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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

CASE NO. 4:22-cv-00325-RH-MAF

AUGUST DEKKER, et al.,

Plaintiffs,

vs.

JASON WEIDA, et al.,

Defendants

_____ /

Volume 2, Pgs. 125 - 261

VIDEOTAPED DEPOSITION OF: MATTHEW BRACKETT

AT THE INSTANCE OF: THE PLAINTIFFS

DATE: FEBRUARY 8, 2023

TIME: COMMENCED: 1:30 P.M.

LOCATION: AGENCY FOR HEALTH CARE
ADMINISTRATION
2727 MAHAN DRIVE
TALLAHASSEE, FLORIDA 32308

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
State of Florida at Large

Page 126

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 21
 22 ALSO PRESENT:
 23 RL Minnich, Videographer
 24
 25

Page 127

1 INDEX TO WITNESS
 2
 3 MATTHEW BRACKETT PAGE
 4 Examination by Ms. DeBriere 128
 5 Examination by Mr. Jazil 253
 6 Further Examination by Ms. DeBriere 255
 7
 8 INDEX TO EXHIBITS
 9
 10 NO. DESCRIPTION MARKED
 11 Exhibit 13 Medicaid coverage for children 153
 state list
 12 Exhibit 14 Medicaid policy Routing and 163
 Tracking Form
 13 Exhibit 15 Molina Health Care Notice of 202
 Adverse Benefits
 14 Exhibit 16 August 22, 2022 email 215
 15 Exhibit 17 August 22, 2022 SMMC policy 215
 transmittal
 16 Exhibit 18 Florida Medicaid health care alert 222
 sign off form
 17 Exhibit 19 June 3rd, 2022 series of emails 227
 18 Exhibit 20 Florida Statute 120.542 234
 19 Exhibit 21 GAPMS queue 249
 20 Exhibit 22 Health and Human Services document 253
 21 Exhibit 23 Treatment of gender dysphoria for 253
 children and adolescents
 22
 23 *Uh-uh is a negative response
 *Uh-huh is a positive response
 24
 25

Page 128

1 DEPOSITION
 2 Whereupon,
 3 MATTHEW BRACKETT
 4 was called as a witness, having been previously duly
 5 sworn to speak the truth, the whole truth, and nothing
 6 but the truth, was examined and testified as follows:
 7 VIDEOGRAPHER: This is beginning of video
 8 three. The time is 1:30 p.m. We're on the record.
 9 EXAMINATION
 10 BY MS. DEBRIERE::
 11 Q So prior to break, we were talking a little
 12 bit about Dr. Van Mol and Dr. Grossman's involvement in
 13 the 2022 GAPMS. How did AHCA identify them to
 14 participate in the July 8th rule hearing that was
 15 related to?
 16 A So the -- are we talking about the rule
 17 hearing?
 18 Q Yes, related to the June 2022 GAPMS.
 19 A So since we had already been working with them
 20 in relation to the GAPMS project, because Dr. Grossman
 21 is a psychiatrist, and Dr. Van Mol is a family -- family
 22 practice practitioner, that's based on their backgrounds
 23 and their knowledge of the existing evidence, that was
 24 our basis for selecting them to be on the panel for the
 25 July 8th hearing.

Page 129

1 Q And turning back to the individuals who wrote
 2 reports for the June 2022 GAPMS, who made the decision
 3 to contract with them to prepare those reports?
 4 A So after establishing each one, we wanted
 5 to -- their backgrounds and their suitability to provide
 6 reports, that decision was made by, I think, now
 7 Secretary Weida.
 8 Q And who was involved in determining whether
 9 they had the appropriate backgrounds to write the
 10 reports?
 11 A So I think those individuals who were working
 12 with the experts, I think that was, of course, now
 13 Secretary Weida, I think at our time, General Counsel
 14 Josephina Tamayo.
 15 Q Okay. Anybody else?
 16 A I don't --
 17 Q Were you involved?
 18 A I was not.
 19 Q Was Nai Chen involved?
 20 A He was not.
 21 Q Was Dede Pickle involved?
 22 A She was not.
 23 Q Okay. So now Secretary Weida and Josephina
 24 Tamayo were the two people who decided whether the
 25 consultants who read the reports were qualified to do

Page 130

1 so?

