

**In The Matter Of:**  
*In The Matter Of*  
*Proposed Amended Rule 111 - Version 2*

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*February 24, 2022*

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*Grigsby Reporting Services*  
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*Maumelle, AR 72113*  
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**Min-U-Script® with Word Index**

HEARING

IN THE MATTER OF

PROPOSED AMENDED RULE 111 - VERSION 2  
"CRANIOFACIAL ANOMALY  
RECONSTRUCTIVE SURGERY COVERAGE"

HONORABLE RUSS GALBRAITH  
CHIEF DEPUTY COMMISSIONER, GENERAL COUNSEL, & HEARING OFFICER  
ARKANSAS INSURANCE DEPARTMENT

HEARING PROCEEDINGS

FEBRUARY 24, 2022

at 1:36 P.M.

TAKEN VIA ZOOM VIDEOCONFERENCE

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## APPEARANCES

ON BEHALF OF ARKANSAS INSURANCE DEPARTMENT:

MR. BOOTH RAND  
ARKANSAS INSURANCE DEPARTMENT  
ONE COMMERCE WAY  
LITTLE ROCK, ARKANSAS 72202

ALSO PRESENT VIA ZOOM:

MS. BRANDY WEDSTED  
MS. CLARA MEZZA  
MR. JIM BRADER  
MS. LACEY JOHNSON  
MS. LORI MCNEEL  
MR. GRANT FORTSON  
MR. JONATHAN HART  
MS. ERICKA MILLER  
MS. ELLIE WALTON  
MS. SARAH IRONSIDE  
MS. WENDELYN OSBORNE  
MS. CRYSTAL PHELPS  
MS. TERI MECCA  
DR. NAIF SINADA  
MR. BRITTON KERR  
CHRISTINA WANG  
AMANDA  
REBA  
MITCH

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CAPTION

PROCEEDINGS in the above-styled and numbered cause on the 24th day of February, 2022, before Amy Waid, Arkansas Supreme Court Certified Court Reporter #853, at 1:36 p.m., via Zoom videoconference, pursuant to the agreement hereinafter set forth.

\* \* \* \* \*

## 1 PROCEEDINGS

2 FEBRUARY 24, 2022

3 HEARING OFFICER: So good afternoon. It is  
4 1:36 p.m. on February 24, 2022. We are here in  
5 the matter of the Proposed Amended Rule 111,  
6 Version 2, Craniofacial Anomaly Reconstructive  
7 Surgery Coverage.

8 My name is Russ Galbraith. I am the  
9 hearing officer designated by Commissioner Alan  
10 McClain. Present for the Department is Booth  
11 Rand --

12 (Zoom audio interference.)

13 THE COURT REPORTER: I can't -- I'm  
14 sorry -- I can't --

15 HEARING OFFICER: And, Booth, before I turn  
16 it over to you with your exhibits for this, I  
17 want to see --

18 THE COURT REPORTER: I need --

19 MS. OSBORNE: Okay, she's trying to --

20 THE COURT REPORTER: -- I cannot hear you.  
21 There's a couple that are unmuted --

22 MS. OSBORNE: She's waving at us.

23 THE COURT REPORTER: -- and they're like  
24 getting major feedback. If --

25 MS. OSBORNE: -- her --

1 THE COURT REPORTER: -- anybody that's not  
2 talking can mute except for Mr. Rand and Mr.  
3 Galbraith --

4 MS. OSBORNE: I can't hear her, guys.

5 MR. BOOTH: Thank you. Quit talking.

6 THE COURT REPORTER: That person that just  
7 logged on needs to mute.

8 Sorry. I got to the --

9 MR. BOOTH: She wants everybody muted  
10 that's not --

11 THE COURT REPORTER: -- right before you  
12 said who was for the Department, the attorney,  
13 Mr. Rand. They're still not muted.

14 HEARING OFFICER: Okay.

15 THE COURT REPORTER: Hold on. They're  
16 still not muted. I'm sorry.

17 Brandy, can you mute that person?

18 They're -- well, no, they're still not  
19 muted.

20 HEARING OFFICER: Which one are you talking  
21 about? The phone?

22 THE COURT REPORTER: It's a phone number.  
23 There's another one connecting that's -- I guess  
24 when they log on they don't mute, so it starts  
25 making noise immediately and I can't hear you.



