UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

AUGUST DEKKER, et al.,

Plaintiffs,

V. Case No. 4:22-cv-00325-RH-MAF

JASON WEIDA, et al.,

Defendants.

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DEPOSITION OF: MATTHEW BRACKETT

DATE: WEDNESDAY, MARCH 8TH, 2023

TIME: 10:00 A.M. - 11:44 A.M.

PLACE: REMOTE PROCEEDINGS

STENOGRAPHICALLY
REPORTED BY: LAWANDA MERCER

A P P E A R A N C E S:

Katherine Jean Ann DeBriere, ESQUIRE
Simone Chriss, ESQUIRE
OF: Florida Health Justice Project
3900 Richmond Street
Jacksonville, Florida 32205-9330
352-496-5419, FAX-352-496-5419
Debriere@floridahealthjustice.org
Simone.Chriss@southernlegal.org
APPEARING ON BEHALF OF THE PLAINTIFF

Gary Vergil Perko, ESQUIRE
OF: Holtzman Vogel, et al
119 S Monroe Street, Ste 500
Tallahassee, Florida 32301-1591
850-391-0502, FAX-850-391-0502
Gperko@holtzmanvogel.com
APPEARING ON BEHALF OF THE DEFENDANT

ALSO PRESENT:

Andrew Sheeran, Esquire
Jennifer Altman, Esquire
Shani Rivaux, Esquire
Chelsea Dunn, Esquire
Catherine McKee, Esquire

I N D E X

INDEX OF EXHIBITS

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the counsel for the respective parties and the deponent that the reading and signing of the deposition transcript be reserved.

P R O C E E D I N G S

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THE VIDEOGRAPHER: This is the continued video-recorded deposition of Matthew Brackett in the matter of August Dekker, et al. v. Jason Weida, et al, Case No.: 4:22-cv-00325-RH-MAF. This deposition is being held at 2727 Mahan Drive in Tallahassee, Florida. Today's date is March 8th, 2023, and the time is 10:09 a.m. The court reporter is Lawanda Mercer. My name is R.L. Minnich, I'm the videographer.

Would counsel please introduce themselves and then the court reporter please swear in the witness.

MS. DEBRIERE: Yes. Katy DeBriere, counsel for Plaintiffs.

MS. CHRISS: Simone Chriss, counsel for Plaintiffs.

MR. PERKO: Gary Perko, Counsel for Defendants.

MS. DEBRIERE: And on the line, we have several counsel for Plaintiffs, including Jennifer Altman, Catherine McKee, Shani Rivaux and Chelsea Dunn.

MR. SHEERAN: And Andrew Sheeran of the Agency is on the phone.

COURT REPORTER: Sir, please raise your right hand.

Do you solemnly swear, or affirm, the testimony you're about to give today is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

COURT REPORTER: Thank you.

MATTHEW BRACKETT,

having been produced and first duly sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MS. DEBRIERE:

Q. Okay, Mr. Brackett. So, on March 6th, 2023, your counsel provided us a copy of written responses to our questions. And that was in -- in follow-up to your -- the first part of this deposition on February 8th. I'm going to mark those responses as Exhibit 24 and hand you this.

(Thereupon, Plainitiff's Exhibit No. 24 was marked for identification.)

BY MS. DEBRIERE:

Q. Do you recognize this document?

A. Yes, I do.

Q. And are these your responses?

A. Yes, they are.

Q. Okay. And we talked about this a little bit before --

MS. DEBRIERE: Here you go, Gary.
MR. PERKO: Oh, thank you.
BY MS. DEBRIERE:
Q. Just a little bit before the deposition started. But in the second question, I just wanted to correct one thing that was my mistake. The hyperlink we provided for the drug criteria in our question No. 2, it did not work. I wanted to go back to the web page now and show it to you and then read off the URL in the transcript. And that way we can just agree that's the one that contains the exhaustive list. Is that okay with you?
A. That's okay, yeah.
Q. Okay. So is the exhaustive list of drug criteria contained in this document titled "Preferred Drug List"? Oh, no.
A. No.
Q. That's not it. Sorry. My fault here. Give me one second.
COURT REPORTER: For the record, which attorney is speaking?
MS. DEBRIERE: Katy DeBriere for the plaintiffs.
COURT REPORTER: Thank you.
MS. DEBRIERE: Okay.

BY MS. DEBRIERE:

Q. Okay. So is this the web page that contains the exhaustive list of drug criteria --

A. That is the web page.

Q. -- for AHCA? Okay.

A. Yes.

Q. And just to -- for the clarification of the record, that URL is AHCA, a-h-c-a. http://ahca.myflorida.com/medicaid/prescribed_drug/drug_criteria.shtml.

Okay. Thank you. All right. Turning to the auto PA that you link in the response to your first question. We appreciate that written explanation. Quick set of follow-ups: If a drug is denied on the basis of auto PA, does the beneficiary receive notice of that denial?

A. So it would automatically go to a PA. The recipient would learn at the pharmacy that it was being auto PA'd, yes.

Q. -- Okay. Do they receive notice of the denial?

A. It's for, like, a NABD?

Q. Yes. Or a pharmacy notice of some sort?

A. Well, the pharmacy would definitely verbally tell them. I don't believe they would receive a written notice just because their drug is being auto PA'd

because it's not officially a denial. It's being kicked to auto prior authorization process.

Q. Okay. So it's your understanding they do not receive a written -- a written denial?

A. That's my understanding.

Q. Okay. Could the -- they, or in this instance the prescribing drug pro -- the provider who's prescribing the drug, could they resubmit their request for a prior authorization using the clinical PA process, if denied on auto PA?

A. So the prescriber would have to go through and refill the prescription if --

Q. Refill the prescription or re --

A. Or re -- reissue the prescription if it's -- goes through auto PA.

Q. Okay. Would the person then have the -- the -- would the Medicaid beneficiary then have the opportunity to take that new prescription and submit it for clinical prior authorization, if it was denied on auto PI -- PA?

A. They can. It would --

Q. Okay.

A. It would go to the pharmacy.

Q. Okay. How -- if -- so, if that's the case, how does AHCA then determine if the prior authorization is approved? What criteria do they use?

