

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
No. 3:22-cv-191

KANAUTICA ZAYRE-BROWN,

Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF  
ADULT CORRECTION, et al.,

Defendants.

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S MOTION TO EXCLUDE  
THE TESTIMONY OF SARA E. BOYD,  
PHD**

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**I. Introduction**

Plaintiff seeks to exclude as unqualified an experienced and trained clinical and forensic psychologist whose professional work directly involves conducting evaluations of transgender incarcerated persons. This expert personally interviewed and evaluated Plaintiff, reviewed her health records, and conducted and reviewed psychometric assessments, all of which speak to the scale and scope of Plaintiff's distress (a central issue in the case). Plaintiff seeks to exclude this testimony as not helpful or relevant even though it directly addresses and contradicts the testimony of Plaintiff's expert, also a clinical and forensic psychologist. Plaintiff also challenges the expert's reliability even though the methodology is the same as that of Plaintiff's expert. In short, Plaintiff presents no basis for the Court to reject this rebuttal testimony. Such a ruling would prevent this Court from developing a full and fair record in this case.

**II. Background Facts Regarding Dr. Boyd**

Sara Boyd, Ph.D., is a clinical and forensic psychologist with significant experience conducting forensic mental health assessments of transgender and gender diverse people in correctional settings. (DE-65-1 at 1) Dr. Boyd earned her Bachelor of Science in Psychology from

the University of Illinois, a Master of Science in Counseling Psychology, and a second Master of Science in Clinical Psychology, as well as a Doctor of Philosophy in Clinical Psychology, all from the University of Kentucky. (DE-18-7 at 1) Thereafter, Dr. Boyd completed a Postdoctoral Fellowship in Forensic Psychology at the University of Virginia. (DE-18-7 at 2)

Most of Dr. Boyd's recent work has focused on "sexual/gender minority populations, intellectual developmental disabilities, and interpersonal trauma[.]" (DE-70-1 at 12) Dr. Boyd has conducted more than 100 evaluations of incarcerated individuals, including approximately 20-25 evaluations related to gender-affirming care, and presentence evaluations. (DE-65-1 at 1-2; DE-70-1 at 13-14, 62-63) Dr. Boyd has performed this type of work since 2013 when, during her postdoctoral training, she worked with a colleague who published extensively in this area. (DE-70-1 at 13-14, 62-63) Additionally, Dr. Boyd has participated in specialized trainings focused on gender minority populations in the carceral setting. (DE-70-1 at 34, 40-44)

Dr. Boyd is also the co-author of a book chapter (in press) concerning psychological evaluation, management, and treatment of transgender and gender diverse people housed in correctional settings. (DE-65-1 at 2) Additionally, she is a diplomate of the American Board of Professional Psychology, for the Forensic Specialty. (DE-65-1 at 2) This designation requires credential review, a written exam, work sample review, and a three-hour oral defense of work samples. (DE-65-1 at 2) *See also*, DE-18-6, 18-7, DE-65-1 at 1-2.

In preparing her report, Dr. Boyd thoroughly reviewed various materials and conducted her own independent evaluation. Dr. Boyd reviewed both of Dr. Ettner's declarations (DE-13-1 and 22-1) and expert report. (DE-65-1 at 4) Dr. Boyd also reviewed Plaintiff's medical and mental health records (DE-18-6 ¶¶ 4-5, DE-65-1 at 7, 14-16, 27, 31), and Plaintiff's video-recorded deposition. (DE-65-1 at 27) On June 20, 2023, Dr. Boyd conducted a clinical interview of Plaintiff.

(DE-65-1 at 27) Lastly, in keeping with her typical practice, during that in-person assessment, Dr. Boyd administered two widely accepted psychometric assessments that measure psychopathology, personality, interpersonal and identity functioning, and distress. (DE-65-1 at 23)

### **A. Scope of Dr. Boyd's Opinions**

In her report, Dr. Boyd provides four primary opinions. (DE-65-1 at 3-4, 33-34) First, Dr. Boyd opines that Dr. Ettner's opinions are undermined by multiple deficiencies in her assessment. (*Id.* at 3, 33) Second, Dr. Boyd concludes that Dr. Ettner's opinion that a vulvoplasty would cure Plaintiff's gender dysphoria ("GD") lacks sufficient basis and is misleading because a clinical psychologist cannot reasonably predict that a particular intervention will be curative of a condition such as GD. (*Id.* at 3, 34) Third, Dr. Boyd opines that her evaluation of Plaintiff did not reveal any significant findings that counsel in favor of the surgery as an immediate intervention from a psychological standpoint (*i.e.*, Dr. Boyd does not believe that Plaintiff's mental health is at risk without undergoing the surgery while she remains incarcerated). (*Id.* at 3, 34) Fourth, Dr. Boyd concludes that because the source of Plaintiff's GD appears multifaceted, the degree and timing of psychological benefits that she may experience is dependent in part on psychosocial, cultural, environmental, and interpersonal factors. (*Id.* at 3-4, 34)

### **B. Dr. Boyd's First Opinion Critiques Aspects of Dr. Ettner's Methodology.**

In her first opinion, Dr. Boyd provides multiple direct critiques of Dr. Ettner's methodology and opinions. Dr. Boyd first concludes that Dr. Ettner's approach falls short because she ignores the value of a robust informed consent approach<sup>1</sup> and instead simply refers to the notation in Dr. Figler's surgical consultation record about informed consent. (DE-65-1 at 7) Dr. Boyd concludes

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<sup>1</sup> Dr. Boyd is not referring to medical informed consent, which includes a discussion of the medical and physiological risks and benefits to a given procedure. Rather, Dr. Boyd is referring the process of reviewing an "individual's understanding of their options, ... associated risks, costs, and benefits, to ascertain the person's expectancies as well as their fund of knowledge about their options." (DE-65-1 at 6)

that this is insufficient because Dr. Figler’s record does not indicate any discussion of Plaintiff’s “fund of knowledge as to the anticipated benefits or risks” . . . let alone her expectations with respect to outcomes” and therefore Dr. Ettner’s report should have included such a discussion. (*Id.* at 7) Dr. Boyd opines that such an “exploration of the anticipated benefits, expectations, and outcomes, and the bases of the patient’s understanding is paramount” because “[GD] and the treatment of [GD] necessarily requires consideration of more than medical outcomes, as it implicates [several] psychosocial factors[.]” (*Id.* at 8) According to Dr. Boyd, this is important because “[b]elieving that one will be cured of a psychological condition secondary to [surgery], then finding out that one was not cured, can be extraordinarily painful and discouraging, as well as psychologically destabilizing[.]” (*Id.* at 11)