1                   Okay, they're muted.

2                   HEARING OFFICER:   Okay, the phone number is  
3 muted now.

4                   THE COURT REPORTER:   Um-hum.   Mitch is  
5 about to connect to audio.

6                   HEARING OFFICER:   Are you still getting  
7 feedback?

8                   THE COURT REPORTER:   Not yet.   And Amanda's  
9 not muted, but I don't think I'm hearing  
10 anything from them, so I think we're okay.   I'm  
11 going to -- okay.   If it cuts you off again, I'm  
12 going to tell you to stop.

13                   HEARING OFFICER:   Yeah, it's totally fine.  
14 We want you to --

15                   THE COURT REPORTER:   Okay.   I want to hear  
16 you.

17                   HEARING OFFICER:   -- be able to get  
18 everything.

19                   THE COURT REPORTER:   Okay, go ahead.

20                   HEARING OFFICER:   All right, so present for  
21 the Department is Booth Rand.

22                   And, Booth, before I turn it over to you, I  
23 want to see who -- who is present and on the  
24 phone who is planning on giving a public  
25 comment.

1           So if you would, state your name, if you're  
2 -- let's start with on the phone, because I know  
3 there's some people present there with Booth.  
4 Is there anybody on the phone or on the Zoom  
5 that wishes to make public comment based on this  
6 particular rule?

7           Okay, hearing none at the moment. Anybody  
8 present that wants to make a public comment  
9 after Booth's presentation?

10          Okay, Booth is muted, so I don't know if  
11 that's the B-R-A-N-D camera or the phone, but we  
12 need to make sure he has audio.

13          MR. RAND: Are you there? Okay.

14          HEARING OFFICER: Yes.

15          MR. RAND: Thank you, Mr. Hearing Officer.

16          I believe Ms. Wendelyn Osborne will be  
17 making a public comment following my  
18 presentation.

19          MS. OSBORNE: Uh-uh. Uh-uh.

20          MR. RAND: You're not?

21          MS. OSBORNE: I'm going to be the last one.

22          HEARING OFFICER: Okay, and I don't --

23          MR. RAND: Okay, but you -- but you're  
24 going to make a comment?

25          MS. OSBORNE: Yes.

1 MR. RAND: Okay.

2 HEARING OFFICER: Okay, I don't believe  
3 anybody else spoke up. So, Booth, I'm going to  
4 turn it over to you. You have some exhibits  
5 that you would like put into the record; is that  
6 correct?

7 MR. RAND: I do, Mr. Hearing Officer. And  
8 I will go ahead and give you a -- I will state  
9 the exhibit number and a brief description of  
10 the exhibit.

11 Exhibit 1 is the Commissioner's designation  
12 of you as hearing officer.

13 Exhibit 2 is Act 955 of 2021 which governs  
14 the rulemaking standards of craniofacial anomaly  
15 coverage, and it is the act that gave the  
16 insurance commissioner authorization for  
17 promulgation of rules.

18 Exhibit Number 3 is the approval from the  
19 governor's office for -- to allow us to do  
20 rulemaking on this Proposed Rule 111.

21 Exhibit 4 is a copy of the Amended Rule  
22 111, which is the markup of changes that we have  
23 made to the rule.

24 Exhibit 5 is a copy of the proposed amended  
25 rule unsigned. It is a clean version of the --

1 of the proposed rule.

2 Exhibit 6 is a copy of an exhibit that goes  
3 along with Rule 111, which is an attestation  
4 form for surgical members of ACPA Approved  
5 Teams.

6 Exhibit 7 is a summary of Proposed Amended  
7 Rule 111 for the Bureau of Legislative Research.

8 Exhibit 8 is a copy our Notice of Public  
9 Hearing which set today's hearing for 1:30 today  
10 at February -- on February 24, 2022 with the  
11 advisory that the public comment period ends on  
12 March 4, 2022.

13 Exhibit 9 is a copy of the electronic mail  
14 distribution to the insurance industry regarding  
15 Proposed Amended Rule 111 dated February 1,  
16 2022.

17 Exhibit Number 10 is an email dated January  
18 1, 2022, to Gregg Sterne with the Arkansas  
19 Democrat Gazette requesting notice of  
20 publication as well as confirmation of an ad  
21 running dates. The newspaper notice and the  
22 copy of ad ran for three days in the Arkansas  
23 Democrat Gazette along with the billing  
24 statement that we received. The run dates were:  
25 February 2, 2022; February 3, 2022; and February

1 4, 2022.