A. So that would, of course, be a case-by-case basis. And it would be in accordance with our medical necessity guidelines, yeah.

Q. Would you also use the drug criteria at the URL we just read off?

A. Yes, we would.

Q. Okay. Would it -- would you also compare it against the auto PA list, if it was already denied for auto PA? Would you do a manual review, I guess, I'm asking, of the auto PA list?

A. Prior -- prior authorizations are manual reviews.

Q. Auto prior authorization is not a manual review, correct, it's automatic?

A. It pretty much means that it's automatically referred to prior authorization.

Q. Is there someone who's physically reviewing the criteria for prior auth -- authorization under auto PA?

A. So --

Q. Or it's the computer program?

A. -- the prior authorizations, those, of course, are reviewed by Magellan. Those are reviewed manually.

Q. Okay. Is that a -- what I'm trying to understand is when Magellan is doing the review manually, is that only for clinical PAs or is that also

for auto PAs?

A. That would be for the clinical PA.

Q. Okay. But not for the auto PA?

A. The auto PA would be, of course, automatic.

Q. Great. Okay. Okay. I just want to give you a hypothetical real quick, looking at the auto PA list. So looking at Page 27 here of the auto PA -- A list, and this is the auto PA list that you provided to us linked in your written responses. For Lupron Depot, let's imagine a pro -- a provider has prescribed Lupron Depot-PED to treat a condition not listed in list B here on Page 27. Let's also assume the condition that it's prescribed for is not gender dysphoria. If the prior authorization request is denied through auto PA, could a provider submit the clinical P -- PA process and show that the coverage is nevertheless required under EPSDT?

A. They can do that.

Q. Okay. All right. On February 8th, you testified that AHCA's Medicaid Program Integrity Unit undertakes a rest -- retrospective claims review. Do you remember that?

A. Yes, I do.

Q. Okay. And that retrospective claims review is of whether prescribed drugs that don't require prior -- any prior authorization were prescribed for a medically

necessary reason. Do you recall that testimony?

A. I do recall that.

Q. Okay. So I just have some follow-up questions about that retrospective review process. The point is to ensure that Medicaid dollars in that retro -- retrospective review process, the point is to ensure that Medicaid dollars aren't being used fraudulently, correct?

A. Correct.

Q. Okay. Does AHCA do that retrospective review for every single claim paid?

A. It does not.

Q. Okay. When it does do the review on -- so it -- it only does a retrospective review on select drugs; is that correct?

A. It does retrospective reviews when the situation calls for it. So if there's suspected fraud, it could do a retrospective review. If there's suspicion of overpayments through humans might be not needed. It's basically on an ad hoc basis as needed.

Q. Okay. Okay. Sorry. So when it's doing that retrospective review, what criteria does AHCA use to determine if the claim should not have been paid?

A. So if -- of course, it would look at the recipient, look at their diagnosis codes, look at their

his -- medical history, and look -- and they would evaluate to determine whether those services that are being delivered and claims reimbursed for are necessary for the needs of that specific recipient.

Q. And if you find that the drug was prescribed for in -- in this ad hoc retrospective review process, if you find that the drug was prescribed for something that was not medically necessary, what is the consequence to the pharmacy, if any?

A. To the pharmacy, since the pharmacy just dispenses the drugs, I don't think we would have any consequences to the pharmacy. It would be on the pro -- on the prescriber.

Q. Okay. So you wouldn't take Medicaid dollars back from the pharmacy who is reimbursed for dispensing the drug?

A. I don't believe we would.

Q. Okay. Just going back to my hypo real quick. On the Lupron Depot, you said that if the PA request is denied through auto PA, the provider could submit through the clinical PA process and show that the coverage is nevertheless required under EPSDT. Is that correct?

A. Yes.

Q. Okay. In that instance, is there the

possibility that the drug could be covered under EPSDT?
A. Any FDA-approved drug could, potentially, be covered under EPSDT, that's correct.
Q. Okay. In that clinical PA review process?
A. Yes.
Q. Okay. What percentage of prescription drugs claims paid undergo retrospective review turning back (inaudible)?
A. We don't have that information offhand.
Q. Okay. Is that information you could get us?
A. I don't know if we could, actually, get that information.
Q. But again, your understanding is it's not every drug that's dispensed, without the need for a prior authorization is then subject to a retrospective review?
A. Retrospective reviews don't happen in -- in the -- in the cases of most claims.
Q. Okay. Okay. Could I look at what was previously marked as Plaintiff's Exhibit 19? And these are e-mail exchanges between AHCA and Magellan dated April 20th, 2022, to June 3rd, 2022. Looking back at your written responses -- so thank you for telling us what CCM stands for. What does Change Control Memo mean?
A. So a change control memo, it's -- works like

a -- a file maintenance for our CPT Codes, is that when we need Magellan to make an update into its system, as far as processing claims go, the analyst would create a Change Control Memo and send it to Magellan. And they would use that as the basis to update their system. So if maybe, like, a new NDC needs to be added. Things like that.

Q. Okay. Have we been provided a copy of the particular CCM or Change Control Memo that's being referenced in this e-mail?

A. I don't know if that document has been provided to you.

Q. Okay.

MS. DEBRIERE: Gary, can we find that out?

MR. PERKO: We'll -- we'll find it.

MS. DEBRIERE: Thank you. And if you do find it, you'll provide it to us?

MR. PERKO: Yes.

MS. DEBRIERE: Thank you.

BY MS. DEBRIERE:

Q. Okay. Who provided the internal gender die -- dysphoria criteria to Magellan for use, when reviewing prior authorization requests for GN -- GnRH (inaudible)?

A. So, at the time, that would have been the Bureau of Medicaid Policy.

Q. Okay. Why wasn't that criteria clo -- publicly posted?

A. That -- of course, since that was almost seven years ago, the -- and the staff who were -- made that determination are no longer with us. The agency doesn't -- cannot recall why that occurred.

