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1 REPORTER'S RECORD  
 2 VOLUME 3 OF 4 VOLUME  
 SOAH DOCKET NO. 529-13-0997  
 3 HHSC-OIG CASE NO: P20111316523848911  
 4 ANTOINE DENTAL CENTER, (  
 PETITIONER, (  
 5 (  
 VS. ( BEFORE THE STATE OFFICE  
 6 (  
 TEXAS HEALTH AND HUMAN (  
 7 SERVICES COMMISSION, (  
 OFFICE OF INSPECTOR (  
 8 GENERAL, (  
 RESPONDENT ( ADMINISTRATIVE HEARINGS

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HEARING

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19 On the 30th of May, 2013, the following  
 20 proceedings came on to be heard in the above-entitled  
 21 and numbered cause before the Honorable Howard Seitzman  
 22 and Catherine Egan, Associate Law Judges presiding,  
 23 held in Austin, Travis County, Texas.

24 Proceedings reported by Machine Shorthand.

25

0002

1 A P P E A R A N C E S

2

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0004

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5	Jack Stick	186,248,271,337	275	242,271
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8 PETITIONER'S

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0005

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

2 JUDGE SEITZMAN: All right. Let's go on  
3 the record. It is 9:07 on Thursday, May the 30th,  
4 2013. This is the continuation of the hearing in SOAH  
5 Docket Number 529-13-0997. Judges Seitzman and Egan  
6 presiding.  
7 And at this time we're ready for the next

8 witness, Mr. Moriarty.

9 MR. MORIARTY: Your Honor, I --

10 MR. HILDER: The mic might not be on.

11 JUDGE SEITZMAN: All right. We need to --

12 MS. SILHAN: Yes, I'm Caitlyn Silhan for  
13 the respondent.

14 JUDGE SEITZMAN: Ms. Silhan, are you  
15 calling Dr. Kanaan as the next witness; is that  
16 correct?

17 MS. SILHAN: I am, yes. Dr. Kanaan, is  
18 that correct?

19 THE WITNESS: Good morning. Uh-huh.  
20 (Witness sworn.)

21 WAEL KANAAN,  
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SILHAN:

25 Q. Hi, Dr. Kanaan.

0006

1 A. Hi, good morning.

2 Q. Since this is the first time we've heard from  
3 you, I'd just like to give the Judges a little bit of  
4 your background.

5 A. Uh-huh.

6 Q. When did you become an orthodontist?

7 A. 2005.

8 Q. Okay. And how long have you been working with  
9 All Smiles?

10 A. All Smiles?

11 Q. I'm sorry. Antoine Dental Center.

12 A. Since December, 2006.

13 Q. Okay.

14 A. I started one day a week --

15 Q. Okay.

16 A. -- then I think two or three days a week.

17 JUDGE SEITZMAN: Doctor, can you pull  
18 that -- that's not a very sensitive mic. So, if you  
19 can pull it as close to you as possible, you can tilt  
20 it or whatever so you don't get a neck cramp.

21 THE WITNESS: Okay.

22 JUDGE SEITZMAN: Thank you.

23 Q. (BY MS. SILHAN) Do you work at any other  
24 clinics?

25 A. I have my own clinic --

0007

1 Q. Okay.

2 A. -- and two other clinics as a consultant once  
3 a month.

4 Q. What are the names of those clinics?

5 A. Antoine Dental -- are you talking about that  
6 we take Medicaid or in general?

7 Q. In general, all the clinics that you work for.

8 A. Sima Dental, S-I-M-A, Miles of Smiles and my  
9 office iSmile Specialist.

10 Q. Do you see Medicaid patients at all of those  
11 clinics?

12 A. Just at Antoine.

13 Q. Just at Antoine?

14 A. And Sima Dental, too.

15 Q. Okay.

16 A. We have a few patients.

17 Q. And are Sima, Miles of Smiles and iSmiles  
18 located near or in the vicinity of Antoine Dental?

19 A. (Witness shakes head.)

20 Q. No? Where are they?

21 A. Sima's in Channelview. iSmile's in Sugar Land  
22 and Miles of Smiles in Houston near the Galleria.

23 Q. Okay. So, not too far way?

24 A. Well, Channelview is about 30 miles from Sugar  
25 Land.

0008

1 Q. Okay.

2 A. Yeah.

3 Q. And for the record, where is Antoine Dental  
4 Center?

5 A. We have two offices.

6 Q. Okay.

7 A. One used to be on 6206 Antoine. Another one  
8 on Hillcroft.

9 Q. Okay.

10 A. They're both like 15 minutes, 20 minutes  
11 apart.

12 Q. Okay. So, as an orthodontist you see both  
13 private-pay patients --

14 A. Private pay.

15 Q. -- and Medicaid patients?

16 A. And Medicaid, yes, uh-huh.

17 JUDGE SEITZMAN: Doctor, if you'll be sure  
18 and let counsel finish their question before you answer  
19 it because the court reporter only brought two arms  
20 today. So...

21 MS. SILHAN: Okay. Let's pull up R82,  
22 please.

23 MR. RYTTING: Do we have R82?

24 MS. SILHAN: No, not -- not yet.

25 MR. RYTTING: And may I see it before you

0009

1 present it to the witness?

2 JUDGE SEITZMAN: Is this a direct exhibit,  
3 impeachment exhibit?

4 MS. SILHAN: This is an impeachment  
5 exhibit. I don't know the full purpose of whether we'd  
6 like to offer it yet. I have copies if you'd like to  
7 see.

8 JUDGE SEITZMAN: Be helpful.

9 MS. SILHAN: Okay.

10 MR. RYTTING: And --

11 JUDGE SEITZMAN: It would also be helpful

12 for us to establish what we're impeaching other than  
13 his name and the location of the offices.

14 MS. SILHAN: Okay. May I have just one  
15 moment?

16 JUDGE SEITZMAN: You may.

17 MS. SILHAN: One second. I apologize.

18 MR. RYTTING: Objection, Judge. I see no  
19 foundation.

20 JUDGE SEITZMAN: I appreciate you  
21 standing; but if you'll remain seated, you'll be closer  
22 to the mic. Pull the mic close. Pull the mic closer.

23 MR. RYTTING: They haven't laid a  
24 foundation --

25 JUDGE SEITZMAN: Pull the mic closer.

0010

1 MR. RYTTING: They haven't laid a  
2 foundation for this impeachment. They're just throwing  
3 it up as an exhibit.

4 MS. SILHAN: Okay. I'll be happy to offer  
5 it into evidence, your Honor.

6 JUDGE EGAN: Well, I think it's not --  
7 it's not a current exhibit; is that correct?

8 MS. SILHAN: It is not.

9 JUDGE SEITZMAN: it's being offered for  
10 impeachment but the only thing he's testified to so far  
11 is his name --

12 MS. SILHAN: Okay.

13 JUDGE SEITZMAN: -- and the location of  
14 the offices. If you're thinking --

15 MS. SILHAN: I apologize. It is out of  
16 order.

17 JUDGE SEITZMAN: -- to impeach that --

18 MS. SILHAN: Okay. I'm sorry. Then we  
19 can take it down. I can ask a few questions.

20 Q. (BY MS. SILHAN) When did you first learn  
21 about ectopic eruption?

22 JUDGE SEITZMAN: Pull your mic closer,  
23 please?

24 A. 2003, during my residency.

25 Q. (BY MS. SILHAN) Okay.

0011

1 A. Yes.

2 Q. Did you study any particular texts that  
3 discussed ectopic eruption in school?

4 A. Of course.

5 Q. Okay. What were those texts?

6 A. The same ones that Dr. Tadlock presented.

7 Q. Okay.

8 A. Proffit, Graber, the literature, of course,  
9 yes.

10 Q. Okay. Do you recall what those texts -- how  
11 they define "ectopic eruption"?

12 A. I wouldn't agree that they define. They  
13 describe what ectopic eruption was.

14 Q. Okay.

15 A. Yes.

16 Q. In that case, we have a copy of what is  
17 already in evidence as R30. It's a newer edition.  
18 This is a fourth edition, which is the edition that I  
19 believe you studied; is that correct?

20 A. I don't remember.

21 Q. You don't remember?

22 A. I don't know. I don't remember.

23 MS. SILHAN: Okay. Then let's pull up  
24 that last exhibit, please.

25 JUDGE SEITZMAN: 82?

0012

1 MS. SILHAN: Yes, sir.

2 Q. (BY MS. SILHAN) Okay. Does that refresh your  
3 recollection about the edition of the Proffit text that  
4 you studied?

5 MR. RYTTING: Your Honor, this is --

6 A. This is my --

7 JUDGE SEITZMAN: If you'll stay seated --  
8 I appreciate the courtesy. But just stay seated.  
9 You'll be a lot closer to the microphone and I'll be  
10 able to hear you.

11 MR. RYTTING: I'd just like to hear her  
12 lay the predicate for this exhibit.

13 JUDGE SEITZMAN: She's asking him if this  
14 helps refresh his memory as to which --

15 JUDGE EGAN: Edition.

16 JUDGE SEITZMAN: -- edition he studied.  
17 So, we'll see where --

18 A. I bought this book after I graduated. That's  
19 the new one. So, I did the one before but I think they  
20 have the same general --

21 Q. (BY MS. SILHAN) Okay. Great. They have the  
22 same?

23 A. They have the same, yes.

24 Q. Great. Okay. In that case we have excerpts  
25 from the third edition, which would be the one you

0013

1 studied.

2 A. That's fine. That's fine.

3 Q. Okay. That's in evidence as R30 and  
4 Dr. Tadlock discussed that.

5 A. Yes, uh-huh.

6 Q. I have a copy, a hard copy of the edition that  
7 you hold in that photo.

8 A. That's fine.

9 Q. May I -- you said that the definition of  
10 ectopic eruption is the same; is that right?

11 A. In this book. It hasn't changed --

12 Q. Okay.

13 A. -- that much.

14 Q. Okay.

15 A. I did not put all -- all of them -- all these

16 textbooks and try to compare piece by piece.

17 Q. Okay.

18 A. But the general concept is the same. Proffit

19 didn't changes --

20 JUDGE SEITZMAN: Doctor, can you pull that  
21 microphone to you? You're going to have to act like a  
22 singer where it's almost up to your lips. Okay? Thank  
23 you.

24 MS. SILHAN: May I approach?

25 JUDGE SEITZMAN: You may.

0014

1 Q. (BY MS. SILHAN) Do you see the highlighted  
2 portion here?

3 A. Uh-huh.

4 JUDGE SEITZMAN: Would you, for the  
5 record, describe which volume you're --

6 MS. SILHAN: Yes.

7 JUDGE SEITZMAN: -- and what page you're  
8 showing him?

9 Q. (BY MS. SILHAN) Would you like to do that?

10 THE WITNESS: It's the fourth edition,  
11 Page 139.

12 JUDGE SEITZMAN: Thank you.

13 Q. (BY MS. SILHAN) Could you please -- please  
14 read the highlighted portion?

15 A. Ectopic eruption occasionally malposition of a  
16 permanent tooth but can lead to eruption in the wrong  
17 place. This condition is called ectopic eruption.

18 Q. Okay. Does -- do you agree that that defines  
19 ectopic eruption as eruption in the wrong place?

20 A. That's a definition of Proffit and I agree  
21 with it --

22 Q. Okay.

23 A. -- in that case, yes.

24 Q. You agree with it?

25 A. Yes. What's in Proffit -- I can't say I don't

0015

1 agree what's in Proffit. It's a bible.

2 Q. Okay. I know we've heard a little bit of  
3 conflicting testimony both yesterday and on Tuesday  
4 about whether ectopic eruption is too subjective to  
5 meaningfully define.

6 Were you aware that your Proffit text  
7 discusses it on 13 separate pages?

8 A. Yes.

9 Q. Yes? Okay.

10 A. I didn't know there were 13; but yes, I know.

11 Q. Okay. And three different chapters?

12 A. I know at least two chapters.

13 Q. Okay.

14 A. Yes, uh-huh.

15 Q. Thank you.

16 I'd like to discuss your practice of  
17 scoring ectopic eruption in this case.

18 MS. SILHAN: Can we please pull up R83?

19 A. Score ectopic eruption on where?

20 Q. (BY MS. SILHAN) In the cases that we have,

21 the samples that we have.

22 A. On Medicaid patients?

23 Q. On Medicaid patients.

24 A. Based on Medicaid definition.

25 Q. So, you think -- you're asserting that

0016

1 Medicaid has a different definition --

2 A. Yes.

3 Q. -- of ectopic eruption?

4 A. Absolutely, yes.

5 Q. What is that definition?

6 A. It's an unusual pattern of eruption such as  
7 the high labial and the teeth and outside the lower  
8 axis of the tooth.

9 Q. Okay. So, you don't use your orthodontic  
10 schooling or background and the definitions you learned  
11 there when you treat Medicaid patients?

12 A. No. Of course, I use the definition to treat  
13 the patients. Of course I use it. You are talking  
14 about the diagnosis. HLD is diagnosis. You were  
15 asking me a question about treating. Treating and  
16 diagnosis are different. HLD is an index.

17 Q. Okay. So, let me -- okay. I'll rephrase.  
18 You diagnose Medicaid patients with different  
19 conditions than you would diagnose the same condition  
20 in a nonMedicaid patient?

21 A. That's not true.

22 Q. That's not true?

23 A. No. Diagnosis is the same. Again, I don't  
24 consider HLD as a diagnosis tool. It's an index.

25 Q. Okay, okay. I apologize. I think that you

0017

1 said that -- just now that HLD was a diagnosis tool?

2 A. No, no. I did not say that. HLD is not a  
3 diagnostic tool. It's an index.

4 Q. Okay.

5 A. It's a hematological index.

6 Q. Do you -- do you apply a definition of ectopic  
7 eruption when filling out the HLD index?

8 A. Based -- based on the Medicaid definition,  
9 yes, I do.

10 Q. Okay. And you're asserting here that Medicaid  
11 defines ectopic eruption in a different way than all 13  
12 pages of that Proffit text in front of you?

13 A. And I have that proof.

14 Q. What is the proof? I -- actually I'll take  
15 that back. I'd rather just clarify this point.

16 A. I would like later to explain to the Judges  
17 what other proof.

18 JUDGE SEITZMAN: I'm sure your counsel has  
19 made a note and will give you that opportunity but if

20 you can just answer the questions.

21 THE WITNESS: Yes, I will.

22 Q. (BY MS. SILHAN) Okay. So, you do not  
23 diagnose Medicaid patients in a different manner than  
24 you diagnose private pay patients?

25 A. Absolutely not.

0018

1 Q. At iSmiles --

2 A. Uh-huh.

3 Q. -- you do not see Medicaid patients; is that  
4 correct?

5 A. No, no.

6 Q. Are you familiar with your website on the  
7 iSmiles?

8 A. Yes.

9 Q. Do you recall whether you describe any  
10 particular diagnoses on that website?

11 A. Can you be, please, more specific or if you  
12 can show me what you're talking about because this  
13 website has a lot of things --

14 Q. I'd be happy to.

15 A. -- and I don't remember what's on it.

16 Q. Absolutely. That's a fantastic idea,  
17 actually.

18 MS. SILHAN: Can we pull up R85, please?

19 MR. RYTTING: Can I see what you're going  
20 to show the witness?

21 MS. SILHAN: I -- absolutely.

22 JUDGE SEITZMAN: Let's go off the record  
23 just a second, please, while we're doing that.

24 (Off the record)

25 JUDGE SEITZMAN: All right. Is there --

0019

1 MR. RYTTING: She -- she want -- I take it  
2 she wants to refresh his memory. If she wants to  
3 refresh his memory she can hand him the document, have  
4 him look at it and then she can take it back. It  
5 doesn't need to be displayed.

6 JUDGE SEITZMAN: As I understand it's a  
7 document that's already in evidence. It's from R28.  
8 It's two pages.

9 MS. SILHAN: It is.

10 MR. RYTTING: I don't believe it's in  
11 evidence, your Honor.

12 JUDGE SEITZMAN: Yeah. It was for  
13 impeachment purposes only.

14 JUDGE EGAN: But he asked to see it.

15 JUDGE SEITZMAN: But he asked to see it.  
16 So, we're going -- we're going to allow him to look at  
17 it.

18 MS. SILHAN: May I put it on the screen --

19 JUDGE SEITZMAN: Yes.

20 MS. SILHAN: -- or would you prefer the  
21 hard copy?

22 JUDGE SEITZMAN: Yeah. Well, does the  
23 witness have a copy?

24 MS. SILHAN: No. I was asked to withdraw  
25 that copy.

0020

1 JUDGE SEITZMAN: Go ahead and hand the  
2 witness a copy. The objection's overruled.

3 MR. RYTTING: Just one other objection.  
4 I'm not -- it's still not a proper predicate for  
5 impeaching him. I have no idea --

6 JUDGE SEITZMAN: It's not being used for  
7 impeachment for this purpose. He -- she asked him a  
8 question about the website and he asked to see it and  
9 so, she is offering him the portion of that.

10 MR. RYTTING: Yes, sir.

11 Q. (BY MS. SILHAN) Okay. We're looking at a  
12 page from your website on iSmile; is that correct?

13 A. Yes.

14 Q. Okay. Up at the top of the screen you list  
15 several conditions; is that right?

16 A. Under braces, yes. Uh-huh.

17 Q. For braces, that's right.

18 A. Yes, uh-huh.

19 Q. Can you read from left to right?

20 A. Spacing, crowding, overbite, open bite,  
21 cross-bite, underbite.

22 Q. Okay. Now, can you flip to the next page of  
23 that document?

24 A. Uh-huh.

25 Q. Okay. And is this an example of crowding?

0021

1 A. Of course.

2 Q. Okay.

3 MS. SILHAN: Can we pull up P20-13 next to  
4 this?

5 Q. (BY MS. SILHAN) Okay. That's crowding on  
6 left, correct?

7 A. Yes, uh-huh.

8 Q. In a nonMedicaid patient?

9 A. We opened this office back in October. So,  
10 when I opened the office --

11 Q. Yes or no, sir. Was it a nonMedicaid patient?

12 A. It's a Medicaid patient.

13 Q. It's a Medicaid patient?

14 A. Yes.

15 Q. But you do not treat Medicaid at iSmiles. Is  
16 that what you testified to earlier?

17 A. Yes. But that's why I was explaining to you.  
18 These patients are from Antoine -- Antoine Dental but  
19 because I don't have a good record -- when we start the  
20 office, it's a brand-new office, before and after.

21 Q. Okay.

22 A. So, I took my patients from Antoine and I put  
23 them on the website. So, that's a Medicaid patient.

24 Q. Did you score that Medicaid patient as  
25 crowding?

0022

1 A. No. I scored them as ectopic.

2 Q. You scored that patient as ectopic?

3 A. Yes.

4 Q. You gave him a different diagnosis because  
5 he's a Medicaid patient?

6 A. It's not a diagnosis. Again HLD is not a  
7 diagnosis. It's an index. This is one thing; this is  
8 one -- another thing.

9 Q. Okay. So, you do not apply or describe a  
10 diagnosis on the HLD form?

11 A. On the bottom there's a box that states  
12 diagnosis.

13 Q. Okay.

14 A. I write down there it's Class I or what they  
15 have.

16 Q. Okay. What is ectopic eruption? Is it a  
17 diagnosis?

18 A. It's a description of the position of the  
19 tooth.

20 Q. Okay. Is crowding a description of the  
21 position of the tooth?

22 A. It's a quantitative measurement of how much  
23 length and space we have. One is description. One is  
24 a quantitative measurement of how much lack of space we  
25 have.

0023

1 Q. Okay.

2 A. It's two different things.

3 Q. Okay. Did you diagnose crowding in the  
4 patient on the right, do you recall?

5 A. Oh, I don't know. You need, please, to show  
6 me the record.

7 Q. Okay. I'd be happy to.

8 A. Let me see all of it, please.

9 MS. SILHAN: Okay. That's P20.

10 Q. (BY MS. SILHAN) And I believe I can --

11 A. This is my patient?

12 Q. It is your patient, and I believe I can pull  
13 that up for you. I have the hard copy as well.

14 JUDGE EGAN: While you're doing that, I  
15 just want to -- you said crowding is a quantitative  
16 measurement --

17 THE WITNESS: Yes.

18 JUDGE EGAN: -- of what? It's --

19 THE WITNESS: Of the lack of space --

20 JUDGE EGAN: Of the lack of space. Thank  
21 you.

22 THE WITNESS: -- between the teeth and the  
23 bone that support the teeth.

24 JUDGE EGAN: Okay. Thank you.

25 THE WITNESS: Uh-huh.

0024

1 Q. (BY MS. SILHAN) This is your HLD form for  
2 this patient?

3 A. Correct, ma'am.

4 Q. Is that correct?

5 A. Yes, uh-huh.

6 Q. Did you diagnose crowding?

7 A. This patient is not for that HLD.

8 Q. No, it's not.

9 A. Yes.

10 Q. Right. Can you -- okay. On the left can you,  
11 please, pull up the photo one more time? That's  
12 P20-13.

13 MR. RYTTING: Objection, your Honor. I --  
14 with all due respect I cannot tell whether that  
15 photograph goes with the paperwork or with --

16 JUDGE SEITZMAN: Well, it's -- if the  
17 witness can --

18 MS. SILHAN: Can we look at the Bate stamp  
19 at the bottom?

20 JUDGE SEITZMAN: If the witness can  
21 identify it --

22 MR. RYTTING: Yes, sir.

23 JUDGE SEITZMAN: -- then I guess maybe we  
24 can move from there.

25 MS. SILHAN: Can we look at the Bate stamp

0025

1 at the bottom of the page on the left? And the stamp  
2 on the right is the one I'd like to look, at the bottom  
3 right of the page on the left.

4 Thank you.

5 Q. (BY MS. SILHAN) Did you diagnose crowding in  
6 this patient?

7 A. No. I put it as ectopic eruption. So, it is  
8 crowded, yes; but on the HLD I put it as ectopic.

9 Q. Okay. But the HLD is not --

10 A. A diagnosis.

11 Q. Okay. But there is a diagnosis field; is that  
12 right?

13 A. On the bottom, yes.

14 Q. Okay. Let's see that -- that diagnosis field.  
15 Did you diagnose crowding on this patient?

16 A. I didn't put it as over there because it has  
17 already been described under the HLD.

18 Q. Okay.

19 A. I put --

20 Q. Let's go back to the HLD and see if it  
21 diagnosis crowding. What did you score for crowding on  
22 this patient, Dr. Kanaan?

23 A. Zero.

24 Q. Okay. So, you did not diagnose this patient  
25 with crowding. Is that because this is a Medicaid

0026

1 patient?

2 JUDGE SEITZMAN: I'm sorry. Hang on. We  
3 need a verbal answer, Doctor. You shook your head but  
4 we need a verbal answer for the record.

5 A. I'm sorry. You keep saying you did not  
6 diagnose on the HLD and he keep telling you HLD is an  
7 index to describe.

8 Q. (BY MS. SILHAN) Okay. Let's -- let's scroll  
9 down.

10 A. We're mixing -- mixing two things.

11 Q. Okay. Well, I'd like to clarify.

12 A. See, I --

13 Q. Let's look at the diagnosis field on the HLD,  
14 please.

15 A. And could you, please, go all the way down  
16 because it wasn't enough -- I want to show all the way  
17 down. See I put down Class II on the right upper --

18 (Court reporter interrupted.)

19 A. In the diagnosis, my diagnosis contains what's  
20 inside the box and what's all underneath because the  
21 box is small. So, I put the patient has Class II on  
22 the right side. The upper midline is 2 millimeter to  
23 the right.

24 Q. (BY MS. SILHAN) I believe that's as far as  
25 you got.

0027

1 JUDGE EGAN: All right. But I want him to  
2 ride his diagnosis.

3 MS. SILHAN: Okay, okay.

4 THE WITNESS: And then it says blocked  
5 upper right three, cross-bite upper left five. The  
6 patient need -- has a narrow jaw. I explained as an RP  
7 patient needs rapid panel expander. After I'm done  
8 with the expansion, I need to put an open core to fix  
9 the midline for upper right three. Patient might need  
10 destabilization to fix that Class II. And I put a note  
11 that the lower five roots are short based on the X ray.  
12 We don't diagnose only from the pictures.

13 Q. (BY MS. SILHAN) Okay.

14 A. I take that whole and I put a note there  
15 because of the roots are short start only -- start at  
16 the top on the beginning and then later catch the  
17 bottom because the top has most of the problem.

18 Q. Okay. Let's clarify for the Judges.

19 A. Yes.

20 Q. Did you list crowding as a diagnosis in this  
21 patient?

22 A. All what I told you is crowding.

23 Q. Yes or no?

24 A. Yes. In the --

25 Q. You diagnosed crowding on this HLD?

0028

1 A. If I don't say crowding by itself and describe  
2 it block -- what is block three? It's crowding. Why  
3 are you trying --

4 Q. Did you diagnose crowding on this HLD form  
5 that you submitted to TMHP?

6 A. Yes.

7 Q. And you -- and you certified that it was true  
8 and accurate?

9 A. Yes. Any dentist who can read this or they  
10 know that it's crowding.

11 Q. Sir --

12 JUDGE SEITZMAN: Just answer the question,  
13 please.

14 THE WITNESS: Yes, okay.

15 JUDGE SEITZMAN: Your attorney will give  
16 you a chance to explain it if he wants to ask you those  
17 questions.

18 Q. (BY MS. SILHAN) So, you did not need to write  
19 the diagnosis in the diagnosis box because your blank  
20 space for anterior crowding on this form would tell the  
21 reader of the form that you're diagnosing crowding in  
22 this patient?

23 A. I should have placed zero. I should have  
24 placed a zero.

25 Q. You should have placed zero --

0029

1 A. Yes.

2 Q. -- for crowding --

3 A. Yes.

4 Q. -- to indicate there's no crowding?

5 A. No. See, the manual says record the most  
6 severe condition. So --

7 Q. The manual also asks you to list a diagnosis.  
8 You listed -- you read several lines of text, correct,  
9 for the Judge -- for Judge Egan?

10 A. Yes, uh-huh.

11 Q. Did any of those lines say crowding?

12 A. No, it doesn't say --

13 Q. Were all of those lines describing your  
14 diagnosis --

15 JUDGE SEITZMAN: Counsel, Counsel, make  
16 sure he finishes his answers before you cut him off.

17 MS. SILHAN: Oh, I'm sorry.

18 Q. (BY MS. SILHAN) You said no; is that correct?

19 A. It doesn't say crowding but it describes  
20 crowding.

21 Q. Okay. Let's actually pull up another example.  
22 One moment while I find it.

23 MS. SILHAN: Can we pull up P5-0067?

24 Q. (BY MS. SILHAN) Okay. Let's read the  
25 diagnosis box in this patient.

0030

1 A. Class I crowding.

2 MR. RYTTING: What -- pardon me. What  
3 record are you --

4 MS. SILHAN: This is P -- your Patient

5 Number P -- 006 is the page number. It's Patient 5 --

6 I'm sorry. It's P5-006. Would you like to see the  
7 stamp at the bottom?

8 MR. RYTTING: No. I just wanted to know  
9 what the exhibit was. P5?

10 MS. SILHAN: P5-006.

11 MR. RYTTING: Patient 5 and it's your  
12 exhibit -- it's our exhibit number?

13 MS. SILHAN: It's your exhibit.

14 MR. RYTTING: Okay.

15 Q. (BY MS. SILHAN) Let's go up and look at the  
16 space for crowding on that form. Can you tell the  
17 Court what you listed for crowding on this patient in  
18 the HLD index?

19 A. I did not -- I put zero. I didn't put  
20 anything on the crowding because the --

21 Q. And did you score ectopic eruption instead?

22 A. Yes.

23 JUDGE SEITZMAN: Again, be sure he's  
24 finished his answer before you start your next  
25 question.

0031

1 MS. SILHAN: Okay. I'm sorry.

2 JUDGE SEITZMAN: Both -- both parties need  
3 to slow down just a little bit for us.

4 MS. SILHAN: Okay.

5 Q. (BY MS. SILHAN) I'm going to ask you one more  
6 yes-or-no question. Did you score anterior crowding on  
7 this patient?

8 A. I did not.

9 Q. Okay. Did you instead score ectopic eruption?

10 A. I followed the instruction on the manual what  
11 it says, only record the severe condition.

12 Q. Okay.

13 A. So, I put ectopic.

14 Q. And -- thank you.

15 For this diagnosis, though, you listed  
16 crowding; is that correct?

17 A. I put the diagnosis as crowding and the  
18 description as ectopic.

19 Q. Okay. Thank you.

20 MS. SILHAN: And I just want to go back  
21 quickly to P20-13. Actually I think the HLD might be  
22 on a different page. P20-11, please. And I'd like to  
23 do a side by side between P20-11 and P05-006.

24 Q. (BY MS. SILHAN) Okay. So, in some cases you  
25 do not think the reviewer of a form could tell it's

0032

1 crowding; and so, you write it in the diagnosis field;  
2 is that correct?

3 A. Could you, please, rephrase your question?

4 Q. Yes. When we were discussing the form on the  
5 left, which is page -- the HLD for Patient 20 --

6 A. This one.

7 Q. -- you indicated -- this is the one on the

8 left.

9 A. Okay.

10 Q. You see it says P20-001 or 011 on the top?

11 A. Yes.

12 Q. Okay. That's your HLD for patient 20.

13 A. Okay.

14 Q. You explained that you did not need to list  
15 crowding; although --

16 MS. SILHAN: If you scroll down a little  
17 bit.

18 Q. (BY MS. SILHAN) -- you describe several other  
19 conditions?

20 A. I didn't say that, no.

21 Q. You said that anyone reading this form would  
22 be able to tell it's crowding; is that correct?

23 A. Yes.

24 Q. Okay.

25 A. Any dentist --

0033

1 Q. Now, on the form on the right --

2 MR. RYTTING: He needs to finish his  
3 answer, please.

4 MS. SILHAN: I apologize. I thought I was  
5 asking a yes-or-no question.

6 A. Any dentist who look at this one he will  
7 understand there's severe crowding with the case.

8 JUDGE SEITZMAN: Doctor, it's going to go  
9 a lot faster and your counsel will have a chance to ask  
10 you questions but if you're asked a yes-or-no  
11 question --

12 THE WITNESS: Yes, sir.

13 JUDGE SEITZMAN: -- please try to answer  
14 yes or no, if you can.

15 THE WITNESS: Yes, sir.

16 JUDGE SEITZMAN: And if you need to  
17 explain it, you can answer it and say, "But I need to  
18 explain it."

19 THE WITNESS: Okay. Yes.

20 JUDGE SEITZMAN: And counsel will figure  
21 out what they want to do from there.

22 THE WITNESS: Yes, sir. Yes, sir.

23 Q. (BY MS. SILHAN) But on the right on the form  
24 with substantially less information, you needed to list  
25 crowding although you did not score it; is that

0034

1 correct?

2 A. Say it again, please? I don't understand --

3 Q. Sure.

4 A. -- the point you're trying to make.

5 Q. Okay. I'm not so concerned if you understand  
6 the point. I'd just like to clarify the facts.

7 On the HLD form on the right --

8 A. Uh-huh.

9 Q. -- you do not score crowding; is that correct?

10 A. Correct.  
11 Q. You diagnose crowding; is that correct?  
12 A. Correct.  
13 Q. You list a score for overjet, correct?  
14 A. Correct.  
15 Q. A score for overbite?  
16 A. Correct.  
17 Q. A score for ectopic eruption?  
18 A. Correct.  
19 Q. For a total of 27 points?  
20 A. Correct.  
21 Q. Okay. But you felt that you needed to explain  
22 that that was crowding, correct, although you did not  
23 score it?  
24 THE WITNESS: May I explain something?  
25 Q. (BY MS. SILHAN) Could you answer the question  
0035

1 first and then explain, please?  
2 A. Say the question again.  
3 Q. Could you read the question one more time.  
4 (Requested material was read back as  
5 follows:  
6 "QUESTION: Okay. But you felt that you  
7 needed to explain that that was crowding, correct,  
8 although you did not score it?")  
9 JUDGE SEITZMAN: Hang on. Hang on. Make  
10 sure she has a chance to get back to her keyboard.  
11 A. Yes.  
12 Q. (BY MS. SILHAN) Okay. Thank you.  
13 A. So, can I explain now or...  
14 Q. I believe that you've --  
15 A. That's fine.  
16 Q. -- spoke substantially about these HLD forms.  
17 A. Okay. That's fine.  
18 Q. Okay. Thank you.  
19 I'd like to discuss -- I know we just  
20 talked about crowding and the difference between a  
21 diagnosis for Medicaid and an HLD -- I'm sorry -- an  
22 HLD index for Medicaid and a diagnosis for private-pay  
23 patients.  
24 I'd like to turn to how you apply the  
25 definition of ectopic eruption in the 28 patients of  
0036

1 the 26 on this sample that you scored.  
2 JUDGE SEITZMAN: You mean 26 of the 28?  
3 MS. SILHAN: I'm sorry. Of the 63. The  
4 28 of the 63 that you scored.  
5 Q. (BY MS. SILHAN) I've got a quick visual and  
6 we can go one by one. So --  
7 A. Excuse me. I'd like to state one -- what's in  
8 the exhibit. In the exhibit that we submitted has only  
9 21 cases. So, I want to stick, please, with the 21  
10 cases.  
11 Q. We have 63 cases?

12 A. No, 21 that are under my name. The exhibit --  
13 Q. Okay. We can -- we can go through these cases  
14 if you --  
15 A. The 21 please, yes.  
16 Q. Okay. Did you score Patient 2?  
17 A. Yes. There -- yes, uh-huh.  
18 Q. Okay.  
19 A. Yes.  
20 Q. Did you score Patient 5? Would you like to  
21 look at the HLD forms of those cases?  
22 A. I think -- I think so.  
23 MS. SILHAN: They're your records. Do you  
24 need to see them?  
25 MR. RYTTING: Yeah. I'd like to see them.  
0037

1 MS. SILHAN: Your Honor, may I approach to  
2 give him the HLD form that he's requested to see?  
3 JUDGE SEITZMAN: Let's just let counsel  
4 look at them first. These are all HLD scores that are  
5 in the record, Counsel?  
6 MR. RYTTING: Yes, yes. I'm going through  
7 them quickly just to make sure the signature's on  
8 these.  
9 MS. SILHAN: Well, I'd like the witness to  
10 describe his signature on the forms.  
11 JUDGE SEITZMAN: Well, but it was just a  
12 courtesy of what you asked the witness.  
13 MS. SILHAN: Oh, absolutely. Yes.  
14 Q. (BY MS. SILHAN) Okay. So, we're going to  
15 look at the HLD for Patient 5.  
16 A. Uh-huh.  
17 MS. SILHAN: Stacey, can you pull up  
18 P05-006.  
19 Q. (BY MS. SILHAN) Okay. Do you see your  
20 signature on that page?  
21 A. Yes, uh-huh.  
22 Q. Okay. Thank you.  
23 MS. SILHAN: Stacey, can you --  
24 Q. (BY MS. SILHAN) I'd like to -- do you recall  
25 whether you scored Patient 6, whether you -- I  
0038

1 apologize.  
2 A. I'm sorry.  
3 Q. We can -- we can pull it up.  
4 A. Yes.  
5 MS. SILHAN: P06 is the first page.  
6 Q. (BY MS. SILHAN) Is that your signature down  
7 there?  
8 A. Yes, uh-huh.  
9 Q. Okay. Thank you.  
10 MS. SILHAN: P --  
11 Q. (BY MS. SILHAN) Do you recall whether you  
12 scored Patient 7?  
13 A. I don't remember. Can you show it to me? If

14 it's in the list, then yes.

15 JUDGE SEITZMAN: Maybe, Counsel, if you  
16 want to make it go a little bit faster, you might give  
17 him the scoring sheets and show him the patients and  
18 just get that confirmed. Might be easier for him just  
19 to look at his signature if you've got those.

20 MS. SILHAN: Sure. There's just several.  
21 I'd be happy to.

22 JUDGE SEITZMAN: Right. You can do that  
23 all at one time and you can verify that those are the  
24 patients.

25 MS. SILHAN: Okay.

0039

1 JUDGE SEITZMAN: Can we go off the record  
2 a second while we do this?

3 (Off the record)

4 Q. (BY MS. SILHAN) I think I can actually  
5 clarify. One moment.

6 JUDGE SEITZMAN: And let me just note  
7 while you're looking, what we did while we were off the  
8 record, you handed the witness some scoring forms; and  
9 so, he had an opportunity, while we were off the  
10 record, to go through and confirm whether or not he was  
11 the one who scored various patients.

