

EXHIBIT B

**Deposition of Mike Maples
April 15, 2019**

Mike Maples
April 15, 2019

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOSEPH WARD, by his)	
next friend FRANCES)	
BOURLIOT; MICHAEL)	
ANDERSON, by his next)	
friend PHIL CAMPBELL;)	
ISAAC LEMELLE, by his)	
next friend MARK)	
WESTENHOVER; MARC)	
LAWSON, by his next)	
friend KRISTA CHACONA;)	
JENNIFER LAMPKIN, by her)	CIVIL ACTION NO.
next friend ELSIE CRAVEN;)	1:16-cv-00917-LY
CECIL ADICKES, by his)	
next friend ELSIE CRAVEN;)	
MICHAEL GIBSON, by his)	
next friend MARK)	
WESTENHOVER, KENNETH)	
JONES, by his next)	
friend PATRICIA SEDITA;)	
and MARY SAPP, by her)	
next friend, LOURDES)	
RODRIGUEZ,)	
)	
)	
Plaintiffs,)	
)	
VS.)	
)	
COURTNEY PHILLIPS, in her)	
official capacity as)	
Commissioner of the Texas)	
Department of Health and)	
Human Services,)	
)	
)	
Defendant.)	

ORIGINAL

ORAL DEPOSITION OF
MIKE MAPLES
April 15, 2019
Volume 1

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1 forensic has exceeded the capacity. As long as we
2 have people needing admission and needing civil as
3 well, we have to maintain the ability to make sure
4 that the diverse needs are met because we also have
5 a lot of demand for the civil side of people
6 needing to come in. So, again, I'm not familiar
7 with the day-to-day decision of whether that bed
8 gets a civil or a forensic. But generally, we make
9 a balance of that to try to meet the needs of the
10 State at any given time, in any given community.
11 It's different at each hospital.

12 Q. So what I heard you just say is that the
13 reason that a person gets put on the waiting list
14 is because at the time there is no bed available?

15 A. That's my understanding, right.

16 Q. Okay. Do you know what the waiting lists
17 are currently called because it seems like the
18 names have changed over the years?

19 A. Can you clarify? I mean --

20 Q. So we talked about the waiting list and
21 what those were, right, in terms of the individuals
22 who get put on the waiting list? We were talking
23 about people who were found incompetent to stand
24 trial and then ordered to the hospital and/or
25 possibly people who were not guilty by reason of

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1 insanity and ordered to the hospital, correct?

2 A. Correct.

3 Q. And I've called that a waiting list. I'm
4 asking you if you're familiar with any other names
5 that it's gone by? I know that in some
6 interrogatories that were produced, they are
7 calling it a tracking list now. So I'm just trying
8 to figure out if these are interchangeable terms or
9 if we are talking about the same terms?

10 A. I haven't heard that. It is sometimes
11 referred to as a clearinghouse for the non-maximum
12 security. For the maximum security, it's just the
13 max waiting list. Those are the terms I'm familiar
14 with.

15 Q. And when you said maximum security, would
16 that be the MSU list?

17 A. Correct.

18 Q. And when we talk about people being put on
19 the waiting list because there is no bed
20 availability, when that happens, is HHSC aware that
21 those individuals will remain in jail during that
22 time while they're on the waiting list?

23 A. I am familiar -- or I am aware that that
24 happens.

25 Q. And when you talked about the maximum

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1 security list, what facilities admit people who are
2 on the maximum security list?

3 A. Currently that's the North Texas State
4 Hospital, Vernon. And a -- Rusk State Hospital, a
5 designated unit at the Rusk State Hospital.

6 Q. And for the non-MSU, or the clearinghouse
7 list -- I'm sorry, the clearinghouse list, what
8 facilities?

9 A. Essentially any of them except Waco Center
10 for Youth, which when I refer to hospitals, we
11 should clarify that's not included.

12 Q. Okay. When we talk about hospitals, let's
13 kind of go through so we're all on the same page of
14 what hospitals we're talking about. So what are
15 all the hospitals that are currently operated by
16 the Department?

17 A. Okay. Austin State Hospital, San Antonio
18 State Hospital, Kerrville State Hospital, Rusk
19 State Hospital, Rio Grande State Center, Big
20 Springs State Hospital.

