IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JANIAH MONROE, MARILYN MELENDEZ, LYDIA HELÉNA VISION, SORA KUYKENDALL, and SASHA REED, Plaintiffs, v. ROB JEFFREYS, STEVE MEEKS, and MELVIN HINTON, Defendants.	)	Civil No. 3:18-cv-00156-NJR

PLAINTIFFS' RESPONSE TO DEFENDANTS' REPORT ON COMPLIANCE WITH THE COURT'S PRELIMINARY INJUNCTION ORDER

Defendants had over a month to take meaningful steps to comply with the Court's Preliminary Injunction Order. Yet Defendants' Report on Compliance ("the Report") is nearly devoid of any evidence of tangible progress. Dkt. No. 202, Defs.' Report on Compliance with PI Orders ("Rep."). Instead, the Report evidences Defendants' continued delay, rather than concrete changes to provide adequate medical care to Plaintiffs and the putative class. This is so despite the fact that the Court ordered Defendants to "immediately" cease specific policies and practices that are still in place, by the Report's own admissions. Dkt. No. 186 ("Order") at 37.

Even when Defendants promise to take corrective action in view of the Court's Order, the proposed steps are either insufficient on their face or so indefinite as to prevent meaningful assessment. The Court ordered, and Plaintiffs deserve, specific and meaningful action. This is especially so in light of Defendants' meritless motion to reconsider, which simply rehashes arguments already considered and rejected by the Court. Defendants provided no reason for the Court to give their vague promises of compliance the benefit of the doubt. Quite the opposite. Their pattern of delay thus far suggests they are not taking seriously the Court's directives, or Plaintiffs' dire medical needs and related suffering.

Plaintiffs address each of Defendants' numbered paragraphs from the Report below. But overall, the Report is unjustifiably vague and non-committal, and outlines actions not discernibly different from IDOC's prior practice. For example, Defendants intend to continue using Dr. William Puga and Dr. Shane Reister as the supervisors of all IDOC mental health professionals treating gender dysphoria. This is unacceptable. Dr. Puga and Dr. Reister are the same unqualified individuals who contributed to inadequate care and mistreatment *in the first place*.

Defendants also believe they should be permitted to unilaterally select an expert to assist with revision of their policies for treatment of transgender prisoners. The record is clear that Defendants and their representatives are not adequately equipped to select an expert for this task. Plaintiffs should have a say in the matter. There is no reason that the parties cannot select an independent expert that is mutually agreeable to both sides.

Plaintiffs' Responses to Defendants' Numbered Paragraphs

1. No response is necessary.

2. No response is necessary.

3. Plaintiffs responded to Defendants' Motion to Reconsider in separate briefing. Dkt. No. 206, Resp. to Defs.' Mot. for Reconsideration.

4. Defendants state that, "[t]he Department has ceased the policy and practice of allowing the Transgender Care Review Committee ("TCRC") to make medical recommendations …. The TCRC will only be consulted for placement, security, and gender-related accommodation issues." Defendants do not specify what decisions fall within their definition of "medical recommendations," nor do they specify what falls within "placement, security, and gender-related accommodation issues." For example, to the extent the TCRC continues to make decisions or recommendations regarding transfer requests of transgender prisoners, access to gender-affirming clothing and grooming items at commissary, and evaluation for gender-affirming surgery, the TCRC continues to make "medical recommendations" in violation of the Court's Order.

Indeed, just recently Dr. William Puga confirmed that the TCRC continues to make such medical decisions. Twelve days *after* Defendants filed their Report, Dr. Puga, sitting under oath in a deposition in a different matter relating to IDOC,[1] testified:

[1] Specifically, Dr. Puga was recently deposed as part of a separate lawsuit brought by one of the named Plaintiffs in this matter, Janiah Monroe, in her individual capacity. *See Monroe v. Baldwin*, Case No. 19-cv-01060 (N.D.

