

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Victor Parsons, et al., on )  
behalf of themselves and all )  
others similarly situated; )  
and Arizona Center for )  
Disability Law, )

Plaintiffs, )

vs. )

Charles Ryan, Director, )  
Arizona Department of )  
Corrections; and Richard )  
Pratt, Interim Division )  
Director, Division of Health )  
Services, Arizona Department )  
of Corrections, in their )  
official capacities, )

Defendants. )

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No. CV-12-00601-PHX-DKD

Phoenix, Arizona  
December 20, 2017  
9:02 a.m.

BEFORE: THE HONORABLE DAVID K. DUNCAN, MAGISTRATE JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(STATUS HEARING)

Official Court Reporter:  
Candy L. Potter, RMR, CRR  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
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Phoenix, Arizona 85003-2151  
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Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription

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A P P E A R A N C E S

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I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RICHARD PRATT				
By the Court	125			
By Ms. Kendrick		130		

1 (Proceedings begin at 9:02 a.m.)

2 THE CLERK: Civil case number 12-601, Parsons, et al,  
3 versus Ryan, et al, on for status hearing.

4 THE COURT: Would counsel please announce?

5 MS. KENDRICK: Yes. Good morning, Your Honor, Corene 09:03:00  
6 Kendrick from the Prison Law Office for the plaintiff class.

7 THE COURT: Thank you. Good morning.

8 MS. EIDENBACH: Kirstin Eidenbach for the prisoner  
9 plaintiff class.

10 THE COURT: Thank you. Good morning. 09:03:10

11 MS. ABELA: Good morning. Maya Abela for the Arizona  
12 Center for Disability Law.

13 THE COURT: Thank you. Good morning.

14 Anyone else on plaintiff's side?

15 MR. FATHI: Good morning, Your Honor, David Fathi of 09:03:20  
16 the ACLU National Prison Project for the plaintiff class.

17 THE COURT: Thank you. Good morning.

18 All right. Defendants.

19 MR. STRUCK: Good morning, Your Honor, Dan Struck,  
20 Rachel Love, Ashlee Hesman, and Richard Valenti for the 09:03:37  
21 defendants.

22 THE COURT: Thank you. Good morning.

23 MR. STRUCK: Good morning.

24 MS. HESMAN: Good morning.

25 MS. LOVE: Good morning. 09:03:43

1 THE COURT: Well, I'm standing because in the most  
2 literal sense I'm standing up for the inmates of the Arizona  
3 Prison System. It is my job to be the enforcement officer on  
4 this Stipulation, which I have earnestly tried to do for months  
5 expecting people to comply with my orders in good faith.

09:04:06

6 I read on the website from KJZZ this morning a memo  
7 from Sara Neese at Corizon:

8 Hello, Dr. Watson. Could you please cancel an  
9 inmate's infectious disease consult. There are  
10 two. We do not have a provider to send them to.  
11 One was approved and has been sitting there for 42  
12 days. Another 30 days we get -- after 30 days we  
13 get nailed for 1,000 bucks a day until they are  
14 seen. Also please look at my previous e-mail and  
15 answer the other ATP/NMIs if you would. We really  
16 need them answered to do get our job done. Thanks.  
17 I appreciate it.

09:04:24

09:04:39

18 As I read this, there is no other way to read it than  
19 an end run around the monitoring program, an end run around the  
20 Stipulation.

09:04:55

21 The Stipulation has specifications with respect to  
22 when inmates are supposed to be seen by outside providers.  
23 They were scheduled for those providers, and the Arizona Prison  
24 System decided that the right way to handle it was to cancel  
25 the appointments and deny those people their healthcare.

09:05:07

1 I have used words in this courtroom like  
2 flabbergasted, stunned. I've run out of words. I've run out  
3 of a way to communicate what is such an egregious departure  
4 from honest representation in a case, from the defendants' side  
5 of this case.

09:05:29

6 I don't know what is going on here. If this is  
7 entirely true. This is certainly not something that has a  
8 foundation laid in court. But it looks to be like an e-mail  
9 that was provided from Corizon staff person to another hired  
10 Corizon doctor at the prison system.

09:05:46

11 In addition, there are other e-mails in that story  
12 which include what is just a flat-out statement, we need to get  
13 around the Stipulation, here's how you do it. And I saw the  
14 Corizon comment that that was supposed to be read as, no, this  
15 is how we comply.

09:06:05

16 But, you know, that's not consistent with what I've  
17 seen otherwise, which is signs held up or posted in the offices  
18 telling people what words need to go into the chart to make  
19 sure that there's compliance.

20 Now I'm told -- in the past gave people the benefit of  
21 the doubt when I was told that that was just to make sure that  
22 we weren't making an error. But one could have fairly read  
23 that as being counseling on how to avoid the monitoring  
24 program.

09:06:21

25 I have an agenda that was prepared earlier this week

09:06:34

1 of four pages, which was -- or three pages, which was  
2 consistent with what I've been doing every single month for the  
3 last months, where I have made an earnest and honest effort to  
4 try to encourage compliance with the Stipulation. And I have  
5 done what I thought was a reasonable thing to do. And that is, 09:06:58  
6 point out deficiencies, ask for remediation programs from the  
7 defendants, monitor the defendants' compliance with that, ask  
8 honest and sincere questions about -- and really logical  
9 questions about how the remedy was going to be met. And I have  
10 expected that in the background there would be the same kind of 09:07:19  
11 honest and logical application.

12 What I now see is a window that undercuts my entire  
13 agenda, undercuts my entire program, and that is, it's just a  
14 game. It's just a game to try to beat the judge and his  
15 monitoring program. It's just a game to try to beat the 09:07:37  
16 State's monitoring program.

17 I am without words. I don't know. I cannot have  
18 contemplated that anybody in a system -- the Corizon lawyers  
19 have been coming to the courtroom, they've been listening to  
20 this. They certainly are aware of what's going on in their 09:08:00  
21 shop. They're aware of what's going on in my shop. The two  
22 don't work together, and they're not going to work together.

23 What's going to happen is I'm going to find out  
24 exactly what's going on. I'm going to get this doctor into  
25 this courtroom and I'm going to hear her testimony. I'm going 09:08:13

1 to get this Sara Neese person in this courtroom, or if she's  
2 outside of my jurisdiction I'll get her on the telephone. I  
3 will hear from these people. I will get every single memo that  
4 of this like. And I am now changing the entire approach here.  
5 It's not my agenda anymore, it's digging down deep to see how  
6 deep this evil goes of trying to dissemble to the Court to see  
7 if it's true.

09:08:31

8 Now I've said already that I don't know what's on my  
9 iPad from the KJZZ website is something that's true or not. It  
10 could be all made up. And if's it's made up I'm going to eat  
11 all these words.

09:08:47

12 But over the time that I have been involved in this  
13 case, there have been warning signs that this is not false.  
14 There have been warning signs that come in the nature of the  
15 memo that was posted on the wall that I've already seen. There  
16 have been warning signs of the testimony that I've had here  
17 where I thought that the persons that were telling me the truth  
18 were the inmates and the people that are lying through their  
19 teeth were the people at the Department of Corrections. And  
20 that's not every single one of them. There are decent and  
21 honorable people on the correction side, and there are liars on  
22 the prisoners' side.

09:08:59

09:09:13

23 But I tell you that as a fact finder in this case in  
24 my role, the people that I have thought have lied to me have  
25 not been the prisoners, they have been the people working for

09:09:24

1 the prison. And I've laid that out for you.

2 And so the additional thing that I get is something I  
3 can't work with because it's impermissible under the rules. We  
4 receive phone calls in chambers, my staff receives phone calls  
5 in chambers from people who work for Corizon who say 09:09:38  
6 essentially, it is so much worse than you think. And we cannot  
7 do anything other than to say, if you would like to come  
8 forward, we will have you in court any day to talk to us about  
9 that. Then they ask us, can you protect us? And my staff is  
10 told to instruct them, no, we cannot protect you. I can't 09:09:55  
11 guarantee what can happen.

12 And so some of those -- some of those people may have  
13 told us something that would be relevant, but I really haven't  
14 acted on it because it's not testimony. It's just people  
15 calling on the telephone. I can't act upon it. 09:10:10

16 But what it does is it adds to the filter of how I  
17 evaluate what I see on a website from KJZZ that indicates that  
18 a memo went from the contractor to the contractor's doctors  
19 instructing them how to do an end run around my  
20 Stipulation-monitoring responsibilities. And it's just 09:10:35  
21 disgusting.

22 And so we'll change how we'll do things.

23 The numbers here this morning, except for 35, look to  
24 me like the performance measures are all in the realm of  
25 compliance. But the truth of it is -- I can't trust it all 09:10:55

1 until I get to the root of this and find out whether or not  
2 it's just a game for the State, whether they've tried to figure  
3 out a way to cover up what is non-compliance with the  
4 Stipulation.

5 I had always been a little bit -- and I've told you 09:11:11  
6 about this before -- concerned about the fact that the fox was  
7 guarding the hen house. I've told you also there were other  
8 times that I thought that there was reason to believe that the  
9 State had done what it was supposed to do because they were  
10 reporting numbers to me that were chilling. And so I thought 09:11:28  
11 perhaps I can trust them.

12 I'm now concerned that I cannot trust those numbers  
13 without further inquiry. That's supported by the plaintiffs'  
14 efforts in the Kendrick Affidavit, and the recent November 21  
15 discovery conference where we worked through some of the errors 09:11:49  
16 and discrepancies. And now the plaintiffs have presented even  
17 more of them.

18 The defendants have responded that they did not have  
19 time to be in a position to respond to each of those. From  
20 past experience some of the responses to some of the arrows 09:12:05  
21 that plaintiffs send may turn to fall short, they may be  
22 mistaken or something.

23 But nevertheless, the plaintiffs are now doing what is  
24 helpful to the Court. They are scrutinizing the monitoring  
25 program and the compilation of the CGAR data to see whether or 09:12:20

1 not it's valid.

2 The plaintiffs are making a stronger, stronger  
3 argument, and were before today on my agenda for the purpose of  
4 setting a time to allow us to delve more deeply into that.

5 I didn't have what looks like a smoking gun memo when 09:12:37  
6 I did this agenda. What I have now is nothing short of that, I  
7 think. And so I need to set a plan for us to move forward in  
8 addressing this particular issue of whether or not there is a  
9 corruption within the system that is depriving the Court of its  
10 ability to perform its monitoring responsibilities in a fair 09:13:01  
11 and appropriate way.

12 And we will get to the bottom of this. We will  
13 understand exactly what the nature is. If it turns out that  
14 this is a fallen short arrow, then I know that there are other  
15 parts of it that still probably are right, and that is -- 09:13:16  
16 unless it's a complete fabrication.

17 We have Mr. Millar engaged as an expert to give us  
18 advice to deal with what is manifest now in the memorandum --  
19 another memorandum included in the KJZZ memo, and that is  
20 Operation Backlog. I've been telling you, and everybody except 09:13:38  
21 for the defendants apparently, have been fighting this idea  
22 that it's a staffing issue. And it is identified here by  
23 Corizon as a staffing issue, they don't have the providers  
24 across the board, either inside where an individual doctor is  
25 responsible for 5,000 potential patients and 20 people today, 09:13:54

1 and is told not to talk so much to her patients and not to  
2 order so many procedures, and given specific examples.

3 So what I contemplate -- and I'll listen to the  
4 parties in a moments about how they think this might better be  
5 done if my idea is not a good idea. But what I would 09:14:19  
6 contemplate doing is setting a hearing date perhaps in  
7 the -- we have already set for January, in the third week of  
8 January I believe it is, for us to focus on this issue about  
9 whether or not the monitoring program is so compromised that it  
10 cannot be trusted, and whether we have to adopt some other 09:14:42  
11 method to make sure that the Stipulation can be met in a fair  
12 and honest and responsible way.

13 And what we would do at that hearing is have  
14 the -- lay the foundation, if it exists, for what appears to be  
15 in the press report, and then proceed from that and to call 09:15:02  
16 witnesses and to identify people who will testify under oath  
17 about what the reality is on the ground, a reality that is, as  
18 suggested in the press report, gravely threatening to the  
19 Court's ability to administer the Stipulation.

20 Turning now to plaintiffs for their response to what 09:15:21  
21 I've said in these last 15 minutes.

22 MS. KENDRICK: Your Honor, we share the Court's great  
23 frustration, and we were likewise shocked to read the e-mails  
24 that were in that report.

25 We would just note that the parties have already had 09:15:38

1 more than five days of hearings about the broken methodology  
2 system in place. And plaintiffs asked the Court, after those  
3 hearings in the Spring, that the Court appoint a Rule 706  
4 expert with knowledge and experience in monitoring and  
5 auditing. I don't know if it would be a Price Waterhouse  
6 Coopers type organization, but something like that. Because it  
7 has been shown clearly and repeatedly that the Department is  
8 not capable of monitoring their contractor, that there are  
9 cross interests going -- at play here that call into question  
10 the reliability of the monitoring.

09:16:00

09:16:18

11 And, Your Honor, while we are glad that you find it  
12 useful that we go and have started doing these spot checks, I  
13 can tell you that it's incredibly time consuming for my office.  
14 Just to check three medical performance measures at three  
15 institutions for the September CGARs, it involved going into  
16 hundreds of prisoners' medical records. It took several of the  
17 staff in my office practically a week just to do that.

09:16:37

18 So that was just randomly selecting a couple of  
19 measures at a couple of institutions. And we uncovered  
20 problems. And as we noted, some of the problems went the other  
21 way. You know, we weren't just cherry picking problems where  
22 suddenly they were out of compliance. There were a couple  
23 where I said, look, you guys said it was 90 percent, it was  
24 actually 88 -- you know, it was still above the 85 percent.

09:16:59

25 For us the point is that you can't trust it. We had

09:17:17

1 performance measures where -- this was supposedly the September  
2 CGARs and they were looking at stuff that happened in July and  
3 August. And it troubles us greatly. But we don't have the  
4 resources to do that kind of monitoring.

5 And part of the reason we included the declaration of 09:17:34  
6 my colleague, Alison Hardy, is because she works on another  
7 case that Corizon is the contractor for the medical care, and  
8 they are able to run these system-wide reports.

9 Now again, this doesn't address the fact that you  
10 identified, which is garbage in, garbage out. If you're being 09:17:51  
11 told to cancel things or falsify things then, you know, if  
12 you're running reports it's going to be reflected. But at the  
13 very least that gives you a more accurate picture when you're  
14 looking at the entire system versus this Rube Goldberg system  
15 that we have in place that is a legacy of the fact that they 09:18:08  
16 were still using paper records when we settled the case. And  
17 so that's why we have the pull ten files method of finding  
18 compliance.

19 It's not accurate. It doesn't work. And  
20 unfortunately that wouldn't necessarily address the problem 09:18:24  
21 that you've identified if the Corizon way is to tell providers  
22 to cancel appointments or to not put things in the records.

23 But at the very least we would have an -- a more  
24 accurate sense of what is being reflected in the records, and  
25 we think that would be a good first start at trying to address 09:18:40

1 some of these problems.

2 THE COURT: Well, you have asked for the Rule 706  
3 expert in the past but I was not there yet. And one of the  
4 reasons I wasn't there is you contracted to have this  
5 monitoring system in house, that was the agreement that you 09:18:53  
6 reached. And it seemed to me that I needed to enforce that  
7 agreement, to the extent that it could work, consistent with  
8 the Stipulation. And also it does implicate the Court's  
9 ability to do its role, and that is to monitor the monitors, to  
10 make sure that the performance measures are being met. And so 09:19:13  
11 I have been engaged in that process, a process that you all  
12 selected.

13 If it becomes so corrupt, if it becomes so tainted  
14 that it is not subject to being relied upon anymore, it so  
15 undercuts the Stipulation that it is a component of the 09:19:31  
16 Stipulation, would need to be modified. And that modification  
17 would be an independent auditor to go in and to review it.

18 I was anxious to see where the current allegations of  
19 improper monitoring in your most recent affidavit led, because  
20 the last time it was, I think, three quarters meritorious, a 09:20:01  
21 quarter maybe not, just in rough terms.

22 But it seems that also you may be getting better at  
23 this process of evaluating the monitoring, or worse, I don't  
24 know. But I wanted to see where this next one led. And then  
25 hadn't ruled out in my own mind the idea of proceeding to a 09:20:21

1 Rule 706 auditor as being a necessary component.

2 And so, I hear what you say, but I do think it's  
3 necessary for me to go through this process.

4 With respect to your staffing limitations, I  
5 understand that you may have some trepidation, because the  
6 ability to be paid for these hours for your staff is probably  
7 something that is a management decision that any law firm would  
8 make about whether or not they run the risk of not being  
9 compensated for devoting a lot of resources in a case.

09:20:40

09:21:02

10 And it is true that I have not resolved the issue of  
11 the attorney's fees application that would give you perhaps  
12 some comfort about where you stood with respect to these extra  
13 efforts.

14 The order that I think that is on the docket now, at  
15 least one that I believe I signed yesterday, doesn't  
16 definitively answer it, but it provides, I think, some guidance  
17 to you that I can augment here. And that is that it is my  
18 strong conviction that if your responsibility to assure  
19 compliance with this Stipulation engenders these kinds of hours  
20 to verify what is happening on the defendants' side of the  
21 case, that is compensable under the Stipulation.

09:21:19

09:21:44

22 And understanding that those words, because I am a  
23 trial court and not the Court of Appeals or the Supreme Court,  
24 not the final answer on whether or not you can get those fees,  
25 I understand that that is not yet money in the bank for you.

09:22:01

1           But nevertheless, my -- you should understand that at  
2     least from the trial court's perspective that those hours that  
3     you would devote to this process of double checking the  
4     monitors would be compensable.

5           To the extent that I'm weighing whether or not it's  
6     more efficient to have a Rule 706 expert versus the people in  
7     your office, who may or may not be in a better position to do  
8     that, I don't know, and maybe that's a decision for a different  
9     day. It may well be that the defendants would be more  
10    comfortable having it done by an independent person rather than  
11    having me vest entirely with assigning this additional  
12    responsibility so to speak to the plaintiffs.

13           But, again, that is something that is in my thought  
14    process. I am thinking about it, the 706 expert for the  
15    auditor. And I think I have already said to both sides on the  
16    record that one of the notions with respect to if there is any  
17    sanction imposed for failure to comply, those dollars could be  
18    used to pay for the expert to do exactly this, to confirm that  
19    the numbers that we're relying on are accurate.

20           All right.

21           MS. KENDRICK: Just --

22           THE COURT: Go ahead.

23           MS. KENDRICK: I'm sorry. Just on the issue of the  
24    hearing, I don't know if I really got to that.

25           We would welcome the chance to have Dr. Watson and

1 this other individual come and testify. We would just ask that  
2 prior to the hearing --

3 THE COURT: I'm sorry, excuse me.

4 MS. KENDRICK: Sorry. That prior to the hearing that  
5 we be allowed to get discovery so that we can find out if there  
6 are other similar e-mails going out from Corizon to providers  
7 and to medical staff making similar instructions.

09:23:50

09:24:08

8 THE COURT: All right. And I'm sorry to have  
9 interrupted what you said. I was handed a note that was an  
10 urgent matter.

09:24:31

09:24:54

09:25:11

11 So the blessing of having realtime court reporting is  
12 that although I interrupted you and diverted my attention, I  
13 can ask you to pause for a moment while I read what you just  
14 said.

15 What I would anticipate is that you would do what  
16 plaintiffs need to do in a case. And this is a bit of a  
17 different case because I'm not in the typical role of the  
18 neutral judge, I'm the enforcer of the Stipulation. And so I  
19 turn to the respective parties to assist the Court in that job  
20 when necessary.

09:25:11

21 And one of the things that I would like the plaintiffs  
22 to do, because of their familiarity with the prison system and  
23 with the case, is to identify witnesses that they believe would  
24 be the appropriate people, whether by a broad 30(b)(6) type  
25 designation or individual names.

1           And then you can present those to the defendants and  
2 see where they are, what the nature is with respect to what it  
3 will require, whether the contract that the State has with  
4 Corizon, if they're Corizon witnesses, whether that allows the  
5 State to be able to commit to having their presence in court,  
6 or whether if that's not the case whether we have to subpoena  
7 them. And if that's the case, then you let me know and then  
8 I'll issue the subpoenas after I've heard from both sides about  
9 whether or not it's appropriate to do so.

09:25:29

10           But I would like the plaintiffs to marshal the case,  
11 to verify or not. I can trust that perhaps the defendants will  
12 be doing their bit in our adversary process to try to do what  
13 they can to make sure that anything plaintiffs are presenting  
14 is tested by cross-examination and tested by challenging  
15 evidence.

09:25:44

09:26:03

16           But what I have here is certainly fair to describe as  
17 a prima facie case that I would like the plaintiffs to follow  
18 up on. And that means developing the presentation for our  
19 hearing in January and deciding what witnesses would be  
20 appropriate. If you need the Court's assistance in having  
21 their appearance, then you let me know, we have a method for  
22 doing that.

09:26:16

23           MS. KENDRICK: Thank you.

24           THE COURT: Mr. Struck.

25           MR. STRUCK: Yes, Your Honor.

09:26:28

1 I haven't had the opportunity to review the article  
2 that you came in very upset about. I don't know who this  
3 doctor is or -- I guess he's a former Corizon employee. I  
4 don't know --

5 THE COURT: It's a woman. 09:26:45

6 MR. STRUCK: I don't know anything about -- I just  
7 haven't read it.

8 THE COURT: Okay.

9 MR. STRUCK: But I will tell you this, I work very  
10 closely with the ADC monitoring bureau. They care very deeply 09:26:54  
11 about what they do. And they don't give Corizon free passes.  
12 I haven't seen any evidence of that. We haven't seen any  
13 evidence of that during the course of this Stipulation period.

14 THE COURT: Well, what may be happening then, giving  
15 you the benefit of every doubt, is that under the nose of the 09:27:16  
16 monitors the Corizon people are figuring out the way to do an  
17 end run around the monitors.

18 I mean, just to put it in the record as it stands in  
19 this unverified news report -- and Corizon has had an  
20 opportunity to respond to this because their response is quoted 09:27:43  
21 in the article as well.

22 I'm looking in the article to try to find the quote of  
23 where the Corizon employee said "beat the monitor."

24 But again, this is -- certainly no foundation is laid  
25 for this, but that's -- as I say, it's creating a prima facie 09:28:59

1 case perhaps. But we need to follow up on it because it is  
2 something that is not inconsistent with what other red flags  
3 have been blowing on the horizon in the wind.

4 But there were the words "beat the monitor."

5 And so that is something that the monitors themselves  
6 need to be fully informed about, because if they are the police  
7 officers, and they are people who they're supposed to be  
8 monitoring, and the monitored individuals are in a cobble to  
9 try to beat the monitors, the monitors need to know about that  
10 as well.

11 But -- and I also say this: It's hard for me to think  
12 that if there is this beat the monitoring program going on,  
13 that it would be -- it would still call into question the  
14 quality of the State's monitoring program if it didn't know  
15 about it. And -- because that would be the kind of thing you  
16 would expect the monitors to be able to know about.

17 Just one moment.

18 (Discussion off the record between the Court and courtroom  
19 deputy.)

20 THE COURT: Give me a moment to look at the calendar.

21 The problem is the January hearing date is the 10th,  
22 and that's probably too soon.

23 The potential of this issue, of the trustworthiness of  
24 the reporting -- and when I say that it's specifically and  
25 purposefully different words than monitoring, because the

1 reporting includes also what Corizon is putting into its charts  
2 and putting into information that the monitors would have  
3 access to and be evaluating.

4 The potential impact of this reporting issue is so  
5 great that it can affect all sorts of other issues that are 09:32:21  
6 pending, including, without limitation, the Court's order to  
7 show cause proceedings, in addition the defendants' motions to  
8 terminate certain measures from the Stipulation because of  
9 records of compliance. And so it makes sense to accord it a  
10 fair and thorough hearing. 09:32:51

11 And I'm vexed by the calendar. What we presently have  
12 scheduled is we have the 10th of January, and then we have the  
13 two days at the end of February, the 27th and 28th.

14 And I think that there are two options, one is to  
15 include it on the 27th or 28th. And the other option is to 09:33:45  
16 pick sometime between the 10th and the 27th and the 28th to  
17 address this particular issue of the credibility of the  
18 reporting.

19 What's plaintiffs' position on those choices?

20 MS. KENDRICK: Your Honor, we would propose doing it 09:34:04  
21 in late January or early February, in between. We anticipate  
22 that there will be plenty on the regular status hearing  
23 scheduled for the 10th, and then also on the 27th we're doing  
24 the contempt order to show cause.

25 THE COURT: Right. 09:34:20

1 Okay. Mr. Struck, do you have a view?

2 MR. STRUCK: Your Honor, I think later is probably  
3 going to be more appropriate, considering what the Court is  
4 wanting to look for. I imagine there's going to be a  
5 considerable amount of ESI searching for documentation to  
6 determine whether or not this is just a anecdotal one-time  
7 incident, whether there is any validity to it at all, or  
8 whether it's more widespread as the Court is concerned about.  
9 And that is not something that can be done overnight.

09:34:37

09:34:57

10 So our preference would be to push it to the 27th and  
11 28th of February.

12 THE COURT: If I do it at the end of January, given  
13 the holidays between now and then, I really am just affording  
14 two weeks for this document production, which is really  
15 insufficient. If I postpone it to the end of February, then I  
16 am adding significantly to what is perhaps already an  
17 overburdened calendar.

09:36:23

18 And so what I would think is the right thing to do is  
19 to set it for perhaps Thursday or Friday, the 8th or 9th of  
20 February.

09:36:49

21 Can you all look at your calendars and see if that  
22 could work to do it one of those days?

23 MS. KENDRICK: Both of those days would work for us,  
24 Your Honor.

25 MR. STRUCK: I'm available on the 9th.

09:37:07

1 THE COURT: All right. So at 9:00 a.m. on the 9th of  
2 February we will have the hearing on the issue of the  
3 credibility of the reporting.

4 I expect to be fully engaged and available on any  
5 discovery issues that arise. I want to hear about them, and I 09:37:26  
6 want to hear about them at the soonest instant, so that we are  
7 getting everything teed up in an appropriate way.

8 If you have issues and you cannot resolve it in the  
9 meet and confer, get me on the phone. Although I have some  
10 out-of-state and out-of-country travel in January, there's a 09:37:43  
11 telephone everywhere that I'll be. And so I will be readily  
12 available every single day seven days a week from now until  
13 then if issues arise.

14 Okay. All right. So that means we can proceed to the  
15 filing from the defendants of the October reporting for the 09:38:10  
16 performance measures, is what I would propose to start with  
17 this morning.

18 Let me ask this threshold question of the defendants.  
19 It looked to us on the document that you filed that it was only  
20 perhaps a scanned copy, which meant that it was a little bit 09:38:29  
21 cumbersome for us to use, we couldn't scan it -- we couldn't  
22 search it. And if I'm wrong about that, my apologies. But if  
23 I'm right, could I ask you in the future that when you file it  
24 that you do so consistent with our electronic filing manual,  
25 and that is file a version that is in a scannable pdf or Word 09:38:48

1 so that we can take advantage of that feature in accessing the  
2 document.

3 On the plaintiffs' side, have you had a chance to  
4 digest the reporting yet?

5 MS. KENDRICK: We've attempted to. Again, you know,  
6 we object to the fact that it was filed after close of business  
7 the night before the hearing. 09:39:04

8 We also kind of experienced the same problem last  
9 night and this morning trying to review and search for things  
10 on a non-OCR document. 09:39:18

11 But I do believe that we're able to go forward.

12 THE COURT: All right. Well, what it essentially  
13 includes is an overwhelming demonstration of compliance with  
14 performance measures. Is that fair to say?

15 MS. KENDRICK: No. 09:39:39

16 THE COURT: Okay.

17 MS. KENDRICK: No.

18 THE COURT: All right.

19 MS. KENDRICK: I mean, there's -- again, I don't know  
20 why they're doing this, but they've included performance  
21 measures that you've never found them non-compliant for, and  
22 then tout the fact that they're at 100 percent compliance,  
23 which is fantastic, but -- 09:39:44

24 THE COURT: So again, perhaps I've been hobbled by the  
25 fact that I'm rushing it too, that when it comes on the eve. I 09:39:58

1 was to bed last night when this happened, so I was up at 4:00  
2 going through it this morning. Or at least not when you filed  
3 it, but when I received notice of it, I missed the chance to  
4 take advantage of it last night. So I saw that it came in but  
5 already knew that I couldn't change my course of life.

09:40:21

6 So I was up at 4:00 looking at this morning. So I  
7 perhaps was mis -- misinformed by what you just pointed out,  
8 and that is, it may look to me that it's overwhelming if you  
9 include all the things that I've not been worried about. Is  
10 that essentially what you just said?

11 MS. KENDRICK: Well, there's --

12 THE COURT: It includes some things that I had not  
13 been worried about before. So if I look at it, it looks to me  
14 like the problem areas are more outliers. Is that what you're  
15 saying?

16 I was looking for a way to address this in an  
17 appropriate way rather than going through it and going through  
18 each one that is meeting the performance level, because it  
19 seems a little bit not worth doing in light of the fact that I  
20 don't know whether I can trust the numbers.

09:41:05

21 But maybe the right thing to do is to turn to  
22 plaintiffs and ask whether you have a list of areas of concern  
23 and use those as the destinations for our discussion at this  
24 moment.