12 Is that correct, Doctor?

13 THE WITNESS: Yes.

14 Q. (BY MS. SILHAN) And you handed me one form  
15 that you did not score, correct?

16 A. No. You asked me who the signature is and  
17 that's not my signature.

18 Q. Are you saying you scored the form but not  
19 sign it?

20 A. No, I didn't say that.

21 Can you show it to me again? That has Dr.  
22 Nazari's signature.

23 Q. Correct. So, you handed me one form that you  
24 did not sign; is that correct?

25 A. Yes, I handed you one -- one -- not my form.

0040

1 this is not my form. How do you --

2 Q. I'm agreeing with you.

3 JUDGE SEITZMAN: Doctor, she's asking you:  
4 The form that you handed her back was a form that you  
5 did not sign.

6 THE WITNESS: Correct. Yes.

7 JUDGE SEITZMAN: It was not your  
8 signature?

9 THE WITNESS: Yes, uh-huh.

10 Q. (BY MS. SILHAN) That was one form out of the  
11 group that I handed you, correct?

12 A. Yes, uh-huh.

13 Q. You signed all the rest, correct?

14 A. Yes, uh-huh.

15 Q. All right. That was Patient 57. I apologize

16 for including that patient.

17 So, to confirm, you did score Patients 2,  
18 5, 6, 7, and 8? These are patients -- I mean, I handed  
19 you the forms. I can --

20 JUDGE EGAN: Give him a chance to look  
21 through.

22 A. It doesn't say 2, 5, 6. But I'll go with what  
23 you said that I did. It doesn't say here 2, 5.  
24 There's no numbers. All it says is 11-09, 11-15.

25 Q. (BY MS. SILHAN) Okay. We can -- I'll be  
0041

1 happy to pull up the HLD on the screen. These are the  
2 forms I just handed you.

3 A. Yes, yes.

4 Q. You only handed one back and explained that  
5 you did not sign only one of the 28 that I gave you.  
6 Okay.

7 A. Yes.

8 JUDGE EGAN: And he's -- he's saying that  
9 the numbers that you're using -- you need to show him  
10 where they are on that form so he can --

11 MS. SILHAN: The name -- these are -- if I  
12 might explain to the Court, these are petitioner's  
13 exhibits. They are not redacted and they do not have  
14 patient numbers on them.

15 JUDGE SEITZMAN: I understand but you've  
16 got the redacted electronic version that you're going  
17 to put up so we -- right?

18 MS. SILHAN: Yes. I can -- I can do that.

19 JUDGE SEITZMAN: So, as you go through and  
20 talk to him about it, you're going to put up the  
21 electronic version that we can confirm the patient and  
22 exhibit number.

23 MS. SILHAN: Okay. So, I've prepared a  
24 summary and we can look at the files.

25 So, Stacey, can you pull up -- yes. Yes,  
0042

1 Please, R83. This is not in evidence. It's a summary.

2 MR. RYTTING: I'd like to see that summary  
3 before you put it up.

4 MS. SILHAN: Your Honor, this is a summary  
5 to help the Court. He just --

6 JUDGE SEITZMAN: All he's asked to do  
7 is -- counsel has asked to see a copy of the document  
8 you're putting up.

9 MS. SILHAN: Okay. I have it in  
10 spreadsheet form if he'd like to see it.

11 MR. RYTTING: It's not the -- that's not  
12 going to be the form you put it up?

13 MS. SILHAN: I can put it up in the  
14 spreadsheet form. We prepared a graphic that shows the  
15 exact same information with Dr. Kanaan's handwriting on  
16 it.

17 JUDGE SEITZMAN: If you've got the

18 spreadsheet, just give him a copy of the spreadsheet,  
19 please.

20 You can keep -- you can keep the summary.

21 MS. SILHAN: Okay. Can you, please, pull  
22 the summary up, R83?

23 MR. RYTTING: We have some questions about  
24 going and questioning the witness about a summary that  
25 they've -- they've created. If they want to go patient  
0043

1 by patient, they can do so. I do not -- I can't

2 comprehend what this is about. I'd like to show it --

3 JUDGE SEITZMAN: You're not on the stand,  
4 Counsel. So...

5 MR. RYTTING: May I approach the Court --

6 JUDGE SEITZMAN: No.

7 MR. RYTTING: -- and show you what's been  
8 summarized?

9 JUDGE SEITZMAN: No. Counsel, it's a  
10 summary. If it's a summary of the data that's in the  
11 record, we're going to allow Counsel on cross to go  
12 through it and we'll see what the witness has to say  
13 about it but the fact that you don't understand it  
14 doesn't necessarily make a difference at this point.

15 Let's go on.

16 MR. RYTTING: She's handed me something  
17 different.

18 JUDGE SEITZMAN: I have ruled. I have  
19 ruled.

20 MR. RYTTING: Okay.

21 Q. (BY MS. SILHAN) Dr. Kanaan, to describe what  
22 we're looking at this is a bar chart and it shows the  
23 possible points for ectopic eruption on the left. Do  
24 you see that?

25 A. Yes, uh-huh.

0044

1 Q. Okay. Do you see at the bottom a number?

2 That's the patient number; is that correct?

3 A. Yes, uh-huh.

4 Q. Okay. Do you see below that a grid?

5 A. Yes. That's mine, too.

6 Q. That's yours?

7 A. Uh-huh.

8 Q. Okay. So, we're looking at Patient 2 and you  
9 scored 24 points for ectopic; is that right?

10 A. Uh-huh.

11 Q. And you have the HLD form in front of you, if  
12 you'd like to consult it.

13 A. Yes, uh-huh.

14 Q. Counsel also has a copy.

15 JUDGE SEITZMAN: Doctor -- excuse me -- if  
16 you're going to say something, you need to speak up  
17 loud enough for the mic to pick it up, please.

18 Q. (BY MS. SILHAN) Can you explain what this  
19 grid represents at the bottom?

20 A. You need to pull the pictures. I cannot just  
21 do it off of this one.

22 Q. You have the HLD forms in front of you. I'll  
23 be happy to also pull up P02.

24 A. No. I want --

25 Q. It's the first HLD form in front of you.

0045

1 A. -- the pictures of the patients how I scored  
2 it. I can't --

3 Q. I'm not asking you to explain how you scored  
4 it. I'm asking you to tell us what the marks that you  
5 made on the HLD forms with your signature what those  
6 marks mean.

7 A. It tells that we have eight ectopic.

8 MR. RYTTING: Objection, your Honor.

9 This -- this summary is not a document that he created.

10 We have documents that are -- that have exactly that  
11 information on it that contain his other scores that  
12 will allow him to comment and explain.

13 JUDGE SEITZMAN: You'll have your  
14 opportunity.

15 MR. RYTTING: Under Rule 106 I don't think  
16 this --

17 JUDGE SEITZMAN: You'll have your  
18 opportunity on -- I guess I'm calling cross direct  
19 since we're kind of doing it backwards. So -- but it's  
20 a summary and it comes from the evidence that's in the  
21 record. And she's entitled to ask him questions about  
22 it. They're his marks. So...

23 Go ahead. Would you repose your question,  
24 Counsel?

25 MS. SILHAN: Yes.

0046

1 Q. (BY MS. SILHAN) Can you explain to the Court  
2 what the grid below Patient Number 2's bar represents?

3 A. It represents that this patient has eight  
4 ectopic teeth based on my comprehensive diagnosis and  
5 these eight teeth are the upper and lower central and  
6 lateral incisors.

7 Q. Okay. So, in laymen's terms those are the  
8 upper four front teeth?

9 A. Yes.

10 Q. And the lower four front teeth, correct?

11 A. Yes, uh-huh.

12 Q. But not the canines on either side; is that  
13 correct?

14 A. No canines. No.

15 Q. Okay.

16 MS. SILHAN: Let's pull up P02.

17 Q. (BY MS. SILHAN) We're looking at your HLD  
18 form for Patient 2, correct?

19 A. Yes, yes. Uh-huh.

20 Q. Okay. Does the grid on this HLD form  
21 represent the same information, is it the same grid as

22 the one on the graph?

23 A. Yes.

24 Q. Okay. Thank you.

25 And to confirm, your score for this

0047

1 patient was 24 points for ectopic teeth?

2 A. Yes.

3 Q. And the upper four teeth were all ectopic.

4 The upper four front teeth were all ectopic?

5 A. Yes.

6 Q. And the bottom four front teeth were also  
7 ectopic?

8 A. Yes.

9 MS. SILHAN: Okay. Let's move on to

10 Patient 5, please. Let's just look at P05-006 on the

11 left and we can keep R83 on the right, if that's okay.

12 Q. (BY MS. SILHAN) Can you read your HLD ectopic  
13 eruption score for Patient 5?

14 A. This patient based on my comprehensive  
15 evaluation has eight ectopic teeth, the four front  
16 teeth on the top and four teeth on the bottom. Total  
17 score 24.

18 Q. Okay. Thank you. Is that the same score as  
19 Patient 2?

20 A. It's the same score as Patient Number 2.

21 Q. And the same teeth are ectopic as Patient  
22 Number 2, correct?

23 A. Yes.

24 Q. Thank you.

25 Let's look at Patient 6 now.

0048

1 MS. SILHAN: Pull up 06 on the left and we  
2 can keep R83 on the right.

3 Q. (BY MS. SILHAN) Can you, please, read us your  
4 score for ectopic teeth on this patient?

5 A. This patient based on my comprehensive  
6 evaluation has eight ectopic teeth, the four front and  
7 the four bottom, total point 24 points.

8 Q. Is that the same score --

9 A. Yes, it is.

10 Q. -- for -- let me finish my question one  
11 moment.

12 -- for Patient 5?

13 A. Yes, it is.

14 Q. And Patient 2?

15 A. Yes, it is.

16 Q. Okay. And the same teeth are ectopic in all  
17 three patients; is that correct?

18 A. Yes.

19 Q. Thank you.

20 MS. SILHAN: Let's do 7 now. That's  
21 P07-003 on the left.

22 Q. (BY MS. SILHAN) Can you, please, read your  
23 ectopic score for this patient?

24 A. Based on my comprehensive evaluation, this  
25 patient has eight ectopic teeth, the four front and the  
0049

1 four bottom ones, total score 24.

2 Q. Is that the same total score --

3 A. Yes, it is.

4 Q. -- as you had for Patient 6?

5 A. Yes, it is.

6 Q. Patient 5, Patient 2?

7 A. Yes.

8 JUDGE SEITZMAN: Counsel, I just want to  
9 be clear. Are you asking if it's the same total score  
10 or the same ectopic eruption score?

11 MS. SILHAN: I apologize. The same score  
12 for ectopic eruption. I'm sorry. The same score for  
13 ectopic eruption.

14 Q. (BY MS. SILHAN) Is that correct?

15 A. Yes.

16 Q. Thank you.

17 Were the same teeth scored as ectopic in  
18 Patient 7 as Patient 6?

19 A. Yes.

20 Q. As Patient 5?

21 A. Yes.

22 Q. As Patient 2?

23 A. Yes.

24 Q. Thank you.

25 MS. SILHAN: Okay. On the left let's pull  
0050

1 up Patient 8, P08. It's the first page of the file.

2 Q. (BY MS. SILHAN) Dr. Kanaan, can you, please,  
3 read your ectopic eruption score for this patient?

4 A. Based on my comprehensive evaluation, this  
5 patient has eight ectopic teeth, the four front ones  
6 and four bottom ones, total score 24 for ectopic  
7 eruption.

8 Q. We can cut to the chase here. That's the same  
9 score for Patient 2, 5, 6 and 7?

10 A. Yes.

11 Q. Okay. And the same teeth are ectopic in 2, 5,  
12 6 and 7 and the current Patient 8?

13 A. Yes.

14 Q. Okay. Thank you.

15 Is this a pattern, Dr. Kanaan?

16 A. What do you mean by "pattern"?

17 Q. Well, we're just looking at the way you score  
18 ectopic eruption, which makes up a significant number  
19 of scores on these sheets that we've looked at.

20 A. That's --

21 Q. Is this a pattern?

22 A. That's a description of these four patients  
23 that you pulled.

24 Q. Okay. So -- so, you wouldn't say that five  
25 patients represents a pattern?

0051

1 A. No, absolute --

2 Q. Okay.

3 A. A pattern --

4 MS. SILHAN: Stacey, can you scroll

5 over --

6 JUDGE SEITZMAN: Excuse me. Hang on. You

7 cut him off.

8 MS. SILHAN: Oh, I'm sorry.

9 THE WITNESS: Can I explain further?

10 JUDGE SEITZMAN: No. You just started to  
11 say, "No, absolutely" and then I think you got cut off.

12 THE WITNESS: I'm okay.

13 JUDGE SEITZMAN: Do you want to finish  
14 that answer right now?

15 THE WITNESS: No, no. It's not an answer.  
16 I'm done with my answer.

17 Q. (BY MS. SILHAN) Thank you.

18 MS. SILHAN: Stacey, can you scroll over?

19 Stop, please. Oh, let's keep 9 through 25 on the page.

20 Okay. Let's pull up -- can we pull up on  
21 the left, keeping this on the right, P09-003?

22 Q. (BY MS. SILHAN) Dr. Kanaan, can you, please,  
23 read your ectopic eruption score on this patient?

24 A. Based on my comprehensive evaluation, this  
25 patient has eight ectopic teeth, four front, four

0052

1 bottom, total score 24.

2 Q. Okay. Now, do you recall that the previous  
3 patient -- five patients we looked at did they all have  
4 a score of 24 as well?

5 A. Yes.

6 Q. Did they all have the same teeth scored as  
7 ectopic?

8 A. Yes.

9 Q. Thank you.

10 MS. SILHAN: Patient 18 on the left now,  
11 P18.

12 Q. (BY MS. SILHAN) Can you, please, read your  
13 score for ectopic eruption on this patient?

14 A. Based on my comprehensive evaluation, this  
15 patient has eight ectopic teeth, the four front, four  
16 bottom, total score 24.

17 Q. Thank you.

18 Is that the same as Patient 9 for both the  
19 score and the teeth that were ectopic?

20 A. Yes.

21 Q. Is that the same as Patient 8?

22 A. Yes.

23 Q. Is that the same as Patient 7?

24 A. Yes.

25 Q. And 6?

0053

1 A. Yes.

2 Q. And 5?

3 A. Yes.

4 Q. And 2?

5 A. Yes.

6 Q. Okay.

7 JUDGE SEITZMAN: Counsel -- and I'm not  
8 meaning to tell you how to do your direct or cross  
9 here -- but it'll save us a little bit of time since  
10 whoever the previous -- we've kind of got a chain of A  
11 through F now and we know that they're all equal. So,  
12 I don't think we have to go back through each one, as  
13 long as the subsequent one --

14 MS. SILHAN: Sure.

15 JUDGE SEITZMAN: -- is the same --

16 MS. SILHAN: Great.

17 JUDGE SEITZMAN: -- as the prior one.

18 MS. SILHAN: Got it.

19 JUDGE SEITZMAN: Then they should all be  
20 equal.

21 MS. SILHAN: Thanks.

22 Let's pull up patient 20 on the left.

23 That's 20-011 is the HLD.

24 Q. (BY MS. SILHAN) Can you, please, read your  
25 total HLD ectopic eruption score for this patient?

0054

1 A. 27 points.

2 Q. Thank you.

3 Which teeth were ectopic in this patient?

4 A. The five top and the four bottoms.

5 Q. And of the five top, do you mean --

6 A. It's upper right canine, upper right lateral,  
7 upper right central, upper left central, upper left  
8 central lateral.

9 Q. Thank you.

10 This score is different from the others,  
11 correct, that we've looked at --

12 A. Yes.

13 Q. -- for ectopic eruption?

14 Thank you.

15 MS. SILHAN: Let's look at 21. 21 is  
16 P21-006.

17 Q. (BY MS. SILHAN) Dr. Kanaan, can you, please,  
18 read your ectopic eruption score?

19 A. 24.

20 Q. And which teeth were ectopic?

21 A. The four front, four bottom.

22 Q. Thank you.

23 Now, this is different than Patient 20,  
24 correct?

25 A. The score is different, yes.

0055

1 Q. But the same as all the others we looked at?

2 A. The scoring, yes.

3 Q. Thank you.

4 MS. SILHAN: Patient 24. HLD is at  
5 P24-014.

6 MR. RYTTING: Your Honor, I'd like to --  
7 I'm not sure that he did Patient 24. I'd like to  
8 confirm that, lay the predicate for that.

9 JUDGE SEITZMAN: Can you -- do you have  
10 the scoring sheet? Can --

11 MS. SILHAN: Yes, we do.

12 JUDGE SEITZMAN: Please show him the  
13 scoring sheet. See if that's his --

14 Q. (BY MS. SILHAN) Is that your scoring  
15 signature?

16 A. Yes, it is.

17 MS. SILHAN: Is that okay?

18 Q. (BY MS. SILHAN) Can you, please, read your  
19 ectopic eruption score?

20 A. 24 points.

21 Q. Which teeth were ectopic in this patient?

22 A. Four front, four bottom.

23 Q. Okay.

24 MS. SILHAN: Stacey, can we scroll to the  
25 left? Oh, other way.

0056

1 Q. (BY MS. SILHAN) Do these ten patients  
2 represent a pattern of scoring?

3 A. No.

4 Q. Okay. Then let's continue see if -- if  
5 there's anything different.

6 MS. SILHAN: Let's start with Patient 25,  
7 P64-025, please.

8 There's a little confusion.

9 Q. (BY MS. SILHAN) This patient file, P -- P25  
10 did not have an HLD score sheet in it but the separate  
11 attachments that were provided to us in discovery in  
12 this case or provided as exhibits in this case they did  
13 contain an HLD score sheet that wasn't provided to OIG.

14 MS. SILHAN: Let's go to one down --

15 MR. RYTTING: We need to object. She  
16 needs to ask him if he recognizes this document.

17 Q. (BY MS. SILHAN) Is this your signature on the  
18 document?

19 A. Yes.

20 Q. Can you tell us what you scored for ectopic  
21 eruption on this patient?

22 A. 24 Points.

23 Q. Can you tell us which teeth were ectopic on  
24 this patient?

25 A. The four -- four front, four bottom.

0057

1 Q. Is that the same as all the other patients we  
2 looked at, except one?

3 A. Same scoring?

4 Q. Yes.

5 A. Same scoring number, yes.

6 Q. Thank you.  
7 MS. SILHAN: Let's look at Patient 27,  
8 P27-005.  
9 Q. (BY MS. SILHAN) Can you read your total  
10 ectopic eruption score for this patient?

11 A. 24 points.

12 Q. Thank you.  
13 Can you tell us which teeth were ectopic  
14 on this patient?

15 A. The four front, four bottom.

16 Q. Thanks.

17 Is this the same as all the other  
18 patients, except Patient 20?

19 A. Yes, same scores.

20 Q. Thanks.

21 MS. SILHAN: Let's look at Patient 28.  
22 That's P28-013 is the HLD.

23 Q. (BY MS. SILHAN) Can you read your total  
24 ectopic score for this patient?

25 A. 24.

0058

1 Q. Can you tell us which four teeth you scored as  
2 ectopic?

3 A. The four top, four bottom.

4 Q. This is the same -- you know, cut to the  
5 chase --

6 A. Yes, yes.

7 Q. -- this is the same as all the others except  
8 one?

9 A. Yes.

10 Q. Thanks.

11 MS. SILHAN: Let's do 29. Unless -- we  
12 can hold off on the 29.

13 Q. (BY MS. SILHAN) Do you see a pattern here?

14 A. I don't see a pattern, no.

15 Q. Okay. 29, what's your total score for ectopic  
16 eruption?

17 MS. STACEY MANELA: What page on 29?

18 MS. SILHAN: Oh, I apologize. It's  
19 P29-008.

20 A. 24 points, the four upper, four lower.

21 Q. (BY MS. SILHAN) The same as all the others,  
22 except Patient 20; is that right?

23 A. Yes.

24 Q. Okay.

25 MS. SILHAN: Patient 30, please. That's

0059

1 P30-008.

2 Q. (BY MS. SILHAN) Can you, please, read your  
3 ectopic eruption score for this patient?

4 A. 24 points, four upper, four lower.

5 Q. Again, the same as the others --

6 A. Yes, please.

7 Q. -- except that one?

8 A. Yes.  
9 Q. Okay. We're going to go on -- do you see a  
10 pattern here?  
11 A. I don't see a pattern, no.  
12 Q. Okay. Thank you.  
13 Let's scroll over a little bit on the  
14 right and see Number 34. And there's two 34s because  
15 there were two HLD score sheets in this patient's file.  
16 So, let's look at the first one. That's P34-017.  
17 Can you read the score for this patient?  
18 A. 24 points.  
19 Q. Were the same teeth scored as ectopic as the  
20 others --  
21 A. Yes.  
22 Q. -- minus 20?  
23 A. Yes.  
24 Q. Thanks. Let's look at the second HLD score  
25 sheet for this patient. P34-0008.

0060

1 Can you read your total score?  
2 A. 27 points.  
3 MR. RYTTING: Again, just for the record,  
4 did she say total ectopic score?  
5 JUDGE SEITZMAN: I think we just got a  
6 running understanding that we're just talking about  
7 ectopic scores at this point.  
8 Q. (BY MS. SILHAN) Can you tell us which teeth  
9 were scored ectopic on this patient for this second  
10 HLD?  
11 A. The four front, plus the upper right canine  
12 and the lower four teeth.  
13 Q. Okay. So, this one is not like the others,  
14 except --  
15 A. I added one tooth.  
16 Q. That's right.  
17 JUDGE EGAN: Okay. Is that his signature  
18 at the bottom?  
19 THE WITNESS: Yes, it is.  
20 MS. SILHAN: Yeah. Aside from the one at  
21 the very end of my list here, which we -- we took out  
22 and you identified, we've gone -- these are from the  
23 HLDs he's viewed and verified his signature on just  
24 to --  
25 JUDGE EGAN: Just wanted to make sure

0061

1 because it looked different.  
2 MS. SILHAN: Okay.  
3 Let's look at Patient 35, please.  
4 JUDGE SEITZMAN: We're usually trained in  
5 handwriting analysis but sometimes we slip.  
6 MS. SILHAN: P35-003, please.  
7 And I apologize. On 35, the image below  
8 the score is incorrect on our chart on the right.  
9 You'll --

10 Q. (BY MS. SILHAN) Can you tell us what your  
11 ectopic eruption score is for the HLD on Patient 35?

12 A. 24 points.

13 Q. And which teeth?

14 A. The four upper -- the four upper and the four  
15 lower.

16 Q. Thank you. For the record under the summary  
17 on 35, that's not a correct image, right?

18 A. Yes.

19 Q. Instead it's this one on your form, correct?

20 A. Yes.

21 Q. Which is the four upper and four lower; is  
22 that right?

23 A. Yes, yes.

24 Q. Okay. Thank you.

25 MS. SILHAN: Let's look at 36. That is

0062

1 P36-011.

2 Q. (BY MS. SILHAN) Can you, please, read your  
3 ectopic eruption score for this patient?

4 A. 24 points, the four upper and the four lower.

5 Q. And that's the same as all the others, except  
6 Patient 20 and except for the second HLD in Patient 34?

7 A. Yes.

8 Q. Do you see a pattern here?

9 A. No.

10 Q. Okay.

11 MS. SILHAN: Let's go to 37, P37-015.

12 Q. (BY MS. SILHAN) Can you read your score for  
13 ectopic eruption?

14 A. 21 points, upper centrals, the upper left  
15 canine and the lower four front teeth.

16 Q. Okay. Thank you.

17 Before we move on, I just want to do a  
18 little quick math.

19 Okay. So, this score is different than  
20 most of the others we've looked at; is that correct?

21 A. Yes.

22 Q. And it has different teeth, correct?

23 A. Yes.

24 Q. Okay. And that's Patient 37, right?

25 A. Yes.

0063

1 Q. Okay. We've looked at 20 HLD score sheets and  
2 19 patients so far; is that correct?

3 A. I'm assuming, based on your calculations.

4 Q. Okay. Well, I'll represent to you that that's  
5 what we've looked at; and if you'd like to count your  
6 sheets, you may.

7 Out of those 20 HLDs and 19 patients, 17  
8 have scored 24 for ectopic eruption; is that correct?

9 We can go back and look. I believe there's only been  
10 three.

11 A. Yes, yes.

12 Q. Has there not?

13 A. Yes.

14 Q. Okay. Thank you.

15 And they all have the same teeth described  
16 as ectopic; is that correct?

17 A. Yes.

18 Q. Do you see a pattern?

19 A. No.

20 MS. SILHAN: Okay. Let's go to the next  
21 one. Patient 39, 39-008.

22 Q. (BY MS. SILHAN) Can you read us your ectopic  
23 eruption score for this patient?

24 A. 24 points.

25 Q. Which teeth are those that are scored ectopic?

0064

1 A. Four front, four bottoms.

2 Q. Okay. The same as all the others --

3 A. Yes, please.

4 Q. -- minus three, correct?

5 A. Yes.

6 Q. Thank you.

7 Now, we can keep going.

8 MS. SILHAN: Let's go to 41, 41-012,  
9 please.

10 Q. (BY MS. SILHAN) Can you read us your ectopic  
11 eruption score?

12 A. 24 points. The four front top, four bottom  
13 ones.

14 Q. Okay. The same as all the others minus the  
15 three?

16 A. Yes.

17 Q. Thank you.

18 MS. SILHAN: Let's do 42, P42-016.

19 Q. (BY MS. SILHAN) Can you read us your ectopic  
20 eruption score?

21 A. 24 points, the four front, four bottoms.

22 Q. Okay. The same as the others minus three  
23 again, correct?

24 A. The same, yes.

25 Q. Okay. So, 20 have the same score. Three have

0065

1 different scores?

2 A. Yes.

3 MS. SILHAN: Let's do 43, P43-006.

4 Q. (BY MS. SILHAN) We'll get through the rest of  
5 these quickly.

6 What's your total score for ectopic here?

7 A. 24 points, four top, four bottom.

8 Q. Okay. Like most of the others, correct?

9 A. Yes.

10 MS. SILHAN: Okay. Let's go on to the  
11 next patient, 45, P45-008.

12 Okay. Well, can you pull up 45? It's not  
13 on the graph.

14 JUDGE SEITZMAN: Counsel, did you say  
15 43 -- okay. I see what you're saying but it was the  
16 same score. Did -- was it the same teeth?  
17 MS. SILHAN: Yes. It's the --  
18 JUDGE SEITZMAN: Okay.  
19 MS. SILHAN: Oh, oh, I'm sorry.  
20 Dr. Kanaan.  
21 JUDGE SEITZMAN: Dr. Kanaan, was --  
22 THE WITNESS: Yes, it was. Yes.  
23 JUDGE SEITZMAN: 43 was the same score for  
24 ectopic as all the others?  
25 THE WITNESS: Yes, sir. Yes.  
0066  
1 JUDGE SEITZMAN: The graph isn't showing  
2 that.  
3 THE WITNESS: This doesn't go with that  
4 one.  
5 JUDGE SEITZMAN: I know. But I'm just  
6 looking at the graph for 43 versus 42 and 43 on the  
7 graph.  
8 THE WITNESS: The bar's -- the bar's  
9 incorrect.  
10 JUDGE SEITZMAN: 43 seems higher than 42.  
11 MS. SILHAN: Yeah, you're right. It  
12 should be -- it should just go up to the 24. I believe  
13 that -- actually what's labeled as 43 is meant to be  
14 this Patient 45.  
15 Q. (BY MS. SILHAN) Can you read your total score  
16 for 45 on the left?  
17 A. 27 points.  
18 Q. Okay. And which teeth were ectopic?  
19 A. The four front plus the upper left canine and  
20 the four bottom ones.  
21 Q. Thank you.  
22 Let's look at 46.  
23 JUDGE SEITZMAN: So, just so the record's  
24 clear, we had 42 and 45 as 43, just a patient of his  
25 that he scored that's not -- is omitted from the graph  
0067  
1 or was it --  
2 MS. SILHAN: It is. It's misnumbered and  
3 what's listed there, the patient number and what's  
4 below it, the grid, those are for patient -- that's  
5 correct. The graph is -- is what should be 45, which  
6 is on the left here and it's scored at 27.  
7 JUDGE SEITZMAN: So, we have a missing  
8 tooth here; is that correct? Okay.  
9 MS. SILHAN: We have a missing bar that  
10 would represent --  
11 JUDGE SEITZMAN: We have a correct root  
12 but a missing tooth; is that correct?  
13 MS. SILHAN: Right.  
14 And I do have this in a spreadsheet form,  
15 which contains all the patients. I'd be happy to

16 provide that summary.

17 JUDGE SEITZMAN: That's okay. That's  
18 okay. Thank you. I just wanted to be clear that it  
19 wasn't just a misnumbering. That the -- that there  
20 should have been another column for --

21 MS. SILHAN: That's right.

22 JUDGE SEITZMAN: -- for 43.

23 MS. SILHAN: Yes. Another column and it  
24 would be at the score we've been seeing at 24.

25 Q. (BY MS. SILHAN) Okay. We're at 45. Can you  
0068

1 read -- oh, we've already done that, I believe.

2 MS. SILHAN: Okay. 46, 46-013.

3 A. 36 points, the six upper front and the six  
4 bottom.

5 Q. (BY MS. SILHAN) So, this is different than  
6 most of the others, correct?

7 A. Yes.

8 Q. Thank you.

9 MS. SILHAN: 47, P47-007.

10 Q. (BY MS. SILHAN) Can you tell us your total  
11 ectopic score for this patient?

12 A. 24 points, the four upper, four lower.

13 Q. Is that the same as most all but --

14 A. Yes, it is.

15 Q. -- the four?

16 Thank you.

17 MS. SILHAN: Let's do 56. This'll be our  
18 last one. This --

19 57, the bar on the right is -- represents  
20 the patient that -- that Dr. Kanaan pulled out of the  
21 pile and told me he did not sign that HLD.

22 But when we zoom out, I'd like to point  
23 out that the score is the same as the one that's  
24 missing that Judge Seitzman pointed out. So, the bar  
25 would look the same.

0069

1 MR. RYTTING: She's testifying, your  
2 Honor. I'm not sure --

3 JUDGE SEITZMAN: Well, we'll -- we'll  
4 instruct the jury not to listen. Thank you.

5 MR. RYTTING: Okay.

6 JUDGE SEITZMAN: You may proceed.

7 MS. SILHAN: Thank you.

8 P56-013.

9 Q. (BY MS. SILHAN) Okay. Can you read your  
10 total ectopic score for this patient?

11 A. 24 points, four front, four bottom.

12 Q. Okay. Thank you. Do you see a pattern here?

13 A. I don't see a pattern.

14 Q. Okay. Let's zoom out and make R30 -- I'm  
15 sorry -- 83 our whole screen. Now, just to clarify  
16 there was one score sheet that we reviewed that was not  
17 numbered on this graph, correct?

18 A. Yes.  
19 Q. And that score?  
20 A. 45 or --  
21 Q. Excuse me?  
22 A. The 45 patient?  
23 Q. Yes.

24 Patient 45 was not listed and Patient 43  
25 had the incorrect value, correct? They were  
0070

1 transposed?  
2 A. As your sheet --  
3 Q. Do you recall?  
4 A. Yes.  
5 Q. Okay. And then on Patient 57 at the end you  
6 confirmed that that was not your score sheet; is that  
7 right?

8 A. That's Dr. Nazari's signature, yes.

9 Q. Okay. But just -- just to clarify, that  
10 scored at 24 points, right?

11 A. Which one?

12 Q. 57.

13 A. Yes.

14 Q. Okay. That -- when we correct the graph it  
15 will look the same. You don't see a pattern?

16 A. I don't see a pattern.

17 Q. Okay. Then let's look at some specific  
18 patient examples.

19 MS. SILHAN: Can we pull up on the left  
20 photos for Patient 7? That's P07-05 and Patient 34 on  
21 the right, P34, first page.

22 And if I may, this might be clarifying  
23 because I'd like to ask him questions about what we  
24 just went through. I have the summary table here with  
25 the correct information. May I provide it?

0071

1 JUDGE SEITZMAN: You may.

2 MS. SILHAN: Okay. I will do.

3 Q. (BY MS. SILHAN) I'm crossing out 57 since  
4 that one was not yours.

5 MR. RYTTING: Is this the -- oh.

6 JUDGE SEITZMAN: She's just providing it  
7 to the witness so he can reference it, since that other  
8 screen's been pulled down.

9 Q. (BY MS. SILHAN) Okay. So, Patient 7 is on  
10 the left --

11 A. Uh-huh.

12 Q. -- and Patient 34 is on the right; is that  
13 correct?

14 A. I'm assuming.

15 Q. You can read -- okay. On the top?

16 A. Yes.

17 Q. Thank you.

18 And both of these patients have scores of  
19 24 for ectopic eruption, correct?

20 A. Yes.  
21 Q. And the same eight teeth, correct?  
22 A. I'm taking your words.  
23 Q. Okay. You can please feel free to consult.  
24 A. Yes. So, 34 that's the one that has two  
25 scores. So, if you view the first one --

0072

1 Q. Well, that's right.  
2 A. Yes.  
3 Q. But this is one of the scores, correct?  
4 A. Yes, 24, yes.  
5 Q. So, just to demonstrate for the Court, the  
6 front four and the bottom four are ectopic --

7 A. Yes.  
8 Q. -- in both patients?

9 A. Yes.

10 Q. Correct?  
11 So, all eight front teeth in both of these  
12 patients erupted in the wrong place?

13 A. Yes.

14 Q. Okay. Let's look at Patient 7's photos and  
15 we've got Patient 7 up close on the left. Is there  
16 anything unusual about the right upper canine?

17 A. Are you asking me?

18 Q. Yes.

19 A. The upper right canine?

20 Q. Yes.

21 A. I can't see. I don't know.

22 Q. You don't know?

23 Okay. But you do know that the front  
24 eight teeth are unusual?

25 A. Yes, uh-huh.

0073

1 Q. Okay.

2 A. Yes.

3 Q. Do you know whether Dr. Ornish scored Patient  
4 37?

5 A. I don't know.

6 Q. You don't know.

7 MS. SILHAN: All right. Let's pull up  
8 P72-34. I'm sorry. It's Patient 34, not Patient 37.

9 Yes. We compared Patient 7 to Patient 34  
10 and I'd like to pull up...

11 Oh, no. Let's -- let's put the photos  
12 for -- or the HLD for Patient 34 on the left, P34-017,  
13 please. Okay. And then let's pull up Dr. Ornish's  
14 score on the right, P72-34.

15 A. So, you're putting up 34?

16 Q. (BY MS. SILHAN) Yes. We're on 34. Both of  
17 these are for 34.

18 Can you read Dr. Ornish's score for  
19 ectopic eruption?

20 A. He scored -- he scored 18 points upper right,  
21 two and three and lower five teeth. Lower right -- the

22 lower right central lateral canine and the lower left  
23 canine.

24 Q. Okay. Would you disagree with your expert's  
25 opinion that this patient had nine ectopic teeth in  
0074

1 this pattern?

2 A. I would not use the word "disagree." That's  
3 how we scored it. That's how I scored it.

4 Q. You did not score it the same, did you?

5 A. I did not score the same. That's -- that was  
6 my opinion. That's his opinion.

7 MS. SILHAN: Okay. In place of Dr.  
8 Kanaan's score sheet on the left, can we look at P34,  
9 just the pictures? Pull you up the center bottom  
10 picture, please.

11 Q. (BY MS. SILHAN) So, he scored the right upper  
12 and lower canines; is that correct?

13 A. Yes, he did. Yes.

14 Q. Okay. And you did not?

15 A. Remember I have two HLDs. On the second one I  
16 scored it.

17 Q. You scored both canines on the second HLD?

18 A. I only scored the cross-bite ones. I scored  
19 the canine --

20 Q. Did you score both the canines that Dr. Ornish  
21 scored on the second HLD?

22 A. I scored only one of them, the upper right.

23 Q. So, you disagree with Dr. Ornish's score here?

24 A. I would not say I disagree.

25 Q. So, you did not feel that both right canines  
0075

1 were in an unusual place?

2 A. They might be but I did not put it. They  
3 might be but I did not score it. I did not put it in  
4 the index.

5 Q. Okay. Let's move on to two other patients.  
6 These are from that universe of all the patients you  
7 scored that we've already discussed. We're going to  
8 look at Patient 42 and 57. They were both scored 24  
9 for ectopic eruption.

10 MS. SILHAN: Patient 42, the photos are at  
11 P42-02. And on the right let's do -- I'm sorry.

12 Q. (BY MS. SILHAN) You know what, 57 you did not  
13 score. That's the one we didn't score. So, why don't  
14 we cross that out.

15 Let's move on to another comparison. I  
16 apologize for that.

17 MS. SILHAN: Let's look at Patients 25 and  
18 30; and as you may have guessed, they both scored 24  
19 points for ectopic with the same teeth. Patient 25 on  
20 the left 25-202 -- I'm sorry. P25-002 are the photos  
21 and Patient 30 is P30-010.

22 Q. (BY MS. SILHAN) So, both of these patients  
23 had the same unusual patterns of eruption, according to

24 your HLD score sheets; is that correct?

25 A. If it says so, yes.

0076

1 Q. And are -- these four upper and lower teeth on  
2 both patients, did they erupt in the wrong place?

3 A. Based on my comprehensive examination, they  
4 do, yes. Uh-huh.

5 Q. Thank you.

6 Do you see anything unusual about the  
7 canines on these patients?

8 A. I need to see the pano'd X rays. Just from  
9 the pictures you can't judge that based on just one  
10 picture.

11 Q. Okay. I can -- I can ask a different  
12 question.

13 Would you -- you did not score the canines  
14 on those patients, correct? You do have the HLDs  
15 there, if you'd like to consult.