21 Q. Rio Grande?

22 A. I said Rio. Terrell State Hospital. Did
23 I say San Antonio?

24 MS. SNEAD: You did. Wichita Falls.

25 THE WITNESS: Wichita Falls -- well,

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1 average daily census in January '17 was 2220.

2 Q. Okay. So, again, my question is, the
3 average daily census went down by close to 200 beds
4 between January 2001 and January 2017, correct?

5 A. Correct.

6 Q. And so the total number of the forensic
7 capacity, then, also went down? Actually, let me
8 rephrase that because that's inaccurate.

9 So as the percentage of beds that are
10 used for the forensic population went up, that
11 number still went down because the total number of
12 beds went down?

13 MR. ABRAMS: Objection. Form.

14 THE WITNESS: But we're serving -- I
15 mean, the proportion -- I mean, we're serving more
16 forensic beds than we ever had.

17 Q. (BY MS. MITCHELL) Right.

18 A. Now, you got to -- also at the same time,
19 our purchased beds have grown, so the people going
20 to civil capacity has converted over and we've
21 expanded actually how many beds are bought by the
22 state of Texas because there's community beds as
23 well.

24 Q. So, let's go back to the community beds.
25 So if we go to the strategic plan of 2016, it says

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1 that there was 535 purchased beds, correct?

2 A. Yes.

3 Q. And that was along with the 2,463 State
4 hospital beds, correct?

5 A. Correct.

6 Q. So at that time, the total would have
7 been --

8 A. Again, we identified the 2463 as what our
9 perceived capacity was. Our average daily census
10 was actually people in beds. This is what our
11 perceived capacity was based on -- this is the math
12 at the time. That's a math estimate, so this is
13 the actual estimate. And what we had determined
14 was what our estimated capacity was wasn't true,
15 and when we redid it, based on all costs, it's
16 2269.

17 Q. But the number of beds that are actually
18 in the State hospital system at some point was the
19 2469?

20 A. What our average daily census was,
21 correct.

22 Q. So there was that many beds in the
23 hospital at that time, correct?

24 A. Correct.

25 Q. So let's just -- saying that 2469 was

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1 there plus the 535 purchased beds; right?

2 A. Correct.

3 Q. So even if you weren't operating at that
4 time, at some point there were 2400 -- over 2400
5 beds that were being occupied, correct?

6 A. Correct.

7 Q. And so that would have made a total of
8 close to 3000 beds that were available in the
9 system?

10 A. I will defer to your math.

11 Q. Okay. And then now, right, the strategic
12 plan update, which is P-3, so now there are 601
13 beds on page --

14 A. Yes.

15 Q. So there were 601 purchased community
16 beds, correct?

17 A. Correct.

18 Q. And now as of September 2018, there's also
19 only 2,269 average daily capacity, correct?

20 A. Correct.

21 Q. So that means that currently there's only
22 2,870 beds total beds available, correct?

23 A. That we pay for, correct.

24 Q. Right. And so the number of beds that the
25 Department pays for has still declined even with

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1 closed the rest of the hospital systems to civil
2 patients, you would have a little over 700 more
3 beds that could be used for the forensic
4 population, correct?

5 A. Correct.

6 Q. Okay. So you've talked about, that one of
7 the reasons for the loss of beds was the cost of
8 operating a bed, correct?

9 A. Correct.

10 (Exhibit No. 5 marked)

11 Q. (BY MS. MITCHELL) In the presentation to
12 House Public Health -- so are you familiar with
13 that document.

14 A. I am, my part of it.

15 Q. And so what is this document?

16 A. This was a presentation we were asked
17 to -- I'm still familiar with it but I realize this
18 is one from last session. So, yes, this appears to
19 be a presentation that we were asked to provide
20 just as an overview of our system, or at least
21 these parts of the system to the committee on
22 public health.

23 Q. And on page 15 of this document, the
24 public health document, it says on there that the
25 84th Legislature funded the 2,463 beds across all

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1 hospitals that we had talked about previously,
2 correct?