Dr. Boyd also critiques the lack of any robust discussion of Plaintiff’s mental state. (*See* DE-65-1 at 13-16) Dr. Boyd notes that while Dr. Ettner’s report is more than 60 pages long, she spends only approximately 6 pages addressing Plaintiff specifically, and “offers very little information, assessment, or discussion about [Plaintiff]’s mental and emotional state.” (*Id.* at 13) The lack of any such discussion is striking considering that Dr. Ettner writes that her “examination of [Plaintiff] and her medical history demonstrate that . . . surgery actually is necessary to protect her life given the risks of suicide in failing to provide such surgery, to prevent the ongoing disability[,] . . . and to alleviate the psychological pain she has long experienced and continues to experience.” (*Id.* at 13 quoting DE-61-2 ¶ 105)

Dr. Boyd further concludes that Dr. Ettner “does not articulate how her examination of [Plaintiff] or her medical history demonstrate that she is at any particular risk of suicide[.]” (DE-65-1 at 13) Nor does Dr. Ettner discuss “the factors that may have historically aggravated or attenuated [Plaintiff]’s suicidality.” (*Id.* at 13) Additionally, Dr. Boyd notes that despite opining

about Plaintiff's "disability," Dr. Ettner does not discuss any disability or how it would continue without gender-affirming surgery ("GAS") (*Id.*) Moreover, Dr. Boyd's opinion is critical of Dr. Ettner for not providing any "methodical examination of [Plaintiff's] psychological pain, including the scale, scope, and manifestations of [her] distress, and the relationships between stressors and mental health conditions[.]" (*Id.* at 13-14) Dr. Boyd finds the absence of such a discussion notable considering that "there are multiple incidents that are chronicled in her medical records which warrant an examination." (*Id.* at 14) Unlike, Dr. Ettner, Dr. Boyd did assess two of these instances and concludes that Plaintiff's "acute mental health crises in recent years were indirectly rather than directly related to her [GD]." (*Id.* at 29) In short, Dr. Boyd's first opinion offers multiple critiques of Dr. Ettner's methodology in assessing Plaintiff and the basis for her opinions.

**C. Dr. Boyd's Second Opinion Critiques Dr. Ettner's Central Thesis—that Surgery is Curative.**

As a direct response to Dr. Ettner's primary conclusion—that GAS would cure Plaintiff's GD, Dr. Boyd opines that "a clinical psychologist cannot reasonably predict with confidence that a particular intervention will be curative of a condition such as [GD][.]" (DE-65-1 at 3) Thus, Dr. Boyd concludes that Dr. Ettner's opinion that the requested vulvoplasty would cure Plaintiff's GD "lacks a sufficient basis and is misleading." (*Id.*)

Dr. Boyd's opinions on this point consist of multiple components. First, Dr. Boyd concludes that "[w]ithout ascertaining [Plaintiff's] expectancies regarding the likely efficacy of a given intervention . . . a clinical psychologist lacks any reasonable basis upon which to predict with confidence that a particular intervention will be curative[.]" (DE-65-1 at 22) Dr. Boyd further concludes that this is "particularly true with respect to a condition such as [GD] which has a diverse manifestation and is inextricably bound up in aspects of a person's life and circumstances . . . that go far beyond the physical appearance of their genitals." (*Id.*)

With respect to Dr. Ettner's specific opinion that GAS would be curative, Dr. Boyd concludes that such an opinion is "striking" given the "absence of a discussion regarding" Plaintiff's prior expectancies and "seems particularly questionable in light of the very modest gains in psychological functioning" from prior interventions that "Plaintiff reported in her deposition"<sup>2</sup> (DE-65-1 at 22) Moreover, Dr. Boyd opines that any basis for Dr. Ettner's conclusion that surgery would be curative is further eroded by the "lack of an articulation by Dr. Ettner of an examination of [Plaintiff] or her medical history, beyond cursory references to medical records." (*Id.*) Thus, Dr. Boyd concludes that "it is difficult see the basis for [Dr. Ettner's] opinion that surgery would cure [Plaintiff's] [GD]" and "it would be misleading to tell [Plaintiff] that . . . [GAS] alone will be curative[.] (*Id.*)

**D. Dr. Boyd's Third Opinion Regarding the Absence of Specific Factors in Plaintiff's Mental State Indicating a Need for Immediate Surgery is a Direct Response to Dr. Ettner's Conclusions.**

Dr. Boyd concluded that her evaluation of Plaintiff did not reveal any significant findings in her mental state that would counsel in favor of the surgery as an immediate intervention, from a psychological standpoint. By contrast, Dr. Ettner opines that Plaintiff has: GD-related "persistent distress[;]" is and has been experiencing "psychological pain[;]" faces a risk of suicidality; is suffering from "ongoing disability" and therefore "urgently requires" GAS. (DE 61-2 at ¶¶ 91, 105, 132-133, 136)

Overall, Dr. Boyd's assessment demonstrates that while Plaintiff has "some issues of note[;]" she "is relatively well adjusted, all things considered." (DE-65-1 at 23) Here, Dr. Boyd's conclusion is supported by the results of Plaintiff's psychometric testing, performed by both Dr. Boyd and Dr. Ettner. (*Id.* at 18-20, 23-26) Dr. Ettner conducted psychometric testing during her

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<sup>2</sup> Unlike Dr. Boyd, Dr. Ettner did not review Plaintiff's deposition. (Ex. A at 71, 202-205)

in-person evaluation of Plaintiff. (DE-13-1 ¶ 76; DE-61-2 ¶ 80) However, Dr. Ettner did not produce nor discuss the results of that testing in her report—in fact she did not even identify the tests that she used. (DE-65-1 at 17) Only after Defendants requested access to this testing, was Dr. Boyd able to review and score the raw testing results. (*Id.* at 18)

Dr. Ettner administered three tests: (1) the Trauma Symptom Inventory, Second Edition (TSI-2), which measures trauma-related psychological symptoms; (2) the Beck Anxiety Inventory (BAI), which measures anxiety; and (3) the Beck Depression Inventory (BDI), which measures depression. (*Id.* at 18-20) On the TSI-2, there was only a single elevated scale, the Defensive Avoidance scale which is “associated with a tendency to avoid remembering/thinking about traumatic events.” (*Id.* at 19) Additionally, on the BAI and BDI, Plaintiff’s scores fell into the “mild range.” (*Id.* at 20) Furthermore, on the tests administered by Dr. Ettner, the scales related to suicidality were not statistically elevated. (*Id.* at 19-20).