16 A. I don't see -- no, I did not score.

17 Q. Okay. Let's pull up -- oh, well, are you  
18 aware that Dr. Orr scored Patient 29's canines as  
19 ectopic?

20 A. I don't know, no.

21 MS. SILHAN: Okay. Let's pull up Patient  
22 73-25.

23 MS. STACEY MANELA: On the right?

24 MS. SILHAN: On the right, please.

25 Q. (BY MS. SILHAN) Did all of Patient's 25's

0077

1 front teeth erupt in the wrong place?

2 A. Based on all scoring?

3 Q. Based on your information --

4 A. I put --

5 Q. -- on your sheet?

6 A. I put only the four front, four bottom.

7 Q. Okay. Only the four front and four bottom  
8 erupted in the wrong place for this patient; is that  
9 correct?

10 A. Erupt ectopically.

11 Q. Okay.

12 A. Yes.

13 Q. But Dr. Orr scored them all 12; is that  
14 correct --

15 A. Yes. That's --

16 Q. -- of the anterior teeth?

17 A. That's his scoring. I don't know how he  
18 scored. I have no idea.

19 Q. Okay. Let's do another comparison.

20 MS. SILHAN: Let's pull up -- one moment.

21 Let's start with HLDs On Patient 20 and 42. Let's do  
22 P20-011.

23 Q. (BY MS. SILHAN) So, this is one of the  
24 outlier patients. This -- what's your score on this  
25 patient?

0078

1 A. 27.

2 Q. 27.

3 MS. SILHAN: Okay. Let's pull up the HLD  
4 on Patient 42 on the right, P42-16, please.

5 Q. (BY MS. SILHAN) And you mentioned you liked  
6 to see panos, correct?

7 A. If you want to ask me about canines, that's  
8 true.

9 Q. Okay. Well, we're going to do P42-16 first  
10 and compare the scores. Can you tell us your score for  
11 Patient 42?

12 A. 24 points.

13 Q. Okay. And so, for Patient 20 you scored more.  
14 Which tooth resulted in three extra points for ectopic  
15 eruption?

16 A. The upper right canine.

17 Q. The upper right canine. Okay. Let's look at  
18 panos now.

19 And Patient 20 has an upper right canine  
20 that's ectopic. 42 does not, correct?

21 A. I didn't say that.

22 Q. Your score sheets say that, correct?

23 A. The score sheet only described the four teeth  
24 but it's not limited only to the four teeth.

25 Q. Okay. So, you did not score an ectopic tooth

0079

1 that you diagnosed as ectopic in Patient 42?

2 A. Which was the right one?

3 Q. 42 is the right, yes, sir.

4 A. Okay. Put the patients -- let's see the  
5 patients.

6 Q. Well, I'm asking you about your score sheet  
7 and you explained that there's --

8 A. What's in the score sheet --

9 Q. -- your -- yes, sir.

10 A. What's in the score sheet is what is in the  
11 score sheet. I have four front teeth, four bottom  
12 teeth.

13 Q. Okay. So, the four front teeth, upper teeth,  
14 the four lower teeth --

15 A. Yes.

16 Q. -- are ectopic in this patient?

17 A. It doesn't mean that the other teeth are  
18 ectopic.

19 Q. Well, you can only score the anterior teeth on  
20 the HLD as ectopic, correct?

21 A. Yes.

22 Q. And that is the upper and the lower, correct?

23 A. Yes, the upper and lower six, uh-huh.

24 Q. Upper and lower six. But your sheets for  
25 Patient 42 --

0080

1 A. But if I don't score it, it doesn't mean it

2 doesn't exist.

3 Q. So, you don't regularly score the accurate and  
4 true condition of your patients on the HLD score sheet?

5 A. No, no. This is not how it is.

6 I -- do you want explanation or just  
7 yes-or-no answer?

8 Q. Well, I'd like to understand how there could  
9 be teeth that you -- that could be worthy of scoring  
10 and in need of correction but not make it on the HLD.

11 So, please do explain.

12 A. The manual -- the manual says don't -- don't  
13 score or don't measure from the ectopic tooth. So, if  
14 I measure an overbite and they have ectopic tooth, I  
15 don't double score it. I leave that one to measure it  
16 for the open bite and I score the front teeth. I was  
17 following the manual and the manual says also be  
18 conservative. So, if I have a question about a tooth,  
19 especially the side ones, it was my bag or is it Tweed  
20 philosophy. You focus more on the front teeth.

21 Q. Okay. So, we're talking about the front  
22 teeth, the anterior teeth. That's all the ectopic  
23 eruption that the HLD score sheet cares about, correct?

24 A. Yes.

25 Q. Okay. Now, you scored 24 on Patient 42 for  
0081

1 ectopic eruption, correct?

2 A. Correct. Yes.

3 MS. SILHAN: Okay. Let's go to the panos  
4 for these patients. On the left let's pull P20-15 and  
5 hold it there once we pull it up.

6 Q. (BY MS. SILHAN) Now, you say on your score  
7 sheet that the upper right canine is ectopic, correct?

8 A. Yes.

9 Q. Okay. Is that the upper right that's ectopic?

10 A. Yes.

11 MS. SILHAN: Okay. Let's pull up the pano  
12 for Patient 42, P42-3.

13 Q. (BY MS. SILHAN) Is that the upper right  
14 canine in that mouth?

15 A. Maybe. I don't know. I can't see it clearly.

16 Q. Your panos are not of diagnostic quality?

17 A. On the screen, I can't see it. On your  
18 screen.

19 Q. Okay. Let's -- I don't know how to turn -- we  
20 can't turn that light off.

21 A. Can you put the pictures, enter all the  
22 pictures?

23 MS. SILHAN: Let's pull up --

24 A. Put the pictures.

25 MS. SILHAN: Let's look at the photos,  
0082

1 sure. So, for the -- on the left side let's look at  
2 P20-13.

3 MS. STACEY MANELA: Caitlyn, I'm sorry.

4 Where would you like it to be?

5 MS. SILHAN: Where the panos are.

6 Actually, no. Let's put it up where the HLD is. I

7 apologize.

8 P20-13. Okay. Let's pull up the photos

9 for Patient 42, P42-02 up in the upper right, please.

10 Q. (BY MS. SILHAN) Okay. Now, Patient 20 got a  
11 score of 27, correct?

12 A. Yes.

13 Q. Okay. And the patient -- and that was all  
14 four of the upper and lower teeth were erupted out of  
15 place, correct?

16 A. Yes.

17 Q. Okay. And the right -- upper right canine  
18 also erupted out of place, correct?

19 A. Yes.

20 Q. Okay. And on the patient on the right,  
21 Patient 42, you scored only the upper front four and  
22 the lower front four teeth as erupting out of place?

23 A. Correct.

24 Q. Correct?

25 A. Correct.

0083

1 Q. You did not score the canines on Patient 42 as  
2 ectopic, correct?

3 A. Because I scored them as overbite. I put the  
4 overbite point. If you go to the HLD, I put an  
5 overbite. And you only supposed to measure overbite  
6 from ectopic tooth. I cannot double score.

7 MS. SILHAN: Okay. Well, let's pull up --  
8 one moment.

9 A. If I strictly follow what's in the manual.

10 MS. SILHAN: Okay. Let's pull up -- one  
11 moment.

12 Q. (BY MS. SILHAN) Was there any crowding in  
13 this patient on Patient 42?

14 A. Yes. Severe crowding, yes.

15 Q. Severe crowding?

16 A. Yes.

17 Q. Okay. Did you score crowding on this patient?

18 A. 42?

19 Q. Yeah. We can pull up the ectopic -- or I'm  
20 sorry -- the HLD score sheet P42-016.

21 A. Yeah, I put zero for crowding but I described  
22 Class I crowding, overbite. So, I scored the most  
23 severe case.

24 Q. Okay. So, the upper four and the lower four  
25 erupted out of place?

0084

1 A. Upper four -- yes.

2 Q. Okay.

3 A. Yes.

4 Q. Let me take one moment before posing the next  
5 question.

6 JUDGE SEITZMAN: Is this a convenient time  
7 to take a morning break?  
8 MS. SILHAN: May we take a break?  
9 Sure.  
10 JUDGE SEITZMAN: Let's go off the record.  
11 (Off the record)  
12 JUDGE SEITZMAN: All right. We're back on  
13 the record at 10:55.  
14 Ms. Silhan.  
15 MS. SILHAN: Thank you.  
16 Q. (BY MS. SILHAN) One of the patients we looked  
17 at was Patient 42.  
18 MS. SILHAN: I wanted to pull up  
19 Petitioner's Exhibit 64.42-002.  
20 MS. STACEY MANELA: Okay. Slow down  
21 please.  
22 MS. SILHAN: I apologize. P64.42-002.  
23 Q. (BY MS. SILHAN) Is this a score sheet you  
24 filled out for this patient?  
25 A. Yes.

0085

1 MS. SILHAN: Okay. Let's side by side  
2 let's pull up P64.42-004.  
3 Q. (BY MS. SILHAN) Can you tell me what -- what  
4 P64.42-004 is?  
5 A. In terms of what? What --  
6 Q. Is this an HLD score sheet?  
7 A. Yes, it's an HLD.  
8 Q. But there is no patient name on this form, is  
9 there? Correct?  
10 A. I don't know.  
11 Q. Can you read a patient name on this form?  
12 A. I don't see anything, no.  
13 Q. Okay. The patient name is blank, correct?  
14 A. Yes, uh-huh.  
15 Q. Do we see any other identifying information on  
16 this form?  
17 A. In terms of identifying the patient?  
18 Q. Do we see a Medicaid ID on this form?  
19 A. No.  
20 Q. An address on this form?  
21 A. No.  
22 Q. Is there a date on this form?  
23 A. No.  
24 Q. Okay. But there is an ectopic eruption score  
25 on this form, correct?

0086

1 A. Yes.  
2 Q. What is the score?  
3 A. 24 points.  
4 Q. Which teeth are marked ectopic on this score,  
5 score sheet on the right, the blank score sheet?  
6 A. The four upper, the four lower.  
7 Q. Okay. And then on the left, the one that did

8 have patient identifying information redacted from it,  
9 what's the ectopic eruption score?

10 A. Same, 24, four upper, four lower.

11 Q. Okay. Is there a reason you scored a patient  
12 without knowing the patient's name on the form?

13 A. I'm sure that form was in the patient chart.  
14 I didn't put -- I never put the patient's name.

15 Usually my assistant writes the patient's name,  
16 Medicaid information. So, maybe they --

17 Q. Okay.

18 A. -- they didn't put it there.

19 Q. Okay. And then they also fill in the  
20 examiner; is that correct?

21 A. No. That's --

22 Q. Is that your handwriting?

23 A. No. Sometimes I write it; sometimes they do.

24 Q. Okay. And on the blank -- the form without  
25 the patient name, the examiner's blank, correct?

0087

1 A. Yes.

2 Q. Okay. And it looks like on the blank form --

3 A. Score --

4 Q. -- what do you score for cleft palate?

5 A. Let me ask you. So, for P64.42, the right  
6 one, is it the same patient?

7 Q. It is. If you want to pull out, you can look  
8 at the Bate -- Bate stamps on them.

9 A. Okay.

10 Q. It's the same file.

11 A. So, you found in the chart two HLD?

12 Q. Sir, I -- I'm the one asking the questions.

13 A. Okay. No. I just want to be clarified  
14 because you put two. I don't know when you talk --

15 Q. Sir -- okay. Well, I'm referring to them by  
16 the left and the right.

17 A. Yes.

18 Q. These are the documents that your counsel  
19 produced in this case.

20 A. Yes.

21 Q. The one on the left had patient identifying  
22 information on it. You actually have the unredacted  
23 form in front of you in your pile.

24 A. Uh-huh.

25 Q. Okay. The form on the right does not have any  
0088

1 patient name on it, does it?

2 JUDGE SEITZMAN: I think we've established  
3 that.

4 A. Yeah, but this is the same form. The right is  
5 the same as the left one.

6 JUDGE SEITZMAN: Yeah. I think we've  
7 established the one on the left has the redacted name  
8 and the one on the right has no identifying.

9 MS. SILHAN: Okay. Thank you.

10 Q. (BY MS. SILHAN) The one without the name, the  
11 one on the right, what do you have for cleft palate?

12 A. Zero.

13 Q. Okay. And did you have zeroes for other  
14 scores on here on the -- for the form on the right?

15 A. No, I do not have zeroes.

16 Q. You don't have zero for, let's see, mandibular  
17 protrusion?

18 A. I don't have zeroes.

19 Q. Okay. On the -- okay. So, they're blank.

20 Thank you.

21 So, did you go in and fill the zeroes in  
22 on the form on the left?

23 A. No. My assistant does it.

24 Q. Okay. Your assistant fills out the HLD form?

25 A. The right form is exactly as the left one.

0089

1 Q. Correct. But you filled out the form on the  
2 right without having the patient's name on the form,  
3 correct?

4 A. This form was inside the patient's chart. So,  
5 when --

6 Q. So, you fill -- you -- your practice is to  
7 fill out forms without the patient's name on them,  
8 correct?

9 A. No, that's not correct.

10 Q. But you just -- but you did that in this case,  
11 correct?

12 A. That's not correct --

13 Q. Do you --

14 A. -- because you only see --

15 Q. Do you also fill out prior authorization forms  
16 without patient's name on them?

17 A. I don't fill them out.

18 Q. Does Antoine Dental print out prior  
19 authorization forms without the patient's name on them?

20 A. I don't know.

21 Q. And sign them?

22 A. I don't -- let's --

23 Q. Okay. Let's -- you don't know?

24 A. See, this is how it works. We got a patient  
25 and then there's a sticky note --

0090

1 Q. I haven't asked you a question. You don't  
2 know?

3 MR. RYTTING: Your Honor, can --

4 JUDGE SEITZMAN: State the objection. Go  
5 ahead with your objection.

6 MR. RYTTING: Oh, my objection is she's  
7 not letting the witness finish. If he -- if she thinks  
8 it's unresponsive, she can say it's unresponsive; but I  
9 would like him to be able to complete his -- his  
10 answer.

11 JUDGE SEITZMAN: That would be a better

12 procedure, Ms. Silhan. If you --  
13 MS. SILHAN: Absolutely.  
14 JUDGE SEITZMAN: -- think the witness'  
15 response is not responsive to the question rather than  
16 cutting the witness off, raise that objection.  
17 MS. SILHAN: Okay.  
18 JUDGE SEITZMAN: So, the pending question  
19 is is -- I believe your question was on prior  
20 authorizations are those printed out without the  
21 patient name on them; is that correct?  
22 MS. SILHAN: I asked -- yes, he answered  
23 that negatively, I believe. I think the last question  
24 had to do with the signature at the bottom of the form.  
25 JUDGE SEITZMAN: I think his answer was he  
0091

1 doesn't -- he does not do the prior authorizations.  
2 THE WITNESS: I don't do them. I have no  
3 idea.  
4 MS. SILHAN: Okay.  
5 JUDGE SEITZMAN: And so, your question was  
6 you don't know. And I think we're waiting -- if you  
7 want to a response to that question --  
8 MS. SILHAN: Yes, please.  
9 JUDGE SEITZMAN: Do you -- so, I take it  
10 the question is: Do you know how the prior  
11 authorizations are done at Antoine?  
12 MS. SILHAN: Oh.

13 A. Do you -- do you -- this is your question?  
14 You want me to explain it?

15 JUDGE SEITZMAN: Or do you want -- that's  
16 what I understand to be your question. If you've got a  
17 different question, I'll let you pose a different  
18 question. Since he said he didn't do it --

19 MS. SILHAN: Correct.  
20 JUDGE SEITZMAN: -- and you asked him, so,  
21 you don't know how it's done. He's trying to explain  
22 that maybe he knows how it's done. He just doesn't do  
23 it.

24 MS. SILHAN: No. I was asking  
25 specifically about the signature on the prior

0092

1 authorization and whether --  
2 JUDGE SEITZMAN: Well, let's go back and  
3 get that question clarified to do that.

4 MS. SILHAN: Okay. Okay.  
5 Q. (BY MS. SILHAN) You have explained that you  
6 fill out HLD forms before there's any patient  
7 information on the form, correct?

8 A. I did not say that.

9 Q. Do you fill out HLD forms without the  
10 patient's name, date of birth, or Medicaid ID filled  
11 out on the form?

12 A. That's not correct.

13 Q. So, the form on the right for Patient 42 --

14 A. Uh-huh.

15 Q. -- there was at one point a patient name on  
16 the form on the right?

17 A. There was -- yeah. No. There was a sticky  
18 note. What I filled out -- when we get new patients --  
19 if you don't mind me to explain it. We get new  
20 patient. The blank -- the form is blank. It's inside  
21 the chart. There's a sticky note, once we fill it out  
22 and then, yes, we will -- we'll try to send it to  
23 Medicaid. Then they go and they fill -- because we  
24 might have patient they don't qualify or we might have  
25 patient that don't reach the points.

0093

1 Q. Okay.

2 A. I don't -- I don't send them. So, why should  
3 we do --

4 Q. Okay. But -- but when you fill out the form  
5 on the right, the form without the patient name on the  
6 form, you don't put zeroes in --

7 A. This is the same form. That's exactly the  
8 same form.

9 Q. These are not the same form.

10 A. No. It's the same form.

11 Q. Sir, it's --

12 JUDGE SEITZMAN: Okay. Let's go back and  
13 we'll go back to question and answer.

14 So, Doctor, let -- let Counsel finish her  
15 question and then you --

16 THE WITNESS: Yes, sir.

17 JUDGE SEITZMAN: -- can answer the  
18 question, if you can.

19 Let's pose a question.

20 Q. (BY MS. SILHAN) Does the form on the right  
21 have the patient name on it?

22 A. It does not have it --

23 Q. Okay.

24 A. -- currently.

25 Q. Okay. Does it have zeroes for all of the

0094

1 fields that you did not score?

2 A. It does not.

3 MR. RYTTING: Asked and answered.

4 JUDGE SEITZMAN: Well, I think we're going  
5 back and we're trying to re-establish what the basis  
6 for the next question. So, it's overruled.

7 You may proceed.

8 MS. SILHAN: Thank you.

9 Q. (BY MS. SILHAN) Your staff fills in the  
10 patient name on the form after you score it; is that  
11 correct?

12 A. After we determine that we'll submit the case  
13 to Medicaid, yes.

14 Q. Okay. And do they also fill in the values for  
15 cleft palate?

16 A. If I leave it blank, I instruct them to put  
17 zero. That means it's zero.  
18 Q. Do they always put zeroes?  
19 A. If I leave it blank.  
20 Q. But you don't know? Do you -- do you know  
21 whether they fill in zeroes?  
22 JUDGE SEITZMAN: I think he answered your  
23 question.  
24 MS. SILHAN: Okay.  
25 JUDGE SEITZMAN: As I understand your  
0095

1 question -- his answer to your question was if he  
2 leaves it blank they put in the zero.  
3 Q. (BY MS. SILHAN) Do you watch them fill in the  
4 zero?  
5 A. I don't watch them.  
6 Q. Okay, okay. And do you know whether the prior  
7 authorizations are filled out in a similar manner with  
8 a signature but without the patient identifying  
9 information on it?  
10 A. I can't answer that question.  
11 Q. Okay. Let's look on the right.  
12 MS. SILHAN: Can we -- let me find the  
13 page number. Can we go to P64.42-003?  
14 Q. (BY MS. SILHAN) Are you familiar with this  
15 form?  
16 A. Yes.  
17 Q. Okay. Is the Patient 42's name on this form?  
18 A. There's no name here. I don't see any names.  
19 Q. Okay.  
20 MS. SILHAN: Can we scroll down?  
21 Q. (BY MS. SILHAN) But there is a signature on  
22 this form?  
23 A. Yes.  
24 Q. Okay.  
25 MS. SILHAN: Can we go to page 1 of the  
0096

1 same file?  
2 Q. (BY MS. SILHAN) Does this appear to have  
3 redacted information on the top of the form?  
4 A. Yes.  
5 Q. Okay. Thank you.  
6 What percentage of your private pay  
7 patients have ectopic eruptions?  
8 A. I don't use a concept of ectopic eruption as  
9 my private pay patients.  
10 Q. Are you aware and do you recall that at least  
11 one ectopic tooth is scored in 100 percent of your  
12 Antoine Dental patients?  
13 A. Can you rephrase your question, please?  
14 Q. Is it true that 100 percent of the patients  
15 you have scored in the sample in Antoine Dental --  
16 A. That's not --  
17 Q. -- have at least one ectopic tooth?

18 A. That's not correct.  
19 Q. We went through all the cases you signed  
20 today, correct?  
21 A. You mentioned the word "sample." You should  
22 have said --  
23 Q. Yeah, some --  
24 A. -- my patient. That's -- that's different.  
25 Q. Of your patients in the sample 63 --

0097

1 A. So --  
2 Q. -- is it correct that 100 percent of them you  
3 scored with at least one ectopic tooth?  
4 A. That's correct.  
5 Q. Is it also correct that you scored at least  
6 seven ectopic teeth in 100 percent of your patients out  
7 of the 63 here?  
8 A. That's correct.  
9 Q. Okay.

10 MS. SILHAN: I'll pass, please.

11 JUDGE SEITZMAN: Direct -- or cross-direct  
12 or whatever we're calling it.

13 CROSS-EXAMINATION

14 BY MR. RYTTING:

15 Q. Dr. Kanaan --

16 JUDGE SEITZMAN: Pull the mic closer,  
17 please. You don't have to -- pull it closer, please.

18 Q. (BY MR. RYTTING) -- if you would -- I'd like  
19 you to tell the Court a little bit more about your  
20 training and experience, please.

21 A. Okay. I finished my dental school in 2000  
22 from Aleppo University. I did a mini-residency program  
23 2002 at Harvard University. I finished my residency  
24 2005 from St. Louis University. I did a master thesis  
25 during my residency. I did a one-year fellowship at

0098

1 the cleft lip and palate team at St. Louis Children  
2 Hospital.

3 Q. And how long have you been a Medicaid  
4 provider?

5 A. Since early 2006.

6 Q. And do you have any special- -- are you  
7 specialized in -- or do you have any specialties?

8 A. I'm an orthodontist.

9 Q. Do you have any other training with -- within  
10 orthodontics, that is specialized?

11 A. I did a one-year fellowship in cleft lip and  
12 palate.

13 Q. All right. You've been asked a number of  
14 questions about HLD scores and I'd like to have you --  
15 I'd like you to give your opinion for the Court.

16 MR. RYTTING: If you would put up just any  
17 HLD score that's in evidence.

18 MR. ROY ORNALES: This is --

19 (Court reporter interruption.)

20 Q. (BY MR. RYTTING) Maybe stick with one of your  
21 patients that's already been discussed.

22 MR. RYTTING: So, that would be, I  
23 believe, patient --

24 MR. ROY ORNALES: P1 -- it's Exhibit P1.

25 Q. (BY MR. RYTTING) Okay. Exhibit P1, would you  
0099

1 put up the HLD score, please?

2 JUDGE SEITZMAN: Hold on. He's going to  
3 read off the Bate number.

4 MR. ROY ORNALES: Bate Number ADC000863.

5 MR. RYTTING: And actually if I could --  
6 if we take that down and put up one of his patients,  
7 Patient 2, the HLD for Patient Number 2.

8 MR. ROY ORNALES: This is P2 Bate Number  
9 ADC000979.

10 Q. (BY MR. RYTTING) And you recognize --

11 A. It's unclear.

12 Q. It's unclear? Would you like -- would you  
13 like another exhibit?

14 A. Yes, please.

15 MR. RYTTING: All right. Well, try Page  
16 (sic) Number 5.

17 MR. ROY ORNALES: P5 Bate Number  
18 ADC000419.

19 Q. (BY MR. RYTTING) And, Doctor, this is a  
20 patient -- this is an HLD score that you filled out,  
21 correct?

22 A. Yes, sir.

23 Q. And what is your understanding of the purpose  
24 of the HLD index?

25 A. The HLD index it's a hematological index where  
0100

1 it measure the existence or absence of handicapping  
2 malocclusion and the severity of it.

3 Q. Okay.

4 A. So, existing or absence and the severity of  
5 the handicapping by the quotient.

6 Q. And are these -- is the HLD score used in your  
7 private practice? I mean, is the HLD score sheet used  
8 in your private practice -- let me back up.

9 Do you use the HLD index to diagnose  
10 patients?

11 A. I don't use the HLD index to diagnose a  
12 patient just --

13 Q. What do you -- what do you rely on to diagnose  
14 the patients?

15 A. Well, my clinical findings and X rays and  
16 pictures.

17 Q. So, the HLD score has a distinct purpose; is  
18 that correct?

19 A. Correct.

20 Q. And within Medicaid what is your understanding  
21 of that purpose?

22 A. It's a tool to measure whether the patients  
23 will qualify for the public funding program or not.  
24 So, it measures its different components; and once you  
25 meet the cut point, it will make the patient either  
0101

1 eligible or noneligible.

2 Q. And you say it measured handicapping  
3 malocclusion. How does -- what is handicapping  
4 malocclusion?

5 A. Handicapping -- Draker, who coined that term,  
6 described it as an extreme deviation of the norm. So,  
7 if we know the norm then we know what's the abnormal  
8 and we know what is a handicapping.

9 Q. And is -- is -- when you -- when you submit a  
10 document or a case to Medicaid, what is -- is the HLD  
11 score what indicates handicapping malocclusion, severe  
12 handicapping malocclusion?

13 A. It indicates the severity of the handicapping.

14 Q. Is there any other thing you put -- any other  
15 information that you put in your documents that you  
16 submit to Medicaid that is -- that would inform  
17 Medicaid about handicapping malocclusion or is it just  
18 the score?

19 A. Just the score.

20 Q. And is this based on your un- -- and are you  
21 familiar with the Texas Medicaid manual?

22 A. Of course.

23 MR. RYTTING: Can we -- if you would put  
24 up, I believe it's, Respondent's 14, and if you could  
25 take us to Chapter 19.

0102

1 JUDGE EGAN: I have the hard copy, if it's  
2 easier.

3 MR. ROY ORNALES: This is from P66 Bate  
4 Number P01254.

5 MR. RYTTING: And can we have, I  
6 believe -- I can hardly see it. Can that be made any  
7 clearer, bigger?

8 Q. (BY MR. RYTTING) All right. And is that  
9 your -- it's your understanding that the HLD score --  
10 that a handicapping malocclusion is measured by the HLD  
11 score, correct?

12 A. Correct.

13 Q. As measured by the HLD score?

14 A. Correct.

15 Q. And nothing more? They're identical?

16 A. It says right there on the bottom.

17 Q. Okay.

18 MR. RYTTING: If you would, can we go back  
19 to the -- to Patient Number 5 in the HLD -- actual HLD  
20 score?

21 MR. ROY ORNALES: P5 ADC000419.

22 Q. (BY MR. RYTTING) And the HLD score has  
23 several categories, correct, that you're supposed to

24 score?

25 A. Yes. Nine categories, correct.

0103

1 Q. And they come from the Texas Medicaid  
2 handbook?

3 A. Correct.

4 Q. Is that correct?

5 All right. And they include -- if you  
6 would read them off.

7 A. The cleft palate, severe traumatic deviation,  
8 overjet, overbite, mandibular protrusion, open bite,  
9 ectopic eruption, anterior crowding and labio-lingual  
10 spread.

11 Q. Thank you. And these are orthodontic  
12 concepts?

13 A. Yes, they are.

14 Q. And they're -- but they're defined -- where  
15 are -- where are they defined? Do you know?

16 A. The manual.

17 MR. RYTTING: Can we turn to the manual  
18 Chapter 19 and put up that definition?

19 MR. ROY ORNALES: This is P66 Bate Number  
20 P01261.

21 MR. RYTTING: Can we go to -- let's go to  
22 overjet in millimeters.

23 Q. (BY MR. RYTTING) And are you familiar with  
24 that definition?

25 A. Yes, I am.

0104

1 Q. Or with that -- with what an overjet is?

2 A. Yes, I am.

3 Q. And what is that -- what are -- what are you  
4 familiar -- and why?

5 A. It's just something common. It's the linear  
6 measurement between the surface of the front tooth to  
7 the bottom teeth, how much the teeth stick out.

8 Q. And is that similar to -- is the use -- the  
9 Medicaid's -- it's your understanding that Medicaid  
10 uses overjet similar to the way that you've been taught  
11 to apply that term in -- through your training and  
12 through your practice?

13 A. Yes.

14 MR. RYTTING: Can we turn to the next  
15 definition overbite in millimeters?

16 Q. (BY MR. RYTTING) Is it -- and that -- if you  
17 would, read the -- the instruction or the definition.

18 A. There's no definition. It's only instruction.  
19 It tells me that score the case exactly as measured,  
20 then subtract 3 millimeters. Consider the norm and  
21 enter the difference as the score. This would be  
22 double-counting.

23 Q. Okay. And is that -- that, too, is -- is that  
24 familiar from your training?

25 A. From my training, yes.

0105

1 Q. And so, that is how you would apply it when  
2 you're doing general dentistry for Medicaid and  
3 nonMedicaid patients?

4 A. Correct.

5 Q. I will pass mandibulars and also a definition  
6 for mandibular -- or the instruction for mandibular  
7 protrusion in millimeters is. And if you would read  
8 the instruction.

9 A. Score the case by measurement in millimeter by  
10 the distance from the labial surface of the mandibular  
11 incisors to the labial surface of the maxillary  
12 incisor. Don't score both overbite and open bite.

13 Q. And that, too, is a concept that's familiar  
14 from your training?

15 A. Yes.

16 Q. And if we turn to -- and by "training" by  
17 the -- by your knowledge of the literature or your  
18 academic training courses and so forth?

19 A. Yes, sir.

20 Q. Okay. If we turn to open bite in millimeters,  
21 what does that -- what does that instruction say?

22 A. "Score the case exactly as measured.  
23 Measurement should be recorded from the line of  
24 occlusion of the permanent teeth, not from the  
25 ectopically erupted teeth in the anterior segment.

0106

1 Caution is advised in undertaking treatment of open  
2 bites in older teenagers because of the frequency of  
3 relapse."

4 Q. And is this definition -- and is this  
5 definition -- is this definition something that's --  
6 that you're familiar with from your -- from your  
7 practice and from your training?

8 A. This definition is a little bit different.

9 Q. And how is it different?

10 A. I would like to put the -- the Draker picture,  
11 that exhibit that Dr. Tadlock used.

12 MR. RYTTING: So, that would be, I  
13 believe, 37 or R37.

14 MR. ROY ORNALES: R37.

15 THE WITNESS: Yes. Can you, please, go  
16 down, I think, four or five pages?

17 Go down, go down more, more, more, more.  
18 Okay. Here we go.

19 A. This is a picture that Dr. Tadlock used from  
20 the Draker article and I'd like to zoom on the bottom,  
21 please. And on Draker this is what -- how we do it at  
22 the textbook or in the orthodontic program. We measure  
23 the open bite the distance from the incisor edge on the  
24 top to the bottom.

25 It says mandibular protrusion --

0107

1 THE WITNESS: I think you need to go up a

2 little bit because this is not -- no. Where is the  
3 explanation for that figure? Right here.

4 A. Overbite, this condition is defined as absence  
5 of occlusal contact --

6 (Reporter interruption.)

7 A. It says it is measured from edge to edge in  
8 millimeters.

9 So, what Tadlock used it says it's  
10 measured from edge to edge in millimeters. If I go to  
11 the manual, it says you need to measure it from the  
12 line of occlusion, not from ectopic tooth. That's  
13 one -- one of the differences that Medicaid has in the  
14 manual among what's been taught in the textbooks.

15 Q. (BY MR. RYTTING) Okay. And when you say  
16 measure from the line of occlusion, can you explain  
17 that or do you need to look at a document?

18 A. I think Dr. Orr yesterday he explained the  
19 line on the CEF. You see this vertical line from the  
20 back more to the front? So, if the tooth has erupted  
21 you don't use this ectopic erupted tooth because it  
22 will mask the open bite.

23 So, what you do, you do a more objective  
24 measurement. You use the back teeth as a reference of  
25 point rather than the crooked tooth. So, you have the  
0108

1 more realistic measurement and that's what Medicaid  
2 wants.

3 There's two ways. Medicaid has this way  
4 and the academic we have that way. It's strange that  
5 Draker is the one that introduced the HLD concept but  
6 to use this way but in Med- -- in Texas Medicaid we use  
7 a line of occlusion as a reference.

8 MR. RYTTING: And if we go back to the  
9 Texas Medicaid definitions.

10 MR. ROY ORNALES: P66.

11 MR. RYTTING: P66, thanks. P66.

12 A. It's very clear. Measurement should be  
13 recorded from the line of occlusion of the permanent  
14 teeth. It does not say from the incisor edges.

15 Q. (BY MR. RYTTING) And before we get to the  
16 ectopic eruption, which we've heard so much about,  
17 let's go down to lab- -- labio-lingual spacing.

18 A. Labio-lingual spread, yes.

19 Q. And what does that say?

20 A. Labio-lingual spread in millimeters. The  
21 score for this category should be the total in  
22 millimeters of anterior spaces. And this is how  
23 Dr. Altenhoff explained the first day. It's the amount  
24 of spacing between the front teeth.

25 However, if we go back to Draker's  
0109

1 article, it described exactly the opposite.

2 THE WITNESS: Could you, please, have the  
3 Draker article that the respondent has?

4 Maybe you can put them side by side.  
5 Okay. It's right here. Please zoom into the bottom  
6 one and also you can show the picture so the Judges  
7 can --

8 A. So, in Draker's article the labio-lingual  
9 spread, I want -- I want to read it. "This measurement  
10 is new and, therefore, requires a somewhat more detail  
11 explanation. To measure labio-lingual spread, the  
12 Boley gauge is used to determine the extent of  
13 deviation from a normal arch."

14 And you can see at the top the patient has  
15 crowding. "In the illustration the measurement is made  
16 from the incisor edge of the mandibular left cuspid to  
17 the incisor edge of the lingually locked --" locked,  
18 which means crowding -- "lateral incisor." That's one  
19 situation. Now, the condition is "where there is only  
20 a protruded or lingually displaced interior, the  
21 measurement should be made from the incisal edge of  
22 that tooth to the normal arch."

23 So, he's talking about crowding. Whereas,  
24 what we have in Medicaid, we had spacing, two different  
25 issues. So, when I score it based on Medicaid, I don't  
0110

1 go and apply the textbook definition or Draker's  
2 definition. I stick what's in the Medicaid definition.  
3 This is what Tadlock did. This is what Dr. Linda  
4 Altenhoff confirmed. When we see spacing, we go and we  
5 do spacing.

6 I don't go be smart, "Oh, no. This is  
7 wrong. I'm going to go with what's in the textbook and  
8 Proffit then.

9 Q. (BY MR. RYTTING) What other -- let's talk  
10 about -- let's get to ectopic eruption then.

11 A. I just want to make sure that the Judges  
12 understand how it's two different things. Thank you.

13 MR. RYTTING: If you put those back up --  
14 both back up, please. And if you would highlight the  
15 definition for ectopic eruption.

16 Q. (BY MR. RYTTING) And is this just an  
17 instruction?

18 A. No. It's a definition with two examples.

19 Q. And then it also contains instruction at the  
20 end?

21 A. Yes.

22 Q. So, fair to say that Medicaid took an  
23 additional step with ectopic eruption. It provided  
24 definition rather than just instructions?

25 A. Yes, sir.

0111

1 Q. And under -- under Medicaid how is it defined?

2 A. It's an "unusual pattern of eruption" or to  
3 explain it, as Dr. Tadlock said, it's abnormal position  
4 of the tooth.

5 Q. And how do you know when a pattern or -- well,

6 have you -- have you found the term unusual -- have  
7 you -- have you researched the term "unusual pattern of  
8 eruption"? That's what's defining ectopic eruption,  
9 correct, that phrase?

10 A. Yes, sir.

11 Q. Okay. Have you -- have you done any -- have  
12 you, say, Googled "unusual pattern of eruption" or done  
13 any data --

14 A. To know what the phrase mean?

15 Q. Yes.

16 A. If you Google it, it will only take you back  
17 to the Texas Medicaid manual. It doesn't exist -- it  
18 only exists in the Texas Medicaid manual.

19 Q. So, the phrase -- so, the term --

20 A. There's no --

21 Q. The term unusual pattern of eruption?

22 A. That's only strictly Medicaid.

23 Q. Please -- as far as your -- your investigation  
24 of that phrase goes?

25 A. Yes, unless there's something new happened but  
0112

1 this is, like, four or five years ago.

2 Q. And is that definition "an unusual pattern of  
3 eruption," is that definition something that you were  
4 taught ectopic eruption meant in the schools in  
5 your -- and through your training?