2 Exhibit 11 is a copy -- email and copy of  
3 the Arkansas Insurance Department February 1,  
4 2022, letter to Jessica Whitaker of the Arkansas  
5 Legislative Council and the Arkansas Bureau of  
6 Legislative Research with copies of the  
7 Legislative Counsel Questionnaire, Financial  
8 Impact and Economic Impact Statement.

9 As the hearing officer understands, we have  
10 to submit a variety of BLR -- or Arkansas  
11 Legislative Counsel documents, which included  
12 those, to BLR.

13 Exhibit 12 is a copy of the February 1,  
14 2022, Arkansas Insurance Department letter and  
15 email to the Secretary of State.

16 Exhibit 13 is a copy of the January 31,  
17 2022, Arkansas Insurance Department letter and  
18 email to Sara Farris at the Office of the  
19 Attorney General giving her a courtesy copy of  
20 the proposed rule.

21 Exhibit 14 is a copy of the Arkansas  
22 Insurance Department letter and email of January  
23 31st reflecting the filing of the rule at the  
24 Arkansas State Library.

25 Exhibit 15 is a reservoir exhibit for

1 public comments that we have received either in  
2 support or against the actual promulgation of  
3 the proposed rule.

4 I have received a February 23, 2022, letter  
5 from Mr. Grant Fortson for and on behalf of  
6 Ozark Prosthodontics and Dean McNeel, DDS, which  
7 is largely in support of the rule.

8 And there will be other public comments I  
9 submit -- submitted before the record closes on  
10 March 4th.

11 At this time, I move that those exhibits be  
12 admitted into evidence.

13 HEARING OFFICER: And that was 14; is that  
14 correct?

15 MR. RAND: Yeah. And let me -- also,  
16 Mr. Hearing Officer, before we -- I forgot --  
17 also, I want to include in the record the  
18 electronic transcript of the previous hearing on  
19 December 10, 2021, which composed a variety of  
20 different, and has a lot of, comments from the  
21 public related to the originally filed rule.

22 HEARING OFFICER: Would you like to make --

23 MR. RAND: And that will be part of --

24 HEARING OFFICER: -- that Exhibit 15?

25 MR. RAND: 16.

1 HEARING OFFICER: 16? All right, we're  
2 going to make that --

3 MR. RAND: Yes.

4 HEARING OFFICER: -- Department's Exhibit  
5 16. And then Department's Exhibits 1 through 16  
6 will be entered into the record with -- without  
7 -- yeah.

8 (WHEREUPON, Department's Exhibits 1 through 16  
9 were marked, identified, and admitted for the record  
10 and are attached hereto.)

11 HEARING OFFICER: All right, you may  
12 proceed.

13 MR. RAND: Okay. The most important  
14 exhibit for you to refer to Mr. Hearing Officer  
15 is Exhibit 4. And I'll give you some time to  
16 locate Exhibit 4.

17 Exhibit 4 is the proposed markup of the  
18 originally filed rule. We have two versions.

19 Version 1 of the originally filed rule,  
20 which had a hearing on December the 10th, 2021,  
21 made significant changes to the originally filed  
22 rule that fall.

23 The Commissioner was responding to public  
24 comments made on December the 10th during the  
25 hearing in 2022 [sic] and for -- related to a

1           variety of concerns raised by outside medical  
2           providers related to the restrictive language  
3           that was in the originally proposed rule.

4           So out of an abundance of caution, after  
5           the Commissioner made his changes to the  
6           originally filed rule, he, again, felt like that  
7           although he may not be required to, he wanted to  
8           go ahead and republish this rule with the  
9           changes that he made in response to public  
10          comments made to Version 1.

11          Exhibit 4 is a copy of markup that -- that  
12          we went through to arrive at the current  
13          proposed rule, Version 2, of the proposed rule.  
14          And I will go through the markup of that at this  
15          time.

16          On Page 4 of Exhibit 4, the Commissioner  
17          defines "surgical team member" to mean a team  
18          being a surgical member of an ACPA Approved Team  
19          who specializes in craniofacial reconstructive  
20          surgery or a surgical member of an approved team  
21          with requisite and equivalent craniofacial  
22          surgical experience in the field of service  
23          requested to be reviewed.

24          Originally, the Commissioner struck out the  
25          word "surgical," but he has -- he has put it



1 back into the definition.

2 Page 5 of Exhibit 4, the phrase "healthcare  
3 services to be performed by a medical provider  
4 that is not on a nationally approved  
5 cleft-craniofacial team," was -- was used for  
6 better clarification of the exact composition of  
7 the team that was providing the services.