Dr. Boyd administered two well-established psychometric assessments: (1) Minnesota Multiphasic Personality Inventory, Second Edition—Restructured Form (MMPI) and (2) the Personality Assessment Inventory (PAI). (DE-65-1 at 23-25) The MMPI is a self-report inventory commonly used in forensic settings and it “measures a broad range of psychopathology, including mood, anxiety, and perceptual disturbances,” among other metrics. (*Id.* at 23) On the MMPI, the scales related to suicidality were somewhat elevated. (*Id.* at 24) On the PAI, Plaintiff’s scores were elevated on only one primary clinical scale, mania, and her overall levels of anxiety and depression were within normal limits. (*Id.* at 26) The PAI results were not elevated for suicidality. (*Id.* at 26)

Dr. Boyd notes that the MMPI results could indicate a concern regarding suicidality risk because of Plaintiff’s reported history and “her responses indicat[ing] that she may have increased impulsivity when emotionally distressed.” (DE-65-1 at 24) However, Dr. Boyd notes that the

various other assessments (including Dr. Ettner's) did not indicate elevated risks in this area. (*Id.* at 19-20, 24) Moreover, to the extent the MMPI does indicate an elevation, Dr. Boyd concludes that Plaintiff, "appears to have a number of contributors to" such a risk "beyond [GD][,]" including trauma-related symptoms (*Id.* at 20, 24) Thus, an elevated risk "does not necessarily mean that [GD] is the primary or only cause of the elevated risk, nor does it mean that any particular affirming intervention would necessarily reduce or eliminate" that risk. (*Id.*) Dr. Boyd further notes that it is "not uncommon for incarcerated individuals to have elevated risk factors for suicidality." (*Id.*)

Thus, contrary to Dr. Ettner's conclusions and opinions that Plaintiff's "psychological pain," "persistent distress," and suicide risk, urgently necessitates surgery, which will cure her GD (*see* DE-61-2 ¶¶ 91, 105, 132-33, 136), Dr. Boyd opines that based on her review of Plaintiff's records, her own assessment of Plaintiff, and the results of both her and Dr. Ettner's psychometric testing, Plaintiff's psychological distress is not solely caused by her GD and that surgery alone will not eliminate or even substantially alleviate the source of that distress.

**E. Dr. Boyd's Fourth Opinion that the Psychological Benefit that Plaintiff May Realize From Surgery Will be Greater in the Community is a Direct Response to Dr. Ettner's Conclusions.**

Given the contributing factors to Plaintiff's GD, Dr. Boyd's opinion is that Plaintiff is likely to derive more psychological benefit from GAS in the community than while in custody. (*Id.*) This opinion counters Dr. Ettner's claim that Plaintiff urgently requires surgery. (*See* DE-61-2 ¶ 136) Dr. Boyd opines that "the drivers of the distress associated with GD can vary and can be affected by an individual's environment and their access to positive social and practical supports[,]" and that [t]his is true in [Plaintiff]'s case." (*Id.* at 26-27) Moreover, based on her examination of Plaintiff and review of her health records, Dr. Boyd concludes that the sources of Plaintiff's GD are the incongruence she experiences between her identity and physical body, transphobia when

other misidentify her, and her aim to be essentially indistinguishable from a cisgender woman. (*Id.* at 27, 29-30)

Given the drivers of Plaintiff's GD, Dr. Boyd opines that Plaintiff's "ability to avoid being identified as a transgender person" is a factor that would impact any benefit Plaintiff may realize from GAS. (DE-65-1 at 31) Yet, as Dr. Boyd notes, in the carceral setting, even with the surgery she would still be known as a transgender woman because of the nature of the insulated community. (*Id.* at 32) Additionally, Dr. Boyd concludes that "whatever the benefit [Plaintiff] would derive from the surgery will be less noticeable in a carceral setting than a community setting, because the community setting offers more opportunity to blend in, as [she] has indicated she wishes to do." (*Id.*) Accordingly, Dr. Boyd's opinion is that Plaintiff is likely to derive more psychological benefit from GAS in the community. (*Id.*) This opinion counters Dr. Ettner's claim that Plaintiff should receive surgery now. (*See* DE-61-2 ¶ 136)

### **III. Argument**

#### **A. Applicable Legal Standard**

Rule 702 provides that "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education" can offer expert opinions if four factors are present:

(a) that expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

A leading treatise on evidence condenses Rule 702 into three broad prerequisites: (1) the "testimony offered must be helpful to the trier of fact," (2) "the witness must be qualified to offer opinions on that topic," and (3) "the opinion testimony must be reliable from an evidentiary standpoint and must fit the facts of the case." 4 WEINSTEIN'S FEDERAL EVIDENCE § 702.syn (2023).

### 1. Rule 702 is Broadly Interpreted in Favor of Admission.

“[T]he Federal Rules of Evidence eliminated many formalistic barriers imposed by the common law on the introduction of opinion and expert testimony.” *Kopf v. Skyrms*, 993 F.2d 374, 377 (4th Cir. 1993). “Rule 702 is broadly interpreted, and helpfulness to the trier of fact is its ‘touchstone.’” *Id.* quoting *Friendship Heights Associates v. Koubek*, 785 F.2d 1154, 1159 (4th Cir. 1986). *See also*, *United States v. Offill*, 666 F.3d 168, 175 (4th Cir. 2011) (noting that the “touchstone of [Rule 702] is whether the testimony will assist the jury.”)

“The presumption under the Rules is that expert testimony is admissible.” 4 WEINSTEIN’S FEDERAL EVIDENCE § 702.02 (2023). The trial court has broad discretion in its “gatekeeper” function regarding these three requirements. *See GE Co. v. Joiner*, 522 U.S. 136, 142 (1997) (admissibility of expert testimony reviewed on abuse of discretion standard). Moreover, the trial court has “broad discretion in choosing which *Daubert* factors to apply and how to consider them.” *Belville v. Ford Motor Co.*, 919 F.3d 224, 233-234 (4th Cir. 2019) (cleaned up)

Regarding the helpfulness requirement, “[t]estimony from an expert is presumed to be helpful unless it concerns matters within the everyday knowledge and experience of a lay juror.” *Kopf*, 993 F.2d. at 377. With respect to the qualification requirement, as Plaintiff acknowledges, “a person may qualify to render expert testimony in any one of the five ways listed” by Rule 702: “knowledge, skill, experience, training, or education.” (DE 76 at 5 citing *Kopf*, 993 F.2d at 377) The expert simply must be qualified “on the issue for which the opinion is proffered.” *Kopf*, 993 F.2d at 377. And, when an expert’s qualifications are challenged, “the test for exclusion is a strict one . . .” *Id.*