Q. Okay. But all drug criteria should be publicly available?

A. No, they don't absolutely have to be.

Q. Okay. As you earlier testified just now what was previously marked as Plaintiff's Exhibit 4, the exhaustive list of --

A. Uh-huh.

Q. -- internal -- I'm sorry. Scratch that.

What was previously marked as Plaintiff's Exhibit 4, which is the GnRH -- hold on, Mr. Brackett, I'll get you a copy of it. The Special Services Criteria For Pubertal Suppression with GnRH Analog.

A. Okay.

Q. This represents the internal criteria AHCA provided to Magellan; is that correct? -- that's being referenced in this e-mail?

A. Uh-huh. That's correct.

Q. Okay. Should this criteria have been publicly posted?

A. It does not have to necessarily be publicly posted. Just because what we have on our list currently is exhaustive, doesn't preclude us from not necessarily publicly posting one.

Q. Okay. But just to be clear, the drug criteria that's posted at the website we read earlier, that is the exhaustive list, right?

A. That's currently exhaustive, yes.

Q. Turning back to the e-mails. In 2017, why did AHCA direct the removal of all gender codes from programming?

A. Can you give me -- tell me the date again?

Q. Yep. Yep. So it's 2017.

A. Uh-huh.

Q. Specifically, Elicia King-Wilson from Magellan writes to Susan Williams and others to ah -- from AHCA, "As a reminder, all gender codes were removed from" program -- "programming as directed by the Agency in 2017."

A. So the gender codes prim -- what that means is that drugs can apply to either male or female. So it -- removed those and just it can apply to both genders.

Q. And that was the change made in 2017?

A. That was the change made in 2017.

Q. Okay. So that resulted in all products within

the database being coded as MEDICAID_STATE_VALID_SEX_CD=B-Both.

A. Correct.

Q. (Inaudible). Okay. In June 22nd, 2022, why did Arlene Elliott at AHCA direct Magellan to remove the Gender Code B-Both from all the NDCs that had it hard coded? And I can point you to the specific language, if helpful, in the e-mail.

A. Yes.

Q. So on the first page -- oh, I see. I apologize. I misspoke. That was not in June, 2022, that they were directed to remove the gender code. It was on August 21st of 2017; is that correct?

A. That would be correct, yes.

Q. Okay. And that was done, again, to result in all products having the Gender Code of B for Both; is that correct?

A. That's correct.

Q. Okay. Were there any changes to that made in 2022?

A. Well, following the promulgation of the challenge exclusion --

Q. Uh-huh.

A. -- yes. Those codes would have been updated to reflect the changes that would make it align with the

challenge exclusion.

Q. Okay. And is that what the Change Control Memo directed Magellan to do?

A. We would use a Change Control Memo to have Magellan update its symptoms.

Q. Okay. On -- okay. When did AHCA direct Magellan to remove the Gender Code equals B-Both to implement the adoption of the categorical exclusion?

A. That change would be intended to take effect on the date the rule went into effect.

Q. Okay. So you direct -- and -- and that date was August 21st, 2017?

A. I recollect that's correct.

Q. So at the -- what date would -- what date did AHCA direct Magellan to make that change?

A. It would have been a date preceding August 21st since Magellan would need advanced notice. We don't have the date offhand.

Q. Okay. Could you get us that date?

A. We -- we can look into it.

Q. Okay. Is this an e-mail directing Magellan to make the change? Is this e-mail referencing -- scratch that.

Is Exhibit 19, is this an e-mail from AHCA to Magellan asking them to make the change?

A. Let me take a look --
Q. Yeah.
A. -- at it again. This does not appear to be that e-mail.
Q. Okay. Would there have been another e-mail from AHCA to Magellan directing them to make that change?
A. It may have, potentially, been a verbal request.
Q. Okay. Can you verify that it was -- whether it was an e-mail request or a verbal request for us, at some point? Is that a follow-up that you can do?
MR. PERKO: I don't know if he can do it or not.
THE WITNESS: I'm -- Im not sure because Ashley Peterson, who used to have that role, is no longer with us.
BY MS. DEBRIERE:
Q. But you could search Ashley Peterson's e-mails?
A. We can -- yeah. If there is an e-mail -- if there was an e-mail for it, with all the searches we've done for e-mails, it's probably been pulled up in that.
Q. Okay. When Elicia from Magellan -- so turning back to the e-mail -- when Elicia from Magellan states that all requests for GN -- and she's referencing GN --

GnRH Analogs use to delay puberty in the treatment of gender dysphoria, were required to be vetted by AHCA before a final determination is made. What did she mean by that?

MR. PERKO: Can you point to the specific language?

MS. DEBRIERE: Absolutely.

BY MS. DEBRIERE:

Q. So, looking at the e-mail from Elicia King-Wilson dated April 20th, 2022, to Susan Williams and others at AHCA, she states, "This internal document serves for GnRH Analogs use to delay puberty in adolescence with Gender Dysphoria, but it does not speak to the use of hormone therapy. This document was provided by the Agency due to a fair hearing request for Lupron for recipients with this diagnosis. All requests required vetting by AHCA before a final determination is made and MMA will continue to do so as instructed."

A. Well, vetting by AHCA would -- could be interpreted as meaning that once Magellan has made its determination, it would be sent to AHCA to be reviewed and then returned to Magellan with a yes or no.

Q. Okay. So AHCA was making a -- a determination on all requests sent to Magellan, as to whether or not GnH -- GnRH Analog for the treatment of gender dysphoria

was medically necessary?
A. Yes.
Q. Okay. And do you know if AHCA ever said yes in that situation?
A. We don't have a running list of when we would say yes or no.
Q. So you don't know?
A. We don't know.
Q. Okay. So these decisions would not have been documented somewhere?
A. Not on any shared files, no.
Q. What other type of files would there be?
A. If a -- potentially if an -- an employee -- potentially, if an employee kept a personal file or that would -- that would be it.
Q. Okay. Were there -- are there any particular employees who might keep those personal files that you can think of?
A. One of our pharmacists, potentially, may have kept one.
Q. Okay.
A. But given that the pharmacists often share work between them, and I don't think that they would have because there's -- there's no way that mid -- could -- you get to determine whether or not that's a complete

list, and other pharmacists may have vetted one, and it may not have been recorded.

