

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE, FLORIDA

AUGUST DEKKER, et al., )  
)  
Plaintiffs, ) Case No: 4:22cv325  
)  
vs. ) Tallahassee, Florida  
) May 19, 2023  
JASON WEIDA, et al., ) 10:20 A.M.  
)  
Defendants. )  
\_\_\_\_\_ )

VOLUME VI  
(Pages 1152 through 1262)

TRANSCRIPT OF SIXTH DAY OF BENCH TRIAL  
BEFORE THE HONORABLE ROBERT L. HINKLE,  
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(Call to order; parties present.)

THE COURT: Please be seated.

Please call your next witness.

MR. BEATO: We call Ann Dalton to the stand, Your Honor.

DEPUTY CLERK: Please raise your right hand.

**ANN DALTON, DEFENSE WITNESS, DULY SWORN**

DEPUTY CLERK: Be seated.

Please, state your full name and spell your last name for the record.

THE WITNESS: Ann Dalton, D-a-l-t-o-n.

THE COURT: And why don't you spell Ann for us.

THE WITNESS: A-n-n.

DIRECT EXAMINATION

BY MR. BEATO:

Q. Good morning, Ms. Dalton. Just a few questions.

Where are you currently employed?

A. The Agency for Health Care Administration.

Q. And what is your current job at AHCA?

A. Currently I'm the Bureau Chief for the Bureau of Medicaid Policy at the Agency.

Q. What does that job entail?

A. As the Bureau Chief I oversee the Bureau, and the Bureau of Medicaid Policy is responsible for a lot of various

1 policy-related functions; primarily, the drafting and routing  
2 and execution of the Statewide Medicaid Managed Care Plan  
3 contracts, the maintenance of the various federal authorities  
4 that the State has with our federal partners at the Centers  
5 for Medicare and Medicaid Services; as well as drafting and  
6 promulgating rule the various coverage policies that really  
7 dictate the services that we provide through Medicaid, which  
8 includes the GAPMS rule and process; and up until recently,  
9 the Canadian Prescription Drug Importation Program.

10 Q. And we will get back to the program a little bit later  
11 on.

12 How long have you been in this role?

13 A. I have been Bureau Chief officially since August of 2021.

14 Q. And did you work for AHCA in any other roles before  
15 becoming the Bureau Chief?

16 A. Yes. I worked in the Bureau, specifically, at AHCA, in  
17 two management roles prior to becoming Bureau Chief.

18 Immediately before Bureau Chief, I was an Agency for Health  
19 Care administrator, and then before that I was a program  
20 administrator in the Bureau.

21 Q. And so just briefly, what did those two jobs entailed?

22 A. As an AHCA administrator, I oversaw a unit, the unit  
23 specifically responsible for the federal authorities, and  
24 then the administrative rulemaking process. And then the  
25 program administrator position, I was responsible for a small

1 unit that primarily worked with the children's health  
2 insurance program, the eligibility policies. So working  
3 closely with the Department of Children and Families and a  
4 few other policy areas.

5 Q. And when were you in those two positions?

6 A. I started with the agency in January of 2018 as the  
7 program administrator, and had that position until  
8 August 2018, which is when I moved into the AHCA  
9 administrator role.

10 Q. So before your time at AHCA, where else did you work?

11 A. Prior to AHCA I was with the Department of Elder Affairs  
12 in various positions working with Medicaid long-term services  
13 and support, for a little over five years, since 2012.

14 Q. Okay. So remind us, what was your position in AHCA in  
15 April 2022?

16 A. In April 2022 I was the Bureau Chief of Medicaid Policy.

17 Q. And who was your immediate boss?

18 A. The Assistant Deputy Secretary for Medicaid Policy and  
19 Quality, who at the time was Jason Weida.

20 Q. And so how often did you speak with Mr. Weida when he was  
21 the Assistant Deputy Secretary?

22 A. All the time. I spoke with him daily, sometimes multiple  
23 times a day. He was somewhat new to the Agency, so we spent  
24 a lot of time kind of catching him up on the different  
25 functions that the Bureau was responsible for, and then also

1 talking about whatever the priority for the day or the week  
2 for the Agency was.

3 Q. Are you familiar with the GAPMS report on treatments for  
4 gender dysphoria?

5 A. Yes.

6 Q. When did you first become aware of this?

7 A. I became aware of the direction to do the report in  
8 April 2022.

9 Q. And how did you first become aware of this?

10 A. I was notified verbally that the Secretary was going to  
11 be directing our Medicaid director, who at the time was Tom  
12 Wallace, to be -- for the Bureau to undertake the task of the  
13 report.

14 Q. And what happened next?

15 A. I met with my direct report, Jason -- or my direct  
16 supervisor, Jason Weida.

17 Q. What did you talk with him about?

18 A. So we talked about the task, what that entailed, and then  
19 we talked about how best to move forward with accomplishing  
20 the task, and who would be working on the project.

21 Q. So the last thing you said, who would be working on the  
22 project, could you elaborate on that further?

23 A. Yes. I recommended that the Canadian Prescription Drug  
24 Importation team would be available to work on the reports.

25 Q. Okay. And just to break that answer down, what is the

1 Canadian Prescription Drug Importation Program?

2 A. That program was established legislatively in 2019, I  
3 believe, to direct the Agency to implement a program working  
4 with the federal government to allow us to import  
5 prescription drugs from Canada.

6 Q. Was it a high priority policy for the State?

7 A. Yes.

8 Q. And what was the status of that program in 2022?

9 A. So, in 2022 the Agency had done a lot of work trying to  
10 move forward, since it was a high priority, and had really  
11 reached the place where we couldn't go much further. We had  
12 submitted everything to the federal government, and we were  
13 really pending feedback from the federal government on next  
14 steps. So it was a little stagnant.

15 Q. Understood. And you said you recommended that program  
16 team. Who was on the team?

17 A. D.D. Pickle -- Devona Pickle, she goes by D.D. -- Matt  
18 Brackett, and Nai Chen.

19 Q. And why did you recommend Mr. Brackett?

20 A. I recommended Mr. Brackett specifically in the team for  
21 several reasons. Like I was just explaining with the  
22 Canadian Prescription Drug Importation Program kind of having  
23 a lull, the team had a lot of bandwidth. They had been doing  
24 other special projects for the Bureau and kind of stepping in  
25 where needed. And Matt Brackett specifically had a lot of



1 historical knowledge with the GAPMS process. He was  
2 previously the GAPMS analyst, he held that position before  
3 moving to a supervisory position and then into the role --  
4 his current role. And I had a really strong rapport with the  
5 team, specifically Matt and D.D., since they had been with  
6 the Agency a pretty long time, and since I had been with the  
7 Agency, both in management positions when I first started.  
8 So I work closely with them on lots of projects. I knew  
9 their work. I knew they both had the historical knowledge,  
10 and I trusted that, you know, they could work independently  
11 and would deliver a really good product in a short amount of  
12 time.

13 Q. Understood. And sticking with Mr. Brackett, how would  
14 you describe Mr. Brackett's GAPMS knowledge?

15 A. So, my knowledge of GAPMS was somewhat limited when I  
16 took the role, and he was the primary source for me at the  
17 beginning to kind of get me up to speed with the historical,  
18 what GAPMS was, what the process was, you know, just the  
19 historical background. And it was my understanding that he  
20 worked on GAPMS and completed several GAPMS reports over the  
21 years.

22 Q. And what is Mr. Brackett's work product like?

23 A. It's very good. His work products come, since I have  
24 been his supervisor or in the chain of review, they come  
25 polished with very little to no revisions; there are

1 thoroughly researched; they are well written.

2 Q. And, generally speaking, what is like to work with  
3 Mr. Brackett?

4 A. My experience with Mr. Brackett has been very positive.  
5 I think he's a hard worker, I think he takes his job very  
6 seriously. He is kind of a go-to guy in the Bureau. I  
7 witnessed my supervisor before me also going to him for  
8 special research projects or to review or look at things  
9 because he is very knowledgeable and good at what he does.

10 Q. So abstracting out a little bit, why did you recommend  
11 Ms. Pickle?

12 A. A lot of the same. She had been with the Agency for a  
13 long time. She had a lot of -- she's a great manager. She  
14 really builds a team like environment, and so her teams have  
15 in my experience been very strong and worked well together.  
16 And she gives good direction, so she's a good manager, and  
17 ability to work with little direct oversight, to really work  
18 autonomously.

19 Q. And why did you recommend Mr. Chen?

20 A. I don't -- I didn't at the time know Mr. Chen that well.  
21 He hadn't been with the Agency that long. He was part of the  
22 team. I had witnessed the team working very well together.  
23 They had put forward very strong work products related to the  
24 Canadian Prescription Drug Importation Program. And he is a  
25 pharmacist. So I thought the team, as a whole, would be a

1 good choice.

2 Q. Are you familiar with an individual named Jeff English?

3 A. Yes.

4 Q. Who is he?

5 A. He was an employee at the Agency. He had two different  
6 positions in the Bureau. He was the analyst for GAPMS on  
7 Jesse Bottcher's team, and he was also the analyst or SPA  
8 coordinator on Cole Giering's team.

9 Q. And what was he specifically doing around April 2022?

10 A. He was the analyst, the GAPMS analyst.

11 Q. Why didn't you recommend him to draft the 2022 GAPMS  
12 report on treatments for gender dysphoria?

13 A. For the reasons that I stated before why I chose the or  
14 recommended the Canada Prescription Drug Importation team,  
15 that was the primary driver is knowing that there was a team  
16 that had a lot of bandwidth. This was a Secretary request,  
17 so it was a high priority. And having a strong team that I  
18 had a lot of experience with that I knew the work product was  
19 the primary factor in my recommendation.

20 Q. And does Mr. English, when he worked for the Agency, did  
21 he supervise anyone?

22 A. No.

23 Q. Who was Mr. English's supervisor?

24 A. Jesse Bottcher.

25 Q. And who was Mr. Bottcher's supervisor?

1 A. Me.

2 Q. And I would like to show you PX238. You can look on the  
3 screen.

4 Ms. Dalton, are you familiar with this document?

5 A. Yes.

6 Q. What's your understanding of this document?

7 A. My understanding is this document is used by the GAPMS  
8 analysts to assist them with completing their work.

9 Q. Have you ever seen this document filled out before?

10 A. No.

11 Q. Most GAPMS employees use this document?

12 A. It's not a Bureau requirement or an Agency requirement.  
13 I think it's -- if it's a helpful tool for the analysts, then  
14 I support however the different positions in the Bureau  
15 accomplish their work. But it's not a required document.

16 MR. BEATO: One moment, Your Honor.

17 No further questions, Your Honor.

18 THE COURT: Cross-examine?

19 MS. DUNN: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. DUNN:

22 Q. Good morning, Ms. Dalton. My name is Chelsea Dunn, and  
23 I'm an attorney for the plaintiffs in this case.

24 You testified that you are the Bureau Chief for the  
25 Bureau of Medicaid Policy at the Agency for Health Care

1 Administration; is that correct?

2 A. Yes.

3 Q. And you started AHCA in August of 2018?

4 A. In January of 2018.

5 Q. January 2018. Thank you.

6 You became the Bureau Chief of your division in August of  
7 2021?

8 A. Yes. I was officially the Bureau Chief in August of  
9 2021.

10 Q. And your educational background and degrees is in music;  
11 is that right?

12 A. Yes.

13 Q. You have both a Bachelor's degree and a Master's degree  
14 in music?

15 A. Yes.

16 Q. Turning to the GAPMS process that we discussed or that  
17 you were discussing, Jesse Bottcher supervised the position  
18 that's designated to undertake GAPMS analyzes; is that right?

19 A. Yes.

20 Q. And Mr. Bottcher was your direct report?

21 A. Yes.

22 Q. You met with Mr. Bottcher weekly?

23 A. Yes. I met with him -- I had a scheduled weekly meeting,  
24 but we probably touched base or talked about something in a  
25 meeting together daily.

1 Q. So at least weekly but more likely daily?

2 A. Yes.

3 Q. And the GAPMS analyst position was previously held by  
4 Jeffrey English; is that right?

5 A. Yes.

6 Q. And he was in that position for approximately three  
7 years; is that correct?

8 A. I don't know the exact timeline. When he was hired at  
9 the Agency I was in a different capacity, so did not have any  
10 direct oversight of that team or the GAPMS process. And then  
11 we were home with COVID for a while, and so I don't know  
12 exactly when he started.

13 Q. He started before you became Bureau Chief, though?

14 A. Yes.

15 Q. And if he were to say that he had worked in the GAPMS  
16 position for three years, do you have anything to believe  
17 that that's not correct?

18 A. No.

19 Q. And he reported directly to Mr. Bottcher?

20 A. Yes.

21 Q. So you testified to making the decision to assign  
22 Mr. Brackett, Mr. Chen, and Ms. Pickle to the 2022 GAPMS for  
23 gender dysphoria; is that right?

24 A. Yes.

25 Q. None of these individuals were assigned to the unit

1 responsible for conducting GAPMS at the time; is that right?

2 A. Correct.

3 Q. At the time Mr. English was in the analyst position  
4 responsible for GAPMS determination while the 2022 GAPMS for  
5 gender dysphoria was being conducted; is that right?

6 A. Yes.

7 Q. And at that time, when you decided to assign this GAPMS  
8 determination to Mr. Brackett, Mr. Chen, and Ms. Pickle, you  
9 didn't check whether Mr. English had the capacity to complete  
10 the GAPMS analysis for gender dysphoria?

11 A. I didn't check specifically if Mr. English did. I knew  
12 that Jesse, his direct report, who would need to be available  
13 to oversee work, had an expensive workload at the time. So  
14 he oversees three other managers besides the GAPMS position  
15 that each had teams, and we had some vacancies. So his team  
16 as a whole was very busy.

17 Q. But Mr. --

18 THE COURT: I want to interrupt just to make sure the  
19 record is clear. When you say -- I think you said Jesse was  
20 his direct report, you meant his direct supervisor?

21 THE WITNESS: Yes. Sorry. I think I said that twice  
22 now. I will try to make that clear. Yes, his direct  
23 supervisor, Jesse Bottcher.

24 BY MS. DUNN:

25 Q. But you didn't check to see if Mr. English himself had

1 capacity; is that right?

2 A. No.

3 Q. And Mr. English would have been the one actually --

4 THE COURT: Let me make that one clear, too. That's  
5 one of those questions that gets asked that way and you say  
6 no. What she said was correct, you didn't check to see -- let  
7 me ask the question correctly instead of -- I'm sorry.

8 Did you check to see if Mr. English had capacity?

9 THE WITNESS: No, I did not talk to Mr. English to  
10 see what his workload was.

11 THE COURT: That's what I understood the prior answer  
12 to be. I just think the way it was phrased and answered, it  
13 wouldn't have been clear.

14 MS. DUNN: Thank you, Your Honor.

15 BY MS. DUNN:

16 Q. And Mr. English would have been the one responsible for  
17 writing the report and conducting the research to complete  
18 the analysis; is that right?