Regarding the reliability requirement, the factors are flexible and will depend on the unique circumstances of the expert testimony. *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th

Cir. 1999). This flexibility is particularly applicable when expert testimony is based on experience, “as there exist meaningful differences in how reliability must be examined with respect to expert testimony that is primarily experiential in nature as opposed to scientific.” *United States v. Wilson*, 484 F.3d 267, 274 (4th Cir. 2007). While scientific expert testimony is “objectively verifiable, and subject to the expectations of falsifiability, peer review, and publication,” experiential expert testimony “does not rely on anything like a scientific method.” *Id.* (cleaned up). Even so, “this does not lead to a conclusion that experience alone—or experience in conjunction with other knowledge, skill, training or education—may not provide a sufficient foundation for expert testimony.” *Id.*

## **2. The Rules are Even More Relaxed for Rebuttal Expert Opinions.**

Furthermore, Federal Rule of Civil Procedure 26 permits parties to submit expert testimony that is “intended solely to contradict or rebut evidence on the same subject matter identified by another party.” Fed. R. Civ. P. 26(a)(2)(D)(ii). “Rebuttal evidence is properly admissible when it will explain, repel, counteract or disprove the evidence of the adverse party.” *Earthkind v. Lebermuth Co.*, No. 5:19-CV-00051, 2021 U.S. Dist. LEXIS 103080, \*10 (W.D.N.C. June 1, 2021) (cleaned up). When offering rebuttal expert testimony, the expert has “no burden to produce models or methods of their own; they need only attack those of the opposing party’s experts.” *Id.* (cleaned up) Rebuttal experts still “must meet *Daubert*’s threshold standards regarding” qualifications, sufficiency of the data, reliability of the methodology, and relevance of the testimony. *Id.*

## **3. Exclusion is Rare and Disfavored.**

Not surprisingly, in light of the foregoing principles, “rejection of expert testimony is the exception, rather than the rule.” *Lipitor (Atorvastatin Calcium) Mktg. v. Pfizer, Inc.*, 892 F.3d 624,

631 (4th Cir. 2018); *United States v. Smith*, 919 F.3d 825, 835 (4th Cir. 2019) (same). Notably, to the extent this case proceeds with a bench trial,<sup>3</sup> exclusion is particularly inappropriate, as “[t]he main purpose of [the] *Daubert* exclusion is to protect juries from being swayed by dubious scientific testimony.” *Nease v. Ford Motor Co.*, 848 F.3d 219, 231 (4th Cir. 2017). Moreover, whether the case is tried by judge or jury, many of Plaintiff’s concerns about Defendants’ experts “can be handled on a rigorous cross-examination.” *Earthkind*, 2021 U.S. Dist. LEXIS 103080, at \*11.

### **B. Each of Dr. Boyd’s Opinions are Admissible Under Rule 702.**

Dr. Boyd’s opinions assist the trier of fact by explaining and disproving various aspects of Plaintiff’s evidence, namely Dr. Ettner’s opinions. Additionally, each of Dr. Boyd’s opinions would assist the trier of fact in understanding the sources and contours of Plaintiff’s distress, including contributing factors. Moreover, Dr. Boyd’s knowledge, training, and experience as a clinical and forensic psychologist certainly qualify her to offer opinions regarding the sources and contours of Plaintiff’s distress and to offer rebuttal opinions to those of a fellow clinical and forensic psychologist. Because each of Dr. Boyd’s conclusions and opinions are based on her review of health records, other documents, including Plaintiff’s deposition, and her experience and knowledge as a clinical and forensic psychologist, those opinions are reliable from an evidentiary standpoint and fit the facts of the case.

#### **1. Dr. Boyd’s Opinions Are Useful to the Trier of Fact.**

To be admissible, testimony must aid the jury in that: (a) the evidence must be based on some specialized scientific, technical or other specialized knowledge; and (b) that the evidence

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<sup>3</sup> Although the Court has discretion to exclude expert testimony at the summary judgment stage, even if Plaintiff were to prevail on this motion, expert testimony is not necessary for Defendants to be awarded summary judgment based on the reasonable disagreement between the members of the Division TARC and Plaintiff regarding the proper course of her medical care.

would be useful to the trier of fact. *Kopf*, 993 F.2d at 377. All of Dr. Boyd’s opinions meet these requirements.

Dr. Boyd’s opinions are based on her specialized knowledge and experience as a clinical and forensic psychologist. Dr. Boyd’s first and second opinions critique the methodology and conclusions of Dr. Ettner, a fellow clinical and forensic psychologist. (*See* Section (III)(A)(B) above). And Dr. Boyd’s third and fourth opinions concern Plaintiff’s mental health and the degree of psychological benefit which she may realize from surgery, countering Dr. Ettner’s conclusions regarding the same. (*See* Section (III)(C)(D) above)

Dr. Boyd’s opinions address a central issue in this litigation—the scale and scope of Plaintiff’s mental health distress—which will assist the fact finder in determining whether Defendants have been deliberately indifferent to a known excessive risk of psychological harm. These matters (*i.e.*, critiques of the methodology employed by Dr. Ettner and the scale and scope of Plaintiff’s mental distress are not “matters within the everyday knowledge and experience of a lay juror.” *Kopf*, 993 F.2d. at 377. Thus, Dr. Boyd’s testimony concerning these matters “is presumed to be helpful[.]” *Id.*

## **2. Dr. Boyd is Qualified to Offer the Opinions Presented in Her Report.**

When an expert’s qualifications are challenged, “the test for exclusion is a strict one[.]” *Kopf*, 993 F.2d at 377. Rule 702 specifically provides that an expert may qualify to render an opinion based on “knowledge, skill, experience, training, or education.”

Dr. Boyd’s educational background is set forth above. Moreover, specific to transgender health, Dr. Boyd has approximately 10 years of experience conducting forensic mental health assessment and has done approximately 20-25 assessments of transgender and gender diverse people in correctional settings. (DE-65-1 at 1-2; DE-70-1 at 13-14, 62-63) Also, working with this

sexual/gender minority population is one of Dr. Boyd's three primary areas of focus. (DE-70-1 at 12) She has also attended specialized trainings regarding this population in the carceral setting. (*Id.* at 34, 40-44) Additionally, Dr. Boyd is a co-author of a textbook chapter concerning the psychological evaluation, management, and treatment of transgender and gender diverse people housed in correctional settings. (DE-65-1 at 2) Accordingly, based on her knowledge, skill, experience, training, and education, Dr. Boyd is qualified to offer opinions both challenging Dr. Ettner's opinions and concerning Plaintiff's mental health.

