' argued that
28 instead, the legislature has authorized the Department to make amendments under the
29 circumstances described in A.R.S. § 36-337(A)(3), and under subsection (A)(4).

30 16. Appellants' argued that the plain meaning of A.R.S. § 36-337(A)(3) does
not limit amendments to sex on a birth certificate to people who have undergone a sex

1 change or who have a chromosomal count that establishes the sex of the person as
2 different from what is stated on the person's birth certificate.

3 17. Appellants contended that while an agency's interpretation of A.R.S. § 36-
4 337 must be given great deference, the courts remain the final authority on critical
5 questions of statutory construction.

6 18. Thus, Appellants' argued, even if the Department believes that Judge's
7 Woods order was erroneous, the Office of Administrative Hearings cannot collaterally
8 attack the order.

9 19. Appellant's position is that if the Department believes that the order was
10 invalid, the challenge can only be heard in an appeal or special action challenging the
11 judgment of the Pima County Superior Court in the Court of Appeals.

12 **CONCLUSIONS OF LAW**

13 1. The burden of proof at an administrative hearing falls to the party asserting
14 a claim, right, or entitlement, and the standard of proof on all issues in this matter is by a
15 preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

16 2. A preponderance of the evidence is:

17 The greater weight of the evidence, not necessarily established by the
18 greater number of witnesses testifying to a fact but by evidence that has
19 the most convincing force; superior evidentiary weight that, though not
20 sufficient to free the mind wholly from all reasonable doubt, is still
21 sufficient to incline a fair and impartial mind to one side of the issue rather
22 than the other.

23 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

24 3. Fundamental to statutory construction is the presumption that "what the
25 Legislature means, it will say."¹ An agency may not disregard clear statutory directives
26 or legislative intent.²

27 4. "Where the language of a statute is clear and unambiguous, [the tribunal
28 is] not warranted in reading into the law words the legislature did not choose to include."

29 ¹ *Canon School Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994).

30 ² *See, e.g., Cochise County v. Arizona Health Care Cost Containment System*, 170 Ariz. 443, 445, 825
P.2d 968, 970 (App. 1991).

1 *Home Builders Association of Central Arizona v. City of Scottsdale*, 187 Ariz. 479, 483,
2 930 P.2d 993, 997(1997).

3 5. The Department is required to follow its rules and a failure to do so would
4 be unlawful. *Arizona Municipal Water Users Association v. Arizona Department of*
5 *Water Resources*, 181 Ariz. 136, 888 P.2d 1323 (App. 1994).

6 6. A.R.S. § 36-337 sets forth the following requirements for amending a birth
7 certificate a person born in Arizona:

8 A. The state registrar shall amend the birth certificate for a person born in this
9 state when the state registrar receives any of the following:

10 1. Except as provided in subsection D of this section, an adoption
11 certificate or a court order for adoption required pursuant to section 36-
12 336.

13 2. A voluntary acknowledgment of paternity pursuant to section 25-812.

14 3. For a person who has undergone a sex change operation or has a
15 chromosomal count that establishes the sex of the person as different
16 than in the registered birth certificate, both of the following:

17 (a) A written request for an amended birth certificate from the
18 person or, if the person is a child, from the child's parent or legal
19 guardian.

20 (b) A written statement by a physician that verifies the sex change
21 operation or chromosomal count.

22 4. A court order ordering an amendment to a birth certificate.

23 7. Under A.R.S. § 36-337(A)(4), the State Registrar shall amend the birth
24 certificate for a person born in Arizona when the state registrar "receives a court order
25 ordering an amendment to a birth certificate." ARIZ. REV. STAT. § 36-337(A)(4).

26 8. Appellants requested a change in the sex on ■■■'s birth certificate and
27 provided the supporting court order ordering such an amendment. Appellants also
28 provided a doctor's sworn statement that ■■■ had undergone appropriate clinical
29 treatment for gender transition.

30 9. The preponderance of the evidence shows that the Department was
required to amend the sex on ■■■'s birth certificate.

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10. Consequently, Appellants' appeal should be granted.

ORDER

IT IS ORDERED that the Department of Health Services' decision to deny the application to amend the sex on ■■■'s birth certificate is not affirmed.

IT IS ORDERED that the Department of Health Services amend the sex on ■■■'s birth certificate as ordered by Judge Catherine Woods.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five days after the date of that certification.

Done this day, June 26, 2017

Velva Moses-Thompson
Administrative Law Judge

Transmitted electronically to:

Dr. Cara Christ, Director
Arizona Department of Health Services

1 Page 2, Findings of Fact, number 5, line 14, strike “that you” and insert “that your” for
2 consistency with the record.

3 Page 2, Findings of Fact, number 5, line 18, strike “§ 36-337 (A)(3); A.A.C.” and insert
4 “§ 36-337[(A)(3)] and Arizona Administrative Code (“A.A.C.”)” for consistency with the
5 record.

6 Page 2, Findings of Fact, number 8, lines 26 and 27, strike “Colburn, Chief of the
7 Bureau of Vital Statistics” and replace with “Colburn, Bureau Chief of the Bureau of Vital
8 Records” for consistency with the record.

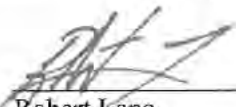
9
10 **IT IS ORDERED THAT** the Department’s denial of Appellant’s application to amend
11 the sex on [REDACTED]’s birth certificate is **NOT AFFIRMED**.

12 **IT IS FURTHER ORDERED THAT** the appeal is **GRANTED**.

13 **IT IS FURTHER ORDERED THAT** the Department shall amend the sex on [REDACTED]’s birth
14 certificate as ordered by the December 16, 2016 Court Order.

15 **PURSUANT TO** the requirements of A.R.S. §§ 41-1092.08(H), 41-1092.09, and 12-
16 904, and Arizona Administrative Code (“A.A.C.”) R9-1-103, the parties are advised that they
17 have a period of thirty (30) days from the service of this decision to file a motion for rehearing
18 or review with the **Clerk of the Department**, at the address appearing on the distribution list or
19 at ACR@azdhs.gov; or a period of thirty-five (35) days after service of this decision to request
20 judicial review by filing a notice of appeal for judicial review of administrative decision in
21 Superior Court.

22
23 Dated this 24th day of July, 2017.

24
25 

Robert Lane
Director’s Designee

1 ORIGINAL filed on the 24th day of July, 2017, with:

2 Clerk of the Department
3 Arizona Department of Health Services
4 150 N. 18th Ave., Ste. 200
5 Phoenix, AZ 85007-2602

6 COPY of the foregoing sent by certified mail return receipt requested
7 on the 24th day of July, 2017, to:

8 **REDACTED**

9 **REDACTED**

10 COPIES of the foregoing sent by electronic/regular/interdepartmental mail
11 on the 24th day of July, 2017, to:

12 **REDACTED**

13 **REDACTED**

14 Colby Bower, Assistant Director
15 Thomas Salow, Branch Chief
16 ADHS/Division of Public Health Services-Licensing Services
17 150 N. 18th Ave.
18 Phoenix, AZ 85007

19 Krystal Colburn, Bureau Chief
20 Robin Rodriguez, Office Chief
21 Marcellina Lopez, Operations Section Manager
22 ADHS/Bureau of Vital Records
23 1818 W. Adams
24 Phoenix, AZ 85007

25 Patricia LaMagna, Assistant Attorney General
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007

1 Velva Moses-Thompson, Administrative Law Judge
Office of Administrative Hearings
2 1400 W. Washington, Suite 101
Phoenix, AZ 85007
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EXHIBIT 5

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

HELEN ROE, a minor, by and through her parent and next friend MEGAN ROE; JAMES POE, a minor, by and through his parent and next friend LAURA POE; AND CARL VOE, a minor by and though his parent and next friend RACHEL VOE,

Plaintiffs,

v.

DON HERRINGTON, in his official capacity as Interim State Registrar of Vital Records and Interim Director of the Arizona Department of Health Services,

Defendant.

Case No. 4:20-cv-00484-JAS

EXPERT REPORT OF DR. RANDI C. ETTNER, Ph.D.

I. INTRODUCTION

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-mentioned litigation. I have been asked by Plaintiffs' counsel to provide my expert opinion regarding the Arizona law prohibiting transgender persons born in Arizona from obtaining accurate birth certificates reflecting their sex and gender identity unless they either: (1) submit a written request for an amended birth certificate accompanied by a written statement from a physician that verifies the applicant or applicant's child has "undergone a sex change operation" (also referred to herein as a private administrative process); or (2) obtain a court order.

2. I have actual knowledge of the matters stated herein. If called to testify in this matter, I would testify truthfully and based on my expert opinion.

II. BACKGROUND AND QUALIFICATIONS

3. I am a licensed clinical and forensic psychologist with a specialization in the diagnosis, treatment, and management of gender dysphoric individuals. I received my Doctorate in Psychology (with honors) from Northwestern University in 1979. I am a Fellow and Diplomate in Clinical Evaluation of the American Board of Psychological Specialties, and a Fellow and Diplomate in Trauma/Post-Traumatic Stress Disorder.

4. During the course of my career, I have evaluated, diagnosed, and treated approximately 3,000 individuals with gender dysphoria and mental health issues related to gender incongruity from 1977 to present.