2 MR. JAZIL: Object to form.

3 THE WITNESS: So are you asking that whether or

4 not those two only assessed their credentials?

5 BY MS. DEBRIERE::

6 Q Yes.

7 A I mean, yeah. I mean, they assessed their

8 credentials and looked at their background and

9 experience and knowledge.

10 Q Were those the only two people that assessed

11 their credentials before deciding whether to engage

12 them?

13 A In regarding the Agency, I mean, the -- Andrew

14 Sheeran may have been involved. So it's possible a

15 couple others with the principal decision to rely on

16 those experts was theirs.

17 Q Okay. And so just to be clear, you were not

18 involved in that decision?

19 A I was not involved in that decision.

20 Q And Nai Chen was not involved in that

21 decision?

22 A That's correct.

23 Q And Dede Pickle was not involved in that

24 decision?

25 A Correct.

Page 131

1 Q When making that decision, did AHCA

2 investigate whether any of the consultants had a stance

3 related to the treatment of gender dysphoria?

4 A We, of course, were looking for those that

5 had -- were knowledgeable about the existing literature

6 of gender dysphoria, and those who would, for the

7 supplemental reports, would take an evidence-based

8 approach.

9 Q Did it -- so those were the only two criteria

10 that you used to determine which consultants you would

11 engage with?

12 A Correct.

13 Q And so opposition to gender-affirming care was

14 not a factor in who you chose?

15 A We were specifically looking -- I think we

16 might be talking semantics on what we consider

17 opposition, but we were looking for individuals who were

18 going to make reports and recommendations based on the

19 existing evidence.

20 Q Okay. Was whether the vendor had experienced

21 treating -- I'm sorry. Was whether the consultant had

22 experienced treating gender dysphoria a factor?

23 A Not so much a factor that would outweigh the

24 knowledge of the existing literature and the evidence,

25 since this was going to be a -- the GAPMS process really

Page 132

1 takes into account peer-reviewed literature. It takes

2 into account evidence-based clinical guidelines, et

3 cetera, so those are our primary -- our primary factors

4 in evaluating the experts and their ability to

5 contribute to this report.

6 Q Would people who actually provide treatment in

7 gender dysphoria be most familiar with peer-reviewed

8 literature as it relates to their practice?

9 A Well, that is a complicated question. They

10 don't necessarily have to be. It's possible to -- I

11 mean, it is possible -- I mean, it is hypothetically

12 speaking, someone could engage in treatment of these

13 individuals and run and follow anecdotes.

14 Q So it's not important to AHCA that the

15 consultants with whom you engaged had actual experience

16 treating gender dysphoria?

17 A So based on how the GAPMS rule is written, the

18 needs of the report, we really -- the primary ask was

19 for individuals who were steeped in the evidence.

20 Q But didn't necessarily have actual real life

21 experience treating gender dysphoria?

22 A Right, that wasn't a primary consideration.

23 Q Okay. For -- was AHCA aware that all the

24 consultants with which you engaged took a stance to

25 oppose mainstream medical organizations' stance on

Page 133

1 gender-affirming care?

2 MR. JAZIL: Object to form.

3 THE WITNESS: So are you talking about in

4 opposition or in contradiction?

5 BY MS. DEBRIERE::

6 Q Contradiction.

7 A We -- whether contradiction or alignment

8 really was irrelevant, it really was taking a look and

9 making evidence-based conclusions.

10 Q Speaking to Dr. Brignardello-Petersen -- I'm

11 sorry. I'll start here actually. In deciding on

12 whether to use these consultants, was any input provided

13 from the Alliance Defending Freedom?

14 A No.

15 Q What about the Heritage Foundation?

16 A No.

17 Q Liberty Council?

18 A No.

19 Q Society for Evidence-Based Gender Medicine?

20 A We may have gotten Romina's name from that

21 organization.

22 Q Okay. And what about the Family Christian

23 Coalition?

24 A No.

25 Q Did you get anybody else's name from the

Page 210

1 think they do.