8 Exhibit -- on Page 5 of Exhibit 4, the same  
9 phrase is used again to clarify. It needed  
10 language to make sure it's simple and  
11 understandable.

12 I will address the more significant changes  
13 that the Commissioner has -- has designed here.

14 One is that the original language required  
15 that the approval process for the services go  
16 through a medical surgeon, a -- a surgeon who  
17 was qualified by the medical board that would  
18 review and approve the proposed services and  
19 that would initiate the referrals to outside  
20 teams.

21 The Commissioner believed that was too  
22 restrictive and has opened up the authorizations  
23 to be permitted to be done by anyone on a team  
24 that has surgical experience, and it's not  
25 necessarily required to be a medical surgeon.

1           It can be a prosthodontist or anyone that does  
2           surgery on the team. And so his -- his  
3           interpretation of surgery is broader than it  
4           being restricted just to medical providers.

5           Also, I'm going to refer you to one of the  
6           most important changes in the rule that -- that  
7           the original language in the proposed rule,  
8           Version 1, required that all referrals and all  
9           outside referrals for services have to be  
10          initiated by an ACPA Approved Team.

11          The Commissioner did not agree with that  
12          particular process and struck that out of the  
13          original Version 1 of the rule.

14          Today, under the proposed rule, only a  
15          member -- surgical member of a team, any member  
16          of the team, may initiate a referral, or it may  
17          come from the outside provider. The outside  
18          provider may actually initiate the referral to  
19          the team -- to any surgical member of the team.

20          The rest of the rule makes clarification of  
21          the process. It is the Commissioner's goal that  
22          the Exhibit A, which is the attestation form, be  
23          used for authorization for services from the  
24          ACPA Approved Teams. It can be authorized by  
25          any member -- any surgical member of the team,

1 and it can come from a referral from an outside  
2 provider. And then once the authorization is  
3 obtained by the ACPA Approved member, the health  
4 benefit plan is submitted to actual  
5 authorization. And the health benefit plan has  
6 no longer than two working days from the  
7 submission date of the review to review the  
8 claims for non-urgent cases and 24 hours for  
9 urgent cases.

10 The Commissioner, in Section 6 of Exhibit  
11 4, continues to adopt the proposal that -- that  
12 the insurance companies provide a coding fee for  
13 evaluation to APCA Approved Teams to help reduce  
14 some of the backlog that we're having for claims  
15 that are submitted to the health plans that are  
16 backlogged waiting on ACPA Approved  
17 authorization.

18 Section 7 is simply a form that we have  
19 designed to allow for outside team members --  
20 outside providers to submit for approval of  
21 services.

22 That is a brief explanation of the proposed  
23 rule. I'll be glad to answer any questions.

24 HEARING OFFICER: Thank you. Thank you,  
25 Booth.

1           Real quick, as we started this hearing, we  
2           asked for anybody that was going to speak  
3           publicly. I know Ms. Osborne is there. We  
4           didn't hear from anybody else, but there have  
5           been other people who have been added to the  
6           Zoom call since then. So I'm going to reiterate  
7           that -- or repeat that question.

8           Is there anybody else that's on this call  
9           that wishes to make public comment for this  
10          rule? If you would, please unmute and -- and  
11          tell us your name, or if you -- if for some  
12          reason you're having audio problems, if you  
13          could put it into the -- the chat or whatever,  
14          that would be great. So we'll give you a minute  
15          for that.

16          Okay, it doesn't appear that anybody else  
17          is wanting to make public comment.

18          So any questions for Mr. Rand at this time?

19          Okay. We'll move to public comment.

20                   PUBLIC COMMENT

21          So for the public comment section, what I  
22          would like to -- to make sure that I'm clear on  
23          is that -- that you are speaking on the Amended  
24          Rule 111, the -- the parts of the proposed rule  
25          that have been changed since the last time we

1 had a hearing and there was public comment. I  
2 would also remind the -- the audience that  
3 public comment can be made up until March 4th.  
4 As Booth said, that the record will be -- will  
5 remain open for those comments if they -- if you  
6 want to add some written.

7 At this time, Ms. Osborne, if you would,  
8 please state your name, and then you are open  
9 for the public comment for the -- for the  
10 amended part of this rule.

11 I just want to remind everybody, too, that,  
12 you know, there -- there have been comments that  
13 have been made, but this is for the amended  
14 version of this rule.

15 So please proceed.

16 MS. OSBORNE: I want to make sure that I'm  
17 the very last one to speak. So if anybody else  
18 wants to speak, I -- I ask that you not give  
19 anymore options if they're not on now and don't  
20 speak now. I want to be the last one to speak.