3 A. Correct.

4 Q. And then it indicates that staffing trends
5 and infrastructure have reduced capacity to 2,285,
6 correct?

7 A. Correct.

8 Q. Which I think we've even said has gone
9 down a little bit more since then as well, correct?

10 A. Correct.

11 Q. So can you tell me what some of the
12 staffing trends and hospital infrastructure issues
13 have caused that reduction based on what's written
14 here?

15 A. You know, I think, again, this was pre-us
16 determining that our costing structure was flawed,
17 that -- the way we were calculating what our true
18 capacity is. This was prior to that. So some of
19 our -- so some of our identification of our
20 inability to staff 2463, we were identifying that
21 we didn't have -- we don't have the staff to do
22 that. We're unable to recruit that many. We're
23 also refining our budget and realizing we don't
24 really have the money to do it. We refined our
25 costing models and we realized -- at the time we

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1 thought, well, we just can't staff everything, why
2 aren't we -- when we redid our staffing models, we
3 realized our capacity wasn't that much. But back
4 at this time we believed it was based on a math
5 calculation. So we believed we had the money; we
6 just weren't able to recruit in certain places. We
7 weren't able to fill up the units.

8 So in many places we would be
9 advertising, we'd be recruiting, we weren't able to
10 hire folks. And in some cases we had buildings
11 that were offline because of -- like in Rusk, mold
12 and other things; we had taken them offline. So
13 that's why our capacity reduced at this time what
14 we believed it to be. Later on is when we
15 determined that we really didn't have the dollars
16 to operate beyond that much anyway.

17 Q. So when you're saying recruit and when
18 you're saying recruiting staff, does that also mean
19 retaining staff?

20 A. It can, I mean, because if we don't
21 recruit and we lose people, we end up more and more
22 in the hole.

23 Q. And so when you're talking about the cost
24 for the bed had changed over time, and tell me if
25 I'm right, but it sounds as if some of that cost

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1 that changed over time was the need to spend more
2 money on salaries for staff than what was
3 originally thought?

4 A. Right. Well, I mean, in every biennia
5 that happens. If I ask for money for inflation and
6 if I don't get it and the cost of food goes up, the
7 cost of medical care goes up, salaries go up, so at
8 the same time as us -- even if I hadn't
9 recalculated what my true cost was, every year I
10 didn't get inflation money eroded away what my
11 capacity would be because of an inflation. So
12 every year it cost more to operate a bed. So even
13 before I -- and even today, if I don't get
14 inflation money, potentially beds will come offline
15 in the future.

16 Q. And so, again, it's not that those beds
17 aren't currently in the State hospital; it's just
18 that they cannot be used because they can't be
19 staffed or the infrastructure is -- there's
20 concerns with the infrastructure for those beds?

21 MR. ABRAMS: Objection. Form.

22 THE WITNESS: Well, but I'm -- I'm
23 pretty close to capacity of the 2220 -- or the 2259
24 that I had funded at.

25 Q. (BY MS. MITCHELL) Right, that you're

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1 funded at?

2 A. Right.

3 Q. But what I'm saying is, is if you've got
4 5 billion more dollars, you currently have beds at
5 the State hospitals that could be filled with staff
6 and patients?

7 A. Yeah, with some remediation. Some beds
8 have been offline for a while.

9 Q. Okay. And so explain to me the -- is
10 there anything beyond just the dollar amount that
11 you are paying to recruit, say, psychologists or
12 psychiatrists that is causing the concern with
13 being able to recruit those professions?

14 A. Say that again. Other than the pay?

15 Q. Uh-huh.

16 A. That's hard for me -- I mean, I'm -- it
17 would be hard for me to say why people -- it's like
18 proving the know. I don't know why people beyond
19 that wouldn't be coming. I would assume pay
20 attracts them to come in the door or get them
21 there. And then other factors that you identify to
22 keep them, you know, it's a difficult population.
23 You know, people realize that's not what they want
24 to do and so they leave.

25 Reasons why people don't apply to our

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1 jobs, I'm assuming, I just stopped at a Buc-ee's
2 yesterday, it pays \$3 more an hour with benefits
3 and retirement. That's my competition. So I can
4 only assume the reason why they're not applying is
5 pay and benefits and those type things.

6 Q. And I assume when you're saying Buc-ee's
7 pays \$3 more, it's for your mental health techs and
8 not your psychiatrists and your psychologists,
9 correct?