6 A. As the Medicaid manual, no.

7 Q. Are you familiar with Proffitt's book?

8 A. Yes.

9 Q. Okay. And I believe we have an excerpt of  
10 that book in evidence.

11 JUDGE SEITZMAN: Roy, do you need Stacey  
12 to pull up --

13 MS. STACEY MANELA: What is it?

14 JUDGE SEITZMAN: Stacey, do you mind?

15 MS. STACEY MANELA: I'm sorry? What  
16 number is it? R30? That's the actual book. That's  
17 not a --

18 THE WITNESS: You put some pictures of  
19 Dr. Tadlock.

20 JUDGE SEITZMAN: Let's go off the record a  
21 second.

22 (Off the record)

23 Q. (BY MR. RYTTING) And are you familiar with  
24 the definition that Proffitt gives for --

25 A. Of course.

0113

1 Q. Is it actually a definition?

2 A. It's more a description than a definition, a  
3 description of the situation. There's no clear  
4 definition for ectopic eruption.

5 Q. Is the --

6 JUDGE SEITZMAN: Excuse me. Hang on,  
7 Doctor.

8 Can you tell us which exhibit we're  
9 looking at?  
10 MS. STACEY MANELA: Yes, Judge. It's  
11 Respondent's 50.

12 JUDGE SEITZMAN: Respondent's 50.

13 MS. STACEY MANELA: Yes, sir.

14 JUDGE SEITZMAN: Thank you, ma'am.

15 You may proceed.

16 Q. (BY MR. RYTTING) And what is -- what are the  
17 important aspects of this definition, in your view?

18 A. Oh, Proffit's definition?

19 Q. Yes.

20 A. Number one, his definition happened in the  
21 early mixed dentition.

22 JUDGE EGAN: Early what?

23 THE WITNESS: Early mixed dentition.

24 Q. (BY MR. RYTTING) And what do you mean by that?

25 THE WITNESS: Please put the X ray.

0114

1 MS. STACEY MANELA: Which one, sir?

2 THE WITNESS: That one. Can you, please,  
3 blow it up?

4 A. So, that's a situation where the patient is at  
5 age 6 or 7 where the upper molars comes down. If they  
6 lean a little bit forward like a millimeter or so, they  
7 will cause -- they will be blocked by the primary  
8 tooth. So, here we have baby teeth; whereas, in  
9 Medicaid they are 12 or older, there's no baby teeth.  
10 So, we talk about two different things. That's a  
11 situation, an early mixed dentition. What you are  
12 talking about is DADA comprehensive when the patient is  
13 12 years of age or older.

14 Q. And what about the -- and what was Proffit's  
15 focus upon? What part of the mouth?

16 A. The posterior teeth. That's --

17 Q. And how -- how is that different from the  
18 Medicaid manual?

19 A. The Medicaid manual were limited to the  
20 anterior teeth.

21 Q. And does Proffit, though, talk about anterior  
22 teeth and ectopic eruption of anterior teeth?

23 A. He does, but he talked about it the same in  
24 the early mixed dentition where the lower incisor will  
25 come in and they knock off the baby teeth.

0115

1 Q. So, what relevance does that have for you as a  
2 Medicaid practitioner, this definition?

3 A. No rele- -- no relevance, apple and orange,  
4 two -- two different things. These are more toward the  
5 pediadontist, the pediatrician, the pediadontist who  
6 treat kids at early age. I'm an orthodontist. I treat  
7 kids who are 12 year old. I have nothing to do with  
8 this.

9 Q. And what else -- I mean, the set -- you've

10 been in the courtroom when Dr. Tad- -- Tadlock  
11 testified and when Linda Altenhoff testified, correct?

12 A. Yes, uh-huh.

13 Q. And they maintained that the definition that  
14 the Medicaid manual uses is the same as the definition  
15 in Proffit. Is that your understanding of their  
16 part -- part of their testimony?

17 A. This is what they said, yes.

18 Q. What about -- what -- in the Medicaid manual  
19 what -- is there anything in the Medicaid manual that  
20 indicates that that's a mistake, that that's a mistaken  
21 interpretation of the Medicaid definition?

22 A. You know, we can prove it with two points.  
23 Number 1, Medicaid manual very clearly specify -- it  
24 gives me two examples. It says such as a high labial  
25 cuspid or teeth that are grossly out of the long axis

0116

1 of the alveolar ridge.

2 These two situations are not described in  
3 Proffit book as ectopic eruption. He described them as  
4 abnormal eruption. So, even Proffit -- even the  
5 examples that Medicaid use, in Proffit and the other  
6 textbooks they're not being referred as ectopic. They  
7 call themselves something else. That's Number 1.

8 Number 2 in that instruction it says  
9 either use ectopic eruption or anterior crowding. It  
10 says you cannot -- I cannot put anterior crowding and  
11 ectopic eruption. I can only choose one. And that's  
12 what tells me that there's a relation between the  
13 crowding and ectopic eruption. Whereas, Proffit  
14 never -- he never said that. He just categorize it  
15 under -- under a different category.

16 So, these are the two strong points that  
17 emphasize that this definition that Medicaid has is  
18 total different than what Proffit and the textbooks  
19 has.

20 Even Parker -- in the article that the  
21 respondent has, Parker has it very clearly if you -- we  
22 can pull it up if you want.

23 Q. Would you like to see the article by Parker?

24 A. Yeah, we can show the Judge that.

25 Q. Is --

0117

1 A. I don't have it. It was with the respondent.

2 It's a respondent article --

3 MR. RYTTING: Is that another  
4 demonstrative exhibit?

5 MS. STACY MANELA: You're kind of catching  
6 me off guard.

7 JUDGE SEITZMAN: Let's go off the record a  
8 second.

9 (Off the record)

10 JUDGE SEITZMAN: All right. We're back on  
11 the record at 19 minutes before the noon hour.

12 Q. (BY MR. RYTTING) Okay. And I believe you --  
13 are you familiar with the HL- -- an article by Parker,  
14 William Parker, "The HLD Index and the index Question"?

15 A. Yes, I am.

16 Q. Okay. And what relevance is that to -- we  
17 were talking about ectopic eruption and the difference  
18 between the Medicaid manual and the way that other  
19 authorities define that term. How is --

20 A. May I -- may I read exactly what he quotes so  
21 I don't come up with something from me?

22 JUDGE SEITZMAN: You want to show it to  
23 counsel?

24 MR. RYTTING: May I show it to opposing  
25 counsel?

0118

1 MS. SILHAN: The highlighted portion?

2 MR. RYTTING: May I approach?

3 JUDGE SEITZMAN: You may.

4 Q. (BY MR. RYTTING) I'm handing the witness an  
5 article, "The HLD (CalMod) Index and Index Question" by  
6 William Parker.

7 A. I'd like to read on page 140, Item Number 6.  
8 And Parker, after his study what he said -- I'm quoting  
9 Parker now.

10 JUDGE SEITZMAN: Okay. If you can read it  
11 very slowly.

12 JUDGE EGAN: Slowly.

13 JUDGE SEITZMAN: Okay.

14 A. Because of the confusion surrounding the  
15 definition of ectopic, the following definitions and  
16 instructions apply when the HLD California modification  
17 index is used to identify ectopic eruption.

18 Then he talks about the examples and  
19 then -- do you want me to read the whole thing?

20 JUDGE SEITZMAN: You read whatever you  
21 feel like you need to read for whatever.

22 A. Well, I just read the most important part  
23 where it says that the confusion surrounding the  
24 ectopic eruption and then where he said that -- I'm  
25 back -- in all other situations teeth to be deemed

0119

1 ectopic must be more than 50 percent blocked out.

2 So, that's another areas -- and

3 Dr. Tadlock he agrees with this one -- that if you have  
4 blocked teeth, they're considered ectopic; whereas  
5 Proffit doesn't consider them ectopic.

6 Thank you.

7 Q. (BY MR. RYTTING) And do either one of these  
8 authorities comment on the sub- -- what has been called  
9 the -- let me strike that. Let me go back.

10 There was -- you were in the courtroom  
11 when there was issues about whether ectopic eruption is  
12 a subjective definition or completely subjective  
13 definition.

14 Do you recall if Parker or if --  
15 JUDGE SEITZMAN: Proffit?

16 MR. RYTTING: No.

17 Q. (BY MR. RYTTING) -- Dr. Draker had anything  
18 to say about these -- the concept of ectopic eruption  
19 and its subjectivity?

20 A. Yes. So, we will go one by one. You have two  
21 component. Let's put Draker's article, please, on the  
22 screen.

23 MR. ROY ORNALES: R37.

24 THE WITNESS: Okay. I think, please go  
25 down. Go down.

0120

1 JUDGE SEITZMAN: Does anybody have a laser  
2 pointer that he can give him -- that you can give the  
3 doctor so that he can point out what he's looking at?

4 JUDGE EGAN: I'm too blind to be able to  
5 read that.

6 THE WITNESS: I am to go backward please  
7 but please go backward slowly. Backward, please.  
8 Backward, backward, back. Wait one second.

9 A. I want to --

10 JUDGE SEITZMAN: Okay. Doctor -- hang on,  
11 Doctor. Can you point to the area?

12 And then, Roy, would you blow it up for  
13 us, please?

14 Is that what you wanted, Dr. Kanaan?

15 THE WITNESS: Yes.

16 A. So, it says here the preliminary cycocical  
17 valuation therefore pointed up the inadequacy and lack  
18 of definition for Component Number 7, which is ectopic  
19 eruption and anterior crowding.

20 This is Draker. That's the one who wrote  
21 the HLD. He's saying that lack of definition for  
22 Components Number 7 and Number 8, 1960. And then the  
23 second section of your question is Parker article.

24 Q. (BY MR. RYTTING) Well, could you -- would you  
25 go a bit further because I believe that Draker talks

0121

1 about --

2 A. And then what Draker said it was hypothesized  
3 that Number 9 the labio-lingual spread -- and remember  
4 I told you that labio-lingual spread is crowding. It's  
5 not spacing. So, he suggest that rather than using the  
6 first two concept, he eliminated these two and he said  
7 it was hypothesized that Number 9 might be a more  
8 distant and objective measure for what we intended to  
9 record. The HLD data sheet Number D-10 show seven  
10 components only. +

11 So, he eliminated the ectopic and anterior  
12 crowding because it is subjective.

13 THE WITNESS: So, go, please, to the next  
14 page and I will show the Judge how it was eliminated.  
15 Next page, please.

16 Keep going, keep going, keep going. Right  
17 here. See, please blow up this one.

18 A. The original HLD has nine component and you  
19 see how he get rid of the ectopic eruption and the  
20 anterior crowding because it's subjective and he stick  
21 with the labio-lingual spread.

22 Q. (BY MR. RYTTING) Is it your understanding  
23 that the concept of ectopic eruption that it's used in  
24 Texas Medicaid is to -- and H -- along with the HLD  
25 score, in general, is derived from Draker's work?

0122

1 A. Yes.

2 Q. So, and Dr. Tadlock, as you recall -- you were  
3 in the courtroom when Dr. Tadlock testified?

4 A. Yes.

5 JUDGE SEITZMAN: Microphone, please.

6 Q. (BY MR. RYTTING) You were in the courtroom  
7 when Dr. Tadlock testified, correct?

8 A. Yes.

9 Q. And doc- -- you were in the courtroom when  
10 Dr. Altenhoff testified?

11 A. Yes, I was.

12 Q. And they both maintained that ectopic eruption  
13 was an objective definition for the most part, correct,  
14 objectively defined? Is that your understanding?

15 A. I think Dr. Tadlock, he said it was somewhat  
16 subjective. I don't remember. I don't remember.

17 Q. Would that be another indication that the  
18 definition of ectopic eruption that they're working  
19 with is different from the Medicaid manual?

20 A. Yes.

21 Do you know when labio-lingual spread was  
22 added to the Texas Medicaid manual?

23 A. I don't know.

24 Q. Do you know when ectopic eruption was added --

25 A. I don't --

0123

1 Q. -- to the Medicaid man- --

2 A. I don't know.

3 Q. I want to go back to the point that you made  
4 that the connection between anterior crowding and  
5 ectopic eruption of teeth --

6 A. Yes.

7 Q. -- is connected in the Medicaid manual.

8 A. Yes, sir.

9 Q. And why -- and are they connected as  
10 orthodontic phenomena, too, like one -- for example,  
11 may one cause the other?

12 JUDGE EGAN: You want to --

13 A. It might -- it might, yes.

14 JUDGE EGAN: Just pull it closer to you.

15 A. It might, yes; it might not. Again ectopic  
16 eruption is a description of the location of the tooth.

17 Crowding is a quantitative measurement of how much lack

18 of space we have. So, you might -- it might be yes.

19 It might be no. But mostly yes. Yes.

20 Q. (BY MR. RYTTING) Okay. And how could they --

21 and how -- and why would they be connected? As

22 orth- -- orthodontic phenomena, how might they be

23 connected? Does one cause the other? Crowding, for

24 example?

25 A. Yeah. Because if the teeth have drifted and

0124

1 the tooth doesn't have enough space or crowded, it will

2 represent itself as ectopic. And that canine it became

3 ectopic because there was no space. If there had been

4 enough space, it would not be ectopic.

5 Q. And what about the incisors, upper and lower?

6 A. Same -- same concept. If the patient has

7 enough space on the bone, they would not be pushed

8 outside the base of the bone. They will be straight

9 and up; but because the size of the bone is smaller,

10 they come out ectopic.

11 Q. And would they -- what about -- would --

12 would -- could it cause an ectopic eruption and

13 represent themselves as rotation or as slanting?

14 A. Correct, yes.

15 Q. And how -- how would -- how would that -- how

16 would that occur?

17 A. As I told you earlier, if the tooth comes in

18 and it doesn't have enough space, because the

19 difference of the measurement of the tooth, it might be

20 slanted so it can accommodate itself on the arch. So,

21 the ectopic eruption will be expressed as rotation.

22 The sign of ectopic would be presented as rotation or

23 lean out of that basal bone or alveolar ridge.

24 Q. And when you -- when you score -- when you

25 score ectopic eruption on Medicaid or on the HLD

0125

1 sheets, do you -- do you count teeth that have rotated

2 or teeth that have slanted?

3 A. If -- if they have symptoms, I do. If they

4 have no symptoms -- again, I don't look -- I don't look

5 only into this rotated tooth. You have to look at the

6 whole patient. So, if there are symptoms, yes, I count

7 them. If they're only rotated a little bit, no, I

8 don't count them. That's why -- I'm sorry. I want to

9 clarify. That's why sometimes you will see extremely

10 straight teeth but no, they are not straight. They're

11 outside the bone. There are symptoms. The patient had

12 problem with the joint, either crack in teeth, chipped

13 teeth. You don't go only by what you see in the

14 picture and then jump to the conclusion, "Oh, these are

15 straight and not ectopic." No, that's not right.

16 We can show hundreds of cases in textbooks

17 where they have straight teeth in the beginning but

18 when you do the X rays, you do the CEF, they're not

19 straight. You do it backward.

20 Q. And by -- and by ectop- -- when you say  
21 they're ectopic, you're using the Medicaid  
22 definition --

23 A. Medicaid definition, yes.

24 Q. -- as you understand that definition?

25 A. Yes.

0126

1 Q. And how did you come up -- how did you arrive  
2 at this understanding that Medicaid counted teeth that  
3 are rotated or teeth that are slanted outside of the  
4 basal bone as ectopic?

5 A. Yeah, we do -- we apply the definition as it  
6 says as unusual pattern of eruption and Dr. Tadlock  
7 agreed that it is abnormal. And to know what abnormal  
8 is we need to know what normal is. So, I go back to  
9 the article -- to the ABC article of orthodontia and  
10 you have to take this article and read it for your  
11 board exam which is the "Six Keys to Normal Occlusion."  
12 There's a very well-known article called the "Six Keys  
13 to Normal Occlusion."

14 And it defines six components and you have  
15 one component about inclination. Second component says  
16 that the teeth should be no rotation. It says it very  
17 clearly and I have the article. And then it says that  
18 there should be no spacing. So, if the tooth is  
19 straight, no rotation. It's normal. If it's rotated,  
20 it's abnormal. And that's based on the requirement  
21 reading list for the ABO exam, the board exam for  
22 orthodontist. You need to read and understand that  
23 article.

24 So, normal teeth has no rotation have no  
25 spacing. They're properly placed on the bone. The

0127

1 Class I molar, Class I canine, proper turn, proper  
2 inclination. And I have the article ready if the Judge  
3 wants to take a look to it.

4 THE WITNESS: It says very clearly no  
5 rotation, no spacing for normal occlusion and I would  
6 like you to see it, please.

7 MR. RYTTING: I would like -- I just would  
8 like to tender this into evidence.

9 JUDGE SEITZMAN: Show it to Ms. Silhan.

10 We can go off the record a second so you  
11 can take a look at it.

12 (Off the record)

13 JUDGE SEITZMAN: Back on the record at  
14 five minutes before noon.

15 And, Ms. Silhan, you've had an opportunity  
16 to look at the document. We haven't given it a number  
17 yet, and I know we haven't had a formal tender. So, if  
18 you want to do that at this time, Counsel?

19 Do you want to mark it?

20 MR. RYTTING: I'd like to mark this as P83  
21 and tender.

22 JUDGE SEITZMAN: And tender for what  
23 purpose?

24 MR. RYTTING: We offer it to -- into  
25 evidence as a learned treatise.

0128

1 JUDGE SEITZMAN: Ms. Silhan?

2 MS. SILHAN: I object on the grounds that  
3 this witness isn't offered as an expert and the  
4 exception for a learned treatise is inapplicable in  
5 this case.

6 JUDGE SEITZMAN: Well, he may not have  
7 been offered as an expert but he certainly is qualified  
8 as an expert as much as any other -- other orthodontist  
9 has and he's one of the treating professionals  
10 orthodontists in this case. The way we've handled this  
11 rather than as learned treatises, Counsel, because  
12 typically those have to be read into the record, is  
13 we've just offered it as showing the basis in whole or  
14 in part for the opinion of the expert testimony. And  
15 I'd be inclined to keep with that pattern and admit it  
16 in that fashion.

17 MR. RYTTING: Okay. I would offer it -- I  
18 would offer it, then, for that purpose.

19 JUDGE SEITZMAN: If so, any objection with  
20 that entry?

21 MS. SILHAN: One moment.

22 Okay. So, I'm not sure what the -- you've  
23 mentioned it's a learned treatise. Is that --

24 JUDGE SEITZMAN: That tender's been  
25 withdrawn.

0129

1 MS. SILHAN: Oh, I apologize. I  
2 apologize.

3 JUDGE SEITZMAN: And the tender now is  
4 same as a tender of a number of the respondent's  
5 exhibits and that's being offered to show in whole or  
6 in part a basis for the expert's opinion.

7 MS. SILHAN: Okay. I mean --

8 JUDGE SEITZMAN: So, the articles are not  
9 being admitted for the truth of the matter contained in  
10 the article, simply to show that that is in part --  
11 what the expert relied upon -- relied upon either whole  
12 or in part in forming the expert's opinion.

13 MS. SILHAN: Has he relied on this?

14 JUDGE SEITZMAN: He indicated he has. His  
15 testimony -- we've had extensive testimony about it.

16 MS. SILHAN: Okay. Well, I have not had a  
17 chance to review this.

18 Okay. We'll withdraw our objection, then.

19 JUDGE SEITZMAN: All right. It'll be 83.

20 P83's admitted for the limited purpose of showing in  
21 part what Dr. Kanaan relied upon in forming his expert  
22 opinions.

23 Can we get a copy to Ms. Silhan before the

24 lunch hour so that she can review it?

25 MR. RYTTING: Yes, your Honor, we can.

0130

1 JUDGE SEITZMAN: Thank you.

2 MR. RYTTING: And just to make -- make the  
3 record clear, what was offered/admitted for the purpose  
4 of showing the basis of Dr. Kanaan's testimony is "Six  
5 Keys to Normal Occlusion" by Lawrence F. Andrews,  
6 D.D.S, Exhibit P83.

7 JUDGE SEITZMAN: All right. And would you  
8 also --

9 MS. SILHAN: Is there a year on that?

10 THE WITNESS: 1972, I think.

11 MR. RYTTING: It is -- I do not know if  
12 there is a year on this. It appears to be 1972.

13 THE WITNESS: 1972.

14 JUDGE SEITZMAN: And can we also get  
15 Ms. Silhan a copy, even though it hasn't been tendered  
16 in evidence, of the Parker -- is it the Parker article?  
17 Yeah, the Parker article. And if you can get that at  
18 the lunch hour so she'll have that article.

19 MR. RYTTING: I'll do that and maybe I  
20 should admit that as P --

21 JUDGE SEITZMAN: I'm not asking you to  
22 admit it or offer it at this time. I mean, you can do  
23 what you want.

24 MR. RYTTING: I would like to admit it as  
25 P --

0131

1 JUDGE SEITZMAN: He was asked questions  
2 about it. I thought she might want to read it over  
3 lunch.

4 MR. RYTTING: We would like to designate  
5 the Parker article as P84 and we would move to admit  
6 it.

7 JUDGE SEITZMAN: Same tender on Parker,  
8 just to show what Dr. Kanaan relied upon in whole or in  
9 part in forming his expert opinions? Same tender?  
10 Same --

11 MR. RYTTING: Yes. Yes, your Honor.

12 JUDGE SEITZMAN: Ms. Silhan, any objection  
13 to the limited tender?

14 MS. SILHAN: No. I'll be happy to read it  
15 over lunch.

16 JUDGE SEITZMAN: All right. So, P84 is  
17 admitted without objection for the limited purpose of  
18 showing what Dr. Kanaan relied upon in whole or in part  
19 in forming his opinions with respect to his testimony  
20 today.

21 And we're -- so, 83 and 84 are in for  
22 those limited purposes.

23 MR. RYTTING: And I guess one other -- one  
24 other record keeping purpose. I have the Draker  
25 article. It's not clear whether that has been admitted

0132

1 for a limited purpose.

2 JUDGE SEITZMAN: Draker was admitted, I  
3 think, for the purpose of showing Dr. Tadlock's basis  
4 in whole or in part in forming his opinions. Am I  
5 correct? Judge Egan's got the score sheet. So, let me  
6 see if it was a home run or a double.

7 JUDGE EGAN: You have to give me the  
8 number.

9 My recollection is it's --

10 JUDGE SEITZMAN: To any extent it wasn't,  
11 is there any objection to having the Draker article  
12 admitted as showing -- actually it appears now as a  
13 basis for both Dr. Tadlock and Dr. Kanaan's expert  
14 opinions.

15 Any -- any objection to 37 to the extent  
16 it hasn't been admitted?

17 MS. SILHAN: No, your Honor.

18 JUDGE SEITZMAN: So admitted for that  
19 limited purpose.

20 We're back to any other questions you have  
21 for Dr. Kanaan at this point.

22 MR. RYTTING: I do have other questions.

23 Q. (BY MR. RYTTING) Sticking with the Medicaid  
24 definition, is it your understanding that language has  
25 been added to the -- the definition of ectopic eruption

0133

1 recently?

2 A. Yes, sir.

3 Q. Okay.

4 A. I've been told that, yes.

5 JUDGE SEITZMAN: Speak up.

6 A. Yes. I have been told, yes.

7 Q. (BY MR. RYTTING) And was this published in a  
8 bulletin, to your understanding?

9 A. I saw it online on the website.

10 Q. And what was added to the -- what was -- what  
11 was added or changed about the definition?

12 A. It took off the rotated or slanted teeth. It  
13 took it off from the definition.

14 Q. And was anything added to it?

15 A. I don't remember.

16 MR. RYTTING: We have the -- like to show  
17 it to opposing counsel what I'd like -- I'd like to  
18 refresh the witness' memory. I believe this has  
19 already been --

20 JUDGE EGAN: A couple of those have been  
21 admitted.

22 MR. RYTTING: -- admitted as P81, the  
23 bulletin.

24 JUDGE SEITZMAN: Hang on one second.

25 JUDGE EGAN: Which one are you looking at?

0134

1 JUDGE SEITZMAN: 81.

2 JUDGE EGAN: 81, yeah.  
3 JUDGE SEITZMAN: 81 is in evidence.  
4 JUDGE EGAN: I believe I'm going to have  
5 to defer to you for this one.

6 MR. RYTTING: We'll pull it up, then.  
7 JUDGE EGAN: It was handed to us and I  
8 believe they were admitted.

9 JUDGE SEITZMAN: P81 is the bulletin. To  
10 the extent it hasn't been previously admitted, does  
11 anyone have any objection to P81?

12 MS. SILHAN: No.

13 JUDGE SEITZMAN: All right. P81 to the  
14 extent it hasn't been previously admitted is admitted.  
15 You may proceed.

16 Q. (BY MR. RYTTING) And would you go to --

17 MR. RYTTING: Turn to page 53, Roy? On  
18 page 53 the definition of ectopic eruption highlight  
19 that.

20 Q. (BY MR. RYTTING) You see that definition.  
21 Would you read that definition for us?

22 A. "Ectopic eruption an unusual pattern of  
23 eruption, such as high labial cuspids or teeth that  
24 have erupted in a position that is grossly out of the  
25 long axis of the alveolar ridge. Ectopic eruption does  
0135

1 not include teeth that are rotated or teeth that are  
2 leaning or slanted especially when the enamel-gingival  
3 junction is within the long axis of the alveolar  
4 ridge."

5 Q. (BY MR. RYTTING) Okay. And you were in the  
6 courtroom when Dr. Altenhoff testified that this was  
7 just a clarification of the previous definition; is  
8 that correct?

9 A. Yes, I was.

10 Q. And there's certain parts of that definition  
11 that are the same as before, correct?

12 A. Yes.

13 Q. And what portion is that?

14 A. The first sentence, the first two lines.

15 Q. And Dr. Altenhoff also -- you were also in the  
16 courtroom when Dr. Altenhoff and Dr. Tadlock -- Tadlock  
17 opined that the definition of ectopic eruption, as  
18 you -- as defined before and as defined now, is similar  
19 to, if not identical, to what's in Proffit and in other  
20 learned treatises.

21 Is that your understanding of the  
22 testimony?

23 A. That's what they claimed, yes.

24 Q. And so, a clarification of that definition  
25 would result in a new definition or a new -- or a new  
0136

1 description of ectopic eruption that comes closer to  
2 Proffit's or Proffit or call it the textbook definition  
3 of ectopic. Would that be a reasonable assumption?

4 Would expect a clarification to make it even closer?  
5 A. But it will never go closer to what's in  
6 Proffit because Proffit talked about area limitation.  
7 Here they're talking about when the whole dentition is  
8 gone.

9 Q. And also what about ectopic -- it says,  
10 "Ectopic eruption does not include teeth that are  
11 rotated or teeth that are leaning or slanted." In  
12 Proffit are ectopically erupting teeth leaning or  
13 slanting as you understand it?

14 A. Yes, they might be. Yes. If a tooth is  
15 slanted outside, it's ectopic.

16 Q. And in the Proffit article --

17 A. In Proffit, yes.

18 Q. -- are the examples that you're familiar from  
19 that article, do they show a tooth that is slanting or  
20 leaning as it's growing or erupting?

21 A. Yeah. We just showed that x-ray. If you  
22 don't mind, put the X ray pictures again from Proffit.

23 MR. RYTTING: Can we show the X ray  
24 pictures of Proffit up there?

25 THE WITNESS: We can leave this one,  
0137

1 please. Leave the one on the left side and --

2 JUDGE SEITZMAN: We've got mixed platforms  
3 on this one. We're not giving Stacey time to relish in  
4 her Chicago Blackhawks victory last night. We're  
5 working her pretty hard this morning.

6 MS. STACEY MANELA: I plan on milking it  
7 for all it's worth.

8 A. The upper rotation you can see how the molar  
9 is a little bit lean forward or slanted but yet it's  
10 ectopic.

11 Q. (BY MR. RYTTING) That wouldn't count under  
12 Medicaid's definition? And if an anterior teeth was --

13 JUDGE SEITZMAN: Excuse me, hang on. Do  
14 you still have your pointer?

15 THE WITNESS: Yes.

16 JUDGE SEITZMAN: Can you point to the  
17 tooth that you're referring to?

18 THE WITNESS: This is the molar. It's  
19 very lightly slanted. You can see it's very lightly  
20 slanted. I would say a millimeter. This space is only  
21 a millimeter. It's leaned forward or mesially drift  
22 and it's classified under ectopic eruption.

23 JUDGE SEITZMAN: Thank you.

24 Q. (BY MR. RYTTING) And so, this -- that's  
25 another -- this is another indication that the  
0138

1 Medic- -- let me ask it this way: In your opinion is  
2 this another indication that the Medicaid definition is  
3 not the same as Proffit's or the textbook definition of  
4 ectopic eruption?

5 A. Absolutely correct. They're different.

6 Q. And in your opinion --

7 JUDGE SEITZMAN: Can you pull the mic in  
8 front of you again?

9 Q. (BY MR. RYTTING) In your opinion has a  
10 definition of ectopic eruption changed from what it was  
11 in the Medicaid manual?

12 A. Yes.

13 Q. And why?

14 A. Because of that added sentence that "ectopic  
15 eruption does not include the teeth that are rotated or  
16 slightly slanted."

17 Q. Is that a significant change in your opinion?

18 A. Yes, big changes.

19 Q. And what does it -- how does it affect your  
20 ability to -- well, what does that -- what does -- what  
21 does that change do?

22 A. It eliminate any tooth that is rotated or  
23 slanted. Again, it doesn't define what slanted means  
24 based on what reference but it eliminated those two  
25 symptoms of ectopic eruption.

0139

1 Q. And can you tell from that --

2 A. Like now -- like now I have a tooth that's  
3 severely rotated, really ectopic, really has damage but  
4 I can't rotate it because -- I cannot score it because  
5 it's excluded.

6 Q. And what type of problems would that -- could  
7 a severely rotated tooth cause?

8 A. It can cause damage to the teeth itself -- to  
9 the tooth itself, damage to the adjacent teeth. The  
10 patient might lose a tooth later. Again we are looking  
11 to these young people when the mother nature is strong,  
12 it can compensate for any abnormality. But once these  
13 case is 10, 20 years later then you will see the  
14 symptoms and signs of these ectopic teeth.

15 Q. And what -- what about the elimination of your  
16 ability to count slanted teeth?

17 A. Same as rotation. Any tooth that is slanted  
18 or tilted, you cannot count it. Like even the example  
19 that Dr. Tadlock showed a tooth that was outside, you  
20 can't count that one because it was slanted.

21 Q. And would that mean that many -- would that  
22 mean, in your opinion, that many children without --  
23 with severe orthodontic problems now won't qualify?

24 A. Yes.

25 MR. RYTTING: Can I have a moment to --

0140

1 JUDGE SEITZMAN: You may.

2 Q. (BY MR. RYTTING) You were asked if you saw a  
3 pattern in the scoring.

4 A. Yes.

5 Q. And you answered --

6 A. No.

7 Q. -- no. Why did you answer no?

8 A. Because this was a -- the pattern, this was  
9 the actual treated patient. Like, we see a lot of  
10 patients they come to the office and then they been  
11 seen by the general dentist. That's Filter Number 1.  
12 General dentist Filter Number 2 and then later -- then  
13 lastly when they come to me maybe we convert every  
14 other patient into -- into treatment. So, you are only  
15 narrowing like -- it's like an example. If I say, "Oh,  
16 everybody here has a -- has a tie. Is this a pattern?"  
17 Of course it's a pattern in this room but it's not a  
18 pattern among the whole population.

19 So, you are only focusing in one area,  
20 which are the treated patients. Of course, you will  
21 see hundred percent because these are the patients that  
22 have been treated. But if you look the ectopic  
23 eruption percentage versus the whole patient we saw,  
24 that percentage will go way, way, way down.

25 Q. Thank you.

0141

1 MR. RYTTING: Judges, I'm going to next  
2 have to march through the patients and then address the  
3 panos and the X rays and explain why these teeth are  
4 ectopic.

5 JUDGE SEITZMAN: Let's go off the record  
6 just a second.

7 (Hearing recessed for lunch.)

8 JUDGE SEITZMAN: All right. Good  
9 afternoon. We're back on the record at 1:07 and I  
10 believe, Mr. Hilder, we're still in your cross-direct  
11 case or Mr. --

12 MR. RYTTING: Mr. Rytting.

13 JUDGE SEITZMAN: I'm sorry?

14 MR. RYTTING: Mr. Rytting.

15 JUDGE SEITZMAN: Oh, I'm sorry. Okay. Go  
16 ahead.

17 MR. RYTTING: May I hand him the --

18 MS. SILHAN: Oh, yeah.

19 Q. (BY MR. RYTTING) I'd just like to clarify one  
20 thing for the record concerning your testimony earlier  
21 this morning. You mentioned mesial drift and -- when  
22 you were talking about a molar that was in the Draker  
23 book?

24 A. Proffit.

25 Q. No. In the Proffit -- in the Proffit example

0142

1 of ectopic eruption.

2 Can you explain what mesial drift is?

3 A. Mesial drift is when the teeth lean a little  
4 bit forward where they're supposed to be. Like if  
5 they're supposed to be -- remember we're talking about  
6 a three dimensional position of a tooth, XYZ. So, if  
7 they come a little bit forward in one of these axes,  
8 we call it mesial drift. So, mesial is a two-way  
9 posterior. They swing a little bit forward. That's a

10 mesial drift.

11 Q. A mesial drift. And you were able to tell  
12 that from the X ray?

13 A. Yeah. Because of the symptoms it caused the  
14 root absorption of the adjacent tooth. It caused the  
15 damage to the tooth.

16 Q. And is it fair to say that when you determined  
17 that teeth are ectopically erupted, according to the  
18 Medicaid definition, that you rely on X rays?

19 A. Yes.

20 Q. Okay. And it takes -- do you have any special  
21 training in reading X rays other than you -- or is it  
22 just your orthodontics training?

23 A. Just the orthodontics and some continuing  
24 education courses.

25 Q. But this is something that you -- yesterday

0143

1 there was testimony about how lay persons could tell  
2 when certain orthodontic phenomena had occurred. Do  
3 you recall that?

4 A. Vaguely.

5 Q. Is -- is -- with the X rays, does that take  
6 technical ability?

7 A. Yes. You need to measure it, yes.

8 Q. All right. I would like to turn to, if you  
9 would -- you have -- you have before you the Proffit.  
10 The book -- the bible of orthodontia by Proffit. And  
11 if you would, would you turn to the section that has to  
12 deal with problems with eruption?

13 A. What page?

14 Q. It may be flagged, I believe. Flip back.

15 A. Yes, page 449.

16 Q. Okay. And we were talking about -- we've gone  
17 over the Medicaid definition of ectopic eruption as  
18 being an unusual pattern of eruption.

19 A. Uh-huh.

20 Q. And you were in the courtroom yesterday when  
21 Dr. Tadlock testified and Dr. Altenhoff testified and  
22 they said that that was pretty much the same in meaning  
23 as an abnormal --

24 A. Yes.

25 Q. -- pattern -- an abnormal pattern of --

0144

1 A. Correct.

2 Q. -- abnormal eruption of teeth. Was that your  
3 understanding of their testimony?

4 A. Yes, yes.

5 Q. But they maintain that ectopic eruption  
6 happens very -- and, in fact, that could be substituted  
7 for the definition of ectopic -- for the definition in  
8 the Medicaid handbook, an abnormal pattern of eruption.

9 Do you recall that?

10 A. Yes, I do.

11 Q. Okay. And you testified today that when you

12 looked up the definition of ectopic eruption doing a  
13 Google search like Dr. Tadlock did, if you put in the  
14 phrase unusual eruption of teeth, you got back to  
15 basically the TMHP manual?

16 A. Correct.

17 Q. You didn't get back to ectopic eruption, did  
18 you?

19 A. Correct.

20 Q. Okay. So, does -- does Dr. Proffit, the  
21 author of this book, use a concept similar to abnormal  
22 eruption -- I mean, to -- to unusual eruption?

23 A. Can you rephrase it, please? What --

24 Q. Does that -- does he use a concept or a phrase  
25 similar to abnormal eruption or unusual eruption in his  
0145

1 book?

2 A. Correct. Absolutely, yes. Because underneath  
3 the title of eruptions he has different categories and  
4 one of them is abnormal eruption, yes.

5 Q. And what does he say about abnormal -- well,  
6 let me strike that.

7 Both Dr. Tadlock and Dr. Altenhoff  
8 indicated that an abnormal pattern of eruption or  
9 abnormal eruption of the teeth was highly unusual.

10 A. Yes, I recall that.

11 Q. What does Dr. -- does Proffit say about  
12 abnormal eruption of teeth?

13 A. I don't know. I have to read it. I don't  
14 know. I don't remember.

15 Q. Well, can I refer you to Figure 38, I believe?

16 A. Okay. You want me to read it?

17 Q. Yes.

18 A. Permanent teeth often erupt in abnormal  
19 positions as a result of retained primary teeth.

20 JUDGE EGAN: As a result of what?

21 THE WITNESS: Retained primary teeth.

22 JUDGE SEITZMAN: Retained?

23 THE WITNESS: Yes, primary teeth.

24 A. Often erupt in abnormal positions.

25 Q. (BY MR. RYTTING) And just to -- one follow-up  
0146

1 question about the -- an article that you relied upon  
2 for your testimony, the Andrews article --

3 A. Yes.

4 Q. -- about -- and what was the title of that  
5 article, do you remember?

6 A. The "Six Keys to Normal Occlusion."

7 Q. And where -- where can you find that article?

8 A. It's published in the web.

9 Q. Of what?

10 A. The American Board of Orthodontists, if you  
11 want to take their exam, it's one of the required list  
12 of reading. You go to the ABO website, you'll see this  
13 article. It's one of 61 articles that you need to read

14 and understand to pass that board certification exam.