5. I have published four books related to the treatment of individuals with gender dysphoria, including the medical text entitled *Principles of Transgender Medicine and Surgery* (coeditors Monstrey & Eyler; Routledge 2007) and the second edition (coeditors Monstrey & Coleman; Routledge 2016). In addition, I have authored numerous articles in peer-reviewed journals regarding the provision of healthcare to the transgender population.

6. I have served as a member of the University of Chicago Gender Board, am on the editorial boards of *Transgender Health* and the *International Journal of Transgender Health*, and am an author of the *WPATH Standards of Care for the Health of Transsexual, Transgender and Gender-Nonconforming People* (7th version), published in 2011. I am also an author of the newly released World Professional Association for Transgender Health (“WPATH”)’s Standards of Care Version 8, published in 2022. WPATH is an international association of 2,700 medical and mental health professionals worldwide specializing in the treatment of gender diverse people.

7. I am on the Medical Staff at Weiss Memorial Hospital in Chicago, and I have lectured throughout North America, Europe, South America, and Asia on topics related to gender

dysphoria. I am the honoree of the externally funded Randi and Fred Ettner Fellowship in Transgender Health at the University of Minnesota. I have been an invited guest at the National Institutes of Health to participate in developing a strategic research plan to advance the health of sexual and gender minorities, and in November 2017, I was invited to address the Director of the Office of Civil Rights of the United States Department of Health and Human Services regarding the medical treatment of gender dysphoria. I received a commendation from the United States House of Representatives on February 5, 2019, recognizing my work for WPATH and gender dysphoria in Illinois.

8. I have been a consultant to news media and have been interviewed as an expert on gender dysphoria for hundreds of television, radio, and print articles throughout the country.

9. I have been retained as an expert regarding gender dysphoria and the treatment of gender dysphoria in multiple court cases and administrative proceedings and have repeatedly qualified as an expert.

10. A true and accurate copy of my Curriculum Vitae is attached hereto as **Exhibit A**. It documents my education, training, research, and years of experience in this field and includes a list of publications. A bibliography of the materials reviewed in connection with this report is attached hereto as **Exhibit B**. The sources cited therein are authoritative, scientific peer-reviewed publications. I generally rely on these materials when I provide expert testimony, and they include the documents specifically cited as supportive examples in particular sections of this report. The materials I have relied on in preparing this report are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

11. I have not met or spoken with the Plaintiffs for purposes of this report. My opinions are based solely on the information I have been provided by Plaintiffs' attorneys, the materials

referenced in the Bibliography as **Exhibit B** and cited herein, and my extensive experience studying gender dysphoria and in treating transgender patients.

a. Previous Testimony

12. In the last four years, I have testified as an expert at trial or by deposition in the following cases: *Diamond v. Ward*, No. 5:20-cv-00543 (M.D. Ga. 2022); *Stillwell v. Dwenger*, No. 1:21-cv-1452-JRS-MPB (S.D. Ind. 2022); *Letray v. Jefferson Cty.*, No. 20-cv-1194 (N.D.N.Y. 2022); *C.P. v. BCBSIL*, No. 3:20-cv-06145-RJB (W.D. Wash. 2022); *Kadel v. Folwell*, No. 1:19-cv-00272 (M.D.N.C. 2021); *Iglesias v. Connor*, No. 3:19-cv-00415-NJR (S.D. Ill. 2021); *Monroe v. Jeffreys*, No. 3:18-CV-00156-NJR (S.D. Ill. 2021); *Singer v. Univ. of Tennessee Health Sciences Ctr.*, No. 2:19-cv-02431-JPM-cgc (W.D. Tenn. 2021); *Morrow v. Tyson Fresh Meats, Inc.*, No. 6:20-cv-02033 (N.D. Iowa 2021); *Claire v. Fla. Dep't of Mgmt. Servs.*, No. 4:20-ov-00020-MW-MAF (N.D. Fla. 2020); *Williams v. Allegheny Cty.*, No. 2:17-cv-1556 (W.D. Pa. 2020); *Gore v. Lee*, No. 3:19-CV-00328 (M.D. Tenn. 2020); *Eller v. Prince George's Cty. Public Sch.*, No. 8:18-cv-03649-TDC (D. Md. 2020); *Monroe v. Baldwin*, No. 18-CV-00156-NIR-MAB (S.D. Ill. 2020); *Gilbert v. Dell Technologies*, No. 19-cv-1938 (JGK) (S.D.N.Y. 2019); *Ray v. Acton*, No. 2:18-cv-00272 (S.D. Ohio 2019); *Soneeya v. Turco*, No. 07-12325-DPW (D. Mass. 2019); *Edmo v. Idaho Dep't of Corr.*, No. 1:17-CV-00151-BLW (D. Idaho 2018).

b. Compensation

13. I am being compensated for my work on this matter at a rate of \$375.00 per hour for preparation of declarations and expert reports. I will be compensated \$525.00 per hour for any pre-deposition and/or pre-trial preparation and any deposition testimony or trial testimony. I will receive a flat fee of \$2,500.00 for any travel time to attend a deposition or trial and will be reimbursed for reasonable out-of-pocket travel expenses incurred for the purpose of providing

expert testimony in this matter. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I may provide.

III. SUMMARY OF OPINIONS

14. Medical management of gender dysphoria includes the alignment of appearance, presentation, expression, and often, the body, to reflect a person's true sex as determined by their gender identity. Correcting the gender marker on identification documents confers social and legal recognition of identity and is crucial to this process. The necessity and importance of privacy is universal and exists even in animals. A wide range of species avoid predators by managing information about internal states and future intentions, for purposes of survival. Privacy enables normal psychological functioning, the ability to have experiences that promote healthy personal growth and interpersonal relationships and allows for measured self-disclosure. It is the basis for the development of individuality and autonomy.

15. For a transgender person, a birth certificate bearing an incorrect gender marker invades privacy, releases confidential medical information, and places the individual at risk for grave psychological and physical harm.

IV. EXPERT OPINIONS

a. Sex and Gender Identity

16. At birth, infants are assigned a sex, typically male or female, based solely on the appearance of their external genitalia. For most people, that assignment turns out to be accurate, and their birth-assigned sex matches that person's actual sex. However, for transgender people, the sex assigned at birth does not align with the individual's genuine, experienced sex, resulting in the distressing condition of gender dysphoria.

17. External genitalia alone—the critical criterion for assigning sex at birth—is not an accurate proxy for a person’s sex.

18. A person’s sex is comprised of a number of components including, *inter alia*, chromosomal composition (detectible through karyotyping); gonads and internal reproductive organs (detectible by ultrasound, and occasionally by a physical pelvic exam); external genitalia (which are visible at birth); sexual differentiations in brain development and structure (detectible by functional magnetic resonance imaging studies and autopsy); and gender identity.

19. Gender identity is a person’s inner sense of belonging to a particular sex, such as male or female. It is a deeply felt and core component of human identity. It is detectible by self-disclosure in adolescents and adults.

20. When there is divergence between anatomy and identity, one’s gender identity is paramount and the primary determinant of an individual’s sex. Developmentally, identity is the overarching determinant of the self-system, influencing personality, a sense of mastery, relatedness, and emotional reactivity, across the life span. It is also the foremost predictor of satisfaction and quality of life. Psychologist Eric Erickson defined identity as “the single motivating force in life.”

21. Like non-transgender people, transgender people do not simply have a “preference” to act or behave consistently with their gender identity. Every person has a gender identity. It is a firmly established elemental component of the self-system of every human being.

22. The only difference between transgender people and non-transgender people is that the latter have gender identities that are consistent with their birth-assigned sex whereas the former do not. A transgender man cannot simply turn off his gender identity like a switch, any more than anyone else could.

23. In other words, transgender men are men and transgender women are women.

24. A growing assemblage of research documents that gender identity is immutable and biologically based. Efforts to change an individual's gender identity are therefore both futile and unethical.

25. Researchers have documented the risks and harms of attempting to coerce individuals to conform to their birth-assigned sex. These include, but are not limited to, the onset or increase of depression, suicidality, substance abuse, loss of relationships, family estrangement, and a range of post-traumatic responses. *See* Byne (2016); Green, et al. (2020); Turban, et al. (2020).

26. The evidence demonstrating that gender identity cannot be altered, either for transgender or for non-transgender individuals, further underscores the innate and immutable nature of gender identity. Past attempts to "cure" transgender individuals by means of psychotherapy, aversion treatments or electroshock therapy, in order to change their gender identity to match their birth-assigned sex, proved ineffective and caused extreme psychological damage. All major associations of medical and mental health providers, such as the American Medical Association, the American Psychiatric Association, the American Psychological Association, and WPATH's *Standards of Care* consider such efforts unethical.

b. Gender Dysphoria and Its Treatment

27. Gender dysphoria is the clinically significant distress or impairment of functioning that can result from the incongruence between a person's gender identity and the sex assigned to them at birth. Gender dysphoria is a serious medical condition associated with severe and unremitting emotional pain from the incongruity between various aspects of one's sex. It is codified in the *International Classification of Diseases* (10th revision: World Health

Organization), the diagnostic and coding compendia for mental health and medical professionals, and the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* Fifth Edition (DSM-5). People diagnosed with gender dysphoria have an intense and persistent discomfort with their assigned sex.