Q. Who is the pharmacist you had in mind who might have it?

A. It's potentially, since this is historic, Susan Williams and Kelly Rubin, who were at the time -- who were here at the time and -- and Susan Williams was on the e-mail chain. They are still employed with the agency.

Q. Is Susan Williams still employed with the agency?

A. Susan Williams is still employed --

Q. Okay.

A. -- with the agency.

Q. So can you ask her if she has any of those decisions documented somewhere?

A. We can ask her.

Q. Okay. And -- and then get -- provide us the answer?

A. Okay.

Q. Okay. When AHCA was making these determinations, what criteria were they using?

A. So when AHCA was making its determinations, of course, it's going to be in line with our internal GnRH Analog for Gender Dysphoria Criteria.

Q. And that's what was previously marked as Plaintiff's Exhibit 4?
A. That's correct.
Q. Okay. When Elicia references MMA, does MMA stand for Managed Medical Assistance?
A. That's correct.
Q. Okay. And Managed Medical Assistance is AHCA's Managed Care Program for Florida Medicaid, correct?
A. It's one of our Managed Care Programs, that's correct.
Q. So it's referencing -- when she says MMA, she's referencing all Managed Care Plans, excluding Long-Term Care Plans; is that correct?
A. She's referencing all plans that have an MMA contract, yes.
Q. Okay. And all plans that have an MMA contract, that's publicly available on AHCA's website, correct?
A. This would have been actually with our first contract period. So at the time --
Q. Uh-huh.
A. -- because we did a re-procurement in 2018 --
Q. Uh-huh.
A. -- and we had a new contract period, these contracts would be historical. That's not available on our web pages right now.

Q. So what plans had MMA contracts at the time?
A. Staywell, Sunshine, Molina, Prestige. That's just the ones I can think of off the top of my head.
Q. Humana?
A. Humana was one. Aetna.
Q. And that -- Sunshine and Staywell, that would include any of the specialty plans they operated as well?
A. This would apply to the specialty plans as well.
Q. Okay. Including Children's Medical Services?
A. That's correct. But that wasn't a Managed Care during this contract period.
Q. 2017. So that was operated by at the time?
A. At -- Department of Health operated Children's Medical Services. It didn't get -- get -- it wasn't until the second contract period. That was when CMS -- that's when Staywell took over CMS.
Q. But this criteria -- or this requirement that we've been discussing that AHCA vet every request for use of GnA -- GnRH antagonist by an adolescent for the treatment of gender dysphoria, they would also apply to use CMS, correct?
A. Yes.
Q. Okay. Okay. So turning to the AHCA Summary of

Public Comments in Response to the GAPMS at issue in this case.

MS. DEBRIERE: We'll mark that as Exhibit 25.

(Thereupon, Plaintiff's Exhibit No. 25 was marked for identification.)

BY MS. DEBRIERE:

Q. Who wrote this memo?

A. I wrote it.

Q. Okay. Why?

A. So, at the direction of our general counsel's office, following the rule hearing on July 8th, we decided to go ahead and do a written comment summary in response to some of the written comments that we received. And also to summarize some of the verbal comments that were provided during the -- during the hearing. And -- and also because we did see Plaintiffs' attorneys at the hearing. So we figured litigation was imminent.

Q. So then what -- what was the purpose that this document was supposed to serve?

A. So we re -- did receive substantial written comments, particularly from three clinical organizations. And -- which, of course, these documents were not just sent to us, they were also publicly released and became publicly available. Because they

make substantial claims about the validity of our GAPMS memo, we needed to create an internal document that would, of course, explain and -- any potential issues or ex -- respond to any criticisms that, of course, those that weren't intimately familiar with the process might be aware of.

Q. And so the three organizations that you did responses to, comments on, were Yale University, Endocrine Society -- I'm sorry. There's four -- no, no, no, three. Yale University, Endocrine Society and the American Academy of Pediatrics. Is that correct?

A. That's correct.

Q. Why did you pick those three?

A. So those are the three that sent us the substantial comments that had particular criticisms towards our GAPMS report.

Q. Why didn't you respond to any of the other public comments that were provided or create a written detailed response like you did with these three?

A. The other comments were usually very brief, made very general statements. Some of them made expletive-laden statements, because those comments didn't -- weren't looking at the legality of our rule. It wasn't looking at the -- the credibility of the basis for that rule. We didn't do written summaries of those

comments.

Q. Which one of the comments looked at the -- criticized the legality of your role?

A. Yale University's did.

Q. Okay. And then the Endocrine Society, and AAP along with Yale also criticized the basis for your decision; is that correct?

A. Their criticisms were more limited to the GAPMS memo.

Q. And they disagreed with that conclusion?

A. They disagreed with it.

Q. Why was it sent to the experts?

A. Because we also wanted them to see the comments that were submitted via these institutions. And we wanted to make sure that our response were as complete as possible.

Q. Were you intending to release the com -- the -- this report at some point? I guess, I'm still just not understanding the use of the report.

A. So the re -- the use of the report was to have an internal memo for those involved in the GAPMS process. And those, of course, would be involved in the imminent litigation of what was said about our report and what our responses were. Now only a small handful of us in the agency were intimately involved in the

development of the GAPMS memo. So we needed to share that information with other agency staff.

Q. So this report wasn't created to assess the validity or -- this report was not created for use -- for AHCA's use in determining whether or not it should adopt the rule?

A. That's correct.

Q. Okay. Why not look at and respond to all comments that question the validity or credibility of the GAPMS report?

A. Because while a lot of comments hurled criticisms at us, they weren't substantiated criticisms. They just were saying we're wrong or --

Q. So that --

A. -- things like that. Just very general statements that didn't actually provide a -- a reasoned case as to why we should not go forward with the rule, these comments did.

Q. Okay. So -- okay. Was this document ever intended to become public at some point?

A. No.

Q. Is this the only document AHCA prepared summarizing or responding to public comment, provided in response to the adoption of 59G-1.050(7)?

A. That's the only document.

Q. Including these, did any of the public -- including the comments from AAP, Yale and the Endocrine Society, did any of the public comments submitted lead AHCA to reconsider the credentials of the consultants it chose to prepare and submit reports in support of the GAPMS memo?