25 MS. KENDRICK: Yes, Your Honor. Most of our

09:41:17

1 questions, in fact, I think all of them, are around areas where  
2 there's either continued non-compliance or there's a newer  
3 remedial plan, and we have questions.

4 And we share your interest in not going to through the  
5 Kabuki Theater of, you know, going through and reading plans 09:41:35  
6 and not knowing when they're implemented. So we're hoping that  
7 we can streamline this as well.

8 THE COURT: All right.

9 MS. KENDRICK: So the first one was on Performance  
10 Measure 11 at Eyman at page 4 of the Court filing. 09:41:44

11 They again talk about in their December 15th update  
12 plan, which is at page 6, that the non-compliance is due to  
13 documentation problems. And that their tracking this  
14 information and preliminary data for November indicates that  
15 all facilities are compliant. And so we're just unclear what 09:42:18  
16 this preliminary data is based upon.

17 THE COURT: Mr. Struck, or who on defendants' side?

18 MR. STRUCK: Yes, Your Honor.

19 This particular action plan was provided to us by  
20 Corizon. It's a Supplemental Corrective Action Plan with 09:42:38  
21 respect to the Eyman facility, which was at 78 percent.

22 And I will tell you we had some -- when I spoke to  
23 Corizon, the Corizon folks yesterday, there were some  
24 preliminary numbers -- in conjuncture with the ADC monitoring,  
25 there was -- there were some preliminary November numbers, not 09:43:03

1 very many. But on this particular Measure all ten facilities  
2 met it. Since we're talking about October numbers here.

3 THE COURT: Right.

4 MR. STRUCK: And so it's my understanding that they  
5 are tracking this daily in order to try and finally reach  
6 compliance with this particular Performance Measure.

09:43:17

7 And, of course, you know, pursuant to the Court's  
8 order, if there aren't medications available, they're supposed  
9 to go to Walgreens and get them.

10 It's something that is -- this is one of the original  
11 performance measures that they were found to be non-compliant,  
12 and it is subject to the Court's order that we're having a  
13 hearing about the end of February. It is on everyone's radar  
14 screen, and it is on Corizon's radar screen.

09:43:41

15 So the fact that their preliminary numbers will show  
16 that all of the facilities met compliance -- were compliant  
17 with this is positive.

09:44:04

18 THE COURT: All right. I don't know that there's much  
19 more to be said, because we are in the period where come the  
20 end of February we'll know what the actual numbers were and  
21 whether there will be a sanction. So we're in this time period  
22 where my words of remonstrations are probably less effective  
23 than the potential monetary threat that looms.

09:44:19

24 But, again, I have to drop the footnote that it all is  
25 subject to confidence that we can trust the numbers.

09:44:39

1 Anything else you want to say on this Measure,  
2 Miss Kendrick?

3 MS. KENDRICK: No, Your Honor.

4 THE COURT: Okay. The next one?

5 MS. KENDRICK: Sorry, I'm having to scroll through  
6 this.

09:44:48

7 THE COURT: That's fine.

8 MS. KENDRICK: I don't have a hard copy.

9 THE COURT: Take your time.

10 MR. STRUCK: Your Honor, I have -- I have a hard copy,  
11 if it would make it easier for --

09:44:58

12 THE COURT: Sure, please.

13 MR. STRUCK: -- Miss Kendrick to scroll through.

14 THE COURT: Sure.

15 MS. KENDRICK: Unfortunately my notes are on the pdf.

09:45:22

16 THE COURT: And I understand that that may --

17 MS. KENDRICK: I'm sorry.

18 THE COURT: Don't apologize. It's very difficult to  
19 have everything in line when you get it just the eve of the  
20 hearing. So take your time.

09:45:35

21 MS. KENDRICK: So the next one was on Performance  
22 Measure 15. And this is about the medication refusals.

23 And for the past two hearings we have raised the fact  
24 that the Corrective Action Plans kept referring to the fact

25 that people needed to be counseled by providers, and the Action

09:45:50

1 Plans were putting duties on providers. And we had observed  
2 that the Stipulation defines QHCP as a qualified healthcare  
3 professional, so it doesn't have to be somebody at such a high  
4 level.

5 And the past two months Mr. Bojanowski and the Corizon 09:46:09  
6 people said they would get back to us as to whether the  
7 Corrective Action Plan would be put on non-provider staff  
8 rather than burdening the very few doctors that they already  
9 have and nurse practitioners they have at the institutions.

10 THE COURT: And you haven't heard back, is that what 09:46:29  
11 you're saying?

12 MS. KENDRICK: What's that?

13 THE COURT: You haven't heard back about whether  
14 that's happened?

15 MS. KENDRICK: No, sir, not a word. 09:46:34

16 THE COURT: Do you know, Mr. Struck?

17 MR. STRUCK: Well, I do know that I was informed that  
18 the Director of Nursing is the one that's -- she's checking on  
19 a daily basis to make sure that this is happening with respect  
20 to -- 09:46:50

21 THE COURT: But you don't know who is doing the  
22 counseling?

23 MR. STRUCK: I do not know who is doing the  
24 counseling.

25 THE COURT: Would you make a note and ask 09:46:56

1 Mr. Bojanowski to let plaintiffs know whether or not it  
2 is -- again, this is something that is principally in your  
3 wheelhouse as to how to decide to do it. But I think the  
4 plaintiffs make a constructive comment, and that is, having  
5 heard that it appears that you're thinking that maybe providers 09:47:15  
6 needed to be the ones who were doing it, that that's not  
7 necessarily so.

8 MR. STRUCK: I can find out, Your Honor.

9 THE COURT: All right.

10 MS. KENDRICK: So the next one, Your Honor, is 09:47:24  
11 Performance Measure 35. And this is a Performance Measure that  
12 the Court is quite familiar with about the transfer of  
13 medications between the facilities. And you've included it in  
14 your order to show cause with regard to Eyman, Florence, Lewis  
15 and Tucson. 09:48:03

16 And unfortunately they continue to report  
17 non-compliance. Seventy-eight percent at Eyman. Eighty-five  
18 percent at Florence, so they're above. And okay, actually, no,  
19 Tucson is at 90, that's very good.

20 So I guess the question, they've included the new 09:48:34  
21 system and the new policy, they cut and pasted it into the  
22 Corrective Action Plan. But I don't know if they have an  
23 update on how this is working in terms of the daily tracking  
24 and the ultimate reporting that's going to come to the Court in  
25 February. 09:48:56

1 THE COURT: That was going to be my first question for  
2 Mr. Struck.

3 Do you have any update on anything past October on  
4 this one?

5 MR. STRUCK: I do not have an update on anything past 09:49:04  
6 October on this particular Performance Measure. Other than to  
7 say the -- I do have the name of the individual who the  
8 Department of Corrections has hired -- or has assigned as  
9 the -- to coordinate Corizon and ADC, and his name is Mark  
10 Versluis, V-E-R-S-L-U-I-S. I believe that he started in the 09:49:29  
11 beginning of November. And his job is to ensure coordination  
12 between security, who are transferring the inmates from  
13 facility to facility, and to make sure that the KOP and the  
14 D.O.T. meds are transferred and provided to the inmate,  
15 whether they have them when they arrive, make sure that they 09:50:00  
16 get them.

17 But I don't have current status with respect to how  
18 that's going. I requested that information, but I was -- they  
19 were unable to provide it to me.

20 MS. KENDRICK: The other thing, Your Honor, is at page 09:50:17  
21 79 of the filing, at docket 2506-1, for Lewis, they report no  
22 score for the institution and say that it's in the rebuttal  
23 process.

24 If you have an update on that one.

25 THE COURT: There is no October reporting for 35 for 09:50:45

1 Lewis. And it says it's -- as Miss Kendrick says, it's in the  
2 rebuttal process.

3 Do you have an insight as to what the challenge was  
4 there and where that stands?

5 MR. STRUCK: I can tell you that the October Lewis  
6 number, which is not listed on here, is 84 percent. I don't  
7 know what the -- where the rebuttal process stands, whether  
8 that was what the issue was or whether that was upheld or not.

09:51:19

9 THE COURT: So you have a piece of paper that tells  
10 you that the October for Lewis was 84? Is that what you just  
11 said?

09:51:34

12 MR. STRUCK: Yeah, it's my understanding that  
13 the -- that that was the score that's being -- the preliminary  
14 score that's being contested by Corizon.

15 THE COURT: I see.

09:51:48

16 MS. KENDRICK: So, Your Honor, actually I just  
17 realized as soon as I said it that they produced the CGARs to  
18 us last night, and so I looked and confirmed that it was at 84  
19 percent, according to what they gave us.

20 However, we raised this last month and this came up in  
21 the hearings, this whole issue of the rebuttals. Mr. Pratt  
22 represented last week that the rebuttal process is over by the  
23 10th of the month. It came out in the testimony that when  
24 these rebuttals happened and things were changed, that they  
25 were going to make an addendum. That actually was an item on

09:52:03

09:52:22

1 our agenda, item number 5.

2 I am looking at what they produced us last night  
3 that's Bates stamped ADCM1045147 for Performance Measure 35 at  
4 Lewis, and there's no addendum or indication looking at the  
5 face of the CGAR what was changed to get this final number of  
6 84 percent that was given to us last night.

09:52:42

7 THE COURT: Thank you.

8 It is true what Miss Kendrick just said that Mr. Pratt  
9 told us last month that if it was in the informal process there  
10 was no documentation about that. I expressed some concern  
11 about that. But then we were assured that if it was in the  
12 formal process that there was documentation.

09:53:00

13 Is that only when there is a final decision that's  
14 made that it's formally recorded, Mr. Pratt? Or is this an  
15 error that should have been reflected that actually a rebuttal  
16 had been asserted?

09:53:19

17 MR. PRATT: The results are -- there's not an addendum  
18 until these results are considered final. At that point IF  
19 there's a change there would be an addendum placed in there.

20 THE COURT: All right. So now my understanding is a  
21 little bit different. Because I did think that what you said  
22 is that things would have to be resolved by the 10th of the  
23 month, and then after that it would be reported, and that any  
24 challenge would have to be documented. But here we are --

09:53:35

25 MR. STRUCK: Your Honor, 84 percent is final. I

09:53:56

1 just -- Mr. Pratt just informed me that the numbers that were  
2 provided to Court and counsel with respect to the CGARs are  
3 final numbers. So 84 percent is final.

4 We -- this chart that we get is provided to us by  
5 Corizon's attorneys. So that's perhaps why it's not up to  
6 date. But it's my understanding that the 84 percent that is  
7 reported on the CGARs, the October CGARs, is a final number.

8 So the appeal must have been denied by ADC.

9 MS. KENDRICK: Well, I don't know --

09:54:15

10 THE COURT: I need to understand what you just said,  
11 Mr. Struck.

09:54:40

12 MR. STRUCK: Okay.

13 THE COURT: Did you say that document 2506, page 79,  
14 was a document prepared by Corizon and given to you?

15 MR. STRUCK: These documents are -- these graphs are  
16 prepared by the Corizon attorneys. And we go through it with  
17 them and make changes on it.

09:54:52

18 Yesterday I met with them and the Corizon folks and we  
19 added information to the -- some of the Corrective Action  
20 Plans, because the plaintiffs and the Court have expressed a  
21 frustration that some of these Corrective Action Plans in the  
22 past -- the Corrective Action are provided by Corizon.

09:55:13

23 THE COURT: I had no idea. I had no idea that the --  
24 that this work in progress that I've been working with  
25 Mr. Bojanowski on on this reporting was something that's being

09:55:31

1 generated by the contractor who's supposed to be monitored.

2 MR. STRUCK: It's provided to us in Word, and then we  
3 do make changes to it. We add to -- like, for example, there  
4 was -- there's additions to -- when I found out some more  
5 specific information with respect to the Corrective Action  
6 Plan, we added to -- that information to that.

09:55:48

7 But in terms of these graphs, that's something that we  
8 receive from Corizon.

9 But it -- and by way of explanation, that's probably  
10 why the 84 isn't on there, but yet it is reflected in the CGAR  
11 results that we provided to the Court and counsel.

09:56:09

12 THE COURT: I cut you off, Miss Kendrick.

13 MS. KENDRICK: So I get Mr. Struck seems very  
14 confident that there must not have been any change in the  
15 score. But, again, there's really no clarity, because last  
16 week -- or last month Mr. Pratt said that the addendums weren't  
17 being made, while they said in a court filing that they were  
18 going to start making addendums any time there was this formal  
19 rebuttal process going on so that things could be seen.

09:56:28

20 So, again, it's very hard to take with any confidence  
21 the trust us nothing's changed. Because I'm looking at  
22 something that's dated 11-29-17 done by a person who is one of  
23 the monitors at the facility. And as of December 15th,  
24 according to them, it was still in the rebuttal process, so we  
25 have no way of knowing what's been changed.

09:56:46

09:57:09

1 I certainly hope that Mr. Struck is correct and I can  
2 take him at his word on this that nothing changed. But it's,  
3 again, troubling for us.

4 Also we're slightly concerned to learn that Corizon is  
5 preparing the filings for the Court about how the Department is 09:57:26  
6 going to ensure compliance with the performance measures.

7 MR. STRUCK: Your Honor, the CGARs are prepared by  
8 ADC. And the CGARs that were provided to Court and counsel  
9 have the 84 percent.

10 These documents are given to us in a draft form, but 09:57:43  
11 we -- like I said we -- it's in a Word format, so we, you know,  
12 we make sure that it has -- I've been in the courtroom where  
13 the Court -- where the Judge has expressed displeasure with  
14 some of this information being inaccurate, so I wanted to make  
15 sure it was accurate. So I met with the Corizon folks twice to 09:58:04  
16 go through this stuff to make sure it was accurate and to add  
17 information to provide the plaintiffs and the Court, additional  
18 information with respect to some of these performance measures  
19 that aren't -- that were not in compliance, to explain what  
20 Corizon was doing to try and get it -- and ADC was insisting 09:58:23  
21 they do to try and get in compliance.

22 THE COURT: A couple of take aways here. The first is  
23 that I appreciate having the information now that, as I say, is  
24 new information, and that is the provenance of these documents  
25 that we're discussing right now. So that's informative to me. 09:58:43

1           The second take away is that it does augment what had  
2           been my growing belief that it was appropriate that there  
3           should be any -- that if there should be any change in the CGAR  
4           data, either pursuant to the informal rebuttal process or the  
5           formal rebuttal process, that that all should be logged  
6           similarly to any way that a patient progress note is logged.  
7           If the doctor records something that turns out not to be  
8           accurate, they don't go in and erase the old one, they then put  
9           at the bottom of the note, the previous statement is corrected  
10          to reflect this.

09:59:07

09:59:30

11           And so that kind of bread crumb trail that is so  
12          intrinsic to proper auditing I think should be present in this  
13          process as well.

14           Whether we -- exactly how that is put in place,  
15          whether it should be in the Monitoring Manual or some  
16          modification otherwise, an instruction of the Court, for  
17          example, I am continuing to contemplate that and consider it,  
18          thinking that it may be necessary.

09:59:48

19           Go ahead, Miss Kendrick.

20          MS. KENDRICK: That's it on that measure.

10:00:08

21          THE COURT: You may go ahead then.

22          MS. KENDRICK: So the next one was Performance Measure  
23          39, which is about routine providers being seen -- provider  
24          referrals being seen within 14 days.

25          At Florence, which is at page 92 of the filing, the

10:00:22

1 basis for non-compliance at the institution, I have read it  
2 several times, and granted it was late at night, but I still  
3 don't quite understand what the problem was. And so hopefully  
4 Mr. Struck or Mr. Pratt or somebody could explain.

5 THE COURT: Which paragraph are you talking about that 10:00:44  
6 you had trouble with?

7 MS. KENDRICK: It's at the bottom of page 92. It  
8 says, basis for non-compliance.

9 THE COURT: There was an issue experienced with the  
10 manner in which routine provider referrals requiring an 10:00:53  
11 appointment were being scheduled by one staff person at this  
12 facility. The staff member was miscalculated the 14 day time  
13 clock starting on the day after the referral was made, rather  
14 than on the same day it was made, leading to referrals being  
15 addressed one day late. 10:01:14

16 MS. KENDRICK: So I guess, is the point that you guys  
17 are scheduling them to be exactly 14 days from the date of  
18 referral? Or why would being off one day be the cause of all  
19 the problems?

20 MR. STRUCK: It's my understanding that there was 10:01:37  
21 somebody that was miscalculating it so these things were  
22 occurring in 15 days, within 15 days, which obviously doesn't  
23 meet the 14-day threshold. That was one of the issues.

24 In addition, there had been -- prior to this there had  
25 been a backlog at the facility that has been -- that's no 10:01:57

1 longer in existence after the additional staff had been hired  
2 in October.

3 So those were the two issues identified as to why  
4 Florence was having trouble meeting the 85-percent threshold on  
5 Performance Measure 39. 10:02:24

6 MS. KENDRICK: What was the additional staff that was  
7 hired in October?

8 MR. STRUCK: Your Honor, I don't have the information  
9 with respect to the additional staff at my fingertips. I  
10 thought it was in here somewhere, but I will find out at the 10:03:29  
11 next break and let you know.

12 THE COURT: Do you know when they were hired in  
13 October?

14 MR. STRUCK: It was my understanding that they were  
15 hired in October. 10:03:37

16 THE COURT: Do you know when they started?

17 MR. STRUCK: Wait. Well, I have -- it shows -- if you  
18 look at the supplemental information, it looks like there were  
19 two nurse practitioners hired on October 2nd, an additional  
20 M.D. hired on October 5th. If you look above -- 10:03:53

21 THE COURT: I see, I see.

22 MR. STRUCK: Okay. I think that is -- those are  
23 the -- that's the additional staff that helped eliminate the  
24 backlog.

25 MS. KENDRICK: Is that additional or is it replacing 10:04:07

1 vacant positions?

2 MR. STRUCK: I'm sure it was replacing vacant  
3 positions.

4 THE COURT: And yet on October 9th, according to the  
5 KJZZ story, there's a memo from Daniel Segó:

10:04:27

6 Hi team. As you all know we are currently  
7 working towards catching up on our backlog of both  
8 HNR and Chronic Care patients totaling  
9 approximately 800. We are in need of all available  
10 provider staff to assist in, quote, Operation  
11 Backlog, close quote. We have the availability and  
12 need at both Florence and Eyman, and we encourage  
13 you to let us know when -- where you would like to  
14 work the overtime shifts and we will make the  
15 arrangements.

10:04:45

10:05:01

16 I greatly appreciate any and all time you are  
17 willing to spend assisting us with our patient care  
18 needs. You will be compensated for your time. And  
19 who couldn't use a little extra cash around the  
20 holidays? Thank you in advance. And I look  
21 forward to the response.

10:05:14

22 Best regards, Daniel Spencer Segó.

23 Facility Health Administrator.

24 Arizona State Prison Complex - Florence.

25 Do you have any data post October with respect to 39

10:05:42

1 at Florence?

2 MR. STRUCK: I do not.

3 THE COURT: And this issue is one that's also  
4 implicated by the HNR Box Removal Program because it does  
5 affect the number of days. 10:06:12

6 All right. Your next Measure?

7 MS. KENDRICK: Yes, Your Honor, Performance Measure  
8 42, which is about follow-up sick call encounters occurring  
9 within the time frame specified by the medical provider.

10 So Eyman is at 35 percent this month, going down from 10:06:31  
11 49 percent. At the bottom of page 104 is the Corrective Action  
12 Plan. And I'm trying to look at my notes here.

13 Oh, so I guess it's midway on page 104, it's in  
14 regular font, it's not bold. It says that:

15 On or after December 15th Corizon compliance 10:07:03  
16 monitor shall review an appropriate sample of  
17 entries on the logs to evaluate and assess  
18 compliance with the new policy and procedure. Any  
19 and all compliance deficiencies discovered during  
20 this monitoring exercise shall be addressed by site 10:07:19  
21 leadership in the form of providing additional  
22 training to those providers associated with  
23 deficiency findings.

24 So since this was supposed to be done, I don't know if  
25 it's been done yet, if there's any update on what this review 10:07:32

1 by the compliance monitors have found.

2 THE COURT: It will be interesting to see whether or  
3 not the providers are actually able to schedule the follow-up  
4 in light of the staffing issues that seem to be suggested both  
5 with respect to the information that we have from the KJZZ  
6 story and also from the reporting numbers here, just so  
7 abjectly poor at 35 percent, 47 percent, 66 percent.

10:08:15

8 And I gather you don't have any real-time data in the  
9 last five days.

10 MR. STRUCK: I don't have any real-time data on that.

10:08:45

11 I was informed that one of the problems was that the  
12 providers weren't consistent in ensuring that these follow-up  
13 appointments were being scheduled. So a CNA, a certified  
14 nursing assistant, has been tasked with actually having that  
15 job, to make sure that the order from the provider and -- is  
16 taken and a follow-up is scheduled.

10:09:05

17 The Director of Nursing and the scheduler are looking  
18 at this daily. But I do not have any real-time information  
19 with respect to how that's going.

20 MS. KENDRICK: So I guess I would hope that they have  
21 nursing staff to do the follow-ups.

10:09:29

22 I'm sorry, Your Honor, just to go back a couple pages,  
23 I just realized this as we were flipping through. There's no  
24 data reported for Performance Measure 39 at Perryville. It's  
25 at page 96 of the filing. I checked the CGAR that we got last

10:09:44

1 night for this Performance Measure, and it shows 77 percent  
2 compliance with this measure.

3 And again, if this was one that was in the rebuttal  
4 process, the CGAR that we were given, which is Bates stamped  
5 ADCM1045194, has no indication of any changes being made. 10:10:08

6 Since it's 77 percent, we would also ask what the  
7 remedial plan is for Perryville for this measure.

8 THE COURT: The first question is whether Mr. Pratt  
9 knows whether this one is now concluded from the rebuttal  
10 process and we can take the 77 number, or whether the rebuttal 10:10:29  
11 process still seems to remain open.

12 Do you know?

13 MR. STRUCK: The 77 percent number is a final number  
14 that --

15 THE COURT: All right. And what would defendants 10:10:40  
16 propose to do about correcting this problem and identifying its  
17 cause?

18 MR. STRUCK: You know, I am not sure what -- I did not  
19 get a remedial plan from Corizon. But in looking at PM 39, it  
20 looked like Perryville was in compliance for -- 10:10:56

21 THE COURT: They were, yeah.

22 MR. STRUCK: -- six months in a row. So I'm not sure.  
23 I have to find out what the reason behind the falling from 94  
24 percent to 77 percent was. And I don't have that information.

25 MS. KENDRICK: But we would note that, according to 10:11:26

1 their November staffing report, which was filed -- we filed it  
2 last night at docket 2509-1, on page 7 it shows that the  
3 Medical Director position at Perryville is staffed at 80  
4 percent, and the staff physician positions are at 80 percent  
5 full-time equivalent. 10:11:43

6 So we would express a concern that it perhaps is  
7 rooted in the fact that they're not at full staffing at the  
8 physician and Medical Director level.

9 THE COURT: That would be a reasonable conclusion.

10 All right. Your next one? 10:11:57

11 MS. KENDRICK: So Performance Measure 42 at Lewis,  
12 which is page 106 of their filing, they show 66 percent  
13 compliance for the month. The new Corrective Action Plan as of  
14 last week says that the training is being done for nurses on  
15 the requirements. It also says that the Assistant Directors of 10:12:31  
16 Nursing are pulling data related to this issue daily to send to  
17 providers.

18 And then the final sentence is written in the passive  
19 voice and says: Further, the data is checked every night at  
20 10:00 p.m. to prompt follow-up. 10:12:48

21 And so our question would be, checked by whom?

22 THE COURT: Do you have an answer to that question?

23 MR. STRUCK: Yes. It's my understanding it was the  
24 Assistant Director of Nursing. But I will get confirmation on  
25 who is checking at 10:00 p.m. 10:13:11

1 THE COURT: Give me just a moment.

2 MS. KENDRICK: So the next one we have questions about  
3 is Performance Measure 46 at Eyman, which is at page 118 of  
4 this filing. And they show 60 percent compliance.

5 And then on page 119 is the supplemental Corrective  
6 Action Plan, which states that there's a backlog in having  
7 providers review and act on diagnostic and pathology reports.

10:14:03

8 And then it says, providers were only reviewing their own  
9 ordered diagnostic and pathology reports and were not also  
10 reviewing the reports sought by other providers.

10:14:29

11 The Corrective Action Plan states that on-duty  
12 providers will be assigned to an individual yard at the  
13 facility. Providers are now responsible for reviewing all  
14 diagnostic and pathology reports generated for the patients at  
15 an assigned yard, including those requested by other providers.  
16 This supplemental Corrective Action Plan was implemented in the  
17 beginning of November 2017.

10:14:45

18 So a couple of questions or comments coming out of  
19 this Corrective Action Plan.

20 First of all, our understanding was that providers  
21 were assigned to an individual yard at the facility unless  
22 there was a shortage of providers and then they had to go to  
23 multiple yards.

10:15:01

24 The second observation is one that our consulting  
25 expert, Dr. Wilcox, has shared with us before that the best

10:15:19

1 practice is that the provider who orders a report should be the  
2 same person who reviews the report, because they know why they  
3 ordered the report in the first place.

4 You know, obviously if that person is no longer  
5 working there, then someone's going to have to review it. But 10:15:34  
6 I guess we just had some questions about why that is becoming  
7 the practice and why it's not the situation where the person  
8 who orders the report is reviewing the report.

9 THE COURT: Mr. Pratt, do you have any observations  
10 there? 10:15:57

11 (Discussion held off the record.)

12 MR. PRATT: Your Honor.

13 THE COURT: Yes.

14 MR. PRATT: It may not be the case where it's simply  
15 the provider that ordered the report when it comes in. In a 10:16:10  
16 lot of cases you also have to consider the inmate movements  
17 going from one facility or one yard to another when that report  
18 does come in. So it's not going to be the same provider that  
19 is actually hands on with that inmate at the time.

20 THE COURT: Okay. Miss Kendrick, can I go back to 42 10:16:30  
21 for a moment?

22 MS. KENDRICK: Of course, Your Honor.

23 THE COURT: Is my recollection correct that you  
24 focused on Lewis and not on the other facilities, or did you  
25 address the other facilities as well? 10:16:45

1 MS. KENDRICK: I think we looked at Eyman and Lewis.

2 THE COURT: Did you? All right. Thank you.

3 Because I was going back to my notes from last month,  
4 and I guess it looked to me like there had been a dialogue with  
5 the Corizon people to make sure that the training was in place,  
6 that this should have been reflected even in October.

10:17:13

7 No, that's not right, it's on November 1. So November  
8 1 was the new oversight. Okay. Never mind then. Thank you.

9 You may go.

10 MS. KENDRICK: So Performance Measure 46, again  
11 reporting 65 percent compliance at Florence. This Performance  
12 Measure is part of your order to show cause at Eyman, Florence,  
13 Perryville and Tucson, so we're concerned that the data is not  
14 showing great improvement.

10:17:39

15 On the Lewis one, which is at page 121, the  
16 supplemental information is referring to intake nurses and  
17 communicating that people be seen upon their transport to the  
18 Lewis facility before they are taken to their unit. But it's a  
19 little unclear how -- whether the source of the problem is  
20 people that were coming from other prisons, or what the  
21 situation was there.

10:18:03

22 THE COURT: Do you have an answer on that?

23 MR. STRUCK: Yeah, I think that -- it's my  
24 understanding the issue is when inmates are transferred from  
25 complex to complex, that at least at Lewis there had been

10:18:30

10:19:18

1 issues with respect to whether or not the providers at the  
2 Lewis facility were -- knew that they needed to be reviewing a  
3 diagnostic report or a pathology report that might have  
4 occurred at a prior -- when they were at a prior facility.

5 And so I think that it's my understanding that 10:19:44  
6 the -- this particular action plan by Corizon is to try and  
7 ensure, to catch the patients that are being transferred to  
8 make sure that this Performance Measure is being met.

9 THE COURT: Do you have any more current data than  
10 October? 10:20:09

11 MR. STRUCK: I do not.

12 THE COURT: I guess that's puzzling to me why you  
13 don't. Because I guess if I were the defendant in this case  
14 and I was sitting in the middle of December and I knew that  
15 each one of these would cost me \$1,000 if it wasn't happening 10:20:20  
16 in December, and I had October data that suggested that I was  
17 missing the boat here, and that this could be very costly for  
18 me, I would really have my fingers on that pulse, I'd know  
19 about it.

20 MR. STRUCK: I'm not disagreeing with you, Your Honor. 10:20:36

21 THE COURT: But you don't. You don't --

22 MR. STRUCK: Not -- on some of them I do. On this one  
23 I don't. And I don't have the answer for you as to why I  
24 don't.

25 THE COURT: All right. 10:20:48

1 MS. KENDRICK: Your Honor, just one other observation.  
2 The CGARs that we got last night for Lewis, I was looking at  
3 this Performance Measure trying to get some more information,  
4 and observed that there seems to be a problem similar to one  
5 that we identified in the letter that was attached to my  
6 Declaration regarding the September CGARs, and that's the issue  
7 of reviewing reports and actions for the month that's not being  
8 reviewed.

10:21:05

9 So, for example, this is the October CGAR, it's Bates  
10 number ADCM1045151, and it refers to a non-compliance file  
11 where the results were received on September 20th and reviewed  
12 September 26th. And again, I'm not quite sure why that would  
13 be included in the sample for an October performance review.