28. Gender dysphoria was previously referred to as gender identity disorder. In 2013, the American Psychiatric Association changed the name and diagnostic criteria to be "more descriptive than the previous DSM-IV term gender identity disorder and focus[] on dysphoria as the clinical problem, not identity per se." DSM-5 at 451.

29. The diagnostic criteria for Gender Dysphoria in Adolescents and Adults in DSM-5 are as follows:

- a. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least six months' duration, as manifested by at least two of the following:
 - i. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
 - ii. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated sex characteristics).
 - iii. A strong desire for the primary and/or secondary sex characteristics of the other gender.

- iv. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
 - v. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
 - vi. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- b. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

30. Once a diagnosis of gender dysphoria is established, individualized treatment should be initiated. Without treatment, individuals with gender dysphoria experience anxiety, depression, suicidality, and other attendant mental health issues and are often unable to adequately function in occupational, social, or other areas of life.

31. Although rates of suicide are higher amongst the transgender community than the general population, a 2015 study identified several factors that were associated with large reductions in suicide risk. The study reported that having an identity document with a gender marker notation that matched their lived gender was associated with a large reduction in suicidal ideation and attempts. The study noted that having one or more of these concordant identity documents has the potential to prevent suicidal ideation and suicide attempts—demonstrating that in a hypothetical sampling of 1,000 transgender people who were permitted to change an identity document gender marker, 90 cases of ideation could be prevented, and, in a hypothetical sampling of 1,000 transgender people with suicidal ideation who were permitted to change an identity document gender marker, 230 suicide attempts could be prevented (Bauer, Scheim & Pyne). A

review of 24 studies similarly found that social and legal gender validation was positively related to improved health outcomes (King & Gamarel, 2021).

32. The medically accepted standards of care for treatment of gender dysphoria are set forth in the *WPATH Standards of Care* (7th version, 2011), first published in 1979 and the *WPATH Standards of Care* (8th version, 2022). The WPATH-promulgated *Standards of Care* are the internationally recognized guidelines for the treatment of persons with gender dysphoria and inform medical treatment throughout the world.

33. The American Medical Association, the Endocrine Society, the American Psychological Association, the American Psychiatric Association, the World Health Organization, the American Academy of Family Physicians, the National Commission of Correctional Health Care, the American Public Health Association, the National Association of Social Workers, the American College of Obstetrics and Gynecology, the American Society of Plastic Surgeons, and the American Society of Gender Surgeons all endorse protocols in accordance with the WPATH standards. (See, e.g., American Medical Association (2008) Resolution 122 (A-85); *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline* (2009); *American Psychological Association Policy Statement on Transgender, Gender Identity and Gender Expression Nondiscrimination* (2009).)

34. The Standards of Care identify the following treatment protocols for treating individuals with gender dysphoria, which should be tailored to the patient's individual medical needs:

- Changes in gender expression and role, also known as social transition (which involves living in the gender role consistent with one's gender identity);

- Hormone therapy to feminize or masculinize the body to reduce the distress caused by the discordance between one's gender identity, and sex assigned at birth;
- Surgery to change primary and/or secondary sex characteristics; and
- Psychotherapy (individual, couple, family, or group) for purposes such as exploring gender identity, role, and expression; addressing the negative impact of gender dysphoria and stigma on mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; and promoting resilience.

35. These treatments do not change a transgender person's sex, which is already determined by their gender identity.

36. As I understand it, A.R.S. § 36-337 prohibits transgender persons born in Arizona from obtaining accurate birth certificates reflecting their gender identity unless they: (1) submit a written request for an amended birth certificate accompanied by a written statement from a physician that verifies the applicant or applicant's child has "undergone a sex change operation"; or (2) obtain a court order. As it relates to the first method, from a medical standpoint, this mandate is impossible to fulfill, as surgery does not change a person's immutable sex.

37. To the extent transgender persons can amend their birth certificates through a court order, that court process would by its nature require transgender persons to file documents or appear in person in court, or both, and therefore invade their privacy because they would have to publicly disclose their transgender status. Invasions of privacy of this nature exacerbate gender dysphoria and lead to an erosion of coping mechanisms. Such experiences can precipitate the onset of major psychiatric disorders, including, but not limited to, posttraumatic stress disorder, major depressive disorder, and even suicidality.

c. The Process of Gender Transition

38. Gender transition is the process through which a person begins bringing their outer appearance and lived experience into alignment with their core gender. Transition may or may not include medical or legal aspects such as taking hormones, having surgeries, or correcting the sex designation on identity documents. Social transition—which often includes correcting one’s identity documents to accurately reflect one’s sex—is the most important, and sometimes the only, aspect of transition that transgender people undertake. Changes often associated with gender transition include changes in clothing, name, pronouns, and hairstyle.

39. A complete transition is one in which a person attains a sense of lasting personal comfort with their gendered self, thus maximizing overall health, well-being, and personal safety. Social role transition has an enormous impact in the treatment of gender dysphoria. An early seminal study emphasizes the importance of aligning presentation and identity. Greenberg and Laurence (1981) compared the psychiatric status of individuals with gender dysphoria who had socially transitioned with those who had not. Those who had implemented a social transition showed “a notable absence of psychopathology” compared to those who were living in their birth-assigned sex. Similarly, a recent study found that use of a transgender person’s chosen name, if different from the one given at birth, was linked to reduced depression, suicidal ideation and suicidal behavior (Russell, Pollitt & Grossman, 2018).

40. Hormones are often medically indicated for patients with gender dysphoria and are extremely therapeutic. In addition to inducing a sense of well-being, owing to the influence of sex steroids on the brain, hormones induce physical changes which attenuate the dysphoria. One or more surgical procedures are medically indicated for some, but by no means all, transgender individuals.

41. A person's gender identity is an innate, immutable characteristic; it is not determined by a particular medical treatment or procedure. The medical treatments provided to transgender people (including social transition), do not "change a woman into a man" or vice versa. Instead, they affirm the authentic gender that an individual person is.

42. The goal of proper treatment is to align the person's body and lived experience with the person's fixed identity, which already exists. Treatment creates more alignment between the person's identity and the person's appearance, attenuating the dysphoria, and allowing the person's actual sex to be seen and recognized by others. Treatments fall below the accepted *Standards of Care* if they fail to recognize that a person's affirmed gender identity is not how they feel, but rather essentially who they are.

d. The Importance of Accurate Identity Documents, Including Birth Certificates, for Transgender People

43. My experience with patients over 40 years as a practicing psychologist has underscored the essential and often life-saving nature of having accurate identity documents. Accurate identity documents are critical to ensuring that people with gender dysphoria can live safely and comfortably, free of the fear of exposure or the actual harms that can, and often do, result.

44. A discordance between identity documents that include a transgender person's birth-assigned sex (typically based only on the appearance of genitalia at birth) rather than their actual sex as determined by their gender identity and their lived experience creates a myriad of deleterious social and psychological consequences.

45. Identity documents consistent with one's lived experience affirm and consolidate one's gender identity, mitigating distress and functional consequences. Changes in gender

presentation and role, to feminize or masculinize appearance, and social and legal recognition, are crucial components of treatment for gender dysphoria. Social transition involves dressing, grooming, and otherwise outwardly presenting oneself through social signifiers of a person's true sex as determined by their affirmed gender identity.

46. Through this process, the shame of growing up living as a "false self" and the grief of being born into the "wrong body" are ameliorated. Being socially and legally recognized with correct identification is essential to successful treatment. The *WPATH Standards of Care* explicitly state that changing the gender marker on identity documents greatly assists in alleviating gender dysphoria. Uncorrected identity documents serve as constant reminders that one's identity is perceived by society and government as "illegitimate." Individuals who desire and require surgery must, as a prerequisite, undergo social role transition, which can be thwarted or upended by inaccurate identification documents.

47. An inability to access identity documents that accurately reflect one's true sex for any reason is harmful and exacerbates gender dysphoria, kindling shame and amplifying fear of exposure. Inaccurate documents can cause an individual to isolate to avoid situations that might evoke discrimination, ridicule, accusations of fraud, harassment, or even violence—experiences that are all too common among transgender people. Ultimately, this leads to feelings of hopelessness, lack of agency, and despair. Being stripped of one's dignity, privacy, and the ability to move freely in society can lead to a degradation of coping strategies and cause major psychiatric disorders, including generalized anxiety disorder, major depressive disorder, posttraumatic stress disorder, emotional decompensation, and suicidality. Research has also demonstrated that transgender women who fear disclosure are at a 100% increased risk for hypertension, owing to the intersection of stress and cardiac reactivity (Ettner, Ettner & White, 2012).

48. An abundance of research establishes that transgender people suffer from stigma and discrimination. The “minority stress model” explains that the negative impact of the stress attached to being stigmatized is socially based. This stress can be both *external*, i.e., actual experiences of rejection or discrimination (enacted stigma), and, as a result of such experiences, *internal*, i.e., perceived rejection or the expectation of being humiliated or discriminated against (felt stigma). Both are corrosive to physical and mental health (Bockting, 2014; Bradford, et al., 2013; Frost, Lehavot, & Meyer, 2015).