10 A. Yes, that is -- I hope, but, yes. Yes.
11 So that would be -- for that level. Same -- you
12 know, nursing is the same thing. I don't know
13 exactly why they don't apply other than pay.

14 Q. So would it also be that some of the
15 hospitals are in remote areas that makes it also
16 difficult to recruit or retain staff?

17 A. Yes.

18 Q. And could it be because of workforce
19 shortages that it's difficult to recruit or retain
20 staff?

21 A. Yes, if there's no nurses in the area,
22 correct, no physicians in the area, it does impact
23 that, especially because of the pay, you're not
24 going to draw any in the area.

25 (Exhibit No. 6 marked)

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1 Q. And did you say that all of the State
2 hospitals have a -- provide prosocial activities
3 throughout the day?

4 A. Can you define prosocial?

5 Q. So activities that keep somebody --
6 provide somebody with opportunities to engage in
7 activities, be them educational or
8 entertainment-wise, but something that keeps
9 somebody occupied throughout the day?

10 A. Yes.

11 Q. And would you say that inpatient mental
12 health facilities offer a therapeutic environment?

13 A. Yes.

14 Q. Okay. And when -- for a person who --
15 besides the services we just talked about, when a
16 person is found incompetent to stand trial, do the
17 hospitals also provide specific competency
18 restoration services?

19 A. Yes.

20 Q. And does it have staff that are
21 specifically trained on how to provide those
22 competency restoration services?

23 A. Yes.

24 Q. And does some of that training happen at
25 the Texas Forensic Mental Health Conference?

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1 A. If they went, absolutely, yeah. Yes, that
2 is a training option for individuals.

3 Q. And is it the State hospital system that
4 puts on that training session, the Texas Forensic
5 Mental Health Conference?

6 A. It is the North Texas State Hospital
7 Vernon campus that does for that specific -- yes,
8 yes.

9 Q. And when -- besides the services that
10 we've talked about, the IDT team, the prosocial
11 activities and the therapeutic environment, is
12 there any other services that are provided to a
13 person not guilty by reason of insanity when they
14 enter the State hospital system?

15 A. I'd have to defer to somebody more closely
16 familiar with their daily treatment needs.

17 Q. But they do provide the evaluation that's
18 required by the court when they first enter the
19 hospital?

20 A. Correct.

21 Q. Okay. And so for the forensic population
22 that comes into the State hospital system, would
23 you say that the treatment that's being provided is
24 more than just giving psychotropic medications?

25 A. I think it's individualized. I think

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1 A. It would be referencing, I'm assuming, the
2 first quarter.

3 Q. Okay. And so on page 14 it has Table 7
4 that says, "Forensic State Hospital Bed Waiting
5 List (Non-maximum Security)"; do you see that?

6 A. I do.

7 Q. Page 23. Sorry.

8 And so that is the clearinghouse
9 waiting list, correct?

10 A. Correct. The first table?

11 Q. Yes, correct, the first table. Table 7.
12 And based on Table 7, it says the number of people
13 that are currently waiting for a State hospital bed
14 (non-maximum security) is 269 people; is that
15 correct?

16 A. Correct.

17 Q. And the average time that they remain on
18 the waiting list is 44 days?

19 A. Correct.

20 Q. And during that time that they remain on
21 the waiting list, they are in jail?

22 A. Correct.

23 Q. And then if we go to Table 8, that table
24 in this quarterly report is the maximum security
25 bed waiting list, correct?

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1 A. Correct.

2 Q. And it says that the number of people on
3 the maximum security bed waiting list is 463
4 people?

5 A. Correct.

6 Q. And 215 of those people -- sorry. The
7 average number of days that the people remained on
8 the MSU waiting list was 215 days?

9 A. Correct.

10 Q. And during those 215 days, they generally
11 remain in the jail?

12 A. Correct.

13 Q. And the reason they're on the waiting list
14 is because there's no bed available at that time
15 for those people?