21 HEARING OFFICER: Well, Ms. Osborne, as the  
22 hearing officer, there may be somebody that  
23 comes in late, so there's really no guarantee of  
24 that. But the floor is --

25 MS. OSBORNE: If this were done --

1 HEARING OFFICER: -- yours right now --

2 MS. OSBORNE: -- if this were done in  
3 person -- if this were done in person, you  
4 wouldn't allow that. So if you want to wait --

5 HEARING OFFICER: Well, ma'am -- ma'am --

6 MS. OSBORNE: -- I'm willing to wait as --

7 HEARING OFFICER: -- ma'am --

8 MS. OSBORNE: -- long as --

9 HEARING OFFICER: -- ma'am, this is --  
10 look, look, look. Let me -- I just want to be  
11 clear here. This is my hearing. Okay. I'm the  
12 hearing officer. We've had to adapt because of  
13 weather. We are holding this the best way we  
14 can under the circumstances. You have the mic.  
15 Please proceed.

16 MS. OSBORNE: Hold on. I'm trying to turn  
17 off my phone. I thought I had it turned off,  
18 but it just keeps beeping.

19 I am Wendelyn Yvonne Osborne.

20 I'm sorry. What else am I supposed to say  
21 besides my name?

22 HEARING OFFICER: Yeah, you were just  
23 supposed to identify yourself, and then you can  
24 continue with your public comments, please.

25 MS. OSBORNE: Okay.

1 I am Wendelyn Yvonne Osborne. It is  
2 because of me that this law exists. Period.  
3 And I have issues with people playing politics  
4 with my law.

5 Alan McClain, I'm speaking to you.

6 So I'm going to read these lyrics, and I  
7 want this to be notated.

8 The lyrics -- the title is "Playing Games  
9 at the Foot of the Cross."

10 HEARING OFFICER: Okay, Ms. --

11 Ms. Osborne --

12 MS. OSBORNE: I'm sorry.

13 HEARING OFFICER: -- real quick --

14 MS. OSBORNE: I -- yes?

15 HEARING OFFICER: Excuse me. I'm going --  
16 I'm going to intervene. You have public  
17 comments --

18 MS. OSBORNE: Yes?

19 HEARING OFFICER: -- based on the amended  
20 version of this rule?

21 MS. OSBORNE: I sure do. I sure do.

22 HEARING OFFICER: Okay. So what -- what  
23 part of this that you're about to read has to do  
24 with the rule? What part of the rule?

25 MS. OSBORNE: I'm going to read this.

1 Okay? So I ask that you --

2 HEARING OFFICER: Well, now -- now, hold  
3 on.

4 MS. OSBORNE: -- give me the respect --

5 HEARING OFFICER: Hold on. Hold on. I'm  
6 just asking you a question. The amended version  
7 of the rule, there's --

8 MS. OSBORNE: This is --

9 HEARING OFFICER: -- there's certain  
10 sections that have been amended that -- that  
11 Booth went over. What part of the amended  
12 version is this -- does this pertain to?

13 MS. OSBORNE: All of it.

14 HEARING OFFICER: Can you tell me which  
15 section that this pertains to that you're about  
16 to -- to talk about?

17 MS. OSBORNE: Everything that Booth  
18 mentioned. I can't go back -- unless you want  
19 me to reread all that. I'll reread what Booth  
20 just read.

21 HEARING OFFICER: Well, there are --

22 MS. OSBORNE: I'm not trying to be (Zoom  
23 audio interference) --

24 HEARING OFFICER: -- certain sections --

25 MS. OSBORNE: Okay, Booth, let me read what



1           you just read, and we'll just go over that  
2           again.

3           MR. RAND:   Just go -- look at your --

4           MS. OSBORNE:  No, I'm going to -- I'm going  
5           to read it all.  I'm going to do exactly what  
6           you just did.

7           Is this what you want me to do, Hearing  
8           Officer?  I'm going to read everything that  
9           Booth just read.  Is that what you want me to  
10          do?