10:21:22

14 THE COURT: I can't figure out a reason.

15 As you just listened to that description, Mr. Pratt,  
16 do you have any idea why that would be so?

10:21:52

17 MR. PRATT: I don't, Your Honor.

18 THE COURT: All right. Thank you.

19 MS. KENDRICK: So on Performance Measure 46 for  
20 Phoenix, which is a couple pages later, at page 123. This  
21 Performance Measure is about medical providers reviewing  
22 diagnostic reports, but on this document on the basis for  
23 non-compliance it states that the psychiatrist on staff did not  
24 understand the process for reviewing diagnostic reports and  
25 acting upon them.

10:22:17

10:22:38

1           So it's a little unclear why we have psychiatrists  
2 reviewing diagnostic reports, and how that's relevant to a  
3 Performance Measure that's about medical procedures and  
4 reports.

5           (Discussion off the record between defense counsel.)

10:23:23

6           MR. STRUCK: Your Honor, I'm going to have to find out  
7 some additional information to answer that question.

8           THE COURT: And I gather Dr. Taylor or Mr. Pratt have  
9 no ready response to it, on the face of it?

10          MR. STRUCK: That's correct.

10:23:47

11          THE COURT: All right.

12          MS. KENDRICK: So I wanted to go to Performance  
13 Measure 47, which is at docket 2506-2, page 3.

14          Eyman is listed as 60 percent. This is a Performance  
15 Measure and institution that's included in your order to show  
16 cause for contempt, along with multiple other facilities;  
17 Florence, Lewis, Perryville, Phoenix and Tucson. And this is  
18 an issue which we've discussed ad nauseam for most of the year  
19 about communicating the results of the test.

10:24:27

20          And at the bottom of page 3 the basis for  
21 non-compliance says that there were, quote, issues previously  
22 experienced in terms of how diagnostic results could be  
23 communicated and delivered to an inmate upon request.

10:24:47

24          And the question is, what are the issues? Because our  
25 understanding was that this new process was put into place

10:25:08

1 several months ago for communicating diagnostic results to  
2 inmates.

3 THE COURT: So we have two questions here. The first  
4 one, the one you just raised, what is the modification?  
5 Because it just says there's -- the diagnostic results, the RN 10:25:28  
6 is now tasked with immediately providing the results to an  
7 inmate. We don't know how that's happening, what is the  
8 method.

9 And the second is, it says it's being tracked on a  
10 daily basis. And that leads to the question, do we have 10:25:42  
11 real-time data on where we stand yesterday, for example?

12 MR. STRUCK: The answer to question number two, I  
13 don't have real-time data.

14 THE COURT: Do you have any update at all after the  
15 implementation of the program the third week of November? 10:25:58

16 MR. STRUCK: I do not.

17 THE COURT: All right.

18 MS. KENDRICK: All right. We would just observe that  
19 Florence also looked problematic at 46 percent, Lewis at 52  
20 percent, and Tucson at 75 percent. So we hope that perhaps at 10:26:12  
21 the January 10th hearing we might have a sneak peak of some of  
22 the real-time data, as we had requested that the December  
23 real-time data be provided at that hearing for those measures  
24 that were included in your order, Your Honor.

25 THE COURT: Right. Well, it seems that if it's being 10:26:37

1 tracked on a daily basis, that is as difficult as forwarding an  
2 e-mail to let us know. I mean, obviously I'm most interested  
3 in compliance with the Stipulation and compliance as  
4 expeditiously as possible. And I'm limited by the delay in the  
5 data that is a natural feature of the process. But when that 10:27:01  
6 natural feature of the process is addressed by daily tracking,  
7 it is certainly much more useful for me to have that  
8 information, and I would encourage it to be produced.

9 With respect to the first question, Mr. Struck, do you  
10 know what is the new method that the RNs are using? 10:27:24

11 MR. STRUCK: I'm going to have to find out what  
12 actually the RN is doing.

13 THE COURT: I see. I guess that seems to me a pretty  
14 important component here, consistent with really the drill down  
15 that I have engaged in on a monthly basis. I mean, tasked with 10:27:40  
16 immediately providing these results to an inmate, that could be  
17 everything from immediately walking it over to the inmate in  
18 his or her cell, to other methods that have been communicated  
19 to me in the past, that apparently were not done, and that is  
20 using the mailbox rule and immediately putting it in the inmate 10:28:09  
21 mail. But I've been told that that doesn't work for a number  
22 of reasons.

23 So the bottom line of this comment is, I'm surprised  
24 that we don't have an answer to both of these questions at this  
25 moment at this time. 10:28:26

1 MR. STRUCK: Your Honor, I'm documenting these  
2 questions. I will get an answer to the Court and to the  
3 plaintiffs.

4 THE COURT: Right. But that's not really helpful in  
5 one way, because we have these monthly meetings to try to cut 10:28:37  
6 as much time as we possibly can out of the delay process.  
7 Because if I wait until the next -- to the next time that we  
8 talk about it, I'm 30 days, usually, out from when we last  
9 talked about it. And it is anything but expeditious to do it  
10 that way. 10:29:00

11 And so I've been trying to drill down, trying to nail  
12 people to firm commitments, as I told Mr. Bojanowski last month  
13 using the metaphor of keeping feet to the fire. I mean, that's  
14 really what I try to do. And if we don't get the answer right  
15 at this moment, the feet grow cold. 10:29:17

16 MR. STRUCK: My intention is that as soon as there's a  
17 break, to send these questions out and try to get an answer  
18 today.

19 THE COURT: Okay.

20 MR. STRUCK: And I apologize. But I can't -- I mean, 10:29:28  
21 I can anticipate what some of the questions are going to be.  
22 And I did. But I didn't -- I still -- I couldn't get an answer  
23 for you, because I made an attempt. Some of these questions I  
24 just didn't anticipate, but I can get the answer.

25 And I understand the Court's desire to -- we're 10:29:44

1 talking about it now, you'd like to have the answer now. But I  
2 don't have the person from Florence that we're going to have to  
3 ask this question here in the courtroom, so I can't answer it.

4 THE COURT: All right. Thank you.

5 We'll take a ten-minute break at this moment and then 10:30:01  
6 we'll get back to it. Thank you.

7 (Recess at 10:30 a.m., until 10:44 a.m.)

8 THE COURT: A couple of things, the Court collecting  
9 its thoughts during the break. It makes sense, I think, for us  
10 to set a deadline at the very start so that people can 10:45:02  
11 understand when the documents would need to be designated for  
12 the February hearing on the reporting.

13 I just want to make sure that people do feel that they  
14 have a deadline in place, so that they know at that deadline  
15 who the plaintiffs believe the list of witnesses should be and 10:45:34  
16 the document categories that the plaintiffs believe should be  
17 produced for the hearing.

18 And it would seem to me that an appropriate deadline  
19 for that would be maybe the end of the second week of January.

20 What do you think about that, Miss Kendrick? 10:45:52

21 MS. KENDRICK: So you're saying for production of  
22 documents and --

23 THE COURT: That would be the deadline for you to  
24 designate the witnesses that you believe, so that you are  
25 putting notice on anybody who has responsibility for those 10:46:04

1 witnesses, by that date. And then also you would be serving by  
2 that date your requests for production of documents, so that  
3 you would have enough time to allow for the responding parties  
4 to collect those documents and for any issues to be resolved,  
5 and also allow enough time for you to digest them. 10:46:29

6 And then once that date happens, then it would seem to  
7 me --

8 Unfortunately I don't have a calendar. I do now.  
9 Good. 2018.

10 MS. KENDRICK: So, Your Honor, kind of working 10:46:56  
11 backwards from that date, the 9th, we agree that we would want  
12 to give them the list of names. But depending on what we --

13 THE COURT: You need a deadline to have the response;  
14 right.

15 MS. KENDRICK: Right. And we would also need to 10:47:12  
16 potentially supplement who we were going to call based upon  
17 what we get in the document production.

18 So working backwards what we would propose is that we  
19 get our request to them no later than January 12th, which is  
20 four weeks before the hearing. They provide all responsive 10:47:27  
21 information no later than the 26th. And then Friday the 2nd,  
22 one week before, would be the final day for any supplemental  
23 witnesses based on reviewing documents.

24 THE COURT: And defendants' view on that schedule?

25 MR. STRUCK: Your Honor, I don't think that's 10:47:49

1 going -- I mean, I haven't seen what their document request is,  
2 but I suspect that there's going to be a significant amount of  
3 ESI. Probably, based on the Court's comments, it's going to  
4 have to come from Corizon. And I don't even know what kind of  
5 document retention system they use, whether they -- you know,  
6 how easy it's going to be to get it from them. So I'm a little  
7 concerned about that short fuse.

10:48:05

8 To agree on search terms, agree on -- I just think  
9 we're going to need a little more time than that.

10 THE COURT: Miss Kendrick, would it be possible to  
11 push you all to the 5th of January as the date that you get  
12 this -- these requests over to the defendants and to anybody  
13 else?

10:48:20

14 MS. KENDRICK: Yes, we could do that.

15 However, I would just note that we would like a firm  
16 deadline for all discovery to be in, and for defendants to  
17 produce it on a rolling basis rather than waiting until the  
18 last piece of paper has arrived before producing anything to  
19 us.

10:48:34

20 So 26th is the absolute deadline for them to produce  
21 responsive documents, but that they start doing it sooner, then  
22 we could do it on the 5th.

10:48:47

23 THE COURT: All right. So we'll set the 5th for the  
24 date for the request for production and for the witness list  
25 from plaintiffs to be produced.

10:49:04

1           And then we'll set a response deadline of the 26th of  
2     January.

3           And also the requirement that in good faith and with  
4     good deliberate action, that the plaintiffs (sic) produce  
5     documents on a rolling basis rather than accumulating them for  
6     service on the date of the 22nd (sic). If they become  
7     available to counsel here sooner, then they should produce  
8     those to plaintiffs so that they can have the time to digest  
9     them. That seems to be a fair accommodation of the respective  
10    parties' positions on this issue.

10:49:19

10:49:40

11           MR. STRUCK: And, Your Honor, I do want to point out,  
12    I do want to mention, because Miss Kendrick is implying that we  
13    don't do that, that we data dump them. We don't do that. When  
14    we can, we produce on a rolling basis, there was really no need  
15    for you to order that. And it's -- I'm --

10:49:55

16           THE COURT: I don't know, were you here last month  
17    where I heard about -- it sounded to me, looked to me like it  
18    was not a rolling basis, at least in one instance. It may be  
19    that overall you're doing exactly that. But I'm not making it  
20    up.

10:50:12

21           MR. STRUCK: And understand that sometimes we can't,  
22    we're not able to do it. But when we can, we do,  
23    because -- and we always offer to do that when we can.

24           THE COURT: All right. Good.

25           And I maybe wasn't clear, but with respect to the

10:50:25

1 status report with the graphs that's not in an OCR form that  
2 we're using today, if you could refile that so we would have  
3 this one --

4 MR. STRUCK: We will, Your Honor.

5 THE COURT: Okay. Thank you. 10:50:43

6 MR. STRUCK: And do you -- do you have additional  
7 things --

8 THE COURT: No, go ahead.

9 MR. STRUCK: I was going to say, during the break I  
10 got some answers to some of the questions that have been asked 10:50:50  
11 by the Court and counsel.

12 THE COURT: All right.

13 MR. STRUCK: Not all of them, but some of them. I  
14 only had a limited amount of time.

15 THE COURT: Okay. 10:50:58

16 MR. STRUCK: With respect to Performance Measure 15,  
17 there was a question, I believe Miss Kendrick wanted to know  
18 who was doing the counseling. And that would be either an LPN  
19 or an RN who is doing the counseling on Performance Measure 15.

20 With respect to Performance Measure 39, I wasn't fully 10:51:18  
21 able to understand why Perryville dropped to 77. And I'll get  
22 to the bottom of that. But I can tell you I was informed by  
23 the FHA -- because I spoke to the FHA at Perryville on the  
24 break, and was told that the preliminary numbers that had been  
25 shared with the FHA show that they were at 92 percent in 10:51:49

1 November. So that's gone up.

2 On Performance Measure 42, Miss Kendrick wanted to  
3 know who at Lewis was checking daily at 10:00 p.m. to prompt a  
4 follow-up. And it's the FHA, Kelly Rogers, who's doing that.  
5 And that's Performance Measure 42. 10:52:23

6 THE COURT: Thank you.

7 MR. STRUCK: And on Performance Measure 47, I believe  
8 it was Florence. The question was, how is the RN communicating  
9 the results of the diagnostic study to the inmate when the  
10 inmate requests it. And it's my understanding that they're 10:52:44  
11 actually -- when the inmate request -- is requesting it, comes  
12 in with the HNR requesting it, they immediately print off the  
13 results and hand it to the inmate, the RN does.

14 THE COURT: Okay.

15 MR. STRUCK: And those -- the other questions I'll get 10:53:06  
16 answers to, I think there were three other questions.

17 THE COURT: Okay.

18 MS. KENDRICK: Thank you.

19 THE COURT: I interrupted Mr. Struck when we took the  
20 break. I don't know whether you had finished or whether we 10:53:20  
21 were able to move forward with what you were saying.

22 MR. STRUCK: I -- I don't remember what I was saying.

23 THE COURT: All right.

24 MR. STRUCK: It mustn't have been very important.

25 THE COURT: All right. Miss Kendrick? 10:53:35

1 MS. KENDRICK: So I think we were finishing up  
2 Performance Measure 47. I note that at page 12 of the filing  
3 it shows that it's in the rebuttal process. I reviewed the  
4 CGAR that we got last night for Winslow, and it showed zero  
5 percent for Performance Measure 47.

10:53:54

6 THE COURT: Do we know if that's a final number,  
7 Mr. Pratt?

8 MR. PRATT: Yes, Your Honor.

9 MR. STRUCK: That is final.

10 MR. PRATT: They were zero for one.

10:54:10

11 MR. STRUCK: There was only one inmate that fell under  
12 this particular Performance Measure --

13 THE COURT: And you didn't get that one right.

14 MR. STRUCK: -- and they did not meet it.

15 MS. KENDRICK: All right. So Performance Measure 49  
16 is the denials of requests for specialty service being  
17 communicated to the patient. And Tucson is showing 76 percent  
18 at page 20. The basis for non-compliance it states was due to  
19 the departure and on boarding, I guess that means the training,  
20 of a new clinical coordinator in mid October and turnover of  
21 several providers.

10:54:29

22 And it states that two doctors have been hired. I  
23 just want to confirm that those are actually M.D.s or if  
24 they're nurse practitioner providers, if Mr. Pratt or anybody  
25 knows.

10:54:55

10:55:15

1 MR. STRUCK: I was told it was two new medical  
2 doctors, but --

3 (Discussion off the record between defense counsel.)

4 MR. STRUCK: Definitely one medical doctor. We'll  
5 check on -- make sure what the other provider is. 10:55:42

6 MS. KENDRICK: Okay. Because the November report for  
7 staffing that we filed at docket 2509-1, page 10, shows that of  
8 the 3.5 staff physician positions, there's a .75 physician  
9 filled in November. The October report showed zero physicians.  
10 So that appears that there's only three quarters of a M.D. 10:56:05  
11 hired in November.

12 I also don't know if Mr. Pratt or anybody knows if  
13 these are full-time M.D.s or if they are part-time, the ones  
14 who have been hired.

15 THE COURT: Do you happen to know, Mr. Pratt? 10:56:25

16 MR. PRATT: I do not.

17 THE COURT: All right. Well, the fact that we don't  
18 know that what is said here is true, that Corizon has hired two  
19 new M.D.s, when we have Corizon staff and Corizon lawyers in  
20 the courtroom, we have ADOC staff and ADOC lawyers in the 10:56:48  
21 courtroom, and we have a document that the lawyers from Corizon  
22 produced --

23 MR. STRUCK: If I may interrupt, it does say that the  
24 second M.D. was hired in December 4th, so that wouldn't  
25 necessarily show up on the November staffing report. 10:57:05

1 THE COURT: Well, it says who started December 4th. I  
2 don't know anybody who's hired on the 1st of December and  
3 starts on the 4th. Maybe that happens in some other world.  
4 But again, it may be my bet that it was not a December -- maybe  
5 it's only reported in the staffing report, that could be. 10:57:24  
6 You're right, that's possible.

7 Okay. I just -- it's troubling to me that it's the  
8 Corizon lawyers who are producing this document, not the  
9 Corizon people who are the contractors, and not the ADOC staff  
10 who are producing the document that we're using. 10:57:44

11 So I'm worried that what I'm receiving is a lawyered  
12 document rather than an actual depiction of what's going on on  
13 the scene. I'm not naive to think that things are never  
14 lawyered. But when I've got the lawyers in front of me in the  
15 case, and they're honing over a document that's been generated 10:58:05  
16 by lawyers for the contractor, very different interests  
17 obviously in a long-time -- well, "long-time" perhaps not the  
18 best word -- a broad responsibility to the case as the  
19 signatories to the Stipulation, it would seem to me that it  
20 would be a better practice for the documents to be developed 10:58:41  
21 and not only merely evaluated or reviewed or modified by the  
22 parties before the Court.

23 But that said.

24 All right. Go ahead, Miss Kendrick.

25 MS. KENDRICK: Well, our concern actually, Your Honor, 10:59:01

1 is that in the past Mr. Bojanowski refers to people as medical  
2 doctors when they don't have M.D.s. And so I just wanted to be  
3 sure that this was actually accurate.

4 THE COURT: Okay.

5 MS. KENDRICK: So the next one was Performance Measure 10:59:16  
6 50 at Florence, which is part of your order to show cause. And  
7 defendants are reporting 59 percent compliance.

8 And I don't know if there's any possibility that they  
9 have more current or real-time data than the 59 percent in  
10 October since they're collecting it in response to your order. 10:59:39

11 MR. STRUCK: Your Honor, in answer to that question, I  
12 do not have more current data with respect to Performance  
13 Measure 50 at Florence.

14 I did obtain information yesterday from Corizon that  
15 they have -- Corizon Nashville has contracted with Tenet 11:00:11  
16 Healthcare to --

17 This is -- this particular Performance Measure is for  
18 specialty diagnostic services, outside services. And one of  
19 the difficulties in meeting this Performance Measure at some of  
20 these facilities was that -- you know, being able to identify 11:00:38  
21 an outside provider who would actually treat this group of  
22 patients in light of the challenges presented by that, in  
23 addition to the AHCCCS rate issue.

24 But Tenet Healthcare, there is a contract with them.

25 And I believe that they did tell me they were 11:01:04

1 negotiating with Banner Health as well for some of these  
2 specialty services.

3 THE COURT: The Tenet Healthcare sounds like it has  
4 already been consummated as a contractor agreement?

5 MR. STRUCK: That is what I was told yesterday. 11:01:20

6 THE COURT: Do we know whether it's in place?

7 MR. STRUCK: I don't have -- I don't have the  
8 contract. I just know that they have -- I was told that a  
9 contract is in place -- or has been signed. I don't know what  
10 the effective date of that contract is. 11:01:34

11 THE COURT: And these Tenet providers, where are they  
12 located?

13 MR. STRUCK: I believe it's the Tucson area. But  
14 there's more than one location. It's kind of like Banner has  
15 multiple locations around the state. 11:01:51

16 THE COURT: Well, if this Performance Measure is not  
17 showing a turnaround, we'll need to have much more detail about  
18 the Tenet Healthcare. Or maybe Mr. Millar's investigation will  
19 also elucidate on this issue as well.

20 MS. KENDRICK: So on their Supplemental Plan dated 11:02:13  
21 December 15th, that's at page 25, they talk about the problem  
22 in finding a specialist. And it says that Corizon, quote, is  
23 reaching out to additional specialty providers within Arizona  
24 and those also residing in neighboring states. This action  
25 measure was implemented in mid November 2017. 11:02:37

1           It's unclear what does -- what neighboring states  
2 means. Is that referring to telemedicine, or are you guys  
3 going to start taking people to Nevada and New Mexico? Or  
4 what --

5           MR. STRUCK: I'm fairly certain that they're not going 11:02:53  
6 to be transporting inmates to neighboring states.

7           And it's my understanding that that relates to  
8 telemedicine.

9           THE COURT: Any idea whether this reaching out in mid  
10 November has produced any fruit yet? 11:03:18

11           MR. STRUCK: Well, that's the Tenet contract  
12 was -- that's one of the -- and it's my understanding that  
13 there were additional contracts with -- Tenet is more of a  
14 broad -- it's more than one specialty area that they will  
15 provide. And there are -- there are other specific contracts 11:03:39  
16 relating to, you know, more specific providers I know that  
17 were -- that I was told were also entered into contracts with.

18           I can get that information. I requested that  
19 information, I did not receive it. But I can get that  
20 information to the Court and counsel with respect to what 11:04:06  
21 contracts have actually been entered since November on  
22 that -- for that particular Performance Measure.

23           THE COURT: Well, I mean, we will have to know more,  
24 because the statement in the Corrective Action Plan is that the  
25 corporate office was reaching out, and that this was 11:04:22

1 implemented in November 2017. And we're hearing about entered  
2 into new contracts with. And that has been orally put on the  
3 record with respect to the consummated contract with Tenet and  
4 the perhaps contemplated contract with Banner Health.

5 But we'll need to know exactly what the details are 11:04:44  
6 here so that we can address the appropriateness of this  
7 remedial measure and offer secondary measures if those are  
8 necessary.

9 MS. KENDRICK: Also, what is the status of Corizon's  
10 contract with the Arizona Oncology Network? 11:05:05

11 Yesterday we contacted your office, Mr. Struck, about  
12 a patient with leukemia at Eyman who has a pending urgent  
13 consult for oncology. And the response from Corizon in his  
14 medical record said that, quote, due to the transition process  
15 from AON to MIHS there's been a large amount of patients that 11:05:28  
16 are currently on a wait list, first come, first serve basis,  
17 and we'll try to schedule him as soon as possible.

18 THE COURT: The second acronym refers to?

19 MS. KENDRICK: I'm not sure what MIHS means.

20 THE COURT: I bet Mr. Pratt knows.

21 MS. KENDRICK: If I may approach I can show you --

22 THE COURT: I bet Mr. Pratt knows.

23 MR. PRATT: Maricopa Integrated Health Services.

24 THE COURT: So Corizon's no longer using them?

25 MR. STRUCK: No, I think they are using -- I think 11:05:59

1 that --

2 THE COURT: It's a transition away from AON to  
3 Maricopa Integrated?

4 MR. STRUCK: That's what I understood Miss Kendrick to  
5 say. 11:06:10

6 MS. KENDRICK: May I approach, Your Honor?

7 THE COURT: Yes.

8 Mr. Pratt, do you know anything about the details of  
9 this wait list?

10 MR. PRATT: I don't know the details on it, 11:06:57  
11 Your Honor. I do know that AON -- it was reported to me that  
12 AON was --

13 (Court reporter interruption.)

14 THE COURT: Louder, please.

15 MR. PRATT: I'm sorry. It's my understanding that AON 11:07:05  
16 has declared or is declaring Chapter 11 bankruptcy, and  
17 refusing to accept inmates as patients going forward, which  
18 required Corizon to find another provider for their continuing  
19 care.

20 THE COURT: And so the notation on the document 11:07:30  
21 provided by plaintiffs' counsel states, quote, there has been a  
22 large amount of patients that are currently on a wait list,  
23 close quote.

24 Do you know the number of patients roughly?

25 MR. PRATT: I do not. 11:07:48

1 THE COURT: Do you know roughly how long the delay is  
2 attendant to this dislocation arising out of the bankruptcy?

3 MR. PRATT: No, sir, I do not have the details or  
4 specifics on the delays. All I know is that they will try to  
5 schedule them as soon as possible through MIHS in the  
6 transition. 11:08:04

7 THE COURT: Who in the State looks over such a thing  
8 like this? Who's responsible? I mean, the Department of  
9 Corrections is responsible for the lives of its inmates. And  
10 you've contracted with a contractor to provide medical 11:08:24  
11 services, and so that removes you sort of once removed from the  
12 process.

13 And then there is a debacle that happens that is out  
14 of the contractor's control, and that is a provider it used is  
15 no longer able to see the patients. And then there is word 11:08:51  
16 that they're moving to another provider, but that there is a  
17 large number of -- a large amount of patients that are  
18 currently on a wait list that's a first come, first serve  
19 basis.

20 And I wonder, when this happens, who in the State of 11:09:09  
21 Arizona, among State of Arizona employees at the Department of  
22 Corrections, takes responsibility for the fact that they need  
23 to be riding herd on this situation where a large amount of  
24 patients are having their oncology care delayed by  
25 circumstances, to assure that the contractor who has apparently 11:09:34

1 dragged its feet with respect to getting the appropriate number  
2 of providers -- and that's not something that is disputed by  
3 the State because it insists on a particular number of  
4 providers in its contract with the contractor and the  
5 contractor has elected to pay a fine for many months rather  
6 than hiring the appropriate number of providers.

11:09:51

7 So who -- is it your -- is it on your shoulders,  
8 Mr. Pratt? Who has trouble sleeping at night at the State  
9 because the patients who have -- inmates who have cancer can't  
10 get care because of the circumstances? Is there anybody in the  
11 State employ who worries about this?

11:10:12

12 MR. PRATT: Your Honor, I worry about this.

13 THE COURT: And yet you seem to know remarkably little  
14 about it.

15 MR. PRATT: I know as much as I've been provided the  
16 same information. And when I look into it, I discuss with  
17 Corizon, and we tell them -- again, responsibility for the  
18 care, I rely on Corizon to provide that care. If there's been  
19 a change in their -- their subcontractor who provides this, my  
20 expectation is that they will do this as quickly as they  
21 possibly can.

11:10:21

11:10:43

22 I don't know time frame wise on the delays on  
23 transitioning that care over to the MIHS. But I will deal with  
24 specifications as they're brought to my attention. I do not  
25 know the number, Your Honor. And I would be surprised if this

11:11:02

1 number is a large number. I don't know what that means.

2 THE COURT: Well, I know that it doesn't mean a small  
3 number. And I know it doesn't mean -- well, actually it says  
4 "a large amount." So I know it doesn't mean a small amount.  
5 And I know it doesn't mean an amount. So the word "large" is 11:11:18  
6 an adjective I'm familiar with. And it typically means a lot.  
7 And that the people are on a wait list, and that there's a  
8 first come, first serve basis.

9 And I guess what really troubles me is that you're the  
10 one in the State of Arizona who thinks about this, and you 11:11:38  
11 don't know the answer to basic questions, such as, what is the  
12 amount of patients exactly and how long is the wait list.

13 The buck stops someplace. And it seems to me that I'm  
14 in a position of having to have to always be looking over your  
15 shoulder and saying, you know, you just can't pass the buck to 11:11:59  
16 Corizon because at the end of the day you're responsible on  
17 this. And at the end of the day it's hard for me to imagine  
18 how a person with responsibility is aware that the  
19 contractor -- or the subcontractor that provides oncology  
20 services -- and I don't know of anybody who's referred to an 11:12:20  
21 oncology service who doesn't think that that is a matter of  
22 immediate concern. I mean, at least that's my experience in  
23 the world.

24 And so, cancers grow, and they tend to grow I think in  
25 some medical term that involves the idea of very quick cell 11:12:39

1 division, that's what cancers do. And so time is usually of  
2 the extreme essence.

3 And so, if you know the basic fact that there is this  
4 contractor that's no longer providing this service, and they're  
5 transitioning to another, and you don't know the number of 11:12:59  
6 patients that are involved or what the implication is on a  
7 timeline -- you know, what might be acceptable to Corizon may  
8 not be acceptable to somebody who's on the hook in the  
9 Stipulation in this case.

10 And so I guess it would seem that it would be in your 11:13:15  
11 best interests, separately from the interests of the individual  
12 inmates, to make sure that you are riding really close herd on  
13 this.

14 MS. EIDENBACH: Your Honor, if I may. I'm also  
15 wondering whether or not the Department has spoken to the 11:13:30  
16 Bankruptcy Court. Because if AON has declared Chapter 11,  
17 there may be some way that the Court can order them to continue  
18 providing care as part of the bankruptcy plan, so that there's  
19 not this lapse in life-or-death situations.

20 So I'm wondering whether this has been brought to the 11:13:51  
21 Bankruptcy Court's attention by the Department, whether they're  
22 following the bankruptcy and trying to participate as a  
23 creditor or vendor, just in terms of continuing to provide care  
24 until the Department is able to make provisions otherwise.

25 THE COURT: Well, your comment has certainly provided 11:14:08

1 information that might be useful on the defendants' side of the  
2 case to explore that possibility.

3 MR. STRUCK: Your Honor, this progress note or  
4 whatever this is written by Marsha Ramirez is less than -- was  
5 done about 46 hours ago. We'll look into it. 11:14:28

6 THE COURT: Well, I mean --

7 MR. STRUCK: I didn't see any -- I'm not aware of any  
8 information with respect to a backlog, or how many inmates  
9 we're talking about, or what the delay is. So we can certainly  
10 find out, and it might be something that we don't have to make 11:14:45  
11 issue of.