16 A. Correct.

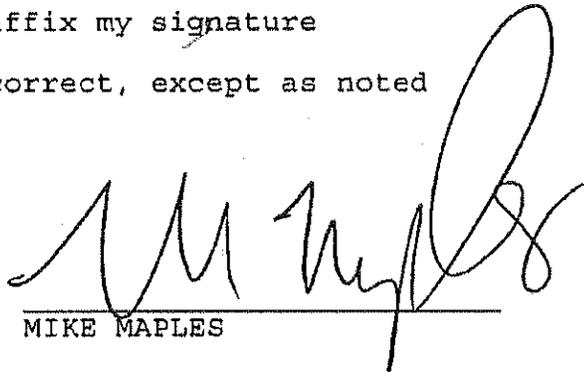
17 Q. And the people who are on these waiting
18 lists, do they come from all across the state of
19 Texas?

20 A. Yes. And without seeing the actual list,
21 I can't tell you if it's -- it comes from -- it's
22 distributed, but I can't -- there are places that
23 don't have people on the waiting list as well. But
24 it is from an accumulation from people coming in
25 from all over the State.

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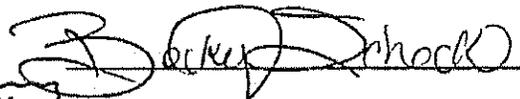
1 I, MIKE MAPLES, have read the foregoing
2 deposition and hereby affix my signature
3 that same is true and correct, except as noted
4 above.

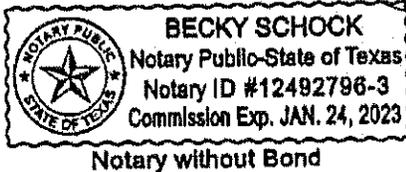

MIKE MAPLES

9 THE STATE OF TEXAS)
10 COUNTY OF TRAVIS)

11 Before me, Becky Schock, on this day
12 personally appeared MIKE MAPLES, known to
13 me (or proved to me under oath or through
14 Drivers Lic.) (description of identity card or
15 other document) to be the person whose name is
16 subscribed to the foregoing instrument and
17 acknowledged to me that they executed the same for
18 the purposes and consideration therein expressed.

19 Given under my hand and seal of office this
20 16 day of May
21 2019.





NOTARY PUBLIC IN AND FOR
THE STATE OF Texas
COMMISSION EXPIRES: 1/24/2023

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOSEPH WARD, by his)	
next friend FRANCES)	
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COURTNEY PHILLIPS, in her)	
official capacity as)	
Commissioner of the Texas)	
Department of Health and)	
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)	
Defendant.)	

REPORTER'S CERTIFICATION
ORAL DEPOSITION OF
MIKE MAPLES
APRIL 15, 2019
Volume 1

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1 I, Marlene Erives, Certified Shorthand
2 Reporter in and for the State of Texas, hereby
3 certify to the following:

4 That the witness, MIKE MAPLES, Volume 1,
5 was duly sworn by the officer and that the
6 transcript of the oral deposition is a true
7 record of the testimony given by the witness;

8 That the deposition was submitted on
9 April 24, 2019 to Mr. Michael R. Abrams,
10 attorney for the witness, for examination,
11 signature, and return to me by May 29, 2019;

12 That the amount of time used by each party at
13 the deposition is as follows:

14 Ms. Beth Mitchell - 2 Hours: 50 Minutes

15 That pursuant to information given to the
16 deposition officer at the time said testimony was
17 taken, the following includes counsel for all
18 parties of record:

19 Beth Mitchell, Peter Hofer, Lisa Snead and
20 Coty Meibeyer, Attorneys for Plaintiffs

21 Michael R. Abrams, Thomas A. Albright and
22 Corey D. Kintzer, Attorneys for Defendant

23 I further certify that I am neither counsel
24 for, related to, nor employed by any of the parties
25 or attorneys in the action in which this proceeding
was taken, and further that I am not financially or

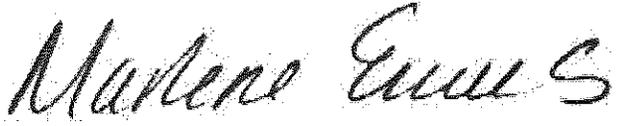
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otherwise interested in the outcome of the action.

Certified to by me this 24 day of
April, 2019.



MARLENE ERIVES, CSR
Texas CSR 7454
Expiration: 10/31/21
TCRB Registration No. 344
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JOB NO. 292667