

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

3
4 Victor Parsons, et al., on)
5 behalf of themselves and all)
6 others similarly situated;)
7 and Arizona Center for)
8 Disability Law,)

9 Plaintiff,)

10 vs.)

11 Charles Ryan, Director,)
12 Arizona Department of)
13 Corrections; and Richard)
14 Pratt, Interim Division)
15 Director, Division of Health)
16 Services, Arizona Department)
17 of Corrections, in their)
18 Official capacities,)

19 Defendants.)
20

No. CV 12-00601-PHX-DKD

Phoenix, Arizona
June 14, 2017
9:00 a.m.

21 BEFORE: THE HONORABLE DAVID K. DUNCAN, MAGISTRATE JUDGE

22 REPORTER'S TRANSCRIPT OF PROCEEDINGS

23 (Status Hearing)
24

25 Official Court Reporter:
Laurie A. Adams, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc 43
Phoenix, Arizona 85003-2151
(602) 322-7256

Proceedings Reported by Stenographic Court Reporter
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A P P E A R A N C E S

For the Plaintiffs:

EIDENBACH LAW PC
By: **Kirstin T. Eidenbach, Esq.**
P.O. Box 91398
Tucson, AZ 85752

ACLU - Washington DC
By: **David C. Fathi, Esq.**
By: **Amy Fettig, Esq.**
915 15th Street NW
7th Floor
Washington, DC 20005

ARIZONA CENTER FOR DISABILITY LAW - Tucson, AZ
By: **Maya S. Abela, Esq.**
177 N. Church Avenue
Suite 800
Tucson, AZ 85701

PRISON LAW OFFICE
By: **Corene Kendrick, Esq.**
1917 5th Street
Berkeley, CA 94710

For the Defendants:

STRUCK WIENEKE & LOVE, P.L.C.
By: **Timothy J. Bojanowski, Esq.**
By: **Rachel Love, Esq.**
By: **Anne M. Orcutt, Esq.**
3100 W. Ray Road
Suite 300
Chandler, AZ 85226

OFFICE OF THE ATTORNEY GENERAL - Phoenix
By: **Lucy M. Rand, Esq.**
1275 W. Washington Street
Phoenix, AZ 85007

WITNESS:

Dr. Nicole Taylor

EXAMINATION BY THE COURT

52

1 P R O C E E D I N G S

2 THE MAGISTRATE CLERK: Civil Case Number 12-601,
3 Parsons, et al., versus Ryan, et al., on for a status hearing.

4 THE COURT: Counsel please state their appearances for
5 the record. 09:00AM

6 MR. FATHI: Good morning, Your Honor. David Fathi,
7 Amy Fettig, Corene Kendrick, and Kirsten Eidenbach for the
8 plaintiff class. And Maya Abela for the Arizona Center for
9 Disability.

10 THE COURT: Thank you very much. Good morning. 09:00AM

11 MR. BOJANOWSKI: Tim Bojanowski, Rachel Love, Ann
12 Orcutt present. And then on the phone is Lucy Rand.

13 THE COURT: Thank you very much. Good morning.

14 Mr. Bojanowski, perhaps the first thing we can do is
15 turn to the performance measures and the April update. 09:00AM

16 MR. BOJANOWSKI: Okay. I have two big notebooks. It
17 will take me --

18 THE COURT: Fair enough. I didn't think you had them
19 memorized.

20 Maybe while you are doing that I can say that the 09:02AM
21 first one, perhaps, we could look at is Performance Measure 11:
22 Newly prescribed provider ordered formulary medications will be
23 provided to the inmates within two business days after
24 prescribed or on the same day if prescribed stat.

25 This is why I suggested the last time that it would be 09:03AM

1 helpful if you could provide these numbers to the parties and
2 to the Court in advance of the hearing. Then we wouldn't have
3 to require you to go through this exercise. I would have it on
4 my spreadsheet and be able to save you this time.

5 MR. BOJANOWSKI: Your Honor, you are referring to 09:03AM
6 Docket 2062?

7 THE COURT: 2062?

8 MR. BOJANOWSKI: Yeah. That was our notice that we
9 filed with the Court on 5-17-17 giving you the current --

10 THE COURT: But that had. March remember we talked -- 09:03AM

11 MR. BOJANOWSKI: Oh, April. I'm sorry. I'm sorry,
12 Your Honor. Okay. I'm ready to go.

13 THE COURT: Okay.

14 MR. BOJANOWSKI: I thought you were talking about
15 March. 09:03AM

16 THE COURT: No. No. Performance Measure 11 for
17 April.

18 MR. BOJANOWSKI: Okay. For Number 11, preliminary
19 numbers for April: Eyman, 68 percent; Florence, 95 percent;
20 Lewis, 79 percent; Tucson, 84 percent; Winslow, 93 percent; and 09:04AM
21 Yuma, 98 percent.

22 THE COURT: Okay. Thank you.

23 Performance Measure 13: Chronic and --

24 MR. BOJANOWSKI: All right. 13.

25 THE COURT: Let me just finish this. Chronic and 09:04AM

1 psychotropic medication renewals will be completed in a manner
2 such that there is no interruption or lapse in medication.
3 Performance Measure 13.

4 MR. BOJANOWSKI: All right. Douglas, 100 percent;
5 Eyman, 92 percent; Florence, 80 percent; Lewis, 97 percent;
6 Perryville, 72 percent; Tucson, 86 percent; Yuma, 100 percent.

09:05AM

7 THE COURT: We saw a dramatic improvement based upon
8 what you just said in Eyman going from 62 to 92 and then also
9 with respect to Florence, going from 51 to, did you say, 80?

10 MR. BOJANOWSKI: Yes, sir.

09:06AM

11 THE COURT: All right. And then Lewis going from 72
12 to 97. And Perryville is still a problem from 78 to 72.
13 What's going on there and what can be done?

14 MR. BOJANOWSKI: I don't have specifics. May I have a
15 moment, Your Honor?

09:07AM

16 THE COURT: Surely.

17 MR. BOJANOWSKI: Your Honor, what we have done is
18 implemented a plan statewide for all facilities. I think the
19 issue at Perryville may be related to a change in personnel at
20 the FAH level. I'm not quite sure. I don't have specifics on
21 that. But it's my understanding that the data reporting and
22 utilization reports are now being run on a daily basis, and
23 they are being reviewed by the FAH, the Facility Health
24 Administrator, to assure that this measure is met. So I'm
25 thinking that maybe the -- as you can see the plan is taking

09:08AM

09:08AM

1 hold here statewide, but it may have been that at Perryville we
2 had that change in top level personnel which may have affected
3 that score. I don't have specifics, unfortunately, to answer
4 your question.

5 THE COURT: Well, the problem is that although we had 09:09AM
6 in February a compliance rate that met the performance measure,
7 and same was true for January, that before that there was an
8 abject failure to comply with this performance measure not only
9 at Perryville but everywhere. And so the suggested remediation
10 measure that you have identified there is one that I heard 09:09AM
11 before and I'm not willing to abide anymore.

12 So effective immediately at Perryville, every single
13 failure to comply with Performance Measure 13 will result in an
14 order to show cause hearing as to why a \$1,000 fine should not
15 be imposed. On July 17th, the State will file a report, a both 09:10AM
16 redacted and under seal version, that would include the name
17 and numbers of the inmates who did not receive the required
18 transfer or the required medication required by Performance
19 Measure 13 in the previous 30 days.

20 And so we'll see what happens at the next month report 09:10AM
21 and see whether or not this gets somebody's attention on that.
22 That's how I'm going to proceed with a number of these if we do
23 hear numbers that are similar to this. I have just had enough.

24 All right. Performance Measure 14 all compliant.

25 Well done. 09:10AM

1 Performance Measure 35, please.

2 MS. KENDRICK: Your Honor?

3 THE COURT: Yes.

4 MS. KENDRICK: Performance Measure 14?

5 THE COURT: Did I miss one?

09:11AM

6 MR. BOJANOWSKI: I think we were on 13, Your Honor.

7 14 I can give you the preliminaries.

8 THE COURT: Yes. Thank you. I'm sorry. Give me just

9 a second. Yep. You are right. I do need to hear those

10 numbers. Thank you.

09:11AM

11 Go ahead.

12 MR. BOJANOWSKI: Douglas is 100 percent.

13 THE COURT: Okay.

14 MR. BOJANOWSKI: Eyman, 98 percent; Florence, 92

15 percent; Lewis, 100 percent; Perryville, 96 percent; Tucson,

09:11AM

16 100 percent; and Yuma, 93 percent.

17 THE COURT: All right. So I get to repeat the "well

18 done." Thank you.

19 Then next to 35. And 35 is: All inmate medications

20 will be transferred with and provided to the inmate or

09:12AM

21 otherwise provided at the receiving prison without any

22 interruption.

23 MR. BOJANOWSKI: Okay. Eyman, 38 percent; Florence,

24 62 percent; Lewis, 66 percent. Excuse me. Lewis is 49

25 percent; Phoenix is 67 percent; Tucson, 73 percent.

09:12AM

1 THE COURT: Okay. Well, we have talked about this
2 last month, and I guess I don't understand how this is so
3 difficult. I have expressed that failure to comprehend how,
4 when you have the responsibility for the person and you are
5 moving that person from one facility to another, how you cannot 09:13AM
6 also make sure that the medication that that person is
7 receiving is transferred with that person.

8 So with Performance Measure 35, effective immediately,
9 for Eyman, Florence, Lewis, Phoenix, and Tucson, the same
10 measure is employed for Performance Measure 13, and that is, 09:13AM
11 you will have an OSC as to why you shouldn't have to pay a
12 \$1,000 per failure to comply with this performance measure for
13 every single person who didn't get it. And I want the names
14 and numbers of those people by the 17th of July, and we'll set
15 the OSC and decide how to proceed. 09:13AM

16 37, the April numbers, please.

17 MR. BOJANOWSKI: 37: Eyman, 86; Florence, 97; Lewis,
18 87; Tucson, 90; Winslow, 100; Yuma, 100.

19 THE COURT: Well done.

20 39. This is a real challenge, my spreadsheet. 09:15AM
21 Routine provider referrals will be addressed by a medical
22 provider. And the problem is I just can't read the small
23 print. If somebody has it in front of them and would put it in
24 the record it would be helpful for me.

25 MR. BOJANOWSKI: Routine provider referrals will be 09:15AM

1 addressed by a medical provider and referrals requiring a
2 scheduled provider appointment will be seen within 14 calendar
3 days of the referral.

4 THE COURT: Thank you. I don't know why I just
5 couldn't read that one word. But thank you for doing that. 09:15AM

6 MR. BOJANOWSKI: The preliminary numbers are: Eyman,
7 90 percent; Florence, 85 percent; Lewis, 87 percent;
8 Perryville, 94 percent; Tucson, 97 percent.

9 THE COURT: I'm pleased to see the increase in
10 Perryville going from the March report of 76 to 94 and the 09:16AM
11 other numbers here. Thank you.

12 MS. KENDRICK: Could you give the number for Yuma,
13 please? Because it was also non-compliant.

14 MR. BOJANOWSKI: I'm sorry. I missed one. You are
15 right. Yuma is 90 percent. 09:16AM

16 THE COURT: Thank you for minding this. You have
17 apparently got the sharper eyesight, and I appreciate it.

18 Performance Measure 40: Urgent care referrals are
19 seen by a medical provider within 24 hours of the referral.

20 MR. BOJANOWSKI: Eyman, 40; Tucson, 100. 09:17AM

21 THE COURT: So if I'm reading this right, Eyman has
22 gone from being, since September, with the exception of
23 November, being in compliance. The last three months reported
24 December, January, February at 100 percent and now has dropped
25 off to 40. What's going on -- no. That's not right. I 09:17AM

1 misstated. It's 46 in -- 46 in March. So we saw no rebound at
2 all. In fact, I kind of was hopeful that there would be a
3 rebound after three months where you showed you knew how to do
4 it. But instead we go to 40 from 46. So what's happening at
5 Eyman?

09:18AM

6 MR. BOJANOWSKI: It seems as though the problem may be
7 the number of files being pulled. So what we would like to do
8 and intend to do, I think, is change our source documents to
9 try and increase the sample size. Under the measure --

10 THE COURT: Wait a minute. Why is that a good idea?
11 Are we just going to go fishing more until we get some fish in
12 our bucket so it's filled up?

09:18AM

13 MR. BOJANOWSKI: I think the problem is when you have,
14 say, four files and you miss two, you are at 50 percent.

15 THE COURT: I see. What's the total?

09:18AM

16 MR. BOJANOWSKI: I think we had six files, if I recall
17 correctly, that that fell under this. So we think that the
18 problem may be in trying to gather the data we need to explore
19 other source documents to look to see if maybe we can capture
20 this information in other files that we could then look at to
21 get a better picture of what's actually going on with regard to
22 this measure.

09:18AM

23 THE COURT: That's frightening in all sorts of ways.
24 For the first it becomes an affront to our randomization
25 criteria which we employ for a good purpose; but two, it also

09:19AM

1 is very concerning because if it's true that we have just six
2 people who have this requirement and you can't get it right
3 with half of them, how hard is that? What's going on there?

4 MR. BOJANOWSKI: We also, aside from that, Your Honor,
5 we have got some new plans that we would like to get to the 09:19AM
6 Court if the Court would allow us. But under this new plan
7 that we've got, the Eyman facility is going to have a provider
8 staffed on each housing unit. The fully staffed provider model
9 will greatly assist the demand of urgent referrals required to
10 be seen within 24 hours. Open sick call model will also assist 09:20AM
11 this measure in that inmates with urgent referrals from the
12 nurse line will have the ability to see the provider on that
13 unit during the open sick call process. So they will see them
14 on the same day. We're also increasing --

15 THE COURT: How is that -- the referral time people 09:20AM
16 often times aren't in every day, as I understand it, the
17 referral people aren't. Are they in every day?

18 MR. BOJANOWSKI: Who?

19 THE COURT: These referral people, the medical
20 providers at Eyman, are they there every day? The people that 09:20AM
21 you can see, are they there every day?

22 MR. BOJANOWSKI: Yeah. The provider is there every
23 day, Your Honor. What's going on, I think, from what I'm being
24 told here, is that the nurse makes the referral over to the
25 provider. They are not marking it as an urgent referral so 09:21AM

1 they are not getting credit for it. That's the documentation
2 issue. But to get the -- instead of -- so each yard will have
3 the provider on it?

4 MR. PRATT: Yes.

5 MR. BOJANOWSKI: So each yard will now have the
6 provider there to be able to handle these urgent referrals
7 right away.

09:21AM

8 MS. KENDRICK: Your Honor, we would like to ask for
9 written proof of it, because based upon the weekly staffing
10 schedules, providers only work Monday through Fridays. They
11 don't work on holidays and weekends. So if this change has now
12 occurred where they are on site seven days a week with a
13 provider level person on every single yard, that's great news,
14 but we would like written proof of that.

09:21AM

15 MR. BOJANOWSKI: They are not there weekends and
16 holidays.

09:22AM

17 THE COURT: So how do you comply with this performance
18 measure then? It says 24 hours. Doesn't say weekends and
19 holidays excepted. People get sick weekends and holidays.

20 MR. BOJANOWSKI: It would be by way of either telemed
21 or we would have the provider come in.

09:22AM

22 THE COURT: But it's not been happening. I have got
23 it less than 50 percent compliance rate. And telemed I have
24 been told about and these other remedies I have been told about
25 before, and here we are looking at April. It's the same story.

09:22AM

1 MR. BOJANOWSKI: I don't have an answer to that, Your
2 Honor.

3 THE COURT: What we'll do is we'll put Performance
4 Measure 40 in the same bucket as to you telling me every single
5 one of these six people or however number they are who don't
6 get this in the next 30 days, reporting to me on July 17th and
7 we'll consider an OSC as to why there shouldn't be a \$1,000
8 sanction for failure to comply with this performance measure
9 especially in light of the fact that it seems you have been
10 sitting on a situation where I have only heard about the
11 enhanced telemedicine, I think, since December and that this is
12 something that hasn't been fixed since then when telemedicine
13 has been talked about before. So we'll put 40 into that bucket
14 as well.

09:23AM

09:23AM

09:23AM

09:24AM

09:25AM

15 So Performance Measure 44: Inmates returning from an
16 inmate hospital stay or ER transport with discharge
17 recommendations from the hospital shall have the hospital's
18 treatment recommendation reviewed and acted upon by a medical
19 provider within 24 hours.

20 MR. BOJANOWSKI: So Number 44 at Eyman, 15; Florence,
21 100; Lewis, 100.

22 THE COURT: I'm sorry. Could you repeat Eyman?

23 MR. BOJANOWSKI: 15.

24 THE COURT: Did you say 1-5?

25 MR. BOJANOWSKI: 1-5.

1 THE COURT: So what's the explanation there?

2 MR. BOJANOWSKI: I think it is a matter of procedure
3 of getting the records from the ER sent to the site medical
4 director instead of being sent to the yard.

5 THE COURT: Are you kidding me? So somebody is
6 transferred from a hospital and some prison guard gets the
7 medical record and the healthcare facility doesn't get it?

09:25AM

8 MR. BOJANOWSKI: No, it's going to each medical site
9 at the yard. And so it wasn't getting captured. And so what's
10 happening is it's not getting documented. So the proposal was
11 to get it to the site medical director for processing so that
12 it's with one person and it's getting acted upon.

09:25AM

13 THE COURT: Do the plaintiffs, through their
14 observations and monitoring, have any insight as to why this is
15 happening? Should I be as alarmed as I am or am I missing
16 something?

09:26AM

17 MS. KENDRICK: We're equally alarmed, Your Honor. And
18 what we're also very alarmed about, as detailed in our expert
19 Todd Wilcox's declaration, Document 2103 at Paragraph 41, the
20 remedial plan that defendants submitted was not that the
21 medical director reviewed these diagnostic reports but that the
22 facility health administrator would review them, what they call
23 a FAH and those people do not necessarily have medical
24 training. They are administrators.

09:26AM

25 So as Dr. Wilcox pointed out, it needs to be reviewed

09:26AM

1 by a treating provider familiar with the patient not some
2 administrator. And also the stipulation by its own language
3 says --

4 THE COURT: "Medical provider" are the words that are
5 used. Are you are telling me the State is saying they are
6 compliant, Mr. Bojanowski, because an administrator, somebody
7 who has no medical degree, is looking at this? This can't be
8 so. Is that what you really said?

09:27AM

9 MS. KENDRICK: That's in the remedial plan, sir.

10 THE COURT: Can you show it to me? Do you have it
11 handy?

09:27AM

12 MS. KENDRICK: Docket 1977 at Pages 6 to 7.

13 THE COURT: Could you print that out, please?

14 MR. BOJANOWSKI: It's being reviewed by the FAH to see
15 that it's actually done. The FAH doesn't have the authority
16 to --

09:27AM

17 MS. KENDRICK: Your Honor, I quote from --

18 THE COURT: Hold it. Don't talk over one another,
19 please.

20 MR. BOJANOWSKI: Maybe there's a problem or maybe
21 there's a mistake in the pleading. I don't know. But the
22 bottom line is, is that the FAH reviews it to make sure that
23 it's actually done, okay, not -- they can't do it. They don't
24 have the authority to do it. So if that's in the pleading then
25 that's clearly an error.

09:27AM

09:28AM

1 MS. KENDRICK: Well, I will quote from the bottom of
2 Page 6 of Docket 1977 for Eyman it says, "Going forward, the
3 facility health administrator will be exclusively responsible
4 for reviewing and acting upon hospital treatment
5 recommendations." The performance measure clearly says 09:28AM
6 "medical provider." Their remedial plan such as it is says
7 that the FAH will be doing it. And the FAH is not a person
8 with medical training.

9 THE COURT: Well, that clearly is a mistake. And it's
10 the kind of mistake that you don't get a pass on because I 09:28AM
11 can't have mistakes like that causing the plaintiffs to run
12 down what is an emergent blind alley. Because if somebody
13 reads that and they think that the performance measure requires
14 a medical provider and you tell them that you are exclusively
15 putting that in the responsibility of an administrator, they 09:29AM
16 are every bit entitled to be running about with extreme
17 concern.

18 And then when you see a compliance of 15 percent, you
19 are struck with how such a mistake could occur because you
20 would think that that would be a ready sign to everybody that 09:29AM
21 the Court was going to be interested in it and that you also
22 should be dramatically interested in it and that you should
23 take extra care to make sure that what you are writing about in
24 the remedial plan is what you are indeed intending to
25 communicate to everyone, except you didn't do that. 09:29AM

1 What you did is you told them that you are going to
2 have someone who is not a medical provider look at this when
3 it's obviously in the stipulation because it matters, that when
4 somebody is in the hospital or they have an emergency room
5 transport with a discharge recommendation, nothing can fall
6 between the cracks. And this is a huge crack.

09:30AM

7 MS. KENDRICK: Your Honor, may I say something else?

8 THE COURT: Yes.

9 MS. KENDRICK: We're also very -- besides the fact
10 that we're very appalled by these numbers, we're kind of
11 flabbergasted why they cannot come into compliance with this
12 because it is not rocket science. As our expert pointed out in
13 his report at Paragraph 45, his recommendation was that any
14 patient that arrives back at a facility needs to be checked in
15 by nursing staff, getting vital signs and assessment, and any
16 paperwork or orders should be reviewed at the time with a
17 doctor on call so the treatment plans can be implemented.

09:30AM

09:30AM

18 This isn't creating some new system whole cloth. It's
19 basic common sense from a correctional healthcare point of
20 view.

09:31AM

21 THE COURT: Well, I want -- go ahead.

22 MR. BOJANOWSKI: Part of the problem is that this gets
23 into, quote, unquote, "acted upon" and what does that mean. So
24 what we found at Eyman and even at other facilities was that
25 the doctors were taking the report that would come from, say,

09:31AM

1 the hospital, they would sign off on it, and that's all they
2 would do. Well, they don't get credit for that, even though
3 they saw the report, they signed the report.

4 THE COURT: Right. And we talked about this before
5 and I wanted to have documentation that they acted upon it. 09:31AM

6 MR. BOJANOWSKI: Exactly.

7 THE COURT: And if they chose not to follow the course
8 of treatment recommended by the discharging facility, that
9 would have to be documented.

10 MR. BOJANOWSKI: Right. 09:31AM

11 THE COURT: So the "acted upon" here is something we
12 have talked about before and something that is of significant
13 importance to me.

14 MR. BOJANOWSKI: Very important to us, too.

15 THE COURT: You have known about that. 09:31AM

16 MR. BOJANOWSKI: So in an effort to try and cure this
17 problem, to force the language to be appropriate, we have been
18 looking at trying to modify that eOMIS program to make it so
19 that the doctor has to do something with it. He can't just
20 sign off on it. He's got to put some kind of comment in there 09:32AM
21 to say, yeah, I agree with the recommendation, no I don't, and
22 I want this done.

23 So it's, you know, it's one of those things that, you
24 know, we're getting good compliance at every other facility
25 except this one. And so it's one that we need to target and 09:32AM

1 certainly address. But we're taking that kind of action to get
2 that done.

3 THE COURT: All right. On the 17th of July, I want
4 you also to submit to the Court a report of the previous 30
5 days of every Eyman person who was returning from an inpatient
6 hospital stay or ER transport with discharge recommendations
7 from the hospital. And I want you to report to the Court how
8 each of these individuals were reviewed and acted upon by the
9 medical provider within 24 hours.

09:32AM

09:33AM

10 So that's a slightly different remedy than what I have
11 talked about before. It's not one that's anything but
12 informational. I'm hopeful that that will be sufficient to
13 address that problem.

14 Performance Measure 45: On site diagnostic services
15 will be provided the same day if ordered stat or urgent, and
16 within 14 calendar days if routine.

09:33AM

17 MR. BOJANOWSKI: 45: Lewis, 87 percent; Tucson, 68
18 percent.

19 THE COURT: So the problem is that 87 percent for
20 Lewis follows a track record where there was only compliance in
21 two months in the last six months and with Tucson falling off
22 to 68 percent from 97, where we had the previous months 48, 71,
23 84, and 80. Again, this is not the kind of robust trend that
24 gives anybody the idea that you all got your hands on this. So
25 I'm going to impose the same measure that I imposed for

09:34AM

09:35AM

1 Performance Measure 13, and that is that by the 17th of July
2 that you report the numbers for both Lewis and Tucson with
3 respect to the number of people who did not receive the service
4 and will have an OSC as to why it is that the fine of \$1,000
5 should not be imposed for each of those failures to comply.
6 With this fundamental stat or urgent and 14 days of routine,
7 that's not an arduous hurdle. And again, the numbers
8 demonstrate that for some reason over months and months and
9 months and months, you are not able to fix this on your own.

09:35AM

10 MS. KENDRICK: Your Honor?

09:36AM

11 THE COURT: Yes.

12 MS. KENDRICK: On Performance Measure 45 the
13 defendants submitted a remedial plan for Lewis but they did not
14 submit one for Tucson, for what it's worth.

15 The second thing that I just would like to ask is
16 since the parties are going to have our next hearing with you
17 on July 14th, would it be possible to have this information
18 prior to the hearing rather than July 17th?