### **3. Dr. Boyd's Opinions Are Reliable and Trustworthy.**

The test of reliability is flexible and will ultimately depend on the unique circumstances of the expert testimony involved. *Westberry*, 178 F.3d at 261. "Expert testimony is admissible only if: (1) it is based on sufficient facts or data; (2) it is the product of reliable principles and methods; and (3) the witness has reliably applied the principles and methods to the facts of the case[.]" 4 WEINSTEIN'S FEDERAL EVIDENCE § 702.05 (2023).

Dr. Boyd's opinions are based on reviewing records, reviewing Plaintiff's deposition, conducting an in-person assessment of Plaintiff, and performing and reviewing psychometric assessments. (DE-65-1 at 4, 22-23, 27-28, These are the same methods employed by Plaintiff's own expert forensic psychologist. (DE-61-2 ¶¶ 14-16) Thus, Dr. Boyd's opinions are based on sufficient facts and data. For the same reasons, Dr. Boyd's opinions are the product of reliable principles and methods in the field of clinical and forensic psychology. (*Id.*) Nothing suggests that Dr. Boyd deviated in any way from her normal practice of reviewing records, and other available information, as well as assessing the individual in-person. Thus, because each of Dr. Boyd's opinions are based on the work she performed in this case (which incidentally mirrors the work

performed by Dr. Ettner), Dr. Boyd reliably applied these principles and methods to the facts of this case.

**C. None of Plaintiff's Arguments Warrants Exclusion of Dr. Boyd's Testimony.**

Plaintiff asserts four sweeping and unsupported arguments to exclude *all* of Dr. Boyd's opinions. Each of Plaintiff's arguments to exclude Dr. Boyd's testimony fails.

Plaintiff's first argument is that Dr. Boyd is not qualified to opine on the necessity of GAS. (*See* DE-72 at 5-7) This contention fails because it misconstrues Dr. Boyd's opinions, overlooks key aspects of her opinions, and is not supported by case law. Plaintiff's second argument is that Dr. Boyd's conclusions about the benefits of treatment outside of the carceral setting are irrelevant. (*See id.* at 8-10) This assertion lacks merit as it twists the premise of Dr. Boyd's opinions and ignores the bearing her opinions have on matters in this case. Plaintiff's third argument to exclude Dr. Boyd is that her critiques of Dr. Ettner are irrelevant. (*See id.* at 10-11) This contention is baseless. It is hard to see how one expert's direct criticisms of another expert's methods and conclusions can be irrelevant. Plaintiff's fourth argument is that Dr. Boyd's opinion that psychologists should not opine as to medical necessity is unreliable because it is not based on sufficient facts. (*See id.* at 11-14) This assertion lacks merit.

**1. Plaintiff Cannot Establish that Dr. Boyd is Not Qualified.**

Plaintiff asserts that "Dr. Boyd is not qualified to opine on the necessity of GAS because she has never evaluated a patient for that treatment, published on the subject, or qualified as an expert on the subject." (DE-72 at 1) Plaintiff's argument fails for multiple reasons.

**a. Dr. Boyd is Qualified to Offer Opinions She Actually Offers.**

Plaintiff's first contention is a textbook example of a strawman argument. Plaintiff contends that Dr. Boyd is not qualified to offer opinions about the necessity of GAS. But, while

Dr. Boyd opines as to current levels of psychological distress (including that there is no psychological indication for immediate intervention), Dr. Boyd *does not* render an opinion regarding the medical necessity of GAS. Indeed, in her report, Dr. Boyd specifically notes that because she is not a physician, she does not make determinations regarding the necessity of specific medical interventions. (DE-65-1 at 2) Rather, as Plaintiff notes (*see* DE-72 at 6-7), as a clinical and forensic psychologist, Dr. Boyd is competent to speak to psychological distress and whether a particular intervention may offer psychological benefit to a patient. (*See* DE-70-1 at 59-61; DE-65-1 at 9, 14, 26-27, 32) It is that expertise that informs Dr. Boyd’s opinions regarding Dr. Ettner’s work on this case and Plaintiff’s mental health. And those are the matters about which Dr. Boyd opines—not whether surgery is medically necessary.

**b. Publication and Prior Expert Designations are Not Prerequisites.**

Plaintiff also incorrectly argues that Dr. Boyd’s opinions should be excluded because she has not published on the topics about which she opines. (DE-72 at 7) However, the case law does not support a publication-litmus test. *See United States v. Young*, 916 F.3d 368, 380 (4th Cir. 2019) (“[A]lthough publishing in a peer-reviewed publication can be a hallmark of expert witness reliability, that hallmark is a guidepost, not a mandatory prerequisite to qualification as an expert.”) Moreover, while Dr. Boyd has not published any peer-reviewed articles on the subject of GAS or GD, she was invited by other prominent individuals in the field of correctional psychology and forensic psychology to coauthor a chapter within a textbook regarding the assessment and treatment of transgender individuals in correctional settings. (*See* DE-70-1 at 19-22; DE-65-1 at 2) Additionally, prior designation as an expert in a particular area is also not a prerequisite. As long as an expert’s qualifications are sound, it is irrelevant that the witness has never previously been qualified as an expert. *See Young*, 916 F.3d at 380.

Thus, publication and prior designations are not prerequisites, as experience can also supply the necessary qualification. “[T]he text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience.” *Wilson*, 484 F.3d at 274. Thus, a witness who relies on experience may be qualified to testify as an expert witness when the witness can explain how their experience leads to their conclusion, why their experience provides a sufficient basis for the opinion, and how the experience reliably is applied to the facts. *See id.* 484 F.3d at 274-78. All of those requirements are met here.

**c. Dr. Boyd Opines on Key Issues Within Her Expertise But Leaves the Ultimate Issue for the Trier of Fact.**

Plaintiff argues that Dr. Boyd’s “[e]xperience in psychology and knowledge of [GD] generally do not make [her] an expert on the discrete issue before the Court.” (DE-72 at 7) This misses the mark. First, this contention constricts the focus of this case far too narrowly. The basis of Plaintiff’s deliberate indifference claim is that GAS is medically necessary because she is suffering from severe symptoms of GD and that surgery would cure her dysphoria. Dr. Boyd offers opinions that squarely rebut the underpinnings of Plaintiff’s argument. Thus, while the ultimate issue is whether denial of the surgery violates the Eighth Amendment, that answer will be informed by multiple other issues, including the scale and scope of Plaintiff’s mental health distress, the bases for Dr. Ettner’s opinions, and the likelihood of psychological benefit from surgery. As a clinical and forensic psychologist, Dr. Boyd is qualified to opine on those topics.