12 THE COURT: Well, raise the temporal issue, I'll ask  
13 back:

14 Mr. Pratt, when did you learn about this bankruptcy?

15 MR. PRATT: In the last couple of days. 11:15:02

16 THE COURT: Last three or four days?

17 MR. PRATT: Yes.

18 THE COURT: And how long has there been any  
19 obstruction in the process that you've been aware of with  
20 respect to AON seeing these inmates? 11:15:10

21 MR. PRATT: Just in the last couple of days when I was  
22 made aware of it.

23 THE COURT: All right. Thank you.

24 MS. KENDRICK: Just for the record, we did notify

25 Mr. Struck and his firm about this particular patient first on 11:15:19

1 November 15th, and then again yesterday, about the fact that he  
2 is 25 years old, has chronic leukemia, and is experiencing a  
3 serious lapse in getting the urgent care and treatment with  
4 oncology.

5 So this was actually brought to ADC's attention more 11:15:38  
6 than a month ago originally with regard to this particular  
7 patient and the inability to get him urgent oncology care.

8 THE COURT: In a prison system that's operating under,  
9 quote, Operation Backlog, close quote, it's not surprising to  
10 hear what you just said. 11:15:56

11 Miss Kendrick.

12 MS. KENDRICK: Let me just scroll through, Your Honor.

13 So Performance Measure 52 is about specialty  
14 consultation reports being reviewed and acted upon within seven  
15 calendar days. 11:16:30

16 The report for Eyman shows 35 percent compliance,  
17 that's at page 43 of their report.

18 It also states that for the Corrective Action Plan as  
19 of December 15th, which is at page 46, that this is now being  
20 monitored on something called the Warden's Daily Tracker Sheet. 11:16:49  
21 And the site medical directors have been tracking this for the  
22 last three weeks. So, again, if Corizon or ADC has any more  
23 current information, that would be greatly appreciated.

24 MR. STRUCK: I'm sorry, Your Honor what Performance  
25 Measure are we looking at? 11:17:17

1 THE COURT: 52, in particular on page 46 where it is  
2 node that specialty consultation reports are now monitored on  
3 the Warden's Daily Tracker Sheet. And that this is being  
4 captured since October 20th, 2017, on a daily basis by pulling  
5 data directly from eOMIS for the last three weeks to ensure  
6 timely action. 11:17:34

7 And so Miss Kendrick has asked the natural question,  
8 what is this data that's been pulled in real time telling us  
9 right now?

10 MR. STRUCK: I will find out, Your Honor. 11:17:48

11 MS. KENDRICK: And we would note that Florence, which  
12 is part of your order to show cause, Your Honor, is at 63  
13 percent.

14 This particular measure, it states that the reason is  
15 because of the backlog. And it appears to be the same  
16 Corrective Action Plan that we discussed earlier with the  
17 providers being assigned to yards. And we hope that there will  
18 be more current data at the January 10th hearing. 11:18:11

19 MR. STRUCK: Your Honor, it's -- in speaking with the  
20 Facility Health Administrator at Florence yesterday, it's my  
21 understanding that the backlog has been eliminated. They've  
22 been utilizing telemedicine lines, two to three telemedicine  
23 lines per week to eliminate the backlog. 11:18:32

24 And that they -- but in terms of how that has affected  
25 this particular measure, I don't have November preliminary 11:19:08

1 results.

2 THE COURT: All right.

3 Miss Kendrick?

4 MS. KENDRICK: We would also just note that their  
5 reporting does show continued non-compliance with this measure 11:20:00  
6 also at Tucson and Yuma. And we hope that the daily tracking  
7 will show some improvements in the next month's data.

8 On Performance Measure 54 for Eyman, which is also  
9 part of your order to show cause, and that's regarding patients  
10 who have chronic conditions being seen for chronic care 11:20:27  
11 treatment as specified by the provider no less than every 180  
12 days.

13 Again, from September to October they're showing a  
14 dip, which is concerning, because we had been told, I believe  
15 it was two months ago, that telemedicine was going to fix this 11:20:48  
16 problem at Eyman in October, but instead it looks like it's  
17 getting worse.

18 The remedial plan that's at page 56 states that they  
19 are modifying the tracking in an attempt to forecast the needs  
20 of inmates in the future to allow Corizon to better allocate 11:21:14  
21 resources.

22 And I was hoping either Mr. Struck or Mr. Pratt or  
23 somebody could unpack that and translate it into plain English  
24 as to what this actually means and what those steps would be in  
25 tracking. 11:21:30

1 MR. STRUCK: I don't have information with respect to  
2 how the chronic care tracking has changed, but I can certainly  
3 find out, unpack that for Miss Kendrick and let her know.

4 THE COURT: Thank you.

5 MS. KENDRICK: Okay. And it also doesn't say when  
6 that change took place, so when we could possibly see  
7 improvements in the scores.

11:21:51

8 THE COURT: Do you know the date of when Corizon  
9 modified the chronic care tracking?

10 MR. STRUCK: I do not.

11:22:09

11 THE COURT: Okay.

12 MS. KENDRICK: And then for the next page, for the  
13 same Performance Measure 54 at Florence, it's showing a drop  
14 from 82 percent to 67 percent. And again, says that they are  
15 using out-of-state providers to develop -- to deliver  
16 telemedicine and see patients on-site, and that the backlog is  
17 going to be eliminated.

11:22:27

18 And so again, with these out-of-state providers, it's  
19 a little unclear with the sentence if they're just being seen  
20 by telemedicine or if they're actually also being brought to  
21 Arizona to see patients in the flesh.

11:22:46

22 THE COURT: Do you know, Mr. Pratt, how this is  
23 happening? Is it just by telemedicine or are the out-of-state  
24 providers coming here?

25 MR. PRATT: The majority is telemedicine, but Corizon

11:23:05

1 has brought in out-of-state providers to assist.

2 THE COURT: All right.

3 MS. KENDRICK: And I guess that's also the same  
4 Corrective Action Plan it looks like for Performance Measure 55  
5 at Eyman at page 64, which is showing 60 percent compliance. 11:23:45  
6 So we hope to see improvement there.

7 And then Performance Measure 66, which is about  
8 providers seeing patients a minimum of every 72 hours in the  
9 infirmary. Unfortunately it looks like Florence is still  
10 non-compliant at page 67. And Florence was one of the three 11:24:24  
11 prisons you had included in your order to show cause.

12 It states that the problem is that providers are not  
13 fully documenting their rounds. Again, we raised this last  
14 month about our concern about the fact that some of the  
15 providers were opening and closing their entries into the eOMIS 11:24:44  
16 system after the fact or in advance of the rounds. And we are  
17 very concerned about that sort of record keeping. I mean, the  
18 fact that they're still showing non-compliance at Florence is  
19 significant, but the fact that the providers can manipulate the  
20 system in that way is something that we find problematic. 11:25:10

21 Mr. Pratt stated that he thought this was regular  
22 practice. And defendants also submitted an affidavit from a  
23 nurse saying that that is a common feature of electronic health  
24 records.

25 We checked with our medical expert, Dr. Wilcox. He 11:25:28

1 said that he is not familiar with electronic health record  
2 systems that allow you to manipulate the time of an encounter,  
3 that the time when it's documented is the time that it should  
4 show up in the record.

5 So, again, we're just stating that for the record, 11:25:45  
6 Your Honor, that we are concerned not only with the fact that  
7 their reporting is showing non-compliance and continued  
8 non-compliance, but we are now concerned about the underlying  
9 accuracy of the records that are being kept by the providers at  
10 the infirmaries. 11:26:02

11 THE COURT: The inpatient facility at Florence, how  
12 many beds does it have?

13 MR. PRATT: Fifty-seven.

14 THE COURT: And what's the census usually?

15 MR. PRATT: There typically 90 percent full. 11:26:16

16 THE COURT: As I discussed in the past, it is  
17 surprising to me that this is a Performance Measure that's even  
18 at issue, because it seems that people who are in the  
19 stepped-up care of having to be inpatient at the facility, that  
20 there wouldn't be something in the record that would document 11:26:43  
21 that they had had a provider encounter, at least every 72  
22 hours. It was surprising.

23 And so the continued issues that we are here in  
24 December, being told about additional education on November  
25 29th, 2017, when this has such a chronic record of failure, 11:27:05

1 calls yet again into question the credibility of the effort to  
2 try to address some of these problems.

3 I say that again for the record knowing that we are on  
4 the cusp of seeing really what it is in true terms in terms of  
5 every single person, but also maybe having a better  
6 understanding about the veracity of the record keeping. 11:27:28

7 All right. Go ahead.

8 And maybe I should at this point mention too, I opened  
9 with a comment that I have to completely change, and that is  
10 where I said the words I think "overwhelming compliance," that 11:27:48  
11 was a feature of me having started reading every word in  
12 the -- in the defendants' submission of the charts and seeing  
13 what looked to me to be progress on those charts that  
14 were -- that I'd reached. And then thumbing through the rest  
15 and seeing what I thought to be a good collection of 11:28:10  
16 compliance.

17 I've since learned a couple of things.

18 One, that there are apparently included here some  
19 numbers of things that I'm not concerned about that have always  
20 been compliant so that they tend to make it look more rosier 11:28:26  
21 than what I would be focused on.

22 Two, we have spent a lot of time talking about  
23 continued egregious failures to comply. So that undercuts the  
24 idea of overwhelming compliance.

25 And third, of course, the issue that we've discussed 11:28:42

1 extensively this morning, and that is the concern about the  
2 veracity of the reporting process.

3 But I just wanted to strike my previous comment. It  
4 is a reflection of having read only part of the document, and  
5 the document that I had read perhaps was over inclusive with  
6 respect to rosy performance measures that haven't been the  
7 focus of my concern previously, and so I was clouded by them.

11:28:57

8 Thank you.

9 MS. KENDRICK: So, Your Honor, I'm going to turn it  
10 over to my colleague, Mr. Fathi, because that was all the  
11 medical measures --

11:29:20

12 THE COURT: Okay.

13 MS. KENDRICK: -- that I wanted to talk about.

14 THE COURT: Thank you.

15 Mr. Fathi.

11:29:27

16 MR. FATHI: Good morning, Your Honor. And I apologize  
17 that I'm not able to be present in person today.

18 THE COURT: Thank you.

19 MR. FATHI: The first measure I would like to discuss  
20 is Performance Measure 81 at Tucson, this is at document 2506-2  
21 at page 86. And this is -- it's present here, but this is  
22 really kind of a global question. The remedial plan says --

11:29:38

23 By the way, this is the measure that requires MH-3A  
24 prisoners who are prescribed psychotropic medications to be  
25 seen a minimum of every 90 days by a mental health provider.

11:30:08

1           So the remedial plan says, this issue was caused by  
2 one new mental health nurse who was not scheduling the  
3 appointments within the strict time frames. And it says the  
4 remedy is that the nurse was given additional education.

5           And we've heard similar variations on this theme  
6 throughout today, that someone wasn't properly trained, and the  
7 remedy was to provide additional training. 11:30:27

8           These are obviously not new requirements, and so we  
9 would think that existing staff would have been trained, and  
10 that new staff coming on board would also have received  
11 training. 11:30:46

12           So my question is, why do we keep seeing this problem  
13 in staff who have apparently not received training in the  
14 requirements of the Stipulation?

15           THE COURT: Well, I don't know that we're going to  
16 hear an answer from the defendants. And I'll give them a  
17 chance if they want to offer an answer. 11:31:01

18           I'll offer an answer, and that is, in a system that's  
19 chronically understaffed you would expect that training would  
20 be one of the things that would be compromised. It's short  
21 sighted obviously because it results in Performance Measure  
22 issues. 11:31:13

23           But again, this may just be anecdote, but it's what  
24 sticks in my mind, and that is Dr. Watson is quoted in the KJZZ  
25 article as saying that she was scheduled for five days of 11:31:37

1 training, I think, and she had only two.

2 I think that when you are dealing with an emergent  
3 situation one of the first things that falls off is training.  
4 And you're right to say, Mr. Fathi, that it is a theme that we  
5 hear and see a lot, that education appears to be a problem, 11:31:51  
6 training appears to be a problem, new staff members don't get  
7 it right, old staff members don't get it right.

8 Overall you would think that over time, that having  
9 worked on this so carefully all of us in this room together on  
10 a monthly basis and sometimes more frequently than that, that 11:32:09  
11 we would see that the ship kind of tightening up and that the  
12 sails would be pulled tight and we'd be making good time. It  
13 does seem that we continue to be dogged by the same things over  
14 and over again.

15 But, again, I didn't mean to cut off if there was a 11:32:24  
16 response from the defendants to Mr. Fathi's particular  
17 question.

18 MR. STRUCK: I would like to respond, Your Honor.

19 Looking at MP 81 in Tucson, this has been compliant  
20 since -- at least according to this graph since October of 11:32:36  
21 2016. This one -- this month is the first month that it was  
22 non-compliant at 82 percent, barely non-compliant. It's my  
23 understanding that preliminary numbers on that show that they  
24 were at 92 percent for the month of November.

25 This was one nurse who was scheduling things out three 11:32:54

1 months. So these things were getting scheduled maybe at 91  
2 days or 92 days. And that's not a passing score.

3 It's not that things are falling through the cracks  
4 when we're talking about this Performance Measure. There's no  
5 reason to conflate this particular issue to, oh, all of 11:33:17  
6 these -- you know, we have all of these problems and they  
7 continue to come up.

8 I mean, this is a human being. I'm certain she was  
9 told that she's supposed to do it at 90 days and she did it at  
10 three months. And that's where the mistake happened. 11:33:35

11 THE COURT: And what you say is fair, Mr. Struck, if  
12 it wasn't in the context that suggests that it isn't a one off.  
13 That if we did this global search for the word "education" or  
14 "training" we would see it over and over and over again. And I  
15 guess at some point you want to see no drop below the bench 11:33:55  
16 mark, because you would think that mistakes made would be  
17 mistakes corrected. And we just see the same mistake in its  
18 descriptive term being employed.

19 But I appreciate what you say.

20 Mr. Fathi. 11:34:14

21 MR. FATHI: Thank you, Your Honor.

22 On performance measures 85 and 86, and both of these  
23 concern MH-3D prisoners being seen after discontinuing  
24 medication, I just wanted to remind the Court that there  
25 remains a dispute between the parties about the monitoring 11:34:32

1 methodology for 85 and 86.

2 After the telephonic hearing on November 21st you  
3 asked each side to e-mail you their proposed language for the  
4 monitoring methodology. So we are awaiting the Court's  
5 decision on that issue. 11:34:51

6 THE COURT: Right. And I saw that, and will get an  
7 order out.

8 MR. FATHI: Thank you, Your Honor.

9 Performance Measure 86 at Tucson -- and this is  
10 document 2506-2, page 93, there's no cause identified for the 11:35:04  
11 non-compliance. There's a corrective action, but we need to  
12 know what caused the non-compliance in the first place.

13 MR. STRUCK: And this particular Performance Measure  
14 86, again, it's at Tucson for over a year has been compliant.  
15 And for the month of October they were one percent below 11:35:36  
16 compliant.

17 It's my understanding that a staff psychologist had  
18 been scheduling something and that he'd done it incorrectly.  
19 And so they -- Corizon decided that they would have the mental  
20 health context be reassigned to one individual to make sure 11:35:59  
21 that this is all being done consistently, and we don't continue  
22 to have these issues with respect to, you know, somebody  
23 scheduling something out 92 days or 93 days using the calendar  
24 instead of the actual days.

25 MR. FATHI: Your Honor, this is the second time we've 11:36:22

1 heard that response from Mr. Struck, and I have to say I don't  
2 understand it. Because while the requirements in the  
3 Stipulation are stated in terms of 30 days, 60 days, 90 days,  
4 the defendants early on asked to be able to use calendar  
5 months, and the Court granted their motion at document 1673. 11:36:40

6 So if they're scheduling out three months that would  
7 still be compliant. So, again, I don't understand Mr. Struck's  
8 explanation.

9 THE COURT: Well, I think what he was saying that they  
10 were just slightly beyond it. 11:36:55

11 Is that what you said?

12 MR. STRUCK: Yeah, that's my understanding, yeah.

13 MR. FATHI: I'm sorry, I thought he was saying they  
14 were scheduling using calendar months rather than counting the  
15 days and that's why they -- 11:37:09

16 THE COURT: I think he said that was by way of how  
17 they got into that problem. But maybe I misunderstood.

18 MR. STRUCK: That's my understanding as to how the  
19 problem occurred, where the scheduling actually was beyond the  
20 90 days. 11:37:20

21 MR. FATHI: All right. Well, let's move on.

22 Performance Measure 91, this is the measure that  
23 requires MH-5 prisoners who are the most seriously mentally ill  
24 people in the system, who are actively psychotic or actively  
25 suicidal, to be seen by a mental health clinician or mental 11:37:41

1 health provider daily. This applies at Phoenix, and this is at  
2 2506-2, page 96.

3 This is identified on page 97 -- excuse me, on page 96  
4 as Supplemental Corrective Action Plan as of November 6, 2017.  
5 But on November 14th at document 2447-1, we were provided a 11:38:05  
6 Supplemental Corrective Action Plan revised as of November  
7 14th, which was substantially different from the one that's now  
8 before us. There were significant modifications made and  
9 redlined.

10 So my question is, which Corrective Action Plan is in 11:38:29  
11 effect, and what happened to the November 14 Corrective Action  
12 Plan?

13 MR. STRUCK: Okay. I don't have an answer to his  
14 question. All I can say is it was in compliance in October.

15 THE COURT: Well, it's a fair question. He says that 11:38:46  
16 you've recited the November 6, 2017 plan when there was a  
17 supplement after that. Was this a mistake to include within  
18 document 2506-2 this vestigial November 6 plan, or is the  
19 November 6 now rekindled in the supplemental plan the following  
20 week no longer in action? 11:39:09

21 MR. STRUCK: One moment, Your Honor.

22 (Discussion off the record between defense counsel.)

23 MR. STRUCK: The November 14th update did not make it  
24 onto this particular document. So the November 14th is the  
25 correct Corrective Action Plan. 11:39:44

1 THE COURT: Thank you.

2 MR. FATHI: And just a couple of questions about  
3 particular wording. On page 97, paragraph 6 --

4 THE COURT: But that's the old plan, isn't it? That's  
5 the old plan. Or is that in the new plan as well? 11:40:04

6 MR. FATHI: It is, Your Honor. This text is  
7 unchanged.

8 THE COURT: Okay. Thank you. Thank you.

9 MR. FATHI: All right. In paragraph 6 it refers to,  
10 verify any illness each inmate -- and there seems to be a word 11:40:16  
11 missing. Inmate what?

12 MR. STRUCK: That each inmate on watch was seen?

13 MR. FATHI: It says inmate, I-N-N-A-T-E. Is that an  
14 error?

15 MR. STRUCK: Inmate, not inmate. It's inmate. That's 11:40:37  
16 a typo.

17 THE COURT: Thank you.

18 MR. FATHI: Okay. And then in paragraph 7 -- and this  
19 is also -- this language is unchanged between the two versions.  
20 It talks about a mental health clinician or RN conducting the 11:40:50  
21 watch in a confidential -- excuse me -- conducting the watch in  
22 a confidential setting.

23 I don't understand that. Continuous -- or watches are  
24 conducted by custody staff, they're not conducted by mental  
25 health staff. So I would just appreciate an explanation of 11:41:11

1 that.

2 (Discussion off the record between defense counsel.)

3 MR. STRUCK: Yeah, the clinicians conduct the  
4 confidential contact, the face-to-face contact. The officers  
5 are just doing -- conducting a watch. 11:41:34

6 MR. FATHI: But that's not what it says. It says, the  
7 clinician -- assign a licensed mental health clinician slash RN  
8 to conduct the watch in a confidential setting.

9 So why is a clinician conducting the watch?

10 THE COURT: It looks like that's a mistake. 11:41:51

11 MR. STRUCK: After the word "watch" should be  
12 "contact."

13 MR. FATHI: Okay. So that's an error?

14 MR. STRUCK: It's a typo.

15 MR. FATHI: Which is different from an error. Okay. 11:42:07

16 THE COURT: It's not, it's an error.

17 Go ahead.

18 MR. FATHI: Next is Performance Measure 93 at Eyman.  
19 This is page 103. And this is mental health staff making  
20 weekly rounds of all inmates 3 and above prisoners who are 11:42:27  
21 housed in maximum custody.

22 Paragraphs 2, 3, 4 and 6 each refer to action by the  
23 MH tech. Paragraph 5 refers to action by the MH aide. What's  
24 the difference between those two positions and why are these  
25 functions done by different positions? 11:42:54

1 (Discussion off the record between defense counsel.)

2 MR. STRUCK: It's the same person. I think this has  
3 been addressed in prior hearings. ADC uses the term "MH tech,"  
4 Corizon uses the term "MH aide." It's the same individual.  
5 And I think that Mr. Fathi knows that. 11:43:16

6 MR. FATHI: I'm simply asking why this document that's  
7 been produced to us uses the two different terms.

8 So you're telling me that, in fact, it's the same  
9 person?

10 MR. STRUCK: And you know it's the same person. 11:43:31  
11 You're aware of the fact that it's the same person.

12 MR. FATHI: Excuse me, Your Honor, we should be  
13 addressing the Court rather than each other.

14 THE COURT: Well, some amount of the exchange goes on.

15 And again, if you're telling us something that you 11:43:43  
16 already know just to sort of highlight the errors -- I mean, it  
17 would be better that if the MH tech is a synonym for the MH  
18 aide, it would be preferable for any document that's filed with  
19 the Court to pick one or the other, because it does create a  
20 reasonable question for someone to wonder why, in this document 11:44:08  
21 that was filed on the 19th of December, does it say in 1  
22 through 4 "MH tech" and then in 5 say "MH aide."

23 I can't remember everything that's previously been  
24 discussed. I think people who submit things and file things  
25 with the Court, if it has been previously identified as a 11:44:29

1 synonym that is simply a product of one usage preferred by the  
2 contractor and the other usage preferred by the  
3 contracting -- the contracted party -- I said that wrong -- by  
4 the contractor and -- by Corizon and by the State, then it  
5 would be helpful to not run into this three minutes, four 11:44:50  
6 minutes that we spent talking about it by making sure that that  
7 gets fixed in the future.

8 So Mr. Fathi's right to point it out. And it's  
9 helpful to the process, because it again is a further reminder  
10 to everybody as we try to pull the lines tighter on our sails 11:45:06  
11 that we've got to be careful.

12 Thank you.

13 MR. FATHI: Okay. Thank you, Your Honor.

14 On Performance Measures 94, 95 and 97, this is  
15 actually an upcoming agenda item on plaintiffs' agenda, item 11:45:23  
16 4A. The Court issued an order about the monitoring methodology  
17 for these three performance measures in July, and defendants  
18 have not been complying with that order in subsequent months.

19 And so these scores have to be read in light of that  
20 non-compliance with the Court's order. 11:45:45

21 THE COURT: All right.

22 MR. FATHI: On specifically Performance Measure 94 at  
23 Tucson, this is page 115, the Corrective Action Plan refers to  
24 at the very bottom clinician -- a new clinician beginning  
25 employment on August 14th. And then it reads, quote, with the 11:46:10

1 change in clinicians, Corizon is fully staffed at Tucson, end  
2 of quote.

3           However, the staffing report that was produced to us  
4 just last night has the following numbers for mental health  
5 staff at Tucson: Psychiatrists 50 percent, psychologists 75  
6 percent, mental health clerk is zero percent, mental health RN  
7 50 percent, rec therapist zero percent, regional director zero  
8 percent, clerk zero percent. This is page -- or document  
9 2509-1, page 10.

11:46:27

11:46:53

10           So I don't know how to reconcile this statement that  
11 Corizon is fully staffed at Tucson with the data that I just  
12 read into the record.

13           MR. STRUCK: Okay. A couple things, Your Honor.

14           First, the way this document was -- is presented to  
15 plaintiffs and counsel -- this information I believe was in the  
16 last -- in prior reports.

11:47:07

17           THE COURT: You're right. I mean, you're right about  
18 that. And it's also been at my insistence that it would  
19 include the previous information.

20           But it's also right for Mr. Fathi to observe, we see  
21 now in the October report a 96 percent, where we have a  
22 previous track record, except for a couple of months, where  
23 we're either below or on the cusp. And so having been told  
24 that they were fully staffed in August, and then having looked  
25 at the most recent staffing numbers indicating that there is

11:47:22

11:47:45

1 missing staff members from what the contract calls for, he is  
2 at the least perhaps inquiring about whether or not there is  
3 any information that the state has that the more recent data  
4 might reflect the pull down, or he's at least giving us a  
5 presage of a fear he has that this 96 percent is based upon a  
6 statement that they're at full levels.

11:48:13

7 And so he's not saying you were wrong to include it  
8 here. He's not saying that you necessarily had to -- I don't  
9 think he's saying that you necessarily had to include the fact  
10 that you're no longer at full staffing. But he's observed  
11 something that I think everybody would want to know, and that  
12 is, we were told before that we were going to address the  
13 problem with a Corrective Action Plan by making sure that we  
14 were fully staffed, we're fully staffed, and now he's saying,  
15 whoops, we're not, and he's worried about it.

11:48:34

11:48:49

16 MR. STRUCK: And I didn't hear him say anything about  
17 clinicians when he was reading off vacancies.

18 MR. FATHI: Your Honor, under the Stipulation  
19 psychologists are specifically -- or rather, clinician is  
20 defined to include psychologists. And I did read that  
21 psychologists are currently at 75 percent.

11:49:05

22 On Performance Measure 94 at Winslow, this is page 116  
23 of document 2506-2, this performance measure requires that all  
24 prisoners who are on a suicide watch or mental health watch be  
25 seen daily by a licensed mental health clinician or on weekends

11:49:30

1 and holidays by a registered nurse.

2           However, according to the defendants' staffing plan  
3 there has been no mental health staff at Winslow since May of  
4 2016.

5           So my question is, how -- how can we explain these 100  
6 percent compliance rates when there's no mental health staff at  
7 the facility? 11:49:48

8           MR. STRUCK: Two things, and Mr. Fathi has been  
9 informed of this.

10           There's -- telepsych is used at that facility. And 11:50:07  
11 then as soon as -- it's my understanding as soon as somebody  
12 goes on watch they're transferred away from Winslow to a  
13 corridor facility.

14           THE COURT: Does that answer your question, Mr. Fathi?

15           MR. FATHI: It does not, Your Honor. 11:50:29

16           And I'm sorry if it's repetitive, but I need to keep  
17 correcting Mr. Struck when he knows that I know this -- he  
18 asserts that I know this or I have been told this, et cetera,  
19 that is not correct.

20           The explanation that people are transferred as soon as 11:50:45  
21 they go on watch, that doesn't explain a score of 100 percent.  
22 That might explain a score of NA, not applicable, if there's no  
23 one there to be seen daily by a licensed mental health  
24 clinician. But transferring them away as soon as they go on  
25 watch does not explain a 100 percent compliance score. 11:51:07

1 THE COURT: Is that necessarily true, Mr. Fathi? You  
2 couldn't have somebody seen who's on a watch at the destination  
3 facility on that day, and so you'd get the 100 percent  
4 compliance, the fact that they were transferred that day? Or  
5 on the alternative, if they were transferred to another place 11:51:34  
6 and they were seen on that day, they were seen at the  
7 transferee place, wouldn't that be counted that way, or is  
8 that --

9 MR. FATHI: No, Your Honor. Excuse me, Your Honor.

10 THE COURT: Go ahead. 11:51:47

11 MR. FATHI: No, Your Honor. Because if they were seen  
12 at -- if they weren't seen at all at Winslow, they shouldn't be  
13 in the sample for Winslow. If they were transferred to Tucson  
14 and then seen in Tucson, then they can be in the Tucson sample.  
15 But Winslow can't get credit for someone being seen at Tucson. 11:52:03

16 THE COURT: I see. That makes -- that makes a good  
17 point.

18 Dr. Taylor, can you help us out here?

19 DR. TAYLOR: Sure, Your Honor.

20 When they get -- when they go on watch at Winslow they 11:52:15  
21 are seen when they are there. Sometimes it's a day or two.

22 And we've provided to Mr. Fathi --

23 THE COURT: By telemedicine -- by telepsych?

24 DR. TAYLOR: Well --

25 THE COURT: Because Mr. Fathi says there's nobody 11:52:27

1 there in Winslow who's qualified to do this on site.

2 DR. TAYLOR: Correct. So if the individual goes on  
3 watch on a Sunday, that's going to be a registered nurse who  
4 does that first contact. Then when it starts on -- it's a week  
5 day, it's Monday, it's Mr. Metz who does the telepsychology 11:52:41  
6 contacts until the individual is transferred. And so they have  
7 that schedule, he does that daily until that individual is  
8 transferred, which may be one day, it may be two days, it may  
9 be three days.

10 But those contacts happen up there, and that's all 11:52:58  
11 that is monitored. We don't include anybody -- any contacts  
12 that, you know, are from down in another facility and then  
13 continue counting those days for Winslow. It's just the  
14 Winslow days that are counted.

15 THE COURT: Anything else you wanted to say about 11:53:14  
16 that, Mr. Fathi?

17 MR. FATHI: Yes, Your Honor. When Mr. Struck said  
18 that as soon as someone goes on watch at Winslow they're  
19 immediately transferred to another facility, I took  
20 "immediately" to be within a couple of hours. I didn't 11:53:27  
21 realize, as Dr. Taylor has just testified, that "immediately"  
22 might -- it might be a few days before the transfer.