09:36AM

19 THE COURT: You know, it's a good point. And there's
20 no reason why we shouldn't accelerate it. So it will be the 30
21 days before the hearing, and I will expect those numbers to be
22 reported the day before the hearing in a filing that I have
23 described that identifies the names in both redacted and
24 unredacted version under seal.

09:36AM

25 Well Performance Measure 46, I hope is -- it's: A

09:36AM

1 medical provider will review the diagnostic report, including
2 pathology reports, and act upon reports with abnormal values
3 within five calendar days of receiving the report at the
4 prison.

5 The numbers were horrid last time. Where do we stand
6 for April? 09:37AM

7 MR. BOJANOWSKI: Douglas at 73; Eyman at 22; Florence
8 at 45; Lewis at 58; Perryville at 75; Phoenix at 70; Tucson at
9 64; and Yuma at 92.

10 THE COURT: So every facility except for Yuma went the
11 wrong direction. Am I reading that right? 09:38AM

12 MR. BOJANOWSKI: Florence increased. Lewis increased.

13 THE COURT: You are right. Florence, hardly
14 congratulations there going from 12 to 45. And the other one
15 you said that was improved was -- no. I don't see any others. 09:38AM

16 Okay. So the same measure as Performance Measure 13
17 for all of these facilities except for Yuma.

18 Now, turning to Performance Measure 47, which has been
19 a focus of the Court and representation to the Court that

20 turned out to be wholly untrue, I don't understand how that 09:39AM

21 happened. I have read the affidavit. I have read counsel's

22 statement. It's astonishing to me how I should trust any

23 representation from the contractor here when counsel addressed

24 a question of the contractor's representative here in court

25 where it was plain what I was asking. And I was told that a 09:39AM

1 system would be up and running in two weeks. And then I learn
2 in the affidavit that it hadn't even been bid yet. So how is
3 that possible, Mr. Bojanowski?

4 MR. BOJANOWSKI: Are you on the notice?

5 THE COURT: I'm on 47. 09:40AM

6 MR. BOJANOWSKI: Okay. 47.

7 THE COURT: Right.

8 MR. BOJANOWSKI: The representation made to me in
9 court based from them was it was their understanding that this
10 was already any the pipeline and it was good to go. It was 09:40AM
11 wrong. I represented to you what was given to me. In going
12 back and checking with them, they then said, well, wait a
13 minute, yeah, that was in the pipeline but it wasn't as high on
14 the priority list as other things were for changes within the
15 system. 09:40AM

16 So what we did was we said, well, this has got to be
17 your number one priority. We've got to get this in place. And
18 so they bumped it all the way up. And it's my understanding
19 this is going to be operational by June 22nd. So I apologize
20 to the Court. I think there was a misunderstanding on the part 09:41AM
21 of the representatives from Corizon. They knew it was being
22 worked on. They were under the understanding that it was going
23 to be operational within that 14-day time frame, and they were
24 wrong. I don't know what else I can tell the Court except
25 apologize for that. We certainly don't want to misrepresent 09:41AM

1 anything to the Court. We're relying on the best information
2 we've got.

3 THE COURT: And lawyers are to be commended when they
4 come forward and say that I was wrong. I said something I
5 didn't understand. My question and my problem is a little bit
6 broader, and that is that I had the representative of the
7 contractor who heard what I was talking about, heard what I was
8 addressing, and then gave this representation that also turns
9 out to be wrong.

09:41AM

09:41AM

09:42AM

09:42AM

09:43AM

10 What it does is it raises the specter in my mind that
11 a system, which I have already identified, has certain
12 incentives to make sure that accurate information is not --
13 well, that's the wrong way to put it. It's a system that does
14 not incentivize on an economic term the provision of honest
15 information. There's no benefit to someone who tells me
16 everything is fine when, in fact, there is a real problem,
17 meaning that if I'm -- if the Court's eyes are blinded to the
18 real problem because of the representation that things are fine
19 or things are being done, then it takes me off my assignment to
20 try to make sure that I'm fixing the real problems.

21 Similarly, where people have an absence of care that
22 allows them to represent something that they don't know for
23 certain is true, it sends us on this errant falling of running
24 down a blind alley that consumes resources and energy and
25 distracts attention.

1 And so there needs to be a ramping up of the care of
2 information that is provided, the representations that are
3 being made to the Court so that I can trust upon the system.
4 Because otherwise it just means a much greater investment of
5 not only my resources but also whenever I wade into an area I
6 see also that will be more expensive for the defendants.

09:43AM

7 And so everybody should be in mind that honest
8 reporting to the Court, honest representations and especially
9 taking care not to over represent. And that's, sadly,
10 something that without suggesting bad motive is a reality of
11 the case. I have heard over and over again that this is going
12 to be addressed by a program that employs oftentimes the same
13 words. We're going to talk to the people. We're going to make
14 sure that the right person understands what they are supposed
15 to get. And then subsequent months show the same errant
16 numbers and the same representations are made so you kind of at
17 a certain point start to think people aren't really listening
18 what they are saying and not even believing it themselves.
19 They are just words that are being given that don't seem to
20 have a relationship to the reality.

09:44AM

09:44AM

09:44AM

21 So this 47 issue is serious. You have now -- you said
22 the 22nd of June it will be up? Is that what you said?

23 MR. BOJANOWSKI: That's what I said. Let me given
24 my --

25 THE COURT: Guess again?

09:44AM

1 MR. BOJANOWSKI: Let me double check, Judge, because I
2 don't want to misrepresent something to the Court. I really
3 don't.

4 THE COURT: Boy, this would be something I would want
5 to double check about. Because once you have stepped off this,
6 you know how it is. 09:45AM

7 MR. BOJANOWSKI: I know.

8 THE COURT: I start out with the presumption that -- I
9 mean, as you heard this, I mean, both sides have asked for
10 affidavits back and forth and I have taken lawyers to get the 09:45AM
11 presumption of rectitude and that what they say is not only
12 true to the best of their understanding but also it's just not
13 the result of a simple when is this going to happen? Oh, it's
14 going to happen in two weeks. Oh, Judge, it's going to happen
15 in two weeks without saying, how do you know? How do you know 09:45AM
16 it's going to -- saying to the representative, how do you know
17 it's going to happen in two weeks so you can vet it yourself so
18 that you can make sure that when you stand up and put at risk
19 your credibility to the Court that you have taken care of that
20 and made sure that you are not going to overstep and end up on 09:45AM
21 that branch that crashes to this horrible sound that just seems
22 to echo forever.

23 All right. So the numbers for 47 then for April.

24 MR. BOJANOWSKI: I have Douglas at 100; Eyman at 41;
25 Florence at 42; Lewis at 34; Perryville at 77; Phoenix at 86; 09:46AM

1 Safford is a non-applicable; Tucson is 88; Winslow is 100; and
2 Yuma is 63.

3 THE COURT: And I gather there's no one in the
4 courtroom right now that you can verify this June 22nd date?

5 MR. BOJANOWSKI: May I have a moment, Your Honor? 09:47AM

6 THE COURT: Surely.

7 MR. BOJANOWSKI: All right. Your Honor, I think I
8 have a better picture here. They are rolling this out on the
9 22nd.

10 THE COURT: What's "rolling out" mean? 09:48AM

11 MR. BOJANOWSKI: It's going to be put out into the
12 system, so to speak.

13 THE COURT: Well, does that mean that it will start to
14 happen, that all --

15 MR. BOJANOWSKI: It will start to happen. 09:48AM

16 THE COURT: -- all medical providers will communicate
17 the results of the diagnostic study to the inmate upon request
18 and within seven calendar days of the date of the request? So
19 that will happen starting on the 22nd?

20 MR. BOJANOWSKI: Right. But what ends up happening 09:49AM
21 with these modifications is that they put it into place and
22 then if there's a, say, a glitch or a problem or there is some
23 operational issue that arises, then, you know, they have to
24 tweak it somewhat. But the idea is, is when you roll this --
25 it's like any new program that you get when you give a person a 09:49AM

1 new computer program, so to speak, it takes some time to get
2 used to it, implement it, get it so that it's fully
3 operational. But it's going to hit the system on the 22nd.

4 Is that accurate?

5 THE COURT: And how long does it take for it to become 09:49AM
6 fully operational?

7 MR. BOJANOWSKI: It's fully -- the computer system
8 itself is fully operational. It's the other component of the
9 system, the human being who is using it that, you know, when
10 they start to use it, to make sure that what it is intended to 09:50AM
11 do is actually going to occur.

12 THE COURT: All right. So on the 30th of June, the
13 defendants will file a notice with the Court informing it about
14 the implementation of this new measure to address the failures
15 to satisfy Performance Measure 47, and that it will give me 09:50AM
16 concrete unquivering statements about whether it's working or
17 it's not. I don't want to hear rolling out, I don't want to
18 hear moving toward implementation, I don't want -- if it's
19 happening, tell me that. If it's not happening at that moment,
20 tell me that. I want to know on the 30th of June exactly where 09:50AM
21 we stand with respect to the efforts to address what is just,
22 again, a shocking failure in a number of these facilities.

23 MS. KENDRICK: Your Honor?

24 THE COURT: Yes.

25 MS. KENDRICK: Plaintiffs have asked the Court 09:51AM

1 multiple times for further relief on this performance measure,
2 and I believe that in our filing on May 31st at Docket 2078, we
3 proposed a low-tech, again, not rocket science solution that we
4 would like to ask the Court to order the defendants to
5 implement in the interim while they are implementing and moving 09:51AM
6 forward. And that is the low-tech solution of having a human
7 being be designated as responsible for handwriting out these
8 communiques as requested and scanning them to the folder and on
9 a weekly basis reporting to the Court all communiques that have
10 been done by hand the low-tech way not with some eOMIS rollout 09:51AM
11 implementation, whatever buzz word defendants care to use.

12 THE COURT: Well, the eOMIS implementation, Mr.
13 Bojanowski, will produce a printout of this report. It then,
14 as I remember, you said that it would be, at first you said
15 e-mailed, and I said really, the inmates have -- and you said 09:52AM
16 no. And it sounded like you were telling me somebody would
17 walk it to the person. Exactly how is that going to happen?

18 MR. BOJANOWSKI: You are correct, Your Honor. It gets
19 printed and into the inmate mail.

20 THE COURT: And the inmate mail, how does that work 09:52AM
21 exactly?

22 MR. BOJANOWSKI: It's very similar to the way it's
23 done in public. It's picked up by an officer and then
24 delivered each day.

25 THE COURT: To the cell? 09:53AM

1 MR. BOJANOWSKI: Right.

2 THE COURT: Okay. And then the difference with the
3 eOMIS system is that the -- you are cutting out the need for a
4 human to identify the diagnostic studies that need to be
5 communicated. Those are automatically generated, put in a
6 place, and then they are distributed through the same mail
7 system. Is that correct?

09:53AM

8 MR. BOJANOWSKI: Yeah, I think so.

9 THE COURT: Can you check?

10 MR. BOJANOWSKI: What was your question again?

09:53AM

11 THE COURT: What I'm trying to understand is the
12 benefit of eOMIS is that to the extent that this failure to
13 comply with this performance measure has been due to the
14 failure of someone to print out the diagnostic report and to
15 put it into this mail route, the eOMIS system automatically
16 generates the diagnostic report and spits it out at some point
17 at a printer, I gather, and then those reports are then placed
18 into the mail system. So eOMIS is doing the capturing of these
19 diagnostic reports that need to be communicated.

09:54AM

20 MS. KENDRICK: Your Honor, they don't actually send
21 the diagnostic test to the prisoners, because the prisoners
22 can't possess their medical records. What they send them, we
23 see them all the time scanned into prisoners' folders. They
24 are a handwritten communique that says, Dear Mr. Jones, your
25 lab tests are normal or your lab tests are negative, alarming,

09:54AM

09:54AM

1 whatever, it's a handwritten note from the provider that is
2 sent.

3 THE COURT: Okay. That's a good question. So how
4 does that fit with what the new plan is? How is it different,
5 the new plan? 09:54AM

6 MR. BOJANOWSKI: It's similar, but the idea is, is
7 that -- and the goal here, is that instead of just
8 communicating the results of the studies to the inmates upon
9 request, the system, and the way we're going to do it, is all
10 diagnostic studies, whether requested or not, are going to be 09:55AM
11 then sent out in a batch to all the inmates who have had them
12 so that regardless of whether you ask for it or not, you are
13 going to get it.

14 And so that's kind of the eOMIS, the difference
15 between the eOMIS system that we're going to be doing and as 09:56AM
16 was described earlier about having somebody handwrite a note to
17 the inmate and then scan that note into the system so it could
18 then meet this performance measure. This way we get all of the
19 diagnostic study results out to the inmates so that they have
20 that information. So it will include anybody that requests it. 09:56AM

21 THE COURT: So is your expectation that on the 22nd of
22 June, these diagnostic reports will be printed out by a printer
23 at some place and then when they say Inmate Jones, they will be
24 sent in the mail to Inmate Jones and she will receive it at her
25 cell soon thereafter. Is that what you are thinking? 09:57AM

1 MR. BOJANOWSKI: Right.

2 THE COURT: All right. And so what you will do -- I
3 appreciate plaintiff's suggestion but I'm going to give this a
4 shot because it's imminent, it sounds like, you will start it
5 on the 22nd. You will report to me on the 30th about whether
6 it's working in the way that you described, and we'll then
7 hopefully be done with this concern.

09:57AM

8 MS. KENDRICK: Your Honor?

9 THE COURT: Yes.

10 MS. KENDRICK: If defendants discover on the 22nd that
11 it's not operational or not being implemented could you order
12 them to notify the parties and the Court sooner than the 30th,
13 or are we going to wait eight days to get a filing that says
14 it's still in process?

09:57AM

15 MR. BOJANOWSKI: We don't anticipate a delay, but if
16 the Court wants a notice saying that we have rolled it out, I'm
17 willing to do that on the 23rd.

09:58AM

18 THE COURT: Here's what I'm going to do. On the 30th
19 you are going to tell me whether it's working or not. If it's
20 not working, I want to know about that but I want to know what
21 the situation is on the ground in the previous week. The 22nd
22 to the 30th gives you this time to figure out what's happening.
23 I want to be told, plaintiffs want to know, is it working on
24 not? And if it's not working I know how before the next
25 hearing to jump in on that and to get you on the phone and

09:58AM

09:58AM

1 figure out what to do or issue an order addressing it.

2 Okay. Performance Measure 50: Urgent specialty
3 consultations and urgent specialty diagnostic services will be
4 scheduled and completed within 30 calendar days of the
5 consultation being requested by the provider. For Florence,
6 last report in March was 59. Where do we stand in April?

09:59AM

7 MR. BOJANOWSKI: 50, did you say, for Florence?

8 THE COURT: Yes.

9 MR. BOJANOWSKI: 39.

10 THE COURT: Okay. The same measure for 13 here as to
11 50, and that is, you will identify for me each one of the
12 people -- I have heard that these consultation issues are
13 apparently somewhat associated with the inability to get
14 consultations because people won't do it for the amount you are
15 willing to pay, you are going to have to figure out something
16 else. You are going to have to go to the emergency room. You
17 are going to have to do something. But you are going to have
18 to comply with this performance measure. If you fail to you
19 are going to have to tell me why you shouldn't be fined \$1,000
20 for failing to do so in each instance.

09:59AM

09:59AM

09:59AM

21 Performance Measure 51: Routine specialty
22 consultations will be scheduled and completed within 60
23 calendar days of the consultation being requested by the
24 provider. We were on the bubble last month, and see where we
25 are in April.

10:00AM

1 MR. BOJANOWSKI: For what facilities, Your Honor?

2 THE COURT: For Eyman, Florence, and Tucson.

3 MR. BOJANOWSKI: Eyman, is at 94; Florence, is at 87;
4 Tucson, is at 74.

5 THE COURT: So what are you doing about Tucson?
6 Tucson track record is not great.

10:00AM

7 MR. BOJANOWSKI: At Tucson, in May they increased
8 their capacity to utilize the telemedicine services. I'm
9 assuming that's extra, additional units? They are also
10 utilizing and they have begun to utilize the services of the
11 medical school in Tucson.

10:01AM

12 THE COURT: And when did that start? Also in May?

13 MR. BOJANOWSKI: I'd say end of May.

14 THE COURT: And when did the telemedicine start? Was
15 that end of May? Beginning of May?

10:02AM

16 MR. BOJANOWSKI: Same time and it was all part of one
17 overall plan.

18 THE COURT: All right. We'll watch and see what
19 happens with that measure.

20 Performance Measure 52, specialty consultation reports
21 will be reviewed and acted upon by a provider within seven
22 calendar days of receiving the report.

10:02AM

23 MR. BOJANOWSKI: Okay. Florence, 46; Perryville, 95;
24 Tucson, 85.

25 THE COURT: Okay. The remedy for Performance Measure

10:03AM

1 13 will be employed for Florence for 52. That's because we are
2 dropped off from the 52 in March to 46 in April. And we have a
3 history of never being compliant with this measure. So we'll
4 employ the mechanism that I have employed for Performance
5 Measure 13.

10:04AM

6 Performance Measure 54: Chronic disease inmates will
7 be seen by the provider specified in the inmate's treatment
8 plan no less than every 180 days unless the provider documents
9 a reason why a longer time frame can be in place.

10 MR. BOJANOWSKI: Okay. 54, you said, Your Honor?

10:04AM

11 THE COURT: Yes, please.

12 MR. BOJANOWSKI: All right. Eyman, 60; Florence, 63;
13 Lewis, 86; Perryville, 97; Phoenix, 96; Tucson, 92; Yuma, 100.
14 Excuse me. Yuma, 90.

15 THE COURT: Could you repeat those? I may have gotten
16 confused where I placed them in the columns.

10:05AM

17 MR. BOJANOWSKI: Eyman, 60; Florence, 63; Lewis, 86;
18 Perryville, 97; Phoenix, 96; Tucson, 92; Yuma, 90.

19 THE COURT: So Eyman, the 60, is roughly consistent
20 with how it's been performing. Florence is a dropoff of how
21 it's been performing. What does the State have to say about
22 that?

10:06AM

23 MR. BOJANOWSKI: We don't have an answer for what
24 happened at Florence since we just got these numbers. So I
25 can't really say what happened. I mean, certainly they have

10:07AM

1 shown compliance for a long period of time, but I don't know
2 what happened in the past month.

3 THE COURT: How about Eyman? What kind of specific
4 remedial measure do you have in place there?

5 MR. BOJANOWSKI: Your Honor, what we've done at Eyman 10:08AM
6 is that there are now three additional providers that have been
7 put into place. The process to hire them, obviously, takes
8 quite a while. So it's been in the works for some time since
9 they have to clear background and everything else.

10 They have started within the past week or so, so with 10:08AM
11 the additional, I believe it's three providers, we're certainly
12 hopeful that these numbers will start to climb. I mean, we
13 showed a little bit of improvement at Eyman over the past few
14 months, but we need to push that up just a little bit further.

15 As far as, like I said, Florence, we simply don't have 10:08AM
16 an answer. I have to look back and see what was going on
17 there.

18 MS. KENDRICK: Your Honor, for what it's worth, Eyman
19 Performance Measure 54 was one of the performance measures and
20 institutions that was subject to your November 2016 outside 10:09AM
21 providers order, which this clearly shows that they are not in
22 compliance with the Court's past order.

23 THE COURT: It just doesn't strike me as anything that
24 is such a huge challenge to make sure that people with chronic
25 disease are being monitored at a six-month interval. And it -- 10:09AM

1 the failure to do so seems like it can be readily redressed,
2 that the failure to do this at Eyman is striking. The
3 additional providers that you have talked about, again, more
4 people, not a surprise to me as to why that would be necessary
5 to address this kind of problem.

10:10AM

6 So we'll continue to watch this and expect to have a
7 better explanation next time on Florence if there's a continued
8 departure here, and we'll look to see some result from these
9 additional providers at Eyman.

10 Performance Measure 66: In an IPC medical provider
11 encounters will occur at a minimum of every 72 hours. The
12 numbers last time were horrid.

10:10AM

13 MR. BOJANOWSKI: Florence, 50 percent; Lewis, 100
14 percent; Tucson, 60 percent.

15 THE COURT: So one wonders why it is that you can
16 solve a problem that was the fact for all three of these in one
17 facility and fail to solve the problem at Florence and do worse
18 in Tucson.

10:11AM

19 MR. BOJANOWSKI: This is our medical provider
20 encounters occurring at a minimum of every 72 hours for IPC
21 inmates?

10:11AM

22 THE COURT: Right.

23 MR. BOJANOWSKI: We found that at the Tucson facility,
24 at least one provider was performing the encounters per the
25 standard but was making the chart entries outside the required

10:12AM

1 time frames. As a result, they are marked as non-compliant.

2 So what the doctor was doing was doing his rounds and then
3 apparently documenting it outside of the time frame. So he --

4 THE COURT: The doctor is charting it outside the time
5 frame or doing it outside the time frame? 10:12AM

6 MR. BOJANOWSKI: Charting it outside the time frame.

7 So the eOMIS, what happens with the eOMIS is when the doctor
8 gets into it, it automatically puts a time and date stamp on
9 it. So he may do -- say it's -- because it's a 72-hour
10 situation, he may be, say, on hour 70, and he does his rounds 10:12AM
11 but doesn't chart it until, say, hour 75. So what ends up
12 happening is it's non-compliant.

13 THE COURT: You are saying there was one provider that
14 was doing this. Do you know whether that's the responsible
15 reason for the 60 percent number for Tucson? I mean, that 10:13AM
16 doesn't really tell me anything. It doesn't tell me what you
17 just said, doesn't tell me whether this happened in one
18 instance or whether it happened in a greater number of
19 incidents, happened in a majority number of incidents that
20 could be responsible for this failure. Do you have any idea 10:13AM
21 about that?

22 MR. BOJANOWSKI: I don't have any additional
23 information except that we found that there was a provider
24 doing it, and then we corrected that situation, so to make sure
25 that they are putting these entries in per the standard. 10:13AM

1 THE COURT: So that maybe explains Tucson, but we
2 don't know, really. We just don't know. I certainly wouldn't
3 trust in that based upon what you have said because it could be
4 meaningful, it could be meaningless. I just don't know.
5 Because this is one provider, and I don't know whether that 10:14AM
6 provider didn't do this in one instance or 10 or whether others
7 did or didn't. But I guess that's not the explanation for
8 Florence.

9 MR. BOJANOWSKI: I'm trying to nail that down right
10 now, Your Honor. 10:14AM

11 THE COURT: Okay. Thank you.

12 MR. BOJANOWSKI: In order to address the situation at
13 Florence, instead of the rounds being every 72 they are
14 changing it to every 48. That way it will -- the rounds will
15 get done and it will get documented so we're not running into 10:14AM
16 the 72 hour situation.

17 THE COURT: And when did that start?

18 MR. BOJANOWSKI: Good question.

19 That started in May, Your Honor.

20 THE COURT: When? 10:15AM

21 MR. BOJANOWSKI: In May.

22 THE COURT: But when?

23 MR. BOJANOWSKI: Oh. End of May, I'm sorry.

24 THE COURT: So what you are saying is end of May at
25 Florence only or everywhere? 10:15AM

1 MR. BOJANOWSKI: It's just at Florence at this point.
2 I think we're going to see how it works at Florence. It may go
3 on beyond that.

4 THE COURT: So can I understand this exactly a little
5 bit better? These people are in the in-patient facility,
6 right? Is that who these people are? 10:15AM

7 MR. BOJANOWSKI: Correct.

8 THE COURT: And you are telling me that it's 50
9 percent of the people have not been seen by a medical provider
10 over a 72-hour time frame when they are in the hospital? 10:16AM

11 MR. BOJANOWSKI: No.

12 THE COURT: Okay. And I'm using that as a rough
13 equivalent. Obviously if you are sick enough to be outside of
14 your cell and you are in an infirmary kind of situation, that's
15 sort of like the hospital but somebody is pretty sick. And so 10:16AM
16 I guess it's just amazing to me that there's no indication in
17 the chart that they have been seen by a medical provider over
18 the span of 72 hours in half these cases.

19 MR. BOJANOWSKI: This is one of those ones, Your
20 Honor, if the inmate is seen, okay, over the course of, say, a 10:17AM
21 month 50 times and they miss one, then the entire chart is
22 non-compliant. So it's one of those ones where there's no
23 partial credit given to --

24 THE COURT: So somebody is sick enough to be in the
25 infirmary and you, over the course of 72 hours, there's no 10:17AM

1 charted indication that any medical provider has checked in on
2 that person. And that means that you should get a pass on that
3 person?

4 MR. BOJANOWSKI: No, you fail on that person. That's
5 my point. 10:17AM

6 THE COURT: Yeah, but you just told me there's no
7 partial credit. We only missed him for 72 hours. What could
8 happen in 72 hours when somebody is in the infirmary? I don't
9 think anything bad. That's preposterous, Mr. Bojanowski.

10 MR. BOJANOWSKI: I'm not saying that at all. 10:18AM

11 THE COURT: How else am I supposed to read that? You
12 said you on get no partial credit for missing somebody over 72
13 hours when they are in your infirmary.