11          HEARING OFFICER:  I want you to notate --

12          MS. OSBORNE:  Okay.  So I'm --

13          HEARING OFFICER:  -- what section --

14          MS. OSBORNE:  -- I'm going to read every  
15          one of (Zoom audio interference.) --

16          HEARING OFFICER:  Hold on.  Hold on.  Hold  
17          on.

18          MS. OSBORNE:  I told you, "all."

19          HEARING OFFICER:  Hold on.  Ms. Osborne?  
20          Ms. Osborne?  I'm asking you to notate what  
21          section of the amended version that -- that  
22          you're about to talk about, and then explain --

23          MS. OSBORNE:  Everything.

24          HEARING OFFICER:  -- your comments based on  
25          that.

1 MS. OSBORNE: All of them. Everything that  
2 Booth mentioned. I don't know how to get more  
3 plain. I will read this over again just like  
4 Booth did. I don't know how to get more plain  
5 than that. All. A-L-L.

6 HEARING OFFICER: All right.

7 MS. OSBORNE: All. So if you wanted me to  
8 be specific, I will read every last one of  
9 these.

10 Okay. Section 1: Authority -- and you're  
11 going to have to forgive me because I can't see  
12 very well right now; okay? But you asked,  
13 and -- and you're not giving me any flexibility  
14 here. I'm going to read it all.

15 HEARING OFFICER: Well, actually,  
16 Ms. Osborne, you're reading the rule. You're  
17 not reading the amended version of the rule.  
18 There -- there are -- the parts that are  
19 underlined are the parts that were amended. So  
20 that's what I'm talking about, and that's what  
21 we're here for. This particular hearing is  
22 based on the amended --

23 MS. OSBORNE: And I told you --

24 HEARING OFFICER: -- part --

25 MS. OSBORNE: -- I -- I -- I've already

1 told you three times now. I'm amending all of  
2 the -- I am -- I'm going to oppose all. I'm  
3 going to be talking about all of the amended  
4 parts of this rule. All of them.

5 HEARING OFFICER: Well, the first part --  
6 the first part that's amended is down in Section  
7 D -- Section 3, I believe it's Number 3. No,  
8 I'm sorry. That was just -- that was just the  
9 numbers were changed because of the amendments.

10 So the first one that's amended --

11 And, Booth, tell me if I'm correct on this.

12 MR. RAND: Yeah.

13 HEARING OFFICER: -- where it's underlined,  
14 where it says "healthcare services to be  
15 performed," is that the first change?

16 MR. RAND: So -- so wherever there is red  
17 markup, it indicates a deviation from the  
18 originally filed Rule 111 from December 10th, so  
19 2021. And so what she could do is look for each  
20 red area of the markup, which you should see on  
21 your Exhibit Number 4. Exhibit 4 from the  
22 notebook should show you the markup in red of  
23 the changes the Commissioner wanted to the  
24 proposed rule that was originally filed.

25 So she can just deal with each red section

1 of the -- of the rule.

2 HEARING OFFICER: Right. Well, that's --

3 MS. OSBORNE: I'm just --

4 HEARING OFFICER: -- that's what I said.

5 MS. OSBORNE: -- (Zoom audio interference.)

6 What is his name?

7 HEARING OFFICER: Each part of the rule --

8 MR. RAND: (Zoom audio interference.)

9 MS. OSBORNE: Booth?

10 HEARING OFFICER: -- that has been changed  
11 for this particular hearing, those are the --  
12 the pertinent points that -- that we're talking  
13 about in this hearing.

14 MS. OSBORNE: Okay. What is your name?

15 HEARING OFFICER: I'm Russ Galbraith. I'm  
16 the hearing officer.

17 MS. OSBORNE: Okay. So, Russ, I'm going to  
18 tell you something. I had surgery on both my  
19 eyes because of my craniofacial anomaly. My  
20 eyes are swollen. I can barely see. And I  
21 -- it's going to be hard for me to read this.  
22 But if you're going to be that detailed and that  
23 specific, even though I've already told you  
24 everything that Alan did I am opposed to.

25 HEARING OFFICER: Okay. I'll tell you what

1           -- I'll tell you what, Ms. Osborne, why don't we  
2 back up. If you -- if you're able to read your  
3 lyrics -- are you able to read your lyrics?

4           MS. OSBORNE: Yes, because they're printed  
5 off large enough to where I can see them.

6           HEARING OFFICER: Okay. Well, just proceed  
7 with that, and we'll see where this goes.

8           MS. OSBORNE: Okay. Thank you.

9           The title is "Playing Games at the Foot of  
10 the Cross."

11           Here's verse one: "You've heard the story  
12 many times before how the soldiers gambled for  
13 the robe of the Lord. Their laughter drowning  
14 out the Savior's cry, 'Father forgive them' as  
15 He bows his head and dies."