23 Also, I would just point out that the most recent CGAR  
24 shows eight cases sampled at Winslow for this Performance  
25 Measure for the most recent month. So clearly there are people 11:53:44

1 who are -- who go on watch at Winslow and are staying on watch  
2 for at least a few days so as to be included in the sample.

3 THE COURT: All right.

4 MR. FATHI: Performance Measure 95, I just want to  
5 point out again that the Court has recently issued a ruling on 11:54:04  
6 the methodology for this Performance Measure which is not  
7 reflected in these data, so they have to be read with that in  
8 mind.

9 THE COURT: Understood.

10 MR. FATHI: And I believe that is everything. 11:54:20

11 I believe Miss Kendrick had something to add about  
12 this.

13 MS. KENDRICK: Your Honor, the parties met and  
14 conferred on November 28th with Judge Bade about the notice of  
15 non-compliance that we had sent. And there was some 11:54:43  
16 disagreement about three of the measures. But with all the  
17 others defendants conceded that they were substantially  
18 non-compliant. And at the mediation they provided partial  
19 remedial plans for some of the measures. And Mr. Bojanowski  
20 represented to us and to the Court that this filing today would 11:55:01  
21 include updates on these performance measures as well, and it  
22 appears that there's at least five of them where that was not  
23 done and they were not included.

24 So we ask that when defendants file a supplemental OCR  
25 searchable version that they also include the Performance 11:55:22

1 Measure Remedial Plans that they had promised to provide us no  
2 later than today.

3 THE COURT: Do you want to set forth on the record  
4 what those are again so that Mr. Struck knows?

5 MS. KENDRICK: Sure. So the first one was Performance 11:55:34  
6 Measure 19 at Eyman, Lewis, Perryville, Phoenix and Tucson.  
7 Defendants had provided just a flow chart for their remedial  
8 plan. They had promised to provide narration and words  
9 describing what the remedial plan was.

10 They had also agreed to design a training program, and 11:55:55  
11 that they were going to start training no later than the end of  
12 December.

13 MR. STRUCK: Your Honor, let me just interrupt. I  
14 don't know that it's appropriate to be discussing what happened  
15 in the mediation. 11:56:10

16 THE COURT: I don't think it is, but what she said is  
17 that Mr. Bojanowski had said at the mediation that today, along  
18 with the graphs, he would also include this additional  
19 information. If that's not true, then you can bring that up in  
20 the settlement context. But if it is true, it looks like it 11:56:28  
21 might be an oversight or a feature of the fact that he's not  
22 here and you are or something.

23 And so if -- why don't we do this: Over the noon  
24 break, you all again confer about whether or not this is  
25 information that was supposed to be included today, get 11:56:48

1 Mr. Bojanowski's opinion if you can. And then when we return  
2 we'll take it up again.

3 MS. KENDRICK: We notified defendants -- we were asked  
4 and we sent a confirming letter on December 6th that  
5 memorialized all of Mr. Bojanowski's agreements and his  
6 representations. 11:57:02

7 THE COURT: But, again, if they're taking a different  
8 view now that's really something that's appropriately in front  
9 of Judge Bade, I think, because I shouldn't be jumping in to  
10 the settlement context. 11:57:16

11 But if it's just an oversight that he said he would do  
12 this, and they don't disagree that they said they would do this  
13 and they just haven't done it because it was an oversight, then  
14 get it fixed.

15 But if they have a different view, that they said, no,  
16 we never said we would do that, I'm not going to resolve that  
17 dispute. 11:57:27

18 MS. KENDRICK: Right. Well, right now I didn't  
19 realize that they were now disputing what they had previously  
20 said -- 11:57:38

21 THE COURT: Well, let's come back at 1:15, and over  
22 that time you'll have had a chance to have an off-the-record  
23 discussion about it that respects everybody's interests.

24 All right. Thank you all.

25 (Recess at 11:57 a.m., until 1:17 p.m.) 11:57:52

1 THE COURT: Mr. Struck, were there more answers that  
2 you wanted to provide? Or if not, that's all right.

3 MR. STRUCK: I believe this was in -- the question was  
4 in response to Performance Measure 49 at Tucson. There was a  
5 question with respect to the -- I think reference to M.D.s. 13:18:19

6 THE COURT: Yes.

7 MR. STRUCK: We have -- I've got the names of the  
8 providers and when they were employed.

9 THE COURT: Okay.

10 MR. STRUCK: I've got a Dr. DeGuzman, D-E capital 13:18:32  
11 G-U-Z-M-A-N, who's and M.D. that was hired on 11-6-17. Greg  
12 Ladek, L-A-D-E-K, who's a DO hired on December 4th, 2017.  
13 Steve Ellison is a nurse practitioner, start date 12-18-17.  
14 And Julie Shute, that's S-H-U-T-E, who is also a nurse  
15 practitioner, start date 12-4-17. 13:19:12

16 THE COURT: Thank you.

17 All right. I'll turn then to the agenda that I have  
18 crafted out of your agendas, and I'll work through these items  
19 up until the place that Mr. Millar is ready to join us. And if  
20 at the end of working through the agenda that I have cobbled 13:19:36  
21 together from yours, if you think that I've missed items or you  
22 want to elaborate on some others, you can let me know at that  
23 point.

24 But the next one that I would take a look at is the  
25 notice that I need to make a finding with respect to 13:19:53

1 Performance Measure 15 in Tucson.

2 I think that under the Stipulation it's non-compliant,  
3 so I'll make that finding. But there's no reason to take any  
4 action in light of the recent performance at a level above the  
5 benchmark for any further enforcement action at this time. So 13:20:11  
6 we'll continue to watch it, but hope that the current trend  
7 continues to be locked in.

8 Next topic is the timing of document production. I  
9 think it really does cobble the whole operation to have the  
10 graphs produced so close in time to the time that we join 13:20:33  
11 another. I made mistakes this morning because of that. And I  
12 just think it's much more efficient for us to have it so that  
13 we can work through it in a more ordinary course.

14 And so what I would do is, understanding that January  
15 is just an unusual circumstance with respect to that we have 13:20:52  
16 that early meeting time, I would say that starting in February,  
17 that whenever we meet on a Wednesday, that it has to be  
18 filed -- or whenever we meet, that it has to be filed 48 hours  
19 in advance of when we're scheduled to meet, so that everybody  
20 has a chance to work through it in a deliberate way. 13:21:12

21 And then the next timing issue is the one that the  
22 plaintiffs raised with respect to the current disagreement  
23 between the parties on the scheduling of the prison tours.  
24 There's been an objection to the document request, but also an  
25 objection to the timing of the notice. 13:21:36

1           The Stipulation is clear, it says that two weeks'  
2 notice has to be provided. But seems to me that it just  
3 doesn't make sense for me to build within that a reasonable  
4 production of the documents.

5           So when the plaintiffs provide their notice of the  
6 intention to do a prison tour, they'll at the same time produce  
7 their document request, and then the response will be a week  
8 later. So that defendants will have a week, and that will  
9 leave a week for the plaintiffs to digest the documents and  
10 prepare for the hearing.

11           That seems fair to me in light of the fact that I  
12 don't think the documents are generally a surprise, the  
13 category of them. From what I've learned in the process when  
14 you've involved me in this kind of dispute before, they are  
15 subject matter documents that have been previously identified.  
16 And so it would be an unusual case, I think, where there was  
17 some kind of onerous burden on the defendants to have to turn  
18 that request around --

19           MS. LOVE: Your Honor, may we be heard on that matter?

20           THE COURT: Everybody can be heard on that, surely.

21           Go ahead, Miss Love.

22           MS. LOVE: Your Honor, with respect to the timing and  
23 the Stipulation, the Stipulation at paragraph 32, which relates  
24 to tours, provides that tours should be scheduled within at  
25 least two weeks' advance notice. However, the next to last

1 paragraph of -- I'm sorry, the next to last sentence of  
2 paragraph 32 specifically addresses document production in  
3 association with tours. And it says that plaintiffs' counsel  
4 and their experts shall be able to review healthcare records of  
5 class members, et cetera, as well as documents that relate to 13:23:13  
6 underlying basis for the CGAR reports.

7 But the next to last sentence says, during the tours.  
8 There's no requirement in the Stipulation of advance production  
9 of the documents.

10 As to the burden on operations, while it may be 13:23:30  
11 similar requests that are made at each time, we're still only  
12 provided two weeks' notice of a tour and then one week to  
13 produce.

14 No matter if we know what documents they generally  
15 request, we're still only having two weeks' notice of where a 13:23:46  
16 tour -- where a tour is going to occur. It is a monumental  
17 production by operations staff to gather the documents, which  
18 are not -- they're asking for categories of documents that  
19 relate to all inmates who, for instance, may have a specialty  
20 consultation for the preceding 90 days. We're not talking 13:24:04  
21 about a week's worth of data.

22 That data has to be gathered by both Corizon folks and  
23 ADC, and has to go through the process of coming to our office,  
24 being reviewed so that we can make sure that the appropriate  
25 documentation is being actually produced, and then provide it 13:24:19

1 for production.

2 All we're simply asking is, if they want to have  
3 documents in their hands in time to review prior to going to  
4 the tour in accordance with the normal document production  
5 pursuant to Rule 34(b)(2), if it's a document request we should 13:24:35  
6 be afforded 30 days to respond. If they do not want them in  
7 their hands to be able to review prior, then in accordance with  
8 what the Stipulation requires we will have them on site.

9 THE COURT: All right. That sounds like a compelling  
10 case to me to refute what I said. 13:24:54

11 MS. KENDRICK: As an initial matter, Your Honor, we  
12 have never run into this problem when the Attorney General's  
13 Office was responding and providing the documents prior to the  
14 tour. It's only since the law firm has taken over that  
15 suddenly they're not capable of doing it. 13:25:09

16 Also, this tour was one in which we told them two  
17 weeks before the date that we were going, but the majority of  
18 the time we tell them three or even four weeks in advance of  
19 tours. So to say that we're not giving them enough time I just  
20 think is not true. 13:25:27

21 And again, the point of the requirement is so that we  
22 can get as accurate a snapshot as possible about what's going  
23 on at the prison, and not so they have the time to paint and  
24 make it pretty and try to fix every problem before we get  
25 there, as if suddenly there's nothing wrong with the prison. 13:25:46

1 So the reason there's two weeks' notice is precisely for that  
2 reason.

3           These document requests are not burdensome, most of  
4 them are reports that Corizon can run using their Pentaho  
5 software. The problem we ran into in this situation was that 13:26:00  
6 when I contacted them after I contacted the Court and talked to  
7 Mr. Bojanowski and Mr. Valenti about it, I was told that they  
8 were gathering the documents and there was just a couple of  
9 things left that they wanted to check. And so again I reminded  
10 them of their responsibility to provide documents on a rolling 13:26:19  
11 basis.

12           So we think, again, that this is not burdensome of a  
13 request. And in the majority of the time we are giving them  
14 more than two weeks' notice and they do have time to respond.

15           THE COURT: The problem I have is what Miss Love has 13:26:32  
16 cited, and that is the Stipulation says that you're entitled to  
17 review the documents at the prison. And so you're asking for  
18 them this advance, which is something that is beyond what the  
19 Stipulation requires.

20           And she's saying that if you want to have them in 13:26:45  
21 advance they'll give them to you but you're going to have to  
22 give them 30 days' notice. And that seems to be a matter of  
23 grace that is hard for me to extract a further commitment from  
24 because they don't have to even do that.

25           Is there any reason to think what I've said isn't 13:27:03

1 true?

2 (Discussion off the record between plaintiffs' counsel.)

3 MS. KENDRICK: What Miss Eidenbach is reminding me is  
4 the provision was a result of when the medical records were  
5 paper documents, and that we needed to review them on-site  
6 because we didn't have access to medical records. 13:27:20

7 THE COURT: But you do review paper documents. I  
8 mean, I've been involved in disputes where I've been told about  
9 boxes. And so it's not -- if it were just medical records.  
10 But you have access to the medical records yourself. 13:27:35

11 MS. KENDRICK: We don't have access to those reports,  
12 sir.

13 THE COURT: What reports?

14 MS. KENDRICK: For example, the report that we asked  
15 for of the pending specialty care appointments where  
16 Utilization Management is either pending review or has approved  
17 but it hasn't been scheduled. We're not capable of creating or  
18 getting those reports through our access to eOMIS. That's  
19 what's called a Pentaho report that Corizon creates. 13:27:43

20 THE COURT: All right. So what this is is a category  
21 of documents that is exclusively electronic. And you're saying  
22 because of the Stipulations a recognition of the need to change  
23 the practice with respect to document production once we move  
24 to electronic records, that this would be included within that  
25 transition and, therefore, a different time table should be 13:28:02  
13:28:19

1 contemplated because we were dealing with electronic records  
2 and not paper records which had an intrinsic greater difficulty  
3 to assemble to copy to produce.

4 MS. KENDRICK: Right. Right. So we're asking them to  
5 run different specialty reports or reports of people who have 13:28:36  
6 been sent out to the hospital. And the reason -- I mean, it's  
7 not a secret why we're asking for these reports. We use those  
8 reports to identify class members who we will want to speak to  
9 so we know who the people are that have outstanding pending  
10 specialty consults that haven't been completed, or people that 13:28:53  
11 have been sent out to the emergency room in the previous 90  
12 days.

13 That's what we use the reports for. It's not a  
14 mystery or anything, it's to identify the class members that we  
15 want to speak with while we're there. 13:29:06

16 And they're electronic reports that the Corizon  
17 software program called Pentaho can create.

18 THE COURT: All right.

19 MS. LOVE: Your Honor, first of all, I don't see  
20 where -- defendants don't see where there's any prejudice to 13:29:24  
21 the plaintiffs for just not simply following the general Rules  
22 of Civil Procedure for a document request to allow 30 days of  
23 production.

24 In addition, you know, the statements that ADC goes  
25 and paints and makes its prison pretty is, A, offensive, B, 13:29:38

1 incorrect, and C, has nothing to do with document production.

2           Number 3 on the list, they're not asking for one  
3 report. For the Tucson tour there are 15 categories of  
4 documents asking for data back 90 days. So to state that  
5 they're just asking for one general report is not -- is not 13:29:58  
6 correct based upon their own categories of documents that they  
7 look for.

8           With respect to -- and I just did the quick math, so  
9 this is all me doing it in my head, but as we were coming onto  
10 the subject matter, with respect to document production made 13:30:19  
11 prior to the Tucson, we produced either nearly or just over  
12 1,000 pages of paper. So we're not talking about one specific  
13 report.

14           Finally, when the Stipulation was being negotiated,  
15 defendant -- or plaintiffs knew that the electronic monitoring 13:30:38  
16 system was coming on board. So this isn't just exclusive and  
17 constrained by the Stipulation to production during tours of  
18 medical records. Indeed the second -- I'm sorry, the last  
19 sentence of paragraph 32 states that plaintiffs' counsel and  
20 their experts shall be able to review any documents that 13:30:57  
21 perform -- that form the basis of the MGAR reports and be able  
22 to interview the ADC monitors who prepare those reports.

23           It says "review." It doesn't say that we have to  
24 produce those documents to plaintiffs' counsel prior.

25           That was, in defendants' mind, the whole concept of 13:31:15

1     them doing tours, is that they could be on-site, they could  
2     look at whatever documents they wanted to review. We would  
3     have them ready for them to review. And then they could  
4     interview ADC or Corizon staff with which they wanted to speak.

5             In sum, requesting that they provide 30 days' notice  
6     in advance of a tour to provide documents when they're asking  
7     for routinely 90 days worth of information not constrained to  
8     just a report or two is appropriate.

13:31:31

9             THE COURT: Well, what Miss Love is describing is  
10    something different than what you described, Miss Kendrick, and  
11    that is you said there was some kind of report about impending  
12    scheduled appointments. And what she's described is a look  
13    back over 90 days of what was scheduled and what's happened.  
14    And this does seem to be a larger class of documents than what  
15    you described.

13:31:48

13:32:05

16            MS. KENDRICK: Well, we did request 15 separate  
17    reports in the request.

18            And I don't understand about having to go back and  
19    show -- it's not showing every specialty. So what it is is,  
20    for example, the specialty report, they run the report on  
21    whatever day that they run it, and it shows all of the open  
22    pending specialty reports that had been requested in the  
23    preceding 90 days. If the appointment had been completed, it  
24    doesn't show up on the report.

13:32:21

25            So they're not creating like a daily list for us

13:32:36

1 of -- for the past 90 days each day this was who had a pending  
2 report. It's a snapshot of people whose requests have been  
3 made in the previous 90 days, how many of them were still open  
4 as of the day the report was run.

5 Medication expiration reports, I mean a lot of these 13:32:53  
6 were just printouts of who -- where people are housed. So one  
7 request is the housing assignment logs for people who are  
8 seriously mentally ill. And it's just a roster that is printed  
9 out.

10 So, yes, it looks like it's many pages long, but it's 13:33:08  
11 the names of the people who are seriously mentally ill and  
12 where they are housed so that we can go and find them and see  
13 what sort of conditions they're in.

14 I think that it's clear with the Stipulation that 14  
15 days is the notice that they need to be given. These are 13:33:28  
16 not -- we're not asking them to go through paper records and  
17 create things for us. We're asking for computer-generated  
18 reports.

19 And, again, like I said earlier, when Miss Rand was  
20 responsible for the document productions for the tours, we did 13:33:40  
21 not have this problem or this objection. So it's unclear what  
22 has suddenly happened to cause this to become a problem.

23 THE COURT: In this past experience with the obtaining  
24 of these records, were they produced to you in electronic  
25 format or in paper form? 13:33:59

1 MS. KENDRICK: They were pdf's, they were electronic.

2 THE COURT: Trying to craft a fair outcome under the  
3 reality of the situation that is reflected in the Stipulation,  
4 and that is the parties understood that there would be a change  
5 in the migration to electronic records, and the eventual 13:34:41  
6 occurrence of that development, and the idea that the Court  
7 would be empowered to make a modification in how documents were  
8 produced, it does seem to me to make sense to try to find a way  
9 so that the plaintiffs can have in advance of when they arrive  
10 on the scene to make their plan. 13:35:05

11 So I need to find a way so that they can get the  
12 documents that they think are relevant close in time before  
13 they arrive. The Stipulation presently says that if you want  
14 to look at them you have to give two weeks' notice.

15 So the defendants understood that they were entering 13:35:24  
16 into a plan that would provide for two weeks' notice of  
17 documents that the plaintiffs were entitled to look as, as the  
18 defendants say, if they would look at them at the day of the  
19 visit. That contemplates that they were actual paper  
20 documents, I think, and difficult to copy. And they say, here 13:35:41  
21 they are, look at them, that kind of thing.

22 But if they're produced in electronic format, that's a  
23 whole different thing, much easier to do. And so it seems like  
24 it's reasonable to expect that the defendants would produce  
25 that in advance. The question is, how much in advance? It 13:35:55

1 seems to me that it still does take time to assemble the  
2 records.

3 So I'm going to do it this way: If the plaintiffs  
4 provide only the two weeks' notice of the documents that they  
5 want to see, they're certainly entitled to see them at the site 13:36:10  
6 of the visit. But if those documents have been in the past and  
7 are, therefore, reasonable to believe that they can be produced  
8 in electronic format, in this pdf form, they'll have to produce  
9 those pdf's no later than the start of business the day before  
10 the tour. 13:36:30

11 If they want to see other documents that are not in  
12 electronic form, then we'll go with the 30-day requirement if  
13 you want to see them in advance.

14 But otherwise if they're in electronic form, and they  
15 have been shown to be in electronic form, plaintiffs can still 13:36:42  
16 do it within the two weeks, but the day for the compliance with  
17 that will be not the day of the tour but the day before, no  
18 later than the start of business the day before.

19 All right. Turning now to Performance Measure 85 and  
20 86 where you've asked for the Court's guidances on trying to 13:37:05  
21 resolve the dispute that presently exists. We ran into a  
22 little bit of trouble there because we understand that  
23 defendants' language is in an October 20th, 2017 letter, which  
24 we couldn't find.

25 Does anybody here happen to have a handy cite to where 13:37:24

1 that might be in the record, the defendants' version of their  
2 language that they would like in regard to Performance Measures  
3 85 and 86?

4 MS. HESMAN: Your Honor, we filed with that the Court  
5 shortly after the November 21st telephonic hearing. I don't  
6 have the docket cite readily available, but --

13:37:42

7 THE COURT: Would you mind e-mailing --

8 MS. HESMAN: Sure.

9 THE COURT: -- Miss Selzer and let her know where that  
10 is, just so that we -- we had trouble finding it.

13:37:49

11 MS. HESMAN: Okay, yeah, will do.

12 THE COURT: Then with respect to Performance Measure  
13 95, I see the plaintiffs' proposed language but, again, I don't  
14 see if defendants have any objection to that.

15 Have you let us know whether you have an objection to  
16 the defendants' (sic) language that they proposed for  
17 Performance Measure 95?

13:38:11

18 MS. HESMAN: No, Your Honor. We've already reached an  
19 agreement. We agreed to plaintiffs' language.

20 THE COURT: Okay. Thank you.

13:38:22

21 Plaintiffs ask that we address the issue of the  
22 re-audit of Performance Measures 1, 2, 4, 77 and 95.

23 What I'll say with respect to that is what I've said  
24 in the past, if there's not a re-audit it can't be used in an  
25 argument for removal from the Stipulation. So the ball is kind

13:38:40

1 of in the court on the defendants' side on what they wish to do  
2 with respect to that.

3 The next agenda item is that the plaintiffs have asked  
4 if the State is in a position to give any update on the RFP for  
5 the provider, the contractor for health care. 13:39:04

6 MR. STRUCK: Yes, Your Honor.

7 Your Honor, the RFP is still under review. And that's  
8 about all I can say.

9 THE COURT: Okay.

10 MR. STRUCK: And I know -- well, it's your agenda. 13:39:18

11 THE COURT: No, go ahead.

12 MR. STRUCK: But there were a couple of issues that  
13 they --

14 THE COURT: On that topic?

15 MR. STRUCK: There's -- 13:39:27

16 THE COURT: Feel free. Go ahead.

17 MR. STRUCK: 12A, B and C. They wanted to know what  
18 the sanctions were assessed against Corizon for the months of  
19 September and October. And under the new contract is -- the  
20 cap is lifted starting this month, so -- I mean starting 13:39:44  
21 November. So in September and October it was 90,000 was the  
22 maximum amount that they could be assessed.

23 THE COURT: And you don't know what November is yet?

24 MR. STRUCK: That's correct, I don't know what  
25 November is yet. 13:40:00

1 I do know -- I can say that if there wasn't a cap, the  
2 October sanction would have been 320,000 and November sanction  
3 would have been 245,000.

4 THE COURT: And when does the November information  
5 become available? 13:40:16

6 MR. PRATT: Well, what's being audited in December, so  
7 middle of January.

8 THE COURT: All right. Thank you.

9 MR. STRUCK: And the third question they asked under  
10 that subsection was the amount of money assessed by the State 13:40:34  
11 against Corizon for failure to maintain staffing levels above  
12 90 percent.

13 The month of September the total amount assessed  
14 against Corizon was \$58,497.22. Of that amount \$22,323.41 was  
15 with respect to providers, because there's three different 13:41:00  
16 categories. There's key manager positions, there's provider  
17 positions, and then there's everybody else, nonmanagement group  
18 they call it. So of the \$58,497.22, \$22,323.41 related to  
19 providers.

20 For the month of October the total assessment against 13:41:22  
21 Corizon was \$60,660.03. Of that amount -- for the providers,  
22 that amount of the 60,000 amount was \$6,875.99.

23 THE COURT: Does that address plaintiffs' inquiry on  
24 that subject?

25 MS. KENDRICK: That answers the question, yes. 13:41:52

1 THE COURT: Thank you.

2 There are pending motions to seal documents 2498 to  
3 2501 and 2508, which will be granted consistent with the  
4 Court's previous practice with respect to protecting individual  
5 inmate's personal health information. 13:42:11

6 The next topic on my agenda is to turn to yet again  
7 this issue that continues to percolate, and that is the random  
8 sampling issue.

9 It's not clear to me again where we are on this. It's  
10 because -- it seems as though part of the discussion is where 13:42:31  
11 the randomization language would be present or not. It seems  
12 like I read that defendants say that we agree with it, with  
13 plaintiffs' expert, but it then seems like the issue still  
14 remains vital or alive in the parties' minds.

15 So it's not clear to me where it is. So I need you 13:42:55  
16 all to square it up for me to make sure that I understand  
17 exactly what the issue is and what you need me to decide on  
18 this random sampling issue.

19 MR. FATHI: Your Honor, this is David Fathi. Let me  
20 try to give you a quick summary. 13:43:10

21 The Court some months ago suggested that some language  
22 based on Dr. Haney's Affidavit about random sampling be  
23 included in the Monitor Guide. We sent the defendants -- the  
24 defendants asked us to provide some proposed language, we did.  
25 They ended up including only two sentences of our proposed 13:43:31

1 language. We expressed a view that that was insufficient.  
2 There were a number of critical topics that simply weren't  
3 covered.

4 At the last hearing the defendants asked for a chance  
5 to file a brief. They did so at document 2465. We filed a  
6 response at document 2469. 13:43:47

7 So those are the relevant documents for the Court to  
8 review. I think the matter is fully briefed and ready for  
9 decision.

10 THE COURT: All right. I looked at that. And again,  
11 what -- I mean, if defendants are saying in the one hand they  
12 don't object to the randomization, I guess I need to now hear,  
13 what is it that the defendants object to in Dr. Haney's  
14 Declaration that I embraced before? 13:44:04

15 MS. HESMAN: Your Honor, first of all we object to  
16 including the language in the Monitoring Guide, because it's  
17 confusing. The monitors aren't the ones who are actually doing  
18 the random sampling. So to advise them as to how to do  
19 randomization is confusing. 13:44:29

20 Moreover, Dr. Haney's Declaration is extremely long  
21 and convoluted. Therefore, we attached a Declaration from our  
22 own doctor with our filing that simplifies the language. So to  
23 the extent that the Court does desire that random sampling  
24 language be included in the Monitoring Guide, that he uses that  
25 simpler language. Again, it's language that Dr. Haney also  
13:45:02

1 agrees to. It's the same language, it's just in a simpler  
2 format.

3 But, again, our position is that no language should be  
4 included in the Monitor Guide on randomization because the  
5 monitors aren't the ones randomizing. 13:45:17

6 THE COURT: Right. So I guess -- I mean, I do  
7 understand and agree with that point, that it is not the  
8 monitor's task to be doing the randomization. But I also am  
9 puzzled by your statement that you think that your expert -- if  
10 I take it what you're saying essentially agrees with Haney's 13:45:36  
11 Declaration, but you just think you say it plainer.

12 So I guess I should give Mr. Fathi a reply on that to  
13 say why it is that they are still different.

14 MR. FATHI: Your Honor, first of all, it's not correct  
15 that the monitors don't do randomization. In our filing at 13:45:54  
16 2469 we cited testimony from the evidentiary hearings earlier  
17 this year that monitors do sometimes do randomization.

18 Secondly, Dr. Haney --

19 THE COURT: That's with the computer program -- that  
20 was with the computer program that did it, is that what that 13:46:12  
21 testimony was about? Do you remember?

22 MR. FATHI: Your Honor, the testimony I'm referring to  
23 is Dennis Dye, who was a mental health monitor who was  
24 testifying about, I believe, Performance Measure 74, in which  
25 he testified that generally there's fewer than ten applicable 13:46:28

1 records per month, so he doesn't need -- they don't need to be  
2 randomized. But if there were more than ten then he would be  
3 doing the one doing the randomization.

4 THE COURT: Okay.

5 MR. FATHI: But the more fundamental point, 13:46:43  
6 Your Honor, is that Dr. Haney's Declaration covers many other  
7 critical subjects other than just the mechanics of how you  
8 randomize it.

9 It covers the need to -- when you make changes to the  
10 results of the sampling, to document those changes in real 13:47:00  
11 time. It covers the entire process rather than just the narrow  
12 mechanics of how do you do the randomization.

13 The defendants' expert said in his Declaration that  
14 what Dr. Haney stated is correct. There is absolutely no  
15 objection, no disagreement from defendants' expert, except with 13:47:19  
16 regard to I believe a single sentence about Performance Measure  
17 39. Defendants' expert didn't explain his objection, he just  
18 said Dr. Haney's wrong without any elaboration.

19 Finally, Your Honor, we believe that if the Court  
20 finds itself compelled to make a credibility determination 13:47:37  
21 between the two experts, Dr. Haney has far, far more experience  
22 in random sampling and research methods more generally than the  
23 defendants' expert.

24 So for all of those reasons, particularly the fact  
25 that neither the defendants' pleading at 2465 nor their expert 13:47:54

1 Declaration actually identify anything incorrect with what  
2 Dr. Haney says, we believe that the language we propose should  
3 be included in the Monitor Guide.

4 THE COURT: Mr. Fathi, have you observed in the months  
5 since we did talk about this and had testimony, have you had 13:48:13  
6 occasion to observe any circumstances where you thought that  
7 there were randomization issues that were inconsistent with  
8 what Dr. Haney had opined about?

9 MR. FATHI: About the mechanics of randomization, no,  
10 Your Honor. But that's because those are invisible to us. All 13:48:35  
11 we get are the CGARs. And the CGARs say, these were the ten  
12 records we pulled. They contain absolutely no information  
13 about the mechanics through which those records were selected.