2 Q Okay. Is there any way you can get

3 confirmation of that answer?

4 A I mean, we could obviously pull up a copy of

5 the final order and see if that information is included.

6 Q If we had a copy of an AHCA final order, would

7 that be sufficient to determine, and it did not list it,

8 would that --

9 A I'll defer to our attorneys, if that's

10 sufficient.

11 MR. JAZIL: That'd be sufficient. If you have

12 one, you can show it to him.

13 MS. DEBRIERE: Well, we can pull one up, can't

14 we?

15 MS. CHRISS: Just one?

16 MS. DEBRIERE: Yeah. Yeah. Why not. Yeah, as

17 long as their name's blocked out, which really

18 shouldn't matter here because we're dealing with an

19 AHCA employee.

20 THE WITNESS: Yeah. I mean, I'm cleared to

21 review PHI and recipient information. It shouldn't

22 be a problem.

23 MS. DEBRIERE: Do you want another one? I can

24 send you another one. Bear with me one second.

25 I'm going to forward you this email. And

Page 211

1 it's -- I can tell you what the name of the

2 document is. It's the last document, 23. That

3 should be the last one. Chelsea's copied on that

4 one, too.

5 THE WITNESS: Okay.

6 MS. DEBRIERE: Okay. Okay. So feel free to

7 just scroll through it and see if you see any

8 reference -- oh I'm sorry, it isn't a touchscreen?

9 THE WITNESS: I don't know where the scroll

10 bar.

11 MS. CHRISS: It's just -- just use two fingers

12 and just go like that.

13 MS. DEBRIERE: Oh, it's a Mac.

14 MS. CHRISS: I'm sorry.

15 THE WITNESS: Okay. There it goes. Yeah.

16 I pads and iPhones I'm good with, Mac's I never got

17 comfortable with.

18 MS. DEBRIERE: The next exhibit I'm going to do

19 is emails related to the policy transmittal and the

20 policy transmittal itself, if that helps.

21 MS. DUNN: Yep.

22 THE WITNESS: So are we talking about the --

23 that last paragraph on the final page that's, like,

24 notice of judicial review?

25 BY MS. DEBRIERE::

Page 212

1 Q Yes. So does that relate to the variance

2 waiver process?

3 A I mean, it doesn't point out the variance

4 processes as described in section -- or Chapter 120. I

5 think that's more if they want to appeal to the next

6 level -- next court level. I don't think that's in

7 response to the variance process. That's a different

8 process.

9 Q Okay. Thank you. So it does not mention the

10 variance waiver process --

11 MR. JAZIL: Would it be possible just to read

12 off the --

13 MS. DEBRIERE: Yes, absolutely. So it says at

14 the bottom: Notice of a right to judicial review.

15 A party who is adversely affected by this final

16 order is entitled to judicial review, shall be

17 instituted by filing the original notice of appeal

18 with the Agency clerk of AHCA, and a copy along

19 with the filing fee prescribed by law with the

20 District Court of Appeal and appellate district

21 where the Agency maintains its headquarters or

22 where a party resides. Review proceedings shall be

23 conducted in accordance with the Florida appellate

24 rules. The Notice of Appeal must be filed within

25 30 days at the rendition of the order to be

Page 213

1 reviewed.

2 THE WITNESS: Our various processes doesn't

3 involve appellate courts, so it would not be an

4 appellate case, so it's a different affair.

5 BY MS. DEBRIERE::

6 Q Thank you. Okay. Did AHCA work with Florida

7 Medicaid managed care plans to implement the exclusion

8 set forth in 59G-1.050(7) in any way?

9 A No. I mean, the publication's in the Florida

10 Administrative Register, that was to provide ample

11 notice -- public notice that the rule's changing, the

12 managed care plans are responsible for keeping up with

13 changes to manage -- to AHCA's coverage policies and

14 administrative policies.

15 Q What about plan transmittal? Are you maybe

16 forgetting those?

17 A We do not do a plan transmittal for this. Are

18 you referring to a policy transmittal?