14 MR. BOJANOWSKI: If you miss that person you should
15 not get credit. 10:18AM

16 THE COURT: Right.

17 MR. BOJANOWSKI: And they don't. All right.

18 THE COURT: Yeah.

19 MR. BOJANOWSKI: So what I'm saying is --

20 THE COURT: But you just told me that this is not a 10:18AM
21 big problem, Judge, because we saw them for 50 times over a
22 month and we missed them for 72 hours. And I just can't fathom
23 how you can run a healthcare facility and have somebody in an
24 inpatient position and not see them for 72 hours.

25 MR. BOJANOWSKI: The IPCs are staffed 24/7. Okay. So 10:18AM

1 if --

2 THE COURT: But there's nothing in the chart that
3 indicates that they were checked in on.

4 MR. BOJANOWSKI: Well, they are checked by nursing
5 staff all the time. But, you know, this is where a doctor sees
6 the patient. 10:18AM

7 THE COURT: You say doctor loosely, but you are always
8 enlarging what that means. It's dropping pretty low. I don't
9 mean to denigrate anybody who does anything. You said doctor.
10 Let's be clear. We're not talking about doctors. You want
11 people to qualify as medical providers who are not doctors,
12 right? 10:19AM

13 MR. BOJANOWSKI: Well, there are by definition other
14 people who --

15 THE COURT: They are not doctors. We know what a
16 doctor is. That's somebody who has an M.D. after a name or
17 D.O. or doctor. The D means doctor. So that's what a doctor
18 is. But you are not saying this is qualified by doctors. I'm
19 sorry to be hostile about this but I'm a little bit -- 10:19AM

20 MR. BOJANOWSKI: It's okay, Your Honor. 10:19AM

21 THE COURT: -- fed up with these loose language when
22 you say a doctor when you and I both know --

23 MR. BOJANOWSKI: It can be an LPN, too.

24 MS. KENDRICK: I certainly hope that's not an LPN.

25 That's a licensed practical nurse. 10:19AM

1 MR. BOJANOWSKI: Nurse practitioner. I'm sorry.

2 THE COURT: Okay.

3 MR. BOJANOWSKI: Those types of people. So you are
4 correct, Your Honor. I don't mean -- I'm not trying to play
5 fast and loose here. So, you know, I'm trying to get -- I
6 don't want the Court to have the impression that the IPC is not
7 staffed. That's my point. I mean, there are people there all
8 the time. They are people checking on the inmates all the
9 time. This is one that requires a provider to check in with
10 the inmate.

10:20AM

10:20AM

11 THE COURT: That's what I'm doing. If you didn't have
12 the requirement in the performance measure I wouldn't be
13 talking about it. But you entered into a performance measure
14 that says that a medical provider has to do this. And it just
15 is astounding to me that if you agree to do it in 50 percent of
16 the cases in April it didn't happen in Florence, and that in 10
17 percent of the cases it happened. So 90 percent of the cases
18 before that, it happened in 40 percent. Before that it
19 happened in 40 percent. No, I misspoke. For February it
20 happened in 60 percent. In January it happened in 40 percent,
21 and then in December, 40. And then in November, 84, and 96 and
22 100 before that.

10:20AM

10:20AM

23 And I can't just, at some point, I cannot just say,
24 looking over this situation, I can ignore the current abject
25 failure because there was a previous demonstration. One of the

10:21AM

1 reasons that I can't is because you entered into an obligation
2 to do this all the time, not just on episodic like the moon
3 rising and being a full moon a particular day.

4 And also, there is what the plaintiffs have raised a
5 reasonable understanding that in a land of scarce resources,
6 the robbing Peter to pay Paul situation is real. And so I have
7 got to stay on top of the situations where there is this
8 dramatic falloff, and it's dramatic. And so, I mean, my remedy
9 for this, for 66, was if you couldn't see them by a medical
10 provider within the timeline, take them to the hospital so that
11 they can be seen by somebody. Take them to the emergency room
12 you haven't done that. And I think I have ordered you to do
13 that.

14 So here I am in June, after having previously told you
15 how this should be addressed, and what I'm hearing is that you
16 really have no idea other than we missed it for 72 hours. I
17 mean, really, the only explanation you have given me is we
18 didn't get partial credit. Is there anything else you want to
19 say? Well, what we'll do -- go ahead.

20 MR. BOJANOWSKI: We actually did look at the total
21 number of encounters, you know, that occurred and how that, you
22 know, when you talk about the 10 percent, I mean, we actually
23 looked at that and found that there were 399 encounters out of
24 412 needed. So that's why you see a 10 percent. I mean, we
25 actually looked at that. So it's --

1 THE COURT: The problem is it's not like a brick wall
2 that over 72 hours it's not going to fall down. No, it's not.
3 It's been there for 30 years. It's going to be there for the
4 next 30 years. But we're talking about people who have been
5 determined that they need to be in an inpatient facility and 72
6 hours is really a huge period of time. Unfortunately, four
7 minutes is a huge period of time, too, for somebody who is in
8 that kind of situation.

9 MS. KENDRICK: Your Honor, you have made it crystal
10 clear that they don't get partial credit. So I think that Mr.
11 Bojanowski talking about that, that's really a red herring.
12 And you previously ordered them to use outside providers for
13 this performance measure which, clearly, they are disregarding
14 your past order given these abject failures. While it's great
15 Lewis actually finally hit 100 percent they certainly haven't
16 been doing that great in the recent months.

17 So we again reiterate our request that the outside
18 providers order applies to all of them and that they provide
19 documentation as to every single individual in the hospital,
20 not just a random sample of 10.

21 Furthermore, our expert discussed this performance
22 measure at Paragraph 60 and 61. He critiqued their remedial
23 plan which he described as, quote, "meaningless" and that it
24 used vague language saying that they were going to ensure more
25 resources. And that was their remedial plan in July and

1 obviously it's not working.

2 Dr. Wilcox offered some creative solutions that they
3 could try implementing to make better use of provider time and
4 to get rid of this excuse that it's just a documentation error
5 including using scribes and dictation services to document that
6 the encounters actually occurred.

10:24AM

7 He also notes that 72 hours is an outside ceiling on
8 things and that people should be seen according to their acuity
9 level. So some people may be so sick they need to be seen
10 twice a day by a provider, so they shouldn't be having this
11 sort of non-compliance if they are practicing good medicine and
12 seeing people as necessary by their acuity level.

10:25AM

13 MR. BOJANOWSKI: This is also going to fall under, as
14 I mentioned in the previous situation, there's the change in
15 seeing the inmates from the 72 to a 48. So we're switching to
16 the 48-hour rotation so that we don't miss things like, you
17 know, maybe part of the problem was weekend coverage or
18 something like that.

10:25AM

19 THE COURT: But you said you are only doing that at
20 one facility.

10:25AM

21 MR. BOJANOWSKI: At Florence, yeah, to pick that up.

22 MS. KENDRICK: Your Honor, we believe that this is
23 such a critical performance measure to the life and safety of
24 our clients that they should implement that at all four
25 institutions including Perryville which you have not yet found

10:25AM

1 them non-compliant. But it's critical and if that's what it
2 takes they should do it everywhere not just at one institution.

3 THE COURT: I think a good way for me to incentivize
4 the satisfaction of this performance obligation is to impose
5 the mechanism for Performance Measure 13 for Performance
6 Measure 66 as well. And I will do so for the three facilities,
7 Florence, Lewis, and Tucson. Tucson -- I'm sorry, Lewis,
8 although at 100 percent, the previous month it was at 60, and
9 in February, it was at 20.

10 And so you will have to report to me before the next
11 hearing about the number of people who did not receive the
12 medical provider attention required by this performance
13 measure, and then we'll consider whether or not a sanction
14 should be imposed for the failure to comply. My hope is that
15 the State's articulated measure of changing this 48 to changing
16 for 48 hours for one facility perhaps will be employed at the
17 others or that they will take other measures to make sure that
18 this doesn't happen.

19 I gather, I don't know what kind of arrangement that
20 it is for people to be seen by less expensive methods, but I
21 would suspect that there probably are ways for people to be
22 brought in to review a -- for a medical provider to be brought
23 in to take a look at people to make sure that Performance
24 Measure 66 is complied with that costs less than \$1,000 per
25 patient. So I'm hopeful that that will be an economic

1 incentive that will operate to the favor of seeing compliance
2 with this performance measure.

3 Performance Measure 80: MH-3A prisoners shall be seen
4 a minimum of every 30 days by a mental health clinician.
5 Hopefully we're still on a good trend here. 10:28AM

6 MR. BOJANOWSKI: That would be at Lewis and Tucson?

7 THE COURT: Yes, sir.

8 MR. BOJANOWSKI: Lewis is at 92. Tucson is at 97.

9 THE COURT: All right.

10 MR. FATHI: Your Honor? 10:28AM

11 THE COURT: Yes.

12 MR. FATHI: I would like to point out that for this
13 measure and for many of the ones that remain to be discussed,
14 the defendants are in violation of your orders on the
15 monitoring methodology. And we have discussed that in our
16 briefs and we have placed it on the agenda for today. 10:28AM

17 THE COURT: Right. And we -- I mean, what I
18 understood, and I must say there's a bit of a disconnect on my
19 understanding I thought I cleared those issues up. And I
20 thought I heard Mr. Bojanowski last month say that they were
21 going to do it. 10:29AM

22 Tell me, Mr. Fathi, what are they not doing here with
23 80 that they should be doing?

24 MR. FATHI: Well, Your Honor, this is an issue that
25 involves every measure that requires something be done 10:29AM

1 periodically, so every X days. And the Court said in its order
2 that the defendants have to look back at the last two
3 occurrences and measure the interval. Were they -- was it done
4 within 30 days or less or 90 days or less.

5 And, in fact, the defendants correctly incorporated 10:29AM
6 the Court's order into their monitor guide. Their monitor
7 guide is fine. It says you look at the last two instances and
8 measure the interval.

9 THE COURT: Okay. I'm going to cut you off, Mr.
10 Fathi, just for a second. Part of the problem is that Mr. 10:29AM
11 Bojanowski is still trying to get up to speed on this issue
12 because I can tell he's talking to his expert about this. And
13 that's not really helpful because he's not hearing what you are
14 saying. I can't talk and listen at the same time.

15 But I just want to make sure that this issue is fully 10:30AM
16 joined. So this is a convenient time for us to take a
17 10-minute break. That's what we'll do. Let's make it 15
18 minutes. We'll come back at 10:45. You will have a chance to
19 do what you need to do but also if during this period of time
20 the two sides would talk and make sure that you are not still 10:30AM
21 at issue on this. And if you are, things will be better
22 focused. But we'll come back at 10:45.

23 Thank you.

24 (Recess from 10:30 a.m. until 10:48 a.m.)

25 THE COURT: Please be seated. 10:48AM

1 I interrupted you, Mr. Fathi.

2 MR. FATHI: Quite all right, Your Honor.

3 We were talking about 80 and all the other performance
4 measures that require that something be done every X days. And
5 the Court's order was very clear saying that for those
6 performance measures you have to look at the last two
7 occurrences and the interval between.

10:48AM

10:48AM

10:49AM

10:49AM

10:49AM

8 Here's what the defendants are doing. They are
9 counting records as compliant without measuring that interval.
10 They are counting records as compliant even when there's only
11 one single contact in the person's entire record. And thirdly,
12 they are counting records as compliant when the record can't
13 possibly be found non-compliant. We have discussed this issue
14 before. So, for example, MH-3As have to be seen every 30 days
15 that's Performance Measure 80.

16 If someone has only been an MH-3 for 20 days, that
17 record cannot possibly be found non-compliant but they are
18 including those records in the sample, which as Dr. Haney
19 explains is impermissible and falsely inflates the compliance
20 levels.

21 Now, defendants did say in their brief that, well,
22 yes, that was true as of the December CGARs about everything is
23 different, but, in fact, Mr. Dye specifically was asked and
24 specifically testified that in January and February CGARs, he
25 was still counting records as compliant without measuring that

1 interval, and he was still including in the sample records that
2 couldn't possibly be found non-compliant.

3 So we looked at the March CGARs which are the most
4 recent ones that any of us have, and those results are set
5 forth in the declaration of Ada Lin, which is Document 2089.

10:50AM

6 So here's what they do: The person is admitted as a
7 new prisoner to the Arizona Department of Corrections. As part
8 of that intake process, that person is seen by a mental health
9 clinician and assigned a mental health code. So let's say,
10 again, it's an MH-3A. Someone who is MH-3A has to be seen
11 every 30 days. What they do is they count that same initial
12 contact when the person was made an MH-3A, the only clinician
13 contact in the entire record, and they say that person was seen
14 every 30 days. That's compliant with the performance measure.
15 And that's just not permissible, Your Honor.

10:50AM

10:50AM

16 So that's the dispute that we have on not only
17 Performance Measure 80 but on all the measures that require
18 every X days.

19 THE COURT: Mr. Bojanowski.

20 MR. BOJANOWSKI: I think Mr. Fathi admitted that the
21 first contact is a contact. The person is seen. They are
22 evaluated. They are given a treatment plan potentially --

10:51AM

23 THE COURT: How can you answer the question every 30
24 days when there's only been one contact.

25 MR. BOJANOWSKI: There's one contact within the 30 day

10:51AM

1 period. Otherwise what you are going to end up having is
2 those -- it disincentivizes Corizon from seeing the person
3 within the 30-day period, say, of intake. Why would you do
4 that? Because if that record is not going to be counted
5 compliance-wise, well, then, it would get thrown out.

10:51AM

6 And I'm not as articulate on this issue as Mr. Fathi
7 is, and I have got Dr. Taylor here who maybe can better explain
8 it to the Court because I'm not as good describing what's going
9 on as she would be.

10 So I'd prefer, frankly, maybe to have her address the
11 issue to you and maybe you could ask the questions of her as
12 opposed to me trying to interpret and it gets lost in the
13 translation.

10:52AM

14 THE COURT: That's fine. Go ahead, Doctor.

15 MR. FATHI: May we have the doctor sworn, Your Honor?

10:52AM

16 MR. BOJANOWSKI: She's already been sworn, so she can
17 continue.

18 THE COURT: Please step forward. The oath works when
19 we're in successive hearings. But because of the formality of
20 it, it is something that's worth doing.

10:52AM

21 (Dr. Taylor was sworn.)

22 THE COURT: Thank you.

23 Please have a seat in the witness stand. It's got a
24 handy microphone.

25 NICOLE TAYLOR,

1 a witness herein, having been first duly sworn by the clerk to
2 speak the truth and nothing but the truth, was examined and
3 testified as follows:

4 EXAMINATION BY THE COURT

5 Q. So I know you have heard my previous expressions of doubt 10:53AM
6 about how it can be that something you are supposed to do every
7 X number of days can be ascertained with respect to only
8 looking at one contact. And Mr. Bojanowski has said that that
9 is okay here; Mr. Fathi said it's not. And Mr. Bojanowski
10 suggested that you are the person to ask as to why it is that 10:53AM
11 it's okay from the State's perspective. So please.

12 A. So strictly adhering to the every two, as I was explaining
13 to Mr. Fathi over the break, would also exclude ones where they
14 have only had one contact and it was outside of time frames.

15 Q. Wait a minute. I will ask you to -- I didn't catch what 10:53AM
16 you just said and I'd ask you to say it again so I can try to
17 get it. Thank you.

18 A. So strictly adhering to the requirement of two contacts in
19 order to be able to evaluate a record would mean if they only
20 had one contact but it was on the 95th day instead of 90th day 10:54AM
21 we would remove that record also because we wouldn't have two
22 contacts to compare. And that can put us into a problematic
23 area.

24 I showed one to Mr. Fathi that is from the April audit
25 on my phone that I had and said this is one that's 10:54AM

1 non-compliant because he became 3B, I think it was, on 2-15-15,
2 didn't have a treatment plan until January of 2017. There's
3 only one treatment plan. But it's way overdue and, therefore,
4 non-compliant. Those were also included in there. And I
5 shared that with him and said strictly adhering to the every
6 two would require that to be removed. 10:54AM

7 Q. I guess I don't understand why your example would mean that
8 a person who has been determined to be MH-3 who that
9 determination's been made but the treatment plan hasn't been
10 put in place who hasn't been seen for 90 days why that person
11 doesn't fall out also from being compliant? 10:55AM

12 A. They are not compliant. But we would have to remove their
13 record because there weren't two to compare. So what we had
14 done and implemented in January is provided them start dates.

15 Q. All right. So what if we changed the rule so that it said
16 that for people to be -- for compliance to be obtained under
17 these performance measures that require actions within a
18 certain number of days, you are in compliance if going back two
19 months you find that there is a treatment -- there is treatment
20 offered or provided within the X number of days required and
21 you are not in compliance if there has been no such treatment
22 provided. 10:56AM

23 A. So if I understand you, that would include people who have
24 a 90-day period.

25 Q. Right. 10:56AM

1 A. For instance and are seen on the 80th day of becoming
2 whatever subcode that is.

3 Q. That record would be counted as non-compliant?

4 A. They were seen on the 80th day. They have 90 days.

5 Q. Oh. They have 90 days, right.

10:56AM

6 A. So they would be counted as compliant. And then if they
7 were seen on the 95th day they would be counted as
8 non-compliant. That's what we have been doing.

9 Q. Well, no, because for the 90-day, I guess you are switching
10 from 90 to 30 and I'm not so facile at that. But the example
11 that I'm understanding is that if somebody is supposed to be
12 seen every 30 days and they become MH-3 designated on January
13 10th and they are not seen by February 9th then you know that
14 you have that record as not being compliant.

10:56AM

15 And the problem is that if you look at the end of
16 January and you see that they were seen on January 10th, you
17 determined that they were seen within the period but you have
18 no reference to go back to. So what I'm saying is you use two
19 approaches simultaneously; one, you see whether or not there
20 has been a possible previous date that you can march forward
21 the requisite number of days, and you use that, and you also
22 apply a mechanism that would allow you to capture as
23 non-compliant the record that you describe under the 90-day
24 scenario.

10:57AM

10:57AM

25 A. I think I understand what you are saying. But I personally

10:58AM

1 believe that that deflates the scores.

2 Q. Say why.

3 A. So if I'm going to ask Corizon to use their resource to see
4 somebody as fast as possible, which is what I ask them to do,
5 and so they are seeing them at the 30th day when they are a
6 90-day person, my preference is that they do that and that that
7 resource is used for that.

10:58AM

10:58AM

8 If those are not files that I review to ensure that
9 they are seen quickly when they come in, when they are changed
10 in subcode, and instead, they are incentivized to wait until
11 day 89, that's difficult for me. And so I would only be
12 reviewing records that they did the wrong thing and not
13 reviewing the ones they did the right thing and then providing
14 you kind of half the story.

15 Q. And that seems not to lack virtue, but why does that
16 mechanism mean that I also have to create the problem of
17 deeming as compliant somebody who has only been seen that
18 month, but we have no record of whether or not this is an
19 example of what we're concerned about, and that is somebody
20 whose got an ongoing problem who is supposed to be seen every
21 30 days and we want to make sure we're looking at those records
22 to see if we're capturing those failures.

10:59AM

10:59AM

23 A. I would only be giving you half the story. When I'm giving
24 you a percentage of compliance but I'm only looking at ones
25 that are not in compliant and removing any that are compliant

10:59AM

1 I'm only -- I'm not giving you an actual compliance report
2 anymore.

3 Q. But the measure is designed to report to me about whether
4 or not we're seeing people on a regularized interval.

5 Mr. Fathi, do you want to jump in at this point? 11:00AM

6 MR. FATHI: Yes, Your Honor. Dr. Haney explained this
7 twice in his declaration. If you are trying to test whether
8 the defendants are compliant, you have to have a sample that
9 includes records that at least show the possibility of
10 non-compliance. It had to be possible for them to be 11:00AM
11 non-compliant. So if someone has become an MH-3 20 days ago,
12 and they are supposed to be seen every 30 days, that record
13 cannot possibly be non-compliant. It could be, under the
14 methodology Dr. Taylor explains, it's going to be compliant or
15 if the person isn't seen it's going to drop out of the sample. 11:00AM
16 But it will never be non-compliant. And if you have a sample
17 that consists entirely of records like that you are guaranteed
18 100 percent compliance.

19 So what you do, and again, Dr. Haney explains this in
20 a declaration that has not been contradicted, you simply 11:01AM
21 exclude from the sample records that, because of the timing,
22 couldn't possibly be found non-compliant. And if someone is
23 supposed to be seen every 30 days and they have been there for
24 a year and they have only been seen once, obviously that's
25 non-compliant. I think the Court understands this. 11:01AM

1 But it's just fundamental to sampling methodology you
2 have to exclude all records from the sample that could not
3 possibly be found to be non-compliant. I think we have a
4 fundamental disagreement on this. I think the Court's going to
5 have to resolve it.

11:01AM

6 THE WITNESS: I'm sorry. Could I share one more
7 thing? Mr. Fathi is suggesting most of them are in the
8 category he is describing and, in fact, most of them are in the
9 category that the start date is when they became that mental
10 health code. Mental health codes transition with acuity. So
11 they are doing really well, their mental health subcode
12 decreases. They start to have more problems, their mental
13 health subcode increases.

11:02AM

14 So a number of the individuals have two contacts
15 within the time frames required. But we're only looking back
16 to when they became that subcode. So what I offered to Mr.
17 Fathi was we can remove the start date when they became the
18 subcode. Because if your concern is an MH-3B being seen every
19 90 days, and I have one contact when they were a D and one
20 contact when they were a B, the answer is yes, they were seen
21 every 90 days.

11:02AM

11:02AM

22 We had included the start date to assist them. What
23 it's done is create this suggestion that they are not being
24 seen every X but most of the time they are moving within the
25 subcodes and getting the every X through that, if that makes

11:03AM

1 sense.

2 BY THE COURT:

3 Q. Is there a way to address that particular unfairness?

4 A. We can remove the start date. And so the start date was
5 just -- it was to assist us because treatment plans require us
6 to go back two years. That meant we were going into a lot of
7 paper records and with the three of us that is very
8 challenging. And so if we were looking back to when they
9 became an MH-3B as opposed to and MH-3 in general, it made it a
10 little bit easier.

11:03AM

11:03AM

11 We may have to include some start dates, because if
12 they became an MH-4, for instance, they need an every 30-day
13 contact. But when they were a B they only needed an every
14 90-day. So we would want to indicate that to them when that
15 did transition into every 30 so we know they are looking at
16 every 30 now not every 90.

11:03AM

17 MR. FATHI: Your Honor, we would strongly object to
18 removing the start dates because it's the inclusion of the
19 start dates that made it possible for us to see they were
20 counting files that could not possibly be non-compliant. And
21 as we show in the declaration of Ada Lin, these are not people
22 whose score has changed. These are people who are new into the
23 system and they are counting the one and only contact they have
24 had and saying, oh, that's every 30 days. That's compliant.

11:04AM

25 So what Dr. Taylor has said has nothing to do with the

11:04AM

1 large majority of cases. If someone is in the MH-3A sample and
2 they have been seen twice and it's within -- those two
3 instances are within 30 days then that's compliant. Even if
4 the first time they were seen they had a different mental
5 health code, we don't care about that. What we care about is
6 meeting the requirements of the performance measure for the
7 mental health code they are now. But it is fundamental that
8 they cannot include files that cannot possibly be found
9 non-compliant. And as I said, I think we need a ruling from
10 the Court on that.

11:04AM

11:05AM

11 THE COURT: Okay. Thank you.

12 Thank you, Dr. Taylor. I appreciate it.

13 Well, as you all have heard me say before, I do not
14 see how it is that it's helpful for me to have a performance
15 measure defined by something that doesn't give me what that
16 performance measure is supposed to focus on, and that is
17 whether or not there's this regularized performance of a
18 service. And these measures that require things to be done
19 within a certain number of days are designed exactly to do
20 that.

11:05AM

11:05AM

21 And so as I have said before, it seems to me, as Dr.
22 Haney has said, that it is appropriate to remove from
23 consideration files that cannot possibly be deemed
24 non-compliant so that I'm making sure that I'm getting a full
25 picture of the ones that could be demonstrating the failure of

11:06AM

1 a performance measure.

2 So I thought I had made that clear before, but I'm
3 making it even clearer now. And I'd ask, Mr. Fathi, if you
4 would kindly, in a week's time, submit draft language for the
5 monitoring manual. The only reason I suggest, even though you 11:06AM
6 say I have already done this, that I ask that you do this in
7 this process, is to in a week's time if you would submit that
8 so that the defendants can have a week to try to, given what I
9 have just said, to import into it any additional modification
10 that perhaps might be acceptable to plaintiffs to address what 11:06AM
11 is their concern about removing files that they should get
12 credit for.

13 And so if you would do that, and then on a seven-day
14 and seven-day basis, and then the plaintiffs can have an
15 opportunity to reply in seven days. And then I will issue a 11:07AM
16 written ruling specifying what it is and we'll know for
17 certain. But I'd like to do it that way.