> Q: And now after the court injunction in December of 2019, what are the committee's current responsibilities?
>
> A: Well, we're still in the process of redefining it. We have certainly stopped approving or stopped weighing in on whether hormones were to be approved or not. And I think now what we're looking at is more of an oversight of accommodations and making sure our transgendered [*sic*] offenders are adequately -- their needs are adequately addressed.
>
> Q. Is the committee now, after the court order, still in charge of making decisions related to placement?
>
> A. Yes.
>
> Q: Is the committee now still in charge of making decisions related [to] medical accommodations such as surgery?
>
> A: Yes.
>
> Q: Is the committee still responsible for making decisions related to accommodations within the prison such as access to commissary?
>
> A: Yes.
>
> Q: So is it fair to say that the committee has retained all the same responsibilities it had prior to December of 2019 with the exception of making decisions regarding whether or not someone had been on hormones?
>
> A: Yes. That's correct.
>
> Ex. A, 02/03/2020 Deposition of William Puga, *Monroe v. Baldwin*, 19-cv-01060 ("Puga Dep.") at 10:14–11:18.

In other words, Defendants are either misinterpreting the Court's directive, or are willfully ignoring it. Plaintiffs are at a loss trying to imagine any other explanation for belief that only *initiation* of hormone therapy is properly considered a "medical" treatment for gender dysphoria. This Court, citing Plaintiffs' experts, stated in its Preliminary Injunction Order that "[s]ocial

Ill.). Plaintiffs have been unable to move forward with any depositions or other discovery in this case due to the Magistrate's ruling that discovery is stayed until there is a ruling on Plaintiffs' Motion for Class Certification. Dkt. No. 174, 10/17/2019 Minute Entry for Tele. Discovery Dispute Conf.

transition is an important component of *medical treatment*." Order at 34.[2] The Court also noted: "Plaintiffs' experts testified surgery can be *medically necessary* to treat gender dysphoria, but IDOC has not evaluated a single transgender inmate for surgery." *Id.* at 33. And the ordered injunctive relief explicitly acknowledged that "individualized [housing] placement determinations" are part of a policy required to enable "*medically necessary* social transition." *Id.* at 38. Yet even now, the TCRC continues to make medical decisions in defiance of the Court's Order.

Defendants also state: "Mental health treatment for gender dysphoria will now be provided by the licensed mental health professionals at the facility under the supervision of Dr. Shane Reister … and Dr. William Puga." How can this be sufficient? Neither Dr. Puga nor Dr. Reister are qualified to supervise such treatment. As the Court previously noted, "Dr. Puga is the Chair of the Committee but has never treated a patient primarily for gender dysphoria and is not familiar with the Endocrine Society Guidelines …. Although the Committee consults with Dr. Reister, he testified he defers medical decisions to Dr. Puga, and he is not familiar with the [Endocrine Society] Guidelines." Order at 34. Further, even if IDOC had selected supervisors qualified to oversee such treatment, the mental health professionals themselves are unqualified to treat gender dysphoria. The Court found persuasive Dr. Ettner's testimony that "IDOC's mental health staff, in general, is incompetent to treat dysphoria based on records of misgendering inmates and conflating sexual identity with gender identity." Order at 15. Defendants have offered no evidence that progress is being made to ensure the mental health professionals are minimally competent to treat gender dysphoria. Adequate medical care for transgender prisoners must be supervised and

[2] Emphasis added unless otherwise noted.

provided by individuals who meet the baseline qualifications for treating gender dysphoria established by the WPATH Standards, as this Court ordered. *Id.* at 38.

5. Defendants state that in order to provide "high quality care" to transgender prisoners, "Wexford is currently developing a policy." They provide no details on this policy, other than it will involve "protocols related to how and when to initiate hormone therapy, frequency for checking hormone levels, tools to monitor progress and/or assess the deleterious side effects, and guidelines related to relative and absolute contraindications to initiating hormone therapy." Defendants also state they intend to "identify readily available experts for medical consultation when needed," although they do not state who these experts will be, or what their qualifications will be to treat gender dysphoria and to design policies governing that treatment.

Defendants' response is deficient. They fail to articulate any concrete policy, protocols, or timeline for providing adequate treatment and decline to state who at Wexford is responsible for developing a policy and what qualifies them to do so. Defendants also fail to even acknowledge the Endocrine Society Guidelines or WPATH Standards. In fact, Defendants' Report is entirely devoid of reference to the Endocrine Society Guidelines, which set "the floor" for adequate treatment of gender dysphoria relating to hormone therapy. PI Hr'g Tr. at 98:9–18 (Dr. Tangpricha). It is hard, therefore, to conceive of an adequate hormone therapy policy that does not even take the Guidelines into account. The individuals responsible for developing such a policy should also meet the minimum qualifications set forth under the WPATH Standards, which, according to the medical community and this Court, "are the appropriate benchmark for treating gender dysphoria." Order at 31 (citing *Edmo v. Corizon, Inc.*, 935 F.3d 757, 769 (9th Cir. 2019)).