15 Q. And the American Board of Orthodontists,

16 that's the organization that Dr. Tadlock is on,

17 correct?

18 A. Yes. Yes, sir.

19 Q. He's a board member of it, correct?

20 A. Correct.

21 Q. I'm going to turn to some of the patient

22 files.

23 MR. RYTTING: And just so the Judges will  
24 know, we've narrowed it down to five patients is all  
25 we're going to -- all we believe we need to go through.

0147

1 So, if you would, Roy, put up our patient  
2 File 36, P36 and maybe you -- if we can get to the HLD  
3 score.

4 Q. (BY MR. RYTTING) And, Dr. Tadlock (sic), this  
5 patient P36 what was the HL- -- the HL- -- what was the  
6 score for ectopic eruption?

7 A. 24 points.

8 Q. And I'd like you to explain how you got to  
9 that -- or why you, as a clinician, got to that -- that  
10 figure. What were -- and would it be useful -- what  
11 would be useful for you to see?

12 A. I did a comprehensive exam --

13 Q. Yes.

14 A. -- which includes an intraoral examination by  
15 my eyes for his teeth plus the X rays plus the  
16 symptoms. I'd like to have his pictures first, please,  
17 the intraorals.

18 So, although here you'll see his teeth are  
19 almost straight, you see a little bit of open bite but  
20 when you look into his lip and the function and  
21 furthermore into his X rays --

22 THE WITNESS: Let me see the CEF, please.

23 A. And you can --

24 THE WITNESS: Can we increase the  
25 contrast?

0148

1 A. You can see very clearly that this is a long  
2 axis of the alveolar ridge right here and you see the  
3 teeth are slanting outside the long axis of the  
4 alveolar ridge, same thing top and bottom. Again this  
5 is the alveolar ridge right here. This is the long  
6 axis and you see these teeth are slanting outside.

7 THE WITNESS: If you go back to the  
8 intraorals, please. Could you please zoom in here?

9 No this one. This one.

10 A. You can see from this picture -- this is the  
11 alveolar ridge and you can see it very clearly how  
12 these four front teeth are outside. So, although they  
13 look straight but they are not where they're supposed  
14 to be. They're outside the bone. See, this is the  
15 bone right here and these teeth you can see the edges

16 they're way outside.

17 Q. So, the --

18 A. So, based on that, I score him two ectopic on  
19 the top -- four teeth on top, four on the bottom, score  
20 24. And he has an overbite, slight overbite here. I  
21 gave him 1 millimeter. And I came up with a score,  
22 maybe 28. I don't know.

23 Q. (BY MR. RYTTING) And this did --

24 A. This little spacing I put 2, 2 millimeters.

25 Q. And does this patient have an orth- -- does he  
0149

1 represent a patient that has a true orthodontic need?

2 Needs orthodontic care?

3 A. Of course, of course, 100 percent

4 dysfunctional handicapping case, 100 percent.

5 JUDGE SEITZMAN: Can you pull the mic to  
6 your right? That way when you're looking at the  
7 witness, you'll actually be talking into the mic.

8 MR. RYTTING: Yes, I will. Thanks.

9 Q. (BY MR. RYTTING) All right. And do you  
10 recall the score that Dr. Tadlock gave this case?

11 MR. RYTTING: Do we have those scores,  
12 Roy?

13 MR. ROY ORNALES: This is R11.36.

14 Q. (BY MR. RYTTING) He gave this case a 10.

15 A. Yes.

16 Q. Correct?

17 So, this child would have been denied care  
18 under Medicaid. Is that your understanding of what  
19 would have happened to him if Dr. Tadlock had been his  
20 physician.

21 A. Yes, he was denied. Yes.

22 Q. And is he a zero -- zero for ectopic eruption  
23 on the Tadlock score.

24 A. Yes.

25 Q. Is that because, based upon your understanding  
0150

1 of his testimony, he was using a completely different  
2 definition of --

3 A. Yes.

4 Q. -- ectopic eruption?

5 A. I think he was using the textbook definition.

6 He did not stay with the Medicaid manual definition.

7 Q. So, he basically was in violation of the  
8 Medicaid manual?

9 MS. SILHAN: May I object, please? Can we  
10 refrain from -- I'd like him to stop speculating as to  
11 what Dr. Tadlock might believe about this patient.

12 JUDGE SEITZMAN: He just asked him if --  
13 if Dr. Tadlock used the textbook definition as opposed  
14 to the Medicaid definition would Dr. Tadlock be --

15 MS. SILHAN: Okay.

16 JUDGE SEITZMAN: -- outside the Medicaid  
17 definition in violation of it --

18 MS. SILHAN: Well, in that case I'd also  
19 like to object that he's leading the witness.

20 JUDGE SEITZMAN: Can you rephrase the  
21 question? We already know he knows the question but  
22 would you mind rephrasing it?

23 MR. RYTTING: Well, he's answer -- I  
24 believe he's answered the question. I won't take the  
25 Court's time.

0151

1 JUDGE SEITZMAN: All right. The  
2 question's been withdrawn.

3 MR. RYTTING: Okay. I'll try -- I'll try  
4 to rephrase it.

5 Q. (BY MR. RYTTING) Would -- in -- let's see.  
6 Dr. Tadlock scored the ectopic eruption as zero,  
7 correct?

8 A. Yes.

9 Q. Do you have an opinion about whether this,  
10 this score -- and it was under -- your understanding  
11 based on his testimony yesterday that he was using a --  
12 the definition out of Proffit and not the Texas  
13 Medicaid definition. Is that -- that was your  
14 understanding?

15 A. Correct, yes.

16 Q. In your opinion, would his testimony be --  
17 would his score be a violation of the Medicaid manual?

18 A. I don't know about that. I'm not a Medicaid  
19 expert on violation. I'm a clinician.

20 Q. All right. Fair enough.

21 Is there anything else you want to say  
22 about this patient, Patient Number 36?

23 MS. SILHAN: Okay. Your Honor, I'm going  
24 to renew my -- or re-object to leading. Calling for a  
25 narrative.

0152

1 JUDGE SEITZMAN: Actually I think the  
2 question can be answered yes or no. So --

3 MS. SILHAN: Okay.

4 JUDGE SEITZMAN: -- I don't think it's  
5 leading.

6 A. This is Dr. Tadlock's score. This is my  
7 scoring. There's nothing else.

8 Q. (BY MR. RYTTING) All right. Let's return to  
9 the X ray. Okay. And would a layperson be able to  
10 tell from this X ray that these teeth were ectopic?

11 A. No. Can we have the measurements, please?

12 Q. The --

13 A. The measurements for these ones?

14 Q. What are those called, Doctor, the  
15 measurements that you're referring to?

16 A. The cephalometric measurements, the tracings.

17 Q. The tracings?

18 A. Yes. May -- may I explain further, please?

19 Q. Yes. What is -- what is the significance of

20 this as far as your diagnosis?

21 A. I'm going to show that this is the angle  
22 between the mandibular plane between the jaw and the  
23 incisor tooth and the normal supposed to be 95, 95.

24 And this patient has 1 -- almost 110. 15-degree over  
25 what's normal. You can tell how severe ectopic that  
0153

1 this is the normal 95 and this is the normal for  
2 African-American. We did not use a normal for  
3 Caucasian. 110 versus 95, 15-degree extra, two  
4 standard deviation away from the normal.

5 Q. So, in order to make a diagnosis -- a  
6 diagnosis of an ectopic eruption doesn't -- requires a  
7 lot more than just looking at the front teeth --

8 A. Definitely.

9 Q. -- head on at the pano?

10 A. Definitely, yes.

11 MR. RYTTING: Can we look at Patient  
12 Number 42? And if we would go to the HLD score.

13 Q. (BY MR. RYTTING) And what is the score for  
14 ectopic eruption you gave?

15 A. 24 points.

16 Q. And what teeth did you categorize as ectopic?

17 A. The upper four and the bottom fours.

18 Q. And what definition were you applying to this  
19 case?

20 A. The Medicaid manual definition.

21 Q. Okay. And what would be helpful as far as  
22 explaining why you did this?

23 THE WITNESS: Can we start with the  
24 pictures, please?

25 A. So, that's a case from the front you can tell  
0154

1 that the front is almost straight but if you look at  
2 her profile, you immediately can tell that these teeth  
3 are outside of the bone. The lips are noncompetent.  
4 When you look to the X ray --

5 THE WITNESS: May I see that CEF, please?

6 A. And this hundred percent proves that these  
7 teeth are outside. This -- this is the long axis of  
8 the alveolar bone and the teeth are outside. As a  
9 matter of fact, you can see the teeth are biting -- her  
10 top teeth are biting over the bottom ones.

11 Q. (BY MR. RYTTING) And what is -- and what type  
12 of problems can that cause when the front teeth are  
13 resting on the bottom?

14 A. Dysfunction, trauma in the future, teeth keep  
15 coming forward, the hitting of the gum.

16 MR. RYTTING: Can you put up the HLD for  
17 Dr. Tadlock?

18 Q. (BY MR. RYTTING) And Dr. Tadlock, what was  
19 his score for ectopic eruption?

20 A. Six points.

21 Q. And, Dr. Kanaan, what was Dr. Tadlock's score?

22 A. Six points, total of 12 points.  
23 Q. And this is another child that would have been  
24 denied care under Medicaid?  
25 A. Based on Tadlock's scoring, yes.

0155

1 Q. Is this an example of true orthodontic need?

2 A. Correct, hundred percent.

3 JUDGE EGAN: I'm sorry. True orthodontic  
4 what?

5 MR. RYTTING: Truth orthodontic -- true  
6 orthodontic need.

7 JUDGE EGAN: Thank you.

8 Q. (BY MR. RYTTING) So, is there -- would you  
9 like to look at the tracings? Would they help you?

10 A. I'm good. Unless you want to see them but I'm  
11 good.

12 Q. And, again, this is -- okay.

13 MR. RYTTING: Patient 37.

14 Q. (BY MR. RYTTING) And, again, your -- what's  
15 the score that you gave this child for the ectopic  
16 eruption?

17 A. 21 points.

18 Q. And the teeth that were ectopically erupted  
19 are?

20 A. The upper centrals and upper left canine.

21 Q. And the total score for the patient was?

22 A. 29 points.

23 Q. Let's -- and --

24 MR. RYTTING: Can you put up the X ray.

25 THE WITNESS: Please put the pano, the

0156

1 panoramic X ray.

2 A. You can very clearly see that ectopic tooth  
3 here. The patient is missing two -- the patient is  
4 missing two laterals. So, this tooth even if it looks  
5 straight but it's ectopically supposed to be right here  
6 and the tooth has drifted all the way to the left.

7 THE WITNESS: Can we go to the intramural,  
8 please?

9 A. So, that's how it looks. When you look here,  
10 it doesn't look that bad; but when you look into the X  
11 ray, you realize that there's a tooth coming up here.  
12 This tooth drifted all the way backward to touch this  
13 tooth was supposed to be right here. So, based on the  
14 X rays and the clinical findings, I put this one  
15 ectopic, this one ectopic and the other one ectopic.

16 Q. (BY MR. RYTTING) Now -- and, again, this  
17 represents a patient with a -- in your opinion, has a  
18 true orthodontic need?

19 A. 100 percent, 120 percent.

20 Q. And by that means orthodontic need for braces  
21 for --

22 A. Braces and possible surgery --

23 Q. -- orthodontic care?

24 A. To bring the tooth down.

25 MR. RYTTING: And, again, if you would

0157

1 again bring the score that Dr. Tadlock gave this child,  
2 Roy.

3 MR. ROY ORNALES: This is R11.37.

4 Q. (BY MR. RYTTING) And his score for ectopic  
5 teeth was what?

6 A. Six points.

7 Q. So -- and the total score?

8 A. 15.

9 Q. And would that result in a denial from  
10 Medicaid, in your opinion?

11 A. Yes, it would.

12 Q. Move on to -- and one -- this is another --  
13 this is another case, in your opinion, where you have  
14 to look at the X rays?

15 A. Most definitely, yes. Yes.

16 Q. The pano will give you some information?

17 A. A lot of information that --

18 JUDGE SEITZMAN: Pull the mic closer.  
19 Thank you.

20 JUDGE EGAN: What did you just say?

21 THE WITNESS: A lot of information. A  
22 lot. Not some, a lot.

23 Q. (BY MR. RYTTING) And when he -- when he  
24 scored the ectopic teeth, do you -- in your opinion is  
25 the explanation for that low score the fact that he

0158

1 used a -- call it the Proffit definition of ectopic  
2 eruption?

3 A. Correct, yes.

4 Q. And he did not use the Medicaid definition?

5 A. I guess so. Yes.

6 MR. RYTTING: If we would, let's go to  
7 Patient number 43.

8 MR. ROY ORNALES: It's P43?

9 MR. RYTTING: P43.

10 Q. (BY MR. RYTTING) And, again, you have an HLD  
11 score of 24?

12 A. Uh-huh. Yes.

13 MR. RYTTING: And will you put up the  
14 X ray.

15 THE WITNESS: Yeah. We have a tooth right  
16 here -- may I see the pano, please?

17 I want you to please, focus right here.

18 A. This is another case of the Judges that I can  
19 show you very clearly if you have a problem with one  
20 tooth how these two front teeth are slanted this way.

21 So, they're not straight. You can see very clearly  
22 they're leaning to the left side of the patient.

23 MR. RYTTING: And if you would, put up the  
24 intraorals.

25 A. See the intraorals, they don't look that bad.

0159

1 Like if somebody comes in, "Oh, these teeth are  
2 straight." But the reality, no, they're not straight.  
3 They are tipped. See, this is the top midline. This  
4 is the bottom one. You have like 3 -- 3 millimeter  
5 discrepancy.

6 Q. And what's the significance of that for an  
7 orthodontist?

8 A. Well, then it will click your mind, "Oh,  
9 there's something going on. Take an X ray and see  
10 what's going on." So, you take an X ray and you see  
11 this tooth laying over there.

12 Q. And, again, does this child represent a case  
13 of true orthodontic need for --

14 A. 100 percent.

15 Q. -- for braces?

16 A. 100 percent, yes.

17 MR. RYTTING: And, again, can we compare  
18 this to what Dr. Tadlock -- Dr. Tadlock's score on the  
19 HLD?

20 MR. ROY ORNALES: R11.43.

21 Q. (BY MR. RYTTING) And what's the score he gave  
22 for ectopic eruption?

23 A. That's his scoring?

24 Q. Yes.

25 A. You sure?

0160

1 If that's the scoring, then he gave it  
2 zero.

3 Q. And what was his total score?

4 A. One.

5 Q. Okay. And under your understanding of how  
6 Medicaid works, would this child have been denied care  
7 if Dr. Tadlock had been his dentist?

8 A. Of course.

9 Q. Or her dentist?

10 A. Of course.

11 Q. And what do you think, in your opinion, is the  
12 explanation for the zero on the ectopic eruption, the  
13 fact that Dr. Tadlock was using a non-Medicaid  
14 definition of ectopic eruption?

15 A. This what and what Mr. Garcia was telling him.

16 Q. Pardon me? Would you repeat that?

17 A. I said this one -- I agree this one and what  
18 Mr. Garcia, Arthur Garcia was telling him in his  
19 deposition, was he wearing his eyeglasses.

20 MR. RYTTING: Let's turn to page (sic) 47  
21 and the HLD score that Dr. Kanaan gave for that  
22 patient.

23 A. 24 points for ectopic.

24 Q. (BY MR. RYTTING) And, again?

25 A. 33 for total.

0161

1 Q. And what teeth did you score ectopically?

2 A. The four front, the four bottom.

3 MR. RYTTING: Please put up the  
4 intraorals.

5 Q. (BY MR. RYTTING) Are these the intraorals for  
6 Patient 36?

7 A. Are they?

8 Q. Yes.

9 A. So --

10 MR. HILDER: Patient 40.

11 MR. RYTTING: Patient 40. These are  
12 intraorals for Patient 46. I apologize.

13 MR. ROY ORNLES: P47.

14 MR. RYTTING: P47. I apologize.

15 Q. (BY MR. RYTTING) Okay.

16 A. So, if you only limited your evaluation on the  
17 front teeth, they don't look that bad; but if you look  
18 to the top, bottom and then --

19 THE WITNESS: And then please pull the  
20 CEF, please.

21 Can you exchange the contrast here or no?

22 JUDGE EGAN: You can enlarge.

23 A. Well, you can see how these incisor edges --  
24 that's her lip. You can see this is her lip and you  
25 can see clearly how these incisors are biting over half  
0162

1 in front of her middle, but this patient is really --  
2 rather than bite on the teeth, she bites on her lip.  
3 So, this is a dental necessity, medical necessity,  
4 hundred -- hundred percent handicap malocclusion. You  
5 can see it very clearly, upper teeth biting on the  
6 bottom lip.

7 MR. RYTTING: Okay. If you would put  
8 Tadlock HLD score for the patient.

9 MR. ROY ORNALES: R47 point -- I'm sorry.  
10 Excuse me. R11.47.

11 Q. (BY MR. RYTTING) And Dr. Tadlock's score for  
12 the ectopic eruption, what was that?

13 A. 0.

14 Q. Total score for this patient?

15 A. 8.

16 Q. And is it your understanding that Medicaid  
17 would have denied care for this patient --

18 A. Yes.

19 Q. -- if Dr. Tadlock had been her dentist?

20 A. Yes.

21 Q. And what explanation, in your opinion, after  
22 hearing Dr. Tadlock's testimony yesterday, is the  
23 reason -- what -- what explains that zero for ectopic  
24 eruption?

25 A. I don't know. Maybe -- because even here he  
0163

1 didn't put crowding here. Severe -- she has severe  
2 crowding. He didn't put ectopic or crowding. I don't  
3 know why he did that. That's his scoring.

4 Q. Do you think -- when it comes to ectopic  
5 eruption, what definition do you think he was using  
6 based on your -- his testimony yesterday?

7 A. The Proffit -- the Proffit definition.

8 Q. And -- and, again, the Proffit definition is  
9 different -- different from the Medicaid definition; is  
10 that correct?

11 A. Absolutely correct.

12 Q. We have a -- you were asked by -- by opposing  
13 counsel about the -- your scores and Dr. Orr's scores.  
14 Is that -- do you recall that earlier this morning to  
15 be asked to compare your scores to Dr. Orr's scores?

16 A. Okay.

17 Q. Do you recall that?

18 A. Yes, she asked me that. Yes, sir.

19 Q. And there were significant differences in --  
20 in some of the scoring; is that correct?

21 A. Possibly, yes, uh-huh.

22 Q. Okay. I mean, at least the -- you -- the  
23 points -- points that you gave on occasion were  
24 different from Dr. Orr's. Is that fair to say?

25 A. Yes.

0164

1 Q. Okay.

2 MR. RYTTING: I'd like to put up the --  
3 it's a -- you can either use it demonstrative exhibit  
4 or probably as an exhibit that the Court asked for,  
5 which is a summary of all the scores of all the  
6 doctors.

7 JUDGE SEITZMAN: I didn't -- have you  
8 given it to opposing counsel?

9 MR. RYTTING: P77 I believe is what it is.  
10 I believe it's P77.

11 MR. TONY CANALES: P77 is the spreadsheet  
12 I prepared earlier, forwarded a copy to opposing  
13 counsel. They told me they were going to look at it,  
14 if they felt there was an error somewhere -- I have not  
15 heard any more but it's the column by column of the  
16 doctors.

17 JUDGE EGAN: I don't recall having an  
18 objection on it. I thought we admitted everything  
19 except the Exhibit 76.

20 MR. KHAROD: Your Honor, this was not one  
21 of the three admitted exhibits.

22 JUDGE EGAN: Okay.

23 MR. KHAROD: This is one of those last  
24 week I remember we were exchanging other documents when  
25 we asked --

0165

1 I'm sorry. Mr. Kharod is my name.

2 K-H-A-R-O-D.

3 JUDGE EGAN: Okay.

4 MR. KHAROD: So, it's one they had  
5 e-mailed to us over the weekend asking whether we'd

6 stipulate to it. We found some errors. We said we'd  
7 rather not agree to it until we have a chance to review  
8 all the numbers and we can create our own summary based  
9 on the numbers that we have.

10 JUDGE SEITZMAN: And have you had an  
11 opportunity to do that?

12 MR. KHAROD: To create our own summary?

13 JUDGE SEITZMAN: Yes.

14 MR. KHAROD: We have not. I can put one  
15 together but -- he had asked -- Mr. Canales asked me if  
16 I knew which numbers were mistaken. I didn't at the  
17 time. If they want to use it as a demonstrative and  
18 represent that it represents the correct numbers that  
19 are in each of the expert reports, then they can  
20 introduce it for that purpose but --

21 JUDGE SEITZMAN: Well, we've had a number  
22 of summaries; and as long as it's a summary of what's  
23 in evidence, if it needs to be corrected, then we've  
24 given leave, I think for both parties at this point, to  
25 go back and make corrections, even this morning.

0166

1 So, is there a substantive objection to  
2 77, P77?

3 MR. KHAROD: I think the scores are what  
4 they are. If this is what they want to use to display  
5 what those scores are, then they can. I think  
6 that's --

7 MR. TONY CANALES: So, there's no  
8 objection.

9 JUDGE SEITZMAN: So, I take it it's a lot  
10 like the summary that Ms. Silhan used this morning.

11 JUDGE EGAN: And the summary they used.

12 MR. KHAROD: Yes, but I don't believe that  
13 summary was put in evidence.

14 JUDGE SEITZMAN: I believe it was.

15 MR. TONY CANALES: Yes, it was.

16 MR. KHAROD: If -- if that's -- I'm sorry.

17 JUDGE EGAN: This one was put in.

18 MR. KHAROD: If it's their summary of the  
19 expert numbers and those numbers reflect what are the  
20 actual HLD scores of those experts, then it is what it  
21 is.

22 JUDGE SEITZMAN: I take it back. It was  
23 the summary -- maybe it was yesterday -- with Dr.  
24 Tadlock. Actually had Dr. Orr yesterday. So I may be,  
25 you know, suffering from acute hospital disorientation.

0167

1 But we had this summary and we had asked the parties to  
2 expand this summary of all the point scores, of all the  
3 people who did the reviews. I don't know it's -- it  
4 was in the --

5 JUDGE EGAN: I don't know what number it  
6 is.

7 JUDGE SEITZMAN: I think it was

8 Dr. Tadlock because we excluded the calculations, the  
9 mathematical calculations at the bottom from the  
10 exhibit but I believe he ended up testifying to the --  
11 to the math. But I believe the scores came in as an  
12 exhibit.

13 This is similar, is it not?

14 MR. TONY CANALES: Yes, your Honor. P77 I  
15 forwarded it to them last Friday, I believe.

16 JUDGE SEITZMAN: No, no. Is it similar --

17 MR. TONY CANALES: Yes, yes. All it shows  
18 is the P number of the patient and the four, five  
19 columns of each respective doctor. It doesn't have  
20 anymore comments. They had an objection at one time  
21 that it said privileged or something. I took that out.  
22 It has no comments about anything. Strictly it's all  
23 based on whatever is in evidence.

24 MR. KHAROD: This is -- just answer a  
25 question whether it was a similar type -- it's a  
0168

1 similar type of document. The difference in  
2 Dr. Tadlock's spreadsheet and this spreadsheet we  
3 intend to offer is that it would give not just the  
4 overall HLD scores but the components of the scores by  
5 two and that information -- that information is not on  
6 P77 they're offering.

7 JUDGE SEITZMAN: But is P77 substantially  
8 similar to the score sheet that was introduced in  
9 evidence through Dr. Tadlock with the exception of the  
10 mathematical calculations?

11 MR. KHAROD: I don't believe it is it  
12 because it doesn't break down by tooth. What their P77  
13 it says it has five columns doctor the --

14 JUDGE SEITZMAN: Well, let's see P77. We  
15 haven't seen it.

16 MR. KHAROD: Okay.

17 MR. TONY CANALES: He's pulling that out  
18 for me.

19 JUDGE SEITZMAN: Let's go off the record a  
20 second.

21 (Off the record)

22 JUDGE SEITZMAN: All right. Back on the  
23 record at 1:47. Mr. Canales.

24 MR. TONY CANALES: Yes, your Honor. Thank  
25 you for allowing me to propose Exhibit 77 which we're  
0169

1 offering in evidence as a summary of P77, which you  
2 have in your notebooks already.

3 JUDGE SEITZMAN: All right. We had a -- I  
4 wouldn't call it lengthy. Call it intermediate  
5 discussion off the record about this.

6 Is there any objection from the Office of  
7 Inspector General with respect to the tender of Exhibit  
8 77 understanding that the parties have agreed that if  
9 they -- in their review of it if they find that there

10 is a calculation error or transposition error and  
11 they're both in agreement, they will correct it and  
12 file -- petitioners will file a substitute copy.

13 With that caveat, is there any objection  
14 to 77?

15 MR. KHAROD: Based on your excellent  
16 summary of what was discussed, we have no objection.

17 JUDGE SEITZMAN: And I'll also add that it  
18 doesn't preclude a substantially similar or expanded  
19 exhibit from the OIG.

20 With that, 77 is admitted.

21 MR. RYTTING: And, Roy, would you, please,  
22 call up what's been admitted as Exhibit 77.

23 Q. (BY MR. RYTTING) And do you recognize this,  
24 Dr. Kanaan?

25 A. Yes. I saw it recently, yes.

0170

1 Q. Have you had a chance to examine the scores of  
2 Dr. Evans and Dr. Tadlock?

3 A. I did not look into the individual ones but I  
4 look into the total ones. I can see that like on this  
5 patient Dr. Evans gave 8. Here we have 19. 11 point  
6 different for Patient Number 7. You have here 16 point  
7 difference between D. Tadlock and Dr. Evans. 16 points  
8 difference on Patient Number 19, which will -- which  
9 will show a different -- differently how subjective the  
10 issue is.

11 Evans, zero; Tadlock, 16.

12 Q. Is there any --

13 THE WITNESS: Can we go to the next page?

14 A. See here, eight points different, six points,  
15 ten points different, six points, four points.

16 THE WITNESS: Next page, please.

17 A. Three, six points here different, six points.

18 Clearly it show you how subjective the issue is.

19 Q. (BY MR. RYTTING) And these are -- these are  
20 total HLD scores, correct?

21 A. Yes.

22 Q. And with Tadlock using what he considered to  
23 be an objective definition --

24 A. Yes, sir.

25 Q. -- of ectopic eruption?

0171

1 A. Correct.

2 JUDGE SEITZMAN: Mic, please.

3 Q. (BY MR. RYTTING) Using an objective  
4 definition or a textbook definition of ectopic eruption  
5 and we still see major --

6 A. Even with objective definition, you still see  
7 big variation.

8 Q. And we're seeing with -- and just for  
9 clarification is what Dr. Proffit said was an  
10 objective?

11 A. Yes.

12 Q. So -- and yesterday Dr. -- or I believe it was  
13 yesterday. Maybe the day before. Dr. Tadlock  
14 testified that he did several Google searches -- you  
15 were in the courtroom for that?

16 A. Yes.

17 Q. -- based on ectopic eruption?

18 A. Yes.

19 Q. Did you try to reproduce his results?

20 A. Of course.

21 Q. What did you -- when -- and what did you do to  
22 reproduce it?

23 A. I went to the same website that Dr. Tadlock  
24 use, which is PubMed.org and I put ectopic eruption on  
25 the search field to see how many time -- how many  
0172

1 articles came out. And I found out that, exactly what  
2 he said, there are several hundreds. There's 1,395  
3 articles that contains the word ectopic eruption.  
4 However, if you look further down about these articles,  
5 some of them they talk about lung cancer. Some of them  
6 they talk about brain cancer. Some of them talk about  
7 teeth. So, to be -- and some of them are  
8 cross-referenced like the article might mention in the  
9 reference ectopic eruption. So, it's going to be  
10 counted.

11 So, when I did PubMed ectopic eruption  
12 only in the title, it narrowed it down to 140 articles.  
13 Because Medicaid doesn't take -- doesn't accept the  
14 molars as ectopic erupted. I put ectopic eruption in  
15 the title, not molars and it narrowed it down to 48  
16 articles. If you put ectopic eruption definition, you  
17 have no -- no articles. And I have it on my laptop.  
18 We can go right now and Google. We can do it right  
19 now, if the Judges want to confirm my numbers.

20 Q. I don't believe it'll be a need for that.

21 A. That's for the Judges if they want to see what  
22 I'm talking about. I have it on my laptop. I put  
23 every screen.

24 JUDGE SEITZMAN: We'll be guided by your  
25 attorney on this one.

0173

1 Q. (BY MR. RYTTING) I think that was a  
2 sufficient explanation. They have the wherewithal to  
3 corroborate.

4 Dr. Kanaan, did you ever try to  
5 misrepresent your scores --

6 A. Never.

7 Q. -- on the HLD score sheet?

8 A. Never.

9 Q. Did you ever attempt to fraud the Medicaid  
10 system?

11 A. Never.

12 MR. RYTTING: I will pass the witness.

13 JUDGE SEITZMAN: Judge Egan?

14 JUDGE EGAN: No. Oh, I did. Anyway,  
15 you're right just before lunch.  
16 JUDGE EGAN: Oh, you may have answered  
17 this. But between 2008 and 2011 at Antoine Dental  
18 Center how many Medicaid patients were you treating as  
19 an or- -- you were the orthodontist, correct?  
20 THE WITNESS: Yes.  
21 I don't recall the exact number. It was  
22 me or Dr. Nazari. I don't know.  
23 JUDGE EGAN: Do you have any idea? Was  
24 it --  
25 THE WITNESS: Maybe 2,000, maybe.  
0174

1 JUDGE EGAN: 2,000.  
2 THE WITNESS: 2 or 3,000, I don't know.  
3 JUDGE EGAN: And these patients would only  
4 get to you after they had gone through a general  
5 dentist and been assessed as needing orthodontia work  
6 or needing an evaluation for orthodontia work?  
7 THE WITNESS: That is one at the outset I  
8 got the patients. I might have gotten them referred  
9 from the general offices in the area, from the  
10 children's hospital for the -- if they have cleft  
11 palate or lingual problems.  
12 JUDGE EGAN: Okay. So, the hospital might  
13 send them to you as well --  
14 THE WITNESS: Yes, ma'am. Yes.  
15 JUDGE EGAN: -- if they have a cleft  
16 palate or some orthodontural need?  
17 THE WITNESS: Yes.  
18 JUDGE EGAN: I think that's all I have.  
19 JUDGE SEITZMAN: Dr. Kanaan, under the  
20 definition that was in the more recent bulletin --  
21 THE WITNESS: Uh-huh.  
22 JUDGE SEITZMAN: -- that eliminated -- I  
23 think your testimony and your opinion eliminated  
24 certain teeth or actions of teeth from qualifying for  
25 ectopic eruption, under that current definition that --  
0175

1 as you understand it, what would qualify as -- what  
2 would qualify as an ectopic eruption?  
3 THE WITNESS: You would need to ask  
4 Dr. Linda Altenhoff.  
5 JUDGE SEITZMAN: I'm sorry?  
6 THE WITNESS: We need to ask Dr. Linda  
7 Altenhoff.  
8 JUDGE EGAN: Okay.  
9 THE WITNESS: I don't know.  
10 JUDGE SEITZMAN: So, you're not clear as  
11 to what would qualify?  
12 THE WITNESS: No.  
13 JUDGE SEITZMAN: Because of the -- because  
14 of the clarifying --  
15 THE WITNESS: Exclusion.

16 JUDGE EGAN: -- or changed language?  
17 THE WITNESS: Yes.  
18 JUDGE SEITZMAN: I have one question and I  
19 thought about it. I don't really know how to phrase it  
20 very artfully. So, accept my inartful phrasing.  
21 But if I had a box of quart bottles in a  
22 container -- and let's say it would hold 12.  
23 THE WITNESS: Uh-huh.  
24 JUDGE SEITZMAN: -- and then tried to take  
25 a liter bottle and put it into that box, there's  
0176

1 obviously not enough space for it. So, something's  
2 gonna happen. And so, what I'm trying to understand is  
3 in the mouth, when you were describing what's happening  
4 with the teeth, are there two possibilities as I -- so  
5 as I try and put that liter bottle into this full box  
6 of quart bottles, one of two things can happen, it can  
7 push other bottles out of the way or it can change its  
8 orientation --

9 THE WITNESS: Uh-huh.  
10 JUDGE SEITZMAN: -- to try and fit into  
11 whatever space is there. Is that essentially -- do  
12 both those things happen in the mouth as a tooth is  
13 trying to come in?

14 THE WITNESS: To a degree, yes, or the  
15 whole box might expand it.

16 JUDGE SEITZMAN: So, I breakdown the  
17 corners of the box.

18 THE WITNESS: Yes, yes.

19 JUDGE SEITZMAN: Okay.

20 THE WITNESS: It depends on how the  
21 muscles -- yes, uh-huh.

22 JUDGE SEITZMAN: Okay. That's all the  
23 questions I had.

24 MS. SILHAN: May I ask for a quick  
25 five-minute --

0177

1 JUDGE SEITZMAN: Sure.

2 MS. SILHAN: -- break and I promise we'll  
3 be quick when we come back.

4 JUDGE SEITZMAN: Okay. Let's go off the  
5 record for five minutes.

6 (Off the record)

7 JUDGE SEITZMAN: All right. We're back on  
8 the record at 2:05.

9 Ms. Silhan?

10 REDIRECT EXAMINATION

11 BY MS. SILHAN:

12 Q. Okay. I'd like to keep this quick. I know  
13 you have to go. So, I'll try to ask just a few  
14 questions.

15 You described a handicapping malocclusion  
16 as measured by the HLD index just now?

17 A. Yes.

18 Q. You said that measures extreme deviations from  
19 the norm; is that right?

20 A. The HLD measures the absence -- the presence  
21 or absence and the degree of the handicap.

22 Q. Okay. Do you recall testifying that it  
23 measures extreme deviations from the norm?

24 A. Yes, uh-huh.

25 Q. Okay.

0178

1 A. That's a different issue, yes.

2 Q. Did all of your patients in this sample have  
3 extreme deviations from the norm since you qualified  
4 all of them on the HLD index?

5 A. Based on my comprehensive exam, yes.

6 Q. Thank you.

7 You also testified that ectopic eruption  
8 occurs when teeth are crowded. Does that mean that  
9 there was no ectopic eruption in patients you did not  
10 diagnose with crowding?

11 A. Say that again?

12 Q. Well, you indicated that ectopic eruption  
13 results from crowding.

14 A. It might result from crowding. It might  
15 result. Ectopic eruption is a description of the  
16 situation. Crowding is a quantitative measurement.

17 Q. So, all of the patients with -- with  
18 apparently straight teeth that you scored as ectopic,  
19 were those caused by crowding?

20 A. No.

21 Q. No?

22 A. No.

23 Q. Okay. And do you recall Patient 37? Let's  
24 see if I can pull up the photos for that patient. I  
25 don't have the photos listed.

0179

1 MS. SILHAN: But P37-015 is the HLD.

2 Let's see if we can find the photos in there.

3 Q. (BY MS. SILHAN) Do you recall this patient?

4 A. Yes, uh-huh.

5 Q. And you indicated there was some big issues  
6 with the upper front teeth, correct?

7 A. Yes. He has impacted tooth, yes.

8 JUDGE SEITZMAN: I'm sorry. Pull the mic  
9 closer.

10 THE WITNESS: Yes, uh-huh.

11 Q. (BY MS. SILHAN) You also -- you also noted  
12 that Dr. Tadlock gave him a different score for ectopic  
13 corruption; is that correct -- eruption. I apologize.

14 A. I think he gave him six. He only scored two  
15 of the teeth. I scored seven.

16 Q. Do you recall that Dr. Tadlock scored the same  
17 upper teeth you pointed to --

18 A. He scored upper left one and upper left three.

19 Q. -- earlier?

20 A. Yes. He only scored part of them.

21 Q. Okay. And Patient 43.

22 MS. SILHAN: Can we pull up P43 and go  
23 back to that -- that CEF, please, or the pano. I  
24 apologize. I don't which -- I don't have the page  
25 number offhand. I --

0180

1 Q. (BY MS. SILHAN) Okay. This is the patient  
2 with the ectopic tooth just pushing up underneath the  
3 lower four incisors, correct?

4 A. Yes, uh-huh.

5 Q. Did you score that tooth --

6 A. I did not.

7 Q. -- that canine as ectopic?

8 A. I did not. I documented but I did not.

9 Q. Okay.

10 A. I could have.

11 Q. Okay. Let's turn quickly, moving on, to the  
12 Proffit text, which your counsel referred to as the  
13 bible of orthodontia. I'm gonna have you read  
14 something here.

15 Please start with "in fact." It's on page  
16 6 of Proffit.

17 A. "In fact, perfectly interdigitating teeth  
18 arranged along a perfectly regular line of occlusion  
19 are quite rare."

20 Q. Thank you.

21 I'd also like to turn to some of the other  
22 texts that your counsel provided to me during lunch.

23 MS. SILHAN: Can we pull up P83, please?

24 Q. (BY MS. SILHAN) And while this is being  
25 pulled up, this is the study of 120 casts, correct?

0181

1 A. Yes. It's more than 120. It's 1,000  
2 something.

3 Q. Okay. Can -- let's read the first line,  
4 please. Can you read the first line, please?

5 A. "This article will discuss six significant  
6 characteristics observed in a study of 120 casts of  
7 nonorthodontic patients with normal occlusion."

8 Q. So, these are what are considered normal in  
9 this article, correct?

10 A. Yes.

11 Q. Okay. Let's go down. Can you scroll down to  
12 the paragraph beginning with a gathering of data?

13 MS. SILHAN: I'd like you to highlight  
14 where it starts with "models selected were."

15 Q. (BY MS. SILHAN) Can you, please, read how  
16 they selected the 120 modeling that --

17 A. Yeah. They have -- they have criteria.

18 Q. I'm asking -- thank you. Please read.

19 A. Models selected of teeth which, number one,  
20 had never had orthodontic treatment, which means they  
21 exist in nature; Number 2, were straight and pleasing

22 in appearance; Number 3, had a bite which looked  
23 generally correct; and, Number 4, in my judgment would  
24 not benefit from orthodontic treatment.

25 Q. Okay. So these were not candidates for  
0182

1 orthodontic treatment, correct?

2 A. Well, it would be no. Yes.

3 Q. Okay. Let's go to page 2, please. We're  
4 going to go to the third paragraph and we're going to  
5 talk more about these models just quickly. Let's start  
6 highlighting -- are we on page -- yes.

7 Okay. Let's start with "and." Let's  
8 highlight and talk about what that says.

9 Can you read starting with "and"?

10 A. And? Where's and? I don't see it.

11 Q. The third line. And the best?

12 A. "And the best in nature (the 120  
13 nonorthodontic normals) would reveal differences which,  
14 once systematically identified, could provide  
15 significant insight on how we could improve ourselves  
16 orthodontically. Deliberately, we sought those  
17 differences."

18 Q. Okay. So, when this article talks about  
19 normal occlusion, they select 120 models of the best in  
20 nature, correct?

21 A. No.

22 Q. Can you read about those models one more time?

23 A. It says we need to look back. That comparison  
24 of the best in treatment results. So, they have 1,150  
25 treated cases and at that time they were able to

0183

1 collect 120 cases. They were nontreated in a good  
2 shape. So, to compare this one versus that one.

3 Q. Okay. So, they're talking about the best in  
4 nature of untreated cases and comparing those to  
5 treated cases, correct?

6 A. Yes.

7 Q. Okay. Thank you.

8 A. The ones that they were able to come up with.

9 Q. Thanks.

10 MS. SILHAN: Okay. Now, let's go to P84,  
11 please, and I want to go to the second-to-the-last  
12 page. I don't have a page number. I'm sorry.

13 Q. (BY MS. SILHAN) And the discussion section  
14 and can you, please, read the two -- first two  
15 sentences in the paragraph beginning with "probably"?

16 A. Probably the most irritating issues surround  
17 the use of the word ectopic. The ingenuity of dentists  
18 to stretch this word over never considered  
19 possibilities is incredible. Our expanded  
20 definition --

21 Q. Thank you. Okay. Thank you. That's all.

22 MS. SILHAN: I think we're all set. Thank  
23 you.

24 JUDGE SEITZMAN: Mr. Rytting, subject to  
25 the recross, direct and our questions?

0184

1 MR. RYTTING: Yes, just one -- one  
2 question.

3 RECROSS-EXAMINATION

4 BY MR. RYTTING:

5 Q. When it -- when it comes to the Medicaid  
6 definition, which is an unusual pattern of eruption --

7 A. Uh-huh.

8 Q. -- is that -- is that a -- what -- do you  
9 consider that a broad definition of -- a broad or  
10 narrow definition?

11 MS. SILHAN: I'd object, please. That's  
12 outside the scope of my recross and outside the scope  
13 of your questions.

14 JUDGE SEITZMAN: Can you tie it back  
15 into --

16 MR. RYTTING: Oh, it was her -- I would  
17 tie it back into her questions regarding the ingenuity  
18 of apparently California dentists to expand beyond  
19 what -- how California defined ectopic eruption.

20 JUDGE SEITZMAN: That's pretty stretched,  
21 if you can find a way to tie it.

22 MR. RYTTING: Okay. Actually I think at  
23 this point I can pass Dr. Kanaan.

24 JUDGE SEITZMAN: Okay. Anything further  
25 for Dr. Kanaan?

0185

1 Thank you, Dr. Kanaan. You can step down.

2 THE WITNESS: Thank you. Thank you.

3 JUDGE SEITZMAN: Does anybody object to  
4 letting him go back to his house, his wife? Thank you.

5 THE WITNESS: Thank you. Thank you so  
6 much.

7 JUDGE SEITZMAN: Let's go off the record.

8 (Off the record)

9 JUDGE EGAN: We're reconvening in Docket  
10 Number 529-13-0997. It is now 2:25 p.m. on May 30th,  
11 2013.

12 And are the parties ready to proceed and  
13 you're ready to call your next witness?

14 MR. WATKINS: Yes.

15 MR. WINTER: We are, Judge.

16 JUDGE EGAN: Mr. Winter, will you be the  
17 attorney --

18 MR. WINTER: Yes, I am, your Honor.

19 JUDGE EGAN: -- sponsoring this witness?

20 All right. I will remind the parties that  
21 there was a prehearing conversation about any  
22 discussions that were initiated during any informal  
23 settlement conferences and we have instructed both  
24 parties not to have the witness testify about anything  
25 that happened in those conferences with that expressly

0186

1 from us.

2 JUDGE SEITZMAN: And my understanding was  
3 the Office of Inspector General had agreed not to go  
4 into that line of questioning.

5 MR. WINTER: That is correct, Judge --  
6 Judges. We do not intend to delve into anything that  
7 transpired between representatives of the OIG and the  
8 petitioner in any informal conference.

9 JUDGE EGAN: Thank you.

10 MR. WINTER: May I proceed, Judge?

11 JUDGE EGAN: Yes, you may. Let me make  
12 sure the witness has been sworn.

13 JACK STICK,  
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WINTER:

17 Q. Good afternoon.

18 MR. WINTER: For the record, my name is  
19 Raymond Winter, W-I-N-T-E-R, with the Office of  
20 Attorney General representing the Office of Inspector  
21 General.

22 Q. (BY MR. WINTER) Would you, please, state your  
23 name, sir?

24 A. My name is Jack Stick.

25 Q. And how are you currently employed?

0187

1 A. I'm employed as the Deputy Inspector General  
2 for Enforcement at the Office of Inspector General.

3 Q. Sir, are you a licensed attorney in the state  
4 of Texas?

5 A. I am.

6 Q. Have you previously served in the Texas State  
7 Legislature?

8 A. I have.

9 Q. From when until when?

10 A. I was elected in 2002. I left office in  
11 January of 2005.

12 Q. Have you also served as a criminal prosecutor  
13 at both the state and federal level?

14 A. I have.

15 Q. Have you served as a municipal court judge in  
16 the City of Bee Cave?

17 A. I have.

18 Q. Is there any other employment that you would  
19 like to tell the Court, the Administrative Law Judges  
20 that you've had prior to assuming your current duties?

21 A. No.

22 Q. Would you, please, tell the Administrative Law  
23 Judges that are --

24 JUDGE SEITZMAN: Hold it closer.

25 Q. (BY MR. WINTER) -- what was the Office of

0188

1 Inspector General, the HSSC?

2 A. The Office of Inspector General was created in  
3 2003 by House Bill 2292, which was the omnibus  
4 consolidation of all of the state's health and human  
5 service agencies. I think there were 13 of them. They  
6 were consolidated into five under umbrella enterprise  
7 of the Health & Humans Services Commission.

8 As part of House Bill 2292, we also  
9 created the Office of Inspector General, which is  
10 charged with monitoring all of the state Health &  
11 Humans Services employees expenditures and programs to  
12 ensure against and interdict waste, fraud and abuse.

13 Q. Mr. Stick, is HHSC or the Health & Human  
14 Services Commission the single state agency in the  
15 state of Texas responsible for administering the  
16 Medicaid program?

17 A. Yes, it is.

18 Q. And does the OIG -- HHSC OIG have  
19 responsibility for oversight and interdiction of waste,  
20 fraud and abuse in all HHSC programs, including  
21 Medicaid?

22 A. Yes. The creation of OIG came about in a  
23 little bit of a convoluted way. What we ended up doing  
24 was attaching OIG administratively to the Health &  
25 Human Services Commission in order to draw down federal  
0189

1 funds. As part of that, OIG is charged with monitoring  
2 and investigating any allegations of waste, fraud and  
3 abuse in Title XIX or Medicaid programs.

4 Q. You say that HHSC OIG, which I'm just going to  
5 refer to as OIG for the rest of the day if it's all  
6 right with you, is administratively attached to HHSC?

7 A. That's correct.

8 Q. Does that mean for operational purposes OIG  
9 operates within the discretion of the inspector general  
10 and senior staff separate and apart from the HHSC chain  
11 of command?

12 A. Yes. The inspector general is a gubernatorial  
13 appointee. The Office of Inspector General is an  
14 independent agency reporting to the governor.

15 Q. And the gubernatorial appointee, the inspector  
16 general, who is that?

17 A. His name is Douglas Wilson.

18 Q. And you are one of his deputies?

19 A. That's correct.

20 Q. And are you the deputy specifically for  
21 enforcement?

22 A. Yes.

23 Q. Would you, please, explain for the  
24 Administrative Law Judges what your duties and  
25 responsibilities are as the deputy for enforcement at  
0190

1 OIG?

2 A. Sure. The enforcement division is the  
3 division that handles all of the investigations, except

4 for HHSC employees or -- or health and human employees.  
5 That's done by a different division, which is internal  
6 affairs.

7 My division, the enforcement division is  
8 divided into three sections. The first section is  
9 Medicaid provider integrity. Medicaid provider  
10 integrity is exactly what it sounds like. We  
11 investigate providers in the -- in the Title XIX  
12 program to ensure and -- ensure against and interdict  
13 waste, fraud and abuse when it occurs. The second  
14 division is the general investigations division which  
15 focuses on the supplemental nutrition assistance  
16 program, SNAP or what used to be called food stamps;  
17 TANF, the Temporary Aid to Needy Families, which is  
18 cash assistance; and the WIC program. So, we  
19 investigate both recipients as well as retailers.  
20 The third main area is the data analytics and  
21 intelligence units, which is exactly what it sounds  
22 like. It's data analytics.

23 Q. Now, the section of yours that's of concern to  
24 us today is the Medicaid program provider integrity  
25 unit section?

0191

1 A. That's correct.

2 Q. Approximately how many staff do you have  
3 working in MPPI?

4 A. It fluctuates but between 90 and 95.

5 Q. Is it fair to say, sir, that the job of your  
6 division is to undertake investigations of possible  
7 violations of Medicaid, rules, regulations and  
8 policies?

9 A. That's correct.

10 Q. In order for you to do that job competently  
11 and thoroughly, is it necessary for you to have an  
12 understanding of those very same Medicaid policies?

13 A. Yes. In order to enforce the policy, it's  
14 important to not only what the policy is, in other  
15 words, what the -- what the state statutes or the state  
16 regulations or federal statutes and regulations are but  
17 also the policies as set forth in the Texas provider --  
18 or Texas Medicaid Provider Procedure Manual, TMPPM; but  
19 beyond that it's also important to understand the  
20 genesis of the policies, why the policies exist. It's  
21 important to understand that because if you're going to  
22 enforce those policies, you have to understand them  
23 fairly thoroughly.

24 Q. Mr. Stick, does this -- the breadth of your  
25 understanding, does it extend beyond just Medicaid

0192

1 generally into program specific areas?

2 A. Yes. Title XIX is a big program. I think it  
3 would be difficult to -- to know particularly well all  
4 of the different areas. But what generally happens is  
5 the more time we spend in a -- in a discrete area of

6 investigations the more familiar we all become with the  
7 policies and procedures in that area.

8 Q. What area of Medicaid have you been spending a  
9 lot of time in, particularly recently, say within the  
10 last 12 months to 18 months?

11 A. There have been several of them, but I think  
12 the one most relevant is the orthodontic program.

13 Q. Mr. Stick, is it fair to say that not only are  
14 you familiar with the Medicaid policies that you also  
15 have to some extent a role in helping shape it?

16 A. We definitely have input into that. There's a  
17 group called the BMW group, the benefits management  
18 work group, which is comprised of various entities  
19 within the Health & Human Services Commission. So, the  
20 Medicaid CHIP would be a part of that. The medical  
21 director's office would be a part of that. The dental  
22 director's office would be a part of that and OIG is a  
23 part of that.

24 And we meet on a regular basis to discuss  
25 policies, to discuss changes in policies, new policies

0193

1 and OIG definitely has a role in that offering, as best  
2 we can, insight into areas of weakness in the program  
3 where program integrity might be compromised and areas  
4 where we can strengthen the program as well.

5 Q. Mr. Stick, to your knowledge has Texas  
6 Medicaid undertaken a change in its policy with respect  
7 to the interpretation or application of the standard  
8 for eligibility of orthodontia benefits within the last  
9 year?

10 A. No.

11 Q. Has Texas Medicaid undertaken any change in  
12 its policy regarding the interpretation of the meaning  
13 of ectopic eruption within the last year?

14 A. No.

15 Q. You've been with OIG for, approximately, two  
16 years?

17 A. That's correct.

18 Q. At any time over the -- your tenure at OIG has  
19 Texas Medicaid undertaken a change in its policy  
20 regarding eligibility for the orthodontia benefit?

21 A. No.

22 Q. At any time over the last two years that  
23 you've been at OIG has Texas Medicaid undertaken any  
24 type of change of its interpretation of ectopic  
25 eruption?

0194

1 A. No.

2 Q. Mr. Stick, are you familiar with a Medicaid  
3 provider -- an orthodontia provider known as Antoine  
4 Dental Center or an orthodontist named Dr. Behzad  
5 Nazari?

6 A. Yes, I am.

7 Q. Has your office undertaken an investigation or

8 any investigations of this provider?

9 A. Yes. we've initiated three separate  
10 investigations. One we began in 2007. That's still  
11 pending. One --

12 JUDGE EGAN: Okay. Let me just make sure  
13 I understand. You didn't come on board with OIG until  
14 2011?

15 THE WITNESS: That's correct.

16 JUDGE EGAN: So, these occurred before you  
17 even got there?

18 THE WITNESS: Yes, ma'am.

19 JUDGE EGAN: All right. So, in 2011 there  
20 was an investigation that you're aware of?

21 THE WITNESS: Yes. There was an --

22 A. There's an investigation pending right now  
23 that was initiated in 2007. There was one pending  
24 right now that was initiated in 2008 and there's  
25 another one pending, which is the one we're here today  
0195

1 on, which was initiated in 2011.

2 Q. (BY MR. WINTER) So, to your knowledge there  
3 are three separate and distinct investigations arising  
4 out of separate facts of Dr. Nazari and Antoine Dental,  
5 correct?

6 A. That is correct.

7 Q. But we're here today on the most recently  
8 initiated investigation, which is the one started in  
9 2011?

10 A. Yes.

11 Q. Is that -- was that investigation begun under  
12 your watch?

13 A. Yes.

14 Q. When did that investigation begin, sir?

15 A. In late June or early July of 2011 I asked  
16 that my division prepare a -- an analysis of the top  
17 utilizers of the orthodontic benefits program to  
18 determine whether or not we had an ongoing problem in  
19 the overutilization of the orthodontic program. And I  
20 was given within a couple of days a list of about 55  
21 providers who were the highest utilizers of orthodontic  
22 services in Texas.

23 Q. Mr. Stick, what prompted you to instruct your  
24 staff to pull these orthodontic billing records?

25 A. Well, we had been aware for sometime -- OIG  
0196

1 had been aware for sometime that there were ongoing  
2 problems with the -- with the orthodontic problem. In  
3 2008 OIG conducted an audit of the Texas Medicaid  
4 Medical Partnership, TMHP, which is a private  
5 partnership comprised primarily of ACS Healthcare, now  
6 owned by Xerox, and a number of other private  
7 companies.

8 In 2008 the OIG determined that ACS was  
9 not actually conducting a prior authorization

10 investigation. In other words, providers would submit  
11 HLD scores and supporting information but ACS wasn't  
12 really reviewing the information at all. They were  
13 simply seeing whether or not the HLD score sheet read  
14 26 or better; and if it did, well, then the prior  
15 authorization was approved.

16 Q. I think you misspoke a moment ago. You said  
17 your investigation reached the audit back in 2008  
18 stated -- found that the contractor was not doing prior  
19 authorization investigations. You meant prior  
20 authorization reviews?

21 A. Right. Exactly. They weren't reviewing  
22 information that was supporting it.

23 Q. We're going to talk a little bit more about  
24 the Medicaid contractor, ACS Healthcare in a few  
25 minutes; but if you could succinctly tell the

0197

1 Administrative Law Judges how that 2008 audit spurred  
2 you to want to undertake additional investigation  
3 regarding the providers?

4 A. So, knowing the background, knowing that in  
5 2008 we had already identified that there was a gap in  
6 the prior authorization process, we then looked at the  
7 utilization rates, so the actual dollars that were  
8 flowing out of the Medicaid program Title XIX, into  
9 orthodontia and we saw that each year from 2008  
10 beyond -- actually from, you know, whenever the program  
11 was initiated, even years before that, there had been a  
12 steady and increasingly obvious increase in the dollars  
13 that were expended through -- through Title XIX for  
14 orthodontic benefits.

15 When we looked at the top utilizers, the  
16 providers who were -- who were obtaining the most prior  
17 authorizations, we saw that there were enormous amounts  
18 of money that were going to a relatively small number  
19 of providers and that led us to conclude that we might  
20 have a serious and ongoing problem with orthodontic  
21 expenditures and the prior authorization process.

22 Q. Mr. Stick, when you did this pull of the --  
23 did you say it was the top 55?

24 A. It ended up being 56, I think.

25 Q. Was Antoine Dental Center within -- somewhere

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1 between that range of 1 to 56 of the top billing  
2 Medicaid orthodontia providers?

3 A. Yes. In fact, I think Antoine Dental was in  
4 the top 25.

5 Q. Now, was your decision to pursue an  
6 investigation or undertake an investigation of Antoine  
7 Dental Center prompted in any way by the WFAA news  
8 story that was aired in Dallas, Texas, sometime in the  
9 fall of 2011?

10 A. Not entirely but in part. I think the WFAA  
11 stories certainly heightened -- maybe underscored the

12 importance of these investigations. When we looked at  
13 the top 56 providers, you know, we -- as I indicated we  
14 became aware that there was ongoing -- potentially an  
15 ongoing problem and I think the WFAA stories maybe  
16 heightened the urgency of conducting the  
17 investigations.

18 Q. Mr. Stick, just because your office, OIG,  
19 launches an investigation of the Medicaid provider,  
20 that in and of itself does not conclude a presumption  
21 that the provider is guilty of any kind of Medicaid  
22 violation, is it?

23 A. No.

24 Q. You don't assume just because you've started  
25 an investigation that the provider has committed  
0199

1 program violations and you don't proceed directly to  
2 collection efforts or efforts to assess an  
3 administrative penalty or efforts to exclude somebody  
4 from the program? You don't do that, do you?

5 A. No, we don't. And we can't do that. There's  
6 no process to do that. In order to take any action  
7 against a provider, we have to conduct an investigation  
8 and we have to have evidence of wrongdoing, at least  
9 some level of evidence of wrongdoing, overpayments.

10 Q. I would -- excuse me. I would -- I would  
11 presume that an investigation of that nature would  
12 require you to -- you to review the providers' medical  
13 records, their patients files; is that true?

14 A. Yes.

15 Q. And I would also assume that a provider such  
16 as Antoine Dental would have literally thousands of  
17 patient files that you might review; is that true?

18 A. Yes. The -- this investigation was a --  
19 covered a three-year period and I think during that  
20 three-year period there were something close to 6,550  
21 separate patient files or separate patients who were  
22 treated.

23 Q. Your -- now referring specifically to Antoine  
24 Dental Center?

25 A. Right and this particular discrete

0200

1 investigation.

2 Q. Which covered which years?

3 A. This covered 2011, 2010 and 2009. I think it  
4 was initiated at the end of 2009. I mean, it went back  
5 as far as 2009.

6 Q. All right, sir.

7 JUDGE EGAN: How many -- you said you  
8 looked at a number of files. What was that number  
9 again?

10 THE WITNESS: In that period Antoine  
11 Dental had served or received prior authorizations for  
12 6,550, give or take. I mean, it's, you know, within 25  
13 or 30.

14 JUDGE SEITZMAN: These are Medicaid  
15 patients you're talking about?

16 THE WITNESS: Yes.

17 Q. (BY MR. WINTER) So -- so to be clear, then,  
18 if I understand your testimony, Mr. Stick, during the  
19 relevant time period of your investigation, according  
20 to your investigation, the Antoine Dental had received  
21 prior authorization to -- to service orthodontia  
22 patients in over 6,500 individual cases?

23 A. That's correct.

24 Q. Okay. But you didn't look at all 6,500 of  
25 those patients files, did you?

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1 A. No.

2 Q. Was there a process to get to some subset of  
3 those files upon which you could reasonably rely?

4 A. Sure. We use a method of statistical sampling  
5 in order to obtain a reasonable number of files that we  
6 can -- that we can review. In -- in cases of providers  
7 who use -- use the services or provide services  
8 frequently, we often end up with cases of thousands of  
9 patients and it's just not practical for us to go pull  
10 5,000 or 10,000 cases and look at each one. First, it  
11 would be fantastically expensive; and then, secondly,  
12 it'd take forever. We'd never be able to complete the  
13 investigation.

14 So, what we do is we use a method of  
15 statistical sampling that's been approved by the state  
16 auditor and the general accounting office and we're  
17 able to pull a much, much smaller, much more manageable  
18 subset of data while still maintaining a high level of  
19 precision in the sampling process in getting a  
20 statistically valid random sample.

21 Q. Mr. Stick, you're not an auditor, are you?

22 A. No.

23 Q. You're not a statistician, are you?

24 A. No.

25 Q. Do you have any understanding of how that

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1 sampling is pulled?

2 A. Yeah. I have a general understanding of the  
3 statistical method that we use.

4 Q. Could you describe that for the  
5 Administrative Law Judges?

6 A. Sure. The sampling process begins by  
7 identifying four characteristics or attributes. The  
8 first one is a historical error rate. We have divided  
9 the providers in the state into discrete subsets or  
10 specialty areas. So, orthodontists get one area and  
11 one historical error rate. Dentists would get another.  
12 Pediatricians would get another and so on. The  
13 second -- and we have a -- a historical error rate that  
14 we've been able to identify based on our experience in  
15 those provider times.

16 So, the first thing we do is we identify  
17 the historical error rate that we would expect to find.  
18 The second thing that we do is we identify the  
19 population size. That would be the total number of  
20 patients or total number of files that the provider  
21 has -- has seen and created. The third major --

22 JUDGE EGAN: Let me just make sure to  
23 clarify. When you're talking about patients we're only  
24 going to be talking about Medicaid patients.

25 THE WITNESS: That's correct, ma'am.

0203

1 JUDGE EGAN: All right. Go ahead.

2 A. The third area is precision. The American  
3 Institute of CPA's uses a 15 percent precision rate.  
4 And what that means is that they want results. They  
5 consider it acceptable for results to be within 15  
6 percent of the true error rate.

7 We use a 10 percent precision rate. So,  
8 our -- our results are more stringent. It's normally  
9 difficult to meet our results. We expect our results  
10 to be within 10 percent of the true error rate every  
11 time.

12 And then the fourth main characteristic is  
13 the confidence level, and that's simply the percentage  
14 of time you would expect if you did multiple  
15 statistical samplings that you would come up with the  
16 same answer. And we use a 95 percent competence level.  
17 Again, these are drawn from GAO- and SAO-approved  
18 formulas.

19 Once we've established these  
20 characteristics, we plug those into a formula from the  
21 state auditor's office. And what that does is it  
22 generates a number for us. So, remembering that you  
23 can sample all, we'll say, 6500 cases. If you sample  
24 all 6500 -- that is say you pull 6500 cases and you  
25 look at each one -- you get a very accurate result. It

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1 takes you a long time and it's a lot of work but you  
2 get a very accurate result.

3 There are five statistical sampling stages  
4 that you can use called stages one through five. Stage  
5 one is the largest of those sampling stages. Stage  
6 five would be the smallest of those sampling stages.  
7 So, what you look for is a -- at the end of stage one,  
8 after you've completed your review of the files drawn  
9 in stage one -- and I'll explain how we get those  
10 files. At the end of stage one you will then test your  
11 results to see if they meet the targeted precision,  
12 that 95 percent precision. If they do, then  
13 statistically -- the science statistic says you can  
14 stop doing your investigation at that point because  
15 there's a 95 percent probability that you've hit the  
16 target. If they don't hit the statistical precision,  
17 then you go on to stage two. You do -- you go farther

18 down the line and do more reviews and you get more  
19 accurate results and so on.

20 So, theoretically you could get to the end  
21 of stage five, not have met your statistical precision  
22 level, throw the whole thing out and have to start all  
23 over again.

24 In this case we sampled through stage two.  
25 We always pull through stage two, which was 85 cases.

0205

1 We were able to stop after stage one, which was 63  
2 cases. After the computer and the formula tell us how  
3 many cases we need to -- we need to pull, we then need  
4 to figure out which cases to pull. So, knowing that we  
5 need to pull 85 cases -- if you think about all of  
6 Dr. Nazari's cases laid out on the line, just a  
7 straight line from here to wherever they stop, you have  
8 to get a seed value and that seed value is really  
9 nothing more than where you start on that line, so,  
10 your first case. The computer just randomly generates  
11 a seed value. But you're not done at that point. You  
12 can't just pick the next 85 cases. The computer has to  
13 tell you which case to pull and it does that -- that  
14 randomly.

15 But the computer doesn't know what  
16 characteristics you're looking for. So, if you think  
17 about it in context of political polling, political  
18 pollsters they want a sample size of 600 to a thousand  
19 people but they want so many men and so many women.  
20 They want so many Democrats, so many Republicans, so  
21 many independents, so many of this minority group, this  
22 minority group and so on. And they've broken it down  
23 and what they want is a statistically valid sampling of  
24 the population because then you can extrapolate to the  
25 greater population.

0206

1 What we do is we say we know that we want  
2 a statistically valid sampling of the types of services  
3 that the provider provides. So, for example, if you  
4 have a two-dollar procedure and, you know, you do it  
5 wrong every single time and all I ever do is sample  
6 two-dollar procedures, well, then I've identified a  
7 very small dollar amount of -- in terms of procedures  
8 but a very high error rate. And if I go and try to  
9 extrapolate that very small dollar amount and very high  
10 error rate to the greater population of all the claims  
11 that you've ever submitted, I'm being unfair because  
12 there may be claims that you've submitted at the  
13 10,000-dollar level that will be considered an error  
14 and that would be a hundred percent error rate.

15 So, what we do is we say, "Okay. We're  
16 looking for claims hypothetically in the zero to 50  
17 range, the 51 to 100-dollar range and so on" and we  
18 break it down into -- into various strata,  
19 characteristics. And we identify how often the biller

20 or the provider bills in those areas. So, we'll take  
21 a, you know, 10 percent sampling from the zero to  
22 50-dollar range, maybe a 12 percent from the, you know,  
23 51 to hundred-dollar range and so on. And the cases  
24 that we pull from the seed value when the computer  
25 generates, you know, the numbers telling us pull case  
0207

1 Number 35, 58, 21 and so on. Once we've pulled those  
2 cases, we have to, then, test them to make sure they  
3 meet the characteristics and that they are, in fact, a  
4 statistically valid random sample. They're a random  
5 sample but they may not be statistically valid.  
6 They have to meet those -- those different billing  
7 strata, different billing levels.

8       Once we have a statistically valid random  
9 sampling -- sometimes we get it the first time.  
10 Sometimes it's two times. Sometimes it's ten times.  
11 Once we have that, then we're able to go out into the  
12 field and actually pull those files. So, we get a list  
13 of patient control numbers, PCNs. Each one of those  
14 PCNs is associated with an individual. And we would go  
15 to the provider and then say, "Here's a list of the 85  
16 PCNs we need." We would physically collect copies of  
17 those files and any appropriate documentation, so,  
18 molds, X rays, anything like that and then bring those  
19 back for review.

20 Q. (BY MR. WINTER) Thank you, Mr. Stick.

21       That's what -- I believe you've just  
22 described is generally the process for polling a  
23 statistically valid random sample that is employed by  
24 the OIG; is that correct?

25 A. Yes.

0208

1 Q. Is that, in fact, the process you employed in  
2 the process of Antoine Dental Center?

3 A. Yes.

4 Q. In fact, did you undertake your investigation  
5 of Antoine Dental in the same manner that you undertake  
6 all investigations?

7 A. Yes.

8 Q. So, as I understand it you didn't --

9 JUDGE SEITZMAN: Mr. Winter, can I  
10 interrupt a minute --

11 MR. WINTER: Yes, sir.

12 JUDGE SEITZMAN: -- before we move on to  
13 another point?

14 Mr. Stick, just so I'm clear, so you're  
15 pulling -- you're testing the sampling size and the  
16 specifics of the sample file against a payment and  
17 other data that you already have in your system.  
18 You're not acquiring -- going out and acquiring that  
19 from a provider. It's from data that you have in your  
20 system?

21 THE WITNESS: That's correct, sir.

22 JUDGE SEITZMAN: Then you collect the  
23 physical file from and physical elements from the  
24 provider after you're satisfied that you have the  
25 correct sampling, size and parameters?

0209

1 THE WITNESS: Yes, sir.

2 JUDGE SEITZMAN: Okay. Thank you.

3 Q. (BY MR. WINTER) So, if I understand your  
4 testimony correctly, then, Mr. Stick, you-all and your  
5 investigators didn't just drive down to Houston, march  
6 into Antoine Dental Center headquarters and pull the 63  
7 worse cases you could find?

8 A. No. We don't -- we don't have any method to  
9 do that.

10 Q. After you pull your statistically valid,  
11 random sample, what is the next step in the process of  
12 the investigation?

13 A. At that point the investigation takes two  
14 different paths. The physical files will go to a -- an  
15 expert consultant for review. The expert consultant  
16 reviews the files and identifies any -- any program  
17 violations that are stamps -- stamped, reviews the file  
18 or -- or the files for medical necessity and identifies  
19 any problems that may exist.

20 At the same time that the expert  
21 consultant is reviewing the files, field investigators  
22 are physically out in the field interviewing witnesses,  
23 doing the things that you would expect as a normal part  
24 of the investigative process. So, in the case of  
25 Antoine Dental field investigators interviewed office

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1 staff, office assistants. They interviewed both Dr.  
2 Nazari and Dr. Kanaan, office managers, supervisors;  
3 but at the same time they also interviewed patients and  
4 patients' guardians or parents. The things that  
5 they're looking for are any indications that something  
6 is going wrong. Are patients complaining that they're  
7 not getting the services? Are patients saying they  
8 never went to Antoine Dental? Are patients saying that  
9 they didn't get certain appliances? So, the  
10 investigators will show them an appliance and say, "Did  
11 anybody ever put this in your mouth?"

12 They'll interview the office staff because  
13 we found that office staff are often a great -- a great  
14 resource for information about what's really going on.  
15 So, you know, we have providers who frequently are very  
16 honest with us and just tell us, "This is what we do."  
17 And what they're doing is a violation of Medicaid  
18 policy.

19 We also run into situations where we have  
20 field investigators out there and they don't find  
21 anything abhorrent. So, the field investigator's  
22 conducting the field investigation. The expert  
23 consultant is conducting the expert review and then

24 when both are completed they're melded back together  
25 into a final case report.

0211

1 Q. And is that, in fact, the process you  
2 undertook in the case of Antoine Dental Center?

3 A. Yes.

4 Q. This two tiered process with the field  
5 investigators constructing the interviews, reviewing  
6 records -- and did you also have an expert review the  
7 63 patient files?

8 A. Yes. In the case of Antoine Dental, we  
9 actually had three experts review the files.

10 Q. And was there any discrepancy between the  
11 findings of those three experts?

12 A. There were minor fluctuations on the HLD  
13 scorings but the result were -- was consistent. All  
14 three of the experts who reviewed the case found that  
15 the HLD scores were inflated.

16 Q. What was the end result -- after the parallel  
17 tracks came back together and you were prepared to, I  
18 guess, issue your, at least preliminary findings of  
19 your investigation, what conclusions did you make at  
20 that time?

21 A. At the conclusion of the investigative stage,  
22 I made a determination that this case was appropriate  
23 for a payment hold based upon a credible allegation of  
24 fraud; and I referred the case to our sanctions  
25 division for imposition of a -- of a payment hold.

0212

1 Q. Before we get into what is a criminal  
2 allegation of fraud and what was the basis for the  
3 payment hold, can you summarize for the Administrative  
4 Law Judges the findings of the investigation?

5 A. Sure.

6 We found a number of program violations.  
7 The first I think, obviously, would be the inflated HLD  
8 scores. We found that -- we had conducted other  
9 investigations at that point and had seen a pattern  
10 developing that HLD scores across the board were  
11 artificially inflated, that our expert witnesses were  
12 coming back saying that HLD scores were in the three,  
13 four, five, twelve range where the provider was  
14 identifying 28, 30, 35, and beyond and there was so  
15 much discrepancy between them that it just wasn't  
16 attributable to a difference of opinion. And it was so  
17 frequent that we couldn't attribute it to a difference  
18 of opinion and we saw that again in this case.

19 But beyond that, you know, we also -- we  
20 also considered different factors that were present in  
21 the Antoine case. For example, we had parents who had  
22 complained that their child didn't get the services  
23 that Antoine Dental had billed for. We had parents --  
24 at least one parent who said her child never went to  
25 Antoine Dental.

0213

1 MR. WATKINS: Your Honor, we object to all  
2 of this as hearsay. What -- what these people told  
3 some investigator who then told him, I think I can make  
4 a triple hearsay argument.

5 JUDGE EGAN: Sustained.

6 It is -- Judge Seitzman's reminded me that  
7 his concern is that we need to know what the basis of  
8 their decision was. We understand what hearsay is and  
9 we will not be considering it for the truth of the  
10 matter but for why they were doing what they were  
11 doing. So, we will allow it in for that limited  
12 purpose; but it is not coming in for the truth of the  
13 matter.

14 MR. WATKINS: Well, I'm perfectly happy if  
15 we're allowing in assuming it's not true. And I don't  
16 think they can form basis of opinion based on untrue  
17 information. Therefore, they're, obviously, offering  
18 it for the truth. They're telling you-all what these  
19 guys told them was the truth because that's their  
20 justification for the State taking their action. This  
21 is not an expert witness who says, "This is how I  
22 formed my opinion." This is the State of Texas saying,  
23 "We put out this hold because what these guys told us  
24 was true."

25 JUDGE EGAN: And I understand that -- that

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1 is your position and that's your objection. Right now  
2 we're trying to figure out why they did what they did  
3 and we understand that the information that he is  
4 providing to us is hearsay and it will not be  
5 considered by the Judges as truthful, unless they  
6 present evidence supporting those truth -- those  
7 allegations. And some of these were not raised in  
8 pleadings. So, it would be an objection on that level.

9 But right now we're going to let him  
10 explain why he took the action he did.

11 MR. WINTER: Thank you, Judge. May I  
12 proceed?

13 JUDGE EGAN: Yes, you may.

14 Q. (BY MR. WINTER) Mr. Stick, I believe you were  
15 in the process of summarizing the findings of your  
16 investigation. Please proceed.

17 A. We also had a number of complaints from  
18 parents who were -- who were concerned that Antoine  
19 Dental was charging them for Medicaid services. And  
20 so, if their child broke a certain number of  
21 brackets -- I think sometimes three, sometimes ten,  
22 they would be charged \$25 for a replacement bracket.  
23 They would also complain that they were being charged  
24 for office visits if their child missed a certain  
25 number of office visits. All of that would be a

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1 violation of --

2 JUDGE EGAN: Hold on just a second.

3 JUDGE SEITZMAN: Mr. Stick, there was some  
4 preliminary matters that have gone on before you --  
5 well, before you took the stand. So, we're just trying  
6 to stay within those parameters. So, just pardon us  
7 for the interruption.

8 But I believe that's the allegation that  
9 fell outside of the complaint.

10 JUDGE EGAN: And right now -- hold on just  
11 a second.

12 Okay. We're just wanting to make sure the  
13 record's clear that while we're allowing you to tell us  
14 why you made the decision you made that this was not  
15 a -- a lot of this was not pled and it is -- has  
16 already been ruled that it cannot be brought in in this  
17 case.