**d. Dr. Boyd Describes Her Relevant Experience and Training.**

Plaintiff also incorrectly asserts that Dr. Boyd could not identify any specific education, training, or experience in evaluating patients with GD for GAS. (DE-72 at 7) This contention is simply incorrect. Dr. Boyd was asked, “when it comes to evaluating patients with [GD] for [GAS], do you consider yourself to be an expert?” (DE-70-1 at 69) In response, Dr. Boyd testified “I have

expertise in that area[.]” (*Id.*) And when asked if she considers herself an expert in evaluating patients to determine whether GAS would have a psychological benefit, Dr. Boyd responds, “[y]es, I think I can give opinions about whether or not somebody would achieve a psychological benefit.” (*Id.* at 70-71) Then, in the very next question, Dr. Boyd was asked “where specifically does that expertise<sup>4</sup> come from?” (*Id.* at 71) In response, Dr. Boyd discusses her training as a clinical psychologist, her experience as a forensic psychologist, her experience working with transgendered patients, both in conducting independent evaluations, and providing psychotherapy, publications, trainings, and more. (*Id.* at 71-74)

**e. Plaintiff Fails to Cite Any Compelling Legal Authority to Support the Exclusion of Dr. Boyd’s Testimony.**

Plaintiff’s reliance on three cases is misplaced. Plaintiff cites *Kadel* and contends that it is “especially instructive[.]” (*See* DE-72 at 5) Beyond involving GD, *Kadel* is not instructive. That case involves a claim that a categorical exclusion of a host of procedures from insurance coverage violates portions of the Affordable Care Act. *Kadel v. N.C. State Health Plan Teachers & State Empl.*, 12 F.4th 422 at 426 (4th Cir. 2021).<sup>5</sup> Moreover, the portions of *Kadel* referenced by Plaintiff regarding the qualifications of experts are not analogous. In *Kadel*, the Court found that one expert, a surgeon, could testify as an expert related to surgery, but could not testify about other non-surgical interventions nor matters related to research. *Kadel*, 620 F. Supp. 3d at 368-69. The Court also ruled that a second expert, an endocrinologist, could testify only as an expert in that specific field. *Id.* at 365. Nothing about those rulings in *Kadel* have any bearing on the issue of whether Dr. Boyd should be excluded. Dr. Boyd is a clinical and forensic psychologist who is

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<sup>4</sup> The expertise referenced in this question is the expertise discussed in the previous question—expertise in evaluating patients to determine whether GAS would have a psychological benefit. (*See* DE-70-1 at 70-71)

<sup>5</sup> *Kadel* was argued *en banc* on September 21, 2023, with an opinion forthcoming.

rendering rebuttal opinions about the work of another clinical and forensic psychologist and conclusions about Plaintiff's mental health distress. Thus, unlike the witnesses in the *Kadel* case, Dr. Boyd offers opinions that are firmly in her field of expertise.

Additionally, Plaintiff's reliance on *Cooper v. Laboratory Corp. of America Holdings, Inc.*, 150 F.3d 376, 380 (4th Cir. 1998) and *Smith v. Wyeth-Ayerst Lab's Co.*, 278 F. Supp. 2d 684, 697 (W.D.N.C. 2003) is misplaced. In *Cooper*, the Court affirmed the exclusion of an expert opinion concerning alcohol testing of a urine sample where the proposed expert was not a toxicologist and only had a "general knowledge of chemistry." *Cooper*, 150 F.3d at 380-81. And in *Wyeth-Ayerst*, a case concerning the effects of specific pharmaceutical medications, the district court excluded portions of expert-physicians testimony related to the "relationship between appetite suppressants and primary pulmonary hypertension[,]” because, while they were “surely experts in their specialty areas,” they “lack[ed] the specialized knowledge or experience” with the specific drugs at issue. 278 F. Supp. 2d 684, 697 (W.D.N.C. 2003) To be sure, both *Cooper* and *Wyeth-Ayerst* can be cited to support the notion that general expertise in a broader field, *e.g.*, chemistry or medicine, does not necessarily translate to expertise in a more specific field such as toxicology or pharmacology. But unlike the opinions proffered in *Cooper* and *Wyeth-Ayerst*, Dr. Boyd is offering opinions and conclusions on issues related to clinical and forensic psychology—which are squarely in her realm.

## **2. Dr. Boyd's Conclusions Concerning the Psychological Benefits of Treatment Outside of Prison Are Relevant and Will Assist the Trier of Fact.**

Plaintiff next contends that because Dr. Boyd agrees that GAS while Plaintiff is incarcerated would generate some psychological benefit, her opinion that undergoing such a procedure while incarcerated “would not derive the greatest psychological benefit” is not relevant. (DE-72 at 8) This contention takes Dr. Boyd's conclusions out of context.

Dr. Boyd's opinions on this matter are nuanced. Dr. Boyd did testify that Plaintiff would derive a psychological benefit from surgery. However, from a psychological perspective, her evaluation of Plaintiff did not reveal significant findings that would counsel in favor of the surgery as an immediate intervention. In addition, Dr. Boyd opines that surgery outside the carceral setting would be more likely to provide maximal psychological benefit to Plaintiff. (DE-70-1 at 156-168; DE-65-1 at 34) This conclusion is a direct response to Dr. Ettner's assertions that surgery is not only medically necessary but urgently required based on Plaintiff's mental health. (See DE-61-2 at ¶¶ 91, 105, 132-133, 136) Accordingly, contrary to Plaintiff's argument, Dr. Boyd's opinions regarding Plaintiff's mental distress and the likelihood and extent of psychological benefit to Plaintiff from GAS, are indeed relevant.

Additionally, Plaintiff's contention that Dr. Boyd's opinion is not relevant because Plaintiff is not in prison but a community transition center, misses the mark. Plaintiff fails to recognize that although Plaintiff is currently housed in community transition center, she is still in the custody of the Department of Adult Correction, and thus is still constrained from certain activities, and subject to many of the same elements that, according to Dr. Boyd, are contributors to her distress. (See DE-65-1 at 27, 29-30, 32). Moreover, the challenged decision to deny surgery was made when Plaintiff was still in a prison setting. If Plaintiff believes this recent (post-report) change in circumstances has any impact on this opinion, her counsel are free to explore that issue on cross examination.