A. They did not.

Q. Why?

A. None of the comments provided any reasoning or evidence that would force us to redetermine the decisions we'd already made.

Q. But you did think that the comments, particularly from Yale, AAP and the Endocrine Society, were substantiated and -- and reasoned through?

A. They -- Yale put together 47 pages, and they make some pretty sensationalist claims about our report. They published that report. They -- they did a press release around that report. We needed to go through and analyze it, to make sure that their claims were just sensationalist and nothing more.

Q. Okay. Because you'd previously described them -- the -- the reason that you gave me for why you considered their comments and created a detailed summary report of them was because they were reasoned and substantiated, unlike the other public comments

provided.

A. They provided some fact-based arguments, if that's what you're meaning. But these were still sensationalist in nature. They were poorly-reasoned arguments.

Q. What criteria did you use to determine whether they were poorly reasoned?

A. Just the standard critical thinking procedures that you would apply to research and analysis.

Q. Okay. So it's your position that the comments provided by Yale, the Endocrine Society and AAP, were poorly-reasoned criticisms of the GAPMS report?

A. That's my personal opinion, yes.

Q. What's the Agency's opinion?

A. The Agency's opinion was that they were flawed arguments, and that they weren't sufficient to warrant overturning the GAPMS report or decision to move forward with the rule promulgation.

Q. And were you the only person who determined whether the report -- the comments of Yale, the Endocrine Society and AAP, were comments that AHCA would disregard in adopting the opinions set forth in GAPMS?

MR. PERKO: Object to form.

THE WITNESS: I was the only author of that document, but I was not the only person who read

those comments. As I said, we did mail copies to their experts and, of course, we had other internal staff look and review the comments and the rebuttal.

BY MS. DEBRIERE:

Q. And what internal staff at AHCA agreed with your position about the organization's comments?

A. That'd have been my immediate supervisor, Devona Pickle.

Q. Anybody else?

A. She was -- she -- she had reviewed them as well and reviewed my work.

Q. Uh-huh.

A. That was pretty much the extent of it. Then we, of course, presented our responses to leadership.

Q. And who's leadership?

A. That would have been Secretary Marstiller and General Counsel Josefina Tamayo.

Q. Okay. And did they agree with what is contained in this report?

A. They agreed with our findings.

Q. Okay. I understand that you were the only one who wrote the report. Did anybody make any edits in the report?

A. As far as any edits, no. Nobody else worked on that document. We did get a suggestion from Dr. VanMol

to include information about Western European countries, in a response to Yale. That was it.

Q. Okay. I'm sorry, Mr. Brackett. Say that again. You asked Dr. VanMol to include --

A. No, Dr. VanMol said that we should mention he -- we should consider including information from the Western European countries.

Q. Okay. And so you had not previously thought about that. That was Dr. VanMol's suggestion?

A. For this -- for the rebuttal, yes. We were, of course, aware of it. But that was his suggestion to make it more complete.

Q. Okay. So taking each comment individually, starting with Yale, what was the basis for determining whether it was poorly reasoned?

A. So the basis was that no other argument's valid. What is the -- what is the basis for their arguments? Do they make a case? Or when -- when you apply scrutiny, which, in other words questioning, when you start applying those standard analytical methods, do they hold up. And they didn't. We found that they were making comparisons to drugs, et cetera, making analogies that just didn't apply.

Q. So the reason it was poorly reasoned was simply because they were making analogies that didn't apply?

MR. PERKO: Object to form.

THE WITNESS: That's an example.

BY MS. DEBRIERE:

Q. Okay. Can you give me other examples?

A. I can. But those are also explained in the -- in the rebuttal.

Q. When you say it's not valid criteria, what are -- valid reasoning, what makes something valid?

A. What would make something valid is that it's a point, you -- you can't really take argument with it. And it make -- would make you walk back from your position, knowing that that's an argument that you cannot overcome. In other words, it's well thought, it's logical, it's supported by evidence.

Q. So it's your position that nothing in the Yale comment was supported by -- that the thrust of the Yale comment was not supported by evidence?

A. There was -- it could be explained that way. They provide some evidence for their arguments but their arguments were nonapplicable. Their arguments danced around our main points.

Q. Okay. What about the basis for determining that AAP's comment was poorly reasoned?

A. The same basis.

Q. So they didn't have any evidence for their

comments?

A. Correct.

Q. Okay. And they missed --

A. Well, let me rephrase that. They did not have what we'd consider credible evidence, to support their arguments.

Q. Okay. So what does it mean to be credible?

A. Well, we do explain that in our GAPMS memo. We explain that in our rebuttal.

Q. And did the -- like the -- the Yale comment, did the AAP comment miss AHCA's point?

A. The AAP comm -- comment was obfuscating the fact that they -- that there was no standard of care available for these services. The AAP comment frequently referred to one. There was no standard of care available for these.

Q. So it's AHCA's position there is no standard of care?

A. That's not our pos -- that's not our position. That's just the reality of the situation.

Q. Okay. So what was the basis for determining whether the Endocrine Society's comment was poorly reasoned?

A. Similar basis as to Yale's. There's was the briefest of the three.

Q. Okay. So they didn't present evidence to support their comment?
A. Correct.
Q. Okay. And they --
A. Or they didn't provide credible evidence to support their comment.
Q. And did they -- like the Yale report, did they miss the point that AHCA was trying to make?
A. I don't think they missed it. But their -- their -- their responses didn't fis -- sufficiently -- sufficiently refute that.
Q. Okay. And what was the point that AHCA was trying to make?
A. The point that we made was in our GAPMS, that the evidence was too low quality to constitute -- um, alignment with GAPMS.
Q. Was there anything in any of the three comments that AHCA did agree with?
A. Are we talking about, like, any last thing or are we talking --
Q. Yeah.
A. That, of course, I think the -- probably the only thing that we could agree on is, that kids who are having issues and having gender dysphoria are worthy of receiving some help of some kind.

Q. Okay. That's the only thing that you could agree on with them?

A. I'd have to review their comments to redetermine whether or not there's anything we agree -- could agree on. But at -- at large, we are -- I think we do agree that kids who experience gender dysphoria do need evidence-based treatment. We disagree on what we consider to be sufficiently evidence-based treatment.