18 MR. WATKINS: Well, your Honor, we would  
19 object to all of it because if it's outside the  
20 complaint and they're going to tell us these are the  
21 credible allegations of fraud, then they need to have  
22 pled the credible allegations of fraud. And so,  
23 they're going to say, "We've got some secret stuff in  
24 our mind, which we didn't plead and didn't give you  
25 notice of and now we're going to come into court and  
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1 tell you what that was in order to justify."

2 So, we would object to any testimony from  
3 this witness which is outside of the petition to  
4 justify any credible allegations of fraud. I don't  
5 care why they may have thought they had the right to do  
6 it; but if they don't plead it, they don't get to bring  
7 it before this panel.

8 JUDGE EGAN: Mr. Winter?

9 MR. WINTER: Well, Judge, respectfully we  
10 feel like we did plead it. We did cite to specific  
11 Administrative Code provisions which apply to all the  
12 of the program violations that Mr. Stick is providing.  
13 And, so, we think it is in the pleading. We understand  
14 the Judges' ruling on the hearsay objection. We're not  
15 offering it for the truth of the matter. So, it's not  
16 hearsay; and we think it comes in under 801(d). We  
17 would point out, though, that if it is hearsay, it's  
18 still admissible under 803(8) as a record of an  
19 investigation undertaken pursuant to lawful authority.

20 So, it is a record as Mr. Stick's oral  
21 testimony of the record of his investigation. Either  
22 way we think this -- this does come in.

23 JUDGE SEITZMAN: Let's take a two-minute  
24 break. Let's go off the record.

25 (Off the record)

0217

1 JUDGE EGAN: We had a discussion among the  
2 Judges. At this time we're going to allow this witness  
3 to tell us what the basis -- why he made the decision

4 to place a payment hold. We have limited any further  
5 evidence and will limit any further evidence to what  
6 was pled, which is only in our opinion -- and we've  
7 already had this discussion -- that the Medicaid  
8 providers under the HLD scores than what was actually  
9 pled in its complaint. It -- the other factors -- if  
10 there's five factors and only one was going to be --  
11 was pled and allowed in this case, that's the only one  
12 we're going to consider.

13 So, at this point we'll allow him to  
14 finish that but there will be no further evidence on --  
15 on the issues that were not pled.

16 MR. WINTER: Thank you, Judge.

17 JUDGE EGAN: And I understand. So, your  
18 objection's overruled for the record. And go ahead,  
19 Mr. Winter.

20 MR. WINTER: Thank you, Judge.

21 Q. (BY MR. WINTER) Mr. Stick, I believe you were  
22 in the process of summarizing the findings of your  
23 investigation and the bases for your next steps. Do  
24 you have any more to add to that?

25 A. Yes.

0218

1 Field investigators also spoke with both  
2 of the providers and their office staff. Dr. Kanaan  
3 reported that he often saw 110 or more patients a day.  
4 His office manager reported that they scheduled -- the  
5 most common appointment was a -- an adjustment, which  
6 they scheduled for the least amount of time, which was  
7 10 minutes. Dr. Kanaan also indicated that he would  
8 sometimes use a Boley gauge to measure distance and  
9 sometimes he would eyeball it. All of these things --

10 Q. Is that a problem?

11 A. Well, it's a problem because the HLD score  
12 sheets require more precision than eyeballing it. And  
13 all of those things were -- were concerning. All of  
14 those program violations -- there were other program  
15 violations. For example, there were missing  
16 photographs. There were missing X rays. There were  
17 missing treatment plans. All of those things were  
18 concerning as program violations; but most concerning  
19 to me was -- was the pattern that I saw developing,  
20 which lent itself, in my judgment, to a conclusion that  
21 there was a credible allegation of fraud.

22 And let me -- let me just be clear. When  
23 we evaluate fraud, we don't necessarily --

24 JUDGE EGAN: He needs to be asking you  
25 questions. You're not allowed to just go into a

0219

1 narrative here.

2 Q. (BY MR. WINTER) Mr. Stick, let me -- let me  
3 ask you this question. First of all, when you -- we're  
4 going to go into the credible allegation of fraud area  
5 in a moment. First let me ask you about the program

6 violations.

7           Would you, please, explain to the  
8 Administrative Law Judges what is a program violation?

9     A. Yes. When you enroll in the Medicaid program,  
10 you sign an agreement that you agree to comply with and  
11 comport with various statutes, federal and state,  
12 various regulations, federal and state, as well as the  
13 policies and procedure -- and procedures set forth in  
14 the policy and procedures manual of the Texas Medicaid  
15 program; and in addition to that, you agree to comply  
16 and comport with all the standards of practice in your  
17 profession. So, the dentists in the -- in the  
18 Medicaid program are required not only to comply with  
19 all of the Medicaid rules and regulations but also  
20 their -- their own regulating bodies. And violating  
21 any of those regulations is also a violation of  
22 Medicaid policy or Medicaid rules.

23           MR. WATKINS: Your Honor, for the record  
24 we object for the same reasons. All of that, which is  
25 not pled, cannot be used as credible allegations of

0220

1 fraud in this case because its outside the pleadings  
2 and I know you're going to --

3           JUDGE EGAN: I think that was a generic  
4 question as to what is a program violation. I don't  
5 think he said that Antoine --

6           MR. WATKINS: Well, generic program  
7 violations are not part of the pleading in this case.  
8 And so, I -- I don't want them to be able to go outside  
9 of what they actually did or what they actually are  
10 gonna try to prove to this group and say, "We know a  
11 whole bunch of other stuff we're not bringing before  
12 the panel that justifies what we did."

13           JUDGE EGAN: The question was a -- was a  
14 generic question and I'm going to allow it.

15           MR. WINTER: Thank you, Judge. May I  
16 proceed?

17           JUDGE EGAN: Yes.

18     Q. (BY MR. WINTER) Mr. Stick, I assume that  
19 program violations can fall on a continuum from the  
20 very innocuous to some that may be of greater concern,  
21 perhaps very important violations; is that fair?

22     A. That's correct, yes.

23     Q. Did you hear testimony earlier this week -- I  
24 believe somebody had a question of whether a  
25 misspelling of a name Randall with two Ls when the true

0221

1 name was only spelled with one L can arise to the level  
2 of being a program violation.

3     A. Yes. I think Dr. Seitzman asked Dr. Altenhoff  
4 that. And the answer is that misidentifying a patient  
5 could be and probably would be a program violation but,  
6 you know, there are -- there are program violations and  
7 then there are program violations. Not every program

8 violation rises to the level of needing some action.  
9 And, in fact, if that's what was happening, unless  
10 there were a -- an associated problem, in other words,  
11 if we couldn't identify the patient, which is a big  
12 problem -- but if we can identify the patient and it's  
13 a misspelling of a name, that might even not register  
14 as a program violation.

15 If it did register as a program violation,  
16 the only response from my division would be probably a  
17 letter saying, "You know, make sure that you identify  
18 patients correctly. We notice that this patient had  
19 his name misspelled."

20 If it were a consistent pattern of  
21 misidentifying patients, we have a -- we have a  
22 continuum of responses that we can employ to educate  
23 and regulate provider behavior. So, the next step  
24 would probably be to send the provider for some sort of  
25 an education, you know, make them participate in a  
0222

1 class or send them to their regulating board or body or  
2 something like that. But what we would try to do is,  
3 you know, particularly for less important, less  
4 significant violations, educate the provider on how to  
5 comply with Medicaid policy.

6 Q. So, it's fair to say that not all program  
7 violations are created equal?

8 A. That is absolutely the case.

9 Q. And in your job in evaluating and determining  
10 which program violations merit further action or  
11 perhaps more strident action on your part, you have to  
12 exercise your judgment and deliberation and review the  
13 totality of the situation; is that fair?

14 A. Yes, it is the totality of the circumstances  
15 that -- that we consider when making a determination  
16 what response, if any, is appropriate in a particular  
17 situation.

18 Q. So, in the case of Antoine Dental Center,  
19 after the two tracks came together, that is the field  
20 investigation and the expert investigation came  
21 together, and you were able to make some determinations  
22 as to what the situation was, what was your next move?

23 A. After reviewing both the expert opinions on  
24 HLD scoring and the facts and circumstances as  
25 developed by the field investigators, I became troubled  
0223

1 by what I saw was a pattern that had developed. And  
2 the pattern I discovered was --

3 JUDGE EGAN: His question was: What was  
4 your next move?

5 A. My next move was to consider the totality of  
6 the circumstances and evaluate whether or not a payment  
7 hold was appropriate and I determined that it was.

8 Q. (BY MR. WINTER) And in your judgment did you  
9 then refer the case to another division within OIG to

10 implement the payment hold?

11 A. Yes.

12 Q. Is OIG mandated by applicable law to impose a  
13 payment hold under certain circumstances?

14 A. Yes. The Affordable Care Act requires,  
15 effective March of 2011 that any OIG that identifies a  
16 credible allegation of fraud impose a mandatory payment  
17 hold on that provider.

18 Q. What, please, tell us, is a credible  
19 allegation of fraud?

20 A. Credible allegation of fraud has been defined  
21 as a -- an allegation and an allegation can be through  
22 data mining, through a complaint, hotline, letter,  
23 any -- any way you can get a complaint or an  
24 allegation, which has been verified with indicia of  
25 reliability.

0224

1 Q. And do you have an understanding, sir, of  
2 what, quote, indicia of reliability, close quote means?

3 A. I do. The U.S. Supreme Court has defined  
4 indicia of reliability as statements made that have --  
5 I'm drawing a blank. Statements made with  
6 particularized guarantees of reliability.

7 Q. Statements made with particularized guarantees  
8 of reliability; is that correct?

9 A. Yes.

10 Q. And in your judgment did the evidence that you  
11 have before you meet that standard?

12 A. Yes.

13 Q. And consequently you felt you were obligated  
14 by law to seek imposition of a payment hold; is that  
15 true?

16 A. That is true.

17 Q. Now, was there any basis other than that or  
18 authority other than that federal and state statute  
19 that also authorized OIG to impose a penalty in this  
20 case?

21 A. Right. So, your question actually asks two  
22 questions. One is that there's federal requirements  
23 that OIG impose a payment hold in cases where there's a  
24 credible allegation of fraud. Beyond that, state law  
25 also requires in cases where there is a verified

0225

1 allegation of fraud that OIG impose a payment hold.

2 But separate from -- from fraud and  
3 maybe -- maybe here is where I would want to clarify  
4 that fraud is defined in the Texas Medicaid Fraud  
5 Prevention Act and it is defined as knowing actions.  
6 It can also be actions taken with conscious disregard  
7 to the truth or falsity of a claim asserted or reckless  
8 indifference to the truth or falsity of a claim  
9 asserted. So, we've actually got a recklessness  
10 standard.

11 It's also important to know that when we

12 evaluate these using the Texas Medicaid Fraud  
13 Prevention Act, that Act does not require the specific  
14 intent to commit an act. So, it doesn't require  
15 anything more than reckless conduct, not reckless  
16 conduct with the intent to do anything else. But  
17 separate from a credible allegation of fraud, OIG is  
18 also authorized to impose discretionary payment holds  
19 for program violations; and here, again, this is where  
20 we get back to all program violations are not  
21 necessarily created equal.

22 Misspelling a name would not in and of  
23 itself result in a payment hold. Committing an action  
24 that caused harm to a patient, might or a series or a  
25 pattern of program violations depending on the  
0226

1 seriousness and the extent and the effect of those  
2 might cause a payment hold. But it really just depends  
3 on the facts and the circumstances.

4 Q. And in this particular case, again,  
5 considering the totality of the circumstances, was it  
6 in your judgment that a payment hold was authorized and  
7 indeed required under, A, the mandatory standard and,  
8 B, appropriate under the permissible standard?

9 A. Yes.

10 The -- the problem that we were seeing  
11 with the HLD score sheets --

12 JUDGE EGAN: You already answered his  
13 question. Wait until he asks the next question.

14 THE WITNESS: Okay.

15 Q. (BY MR. WINTER) Sir, what was the problem you  
16 were seeing with the HLD score sheets?

17 A. The inflated HLD score sheets caused concern  
18 because they established a pattern of at a minimum  
19 recklessness and quite possibly intentional conduct as  
20 well and that would justify -- not only justify but  
21 mandated a payment hold under the Affordable Care Act.  
22 We don't have any discretion in that regard whether or  
23 not to impose a payment hold. The Affordable Care Act  
24 says the payment hold must go on and the default is  
25 hundred percent.

0227

1 Once you've made that decision, there are  
2 several good cause exceptions for reducing or  
3 eliminating the payment hold but the payment hold must  
4 go. That's -- that's step one. But separate and apart  
5 from that, those HLD score sheets also constituted  
6 program violations. Even if they weren't fraud, they  
7 were still program violations; and I still had, in my  
8 judgment at that time, prima facie evidence of program  
9 violations that would also require or permit OIG to  
10 impose a payment hold. The nature -- I'm sorry.

11 Q. Excuse me. But following on that point, just  
12 to be clear, the problems that you identified with the  
13 HLD score sheets, even if they did not rise to the

14 level of being a credible allegation of fraud  
15 justifying a mandatory program hold -- payment hold,  
16 they still sufficed to be grounds for imposition of the  
17 discretionary payment hold in your judgment; is that  
18 true?

19 MR. WATKINS: Objection. Leading.

20 JUDGE EGAN: Please be careful not to  
21 lead.

22 But I'm going to overrule the objection  
23 just so we can get through this information.

24 A. Yes, I still thought --

25 Q. (BY MR. WINTER) You can answer.

0228

1 A. I still thought there was prima facia evidence  
2 of program violations.

3 Q. Mr. Stick, is a payment hold a sanction, a  
4 punitive sanction imposed by the OIG?

5 A. No. A payment hold is a remedial action that  
6 OIG takes.

7 Q. Can you, please, explain your answer for the  
8 Administrative Law Judges? Why is it remedial and not  
9 punitive?

10 A. Although I recognize that a provider who is  
11 not getting regular checks from the Title XIX program  
12 is harmed, the effect, the intent of the payment hold  
13 is not to punish the provider. The effect and the  
14 intent is to hold the situation in stasis until OIG can  
15 determine what is happening and if there is a problem  
16 how to correct it. So, in a situation where a credible  
17 allegation of fraud does, in fact, exist, OIG needs to  
18 prevent the outflow of money to that provider. If we  
19 fail to do that, the federal government will claw back  
20 the money that we have paid to the provider from the  
21 moment that we discovered the credible allegation of  
22 fraud.

23 So, if -- if we fail in our obligation  
24 under the Affordable Care Act, the State of Texas and  
25 taxpayers are on the hook for general revenue dollars

0229

1 to pay the federal government back all of the money  
2 that the federal government expended.

3 Q. So, in essence, imposition of a payment hold  
4 is -- is preserving the status quo?

5 A. That's exactly right. It just affords us the  
6 opportunity not to lose any money, to keep everything  
7 in stasis until we've been able to identify exactly  
8 what's going on and what, if any, remedial action  
9 needs -- other remedial action needs to happen.

10 Q. And did I understand you to testify a few  
11 moments ago that under the mandatory provision under  
12 the Affordable Care Act and the Code of Federal  
13 Regulations, if there's a credible allegation of fraud,  
14 the payment hold must be 100 percent unless some other  
15 exception applies?

16 MR. WATKINS: Objection. Leading.

17 A. Yes.

18 JUDGE EGAN: Please --

19 Q. (BY MR. WINTER) What is the standard if a  
20 payment hold is mandated under applicable federal law?

21 A. It's -- it's a payment hold. It's a hundred  
22 percent payment hold. Keeping in mind that if we do  
23 anything other than a payment -- a hundred percent  
24 payment hold the State of Texas is on the hook,  
25 unless -- on the hook for that -- that money, unless  
0230

1 there's a good cause exception that we can identify and  
2 explain to the federal government when the federal  
3 government comes along and says, "We've identified  
4 fraud here as you did. We want the money back."

5 Q. And in this case did you find any -- any basis  
6 to impose less than a one hundred percent payment hold?

7 A. No.

8 Q. You've heard -- you've been in the courtroom  
9 the last several days, haven't you?

10 A. Yes.

11 Q. You've heard and you're aware of the fact that  
12 your counsel have notified the Administrative Law  
13 Judges and the other side that OIG intends to proceed  
14 fewer counts of violations than are alleged in the  
15 pleadings?

16 A. I heard that.

17 Q. Does the fact that the -- that your attorneys  
18 are going to prove up fewer counts, fewer instances of  
19 violation than are set forth in pleadings justify a  
20 lesser than 100 percent reduction in the percentage of  
21 payment hold?

22 MR. WATKINS: Objection. Leading.

23 JUDGE EGAN: Sustained.

24 You want to rephrase your question?

25 Q. (BY MR. WINTER) Is there any basis, sir, to  
0231

1 reduce the percentage of the payment hold based on  
2 pursuing fewer counts?

3 A. No.

4 Q. Why not?

5 A. So, when -- when OIG conducted the  
6 investigation, we investigated those first 63 cases  
7 through stage one. We arrived at a 95 percent or  
8 better precision rate. So, we were certain that our  
9 results could be repeated regularly and accurately. We  
10 identified 100 percent error rate. That is to say  
11 there were errors in every single one of the cases.  
12 Every single one of the cases had HLD scores that were  
13 inflated and every one of those cases also had other  
14 errors associated, program violation errors. So, when  
15 we made the determination to impose a payment hold, we  
16 were basing that decision on -- on the 63 cases that we  
17 knew were instamped at the time that we had

18 investigated.

19 If -- you know, in my experience, there  
20 were never 145 anythings. There were only -- there  
21 were only 63 cases with the associated errors that go  
22 with those cases. But it is important also to know  
23 that the -- the error rate, the 100 percent error rate  
24 is not associated with the 100 percent payment hold.  
25 In other words, if there's a 90 percent error rate,

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1 it's not necessarily a concomitant 90 percent payment  
2 hold.

3 The decision that we have to make is  
4 fraud, not fraud. Using that TMFPA, the Texas Medicaid  
5 Fraud Prevention Act standard. If fraud exists then  
6 the default is a 100 percent payment hold. We must do  
7 that or we are at risk for claw back to the federal  
8 government for all of the money that we've spent after  
9 the point where we identified it.

10 We are always open to good cause  
11 exceptions. We were not able to find any in this case.  
12 In the situation of a program violation, here again the  
13 default is a 100 percent payment hold. Because for a  
14 program violation, although the federal government  
15 might not necessarily claw back that money -- although  
16 they could -- we would have a better position to argue  
17 from because it's a program violation and not  
18 necessarily fraud. But fundamentally OIG is charged  
19 with protecting the integrity and the dollars  
20 associated with all Title XIX expenditures.

21 So, if we know that a provider is  
22 committing multiple program violations that rise to the  
23 level of a program -- of a payment hold, we're  
24 obligated to at least start at the 100 percent level  
25 and then work down from there. And here, again, there

0233

1 were no -- there were no justifications that we could  
2 find that would reduce or eliminate the payment hold in  
3 this case.

4 Q. A payment hold is not the only administrative  
5 remedy available to OIG, is it?

6 MR. WATKINS: Objection. Leading, Judge.

7 JUDGE EGAN: Overruled.

8 Q. (BY MR. WINTER) Are there any other  
9 administrative remedies available to the OIG besides  
10 the payment hold?

11 A. There are other administrative actions that  
12 OIG can take. For example, we can -- as I've already  
13 indicated, we can educate providers. We can simply  
14 close a case. If -- if all we saw was one case where  
15 there was one L instead of two Ls in a name, we  
16 wouldn't likely do anything with that case. We'd  
17 simply close it and we also have the authority to issue  
18 administrative sanctions. If a provider has committed  
19 a program violation or a series of program violations,

20 we have the authority to sanction that provider up to  
21 \$10,000 per incident, up to \$15,000 per incident if  
22 patient harm is associated with -- with the  
23 wrongfulness of the action.

24 We can also initiate recoupment actions.  
25 We can recoup up to 100 percent of the dollars  
0234

1 associated with the payment errors. We don't have to  
2 recoup 100 percent. We can recoup a smaller amount.  
3 So, for example, if a provider provided services valued  
4 at \$50 and that's all that was medically necessary and  
5 that's what we find but the provider actually received  
6 payment for \$100, we wouldn't recoup the hundred  
7 dollars. We'd recoup the delta. We'd recoup that \$50.

8 In certain circumstances in cases of  
9 egregious behavior, we can also exclude the provider  
10 from the Texas Medicaid program entirely; and then, of  
11 course, in all cases of fraud, we can refer the case  
12 for criminal prosecution.

13 Q. By the way, have you made a referral in this  
14 case to anybody outside of OIG?

15 A. Yes. We did. We did refer this case for  
16 criminal prosecution.

17 Q. To whom?

18 A. The Texas Medicaid Fraud Control Unit.

19 Q. And speaking of those remedies, are we here  
20 today in this proceeding regarding any of these  
21 remedies that are available to you beyond a payment  
22 hold?

23 A. No.

24 Q. What exactly, as you understand it, is the  
25 purpose of this proceeding?

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1 A. To determine whether or not the current  
2 payment hold should be maintained.

3 Q. What are the bases that could support, if  
4 found by the ALJs, the maintenance of the payment hold?

5 MR. WATKINS: Objection. Calls for a  
6 conclusion for the panel.

7 Q. (BY MR. WINTER) As you understand, sir --

8 JUDGE EGAN: Sorry. What is -- I couldn't  
9 hear you.

10 MR. WATKINS: That calls for a legal  
11 conclusion to be decided by the panel.

12 JUDGE EGAN: I agree.

13 Rephrase your question and try to avoid  
14 asking him for a legal conclusion.

15 MR. WINTER: Yes, Judge.

16 Q. (BY MR. WINTER) Mr. Stick, as you understand  
17 it, what could be the bases for maintaining this  
18 payment hold, if these bases are found by the ALJ?

19 MR. WATKINS: Objection. That calls for a  
20 conclusion of the panel. It's irrelevant what he  
21 thinks about it. There's not anything he's going to

22 testify to in the next few seconds that won't appear in  
23 a brief that they submit to the panel as to what the  
24 justification is. I object to being -- his opinion  
25 being irrelevant and being for the panel to decide.  
0236

1 JUDGE EGAN: We're going to sustain the  
2 objection.

3 Q. (BY MR. WINTER) Let me try this question,  
4 Mr. Stick. As you understand it, what do you need to  
5 show in order for this payment hold to be maintained?

6 MR. WATKINS: Objection. Same objection.  
7 Judge, the issue every time you get a

8 lawyer on the stand in this situation is are we going  
9 to put him under oath and let him testify to stuff that  
10 we're gonna then write in the pleadings or, I mean, the  
11 briefs and give them to you. They can put all the  
12 lawyers on they want to to tell you what the  
13 justification is. It doesn't matter what this  
14 particular one says.

15 JUDGE EGAN: Mr. Winter --

16 MR. WINTER: Yes, Judge.

17 JUDGE EGAN: -- what purpose are you  
18 offering this testimony for? I mean, it sounds like  
19 it's to educate us as to what the law is; and if that's  
20 the case, it's an inappropriate question.

21 MR. WINTER: I'll move on, Judge.

22 JUDGE EGAN: Okay. Thank you.

23 Q. (BY MR. WINTER) Let's shift gears, Mr. Stick.  
24 I'd like to talk for a few minutes about the Texas  
25 Medicaid contract for claims administration. You've  
0237

1 been here the last several days. You've heard quite a  
2 bit of testimony about TMHP. Would that be true?

3 A. Yes.

4 Q. Would you please explain to the Administrative  
5 Law Judges -- I think you started to talk about this a  
6 little while ago. Let's go back to it now.

7 Please explain to the ALJs what is TMHP?

8 A. TMHP is the Texas Medicaid Healthcare  
9 Partnership. It is a partnership of several different  
10 corporations that have come together to act as the  
11 third-party claims administrator for the State of  
12 Texas. The primary contractor, the prime contractor is  
13 ACS Healthcare now owned by Xerox.

14 ACS is responsible for receiving,  
15 processing, reviewing prior authorizations and paying  
16 claims as appropriate on behalf of the Texas Medicaid  
17 program.

18 Q. Mr. Stick, to be clear is ACS Healthcare a  
19 state agency?

20 A. No, it is not.

21 Q. Is ACS Healthcare a division of the Texas  
22 Health & Human Services Division?

23 A. No. It's a private company.

24 Q. As part of its obligation under contract to  
25 review, process and pay claims, does ACS have any other  
0238

1 functions with respect to prior authorization, for  
2 example?

3 A. Yes, the ACS contract with the State of Texas  
4 with the Health & Human Services Commission requires  
5 that certain discrete areas of treatment, for example,  
6 orthodontia require prior authorization before  
7 treatment can be provided.

8 Q. What is the purpose, as you understand it, of  
9 this prior authorization process under Texas Medicaid  
10 policy?

11 MR. WATKINS: Objection. Irrelevant.

12 JUDGE EGAN: Overruled.

13 A. What -- the Texas Medicaid orthodontia benefit  
14 is, I think, under -- under any analysis, meager. It  
15 provides Medicaid benefits for orthodontia in very  
16 limited, very discrete circumstances. The legislature  
17 and the Health & Human Services Commission determine  
18 where the Texas Medicaid dollars are to be spent. And  
19 for orthodontia the benefit only extends to severe and  
20 handicapping malocclusion, severely handicapping  
21 malocclusions.

22 MR. WATKINS: Objection. Nonresponsive.

23 JUDGE EGAN: Just listen to the question  
24 and answer the question. You tend to go into a  
25 narrative.

0239

1 A. So --

2 MR. WINTER: Sorry. Are you telling  
3 him -- did you cut him off, Judge?

4 JUDGE EGAN: He's going pretty far afield  
5 and going into a narrative. You need to do -- we need  
6 to stick to question and answer.

7 Q. (BY MR. WINTER) Mr. Stick, what is the  
8 standard for eligibility for the Medicaid benefit for  
9 orthodontia?

10 A. In Texas it is a severe handicapping  
11 malocclusion.

12 Q. And let me ask you this question, Mr. Stick:  
13 Is there actually a contract in place --

14 A. Yes.

15 Q. -- between HHSC and ACS Healthcare?

16 A. Yes.

17 Q. This standard, that's -- is that part of Texas  
18 Medicaid policy to only pay for severe handicapping  
19 malocclusion?

20 A. Yes.

21 MR. WATKINS: Objection. Leading.

22 JUDGE EGAN: Be cautious not to lead.

23 But I'm gonna let him get through some of  
24 this so we can get to the points.

25 Go ahead.

0240

1 Q. (BY MR. WINTER) Who is authorized under  
2 applicable law to make Texas Medicaid policy?

3 A. Well, obviously the legislature can always do  
4 it. Otherwise, for Medicaid determinations, it is the  
5 single state agency responsible for Title XIX  
6 expenditures, which is the Texas Health & Human  
7 Services Commission.

8 Q. Are state contractors authorized to make  
9 Medicaid policy?

10 A. Never.

11 Q. Is ACS Healthcare authorized to make Medicaid  
12 policy?

13 A. No.

14 Q. Is ACS Healthcare authorized to make up its  
15 own interpretation as to what is a severe handicapping  
16 malocclusion?

17 A. No.

18 MR. WATKINS: Judge, let the record  
19 reflect that's four leading questions that I didn't  
20 object.

21 JUDGE EGAN: Thank you.

22 Q. (BY MR. WINTER) Who is the Texas state  
23 official, Mr. Stick, who is the most knowledgeable about  
24 Texas Medicaid dental policy?

25 A. For the period of this investigation, it would

0241

1 be the Texas dental director -- Texas Medicaid dental  
2 director or the person serving as sort of the default  
3 Texas Medicaid dental director, which is Dr. Linda  
4 Altenhoff.

5 Q. To your knowledge, sir, has Texas Medicaid  
6 policy ever contemplated a different definition for  
7 dentists and orthodontists who apply for Medicaid  
8 benefits for certain conditions that's distinct from  
9 the definitions that those conditions have in the  
10 generally accepted private practice of dentistry?

11 A. No.

12 MR. WATKINS: Objection.

13 Q. (BY MR. WINTER) To your knowledge --

14 MR. WATKINS: Objection. Leading,  
15 multifarious, confusing and calls for --

16 JUDGE EGAN: Overruled. We understood.

17 Go ahead. And it calls for -- you didn't  
18 finish.

19 MR. WATKINS: Right.

20 JUDGE EGAN: Okay. Go ahead.

21 MR. WATKINS: I ran out of steam, Judge.

22 Q. (BY MR. WINTER) To your knowledge, sir, does  
23 a cleft palate mean something different for the purpose  
24 of seeking prior authorization for a Medicaid benefit  
25 than it does in the generally accepted private practice

0242

1 of dentistry?

2 A. No.

3 MR. WATKINS: May I take this witness on  
4 voir dire on that issue? I object he's not qualified  
5 to answer that question. What is generally in the  
6 medical profession for what a cleft palate is is not  
7 within his expertise and he's comparing what the  
8 Medicaid statute says compared to what a dentist would  
9 testify.

10 JUDGE EGAN: I understand. If you want to  
11 take this witness on voir dire to establish  
12 qualifications to answer that --

13 VOIR DIRE EXAMINATION

14 BY MR. WATKINS:

15 Q. Are you a dentist, sir?

16 A. No.

17 Q. Have you ever gone to dental school?

18 A. No.

19 Q. Have you ever treated a cleft palate?

20 A. No.

21 Q. Do you have any idea what dentists generally  
22 think a cleft palate is?

23 A. What dentists think --

24 Q. Yeah.

25 A. -- a cleft palate is?

0243

1 Q. Yeah. I mean, do you go to dental meetings  
2 and you hear them talk about it?

3 A. No.

4 MR. WATKINS: We move to strike any answer  
5 he might give that relates to cleft palates.

6 MR. WINTER: Judge, this testimony is not  
7 elicited to determine what a cleft palate is. It's to  
8 determine whether there's a distinction of the meaning  
9 of the cleft palate. It's a Medicaid policy question.  
10 Whether there's a different meaning for Medicaid policy  
11 than there is generally accepted in the practice of  
12 dentistry.

13 MR. WATKINS: That's a question to compare  
14 A to B and he's not qualified as to what B is.

15 JUDGE SEITZMAN: Why is the manual the  
16 bible for this? I mean, if -- we all know what a  
17 provider is, right? A provider has a generally  
18 accepted meaning. But provider for Medicaid purposes  
19 for providing dental/orthodontic is gonna have a  
20 specific meaning and that's going to be set out  
21 somewhere, either in the statute or a rule or the  
22 manual.

23 So, I understand you're asking him and I  
24 understand it's a mixed medical-legal question. But I  
25 guess my question for you is: If -- if -- when we've

0244

1 spent several days going through the manual. I can't  
2 say I can recite it by heart but I can pick out a bunch  
3 of words pretty quickly and find out where they are.

4 Why is it -- I guess why do we need testimony beyond  
5 the professional testimony of a dentist and an  
6 orthodontist as to what definitions are or are not in  
7 the manual? I understand your questions to him  
8 regarding the intent of the policy but in terms of  
9 whatever the legal definitions of medical terms or  
10 dental terms --

11 JUDGE EGAN: Or the dental.

12 JUDGE SEITZMAN: -- or the orthodontic  
13 terms, why is the manual or contract or provider  
14 agreement or the regulation or the statute the place  
15 we're going to look?

16 MR. WINTER: I think it goes to a -- what  
17 I think is an assumption here that's been propagated  
18 throughout the hearing that we're going to demonstrate  
19 is a false proposition and that is that Texas Medicaid  
20 had somehow promulgated special definitions for certain  
21 things that were distinct and different than those  
22 generally accepted in the practice of dentistry and --

23 JUDGE SEITZMAN: I'm going to cut you off  
24 because we had -- Dr. Altenhoff has been asked about  
25 this. Dr. Tadlock has been asked about this. Dr.

0245

1 Orr's testified about this. Dr. Kanaan's been asked  
2 about this. And, I mean, they're all professionals  
3 within the profession dealing with the definitions.

4 You've asked Mr. Stick -- and I don't know  
5 that it was objected to. I don't think it was -- about  
6 policies and he's identified, you know, the fact that  
7 he doesn't believe that the policies have changed  
8 either from the time before he became associated and  
9 affiliated with the Office of Inspector General or  
10 since the time he's been affiliated. And I understand  
11 the question's about policy.

12 But I don't -- and I'm not meaning to be  
13 rude, Mr. Stick, and maybe I'll get you off the stand a  
14 half hour earlier. I don't know.

15 But I don't understand why -- and I  
16 understand why we ask lawyers lots of things about what  
17 doctors do because we know better. But I'm not sure  
18 why we need Mr. Stick's testimony and where it's going  
19 to be useful to us in terms of opinion about what's  
20 stated in the manual or not stated in the manual with  
21 respect to specific medical, dental, orthodontia terms.  
22 That's my question.

23 MR. WINTER: And I think what we were  
24 getting at is whether those terms are distinct and have  
25 special Medicaid meanings that are different from

0246

1 what's -- as he understands Medicaid policy do -- does  
2 the manual ascribe under the -- under these certain  
3 specific dental terms a distinct, separate special  
4 Medicaid definition? That's really the question. And  
5 I think that's a policy question. The manual is

6 intended for -- not for lay people. It's intended for  
7 dental and orthodontic professionals.

8         So, the question really is: Are they  
9 supposed to throw out all their education, training,  
10 experience when they put on their Medicaid provider hat  
11 and disregard everything they've learned out there in  
12 the real world and just ascribe -- it kind of goes --  
13 Judge, it goes quite frankly back to your bumper  
14 sticker question. There -- you asked a question day  
15 one let me put this on a bumper sticker. If there was  
16 a definition of ectopic occlusion that we put on one  
17 bumper sticker that TMHP or Texas Medicaid adopted that  
18 was much, much broader and expansive than the generally  
19 accepted definition that Dr. Tadlock testified to that  
20 was accepted in the profession, if we've got these two  
21 definitions -- that was the two question. It was  
22 predicated with an if.

23         And I think we're entitled to explore that  
24 and address whether that proposition is, indeed, a  
25 valid proposition. I think we're entitled to put on  
0247

1 evidence that it's not, that there aren't two separate  
2 definitions and I think we can do this with this  
3 gentleman who has testified that he has familiarized  
4 himself as part of his job to know Texas Medicaid  
5 policy. And, you know, it's not -- we're not asking  
6 him what is a cleft palate? We're just asking him  
7 whether there's two different things. We're not --

8         JUDGE SEITZMAN: But -- but you're asking  
9 him to make a determination as to a specific dental,  
10 medical, orthodontial term. We've already had a bunch  
11 of testimony and -- about whether certain terms are  
12 defined, limited or not defined but instructions only  
13 in the manual. And I guess I --

14         And, again, no disrespect intended.

15         I don't know how Mr. Stick's testimony can  
16 help us deal with that issue about whether or not a  
17 term that's defined, undefined or defined with  
18 instructions or simply with instructions in the  
19 manual -- I mean, you haven't asked Mr. Stick but I  
20 imagine that he would agree with everybody else that's  
21 testified that the manual is the go-to document and if  
22 it's in the manual, you follow it.

23         MR. WINTER: Let me answer that question,  
24 Judge. And maybe I can stop asking about specific  
25 terms and move on but I think -- you know, certainly  
0248

1 the other side is entitled to put on their evidence.  
2 If they want to contend that there are two different  
3 definitions, they're gonna argue that. We're going to  
4 argue that there aren't; and I think we're entitled  
5 to -- to rebut that, what we consider to be a, falsity.  
6 And so, I think we're entitled to put on the evidence  
7 rebutting that falsity. And that's what this line of

8 questioning is designed to address. But certainly I  
9 take your point, Judge. We can go to the manual. We  
10 cannot talk about, you know, these specific terms.

11 JUDGE EGAN: Then, go ahead and ask your  
12 general question.

13 MR. WINTER: Thank you, Judge.

14 Can we pull up Exhibit R16, please? And  
15 let's go to Page 42.

16 MS. STACEY MANELA: 42, sir?

17 MR. WINTER: Yes, please, 42.

18 DIRECT EXAMINATION (continued)

19 BY MR. WINTER:

20 Q. And, Mr. Stick, first of all, do you know what  
21 you're looking at?

22 A. I think this is the -- part of the  
23 introduction to the TMPPM.

24 Q. The manual, right?

25 A. The manual.

0249

1 Q. Heard quite a bit about it in the last several  
2 days. Big ole, thick book, right?

3 A. Yes.

4 Q. I think in the colloquy we just had with the  
5 Administrative Law Judges, there was a proposition set  
6 forth that the manual is the bible. It's the go-to  
7 place for all things Medicaid. And I paraphrased.

8 But you heard the discussion we just had,  
9 correct?

10 A. Yes.

11 Q. Is the manual the go-to oracle, the bible for  
12 all things Medicaid for providers?

13 A. Yes, to the extent that you're asking about  
14 what a provider can do and can't do or how to bill  
15 or -- or what to bill. Yes. To the extent that you're  
16 asking anything beyond that, I think the providers also  
17 bring in their own background, education and  
18 experience.

19 Q. Should a Medicaid provider disregard their  
20 education, training, life experience, continuing  
21 education, knowledge that they gain in the real world in  
22 the private practice of dentistry when they come to  
23 submit a Medicaid orthodontic claim?