18 MR. FATHI: Thank you, Your Honor. Just to be clear,
19 this is language about excluding cases that cannot possibly be
20 found to be non-compliant? 11:07AM

21 THE COURT: Correct. Correct.

22 MR. FATHI: Thank you.

23 THE COURT: Yes. Right.

24 So now are we to Performance Measure 85? Can you give
25 us the April numbers, please? 11:07AM

1 MR. BOJANOWSKI: I don't think I gave you --

2 THE COURT: 80?

3 MR. BOJANOWSKI: 80.

4 MR. FATHI: You did.

5 THE COURT: You did.

11:07AM

6 MR. FATHI: At the risk of being a broken record, Your
7 Honor --

8 THE COURT: I understand that. Totally understand
9 that.

10 MR. BOJANOWSKI: So we're on 85, Your Honor?

11:07AM

11 THE COURT: Yes.

12 MR. BOJANOWSKI: Eyman, 100; Florence, 100; Lewis, 96;
13 Perryville, 94; Tucson, 89; and Yuma, 98.

14 THE COURT: Mr. Bojanowski, have you happened to have
15 run the numbers using the method that you hear me favoring, and
16 that is removing the records that could not possibly be deemed
17 non-compliant?

11:08AM

18 MR. BOJANOWSKI: Hold on. Are you just speaking
19 generally for all measures, or are you speaking about this
20 measure?

11:09AM

21 THE COURT: Well, let's talk about this one first.

22 MR. BOJANOWSKI: This measure is being measured, as
23 the Court has suggested, so that the start date is the
24 discontinuation date of the med and then they calculate the
25 number of days.

11:09AM

1 THE COURT: All right. How about the previous one
2 that we were talking about, 80: Shall be seen a minimum of
3 every 30 days.

4 MR. BOJANOWSKI: That one includes individuals who are
5 on both sides of it, ones that were seen from the start date 11:10AM
6 within or before the 30 days and then those that were also
7 non-compliant files that were found to be non-compliant outside
8 the 30-day window.

9 MR. FATHI: Your Honor, if I may, at -- in our opening
10 brief on the methodology, Document 2046 at Page 30, we cite 11:10AM
11 examples from the January 2017 CGARs where the sample for
12 Performance Measure 85 includes patients who discontinued
13 medications that same month in January so, therefore, less than
14 30 days before the sample was taken.

15 Now, if that's changed, that's great news, but again, 11:10AM
16 we would like a declaration to that effect. Because as of the
17 January 2017 CGARs, they were still including, for Performance
18 Measure 85, files that could not possibly be found to be
19 non-compliant.

20 MR. BOJANOWSKI: And he's referring to January. I 11:11AM
21 think that, you know, the February/March -- is there some issue
22 with February or March, Mr. Fathi?

23 THE COURT: We just want to know when it is that we
24 can know the numbers are as you represented, and that is, they
25 are employing the methodology of excluding records that cannot 11:11AM

1 possible be non-compliant.

2 DR. TAYLOR: To give you an exact date, I can review
3 the CGARs and give you an exact date. But it is definitely
4 being implemented as we discussed where they have had to come
5 off meds the month before we're auditing so that they would
6 fall due the month we're auditing. 11:11AM

7 MR. FATHI: Your Honor, could we get production of the
8 instructions that were given to the monitors to that effect?
9 Because, again, if this is news, we welcome it but we would
10 like some verification. 11:12AM

11 DR. TAYLOR: I do all the MH-3Ds myself. I'm doing
12 those right now. So I'm the monitor who is doing that.

13 THE COURT: And so you are saying that this -- what
14 month can we know for sure that those numbers reflect this
15 method? 11:12AM

16 DR. TAYLOR: I would need to review the CGARs. I can
17 do that while we're here in court on my mobile phone.

18 THE COURT: All right. Thank you.

19 Performance Measure 92: MH-3 and above prisoners who
20 are housed in a maximum custody -- in a maximum custody shall
21 be seen by a mental health clinician for a one-on-one or group
22 session a minimum of every 30 days. 11:12AM

23 MR. BOJANOWSKI: Eyman, 100; Florence, 90; Lewis, 95;
24 Perryville, not applicable; Tucson, not applicable.

25 THE COURT: All right. Sorry to interrupt, Dr. 11:13AM

1 Taylor, what you are working on. But what about 92? Do you
2 know what it is the method you are employing there and when?

3 DR. TAYLOR: So we provide them a start date when they
4 arrive into the max custody facility, and so it would include
5 individuals who have been there less than 30 days but also
6 include ones who have been there longer than 30 days and have
7 not yet been seen. 11:13AM

8 THE COURT: So all of these numbers that we have
9 currently employed a methodology that is now you know
10 disfavored. 11:14AM

11 DR. TAYLOR: But again, it does include people who may
12 have had a contact just before they went into max and we
13 didn't -- so they would still potentially have the 30-day
14 contact span but we have not been providing that to you guys
15 and can't is what I'm -- 11:14AM

16 THE COURT: That's one of the tweaks that I thought
17 that maybe you could employ to what Mr. Fathi could propose to
18 address that kind of an issue.

19 DR. TAYLOR: Understood.

20 THE COURT: Performance Measure 93: Mental health
21 staff not to include LPNs shall make weekly rounds of all MH-3
22 and above prisoners who are housed in maximum custody. 11:14AM

23 MR. BOJANOWSKI: Eyman, 95; Florence 100; Lewis 100;
24 Tucson, not applicable.

25 MR. FATHI: Your Honor, I should point out that there 11:15AM

1 are additional methodological problems with some of these
2 measures.

3 THE COURT: Are they ones on the agenda?

4 MR. FATHI: Yeah, so I'm happy to leave those for
5 later. 11:15AM

6 THE COURT: I have addressed some of those so I will
7 get to that. But thank you.

8 MR. FATHI: Thank you, Your Honor.

9 And I gather for 93, those are also subject to your --
10 to the State's previous, well, the State's challenged method of 11:15AM
11 counting. Is that correct?

12 DR. TAYLOR: No. On that one it's a weekly contact
13 and so if they have been there, as per what we discussed, they
14 had to have been there for a full week before we could use
15 them. 11:16AM

16 THE COURT: Was court reporter able to hear?

17 If you could move closer to a microphone because she
18 is relying upon the microphone with the headsets so et helps to
19 do that, to use microphones.

20 DR. TAYLOR: I apologize. 11:16AM

21 THE COURT: It's all right. You didn't know.

22 94: All prisoners on a suicide or mental health watch
23 shall be seen daily by a licensed mental health clinician or on
24 weekends or holidays by a registered nurse.

25 MR. BOJANOWSKI: Eyman is at 100; Florence at 47; 11:16AM

1 Tucson at 88.

2 MR. FATHI: And Perryville?

3 MR. BOJANOWSKI: Perryville at 93.

4 THE COURT: What about Florence?

5 MR. BOJANOWSKI: Your Honor, this is the one where
6 there was, I think, problems with regard to documentation that
7 Dr. Calcote went out and did a training on that you had
8 requested.

11:17AM

9 THE COURT: Right. Right.

10 MR. BOJANOWSKI: At the last one. He has completed
11 that.

11:18AM

12 THE COURT: He said he was going to do it by the end
13 of May.

14 MR. BOJANOWSKI: That was completed. He went to all
15 of the facilities, even those that are not subject to
16 non-compliance and did trainings. And he submitted an
17 affidavit or declaration, I should say, to that effect,
18 indicating the topics as far as assessments of the need for
19 suicide watches, suicide risk factors, intake assessments,
20 watch assessments, criteria for release from watches, suicide
21 watch follow-ups and treatment planning, clinical treatment of
22 suicidal ideation, inspiring hope and documentation,
23 requirements for compliance with the stipulation for
24 performance measures. So all of those topics were included in
25 those training sessions that started on May 16th and finished

11:18AM

11:18AM

11:19AM

1 on May 23rd.

2 THE COURT: Mr. Fathi, I know that your expert is
3 skeptical of this kind of training that doesn't seem to fit
4 within the normal course of training, but in some ways I think
5 it may be better. I have the person who is in charge telling
6 me that he will go and show up to each of these facilities and
7 tell them in no uncertain terms that this needs to be done.
8 And I would think that would have a more dramatic impact,
9 logically would make me think would have a more logical impact
10 than any other training program.

11:19AM

11:19AM

11 So I'm inclined to look to see what the results of the
12 assessing this performance measure are after we have results
13 from when these visits took place.

14 MR. FATHI: Well, it's not either or, Your Honor. Dr.
15 Stuart specifically recognized that verbal coaching can be
16 helpful, but it is completely unheard of in a multi-billion
17 dollar government agency in 2017 not to write anything down.
18 And Dr. Stuart explains why that's particularly dangerous in a
19 prison healthcare system where you have a lot of turnover, you
20 have use of locum staff, and so you have constantly coming into
21 the system people who aren't familiar with procedures and
22 protocols. And that's why you write things down.

11:20AM

11:20AM

23 This is a measure that is specifically to protect
24 people who are suicidal. And the four suicides that ADC
25 experienced in a 20-day period brings home to us the importance

11:20AM

1 of protecting this particularly vulnerable population.

2 Florence has been non-compliant on this measure for
3 every month since December with a single exception. And now
4 they have actually dropped from 60 percent to a truly abysmal
5 47 percent. This is a measure where the Court should not take
6 chances. We would ask that you extend the Performance Measure
7 17 remedy to Florence on Performance Measure 94.

11:21AM

8 THE COURT: Well, here's what I'm going to do. I'm
9 going to ask that the following be provided to Dr. Calcote, and
10 that is that I appreciate the affidavit which demonstrates that
11 he did do what he said he would do; that he did visit the
12 facilities and explain that this performance measure needed to
13 be complied with in every instance.

11:21AM

14 But I also want him to be able to see the lines of the
15 transcript above what I'm saying now in which the plaintiffs'
16 counsel has raised a point articulated by the plaintiffs'
17 expert in which they are concerned that in a system that does
18 have many, many employees and a high level of turnover that
19 this visit be effective; this visit, which I appreciate again,
20 may be ephemeral, and that there be some methods that should be
21 imposed to make sure it's not so ephemeral and that it does
22 have a longevity that can make sure that we do not get into a
23 situation where we are at a compliance rate that has been
24 previously reported and that, perhaps, could have addressed the
25 loss of life that has recently happened.

11:21AM

11:22AM

11:22AM

1 So I would ask that this transcript portion be
2 provided to Dr. Calcote, and that he provide a supplemental
3 affidavit with respect to his view as to what can be done, what
4 the Court should do to make sure that the message that he
5 communicated in person was and will be followed and heard by
6 people who may not have been in the room when he said those
7 words. Thank you.

11:23AM

8 Is Performance Measure 98 next? And this is: Mental
9 health HNRs shall be responded to within time frames set forth
10 in the mental health treatment mental health technical manual
11 Chapter 2, Section 5.0.

11:23AM

12 MR. BOJANOWSKI: Number 98: Eyman, 100 percent;
13 Florence, 100 percent; Lewis, 95 percent; Winslow, 70 percent.

14 THE COURT: State's reaction to the 70 percent to
15 Winslow?

11:24AM

16 MR. BOJANOWSKI: What happened was the HNRs were
17 submitted in Winslow. The inmates are transferred to Tucson
18 and then the inmates are put into the queue for being seen.
19 And then they fall outside the 14-day limit because Tucson
20 doesn't pick up on the need to get that person processed
21 quicker. And then it falls back on to Winslow as being counted
22 against Winslow even though that inmate is no longer there
23 because they were transferred.

11:24AM

24 And there were a total of 10 HNRs that were evaluated,
25 so -- because the population, the mental health population at

11:25AM

1 Winslow is so small.

2 THE COURT: Everybody who identifies a problem gets
3 transferred to Tucson, I gather?

4 DR. TAYLOR: Correct, and they put them in the queue
5 behind the ones they are tracking down at Tucson because they
6 came down later and they started their time frame from then. 11:25AM
7 And they ended up getting seen a couple of days outside of the
8 14 because they put them in the back of their queue.

9 THE COURT: And it just strikes me that if someone in
10 the medical staff at Winslow has decided that this is such a 11:25AM
11 situation that requires the transfer of the inmate to a
12 facility that has the ability to deal with this particular
13 circumstance, that maybe it's not so great to have that person
14 be at the end of the queue because of the instability that is
15 imposed upon somebody's movement from their home, and the 11:26AM
16 inmates do view their cells as their homes, that can be, I
17 think, a serious issue.

18 So I wonder, is there a way to make sure that we can
19 comply with this performance measure even for these people who
20 are transferred? 11:26AM

21 MR. BOJANOWSKI: It's a matter of making sure that the
22 facilities are communicating with one another as far as the
23 transfers are concerned. And I think the issue is when these
24 guys get moved they need to be put in the front of the line
25 instead of the back of the line at Tucson. 11:26AM

1 THE COURT: Has anybody taken steps to do that?

2 MR. BOJANOWSKI: The short answer is yes, but I'm
3 getting a more detailed overview.

4 THE COURT: Take your time.

5 MR. BOJANOWSKI: So what they have done now is they
6 have established a person who is at the Corizon Central Office
7 that's is in charge of tracking this to make sure that person
8 is seen within time frames.

11:27AM

9 One of the other things that is a backup kind of plan
10 or may also come into play is some telepsych that can be used
11 to perhaps address it before the actual transfer takes place so
12 if the person has put the HNR in, we could potentially see that
13 person prior to transfer because it does take some time to get
14 a person moved.

11:28AM

15 So those are the things that are being looked at in
16 this instance. It's a, like I said, it's usually a very small
17 group of individuals that fall into this. But we do want to
18 make sure that they are seen within time frames and get them
19 into the front of the line upon transfer or into a telepsych
20 before they are actually moved.

11:28AM

11:28AM

21 THE COURT: Well, I have to really drill down to make
22 sure that I understand what is happening now and what is sort
23 of anticipatory, because there's both things there. I had
24 asked what steps had been taken to be sure that they are put in
25 the front of the line when they are moved to Tucson. And your

11:29AM

1 first statement was so what they have done now is they have
2 established a person who is in -- who is at the Corizon central
3 office who is in charge of tracking this to make sure that
4 person is seen within the time frames. That's operational
5 right now?

11:29AM

6 DR. TAYLOR: Yes.

7 MR. BOJANOWSKI: Yes.

8 THE COURT: And you have told me there are other
9 things that are being looked at as a backup and that's a
10 process that's not been implemented yet but it's ongoing?

11:29AM

11 MR. BOJANOWSKI: It's apparently been used in the
12 past. Then they stopped doing that, and now they are going to
13 do it again.

14 THE COURT: The things that have been done in the past
15 are which things?

11:30AM

16 MR. BOJANOWSKI: I'm speaking as to the telepsych
17 only.

18 THE COURT: All right.

19 MR. BOJANOWSKI: So they had a system in place that
20 they had used in the past. They went away from that, and then
21 they are going to bring that on line again.

11:30AM

22 THE COURT: When?

23 DR. CALCOTE: This week.

24 THE COURT: This week?

25 DR. CALCOTE: Yes, sir.

11:30AM

1 THE COURT: All right. And the Corizon oversight
2 process is, you are sure, happening now, that somebody is
3 looking to every person who is transferred for mental health
4 reasons from Winslow to Tucson is being watched to make sure
5 that they will be seen within seven days?

11:30AM

6 MR. BOJANOWSKI: Correct. 14 days.

7 THE COURT: 14 days. Yes.

8 MR. FATHI: Your Honor, may I respond?

9 THE COURT: Yes.

10 MR. FATHI: I am disturbed to hear the defendants
11 repeatedly referring to 14 days. The requirement imposes
12 different time frames for HNRs of different urgencies.

11:31AM

13 THE COURT: I don't know because I don't have that
14 manual in front of me, so I appreciate this clarification.

15 MR. FATHI: Understood, Your Honor. But given the
16 defendant's history of non-compliance with this measure we are
17 concerned if they are only looking at 14-day HNRs. We will
18 investigate it and certainly advise the Court if there's a
19 problem. Some HNRs do need to be responded to immediately;
20 some within 24 hours and so on.

11:31AM

21 THE COURT: All right.

22 MR. FATHI: One additional point is that the
23 defendants, and this is a separate agenda item, propose to
24 eliminate the HNR boxes at a number of facilities, one of which
25 is Winslow. So their ability to comply with this performance

11:32AM

1 measure would certainly be affected if they were to get rid of
2 the HNR boxes. And, again, we're happy to discuss that under
3 the separate agenda item. But I did want to mention that
4 connection for the Court.

5 THE COURT: It's a nice segue and also amplifies what
6 my original concern is when I saw that, is because there are a
7 number of provisions in the stipulation, or in the performance
8 measures, that are triggered that are put in play by this HNR
9 deposit of a request and that I think the parties are free to
10 modify by agreement how to go forward. But both sides have
11 been rather strident with me at different times when it's in
12 their favor to say the rules are the rules.

13 And so if it says, the HNR, you can't decide that a
14 performance measure that requires this thing to be monitored by
15 when an HNR is deposited you can't just remove the mailbox
16 unilaterally. You could bilaterally if you agreed upon it, and
17 it may make sense to do all sorts of things like that in a
18 different area where things change, technology changes. We
19 have made changes with respect to medical records.

20 But this is a problem for the mechanism that is in
21 place for me to know when an action is triggered when I start
22 the clock. And I don't have any other way to start the clock.
23 And so I'm -- I need to hear how it is that I have an assurance
24 that the performance measure that was going to let me know
25 whether or not a requirement of the stipulation was being

1 satisfied is going to fail now because a single side has
2 decided to remove the triggering mechanism.

3 So this is an important issue. It's on the agenda,
4 and maybe we can turn to it now.

5 Mr. Bojanowski. 11:34AM

6 MR. BOJANOWSKI: Your Honor, we're not removing HNRs.

7 THE COURT: The boxes aren't coming away?

8 MR. BOJANOWSKI: No, the boxes are gone. The HNR is
9 still in place. The inmate takes the HNR right to the medical
10 unit. The HNR is processed just like it usually is. 11:34AM

11 THE COURT: So they get docketed in the same way?

12 MR. BOJANOWSKI: Right. The only difference is how
13 does the HNR make it from the inmate to medical.

14 THE COURT: I see.

15 MR. BOJANOWSKI: Is it picked up by medical each day 11:34AM
16 or is it actually hand delivered by the inmate. We removed the
17 boxes such that we can process the HNRs immediately. It's kind
18 of like going to an urgent care clinic.

19 THE COURT: The immediate problem has been raised by
20 the plaintiffs before. They say that sometimes the line is so 11:35AM
21 long that somebody just can't possibly do it. Either they are
22 too sick or they are called away to another obligation or
23 something. There have been these workability issues that have
24 been raised. I don't know what's happening on the scene but
25 the plaintiffs may well. So I just -- I'm sorry to interrupt 11:35AM

1 you, but I wanted to drop a footnote on your use of the word
2 immediately because it seemed to me that the HNR box allowed
3 that to happen for the thing to be date stamped in. We knew
4 what the time was. But if somebody shows up with a piece of
5 paper and the line has 50 people in it and you can't get to the
6 person to hand the piece of paper to, then I have got a problem
7 with deciding whether or not it's fair to allow you to modify
8 the mechanism that started the clock.

11:35AM

9 MR. BOJANOWSKI: That's simply not the way it's
10 functioning.

11:36AM

11 THE COURT: Okay.

12 MR. BOJANOWSKI: Okay. I mean, we don't have people
13 that are not being seen. Anybody that's in line is going to be
14 seen. If there's an emergency situation it's handled as it
15 always has been. There's an emergency declared and the person
16 is taken to medical.

11:36AM

17 As far as people working, the med lines are structured
18 and the work things are structured so that those people have
19 the opportunity to go to medical, in other words, person leaves
20 for work at 6 a.m., they come back at 2, their med line
21 opportunity is from, say, 3 to 6 so they can go after work.
22 Some people work the afternoon shift, so to speak, so they can
23 go in the morning. But all of that is by facility and unit
24 scheduled and structured so that the availability of getting
25 down to the medical unit is there for people who want to do it.

11:36AM

11:36AM

1 Now, if you choose to go to a programming event
2 instead of going to medical, I don't know how we cure that,
3 okay. But it's one of those things where there's a certain
4 level of responsibility upon the inmate to say, look, I'm sick
5 or I need something. I need to go see the medical unit. And 11:37AM
6 so I can go down there with my letter HNR already filled out
7 and I can see that nurse. Do I have to wait? Yes, I may have
8 to wait, or I'm first in line. I may not have to wait so long.
9 So, you know, but everybody that's in line is seen. And my
10 information is that we're not having people turned away because 11:37AM
11 they can't be seen.

12 THE COURT: Okay.

13 MR. BOJANOWSKI: Medical staff is instructed
14 specifically, you need to see everybody in line.

15 THE COURT: I don't know that we have heard exactly 11:37AM
16 something contrary to what you have just said but we have heard
17 some sentiments expressed about workability issues that the
18 plaintiffs have observed in their monitoring capacity. Maybe
19 you can give us an update on that.

20 MS. KENDRICK: Well, Your Honor, it's not just what we 11:38AM
21 have observed. Attached to the declaration that's at Docket
22 2106 is a letter that I sent to Mr. Bojanowski on May 17th in
23 response to their unilateral announcement that they were
24 removing these boxes. And I cited to and included documents
25 from three different institutions where they talked about how 11:38AM

1 their little open sick line was affecting people who work.

2 We attempted to resolve the situation with a
3 meet-and-confer telephonic conference before this hearing, and
4 again, we got these avowals of counsel that, oh, don't worry.
5 They are seen before they go to work. They are seen after they
6 go to work. We said great, give us schedules. Well, the
7 schedule's written down. Nothing is written down. We were
8 just told, oh, trust us. They are written down.

11:38AM

11:39AM

11:39AM

11:39AM

11:39AM

9 And we vociferously object to this unilateral
10 modification. Our expert goes on at length, Dr. Wilcox, how
11 this is used to reduce accountability. And requiring people to
12 go and sit for 8 or 10 hours in a clinic with 50 other people
13 when they have an HNR that says: I'm having bad thoughts. I
14 would like to see my mental health provider or my tooth aches
15 is beyond absurd. And it's putting so much barrier on
16 accessing care for our clients.

17 He says he doesn't have any proof that people are
18 being turned away. They have no way to document it because
19 they count the HNRs that are received and processed. That's
20 why they are suddenly doing so great on Performance Measure 37.

11:39AM

11:39AM

21 THE COURT: Have you watched during your tours this
22 open line?

23 MS. KENDRICK: Yeah, we have watched the open clinic.
24 And despite their assurances in open court that they run 7 to
25 7, seven days a week, we went on multiple yards where they said

11:39AM

1 they were a few hours in the morning on one part of the yard
2 and then a few hours in the afternoon on another part of the
3 yard. We talked to multiple nurses about that.

4 It's very difficult to take any of these vague
5 assurances with any sort of credibility that it's true. 11:40AM

6 There's absolutely no written documentary proof. And I think
7 at this point, it's a little hard to trust assurances that
8 people are being seen, things are being done. Nothing is
9 magically being written down. So again, we object in no
10 uncertain terms to their removal and we ask the Court to order 11:40AM
11 them to put the boxes in all of those yards where they removed
12 them on Monday.

13 THE COURT: What I'm inclined to do I will give you
14 both a chance to address this at our next hearing, set an
15 evidentiary hearing and ask that I have the people from the 11:40AM
16 floor, so to speak, here. The nurses who tell me, whether they
17 be nurses or not, but plaintiffs certainly used the word

18 "nurses" so you have apparently spoken to somebody. So maybe
19 you have an idea of the type of person if not the individual
20 person who would be the right person to have testify in court 11:41AM
21 about what it is that the reality is happening and whether or
22 not it's, as plaintiffs say, people are sitting for eight hours
23 or what I'm getting from defense counsel that that never
24 happens or, on the other hand, in a different subject, whether
25 or not there is this limited number of access hours that are 11:41AM

1 permitted.

2 And so I think we need to understand better about
3 what's happening on the scene. And so that, to me, is a
4 suggestion that the best way to do that is to have an
5 evidentiary hearing addressing the subject. But as I say, I
6 will give you each an opportunity to address my proposal.

11:41AM

7 MS. KENDRICK: That's fine, Your Honor, but we would
8 ask that in the interim you order them to put those boxes back
9 in. Our office has received a lot of mail recently from
10 prisoners who received this notice that we filed with the Court
11 from Director Ryan going to all prisoners informing them that
12 the boxes are going to be removed. And our clients are
13 expressing grave concerns about what's going on. I mean, I
14 read three letters in the past week that said, Ms. Kendrick,
15 what are you going to do about this?

11:41AM

11:42AM

16 So we're hearing loud and clear from our clients that
17 they are concerned that this unilateral removal of the boxes is
18 going to impact their access to receive medical, dental, and
19 mental healthcare.

20 THE COURT: I see. And these boxes they are talking
21 about have already been removed or are going to be removed?

11:42AM

22 MS. KENDRICK: Yes, sir. According to the notice that
23 Mr. Bojanowski sent me on May 15th, it's attached as Exhibit 2
24 to my declaration. It's Docket 2106-1, electronic case filed
25 page Number 12. And it says -- it's signed by Charles L. Ryan

11:42AM

1 and it says, "Effective June 12th, 2017, ADC will no longer
2 utilize the HNR box in processing general health needs requests
3 for minimum and medium state-operated units. Following the
4 removal of the HNR boxes from these areas, inmates seeking
5 medical attention must report to the health unit with a
6 completed HNR where they shall wait to be seen by a daily
7 nurses' line."