14 So there could be massive problems with randomization  
15 of the type that were discussed at the hearings, of the type 13:48:53  
16 that made the Court say there were great chasms of competence  
17 in how the monitoring was being done, and we simply wouldn't  
18 know about it. And that's another reason why it's essential to  
19 make sure that this guidance is provided.

20 Now about other aspects of the problem, yes, we have 13:49:10  
21 noticed difficulties. One of the things that Dr. Haney says is  
22 that it's critically important that when changes are made,  
23 those changes be documented in real time, so that if  
24 there's -- as the Court said earlier, I think a trail of bread  
25 crumbs, an audit trail, so that the reader can see what was 13:49:31

1 done. And as we discussed earlier this morning, there's a  
2 couple of examples that came up today where apparently that  
3 wasn't done.

4 So we think this information is critically important.  
5 The defendants haven't identified any reason not to include it. 13:49:44  
6 And we think it should be included.

7 THE COURT: Any last word from defendants?

8 MS. HESMAN: Yes, Your Honor.

9 I agree with Mr. Fathi that our expert and Dr. Haney  
10 can agree on general language regarding randomization. It's 13:49:57  
11 simply unnecessary to include over five pages in a Monitor  
12 Guide. The purpose of the Monitor Guide is to assist the  
13 monitors. It is very confusing and they don't need that  
14 information.

15 I also don't know how including the randomization 13:50:12  
16 language in the Monitor Guide answers Mr. Fathi's inquiries  
17 about problems in the randomization process. Including that in  
18 the Guide is not going to answer that question for him.

19 I think that the simplified version that our expert  
20 provided who, in fact, is a statistician, and Dr. Haney is not, 13:50:29  
21 answers plaintiffs' concerns, answers any concerns that the  
22 Court may have, and it's simple and direct and to the point.

23 THE COURT: But when you say you don't have an  
24 objection to Dr. Haney's five pages, other than the fact that  
25 it sounds like you think that the five pages should not be 13:50:45

1 included in the Monitoring Guide, if they became an order of  
2 the Court, then do you no longer have an objection to using  
3 Dr. Haney's language of five pages?

4 MS. HESMAN: Well, certainly, Your Honor, if you  
5 ordered us to do it I would no longer have an objection to it. 13:50:58

6 The problem with Dr. Haney's methodology was with  
7 respect to Performance Measure 39, and that's detailed in our  
8 briefing. That was the real issue that we had. He dedicated  
9 many of his pages to the analysis of Performance Measure 39.  
10 But if he's just going to stick with the simplified version of 13:51:13  
11 what randomization is then, no, we do not have an objection to  
12 that.

13 Our overall objection that the monitors don't  
14 randomize, so I don't understand what purpose this serves.

15 THE COURT: All right. Anything else you wanted to 13:51:26  
16 say, Mr. Fathi, on this?

17 MR. FATHI: Simply, again, Your Honor, it is incorrect  
18 that the monitors don't randomize. And again, Dr. Haney's  
19 language is instructive on a number of critical steps in the  
20 process that the hearings earlier this year showed is -- the 13:51:40  
21 defendants are direly in need of.

22 THE COURT: All right. This was helpful for me.  
23 Thank you very much. I'll address it and get an order out.

24 Last time we talked about this suggestion that there  
25 had been a uniform adoption of a policy with respect to pain 13:51:57

1 medications, and it was contemplated that we'd have testimony  
2 from Mr. Pratt this month regarding the --

3 (Phone interruption.)

4 THE COURT: -- discontinuation of the tramadol and the  
5 gabapentin. And so are we prepared to go forward with that? 13:52:23

6 MS. HESMAN: We are, Your Honor. If I could just say  
7 some brief words before Mr. Pratt gives his testimony.

8 I spoke with various Corizon personnel yesterday about  
9 this issue at length, specifically with Dr. Patel who is the  
10 Regional Medical Director for Corizon. And I have been advised 13:52:40  
11 that there is no system-wide discontinuation of gabapentin or  
12 the other pain medications, as plaintiffs allege.

13 As you may recall this issue stemmed from a document  
14 request that plaintiffs sent to us for any and all documents  
15 regarding the system-wide discontinuation of these medications. 13:52:57  
16 That simply is inaccurate. There is no system-wide  
17 discontinuation.

18 Rather what has happened is that there has been an  
19 uptick in abuse of these medications, specifically with inmates  
20 cheeking the medication or hoarding the medication. Therefore, 13:53:12  
21 providers are scrutinizing the medical records a little more  
22 closely before refilling or prescribing these pain medications.

23 So the Declaration submitted in support of their  
24 agenda, Your Honor, where they detail these inmate letters that  
25 they've received, I'm not saying they're invalid, but those are 13:53:30

1 specific concerns that a specific provider had for a specific  
2 inmate, and a determination was made whether or not to remove  
3 that medication, re-prescribe that medication, or prescribe  
4 that medication.

5 It's not a system-wide discontinuation. And, 13:53:46  
6 therefore, there are no responsive documents to their request.

7 THE COURT: All right. So no documents, but we have  
8 Mr. Pratt. If you'd please step forward to the clerk to be  
9 sworn.

10 (RICHARD PRATT, DEFENSE WITNESS, SWORN.) 13:54:01

11 THE CLERK: Thank you.

12 THE COURT: Kindly, sir, have a seat.

13 MS. KENDRICK: Your Honor, Mr. Fathi just sent a  
14 message saying that the call got disconnected. I think he may  
15 have attempted to restart it. 13:54:20

16 THE COURT: Give us just a second, we'll see what we  
17 can do.

18 MS. KENDRICK: Okay. Thank you.

19 (Discussion held off the record.)

20 THE COURT: Mr. Fathi, are you back? 13:55:09

21 MR. FATHI: I am, Your Honor. My apologies.

22 THE COURT: No, well, thank you.

23 Miss Kendrick, when you told us about Mr. Fathi's  
24 absence, was that because he's the lead on the plaintiffs' side  
25 on this issue? 13:55:37

~~Richard Pratt - Direct Examination~~

1 MS. KENDRICK: No.

2 THE COURT: I just wanted to know.

3 MS. KENDRICK: But also, Miss Finger was using the  
4 same call-in number too from Corizon, so we just wanted to make  
5 sure everybody was back on. 13:55:46

6 THE COURT: The only reason I asked that question is I  
7 just wanted to know whether I needed to recapitulate what we  
8 just heard with respect to the preamble from defense counsel  
9 regarding what Mr. Pratt was going to be talking about.

10 I'm going to start with some questions, sir. 13:55:58

11 DIRECT EXAMINATION

12 BY THE COURT:

13 Q. This issue that was raised about the allegation of the  
14 cessation of these two drugs, gabapentin and tramadol, when we  
15 raised it, you then, I gather, looked into it? 13:56:08

16 A. Yes.

17 Q. And what did you do to look into it?

18 A. I checked with Corizon. I discussed the issues with them.  
19 Have they put out anything that says we're going to  
20 systematically get rid of these medications or -- and all the 13:56:22  
21 answers I got were negative.

22 Q. I see. And when we heard from defense counsel that it was  
23 in reaction to abuse of the drugs, is that something that comes  
24 from the Corizon side or from the D.O.C. side?

25 A. Both. 13:56:40

1 Q. I see. And had you heard about that before?

2 A. Yes, sir. And that's -- that's historic. That has been  
3 longstanding. And it's not just ADC, it's across the country.

4 Q. And this uptick that defense counsel mentioned, is that  
5 what you had seen too? 13:56:56

6 A. I haven't seen an uptick. Again, it's been pretty much  
7 historic. And those are medications of high abuse potential,  
8 and they have great street value, I should say, on the yards.

9 Q. I understand pain management -- and both of these drugs are  
10 pain management drugs; is that right? 13:57:17

11 A. Yes.

12 Q. I understand pain management is a challenge in the prison  
13 system because of the potential for abuse, and that the drugs  
14 that are not so susceptible to abuse are not as effective in  
15 dealing with pain oftentimes. Is that fair to say? 13:57:29

16 A. Not necessarily, Your Honor. I don't know that they're  
17 less effective. A lot of times this is just based upon the  
18 patient's desire for a specific drug.

19 Q. All right. And these are general questions. I know that  
20 you're not a doctor. But I know that you have substantial 13:57:47  
21 medical experience in the prison system and you're looking at  
22 these issues, and so I do need to take advantage of the fact  
23 that I have you here and can ask these questions.

24 But if it is a determination that these two drugs are  
25 susceptible to abuse, do you have any idea about what the 13:58:06

1 alternative drugs are that are available?

2 A. There's a lot of different alternative drugs, Your Honor.

3 And by training I was licensed as a physician  
4 assistant in the past, so I've got some knowledge there.

5 But there are a lot of different drugs to address pain 13:58:24  
6 issues. Some drugs will work for some people, some drugs --  
7 that same drug may not work for another person.

8 A lot of times it's trial and error as to what is  
9 successful in pain management. And honestly, the only way that  
10 you're able to judge that is based upon what the patient is 13:58:44  
11 telling you. It's subjective as far as what's considered pain  
12 by the patient.

13 Q. Well, I guess I'm a little bit troubled by the -- sort of  
14 my lay person's logic application of this. The lay person's  
15 logic is that these two drugs were used because everybody 13:59:03  
16 thought they were the best drugs to use. And then it turns out  
17 there's an abuse problem. So that means you have to fall off  
18 to what may not be -- what everybody viewed to be the best  
19 drugs to use.

20 And so in the climate of what we see in Federal Court 13:59:18  
21 where we see an uptick of our own with respect to individual  
22 cases where people say they're no longer getting the pain  
23 relief that they need, and they allege that it's part of a  
24 systematic program, again, not part of the evidence in this  
25 case, but something that I'm aware of from the docket of other 13:59:34

1 cases that are allegations in the courthouse.

2 And so if my logic is correct, I guess the question  
3 is, who's looking at this on an individual basis to make sure  
4 that individual inmates are receiving the appropriate pain  
5 medication that they need to receive? 13:59:59

6 A. Well, when -- as I'm sure you're aware, the whole pain  
7 management and addiction issue has been gaining great notoriety  
8 across the country, in particular with opioids. And there's  
9 been a focus to try to no longer throw out the major  
10 painkiller, be it opioid or whatever it is, to try to come up 14:00:24  
11 with alternative medications that may not be habit forming,  
12 that may not be as dangerous for the overall patient care.

13 So there's been a push to adjust medications to  
14 possibly less addictive, albeit -- and hopefully still as  
15 effective. But there's times when a patient will say, I'm 14:00:47  
16 happy with what I'm getting, don't change it, where it may  
17 actually be in the patient's best interests to change that to a  
18 less addictive drug.

19 Q. I'm left with the thought that this issue -- I mean, the  
20 first question that I asked was whether or not there was a 14:01:14  
21 broad policy to discontinue these medications, and the answer  
22 first is, no, there's been no discontinuation, what there's  
23 been is a decision to try to reduce the use of these medicines,  
24 to explore alternatives because of the high abuse potential.

25 And again, I don't know where that leaves me with 14:01:35

1 respect to the net number of people that are affected or what  
2 the alternatives are.

3 But do you have a way of seeing in a quantitative  
4 measure what the -- if somebody wanted to determine, well, we  
5 are hearing from the lawyers that there's been no policy, but 14:01:58  
6 one of the ways we could check that is we would say that in  
7 December of '16 we had 100 units of this medicine being  
8 dispensed and we look now at November of '17 and we see that  
9 there are five. And then that might inform us with respect to  
10 whether or not there had been a dramatic change and maybe would 14:02:20  
11 stimulate further inquiry, perhaps expert or otherwise.

12 Is there any such number that's available to you to  
13 find about the number of dispensings of these medications?

14 A. Yes. We have a quarterly pharmacy and therapeutics meeting  
15 where Corizon provides us with information on all drugs that 14:02:39  
16 they've been prescribing.

17 Q. I see. And when was this last quarterly report?

18 A. I believe it was last month. I'd have to go back and look  
19 for sure.

20 Q. All right. So that would be for the third quarter of '17, 14:02:55  
21 you think?

22 A. Yes.

23 Q. So you could produce that to us and we could see what the  
24 number of tramadol and gabapentin dispensings were in the third  
25 quarter in the prison system and compare that to the previous 14:03:12

~~Richard Pratt - Cross-Examination~~

1 year, for example?

2 A. Yes, sir.

3 Q. Okay. Can I ask you to make sure that happens?

4 A. Of course.

5 THE COURT: Okay. All right.

14:03:23

6 Any questions from plaintiffs' counsel?

7 MS. KENDRICK: Just a couple, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. KENDRICK:

10 Q. Mr. Pratt, you referred to the fact that the gabapentin and  
11 the tramadol was being abused and cheeked by the people who  
12 were taking it. Are these medications direct observation  
13 therapy or also known as watch swallow medications?

14:03:30

14 A. Either or.

15 Q. What does either or mean?

14:03:47

16 A. Could be -- it depends on how the provider orders it, KOP  
17 or DOT.

18 Q. So the providers prescribe tramadol as KOP?

19 A. They can.

20 Q. Do they?

14:04:00

21 A. I don't know on a general basis.

22 Q. So if medications were being abused, wouldn't the way to  
23 eliminate the issue of passing the meds or cheeking the meds be  
24 to observe them taking the medication?

25 A. Easier said than done. When you hand a pill to a patient

14:04:17

**Richard Pratt - Cross-Examination**

1 and the patient actually cheeks it, the only actual way that  
2 you're going to verify for sure that that inmate has swallowed  
3 that medication is to do a finger sweep of his mouth after the  
4 medication has been delivered.

5 Q. Is the general practice for DOT medication that the person 14:04:36  
6 after they swallow the medication is asked to open their mouth  
7 so that a custody officer or a nurse can see if they've cheeked  
8 it?

9 A. No.

10 Q. That's not the practice in ADC? 14:04:48

11 A. No, it's just observation by an officer.

12 Q. Do you think that if that was the actual practice used that  
13 that would reduce the number of cheekings or people not taking  
14 their medications?

15 A. I can't say that that would make a difference. 14:05:02

16 Q. Are you aware that other prison jurisdictions use that  
17 approach to DOT medication administration?

18 A. No, not particularly.

19 Q. Okay. So you didn't know that's how other prisons do it?

20 A. Other systems -- 14:05:19

21 Q. Yes.

22 A. -- may have different rules as to, you know, how they  
23 monitor direct order therapy.

24 Q. So how -- you mentioned earlier that there's a national  
25 trend of medications being abused and cheeked. How are you 14:05:34

1 aware of that?

2 A. No, I'm talking in particular about the opioid crisis that  
3 we're going through at this point and the heightened level of  
4 being careful regarding what medications are prescribed  
5 for -- in the safety for the patient.

14:05:54

6 Q. Is gabapentin an opioid?

7 A. No.

8 Q. And do you know when tramadol became a controlled  
9 substance?

10 A. I do not.

14:06:03

11 Q. But it wasn't a controlled substance in the past, are you  
12 aware of that?

13 A. I'm not aware of that, no.

14 Q. And you mentioned that because of this opioid crisis, that  
15 alternative drugs are being used. What are the alternative  
16 drugs that Corizon is using?

14:06:17

17 A. There's a host of different medications that are available  
18 for pain control. I can't give you a list.

19 Q. You can't even name one?

20 A. No.

14:06:33

21 Q. How about Effexor?

22 A. I don't know.

23 Q. How about Ibuprofen?

24 A. I don't know.

25 As far as an alternative you're talking?

14:06:46

1 Q. Yes.

2 A. Again, there's a host of medications that are allowed for  
3 pain management.

4 Q. But you're not aware of what Corizon is prescribing as an  
5 alternative to gabapentin or tramadol? 14:07:00

6 A. Patient specific. And that is the decision of the provider  
7 that's treating that patient.

8 Q. What does this quarterly report show that is being  
9 prescribed?

10 A. I will provide it to you and the Court. 14:07:13

11 THE COURT: It probably makes sense for us to see it  
12 across the board, because then we'd be able to see maybe what  
13 the increase in -- commiserate increase in medications that  
14 might compare to the decrease of these other two drugs and we  
15 might, therefore, be able to, knowing the class of drugs, make  
16 some kind of rough assessment about what the substitute drugs  
17 would be. 14:07:33

18 But if we needed to find out in particular from the  
19 person most knowledgeable, who would that be? Who is the one  
20 who's most knowledgeable about making a decision, we've got  
21 this issue with these two drugs, we're seeking to try to clamp  
22 down as I think you said on them, and here are the possible  
23 alternatives, who would be providing that information to the  
24 providers who would need to know that? 14:07:50

25 THE WITNESS: Dr. Patel, who is the medical manager 14:08:08

~~Richard Pratt - Cross-Examination~~

1 for Corizon.

2 THE COURT: Okay. Thank you.

3 Anything further from plaintiffs?

4 MS. KENDRICK: Yes.

5 BY MS. KENDRICK:

14:08:17

6 Q. Do you know what is listed in the Corizon formulary as pain  
7 management medication?

8 A. Not off the top, no.

9 Q. Is that something that you could obtain or request from  
10 Corizon?

14:08:28

11 A. Absolutely.

12 Q. Okay.

13 THE COURT: Can you provide that also to us?

14 THE WITNESS: Sure.

15 THE COURT: Thank you.

14:08:37

16 MS. KENDRICK: I have nothing further.

17 THE COURT: All right. Anything defendants wanted to  
18 say?

19 MS. HESMAN: Nothing, Your Honor. Thank you.

20 THE COURT: Okay. Mr. Pratt, thank you.

14:08:45

21 THE WITNESS: You're welcome.

22 MS. KENDRICK: Your Honor?

23 THE COURT: Yes.

24 MS. KENDRICK: I did want to say something in response  
25 to what Miss Hesman said.

14:08:51

1 THE COURT: Yes.

2 MS. KENDRICK: So we requested documents related to  
3 the discontinuation of medication. We did not request  
4 documents regarding a systematic policy. So the fact that  
5 there's no written policy that says discontinuing medication  
6 doesn't mean that there could not be relevant documents. 14:09:06

7 For example, as detailed in the Declaration of Megan  
8 Lynch at docket 2497, we received reports from class members  
9 that said they had been given grievance responses or shown  
10 e-mails that said that all prisoners were to be taken off these 14:09:27  
11 drugs.

12 So again, we just would like to ask that they make  
13 sure that they are searching correctly for documents rather  
14 than just saying, do you have any documents about a systemic  
15 policy or a written policy to do this, that they're actually 14:09:41  
16 looking at the underlying substance of what we're trying to get  
17 at here.

18 We understand that there probably is no written policy  
19 that's on Corizon letterhead that says we're going to  
20 discontinue these medications. However, given the statically 14:09:55  
21 significant amount of intake our office has received in the  
22 past 11 months about this issue, we do believe that there  
23 perhaps is some sort of documentation out there about the  
24 practice that is going on, even if it's not pursuant to a  
25 formal written policy. 14:10:13

1 THE COURT: And you don't happen to have your  
2 interrogatory question?

3 MS. HESMAN: I do, Your Honor. I can read it.

4 THE COURT: Can you?

5 MS. HESMAN: Any documents relating to the system-wide 14:10:21  
6 and/or institution-wide discontinuation of gabapentin or  
7 tramadol.

8 So what I'm hearing from Miss Kendrick is that we're  
9 supposed to be mind readers and interpret that to mean  
10 something more than what she's requested. If she wanted 14:10:34  
11 something else they should have phrased it differently.

12 THE COURT: That's why I asked the question, because I  
13 don't expect any lawyer should expect the other side's lawyer  
14 to be the mind reader. You need to ask the question that you  
15 want answered. And the question that I heard from 14:10:46  
16 Miss Kendrick is a different question than the one she asked.

17 MS. KENDRICK: We'll be happy to rephrase our request.

18 THE COURT: That's what I think you need to do.

19 All right. Thank you.

20 Other than the Procure Arizona issue that we'd raised 14:11:15  
21 with Mr. Millar, I think all of the -- as I read it, all of the  
22 other agenda items are captured within the change in course  
23 that I adopted this morning with respect to looking into the  
24 collection of records and reporting.

25 And so I think that I have addressed the issues that 14:11:39

1 were on the agenda items that were submitted that touched upon  
2 those already by the course that we're going to take. But  
3 we're now at that point where I'll turn to each side to address  
4 issues that they think that I have failed to raise.

5 MR. FATHI: Your Honor, this is David Fathi. 14:12:01

6 There remain --

7 THE COURT: Oh, there was one -- I'm sorry, I've just  
8 been handed a note that I did miss one that was on my agenda.  
9 And I'm sorry about that.

10 Before you go on, Mr. Fathi, let me just finish my 14:12:12  
11 list for sure.

12 MR. FATHI: Of course.

13 THE COURT: And that is the agenda item of the  
14 isolation subclass.

15 What I have here is an issue that I thought that I 14:12:23  
16 could get to a place where the parties could agree, and that I  
17 kind of jumped over some steps to get to there, thinking that  
18 if I got to that place it wouldn't be a foul for me to have  
19 jumped those steps.

20 But then where I am right now, it looks to me like 14:12:45  
21 with respect to this isolation subclass issue, that I do have a  
22 disagreement. And I have a proposed order -- which is what I  
23 asked for, so there's no foul, this was what was presented to  
24 me. But I now have a proposed order that is a subject of  
25 contention. 14:13:08

1           And so then I have to go back to see -- if I'm not in  
2 the position of presiding over a happy agreement, I have to be  
3 the decision-maker on it. And that means that the steps to get  
4 to that place need to be respected.

5           And the steps that I think that I'm missing are that I 14:13:24  
6 don't have a motion to do what plaintiffs asked me to do in  
7 their proposed language, other than the one that is rather  
8 stale now.

9           Because I understand from what I have read, but is not  
10 really part of the evidentiary record in the case, that there 14:13:47  
11 have been changed circumstances that directly affect this  
12 issue. For example, this adoption I think of a plan that's in  
13 place where the armbands are used to clock like marathon  
14 runners when they run past certain mile points, about when  
15 people are out of the cell or where they are. If that's a 14:14:06  
16 circumstance, that affects how I address this issue. But  
17 there's nothing in the evidentiary record that I have.

18           And so I'm thinking that with respect to the subclass  
19 issue I need to have a renewed motion from plaintiffs. And  
20 then I need to set an evidentiary hearing to give you all a 14:14:22  
21 chance to tell me what the facts are so that I can make a  
22 reasonable decision on how to resolve this dispute that you  
23 presently have. I don't think there's any possibility that we  
24 could schedule it before March, but I think that that's the way  
25 I need to go. 14:14:39

1 I'll turn now to respective counsel to opine on what  
2 I've just said.

3 MR. FATHI: Your Honor, this is David Fathi.  
4 Miss Fettig has just joined us. I don't know if she heard  
5 everything the Court said from the beginning. But if she has  
6 questions I'm sure she will pose them. 14:14:54

7 THE COURT: Well, let's ask Miss Fettig whether she  
8 heard what I said or not.

9 MS. FETTIG: Good afternoon, Your Honor.

10 I heard part of it, but I may not have gotten the full 14:15:06  
11 thing. I came in when you were discussing armbands. And I  
12 confess I'm not sure what you're talking about. You may have  
13 some information that I do not.

14 THE COURT: Go ahead.

15 MS. FETTIG: Yes. No, I'm not sure what you're 14:15:24  
16 talking about in terms of the armband. You may -- there has  
17 been discussion about monitoring the new -- the close custody  
18 units using electronic monitoring. But the most recent  
19 information we have regarding that is that it is still in  
20 progress because of purchasing problems with the State. So 14:15:45  
21 that has yet to be implemented.

22 If there's a separate armband issue, I'm not aware of  
23 it. Certainly electronic monitoring is a nice idea, but I  
24 don't think it has yet been realized in the ADC.

25 THE COURT: All right.

1 MS. FETTIG: So in terms of a renewed motion, the  
2 question I would have for Your Honor is, much of the original  
3 motion is about inaccurate methodology for the initial two  
4 years plus of monitoring for many of the max custody measures.  
5 That situation has not changed because it is historical fact. 14:16:24

6 And so --

7 THE COURT: But what's happening on the  
8 ground -- what's happening right now with -- I mean, do we have  
9 the same issue, do we have the same circumstances, the same  
10 ambiguity about who's going where, when, and who's writing it 14:16:38  
11 down about what's happening?

12 MS. FETTIG: Well, Your Honor, as you know we've been  
13 working on the Monitoring Guide. New monitoring methodology  
14 was put in place.

15 Now, plaintiffs have recently filed a notice of 14:16:52  
16 non-compliance with the defendants, but the defendants have not  
17 yet responded. I believe that is due on December 29th. That  
18 notice raises some issues that are similar and some that are  
19 different from the original motion.

20 For example, the original motion addressed the fact 14:17:10  
21 that there was nonrandom selection of weeks. That had changed.  
22 But that was a year and a half of nonrandom selections in the  
23 methodology historically for the max custody conformance  
24 measures. The fact that there was inaccurate nonrandom  
25 monitoring for the first two years isn't going to change. The 14:17:33

1 issue the plaintiffs brought forward was that, you know, to  
2 some degree we needed to restart the monitoring of the max  
3 custody measures because they were so compromised that they  
4 could not be fixed. And that was part of the original motion.

5 Those arguments remain the same, although going 14:17:58  
6 forward some of the methodology has improved because of the  
7 Monitoring Guide.

8 THE COURT: So the notice of non-compliance, which the  
9 defendants will respond to at the end of the month, won't  
10 provide much more additional information in the record, I 14:18:17  
11 gather, to help me understand this issue. So it seems like I  
12 do need to hear from you all about what the current situation  
13 is as you see it that is the basis for your feeling of  
14 non-compliance. Is that fair?

15 MS. FETTIG: Well, Your Honor, the basis for the 14:18:40  
16 non-compliance during the first two years of monitoring remains  
17 the same as it was in the motion that we originally filed.  
18 That's a historical fact.

19 Going forward there are some new issues that have  
20 arisen that are part of our new notice of non-compliance. And 14:18:54  
21 part of that arises from the Monitoring Guide, a question of  
22 how that monitoring is being done, how are the cell hours being  
23 counted, especially for the SMI population. And that will be  
24 addressed by defendants on the 29th, I don't want to argue that  
25 in court now. 14:19:17

1 But the original motion remains the same in terms of  
2 those methodological errors that we flagged. Our concern is  
3 that we want the monitoring going forward for the adequate  
4 period of time to be accurate. Those first two plus years were  
5 fatally compromised, and that isn't going to change.

14:19:44

6 THE COURT: All right. But the proposed order would  
7 be addressing both a correction of the past record that you'd  
8 submitted as well as going forward; is that true?

9 MS. FETTIG: Your Honor, I'm not quite clear that I  
10 understand you.

14:20:05

11 THE COURT: Okay.

12 MS. FETTIG: The proposed order was meant to address  
13 the flaws that we -- that were identified during the first two  
14 years and then going forward. So some of the issues remain a  
15 problem because they have not yet been decided. Some, like I  
16 mentioned, the random selection of weeks that got corrected  
17 after the first two plus years.

14:20:18

18 So the order that we crafted, the new order that you  
19 asked us submit, and we did submit, that is crafted to address  
20 issues going forward. So that is current.

14:20:39

21 THE COURT: Okay. And then what happens -- if I adopt  
22 that order, the next question I have to ask, what happens to  
23 what you've spent a lot of time talking about, and that is the  
24 historical problems?

25 MS. FETTIG: Yes. Well, we would -- what we would

14:20:57

1 like the Court to address are the old issues of methodology  
2 that made the findings of compliance not compliant. So we've  
3 got a period of time expressed in the motion to enforce the  
4 Stipulation for the max custody measures that -- in which the  
5 defendants claimed they were compliant and our findings upon  
6 analysis of the methodology and the actual -- and the actual  
7 documents, our argument is that they were not complying with  
8 the terms of the Stipulation.

14:21:21

9 So we would ask the Court to rule on the plaintiffs'  
10 position that those -- that first, you know, two years is  
11 actually not compliant.

14:21:39

12 THE COURT: All right. So, my discussion with you  
13 right now has told me that I do think that it was wrong -- or  
14 it is now in retrospect wrong for me to have done things the  
15 way that I did, because it's created all of these ambiguities,  
16 and to make sure that the issues are properly joined.

14:22:00

17 What I'll do is I'll take a look at the  
18 Government's -- the State's response at the end of the month,  
19 and your reply, and then I'll take all of that information  
20 together with the information that I have in the documents that  
21 have already been filed, and see if I'm right, that I do think  
22 that I still need an additional motion. And if I do need any  
23 additional evidentiary evidence -- evidentiary hearing or  
24 taking of evidence, and I'll let you know all about that after  
25 I see the reply.

14:22:17

14:22:38

1 MS. FETTIG: Thank you, Your Honor. We appreciate  
2 that.

3 And if the Court has any questions, certainly at the  
4 next status hearing we can address those so that we're all on  
5 the same page. 14:22:50

6 THE COURT: All right. Thank you very much.

7 MS. LOVE: Your Honor, if I may, I'm not sure in this  
8 discussion what we're speaking of of looking at a reply. I  
9 think there may be some confusion in that the new notice of  
10 substantial non-compliance that Miss Fettig referred to, I 14:23:04  
11 think she just maybe made a mistake in terminology when she  
12 said it was filed. That is indeed a letter to defendants of a  
13 notice of substantial non-compliance pursuant to paragraphs 30  
14 and 31 of the Stipulation, which starts a new mediation  
15 process. 14:23:23

16 So that's not going to give you anymore information in  
17 the record.

18 THE COURT: I see. I see. All right.

19 MS. LOVE: What defendants' concern is, and I think  
20 that we share that with the Court, is that based upon the 14:23:32  
21 motion that defendants also believe is stale in many respects,  
22 because since October of 2016, and even before we have come to  
23 a Monitoring Guide that was put into place as agreements were  
24 made or guidance was provided by the Court, and is in effect,  
25 if you look at the new proposed order versus the stale motion, 14:23:54

1 defendants are also unclear as to the marrying of both, as to  
2 what is really still at issue.