19 A. His primary job duty was doing GAPMS reports and  
20 research, so, yes. But as Bureau Chief, you know, looking at  
21 the Bureau as a whole, at capacity, at trying to manage  
22 priorities, manage the various tasks that we were working on,  
23 I felt that it is, you know, within my capacity as Bureau  
24 Chief to decide if another team would be more appropriate at  
25 that point in time to do the work.



1 Q. You mentioned that Mr. Brackett had previously worked on  
2 GAPMS for the Agency?

3 A. Yes.

4 Q. And were you aware that he had previously worked on GAPMS  
5 for the Agency for under a year?

6 A. I didn't know the exact time that he was in that  
7 position. That was before I started with the Agency. But he  
8 always appeared very knowledgeable about the process and was  
9 available to answer questions, like I stated before about if  
10 I just had general questions about the process and the  
11 approach.

12 Q. You mentioned that he left the GAPMS analyst role to move  
13 to a supervisor position. In that supervisor position, he  
14 did not supervise the GAPMS analysts; is that correct?

15 A. Correct. He supervised a different unit within the  
16 Bureau.

17 Q. In the year preceding -- so the year 2020 through 2021 --  
18 Mr. English received a performance evaluation conducted by  
19 his manager. Have you seen that performance evaluation?

20 A. I don't know if I have. I do have to do a secondary  
21 review on some, but I don't recall seeing that one  
22 specifically.

23 Q. Would it be helpful if we brought up the report to see if  
24 you remember seeing it?

25 A. Yes. I'll look at whatever you want me to.

1 MS. DUNN: Let's pull up Exhibit 29 for Ms. Dalton to  
2 review.

3 BY MS. DUNN:

4 Q. And this has a marking as Plaintiffs' Exhibit 15, which  
5 is actually from a deposition, so that's not relevant here.

6 This performance evaluation was completed in August of  
7 2021. Do you recall seeing it before?

8 A. No.

9 Q. Would you have any reason to believe -- strike that. I'm  
10 sorry.

11 Were you in the Bureau Chief role in August of 2021?

12 A. Depends when in August. I was acting, but I was not  
13 officially until I believe it was the end of August.

14 Q. Mr. English received excellent and above excellent  
15 ratings on his performance evaluation. Were you aware of  
16 that fact?

17 A. No.

18 Q. Did you complete any performance evaluations for  
19 Mr. English?

20 A. No.

21 Q. During your deposition you testified that Mr. English  
22 would be -- Mr. English and Mr. Bottcher would be the two  
23 employees with information about the GAPMS process; is that  
24 correct?

25 A. They would have information, but Matt Brackett also had

1 information, and then there were various other employees I  
2 think that had some knowledge of GAPMS.

3 Q. And often when the Agency is conducting GAPMS, subject  
4 matter experts are used; is that correct?

5 A. I don't know specifically the intricacies of the GAPMS  
6 process. Are you asking if the Agency has subject matter  
7 experts?

8 Q. Yes. I'm specifically referring to internal AHCA  
9 employees who have specific subject matter expertise.

10 Are those individuals used during the GAPMS process?

11 A. I don't know.

12 Q. When the Agency conducts coverage determinations, are  
13 subject matter experts; i.e., internal AHCA employees who  
14 have subject matter expertise, used to make those coverage  
15 determinations?

16 A. Yes. The Bureau is organized in away where the different  
17 positions or subject matter experts are assigned specific  
18 policies, might be one or more policy areas, that it would be  
19 the expectation that they become familiar with that policy  
20 area. So, if a question came up around coverage in a  
21 specific area, there would be a specific employee who would  
22 be responsible for answering that question or looking --  
23 researching that coverage.

24 Q. And would those same individuals be assigned or be  
25 consulted with for GAPMS processes, if necessary?

1 A. I don't know, like I said, the internal process that  
2 analyst uses to develop the GAPMS reports. I don't know if  
3 it's the same for every report or every request. I'm not  
4 that involved or knowledgeable of the actual GAPMS process.

5 Q. When the Agency makes a determination about whether to  
6 cover a certain service, the staff member doing so may  
7 consult the chief medical officer of the Agency; is that  
8 right?

9 A. The chief medical officer is available to staff at the  
10 Agency if they have questions regarding any policy. He's  
11 very nice and very approachable, and so he usually is  
12 available if there is a question.

13 Q. And you know of instances where he has been consulted  
14 while the Agency is making coverage determinations, for  
15 example, by the pharmacy policy unit; is that right?

16 A. Yes. I know that they've asked him questions about  
17 various components of their different tasks.

18 Q. And Mr. Bottcher has also drawn on the knowledge of  
19 Mr. Cogle in his role for actions of his section?

20 A. I believe so.

21 Q. The current chief medical officer for the Agency is  
22 Dr. Christopher Cogle; is that right?

23 A. Yes.

24 Q. And as you mentioned, he serves as an available resource  
25 for your team?

1 A. Yes.

2 Q. And you met with him when you first became Bureau Chief;  
3 is that right?

4 A. Yes.

5 Q. And in that meeting one of the things that was discussed  
6 was the GAPMS process?

7 A. Yes. We met on -- over the years, we have met on lots of  
8 things, but when I first took over the role, he was fairly  
9 new as well. We didn't have a chief medical officer before  
10 him. His role and him personally were somewhat new around  
11 the same time. So we met about different processes or  
12 functions, I think just try to figure out how we could be  
13 most helpful to each other.

14 Q. And in that conversation you did discuss the GAPMS  
15 process?

16 A. Yes.

17 Q. You have been the Bureau Chief as we mentioned in the  
18 Bureau for Medicaid Policy since August of 2021?

19 A. Yes.

20 Q. And in that time you've approved two GAPMS  
21 determinations; is that right?

22 A. Correct.

23 Q. Turning briefly to the rule promulgation process, when  
24 AHCA is promulgating a new rule, there are different public  
25 meetings that might be required based on the stage of the

1 process; is that accurate?

2 A. Yes.

3 Q. During the rule development stage a public workshop may  
4 be held?

5 A. Yes.

6 Q. And before a rule gets promulgated, there may be a public  
7 hearing with the final rule text that's considered; is that  
8 right?

9 A. Yes.

10 Q. These rulemaking hearings are run by Agency staff  
11 typically, or always?

12 A. Typically, there is a specific unit responsible for the  
13 administrative side of the process. So helping schedule the  
14 meeting, facilitate where the meeting is going to be held,  
15 making sure you capture all of the sign-in. And then the  
16 subject matter expert or different analysts in the Bureau,  
17 sometimes the manager, would also usually participate.

18 Q. And when you say subject matter expert in this context,  
19 you're referring to internal AHCA employees who served on the  
20 panel say at the public hearing; is that right?

21 A. Internal or external. We invite our sister agencies to  
22 participate in public meetings often if the rule has to do  
23 with a policy that they may oversee; for example, the Agency  
24 for Persons with Disabilities participated in the rule  
25 hearing that we recently had on the iBudget Waiver handbook,

1 since they are subject matter experts with the iBudget  
2 Waiver.

3 Q. Typically, the subject matter experts are either from  
4 AHCA, the Agency AHCA, or other state agencies; is that  
5 right?

6 A. Yes.

7 Q. I'm pulling up or I am going to have pulled up what has  
8 been marked as Plaintiffs' Exhibit 291, if you can look at  
9 your screen.

10 I understand that you are not on this email, Ms. Dalton,  
11 but do you recognize the second part that includes some  
12 billing information? And we can zoom in if it's hard for you  
13 to read.

14 A. Yes.

15 No.

16 Q. Did you -- when Ms. Pickle has invoices to pay for an  
17 expert consultant such as Mr. Van Mol, or Dr. Van Mol --  
18 excuse me -- do you have to approve those invoices?

19 A. Yes.

20 Q. And you didn't review these invoices?

21 A. I don't believe the invoice had this level of detail.

22 Q. We're pulling up what has been marked as Plaintiffs'  
23 Exhibit 321. Do you recognize this document?

24 A. Yes.

25 Q. What is it?

1 A. This is an after the fact request form under \$35,000.  
2 It's an invoice for consultant services.

3 Q. And who were these consultant services designed to pay?

4 A. This one is for Andre Van Mol.

5 Q. And what was Mr. Van Mol being paid to do?

6 A. My understanding is as a subject matter expert or  
7 consultant for the development of the GAPMS report.

8 Q. And what was his time being spent on? Do you know?

9 A. I don't know the specifics. I knew that he was assisting  
10 the team.

11 Q. And we're now pulling up what -- oh, I'm sorry.

12 We're going to stay on this exhibit, 321, right now. If  
13 you will look at the top box, can you just tell us what the  
14 date of service for Mr. Van Mol was?

15 A. 4/15/22 through 6/30/22.

16 Q. So this would indicate that Mr. Van Mol began consulting  
17 with the Agency on April 15th of 2022?

18 A. I don't know when he began, but that's what the invoice  
19 says, yes.

20 MS. DUNN: We can take this off the screen, and  
21 please we will be showing what has been marked as Plaintiffs'  
22 Exhibit 320.

23 BY MS. DUNN:

24 Q. Do you recognize this document, Ms. Dalton?

25 A. Yes.



1 Q. What is it?

2 A. This is the invoice -- the after the fact request invoice  
3 for Quentin Van Meter.

4 Q. And what was Mr. Van Meter being retained to do for the  
5 Agency?

6 A. The same, consultant for developing the GAPMS report.

7 Q. And you signed these after the fact request forms for  
8 both Mr. Van Meter and Mr. Van Mol?

9 A. Yes.

10 Q. You approved payment for these individuals?

11 A. Yes.

12 Q. And if you can just look at the dates of service on the  
13 request for Mr. Van Meter, what were the dates of service for  
14 his services?

15 A. 4/15/22 through 6/30/22.

16 Q. So that would indicate that he had started working for  
17 the Agency in a consultant capacity on April 15, 2022?

18 A. That's what the invoice says, yes.

19 Q. We're now pulling up what has been marked as Plaintiffs'  
20 Exhibit 292A. Do you recognize this invoice at all?

21 A. No.

22 Q. Do you recognize the person named in the invoice?

23 A. Can you point out where the name is?

24 Q. At the very top, it's italicized. I'm sorry.

25 A. No.

1 Q. So Ms. Brignardello-Petersen completed one of the  
2 attachments to the 2022 GAPMS for gender dysphoria. Have you  
3 reviewed those attachments?

4 A. I did a year ago.

5 Q. And so this appears to be an invoice for services that  
6 she provided to the Agency. Would you have been required to  
7 approve this invoice if she was paid?

8 A. It depends on who was ordering the invoice or who had  
9 filled out the form. If I was in the chain of revision or  
10 supervision or signing, then, yes.

11 Q. And when we looked at Mr. Van Meter and Mr. Van Mol's  
12 requests, those were done by Ms. Pickle, who was part of the  
13 team working on the 2022 GAPMS for gender dysphoria, were  
14 they the same individuals who would have been retaining the  
15 other authors of the GAPMS reports -- attachments?

16 A. I don't know.

17 Q. Do you recall signing an invoice for  
18 Ms. Brignardello-Petersen's services?

19 A. I don't remember.

20 Q. Do you recall signing an invoice for the services of the  
21 other consultants who provided attachments to the GAPMS memo?

22 A. I don't remember specifically. You just showed me the  
23 two. But I don't remember specifically all of the invoices  
24 that I signed, no.

25 Q. We'll pull up Plaintiffs' Exhibit 294. This document is

1 entitled, "Projected Rulemaking Timeline," and it makes  
2 reference to the GAPMS specifically.

3 Have you ever seen this document?

4 A. I don't recall if I have or not.

5 Q. Just from your knowledge as an Agency employee, do you  
6 know what some of these acronyms mean, for example, do you  
7 know what NORD refers to?

8 A. Yes.

9 Q. What does that?

10 A. Notice of Rule Development.

11 Q. And what does FAR refer to?

12 A. Florida Administrative Register.

13 Q. And are these activities that the Agency undertakes, the  
14 Notice of the Rule Development, for example?

15 A. Yes. Those are required steps in the promulgation  
16 process per Chapter 124 of the statutes.

17 Q. And in the third box, June 17th, there's an acronym NOPR.  
18 What does that refer to?

19 A. Notice of Proposed Rule.

20 Q. And that's also published in the Florida Administrative  
21 Register?

22 A. Yes.

23 Q. Under July 12th, there is an acronym JAPC. Do you know  
24 what that acronym stands for?

25 A. Joint Administrative Procedures Committee, I think.

1 Q. And when it says "Adoption package submitted to JAPC,"  
2 does the Agency submit rule adoption packages to JAPC?

3 A. We have to file the rule with the Department of State,  
4 but I believe that we submit them for review to JAPC.

5 Q. And July 19th, where it says, "File for adoption with  
6 DoS," that would be Department of State as you just  
7 mentioned?

8 A. Yes.

9 Q. And on the second row under June 16th, it says, "Send  
10 NOPR to OFARR and FAR," I think FAR is Florida Administrative  
11 Register, we said. Do you know what OFARR is?

12 A. I don't know if I can remember off the top of my head.  
13 They are an entity.

14 Q. A state agency entity in the rulemaking process; is that  
15 accurate?

16 A. Yes.

17 Q. And we are now going to pull up what's been marked  
18 Plaintiffs' 295 on the screen.

19 This is a flowchart entitled, "Gender  
20 Dysphoria/Transgender Health Care Non-Legislative Pathway."

21 Have you ever seen this particular document?

22 A. I don't remember seeing this before.

23 Q. Does this document seem to reflect the process by which  
24 AHCA completed the GAPMS process for gender dysphoria and  
25 promulgated the rule that's being challenged today?

1 A. Yes.

2 Q. And one more document that we'll pull up, Plaintiffs'  
3 Exhibit 296. This document is another flowchart this is  
4 entitled, "Gender Dysphoria/Transgender Health Care Policy  
5 Pathway."

6 Do you recognize this document?

7 A. No.

8 MS. DUNN: Just one second. This might just take a  
9 minute. I'm sorry.

10 BY MS. DUNN:

11 Q. We are pulling up what has been marked as 297. Do you  
12 recognize this document?

13 A. Yes.

14 Q. What is this document? Oh, I'm sorry. This is not the  
15 version of the document that I intended.

16 This is what has been marked as 297A. Do you recognize  
17 this document?

18 A. Yes.

19 Q. And what is it?

20 A. This is an internal form that we use to track routing and  
21 approval of documents through the Agency.

22 Q. And what is this particular routing and tracking form  
23 referencing?

24 A. The GAPMS report assignment.

25 Q. And this would have been what was completed when

1 Mr. Brackett, Ms. Pickle, and Mr. Chen had finished the GAPMS  
2 for gender dysphoria and submitted it to the management team?

3 A. Yes.

4 Q. And they completed or they submitted that form for review  
5 on June 1st, 2022; is that right?

6 A. Yes.

7 Q. So Ms. Pickle signed it on June 1st, 2022?

8 A. Looks like Matt Brackett for D.D.

9 Q. Oh, that's what the "MB for DVP," means, Matt Brackett  
10 signed it for her?

11 A. Yes.

12 Q. And you signed it on that same date, June 1st, 2022?

13 A. Yes.

14 Q. Mr. Weida, your direct supervisor, also signed it on  
15 June 1st, 2022?

16 A. Yes.

17 Q. And then it was sent to Tom Wallace, who is the Deputy  
18 Secretary for Medicaid, and he signed it the next day,  
19 June 2nd, 2022?