Q. Okay. So the purpose of the report was to review those comments and then summarize your opinion about those comments, right?

A. I wouldn't say my opinion. I would say mostly more my counter-arguments.

Q. Okay. So then when you were preparing this report, the point was to refute what Yale, the AAP and the Endocrine Society were saying?

A. Just to point out the flaws of what they were saying, and to, of course, pose counter-arguments, correct.

Q. Okay. Why start from a position where the point is to refute?

MR. PERKO: Object to form.

THE WITNESS: I'll defer to my previous testimony. They make comments. They use hyperbolic language. This was all released nationally in the

media. Internally, we needed to make sure of the substance behind their statements, we needed to analyze that to make sure that hey, is there something in there that would be a fatal flaw or not.

BY MS. DEBRIERE:

Q. Well, analyzing whether something was in there that would either support or not support your conclusion under GAPMS is different from starting from a position where you're writing a report to refute what they're saying; is that right?

MR. PERKO: Object to form.

THE WITNESS: I'm having trouble following what you're saying.

BY MS. DEBRIERE:

Q. Yeah. So your previous testimony was you wrote this report to refute what the AAP, the Endocrine Society and Yale were saying; is that correct?

A. Since they were making arguments and criticisms towards our GAPMS, that were not well founded the -- the -- yes, we were refuting their counter-arguments.

Q. At what point did you determine that they were not well-found -- founded comments?

A. Shortly after I read them.

Q. When you were reviewing them did you go and

look into any of the research that they cite?
A. I did.
Q. At the time that you were reading the comments you did?
A. I did.
Q. Okay. So, when you say pretty shortly after reading them, what do you mean?
A. Well, after I read them. I mean, or -- and -- and as I was reading them, since Yale went point-by-point, as you read something. And, of course, you being an attorney, you start analyzing the language as you read it.
Q. Okay.
A. So either you realize, like, oh, they have a point there, or you shake your head and be, like, no, they don't.
Q. Okay. So after -- directly after -- once you finished reading the comments, you had decided that they were wrong?
A. I had decided that they were -- yeah. That they were flawed, yes.
Q. Okay. Did anyone at AHCA disagree with the contents of this report?
A. You mean, anyone who was in -- who had read it -- read it and received the information on it?

Q. I mean, anyone.
A. Anyone? I can't speak to every employee. Not every employee was made aware of that document either.
Q. Are you of -- aware of anyone at AHCA who disagreed with this report?
A. With the GAPMS memo or the comment summary?
Q. Well, let's start with the comment summary.
A. I'm not aware of any employee who disagreed with the comment summary.
Q. Are you aware of any employee who disagreed with the GAPMS?
A. I'm aware of one.
Q. Who?
A. Jeffrey English.
Q. Only Jeffrey English?
A. He's the only one that I'm aware of.
Q. Okay. Did anybody within leadership direct you to make changes to your summary, after you drafted it?
A. No.
Q. Okay. So it's perfectly written as is? No one edited it?
MR. PERKO: Object to form.
THE WITNESS: It is -- it is purely my work product. So we got the one suggestion from Dr. VanMol, but I added that in myself.

BY MS. DEBRIERE:

Q. So what -- no one made any changes to this document. It's just purely your work product?

A. Yeah.

Q. Okay. Okay. So the General Counsel's office never made any edits to this report?

A. No, they did not.

Q. Okay. They directed you to create the report, but they did not tell you what content to put in it; is that correct?

A. We were instructed to look at the comments, review them and provide analyses of them. Of course, that would be maintained internally.

Q. Okay. Other than the comment from Dr. VanMol, were there any other -- was there any other feedback from the experts?

A. No.

Q. So did they tell you anything after they read the report?

A. No.

Q. Okay. So you sent them the report, and then they didn't make any mention of it after that?

MR. PERKO: Asked and answered.

THE WITNESS: I'd already said that they didn't.

BY MS. DEBRIERE:

Q. Okay. Who did you send this document to before finalizing?

A. So we sent that to Dr's., VanMol, VanMeter, and Grossman (phonetic).

Q. Okay. Did you send it to anyone internally to AHCA, before finalizing?

A. Well, I mean, we did provide copies to Secretary Marstiller, General Counsel. So they did have it to review.

Q. Okay. And they provided you feedback to make changes?

A. They did not request any changes.

Q. Okay. And they being General Counsel's Office, but also AHCA leadership?

A. Correct.

Q. Okay. Okay. So the GAPMS memo -- I'm sorry. The GAPMS regulation presumes that services either meet the GAPMS requirement or they do not. And if they do not, then those services are experimental, correct?

A. That's what we determined, yes.

Q. In the 2022 GAPMS process, you determined that the services listed in 59G-1.050 subpart (7) are experimental, correct?

A. That's what is written in the GAPMS memo, yes.

Q. And, therefore, AHCA adopted the categorical exclusion for the treatment of gender dysphoria from Medicaid coverage; is that correct?

A. That's correct.

Q. Okay.

MS. DEBRIERE: So can I have the Errata sheet?

(Thereupon, Plaintiff's Exhibit No. 26 was marked for identification.)

BY MS. DEBRIERE:

Q. So this is marked as Exhibit 26, it's the Errata sheet that you sent to us yesterday. So, on this Errata sheet, you're saying that there are potentially situations where an individual can prove that the treatment -- the services listed at 59G-1.050(7) to treat gender dysphoria can not be experimental; is that correct?

A. No. That's not how that's to be -- to be interpreted.

Q. Okay. So I'm looking at this Errata sheet, and it says that you can use the variance and waiver process -- "An individual can use the variance and waiver process to have an individual determination as to whether one of the services listed at 59G-0 -- 1.050(7) -- subpart seven is not experimental to treat their gender dysphoria."

A. That text means that they are entitled to review under the legal process.

Q. Are there any circumstances in which that request would be granted?

A. We don't know. That'd be speculation.

Q. Well, if it was granted, then the person would have proven that the service was not experimental as to them, correct?

A. In a very hypothetical situation, if a variance is approved for coverage of these services, it would be strictly on that individual basis and that individual's basis alone.