### **3. Dr. Boyd's Critiques of Dr. Ettner are Relevant and Admissible as Rebuttal Evidence.**

In seemingly seeking to exclude *all* of Dr. Boyd's critiques of Dr. Ettner, Plaintiff focuses on *two* critiques. First, Plaintiff argues that since Dr. Boyd ultimately concluded that Plaintiff possessed the capacity to provide informed consent, Dr. Boyd's criticism of Dr. Ettner's failure to

utilize an informed consent approach is irrelevant. (*See* DE-72 at 10-11) Second, Plaintiff attacks Dr. Boyd's opinion that Dr. Ettner's assessment did not support her assertion that surgery would be curative. (*See id.* at 11) Each of these arguments fails.

First, regarding Dr. Boyd's informed consent critique, Plaintiff's argument misunderstands Dr. Boyd's conclusions and overlooks the permissive standard for admitting rebuttal evidence. Here, it is worth restating that Dr. Boyd is not referring to medical informed consent (*i.e.*, a discussion of the medical and physiological risks and benefits to a given procedure); rather, she is referring to a more comprehensive process that includes a review of the individual's understanding of their options, as well as associated risks, costs, and benefits. (*See* DE-65-1 at 6) The thrust of Dr. Boyd's discussion regarding Dr. Ettner's treatment (or lack thereof) of informed consent has two points: (1) to opine on the deficiency of Dr. Ettner's method of conducting her assessment; and (2) to highlight that Dr. Ettner failed to consider the value and utility of an informed consent approach. (*See id.* at 7-11) Dr. Boyd makes these observations to support her opinion questioning the reliability of Dr. Ettner's bold assertion that GAS would cure Plaintiff's GD. (*See id.* at 10-11)

Here as well, Plaintiff's attempt to analogize to *Kadel* again falls flat. There, a defense expert opined that one of the plaintiff's (a minor) could not provide informed consent. *Kadel*, 620 F. Supp. 3d at 364-65. But because the plaintiff's father could provide that consent on the plaintiff's behalf and did in fact do so, the Court excluded that testimony as irrelevant. *Id.* at 369. The discussion of the informed consent approach provided by Dr. Boyd in response to Dr. Ettner's opinions bears no resemblance to the Court exclusion of that bit of testimony in *Kadel*.

Second, Plaintiff focuses on Dr. Boyd's opinions that Dr. Ettner's assessment lacked critical elements to support her assertion that surgery would be curative. (*See* DE-72 at 11) Plaintiff then argues that "[e]ven if this critique has merit, Dr. Boyd agrees that GAS is 'necessary' to cure

Plaintiff's GD, even if other treatments are also necessary to cure the condition." (DE-72 at 11) As argued in Defendants' response to Plaintiff's motion for summary judgment, this contention is not only an incorrect interpretation of Dr. Boyd's position—it is flatly contradicted by her testimony and report. (See DE-65-1 at 19-20) In short, Dr. Boyd does not agree that surgery is necessary to "cure" Plaintiff's GD, and in fact, Dr. Boyd is dubious of mental health conditions or symptoms being "cured" and instead believes such conditions or symptoms can be improved and sometimes fall below a diagnostic threshold. (DE-70-1 at 82-83, 112-120, 156-157, DE-65-1 at 34) At trial, Dr. Boyd is prepared to fully explain her position and prior testimony.

In sum on this point, Plaintiff fails to present any compelling argument that Dr. Boyd's criticisms of Dr. Ettner's methodology are irrelevant and thus should be excluded. Dr. Boyd's opinions about how Dr. Ettner conducted her assessment of Plaintiff undermine the strength of Dr. Ettner's conclusions. Thus, Dr. Boyd's opinions are clearly admissible rebuttal evidence. See *Earthkind*, 2021 U.S. Dist. LEXIS 103080, at \*10; Rule 26(a)(2)(D)(ii).

#### **4. Dr. Boyd's Opinion that Psychologists Without Medical Training Should Not Offer Medical Opinions is Based on Her Relevant Experience.**

Plaintiff contends that Dr. Boyd's opinion concerning psychologists offering medical opinions lacks a sufficient basis. (DE-72 at 11-13) Plaintiff argues that Dr. Boyd only offers a single sentence to support her opinion: that she knows other psychologists like she and Dr. Ettner, and they do not offer medical opinions. (*Id.* at 12) Then Plaintiff cites highly generalized statements from cases to argue that because Dr. Boyd's conclusion is not based on some rigorous data set it is automatically inadmissible. Plaintiff's argument overlooks two things.

First, Dr. Boyd concludes in her report that to the extent she offers medical opinions, Dr. Ettner "overstep[s] the bounds of competence for a psychologist." (DE-65-1 at 5) Dr. Boyd bases this conclusion on her own experience conducting the same sorts of assessment that Dr. Ettner

performed, her knowledge of other psychologists who also perform similar assessments, and her “education, training, and experience[.]” (*Id.* at 5)

Second, and more importantly, Plaintiff ignores the case law that endorses flexibility in the reliability assessment, particularly when expert testimony is based on experience, “as there exist meaningful differences in how reliability must be examined with respect to expert testimony that is primarily experiential in nature as opposed to scientific.” *United States v. Wilson*, 484 F.3d 267, 274 (4th Cir. 2007). *See also, Wiener v. AXA Equitable Life Ins. Co.*, 481 F. Supp. 3d 551, 559 (W.D.N.C. 2023) (citing Fed. R. Evid. 702 advisory committee’s note) (Experience can be “the predominant, if not sole, basis for a great deal of reliable expert testimony.”). Thus, Dr. Boyd’s opinions and conclusions regarding psychologists offering medical opinions has a sufficient basis and should not be excluded.

Additionally, Plaintiff’s contends that because Dr. Ettner has provided opinions about medical necessity in other cases, Dr. Boyd’s opinions on the issue of whether psychologists should offer medical opinions should be excluded. (*See* DE-72 at 13) However, the fact that other courts have accepted Dr. Ettner’s testimony wherein she offers medical opinions does not somehow preclude the presentation of rebuttal expert testimony questioning her basis to offer medical opinions for a specific reason. Prior cases recognizing Dr. Ettner’s opinions offer no insight as to whether Dr. Boyd’s rebuttal opinions are admissible in this case.

Lastly, Plaintiff’s effort to exclude Dr. Boyd’s opinion by referencing *Raynor v. G4S Secure Solutions (USA) Inc.*, 3:17-cv-00160-FDW-DSC, 2018 WL 662483 (W.D.N.C. 2018), fails for multiple reasons. First, in *Raynor*, an employment case, Dr. Boyd testified for the defense about an employee’s inability to express certain emotional experiences. *Raynor*, 2018 WL 662483 at\*3-4. The Court essentially determined that Dr. Boyd’s statements about the employee were just

statements about the individual's credibility, which is not the province of experts. *Id.* Importantly, in *Raynor*, Dr. Boyd acknowledged that her assessment was not optimal because she was not able to speak with the individual and was only able to talk to others and watch a video deposition. *Id.* at \*6.