11:43AM

8 THE COURT: Well, so the people who wrote that letter
9 are all people who are fearful that the new system will be one
10 that will have all the horrors that you described and not one
11 that will have all the benefits and the absence of the horrors
12 that Mr. Bojanowski describes.

11:43AM

13 MS. KENDRICK: I didn't hear any benefits.

14 THE COURT: The benefit is you are seen immediately.
15 You are seen that day.

11:43AM

16 MS. KENDRICK: That's what they represent. I would
17 say the horrors besides the lack of barrier to care is exactly
18 what you identified, is that so many of these monitoring
19 performance measures are keyed off of HNR submission and wait
20 times. And our expert, Dr. Wilcox, described the fact that he
21 thinks that this is a blatant attempt to avoid accountability
22 and eliminate the only audit trail that exists about requests
23 for care. There's no way to show how many times somebody
24 requested care if the only HNRs that are scanned to the records
25 are when they were actually successfully seen.

11:43AM

11:44AM

1 THE COURT: Right. But that -- but, I mean,
2 obviously, I can find out, I think, about whether as a
3 practical matter people are not able to make it to survive the
4 line, so to speak, long enough if the line is so long that they
5 can't possibly be seen. So I think I can answer that question, 11:44AM
6 because your supposition also assumes that I can't trust the
7 HNR box system itself, that if they are using it as a mechanism
8 to try to escape accountability, why don't they just take all
9 the HNRs and throw them in the trash when they were in the box.

10 So we trust that they don't do that, so we trust here 11:45AM
11 that when people get to the front of the line that they hand
12 the HNR and we have to look and see whether or not it becomes a
13 deterrence to the component that is important upon the parties'
14 agreement, and that is the monitoring of knowing whether
15 something that's triggered by the HNR is no longer able to be 11:45AM
16 gauged because the HNR process or the -- yeah, the HNR process
17 is frustrated.

18 MS. KENDRICK: Well, Your Honor, again, there's just
19 no audit trail. There's no way to know who was not seen. And,
20 you know, Mr. Bojanowski dismissed people who might choose 11:45AM
21 programming over going and sitting in nurses' line for eight
22 hours. But a lot of prisoners are doing programming that is
23 court-ordered or that will need to be reviewed by a parole
24 board when they are exiting. We have people working. Granted
25 they are making 15 cents an hour, but they have jobs. And they 11:46AM

1 are going to have to not report to work, not report to
2 education, not report to their substance abuse classes because
3 they have to sit and wait. So we think it's unreasonable to
4 put this requirement on there.

5 The other thing is there are people who do not need to
6 be seen by a nurse to be triaged. When they use the triage --
7 triage them by paper, if somebody put in an HNR that had to do
8 with mental health or dental, they were not seen a nurses' line
9 and charged \$4. It was referred to the dental department or
10 mental health department who then docketed the individual. So
11 the triaging occurred on the paper in those cases. It's not
12 necessary for every single person to come and sit at nurses'
13 line and pay \$4 for the pleasure of doing that when they are
14 submitting an HNR that's about mental health or dental care. A
15 nurse cannot do anything about a toothache or somebody who is
16 feeling depressed and needs to talk to their counselor.

17 THE COURT: All right. Go ahead. I will let you
18 finish, Mr. Bojanowski.

19 MR. BOJANOWSKI: Like I said, Your Honor, we're not
20 eliminating HNRs. There is an audit trail. The HNR is still
21 processed in the same fashion, even with the boxes. I mean,
22 they are still going to wait in line. They still have to show
23 up the next day and wait in line to be treated. So the waiting
24 in line, missing work, whatever, you know, they are going to
25 have to be in the medical line either the day of that they can

1 get treated immediately or the day after, after they are --

2 THE COURT: But that medical line under the old system
3 is managed. It's triaged. You are telling the person when to
4 come back at a particular time so they think they can see that
5 person with the reasonable amount of time. 11:47AM

6 MR. BOJANOWSKI: So say it's mental health thing
7 that's not urgent. Instead of seeing the nurse right away, the
8 person is -- they take the paper and they are not seen within
9 five days. So, you know, it's a matter of being able to manage
10 the inmate population so that they are seen right away and 11:48AM
11 there is accountability there the idea being that, look, if I
12 have got the HNR I can go there and I can wait for a couple of
13 hours. I am unaware of anybody waiting eight hours. I am
14 unaware of anybody not being seen in the line when they go to
15 the line. And I have not seen anything from plaintiffs that 11:48AM
16 indicate that is the case.

17 We believe that this system is -- it's much quicker to
18 address the needs of the inmate population. So the audit trail
19 is there. The accountability is there. The HNRs are still
20 going to be there. It's not something where there's a denial 11:49AM
21 of access to care. It's just more streamlined. It's just like
22 going, like I say, like going to the urgent care. If I go to
23 the urgent care I may have to sit there for two hours. I may
24 have to miss work because I have got to be someplace to see a
25 doctor because I'm sick or I need something or whatever. I 11:49AM

1 mean, it's the same thing is true inside the facility. We have
2 very specific schedules put in place so that the people who are
3 working are not impacted, they can still access the care even
4 with their work schedules. I have got those schedules and I
5 can produce those to the Court.

11:49AM

6 I'm not objecting to an evidentiary hearing. If the
7 Court wants to hear from people in the field I'd be more than
8 happy to produce some people from the field so that the Court
9 could hear it and hear how it's functioning and how the system
10 works.

11:49AM

11 MS. KENDRICK: Your Honor, Mr. Bojanowski keeps making
12 parallels to urgent care centers that we might go to in the
13 community. But in this case we have lots of individuals who
14 are requesting and needing routine care. And I don't go to
15 urgent care for a routine procedure. You arrange it and
16 schedule it.

11:50AM

17 And I guess I understand they want to streamline
18 things, but there's no burden on ADC to keep the boxes so we
19 don't understand why they are moving so aggressively to remove
20 a way for people to access care. This is creating an
21 unnecessary barrier to care. And again, the benefit of the
22 boxes was that every single HNR that was in a box was logged
23 and tracked and put into a prisoner's record. And if we're
24 only going to be using the HNRs of people who sat and waited,
25 whether it's 45 minutes, two hours, six hours, eight hours, and

11:50AM

11:50AM

1 only their HNRs are being seen, we're not getting the entire
2 universe of them.

3 MR. BOJANOWSKI: What HNRs are missing?

4 MS. KENDRICK: The people who did not sit for two
5 hours or eight hours, or the people who are requesting to see 11:51AM
6 the dentist and are being told that their HNR won't be received
7 until they wait and see the nurse.

8 MR. BOJANOWSKI: Do you have instances where this is
9 occurring? I mean, I don't see any grievances. I don't get
10 any kind of complaints. I don't see evidence of what you are 11:51AM
11 saying is occurring.

12 MS. KENDRICK: Well, there's a couple things we could
13 do, Your Honor. We could perhaps call some prisoners, class
14 members, to testify as witnesses. I could review the letters
15 that we got and anonymize what complaints and concerns we get. 11:51AM
16 But at the end of the day, our fundamental question is, why are
17 they doing this? There's no reason to do this except they want
18 to quote, unquote, "streamline things."

19 And to the extent multiple barriers exist to people
20 accessing care, it seems rather gratuitous and cruel to erect a 11:51AM
21 barrier for no other reason than it, quote, streamlines things
22 with Corizon.

23 MR. BOJANOWSKI: There's more of a barrier with the
24 box.

25 THE COURT: Well, the defendants have articulated in 11:52AM

1 the past a reason of why they believe this would be a better
2 system, not just for efficiency purposes, also for treatment
3 purposes having people seen sooner rather than later. So I do
4 think I need to learn more about it. I think having an
5 evidentiary hearing makes sense. Exactly who the witnesses
6 would be, I would ask the two sides to confer about that. And
7 if you need help from me on deciding what the nature of it
8 should be, get on the phone and call me. And I will take that
9 up. But make arrangements to have that happen.

11:52AM

10 MR. FATHI: Your Honor, will that be at our next
11 scheduled hearing?

11:52AM

12 THE COURT: Yes. Yes.

13 Are the boxes, have they already been removed, all of
14 them?

15 MR. BOJANOWSKI: I'm not really sure whether they have
16 all been removed. I sought to get confirmation of that
17 yesterday, and I don't have the confirmation. So I don't want
18 to represent to the Court that they have all been removed.
19 What we -- months ago we implemented the open clinic concept to
20 try and ease into the procedure by which to get inmates instead
21 of going to the box.

11:53AM

11:53AM

22 THE COURT: Have people been told when they show up
23 with an HNR on the open clinic days, oh, don't put that in the
24 box. Sit here and wait until we can see you? Is that what
25 people have been told, so the number of HNRs going into the

11:53AM

1 box, have they already declined?

2 MR. BOJANOWSKI: I don't think I understood your
3 question, Your Honor.

4 THE COURT: You are trying to transition. So you
5 transition to a place where there are no longer boxes. The
6 people in the old system come in with an HNR, put it in the
7 box, go about their way. They would get contacted when they
8 have an appointment. Am I right so far?

11:53AM

9 MR. BOJANOWSKI: So far.

10 THE COURT: Then the prison knows they are getting to
11 a point where they are going to be doing away with these boxes
12 so when people come in with the HNR, we say, oh, no, don't put
13 that in the box. Sit here and wait until we see you
14 personally. Has that been going on for a while?

11:54AM

15 MR. BOJANOWSKI: Yeah. The boxes are on each yard.
16 So we don't know when they drop them off.

11:54AM

17 THE COURT: I see. The boxes --

18 MR. BOJANOWSKI: They are not at the medical.

19 THE COURT: They are not in the medical facility?

20 MR. BOJANOWSKI: It's like a mailbox on each yard.

11:54AM

21 THE COURT: Okay.

22 MR. BOJANOWSKI: So you might have 10 boxes, say. And
23 so they would collect them, you know, say at night or whatever
24 and then they collect them all. And then they go through them,
25 they would look at them, and then they would determine, okay,

11:54AM

1 this guy needs to be seen say here today. That guy can be seen
2 tomorrow or a couple days from now, and that's the way it was
3 working.

4 THE COURT: Are these the same boxes that the
5 grievances go in? 11:55AM

6 MR. BOJANOWSKI: No. No. It's strictly a medical.

7 MS. KENDRICK: Your Honor, on that point, our
8 plaintiffs have been asking for months to be provided all of
9 the grievances that are filed regarding healthcare and
10 defendants have steadfastly objected. But given Mr. Bojanowski 11:55AM
11 has just represented he reads the grievances and hasn't seen
12 any that complain about this, we would like to ask that they
13 produced all the grievances from the past six months to us
14 within the next two weeks so we can prepare for the evidentiary
15 hearing. 11:55AM

16 THE COURT: So these are the healthcare grievances you
17 are asking for?

18 MS. KENDRICK: He's representing --

19 MS. RAND: Your Honor --

20 MS. KENDRICK: Please let me finish, Lucy. He's 11:55AM
21 representing to the Court that he has reviewed these grievances
22 and doesn't see this as a problem. We do not have access for
23 that information so we cannot counter his representation that
24 he has read the grievances and there's nobody complaining about
25 this issue. Therefore, we reiterate the request we have been 11:56AM

1 making for months in our document requests and they have been
2 refusing to produce it to us that they provide the past six
3 months for grievances. That would cover the period since the
4 open clinic started and that way we could see if there are
5 grievances about the open clinic and whether the HNRs are being 11:56AM
6 taken or whether people are being told they have to wait and
7 see the nurse before their HNR would be accepted.

8 MR. BOJANOWSKI: I think she's greatly expanding what
9 I'm saying. I'm not hearing about any grievances. I haven't
10 seen any grievances. I haven't read all the grievances. It's 11:56AM
11 thousands --

12 MS. KENDRICK: It's not thousands, Mr. Bojanowski.

13 THE COURT: This is the first I have ever heard about
14 the grievance issue and the fact that the plaintiffs have been
15 requesting grievances and that hasn't been complied with. My 11:56AM
16 gut reaction is why wouldn't the plaintiffs be able to see the
17 healthcare grievances?

18 MS. RAND: Your Honor, this is Lucy Rand. Plaintiffs
19 requested almost two years worth of grievances be provided
20 regardless of what topic it's regarding. They are not trying 11:57AM
21 to narrow them down. And we basically, you know, objected that
22 it's unduly burdensome because of the amount of documentation
23 that must be produced. And we asked them to, you know, to
24 basically, you know, narrow it down just a little bit. And
25 they have never responded. So I don't know that we have been 11:57AM

1 objecting and that they -- I'm sorry. Go ahead.

2 THE COURT: Nobody was talking. But it occurs to me
3 that in trying to identify issues that are associated with
4 compliance with the healthcare stipulation, that one of the
5 best mechanisms of communication would be to have the
6 plaintiffs take a look at the grievances that the class
7 plaintiffs have been submitting to the prison authorities with
8 respect to healthcare issues.

11:58AM

9 So I will order that the last six months of healthcare
10 grievances all be produced no later than two weeks from today
11 to the plaintiffs.

11:58AM

12 MS. KENDRICK: And just to be clear, Your Honor, you
13 can see this at Docket 2108-1, the declaration of David Fathi.
14 It's Exhibit 2. It includes our request and it shows that we
15 have been requesting the director's level responses to
16 grievances since February 16th. And since -- February 16,
17 2016. And since then they have been saying that it's unduly
18 burdensome and not required to produce under the stipulation.
19 So we're not asking for every single grievance despite their
20 representation.

11:58AM

11:59AM

21 THE COURT: You want the director's level grievances?

22 MS. KENDRICK: Our previous request had been
23 director's level but given the fact it takes and months and
24 months to get a director's level response and given the
25 evidentiary hearing coming up, we would actually request that

11:59AM

1 it be all grievances. But I want to be clear that historically
2 we have not been asking for all grievances only asking for the
3 ones that made it all the way to the director's office.

4 THE COURT: Let's do this: Let's have the director's
5 level grievances produced to you, but with respect to preparing 11:59AM
6 for the hearing and understanding that there may be some kind
7 of burden to get them from all the facilities, why don't you
8 pick two facilities where you would like to have all the
9 healthcare grievances for the last six months.

10 MR. BOJANOWSKI: Could we limit it to grievances 11:59AM
11 concerning access to care? That's really the issue they are
12 complaining about.

13 MS. KENDRICK: No.

14 MR. BOJANOWSKI: There may be a lot of grievances
15 where a guy says, look, I don't think I should have to pay \$4 12:00PM
16 for this appointment because I'm indigent.

17 THE COURT: I'd like to hear about that if those
18 numbers have increased and where I'm now concerned about the
19 fact that the HNR box means everybody is facing an additional
20 \$4 and I'm trying to ascertain whether or not that's a 12:00PM
21 deterrent of people talking advantage of healthcare services
22 that's a change in circumstances from when a stipulation was
23 entered.

24 So are there two you could identify?

25 MS. KENDRICK: Yes, I mean, this is only applicable to 12:00PM

1 minimum and medium security yards, so we could identify a
2 couple of prisons that have them.

3 And I think if Mr. Bojanowski wants to go through and
4 eliminate, it would actually be easier and less of a burden if
5 they just had a cutoff date and just produced all of them and 12:00PM
6 they wouldn't have to go through and try to make a judgment
7 whether or not they think it's relevant to the evidentiary
8 hearing. They can just do a data dump on us.

9 We would want all of them since the open clinic
10 process started in December. 12:01PM

11 THE COURT: Okay. So then maybe the first of next
12 week, no later than Wednesday, meet and confer about this, how
13 you want to proceed. You know at the end of the
14 meet-and-confer you will have the opportunity to get two
15 facilities' grievances on healthcare and you will get all of 12:01PM
16 the director's levels for the last six months.

17 But there do sound to be, perhaps, some better
18 approaches than my broad brush approach if you can agree on
19 that, such as the data dump would be something less of a burden
20 on defendants and more of a burden on plaintiffs. And 12:01PM
21 plaintiffs, if you want to shoulder that burden, that's fine.

22 With respect to healthcare grievances, I'm concerned
23 that the mechanism, as you know, I'm concerned with the
24 mechanism I have for monitoring is not perfect. I would like
25 to have somebody more on the ground all the time. But these 12:02PM

1 people who are receiving a care, again, are people whose voices
2 should be heard understanding that in some cases, that it's not
3 going to be particularly helpful. But the plaintiffs have said
4 they would go through and are willing to shoulder that burden.

5 It's the noon hour. So what we'll do is we'll take a
6 recess until 1:15 if that works with everybody's schedule. Is
7 that all right with everybody?

12:02PM

8 MR. BOJANOWSKI: Yes, Your Honor.

9 MR. FATHI: That's fine.

10 THE COURT: Thank you very much.

12:02PM

11 (Recess from 12:02 p.m. until 1:27 p.m.)

12 THE COURT: Couple of ruminations over the lunch hour.
13 First, with respect to the issue we were talking about where we
14 have already set the evidentiary hearing for, Mr. Bojanowski,
15 do you know, is there a sign-in sheet for people that show up
16 in the new sick call method? Do people sign in when they
17 arrive?

01:27PM

18 MR. BOJANOWSKI: Let me check.

19 Apparently not.

20 THE COURT: Wouldn't that be a good idea? Wouldn't
21 that be a good way to give you at least something to counter
22 plaintiff's concerns with? It would be a trackable document as
23 to when somebody showed up. Not saying it's ideal.

01:27PM

24 MR. PRATT: Your Honor, everyone that shows up, they
25 do sign a sheet. It's a log of them actually coming in. But

01:27PM

1 it's not when they show up that they sign in and they wait to
2 be seen. And this has to do with the charges, the \$4 co-pay.
3 And it's either documented as a no charge or a chargeable item.

4 MR. BOJANOWSKI: So they don't sign in with a time.
5 Is that what you are saying? 01:27PM

6 THE COURT: Well, I was just wondering if there was
7 something that indicated who showed up for this open line at
8 what time on what day.

9 MR. BOJANOWSKI: It probably has the date.

10 MR. PRATT: Yes. 01:27PM

11 MR. BOJANOWSKI: And it has the names. I don't know
12 if it has a time.

13 MR. FATHI: Your Honor, it sounds as if the person
14 only signs in if and when she's seen. If that's incorrect we
15 would like some clarification on that. 01:27PM

16 THE COURT: Right. So it's actually at the end of the
17 line?

18 MR. BOJANOWSKI: At the point when they submit the HNR
19 to the nurse, they sign a piece of paper saying I'm here.

20 THE COURT: Okay. That doesn't address any of the 01:27PM
21 problems we talked about before. So that rumination is a dead
22 end.

23 The second thing that I thought about with respect to
24 this evidentiary hearing that we've got this issue where I
25 can't exactly tell where the reality is, because the issue is 01:27PM

1 the two visits required for a referral, the defendants have
2 told me that there's no policy against this but that the -- or
3 there's no policy that requires this, but that leaves
4 unanswered the question of whether there's a practice. And
5 that's what plaintiffs are reporting, that there is such a
6 practice. Is that fair to say? 01:27PM

7 MS. KENDRICK: Regarding -- you are referring to the
8 Corrective Action Plan?

9 THE COURT: To referrals.

10 MS. KENDRICK: Yeah. 01:27PM

11 THE COURT: To visits to get to a referral.

12 MS. KENDRICK: That is our concern given what was in
13 the writing in the Corrective Action Plan that was submitted to
14 the Court as evidence. And defendants did submit a notice with
15 declarations from a couple people about this policy, and they
16 only discussed what happened in 2015. There was no discussion
17 about how this Corrective Action Plan was submitted and
18 approved and if it was actually implemented last fall. 01:27PM

19 THE COURT: All right. So we're concerned, though,
20 about whether it's happening right now, right? 01:27PM

21 MS. KENDRICK: Correct.

22 THE COURT: All right. And I thought we had addressed
23 it in court before, but then we get this subsequent statement
24 from the defendants that it's not a policy. But it, again,
25 leaves open the question of whether it's happening still. 01:27PM

1 MR. PRATT: It is not happening, Your Honor.

2 THE COURT: Okay.

3 MR. PRATT: I think the last information that even
4 referred to that was from last October.

5 THE COURT: Okay.

01:27PM

6 MR. PRATT: And it is not happening.

7 THE COURT: So there's no operational practice among
8 any of the Corizon people that in order to get to a referral
9 you have to be seen twice before that can happen?

10 MR. PRATT: Correct.

01:27PM

11 MS. KENDRICK: But, Your Honor, the document that we
12 submitted to the Court is from October 2016, and the affidavits
13 that defendants submitted were talking about 2015. And so
14 that's our concern.

15 THE COURT: Mr. Pratt just answered the question for
16 currently, right?

01:27PM

17 MS. KENDRICK: Well, for how long? Did it ever go
18 into effect in Perryville in 2016? There's no explanation as
19 to how this CAP could have been submitted and then approved by
20 defendants.

01:27PM

21 THE COURT: And what utility would be running that
22 down right now if it's not something that's happening now?

23 MS. KENDRICK: Well, we would like to know that
24 because to the extent they have reported compliance with
25 Performance Measure 39 at Perryville in recent months, it would

01:27PM

1 call those numbers into question. If they have implemented --
2 if they implemented such a policy, even if it was for a month
3 or two, I'm glad he's saying it's not in effect now, but we
4 need to know that to know whether those numbers previously
5 reported are valid.

01:27PM

6 THE COURT: So what you would like to know is when was
7 it, in December or November or afterwards, depending on when it
8 was that word was communicated that this is not how we're doing
9 things. Is that getting at it sufficiently?

10 MS. KENDRICK: Yes, sir. We're trying to figure out
11 how it came to pass that Corizon submitted a Corrective Action
12 Plan to defendants that their way of coming out of substantial
13 non-compliance with Performance Measure 39 was to implement
14 this policy. So we need to know, first of all, why that
15 Corrective Action Plan was approved, but second, how long was
16 such a policy in place. So then we can figure out whether the
17 CGAR data for those months is valid.

01:27PM

01:27PM

18 THE COURT: I understand the second point, but if I
19 remember Mr. Pratt's testimony from before, it sounded -- my
20 recollection is he said this was something that kind of
21 happened without us understanding it was going to happen, and
22 when we found out about it we stopped it.

01:27PM

23 MS. KENDRICK: Well, Your Honor, Kathy Campbell
24 testified on March 8 she reviewed and approved all of the
25 Corrective Action Plans and we submitted to the Court at Docket

01:27PM

1 2106 a copy of the October 2016 Corrective Action Plan from
2 Perryville that clearly states nurses have been reminded that
3 an inmate needs to be seen two times before being referred to a
4 provider. That causes great concern in terms of that how did
5 it come to pass that somebody at ADC thought that was an
6 acceptable Corrective Action Plan and approved it and that part
7 of the question just was not addressed.

01:27PM

8 THE COURT: All right. Mr. Pratt, probably, off the
9 top of his head can't say what date it was, what method it was
10 to communicate that this was not correct. So I would ask -- I
11 think it's fair to ask this, if you would submit, Mr.

01:27PM

12 Bojanowski, an affidavit that indicates the result of that
13 inquiry, when it was that the information was identified, and
14 the remediation measure that was articulated by Corizon was
15 itself corrected. Is that clear enough?

01:27PM

16 MS. KENDRICK: Yes, sir. Thank you.

17 THE COURT: You understand that, Mr. Bojanowski, too?

18 MR. BOJANOWSKI: Yes. I'm trying to make sure my
19 notes are accurate.

20 MS. KENDRICK: Perhaps a date for the affidavit would
21 be helpful.

01:27PM

22 THE COURT: The end of the month? I think I have set
23 a date of the 30th for a number of other things.

24 MR. FATHI: Your Honor, I believe you may have also
25 not specified a date for the declaration from Dr. Calcote.

01:28PM

1 Would that be June 30th also?

2 THE COURT: That's a good date as well. Thank you for
3 that detail.

4 All right. Before we go on to the additional points
5 of the agenda, I wanted to take one of the items and give you 01:28PM
6 an omnibus view about my perspective on your reactions to what
7 I learned during the hearings on the fact-finding and also your
8 reactions to my preliminary view that I needed some assistance,
9 that I needed to understand better the circumstances; that I
10 had serious concerns but that I had also a concern additionally 01:28PM
11 on my own behalf that I would be able to get on top of these
12 issues in a way to make sure that I understood them all. And
13 that I really did think that it would be helpful to get some
14 additional support and some learned support by expert, by
15 somebody who is particularly knowledgeable. 01:29PM

16 And then I had the reactions of both sides. Neither
17 of you thought that that was a particularly good way to go, and
18 you had a slightly different view about what I could do in lieu
19 thereof. And so I went back and tried to consider what would
20 be the appropriate way to move forward in an overall 01:29PM
21 circumstance where you have heard my specific targeting earlier
22 today of trying to address particular failures.

23 But that's an overlay, or those particular areas are
24 subject to an overlay that is even more concerning to me, and
25 that is that generally, the process itself is not working as 01:29PM

1 the parties had anticipated. This is not a stipulation to
2 accomplish goals that have in the main produced the kind of
3 results that I would have expected at this point.