6. The "procedural bulletin outlining a procedure for hormone therapy" attached as Exhibit 1 to Defendants' Report is deficient in several respects. As an initial matter, it fails to

mention the Endocrine Society Guidelines or WPATH Standards. Without defining or referencing applicable standards, there is no way to tell whether the care Defendants intend to provide under the bulletin is adequate.

A manifestation of this failure occurs in the following bulletin directive: "When a Transgendered [*sic*] offender requests hormone medication for the treatment of their Gender Dysphoria, the MHP will interview the offender and complete a DOC0400. They will refer the offender to the psychiatrist for confirmation of diagnosis medication on either DOC0503 or DOC 0502. Mental Health clinicians will determine if the Gender Dysphoria disorder is present and persistent." Rep. Ex. 1 at 2. There is no indication of how mental health professionals will actually diagnose a patient's gender dysphoria, or how they will evaluate whether it is "present and persistent." The Court and Plaintiffs are left to wonder what will guide these critical decisions.

This bulletin directive also suggests that transgender prisoners must be treated first by a mental health professional, and then referred to a psychiatrist prior to a determination of whether hormone therapy appropriate. This is troubling. There is no such requirement in either the WPATH Standards or the Endocrine Society Guidelines. Instead, diagnosis of gender dysphoria by either a qualified mental health professional *or* a qualified psychiatrist is enough. Dkt. No. 123-13, PI Mot. Ex. 6 at 24.

The procedural bulletin strays even further from established standards by requiring that after a transgender prisoner is evaluated by both a mental health professional and a psychiatrist, the facility's medical director must still "perform a physical examination" and "determine appropriateness of hormone prescription considering the offender's medical stability and whether there are any relative contraindications that require consideration or absolute contraindications to prescribing hormones." Rep. Ex. 1 at 2. Again, with the exception of screening for

contraindications, such a procedure finds no support in the WPATH Standards or Endocrine Society Guidelines. Instead, hormone therapy should be initiated promptly after diagnosis of gender dysphoria absent contraindications. PI Hr'g Tr. at 101:4–9, 156:12–15 (Dr. Tangpricha). There is no acceptable rationale for requiring *three* separate medical or mental health professionals to evaluate and diagnose a patient prior to initiation of treatment, particularly when IDOC's medical and mental health staff are not qualified to diagnose or treat gender dysphoria.

Simply put, IDOC's procedural bulletin seeks to supplement the TCRC with yet another bureaucratic process, disconnected from any legitimate medical purpose, which will perpetuate Defendants' established pattern of unjustified delay in initiating hormone therapy for those in desperate medical need.

7. This response is deficient for the same reasons discussed in ¶ 6 above. Defendants also state that "a procedural bulletin was sent out by the Office of Health Services identifying absolute contraindications to prescribing hormones and the frequency for checking hormone therapies as outlined in the WPATH guidelines." To the extent Defendants reference Exhibit 1, that representation is false. The bulletin does not describe the frequency for checking hormone therapies, nor does it reflect the WPATH standards for diagnosing gender dysphoria. Further, the Endocrine Society Guidelines, not the WPATH Standards, contain the guidelines for the frequency and intervals for monitoring patients on hormone therapy. The bulletin also fails to address the necessity of monitoring hormone levels and specific values, such as potassium, creatinine, and prolactin levels, described by Dr. Tangpricha as necessary to detect and prevent potentially life-threatening adverse effects. PI Hr'g Tr. at 107:6–108:4 (Dr. Tangpricha).

These errors and omissions demonstrate that Defendants still do not appreciate the serious harm that can result from inadequate laboratory monitoring. And Defendants' failure to provide

more detail about their plan to administer adequate hormone therapy is mystifying: all relevant standards are plainly laid out in the Endocrine Society Guidelines, which set "the floor" for adequate treatment of gender dysphoria. PI Hr'g Tr. at 98:9–18. Defendants must commit to adhering to the Guidelines.