49. Until recently, it was not understood that these experiences of humiliation and discrimination have serious and enduring consequences. It is now well documented that stigmatization and victimization are the most powerful predictors of current and future mental health problems. The presentation of a birth certificate is required in numerous situations. For the transgender individual, an inaccurate birth certificate can transform a mundane interaction into a traumatic experience. Repeated negative experiences inevitably erode resilience, creating an increscent course of gender dysphoria and attendant psychiatric disorders (Ohashi, Anderson & Bolder, 2017).

50. Many people who suffer from gender dysphoria go to great lengths to align their physical characteristics, voice, mannerisms, and appearance to match their gender identity. Since gender identity is immutable, these changes are the appropriate, and indeed the only treatment for the condition. Understandably, the desire to make an authentic appearance is of great concern for transgender individuals, as the *sine qua non* of the gender dysphoria diagnosis is the desire to be regarded in accordance with one’s true sex as determined by one’s gender identity. Privacy, and the ability to control whether, when, how, and to whom to disclose one’s transgender status, is essential to accomplishing this therapeutic aim.

51. Thus, when an individual implements a social role transition, legal recognition of that transition is vital and an accurate birth certificate is a crucial aspect of that recognition, in large part because congruent identity documentation confers privacy—the right to maintain stewardship of personal and medical information—allowing an individual to live a safe and healthy life (Barry, 2019; Restar, et al., 2020).

52. From a medical and scientific perspective, there is no basis for refusing to acknowledge a transgender person’s sex, as determined by their gender identity, based on whether that person has undergone surgery. Such a requirement is not consistent with the well-established standards of care, nor is it often developmentally or medically appropriate. The appearance of genitalia is not relevant to a person’s innate and immutable gender identity.

53. Moreover, not all individuals with gender dysphoria require surgical therapy. For some, social role transition may be the essential and sufficient therapeutic intervention to alleviate distress. Indeed, for many transgender individuals, surgery is not medically necessary or may be safely delayed for some time as their dysphoria is alleviated through social role transition and other medical treatments. It is estimated that only 33% of transgender individuals undergo some form of gender-related surgery. Not all individuals for whom surgical intervention is medically indicated are able to access these options due to financial and other systemic barriers to necessary medical treatments.

54. Many insurance companies have policies that specifically exclude coverage of surgical treatments for gender dysphoria. Additionally, there are some medical complications that preclude surgical treatment. These include brittle diabetes, allergy to anesthesia, morbid obesity, recent history of stroke, or other uncontrolled disease or organ damage.

55. Thus, transgender people should not be required to undergo surgical treatment in order to use Arizona's private administrative process to obtain and possess identity documents (including birth certificates) that accurately reflect who they are.

56. Transgender people also should not be required to seek a court order to have identity documents (including birth certificates) that accurately reflect who they are. A court process greatly invades their privacy as they would have to publicly reveal they are transgender. Invasions of privacy of this nature exacerbate gender dysphoria and lead to an erosion of coping mechanisms. Such experiences can precipitate the onset of major psychiatric disorders, including, but not limited to, posttraumatic stress disorder, major depressive disorder, and even suicidality.

V. CONCLUSION

57. Medical management of gender dysphoria includes the alignment of appearance, presentation, expression, and often, the body, to reflect a person's true sex as determined by their gender identity. Correcting the gender marker on identification documents confers social and legal recognition of identity and is crucial to this process.

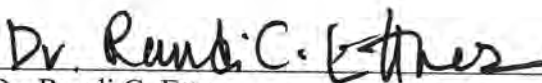
58. The necessity and importance of privacy is universal. A wide range of species avoid predators by managing information about internal states and future intentions for purposes of survival. Privacy enables normal psychological functioning, the ability to have experiences that promote healthy personal growth and interpersonal relationships and allows for measured self-disclosure. It is the basis for the development of individuality and autonomy.

59. For a transgender person, a birth certificate bearing an incorrect gender marker or revealing one's birth name risks disclosing the fact that the person is transgender. This disclosure

invades privacy, releases confidential medical information, and places the individual at risk for grave psychological and physical harm. Drawing on the largest sample of transgender people ever surveyed—22,286 U.S. respondents—investigators found that those who had gender-concordant identity documents had far less psychological distress and less suicide attempts than individuals who were barred from correcting identity documents. The authors underscored the important role of government and administrative bodies in reducing distress by allowing access to documents that accurately reflect identity (Scheim, et al., 2020).

I declare under penalty of perjury under the laws of the state of Arizona that the foregoing is true and correct.

Dated this 3rd day of May, 2023 in Evanston, Illinois.



Dr. Randi C. Ettner

Exhibit A

RANDI ETTNER, PHD
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POSITIONS HELD

Clinical Psychologist
Forensic Psychologist
Fellow and Diplomate in Clinical Evaluation, American Board of
Psychological Specialties
Fellow and Diplomate in Trauma/PTSD
President, New Health Foundation Worldwide
Past Secretary, World Professional Association for Transgender Health
(WPATH)
Chair, Committee for Institutionalized Persons, WPATH
Global Education Initiative Committee Curriculum Development, WPATH
University of Minnesota Medical Foundation: Leadership Council
Psychologist, Center for Gender Confirmation Surgery, Weiss Memorial
Hospital
Adjunct Faculty, Prescott College
Editorial Board, *International Journal of Transgender Health*
Editorial Board, *Transgender Health*
Television and radio guest (more than 100 national and international
appearances)
Internationally syndicated columnist on women's health issues
Private practitioner
Adjunct Medical staff; Department of Medicine: Weiss Memorial Hospital,
Chicago, IL
Advisory Council, National Center for Gender Spectrum Health
Global Clinical Practice Network; World Health Organization
Harvard Law School LGBTQ Clinic Leadership Council

EDUCATION

PhD, 1979	Northwestern University (with honors) Evanston, Illinois
MA, 1976	Roosevelt University (with honors) Chicago, Illinois
BA, 1969-73	Indiana University Bloomington, Indiana Cum Laude Major: Clinical Psychology; Minor: Sociology
1972	Moray College of Education Edinburgh, Scotland International Education Program
1970	Harvard University Cambridge, Massachusetts Social Relations Undergraduate Summer Study Program in Group Dynamics and Processes

CLINICAL AND PROFESSIONAL EXPERIENCE

- 2017-2023 Psychologist: Weiss Memorial Hospital Center for Gender Confirmation Surgery
Consultant: Walgreens; Tawani Enterprises
Private practitioner: clinical and forensic practice
- 2013 Instructor, Prescott College: Gender-A multidimensional approach
ICD-11 Member of International Working Group
- 2011 Consultant to Wisconsin Public Schools
- 2010 President New Health Foundation Worldwide
- 2000 Instructor, Illinois School of Professional Psychology
- 1995-present Supervision of clinicians in counseling gender non-conforming clients
- 1993 Post-doctoral continuing education with Dr. James Butcher in MMPI-2 Interpretation, University of Minnesota
- 1992 Continuing advanced tutorial with Dr. Leah Schaefer in psychotherapy
- 1983-1984 Staff psychologist, Women's Health Center, St. Francis Hospital, Evanston, Illinois
- 1981-1984 Instructor, Roosevelt University, Department of Psychology: Psychology of Women, Tests and Measurements, Clinical Psychology, Personal Growth, Personality Theories, Abnormal Psychology
- 1976-1978 Research Associate, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
- 1975-1977 Clinical Internship, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
- 1971 Research Associate, Department of Psychology, Indiana University
- 1970-1972 Teaching Assistant in Experimental and Introductory Psychology
Department of Psychology, Indiana University
- 1969-1971 Experimental Psychology Laboratory Assistant, Department of Psychology, Indiana University

INVITED PRESENTATIONS AND GRAND ROUNDS

Shifting Sands: Challenges in Providing Surgical Care American Society of Reconstructive Microsurgery, Miami, FL 2023

The Standard of Care for Institutionalized Persons WPATH 27th Scientific Symposium, Montreal, Canada 2022

Healthcare for Transgender Prisoners Rush University, Department of Plastic and Reconstructive Surgery, Chicago, IL 2022

Sexual Function: Expectations and outcomes for patients undergoing gender-affirming surgery. Whitney, N., Ettner, R., Schechter, L. Rush University, Department of Plastic and Reconstructive Surgery, Chicago, IL 2022

Care of the Older Transgender Patient, Weiss Memorial Hospital, Chicago, IL, 2021

Working with Medical Experts, The National LGBT Law Association, webinar presentation, 2020

Legal Issues Facing the Transgender Community, Illinois State Bar Association, Chicago, IL, 2020

Providing Gender Affirming Care to Transgender Patients, American Medical Student Association, webinar presentation, 2020

Foundations in Mental Health for Working with Transgender Clients; Center for Supporting Community Development Initiatives, Vietduc University Hospital, Hanoi, Vietnam, 2020

Advanced Mental Health Issues, Ethical Issues in the Delivery of Care, Development Initiatives, Vietduc University Hospital, Hanoi, Vietnam, 2020

What Medical Students Need to Know about Transgender Health Care, American Medical Student Association, webinar presentation, 2019

The Transgender Surgical Patient, American Society of Plastic Surgeons, Miami, FL 2019

Mental health issues in transgender health care, American Medical Student Association, webinar presentation, 2019

Sticks and stones: Childhood bullying experiences in lesbian women and transmen, Buenos Aires, 2018