4 And so I am vexed about how best to proceed when I am
5 left with or arrive at what is not a surprising conclusion that 01:30PM
6 I do think it's largely a staffing issue. I do think it's
7 largely a number of people issue but that the stipulation, as
8 you have heard me say, is read by me to mean that I can't
9 require the defendants to build more prisons or to hire a
10 particular number or type of staff. 01:30PM

11 But I have, at the same time, come to learn that there
12 are serious issues with respect to having sufficient number of
13 staff on hand to accomplish the goal. I have had testimony
14 from witnesses telling me about the difficulties of maintaining
15 people in the employ of a prison setting, perhaps because of 01:31PM
16 the prison setting; perhaps because of compensation issues;
17 perhaps because of the rural settings of many of our prisons.

18 And so I am left with not the desire to do something
19 I'm not permitted to do under the stipulation because I don't
20 even think about that. I can't order you to hire people. But 01:31PM
21 I think I can figure out what the problem is with respect to
22 maintaining the people that you think you need because you have
23 had those positions and you can't fill them, or you have been
24 hiring actively and you haven't been able to -- you have been
25 seeking hire people but you haven't been able to fill the 01:31PM

1 positions.

2 As I have alluded to earlier, part of my training as a
3 judge but also being somebody who is a full participant in our
4 grand capitalistic model, I understand that there's a curve
5 that well illustrates a way to increase the supply of workers
6 to do a particular job, and that is to peg the compensation at
7 a level that assures that necessary supply. 01:32PM

8 I don't know what that particular compensation level
9 is, but there are people who do. And my view is that the right
10 thing to do is to retain as an expert somebody who can tell me
11 what it is that will be necessary to afford the necessary staff
12 people that the State itself has decided are necessary, and
13 they are simply not able to get into position. 01:32PM

14 Now, the situation is that there's a contractor who
15 obviously does the hiring and sets the wages, but it's also a
16 contractor that's got this incentive that's contrary to doing
17 what is against its best interest and that is to spend more
18 money than it makes. And so consequently, they have a very
19 strong incentive, perhaps as we have even heard testimony
20 about, to pay the fine that the contract provides rather than
21 provide for the staff. 01:33PM

22 Well, that's not my issue. What is my issue is
23 compliance with the stipulation and the performance measures.
24 And where I have this, in many areas, a systemic failure I have
25 to look at what the problem is with the system and with the 01:33PM

1 entity that I have before me, and that's the State.

2 And so I need to find out that if it is the
3 circumstance, as I think it is, and would be very surprised to
4 hear anything different than the testimony I have heard
5 already, that the reason that this difficulty exists is -- 01:34PM
6 well, or certainly we will learn about that, the reason for the
7 difficulty, but we have heard much about it also.

8 But really what we haven't heard and what we don't
9 know is what it would take to get additional people to decide
10 to stay in those positions, not leave them, to avoid the 01:34PM
11 turnover, and also to get people to line up to want to take the
12 positions. And I'm imagining that it's a higher level of
13 compensation.

14 And so I'm going to do this. I'm going to ask you all
15 to meet and confer to try to identify such an expert that the 01:34PM
16 Court could retain, at the defendant's cost, to inform me about
17 what it is about the market situation that would, could be
18 addressed by an order of the Court to provide for the
19 sufficient number of staffing people that the State's already
20 identified are necessary and has itself sought to obtain, and 01:35PM
21 that this expert can guide the Court in crafting more precise
22 measures that are not overly broad and are specifically
23 tailored to try and accomplish the very goal here that the
24 parties have agreed to. And that is compliance with the
25 stipulation. 01:35PM

1 So if you all can, in two weeks, meet and confer and
2 identify a single expert that you think that the Court should
3 turn to, great. I'm probably going to be surprised if that
4 happens. But if it does, great. If it doesn't, then I would
5 ask you a week later to submit, each of you, two names, and I
6 will take a look at the vitae of those two names and make a
7 decision after hearing from you all at our next hearing about
8 what you think about that process and where we stand.

01:36PM

9 But I want to get it moving. I want to get it in
10 place. Perhaps maybe I will see a sufficient turnaround that I
11 will feel that it won't be necessary to go down that road. But
12 I don't think that the past experience necessarily gives me
13 great comfort to think that I can count on that.

01:36PM

14 So I want to make sure that I'm taking steps now so
15 that I'm not just deciding to do this a month later and then
16 delaying everything even more. So that's how we'll proceed
17 with respect to what is an agenda item that is listed, and that
18 is, how am I going to deal with what I have asked you to look
19 into before. That is the comeuppance of the hearings and the
20 issues that were raised there, and also my entertaining the
21 idea of experts and a special master.

01:36PM

01:37PM

22 MR. BOJANOWSKI: Your Honor, would we be permitted to
23 brief this issue at all as to the Court's intention to --

24 THE COURT: Well, what you can do, if in the two-week
25 time that you are not able to get it resolved and in that

01:37PM

1 additional week you can file anything you want in that time
2 period. But you are not going to set me off of this timetable,
3 because I am earnest to take advantage of the learning that I
4 have done and to not let more time pass.

5 So you can certainly feel free to submit anything you
6 would like and the plaintiffs can respond. The sooner they
7 respond the better, probably, but you can go ahead and do that.
8 But I'm not going to be inclined to set up a briefing schedule
9 that builds in more time to this. I will read what you submit.
10 I always do.

01:37PM

01:38PM

11 MR. BOJANOWSKI: Thank you, Your Honor.

12 MS. KENDRICK: Your Honor, for what it's worth the
13 parties have already fully briefed this issue, so it's unclear
14 why additional briefing is needed.

15 But just to be clear, you mentioned you wanted an
16 expert who could assist you in identifying the correct salaries
17 and retention status but then I heard you say something about
18 the monitoring? Or no.

01:38PM

19 THE COURT: Well, I didn't mean to say anything.

20 MS. KENDRICK: Okay.

01:38PM

21 THE COURT: About that other than in the preamble
22 where I talked about what the things were that I had considered
23 and what my options were and my evolution in that process and
24 where I am now. Where I am now is believing that the measures
25 that I employed this morning with respect to the particularly

01:38PM

1 identified performance measure failures may need to be assisted
2 in a broader mechanism, and that is one that addresses what has
3 been a very obvious fact in this case. And that is the number
4 of people that the State thinks should be in the positions are
5 not in the positions. And I want to try to fix that so I need
6 an expert to tell me what it is, is there a manager of labor
7 supplies? What do you do? What do you need to do to get those
8 people so that they are in the position?

01:39PM

9 I think I have a pretty good idea what is required.
10 You can get anybody to go anywhere to do anything if you pay
11 them the right amount. And we're in that position where I'm
12 needing to find people to do the work.

01:39PM

13 MS. KENDRICK: Well, Your Honor, as plaintiffs did
14 fully brief out in our briefing about what you call the
15 comeuppance of the hearings.

01:39PM

16 THE COURT: Right.

17 MS. KENDRICK: That we believe that the Court needs to
18 appoint a Rule 706 expert with knowledge and expertise in
19 methodology and monitoring and auditing, because the testimony
20 shows that the system that has been used to date is broken.

01:39PM

21 We also, in our briefing on the expert issue,
22 requested that the Court appoint an expert or experts with
23 oversight of medical and mental health care experience in
24 running those sorts of complex systems as well to advise
25 defendants and Corizon.

01:40PM

1 THE COURT: Where I am currently is someplace between
2 your two positions. I have decided to do this with respect to
3 the failure to maintain in place and to be able to procure the
4 desired employees, but I do need expert testimony about that.
5 I don't know yet whether what you say otherwise is true for
6 certain. I did have a strong sense that that was where I was,
7 but then in light of the restrictions and the views that have
8 been expressed to me and the briefing associated with that
9 issue, it may made me revisit my position and think, well,
10 those things are true. But one of the things I can do myself
11 to try to address it is to become more engaged with respect to
12 the monitoring component.

01:40PM

01:41PM

13 And to that point, another rumination that occurred
14 over lunch is that I'd like to go visit and watch one of these
15 open clinic lines. I think maybe one of the times that would
16 perhaps make sense, because I understand you all seem to
17 schedule things close to our hearings to take advantage of our
18 travel, is maybe the Thursday before the Friday of our July
19 meeting. Maybe that's a possibility.

01:41PM

20 MS. KENDRICK: Or if you want to come tomorrow we're
21 going to the prison here in Phoenix.

01:41PM

22 MR. BOJANOWSKI: They don't have an open clinic there.

23 MS. KENDRICK: Oh. All right.

24 THE COURT: So that, again, what defendants have asked
25 me to do is something that is within -- is worth trying, and

01:42PM

1 that is, can I, by direct further acquiring of knowledge and
2 experience, do something that they want, that they prefer,
3 apparently. I'm not inclined to think that that's necessarily
4 the right view, but it's what they have said.

5 And so I'm going to give it another full try to see if
6 I can enhance the monitoring component by a greater presence.
7 And to a certain extent I have learned already about a number
8 of the potential systemic vulnerabilities of the monitoring
9 system, so I am poised to be sensitive to those. But I would
10 have, and do think, the Court could be potentially assisted by
11 a Rule 706 expert in that context. But I am going to at least
12 give it another personal try.

01:42PM

01:42PM

13 MR. BOJANOWSKI: Do you have a particular facility in
14 mind?

15 THE COURT: Well, one of the things that comes to mind
16 is that whenever the president goes to visit some city all the
17 streets get painted. And so I was wondering if there was a way
18 around that or whether I didn't need to worry about it. And I
19 actually was on the fence about whether I would share with you
20 this is what I was thinking of doing. But one of the things
21 that's had me on the fence is how best to address the issue of
22 the street painting, whether it could be the kind of thing I
23 could say I'd like to go visit one on the day before. I will
24 tell you which one on the day before.

01:43PM

01:43PM

25 MR. BOJANOWSKI: We think we can accomplish that. We

01:43PM

1 just need to notify security that a federal judge is going to
2 be on grounds and that we have sufficient staff to provide
3 security to you and whatever staff members you might bring
4 along. So a day before is fine, and we can make it happen.
5 But please keep in mind that it's at the minimum and medium
6 yards. If you want a minimum medium yard --

01:44PM

7 MR. FATHI: Your Honor, to address the Potemkin
8 Village problem that the Court has identified, if tomorrow
9 works for the Court, one of us from plaintiff's team would be
10 happy to accompany you along with, I'm sure, others from the
11 defendants.

01:44PM

12 THE COURT: I wish it were so. But I have a
13 settlement conference in the afternoon and a full calendar in
14 the morning, a full calendar that is one partly reflected in
15 the public docket and one partly not reflected in the public
16 docket.

01:44PM

17 MR. FATHI: Well, Your Honor, we do have local counsel
18 here, so if the goal is to do it with perhaps notice the day
19 before, we can accommodate that with our local counsel. It
20 doesn't need to wait until out-of-town counsel are here next
21 month.

01:45PM

22 THE COURT: Okay. Well, I will coordinate with you
23 all taking a look at my calendar and then checking in with your
24 calendars to see what we can do to give you that kind of
25 notice.

01:45PM

1 MR. FATHI: Your Honor, if I may, before we move on,
2 Ms. Abela from the Arizona Center for Disability Law, which is
3 a separately represented plaintiff, would like to be heard on
4 the HNR box issue.

5 THE COURT: All right. Please. 01:45PM

6 MS. ABELA: Thank you, Your Honor. I just had an
7 additional point and perspective I wanted the Court and also
8 the defendants to take into consideration with regard to
9 removal of the HNR boxes. It's a principal tenet of serving
10 individuals with disabilities that you provide multiple options 01:45PM
11 to access a program, information, what have you. We are very
12 concerned that removal of these HNR boxes is going to erect
13 another barrier for those prisoners with disabilities to be
14 able to access the healthcare system that operates in the
15 prisons. 01:46PM

16 It's anecdotal evidence, but I have been on many of
17 these monitoring tours and I have spoken with prisoners that
18 have mobility impairments that make it difficult for them to
19 get around. Some have expressed to me that it's difficult for
20 them to get to the HNR box to drop the HNR and have relied on 01:46PM
21 aids or their cellmates to do that for them so they can have
22 access to medical. If they are going to be required to be
23 waiting in line at a health clinic it could be yet another
24 barrier and perhaps prevent them from accessing the care that
25 they need in disproportionate numbers, just sort of a general 01:46PM

1 population.

2 And we just wanted to bring that to the Court's
3 attention, also the defendant's attention to consider when they
4 are evaluating whether eliminating these boxes is, in fact, a
5 streamlining idea that is going to serve the needs of that
6 community.

01:47PM

7 MR. BOJANOWSKI: Your Honor, we're familiar with that
8 population, and in an effort to care for that population, they
9 are housed closer to the medical unit to provide that access.
10 And those that are limited have aids or helpers that can assist
11 them in getting from one place to another. So we do take that
12 into account when evaluating and implementing the system.

01:47PM

13 THE COURT: Well, one of the things that is in my
14 mind, and I have alluded to this before, is that the
15 performance measures do mention these boxes. And so I do think
16 that the burden is on the defendants to show me how it is that
17 the stipulation's enforcement is not encumbered by the removal
18 of something that is specified in the stipulation.

01:47PM

19 If it looks to me like moving to the new system but
20 then preserving as the fallback position for those who might
21 otherwise find this to be an obstacle, I would be disinclined
22 to grant the relief from what's called for in the stipulation.
23 But I think it makes sense to have a hearing to have of all of
24 these things said so a considered decision can be made about
25 it.

01:48PM

01:48PM

1 Turning to the three performance measures where you
2 had some issues with respect to the language, and this is in
3 particular Performance Measure 61, where the plaintiffs had
4 proposed the language that drew some issues with the defendant,
5 the language that the plaintiffs have proposed was that in
6 eOMIS check whether a memorandum personally advising the inmate
7 she is able to receive a pap smear every three years, if
8 medically appropriate, is scanned into the inmate's record. If
9 the memorandum is dated within 90 days prior to the 36-month
10 anniversary of her last pap smear the record is compliant.

01:48PM

01:49PM

11 The defendants raised a concern about refusals. It
12 seemed to me that could be addressed by adding the following
13 two sentences: Every 36 months thereafter, a similar
14 memorandum shall be sent to the inmate. If the subsequent
15 memoranda are dated within the 90 days prior to the 36-month
16 anniversary of the previous memorandum, the record is
17 compliant.

01:49PM

18 It may not be possible for you all to internalize what
19 I just said here, but when you take a look at the transcript if
20 you have issues with it you can raise it the next time.

01:49PM

21 With respect to Performance Measures 85 and 86, there
22 really wasn't a similar substantive objection that I could
23 ferret out to the plaintiffs' proposed language. And so I
24 would adopt the plaintiffs' language. And that is, with 85,
25 that the monitor selects a random sample of 10 records from all

01:50PM

1 MH-3D prisoners at a given unit. If any of them discontinued
2 medications less than 30 days previously, that record is
3 excluded from the sample and another record is randomly drawn.
4 See Document 2048, Paragraph 12.

5 Once these -- once there are 10 records of MH-3D
6 prisoners that have discontinued medications more than 30 days
7 ago, those records are assessed to determine whether the
8 patient was seen within 30 days of discontinuing medications.

01:50PM

9 And then with respect to Performance Measure 86, the
10 final sample of 10 records used for Performance Measure 85 is
11 the starting point for evaluating compliance with Performance
12 Measure 86. If any of these prisoners discontinued medications
13 less than 90 days previously, that record is excluded from the
14 sample and another record is randomly drawn. Once there are 10
15 records of MH-3D prisoners who have discontinued medications
16 more than 90 days ago, those records are assessed to determine
17 whether the patient was seen within 90 days of discontinuing
18 medications.

01:50PM

01:51PM

19 So I think these articulations might help, but again,
20 if there remain further issues you may bring them to my
21 attention next time.

01:51PM

22 MR. FATHI: Your Honor, may I -- would this be a good
23 time to raise some housekeeping issues?

24 THE COURT: Yes.

25 MR. FATHI: It appears that we are going to have a

01:51PM

1 full agenda for the next hearing, and so we wanted to raise the
2 possibility of having that be a two-day or perhaps a one
3 and-a-half day hearing, perhaps the 13th and the 14th,
4 obviously contingent on the Court's availability.

5 THE COURT: Mr. Bojanowski?

01:52PM

6 MR. BOJANOWSKI: If you are going to do a tour on the
7 13th, I mean, if you have to go to say Florence, or --

8 MR. FATHI: We said that from our perspective the
9 Court can go any time and one of our local counsel can
10 accompany for plaintiffs.

01:52PM

11 MR. BOJANOWSKI: I'm sorry. I thought the Court
12 said --

13 THE COURT: It was, Mr. Bojanowski, it's fair. It was
14 still in play. But it may still be in play because we could do
15 a more -- a closer facility in the morning and then still do
16 the afternoon.

01:52PM

17 But it probably does make sense to at least start in
18 the afternoon on the -- is that the 13th, Thursday the 13th?

19 MR. FATHI: Yes, Your Honor.

20 THE COURT: Is that something that could be possible
21 from the defendants' side?

01:52PM

22 MR. BOJANOWSKI: That's a good question.

23 THE COURT: All right. Take a look.

24 MR. BOJANOWSKI: I think so, because if I can't be
25 here then I may be able to have someone else from the office be

01:53PM

1 here. Right now it looks okay with me, Judge, if that's what
2 you want to do.

3 THE COURT: What we may want to do is conduct the
4 evidentiary hearing on the afternoon of the 13th and then leave
5 the Friday. But if for some reason that doesn't work with
6 respect to witness availability or there's some other reason we
7 could switch it around. But it seems like a natural way to do
8 it. Because the summertime is difficult to get people's
9 attention, if we do have that possibility to grab on to a
10 little bit more than the time we have already allocated, it
11 probably does make sense just as a general matter.

01:53PM

01:53PM

12 MR. FATHI: Thank you, Your Honor. The next item is
13 that in order to give the defendants the maximum amount of time
14 for production, we have determined that the two facilities for
15 which we would like all of the healthcare grievances for the
16 last six months are Perryville and Lewis.

01:54PM

17 THE COURT: All right. Thank you.

18 MR. FATHI: Thank you. And finally, Your Honor, I
19 wanted to raise the fact that as the Court may well know,
20 record-breaking heat is forecast for next week with highs
21 forecast 119 on Monday and 120 on Tuesday for the Phoenix area.
22 The National Weather Service has already issued an extreme heat
23 advisory saying very hot temperature will significantly
24 increase the potential for heat-related illness. Untreated
25 heat illness can lead to fatal heatstroke.

01:54PM

01:54PM

1 As you know, Your Honor, the stipulation requires the
2 protection of patients who are taking psychotropic medications
3 from heat injury. And we are very concerned about our clients,
4 particularly those who are housed in tents at the, for example,
5 at the Florence North Unit. So we would like to know what the
6 defendants are planning to ensure that people are not -- don't
7 suffer from heat injury and illness and possible death during
8 this upcoming heat wave.

01:55PM

9 MR. BOJANOWSKI: Mr. Fathi and I discussed this before
10 today's hearing. I told him that I would express his concern
11 to my clients. And so, I mean, we always do that. We don't
12 want people getting sick and dying because of a heat-related
13 illness.

01:55PM

14 THE COURT: The negotiations that resulted in the
15 stipulation did include a significant amount of time devoted to
16 this issue about the people who were on psychotropic medicines
17 who were, I gather, impaired in their ability to self-regulate
18 temperature or to address extreme -- am I remembering it
19 correctly?

01:55PM

20 MR. FATHI: That's correct, Your Honor. And while I
21 appreciate Mr. Bojanowski's offer to convey my concerns, their
22 response should not be contingent on our concerns. They have
23 access to the same forecast as we do, and they should be
24 planning for this potentially lethal event. So we would like
25 to know what their plans are.

01:56PM

01:56PM

1 THE COURT: Luckily you have, within earshot, actually
2 within three feet of you, the head of the medical services for
3 the Department of Corrections. So he's heard that. So he's,
4 I'm sure, on top of the issue. And we will trust that they
5 will take what care is necessary to protect the people within 01:56PM
6 their custody knowing that if something bad happens, the
7 transcript of these proceedings will likely become evidence in
8 any such subsequent case.

9 So I gather, because I have no reason to believe other
10 than -- I have no reason to believe that the State won't take 01:56PM
11 due care in this instance based upon this record. But you are
12 not unwise to make the comment, because we some of us, you are
13 not one of these, Mr. Fathi, but maybe you are. When it's 90
14 degrees in Washington D.C. and it's 90 percent humidity I don't
15 know how anybody lives. But here we have become a little bit 01:57PM
16 inured to the extreme temperatures and that's among all of us
17 who have the ability to control the regulation of our
18 temperature and we also are not oftentimes in a tent.

19 And so I would feel like you would probably just --
20 it's a good idea just to make the statement that you have made. 01:57PM
21 So it's been made, so I think that's a good thing.

22 MR. FATHI: Thank you, Your Honor.

23 THE COURT: There are two, I think, issues that remain
24 to be addressed in general categories. I need to follow up on
25 where we stand with respect to max custody and close custody 01:57PM

1 issues. The minute entry does or doesn't tell me fully whether
2 there are things that happened in the mediation that can affect
3 that.

4 And the second issue that's related to that are these
5 discovery issues. And I have taken a look at the table that 01:58PM
6 the plaintiffs have prepared, and it looks to me, and I don't
7 know whether this is something that is -- which particular
8 defense counsel is in the position to address it, but it looks
9 to me like a number of the complaints of the requesting party
10 the plaintiffs have made seem to be well taken. But it also, 01:58PM
11 like every discovery dispute, it requires the judge to get into
12 the weeds and go through one by one.

13 And so I don't know whether it makes sense to have
14 everybody in the room doing that when it's probably one lawyer
15 on each side that's going to be responsible for it. So what 01:58PM
16 I'm inclined to do on these discovery issues is to see if
17 there's a time among the three of us, one lawyer, I guess, from
18 each side and I to get on the phone next week together to do a
19 telephonic discovery dispute.

20 MR. FATHI: I beg your pardon, Your Honor? 01:59PM

21 THE COURT: What I was saying was I thought it would
22 be most efficient to have me work through these remaining
23 discovery issues in a telephonic discovery hearing that would
24 involve just the lawyers who are involved in that dispute. And
25 I could do it next week. I'm sitting in Flagstaff next week 01:59PM

1 and that will afford me some time to be available by phone
2 because the calendar is not a full day calendar. And I raise
3 that as a possibility.

4 MR. FATHI: That would be fine with us, Your Honor.

5 THE COURT: Who on your side will be handling this
6 issue? 01:59PM

7 MR. FATHI: That would be me.

8 THE COURT: And who on your side, Mr. Bojanowski?

9 MR. BOJANOWSKI: I believe Ms. Lucy Rand would handle
10 that. 02:00PM

11 THE COURT: Ms. Rand, are you still on the phone?

12 MS. RAND: Yes, Your Honor, I am.

13 THE COURT: What's your availability next week?

14 MS. RAND: I'm open on the 20th and 21st which is
15 Tuesday and Wednesday, and then I have pretrial on Thursday, so
16 actually, Tuesday, Wednesday, and Friday. 02:00PM

17 THE COURT: Mr. Fathi, what is your Tuesday like?

18 MR. FATHI: At this point, Your Honor, my Tuesday is
19 wide open.

20 THE COURT: And what time would you not like -- it's
21 three hours now off of Washington D.C., right? 02:00PM

22 MR. FATHI: Correct, Your Honor. So if we could --
23 obviously I will accommodate the Court, but if we could plan to
24 end by, perhaps, 3:00 Arizona time that would be ideal.

25 THE COURT: Okay. Do I have any heads up on what the 02:00PM

1 criminal calendar is on Tuesday? In custodies are likely to be
2 in the morning but the out of custodies are probably in the
3 afternoon.

4 (Discussion between the courtroom deputy and the
5 judge.)

02:01PM

6 THE COURT: How about 1:30 p.m. on Tuesday to start?

7 MS. RAND: That works, Your Honor, for defendants.

8 THE COURT: All right. So this telephone call that
9 will be with the Court, if one of you two could figure out how
10 to get you two on the line together and place a call to Judge
11 Fine's chambers in Flagstaff at 1:30 p.m. on Tuesday.

02:01PM

12 MR. FATHI: I'm sorry, Judge.

13 MS. RAND: Your Honor, I will take that
14 responsibility.

15 MR. FATHI: I didn't catch the name of the judge, Your
16 Honor.

02:01PM

17 THE COURT: Judge Fine.

18 MR. FATHI: Thank you, Your Honor.

19 THE COURT: Thank you. And can we now turn to
20 anything I need to know about where we stand on the max custody
21 and close custody issues?

02:02PM

22 MS. FETTIG: Yes, Your Honor. This is Amy Fettig.

23 We wanted to raise the issue of the close custody
24 documentation. As you may recall this issue has been ongoing
25 for some time starting with your original order in December of

02:02PM

1 2015 through February of 2015 and now. At the last hearing you
2 asked the parties to do a joint report and you also asked the
3 plaintiffs -- and that joint report relates to close custody
4 units at Florence Central.