8. Here, Defendants vaguely outline the process for evaluating a transgender prisoner's request for transfer to a facility consistent with their gender identity. Right away, there is a serious problem: the TCRC still reviews and decides such requests. This is a violation of the Court's Order to "cease the policy and practice of allowing the Transgender Committee to make the medical decisions regarding gender dysphoria and develop a policy to ensure that decisions about treatment for gender dysphoria are made by medical professionals who are qualified to treat gender dysphoria." Order at 37. Evaluation of a transfer request for a gender dysphoric patient entails a medical decision for the reasons described in ¶ 4 above. Further, Defendants state that transgender prisoners' requests for transfer are evaluated on a "case-by-case" basis; this is exactly, however, what Defendants claimed during the evidentiary hearing. Defs.' Post-Hr'g Br. ¶ 51. More of the same cannot stand. Defendants must change their procedures to comply with the Court's Order.

9. Defendants again claim that they are "developing a policy" to comply with the Court's Order, but provide no details on what that policy will entail or when it will be completed, beyond that it will involve an "administrative approval form" that "would require the mental health profession[al] to meet the WPATH minimum qualifications." The stark lack of detail is especially concerning given that Defendants are currently seeking reconsideration of this portion of the Court's Order. Dkt. No. 206 at 8–10. Defendants did not seek a stay of application of the Court's

Order, and cannot excuse noncompliance by filing a motion for reconsideration after the fact. *See Ohr ex rel. NLRB v. Latino Express, Inc.*, 776 F.3d 469, 478 (7th Cir. 2015).

Even setting aside these troubling issues, Defendants' response is plainly insufficient. First, it fails to state what Defendants understand are the "minimum qualifications" under the WPATH Standards. Given the record in this case, Defendants do not deserve the benefit of the doubt on this point. Case in point, Defendants wrongfully claimed that they already "provide[] mental health professionals that meet the minimum criteria in the WPATH standards." Defs.' Post-Hr'g Br. ¶ 120. The Court disagreed, stating that "[n]one of the[] individuals [on the Committee] meet[] WPATH's minimum qualifications for treating transgender people" and ordering Defendants to develop policies to ensure access to qualified positions. Order at 7, 37.

Providing further confusion, Dr. Puga testified in his recent deposition that since the Court's Order, the Department has "developed a definition of competency," which according to him has "the WPATH standards *pretty much* listed." Puga Dep. at 215:5–7. Here, Dr. Puga is equivocating about an important point, especially given Plaintiffs' expert testimony that "IDOC's mental health staff, in general, is incompetent to treat gender dysphoria…." Order at 15.

Defendants' observation of the WPATH Standards is, at best, a moving target. Against the record in this case, and the weeks passed since the Court's Order, this level of uncertainty should not be tolerated.

10. Defendants report compliance with the Court's Order to "allow inmates to obtain evaluations for gender dysphoria upon request or clinical indications of the condition." Rep. ¶ 10; Order at 38. But again, they fail to provide crucial detail. There is no explanation for how their policies have changed, what standards IDOC health professionals now use to diagnose gender dysphoria, or what qualifications are required of those making diagnoses. And Defendants fail to

address whether prisoners are being informed of their right to request mental health services specifically for gender dysphoria. The few details Defendants provided suggest that whatever the new policies may be, they are inadequate. Specifically, as discussed *supra* in ¶ 6, the procedural bulletin for evaluating prisoners for hormone therapy simply subjects patients to a new multi-layered bureaucratic process entirely unmoored from WPATH Standards, and lacking any legitimate medical purpose.

11. Defendants state they are "in the process of reviewing and drafting policies" to be in compliance with the Order that IDOC "allow transgender inmates medically necessary social transition." Defendants provide no details on those policies, the process for drafting them, or when they will be finalized. While this Court correctly acknowledged that "changes will take time," vague statements about a policy-drafting process with no timeline do not provide adequate "assurance that progress is underway," nor do they comply with the Court's Order that the "issue must be promptly addressed." Order at 38.

Should the TCRC, or some version of it, be responsible for drafting these policies, this is plainly insufficient. Specifically, in his recent deposition, Dr. Puga described a "Transgender Policy Committee" which was created to draft and review IDOC's policies on commissary, diagnosis, transfer, and surgery. Puga Dep. at 205:2–13. As with the TCRC, there is no reason to believe that this new committee—which only includes three medical professionals, Dr. Puga, Dr. Reister, and Dr. Conway—is remotely qualified to draft policies governing access to "medically necessary" treatment for transgender prisoners. To wit, Dr. Puga admitted he has "never written policy before." Puga Dep. at 205:21.