Q. But that individual would have to prove that the treatment for gender dysphoria listed at 59G-1.050 subpart(7) was not experimental as to them, correct?

A. Hypothetically speaking, if it was to be approved, they would have to satisfy proof, that it wouldn't be experimental, as to them.

Q. So AHCA believes there are situations in which the services listed at 59G-1.050 subpart(7) to treat gender dysphoria can not be experimental?

MR. PERKO: Object to form.

THE WITNESS: That is not what we are saying here. The variance of the process is a legal process because of -- of the Agency's rulemaking

authorities. And then, of course, every agency can allow for variances, no matter what the rule says, regardless of whether it applies to health care, environment, business, commerce, et cetera. This is a legal process.

BY MS. DEBRIERE:

Q. I understand that anybody can access the legal process.

A. Uh-huh.

Q. But under what situations would AHCA grant that specific variance request?

MR. PERKO: Object to form.

THE WITNESS: We would be speculating.

BY MS. DEBRIERE:

Q. The individual would have to prove that the services are not experimental as to them, correct?

MR. PERKO: Asked and answered.

THE WITNESS: The burden of proof is on the recipient.

BY MS. DEBRIERE:

Q. To prove that the service is not experimental?

MR. PERKO: Objection to form.

THE WITNESS: The burden of proof is on the recipient.

BY MS. DEBRIERE:

Q. What do they have to prove?
A. They have to prove your -- for -- they've -- they have to prove substantial hardship because of the -- of the rule. That's what the grounds under which a variance is granted.
Q. Would they have to prove that the services are not experimental, as to them?
A. They would have to prove substantial hardship.
Q. Substantial hardship to receive services that AHCA has determined are experimental?
MR. PERKO: Object to form.
THE WITNESS: The GAPMS memo is -- serves as the basis to say, that they're experimental and investigational. If -- if -- and if a recipient feels that -- that their -- that rule is causing them substantial hardship, they are welcome to try to request a variance and have it undergo the review process.
BY MS. DEBRIERE:
Q. I understand that an individual -- I understand that an in -- any individual can access the waiver -- the variance and waiver process. What I'm asking is, in order for AHCA to approve that variance request, what does the individual have to establish?
MR. PERKO: Object to form. Asked and

answered.

BY MS. DEBRIERE:

Q. Let's scratch that.

Looking at the Erat -- the Errata sheet, you say, add the line, that AHCA decides whether a -- a service is experimental as to the requester.

A. And --

Q. Is that the testimony?

A. Yes.

Q. Okay. So in order to have a variance approved, the individual has to -- AHCA decides whether a service is experimental, as to the requester?

A. It could be interpreted that way.

Q. I'm trying to understand what AHCA's policy is, as it relates to a request for a variance or waiver, for someone who is seeking treatment -- seeking a service in 59G-1.050 subpart(7) to treat gender dysphoria.

A. So --

MR. PERKO: Object to form.

THE WITNESS: -- we previously did explain the variance review process. It's very individualized. Because it's very individualized, we really can't speak to what we would exactly request because of the individualized nature of the variance process. It would be speculation.

BY MS. DEBRIERE:

Q. So you cannot sit here today and tell me one example of an individual who would be granted a variance from 59G-1.050 subpart(7)?

A. No, it's all hypotheticals.

Q. I'm not asking for a hypothetical. I'm asking for an example. Can you give me one example?

MR. PERKO: Asked and answered.

THE WITNESS: Any examples we would give would be hypothetical.

BY MS. DEBRIERE:

Q. Mr. Brackett, you have written here that it is AHCA's position that when someone requests a variance or waiver from this rule then it is AHCA's rule to determine whether the service is experimental, as to the requester. Is that correct?

A. Those are the words I wrote, yes.

Q. In what situations could AHCA decide whether a service is -- is not experimental as to the requester?

MR. PERKO: Object to form.

BY MS. DEBRIERE:

Q. If you have decided that these service are always experimental, they're either experimental or they're not.

MR. PERKO: Object form.

BY MS. DEBRIERE:

Q. Is that correct?

A. I defer to the conclusions we drew -- drew in the GAPMS memo.

Q. The services are either experimental or they're not, correct? So -- excuse me. Under the GAPMS memo, you determine that all the services are experimental, correct?

A. When --

Q. As to everyone?

A. When used for those clinical indications, correct.

Q. When used for the treatment of gender dysphoria?

A. Correct.

Q. So all situations, where one of those services is being used to treat gender dysphoria, in all situations, the services are experimental, correct?

A. Based on our GAPMS memo determination, yes.

Q. Okay.

MS. DEBRIERE: Okay. Let's -- let's take a five-minute break.

THE VIDEOGRAPHER: Okay. This concludes Video One of the continued video-recorded deposition of Matthew Brackett. The time is 11:07 a.m.

(Discussion held off the record.)

THE VIDEOGRAPHER: This is the beginning of Video Two of the continued video-recorded deposition of Matthew Brackett. The time is 11:17 a.m.

BY MS. DEBRIERE:

Q. All right. Mr. Brackett, turning back to your Errata sheet. It -- reviewing it yesterday, I noticed that there are just a lot of places where you delete entire lines, and then substitute a few words. And the reason behind that is, because your position it's a more accurate description of agency policy. Um, how did you learn about those more accurate descriptions of agency policy?

A. Those came from our General Counsel's Office.

Q. Um, so did you review your deposition with the General's Counsel's Office, and they directed you to include these in that Errata sheet?

A. Yes. And (inaudible) outside counsel to make sure it was as accurate as possible.

Q. Is outside counsel aware of accurate -- more accurate agency policy?

A. Yes.

Q. How?

A. Via our General Counsel's Office.

Q. So General Counsel's Office gave outside

counsel a more accurate description of agency policy, and then outside counsel directed you to fill out this Errata sheet?

A. It was a team effort, yes.

Q. Are these policies kept anywhere?

A. I mean, these policies are -- these statements are more in line -- aligned with the statutes, as written, when it comes to requesting variances and rulemaking.

Q. Okay. But your reason is that you are providing a more accurate description of agency policy. So they're not policies that are written; is that correct?