20 A. Yes.

21 MS. DUNN: I have no further questions. Thank you.

22 THE COURT: Redirect?

23 MR. BEATO: No, Your Honor.

24 THE COURT: Ms. Dalton, I want to make sure I  
25 understood this, and I have a follow-up question, too.

1           Let me start by saying, I get it, when you give  
2 special attention to a request that came from the boss as  
3 opposed to something that was routine or came some other way.  
4 So I take it this process was a request essentially that came  
5 from the boss, and I think you said Tom Wallace, as you  
6 understood it, at the very beginning of the GAPMS process.

7           THE WITNESS: Yes. It was a request from the  
8 Secretary essentially directing the Medicaid Director, Tom  
9 Wallace, to assign it to his team; and, because of the  
10 assignment, that would come to my Bureau.

11          THE COURT: So it came actually from the Secretary.

12          THE WITNESS: Yes.

13          THE COURT: Did you understand at that point that the  
14 Executive Office of the Governor had some involvement with  
15 this, too?

16          THE WITNESS: I don't -- I wasn't really involved in  
17 any of that. I was taking direction from my supervisor.

18          THE COURT: You're keeping your head down and doing  
19 your job.

20          THE WITNESS: Yes.

21          THE COURT: So, as you understood it, this is a  
22 request from the Secretary. And so it's a request from the  
23 Secretary so you want it done well, and you know the Canadian  
24 team has time on its hands, and you have confidence in them,  
25 and you give it to them.

1 THE WITNESS: Yes.

2 THE COURT: I understood all of that.

3 I think I understood you to say that you didn't  
4 remember those flowcharts that they were showing you on cross  
5 a minute ago.

6 THE WITNESS: Yes. I don't recall ever seeing them.

7 THE COURT: Nobody quite asked you what they really  
8 care about, and so I'm going to ask you about it.

9 Over on the right side at the very end of that  
10 flowchart, it said, "Care Effectively Banned."

11 Now, I have to tell you that it seems to me that, if  
12 somebody was starting out at the beginning and wanted to  
13 describe the process that we're going to use to evaluate some  
14 kind of medical care, we would set out all of those steps, and  
15 then at the end it might say, "Rule adopted or result  
16 reached"; but, if you're really trying to figure out what the  
17 policy ought to be, and you adopted this flowchart in the  
18 beginning to show where you were going, the last thing it said  
19 wouldn't already have the results.

20 When you got this assignment, did you know what the  
21 result was supposed to be?

22 THE WITNESS: No. I mean, I was aware of the  
23 Department of Health and what had been going on there. I  
24 wasn't intimately aware of it, but being part of a government  
25 worker, I was aware. But my direction from my supervisor was



1 always, approach this following the standard process,  
2 thoroughly review of the research, and this is a GAPMS report  
3 following the rules.

4 THE COURT: So you knew what was going on, which is  
5 to say trans individuals were in the crosshairs. Is that --  
6 that's probably a colloquial way to say it, but, look, I live  
7 in this town, too, and read the papers. Trans individuals  
8 were targeted. Is that a fair description?

9 THE WITNESS: As a person living in the town, I agree  
10 that I was aware of the political -- I mean, the things that  
11 were going on politically or some of the other -- with some of  
12 the other agencies.

13 THE COURT: Nobody ever gave you a wink and a nod and  
14 said, "Where this is supposed to come out is that care is  
15 supposed to be effectively banned"?

16 THE WITNESS: No.

17 THE COURT: And when you picked the Canadian team, it  
18 wasn't because you thought these people will understand what  
19 they are supposed to do, you picked them because they had time  
20 and you thought they would do a good product.

21 THE WITNESS: Correct. It was not -- yes, it was  
22 because I thought that they had time and would do a good  
23 product and could accomplish the task.

24 THE COURT: We saw while you were being  
25 cross-examined three invoices, I suppose, one was for \$6100,

1 and I didn't make a note of what the second one was for. The  
2 third one was for \$34,800. This is money out the door to  
3 people that don't work for the State. And I understand that's  
4 not a whole lot of money in a state budget. Can you think of  
5 other things where your Bureau approved that kind of money to  
6 outside consultants?

7 THE WITNESS: I believe there had been a consultant  
8 for the Canadian Importation Drug Program when the legislation  
9 first passed. I don't know the amounts associated with that.  
10 So I personally have not had much experience with outside  
11 consultants.

12 THE COURT: Fair enough. Thank you.

13 Questions just to follow up on mine?

14 MR. BEATO: No, Your Honor.

15 MS. DUNN: Yes, Your Honor, just one or two.

16 RECROSS-EXAMINATION

17 BY MS. DUNN:

18 Q. Ms. Dalton, did you select the Canadian Drug Importation  
19 Program team on your own?

20 A. I initially recommended it, but I believe it was a  
21 discussion with my supervisor at the time, and I think he  
22 agreed that that was like, okay, let's move forward that way.

23 Q. And do you know why the particular consultants that were  
24 used in this process were chosen?

25 A. I don't.

1 Q. Do you know how the particular consultants used in this  
2 process were contacted or selected?

3 A. No.

4 Q. To your knowledge, has the Agency ever used seven outside  
5 consultants on a GAPMS process prior to this?

6 A. My personal experience with GAPMS is limited, and I have  
7 not had any experience prior with consultants on a GAPMS.

8 MS. DUNN: Thank you. No further questions.

9 THE COURT: I think the record already shows this.  
10 When you said you may have talked about it with your  
11 supervisor, that was Mr. Weida?

12 THE WITNESS: Yes, Jason Weida.

13 THE COURT: Thank you. You may step down.

14 Please call your next witness.

15 MR. JAZIL: Your Honor, Mr. Brackett is the next  
16 witness.

17 May I ask for five minutes to use the restroom?

18 THE COURT: Let's take five minutes. We'll start  
19 back at 11:20.

20 *(A recess was taken at 11:16 a.m.)*

21 *(The proceedings resumed at 11:20 a.m.; plaintiffs counsel*  
22 *not present.)*

23 THE COURT: Please be seated. We'll be at ease for a  
24 minute.

25 You're welcome to have a seat. We'll make you stand

1 up in just a minute, but you can sit down right now.

2 MS. DUNN: We can start.

3 THE COURT: Good to go?

4 MS. DUNN: Yes.

5 THE COURT: Please call your next witness.

6 MR. JAZIL: Thank you, Your Honor. Matt Brackett is  
7 our next witness.

8 DEPUTY CLERK: Please raise your right hand.

9 **JOHN MATTHEW BRACKETT, DEFENSE WITNESS, DULY SWORN**

10 DEPUTY CLERK: Be seated.

11 Please, state your full name and spell your last  
12 name for the record.

13 THE WITNESS: My full name is John Matthew Brackett;  
14 my last name is spelled B-r-a-c-k-e-t-t.

15 DIRECT EXAMINATION

16 BY MR. JAZIL:

17 Q. Good morning, Mr. Brackett.

18 Where do you work?

19 A. I work for the Florida Agency for Health Care  
20 Administration.

21 Q. And if I refer to it as AHCA, will you know what I mean?

22 A. Yes, I will.

23 Q. When did you start working at AHCA, sir?

24 A. I started working at AHCA in October 2015.

25 Q. Where did you work before October 2015?

1 A. I worked for the Florida Department of Health as a  
2 medical disability adjudicator.

3 Q. How long did you have that job?

4 A. I had that job for 15 months, from July 2014 to  
5 October 2015.

6 Q. And what did you do in that job?

7 A. So that job was responsible for handling the medical  
8 aspect of social security disability claims, reviewing  
9 medical records, and determining whether or not those records  
10 and the medical evidence, determine whether or not somebody  
11 met the criteria for social security disability.

12 Q. What did you do before that?

13 A. I was a school teacher.

14 Q. How long were you a school teacher for?

15 A. I was a school teacher for six years.

16 Q. So you joined AHCA in October 2015, what was your first  
17 job?

18 A. So my first job at AHCA was a medical health care program  
19 analyst under the deputy secretary for health quality  
20 assurance.

21 Q. How long did you have that job?

22 A. I had that job for 15 months.

23 Q. And what did you do in those 15 months?

24 A. So that job, I worked on coordinating the completion of  
25 bill analyses; tracking legislation; completing monthly,

1 quarterly and annual reports; and I also worked on the  
2 Agency's online licensing program.

3 Q. What was your next job at the Agency?

4 A. My next job with the Agency was a Government Analyst II.  
5 That was in the Bureau of Medicaid Policy.

6 Q. And what did you do as a Government Analyst II?

7 A. That role, was responsible for completion of Generally  
8 Accepted Professional Medical Standards reports.

9 Q. What was your next job?

10 A. My next job was a program administrator over the  
11 specialized and behavioral health services coverage policy  
12 section.

13 Q. And how long did you have that job for?

14 A. I held that job for three and a half years.

15 Q. Next job at the Agency, sir?

16 A. My next and current position is a program consultant for  
17 the State's Canadian Prescription Drug Importation program.

18 Q. Were you a political appointee in any of those jobs at  
19 the two agencies you've mentioned?

20 A. No, I was not.

21 Q. Now, you mentioned Generally Accepted Medical Standards,  
22 GAPMS. Is it okay if I refer to it as that, would you know  
23 what I mean?

24 A. Absolutely.

25 Q. I'm pretty sure I just butchered the acronym, so I

1 apologize.

2 You talked about GAPMS, and you told us what it stands  
3 for. Do you know that a GAPMS report is?

4 A. Yes.

5 Q. What is it, sir?

6 A. So a GAPMS report is a document that is prepared in  
7 accordance with Rule 59G-1.035, Florida Administrative Code.  
8 So that report takes a comprehensive look at evidence as  
9 required by that rule to determine whether or not a medical  
10 service conforms to Generally Accepted Professional Medical  
11 Standards.

12 Q. Are there different kinds of GAPMS reports?

13 A. We have a couple.

14 Q. And what are they?

15 A. So we have a traditional GAPMS and then we have an  
16 expedited GAPMS.

17 Q. What's the difference between the two?

18 A. So an expedited GAPMS, this is a GAPMS that is usually  
19 done by request from one of our managed care plans. It is  
20 usually specific to one recipient. And because it's one  
21 recipient who is awaiting a service or a determination needs  
22 to be done quickly, that GAPMS has to be done kind of  
23 individualized, looking at that recipient's condition and  
24 whether or not that service will benefit that recipient.

25 Q. And the other kind of GAPMS, the traditional GAPMS, can

1 you tell us what that is?

2 A. A traditional GAPMS is much more comprehensive. So  
3 because there's not an urgent request for it, it provides a  
4 comprehensive report looking at like multiple medical  
5 conditions if they are applicable, and looking it through the  
6 guise of recipients who might benefit from that particular  
7 service that's being evaluated.

8 Q. Mr. Brackett, you testified earlier that you held a  
9 Government Analyst II job, and as part of that you wrote  
10 GAPMS reports. Can you remind us how long you held that job  
11 for?

12 A. I held that position for ten months.

13 Q. And how many traditional GAPMS reports did you write in  
14 those ten months?

15 A. During that role, I drafted nine.

16 Q. Mr. Brackett, you mentioned Rule 59G-1.035.

17 MR. JAZIL: Can we bring up Plaintiffs' Exhibit 23,  
18 please.

19 Your Honor, may I approach the witness with a copy as  
20 well?

21 THE COURT: You may.

22 BY MR. JAZIL:

23 Q. Mr. Brackett, as I understood your testimony just now,  
24 you said that this rule guides your work. What specific  
25 provision in this rule do you look to when you're working on



1 your GAPMS reports?

2 A. In particular, subsection (4).

3 Q. I would like to work through the subsections so we get an  
4 understanding of what these factors mean to you.

5 What's your understanding of what subsection (4) (a)  
6 requires of you as you're working through a GAPMS report?

7 A. So subsection (a) applies to evidence-based clinical  
8 practice guidelines. That does require us to look at what's  
9 available, evidence-based clinical practice guidelines are  
10 available pertaining to the medical service under  
11 consideration.

12 Q. Okay. And what about the subsection (b)?

13 A. Subsection (b) is referring published reports and  
14 articles in authoritative medical, research journals --  
15 peer-reviewed articles to be short. So that's going to  
16 require an exhaustive search for what peer-reviewed  
17 literature is available on the subject.

18 Q. And subsection (c)?

19 A. Subsection (c) is requires the evaluation of the  
20 effectiveness of the health service in improving the  
21 individual's health conditions.

22 Q. What about (d), sir?

23 A. That is in reference to utilization trends.

24 Q. What does that mean to you?

25 A. How is the service being used at the time of its

1 evaluation.

2 Q. What about subsection (e), sir?

3 A. (E) is looking at coverage by other credible insurance  
4 payors.

5 Q. And what would those other credible insurance payors be?

6 A. Those could be first and foremost other states' Medicaid  
7 programs, Medicare, other payors, such as TriCare, Veterans  
8 Administration. It can also include private insurers.

9 Q. And what's your understanding of subsection (f), sir?

10 A. Recommendations or assessments by clinical or technical  
11 experts on the subject or field. This is to take a look at  
12 what the authorities out there are saying about this  
13 particular service under consideration.

14 Q. And based on your experience, sir, which of the factors  
15 in subsection (4) dictates the results of your GAPMS  
16 decisions?

17 A. There isn't really one in particular. It's all taken as  
18 a whole.

19 Q. So, sir, you mentioned that you wrote GAPMS reports.  
20 What happens after you finish your draft of your GAPMS  
21 report? What's the next step?

22 A. So after I've prepared a finalized version of that draft,  
23 and it's ready to go, I give that draft to my immediate  
24 supervisor.

25 Q. What happens after that?

1 A. Either my immediate supervisor signs off and gives it to  
2 their immediate supervisor, or it comes back to me with  
3 questions or edits.

4 Q. If it moves up the chain from your immediate supervisor  
5 to their supervisor, what happens after that?

6 A. It eventually makes its way up to the Deputy Secretary of  
7 Florida Medicaid.

8 Q. And do you know what the Deputy Secretary's role is in  
9 this process?

10 A. The Deputy Secretary of Medicaid gets the final say in  
11 agreeing or disagreeing with the conclusions and findings of  
12 the report.

13 Q. And where in Rule 59G-1.035 does it say that?

14 A. That is in subsection (5).

15 MR. JAZIL: We can take that down.

16 BY MR. JAZIL:

17 Q. Mr. Brackett, I would like to move on to the June 2022  
18 GAPMS report on gender dysphoria, which is Defendants'  
19 Exhibit 6.

20 MR. JAZIL: Your Honor, may I approach with a copy?

21 THE COURT: You may.

22 BY MR. JAZIL:

23 Q. Mr. Brackett, please take a look at the report and let me  
24 know when you're done, and you can look back at me.

25 Are you familiar with this document, sir?

1 A. Yes, I am.

2 Q. How so?

3 A. It's -- well, it's our complete GAPMS report from  
4 June 2022, on treatment for gender dysphoria. It contains my  
5 report as well as all of our attachments.