Defendants state they "entered into a contract for consultation services" with a Dr. Erica Anderson where "[i]t is anticipated" she will assist in this policy drafting process. Rep. ¶ 11. But

even assuming that Dr. Anderson is qualified to assist, Defendants should not be permitted to unilaterally choose an expert who has not been vetted by the Court, Plaintiffs, and/or an independent expert. Given that Defendants repeatedly demonstrated a complete lack of knowledge about transgender health issues, input from at least the Plaintiffs is required.

Defendants' response on this point is likewise deficient because the TCRC continues to review and make decisions regarding medically necessary social transition as well as surgery, and there is no indication that Defendants intend to discontinue this practice. *Supra* ¶ 4; Puga Dep. at 10:14–11:18. This is directly contrary to the Court's Order. Defendants must cease immediately the TCRC's role in making unqualified medical judgments.

12. Here, Defendants attempt to address the Court's Order to explain the steps they have taken to train correctional staff. Unfortunately, Defendants simply fall back on a training regimen provided to staff during the pendency of this litigation. In other words, nothing material has changed. Defendants fail to provide any explanation regarding the scope and nature of the training and why they believe it is sufficient to remedy the serious issues regarding mistreatment of transgender prisoners within IDOC.

In his recent deposition, Dr. Puga himself exhibited pessimism about this training, its effectiveness, and any likelihood to change the behavior of IDOC personnel:

> Q: Is that something that you as the chair of the Transgender Care Review Committee would want to know about, if staff are receptive to this training?
>
> A: Yes. And I think, you know, there are many people who, no matter how much training they get, they will not change their view. And yet they've been told keep your view at home when you're in the department. You need to function in a role of being respectful, and it doesn't matter how -- what your feelings are. We have expectations so they can walk through the door.
>
> Q: So I'll represent to you that as part of the Hampton matter, we have deposed a number of correction officers and asked them questions about this training. Would it surprise you to hear that a number of the officers testified that this new training

> that they have been going through on transgender inmates was not effective, that they couldn't remember what they learned, and even one lieutenant characterized the training as brutal?
>
> A: Brutal? Not surprising.

Puga Dep. at 207:10–208:07.

Dr. Puga's dim outlook on this point underscores the need for a qualified expert to assist Defendants in complying with the Court's Order. Expertise in both transgender health and issues arising in the correctional setting is required, and currently, Defendants simply do not have it.

13. Here, Defendants raise the possibility they may engage a different consultant or expert on "transgender care, inmate physical safety, and inmate sexual safety." It is unclear what services this hypothetical expert would provide separate from those contemplated in ¶ 12. Regardless, for the reasons articulated above, Defendants should not be permitted to unilaterally engage experts whose precise mandate, scope of work, and timeline are unclear.

The Need for an Expert to Oversee Defendants' Compliance

The Court noted that it would "address Plaintiffs' request for a court-appointed medical expert to oversee implementation of the preliminary injunctive relief in this Order" at the time Defendants filed their Report on Compliance. Order at 38–39. Although Plaintiffs have addressed the need for an expert briefly at various points above, the issue merits fuller discussion here.

Defendants have not once reached out to Plaintiffs to discuss the issue of experts. For the first time in their Report, Defendants name two potential experts that they identified unilaterally. But Plaintiffs and the Court are left with no idea about what specific work these potential experts would undertake, whether they are qualified under the applicable standards, whether they have any experience in correctional settings, who would supervise their work, how the impact of such work

on the quality of medical care provided to transgender prisoners would be evaluated, or virtually anything else regarding their plan.

Further, as discussed above, Defendants have done nothing to demonstrate that they are equipped to hire qualified experts for the task at hand. Plaintiffs respectfully request that this Court order Defendants to meet and confer with Plaintiffs on an acceptable list of potential experts and on their related roles in overseeing compliance. Under Federal Rule of Evidence 706(a), "[t]he court may appoint any expert that the parties agree on and any of its own choosing…who consents to act." FED. R. EVID. 706(a). *See DeKoven v. Plaza Assocs.*, 599 F.3d 578, 583 (7th Cir. 2010). *See also Lightfoot v. Walker*, 486 F. Supp. 504, 506 (S.D. Ill. 1980) (appointing impartial experts under Rule 706(a) to examine the constitutionality of medical care provided to inmates at Menard Correctional Center), *aff'd*, 826 F.2d 516, 517–18 (7th Cir. 1987) (describing the work and findings of the experts). As provided by the Rule, if the parties cannot agree, the Court may appoint an expert of its own choosing.