19 Q Yes.

20 A We did not send out a policy transmittal.

21 Q Okay. Okay. So we have what's marked as

22 Exhibit 16 and Exhibit 17. Exhibit 16 is some emails

23 from Dede Pickle to Jason Weida, cc'ing Ann Dalton. And

24 those are dated August 22, 2022. I believe that's where

25 they start. Also involved are you, Matt, and Ashley

Page 214

1 Peterson. Also, I just want to note that Exhibit 17 is
 2 an SMMC policy transmittal dated August 22nd, 2022.
 3 (Whereupon, Exhibit Nos. 16 - 17 were marked
 4 for identification.)
 5 BY MS. DEBRIERE::
 6 Q Getting back to the list of questions. So did
 7 AHCA not send the plan policy transmittal out, Exhibit
 8 17?
 9 A We did not send them out.
 10 Q Why?
 11 A Pretty much because all it's doing is
 12 reproducing what was already stated in the rule. The
 13 rules -- the rule -- the policy changes already in rule,
 14 that was announced through the FAR. Policy
 15 transmittal's a little superfluous at this point.
 16 Q Why draft an entire plan transmittal and then
 17 not send it out?
 18 A Which this happens frequently. Sometimes we
 19 will draft something and later decide not to -- not to
 20 use it, or not to utilize that content in favor of
 21 different strategy. So, in this case, since the rule --
 22 since the rule change itself was pretty self-explanatory
 23 and pretty direct, just we later deemed wasn't
 24 necessary.
 25 Q Who made the decision not to send out the

Page 215

1 policy transmittal?
 2 A I think that would have been -- that would
 3 have been Secretary Weida.
 4 Q Only Secretary Weida? Is it Weida or Weida?
 5 A Weida. I mean, as Assistant Deputy Secretary,
 6 he would be within his purview to decide whether or not
 7 to send something out -- or to send something out, but
 8 given that the rule itself was self-explanatory, and we
 9 just decided that a policy transmittal wasn't necessary.
 10 Q All right. In the email exchanges -- I think
 11 it's on the second page -- oh, and Jason Weida, at this
 12 time that he made this decision, was not the
 13 Secretary -- AHCA's Secretary, correct? At the time
 14 this was sent, Mr. Weida was not the AHCA Secretary,
 15 correct?
 16 A Right, he was Assistant Deputy Secretary for
 17 Policy and Quality.
 18 Q On the last page, it looks like you were the
 19 person who drafted the first policy transmittal, is that
 20 correct?
 21 A Yes. Yeah, I mean, Dede and I, it was a
 22 collaborative effort between the two of us. We were, of
 23 course, working on each other's language.
 24 Q Why did you think Dede -- why did you and Dede
 25 think it was important to draft a policy transmittal?

Page 216

1 A We were asked to.
 2 Q By who?
 3 A I think Ann Dalton asked Dede to work on it.
 4 Q Okay. And later -- well, let's look to --
 5 Ashley Peterson says on August 22, 2022 at 10:35 a.m.:
 6 I added one thing to help clarify that these drugs will
 7 still be provided, just not for gender dysphoria.
 8 Please let me know if you think this is unnecessary or
 9 adds confusion.
 10 So at least Ashley thought there was some
 11 clarity that could be provided to plans on the
 12 implementation of the exclusion.
 13 MR. JAZIL: Object to form.
 14 THE WITNESS: Okay. There's several emails.
 15 Which one are you --
 16 BY MS. DEBRIERE::
 17 Q This one is from Ashley to Dede, copying you.
 18 A August 22nd, 11:04 a.m. That's Dede --
 19 Q 10:35 a.m.
 20 A Okay.
 21 Q It's DEF_0002587.
 22 A Okay. I think it was just a minor, minor
 23 technical catch. I mean, when we worked on this, I
 24 mean, we were just fine tuning the drafts.
 25 Q And further up Ann wants to include the 60-day