6 Q. And when you say "your report," what are you referring  
7 to, sir?

8 A. I'm referring to the first part, the General Accepted  
9 Professional Medical Standards Determination. That's the  
10 part that I wrote.

11 Q. And who asked you to write this GAPMS report, sir?

12 A. I was asked to write this report by our Bureau Chief, Ann  
13 Dalton.

14 Q. What's your understanding of why you were asked to write  
15 this report?

16 A. My understanding of why I was asked to write this report  
17 was that I had extensive experience not only just working on  
18 GAPMS reports, but also executing special projects for the  
19 Bureau of Policy over my time there. And also the time  
20 because our proposal had been submitted to the Food and Drug  
21 Administration related to the drug importation program, we  
22 were still awaiting feedback, that we had the bandwidth -- I  
23 had the bandwidth to do this project.

24 Q. When were you asked to work on the report, sir?

25 A. Around mid April 2022.

1 Q. So mid April 2022, you get asked to work on the report,  
2 what's your first step?

3 A. My first stop was to start combing the literature, to  
4 start finding articles, anything that pertained to the  
5 subject, anything in a peer-reviewed journal, and to start  
6 gathering the materials and start reading them, and kind of  
7 letting the research -- letting the research guide me.

8 Q. And where did you go to gather these materials?

9 A. Primarily went to PubMed. That's the National Institutes  
10 of Health's database for peer-reviewed medical literature.

11 Q. What was your next step?

12 A. My next step, of course, as I gathered more and more  
13 materials, reading the articles, kind of understanding what  
14 the literature was saying, kind of trying to get a complete  
15 picture of -- kind of cumulatively what the literature said  
16 about these services. And then kind of began kind of making  
17 a mental outline of how to structure the report.

18 Q. So you've done your mental outline. What comes next?

19 A. Once the mental outline is done, that's when I began  
20 drafting.

21 Q. Okay. And how long did it take you to draft your first  
22 draft of the report?

23 A. My first draft, which was a polished first draft, took me  
24 about three weeks.

25 Q. I'm bad with math so remind me, approximately when in

1 2022 would that put us?

2 A. That would put us in early May 2022.

3 Q. Did anyone at the Agency help you with your draft of the  
4 report?

5 A. As far as the actual writing goes, no. But when it came  
6 down to gathering information on other insurance payors, I  
7 did have some support with that.

8 Q. Who helped you with gathering information on other  
9 insurance payors?

10 A. D.D. Pickle and Nai Chen.

11 Q. Can you tell me what specifically D.D. Pickle did for  
12 this report?

13 A. So D.D. Pickle's role in this was to go out there and  
14 find what other State Medicaid programs were doing in terms  
15 of coverage of these treatments.

16 Q. Anyone else help you with this report?

17 A. Nai Chen.

18 Q. What was Nai Chen's role?

19 A. His role was to take a look at Western European countries  
20 and to take a look at what they were also doing regarding  
21 these treatments.

22 Q. Now, you said Ms. Pickle went and looked at other  
23 Medicaid agencies around the country and what they were  
24 doing. Why didn't Ms. Pickle work with you, look at private  
25 insurance companies and what they were doing?

1 A. So, since Florida Medicaid, since we are a public payor,  
2 when we do the section of the GAPMS, we are primarily  
3 interested in other Medicaid programs first and foremost.  
4 And since she was taking an exhaustive search, far more  
5 exhaustive than we have done for other reports, and we got a  
6 nice breakdown of what the 50 states said, considering that  
7 we had a very complete picture of Medicaid and other public  
8 payors, and we just for this one we did not emphasize -- we  
9 did not emphasize private insurers, but also this is not a  
10 unique situation with that GAPMS. We have done other GAPMS  
11 where we did not look at private payors.

12 Q. I think you mentioned this earlier, but I just want to  
13 make sure this is clear.

14 Did Mr. Chen or Ms. Pickle write any portion of the  
15 report?

16 A. No.

17 Q. And in the report on pages 31 and 32, if you wouldn't  
18 mind turning to them, it discusses the coverage policies.  
19 What did y'all conclude?

20 A. So, for Medicaid, we concluded that there was  
21 disagreement among the states regarding coverage. Some  
22 states covered it, other states said they would not cover it.  
23 A lot of states said they didn't have a policy one way or the  
24 other.

25 Q. It does say that other Medicaid perspectives were

1 considered. How exactly did you and your team go about  
2 checking to see what other states were doing?

3 A. So as part of the research we do in the Bureau of Policy  
4 is scouring other state Medicaid programs for research, D.D.  
5 took the same approach, scoured the 50 state Medicaid program  
6 published policies, their handbooks, their coverage  
7 statements, and, of course, recorded the findings.

8 Q. Y'all also looked at what Western European countries.  
9 Why did you do that?

10 A. Because Western European countries, since they are  
11 generally almost all utilize some kind of universal health  
12 care system, we also considered them to be public payors, and  
13 we also were curious to see what their input was.

14 Q. What did you find when y'all started looking at the  
15 Western European countries?

16 A. We found that they had put in place prohibitions  
17 regarding these services.

18 Q. Mr. Brackett, you testified earlier that the rule for  
19 GAPMS requires you to look at utilization trends. Did y'all  
20 do that here?

21 A. Yes, we did.

22 Q. What did you find?

23 A. So we found that the utilization of these services had  
24 been increasing; that it had been increasing in almost a  
25 reverse manner. We had a lot more young women transitioning



1 to males as opposed to the other way around where you had  
2 more young men who wanted to transition into females. And we  
3 found that the number of cases, of course, had been rising  
4 steadily in recent years.

5 Q. Mr. Brackett, the rule says that you should look at  
6 evidence-based clinical practice guidelines. Did you look at  
7 evidence-based clinical practice guidelines?

8 A. I did.

9 Q. Which ones, sir?

10 A. I looked at the guidelines from the World Professional  
11 Association for Transgender Health, more colloquial known as  
12 WPATH; and the Endocrine Society, as well as guidelines from  
13 the University of California at San Francisco.

14 Q. Let's take those one at a time, sir.

15 Based on your review of WPATH's guidelines, what did you  
16 conclude for purposes of your GAPMS report?

17 A. For the purpose of the GAPMS report, after having read  
18 all of the literature, I kind of concluded that the WPATH  
19 guidelines were founded on low to very low quality evidence.

20 Q. What about the Endocrine Society guidelines, sir?

21 A. The Endocrine Society guidelines, while they were more  
22 transparent in sayings that these recommendations were based  
23 on low to very low quality evidence, their recommendations  
24 didn't really mesh with what their evidence was saying, in  
25 addition, to the grade that their evidence had been given.

1 Q. And what about the University of California, San  
2 Francisco, guidelines, sir?

3 A. So I found their guidelines to be more -- a little bit  
4 more I guess basic, but also found they conflicted with some  
5 of what WPATH and what Endocrine Society said.

6 Q. Understood. The rule requires a review of published  
7 reports, articles, authoritative medical literature. You  
8 said you looked at those. Where in your report do you  
9 provide a list of the articles that you reviewed?

10 A. Starting on page 39 through page, I think, 46.

11 Q. Is this an exhaustive list of the papers that you  
12 reviewed?

13 A. This is an exhaustive list, yes.

14 Q. And which of these articles did you review in their  
15 entirety, sir?

16 A. I reviewed all of the articles in their entirety.

17 Q. Did you review papers that contradicted the findings  
18 ultimately reached in your GAPMS report?

19 A. Yes. I reviewed numerous articles in peer-reviewed  
20 literature that asserted that these treatments were  
21 beneficial to mental health.

22 Q. Sir, can you take a minute to just take a look at your  
23 works cited and point me to one or two articles that  
24 ultimately disagreed with the findings that you reached?

25 A. Sure. On page 43.

1 Q. Okay. Can you read off the author?

2 A. Sure. One was by Tordoff and a group of other scholars,  
3 talked about mental health outcomes in transgender and  
4 nonbinary youths.

5 Another one was by I think Olson-Kennedy, and I think it  
6 was about gender identity five years after social transition.

7 Q. Sir, after your report there are attachments. Are you  
8 familiar with those attachments to the GAPMS report?

9 A. Yes, I am.

10 Q. How, if at all, do they influence the report itself?

11 A. Considering that we didn't receive those reports until  
12 after I had already drafted mine, they didn't.

13 Q. Mr. Brackett, do you know Andre Van Mol?

14 A. Yes.

15 Q. How do you know him, sir?

16 A. I do know him through collaborations with this project.

17 Q. What role did he play in this project?

18 A. He served in an advisory capacity. We had a few  
19 conference calls with him.

20 Q. What did you discuss on those conference calls?

21 A. Resources, articles.

22 Q. Anything else?

23 A. He did give us -- I think in one of the calls he gave us  
24 some suggestions for edits when we were polishing the draft.

25 Q. I would like to show you what has been admitted into

1 evidence as PX329.

2 MR. JAZIL: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. JAZIL:

5 Q. Mr. Brackett, just look up at me when you are done taking  
6 a look at it.

7 Do you recognize this document, sir?

8 A. Yes, I do.

9 Q. What is it?

10 A. So, Dr. Van Mol had supplied us with a bibliography to  
11 help guide our research.

12 Q. How did this document guide your work specifically?

13 A. It was a resource to take a look to see if there are  
14 articles out there. By the time we had already received  
15 this, I had already pulled numerous studies. This helped  
16 make sure that, if there was anything else that was valid or  
17 current or could contribute to our own analysis, this helped  
18 served as a resource for that.

19 Q. And based on this document and based on the conversations  
20 that you had with Mr. Van Mol, the charge has been made that  
21 Mr. Van Mol was the one who actually wrote this GAPMS report.  
22 What is your response to that, sir?

23 A. Well, to that one, I am actually personally offended to  
24 that allegation.

25 Q. Why?

1 A. Because this was my work product. I am an experienced  
2 researcher. I have written a lot of reports. I have  
3 peer-reviewed publications. I did the research for this  
4 report. I also structured it. I determined how best to  
5 approach writing it, and I also -- that was my analysis on  
6 the literature; that they didn't conform to GAPMS. That was  
7 my assessment.

8 Q. Mr. Brackett, do you know Miriam Grossman?

9 A. Yes, I do.

10 Q. How do you know her?

11 A. Through collaboration on this project.

12 Q. Again, tell me what that means, sir.

13 A. So, we had, like with Dr. Van Mol, we did have some  
14 conference calls with Dr. Grossman. She provided the -- gave  
15 us some historical background on gender dysphoria treatments,  
16 talked to us a little bit about Dr. John Money. She also  
17 provided us some background on studies and some background  
18 information in general.

19 Q. I want to make sure the record is clear on this.

20 Did either Dr. Van Mol or Dr. Grossman write any part of  
21 the GAPMS report?

22 A. Neither one of them wrote any part of it.

23 MR. JAZIL: I would like to bring up Plaintiffs'  
24 Exhibit 297A, please.

25 BY MR. JAZIL:

1 Q. Do you recognize this document, sir?

2 A. Yes, I do recognize this.

3 Q. What is it?

4 A. This is our signed routing form for the June 2022 GAPMS.

5 Q. Looking at this form, it looks like everyone on the  
6 review list signed off on the GAPMS report within a day.

7 A. Uh-huh, yes.

8 Q. How did that happen?

9 A. So, during the drafting process, and especially after we  
10 had our initial drafts complete, there were numerous  
11 briefings held with leadership. In the week before that this  
12 was signed, there was a large briefing with everybody on  
13 there, including Secretary Marstiller. They had all been  
14 provided copies and drafts of the report. They all had a  
15 chance to look through it, and they also had a chance to ask  
16 questions while I was briefing them on how the report was  
17 done, how I reached the conclusions, what research I used.

18 So by the time we printed up the routing sheet, every  
19 person who had signed off on it had already had an  
20 opportunity to review, ask questions, had been briefed on it.  
21 So they were well aware what they were signing and approving.

22 Q. In these briefings did anyone tell you to arrive at a  
23 particular result?

24 A. No.

25 Q. Now, you mentioned there were briefings, the Secretary

1 was there, et cetera.

2 What is your understanding of why it was that this  
3 project was being pursued on such an expedited basis?

4 A. My understanding behind the urgency for this project was  
5 that the Department of Health and Human Services of the  
6 United States, on the federal level, had released guidance  
7 citing that these -- that the treatments for gender  
8 dysphoria, that these were evidence-based, should be, you  
9 know, should be utilized in treating gender dysphoria, and  
10 also there had been a Department of Justice document that had  
11 been sent out, I think, advising people that they can contact  
12 DOJ if they felt they had been discriminated against.

13 Q. I would like to show you some of those documents.

14 MR. JAZIL: Your Honor, may I approach?

15 THE COURT: You may.

16 MR. JAZIL: I'm going to show the witness Defendants'  
17 Exhibit 1, 2, and 3.

18 BY MR. JAZIL:

19 Q. Mr. Brackett, look at me when you are done reviewing  
20 them.

21 Are these the documents that you are referring to, sir?

22 A. Yes, these are.

23 Q. If you take a look at documents 1 and 2, they lay out  
24 citations to the federal government's position.

25 A. Yes.

1 Q. Why weren't you persuaded by the position in the  
2 citations that were listed there?

3 A. So, well, I mean, these are -- like I consider these like  
4 one-pagers. I'm generally not persuaded by a one-pager in  
5 general. I always want to go see what the sources say. My  
6 training as a researcher kind of instilled that in me. So  
7 it's like, okay, well, this is what it says, but what does  
8 the evidence say?

9 Q. Mr. Brackett, does the GAPMS memo, which is the first  
10 part of DX6 accurately capture your conclusions?

11 A. Yes, it does.

12 Q. Did anyone anywhere tell you to arrive at those  
13 conclusions?

14 A. No, they did not.

15 Q. I would like to move on to a few other GAPMS reports.

16 At the time you were drafting the June 2022 GAPMS report,  
17 did you know whether AHCA had any other GAPMS reports related  
18 to the treatment of gender dysphoria?

19 A. I was aware that a couple of drafts had been done prior  
20 to my time to the Bureau. I think one was started while I  
21 was in the Bureau.

22 Q. At the time that you were asked to do this job, did you  
23 know whether any of them had been finalized?

24 A. I was not aware if any had gotten through the process,  
25 no.



1 Q. Did you review any of those reports before you started  
2 work on your GAPMS report?

3 A. I did not.

4 Q. Why not, sir?

5 A. So I wanted to take a look at the evidence with fresh  
6 eyes. I didn't want to see what any other analyst had come  
7 up with as far as conclusions went. I just wanted to go into  
8 it with a clean slate, not having reviewed really anything  
9 else other than what I kind of already had in my head, which  
10 wasn't much of anything on the subject.