Plaintiffs propose that, after the parties meet and confer on a list of potential experts, Plaintiffs be afforded the opportunity to file a motion (whether agreed or otherwise) for appointment of an expert or experts that contains a plan regarding the scope of the expert's duties, specific work to be undertaken, and other necessary information to ensure the expert or experts are able to oversee and direct the considerable changes that must be made, and to ensure that transgender prisoners are provided adequate medical care to treat their gender dysphoria. Absent such changes, Plaintiffs and putative class members' suffering and serious risk of death will simply continue unabated.

Dated: February 14, 2020

Respectfully submitted,

By: /s/ *Jordan M. Heinz*

John A. Knight
Camille E. Bennett
Ghirlandi Guidetti
Carolyn M. Wald
ROGER BALDWIN FOUNDATION OF ACLU, INC.
150 North Michigan Avenue, Suite 600
Chicago, IL 60601
Telephone: (312) 201-9740
Facsimile: (312) 288-5225
jknight@ACLU-il.org
cbennett@ACLU-il.org
gguidetti@ACLU-il.org
cwald@aclu-il.org

Catherine L. Fitzpatrick
Jordan M. Heinz
Sydney L. Schneider
Austin B. Stephenson
Sam G. Rose
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
catherine.fitzpatrick@kirkland.com
jordan.heinz@kirkland.com
sydney.schneider@kirkland.com
austin.stephenson@kirkland.com
sam.rose@kirkland.com

Brent P. Ray
KING & SPALDING LLP
353 North Clark Street
Chicago, IL 60654
Telephone: (312) 995-6333
Facsimile: (312) 995-6330
bray@kslaw.com

Thomas E. Kennedy III
Sarah Jane Hunt
KENNEDY HUNT P.C.
906 Olive Street, Ste. 200
Saint Louis, MO 63101

Telephone: (314) 872-9041
tkennedy@KennedyHuntLaw.com
sarahjane@KennedyHuntLaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 14, 2020, I electronically filed the foregoing document and any attachments with the Clerk of this Court by using the CM/ECF system, which will accomplish service through the Notice of Electronic Filing for parties and attorneys who are Filing Users.

/s/ *Jordan M. Heinz*
Jordan M. Heinz

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JANIAH MONROE,)
Plaintiff,)
v.) Case No. 19-cv-01060
JOHN BALDWIN,)
Defendant.)

The deposition of WILLIAM PUGA, M.D., called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Tracy Jones, a Certified Shorthand Reporter within and for the County of Cook and State of Illinois, at 100 West Randolph Street, Chicago, Illinois, on the 3rd day of February 2020 at 11:02 a.m.

Reported by: Tracy Jones, CSR, RPR, CLR
License No.: 084-004553

APPEARANCES:

RODERICK & SOLANGE MacARTHUR JUSTICE CENTER, by
VANESSA DEL VALLE, ESQUIRE
NORTHWESTERN UNIVERSITY SCHOOL OF LAW
375 East Chicago Avenue
Chicago, Illinois 60611
312.503.0844
vanessa.delvalle@law.northwestern.edu

UPTOWN PEOPLE'S LAW CENTER, by
LIZ MAZUR, ESQUIRE (Via Telephone)
4413 North Sheridan
Chicago, Illinois 60640
773.769.1411
liz@uplcchicago.org
Representing the Plaintiff;

OFFICE OF THE ILLINOIS ATTORNEY GENERAL, by
LISA COOK, ESQUIRE
CHRISTOPHER L. HIGGERSON, ESQUIRE
500 South Second Street
Springfield, Illinois 62706
217.557.0261
lcook@atg.state.il.us
chiggerson@atg.state.il.us

Representing the Defendant.

INDEX

EXHIBITS

(Witness sworn.)

WHEREUPON:

WILLIAM PUGA, M.D.,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY ATTORNEY DEL VALLE:

Q. Good morning, Dr. Puga. Could you please state and spell your name for the record.

A. Yes, William Puga, W-I-L-L-I-A-M, P-U-G-A.

Q. And you've been deposed numerous times, I assume?

A. Yes.

Q. So I'll do the ground rules really quick, and then we can jump into it.

So you understand you're under oath?

A. Yes.

Q. And we have a court reporter who's making a record. So it's important that you give verbal answers. Okay?

A. Yes.

Q. And if you don't understand my question at any point, let me know, and I'll rephrase. But

transgender care.