Gender identity and the Standards of Care, American College of Surgeons, Boston, MA, 2018

Expectations of individuals undergoing gender-confirming surgeries Schechter, L., White, T., Ritz, N., Ettner, R. Buenos Aires, 2018

The mental health professional in the multi-disciplinary team, pre-operative evaluation and assessment for gender confirmation surgery, American Society of Plastic Surgeons, Chicago, IL, 2018; Buenos Aires, 2018

Navigating transference and countertransference issues, WPATH Global Education Initiative, Portland, OR; 2018

Psychological aspects of gender confirmation surgery International Continence Society, Philadelphia, PA 2018

The role of the mental health professional in gender confirmation surgeries, Mt. Sinai Hospital, New York City, NY, 2018

Mental health evaluation for gender confirmation surgery, Gender Confirmation Surgical Team, Weiss Memorial Hospital, Chicago, IL 2018

Transitioning; Bathrooms are only the beginning, American College of Legal Medicine, Charleston, SC, 2018

Gender Dysphoria: A medical perspective, Department of Health and Human Services, Office for Civil Rights, Washington, D.C, 2017

Multi-disciplinary health care for transgender patients, James A. Lovell Federal Health Care Center, North Chicago, IL, 2017

Psychological and Social Issues in the Aging Transgender Person, Weiss Memorial Hospital, Chicago, IL, 2017

Psychiatric and Legal Issues for Transgender Inmates, USPATH, Los Angeles, CA, 2017

Transgender 101 for Surgeons, American Society of Plastic Surgeons, Chicago, IL, 2017

Healthcare for transgender inmates in the US, Erasmus Medical Center, Rotterdam, Netherlands, 2016

Tomboys Revisited: Replication and Implication; Amsterdam, Netherlands, 2016

Orange Isn't the New Black Yet- Care for incarcerated transgender persons, WPATH symposium, Amsterdam, Netherlands, 2016

Can two wrongs make a right? Expanding models of care beyond the divide, Amsterdam, Netherlands, 2016

Foundations in mental health; WPATH Global Education Initiative, Chicago, IL 2015

Role of the mental health professional in legal and policy issues, WPATH Global Education Initiative, Chicago, IL 2015

Healthcare for transgender inmates; WPATH Global Education Initiative, Chicago, IL 2015

Children of transgender parents; WPATH Global Education Initiative; Atlanta, GA, 2016

Transfeminine genital surgery assessment: WPATH Global Education Initiative, Columbia, MO, 2016

Foundations in Mental Health; WPATH Global Education Initiative; Ft. Lauderdale, FL, 2016; Washington, D.C., 2016, Los Angeles, CA, 2017, Minneapolis, MN, 2017, Chicago, IL, 2017; Columbus, Ohio, 2017; Portland, OR, 2018; Cincinnati, OH, 2018, Buenos Aires, 2018.

Role of the forensic psychologist in transgender care; WPATH Global Education Initiative, Minneapolis, MN, 2017; Columbus, Ohio, 2017.

Pre-operative evaluation in gender affirming surgery-American Society of Plastic Surgeons, Boston, MA, 2015

Gender affirming psychotherapy; Fenway Health Clinic, Boston, 2015

Transgender surgery- Midwestern Association of Plastic Surgeons, Chicago, 2015

Assessment and referrals for surgery-Standards of Care- Fenway Health Clinic, Boston, 2015

Adult development and quality of life in transgender healthcare- Eunice Kennedy Shriver National Institute of Child Health and Human Development, 2015

How do patients choose a surgeon? WPATH Symposium, Bangkok, Thailand 2014

Healthcare for transgender inmates- American Academy of Psychiatry and the Law, Chicago, 2014

Supporting transgender students: best school practices for success- American Civil Liberties Union of Illinois and Illinois Safe School Alliance, 2014

Addressing the needs of transgender students on campus- Prescott College, Prescott, AZ, 2014

The role of the behavioral psychologist in transgender healthcare – Gay and Lesbian Medical Association, 2013

Understanding transgender- Nielsen Corporation, Chicago, 2013

Grand Rounds: Evidence-based care of transgender patients- North Shore University Health Systems, University of Chicago, Illinois, 2011

Care of the aging transgender patient University of California San Francisco, Center for Excellence, 2013

Grand Rounds: Evidence-based care of transgender patients Roosevelt-St. Vincent Hospital, New York, 2011

Grand Rounds: Evidence-based care of transgender patients Columbia Presbyterian Hospital, Columbia University, New York, 2011

Hypertension: Pathophysiology of a secret. WPATH symposium, Atlanta, GA, 2011

Exploring the Clinical Utility of Transsexual Typologies- Oslo, Norway, 2009

*Children of Transsexual Parents-*International Association of Sex Researchers, Ottawa, Canada, 2005

Children of Transsexual Parents- Chicago School of Professional Psychology, Chicago, 2005

Gender and the Law- DePaul University College of Law, Chicago, Illinois, 2003

Family and Systems Aggression against Providers, WPATH Symposium, Ghent, Belgium 2003

*Children of Transsexual Parents-*American Bar Association annual meeting, New York, 2000

Grand Rounds: Gender Incongruence in Adults, St. Francis Hospital, 1999.

Gender Identity, Gender Dysphoria and Clinical Issues –WPATH Symposium, Bangkok, Thailand, 2014; Argosy College, Chicago, Illinois, 2010; Cultural Impact Conference, Chicago, Illinois, 2005; Weiss Hospital, Department of Surgery, Chicago, Illinois, 2005; Resurrection Hospital Ethics Committee, Evanston, Illinois, 2005; Wisconsin Public Schools, Sheboygan, Wisconsin, 2004, 2006, 2009; Rush North Shore Hospital, Skokie, Illinois, 2004; Nine Circles Community Health Centre, University of Winnipeg, Winnipeg, Canada, 2003; James H. Quillen VA Medical Center, East Tennessee State University, Johnson City, Tennessee, 2002; Sixth European Federation of Sexology, Cyprus, 2002; Fifteenth World Congress of Sexology, Paris, France, 2001; Illinois School of Professional Psychology, Chicago, Illinois 2001; Lesbian Community Cancer Project, Chicago, Illinois 2000; Emory University Student Residence Hall, Atlanta, Georgia, 1999; Parents, Families and Friends of Lesbians and Gays National Convention, Chicago, Illinois, 1998; In the Family Psychotherapy Network National Convention, San Francisco, California, 1998; Evanston City Council, Evanston, Illinois 1997; Howard Brown Community Center, Chicago, Illinois, 1995; YWCA Women’s Shelter, Evanston, Illinois, 1995; Center for Addictive Problems, Chicago, 1994

Psychosocial Assessment of Risk and Intervention Strategies in Prenatal Patients- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984; Purdue University School of Nursing, West Layette, Indiana, 1980

Psychoneuroimmunology and Cancer Treatment- St. Francis Hospital, Evanston, Illinois, 1984

Psychosexual Factors in Women's Health- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984.

Grand Rounds: Sexual Dysfunction in Medical Practice- St. Francis Hospital, Dept. of OB/GYN, Evanston, Illinois, 1990

Sleep Apnea - St. Francis Hospital, Evanston, Illinois, 1996; Lincolnwood Public Library, Lincolnwood, Illinois, 1996

The Role of Denial in Dialysis Patients - Cook County Hospital, Department of Psychiatry, Chicago, Illinois, 1977

PUBLICATIONS

Coleman, E., Radix, A., Bouman, W., Brown, G., deVries, A.L., Deutsch, M., Ettner, R., et al. Standards of Care for the Health of Transgender and Gender Diverse People, Version 8. *International Journal of Transgender Health*, 23:sup1S1-S259.

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Confessions of a Gender Defender: A Psychologist's Reflections on Life amongst the Transgender. Chicago Spectrum Press. 1996.

Post-traumatic Stress Disorder, *Chicago Daily Law Bulletin*, 1995.

Compensation for Mental Injury, *Chicago Daily Law Bulletin*, 1994.

Workshop Model for the Inclusion and Treatment of the Families of Transsexuals, Proceedings of the Harry Benjamin International Gender Dysphoria Symposium; Bavaria, Germany, 1995.

Transsexualism- The Phenotypic Variable, Proceedings of the XV Harry Benjamin International Gender Dysphoria Association Symposium; Vancouver, Canada, 1997.

The Work of Worrying: Emotional Preparation for Labor in Pregnancy as Healing. A Holistic Philosophy for Prenatal Care, Peterson, G. and Mehl, L. Vol. II. Chapter 13, Mindbody Press, 1985.