5 At the same time you asked the plaintiffs to send a
6 list of documentation and questions to the defendants related
7 to their allegations that Perryville and Tucson units are now
8 close custody as well. We did that on May 24th, and as you no
9 doubt know we filed a joint report with the defendants on
10 Friday at Document Number 2102.

11 I did have an opportunity to talk in much greater
12 length with Ms. Love about the proposed solution that the
13 defendants have come up with for Florence Central related to
14 monitoring of the close custody units, and I do understand that
15 that will take some time. It is a pilot. They are not sure if
16 it's going to work. And, you know, we're pleased with the
17 creative ideas they have come up with and if it does work that
18 is great.

19 What we are concerned about is that they are not going
20 to pilot this until Fall 2017. And that means we are faced
21 with a whole year that is basically a black hole for Florence
22 Central. And that's a really, really long time not to have a
23 picture of what's going on in that unit. And so what we
24 requested of defendants is the same list of information that we
25 sent to them regarding Perryville and Tucson close custody

1 units.

2 Now, the defendants have objected to that information
3 for Florence Central and, you know, we haven't been able to
4 meet and confer to see if there's some other documentation they
5 would be willing to do. But basically we do need some sort of
6 information between now and a pilot in Fall 2017 that might not
7 even work, some show of good faith and documentation about what
8 the conditions actually are in Florence Central in addition to,
9 of course, our concern about what's happening in Perryville and
10 Tucson units.

02:04PM

02:04PM

11 THE COURT: Ms. Love.

12 MS. LOVE: Your Honor, as to information related to
13 Perryville and Tucson, that was addressed at the last status
14 hearing. And I have advised Ms. Fettig that documents from the
15 Perryville facility, per her request, have been provided. I'm
16 going through those and I will be providing her with a response
17 back and we have mutually agreed to work on that.

02:04PM

18 Defendants do have an objection to providing
19 information as related to the Tucson complex as to close
20 custody where the Tucson complex has never been part of the
21 stipulation as related to max custody. This whole issue of
22 monitoring close custody arose out of a situation where
23 traditionally a max custody facility now has some close custody
24 within it.

02:05PM

25 So because Tucson was never part of the mix with max

02:05PM

1 custody, defendants object to providing information related to
2 that complex because we don't have a situation that was ever at
3 play to begin with as far as monitoring a max custody facility.
4 I guess simply put, Tucson was never a max custody facility at
5 issue with the stipulation. So we object to providing
6 information regarding close custody at that location where it's
7 not contemplated by the stipulation.

02:05PM

8 As to Perryville, again, we are gathering the
9 information and we will provide it to Ms. Fettig.

10 With relation to the document request that plaintiffs
11 assert in our report that we provided to you last Friday, Ms.
12 Fettig is correct in that we received that list and that
13 portion on Friday, and we did not have the opportunity to
14 confer regarding those document requests prior to providing
15 both side's positions to the Court.

02:05PM

02:06PM

16 But I would like to generally address that while there
17 may be room for compromise here and agreement, it -- we're
18 faced with a situation where when we provided the kinds of
19 documents that plaintiffs are now requesting for Florence for
20 the last six months to the Court when explaining the close
21 custody situation there, plaintiffs came back and said, these
22 documents don't show us actual out-of-cell time for close
23 custody inmates. That's what the Court focused on in making
24 its ruling.

02:06PM

25 So to now gather the same documents that they said

02:06PM

1 didn't show us what we wanted to know to begin with really
2 doesn't make sense here. There are certain things that
3 probably after we confer and I confer with my clients could be
4 at issue, like an activity schedule perhaps for the close
5 custody. There may be some movement on other things.

02:07PM

6 But for instance, in one of their requests they ask
7 for information as to programming for close custody inmates.
8 And for that, in essence, what would have to be provided for
9 the last six months is program sign-in sheets for the entire
10 close custody population at Florence Central, which now we're
11 again getting broader than the stipulation where we're now
12 providing information as related to every single close custody
13 inmate versus monitoring 10. So we're still not Catch 22 of
14 how do we monitor a classification that doesn't function like
15 max custody such that we can individually monitor.

02:07PM

02:07PM

16 So that is where, for many of the requests, we have an
17 objection to providing overall operational information that, in
18 the first instance, wasn't good enough for plaintiffs to show
19 actual out-of-cell time. So we're getting back into that
20 debate of amount of cell time offered versus actual, which we
21 can't monitor, which is why we have to go to the electronic
22 system.

02:08PM

23 THE COURT: How big is the burden to you to assemble
24 this information?

25 MS. LOVE: Well, the biggest burden would be in

02:08PM

1 providing the logs or we call them the journals as to
2 operations at Florence Central. Because the journals -- and we
3 are going to provide them with a week for Perryville so they
4 will be able to see this. But the journals are probably
5 double-sided about a stack like this for a week, which requires 02:08PM
6 redaction for security sensitive information. Because the
7 journals will say, for instance, at 1331 hours, there's so many
8 things maybe happening in that unit, you might have six or
9 seven or eight entries that talk about armory and keys and
10 security issues unrelated to our inmate's able to leave the 02:09PM
11 unit to go to chow or leave the unit to go to programs.

12 So, you know, something like that, the journal is a
13 burden to redact and to provide while at the same time there's
14 activity schedules that can tell you that.

15 So we're in a situation, though at the baseline of 02:09PM
16 it's the same information they said doesn't tell us the picture
17 of what we wanted to see, yet now they want to see that for the
18 last six months. So I don't understand, I guess, the position
19 for requesting the documents that in the first place they said
20 didn't tell us the full picture of what they wanted. 02:09PM

21 THE COURT: Well, without putting words into their
22 mouths, I think what they are trying to do is stay ahead of the
23 situation that's evolving and also one where their knowledge of
24 the system is evolving. So that is, I think, an ongoing
25 process. So it's not surprising it could be changing. 02:09PM

1 I'm most interested, though, in how to overcome this
2 burden issue because you describe a rather sizeable stack that
3 would require a good deal of effort to try to redact. And so
4 I'm really --

5 MS. FETTIG: Your Honor, I would like to make a few 02:10PM
6 clarifying points, and I have some ideas about that.

7 First of all, as to the one week of unit logs which is
8 the one form of paperwork we could think of that would get to
9 what's actually happening in this unit in real time, we do have
10 a protective order in this case. So there's really no reason 02:10PM
11 to redact things. We handle protected information all the
12 time. That's why the protective order is in place.

13 As to the nature of the documents, these questions and
14 documents that we have asked for are not things we have asked
15 for before. They spring from actually the order of this Court 02:10PM
16 finding that the level of documentation that defendants
17 provided for close custody in Florence just really wasn't
18 sufficient to give the kind of picture of how the unit might
19 actually be different than max custody.

20 So we went back and thought through, okay, what types 02:11PM
21 of information beyond what was insufficiently provided in
22 defendants' pleading would actually give us the type of picture
23 we needed. And we boiled it down to these few points that are
24 in Doc 2102. That's different information than we've had
25 before. 02:11PM

1 I would also say in terms of Tucson, the issue there
2 was Performance Measure 92 and 93, not the max custody
3 measures. But the ones related to mental health care the
4 defendants ceased monitoring as of September 2016 because they
5 told us those folks are no longer max custody. They are in
6 close custody.

02:11PM

7 So again, our reaction is how is that different? How
8 does that justify the unilateral decision by defendants to stop
9 monitoring individuals in these units?

10 So we have just asked for a fuller picture. Ms. Love
11 did indicate that she had gotten documents already regarding
12 Perryville and was going through them. We agreed that because
13 we have so much going on in terms of the mediation this week
14 that we would deal with that next week when we're all back in
15 the office. And that's absolutely fine.

02:12PM

02:12PM

16 Our primary concern here is we need a broader picture
17 of what's going on in close custody. We think we have come up
18 with a pretty limited set of documents, and we're not asking
19 for six months for Florence. Actually, what I propose is from
20 June 2017 onwards because I know defendants are working on this
21 different plan right now. I don't want to distract them
22 necessarily from that.

02:12PM

23 But given a shorter period of time, a narrow set of
24 documents, and also the fact that they are not even planning to
25 pilot until fall 2017, I don't know if that means September or

02:12PM

1 November or what ultimately the date will be. Our urgency here
2 is, as you have said, we need to get ahead of this. We need to
3 understand. We cannot wait a full year to ensure that our
4 clients' interests are being served and they are not indeed
5 being harmed.

02:13PM

6 MS. LOVE: Your Honor, I would propose this based upon
7 what Ms. Fettig presented, and perhaps I misunderstood the
8 breadth of the time period she was looking for. I did go back
9 see she is requesting June forward.

10 I would propose Ms. Fettig and I work together early
11 next week to decide what is the arena of documents that we can
12 agree, yes, we will start to produce and produce throughout
13 this period because I would believe that there are several of
14 these documents that we may not have an agreement on and we can
15 do that. Let's get that ball rolling.

02:13PM

02:13PM

16 And then if we have an issue on other categories of
17 documents that we can't work out, then the Court can make a
18 decision on that for us. But in the meantime, we're not going
19 to be in a situation where we have to go and backtrack because
20 I think we could probably meet in a middle ground here.

02:13PM

21 THE COURT: Go ahead, Ms. Fettig.

22 MS. FETTIG: We would be amenable to that. I'm
23 mindful that your time is taken up a great deal by this case.
24 If we can solve some things before putting them in front of you
25 I would be happy to do that.

02:14PM

1 THE COURT: So go ahead and do that, please, with
2 respect to issues that can't be resolved in your additional
3 meet-and-confer, get on the phone together. Again, you can
4 find me next week in Flagstaff. I might be available at the
5 time you are available.

02:14PM

6 I will just observe, though, that one of the remedies
7 for the burden issue that the State raises with respect to the
8 journal, if you took a week of the journals and made those
9 available in Ms. Love's office for Ms. Fettig to take a look,
10 maybe that would address your security concern. I understand
11 there's a protective order, but I also know this is at a
12 heightened level of security just based upon what Ms. Love
13 said. It sounds like that, to me, it is the kind of practices
14 and procedures that go on in a unit that could be information
15 that if even the mails were intercepted or there was a hacking
16 or something of the e-mail that can convey that information the
17 risk could be serious.

02:14PM

02:15PM

18 And so if a person is just looking at it in the office
19 and getting a better understanding of it to answer your
20 questions, and I think we have addressed some of those
21 concerns, so keep that in mind as a possible modality.

02:15PM

22 MS. FETTIG: Thank you, Your Honor.

23 THE COURT: All right. I think I have gone through my
24 list. So now I need to turn to you all to see what I have
25 omitted.

02:15PM

1 MR. FATHI: Your Honor, there is the plaintiffs'
2 pending motion for reconsideration.

3 THE COURT: Yes. And what I'm going to do is I'm
4 almost done with a written order that I will issue soon,
5 perhaps this week, that will address that. Thank you. 02:15PM

6 MR. FATHI: Thank you, Your Honor.

7 And then there were some in our briefing, in the wake
8 of the evidentiary hearing, there were some issues regarding
9 the defendant's non-compliance with the Court's monitoring
10 orders that we would like to address. 02:16PM

11 THE COURT: Okay. Go ahead. Sorry, Mr. Fathi. We
12 have reached our expiration date.

13 (Laughter in the courtroom.)

14 MR. FATHI: We have indeed been going for a long
15 period of time, Your Honor. I will try to be succinct. 02:16PM

16 MR. FATHI: First is the issue of counting group
17 contacts as satisfying the stipulation's requirement that a
18 patient be seen. This Court ruled on September 6 of last year
19 that except for Performance Measure 92, group contacts do not
20 count. But we learned that at the April hearing that for 02:16PM
21 nearly five months after the Court's order defendants continued
22 to count group contacts, thereby falsely inflating their
23 compliance figures. And nowhere in their briefing do
24 defendants actually state that they have stopped counting
25 groups even today. So we need the Court to enforce its earlier 02:17PM

1 order, now nearly nine months old, that groups may not be
2 counted except for Performance Measure 92.

3 THE COURT: Mr. Bojanowski.

4 MR. BOJANOWSKI: I will have Dr. Taylor address that
5 because she's the monitor person and has firsthand knowledge. 02:17PM

6 THE COURT: Thank you. Go ahead, Dr. Taylor.

7 DR. TAYLOR: So sometimes when Mr. Fathi refers to
8 dates, he's referring to the date that we're sitting in court
9 such as January, for instance, and it's looking at November
10 data. 02:17PM

11 THE COURT: Okay.

12 DR. TAYLOR: So at the point that after we had the
13 initial order, the back and forth, and the final order, there
14 are not any more groups that were counted after that point for
15 use to determine compliance. 02:17PM

16 And so I have tried to be very clear with him on that.
17 Additionally, he's indicated that performance measures have
18 used groups that have never used groups. So that's part of the
19 challenge, is that it's been alleged that we have used groups
20 to count for contacts for, let's say, a woman after having a 02:18PM
21 baby coming back to the prison that we have used groups to
22 count for that. And we have never done stuff like that.

23 And so at the point that your final order, we were
24 here in court when you said it verbally was the point that we
25 did not, past that point, use groups for contacts. 02:18PM

1 THE COURT: Any evidence to contest that, Mr. Fathi?

2 MR. FATHI: Well, I confess I don't understand part of
3 what Dr. Taylor is saying about alleging that groups were
4 counted for certain performance measures. I didn't say
5 anything about that. 02:18PM

6 To be clear, the Court's written ruling was September
7 6 of last year. Mr. Dye testified on April 17th that in the
8 December CGARs that were prepared on January 31st, he was still
9 counting groups. And again, we have not had a statement from
10 the defendants until Dr. Taylor's statement right now that they 02:19PM
11 have ceased counting groups as satisfying the requirement that
12 a patient be seen.

13 THE COURT: Okay. Glad we have it now.

14 MR. FATHI: Then there's a similar issue with the
15 issue of counting cell front contacts. The Court ruled on 02:19PM
16 November 8 that cell front contacts may not be counted except
17 under very limited circumstances. But here, too, defendants
18 continued counting cell front contacts for at least three more
19 months of CGARs after the Court's order, again, inflating their
20 compliance scores. 02:19PM

21 And again, we have not, in defendant's brief or
22 elsewhere, yet had a definitive statement that they have
23 stopped counting cell front contacts as satisfying the
24 requirement that a patient be seen.

25 THE COURT: Is that you again, Dr. Taylor? 02:20PM

1 DR. TAYLOR: Yeah. So again, I was in court when you
2 stated that verbally, and that is the point that we stopped
3 counting auditing-wise, going forward, those contacts. The
4 problem is that in January you are looking at November stuff.
5 Or in December you are looking at October -- yeah -- October
6 stuff. And so retroactively we did not go back and fix it.
7 But going forward from your order, if they go cell front and
8 the individual refuses the contact being offered to them then
9 it was being counted. That's always been the case except for
10 the watches. That's the only time we allowed cell front
11 contacts were the watches. That was it. All other contacts,
12 any time you offered anything you had to offer it out of cell
13 prior to that point, the entire time prior to the stipulation
14 and after.

02:20PM

02:20PM

15 THE COURT: Okay.

02:20PM

16 MR. FATHI: Unfortunately, Your Honor, once again,
17 that is not true. First of all, we have submitted to the Court
18 on multiple occasions now examples where cell front contacts
19 were counted for Performance Measure 80. And in terms of the
20 timing, the Court's order saying that they may not be counted
21 was on November 8 of last year. But in the CGARs that were
22 prepared at the end of November, the end of December, and the
23 end of January, they continued to count cell front contacts.
24 That was Mr. Dye's testimony in April.

02:21PM

25 So that is the chronology of past events. I

02:21PM

1 appreciate the assurance that if that's what it was that cell
2 front contacts are no longer being, finally, at long last, no
3 longer being counted in compliance with the Court's order of
4 November 8th.

5 THE COURT: So we do have that assurance, Dr. Taylor,
6 that going forward that these are not being counted. 02:21PM

7 DR. TAYLOR: That is correct, from the dates of your
8 order forward they weren't counted. And just to clarify,
9 Performance 80 being inmates who are MH-3 and have to be seen
10 every 30 days, when they were on a watch and seen cell front it 02:22PM
11 was counted because they were on watch. But that is the only
12 time in the past they had been counted. Otherwise it had to be
13 a refusal for any sort of counting unless we made a human error
14 here or. There but that has always been our standard.

15 THE COURT: Thank you. 02:22PM

16 MR. FATHI: Your Honor, the record will speak for
17 itself. I won't belabor it.

18 The next issue is the sample size for Performance
19 Measures 94, 95, and 97. Performance Measures 94 and 95
20 pertain to prisoners who either are on or have recently been 02:22PM
21 removed from suicide watch. Performance Measure 97 pertains to
22 prisoners who are seen via telepsychiatry for mental health
23 treatment. Now for each of these measures, just like for
24 almost every other measure, the stipulation requires defendants
25 to sample a specified number of patient records. And that 02:23PM

1 means records of individual patients.

2 However, what we learned from Mr. Dye's testimony in
3 April is that the defendants haven't been doing this. So, for
4 example, for Performance Measure 94, again, involving prisoners
5 on suicide watch, they will sample 20 instances in which a
6 person was on watch. But those 20 instances might involve only
7 12 or 15 different individuals if some people were on watch
8 more than once in that month.

02:23PM

02:23PM

02:24PM

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02:24PM

9 Now, as Dr. Haney explains, this shrinks the sample in
10 a way that reduces its representativeness and the extent to
11 which the level of compliance that's found in the sample can be
12 generalized to the larger population. So to comply with the
13 stipulation, if the performance measure requires that 10
14 records be sampled, the defendants have to sample the records
15 of 10 different individuals. And Dr. Haney explained in his
16 declaration a very simple and straightforward way to do that.

17 DR. TAYLOR: As the Court may recall, the defendants
18 actually requested that we could review more records in order
19 to ensure we were reviewing around a quarter. And so we did
20 that on our own from the beginning, and we have always audited
21 the same way. It's from a log that is based on incidents
22 similar to HNRs.

23 When you are looking at were the HNRs seen within 24
24 hours you are not reviewing every HNR that individual turned
25 in, you are reviewing the HNR in question that randomly fell on

1 the log. So an individual may fall twice. Not that likely if
2 it's a large population. And if it's a small population we're
3 probably auditing all of them. But it has a start and stop
4 date which is how we sort it. So they have a start date when
5 they were placed on watch and a stop date in order to ensure
6 that everybody falls into that pool. The start and stop dates
7 is what we use.

02:25PM

8 We then review all parts of that start and stop date
9 that fell within the audit month based on the entry. It's the
10 same log we have had since prior to the stipulation. It's the
11 same log that's been in effect. That hasn't changed.

02:25PM

12 MR. FATHI: Your Honor, HNRs is a totally different
13 provision of the stipulation and it uses -- it has different
14 requirements. That says you sample X number of HNRs. The
15 measures we're talking about, say you sample X number of
16 records. And what we're saying is, you have to sample that
17 number of records of different individual patients.

02:25PM

18 THE COURT: Dr. Taylor has suggested it's not -- the
19 risk is not that grave with this because of the number of
20 people being sampled except for where they have fewer, then
21 they look at all of them.

02:26PM

22 Do you have any sense about that?

23 MR. FATHI: Well, I do, Your Honor. First of all, the
24 sample size for Performance Measure 97, which is one of the
25 issues, the measures we're talking about, has not been changed.

02:26PM

1 The sample for Performance Measure 95, I believe, has not been
2 changed at every facility. But again, whether it's the number
3 that's specifically originally set forth in the stipulation or
4 if it's the larger number that we agreed to with the
5 defendants, it's still that number of different individual
6 records, not that number of instances.

02:26PM

7 THE COURT: I'm just trying to get a window on whether
8 or not it's doing real damage to my ascertainment function.

9 MR. FATHI: Well, it certainly has the potential, Your
10 Honor. As Dr. Haney explains, and this is an entirely possible
11 situation, if you pull 10 instances where somebody was on watch
12 but that only involves five different individuals, you are
13 looking at the care received by five people, not the care
14 received by 10 people. Or if it involves three different
15 individuals.

02:26PM

02:27PM

16 Now, it may not happen every month, but it has the
17 potential, as Dr. Haney explains, to contract the sample to the
18 point where its representativeness and its generalizability
19 become limited. And given that it is ridiculously easy, and
20 Dr. Haney explains how, to pick a sample that involves 10
21 different individuals, I have to say I don't understand the
22 resistance.

02:27PM

23 THE COURT: And what is the disadvantage of caving to
24 plaintiffs' requests on this?

25 DR. TAYLOR: So if you have an individual that each

02:27PM

1 time that they go on watch there's a certain thing that needs
2 to happen, somebody needs to see them, place them on watch,
3 seen every day, taken off watch. There are many times where a
4 thing could happen, the note not being placed on watch. So we
5 review that for the instance that's on the log every single
6 time to look for those things.

02:28PM

7 I get the sense from the plaintiffs that they are
8 wanting to include any time they are on watch in the hopes that
9 the one problem will throw that individual out of compliance
10 because, again, we can't do partial credit.

02:28PM

11 THE COURT: I see what you are saying.

12 DR. TAYLOR: And again, we bumped Eyman from 20 to 35,
13 and so I think they would be hard pressed to show that that
14 isn't 20 different inmates. In fact, it's very likely around
15 30. We have bumped up all the facilities to the number that we
16 have increased it to, including on 95 we have requested to bump
17 that up to 20 records from 10. And so -- for the same reason.
18 And then the telepsych one is 10 per unit. And the likelihood
19 that somebody is seen twice in a month for telepsych, not very
20 likely. But we were reviewing between 50 and 80 on each
21 complex that uses telepsychiatry.

02:28PM

02:29PM

22 So there is no benefit for us to go searching to see
23 if there was possibly another contact in the audit month just
24 to be able to report that when we are already reviewing a large
25 number of records.

02:29PM

1 THE COURT: It seems to me that the odds are very
2 great that I'm capturing the kind of information I need to
3 capture, but I will take another look at what Dr. Haney wrote
4 and get a ruling out to you.

5 MR. FATHI: Thank you, Your Honor. I just want to 02:29PM
6 make clear that what Dr. Taylor said I don't think is
7 responsive to the Court's question. Dr. Taylor is talking
8 about if you pull a person's file, do you have to look at every
9 single instance that that person was on watch during the month.

10 That's not what we're saying. We're saying if you pull a 02:29PM
11 sample of 10 watch instances and five of them happen to involve
12 the same person, you throw four of them back and randomly draw
13 new ones until you have a sample of 10 different individuals.

14 THE COURT: I thought it was responsive because she
15 was telling me what benefit the defendants got out of doing it 02:30PM
16 her way.

17 MR. FATHI: If the Court found it responsive, that's
18 good enough for me.

19 THE COURT: That was my question, I think. And
20 that's the answer I got. That's what I understood why you 02:30PM
21 thought it was to your benefit to do it that way.

22 DR. TAYLOR: Right. And we're attempting to audit the
23 process to make sure it's working over and over again. So one
24 inmate multiple times or multiple inmates, it's the process of
25 which are you covering the start and stop and everything in 02:30PM

1 between.

2 THE COURT: All right.

3 MR. FATHI: The next issue involves Performance
4 Measures 92 and 93. And this is a distinguish issue from the
5 one raised by Ms. Fettig. Both of these performance measures
6 involve prisoners who are both classified as MH-3 or higher
7 and, therefore, have significant mental health needs and
8 vulnerabilities and are housed in maximum custody and are
9 therefore housed in highly restrictive settings.

02:30PM

02:31PM

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02:32PM

10 Now, the stipulation provides that the same records
11 that are reviewed for Number 92, have to be reviewed for Number
12 93. But in April Mr. Dye testified that the defendants weren't
13 doing so. They were reviewing a much larger Number 92 and
14 reviewing a much smaller number for 93. So we simply ask that
15 the Court order the defendants to follow the plain language of
16 the stipulation, which is that the same records be reviewed for
17 both performance measures.

18 THE COURT: Mr. Bojanowski or Dr. Taylor?

19 DR. TAYLOR: So we have asked for an agreement with
20 the plaintiffs regarding we would like to bump up the number of
21 records to 20 per complex. They had an objection to that
22 because it says per yard, so we asked for an in between that
23 says if there's only one yard on a complex do 20; if there's
24 multiple yards do 10 per yard so you could have 20 or 30.

25 I don't know if we have heard back on that. But we

1 had bumped up the max custody one to 50 because we had sites
2 that didn't pass. We wanted to see have you fixed the issue.
3 Specifically Lewis had a problem, and I didn't feel that 10
4 answered that question because I could randomly get maybe 10
5 because they only have the one unit at that whole complex.

02:32PM

6 When we bumped it up to 50 we started so to see there were 4
7 out of 50 out of compliance. That starts to tell me you have
8 fixed the issue because we have pulled a quarter of the
9 population as opposed to a much smaller portion. So they
10 weren't failing the rounds and haven't failed the rounds for a
11 very long time.

02:32PM

12 So we have agreed to let's do -- we have asked to be
13 able to do 20 per complex, however that might work out, at
14 least 20, and then we will do the same, exact same records for
15 the rounds.