The facts and circumstances of *Raynor* are distinguishable from the facts of the instant case. Here, Dr. Boyd does not opine on Plaintiff's credibility, and her opinions are based on a full review and assessment. In short, *Raynor* is inapplicable.

### CONCLUSION

For the reasons stated herein, Defendants respectfully request that this Court deny Plaintiff's motion to exclude the testimony of Dr. Boyd, DE-70.

This the 11th day of December 2023.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
No. 3:22-cv-191

KANAUTICA ZAYRE-BROWN,

Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF  
ADULT CORRECTION, et al.,

Defendants.

**APPENDIX TO DEFENDANTS'  
RESPONSE TO PLAINTIFF'S MOTION  
TO EXCLUDE THE TESTIMONY OF  
SARA BOYD, PHD**

<b>Exhibit A</b>	Excerpts of the deposition of Randi Ettner Ph.D., taken on August 21, 2023.
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This the 11th day of December 2023.

**JOSHUA H. STEIN**  
**Attorney General**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

KANAUTICA ZAYRE-BROWN, )  
Plaintiff, )  
vs. ) No. 3:22:cv-191  
NORTH CAROLINA DEPARTMENT )  
OF PUBLIC SAFETY, et al., )  
Defendant. )

The videotaped deposition of RANDI C. ETTNER, Ph.D., called for examination, pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before YVETTE BIJARRO-RODRIGUEZ, CSR No. 084-003734, a Certified Shorthand Reporter within and for the County of Cook and State of Illinois, at 1 North Franklin Street, Suite 3000, Chicago, Illinois, on the 21st day of August, 2023, at 9 o'clock a.m.

REPORTED BY: YVETTE BIJARRO-RODRIGUEZ, CSR  
LICENSE NO.: 084-003734

1 have in front of you but it's a filing in  
2 opposition to something that Defendants had filed.  
3 In that document it was represented that the  
4 interview, the in-person interview, was five hours  
5 long.

6 So do you think it may have been  
7 four or five?

8 A. I'm not certain.

9 Q. And then have you reviewed the  
10 Plaintiff's deposition in this case?

11 A. No.

12 Q. So if she testified that it was three  
13 hours long, could it be three hours?

14 A. At a minimum it would have been three  
15 hours.

16 Q. In the same page here you've got at the  
17 bottom of the end of this fourth line, "5-26-22:  
18 score and interpret psychometric tests .75 hours;  
19 begin report draft 1.0 hour."

20 Was that your first declaration  
21 that you were referring to drafting there?

22 A. I believe so.

23 Q. Let's turn to PLAINTIFF0254 which is the  
24 second -- third to last page in the stack. The

1 Q. So why did you review them?

2 A. They were sent to me and so I review  
3 whatever documents I receive.

4 Q. You didn't review the Plaintiff's  
5 deposition?

6 A. No.

7 Q. Did you review Dr. Bowman's deposition?

8 A. No.

9 Q. If you flip to Page 14 of your rebuttal  
10 report, Paragraph 23.

11 MR. DAVIDSON: It's Exhibit 12.

12 THE WITNESS: Pardon me?

13 MR. DAVIDSON: Exhibit 12.

14 THE WITNESS: Thank you.

15 BY THE WITNESS:

16 A. And what page was that?

17 BY MR. RODRIGUEZ:

18 Q. Actually, hold on one second. I meant  
19 to do this. So just for closing the universe on  
20 this, did you review any other depositions like of  
21 Dr. Campbell, Dr. Piper, Dr. Junker, Dr. Hahn?

22 A. No.

23 Q. Did you review any other depositions  
24 beyond the Defendants' experts' depositions?

1 A. I did not.

2 Q. And you are aware that they were -- or  
3 are you aware that there were close to ten  
4 depositions taken in this case aside from the  
5 experts?

6 A. I'm not aware of that.

7 Q. Is that something that you sometimes  
8 would be made apprised of?

9 A. Sometimes? You mean in other --

10 Q. In other cases.

11 A. Sometimes, yes. Sometimes, no.

12 Q. Does the testimony of the parties in the  
13 litigation impact your conclusions or opinions  
14 ever?

15 A. I can't answer that as a general  
16 question.

17 Q. Could it?

18 A. It depends I think on the case and the  
19 situation.

20 Q. But you wouldn't know unless you  
21 reviewed them, right?

22 A. I wouldn't know unless you were more  
23 specific about what was at issue and what my  
24 opinions were.

1 Q. Right. So theoretically would it be  
2 possible that a fact witness' deposition could have  
3 information in it that would affect your opinions  
4 and conclusions?

5 MR. DAVIDSON: Object, speculation.

6 THE WITNESS: I'm sorry.

7 BY THE WITNESS:

8 A. Perhaps in a personal injury case.

9 BY MR. RODRIGUEZ:

10 Q. But in a case like this that's not a  
11 theoretical possibility?

12 A. If I'm asked to opine on a particular  
13 intervention, I'm not going to be influenced by  
14 someone else's deposition. I might -- if it were  
15 someone who was also an expert in gender dysphoria  
16 and disagreed with me, I would be interested in  
17 hearing their reason. If it was a WPATH member who  
18 perhaps had a different view, I would be interested  
19 in reading that deposition or that might influence  
20 my thoughts about it. I don't know that it would  
21 change my opinion.

22 Q. Would reviewing the deposition  
23 transcripts of the plaintiffs -- a plaintiff's  
24 mental health care provider be something that you

1 think might be fruitful?

2 A. It might be, but I've reviewed the  
3 medical notes.

4 Q. So you don't need to review the  
5 depositions?

6 A. It would depend on who the provider was,  
7 I think.

8 Q. What about the deposition of the  
9 Plaintiff?

10 A. I read the plaintiff's declaration.

11 Q. The one submitted in support of her  
12 motion for a preliminary injunction?

13 A. I think -- I believe that's what it was.  
14 I'm not certain. I just know it was her  
15 declaration.

16 Q. Are you aware of whether any of the  
17 Defendants in this case are WPATH members?

18 A. I don't know if Dr. Figler is a member  
19 of WPATH or not.

20 Q. Is Dr. Figler a defendant in this case?

21 A. No.

22 Q. Are you aware of whether any Defendants  
23 in this case are WPATH members?

24 A. I'm not aware of that.