3 THE COURT: Well, let me ask this: If it's embarking  
4 upon the mediation process under this new Notice of  
5 Non-Compliance, is that a venue that I should, without being 14:24:19  
6 too much of an imposition on Judge Bade, to give a chance to  
7 run its course so that seeing if it could maybe capture all of  
8 these issues, or is that unworkable or unreasonable to think  
9 about?

10 Miss Fettig? 14:24:42

11 MS. FETTIG: Your Honor, the new Notice of  
12 Non-Compliance -- and I apologize if I made the Court think  
13 that that was an actual pleading. Indeed, we are at the early  
14 stages in the non-compliance findings.

15 For that the issues, some of them overlap and some of 14:25:01  
16 them are new. What plaintiffs would say in this situation is  
17 that the original motion to enforce the Stipulation for the max  
18 custody measures, we do need a ruling regarding the issues  
19 methodology and otherwise that were brought forward in that  
20 motion so that both parties have an understanding of, you know, 14:25:24  
21 where we go from here.

22 For example, you know, we -- even though defendants  
23 for the moment no longer non-randomly select weeks for  
24 monitoring, we need a ruling from the Court on that issue so  
25 that there's no backsliding. You know, that's just a clear 14:25:43

1 example where, if we don't get a ruling from the Court -- you  
2 know, everything is a moving target in this case, from -- on  
3 the monthly monitoring.

4 So we would certainly appreciate an initial ruling.

5 THE COURT: All right. I gather there's no 14:26:03  
6 impropriety in the court seeing the Notice of Non-Compliance  
7 and the response, because that does not intrude upon the  
8 mediation process, as those are just triggering actions before  
9 the mediation occurs.

10 If that's true what I've just said -- and it may not 14:26:27  
11 be true and you all may tell me it's not true. But if that is  
12 true, is it all right for me to see the notice from plaintiffs  
13 and the response from the defendants, and let me see those so  
14 that I can decide whether I think that there's action I can  
15 take with the existing motion, or whether I do think that I 14:26:46  
16 need additional evidentiary information with respect to  
17 addressing the proposed form of order?

18 MS. FETTIG: Your Honor, plaintiffs do not have a  
19 problem with providing that information to you.

20 MS. LOVE: Your Honor, defendants agree with 14:27:03  
21 Miss Fettig. We would only ask that because this is still  
22 pursuant to the Stipulation going through the mediation  
23 process, that rather that it be filed on the public document  
24 that we provide it to your chambers via e-mail.

25 THE COURT: I have no objection to that. So if you 14:27:18

1 would at the end of the month, on the 29th, and sometime  
2 between now and then, Miss Fettig, if you'd submit what you've  
3 provided to the defendants, I'll take a look at that and let  
4 you know what I need or what I can do with respect to the  
5 existing issue that's before me.

14:27:34

6 Thank you.

7 MS. FETTIG: Thank you, Your Honor.

8 THE COURT: All right. Mr. Fathi, that is the end of  
9 my list. You can start up again, please.

10 MR. FATHI: Thank you, Your Honor.

14:27:43

11 There remain some issues under item 4, first beginning  
12 with item 4A, which this involves the Court's order for  
13 Performance Measures 94, 95 and 97.

14 The defendants have to select the required number of  
15 files from different individuals rather than counting the same  
16 person's file more than once in the same month.

14:28:05

17 Now the Court issued its order on July 13th at  
18 document 2185, and since then for the next three months of  
19 CGARs the defendants have failed to comply with the Court's  
20 order, and each month have continued to count the same  
21 individual's file more than once for a given Performance  
22 Measure.

14:28:24

23 We think that's a problem, and we would like assurance  
24 that defendants will comply with the Court's order going  
25 forward.

14:28:39

1 THE COURT: And the defendants essentially respond  
2 that they say it's de minimis; is that right?

3 MS. HESMAN: That's correct, Your Honor.

4 MR. FATHI: Well --

5 MS. HESMAN: Our response is at docket 2489. I'd 14:28:54  
6 specifically like to direct the Court to page 3 where we  
7 outline the total number of files that were reviewed for all  
8 Performance Measures 94, 95 and 97.

9 140 -- with respect to the August numbers, 140 files  
10 were reviewed for Performance Measure 94. Of those files two 14:29:13  
11 duplicate entries were found. That's an error rate of 1.4  
12 percent. More importantly, neither Florence or Yuma where the  
13 duplicates existed fell below 100 percent compliance.

14 For Performance Measure 95, 140 files were reviewed.  
15 Four duplicate entries were found. That's an error rate of 2.8 14:29:29  
16 percent. Florence maintained 90-percent compliance rate.  
17 Lewis maintained a 95-percent compliance rate. Phoenix and  
18 Tucson maintained 100-percent compliance rate.

19 With respect to Performance Measure 97, 364 files were  
20 reviewed. Four duplicates were found. That's an error rate of 14:29:46  
21 1.1 percent. Phoenix's score went from 96 percent to 94  
22 percent.

23 Your Honor, we're talking about human error.  
24 Plaintiffs have constantly tried to present this as an  
25 intentional defiance of the Court order, and that's simply not 14:30:02

1 the case. These are human errors. They're going to happen.  
2 And we're talking about error rates of less than two percent  
3 where compliance remains compliant. None of these measures  
4 dropped to non-compliance.

5 So as we stated in our motion, this is much to do 14:30:17  
6 about nothing, Your Honor.

7 MR. FATHI: Your Honor, as for the defendants'  
8 representations that there were only X errors that accounted  
9 for only Y percent of the cases, and that none of the measures  
10 changed from complaint to non-compliant, there are no 14:30:31  
11 declarations here. The defendants admit that they haven't  
12 provided the underlying documents so we can verify what they're  
13 claiming. All that we have, as usual, is the unsupported  
14 assertions of counsel which are not evidence.

15 And more importantly, there's never been any 14:30:47  
16 explanation as to why, after the Court's order, for three  
17 consecutive months defendants weren't complying with that  
18 order.

19 They do provide an explanation for September, but that  
20 explanation is not reassuring because they admit that the error 14:31:03  
21 was corrected only after we filed our notice with the Court.

22 There's no explanation for the other two months where  
23 we found in July four cases, in August nine cases. And I  
24 emphasize again, that was just spot checking, because as  
25 Miss Kendrick said earlier this morning, we don't have the 14:31:24

1 resources to check every Performance Measure at every  
2 institution every month.

3 But whether in a given month on a given Measure the  
4 defendants' errors are numerous enough and egregious enough to  
5 change from compliance to non-compliance isn't the only 14:31:40  
6 question. The fundamental question is whether these CGAR  
7 reports, the documents on which we all rely, the foundation of  
8 this entire compliance monitor and enterprise are accurate,  
9 whether we can rely that what we read in the CGARs is true and  
10 accurate. And we have shown over and over again, month after 14:32:01  
11 month, that you can't rely on the CGARs for being accurate.

12 What we want is simply that at long last the  
13 defendants commit that they will comply with the Court's order  
14 of July 13th on how to do the monitoring on these three  
15 Performance Measures. 14:32:22

16 THE COURT: Well, what you said just, Mr. Fathi, is a  
17 good articulation of the reason why I omitted this agenda item  
18 from my list, because I believe that it was captured or  
19 subsumed within the greater topic of the reporting issues about  
20 whether or not we could trust the CGARs. 14:32:39

21 What will happen with respect to the marshalling of  
22 the potential case, whether it exists or not, that is suggested  
23 by my comments at the start today, will largely control and  
24 perhaps swamp or not this particular issue. But it seemed to  
25 me, because it potentially could, this one, be swamped, it 14:33:01

1 didn't make a lot of sense to focus on it right now.

2 If it turns out that the plaintiffs think it is one of  
3 their leading points, their lead stories, so to speak, then you  
4 can marshal those facts and present it in a way where we'll  
5 take it up in greater detail with respect to the hearing that 14:33:19  
6 we've scheduled.

7 But for now, for today, I'm not going to address this  
8 one anymore.

9 MR. FATHI: Thank you, Your Honor.

10 THE COURT: Your next one? 14:33:31

11 MR. FATHI: Well, the next one is 4D, and this is a  
12 little bit different, although certainly if the Court wants to  
13 defer this one too, we will comply with the Court's direction.

14 And this involves Performance Measure 77 and the  
15 requirement that treatment plans be updated every 12 months. 14:33:51

16 The Court has ruled on what every 12 months means. It means no  
17 less frequently than every calendar year. But eight days after  
18 the Court ruled, the defendants continued -- reasserted their  
19 position that even if more than one year has elapsed between  
20 the reviews, the file can still be compliant. 14:34:17

21 And this is concerning because it may well make the  
22 difference -- this incorrect counting in disregard of the  
23 Court's order may well make the difference between compliance  
24 and non-compliance.

25 So here again, we simply ask that the defendants 14:34:32

1 commit to obey the Court's order regarding monitoring  
2 methodology for Performance Measure 77.

3 THE COURT: Well, I addressed this when I said what  
4 happened regarding the agenda item that included this one and  
5 the others regarding the plaintiffs' request for a re-audit. 14:34:51  
6 And that is, at the time that the defendants seek to leave the  
7 Stipulation with respect to Performance Measures that are  
8 subject to a challenge based upon a failure to comply with the  
9 Court's instructed methodology, the Court will at that point be  
10 able to evaluate whether or not in fairness and in substance it 14:35:11  
11 is appropriate to think that the errors were significant enough  
12 to remove the -- to remove the compliance record and to not  
13 give the defendants credit for those months.

14 The things that I had previously thought that I would  
15 be thinking about would be whether or not there was a recent 14:35:33  
16 strong history of compliance, in which case then I would think  
17 that it probably would mean that it wasn't such an important  
18 factor to turn the decision on. But if there -- if it was  
19 marginal, then I would think differently about it.

20 But again, it may be swamped by a greater issue 14:35:51  
21 of -- and again, that's why I'll hold off for now for those  
22 reasons on this one as well.

23 MR. FATHI: Thank you, Your Honor.

24 Our only additional concern is that this measure may  
25 well be non-compliant at one or more institutions under the 14:36:07

1 correct monitoring methodology, and defendants' use of the  
2 incorrect monitoring methodology will conceal that, and  
3 therefore create an impression of compliance where, in fact,  
4 none is warranted.

5 And that's why we think this needs to be addressed 14:36:26  
6 sooner than the time at which the defendants seek to terminate  
7 monitoring.

8 But obviously we'll comply with the Court's directive  
9 on how to address this.

10 THE COURT: Thank you. 14:36:38

11 MS. HESMAN: Your Honor, if I may --

12 THE COURT: Yes.

13 MS. HESMAN: -- just very briefly. I think I can  
14 alleviate a lot of Mr. Fathi's concerns.

15 We are applying the Court's methodology to this 14:36:46  
16 Measure. After the November 21st hearing, the first batch of  
17 CGARs that were reviewed were the October CGARs, and they were  
18 reviewed pursuant to the Court's order.

19 So there's been no defiance, we're complying with the  
20 Court's order. 14:37:01

21 THE COURT: Good to hear. Thank you.

22 Is that it from plaintiffs' side?

23 MS. KENDRICK: Your Honor, just one thing.

24 THE COURT: Yes.

25 MS. KENDRICK: I wanted to go back to our request for 14:37:07

1 the documents -- document request number 62.

2 Miss Hesman only read part of the request into the  
3 record, and so for the record I would like to relay what we  
4 actually asked for in full. And it's also at docket 2503-1 at  
5 page 31. 14:37:28

6 Our request number 62 reads in full: Any documents  
7 relating to the system-wide and/or institution-wide  
8 discontinuation of gabapentin, parenthesis, Neurontin, close  
9 parenthesis, or tramadol as pain medications, comma, including  
10 instructions or directives given to prescribing providers, 14:37:46  
11 comma, and protocols for tapering patients off the medication.

12 That was the complete, full request, and the last two  
13 clauses were not read into the record before. So I just wanted  
14 to make a record of that.

15 THE COURT: Your record is made. But as I listened to 14:38:04  
16 it, it does sound like a different question than the one you  
17 asked today.

18 MS. KENDRICK: Nevertheless, we will revise our  
19 request to make it quite clear to them what we are seeking.

20 THE COURT: Thank you. 14:38:16  
21 Anything else from plaintiffs' side?

22 MS. KENDRICK: No, sir.

23 THE COURT: Okay.

24 MR. FATHI: If I may, Your Honor, agenda item 8, this  
25 involves the defendants' failure to provide a number of 14:38:25

1 documents that we've requested. Many of these requests date  
2 from July of this year, and here we are nearing the end of  
3 December. So we would appreciate some alacrity on the part of  
4 defendants and an order by the Court setting a deadline for  
5 production.

14:38:47

6 THE COURT: And are these issues that were addressed  
7 at the November 21 hearing or not?

8 MR. FATHI: They are, Your Honor. And then  
9 subsequently there has been some correspondence. If you will  
10 give me a moment to find the reference in the record.

14:39:00

11 Our letter of December 14th at document 2502-1,  
12 starting at page 30, these are the requests that remain  
13 outstanding. We've already dealt with number 62, which is the  
14 Neurontin/tramadol issue, but there are others where, again,  
15 five months after making these requests we have still not  
16 received the documents. And we have not yet received a  
17 response to this December 14th letter.

14:39:32

18 So we would appreciate, given the many months that  
19 have elapsed, the imposition of a deadline to either produce  
20 the documents or state that after a diligent inquiry none  
21 exist.

14:39:51

22 THE COURT: So the December 14th letter restates  
23 everything that you're asking for in agenda item 8?

24 MR. FATHI: That's correct, Your Honor. It restates  
25 the requests that remain outstanding. We have resolved some

14:40:09

1 since the November 21st telephonic hearing.

2 THE COURT: So what you'd like me to do is to inquire  
3 of the defendants as to when they would be able to respond to  
4 your November 14th letter at the very least; is that right?

5 MR. FATHI: Yes, Your Honor. And respond not only by 14:40:25  
6 saying, we'll look into it, but respond with either production  
7 or a definitive answer, again, given the many months that have  
8 elapsed since these requests were made.

9 MS. LOVE: Your Honor, the letter that Mr. Fathi  
10 speaks of, it's a December 14th letter that was received by 14:40:41  
11 defense counsel less than one week ago.

12 It -- to be fair to all parties, since our firm took  
13 over document production, we've all been working diligently  
14 together to get all remaining outstanding issues resolved.

15 We're down to -- as to request for production numbers, we're 14:40:58  
16 down to literally plaintiffs taking issue with us over

17 eight -- we're down to eight RFPs, a couple of which we have  
18 responded to them, with respect to request number 18 and 19,

19 that we are making additional inquiries into whether there's  
20 additional documents to produce, and we're doing that. Others 14:41:18  
21 we may just be at an impasse.

22 I think that it requires, again, where we are facing  
23 these broad-based requests for production, that we can't be  
24 mind readers as to what they want. And we need to do a meet  
25 and confer among counsel if we can't come to a resolution. 14:41:36

1 But asking for a deadline to respond when we've  
2 received a letter less than a week ago is inappropriate.

3 Again, we're back to the situation where plaintiffs  
4 make, you know, repeated -- sometimes we get multiple letters  
5 or requests a week, where if we were in a litigation  
6 stage -- essentially we are still in discovery. This case was  
7 settled, but we continue with discovery.

14:41:56

8 We should be afforded the protocol of Rule of Civil  
9 Procedure 34(b)(2) where we get 30 days to respond to this.  
10 When we can respond earlier, we certainly will, and we continue  
11 to roll out.

14:42:16

12 But I don't believe that this is a matter that  
13 requires, you know, painting defendants in a bad light when  
14 we've worked down to eight RFPs that are at issue and we've  
15 received a letter less than a week ago.

14:42:33

16 THE COURT: All right. So what we'll do is --

17 MR. FATHI: Your Honor.

18 THE COURT: Go ahead, Mr. Fathi.

19 MR. FATHI: May I respond briefly?

20 First of all, I'm glad to hear defendants agree that  
21 the Federal Rules of Civil Procedure continue to apply to this  
22 case, because they've taken the contrary position previously.

14:42:39

23 Second, as I said, many of these requests were served  
24 in July. There's nothing new in here, they have had them for  
25 five months, so the idea that we're somehow giving them six

14:42:55

1 days to respond is just not correct.

2 THE COURT: All right. Well, what we'll do is, on  
3 the -- no later than the 29th of December the defendants will  
4 produce what documents they have that are responsive, or enter  
5 objections in a responsive letter to the plaintiffs. 14:43:11

6 You then can have your meet and confer on those  
7 remaining issues. And then if you can't resolve it, call me on  
8 the telephone and we'll address those issues of the eight that  
9 remain.

10 Okay. 14:43:26

11 MR. FATHI: Thank you, Your Honor.

12 THE COURT: Defendants' turn on agenda items.

13 MR. STRUCK: Your Honor, really the -- I think the  
14 only thing that we mentioned was the -- and it's something that  
15 we just haven't been able to clear with Mr. Millar. The Court 14:43:39  
16 has ordered payment for Mr. Millar within a certain time frame,  
17 and there's -- it necessarily requires that his organization go  
18 through Procure Arizona. They just need to update their  
19 information, and they're not -- for whatever reason that hasn't  
20 happened. So they were paid, but it was going outside -- 14:44:01

21 THE COURT: All right. So we'll talk about that with  
22 him, do you think makes sense --

23 MR. STRUCK: Yeah, that's fine.

24 THE COURT: -- when he calls in?

25 All right. So he's scheduled to do that at 3:00. So 14:44:12

1 we'll take a break until 3:00 when he calls in.

2 Thank you very much.

3 (Recess at 2:44 p.m., until 3:01 p.m.)

4 THE COURT: Thank you.

5 Please be seated.

6 And, Mr. Millar, you're on the phone, I gather. Thank  
7 you very much for calling in.

8 MR. MILLAR: Yes, we are. Thank you.

9 THE COURT: All right. We have on the screen here the  
10 Advisory Board slide to start. So the WebEx is working  
11 apparently. 15:01:27

12 What we'll do is ask you to go forward, and when you  
13 finish there were just couple of things that we needed to  
14 raise, one from me, one from defense counsel, and maybe  
15 something from plaintiffs. But we'll ask you to go first. 15:01:42

16 MR. MILLAR: We will do that.

17 Judge, we do have the option to possibly bring -- I  
18 can bring myself up on the webcam, we could try that to see if  
19 it would be helpful. I don't know if the audio on the phone  
20 will directly sync with it, and sometimes it's distracting. 15:01:59  
21 But I'll defer to your input on whether you'd like to try that  
22 and see if it works, or just go with our presentation and our  
23 conference call.

24 THE COURT: Well, I'll tell you that right now there a  
25 difficulty with the audio, and it may be because you're on a 15:02:13

1 speaker phone. But there are these -- they're not full  
2 cutouts.

3 But am I only one having trouble hearing?

4 MR. STRUCK: We're having difficulty.

5 THE COURT: It is hard for us to hear. 15:02:26

6 And I think that if you got closer to the speaker  
7 phone microphone or used a nonspeaker phone, we'd probably be  
8 able to hear. But it is hard to hear you right now.

9 So if you want to try using the feature that would use  
10 the WebEx and let us see if it works better, although I'm a 15:02:40  
11 little frightened that maybe it won't, because already we're  
12 having trouble.

13 MR. MILLAR: Actually I think it will make it worse.  
14 Is this better now?

15 THE COURT: Yes, much better. 15:02:54

16 MR. MILLAR: Okay. I will work directly from a  
17 headset. I had the headset off just in case I was going to go  
18 on video. But let's work directly from headsets.

19 I've got two other team members on the phone that I  
20 will introduce, I'll ask them if they have the ability to put 15:03:08  
21 headset on, that they do the same. And hopefully we'll  
22 eliminate that speaker phone issue.

23 THE COURT: Great.

24 MR. MILLAR: Very good.

25 Rene, if you'll go ahead and advance. 15:03:24

1           So as we outlined our intent for this call, what we  
2 refer to this as within our company is a welcome call, that we  
3 seek to introduce our team, outline what we believe the  
4 overview of the engagement will be, or the objectives, to make  
5 sure as we start out we're on the same page. So before we  
6 start spending time and effort going down a road, that we know  
7 that all parties are in agreement with the direction we're  
8 going.

15:03:49

9           And then at this point where we're kicking off we have  
10 some logistical and scheduling elements to talk through, and  
11 then look at the next steps as we move forward with this  
12 project.

15:04:02

13           And I think, Judge, you indicated there are a couple  
14 of additional agenda items that you would like to include at  
15 the end. I think some of them are housekeeping in nature,  
16 others we'll address as they come up.

15:04:15

17           Does that sound like an appropriate agenda to start  
18 with?

19           THE COURT: Yes, perfect. Thank you.

20           MR. MILLAR: Okay. So if we move to the next slide  
21 you'll see photographs of our team there. Three are of us that  
22 will be working with you on this engagement.

15:04:28

23           My name is Braxton Millar. You'll hear me introduce  
24 myself as BJ most often. I'm a vice president with th  
25 value-based care consulting practice at the Advisory Board.

15:04:47

1 And so our practice works with all types of provider-based  
2 consulting endeavors, a lot with physician groups, a lot with  
3 population health management. And we do deal specifically with  
4 physician compensation, recruitment, and retention.

5 Not in my current role at Advisory Board, but in my 15:05:12  
6 prior 25 years of consulting, I do have a substantial  
7 background in correctional healthcare consulting, and have  
8 worked in Arizona, Utah and California.

9 What I'll do is I'll also allow my two teammates to  
10 introduce themselves. Mr. David Long first, and then Miss Rene 15:05:32  
11 Sobolewski.

12 David.

13 MR. LONG: Yes. Hi, I'm David Long. I'm a control  
14 consultant with the Advisory Board team. Much of my practice  
15 focuses around physician alignment as well as population health 15:05:46  
16 management and staffing, which will translate well to figuring  
17 out the best staffing for this engagement.

18 So I'm looking forward to working with everyone.

19 THE COURT: Mr. Long, what's your background?

20 MR. LONG: So I've been with the Advisory Board for 15:06:04  
21 about five years. Prior to that did JD and MBA programs.

22 Worked with the Mississippi Attorney General's Office. I did  
23 my JD at the University of Mississippi. I worked with some  
24 consumer protection as well as Medicaid. Worked there, and  
25 then focused on healthcare law during law school, and then 15:06:32

1 focused on healthcare MBA.

2 And so my major full-time work post grad school has  
3 been with the Advisory Board for about four years.

4 THE COURT: Thank you, sir.

5 MS. SOBOLEWSKI: And hello, this is Rene Sobolewski. 15:06:46

6 I'm a consultant on our value-based care team. And my practice  
7 has been most of the time, like David, in physician alignment,  
8 population health management. Also a good bit of experience  
9 with evaluating physician employment agreements and benefits  
10 packages and providing fair market value opinions. 15:07:01

11 So we're really looking forward to providing you  
12 insights with our analysis of the situation.

13 THE COURT: Thank you.

14 MR. MILLAR: Rene is also -- she's a graduate of  
15 Vanderbilt University. And just as a unique aside, she was the 15:07:14  
16 captain of their golf team. So she's actually our wringer  
17 whenever we go on golfing events.

18 THE COURT: That's good to know.

19 MR. MILLAR: Rene, you can go ahead and move forward.

20 Judge, let me ask you this question: Are there any in 15:07:33  
21 the courtroom that you believe we should introduce -- or we  
22 should be aware of who is there?

23 THE COURT: Well, I think we have all of the counsel  
24 present. And with respect to the defendants, there's the  
25 person who is a defendant in the case who is actually present 15:07:55

1 who is the overseer of the provision of the State's medical  
2 care in the prison system. We also have present in the  
3 courtroom the person who is the chief of the psychological  
4 psychiatric services that are provided.

5 I think that -- I don't know whether it's a handy way 15:08:21  
6 for you to meet these people and to understand who they are and  
7 link names with faces to have us do it by telephone. But I'm  
8 certainly open to when you're in the District of Arizona -- and  
9 I think they will be open too -- to facilitating an opportunity  
10 for you to meet and to understand who contact people are. 15:08:44

11 As you learn about this and embark on the project, I  
12 gather part of what someone does in your business is you  
13 learn -- learn and identify who the contact people are with  
14 respect to getting information. And that's probably the first  
15 question that you ask everybody that you meet. 15:09:03

16 The lawyers are certainly a good place to start here,  
17 and they'll lead you to other people. But to the extent that  
18 you think that it would be helpful for you to have a further  
19 introduction or greeting, and if there's anything I can do to  
20 facilitate that when you appreciate the need for it, let me 15:09:20  
21 know.

22 MR. MILLAR: I will do that. I think just knowing the  
23 description you've given of the groups in the court is helpful  
24 for us. And I think as you proposed, then when we are there  
25 physically in the court we'll be able to do some of that 15:09:35

1 face-to-face, which will be more meaningful than I think taking  
2 up the time on the call to do that today.

3 So with that being said, I think we're good at this  
4 point to move forward.

5 THE COURT: Okay.

15:09:49

6 MR. MILLAR: This next slide is one that is an  
7 overview of our engagement. The top portion of this is  
8 language that we've pulled directly from the engagement letter  
9 which is our contract with the courts and the Arizona  
10 Department of Corrections.

15:10:06

11 And so the goal is to provide for the courts an  
12 assessment of and recommendations for provider staffing and  
13 retention within the Arizona Department of Corrections with  
14 regard to their healthcare services.

15 The objective of that is to understand how to better  
16 and more consistently and timely provide care to the prisoners  
17 by maintaining the staffing and retaining the care providers.

15:10:21

18 If we drop down to the bottom, then we've broken it  
19 out into answers that we believe are the -- those that we are  
20 working towards, answers to the following questions.

15:10:49

21 First one is to understand what the current strategy  
22 and process for healthcare staffing and retention at the ten  
23 ADC facilities is, and why to this point they have struggled or  
24 have lacked success in filling or retaining their budgeted  
25 positions.

15:11:10

1           The second then is what is the current market for  
2 healthcare provider supply and demand within eight specified  
3 markets. In our prior calls we've identified that the ten  
4 facilities fall within what we would define as eight markets.

5           And then understanding how profiling these markets can 15:11:26  
6 inform either the challenges or obstacles that may or may not  
7 exist to staffing, hiring, and retention within the different  
8 market areas.

9           So the first question is focused on the ADC's  
10 approach. 15:11:46

11           The second one looking at market characteristics or  
12 factors that would be influencing it.

13           And then third, the result of these two analytic or  
14 data-gathering exercises is, how will these findings produce a  
15 final report from us where we can outline recommendations for 15:12:02  
16 immediate next steps and even long-term strategy for  
17 successfully hiring and retaining at the proposed budgeted  
18 staffing levels.

19           Let me pause there and see, Judge, if there is a  
20 common understanding that this is what you have engaged us to 15:12:24  
21 pursue.

22           THE COURT: I think that's consistent with what we've  
23 talked about.

24           MR. MILLAR: Okay. I think at this point we'd ask if  
25 there are any concerns or questions from either of the two 15:12:40

1 parties or counsel, if they're in agreement that that's also  
2 what -- that that outlines what our prior conversations have  
3 been.

4 THE COURT: Plaintiffs have any observations?

5 MS. KENDRICK: No, Your Honor. We think that what 15:12:52  
6 Mr. Millar presented does match with what we've talked about in  
7 the past.

8 THE COURT: Thank you.

9 Mr. Struck?

10 MR. STRUCK: No, Your Honor. 15:13:00

11 MR. MILLAR: Okay. Very good.

12 Then as we take the next level, we've broken down the  
13 scope of this engagement into three identifiable work streams.

14 The first of those work streams are the market  
15 profiles and compensation benchmarks. This is where we will 15:13:19  
16 use the data tools and benchmarking data sets that we have at  
17 our disposal, along with some teleconference interviews and  
18 others with providers within each of these markets to  
19 understand what the supply, demand and requisite hiring  
20 characteristics are within the eight Arizona markets. That 15:13:48  
21 will be one that we will do mostly on our own direction. There  
22 will not be much data that we're asking from you all for to  
23 support this work stream.

24 And in fact, our teams, as soon as we received the  
25 first payment about a week ago, began pulling these elements 15:14:08

1 together, pulling the ZIP codes and other. So that will be  
2 some of the first information we'll bring forward for feedback  
3 and vetting with the group.

4 The second work stream then, or Work Stream II, are  
5 the facilities profiles and baselines. This will be where the 15:14:31  
6 bulk of our data request items will be directed, where we are  
7 looking for the current, what I would call, the 28 team  
8 proposed budgets for staff positions at the different levels.

9 We'll also then be looking for information about the  
10 employment and payroll nature of who is employed, what 15:14:53  
11 positions are vacant, what some of the turnover has been. So  
12 there will be a more detailed request for that information.  
13 Which allows us then to look at each of the facilities, not  
14 only geographically, but from the different modalities of care.  
15 So we'll look at the physicians, we'll look at the behavioral 15:15:14  
16 health folks, we'll look at the midlevel providers that are  
17 supporting both of those.