PROFESSIONAL AFFILIATIONS

University of Minnesota Institute for Sexual and Gender Health–Leadership Council

American College of Forensic Psychologists

World Professional Association for Transgender Health

New Health Foundation Worldwide

World Health Organization (WHO) Global Access Practice Network

TransNet national network for transgender research

American Psychological Association

American College of Forensic Examiners

Society for the Scientific Study of Sexuality

Screenwriters and Actors Guild

Phi Beta Kappa

AWARDS AND HONORS

University of Minnesota, Institute for Sexual and Gender Health; *50 Distinguished Sex and Gender Revolutionaries* award, 2021

Letter of commendation from United States Congress for contributions to public health in Illinois, 2019

WPATH Distinguished Education and Advocacy Award, 2018

The Randi and Fred Ettner Transgender Health Fellowship-Program in Human Sexuality, University of Minnesota, 2016

Phi Beta Kappa, 1972

Indiana University Women's Honor Society, 1970-1972

Indiana University Honors Program, 1970-1972

Merit Scholarship Recipient, 1970-1972

Indiana University Department of Psychology Outstanding Undergraduate Award Recipient, 1970-1972

Representative, Student Governing Commission, Indiana University, 1970

LICENSE

Clinical Psychologist, State of Illinois, 1980

Exhibit B

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EXHIBIT 6

ARIZONA HOUSE OF REPRESENTATIVES
Forty-sixth Legislature – Second Regular Session

COMMITTEE ON HEALTH

Minutes of Meeting
Thursday, February 5, 2004
House Hearing Room 4 -- 9:00 a.m.

Chairman Gullett called the meeting to order at 9:06 a.m. and attendance was noted by the secretary.

Members Present

Mr. Arnold	Mr. Konopnicki	Mrs. Rosati
Mr. Bradley	Mr. Lopes	Mr. Thompson
Mr. Hanson	Ms. Lopez L	Mr. Stump, Vice-Chairman
	Mr. Nichols	Mrs. Gullett, Chairman

Members Absent

Mrs. Chase (excused)

Committee Action

H.B. 2195 – HELD	H.B. 2068 – DISCUSSED & HELD
H.B. 2315 – DP (11-0-0-1)	H.B. 2198 – DP S/E (11-0-0-1)
H.B. 2344 – DPA (11-0-0-1)	H.B. 2200 – DPA (10-0-0-2)
H.B. 2182 – DP (11-0-0-1)	

Speakers Present

Anthony D. Rodgers, Director, Arizona Health Care Cost Containment System (AHCCCS)
Elizabeth Baskett, Majority Research Analyst
Representative Marian A. McClure, District 30, sponsor
Jon Dinesman, Vice President, Government Relations, Arizona Physicians IPA (APIPA)
Tom Betlach, Deputy Director, Arizona Health Care Cost Containment System (AHCCCS)
Tara Plese, representing Arizona Association of Community Health Centers
Persons recognized who did not speak, pages 6, 7, 9, 10 and 12
Sarah Joraanstad, Majority Intern
Elaine Letarte, Executive Director, Board of Osteopathic Examiners
Nicole Waldron, Program Associate, County Supervisors Association of Arizona (CSA)
Kristine Stoddard, Majority Assistant Analyst
Representative Sylvia Laughter, District 2, sponsor
Fred Hubbard, representing the White Mountain Apache Tribe

Maryetta Patch, Executive Director, Advisory Council on Indian Health Care (ACOIHC)
Beverly Nichols, representing the White Mountain Apache Tribe
Alida Montiel, Health Systems Analyst, Inter Tribal Council of Arizona (ITCA)
Cathy Eden, Director, Arizona Department of Health Services (ADHS)
Jack Silver, CEO, Arizona State Hospital (ASH), representing ADHS and ASH
Richard S. Porter, Chief, Bureau of Public Health Statistics, Arizona Department of Health Services
Joan Serviss, Research Specialist, County Supervisors Association of Arizona (CSA)
Rory Hays, representing Arizona Nurses' Association (in support) and County Supervisors Association (CSA)

Presentation

Anthony D. Rodgers, Director, Arizona Health Care Cost Containment System (AHCCCS), updated the Committee on the following topics:

- Enrollment and eligibility
 - Annual Growth Enrollment
 - Percent Change in Acute Enrollment Annually
 - Net Monthly Change AHCCCS Enrollment
 - AHCCCS Enrollment by Program
 - 100% Federal Poverty Limit
 - Eligibility Levels
- Medical Inflation
 - Increases to Acute Care Prospective Capitation
 - Title XIX-TANF & SSI CYE 04 Capitation Rate Impact Increases by Service Category
- AHCCCS Budget Policy Issues
 - KidsCare Parents
 - KidsCare Premiums
 - Healthcare Group
 - Outpatient Rates
 - Proposition 204 Program vs. Pre-Proposition 204 MNMI Program – FY 2002-FY 2005 Cost Comparison

(See handout, Attachment 1).

He reviewed annual growth enrollment and advised that the Acute Care program (second chart), which shows a dramatic increase of 46.7 percent in 2002, has always been significant. He added that, while the program looks more stable now, 865,586 out of a total enrollment of 984,327 are enrolled in the Acute Care program as of January 2004 (see 4th chart).

Mr. Rodgers explained that AHCCCS is working hard to bring costs down in future years, and he expects to know by March the level of supplemental required, if any.

He reviewed the 2005 executive recommendations, and noted that if the Health Insurance Flexibility and Accountability (HIFA) parent program ends on June 30, 2004, adults with income above Medicaid eligibility levels will lose coverage for a federally funded AHCCCS program (see chart *Eligibility Levels*).

Mr. Konopnicki asked why the federal money will be lost. Mr. Rodgers explained that a national agreement with the nation's governors provided funding for six quarters during the recession. However, because the recession is not over, there are efforts to extend the federal matching dollars for another year. If these efforts fail, the state will have to replace those dollars.

Mr. Rodgers noted the executive recommendation for a total budget of \$251.8 million for 2005. In addition, the executive budget recommends continuation of KidsCare, while the JLBC budget recommends termination of the program. He noted that HIFA parents do not cost the state any money and said he believes there are many good reasons to consider an extension. Moreover, a study found that if premiums are set at 1 percent of a family's income at the federal poverty level (FPL), enrollment decreases by 16 percent, which means people go uninsured. He believes there is good reason to consider rolling back premium increases and SB 1164, AHCCCS; children's health insurance program continues the KidsCare Parents program.

In regard to Healthcare Group, the executive budget recommends up to 6 percent of the premium collected for administration expenses to support Healthcare Group operations, which comes from member premiums. A study found that 94 percent of small businesses have fewer than 50 employees, and of those, only approximately 30 percent provide health insurance to employees. The vision is to expand to 100,000 members, which will decrease the potential medical cost liability to the general fund.

Mr. Rodgers concluded the AHCCCS overview by pointing out that the final chart demonstrates the value of Proposition 204 to the state, and the significant number of federal dollars that have been brought in. Without Proposition 204, Medically Needy and Medically Indigent (MNMI) costs for FY 2002 – FY 2005 are estimated at \$934,800, while the current state contribution, although higher, is less than the projected amount.

Mr. Stump asked if businesses are likely to move from the private sector to Healthcare Group if it is expanded. Mr. Rodgers said no other state runs a similar program, so no studies are available that might address the issue of whether an employer might find it in their financial interest to do so. However, the number of uninsured people working for small businesses is growing, and Healthcare Group is planning to stabilize and offer lower cost premiums to lower income workers. He added that if premiums continue to increase at 17 to 20 percent, people will look for alternatives.

Chairman Gullett remarked that an expansion to 100,000 members would be bigger than Banner Health.

Mr. Rodgers said while some plans have expressed an interest in the opportunity, there is a lot of concern that it is an unfair advantage. However, they have the opportunity to come in under the AHCCCS umbrella and be innovative. He emphasized that there are currently 1 million uninsured people in Arizona and this proposal will only address 10 percent of the uninsured population. At the present time, the only option for low income workers is to go on AHCCCS.

He added that he believes the state is creating the very thing it fears, because people will believe medical care should be free if they are not encouraged to contribute toward premiums.

Mr. Lopes pointed out that although there is no evidence that people would drop their private insurance to join AHCCCS, there was a concern expressed over KidsCare that commercial insurers might drop children from their policies. Mr. Rodgers said while he is not able to confirm that this has not happened, and he believes there probably have been some, it would not be an issue for Healthcare Group.

Mrs. Rosati asked how AHCCCS plans to reduce the cost of medical inflation. Mr. Rodgers said it is important to get control over payments. Outpatient rates are one issue, as well as controlling AHCCCS membership by getting people on health insurance benefits.

Mrs. Rosati pointed out that physicians, as well as the hospital community, are overworked and underpaid. She said she believes the state needs to embrace tort reform and reduce medical malpractice costs. Mr. Rodgers agreed that health care costs are out of control and said AHCCCS has to be committed to use all available tools to control costs. He said while he agrees it is important to pay providers on an equitable basis, AHCCCS rates are better than Medicare rates. He added that administrative simplification could be better, and rural hospitals are a concern.

Mr. Thompson remarked that an expansion of Healthcare Group would be very tempting for a small business like his. Mr. Rodgers pointed out that the goal is not to build a health plan, but to solve a problem, given the escalation of premiums in the private market. He added that Healthcare Group is a state program and there are no restrictions on the amount it pays. Furthermore, AHCCCS was a national model.

Mr. Konopnicki asked why premiums for private insurance carriers are growing at 16 percent and more. Mr. Rodgers responded that these are national companies that are looking at future costs and demand. However, he does not believe the kind of cost-shifting now taking place is justified.

Mr. Konopnicki commented that as people move from uninsured and private insurance to AHCCCS, eventually costs will go up. As a hospital board member he is aware of the major impact of Medicare and Medicaid reimbursement on costs. However, moving Healthcare Group from 10,000 to 100,000 is the first step to moving toward one million, which is not what the state wants to do. He added that it is important to address the issue of reimbursement. Mr. Rodgers responded that Healthcare Group is not general fund subsidized, and the rates paid to providers are not restricted. Moreover, no other solution is being proposed to address Arizona's uninsured.