16           The chorus: "As they were playing games at  
17 the foot of the cross, so close to the struggle,  
18 yet so far from the cost" -- note that -- "never  
19 feeling the shame" -- note that -- "and never  
20 sensing the loss" --note that -- "they were  
21 playing games at the foot of the cross."

22           The second verse: "We're so quick to judge  
23 them, yet so slow to see" -- this verse is  
24 talking about us human beings now -- "how their  
25 games resemble the ones played by you and me as

1 we fight for position in the Church of God while  
2 the world just goes on dying without the  
3 Savior's love."

4 And then it's the chorus again

5 Politic games are being played here because  
6 Alan McClain is scared of the opposition. Alan  
7 McClain has not one clue of the complexities of  
8 treating craniofacial anomaly.

9 As for our opposition, I'm going to state  
10 this: It's a problem. If you want to write it  
11 down, write down this mathematical word problem:  
12 Craniofacial anomalies take up 2 percent of the  
13 United States population. Period. There are  
14 just over 5,000 Arkansans living with some type  
15 of a craniofacial anomaly. Period.

16 In the field of dentistry there is only one  
17 area of specialty that has a craniofacial  
18 subspeciality, and that is cranio- -- that is  
19 orthodontia known as craniofacial orthodontist.  
20 In all, 2 percent of the United States  
21 population, craniofacial anomaly cases,  
22 craniofacial orthodontists are used in 100  
23 percent of all craniofacial cases.

24 Prosthodontist, endodontist, periodontist,  
25 and any other "dontist" in the dental field are

1           only used maybe 2 percent in all craniofacial  
2           cases, yet there's only 5,000 -- a little over  
3           5,000 Arkansans living with some type of a  
4           craniofacial anomaly.

5           Here's the question in this problem: If  
6           there's only 5,000 Arkansans and prosthodontist  
7           and endodontist and every other "dontist" other  
8           than orthodontist are used maybe 2 percent of  
9           all craniofacial cases -- 2 percent of 5,000,  
10          which is 100 -- how in the world can our  
11          opposition afford to pay for a law firm and a  
12          lobbying firm to oppose this law? They must  
13          really be losing a lot of money from my law.  
14          How? You're only treating possibly 100.

15          And second of all, our opposition, Lori,  
16          the wife of the owner of the prosthodontic  
17          office, has had a side job for a number -- you  
18          know, a good -- a good time, going around  
19          teaching people out of the State of Arkansas how  
20          to file CPT codes to get things covered. So  
21          she's become a pretty good expert at knowing how  
22          to file things -- what CPT codes to file in  
23          order to get things covered.

24          Craniofacial anomalies take up 2 percent of  
25          the United States population. 5 percent of --

1           5,000 -- just over 5,000 of those are Arkansans.  
2           This is a small population nationwide,  
3           worldwide, as well as statewide, and yet the  
4           Commissioner has chosen to play politics because  
5           he's scared that he might not have a job come  
6           the next time the governor comes around.

7           So here are my things: I oppose the  
8           Commissioner's new rule.

9           And also, there are three reasons why a  
10          committee -- the legislative committee can pull  
11          a rule: Number 1, if it violates federal law;  
12          Number 2, if it violates state law; Number 3, if  
13          it violates legislative intent.

14          Alan has violated Number 2 and Number 3.

15          Number 2, we have adopted The Prior  
16          Authorization -- let me make sure I get this  
17          right -- The Prior Authorization Transparency  
18          Initiative, ACA 23-99-1101 through 1119. That  
19          is in my law, those word for word. Alan has  
20          messed with the wording on that to come to his  
21          liking.

22          Again, I want to reiterate Alan has no clue  
23          the complexities of treating craniofacial  
24          anomalies. He's just trying to pacify the  
25          opposition. That's all -- that's his whole



1           intent. He hasn't even tried. He did not want  
2           to talk to me or anything like that after he  
3           made his changes, and he was being kind of  
4           sneaky about it.

5                     And so the other two -- the -- the third  
6           one that he's violated, he has violated  
7           legislative intent. The intent of my law from  
8           the very get-go, from 2013 when it was first  
9           passed, is to protect those of us with  
10          craniofacial anomalies from well-intentioned,  
11          non-craniofacial medical providers. That is the  
12          intent of this law. And when we did the amended  
13          version in 2021, we made this majority law.

14                    Craniofacial patients across the country  
15          have contacted me and said, "Wendelyn, we would  
16          like to have this law in our state."

17                    So go back to the lyrics that I just read  
18          to you. It is one of my callings to fight for  
19          those of us with craniofacial anomalies. We  
20          have a hard enough time fighting and dealing  
21          with our medical condition as is. Trying -- but  
22          we just want to be "normal." But then we have  
23          to deal with the ignorance of society. People  
24          like Alan, who is scared of losing his job, he  
25          has no empathy for what we deal with on a daily

1 basis living with the ignorance of people.

2 Adults are worse than kids.

3 And for -- so you want to play games with a  
4 law that affects a small population and a  
5 population that is struggling to just make it  
6 because of the ignorance. We've got a lot that  
7 we've got to do with this.

8 I've spoken with Booth about this, and I've  
9 spoken with someone at Blue Cross Blue Shield  
10 about this. We've got to get -- we've got to  
11 work -- we've got to talk to all four -- top  
12 four insurance companies and go over what's  
13 expected of them. And we've got another meeting  
14 we've got to have with somebody else as well.  
15 And Booth knows what we're talking about.

16 And we have got to figure out a way to get  
17 the word out to all the -- the obstetricians and  
18 the pediatricians and other doctors across the  
19 state so that when they run across someone that  
20 they -- you know, when you're in medical school,  
21 you only get maybe four hours on craniofacial  
22 anomalies. Period. So you don't really know  
23 it. You don't know what to look for, etc., etc.  
24 We've got to get the word out to the doctors  
25 across the state so that when they run into

1           someone -- like in the last hearing,  
2           prosthodontic -- orthodon- -- Ozark  
3           Prosthodontic -- excuse me -- brought several of  
4           their patients in -- they kept going to all  
5           these different people, and nobody could help  
6           them. Why? Because they didn't know. They  
7           should've -- they've got to go to a craniofacial  
8           team, an ACPA Approved Craniofacial Team, and  
9           let them guide them where they need to go  
10          because they are familiar with craniofacial  
11          anomalies --

12                   HEARING OFFICER: Ms. Osborne?

13                   MS. OSBORNE: -- and how they work.

14                   HEARING OFFICER: Ms. Osborne? I'm going  
15          to ask you to -- to refocus and speak about the  
16          amended version of this rule, please. If you  
17          would focus on the changes to the rule. Thank  
18          you.

19                   MR. RAND: -- (Zoom audio interference)  
20          initiate your referral if you maintain it has to  
21          come from the team.

22                   MS. OSBORNE: I've said all I'm going to  
23          say. Alan has violated two of the three reasons  
24          why the legislative committee will pull the  
25          rule. Those are the reasons they have to pull

1 the rule.

2 Alan, you playing politics with this law,  
3 that might not have been the smartest move on  
4 your part. You are more concerned about an  
5 opposition who --

6 HEARING OFFICER: Ms. --

7 MS. OSBORNE: -- has been --

8 HEARING OFFICER: -- Ms. Osborne, if you  
9 would speak to the rule, or if you are  
10 concluding your comments, speak to the rule.  
11 That's what the public comment is for is about  
12 the rule and the specific changes to the rule.

13 MS. OSBORNE: I've stated what Alan has  
14 done.

15 HEARING OFFICER: Okay. Thank you.

16 MS. OSBORNE: He violated.

17 HEARING OFFICER: Okay. Thank you.

18 Are there any other public comments?

19 Mr. Rand, do you have a closing statement?

20 MR. RAND: No, Your Honor, I do not.

21 And at this time we would just like to  
22 remind everybody that the record will remain  
23 open until March 4, 2022, for written comments  
24 that are submitted to the -- to -- to me. I  
25 will be glad to put it in the record.

1           HEARING OFFICER: Okay. If there's nothing  
2 further, the public comment portion will be --  
3 will remain open until March 4th. The record  
4 will remain open until March 4th.

5           Anything else from any of the folks that  
6 are on the call or there?

7           If not, then this hearing will be adjourned  
8 at 2:12 p.m.

9           (WHEREUPON, the proceedings were concluded  
10 in this matter at 2:12 p.m.)  
11  
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CERTIFICATE

STATE OF ARKANSAS )  
 ) ss  
COUNTY OF FAULKNER )

I, AMY WAID, Certified Court Reporter in and for the State of Arkansas, do hereby certify that the witness was duly sworn prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me through the use of the voice-writing method and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

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Dated this 2nd day of March, 2022.

*Amy Waid*

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Amy Waid  
Arkansas State Supreme Court  
Certified Court Reporter #853

*Amy Waid*  
Arkansas Supreme  
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