Page 217

1 language in the alert, which has been later included.
 2 What is the 60-day language?
 3 A That would be the bottom paragraph of the
 4 policy transmittal.
 5 Q Okay. And that you're referring to starts
 6 with: To ensure the safe discontinuation of puberty
 7 blockers or hormone and hormone antagonists for the
 8 treatment of gender dysphoria?
 9 A Uh-huh.
 10 Q Then the managed care plan must notify its
 11 subcontractors, providers, enrollees receiving active
 12 treatment and changes in coverage, and they must honor
 13 any current prior authorization of prescribed outpatient
 14 drugs for the treatment of gender dysphoria through 60
 15 days after the date of this policy transmittal. So that
 16 means that under the 60-day rule for continuity of care,
 17 the managed care plans were to continue coverage of the
 18 prescribed outpatient drugs for the treatment of gender
 19 dysphoria, correct?
 20 A Only for those existing prior authorizations
 21 had already been approved.
 22 Q Okay. So that meant that AHCA was -- or that
 23 Florida Medicaid was covering this drugs?
 24 A Yeah, just for the sake of honoring existing
 25 PA's.

<p style="text-align: right;">Page 218</p> <p>1 Q Was it not important that the plans know that 2 they should maintain continuity of care? 3 A It's actually in the contract. I mean, when 4 you refer to continuity of care, can you clarify what 5 you mean by continuity of care? 6 Q In this instance, I'm talking about the 7 continued coverage for 60 days of those prescribed 8 outpatient drugs for the treatment of gender dysphoria. 9 A As far as the continuity of care went, I mean, 10 there -- as far as medically necessary services, 11 enrollees are always going to have access to those. So 12 when it comes to the continuity of care, whether or -- 13 Q They're not going to have access to services 14 that have been previously covered, but now are excluded, 15 correct? 16 A That'd be correct. 17 Q Okay. So the 60-day continuity of care 18 ensures that after that categorical exclusion is 19 adopted, those individuals continue to access that care 20 for 60 days? 21 A This, of course, was a draft. It was never 22 sent out. 23 Q At some point, AHCA thought that the 60-day 24 period of continuity of care should apply in this 25 situation, correct?</p>	<p style="text-align: right;">Page 220</p> <p>1 of course, the notice of the plans that the coverage for 2 these services has to stop. 3 Q Immediately? 4 A Well, I mean, that's based on what the rules 5 say, yeah. 6 Q Okay. So they -- that means that the plans 7 were not to implement this 60-day period of continuity 8 of care as described in this transmittal? 9 A Right, we didn't provide notice of -- them of 10 this. 11 Q Okay. And it was AHCA's position that 12 Medicaid beneficiaries were not entitled to that? 13 A That's correct. 14 Q Okay. You previously noted how people on 15 hormones may go through withdrawal, there was something 16 as part of your 2022 GAPMS request. Why wasn't that 17 important to communicate to the plans? 18 A Well, because withdrawal is not gender 19 dysphoria. It's a different -- that's a different -- 20 it'd be a different diagnosis altogether. 21 Q But in the decision to no longer cover drugs 22 that may cause withdrawal, was it important to 23 communicate to the plans or providers that they may need 24 to help facilitate transition off those drugs that would 25 no longer be covered?</p>
<p style="text-align: right;">Page 219</p> <p>1 A Since this was a draft and it was not -- not 2 officially sent out, this is not -- since it is draft 3 language, it is not an official transmittal, we sent out 4 to the health plan, so this does not formally represent 5 the views of the Agency. This is a -- this is a draft 6 that we created, deliberated upon and decided not to 7 send out. 8 Q Who decided? 9 A That would, of course, been leadership. That 10 would have been -- would have gone to Assistant Deputy 11 Secretary Weida. 12 Q And he was the only one who was involved in 13 that decision, correct? 14 A I mean, since he oversees the bureau policy, 15 that's -- which means policy transmittal, yes, he had -- 16 is within his -- is within his job description and his 17 responsibilities and rights to veto sending out a policy 18 transmittal. 19 Q Okay. Since the policy transmittal was not 20 sent out, then is it AHCA's position that those who had 21 a current prior authorization at the time that 22 categorical exclusion was adopted, was not entitled to 23 the 60-day continuity of care period -- were not 24 entitled? 25 A So once the rule went into effect, that was,</p>	<p style="text-align: right;">Page 221</p> <p>1 A We were leaving that to the health plans to 2 manage independently, as well as the providers of these 3 services. 4 MS. DEBRIERE: Do we have a document titled 5 Florida Medicaid health alert? You just -- under 6 DEF_000258815. I feel like I've had the same Bates 7 stamp number. So we're marking as Exhibit 18, the 8 Florida Medicaid health care alert sign-off form. 9 (Whereupon, Exhibit No. 18 was marked for 10 identification.) 11 THE WITNESS: I'm familiar with that. I 12 drafted it. 13 BY MS. DEBRIERE:: 14 Q That would definitely have been one of my 15 questions. 16 A No, I'm listed on there as the analyst who 17 drafted it. 18 Q And there's Dede and Ann. 19 A Yeah. 20 Q Okay. Did this healthcare alert go out to all 21 providers? 22 A That provider alert did not go out. 23 Q And the provider alert on the back, it lists 24 that same language to ensure the safe discontinuation of 25 puberty blockers or hormones and hormone antagonists for</p>