Chairman Gullett announced that other topics will be discussed at a future meeting.

Consideration of Bills

H.B. 2195, vulnerable adults; emergency assistance – HELD

Chairman Gullett announced that H.B. 2195 will be held.

H.B. 2315, AHCCCS; eligibility; redetermination – DO PASS

Elizabeth Baskett, Majority Research Analyst, summarized H.B. 2315, which requires that AHCCCS eligibility be re-determined annually rather than every six months, and contains an emergency clause (see bill summary, Attachment 2).

Representative Marian A. McClure, District 30, sponsor, explained that the Legislature's actions last year in requiring six-monthly redetermination has proved to be costly, and H.B. 2315 would return it to annually.

Jon Dinesman, Vice President, Government Relations, Arizona Physicians IPA (APIPA), a part of UnitedHealth Group, speaking in support, reviewed the bill from a plan perspective. He noted that there are significant concerns over the following issues:

- Continuity of care; and
- The actual costs that could be incurred.

In regard to continuity of care, he pointed out that it is cheaper to keep people healthy, and preventative care is the primary way to achieve that. Moreover, maintaining children's immunizations is important, given that healthy children are more likely to become healthier adults. He said the plan supports focusing on disease management and he believes this bill will be a cost savings to the state.

Mr. Lopes asked if people actually avail themselves of the care that is available. Mr. Dinesman noted that people without healthcare coverage go to emergency rooms more often.

Chairman Gullett requested more information on the cost savings.

Tom Betlach, Deputy Director, Arizona Health Care Cost Containment System (AHCCCS), explained that eligibility is handled by the Department of Economic Security and the administrative cost figures will be available in the next month or so.

Mrs. Rosati asked if APIPA and AHCCCS will support the no-smoking bill, *Smoke Free Arizona*. Mr. Betlach said he will speak to the Governor's office about the issue.

Tara Plese, representing Arizona Association of Community Health Centers, speaking in support, described the negative effect of the 6-month requirement on providers. She pointed out that the anticipated savings could inadvertently hurt providers, who will not get reimbursement. Community Health Centers provide access for many people without insurance or AHCCCS, which leaves them with only two options:

1. To treat the patient and not be reimbursed; or
2. To turn the patient away, which their mission statement prohibits.

She emphasized that critical and chronic problems are much more expensive to treat, and urged support for the bill.

Persons recognized in support of H.B. 2315 who did not speak:

Joseph Abate, representing Arizona Council of Human Service Providers & Arizona Osteopathic Medical Association (AOMA)
Donna Kruck, Arizona Bridge to Independent Living (ABIL)
David Miller, CEO, Arizona Council of Human Service Providers
Pat Vanmaanen, Health Consultant, representing himself
David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association
Sherri Walton, representing Mental Health Association
Peggy Stemmler, AZ Chapter, American Academy of Pediatrics
Barbara Burkholder, Legislative Co-Chair, Arizona Public Health Association
Jason Bezozo, Director, Government Affairs & Policy, Arizona Hospital and Healthcare Association
Richard Bitner, Legislative Counsel, Arizona College of Emergency Physicians
Kelsey Lundy, representing APIPA
Allan Stanton, Lobbyist, Schaller Anderson
Brian McAnallen, Director of Government Relations, Scottsdale Healthcare
Kevin DeMenna, Lobbyist, Arizona Health Care Association

Persons recognized persons taking a neutral position on H.B. 2315 who did not speak:

Don Hughes, Legislative Liaison, AHCCCS (available for questions)

Vice-Chairman Stump moved that H.B. 2315 do pass. The motion carried by a roll call vote of 11-0-0-1 (Attachment 3).

H.B. 2344, board of osteopathic examiners; omnibus – DO PASS AMENDED

Sarah Joraanstad, Majority Intern, summarized H.B. 2344, which makes numerous changes to statute regarding the Board of Osteopathic Examiners (Board). The bill clarifies and extends provisions of unprofessional conduct; allows the Board further options for disciplinary action as alternatives to license revocation; expands the Board's physician assistance program to include physicians who have a medical, psychiatric, psychological or behavioral health disorder; and allows the Board to collect 10 percent of license renewal fees for the operation of the program (see bill summary, Attachment 4). She also reviewed a proposed 12-line amendment to the bill (Attachment 5), which means that the program will not undergo any changes and will remain a substance abuse program.

Elaine Letarte, Executive Director, Board of Osteopathic Examiners, was present to respond to questions and requested support for the bill.

Persons recognized in support who did not speak:

Joseph Abate, representing Arizona Osteopathic Medical Association
Amanda Weaver, Executive Director, Arizona Osteopathic Medical Association
Tina Wilcox, Legislative and Legal Liaison, Arizona Medical Board

Vice-Chairman Stump moved that H.B. 2344 do pass.

Vice-Chairman Stump moved that the 12-line Stump amendment dated 2/4/04 to H.B. 2344 (Attachment 5) be adopted. The motion carried.

Vice-Chairman Stump moved that H.B. 2344 as amended do pass. The motion carried by a roll call vote of 11-0-0-1 (Attachment 6).

H.B. 2182, alcohol detoxification centers; study committee – DO PASS

Sarah Joraanstad, Majority Intern, summarized H.B. 2182, which establishes a study committee on regional alcohol detoxification centers. The bill contains a delayed repeal date of September 30, 2005 (see bill summary, Attachment 7).

Nicole Waldron, Program Associate, County Supervisors Association of Arizona (CSA), testified that CSA supports the legislation and is willing to staff the study committee.

Chairman Gullett explained that Representative Jack C. Jackson, Jr., who has introduced a companion bill, has agreed with Representative Carruthers, the sponsor, to move H.B. 2182 forward with the addition of the Native American members.

The following persons were present in support of H.B. 2182 but did not speak:

David Miller, CEO, Arizona Council of Human Service Providers
Sherri Walton, representing Mental Health Association
Jason Bezozo, Director, Government Affairs & Policy, Arizona Hospital and Healthcare Association

Vice-Chairman Stump moved that H.B. 2182 do pass. The motion carried by a roll call vote of 11-0-0-1 (Attachment 8).

H.B. 2068, Indian health care; advisory council – DISCUSSED AND HELD

Kristine Stoddard, Majority Assistant Analyst, summarized H.B. 2068, which makes changes to the Indian Health Care Advisory Council to increase the number of members on the Council, remove specific requirements for appointees, and require the Governor to fill a vacancy within two months. The bill also adds duties to the Council, including submitting a report on or before December 1 of each year (see bill summary, Attachment 9). She also reviewed a proposed amendment to the bill (Attachment 10).

Representative Sylvia Laughter, District 2, sponsor, said the bill has been in progress for many months to improve the liaison between the Tribes and Arizona Health Care Cost Containment System (AHCCCS). The proposals are designed to help an existing advisory board do a better job. Speaking in response to questions, she said it is her understanding that the board has been meeting, but there are too many vacancies to reach a quorum and be productive.

Fred Hubbard, representing the White Mountain Apache Tribe in support of H.B. 2068, distributed a handout including an April 2002 *Health Status Profile of American Indians in Arizona (2000 Data Book)* (Attachment 11) showing that Native Americans have a 20-year lower life expectancy than all Arizona residents. He pointed out that Indian Health Services (IHS) is severely under-funded and this legislation will give the Tribes the data to seek other resources to attack the widening disparities in health care and mortality rates. He emphasized that the advisory council needs better time frames and to function properly. He thanked Mr. Rodgers, AHCCCS Director, for his proposal and noted that many Native Americans seek care in emergency rooms.

Maryetta Patch, Executive Director, Advisory Council on Indian Health Care (ACOIHC), representing herself, spoke in opposition to the bill. She pointed out that in order for there to be a working relationship between the state and tribal governments there needs to be better collaboration, and said she believes action on the issue of disparity must rest with the Tribes. An annual report for FY 2004 identified all available health resources for the Tribes in Arizona. Ms. Patch acknowledged that 2003 was a difficult year because of a shortage of members. She advised that no consultation took place with the staff of the Advisory Council, and that the bill only recently came to her attention. A copy of her testimony is appended hereto (Attachment 12).

Ms. Lopez asked if amending the existing membership statutes would make the group more effective. Ms. Patch said she believes it would. She pointed out that it is up to the Tribes to send a representative. In addition, to her knowledge, not all Tribes were aware of the bill and there was not time to consult them. She added that she does not believe the proposed legislation will improve the work of the Advisory Council.

Chairman Gullett remarked that the issue is that many Tribes have not availed themselves of the Council which has not been able to get a quorum to function.

Representative Laughter stated that the amendment allows for all 22 Tribes to be represented. She added that Mrs. Patch has never introduced herself to Representative Laughter to talk about the Advisory Council during the six years she has been a legislator. Moreover, no one has been able to get in touch with Mrs. Patch and she has not attended any meetings. She believes the Native American community is not getting the representation it needs.

Chairman Gullett commented that she believes more work needs to be done on the bill and that the organization needs to do a better job.

Ms. Lopez asked if AHCCCS will have to absorb the cost.