02:33PM

16 THE COURT: If it's the same, why is that a problem
17 then?

18 MR. FATHI: Well, Your Honor, it wasn't the same.
19 That was Mr. Dye's testimony.

20 THE COURT: Okay. But what Dr. Taylor has proposed
21 you are okay with?

02:33PM

22 MR. FATHI: If what Dr. Taylor is saying is that hence
23 forth the same records reviewed for Performance Measure 92 will
24 be reviewed for Performance Measure 93, then yes. Then we're
25 satisfied with that.

02:33PM

1 DR. TAYLOR: And does that also mean you are okay with
2 the 20 if there's only one yard on the complex or 10 per yard?
3 We're a limited resource and to be able to audit on places that
4 would then mean 40 records instead of 20 would often times be
5 beyond what we could get done in a month. 02:33PM

6 MR. FATHI: My responsive letter to Ms. Orcutt on June
7 2nd is filed at Document 2108-1.

8 THE COURT: And what do you say.

9 MR. FATHI: I said that increasing the numbers for 92
10 is acceptable with the caveat that the same records must be 02:33PM
11 reviewed for 93.

12 THE COURT: Okay.

13 DR. TAYLOR: Perfect.

14 THE COURT: Thank you.

15 MR. FATHI: And finally, Your Honor, and this, I 02:34PM
16 think, is really in a different category of importance, is
17 Performance Measure 95. This is a measure that is specifically
18 designed to protect prisoners who have recently been removed
19 from suicide watch. And given the extraordinary rash of forced
20 suicides in the recent three-week period, including one man who 02:34PM
21 killed himself hours after being removed from suicide watch,
22 this measure is of surpassing importance.

23 Performance Measure 95 is simple and straightforward.
24 It requires as follows: Any prisoner discontinued from a
25 suicide or mental health watch shall be seen by a mental health 02:34PM

1 provider, mental health clinician, or psychiatric registered
2 nurse between 24 and 72 hours after discontinuation, between 7
3 and 10 days after discontinuation, and between 21 and 24 days
4 after discontinuation of the watch.

5 But we heard from Mr. Dye at the April hearing that 02:35PM
6 defendants have been routinely counting records as compliant
7 with this performance measure without verifying that these
8 required contacts have happened. And that is very dangerous
9 and that needs to stop. The Court should order the defendants
10 to comply with the plain language of Performance Measure 95. 02:35PM

11 THE COURT: And do you happen to have talked to Mr.
12 Bojanowski about that before? Has he been apprised of this?

13 MR. FATHI: Yes, Your Honor. This was in our opening
14 brief.

15 THE COURT: Right, but just recently to see whether 02:35PM
16 it's still ongoing or not?

17 MR. FATHI: I have not, Your Honor. They defended
18 this practice in their brief, so I didn't think there was any
19 change.

20 DR. TAYLOR: Your Honor, there's a reason for the 02:35PM
21 watch follow-ups to be progressively far apart. So the first
22 watch follow-up is 24 to 72 hours. We want to check if you are
23 going to be stable fairly quickly. We then push it out to a
24 week and then three weeks. There's a reason for that follow-up
25 schedule. We're checking to see if you have become unstable. 02:36PM

1 Somebody who goes back on watch now requires a daily contact
2 because they have shown to be unstable.

3 THE COURT: Right.

4 DR. TAYLOR: So I know the plaintiffs brought up their
5 concern that a different level person would be seeing the 02:36PM
6 individual while on a daily watch, and yes, that is true. It's
7 a higher level because we don't take inmates off watch on the
8 weekends, so that follow-up would not happen on the weekend.
9 It's going to happen during the week.

10 So then we're already using clinicians, licensed 02:36PM
11 clinicians, in fact, to see them for the watch contacts. The
12 watch follow-up contacts can be with an unlicensed master level
13 clinician, a psych nurse, or a psychiatrist. But when they go
14 back on watch we're concerned about their stability. And they
15 are seen every day and they are seen by a licensed clinician 02:37PM
16 unless it's a weekend or holiday. Then it can be a registered
17 nurse.

18 So it negates the point of a watch follow-up schedule
19 that progressively gets farther apart that you would go back on
20 watch and we would then want to be checking on you in three 02:37PM
21 weeks to see if now while you are currently on watch are you
22 stable off watch. So the performance measure says follow-up
23 after watch. If you are on watch, you are not -- it's not a
24 follow-up after watch. And it's never been our practice to do
25 that. And first time they brought it up was actually while we 02:37PM

1 were sitting in here in court. And they have been reviewing
2 CGARs for quite sometime, two years, and had never said
3 anything about not reviewing them when they went back on watch
4 because that doesn't make sense.

5 THE COURT: All right.

02:37PM

6 MR. FATHI: Your Honor, we presumed, perhaps naively,
7 that the defendants were complying with the language of the
8 performance measure which requires these three follow-ups and
9 requires them to verify that those follow-ups happened. The
10 difficulty with simply presuming that because someone is back
11 on watch they are being seen is multi-fold.

02:38PM

12 The fundamental problem is they are not verifying. If
13 they are verifying, yes, okay. This person was due to be seen
14 between 7 and 10 days and they are back on watch and they were
15 seen, fine, compliance. We have no objection to that.

02:38PM

16 THE COURT: But we'll know about that because if what
17 they are saying is we're counting as compliant a record that we
18 have verified on this -- no?

19 MR. FATHI: No, Your Honor. They simply presume that
20 because someone is back on watch they are being seen daily.
21 And their dismal performance on Performance Measure Number 94,
22 which is the one about daily watch checks, simply provides no
23 basis for that. In fact, the Court --

02:38PM

24 THE COURT: I see. That's a reasonable point, but
25 there's got to be a different remedy than this Procrustean

02:38PM

1 adherence to the stepped plan.

2 MR. FATHI: All they have to do is to check.

3 DR. TAYLOR: We can do that. If we have an agreement
4 let's get those out. If your proposal is us indicating the day
5 they went back on watch, in our reporting we can do that. They 02:39PM
6 are -- to be placed on watch you have to be seen. There is no
7 other way to get placed on watch. You have to be seen by the
8 RN or the clinician.

9 And so we can either indicate that date or the date
10 of, if it was an RN, the first clinician contact if that helps 02:39PM
11 but I have no problem in providing that information.

12 THE COURT: And it seems to make sense to me that if
13 somebody is in a situation where you are, to use a rough
14 analogy, we have police cars that go around and they check a
15 neighborhood once a week and they have to check them once a 02:39PM
16 week. But then we also have a rule if there's been a recent
17 burglary they have to go every day. We're not going to require
18 them to satisfy the every week requirements because we know
19 during this period of time they are there every day. So that's
20 the analogy that seems to be compelling to me. 02:40PM

21 MR. FATHI: Here's the problem, Your Honor.
22 Performance Measure 95 requires these three follow-ups after
23 someone goes off suicide watch.

24 THE COURT: Right.

25 MR. FATHI: If they go back on watch in that period, 02:40PM

1 yes, they are supposed to be seen every day. But what we know
2 from the fact that Florence has been non-compliant for five out
3 of the six past months on Performance Measure 94 --

4 THE COURT: And we're going to fix that.

5 MR. FATHI: I hope so, Your Honor. 02:40PM

6 THE COURT: Yeah.

7 MR. FATHI: All we're asking, all we're asking is that
8 they verify that these three required follow-ups actually
9 happened, not presume it, because the person is on watch and
10 they are supposed to be seen but verify that it actually 02:40PM
11 happened. That's all we're asking.

12 And I think the Court understood this at the last
13 hearing. The Court said, "You are giving somebody a pass on
14 95 based upon the fact that you were assuming they are going to
15 be seen under 94. But there's no verification of that. So how 02:41PM
16 can you make the determination in 95?

17 THE COURT: But what she's saying is she would be able
18 to verify it on the files that she's pulled to make sure that
19 the person was seen pursuant to the on-watch status. That's
20 what she just said. 02:41PM

21 MR. FATHI: That's not what I understood.

22 THE COURT: Isn't that what you said?

23 DR. TAYLOR: So what I was saying, let's say they have
24 had the first two watch follow-ups occur, the 24 to 72 and the
25 seven day. Let's say they go on watch on Day 8. I can 02:41PM

1 indicate on there they are on watch starting on Day 8. And
2 therefore, that is -- and check to make sure there's a contact.

3 THE COURT: So you would check to make sure there is a
4 contact.

5 DR. TAYLOR: On Day 8, thereby it starts the clock 02:41PM
6 back over again because I need them to follow that --

7 THE COURT: We're not presuming anything. Not
8 assuming anything.

9 DR. TAYLOR: Right.

10 THE COURT: Because in evaluating that pooled record 02:41PM
11 so see whether or not there was somebody being seen much more
12 frequently than required by the stepped out program, you are
13 not just assuming they were seen because you know there's a
14 rule that says they have to be. In order to determine there's
15 compliance with this performance measure you have checked to 02:42PM
16 see that they did have the visit that happened every day
17 pursuant to them being on watch. Is that right?

18 DR. TAYLOR: Right. What we would not want to end up
19 in is I'm looking for a 20-day contact when they went back on
20 watch on Day 8 because when they come off watch that next time 02:42PM
21 I need them to adhere to that --

22 THE COURT: I understand. I want to make sure you are
23 not presuming just because there's a rule that says somebody is
24 on watch, we know the performance measure says there's a
25 significant failure at one institution with respect to meeting 02:42PM

1 this watch obligation. But that will be revealed in that
2 performance measure evaluation, but you are not going to get a
3 pass in this other performance measure, the stepped out
4 performance evaluation based upon the fact that there's a rule.
5 You are going to get either a compliance or non-compliance with
6 the record based upon the fact you checked to see whether or
7 not this person was seen. Are we clear about that?

02:43PM

8 DR. TAYLOR: Just to be clear, I would be looking for
9 the first contact that puts them on watch because they are now
10 in the daily watch.

02:43PM

11 THE COURT: So you would check to see that they were
12 seen on that watch date, and then you would also want to make
13 sure that if -- well, no. So what you are asking me is you
14 have to check every single day?

15 DR. TAYLOR: I would not propose that.

02:43PM

16 THE COURT: That's what you are asking me about
17 whether or not you have to do. But again, if you can establish
18 that there has been a visit that satisfies the stepped out
19 program, then I would say that you could say that that record
20 was compliant. But you cannot deem it compliant based on the
21 fact that there's a rule that says we have to see everybody.
22 You have to actually see whether the person is seen.

02:43PM

23 DR. TAYLOR: So the challenge comes in a lot of times
24 with the 21 to 24 day. It's a window. So they might have gone
25 on watch, come back off watch, and now they are on a more

02:44PM

1 truncated schedule for watch follow-ups. I need them to follow
2 that one now.

3 THE COURT: Right. Right.

4 DR. TAYLOR: So I wouldn't want to track it through to
5 a 21 to 24 from the original one. 02:44PM

6 THE COURT: You start the clock over.

7 DR. TAYLOR: And that's exactly what we have been
8 doing.

9 MR. FATHI: Your Honor, the testimony was very clear
10 as cited in our brief, they have been simply presuming from the 02:44PM
11 fact that somebody is on watch and people who are on watch are
12 supposed to be seen, they have been presuming that the person
13 was seen.

14 Allow me to suggest this: I don't think I fully
15 understand Dr. Taylor's proposal. If we could get that in 02:44PM
16 writing, if we can work it out, that's fine. If not we could
17 raise it at next month's hearing.

18 THE COURT: Would you kindly do that?

19 DR. TAYLOR: Absolutely. And just to be clear we
20 wouldn't know they went on watch unless they were seen. So the 02:45PM
21 only way we know they went on watch is we have to find that
22 contact. We have been doing that already. We have no problem
23 putting that into the CGAR.

24 MR. FATHI: But just to be clear, we are going to get
25 a written proposal. 02:45PM

1 THE COURT: Yep. On the 30th. Thank you.

2 Thank you, Dr. Taylor.

3 DR. TAYLOR: Yeah. And I did have an update for
4 Performance Measure 85 that you had asked for.

5 THE COURT: Yes, please. 02:45PM

6 DR. TAYLOR: I, on my phone, have access to about half
7 of them, because -- anyway, I only have about half of them. So
8 I pulled those and starting in December, the audit looking at
9 December, just to be clear, the audit looking at December data
10 that was transitioned where no files were used with a -- where 02:45PM
11 they were taken off meds in the same month they were reviewed
12 so they would automatically be compliant, we transitioned in
13 November they were used; in December they were not.

14 I found one error in Lewis where one was used and a
15 yes was done instead of a zero, an N/A. It was a human error. 02:46PM
16 The direction was to transition that and the error was made, I
17 believe, by myself, even. But we did transition that with data
18 looking at December.

19 MR. FATHI: Your Honor, unfortunately, I regret to say
20 that's not true. Document 2046, Page 30, we cite January 2017 02:46PM
21 CGAR reports for Perryville where the sample for Performance
22 Measure 85 includes multiple patients who had discontinued
23 medication that same month in January and, therefore, could not
24 be found non-compliant. So again, it's not true that that
25 practice ended with the December CGARs. 02:46PM

1 DR. TAYLOR: So we could produce those if that's
2 helpful. I believe that's January looking at November data.

3 MR. FATHI: It's the January 2017 CGARs.

4 THE COURT: Would you present that to Dr. Taylor at
5 the conclusion of the hearing so that you two can, if Mr.
6 Bojanowski will agree, to stand by for a bit so that you two
7 can take a look at this and figure out who's right. Okay?

02:47PM

8 MR. FATHI: Happy to have that consultation, Your
9 Honor. We don't have the underlying data here. But they
10 are -- it is in the court record.

02:47PM

11 THE COURT: She'll show you. She will have to back it
12 up. And she's got it on her phone. She can show you that the
13 CGARs -- I think it's what you are looking at, the CGARs,
14 right?

15 DR. TAYLOR: Correct.

02:47PM

16 THE COURT: She can show it to you and you say it's
17 not true but you can figure that out. If we had time we would
18 do it right now. But if it turns out that the issue gets
19 resolved, great. If it turns out that there is a
20 misrepresentation to the Court, certainly the defendants have
21 to correct that. And if it turns out that there's something I
22 need to further look into, you will let me know.

02:47PM

23 MR. FATHI: Thank you, Your Honor.

24 I believe Ms. Kendrick has an issue to address.

25 THE COURT: Yes.

02:48PM

1 MS. KENDRICK: Not many issues, just one.

2 Among the performance measures that we identified in
3 the hearings that could not be found non-compliant, there was
4 one in particular on the medical side. That was Performance
5 Measure 25 involving the emergency response.

02:48PM

6 THE COURT: Correct.

7 MS. KENDRICK: As you might recall, Mr. Haldane
8 testified that the moment he starts the clock is at the time
9 the security staff responds. The security staff in his mind
10 are trained, so therefore, the response is instantaneous it's
11 always 100 percent.

02:48PM

12 THE COURT: Is the State really going to hold with
13 that position that's exactly what's required by the
14 stipulation?

15 MR. BOJANOWSKI: Can I have one moment, Your Honor?

02:48PM

16 THE COURT: Surely.

17 MR. BOJANOWSKI: I want to get to the performance
18 measure they are talking about because it was my understanding
19 that this performance measure was looking at the -- what's
20 defined as the first responder to an emergency situation.
21 These emergency situations arise in the housing units. The
22 first responders are the COs on site.

02:49PM

23 THE COURT: Who are focused on trying to control what
24 they always control, and that's not to their -- not criticizing
25 them -- but that is to control individuals. We see it in the

02:49PM

1 press all too time. The police shoot somebody -- again, this
2 is not saying this is what's happening but the police shoot
3 somebody and people stand in aghast as they put handcuffs on
4 the people who have been shot. That's what police officers are
5 trained to do. That's their natural reaction. They just shot
6 somebody. Rather than tending to them medically, they put
7 handcuffs on them.

02:49PM

8 So I think what this is talking about is making sure
9 the first responder is somebody whose first idea what is the
10 healthcare need here, not about how to subdue somebody. That's
11 my impression of it.

02:49PM

12 MR. BOJANOWSKI: Well, the CGAR question is: Are
13 first responders trained in basic life support, responding and
14 adequately providing care within three minutes of an emergency.
15 So that's what the measure is, is are the people that are
16 there, are they adequately trained and are they providing
17 appropriate care within those first three minutes. And that's
18 what's being looked at because it's the line officer who is
19 going -- if somebody is bleeding out on the floor it's the line
20 officer that's going to be putting the pressure on the wound to
21 stop the bleeding. So, you know, that's what we're looking at
22 because medical is going to have to respond from wherever they
23 are at to that location. And so that's what this measure is
24 all about.

02:50PM

02:50PM

25 MS. KENDRICK: So, Your Honor, first of all, it

02:50PM

1 clearly, I guess, is an oversight for all of the parties when
2 we negotiated the stipulation. We did not actually define what
3 a first responder means. And so that, I think, is part of the
4 problem, is that the parties clearly had different ideas of
5 what it meant. There was nothing memorialized in the contract
6 or the stipulation as to what a first responder means.

02:51PM

7 And we are concerned about the situation that you
8 described, I mean, for example, in our original complaint,
9 Docket 1 on this docket, we describe a man who committed
10 suicide by cutting himself with razor blades and the custody
11 officers didn't respond for 30 minutes because they didn't want
12 to wallow in his blood.

02:51PM

13 So this performance measure is based upon situations
14 such as that and other ones that our experts found during
15 litigation. So the fact that defendants have taken this to
16 refer to custody officer, responds, calls 91 and so within one
17 second they are compliant, I think just moots out the entire
18 purpose of this performance measure.

02:51PM

19 THE COURT: That's my impression, too.

20 MR. BOJANOWSKI: Your Honor, the methodology that has
21 been agreed to and in place in the manual and such says that
22 first responders may be either medical or security officers.
23 So you know --

02:52PM

24 THE COURT: I didn't know about that.

25 MR. BOJANOWSKI: That's been in the manual since it

02:52PM

1 was drafted. So it's clearly been the intention of the parties
2 to allow this to be defined as security officers.

3 THE COURT: Okay.

4 MS. KENDRICK: Well, I mean, it's what they do, Your
5 Honor. And it's how they respond. And unfortunately, over the
6 course of the four or five years of having medical emergencies,
7 deaths, and suicides reviewed by our experts, we do find when
8 you look at underlying documents that there is a delay in
9 getting a response from medical care that calls into question
10 whether or they're responsive.

11 The fact that it's in the Monitoring Guide, it's in
12 the Monitoring Guide. It doesn't necessarily mean we agree to
13 it. In all honesty, I apologize if that passed by. That
14 certainly was not our intention to agree to that. It's a long
15 document.

16 But, you know, I think the fact that we hadn't caught
17 it in the draft Monitoring Guide but it came out explicitly
18 clear in the hearing doesn't mean that defendants can say ha
19 ha, you know, you are going to have to live with it because we
20 wrote it into the Monitoring Guide.

21 THE COURT: Okay.

22 MR. BOJANOWSKI: It's an NCCHC standard, Your Honor.
23 The NCCHC recognizes first responders as security officers so I
24 can't -- it's a standard.

25 THE COURT: Well, I will think about it more.

1 MS. KENDRICK: Thank you.

2 THE COURT: Anything you want to say, Mr. Bojanowski?

3 MR. BOJANOWSKI: Your Honor, I need to be honest. I'm
4 a little slow on the uptake maybe. I wanted to get some
5 clarification on your PM 13 order so that I'm absolutely clear
6 as to what it is you are looking for documentation-wise and
7 what's the obligation on the part of the defendants to provide
8 this documentation.

02:53PM

9 So I need to get in my mind, I guess, are you asking
10 us to --

02:54PM

11 THE COURT: To identify for me and for plaintiffs the
12 name and the number of every person for the previous 30 days
13 before the reporting date who did not receive the care that was
14 called for by the performance measures that I addressed today.

15 MR. BOJANOWSKI: Okay.

02:54PM

16 THE COURT: Then you would need to be in a position to
17 tell me why you should not pay \$1,000 per incident for failure
18 to comply with those performance measures.

19 MR. BOJANOWSKI: So the 30-day x -- I'm trying to get
20 in my mind what you mean by the 30-day reporting period. Are
21 you talking about --

02:54PM

22 THE COURT: So we changed it from what I first said.
23 We changed it so that I would have the advantage of having that
24 information before our hearing. So the day before the hearing,
25 you are going to let everybody know the names of the people and

02:55PM

1 their numbers who did not receive the called for healthcare
2 that is required by the performance measures that I identified
3 so I know the total number and I know the individuals for whom
4 these services were not provided.

5 MR. BOJANOWSKI: Is this for all of the inmates, or is 02:55PM
6 this for like the 10 files pulled?

7 THE COURT: It's for every person that didn't receive
8 this benefit, every person.

9 MR. BOJANOWSKI: I'm trying to get a handle on how to
10 logistically do this. 02:55PM

11 THE COURT: You will have to double check, make sure
12 every person who was supposed to get those measures in those
13 facilities that I identified, that they got that service. And
14 if they didn't you have to tell me.

15 MR. BOJANOWSKI: Okay. So starting tomorrow? 02:56PM

16 THE COURT: Yes.

17 MR. BOJANOWSKI: Is what you are saying. We have to
18 then monitor 100 percent compliance.

19 THE COURT: Right.

20 MR. BOJANOWSKI: For all of those measures for all of 02:56PM
21 those people.

22 THE COURT: Right.

23 MR. BOJANOWSKI: And then report that to you?

24 THE COURT: Right.

25 MR. BOJANOWSKI: You are just looking for a list? 02:56PM

1 THE COURT: Yes. I want the names, the numbers.

2 MR. BOJANOWSKI: You are not asking for a percentage.

3 THE COURT: No.

4 MR. BOJANOWSKI: You are saying everybody?

5 THE COURT: Yes.

02:56PM

6 MR. BOJANOWSKI: Say, for instance, a person who is in
7 the IPC, say we have 20 guys in the IPC. You want all 20 guys.

8 THE COURT: If they didn't get the service that's
9 called for in that performance measure.

10 MR. BOJANOWSKI: Okay.

02:56PM

11 THE COURT: Going back to the chronic and psychotropic
12 medication renewals will be complete in a manner such that
13 there is no interruption or lapse in medication. I want to
14 know the names and the numbers of all the people in the next 30
15 days who did not receive that healthcare service.

02:57PM

16 MR. BOJANOWSKI: At those listed facilities?

17 THE COURT: Yes, those listed facilities.

18 (Discussion off the record.)

19 THE COURT: The sample also has told me there's a real
20 problem, so then I have to move beyond the sampling and address

02:57PM

21 the problem. And the way that I'm going to address the problem
22 is find out how many people didn't receive the service and then

23 tell you why I shouldn't fine you for failing to provide the

24 service to every single one of those people who are entitled to

25 do it. Because the stipulation doesn't say that you are going

02:57PM

1 to do it for 85 percent of the people. What the stipulation
2 says is you are going to be governed on whether you do a good
3 enough job to make the 85 percent benchmark. If you fail to
4 make the benchmark we know that you are not providing the
5 service that you contracted to provide. So I need to get
6 something in place to make sure that you do that going forward.

02:58PM

7 MR. BOJANOWSKI: Right. I just want to make sure that
8 everybody --

9 THE COURT: Yep.

10 MR. BOJANOWSKI: -- here understands what it is you
11 are looking for so that we're providing the appropriate
12 information to you.

02:58PM

13 THE COURT: Yes.

14 MR. BOJANOWSKI: And now date-wise you want that
15 information provided by July 13th?

02:58PM

16 THE COURT: Yep, the day before the hearing, which is
17 now the 12th. We can go ahead and say the 13th if we're not
18 going to address this topic on the 12th.

19 MR. BOJANOWSKI: I thought we were addressing this on
20 the 17th.

02:58PM

21 THE COURT: No. Is it -- wait a second.

22 MR. FATHI: Your Honor, you had initially said the
23 17th.

24 THE COURT: We said the 17th, but then it was a good
25 suggestion we move it to before the hearing on the 14th. And I

02:58PM

1 said the day before the 14th. We then decided that we would
2 actually start the hearing before the 14th on the 13th, which
3 would mean that it would have to be on the 12th.

4 MR. BOJANOWSKI: Okay. The evidentiary hearing on the
5 removal of the boxes is what I thought was going to be on the
6 13th. 02:59PM

7 THE COURT: It could be. And if that turns out that
8 is what you all decide is the best thing to do, then you can
9 get me that information on the 13th.

10 MR. BOJANOWSKI: Okay. Can I have a moment? 02:59PM

11 THE COURT: Yep.

12 MR. BOJANOWSKI: We're trying to figure out how this
13 can be accomplished.

14 THE COURT: It can be accomplished because you have
15 committed in a contract to do it, to provide the service. And
16 you have failed repeatedly to provide the service, so we're
17 going to know for whom those people are who are entitled to
18 this benefit who have not received it. And the way to know
19 that is to know what their names and numbers are. 03:00PM

20 So you will take a look to see who is entitled to the
21 service at those units for the numbers that we enumerated here
22 today, and you will tell me the names and the numbers of the
23 people who haven't received this service. And maybe that will
24 help you understand how to address the problem better. 03:00PM

25 Thank you all very much. 03:00PM

1 We'll see you next month.

2 (Proceeding concluded at 3:00 p.m.)

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C E R T I F I C A T E

I, LAURIE A. ADAMS, 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 June, 2017.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR