

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Civil Case No. 2:20-cv-00007-JPJ-PMS

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE
THE REPORT AND TESTIMONY OF PLAINTIFFS' PROPOSED EXPERT
MICHAEL L HENDRICKS

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I. INTRODUCTION

Dr. Hendricks is an experienced clinical and forensic psychologist who has been qualified and testified as an expert witness more than 1,700 times in multiple state and federal courts on mental health issues. The Fourth Circuit cited and credited Dr. Hendricks's expert opinions in issuing its landmark decision in *Porter v. Clarke*, that long-term solitary confinement of death-row prisoners violated the Eighth Amendment. *See* 923 F.3d 348 (4th Cir. 2019). Defendants thus unsurprisingly do not challenge Dr. Hendricks's qualifications to serve as an expert psychologist in this case.

Defendants nevertheless challenge certain of Dr. Hendricks's opinions as impermissibly based on evaluations performed by colleagues, allegedly based on speculation, and outside the scope of Dr. Hendricks's expertise. Defendants move to exclude Dr. Hendricks's testimony and report in their entirety on these bases. Defendants' Motion to Exclude Report and Testimony of Plaintiffs' Proposed Expert Michael L Hendricks (hereafter, "Motion") at 17 ("[T]he Court should exclude his Report and testimony."). Even setting aside that none of the critiques Defendants have raised could possibly be a basis to exclude Dr. Hendricks *in toto*, each of Defendants' challenges is meritless and based on misapplications of the law, overgeneralizations regarding standard practices in psychology, mischaracterizations of Dr. Hendricks's methodology and opinions, and/or challenges of phantom opinions that appear nowhere in Dr. Hendricks's report. For instance, Defendants charge that Dr. Hendricks "ignore[d] other possible causes of Plaintiffs' mental health conditions," *id.* at 7, while simultaneously citing directly to Dr. Hendricks's report for the precise facts that Dr. Hendricks allegedly ignored. In another instance, Defendants criticize Dr. Hendricks for supposedly "offer[ing] causation testimony related to Plaintiffs' experience of medical conditions, including hypertension, arrhythmia and glaucoma." *Id.* at 16. Yet the only references in Dr. Hendricks's report to those conditions are

mere recitations of certain Plaintiffs’ medical histories and references to the scientific literature stating that certain medical conditions are common effects of solitary confinement.

That Defendants have swung much too big in seeking to prevent the Court from considering—or a jury from hearing—*any* of Dr. Hendricks’s opinions in this litigation is also evidenced by the fact that Defendants do not even mention—let alone challenge—many of Dr. Hendricks’s key opinions. These include, among others, that the Virginia Department of Corrections (“VDOC”) does not adequately identify and divert inmates with mental illness before those inmates are assigned to the Step-Down Program, mental health staff have insufficient input into inmates’ progression through the program, VDOC’s mental health coding system is inadequate to identify and track inmates with mental illness, VDOC relies on unqualified or under-qualified mental health staff, and VDOC provides inadequate mental health treatment for inmates in the Step-Down Program. These opinions, and others, remain wholly unchallenged.

Defendants’ arguments for exclusion are meritless or, at most, go toward the weight and not the admissibility of Dr. Hendricks’s testimony. The Court should deny Defendants’ motion.

II. BACKGROUND

A. Dr. Michael Hendricks’s qualifications and expertise.

Dr. Hendricks is a licensed and board-certified clinical psychologist who has been practicing since 1995. ECF No. 368-1, Report of Michael L. Hendricks, PhD., ABPP, hereafter, “Hendricks Rpt.” ¶ 2. From 1996 to 2000, Dr. Hendricks worked at the District of Columbia Central Detention Facility and, for the majority of that time, was the Chief of Outpatient Mental Health Services. His duties involved managing a mental health clinic that served the needs of sixteen of the eighteen cell blocks in the D.C. Jail. The two blocks that Dr. Hendricks directly served were both high-security lock-down blocks—i.e., the jail’s supermax and administrative

segregation units. *Id.* ¶ 3. Dr. Hendricks worked closely with the supermax unit for more than three years, which allowed him to directly observe many of the negative clinical effects of inmate isolation described in the literature and to develop procedures and strategies for (at least partially) mitigating many of these negative effects. *Id.* ¶ 7.

In 2000, after leaving the D.C. Jail, Dr. Hendricks went into full-time private practice at the Washington Psychological Center in Washington, D.C. *Id.* ¶ 8. He continued to receive training in forensic evaluations, including courses in forensic psychology at the Institute of Law, Psychiatry and Public Policy at the University of Virginia, which provided Dr. Hendricks the requisite training and credentials to be placed on the Virginia Supreme Court’s list of qualified evaluators for criminal forensic cases. *Id.* Dr. Hendricks remains on that list. *Id.*

Dr. Hendricks’s current practice consists of roughly sixty-five percent forensic evaluations and thirty-five percent clinical treatment (psychotherapy). *Id.* He has been qualified and testified as an expert witness more than 1,700 times on mental health issues in Virginia state and federal courts, among other jurisdictions. *Id.* ¶ 9.

Dr. Hendricks served as a key expert in the *Porter v. Clarke* litigation, with which this Court is familiar. There, as here, he was retained to examine the plaintiffs and offer opinions regarding the effects of long-term solitary confinement on them. *See Porter v. Clarke*, 290 F. Supp. 3d 518, 529 (E.D. Va. 2018), *aff’d*, 923 F.3d 348 (4th Cir. 2019), *as amended* (May 6, 2019) (reciting in detail Dr. Hendricks’s findings that “each plaintiff has developed serious psychological and/or physical distress and impairment in functioning” that “exceeds any distress and impairment that was evident prior to each man’s arrival [in solitary confinement]”). The district court credited his testimony, as did the Fourth Circuit in affirming the district court’s decision. *See id.* at 531 n.10 (“Based on a review of the experts’ reports, the Court finds Dr.

Hendricks’s methodology is more sound than Dr. Saathoff’s, and his conclusions are likewise more persuasive. Therefore, to the extent that the harm actually experienced by plaintiffs is material, the Court credits Dr. Hendricks’s report rather than Dr. Saathoff’s.”); *Porter*, 923 F.3d at 358 (finding that Plaintiffs’ expert reports, including that of Dr. Hendricks, “demonstrated the serious psychological and emotional risks posed by conditions of confinement materially indistinguishable from those Plaintiffs[] faced on Virginia’s death row”); *id.* at 360–61 (noting that VDOC offered no “evidence disputing the numerous studies and scholarly articles surveyed by . . . Dr. Hendricks demonstrating that prolonged isolated confinement, under conditions closely analogous to those Plaintiffs challenge, creates a substantial *risk* of psychological and emotional harm, which risk is sufficient to satisfy the objective prong”).

B. Factual background

Dr. Hendricks is licensed to practice in Virginia, the District of Columbia, and Maryland. ECF No. 368-1, Hendricks Rpt. ¶ 11. Since nine of the eleven Plaintiffs are currently incarcerated in Virginia or Maryland, Dr. Hendricks was able to personally evaluate each of those Plaintiffs. In preparation for his in-person evaluations, Dr. Hendricks first reviewed the affidavits of each Plaintiff, submitted in this action, which summarize their experiences in solitary confinement and their claims of the effects that solitary confinement had on them. *Id.* ¶ 12. These affidavits allowed Dr. Hendricks to anticipate what testing might be needed for their respective evaluations. *Id.* He also reviewed extensive institutional and mental health records for each of the Plaintiffs before initiating the evaluations. *Id.*

Based on the symptoms Plaintiffs complained about in their respective affidavits—e.g., depression, sleep disturbance, psychotic symptoms, dissociative experiences, trauma-based symptoms, or memory problems—Dr. Hendricks assembled a battery of psychological tests designed to assess for these symptoms. *Id.* ¶ 13. Each of the tests that Dr. Hendricks assembled

and administered included embedded measures of effort and malingering (i.e., exaggeration and/or fabrication of symptoms). *Id.* Dr. Hendricks then travelled to various prisons in Virginia and Maryland and, along with a graduate student assistant, administered these tests and evaluated each Plaintiff. *Id.* ¶¶ 14–15. For each Plaintiff, the clinical interview and each testing session took between two and four hours, resulting in a total contact time with each Plaintiff that ranged from four to seven hours. *Id.* ¶ 16.

For two of the Plaintiffs, Dr. Hendricks could not personally conduct the evaluations. Since the time Plaintiffs filed this action, VDOC has transferred Mr. William Thorpe and Mr. Gerald McNabb to Texas and Wyoming, respectively. For this reason, Dr. Hendricks assisted in identifying and interviewing psychologists licensed in those states, Dr. Cabeldue and Dr. Smith, to administer the tests and perform the evaluations. *Id.* ¶ 12 n.5. Dr. Hendricks shared the above protocol with Dr. Cabeldue and Dr. Smith, who used essentially the same interview format and strategy for test selection. *Id.* ¶ 13.

Once Dr. Cabeldue and Dr. Smith had completed their evaluations of Mr. Thorpe and Mr. McNabb, respectively, each drafted a report providing the results of their testing and evaluations. Dr. Hendricks included these reports as part of his expert report. *Id.* at 113–28. Defendants subsequently had the opportunity to (and did) depose Dr. Hendricks, Dr. Cabeldue, and Dr. Smith.

III. LEGAL STANDARD

In determining whether an expert’s methodology meets the *Daubert* standard, the inquiry must focus “solely on principles and methodology, not on the conclusions” of the expert. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594–95 (1993); *Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 195 (4th Cir. 2017) (“[C]ourts may not evaluate the expert witness’[s] conclusion itself, but only the opinion’s underlying methodology”). Challenges to the “factual

underpinnings of the [expert witness's] opinion affect the weight and credibility' of the witness'[s] argument, 'not its admissibility.'" *Bresler*, 855 F.3d at 195.

"If the methodology is reliable, further criticisms of the expert's testimony will go to its weight, not its admissibility." *Acosta v. Vinsokey*, 310 F. Supp. 3d 662, 667 (W.D. Va. 2018). "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof"—rather than outright exclusion—"are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert*, 509 U.S. at 596. The inquiry has a "liberal thrust" favoring admission. *Daubert*, 509 U.S. at 588; *Md. Cas. Co. v. Therm-O-Disc, Inc.*, 137 F.3d 780, 783 (4th Cir. 1998); Fed. R. Evid. 702 advisory committee's note to 2000 amendment ("[T]he rejection of expert testimony is the exception rather than the rule").

IV. ARGUMENT

A. **Dr. Hendricks properly relied on evaluations performed by Dr. Cabeldue and Dr. Smith for opinions regarding Plaintiffs Thorpe and McNabb.**

Dr. Hendricks reliably and properly relied on tests administered and evaluations performed by licensed clinical psychologists in the states where two Plaintiffs are currently located. As noted, Dr. Hendricks is licensed to practice in Virginia, the District of Columbia, and Maryland. ECF No. 368-1, Hendricks Rpt. ¶ 11. Following Plaintiffs' filing of this action, however, VDOC transferred two Plaintiffs, William Thorpe and Gerald McNabb, to prisons in Texas and Wyoming, respectively, via interstate transfer. Given that two Plaintiffs are no longer in a jurisdiction in which he is licensed, Dr. Hendricks determined that the best course was to identify psychologists located and licensed in Texas and Wyoming who could conduct the testing and evaluations of Mr. Thorpe and Mr. McNabb. *Id.* ¶ 12 n.5.

Such a decision did not impact the reliability of Dr. Hendricks's opinions. As a preliminary matter, "there is nothing objectionable about an expert relying upon the work [of] a

colleague.” *Gopalratnam v. Hewlett-Packard Co.*, 877 F.3d 771, 789 (7th Cir. 2017); *Wilhelm v. Ameristep Corp.*, 2018 WL 6272911, at *6 (W.D. Va. Nov. 30, 2018) (holding that an expert “is entitled to rely on data provided by another [expert] where that data would be relied upon by experts in the relevant area”). The reliability of Dr. Hendricks’s opinions, therefore, cannot hinge on the fact that Dr. Hendricks reviewed the conclusions and relied on the evaluations of competent, licensed colleagues in other states.

Further, no bright-line, generally accepted rule—in the law or forensic psychology—exists stating that a psychologist must personally perform an evaluation or personally administer tests for a diagnosis to be reliable. For instance, the American Psychology Association’s guidelines for forensic psychology state that the reliability standard for psychologists is to “provide written or oral evidence about the psychological characteristics of particular individuals when they have *sufficient information or data to form an adequate foundation* for those opinions or to substantiate their findings.” APA, Specialty Guidelines for Forensic Psychology § 9.03 (emphasis added) (hereafter “APA Guidelines”).¹ Nowhere do the APA Guidelines state that personal interviews or evaluations, though preferred, are fundamental to a reliable psychological diagnosis. Indeed, the APA Guidelines expressly anticipate situations such as the one Dr. Hendricks faced, noting that situations may arise for forensic psychologists “[w]hen it is not possible or feasible to examine individuals about whom they are offering an opinion.” *Id.*² Thus,

¹ The APA’s Specialty Guidelines for Forensic Psychology are available at <https://www.apa.org/practice/guidelines/forensic-psychology> (last accessed on October 4, 2023).

² The APA Guidelines state that when a psychologist cannot personally examine an individual, the practitioner should “strive to make clear the impact of such limitation on the reliability and validity of their professional products, opinions, or testimony.” APA Guidelines § 9.03. Defendants have not, however, challenged Dr. Hendricks’s testimony on the ground that he failed to make clear the impact of his methodology on his opinions. Defendants contend that Dr. Hendricks’s testimony is *per se* unreliable because he did not personally administer the tests or (continued...)

Defendants’ assertion that the “generally accepted practice in the field of psychiatry and clinical psychology [is] that a diagnosis be based on an examination, including a personal interview and observations of the individual,” Motion at 4, proves overbroad and inaccurate.

Defendants’ cited case law also does not support Defendants’ overbroad arguments. For instance, Defendants cite *Cooper v. Smith & Nephew, Inc.*, 259 F.3d 194, 203 (4th Cir. 2001) for the proposition that this Court should exclude Dr. Hendricks’s opinions regarding Mr. Thorpe and Mr. McNabb for “failure to follow established industry best practices.” Motion at 4. *Cooper*, however, states explicitly that “[b]y itself, [a physician’s] failure to conduct a physical examination may not be grounds to exclude his methodology as unreliable.” 259 F.3d at 203 (emphasis added). The Fourth Circuit affirmed exclusion of the expert physician in *Cooper* solely because the expert (1) acknowledged that he always “insist[ed] upon a physical examination” for his own patients and (2) “had access to Cooper, and yet, for purposes of th[e] litigation, chose to deviate from his traditional method of evaluation.” *Id.*

No such evidence exists here. It is undisputed that Dr. Hendricks did not have access to personally interview Mr. Thorpe and Mr. McNabb. Defendants have also presented no evidence that Dr. Hendricks deviated from his traditional method of evaluation in circumstances such as this case. Indeed, Defendants entirely failed to question Dr. Hendricks in his deposition about whether relying on Dr. Smith’s and Dr. Cabeldue’s testing and evaluations was reliable or outside his traditional methodology. While they shirked their earlier opportunity to question Dr. Hendricks about this—raising doubts about the sincerity of their *Daubert* challenge—Defendants

perform the evaluations for Mr. Thorpe and Mr. McNabb. The APA Guidelines reject such a broad assertion.

certainly are free to pose those questions to him on cross-examination at trial. But this is not a basis to exclude his opinions, and nothing Defendants cite suggests otherwise.

Dr. Hendricks also properly opined on the diagnoses of Mr. Thorpe and Mr. McNabb, despite his conclusions varying from those offered by Dr. Smith or Dr. Cabeldue. Indeed, Dr. Hendricks did precisely what courts require of experts when one expert relies on the opinions and data of another expert. Dr. Hendricks “scrutinize[d] another expert’s opinion” and formed his own opinion—“not just show[ed] an unblinking reliance upon the opinions of other experts . . . simply because the other is an expert.” *In re Zetia (Ezetimibe) Antitrust Litigation*, 2022 WL 3337796, at *10 (E.D. Va. Aug. 3, 2022). In other words, Dr. Hendricks reviewed Mr. Thorpe’s and Mr. McNabb’s complete medical history, reviewed the test results from Dr. Cabeldue and Dr. Smith, reviewed his colleagues’ conclusions, and proceeded to provide his own opinions based on all the data available to him. For instance, Dr. Hendricks explained during his deposition that Dr. Cabeldue diagnosed Mr. Thorpe with “unspecified trauma and stress disorder,” which “is a diagnosis when you don’t feel you have enough information to diagnose PTSD.” ECF No. 368-2, Hendricks Dep. Tr. at 186:2–18. Dr. Hendricks explained that he could diagnose Mr. Thorpe with PTSD from the evaluation Dr. Cabeldue performed, his independent review of Mr. Thorpe’s test results, and his own review of Mr. Thorpe’s “institutional mental health medical record.” *Id.*

Further, Defendants deposed Dr. Hendricks on these points—as well as Dr. Smith and Dr. Cabeldue. And, once again, Defendants can cross-examine Dr. Hendricks at trial. Defendants have no basis, however, to exclude Dr. Hendricks—a licensed clinical psychologist who has been in practice for nearly 30 years and has served as an expert in more than 1,700 cases—simply because his diagnosis varied slightly from the diagnosis of a colleague. Further, even if

there were merit to Defendants' argument (there is not), such an argument goes solely to "the weight and credibility" of the witness'[s] argument, 'not its admissibility.'" *Bresler*, 855 F.3d at 195.

B. Dr. Hendricks's opinions that solitary confinement caused or exacerbated the mental health issues of certain Plaintiffs are reliable.

Dr. Hendricks considered other possible causes of the Plaintiffs' mental health issues in forming his opinions. In his report, Dr. Hendricks detailed his methodology, which included "review[ing] extensive institutional and mental health records for each of the Plaintiffs," "reviewing the affidavits of each of the Plaintiffs, which summarized their experiences in solitary confinement," and conducting extensive testing and evaluations on all but two Plaintiffs, which "result[ed] in a total contact time with each of the Plaintiffs that ranged from four to seven hours." ECF No. 368-1, Hendricks Rpt. ¶¶ 12–17. Indeed, every single one of the "other possible causes" of Plaintiffs' mental health issues that Defendants identified in their motion, which Dr. Hendricks allegedly "ignored," comes directly from Dr. Hendricks's expert report. *Compare* Motion at 7 (contending that Dr. Hendricks ignored that "Brooks reported diagnoses of emotional disabilities, including depression, ADHD, and intermittent explosive disorder as early as 8th grade and received treatment for mental health issues since childhood"), *with* ECF No. 368-1, Hendricks Rpt. ¶ 32 (Brooks "attended an alternative school starting at about eight or nine years old, with an Individualized Educational Plan (IEP) for Learning Disability and a serious Emotional Disability. He reported that he had prior diagnoses (while in school) of depression, Attention Deficit/Hyperactivity Disorder (ADHD) and Intermittent Explosive Disorder (IED)"). Yet Defendants argue that somehow Dr. Hendricks entirely ignored the same mental health history that he thoroughly walks through in his report. Defendants' contentions are contrary to the record and wholly incorrect. Defendants are free to cross-examine Dr. Hendricks regarding

his opinions that solitary confinement caused or exacerbated mental health issues in certain Plaintiffs. But disagreement with Dr. Hendricks's conclusions is not a basis for exclusion.

Defendants' argument that Dr. Hendricks failed to conduct a "differential diagnosis" is more of the same. As Defendants note, a differential diagnosis is "determining the possible causes for the patient's symptoms and then eliminating each of the potential causes until reaching one that cannot be ruled out or determining which of those that cannot be excluded is the most likely." Motion at 10. This is just another way of contending that Dr. Hendricks ignored other potential causes of an inmate's mental health issues. As stated, Dr. Hendricks explicitly and thoroughly explained each Plaintiffs' personal and mental health history and considered those inputs as part of his opinions. *See* ECF No. 368-1, Hendricks Rpt. ¶¶ 31–116.

The case law Defendants cite is not to the contrary. For instance, in their (mis)characterization of *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 262 (4th Cir. 1999), Defendants imply that the court excluded the expert's testimony because he had not conducted a differential diagnosis. In *Westberry*, however, the defendant challenged the reliability of an expert precisely because that expert had conducted a differential diagnosis, and the court merely held that "differential diagnosis provides a valid foundation for an expert opinion." *Id.* at 263. Defendants' arguments and cited case law demonstrate that their disagreement is with Dr. Hendricks's conclusions, not his methodology, which goes to weight and not admissibility. *Acosta*, 310 F. Supp. 3d at 667.

C. Dr. Hendricks's opinions are based on his review of medical histories and evaluations, not speculation

Dr. Hendricks's opinions are based on testing and evaluations of the Plaintiffs as well as reasonable inferences from the Plaintiffs' institutional files, including medical histories.

Defendants' arguments to the contrary simply cherry-pick and mischaracterize portions of Dr.