Q. What are your particular responsibilities as chairman, chairman of the committee?

A. I have a standing meeting of the first Tuesday of the month. And we review transgender patients who are either newly diagnosed or if when they've transferred to the new facility and re-review accommodations and treatment planning. And up until recently, we approved hormones and other accommodations that may not have been already addressed.

More recently also, as of, I believe it was October, because there was a paucity of policy regarding transgender, I established a Transgender Policy Committee. And we've been looking at defining policy within our Department, and we're in the middle of defining that and clarifying that.

Q. Okay. So you said up until recently, the committee used to be responsible for making determinations regarding hormones; is that right?

A. Yes.

Q. And did that responsibility change as a result of a court order that was issued in

December of 2019?

A. Yes.

Q. So just to make it clear for the record, can you discuss what the general responsibilities of the committee were before the court order and now after the court order?

A. So before, it was, again, primarily reviewing treatment planning and making sure that accommodations were appropriate, making sure the conditions of confinement and security issues were appropriate for transgender. And also we gave approval -- we approved or denied the start of hormones for the transgender folks.

Q. And now after the court injunction in December of 2019, what are the committee's current responsibilities?

A. Well, we're still in the process of redefining it. We have certainly stopped approving or stopped weighing in on whether hormones were to be approved or not. And I think now what we're looking at is more of an oversight of accommodations and making sure our transgendered offenders are adequately -- their needs are adequately addressed.

Q. Is the committee now, after the court order, still in charge of making decisions related to placement?

A. Yes.

Q. Is the committee now still in charge of making decisions related medical accommodations such as surgery?

A. Yes.

Q. Is the committee still responsible for making decisions related to accommodations within the prison such as access to commissary?

A. Yes.

Q. So is it fair to say that the committee has retained all the same responsibilities it had prior to December of 2019 with the exception of making decisions regarding whether or not someone had been on hormones?

A. Yes. That's correct.

Q. Now, you said the committee has a standing meeting?

A. Yes.

Q. And how often does that occur?

A. Monthly.

Q. Are there occasions where the committee

has to meet more times than monthly as things come up?

A. Yes.

Q. And does the committee do that?

A. Yes.

Q. How are the meetings held?

A. The Transgender Committee -- Review Committee, they're held by -- it's a teleconference.

Q. And are the meetings recorded?

A. No.

Q. Do you take notes during the committee as the chair?

A. Yes.

Q. Then do you then have a process where those notes are then recorded, documented?

A. They're handwritten for my purposes, and then a response is written on the DOC0400 form, and that's submitted to the facility in response to the requests, et cetera.

Q. So your notes are then inputted onto the DOC0400 form?

A. Yes.

Q. And who does that?

establishing?
A. Policy on commissary, policy on identification, policy on search. It will define movement to another -- the other cross-gender facility.
Q. Sorry. Movement to the other cross-gender, you mean transfer?
A. Transfer, yes.
So far, there's about three pages worth of things right now. So those are things we're looking at.
Q. Is surgery on that list?
A. It will be. Surgery right now is very skeletal in our current policy. And until they get it defined differently, that's -- we're referring to the policy that exists. But that has to be modified.
Q. And when do you expect the time line for all these policies to be in effect?
A. Well, I wrote it out. Honestly, I don't know. I've never written policy before, and my first iteration, I thought it was just going to take a few modifications, and then we're fine. And then they gave me more feedback than I

expected. So I'm in the midst of working that right now. So but what we're looking at is a more comprehensive policy.
Q. So still a number of months before any of these policies are finalized?
A. I would imagine.
Another thing in the policy that we put is that, you know, once their surgery, that they go to the facility of whatever gender that they are newly assigned to. Things like that.
Q. Once they have their surgery?
A. Yes. It's an automatic. And yet there still is some room for the individual's right to choose to stay -- there are many who elect to stay -- the transgender females elect to stay in a male prison.
Q. Now, would it also be fair to say that the steep learning curve that you were referring to in the meeting and also in your testimony has to do also with changing attitudes of staff within the department?
A. Yes. We've begun that with the training that we're doing with the correction officers. So yes, that's begun some.