11 Q. Have you since reviewed those prior GAPMS reports?

12 A. After we had gotten this report finalized, I did look at  
13 those.

14 MR. JAZIL: Your Honor, if I may approach with three  
15 exhibits for the witness?

16 THE COURT: You may.

17 MR. JAZIL: For the record, they are Plaintiffs'  
18 Exhibits 240, 242 and 244.

19 BY MR. JAZIL:

20 Q. Mr. Brackett, what is 240, sir?

21 A. 240, that is our GAPMS memo on puberty suppression  
22 therapy.

23 Q. That is a finalized memo, right?

24 A. Yes, that one is finalized.

25 Q. And what about Plaintiff's Exhibit 242?

1 A. That one is on cross-sex hormone therapy, and that's also  
2 a GAPMS memo.

3 Q. Is that a draft or a finalized one?

4 A. This was a draft.

5 Q. Explain to me the discrepancy --

6 MR. JAZIL: If we can pull up 242, please.

7 BY MR. JAZIL:

8 Q. There's a date here April 19, 2022, and the top right  
9 shows Rick Scott, Governor; Justin Senior, Interim Secretary.  
10 Explain that discrepancy to me, sir.

11 A. So, the GAPMS template that we use was a -- it was a Word  
12 document, and when the GAPMS template was created, it -- the  
13 date autopopulated whenever you open the document. If you  
14 were to open up these three documents today in our share  
15 drive, you're going to get today's date in that field.

16 MR. JAZIL: Can we pull up 244, please, Plaintiffs'  
17 Exhibit 244.

18 BY MR. JAZIL:

19 Q. Sir, can you tell me whether or not this gender  
20 confirmation surgery GAPMS was a finalized one?

21 A. No, this one was not finalized.

22 Q. You now have testified that you reviewed these GAPMS  
23 reports after writing your own. Having reviewed these three,  
24 is there anything in these three reports that would change  
25 your mind about the GAPMS report you wrote in June of 2022?

1 A. No, there wasn't anything in these three.

2 Q. Why not?

3 A. So to kind of take them piecemeal, we will start with the  
4 one from 2017 on the surgery, I did take a look at that.  
5 What I found when I reviewed it was that the conclusions of  
6 all the studies that were evaluated were taken more or less  
7 at face value. There wasn't any probing of the methodology  
8 used, whether or not the subject -- whether or not the  
9 studies were low or high quality. It was mostly like, here's  
10 the conclusion, and it just moved on. So because I felt like  
11 it was missing that aspect of -- that analytical critical  
12 aspect that can determine whether or not the evidence was,  
13 you know, really truly supported the conclusions, I couldn't  
14 be swayed by that one.

15 For the cross-sex hormone therapy, similar. Literature  
16 review is very thin. I think that one did acknowledge that  
17 the evidence was low quality, but it was also very thin. It  
18 didn't really go into depth onto those subjects. Given that  
19 I had also read the evidence for myself, I didn't see how  
20 that conclusion could match with what I had read.

21 And the similar goes to the one from 2016, as well.

22 I think one other -- one other thought that I had was,  
23 when I was reading them, was that we have a process for  
24 off-label usage, and I thought that the way the literature  
25 reads and the way these were written, I thought the evidence

1 in the narrative concluded -- conflicted with the findings.

2 Q. Sir, after the June 2022 GAPMS report was finalized, what  
3 did the Agency do next?

4 A. After the report was finalized, the Agency went to  
5 rulemaking.

6 Q. Did you play a role in that rulemaking?

7 A. Yes.

8 Q. What was your role, sir?

9 A. My role was to help provide feedback on the rule  
10 language. I also participated in the July 8th hearing, and I  
11 also prepared a comment summary afterwards.

12 Q. What is your understanding of why the Agency went to  
13 rulemaking after finalizing the report?

14 A. So, since we had determined these services to be  
15 experimental and investigational, we moved to go ahead and  
16 codify that to rule to demonstrate that, because we had  
17 determined them to be investigational and experimental, that  
18 we wanted to have them codified as excluded services under  
19 the Medicaid program.

20 Q. Was there a comment period under that rulemaking?

21 A. Yes, there was.

22 Q. When did that comment period open?

23 A. I think somewhere around mid June, maybe late June. It  
24 went through shortly after the end of the hearing on  
25 July 8th.

1 Q. Sir, do you know how many comments approximately the  
2 Agency received?

3 A. Oh, I think at least 600.

4 Q. Are these written comments or are you including the oral  
5 comments provided for --

6 A. Oh, these were the written comments that we received.

7 Q. And you mentioned a rulemaking hearing. When was that  
8 hearing, sir?

9 A. That was July 8, 2022.

10 Q. Where was it held, sir?

11 A. That was held at the Florida Department of Transaction's  
12 auditorium at its headquarters downtown.

13 Q. Why was it held at the Department of Transportation's  
14 auditorium and not at AHCA?

15 A. So DOT's auditorium had a large capacity. Also, it -- so  
16 it could accommodate a large crowd. We also anticipated that  
17 the Florida channel would probably also want to broadcast the  
18 hearing. That venue made for a much better setting to allow  
19 videography. And also because of the proximity of DOT's  
20 location to downtown and its accessibility compared to  
21 AHCA's.

22 Q. Why did you think there would be a large crowd?

23 A. Well, because we did receive a substantial number of  
24 written comments, and that -- because there had been a fair  
25 amount of media coverage behind our GAPMS report, we

1 anticipated a large crowd.

2 Q. Who from the Agency was at attendance at that hearing?

3 A. So serving on the panel, myself, at the time Assistant  
4 Deputy Secretary Jason Weida, Shena Grantham, and Cole  
5 Giering.

6 Q. Did the Agency invite others to attend?

7 A. Yes, we did.

8 Q. Who?

9 A. So to participate on our panel, we invited Drs. Andre Van  
10 Mol, Quentin Van Meter, and Miriam Grossman.

11 Q. Why did y'all invite those three doctors?

12 A. Since we anticipated a lot of comments, and we did  
13 anticipate some -- a fairly high quantity that would be in  
14 opposition to the rule, to be able to provide responses and  
15 feedback to those comments directly, we thought it would be  
16 best to have a few outside experts participate on the panel.

17 Q. Now, during the comment period at the hearing and the  
18 comment period for written comment, did the Agency receive  
19 comments that opposed its perspective?

20 A. Yes, it did.

21 Q. Who reviewed those comments?

22 A. Myself, our rules unit as well as Nai Chen.

23 Q. Do you recall the names of some of the prominent folks  
24 who commented against the rule?

25 A. Yes. So most notably, as far as written substantive

1 comments went, there was a group of faculty from Yale  
2 University as well as a couple of other universities that had  
3 written us a lengthy comment.

4 We also received comments from the Endocrine Society.

5 In addition we had also received comments from the  
6 American Academy of Pediatrics.

7 Q. When you received those comments from those prominent  
8 institutions and people, what did you do with them?

9 A. I read them very carefully.

10 Q. Did you do anything else beyond reading them very  
11 carefully?

12 A. Because they were very lengthy and very much based on  
13 scientific literature, research, and since I actually had  
14 been the one who had gone through and did the research for  
15 the report, I went ahead and started putting together  
16 analyses of each one.

17 MR. JAZIL: Your Honor, may I approach the witness  
18 with Plaintiffs' Exhibit 326?

19 THE COURT: You may.

20 BY MR. JAZIL:

21 Q. Do you recognize this document, Mr. Brackett?

22 A. Very much I do.

23 Q. What is it, sir?

24 A. That is our comment summary from the rule hearing from  
25 July 8, 2022.

1 Q. You testified a bit about why it is you prepared this  
2 document. Is there anything you would like to add to the why  
3 you prepared this document after having seen it just now?

4 A. So, because the Agency, I mean, because we did do  
5 exhaustive work on this project, we had gone through -- did a  
6 report, did a lot of research for that report, we had gone  
7 through the rulemaking process, that we do take outside  
8 comments very seriously. And we wanted to review them to  
9 determine whether or not they introduced anything that could  
10 particularly truly conflict where our GAPMS report, with our  
11 conclusions or our actions. So, it was -- this is part of  
12 what the Agency's responsibilities are, is to take into  
13 account comments from the public.

14 Q. If someone had as part of that comment process, provided  
15 you a high quality study, showing the efficacy and safety of  
16 puberty blockers, for example, to treat gender dysphoria,  
17 what would you have done with that comment?

18 A. It would have made me rethink my position.

19 Q. Now, Mr. Brackett, are you familiar with the tag line,  
20 "Let Kids Be Kids"?

21 A. Yes, I'm familiar with it.

22 Q. What is it, sir?

23 A. So that's the slogan that went on the web page that  
24 accompanied the GAPMS release.

25 Q. Are you aware of other instances where the Agency has



1 used slogans with policy initiatives?

2 A. Yes.

3 Q. Mr. Brackett, we've some heard testimony before about how  
4 the Agency has not used outside consulting experts as part of  
5 the GAPMS process.

6 Do you know whether the Agency has used outside  
7 consultant experts as part of other work the Agency has done?

8 A. Oh, yes, we have.

9 Q. Can you give me a couple of examples, sir?

10 A. Well, as our Bureau Chief testified earlier, we did use  
11 an outside consultant for the Canadian Prescription Drug  
12 Importation Program. We've also used outside consultants  
13 when working on behavior analysis and other policies on that  
14 treatment service.

15 THE COURT: Before we go beyond that, let me make  
16 sure I understood the premise of the question. The premise of  
17 the prior question was that the Agency had not used outside  
18 consultants in the GAPMS process. Is that correct?

19 THE WITNESS: That's correct, sir.

20 MR. JAZIL: Your Honor, I believe there was some  
21 earlier testimony from Mr. English that the --

22 THE COURT: Right. I knew there was prior testimony,  
23 but sometimes people disagree with prior testimony. I was  
24 just trying to make sure there wasn't any doubt about it.

25 MR. JAZIL: Understood, Your Honor.

1 BY MR. JAZIL:

2 Q. You gave us a couple examples of instances where outside  
3 consultants were hired. I asked you about the tag line, "Let  
4 Kids Be Kids," you said the Agency had used tag lines before.  
5 Do you have a couple examples for us of instances where the  
6 Agency --

7 A. Since I do work on the Canadian Prescription Drug  
8 Importation Program, there have been a couple of slogans  
9 associated with that, and the Agency initiatives on lowering  
10 prescription drug prices.

11 Q. Understood.

12 Mr. Brackett, do you know Jeffrey English?

13 A. Yes, I do.

14 Q. How do you know him, sir?

15 A. He was a co-worker of mine in the Bureau Medicaid policy.

16 Q. Are you familiar with his work, sir?

17 A. Yes, I am.

18 Q. How so?

19 A. There have been times I had to review it. I have also  
20 been his acting supervisor, but always because of my  
21 experience on GAPMSes, I have been periodically asked to  
22 review his work product.

23 Q. Were you asked to review a GAPMS report of his on  
24 computer-assisted musculoskeletal surgical navigational  
25 orthopedic procedures for total knee arthroplasty, sir?

1 A. Yes. I remember in March of 2022 being asked to take a  
2 look at that draft.

3 Q. What did you find based on your review?

4 A. I had found that he had plagiarized parts of it.

5 Q. Now, Mr. English has testified before in this case that  
6 he did not include citations for a draft document. So how  
7 then can you say that he plagiarized something when he just  
8 didn't cite something in the draft?

9 A. Because according to the Bureau of Medicaid Policy  
10 Procedures, when you have completed a draft of something and  
11 you have routed it to your supervisor for approval, and your  
12 supervisor signs off on it as having approved it and sends it  
13 to the Bureau Chief, that's a finalized draft. That's not a  
14 draft for review and feedback prior to routing. That's a  
15 finalized draft.

16 MR. JAZIL: Your Honor, I have no further questions.

17 THE COURT: Cross-examine?

18 CROSS-EXAMINATION

19 BY MS. DeBRIERE:

20 Q. Good morning, Mr. Brackett. I've been taking some notes,  
21 so I'm going to get myself organized. It will take just a  
22 second.

23 A. No problem.

24 Q. Thank you.

25 Okay. Let's start by talking about your education a

1 little bit.

2 You have an Associate in Arts from Tallahassee Community  
3 College; is that correct?

4 A. Yes.

5 Q. And you have undergraduate degree in history from Florida  
6 State University?

7 A. Yes.

8 Q. You have a Masters of Arts also from Florida State  
9 University; is that right?

10 A. That's correct.

11 Q. I think your thesis for your Masters was called,  
12 "Pensacola, Florida, During the Civil War and  
13 Reconstruction"?

14 A. That's right.

15 Q. Do you have a science degree?

16 A. I do not have a science degree.

17 Q. Do you have a medical degree?

18 A. I do not.

19 Q. Are you or have you ever been a health care provider?

20 A. I have not personally worked as a health care provider.

21 Q. Have you published in any scientific journals?

22 A. No, I have not.

23 Q. Have you published in any medical journals?

24 A. No, I have not.

25 Q. And you mentioned you were peer-reviewed. What was that

1 in?

2 A. So my peer-reviewed articles, those were historical. One  
3 was in the Florida Historical Quarterly, and the other one  
4 was in Southern Studies, which is an Interdisciplinary  
5 Journal of the South. That one actually was a  
6 public-health-history-related project.

7 Q. What was the title of that article?

8 A. "Cutting Costs by Cutting Lives."

9 Q. And what was it about?

10 A. It was about prisoner health and how it led to the  
11 abolition of Florida's penal labor system.

12 Q. And the other article you published in Florida Historical  
13 Quarterly, I believe the name of that article was "Wrongful  
14 Defeat: The 1934 Florida Senatorial Democratic Primary  
15 between Claude Pepper and Park Trammell"; is that correct?

16 A. That's correct.

17 Q. Do you have any experience conducting clinical research?

18 A. Can you please rephrase that?

19 Q. I can try asking it again. Does that work?

20 Do you have any experience conducting clinical research?

21 A. So are you referring to reading clinical-reviewed  
22 articles or are you talking about actually preparing research  
23 for clinical journals?

24 Q. Actually preparing research for clinical journals.

25 A. No.

1 Q. Do you have any education or training related to the  
2 evaluation of clinical or medical research?

3 A. So, when I did work at the Department of Health as a  
4 medical disabilities examiner, that job, in order to execute  
5 it correctly, you do have to have a degree of medical  
6 literacy. So you do spend a lot of time reading medical  
7 literature, going through medical science. You are  
8 collaborating with doctors. That job requires a high degree  
9 of medical literacy. If you don't have it, you can't execute  
10 it.

11 Q. When did you work in that position?

12 A. I worked in this position in 2014 and 2015.

13 Q. Did you go straight from being a teacher to going into  
14 being an adjudicator?

15 A. Yes.

16 Q. And what kind of teacher were you?

17 A. So I have caught a little bit of everything. I taught  
18 just about every social science thread, middle school, high  
19 school, I also taught college and university. When I --

20 Q. I'm sorry, Mr. Brackett. I was just speaking if the  
21 teaching position you held directly before becoming an  
22 adjudicator. What teaching position was that?

23 A. So I taught math and science at a school in Sweden.

24 Q. What type of school?

25 A. It was an international school, English speaking.

1 Q. What grades?

2 A. So I taught around ninth grade.

3 Q. Okay. And then the adjudicator position, did that  
4 require a degree in science to work at?

5 A. No. So the Department of Health brought in people with  
6 different backgrounds, and the Social Security Administration  
7 does have a program for people to go through to train to  
8 become one.

9 Q. So you received some training with the Social Security  
10 Administration regarding medical reviews; is that correct?