18 It appears from our initial review of data during the  
19 early conversations we've had, that there will be different  
20 issues in different markets. And so we will strive to identify 15:15:31  
21 those, to be able to detail them from an analytic standpoint as  
22 well as from an anecdotal standpoint.

23 Also part of this will be a series of interviews via  
24 teleconference, or face-to-face if scheduling allows for it,  
25 with some of these providers, both who are currently employed 15:15:55

1 and providing care at the ADC facilities and those that have  
2 been there and no longer are there, to be able to inform beyond  
3 the analytics some of the working conditions, working  
4 requirements and job expectations, so that we can have a full  
5 360-degree look at the elements that are impacting the ability 15:16:17  
6 to hire and retain within the facilities.

7 The final work stream, Work Stream III, in our  
8 consulting language it is our final deliverable. In our mind  
9 it will take the form of a written report and probably a  
10 PowerPoint slide that work hand in hand, that begins then to 15:16:40  
11 take the comparisons of the markets in each of the facilities,  
12 and then begins to identify the -- or to describe the  
13 identified constraints or issues, either from a market  
14 perspective or from the ADC's hiring strategy perspective, of  
15 the causes for the struggles to hire and maintain at the 15:17:10  
16 budgeted staffing levels. We will then work towards what our  
17 recommendations would be for remedying that.

18 This is where you get kind of the full insight from  
19 our experience not only in correctional healthcare but in  
20 healthcare staffing as a whole, to understand what current 15:17:31  
21 methodologies, current strategies are for hiring and retaining,  
22 what the obstacles would be and our recommendations for  
23 overcoming those.

24 Those at this point could span everything from job  
25 descriptions to job requirements to salaries and benefits or 15:17:51

1 different type of retention or staffing elements.

2 Let me pause there and ask if there's any questions  
3 regarding the details flushed out here a little bit more around  
4 these three work streams.

5 THE COURT: I have no questions. 15:18:11

6 Plaintiffs' counsel?

7 MS. KENDRICK: No, sir.

8 THE COURT: Mr. Struck?

9 MR. STRUCK: No, Your Honor.

10 THE COURT: No questions here. 15:18:15

11 MR. MILLAR: Okay. We've been provided by the Court  
12 your monthly ongoing scheduled times that this case is in  
13 court.

14 What we are proposing is that we would have at least  
15 interim project updates during each one of those scheduled 15:18:33  
16 times, where we would give a current project status to let you  
17 know if there are any obstacles or impediments we've had in  
18 obtaining data or scheduling or anything else that would impact  
19 the progress. We would also have discussions and resolutions  
20 of any of those hurdles. 15:18:55

21 We would also look to be very transparent in vetting  
22 and providing data-received feedback on. This is not something  
23 that we intend to work in a black box and bring a final product  
24 forward. And so our intent would be to have materials prepared  
25 ahead of each of these project updates so that they could be 15:19:18

1 reviewed in advance, and counsels and others can come to the  
2 update calls or meetings with specific questions or concerns  
3 around findings and around the process we've gone through.

4 This will allow us then to vet all of those materials  
5 as we work towards that final recommendation, with the intent 15:19:43  
6 being that there really is -- there are no huge surprises as we  
7 get to the end, because we would have worked with these updates  
8 as we go forward on those.

9 The one thing we would reserve -- go ahead.

10 THE COURT: No, we'll make time for these 15:20:05  
11 presentations during our monthly meetings. And I do appreciate  
12 your providing the materials in advance so that we can have a  
13 chance to digest them before we do meet together.

14 MR. MILLAR: And that will be very important, because  
15 we will want to make the most use of that time. And so I will 15:20:23  
16 hold my team accountable to having those out in advance.

17 What we would look to the Court to understand is how  
18 far in advance would be appropriate for that? We oftentimes  
19 shoot for five working days or a calendar week. If that is  
20 acceptable to the Court, we would work toward that, or if it 15:20:46  
21 needs to be longer or shorter.

22 THE COURT: No, we would be very appreciative of that  
23 five days.

24 MR. MILLAR: Okay. The turnaround on the first one,  
25 as we get to the scheduling we'll talk about this as well, we 15:20:59

1 may be a little bit tighter than that on the January 10th --

2 THE COURT: Understood.

3 MR. MILLAR: -- just because of the holidays.

4 But, again, it helps to know that we're accountable to  
5 you for that, because that keeps us accountable internally as  
6 well. 15:21:13

7 THE COURT: Understood.

8 MR. MILLAR: There may be an occasion where we need to  
9 have -- I mean, we will have contact with certain folks to  
10 follow up, to do data collection, et cetera. I think because 15:21:26  
11 of the monthly schedule with the Court I don't anticipate that  
12 we would need any special scheduling with you, Judge, with the  
13 Court, but if that comes up we will work through Sarah and  
14 others, with your folks, to make sure that we make you aware of  
15 any additional access that we would need. 15:21:50

16 THE COURT: Of course. And that's part of the  
17 understanding that I've made plain to you, you should expect us  
18 to help when we're needed to do so.

19 MR. MILLAR: Very good.

20 And if we move to the next slide, this is now putting 15:22:03  
21 the components of those three work streams on a timeline to  
22 look at the milestones that we're pushing towards.

23 So we're looking in January at initiating the market  
24 analysis and the interviews, and in February continuing those  
25 elements with analysis and interviews. 15:22:23

1           As we reach the March time frame, we would expect that  
2 we're coming very close to having some of our initial findings.  
3 What we would not have at that point would be resolutions or  
4 others. But we would start to bring forward those elements so  
5 that in the March and April time frame we would seek to vet and  
6 validate the analysis. 15:22:42

7           The intent for doing that before we move right into  
8 our recommended solutions or strategies around that is we want  
9 to make sure that all parties involved agree that the data that  
10 we have analyzed and the information that's come forward 15:23:01  
11 appropriately describes and fits all of the different  
12 marketplaces.

13           Then in the May time frame we would look to preview  
14 and finalize our recommendations, with a final report sometime  
15 in that May to June -- to mid-June time frame. 15:23:19

16           So I think our engagement letter originally assumed a  
17 five- to six-month work stream on this. Again, our teams will  
18 move as expeditiously as we can, with a commitment to you,  
19 Judge, that no later than mid June that we are presenting  
20 final -- a final report to your group. 15:23:43

21           THE COURT: Okay.

22           MR. MILLAR: All right. If we move to our next slide,  
23 these are the dates we've received from the Court regarding the  
24 times you have scheduled. So today is the 20th, we're speaking  
25 with you today. 15:24:00

1           On January 10th, what we've listed here is our  
2           availability to know when it would most appropriately align  
3           with the Court's scheduled for those days.

4           So we would anticipate no less than 30 minutes,  
5           probably no more than one hour for the update at that point in  
6           time. 15:24:17

7           Judge, initially when we spoke with Sarah and others  
8           last week, I thought that the January time frame would be an  
9           appropriate time for us to be there physically on-site, to be  
10          able to introduce the team and some of our initial findings. I 15:24:32  
11          believe at this point with the short turnaround that it would  
12          be better use of my team's time to make that a virtual call  
13          again in January, and plan during that February timeframe to be  
14          there with the team, because we will have some more substantial  
15          findings. We would also potentially align some interviews and 15:24:54  
16          other things around those two dates, so that we could actually  
17          spend some more time with the Court with some more substantial  
18          findings from our work to date.

19          Let me just ask at this point if you believe that that  
20          proposal would meet the Court's needs. 15:25:15

21           THE COURT: Well, certainly. And we'll coordinate any  
22          particular requirements of your availability during those  
23          times.

24          I do need to apprise you though that earlier this  
25          morning I set an additional hearing date, that while it may not 15:25:29

1 be a place where you would want to make a presentation, it may  
2 be a place and time where you could learn information that may  
3 be relevant to your inquiry.

4 This additional --

5 MR. MILLAR: Okay. 15:25:47

6 THE COURT: -- hearing was set for the 9th of February  
7 at 9:00 a.m. And it's an evidentiary hearing in which I have  
8 tasked the parties to follow up on a news story that was  
9 published -- or broadcast this morning on the public radio  
10 station, the national public radio affiliate in Phoenix, in 15:26:07  
11 which there was a report of a former physician who was  
12 contracted with a temporary agency, and then that led to her  
13 employment in the prison system. And then she decided to talk  
14 apparently with the news reporter and shared some of her  
15 concerns about working there. 15:26:36

16 The reason that I suggest that it might be relevant to  
17 your inquiry is that you have told me, and the parties have  
18 told me too, that -- and it's part of your second stream, and  
19 that is an inquiry into work conditions, so to speak.

20 And so it is possible, without knowing what this will 15:26:54  
21 lead to -- because as I say, it is just a news report and it's  
22 not part of the evidentiary record in the case. But I have  
23 asked the counsel to move forward in a way that would allow us  
24 to have on the 9th of February a full evidentiary hearing, if  
25 appropriate, in which evidence may well be developed regarding 15:27:17

1 issues that are of particular interest to you under the second  
2 stream.

3 To that end also I will tell you that I've asked  
4 Miss Selzer to forward the link of the story, which is not only  
5 apparently in a broadcast form, audio form, but also there is a 15:27:35  
6 written form of the story that's being prepared.

7 So this may be helpful information or it may not to  
8 you. But I think you should know about it. And you should  
9 also know about the fact that we've scheduled this hearing in  
10 Phoenix on the 9th of February. 15:27:53

11 MR. MILLAR: I think that will be very germane to what  
12 we are doing. And I think it's actually -- it's a really good  
13 interim to the six-week spread we had between the currently  
14 scheduled January and February pieces.

15 So I'll make sure my team has that on our calendar. 15:28:10  
16 And we've got to schedule details around that, I think at a  
17 bear minimum we would like someone from our term to at least  
18 participate via call. But at this point I actually think it  
19 might be strong enough that we might have somebody there  
20 physically for that hearing, and schedule some of our other 15:28:28  
21 research in the marketplace around that --

22 THE COURT: Well --

23 MR. MILLAR: -- as well so that --

24 THE COURT: -- understand that you and your team are  
25 welcome any time that we are in court on this matter. And you 15:28:37

1 can be here by physical presence or by telephone, whichever you  
2 prefer.

3 MR. MILLAR: We appreciate that. And we will likely  
4 take advantage of both modalities as needs be.

5 So I believe then that being the case, the other -- 15:28:57

6 If you can go back to the dates just for a moment,  
7 Rene.

8 The other dates then follow fairly well in sequence.

9 Our availability at this point is quite wide open. And I think  
10 as we get further in we'll understand how much time we would be 15:29:11  
11 requesting within those scheduled dates. Although we have the  
12 dates held on our calendars now, we will schedule several  
13 months out in advance the timing that we want for that. But  
14 we'll not go to that level today.

15 THE COURT: Fair enough. 15:29:29

16 MR. MILLAR: Okay. Moving forward then, when we look  
17 at logistics and scheduling, there are two primary elements.  
18 And, Judge, you referenced one of these already. As we're  
19 looking at these, we are looking for some data request items  
20 that will be mostly pertinent to the Arizona Department of 15:29:48  
21 Corrections and their contractor with regard to their staff and  
22 their payroll, et cetera.

23 Along with those data elements will be the facility  
24 interviews. The one question that we're asking just to make  
25 sure that we are within the rights and guidelines of the Court, 15:30:09

1 is in identifying who those folks are, are there protocols or  
2 authorizations or any restrictions that we should be aware of  
3 as we go to request this data and/or hold these interviews? If  
4 it's the type of situation where these either need to be  
5 documented by being recorded, or if there needs to be  
6 representation present at these.

15:30:32

7 THE COURT: Well, my view would be that in your  
8 inquiries that you are undertaking, that you should in the  
9 first instance look for the way that is the most efficient for  
10 you. If issues are raised that you think that interfere with  
11 that efficiency, or obstruct in any way your effort to obtain  
12 information that you need, either from the  
13 defendant -- defendants in my case, the individuals in the  
14 State of Arizona Department of Corrections and/or their  
15 contractor and agent of the defendants in my case, then you  
16 need to let me know and I'll address those.

15:30:52

15:31:12

17 But my hope is that everybody will be amenable to the  
18 idea that you need to find the most efficient way to get this  
19 information. And that does not mean that I'm going to say at  
20 the get go you have to record it or you have to have others  
21 present.

15:31:30

22 If it's not interfering with your role to have others  
23 present, I'm not going to say that that can't occur. But if  
24 you find that it's interfering with your role or it's a  
25 scheduling problem -- I mean, I'm not interested in hearing

15:31:43

1 about the fact that you weren't able to get your work done  
2 because others said they wanted to be there and they had some  
3 other engagement.

4 But you just let me know if you run into individual  
5 issues, and we will address those with everybody on the record 15:31:57  
6 and make sure that you have the guidance that you need.

7 MR. MILLAR: Okay. And I think we can very easily do  
8 that. We'll move forward with the understanding that we can  
9 accommodate requests as long as they're not interfering or  
10 delaying our process in moving our analysis forward. 15:32:16

11 What we will do then is we will prepare a data request  
12 document. Before we come off this call we'll hopefully have  
13 identified who the appropriate person will be to send that to.  
14 And then we would like to schedule a follow-up phone call with  
15 them to talk through on a line-by-line basis so there's clarity 15:32:39  
16 of what we're asking for.

17 Our normal operating procedure is to establish an FTP,  
18 a security FTP site through a document storage corridor that's  
19 called Box, so that these can be uploaded electronically. If  
20 they exist in electronic format, that would be our preferred 15:33:01  
21 methodology, so that we're not having to rekey or reenter them  
22 and running the risks of data entry errors. If they only exist  
23 in hard copy, then we would take scanned or imaged copies of  
24 those, or even I guess mailed hard copies if that's what we  
25 come down. 15:33:23

1           At this point I believe the Court's been able to  
2 provide either scanned images for actual electronic files in  
3 Excel or Word for doing that.

4           THE COURT: Well, I don't know -- I don't know what  
5 the limitations would be with the particular recipients. But 15:33:37  
6 again, I'm hopeful that they'll be able to do it in a way that  
7 is consistent with how you have found the marketplace generally  
8 does produce this information to you.

9           With respect to the written request, I will in a  
10 moment identify a representative from each of the sides in the 15:33:53  
11 case. Because I think for the written requests those should  
12 be, whether they're addressed to one side or the other, they  
13 should be copied to the other side, because there's no  
14 encumbrance to simply providing that information to everybody  
15 in the case so that all sides -- 15:34:14

16           MR. MILLAR: Okay.

17           THE COURT: -- know what questions you're asking.

18           With respect to going beyond that, where you find  
19 perhaps individuals that you want to talk to, it seems to me  
20 that it might make sense to see how it works for you, in terms 15:34:29  
21 of whether or not you are finding that it's efficient to have  
22 really complete reign to talk to individuals, or whether it's  
23 possible to do it in a way such that you do give people the  
24 opportunity to be present if they wish at a time that is  
25 convenient for you. 15:34:55

1 I don't want to prejudge that, because I don't know  
2 how difficult it would be, and I may have to weigh the various  
3 costs and benefits of different approaches. But with respect  
4 to the written inquiries, I think that doesn't have any cost,  
5 it's all potential benefit in that somebody who is not the  
6 target of the inquiry could perhaps send you some response  
7 saying, you've asked this question, maybe should you also ask  
8 this question, kind of thing.

15:35:10

9 MR. MILLAR: Okay.

10 THE COURT: And so that would seem to make sense to  
11 me, unless you have some objections to doing it that way?

15:35:24

12 MR. MILLAR: No, I think we can make that work.

13 And if I'm understanding what you've just described,  
14 what I would anticipate is that we would have a primary contact  
15 at the Court and one for each of the counsels, plaintiffs and  
16 defendants. And when we send these requests, we would send  
17 them to those three principal contacts, which then would have  
18 responsibility for disseminating them appropriately to the  
19 parties.

15:35:38

20 THE COURT: I think that makes sense.

15:35:53

21 MR. MILLAR: Is that a correct understanding?

22 THE COURT: Yes.

23 And on the plaintiffs' side who should that be?

24 MS. KENDRICK: I'm sorry, Your Honor, it could be me,  
25 Corene Kendrick.

15:36:03

1 THE COURT: Okay. So Corene Kendrick, one of the  
2 plaintiffs' counsel. And we'll make sure that you have her  
3 contact information.

4 And on the defendants' side?

5 MR. STRUCK: To me, Dan Struck. 15:36:11

6 THE COURT: All right. Dan Struck on the defendants'  
7 side. And, again, we'll make sure that you have the contact  
8 information.

9 And with respect to the Court, always what you can do  
10 is contact Miss Selzer. 15:36:20

11 MR. MILLAR: Correct. And I think she's identified  
12 one other person that we would contact both of them so that  
13 they would have coverage for each other as well.

14 THE COURT: Is that Miss Brown?

15 MS. BROWN: Yes. 15:36:36

16 THE COURT: The additional one -- I didn't want to  
17 volunteer her without having spoken with her personally about  
18 it. But I do think it makes sense for her to be in the loop as  
19 well. And that is Miss Jody brown.

20 MR. MILLAR: Okay. Well, as we initiate this, we'll 15:36:47  
21 at least communicate with -- any of our written requests with  
22 those four individuals, with the assumption that then the  
23 information will get appropriately distributed.

24 And then we will keep you informed, Judge, if for some  
25 reason that process is creating difficulty in us moving 15:37:03

1 forward, delays in the process, if we need something else. But  
2 at this point we will assume that those communication contacts  
3 will be sufficient for what we need.

4 THE COURT: And I think you can expect that when you  
5 contact Mr. Struck or Miss Kendrick, and that you've -- provide 15:37:18  
6 the information, you should expect them to be giving you -- if  
7 it's a targeted information to their side of the case, I think  
8 you should expect them to be giving you a guiding hand, and  
9 also helping you as much as they can. Because they understand  
10 that that is the -- a key efficiency component of making sure 15:37:42  
11 that you can accomplish your task in a way that is most  
12 expeditious and as most economically efficient as well.

13 MR. MILLAR: That will be very helpful. So we will  
14 move forward with that expectation.

15 Moving forward then, this is just a description of 15:38:06  
16 some of the components that will be included in our data  
17 request. Our team is finalizing the details around that today  
18 and tomorrow. Our intent is that by week end we will send this  
19 out. We do know that we are coming into the holidays, and so  
20 as part of this written -- of the sending of this data request, 15:38:32  
21 there will be the request to work towards scheduling in  
22 early -- as early in January as possible the follow-up call for  
23 these items.

24 But as I described earlier, we'll be looking for the  
25 most current budgeted staffing levels by provider type, by 15:38:54

1 facility. We'll be looking for the existing provider roster or  
2 the payroll record, who has been employed, who is in seat now,  
3 how long have they been there, et cetera.

4 We'll also be looking for written job descriptions for  
5 all of the different levels so that we can make sure as we do 15:39:17  
6 the market profiling that we are doing an apples-to-apples  
7 comparison, or where we are not that we can make appropriate  
8 adjustments between the national benchmarks we're using for  
9 providers and the job descriptions within a correctional  
10 setting. 15:39:35

11 I do understand that oftentimes the requirements of a  
12 physician or a midlevel provider are different. And I want to  
13 make sure that we -- we're able to identify that and to adjust  
14 accordingly as we do our comparisons.

15 We'll also be looking for examples of the contract 15:39:53  
16 agreements. This will likely entail the agreement between the  
17 State and their contractor, as well as between their contractor  
18 and its employees. So it will be two levels of elements that  
19 we're looking at there.

20 And then descriptions of the compensation benefits 15:40:13  
21 packages.

22 We will then work towards gathering information on the  
23 retention and turnover. We will have to see if the agent of  
24 the State or the State itself has reports that are sufficient  
25 for us to work from. If they are not, we may be requesting 15:40:33

1 actual payroll information so that we can calculate the  
2 retention and turnover appropriately.

3 But we'll work with the thought that we might have  
4 reports that may provide sufficient data for us. If it does  
5 not, we will have to look towards raw data to be able to run  
6 that analysis ourself. 15:40:55

7 And then we do reserve the right as we get into this  
8 that there may be some additional detail that are needed or  
9 some other data sets that haven't been anticipated. But our  
10 intent is to be comprehensive up front, but not ask for -- not 15:41:13  
11 burden the ADC or its contractor with superfluous data  
12 requests. So we'll try to ask appropriately. And that's why  
13 we want to have the call to make sure there's clarity around  
14 the description of the elements that we are looking for.

15 Let me pause there and see if specifically from the 15:41:36  
16 defendants' side if they have any concerns or questions  
17 regarding this data request process.

18 THE COURT: Mr. Struck?

19 MR. STRUCK: No. I think he understands that much of  
20 this data that he's looking for is not coming directly from 15:41:48  
21 ADC, it's actually coming from Corizon, which I don't have  
22 direct access, I have hoops that I have to jump through to get  
23 it myself. So I think he understands that.

24 MR. MILLAR: Absolutely understand that. And we'll be  
25 looking for your help. And you will have our support to 15:42:06

1 facilitate getting that data.

2 MS. KENDRICK: Your Honor.

3 THE COURT: Yes.

4 Excuse me, Mr. Millar. Miss Kendrick wanted to say  
5 something. 15:42:20

6 MR. MILLAR: Yes.

7 MS. KENDRICK: Just one idea I had while Mr. Millar  
8 was talking, and also based on what Mr. Struck just said,  
9 whether the Court and Mr. Millar would think it would be useful  
10 to have Corizon designate an individual to be the point person, 15:42:29  
11 much like Mr. Struck and I are the point people too.

12 THE COURT: It may make sense, but I'll let them work  
13 that out. That may well be a good idea. And that kind of was  
14 what I had envisioned, that as -- as Mr. Millar and his team  
15 work deeper into this issue, they would find the right vein of 15:42:49  
16 the mine to mine. And that that would be the person that would  
17 be likely to be the contact.

18 And I would be hopeful that there would be a  
19 relationship that would be established that could make for this  
20 efficient transfer of information. 15:43:07

21 MR. MILLAR: The one request, Judge, that I would make  
22 is that when we provide this data request this week, if  
23 defendants can review that with the Corizon contractor so that  
24 they can inform their questions. And for when we schedule the  
25 follow-up data call, if that Corizon representative could be on 15:43:29

1 that call as well. So that we don't have the issue of asking  
2 questions that can't be answered, if they would be a part of  
3 that conversation.

4 THE COURT: That would seem to make sense to me.

5 MR. STRUCK: I think that's fine. 15:43:45

6 MR. MILLAR: Okay. Thank you.

7 So at that point then if we look at the immediate next  
8 steps that we're looking to achieve between now and the  
9 beginning of January, I think we've identified, at least from a  
10 logistics standpoint, who we would work with to submit our data 15:44:06  
11 requests. We have those contacts at the Court for the  
12 scheduling.

13 And we have now successfully tested our video  
14 conferencing capability. And so, Judge, that does allow us to  
15 use our standard operating procedures for remote presentations 15:44:21  
16 and discussions.

17 I would stop at this point and just ask if the slides  
18 have been presented in a way that have been readable and  
19 accessible on the equipment that's being used in the court.

20 THE COURT: We are definitely within the range of work 15:44:39  
21 built with a little bit of tweaking. We can move the projector  
22 back a little bit and make the image a little bit bigger. We  
23 have, as you say in the third goal here, successfully  
24 demonstrated that this can work.

25 MR. MILLAR: Good. Good. 15:44:56

1           And then I think we are close on confirming times for  
2 our updates and we'll work on interim means as we move forward.

3           So as I look at objectives of this call and our  
4 immediate next steps, I think, Judge, I have achieved  
5 everything that I hoped to have from this call to get my team  
6 up and moving in producing the materials that you have  
7 requested from us. 15:45:14

8           At this point I think I would pause and allow you to  
9 then address some of the items that you indicated at the  
10 beginning that were a couple of follow ups or additional agenda  
11 components. 15:45:29

12           THE COURT: Thank you. I was able to address the item  
13 that was on my agenda already.

14           Mr. Struck has the issue about the method that is  
15 necessary for you to be registered within the State procurement  
16 system. Have you heard about that issue before, Mr. Millar? 15:45:42  
17 Do you know whether you're on the way to trying to resolve  
18 that, or do you need --

19           MR. MILLAR: No, we have -- I may need to hear some  
20 more about it. We have been trying through our finance  
21 department to get registered through the Arizona payment or  
22 procurement site. There was a series of e-mails that went  
23 through today. Our team has had trouble either obtaining or  
24 knowing the right login passwords and elements are. But I  
25 believe that there was an e-mail chain that went through today 15:46:19

1 that we're continuing to make efforts to get that handled.

2 But at this point I believe we are still not  
3 registered, but I think we are receiving information we need to  
4 become registered.

5 THE COURT: All right. Mr. Struck, if it continues to 15:46:35  
6 be a problem, whom should Mr. Millar contact about it to try to  
7 see what he needs to do further to become registered?

8 MR. STRUCK: Well, there's a woman by the name of  
9 Amy Landry at the Department of Corrections, that I think we  
10 provided him with her phone number. 15:46:55

11 THE COURT: Okay. So you have Miss Landry's phone  
12 number and name, Mr. Millar? She's the person, if you continue  
13 to have trouble, give her a call at the Department of  
14 Corrections Mr. Struck says.

15 MR. MILLAR: Yes. I am checking on that to see. 15:47:09

16 MR. STRUCK: I can make sure that he has the correct  
17 line, but I thought I saw an e-mail where her number was  
18 provided to him. But we can send it again.

19 THE COURT: Okay. Thank you.

20 MR. MILLAR: I believe it has been provided. I'm not 15:47:23  
21 sure if we knew that's who we were going to connect directly  
22 with. The e-mail stream I have here came from Elaine  
23 Percevecz.

24 MR. STRUCK: Percevecz.

25 MR. MILLAR: And she's with your group. So if there's 15:47:40

1 some additional follow-up, we would do that.

2 And I'll just let the Court know that I'm working  
3 through our internal iterations on this side as well. I am not  
4 the person that does this, and I'm working down through our  
5 accounting department as well. 15:48:00

6 But it is a known issue, and I commit to the Court  
7 that we'll continue on this until it is resolved in one of the  
8 two offered methodologies for submitting and being paid for the  
9 invoices.

10 I do appreciate -- and I'm not sure exactly how the 15:48:14  
11 State facilitated this, but even without that registration we  
12 did receive the payment on the first invoice just from the  
13 engagement letter which allowed us to start this. And so just  
14 acknowledgement that we appreciate whatever efforts were put  
15 forward to not allow this process to languish just as we 15:48:34  
16 figured out the details of the procurement and payment process.

17 THE COURT: And I will add my appreciation as well.  
18 Thank you.

19 Miss Kendrick, anything you wanted to say?

20 MS. KENDRICK: No, sir. We're looking forward to 15:48:50  
21 seeing what Mr. Millar comes up with.

22 THE COURT: And anything further, Mr. Struck?

23 MR. STRUCK: No, Your Honor.

24 THE COURT: Well, Mr. Millar, thank you very much.

25 MR. MILLAR: We appreciate the opportunity to serve 15:49:02

1 the Court in this process, and look forward to this work with  
2 you over the next several months.

3 THE COURT: Thank you.

4 And Miss Sobolewski's name has come up on our screen  
5 now, which will help us pronounce the name properly. 15:49:15

6 Now you'll be very busy, so I can't say that I can  
7 commend to you the golf courses near Casa Grande which are near  
8 the Florence Prison, but some people in Arizona find those to  
9 be worthy golf courses. But again, I fear that we've given you  
10 a lot of work and so there may not be a lot of time for that. 15:49:39

11 MS. SOBOLEWSKI: Well, I hope I can find some time  
12 maybe on a weekend in between. Sounds good to me. Thank you  
13 very much.

14 THE COURT: Well, indeed Arizona, at some point it was  
15 the place that had the highest per capita number of golf holes. 15:49:53  
16 Hard to believe. Maybe it's not the case anymore. But if you  
17 fly into Phoenix, you do have the sense that virtually every  
18 square mile has a golf course.

19 Thank you all very much. Appreciate your time this  
20 afternoon, and we'll be in touch. 15:50:09

21 MR. MILLAR: Thank you. Good afternoon. Bye.

22 THE COURT: So I have one loose end that I wanted to  
23 tie up, and that is, Mr. Pratt said that he could get us the  
24 additional information regarding the formulary and the  
25 documents regarding the different dispensing rates. 15:50:28

1 I didn't come up with a date. Would the last day of  
2 December be possible?

3 MR. PRATT: I'm hopeful, yes. I've already requested  
4 it.

5 THE COURT: Let Mr. Struck know if it's not so that he  
6 can let everybody know if there's a problem so that we can stay  
7 on top of that. 15:50:43

8 Anything further from plaintiffs?

9 MS. KENDRICK: No, Your Honor. Thank you.

10 THE COURT: Mr. Struck? 15:50:52

11 MR. STRUCK: No, Your Honor.

12 THE COURT: Thank you all for your time today. I  
13 really appreciate it.

14 (Proceedings concluded at 3:50 p.m.)

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C E R T I F I C A T E

I, CANDY L. POTTER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 21st day of December, 2017.

s/Candy L. Potter  
Candy L. Potter, RMR, CRR