Beverly Nichols, representing the White Mountain Apache Tribe, who requested the bill, said it is her understanding that AHCCCS pays \$250,000 each year for the Advisory Council.

Elizabeth Baskett, Majority Research Analyst, said it was her understanding that the money for the Council has not been used, but she is awaiting an answer from AHCCCS.

Following discussion, Chairman Gullett said she will hold the bill to await clarification on the funding, and asked all the parties to work together.

Alida Montiel, Health Systems Analyst, Inter Tribal Council of Arizona (ITCA), representing 19 Arizona Tribes, said she has been a member of the Advisory Council for many years and takes a neutral position on the bill. She called attention to proposed amendments recommended by the ITCA (Attachment 13), which she reviewed.

Chairman Gullett stated that she has not seen the proposed amendments before, but that they will be added to the discussion.

Chairman Gullett announced that H.B. 2068 will be held.

The following persons were present in support of H.B. 2068 but did not speak:

Tara Plese, representing Arizona Association of Community Health Centers
Jon Dinesman, Vice President, Government Relations, APIPA

H.B. 2198, state hospital; licensed bed capacity - DO PASS AMENDED – S/E

Elizabeth Baskett, Majority Research Analyst, summarized a strike-everything amendment to H.B. 2198 (Attachment 14), which delegates authority to the Superintendent to establish, subject to legislative appropriation, the maximum capacity and allocation formula for all patient populations at the Arizona State Hospital (ASH) until June 30, 2006. The strike-everything amendment also makes technical changes and contains an emergency clause (see summary, Attachment 15).

Chairman Gullett asked if there is currently a waiting list.

Cathy Eden, Director, Arizona Department of Health Services (ADHS), speaking in support, said there is a waiting list at this time.

Jack Silver, CEO, Arizona State Hospital (ASH), representing ADHS and ASH in support of the bill, said approximately 42 individuals are currently on the waiting list.

Mr. Thompson asked the average length of stay at ASH. Mr. Silver said populations vary from 72 days for pre-trial patients, to 3 - 6 months for adolescents, to 1,000 days for *guilty except insane* patients. There are 16 beds for adolescents, who are placed in one of three ways:

- Parents or guardians
- Department of Juvenile Corrections (the largest group)
- Child Protective Services (CPS)

In response to a query from Mr. Bradley, Dr. Silver said most adolescents do not come through a Regional Behavioral Health Authority (RBHA). If they do, RBHA does not pay for the bed, with the exception of Title 19 reimbursable. He offered to find out the number of adolescents who come through the RBHA system.

Dr. Silver invited Members to tour the new facility.

Vice-Chairman Stump moved that H.B. 2198 do pass.

Vice-Chairman Stump moved that the 2-page Gullett strike-everything amendment dated 1/30/04 to H.B. 2198 (Attachment 14) be adopted. The motion carried.

Vice-Chairman Stump moved that H.B. 2198 as amended do pass. The motion carried by a roll call vote of 11-0-0-1 (Attachment 16).

Persons recognized in support of H.B. 2198:

David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association
Sherri Walton, Mental Health Association

Person recognized who is neutral on H.B. 2198:

Joan Serviss, Research Specialist, County Supervisors Association of Arizona

H.B. 2200, vital records; public health statistics – DO PASS AMENDED

Elizabeth Baskett, Majority Research Analyst, summarized H.B. 2200, which rewrites and revises the vital records statutes, including the following major changes:

- Extends the time period for filing death certificates from three to seven days.
- Extends the time period for submitting certificates of births resulting in stillbirths from three days to seven.
- Increases the criminal penalty for persons who knowingly provide false information, alter or manipulate records and certificates and use records and certificates for deceptive purposes from a Class 1 misdemeanor to a Class 6 felony.
- Requires persons who submit a certificate for registration to make a reasonable effort to ensure accuracy of the information and requires the registrar to register certificates that contain accurate and complete information.
- Requires that if the registrar does not issue a death certificate, birth certificate or delayed birth certificate, the registrar shall provide notification to the person who submitted the certificate explaining the reason for not registering the certificate and the right to appeal.
- Requires that in cases of death, in which a medical examiner investigation is required pursuant to A.R.S. §11-593, medical examiners must sign and complete the medical certification of death within 72 hours.
- Requires that when a medical examiner cannot determine the cause of death, the examiner must enter the cause of death as “pending” and sign the medical certification of death. The registrar will be required to issue a death certificate in these cases.

(See bill summary, Attachment 17).

She also reviewed three proposed amendments to the bill:

28-line Gullett amendment (Attachment 18), which:

1. Conforms the funeral board’s definition of “human remains” with the new definition of “human remains” proposed in the bill.

2. Strikes language that prohibited deputy local registrars, who are county employees, to receive \$1 fees for certificates registered.
3. Eliminates all references to a person's right to appeal. Persons already have the right to appeal under A.R.S. Title 41, Chapter 6, Article 10.
4. Requires DHS to provide copies of vital records to DES without charge if they are requested in connection with child support cases, child welfare cases, etc.
5. Requires that if an acknowledgement of paternity is rescinded, the registrar must remove the father's name from the registered birth certificate.
6. Clarifies that monies collected by the local registrar shall be credited to the local registrar health department fund and not DHS.

4-page Gullett amendment (Attachment 19), which incorporates the following nurse practitioner requests:

1. Revises the medical examiner statutes and the vital records statutes to clarify a nurse practitioner's ability to sign death certificates.
2. Defines "Nurse Practitioner."
3. Reinstates language that was inadvertently struck to clarify who has the authority to sign a death certificate when a death occurs in a health care institution.
4. Requires that nurse practitioners complete education and documentation requirements by the State Board of Nursing before they sign death certificates.
5. Requires the Board of Nursing to adopt policies prescribing curriculum and documentation procedures for compliance.
6. Establishes an advisory committee to the Board of Nursing to advise on the development of the education requirements for the signing of birth certificates.

5-line Konopnicki amendment (Attachment 20), which eliminates the increase in criminal penalties for submitting false information for the creation of a certificate, altering certificates with deceptive intent, using a certificate for deceptive purposes, failure to report a death or disturbing human remains without authority. The bill proposes that those criminal penalties be increased from a Class 1 misdemeanor to a Class 6 Felony. This amendment keeps them as Class 1 misdemeanor offenses.

Cathy Eden, Director, Arizona Department of Health Services (ADHS), said she supports the bill and all proposed amendments. She noted that the entire year has been spent working with the stakeholders, which she believes has resulted in a very good bill.

She noted for the record that she has spoken to Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (AzCLU), who indicated that she has withdrawn her opposition to the bill.

Mr. Lopes said he is pleased to see a definition of 'vital records' and 'public health statistics,' and asked what the change will mean to those who use statistics.

Richard S. Porter, Chief, Bureau of Public Health Statistics, Arizona Department of Health Services, said he does not believe there will be an increase in the time lag to get data. He noted that the most recent is for the year 2002 because it takes time to collect, correct and analyze data.

Persons recognized in support of H.B. 2200:

John Lamer, Homeowner, representing Arizona State Board of Nursing
Marian Belsanti, FNP, representing herself
Richard Bitner, Legislative Counsel, Arizona State Association of Physician Assistants
David Landrith, Vice President of Policy & Political Affairs, Arizona Medical Association (support with Gullett amendment)
Barbara Burkholder, Legislative Co-Chair, Arizona Public Health Association
Kelsey Lundy, representing Arizona Association of Nurse Anesthetists
Jack Moortel, representing ScienceCare and Funeral Directors Association
Marla Weston, Executive Director, Arizona Nurses' Association
Amanda Weaver, Executive Director, Arizona Osteopathic Medical Association
Kevin DeMenna, Lobbyist, AZ Health Care Association
Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union (AzCLU)
Karen Grady, Advanced Practice Nurse Consultant, Arizona State Board of Nursing
Joey Ridenour, Executive Director, Arizona State Board of Nursing

Mr. Lopes asked if the counties support the bill.

Joan Serviss, Research Specialist, County Supervisors Association of Arizona (CSA), said she believes the amendments rectify some of the counties' concerns.

Rory Hays, representing Arizona Nurses' Association (in support) and County Supervisors Association (CSA), said the counties were concerned over economic impacts but it is her understanding that they are comfortable with the changes. Speaking on behalf of the Nurses' Association, she said she believes DHS staff have developed an excellent bill.

Vice-Chairman Stump moved that H.B. 2200 do pass.

Vice-Chairman Stump moved that the 28-line Gullett amendment dated 2/4/04 to H.B. 2200 (Attachment 18) be adopted. The motion carried.

Vice-Chairman Stump moved that the 4-page Gullett amendment dated 2/4/04 to H.B. 2200 (Attachment 19) be adopted. The motion carried.

Vice-Chairman Stump moved that the 5-line Konopnicki amendment dated 2/4/04 to H.B. 2200 (Attachment 20) be adopted. The motion carried.

Vice-Chairman Stump moved that H.B. 2200 as amended do pass. The motion carried by a roll call vote of 10-0-0-2 (Attachment 21).

Without objection, the meeting adjourned at 11:09 a.m.

Carole Price, Committee Secretary
February 12, 2004

(Original minutes, attachments and tape are on file in the Office of the Chief Clerk.)