11 A. That is correct.

12 Q. How long was that training for?

13 A. That training was really ongoing for about a year. Of  
14 course, your first couple of months are just spent doing  
15 nothing but training, and then they start giving small  
16 numbers of cases. And as you train on those, you steadily  
17 get more and more well versed in medical literacy, policy.  
18 It takes about a full year before they work you up to a full  
19 caseload. So you train for a year.

20 Q. Okay. Turning to the case at hand, Mr. Brackett, the  
21 task given to AHCA by the governor's office in this matter  
22 was to take a detailed look at the available medical evidence  
23 or at least the peer-reviewed literature and see what it  
24 says. Is that an accurate statement?

25 A. Yes.

1 Q. And it's my understanding that Ann Dalton and Secretary  
2 Weida selected you and the Canadian Prescription Drug  
3 Importation Program team for that task; is that right?

4 A. That's right.

5 Q. You testified just a second ago you were chosen for that  
6 task in part because of your experience in special projects  
7 as well as your experience I think for ten months, you said,  
8 in GAPMS. Why was this a special project?

9 A. Well, for me, I considered this a special project, it was  
10 just a GAPMS, but since it was a job that was outside the  
11 Canadian Prescription Drug Importation. Special projects is  
12 kind of a term that I've used personally for myself, since it  
13 was a -- I just considered it a special project, considering  
14 it was a little outside what my position description  
15 required.

16 Q. So, it was something you defined yourself, but it was  
17 criteria that Ms. Dalton used to select you to draft the  
18 GAPMS, right?

19 A. Yes.

20 Q. Nai Chen, a pharmacist, was also on the Canadian  
21 Prescription Drug Importation Program team; is that right?

22 A. That's correct.

23 Q. And Mr. Chen is a pharmacist; is that right?

24 A. Yes.

25 Q. Mr. Chen's assistance with the June 2022 GAPMS report,



1 would you describe it as fairly limited?

2 A. As far as the work that contributed, that would be  
3 limited, but he and I discussed stuff every day.

4 Q. Okay. So his role my understanding was two parts: He  
5 created the map that you discussed earlier, and then he also  
6 occasionally sent you -- found and sent you an article. Is  
7 that accurate?

8 A. Yes, he did that as well.

9 Q. It's my understanding that the process you used to draft  
10 the June 2022 GAPMS was to collect and review the literature  
11 that you deemed relevant in determining whether  
12 gender-affirming care was experimental. Is that an accurate  
13 representation of your process?

14 A. So my assessment going through, determine whether or  
15 not -- finding sources that were relevant to the topic, that  
16 would be accurate, yes.

17 Q. Did you rely on all relevant medical literature regarding  
18 gender-affirming care when drafting the June 2022 GAPMS?

19 A. I relied on everything that I found and include on my  
20 works cited page.

21 Q. So everything you relied on is contained in that works  
22 cited page; is that correct?

23 A. That's correct.

24 MS. DeBRIERE: So, Your Honor, I would like to show  
25 what has been marked as Plaintiffs' Exhibit 141. It will take

1 just a second to appear on the screen. Bear with me.

2 BY MS. DeBRIERE:

3 Q. Mr. Brackett, this is a 2011 study from de Vries. The  
4 study pertains to puberty suppression in adolescents with  
5 gender identity disorder and published in the Journal of  
6 Sexual Medicine.

7 Did you rely on this study in your report?

8 A. I believe I did cite study. Yeah, this is one of the  
9 studies that we considered.

10 Q. And this is contained in your works cited?

11 A. I think that one is, yes.

12 MS. DeBRIERE: Can we bring up Plaintiffs' Trial  
13 Exhibit 18. Can we go to page 40, please.

14 BY MS. DeBRIERE:

15 Q. Mr. Brackett, what I would like you to do is review that.  
16 I believe it's in alphabetical order, so we can scroll down  
17 to page 40. Is that correct, it's in alphabetical order?

18 A. Yes, it's in alphabetical order.

19 Q. Right now we are talking about de Vries, the 2011 study.  
20 I do see --

21 MS. DeBRIERE: Go to page 40, please.

22 BY MS. DeBRIERE:

23 Q. I do see a study here 2014 de Vries, but I was asking  
24 about a 2011 study.

25 A. So in response to that question, is that there are 88

1 articles cited. Many of these I have not laid eyes on in a  
2 year.

3 Q. That's fine. I was trying to confirm: Did you rely on  
4 the 2011 de Vries study?

5 A. What's cited in the works cited is what I relied on --

6 Q. Okay.

7 MS. DeBRIERE: Can we bring up Plaintiffs'  
8 Exhibit 166, please.

9 BY MS. DeBRIERE:

10 Q. This is a 2013 Colizzi study. It's entitled, "Hormonal  
11 Treatment Reduces Psychobiological Distress in Gender  
12 Identity Disorder," and it was published in the Journal of  
13 Sexual Medicine. And I would just like to look at the  
14 study's conclusion at PLAINTIFFS6574. It states:

15 *Our results suggested that untreated patients suffer from*  
16 *a higher degree of stress and that attachment insecurity*  
17 *negatively impacts the stress management. Initiating the*  
18 *hormonal treatment seemed to have a positive effect in*  
19 *reducing stress levels, whatever the attachment style may be.*

20 Mr. Brackett, I can tell you this is not contained in  
21 your works cited page. Did you rely on this study in  
22 drafting the June 22nd GAPMS report?

23 A. No, I did not.

24 MS. DeBRIERE: Can we go to Plaintiffs' Trial  
25 Exhibit 176.

1 BY MS. DeBRIERE:

2 Q. This is 2021 Green study that discusses the association  
3 of gender-affirming hormone therapy with depression, thoughts  
4 of suicide and attempted suicide among transgender and  
5 nonbinary youth. It was published in the Journal of  
6 Adolescent Health. And looking at the conclusions of the  
7 study in PLAINTIFFS6676, it states:

8 *Findings support a relationship between access to*  
9 *gender-affirming hormone therapy -- that's what "GAHT" stands*  
10 *for -- and lower rates of depression and suicidality among*  
11 *transgender and nonbinary youth.*

12 So, again, Mr. Brackett, I can tell you this article is  
13 not contained in your works cited page. Did you rely on it  
14 in the June 2022 GAPMS report? We're happy to bring up the  
15 works cited page.

16 A. I've got it right here in front of me.

17 No, we did not look at this one, but we did look at  
18 studies similar to that.

19 Q. What study was that?

20 A. So I think that one would be -- because we did look at  
21 surveys. I think we used as an example of a study we used  
22 Geffen.

23 Q. I'm sorry?

24 A. On page 40, the Geffen study.

25 Q. And what was the name of that study?

1 A. Wait. No. I want to backtrack on that one.

2 No, we didn't. In our quality of evidence section -- I  
3 think I had the authors mixed up -- we did rely on -- we did  
4 do an analysis of a study that we relied on a large survey.

5 Q. Okay. But you did not rely on this particular study?

6 A. I did not.

7 Q. And the topic of this particular study?

8 A. Are you talking about the topic?

9 Q. The study that you evaluated, yes.

10 A. So I would not use this study -- as far as the topic on  
11 suicide, I would actually need to go back and look at some of  
12 the content in the GAPMS report to confirm for you whether we  
13 did or not.

14 Q. Okay. I'll move on.

15 I would like to show what's marked as Plaintiffs'  
16 Exhibit 151. This is 2020 study by Achille. This is a study  
17 on the longitudinal impact of gender-affirming endocrine  
18 intervention on the mental health and wellbeing of  
19 transgender youth. It was published in the International  
20 Journal of Pediatric Endocrinology.

21 Looking at the study's conclusion at PLAINTIFFS6284, it  
22 states:

23 *Our preliminary results show negative associations*  
24 *between depression scores/suicidal ideation and endocrine*  
25 *intervention, while quality of life scores showed positive*

1 associations with intervention, in transgender youths over  
2 time in the U.S.

3 Again, Mr. Brackett, I can represent to you that this was  
4 not contained in your works cited page. Did you rely on this  
5 study in drafting the June 2022 GAPMS?

6 A. I did not.

7 Q. Bringing up Plaintiffs Trial Exhibit 154. This is a 2021  
8 Almazan study which reviewed association between  
9 gender-affirming surgeries and mental health outcomes. It  
10 was published in JAMA Surgery. Looking at the study's  
11 conclusion at PLAINTIFFS6320, this study's results -- excuse  
12 me -- the study's results demonstrate that undergoing  
13 gender-affirming surgery is associated with improved  
14 past-month severe psychological distress, past-year smoking,  
15 and past-year suicidal ideation.

16 Same question, Mr. Brackett.

17 A. We did not use this one in our study.

18 MS. DeBRIERE: I'm going to ask for Plaintiffs'  
19 Exhibit Trail Exhibit 155.

20 BY MS. DeBRIERE:

21 Q. This is a 2022 Ascha study. It evaluates top surgery and  
22 chest dysphoria among transmasculine and nonbinary  
23 adolescents and young adults, published in JAMA Pediatrics.

24 I have the same question for you, Mr. Brackett.

25 A. If it's not in our works cited, we did not use it.

1 Q. Okay. Just one more.

2 Looking at one final study, Plaintiffs Trial Exhibit 192,  
3 this study is entitled, "Experience of Chest Dysphoria and  
4 Masculinizing Chest Surgery in Transmasculine Youth." It's  
5 authored by Mehringer in 2021.

6 Looking at the study's conclusion at PLAINTIFFS6858, it  
7 states that, quote:

8 *We observed consensus that chest dysphoria is a major*  
9 *source of distress and can be functionally disabling to*  
10 *transmasculine youth. Masculinizing chest surgery performed*  
11 *during adolescence, including before age 18, can alleviate*  
12 *suffering and improve functioning.*

13 Last time, Mr. Brackett, was this a study you relied in  
14 the June 2022 GAPMS report?

15 A. We did not rely on this study.

16 Q. So you stated during your earlier testimony that your  
17 review was exhaustive. Do you maintain that your review of  
18 those medical literature was exhaustive as to  
19 gender-affirming medical care?

20 A. I still maintain that position, yes.

21 Q. So turning back to Plaintiffs' Trial Exhibit 18, in the  
22 June 2022 GAPMS report, you concluded that because the cause  
23 of -- excuse me. Let's get to the page first so you can read  
24 it. It would be page 14.

25 A. Okay.

1 Q. So in the report you conclude that because the cause of  
2 gender dysphoria has not been established, treatments that  
3 pose irreparable effects should not be utilized to address  
4 what is still categorized as a mental health issue.

5 There is no citation next to that statement, is there,  
6 Mr. Brackett?

7 A. No, there is not.

8 Q. So that's your independent conclusion?

9 A. Yes, that's my independent conclusion.

10 Q. Also, in the June 2022 GAPMS report, on page 21, you  
11 discuss the positions of the American Academy of Pediatrics  
12 and the American Psychological Association regarding  
13 gender-affirming care, and you conclude that stances like  
14 these can substantially influence practitioners in their  
15 treatment recommendations.

16 And, again, Mr. Brackett, there is no citation next to  
17 this statement; is that right?

18 A. That's correct.

19 Q. So this is your independent conclusion?

20 A. That's my independent conclusion.

21 Q. Are you a member of any professional medical  
22 organizations?

23 A. No, I'm not.

24 Q. In a couple of the sections of the June 2022 GAPMS report  
25 you discuss watchful waiting. If high percentages of



1 children diagnosed with gender dysphoria.

2 THE COURT: Give me the exhibit number of this again.  
3 I thought you said Plaintiffs 18, and --

4 MS. DeBRIERE: That's correct, Your Honor, it's  
5 Plaintiffs' Trial Exhibit 18. It's the June 2022 GAPMS  
6 report.

7 THE COURT: I got it.

8 MS. DeBRIERE: Page 12.

9 MR. JAZIL: Your Honor, if I may, it's also DX6. DX6  
10 is the exhibit with all of the attachments.

11 THE COURT: I was just pulling up the wrong document  
12 on my machine. I'll figure that out at some point, but thank  
13 you.

14 BY MS. DeBRIERE:

15 Q. So as I stated, in a couple of other sections of the June  
16 2022 GAPMS, you mention watchful waiting; for example, you  
17 state:

18 *If high percentages of children diagnosed with gender*  
19 *dysphoria also have histories of trauma and attachment*  
20 *issues, should conventional behavioral health services be*  
21 *utilized without proposing treatments that pose irreversible*  
22 *effects? Would that approach not provide additional time to*  
23 *address underlying issues before introducing therapies that*  
24 *pose permanent effects.*

25 And then you say, *For example, one of those approaches*

1 would be the watchful waiting approach.

2 Is that an accurate representation of your report?

3 A. I'm seeing the whole screen. I'm trying to follow you  
4 from where you were reading.

5 Q. Take your time to locate it. It's in the second full  
6 paragraph.

7 A. Okay. Can you scroll down so I can see the exact page  
8 number?

9 Okay. There we are.

10 Q. I apologize. There is --

11 A. I was reviewing the wrong page.

12 Q. It was my fault, Mr. Brackett. I apologize. I confuse  
13 things.

14 So, once again let me ask the question, because I'm sure  
15 at this point it's been lost.

16 There is a couple of times in this report that you refer  
17 to watchful waiting. This is an example of referring to  
18 watchful waiting.

19 When you were referring to watchful waiting, were you  
20 referring to the Dutch model?

21 A. Yes.

22 Q. And under the Dutch model, it's my understanding that  
23 after the waiting period the studies suggest that care should  
24 be started at some point for those who persist. Is that  
25 accurate?

1 A. According to those individuals, I think they do make  
2 recommendations for that, yes.

3 Q. Okay. Based on your report it seems like you're  
4 endorsing watchful waiting. Is that a correct  
5 characterization?

6 A. No. I can see how that paragraph can be read, though,  
7 when taken out of context, but no.

8 Q. Okay. Because, just to be clear, the watchful waiting  
9 approach at some point does recommend that care be started;  
10 is that right?

11 A. At some point, yeah, following the Dutch model.

12 Q. Okay. Thank you.

13 MS. DeBRIERE: Can we pull up Plaintiffs' Trial  
14 Exhibit 23, which is Rule 59G-1.035.

15 Your Honor, my co-counsel was asking if we would like  
16 to stop for lunch. I think I only have probably 20 minutes  
17 left. It's 12:30.

18 THE COURT: If we can finish, let's do. We can make  
19 it till 1:00 before we eat.

20 BY MS. DeBRIERE:

21 Q. Okay. So as my friend reviewed earlier, part of the  
22 Agency's standard process in assessing whether health  
23 services fall with Generally Accepted Professional Medical  
24 Standards is to determine whether the services are supported  
25 by evidence-based clinical guidelines. Is that a correct

1 characterization?

2 A. So, subsection 4(a), yes.

3 Q. Having read your report, I take it that you do not think  
4 WPATH guidelines are evidence-based. Is that a correct  
5 statement?

6 A. Well, I can -- when you take into account evidence  
7 at-large, well, yes, they are evidence-based, but that  
8 evidence is low, low, very low quality. So it's very weak  
9 evidence, and you can't build a solid foundation for  
10 guidelines on weak evidence.