Page 258

CERTIFICATE OF OATH


1
2
3
4
5 STATE OF FLORIDA)
6 COUNTY OF LEON)
7
8
9 I, the undersigned authority, certify that the
10 above-named witness personally appeared before me and
11 was duly sworn.
12
13 WITNESS my hand and official seal this 21st
14 day of February, 2023.
15
16
17
18

19
20 DANA W. REEVES
21 NOTARY PUBLIC
22 COMMISSION #GG970595
23 EXPIRES MARCH 22, 2024
24
25

Page 260

1 Gary V. Perko, Esq.
gperko@holtzmanvogel.com
2
3 February 21, 2023
4
5 RE: August Dekker, et al. vs. Jason Weida, et al.
6 February 8, 2023/Matthew Brackett/5696545
7
8 The above-referenced transcript is available for review.
9 The witness should read the testimony to verify its
accuracy. If there are any changes, the witness should
10 note those with the reason on the attached Errata Sheet.
The witness should, please, date and sign the Errata
11 Sheet and email to the deposing attorney as well as to
Veritext at Transcripts-fl@veritext.com and copies will
12 be emailed to all ordering parties. It is suggested
that the completed errata be returned 30 days from
13 receipt of testimony, as considered reasonable under
Federal rules*, however, there is no Florida statute to
14 this regard. If the witness fail(s) to do so, the
transcript may be used as if signed.
15 Yours,
16 Veritext Legal Solutions
17 *Federal Civil Procedure Rule 30(e)/Florida Civil
Procedure Rule 1.310(e).
18
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Page 259

CERTIFICATE OF REPORTER

1
2 STATE OF FLORIDA)
3 COUNTY OF LEON)
4
5 I, DANA W. REEVES, Professional Court
6 Reporter, certify that the foregoing proceedings were
7 taken before me at the time and place therein
8 designated; that my shorthand notes were thereafter
9 translated under my supervision; and the foregoing
10 pages, numbered 128 through 257, are a true and correct
record of the aforesaid proceedings.
11 I further certify that I am not a relative,
12 employee, attorney or counsel of any of the parties, nor
13 am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.
16 DATED this 21st day of February, 2023.
17
18
19

20
21 DANA W. REEVES
22 NOTARY PUBLIC
23 COMMISSION #GG970595
24 EXPIRES MARCH 22, 2024
25

Page 261

1 August Dekker, et al. vs. Jason Weida, et al.
2 February 8, 2023/Matthew Brackett
3 E R R A T A S H E E T
4 PAGE____ LINE____ CHANGE_____
5 _____
6 REASON_____
7 PAGE____ LINE____ CHANGE_____
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10 PAGE____ LINE____ CHANGE_____
11 _____
12 REASON_____
13 PAGE____ LINE____ CHANGE_____
14 _____
15 REASON_____
16 PAGE____ LINE____ CHANGE_____
17 _____
18 REASON_____
19 Under penalties of perjury, I declare that I have read
the foregoing document and that the facts stated in it
20 are true.
21
22 _____
23 Matthew Brackett DATE
24
25