A. If you're talking about promulgated policies that go through the rulemaking process --

Q. I'm not. I'm talking about internal policies or formally-adopted policies.

A. This would be more reflective of -- of our internal processes, yes.

Q. Okay. And are those internal processes written anywhere?

A. Can't speak to that at this time.

Q. Okay. So you don't know?

A. Don't know.

Q. Okay. So can you find that out for me, please?

A. We can check to see if there is a -- if the General Counsel's Office has a written process for variances.
Q. As to the treatment of gender dysphoria?
A. As to the treatment of gender dysphoria?
Q. Uh-huh.
A. There isn't one.
Q. Okay. How did you learn that your initial responses were not accurate?
A. We just reviewed the transcript.
Q. But as it stands, what's in the Errata sheet is your testimony, correct?
A. This is my testimony, correct.
Q. Okay. Would you agree that there are individuals for whom their gender dysphoria cannot be resolved with only psychotherapy?
A. That is a statement that, of course, is going to be made by individual clinicians. That's not -- that's not a statement -- the Agency's not in a position to discuss the effectiveness of medical treatments, when it comes down to individuals such as -- such as you're describing.
Q. Okay. But the agency isn't in a position -- is in a position to determine whether or not services are experimental, as to the provision to Medicaid

(inaudible)?

A. That's a different question. That's a different scene -- scenario.

Q. Okay. So in what scenario -- I'm sorry. So then would the --

A. So can you please repeat that question?

Q. Yes. Would you agree that there are individuals, for whom their gender dysphoria cannot be resolved with only psychotherapy?

A. So just because one treatment may not necessarily be effective, doesn't mean that a treatment that we've deemed to be experimental and investigational is going to be effective.

Q. Okay. So it is not the Agency's position that individuals who are suffering from gender dysphoria, the only method of treatment that is appropriate is psychotherapy?

A. We can't speak to that because that's kind of an absolute statement. We do deem psychotherapy as being an appropriate treatment. But in regards to the other treatments, such as those discussed in the GAPMS memo, those are experimental/investigational.

Q. Okay. I -- but that's not quite my question, though. I mean, my question is, is it the Agency's position that there are medical circumstances, in which

a Medicaid beneficiary who's suffering from gender dysphoria needs treatment other than psychotherapy?

MR. PERKO: Object to form.

THE WITNESS: We're talking only about psychotherapy, correct?

BY MS. DEBRIERE:

Q. Yes.

A. We could probably say yes.

Q. Okay.

MS. DEBRIERE: Are there any other questions that I've missed, Simone?

Okay. All right. That's it for Plaintiff's side.

MR. PERKO: I got no questions.

THE VIDEOGRAPHER: Anybody via Zoom?

MS. DEBRIERE: We're good, but thank you.

THE VIDEOGRAPHER: Okay. This concludes the video-recorded deposition of Matthew Brackett. The time is 11:23 a.m.

(Discussion held off the record.)

COURT REPORTER: Is anyone requesting a copy of this deposition at this time?

MS. DEBRIERE: Yes, we will.

MR. PERKO: And we will take a copy.

(Discussion held off the record.)

MS. DEBRIERE: Ms. Mercer, can you send it to the person who initially organized your services?

(Discussion held off the record.)

COURT REPORTER: Bill it to Jennifer Altman?

MS. DEBRIERE: Yes, please.

(Deposition concluded at 11:23 a.m.)

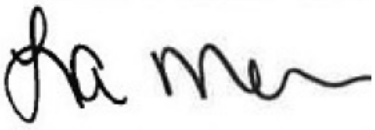
- - -

CERTIFICATE OF OATH

STATE OF FLORIDA:
COUNTY OF DUVAL:

I, LAWANDA MERCER, Florida Professional Reporter, Notary Public, State of Florida, do hereby certify that MATTHEW BRACKETT personally appeared before me on 11th day of March, 2023, and was duly sworn and produced Florida driver's license as identification.

Signed this 23rd day of MARCH, 2023.



LAWANDA MERCER
Florida Professional Reporter
Notary Public, State of Florida
My Commission No.: HH 285925
Expires: July 25th, 2026

CERTIFICATE OF REPORTER

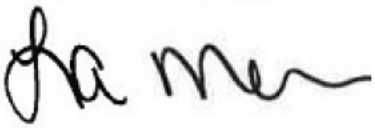
STATE OF FLORIDA:

COUNTY OF DUVAL:

I, LAWANDA MERCER, Florida Professional Reporter, Notary Public, State of Florida, certify that I was authorized to and did stenographically report the deposition of MATTHEW BRACKETT; that a review of the transcript was requested; and that the foregoing transcript, pages 5 through 53, is a true and accurate record of my stenographic notes.

I further certify that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 23rd day of March, 2023.



LAWANDA MERCER

Florida Professional Reporter

ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT-ENTER CHANGES HERE

IN RE: AUGUST DEKKER ET AL. VS. JASON WEIDA, ET AL.,

CASE NO: 4:22-CV-00325-RH-MAF

DATE: MARCH 8TH, 2023

DEPONENT: MATTHEW BRACKETT

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Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true."

_____

DATE MATTHEW BRACKETT

March 23rd, 2023

MATTHEW BRACKETT
C/o Gary Vergil Perko
Gperko@holtzmanvogel.com

In Re: March 8th, 2023, Deposition of MATTHEW BRACKETT
Job# 5801255

Dear MATTHEW BRACKETT:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is available for review. Please read the transcript, make any changes and sign the errata sheet provided, then email completed errata to transcripts-fl@veritext.com and to all ordering parties.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under Federal Rules*; however, there is no Florida Statute to this regard.

The original of this transcript has been forwarded to the ordering party and your errata, once received, will be forwarded to all ordering parties for inclusion in the transcript.

Sincerely,

Veritext Legal Solutions

cc: Katherine Jean Ann DeBriere, Esquire
Gary Vergil Perko, Esquire

Waiver:

I,_____, hereby waive the reading and signing of my deposition transcript.

_____ _____
Deponent Signature Date

*Federal Civil Procedure Rule 30(e)/Florida Civil Procedure Rule 1.310(e)

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zoom 53:15

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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