11 Q. So that's why you didn't use WPATH as a determining  
12 factor under 4(a); is that right?

13 A. No, that's not correct. I did use WPATH. I took WPATH's  
14 guidelines extensively into my considerations. I read,  
15 re-read, and probably re-read again their guidelines. I did  
16 take them into high consideration, maybe more so than some of  
17 the other sources.

18 Q. Okay. Does WPATH maintain that gender-affirming medical  
19 care is experimental?

20 A. No, that's not WPATH's stance.

21 Q. Okay. So you did not adopt that portion of WPATH; is  
22 that right?

23 A. My findings didn't agree with theirs.

24 Q. Okay. Thank you.

25 And your findings -- so it's my understanding that your

1 finding did not agree with theirs because your determination  
2 of the low quality of the evidence; is that correct?

3 A. Right. My assessment of the evidence did not align with  
4 the strength of their recommendations.

5 Q. Okay. Last week plaintiffs' expert, Dr. Dan Karasic,  
6 testified that a 2016 study found that there was a high  
7 degree of certainty to support the provision of care in only  
8 13 and a half percent of the time when a systematic review of  
9 all medical interventions was conducted.

10 Did you take that particular finding into consideration  
11 when you decided not to follow the WPATH's guidelines in your  
12 opinion?

13 A. Since I don't think we included that in our works cited,  
14 I don't think we took that position into account, no.

15 Q. Okay. Dr. Karasic further testified about another study,  
16 also a systematic review of a variety of medical  
17 interventions, not just gender-affirming care, which was done  
18 to determine the percentage of interventions that satisfied  
19 the high quality criteria of GRADE, dividing those  
20 interventions into simple and complex.

21 Dr. Karasic testified that the study found that, when  
22 looking at complex interventions which would include  
23 gender-affirming medical care, none had high certainty under  
24 GRADE, and the most common result was the medical  
25 intervention demonstrated was very low certainty.

1           Again, Mr. Brackett, did you consider that when you were  
2 adopting your conclusions in the June 2022 GAPMS report?

3           A. I did not consider that, but based on what you've read,  
4 that seems to mirror my findings upon my reading of the  
5 evidence.

6           Q. Okay. I was saying as to all medical interventions, not  
7 just gender-affirming medical care.

8           A. No. I understand where you are going with that, yes.

9           Q. You also just mentioned in your earlier testimony that,  
10 after learning that the 2017 surgery GAPMS -- GAPMS on  
11 gender-affirming surgery, was not, as you mentioned, probed  
12 and the studies relied on, guidelines cited, were taken at  
13 face value.

14           Did you decide at that point, seeing that that GAPMS was  
15 weak, that you would go back and review all GAPMSes to make  
16 sure there were similar weaknesses regardless of the type of  
17 care it was assessing?

18           A. No. That's not a job I would undertake.

19           Q. Looking at another factor under 59G-1.035, the criteria  
20 used to determine whether -- another factor under 59G-1.035  
21 is evaluating whether there is other credible health coverage  
22 of the health service. That would be (4) (e).

23           So in reviewing the June 2022 GAPMS you assess coverage  
24 under Medicare, TriCare, the VA, and state Medicaid programs;  
25 is that correct?

1 A. That's correct.

2 Q. Did you include an assessment of whether gender-affirming  
3 care was covered by commercial or private insurers?

4 A. No, we did not.

5 Q. So, looking at this rule, where in this rule does it  
6 state to limit assessment to only government insurance  
7 programs?

8 A. It doesn't actually specify what insurance programs to  
9 look at. It just says other credible insurance payors.

10 Q. So the ruling does not contain the limitation as to only  
11 government insurance programs; is that right?

12 A. It's not a requirement, but it's -- this is also not the  
13 only GAPMS where did not look at private payors. It's a  
14 totally different business model.

15 Q. Fair enough. So in undertaking GAPMS, prior to the  
16 June 2022 GAPMS, was there ever a time AHCA did rely on  
17 private or commercial insurance coverage as part of the  
18 assessment?

19 A. There have been times with GAPMS reports in the past that  
20 we've taken a look at private payors. That's usually to  
21 supplement if we are having problems getting enough  
22 information from other Medicaid payors, but first and  
23 foremost it's always what do the other state Medicaid  
24 programs cover.

25 MS. DeBRIERE: I would like to pull up at Plaintiffs'

1 Trial Exhibit 331, this is a GAPMS on scleral contact lens in  
2 its final draft form. On page 7 -- scroll down a little bit,  
3 a little bit more. There we go.

4 BY MS. DeBRIERE:

5 Q. So here, consideration, yes, of commercial insurance  
6 coverage, AETna, Blue Cross/Blue Shield, I think it continues  
7 on to the other page. So in this GAPMS you did decide to  
8 rely on commercial insurers?

9 A. I did not actually author the one on scleral lens, but  
10 this mirrors some of the GAPMS reports I did. I mean, when  
11 we don't have an exhaustive perspective of other state  
12 Medicaid programs or to strengthen that section, often we can  
13 add private insurance payors.

14 Q. Okay.

15 MS. DeBRIERE: Can you scroll up just a little bit,  
16 probably the page above.

17 BY MS. DeBRIERE:

18 Q. So here it says state Medicaid programs, 30 Medicaid  
19 programs include coverage for scleral contact lens. So here  
20 it looks like there was strong evidence within the state  
21 Medicaid programs, but you also decided to do an analysis of  
22 the commercial insurance; is that right?

23 A. Well, 30 states, yes. That's often at the analyst's  
24 discretion. It's not necessarily required.

25 Q. Okay. A final factor, under 59G-1.035 calls for the view



1 by -- excuse me. Let's start by saying:

2 Just reviewing through some of your earlier testimony  
3 about coverage not here in the U.S., but in European  
4 countries, you mentioned some European countries that have  
5 recently placed restrictions on gender-affirming care for  
6 minors. Is that an accurate representation of your  
7 testimony?

8 A. Yes.

9 Q. Have any of those countries barred provision of coverage  
10 of gender-affirming care to adolescents under all  
11 circumstances?

12 A. I don't -- as I recollect, I don't think so, but I think  
13 it's very, very extenuating circumstances if it's used.

14 Q. How would you define "extenuating"?

15 A. I don't know. You would have to -- I mean, given -- I'm  
16 basing that statement based on the guidelines that I read  
17 from the other countries, it would be up to like House of  
18 Lords in Sweden to make that determination.

19 Q. So touching on one final factor under 59G-1.035, which  
20 calls for the views by clinical or technical experts on the  
21 subject or field. Did AHCA contract with Dr. Andre Van Mol  
22 to assist with the June 2022 GAPMS report?

23 A. Yes, we did contract with him.

24 Q. At the time AHCA decided to contract with Dr. Van Mol,  
25 were they aware that he was affiliated with the American

1 College of Pediatricians?

2 A. I do not know if they were aware.

3 MS. DeBRIERE: Can we pull up Plaintiffs' Trial  
4 Exhibit 284.

5 BY MS. DeBRIERE:

6 Q. You see here some articles that Dr. Van Mol shared with  
7 Secretary Weida while working on the June 2022 GAPMS report.  
8 Some of these articles are about "Financing the Transgender  
9 Movement and Its Tactics," another title is "Who are the  
10 rich, White Men Institutionalizing Transgender Ideology." Do  
11 you see those there?

12 A. Yes.

13 Q. Are these the kind of articles that AHCA might take under  
14 consideration when they're deciding whether to contract with  
15 consultants to provide information about care for people who  
16 are transgender?

17 A. I can't speak to that.

18 Q. Would it have affected your personal decision to contract  
19 with Dr. Van Mol?

20 A. I don't know. Because this is an email, I don't know how  
21 it would apply to the large context of the discussions.

22 MS. DeBRIERE: Can we pull up Plaintiffs' Trial  
23 Exhibit 285.

24 BY MS. DeBRIERE:

25 Q. Here Dr. Van Mol writes to you: *I've read through*

1 several more. These four are the best of the lot that  
2 establish the connection to big pharma, biotech, philanthropy  
3 profiteering in the clothes of being rights advocates.

4 Including an article, you'll see in the attachments  
5 called, "A Founding Father of the Transgender Empire," as  
6 well as, "The ACLU Gets Fat on Pharma and Tax Funding."

7 So these articles were sent to you. Did they have any  
8 impact on your decision as to whether to rely on Dr. Van  
9 Mol's information provided?

10 A. Well, I never actually read anything that he sent us, so  
11 as far as those goes because they didn't really pertain to  
12 the subject I was evaluating. I was looking at the medical  
13 evidence. So the input that I got from Dr. Van Mol that  
14 helped were mostly more getting citations and some feedback  
15 or suggestions for peer-reviewed literature that were in  
16 academic journals.

17 Q. Did these articles that he shared with you, did it  
18 indicate he might be biased?

19 A. I mean, it indicated that I think he disagreed with the  
20 conclusions of a lot of medical evidence.

21 Q. Okay. So you did know that he disagreed with  
22 gender-affirming medical care when you were consulting with  
23 him; is that right?

24 A. As we worked with him, yes, I was aware of that position.

25 Q. Okay. Turning to the rule adoption process a little bit,

1 why did you -- you earlier testified. Why did you expect  
2 such a large opposition to the rule at the public hearing?

3 A. Well, as far as my experience and my role in the process  
4 since we had gotten so many comments -- I mean, we had like  
5 600 comments -- hundreds before the hearing even took place,  
6 so we expected there to be a large turnout of people there;  
7 and just the fact that the report, when it was released, I  
8 mean, it was in the news. So this was a hot topic.

9 Q. Did that extensive opposition affect your decision to  
10 adopt the final rule?

11 A. No, it did not.

12 Q. Did AHCA confer with the GAPMS consultants about any  
13 questions they might receive from those testifying at the  
14 public hearing prior to the hearing?

15 A. There were a couple, I think, Zoom calls. Generally the  
16 ones I was on were just more basically on how the  
17 arrangements for the hearing would go. I don't think so  
18 there was an extensive Q and A prep with the experts. I  
19 think it was just mostly more, here's what's going to happen,  
20 here's what you can expect.

21 Q. Okay. So AHCA didn't suggest that the consultants  
22 provide specific answers to questions for the public hearing?

23 A. I don't recall them providing specific answers.

24 Q. Okay. Did the consultants ask if they should say  
25 anything in particular at the public hearing?

1 A. No, I don't think there was anything like that, no.

2 MS. DeBRIERE: Can we look at Plaintiffs' Trial  
3 Exhibit 303.

4 BY MS. DeBRIERE:

5 Q. Here you see an email from Miriam Grossman to Secretary  
6 Weida and it says:

7 *Quick question: Is it okay if while answering a question*  
8 *at the hearing, I say something like, this rule will protect*  
9 *young people in Florida the same way similar kids are now*  
10 *protected in Sweden, Finland, et cetera. I applaud the State*  
11 *of Florida and hope many others will follow.*

12 So that does seem like asking if she should respond in a  
13 certain way at the hearing. Is that your interpretation?

14 A. Yeah.

15 MS. DeBRIERE: Can we look at Plaintiffs' Trial  
16 Exhibit 292. Can you scroll down just a little bit, please.  
17 I'm looking specifically for --

18 THE COURT: Voices up where we can all hear.

19 MS. DeBRIERE: I apologize, Your Honor.

20 Actually, can you pull up 286. Again, my mistake.  
21 Thank you. Can we scroll down. We talked about this exhibit  
22 quite a bit. Keep scrolling, please. This is not the right  
23 one. Can you go to 286A, please, A as in apple.

24 BY MS. DeBRIERE:

25 Q. So you had previously testified that Dr. Van Mol had put

1 together a bibliography for you, and this is the document you  
2 were referring to; is that correct?

3 A. Yes.

4 Q. Okay.

5 MS. DeBRIERE: And I just want to note for the Court,  
6 this document is both at 286 -- if you can scroll down,  
7 please, Ms. Gonzalez, keep scrolling through the whole  
8 document just very quickly so we can all see.

9 BY MS. DeBRIERE:

10 Q. You know, as I'm looking at this, Mr. Brackett, there's  
11 actually a 286B, as in boy, as well. This looks like more  
12 than a bibliography to me. Do you disagree with that  
13 contention?

14 A. There are some summaries in there. I actually didn't  
15 really look at the summaries. I just looked at the sources.

16 Q. Okay. It's my understanding you paid someone -- Dr. Van  
17 Mol close to \$35,000 to write a document, a pretty extensive  
18 document, that you then decided not to consult while drafting  
19 the June 2022 GAPMS report; is that right?

20 A. Can you repeat the question?

21 Q. I absolutely can.

22 So it's AHCA's decision to pay Dr. Van Mol several  
23 thousand dollars to draft this document; is that right?

24 A. My awareness was that he already had this document  
25 composed before he contracted with us, or at least most of it

1 composed. I don't think, given the time that we had spent  
2 between getting an agreement done and him sending this to us,  
3 he would have had enough time to do this project on his own.

4 THE COURT: Here's the question: This man got hired  
5 for a lot of money to work for the State. He sends you this  
6 long document talking about the very subject you're working  
7 on, and your testimony is you didn't read it or take it into  
8 account. Is that --

9 THE WITNESS: No, Your Honor, I'm not testifying to  
10 that.

11 THE COURT: All right. Then tell us the truth. Did  
12 you read this document? Did you consider it?

13 THE WITNESS: So, I read the document, but I was  
14 primarily interested in the articles. That was really what I  
15 was looking at, or the articles and the citations. The  
16 content summaries, I wanted to look at -- I look everything  
17 for my own eyes.

18 THE COURT: So he read it. There you go. Next  
19 question.

20 MS. DeBRIERE: Thank you, Your Honor.

21 Plaintiffs' Exhibit 291. Scroll down, please.

22 BY MS. DeBRIERE:

23 Q. I think you had just testified that Dr. Van Mol had  
24 already prepared the document and simply shared it with AHCA.

25 What I just showed, that was the master background

1 document; is that correct?

2 A. That was the document that he had sent to us. I mean, I  
3 don't -- no one has ever referred to it as a master  
4 background document. I'm not sure what's meant by that.

5 Q. Well, what is this master background document then that  
6 he refers to in his invoice?

7 A. I guess that would probably be what he sent us. I didn't  
8 see his invoice, so --

9 Q. So Dr. Van Mol may have charged you guys nine hours for  
10 completing a master background document that he had already  
11 drafting previously?

12 A. No. I think, given how long it is, it would strain  
13 fragility to say that he composed a 55-page document in nine  
14 hours.

15 Q. I just have a few more questions.

16 MS. DeBRIERE: Can we pull up Plaintiffs' Trial  
17 Exhibit -- what we have marked as Plaintiffs Trial  
18 Exhibit 365.

19 Your Honor, if I may turn to counsel, this,  
20 Mr. Jazil, is an exhibit that we shared with you last night  
21 and asked if there were any objections. It's a press release  
22 regarding Senate Bill 254. I'm gathering from your face that  
23 you did not see my email.

24 MR. JAZIL: Your Honor, I haven't seen the exhibit.  
25 Perhaps we can put it up and I can --



1           If my friend is going to represent this is from the  
2 governor's website, then I think the Court can take judicial  
3 notice of it. I think it's a press release. Are you --

4           THE COURT: Are you offering the document in  
5 evidence?

6           MS. DeBRIERE: I would like to, Your Honor, yes,  
7 please.

8           THE COURT: It probably doesn't have a number, yet.  
9 I don't know what the last number is. Give it the next  
10 number.