Q. And that training was created as a result of the court order?
A. I believe that's true.
Q. Have you been at all involved in that training?
A. I attended part of the general training.
Q. Have you heard any feedback on the training by any members of the staff?
A. No.
Q. Is that something that you as the chair of the Transgender Care Review Committee would want to know about, if staff are receptive to this training?
A. Yes. And I think, you know, there are many people who, no matter how much training they get, they will not change their view. And yet they've been told keep your view at home when you're in the department. You need to function in a role of being respectful, and it doesn't matter how -- what your feelings are. We have expectations so they can walk through the door.
Q. So I'll represent to you that as part of the Hampton matter, we have deposed a number of correction officers and asked them questions about

this training. Would it surprise you to hear that a number of the officers testified that this new training that they have been going through on transgender inmates was not effective, that they couldn't remember what they learned, and even one lieutenant characterized the training as brutal?
A. Brutal? Not surprising.
Q. Not surprising?
A. No. No.
Is it surprising? Like I said, there are people that are very -- that won't change their mind. And I think that's given. And sometimes you go into a very conservative, rural setting that you don't have exposure to things such as this, and they're going to have a very strong and negative opinion about this. And that's what we're up against. In fact, that's why the whole Transgender Committee was begun because we wanted to have -- from what I understand, this predates me -- consistency in treatment, and we wanted to make sure that someone who had negative views of transgender in the middle of nowhere Illinois, that no matter what -- who's servicing them, that we still had a way of saying this is what you need

A. First of all, my -- everybody on -- that presents at the facilities were informed that the decisions are now being made at the facility level with Dr. Conway. We developed what was set out to be a memorandum, and any time someone has, and whenever people get notified of the transgender meeting and when their time slot is, there's a note there that is starred that says, you know, reminder, we do not -- you are no longer, you know, doing -- weighing in on medication decisions. So everybody is informed about that.

We, with -- Wexford has developed a manual for the physicians to -- who treat gender dysphoria, and they will -- so that I just saw, I thought it was going to be the final product, I guess it's -- it says draft. It has a watermark, draft, that I just got Friday, I believe it was. And there will be an under print consultant or somebody as a consultant when the medical professionals who are prescribing medications have questions or concerns or what have you.

Q. Moving on to order No. 2, says the policy and practice of denying and delaying hormone therapy for reasons that are not recognized as

contraindications to treatment and ensure timely hormone treatment is provided as necessary and maintain routine monitoring of hormone levels.

Has the Department complied with that policy by issuing the memorandum we went through in Exhibit 5?

A. Yes. And also the monitoring hormone levels is included in the Wexford document and they will be doing some training of their physicians about that.

Q. Okay. Moving on to No. 3, says the policy and practice of depriving gender dysphoric prisoners of medically necessary social transition, including by medically assigning housing based on genitalia and/or physical size or appearance.

How has the IDOC complied with this order?

A. We continue to review requests for transfer. And, as mentioned, we are sending in another person over to the Female Division.

Q. Turning the page, No. 1 on that page, develop policies and procedures which allow transgender inmates access to clinicians who meet

the competency requirements stated in the WPATH standards of care to treat gender dysphoria.

How has the Department complied with that order?

A. We've developed a definition of competency, and we have the WPATH standards pretty much listed. And we will -- and part of that is the expectation for them to attend at least 50 percent of the monthly group supervision with Dr. Reister and that they need read the WPATH standards of care and attend Part 1, Part 2 of his training and that in order to be qualified to work with this population.

Q. And these are the clinicians employed by Wexford?

A. Yes.

Q. No. 2, allow inmates to obtain evaluations for gender dysphoria upon request or clinical indications of the condition.

What has the Department done to comply with that policy?

A. I think we've been in compliance with that. I think whenever they are identified or self identify, then at that point, they are

evaluated.

Q. Okay. And lastly, No. 3, develop a policy to allow transgender inmates medically necessary social transition including individualized placement determinations, avoidance of cross-gender strip searches, and access to gender affirming clothing and grooming items.

What has the Department done to comply with that?

A. As I mentioned, we had already started the policy development, so that is in -- that is part of what's being defined in the policy.

Q. And there's no timetable yet for the implementation of those policies, correct?

A. Correct. I think we're making good progress, but we're in the middle of that.

ATTORNEY DEL VALLE: That's all I have.

EXAMINATION

BY ATTORNEY COOK:

Q. Okay. I'm just going to clean up some things so the transcript doesn't look weird when we're looking at it later.

So, you know, earlier this morning, you were asked about Ms. Monroe telling you she was