Hendricks's report. For instance, Defendants argue that Dr. Hendricks speculates that Mr. "Brooks's 'trauma-related' symptoms and memory issues 'seem[ed] new.'" Motion at 13. This is because, according to Defendants, Dr. Hendricks acknowledged in his deposition that "it's possible" that some of Mr. Brooks's trauma-related symptoms were "there before." ECF No. 368-2, Hendricks Dep. Tr. at 246:5–16. Yet Defendants misapply the standard. "[E]xperts are only required to state their opinions to 'a reasonable degree of certainty'"—not absolute certainty. *Norman v. Leonard's Express, Inc.*, 2023 WL 3531605, at *2 (W.D. Va. May 18, 2023). And Dr. Hendricks clearly stated that his opinions were based on a "reasonable degree of psychological certainty." ECF No. 368-1, Hendricks Rpt. ¶ 154. There is no conflict between Dr. Hendricks's opinion that, for instance, Mr. Brooks's symptoms seemed new and the acknowledgement that there were other "possible" explanations. *Cf. United States v. Adkins*, 937 F.2d 947, 950 (4th Cir. 1991) (holding that the "beyond a reasonable doubt" standard does not require proof "beyond all possible doubt" (emphasis added)). In another instance, Defendants allege that Dr. Hendricks speculated about Mr. Cavitt's medical history because "Hendricks claimed Cavitt had not been diagnosed with trauma-based symptoms prior to incarceration, but provides no evidence to support that statement." Motion at 13. Defendants therefore complain that Dr. Hendricks fails to cite a source for the *lack of any evidence* in Mr. Cavitt's medical history, effectively requiring Dr. Hendricks to prove a negative. As explained above, these types of arguments may be fodder for cross examination at trial, but they provide no basis for exclusion under *Daubert*.

Moreover, experts are permitted to make reasonable inferences from the records before them. *See Ferrell v. United States*, 2017 WL 3088390, at *4 (S.D. Ill. July 20, 2017) (noting that the expert "made acceptable inferences from the medical records and, to a reasonable degree of

medical certainty, formed an opinion”). That is precisely what Dr. Hendricks did, for instance, when he concluded that Mr. Brooks’s trauma-related symptoms “seem[] new.” ECF No. 368-1, Hendricks Rpt. ¶ 38. Inferring that a symptom is new based on the lack of similar symptoms appearing in any prior medical record is a reasonable inference. Similarly, Defendants argue that Dr. Hendricks improperly inferred that Mr. Cavitt had not experienced trauma-based symptoms before being incarcerated because there is no record of trauma-based symptoms in Mr. Cavitt’s medical history. Motion at 13. Again, Dr. Hendricks permissibly inferred that the lack of evidence in Mr. Cavitt’s medical records of trauma-based symptoms meant that Mr. Cavitt did not experience those symptoms before being incarcerated—an inference that is especially applicable for Mr. Cavitt who was “psychiatrically hospitalized three times growing up” and was therefore examined and treated numerous times prior to being incarcerated. ECF No. 368-1, Hendricks Rpt. ¶ 41.

Defendants’ arguments that Dr. Hendricks’s opinions are based on speculation are meritless and belied by the analysis actually included in Dr. Hendricks’s report. Further, “[a]lleged gaps in reason or a disagreement on causation are not a basis for exclusion of an expert. Instead, such arguments go to the weight of the evidence, not its admissibility.” *Lone Mountain Processing, Inc. v. Bowser-Morner, Inc.*, 2005 WL 1894957, at *51 (W.D. Va. Aug. 10, 2005).

D. Dr. Hendricks does not opine on medical issues

Defendants also seek to exclude non-existent “medical opinions” allegedly contained in Dr. Hendricks’s report. Defendants argue that Dr. Hendricks’s “[r]eport proceeds to offer causation testimony related to Plaintiffs’ experience of medical conditions, including hypertension, arrhythmia and glaucoma.” Motion at 16. Dr. Hendricks offered no such opinion.

The only references in Dr. Hendricks's report to hypertension, arrhythmia, or glaucoma in connection with any Plaintiff is Dr. Hendricks's recitation of certain Plaintiffs' medical histories. For instance, Dr. Hendricks noted that Cornelison reported that at Red Onion he "had episodes of arrhythmia and was diagnosed with having mild pulmonary hypertension," ECF No. 368-1, Hendricks Rpt. ¶ 51, and that Thorpe "reported that he developed hypertension and glaucoma," *id.* ¶ 113. Dr. Hendricks also explained that, "while it is not clear that [Thorpe's] diagnosis of glaucoma is attributable to solitary confinement," in the scientific literature "it has been fairly well-established that cardiac symptoms, such as his hypertension, and muscle atrophy are not uncommon effects of solitary confinement." *Id.* ¶ 116. Dr. Hendricks rendered no opinion (and does not plan to render any testimony) on any Plaintiffs' medical issues, including glaucoma, hypertension, or arrhythmia.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court DENY Defendants' Motion to Exclude the Testimony and Report of Plaintiffs' Proposed Expert Michael L. Hendricks.

Dated: October 5, 2023

Respectfully Submitted,

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Certificate of Service

I hereby certify that on the 5th day of October, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all CM/ECF participants.

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