11          MS. DeBRIERE: We premarked it, Your Honor.

12          THE COURT: 365?

13          MS. DeBRIERE: Yes, Your Honor.

14          THE COURT: Is there an objection to 365?

15          MR. JAZIL: Your Honor, a quick question. Are we  
16 using it to attribute statements to the governor or to --

17          MS. DeBRIERE: So, Your Honor, I --

18          THE COURT: Look, let me just tell you. I'm sure you  
19 all have read my *Warren* opinion. One of the things I said is,  
20 look, when an official makes a decision, the official is  
21 welcome to put it out however they want; and, if you put some  
22 statement out for political reasons, that doesn't tell you why  
23 you made the decision. And so, if you made a decision for  
24 legitimate reasons and you issued a press release to maximize  
25 the political benefit, well, that's what people who run for

1 office do. Maybe that tells you something about how it got  
2 done, but not very much. So this isn't going to tell us very  
3 much. It's too small for me to read it, but --

4 MR. JAZIL: Your Honor, just a word of caution, I  
5 guess; that is, statements in press releases that are  
6 attributed to people ordinarily aren't said by those people,  
7 they are written by someone in the press shop, et cetera. So  
8 with that --

9 THE COURT: Well, I get it; but, if it got issued in  
10 his name, it's --

11 I'll admit it. Plaintiffs' 365 is admitted.

12 (PLAINTIFFS' EXHIBIT NO. 365: Received in evidence.)

13 MR. JAZIL: Thank you, Your Honor.

14 MS. DeBRIERE: Scroll down, Ms. Gonzalez, the second  
15 page please.

16 THE COURT: And go ahead at some point and file 365  
17 on the CM/ECF system so that it's part of the record.

18 BY MS. DeBRIERE:

19 Q. Mr. Brackett, as we just discussed, the governor's office  
20 issued a press release yesterday about Senate Bill 254, which  
21 in part prohibits the use of State funds like Medicaid to pay  
22 for gender-affirming care. Are you at all familiar with that  
23 bill?

24 A. Only what I have seen in local news.

25 Q. Are you familiar with the press release other than seeing

1 it here today in front of you?

2 A. I am now. No, I had not seen the press release.

3 Q. I just want to point out that in this press release it  
4 does use the slogan "Let Kids Be Kids."

5 Did AHCA solely develop the "Let Kids Be Kids" slogan?

6 A. You mean when we did the --

7 Q. Yes, for the --

8 A. -- GAPMS?

9 Q. -- June 2022 GAPMS.

10 A. I'm under the impression that AHCA created that, yes.

11 Q. Okay. And so the AHCA-created slogan has now been  
12 adopted by the governor's office regarding Senate Bill 254?

13 A. That appears to be the case.

14 Q. And you had mentioned that AHCA had developed other  
15 slogans for programs; is that right?

16 A. Yes.

17 Q. Okay. What were those slogans?

18 A. I think "lower Prescription Drug Prices." I think that's  
19 the one I can think of off the top of my head. Our website,  
20 I think, we have like one for visitation rights. I mean, our  
21 website has lots and lots of slogans and banners for various  
22 programs we do.

23 Q. Okay. So we would be able to find those slogans on  
24 AHCA's website?

25 A. You should. We definitely have archive versions of

1 these. I mean, we come up with new slogans every quarter,  
2 so --

3 Q. Okay. Thank you. Just one last set of questions.

4 It's my understanding that you were in the GAPMS position  
5 for 11 months; is that correct?

6 A. Ten months.

7 Q. Ten months. Thank you.

8 Jeff English, it's my position, was in that position for  
9 three years?

10 A. Yes.

11 Q. And he left that position voluntarily?

12 A. To my knowledge, yes.

13 MS. DeBRIERE: Thank you, Your Honor. That's all I  
14 have.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. JAZIL:

18 Q. Mr. Brackett, my friend asked you about studies that were  
19 not included in your GAPMS report. Do you recall that  
20 testimony, sir?

21 A. I do.

22 Q. One of the studies that my friend brought to your  
23 attention was a study called, "Top Surgery and Chest  
24 Dysphoria Among Transmasculine and Nonbinary Adolescents and  
25 Young Adults," from JAMA Pediatrics.

1 Do you recall questions about that?

2 A. I do recall her questions.

3 Q. If you go to page 43 of DX6, your GAPMS report, the third  
4 one down, sir.

5 A. Yes.

6 Q. Was that an article concerning top surgeries and  
7 dysphoria?

8 A. Yes, it was.

9 Q. My friend mentioned the de Vries article, but your --  
10 does your works cited include an article by the same author,  
11 just from a different year?

12 A. It does. And that was the reason why I was little  
13 confused when that one was put on the screen versus what we  
14 had actually cited. Titles can be kind of combobulated  
15 sometimes.

16 MR. JAZIL: Can we pull up Plaintiffs' Exhibit 176,  
17 please.

18 BY MR. JAZIL:

19 Q. Do you recall my friend asking questions about this  
20 article, sir?

21 A. I do.

22 MR. JAZIL: If we can go to the next page. Can we  
23 blow up the procedures section.

24 BY MR. JAZIL:

25 Q. Take a look at that, Mr. Brackett, and look up at me when

1 you're done.

2 A. Okay.

3 Q. Did you in your GAPMS report look at other articles that  
4 used the survey method to obtain information?

5 A. We did.

6 Q. And did you find them -- why -- did you find them  
7 persuasive?

8 A. No, I did not.

9 Q. Why not, sir?

10 A. While it's a survey, it does have a very large, large  
11 sample size. I mean, I think the citation I was looking for  
12 was on page 41, and it was by Herman. So, you have 34,700  
13 plus sample size. They recruited through various social  
14 media means, Snapchat, et cetera, so they are looking through  
15 online communities. But regardless of how they are sampled,  
16 it's a momentary snapshot. It's how these youths are feeling  
17 at any given moment. It's just a momentary snapshot. We  
18 don't have longitudinal histories. We don't know the  
19 participants' backgrounds. We don't know their profiles.

20 So -- and I think these surveys, most of them are usually  
21 anonymous. So we don't really know who they are even. So  
22 that makes it quite problematic. But it's a snapshot, okay,  
23 this is interesting, but there's a lot more information  
24 that's needed.

25 MR. JAZIL: No further questions, Your Honor.

1 THE COURT: Mr. Brackett, they asked you a lot of  
2 questions about your background. I want to fill it in a  
3 little bit.

4 You were a teacher in Sweden immediately before you  
5 came to AHCA. Where else have you taught?

6 THE WITNESS: Your Honor, I also spent four years  
7 teaching in Jacksonville, Florida.

8 THE COURT: Where did you teach in Jacksonville?

9 THE WITNESS: So I taught at a charter school called  
10 River City Science Academy.

11 THE COURT: Say again.

12 THE WITNESS: Oh, it was a charter school called  
13 River City Science Academy. It was kind of like south side,  
14 Beach Boulevard area, if you're familiar with Jacksonville.

15 THE COURT: Some kind of science emphasis?

16 THE WITNESS: The school had a science emphasis, yes.

17 THE COURT: Where else? Sweden and that school in  
18 Jacksonville. Anywhere else?

19 THE WITNESS: I've also taught at Florida State  
20 University, Tallahassee Community College, and I also taught  
21 at St. Johns River State College.

22 THE COURT: What did you teach at FSU?

23 THE WITNESS: History.

24 THE COURT: Were you on the faculty at FSU teaching  
25 history?

1 THE WITNESS: No. I was a TA.

2 THE COURT: So you were a student, and you were a TA,  
3 helping out -- I was an undergraduate at Florida State, so I  
4 had back then we called them graduate assistants. That's what  
5 you were, a graduate assistant?

6 THE WITNESS: Well, I was not assisting a professor.  
7 I was the teacher of record. So I prepared all of the  
8 lectures, exams, grade all the content. I was the teacher of  
9 record for those courses, sir.

10 THE COURT: And you were a student at the same time?

11 THE WITNESS: I was a student at the same time.

12 THE COURT: When you got involved in this GAPMS  
13 project, what did you understand about where the assignment  
14 came from; why it was that the Agency was doing a GAPMS study  
15 on the subject?

16 THE WITNESS: So, initially, when I got the  
17 assignment, when I was asked to do it, I figured there were  
18 some other factors at play. I wasn't really aware of those.  
19 I also knew it had been a long time since we looked at it. So  
20 I figured it was probably coming from Agency leadership.

21 THE COURT: Ms. Dalton gave you the assignment?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: She didn't tell you where the assignment  
24 came from? She left that for you to figure out on your own?

25 THE WITNESS: I don't -- often we ask these



1 questions, and we don't always get the answer. I figured it  
2 definitely came from like senior leadership.

3 THE COURT: But Ms. Dalton didn't tell you that?

4 THE WITNESS: It just didn't come up, Your Honor.

5 THE COURT: Did you have any reason to think it came  
6 from the governor's office?

7 THE WITNESS: I suspected that it probably did.

8 THE COURT: You live here in town, I'm going to guess  
9 you read the newspaper.

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: You must have known that trans issues  
12 were a hot topic with this administration. True?

13 THE WITNESS: I was aware of that, yes, Your Honor.

14 THE COURT: Did you know when you got the assignment  
15 what result the administration would prefer?

16 THE WITNESS: I had an idea, I mean --

17 THE COURT: I haven't gone back and tracked the  
18 chronology, but people who took a position that didn't match  
19 up with what the administration wanted, haven't fared very  
20 well in the State. Were you aware of that at that time?

21 THE WITNESS: No, I was not.

22 THE COURT: Is it your understanding that being trans  
23 is a mental health issue?

24 THE WITNESS: Based on the DSM-5 diagnosis, being  
25 trans by itself, according to the definition, that's not.

1 THE COURT: I want to know what you believe.

2 Do you believe that there are people who are, in  
3 fact, trans people who have one native sex, biologic sex, sex  
4 assigned at birth as it's sometimes referred to, but who, in  
5 fact, identify as the opposite gender?

6 THE WITNESS: I do, Your Honor.

7 THE COURT: I've been involved and reviewed a number  
8 of public hearings. I don't think I have ever seen one that  
9 seemed to be so orchestrated in advance as this one.

10 First, have you been involved in any other public  
11 hearings that were as orchestrated as this one?

12 THE WITNESS: No, I haven't been involved in a public  
13 hearing that large or anything like that, no.

14 THE COURT: Who orchestrated this, or choreographed  
15 it? Who decided the order in which people were going to  
16 speak?

17 THE WITNESS: I don't know, Your Honor.

18 THE COURT: One of the questions on cross was about  
19 the -- I think they were Zoom meetings you said -- the  
20 discussions with the experts, and you said something that  
21 frankly struck me as curious. I want to follow up on it.

22 You said, "I don't think there was extensive Q and A  
23 prep with the experts." If there wasn't any Q and A prep with  
24 the experts, that's an odd way to phrase it. If there wasn't  
25 any extensive Q and A prep with the experts, was there at

1 least some Q and A prep with the experts?

2 THE WITNESS: So I wasn't present for all of the  
3 calls, all of the Zoom meetings, so I would be speaking to  
4 events for which I wasn't present for. The calls I  
5 participated on were not Q and A prep sessions. There were  
6 just more logistics, getting to and from the venue, how things  
7 would transpire.

8 THE COURT: How things would transpire, that we're  
9 going to have a long list of speakers in favor or what was  
10 that?

11 THE WITNESS: No, Your Honor. It would be more how  
12 we go into the building, where we'd sit, things like that.

13 THE COURT: And this has nothing to do with the  
14 merits, but DOT, where is DOT? I'm not sure I know where DOT  
15 is.

16 THE WITNESS: Your Honor, it's right there by Cascade  
17 Park.

18 THE COURT: In one of those that used to be Caldwell.

19 THE WITNESS: I think it might be the Caldwell  
20 building. I don't know. It's definitely one of the historic  
21 ones.

22 THE COURT: One of those --

23 THE WITNESS: 1950s, it's very nice.

24 THE COURT: When I used to go to the Public Service  
25 Commission over there, I'm not sure anybody described it as

1 very nice, but I'm with you. All right. Thank you.

2 Questions just to follow up on mine?

3 MR. JAZIL: Your Honor, just one.

4 REDIRECT EXAMINATION

5 BY MR. JAZIL:

6 Q. Mr. Brackett, if you had come to the opposite conclusion  
7 in your GAPMS report, in other words, supporting the use of  
8 puberty blockers, cross-sex hormones, gender reassignment  
9 surgeries, do you think you were going to get fired from your  
10 job?

11 A. No, definitely not.

12 Q. Why not?

13 A. So, I'm a career civil servant. My position is  
14 classified as such. I was performing a task as I was  
15 assigned, which was to do a GAPMS report on treatments for  
16 gender dysphoria.

17 MR. JAZIL: Nothing further, Your Honor.

18 THE COURT: Thank you, Mr. Brackett. You may step  
19 down.

20 MS. DeBRIERE: I have one follow up.

21 THE COURT: Sure.

22 RECROSS-EXAMINATION

23 BY MS. DeBRIERE:

24 Q. Mr. Brackett, just for the clarity of the record, do you  
25 know if the request to undertake the GAPMS came from the

1 governor's office?

2 A. To undertake to do the GAPMS specifically?

3 Q. To do the review of gender-affirming care -- Medicaid  
4 coverage of a gender-affirming care.

5 A. I think it did. I'm not certain.

6 MS. DeBRIERE: If we can bring just up -- hold on.

7 BY MS. DeBRIERE:

8 Q. So you say you are not sure.

9 A. I mean, I think from my understanding was that the  
10 governor's office asked us to also take a review as the  
11 Department of Health did. As far as to do a GAPMS  
12 specifically, they are not that familiar with our processes.

13 Q. But it is your understanding that the initial request for  
14 Medicaid to undertake a review of gender-affirming care came  
15 from the governor's office; is that right?

16 A. I think so.

17 MS. DeBRIERE: Thank you. That's all I have.

18 THE COURT: Now, thank you, Mr. Brackett. You may  
19 step down.

20 We are going to take a lunch break. Where do we  
21 stand? We're done for the day?

22 MR. JAZIL: Your Honor, we just have Dr. Scott left  
23 who is going to appear by Zoom Monday morning.

24 THE COURT: So we don't need a lunch break. We just  
25 need to quit for the day.

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Anything else we need to discuss?

MR. GONZALEZ-PAGAN: Not from the plaintiffs, Your Honor.

THE COURT: Do we have time? Nine in the morning probably works in England.

MR. JAZIL: Yes, Your Honor.

THE COURT: All right. I will see you back at 9:00, Monday morning.

*(The proceedings adjourned at 1:11 p.m.)*

\* \* \* \* \*

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Any redaction of personal data identifiers pursuant to the Judicial Conference Policy on Privacy are noted within the transcript.

Judy A. Gagnon  
Judy A. Gagnon, RMR, FCRR  
Registered Merit Reporter

5/20/2023  
Date

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