24 A. No, you can't. The book doesn't -- it's not  
25 a -- a book of what is or -- or anything like that.

0250

1 It's a how-to. It's a how to work in the Medicaid  
2 program, how to bill, that kind of a thing.

3 So, if you were a dentist and you read the  
4 orthodontic section, you wouldn't know how to practice  
5 orthodontics. It doesn't -- it's not an educational  
6 document that actually teaches you substantively what  
7 to do in the practice.

8 Q. Is there any applicable law on whether  
9 Medicaid patients can be treated differently, subjected

10 to some different standard than the standards of care  
11 that are out there in the nonMedicaid world?

12 A. Well, I think that there are two different  
13 areas you'd look at. One is, you know, equal  
14 protection laws; but then even more important for the  
15 purposes of this discussion is that the provider  
16 enrollment agreement states explicitly that the  
17 provider agrees that he or she will treat Medicaid and  
18 private-pay patients identically using the same  
19 standards of care.

20 Q. Mr. Stick, let me direct your attention to the  
21 paragraph that begins about two-thirds of the page down  
22 beginning with "in addition." Can you read that that's  
23 been highlighted there, ending with the citation to the  
24 administrative code?

25 A. In addition providers are responsible for the  
0251

1 delivery of healthcare items and services to Medicaid  
2 clients in full accordance with all applicable  
3 licensure and certification requirements and in full  
4 accordance with all applicable licensure and  
5 certification requirements and in full accordance with  
6 accepted medical community standards and standards that  
7 govern occupations. Such standards include, without  
8 limitations, those limited to medical record and claims  
9 filing practices, documentation requirements, and  
10 record maintenance.

11 The requirement to follow all such  
12 standards in Medicaid is incorporated by reference to  
13 the program's requirements in 1 Texas Administrative  
14 Code Section 371.1617(a)(6)(a).

15 Q. Mr. Stick, are all of those community  
16 standards and record maintenance requirements and  
17 documentation requirements spelled out verbatim in the  
18 manual?

19 A. Yes.

20 Q. Each of those community standards pertaining  
21 to the general practice of dentistry is set forth in  
22 the manual?

23 A. Oh, no. Each of the standards is not, no.

24 Q. So, again, a provider has to bring with him or  
25 her to the Medicaid arena the knowledge, training,  
0252

1 skills, experience and standards they have learned in  
2 their practice of their profession outside of Medicaid?

3 MR. WATKINS: Your Honor, I'm using the  
4 rule of only objecting to leading with questions over  
5 30 seconds long. So, I object to that one.

6 JUDGE EGAN: Did you answer?

7 THE WITNESS: Not yet.

8 JUDGE EGAN: It's leading. I'm going to  
9 allow him to answer.

10 MR. WATKINS: Judge, I understand. And I  
11 will make leading objections understanding we need to

12 get this over. And I'll try to be as quick and as few  
13 as I can.

14 JUDGE EGAN: Thank you.

15 A. The provider manual is big but it's not  
16 infinite and it is a provider manual. It is designed  
17 for providers of services. So, it subsumes the belief  
18 that the provider of these Medicaid services brings  
19 with him or her certain basic knowledge and  
20 understanding in the field that that individual is  
21 providing services in. So, a durable medical equipment  
22 provider wouldn't have the knowledge that a dentist  
23 does. And a dentist wouldn't have the knowledge that a  
24 pediatrician does.

25 But the -- but the manual doesn't say, "Do  
0253

1 this this way." It doesn't say that in any of the  
2 professions. It says -- it's a how-to manual and you  
3 are expected as a provider to bring with you the  
4 education and experience that -- that allows you to  
5 perform services that the manual directs you to bill  
6 for.

7 Q. (BY MR. WINTER) Is the Medicaid provider  
8 procedure manual intended for lay people and  
9 nonproviders?

10 A. No.

11 Q. Are providers typically doctors and dentists?

12 A. Yeah. I mean, there -- there are about 80,000  
13 enrolled providers in Texas. I would say the majority  
14 of them are advanced degree. So, physicians,  
15 optometrists, dentists, orthodontists.

16 MR. WINTER: Please go to Exhibit R15  
17 and -- R15.

18 Q. (BY MR. WINTER) All right. Mr. Stick, you  
19 recognize the page that we're looking at?

20 A. Yes.

21 Q. What is it? Just identify it for record.

22 A. Well, it's Section 19.2. It is the  
23 provider -- it's the initial paragraphs on provider  
24 enrollment.

25 Q. And if you would, please, go down left-hand  
0254

1 column to the bottom where it begins with "important"  
2 and if you could read that language into the record for  
3 us, continue onto the top of the next column.

4 A. It says -- it says important: All providers  
5 are required to read and to comply with Section 1,  
6 provider enrollment and responsibilities. In addition  
7 to required compliance with all requirements specific  
8 to that -- to Texas Medicaid, it is a violation of  
9 Texas Medicaid rules when a provider fails to provide  
10 healthcare services or items to Medicaid clients in  
11 accordance with accepted medical community standards  
12 and standards that govern occupations, as explained in  
13 1 Texas Administrative Code Section 371.1617(a)(6)(a).

14 Q. That's fine. Thank you.  
15 MR. WINTER: Would you, please, go to page  
16 341 of the same exhibit?  
17 MR. WATKINS: What page is that?  
18 MR. WINTER: 341.  
19 MR. WATKINS: Thank you, sir.  
20 JUDGE EGAN: And what year is this? I  
21 know it's a manual but which year is it for?  
22 MS. SILHAN: 2009.  
23 JUDGE EGAN: 2009 because we've got a  
24 couple of the hard copies.  
25 Q. (BY MR. WINTER) Mr. Stick, please identify  
0255

1 the document you're looking at now.  
2 A. This is Section 19.21 of the TMPPM. It's  
3 entitled How to Score the Handicapping Labio-lingual  
4 Deviation (HLD) Index.  
5 Q. Again, this is an exhibit you've seen many  
6 times here in the last week, correct?  
7 A. I have.  
8 Q. Are these definitions?  
9 A. These are instructions.  
10 MR. WINTER: If you'll scroll down,  
11 please.  
12 Q. (BY MR. WINTER) Does that include the entry  
13 under ectopic eruption?  
14 A. Right. So, yes, it does. If you go back you  
15 see that the entire page is entitled "how to score."  
16 So, it's the instruction manual for the next page and  
17 the next page is the actual HLD score sheet.  
18 MR. WINTER: Let's -- let's go see the  
19 next page, please.  
20 Q. (BY MR. WINTER) All right, sir. Now,  
21 Mr. Stick, do you see anywhere on the left page under  
22 the 19.21 how to score the handicapping labio-lingual  
23 deviation HLD index any language that says these are  
24 definitions?  
25 A. No. There are no definitions on that page.  
0256

1 Q. All right. Thank you, Mr. Stick.  
2 Let's shift gears. I want to go back now  
3 to ACS health care we were talking about just a few  
4 moments ago.  
5 You were describing for the Administrative  
6 Law Judges ACS Healthcare's responsibilities under the  
7 contract a few moments ago, correct?  
8 A. Yes.  
9 Q. And, again, those responsibilities include the  
10 authority to implement and execute Medicaid policy but  
11 not to make it. Is that fair?  
12 A. That's correct.  
13 Q. Now, based on your personal knowledge, sir,  
14 that you gained in your capacity as the deputy for  
15 enforcement at OIG, do you have an opinion on how TMHP

16 was discharging its contractual obligations?

17 A. Yes.

18 Q. What is that opinion?

19 A. They weren't.

20 MR. WATKINS: Objection. Irrelevant. We  
21 don't care whether the State did a good or a bad job.  
22 They approved all of these applications and gave these  
23 people money based on that approval. Whether TMHP did  
24 a good job or not is irrelevant. The question is  
25 whether these people committed fraud.

0257

1 JUDGE EGAN: I'm going to allow you to go  
2 some leeway because the 2008 audit -- OIG audit has  
3 been discussed throughout this hearing. So, I'll give  
4 you some latitude to ask those questions.

5 MR. WINTER: Thank you, Judge.

6 Q. (BY MR. WINTER) Again my question, sir, is  
7 can you, please, explain the basis for your opinion  
8 that ACS and TMHP was not discharging its contractual  
9 obligations?

10 A. Yes. In 2008 the OIG audit of ACS  
11 demonstrated that ACS was not reviewing the background  
12 information submitted with the HLD score sheets. They  
13 were simply looking at the score sheets; and if the  
14 score sheets amounted to a 26 or better, they would  
15 approve them. They were approving somewhere in the --  
16 they were automatically approving about 90 percent of  
17 the -- of the claims that were submitted with 10  
18 percent being referred to the dental director because  
19 they scored below a 26.

20 When we began looking at orthodontic  
21 claims in 2011, the first thing I looked at was the  
22 utilization of orthodontic benefits in the -- in the  
23 Texas Medicaid program; and I saw that from 2003 or  
24 2002 on those -- those dollars had continued to  
25 increase, even after the 2008 audit, where we

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1 identified this problem to ACS. So, that led me to  
2 conclude that we probably needed to take another look  
3 at ACS and see whether or not they had -- they were  
4 continuing not to look behind the score sheets and were  
5 instead simply relying on what the score sheet said.

6 In our investigation at that point, which  
7 consisted of interviews with ACS employees, including  
8 ACS senior management, as well as reviewing depositions  
9 from various proceedings, including an orthodontic  
10 case, indicated that ACS had continued not to look  
11 behind the HLD score sheets, instead, relying on the  
12 professional qualifications, the thoroughness and the  
13 honesty of the providers. In other words, if the score  
14 sheet said 26, it was a 26. There was nobody -- there  
15 was nobody there to second guess that or to review  
16 that.

17 ACS was employing low-level employees,

18 clerks, to process these where the contract required a  
19 dental professional to evaluate the -- the HLD score  
20 sheets. That never happened. So, nobody was looking  
21 at the pictures. Nobody was looking at the X rays.  
22 Nobody was looking at the cephalometric diagrams. They  
23 weren't looking at anything. They were simply looking  
24 at the HLD score sheet. I don't even think we were  
25 able to establish that they were adding up the numbers  
0259

1 to see if they added up to a 26. If the number said  
2 26, it got shuffled aside and it was approved.

3 Q. Mr. Stick --

4 MR. WATKINS: Objection. Nonresponsive,  
5 based on hearsay, not admissible for any purpose in  
6 this -- in this hearing.

7 JUDGE EGAN: Over- -- overruled but I will  
8 instruct you to please just answer his question. The  
9 question was fairly specific.

10 THE WITNESS: Yes, ma'am.

11 JUDGE EGAN: And you tend to go into  
12 explaining everything you know about the subject.

13 So, just listen to his question and answer  
14 that.

15 Q. (BY MR. WINTER) Mr. Stick, what evidence have  
16 you found in the course of your investigation, what  
17 evidence that ACS Healthcare was doing any kind of  
18 qualitative analysis to determine whether orthodontia  
19 claims just -- were justified under the severe  
20 handicapping malocclusion standard?

21 A. The prior authorizations were justified?

22 Q. Yes, sir.

23 A. I found no evidence that they were doing that.

24 Q. Mr. Stick, what evidence did you find in your  
25 investigation into this matter that ACS Healthcare was  
0260

1 applying any definition of ectopic eruption to its  
2 evaluation of the orthodontic prior authorization  
3 requests?

4 MR. WATKINS: Objection. Irrelevant,  
5 based on hearsay.

6 JUDGE EGAN: Sustained.

7 If they didn't do a review of the  
8 pre-authorization, then they weren't reviewing anything  
9 in that category because that's what it was intended  
10 for.

11 MR. WINTER: I think -- I think that's  
12 the --

13 JUDGE EGAN: So, at this point it's  
14 redundant more than anything else. So, let's move on.

15 MR. WATKINS: I hate it when I make the  
16 wrong objection.

17 Q. (BY MR. WINTER) Mr. Stick, did anything that  
18 ACS Healthcare was doing or not doing in the process of  
19 reviewing prior authorization requests excuse Antoine

20 Dental Center or Dr. Nazari from his obligation to  
21 comply with all Medicaid rules and regulations?

22 A. No.

23 Q. Just because I leave my front door unlocked or  
24 my front door wide open doesn't give you an excuse or  
25 license to come and steal my TV, does it?

0261

1 MR. WATKINS: Objection. Irrelevant.

2 JUDGE EGAN: Overruled. You can answer  
3 the question, but I'm not sure it makes much --

4 A. Well, I think Dr. Orr said that yesterday.

5 And, no. Under -- under the Medicaid program --

6 JUDGE EGAN: You've answered his question.

7 Q. (BY MR. WINTER) I'm sorry. I don't -- what  
8 were you about to say about --

9 JUDGE EGAN: He said no -- his answer to  
10 your question whether or not it gave you permission to  
11 come through your door and steal your TV, his answer  
12 was no.

13 Q. (BY MR. WINTER) And my following question is:  
14 What were you about to say under the Medicaid program?  
15 I would like to know the answer to that question, sir.

16 A. Under the Medicaid program the providers have  
17 an obligation to exercise professional judgment and  
18 discretion in accordance with existing professional  
19 standards and submit truthful prior authorization  
20 requests. So, if there's nobody on the other end to  
21 review it, that doesn't mean that you can just send in  
22 anything you want. You still have as a provider an  
23 obligation to send in truthful information to the  
24 program for the program's integrity. Otherwise, you're  
25 getting money that you weren't supposed to get.

0262

1 Q. I think a few moments ago you were -- you made  
2 a reference to certain trends that you have observed as  
3 part of your investigations into orthodontia billing;  
4 is that true?

5 A. Yes.

6 Q. What trends have you observed with respect to  
7 dollars spent on orthodontia over the last ten years or  
8 so?

9 A. A couple of salient points, the first one was  
10 that there has been a steady and marked increase in  
11 expended dollars from about 2002 to 2011 amounting to  
12 about 2,480 percent increase. The second trend was  
13 that there was an increase in providers who enrolled  
14 stating -- and who had submitted at least at one point  
15 an orthodontic claim. In the same period of time that  
16 expenditures increased 2480 percent, the number of  
17 providers increased 338 percent.

18 Q. Based upon those statistics that you observed  
19 on the increase in the number of enrolled providers  
20 compared with the increase in the dollars spent,  
21 married up with the other things that you have learned

22 in your investigation, have you been able to draw any  
23 general conclusions about the job that ACS Healthcare  
24 was doing administering the contract?

25 MR. WATKINS: Objection. Irrelevant.

0263

1 JUDGE EGAN: I believe it's already been  
2 established that he doesn't believe they were doing  
3 their job. I mean, we need to move on.

4 Q. (BY MR. WINTER) Based upon your judgment that  
5 ACS Healthcare was not doing -- living up to its  
6 contractual obligations and performing adequate prior  
7 authorization reviews, did you observe any other trends  
8 in the behavior of some providers?

9 A. We noticed that --

10 MR. WATKINS: Objection, Judge.

11 Irrelevant. We're talking about a provider here.

12 We're not talking about some providers.

13 JUDGE EGAN: Sustained.

14 Q. (BY MR. WINTER) Sir, do you know what the  
15 approval rate for orthodontia prior approvals was under  
16 ACS Healthcare's watch?

17 A. Yes.

18 Q. What was that figure?

19 MR. WATKINS: Objection. Irrelevant.

20 We need to hold this to this provider.

21 JUDGE EGAN: I'm going to allow this

22 question.

23 Go ahead.

24 A. Approximately 95 percent.

25 Q. (BY MR. WINTER) Now, was there a change in

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1 the way Texas Medicaid administered the prior  
2 authorization orthodontia program in March of 2012?

3 A. Yes, there was.

4 Q. What was that change?

5 A. In March of 2012 dental -- dental benefits  
6 were transferred to a managed care system. So, there  
7 were three dental maintenance organizations, DMOs, in  
8 the state who were in charge of the vast majority of  
9 mental dental expenditures --

10 Q. Let me ask you --

11 A. -- including orthodontia and prior  
12 authorizations.

13 Q. Excuse me. Let me ask you about those three  
14 DMOs. Do you know what their approval rates are since  
15 they've taken over this program in March of '12?

16 A. There's now two. One dropped out in December  
17 of last year; but in the first year that there were  
18 three of them, they ranged from 3 percent to 9 percent.

19 Q. Let me go back to that 10-year time period  
20 between 2003 and 2013, just prior to the program going  
21 from fee-for-service to managed care. So, excluding  
22 the March, '12, forward but the time period preceding  
23 that, did the reimbursement rate increase at the same

24 time there was an increase in provider enrollment and  
25 increase in expenditures?

0265

1 A. So, are you asking if the -- if the rate the

2 State paid for orthodontic services --

3 Q. Yes, sir.

4 A. -- increased?

5 It did not.

6 Q. Apologize. Unclear question. Just to be  
7 precise here my question was was Texas Medicaid paying  
8 more on a case-by-case basis for services in 2012 and  
9 '11 than it was in 2002 or '3?

10 A. No. The amount of money that a provider would  
11 receive for certain orthodontic service remained static  
12 during that period of time.

13 Q. Yet the number of providers enrolling in Texas  
14 Medicaid increased significantly, correct?

15 A. It increased, yeah, 338 percent.

16 Q. And the -- the rate in dollars were spent  
17 increased even more significantly?

18 A. Right, over -- over almost 2500 percent.

19 Q. Now, since Medicaid has gone from a  
20 fee-for-service orthodontia to managed care since March  
21 of 2012, has there been any change at -- in the rate at  
22 which providers are reimbursed for orthodontia  
23 services?

24 A. I don't believe so, no.

25 Q. Did Texas Medicaid policy change since March  
0266

1 of 2012 regarding what is and what is not eligible for  
2 orthodontia?

3 A. No.

4 Q. Is the standard still the same for Procedure  
5 Code D8080?

6 A. The standard for approving --

7 Q. Yes, sir.

8 A. -- orthodontic treatment? The standard has  
9 remained the same.

10 Q. In addition to your observations about the  
11 program itself, have you made any observations in the  
12 course of your investigations with respect to the  
13 behavior of Antoine Dental Center and Dr. Nazari?

14 A. Yes.

15 Q. What are those observations?

16 A. We looked at Dr. Nazari's absolute number of  
17 prior authorizations for the 12-month period  
18 immediately before OIG went and collected orthodontic  
19 records from him and we determined that he was  
20 receiving -- submitting and receiving prior  
21 authorizations for about 106 patients per month on  
22 average. For the one-year period subsequent to OIG's  
23 record collection, he submitted an average of -- and  
24 received prior authorization for an average of 10 per  
25 month up until March and we -- we collected records in

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1 mid-November. So, up until March of 2012, he received  
2 prior authorizations at the rate of about 10 per month.  
3 After March of 2012 when the managed care companies  
4 took over, he received no prior authorizations.

5 Q. To put this all in perspective, from the  
6 year -- or the part of this discussion perspective, for  
7 the year prior to November of '11 -- that is from  
8 November of '10 to November of '11 -- Dr. Nazari was  
9 enrolling on average how many new Medicaid patients  
10 each month?

11 A. Right at about 106. I think it was 1271 or 72  
12 for that year.

13 Q. And for the time period November of '11 until  
14 March of '12 for that four months, what was  
15 Dr. Nazari's average Medicaid patient enrollment rate?

16 A. Per month it was right at about 10. I think  
17 he enrolled 40.

18 Q. And what has been his Medicaid enrollment  
19 frequency since March of 2012?

20 A. He's not received any new prior  
21 authorizations.

22 Q. He's not submitted any new prior  
23 authorizations. Is that -- is that what you meant to  
24 say or received?

25 A. I'm not able to conclusively determine whether

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1 he has submitted any. I know that he has not received  
2 any prior authorizations.

3 Q. Is it -- has your office taken any action that  
4 would preclude Dr. Nazari from receiving a prior  
5 authorization for a request that he submits?

6 A. No. I checked this morning and he is still an  
7 enrolled provider in the Texas Medicaid program.

8 Q. And what significant event occurred in March  
9 of 2012?

10 A. That's when the managed care companies took  
11 over dental prior authorizations.

12 Q. And went from fee-for-service to managed care?

13 A. To managed care, correct.

14 Q. Mr. Stick, shortly before you took the stand,  
15 you were here for -- were you not, for Dr. Kanaan's  
16 testimony?

17 A. For part of it, yes.

18 Q. Did you hear a question that he was asked  
19 regarding the number of patients that he treated in the  
20 time period that's at issue here?

21 A. Yes.

22 Q. What was the number of patients that he gave?

23 A. I think he estimated it was about 2,000.

24 Q. Does that comport with the information --  
25 well, let me ask you this: Have you been able to

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1 determine based upon OIG records the number of patients

2 that Dr. Kanaan -- Medicaid patients Dr. Kanaan saw?

3 A. Yes. Dr. Kanaan's answer was 2,000 relative  
4 to the patients that both he and Dr. Nazari treated and  
5 the actual number is right at about 6,550.

6 Q. Is it your testimony that Mr. -- Dr. Kanaan  
7 underestimated his response to that question by about  
8 4,000 patients?

9 A. Better than 4,000 patients.

10 Q. What is the total dollar value, to your  
11 knowledge, of Antoine Dental Center's Medicaid billings  
12 for the time period that's in question?

13 A. Slightly over \$8.1 million and this is a  
14 three-year investigation.

15 Q. As part of your investigation into this  
16 matter, the matters that we're here on these several  
17 days, have you had occasion to determine how many prior  
18 authorization requests Dr. Orr processed when he was  
19 the claims agent for National Heritage Insurance  
20 Corporation back in 2000?

21 MR. WATKINS: Objection. Relevance.

22 JUDGE EGAN: What -- what is the relevance  
23 of that question?

24 MR. WINTER: I think it goes to the  
25 credibility of some of the -- Dr. Orr's testimony

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1 earlier that he gave this week about how long he spent  
2 on processing and evaluating prior authorization  
3 requests and he testified that he spent a certain  
4 amount of time for each one. The testimony that we  
5 will elicit will --

6 JUDGE EGAN: I'll allow a little -- a  
7 little leeway but I don't want to spend a lot of time  
8 on this.

9 MR. WINTER: Just have a few short  
10 questions, Judge. Thank you.

11 Q. (BY MR. WINTER) In 2000 how many prior  
12 authorization requests did Dr. Orr process?

13 A. I looked it up and I made a note but I need to  
14 refer to the note to refresh my recollection.

15 MR. WINTER: May the witness refer to the  
16 note to refresh his recollection, Judge?

17 MR. WATKINS: I'm still objecting as to  
18 being relevant.

19 JUDGE EGAN: Overruled.

20 And I'll allow him to refresh his  
21 recollection if he needs to.

22 MR. WATKINS: I would like to look at it.

23 JUDGE EGAN: If you're going to refresh  
24 your recollection, he gets to look at it.

25 So, go ahead. You can approach the

0271

1 witness. Take a minute.

2 MR. WATKINS: I'm probably going to want  
3 to take him on voir dire.

4 JUDGE EGAN: Depends on what he wrote  
5 down.

6 VOIR DIRE EXAMINATION

7 BY MR. WATKINS:

8 Q. Now, do you remember these numbers now?

9 A. I haven't even looked at them.

10 Q. Okay. I want you to look at them.

11 You through looking?

12 A. I am.

13 Q. Do you remember these numbers now?

14 A. I think so.

15 MR. WATKINS: Okay. Go ahead and ask him  
16 your questions.

17 DIRECT EXAMINATION (continued)

18 BY MR. WINTER:

19 Q. Mr. Stick, the question is in the year 2000  
20 approximately how many prior --

21 A. 7,894.

22 Q. In the year 2001 how many prior approval  
23 requests did Dr. Orr process?

24 A. 9,607.

25 Q. And in the year 2002?

0272

1 A. 12,992.

2 Q. Mr. Stick, you have been here, as the OIG's  
3 client representative, here these last three days, sat  
4 through virtually all of this proceeding, haven't you?

5 A. Yes, sir.

6 Q. You've heard quite a bit of testimony about  
7 what ectopic eruption's are, right?

8 A. Yes.

9 Q. I think you've heard some testimony about  
10 subjectivity and professional judgment, true?

11 A. Yes.

12 Q. You've heard about both policy and purposes  
13 behind Texas Medicaid orthodontia policy, right?

14 A. Yes.

15 Q. You've, in fact, testified on that yourself,  
16 haven't you?

17 A. I have.

18 Q. What I'd like you to do is put everything that  
19 we've talked about the last several things in  
20 perspective for the Administrative Law Judges if you  
21 will. What's the harm to Texas Medicaid when a  
22 provider bills for and is paid for services that are  
23 not eligible?

24 MR. WATKINS: Objection. Irrelevant. The  
25 question is: What is the harm, I suppose, by this

0273

1 provider?

2 JUDGE EGAN: I believe it's a generic  
3 question. It's not directed towards this provider.  
4 I'm going to allow the question.

5 MR. WATKINS: Thank you.

6 JUDGE EGAN: Was it directed to this  
7 provider? I've not --

8 MR. WINTER: It was a general question,  
9 Judge.

10 JUDGE EGAN: Go ahead.

11 Q. (BY MR. WINTER) You may answer.

12 JUDGE EGAN: Objection overruled.

13 A. The Medicaid program is funded with, roughly,  
14 a 60 percent/40 percent federal/state split.

15 JUDGE EGAN: It's 60 percent federal?

16 THE WITNESS: Yes, ma'am.

17 A. There is a limited amount of state dollars  
18 that can go into the Medicaid program. The legislature  
19 and the Health & Human Services Commission determines  
20 who qualifies and what benefits they get. That's the  
21 decision making process.

22 It's a difficult process because you're  
23 constantly weighing this grievous condition against  
24 this grievous condition and you're trying to make the  
25 most out of the money you've got available. And there

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1 are certain -- there's certain expectations that policy  
2 makers rely upon that are provided by experts at the  
3 Health & Human Services Commission at the legislative  
4 budget board that govern that decision-making process.

5 When a provider takes money out of the  
6 system at a greater rate, at an unauthorized level,  
7 what that does is it denies services to the neediest of  
8 Texans. So that if the money is -- is allocated for --  
9 or appropriate -- is spent on orthodontic benefits  
10 inappropriately, that means that somewhere down the  
11 line somebody's getting squeezed out and that's wrong  
12 and it's unfair and it hurts the neediest of Texans.  
13 That's the harm to the program.

14 Q. (BY MR. WINTER) Thank you, Mr. Stick.

15 MR. WINTER: If I can have one moment,  
16 please.

17 JUDGE EGAN: We'll go off the record so  
18 our reporter can stand and stretch her legs.

19 (Off the record)

20 JUDGE EGAN: All right. We've taken a  
21 short break so everybody can kind of stretch their  
22 legs. If I can get counsel to all take their seat  
23 again. It is now 4:20 p.m. on May 30th, 2013.

24 Mr. Winter, did you have any further  
25 questions of Mr. Stick?

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1 MR. WINTER: No, thank you, Judge. We  
2 pass.

3 JUDGE EGAN: You pass the witness?

4 MR. WINTER: Yes.

5 JUDGE EGAN: All right. You may begin  
6 with cross.

7 CROSS-EXAMINATION

8 BY MR. WATKINS:

9 Q. Mr. Stick, the policy manual doesn't intend to  
10 teach people how to practice dentistry, does it?

11 A. No, sir.

12 Q. Part of the requirements for getting money  
13 from the State is to comply with dental standards and  
14 applicable professional standards, correct?

15 A. Yes.

16 Q. Okay. And -- but the policy is about how you  
17 get the money. It's not how you practice dentistry?

18 A. That's correct.

19 Q. Okay. So, there could be things that are  
20 perfectly required among dentists in order to do for a  
21 patient which they can't get any money for because it's  
22 not required -- it's not defined in the policy manual?

23 A. I think my answer to that is yes, but I'm not  
24 sure I understand exactly. Can you give me an example?

25 Q. Well, all right. Let's talk about braces.

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1 There's lots of times they're going to put braces on  
2 the kid that they're not going to get the money for and  
3 the kid needs the braces but it's doesn't fit the  
4 definition in the policy manual.

5 A. Yeah. A provider could put braces on somebody  
6 and not get reimbursed.

7 Q. Well, the mother of that child is going to  
8 want braces on that child whether he gets money back  
9 from the State or not, aren't they?

10 MR. WINTER: Objection. Calls for  
11 speculation.

12 JUDGE EGAN: I think it's a safe  
13 assumption but --

14 MR. TONY CANALES: With a straight face?

15 JUDGE SEITZMAN: There must be a quota of  
16 objections that we're going through pretty rapidly at  
17 this point.

18 MR. TONY CANALES: No shame at all.

19 JUDGE SEITZMAN: I guess they're like  
20 timeouts. You can't take them to the next period.

21 Q. (BY MR. WATKINS) And there are definitions in  
22 the policy manual for things provided for purposes of  
23 things getting money that may not be the definition of  
24 what good medical treatment would be?

25 A. I'm not sure I agree with that. I'd have to

0277

1 see what you're talking about.

2 Q. Well, let's talk about how many teeth you can  
3 count when you're doing one of these measurements. The  
4 policy manual says you can only count a certain number  
5 of teeth. The dentist is probably going to look at all  
6 the teeth, isn't he?

7 A. Right. That's not a definition. That's an  
8 instruction.

9 Q. Are there no definitions in the policy manual?

10 A. Not in this part of the policy manual, no.  
11 Q. Haven't you testified differently in the past?  
12 A. Well, the only time I testified relating to  
13 orthodontia was when Mr. Canales took my deposition and  
14 Mr. Canales used the -- used the phrase definition  
15 relating to ectopic eruption. So, we -- we discussed  
16 that in terms of a definition but I didn't testify it  
17 was a definition.

18 Q. Okay. Well, let me remind you.

19 A. Okay.

20 Q. Let's go to your deposition. Do you have a  
21 copy of it with you?

22 A. No.

23 Q. You remember giving your deposition in this  
24 case, don't you?

25 MR. WINTER: Excuse me. Do you have a  
0278

1 copy for me, Counsel?

2 MR. WATKINS: No, I don't.

3 I don't mind if you want to go look on  
4 with him.

5 MR. TONY CANALES: He can have it.

6 MR. WATKINS: Is there another one? There  
7 we have one.

8 Q. (BY MR. WATKINS) I direct your attention to  
9 Page 73 starting at line 22 or 20 -- I'm sorry -- line  
10 20. The question: Maybe I don't think I'm being  
11 agitating. Let me ask you a couple of more questions,  
12 sir. The manual, the TMHP manual, do you believe that  
13 the manual is a comprehensive manual, covers everything  
14 that a doctor needs to know regarding the grading or  
15 the grading or deciding whether somebody's tooth is  
16 ectopic or not?

17 And your answer was: I think it provides  
18 a definition of ectopic eruption.

19 So, you testified under oath that there's  
20 a definition in this manual of ectopic eruption, right?

21 A. I did.

22 Q. And that's not what you testified to here  
23 today?

24 A. No, it's not.

25 Q. You said there was no definition in the  
0279

1 manual?

2 A. In this part of the manual, right.

3 Q. So, well, which -- which time were you telling  
4 the truth, sir? Then or now?

5 A. I don't think it's an either/or. I don't  
6 think that the -- I don't think that the definition  
7 that we've seen here today and in previous days is a --  
8 is a definition of ectopic eruption. This conversation  
9 was relating to Mr. Canales' line of questioning about  
10 ectopic eruption policy changes; and in my answer  
11 here -- although it's not clear from this portion of

12 it -- I was referring to the conversation that Mr.  
13 Canales and I had had. And I think you were there at  
14 that time.

15 Q. And so, you don't think it's an either/or?  
16 You can testify to one thing in the deposition and then  
17 you can testify to something different here? Is that  
18 what you're telling us, sir?

19 A. No, sir. I -- I think that that's kind of a  
20 mischaracterization of what I was saying. What I'm  
21 telling you is that my answer here on page 74 is in  
22 relation to Mr. Canales' line of questioning regarding  
23 policy changes.

24 Q. All right. Now, you have testified in the  
25 past that whether or not there's been a change to the  
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1 definition of ectopic erection -- eruption comes down  
2 to what the word "change" means, haven't you?

3 A. I don't recall. I might have.

4 Q. Okay. Well, do you want me to play it back  
5 for you? I mean, you did say in your deposition it  
6 comes down to what the definition of the word change  
7 is.

8 MR. WINTER: I'd ask that Counsel direct  
9 the witness to the place in the deposition he's  
10 referring to without just ambushing him with abstract  
11 notions.

12 JUDGE EGAN: Well, he's asking him the  
13 question. He's laying the predicate to go ahead and  
14 refer him --

15 Q. (BY MR. WATKINS) Did you or did you not  
16 testify that it comes down to --

17 JUDGE EGAN: Overruled.

18 MR. WINTER: Asked and answered. He's  
19 already answered the question. He doesn't recall that  
20 testimony.

21 Q. (BY MR. WATKINS) Turn to page 19 of your  
22 deposition. Let's look at line 5. Question: The  
23 definition got changed, sir. You know it got changed.  
24 Are you telling me you don't know about the  
25 definitional change?

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1 Well, I think it really ultimately  
2 devolves into how you define, you know, the word  
3 change.

4 A. Right. I understand what you're asking.  
5 Again, Mr. Canales was asking -- he was  
6 basing his question on the assumption --

7 Q. My question is: That's what you testified to  
8 under oath?

9 A. It's right there.

10 Q. Okay. Now, do you still believe that this  
11 issue of what is or is not the definition in the -- and  
12 we know you called it a definition in the manual.  
13 Whether or not that definition got changed by your

14 department?

15 A. Sir, I can't answer your question.

16 MR. WINTER: Objection. Vague.

17 Excuse me.

18 Objection. Vague. The question's

19 unclear.

20 JUDGE EGAN: Overruled.

21 A. I can't answer your question with a yes-or-no

22 answer.

23 Q. (BY MR. WATKINS) Why not? There's a nice

24 open-floated question to you. Why can't you answer it

25 yes or no?

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1 A. Because in order to explain or in order for

2 you to understand why I said what I said, you have to

3 understand what I was understanding Mr. Canales to ask

4 me. So, you can force me into a yes or no but it

5 wouldn't be an accurate answer.

6 Q. Uh-huh. Well, let's -- I put up there Page

7 65, P65 and P81. You see those two. You recognize

8 those two definitions?

9 MR. WINTER: Objection. Misstates the

10 evidence.

11 JUDGE EGAN: He asked if he recognized

12 those two definitions --

13 MR. WINTER: Well, I think he's --

14 JUDGE EGAN: -- definitions. So, at this

15 point overruled.

16 Go ahead and answer, if you recognize

17 them. If you don't, state you don't.

18 A. I recognize those two paragraphs.

19 Q. (BY MR. WATKINS) Different from your

20 deposition you're saying those are not definitions?

21 You tell me that neither one of those are

22 a definition of what an ectopic eruption is for

23 purposes of the manual?

24 A. Sir, what I -- what I'm prepared to do to get

25 you so that you can ask me questions, I'll agree right

0283

1 now to call these definitions if that helps; but in my

2 deposition I was -- I was utilizing Mr. Canales'

3 description of -- of that paragraph. I'm not calling

4 them definitions. Mr. Canales is calling them

5 definitions and I'm using his language.

6 Q. So, when you say "ectopic eruption," up at the

7 top, the first one, an unusual pattern of eruption, you

8 don't think that's a definition of what ectopic

9 eruption is?

10 A. I think that if you view that singularly

11 without the context of where it is that you might be

12 led to that conclusion but that paragraph is in Section

13 19.21, which starts out how to score, the instructions

14 on how to score the HLD index.

15 Q. Well, whether you want to call it how to score

16 or a definition, it's followed by some language. You  
17 see where it says "such as." You see those two words  
18 right after "unusual pattern of eruption"?

19 A. Yes.

20 Q. You were in the legislature, right?

21 A. Yes, sir.

22 Q. Do you remember -- and this goes back a long  
23 way -- the Latin expression *expressio unius est*  
24 *exclusio alterius*? Do you remember what that means in  
25 law school?

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1 A. I don't think I ever learned that.

2 Q. Apparently I didn't either because I had to  
3 look it up.

4 MR. WINTER: Objection. Relevancy.

5 JUDGE EGAN: This part I can't -- go  
6 ahead. Overruled.

7 Q. (BY MR. WATKINS) It means one thing excludes  
8 another thing so that if you put something up and you  
9 say, "Rings are made out of gold and silver," that list  
10 limits what rings are made out of. You understand  
11 that? That a list of specific things following a  
12 general term limits the general term to the list that  
13 follows it. Do you understand that?

14 A. No, sir.

15 Q. Okay. Well, you ran for the legislature,  
16 right?

17 A. Yes.

18 Q. Isn't that a representation by you that you  
19 knew how to draft legislation?

20 A. No. I think the legislature's full of people  
21 who don't know how to draft legislation.

22 Q. And you were -- and you were going to be one  
23 of them?

24 A. I was going to be in the legislature, yes,  
25 sir.

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1 Q. Do you -- did you think you knew how to draft  
2 legislation?

3 A. You know --

4 MR. WINTER: Objection. Relevancy.

5 A. -- I don't think it ever occurred to me.

6 Q. (BY MR. WATKINS) Now --

7 JUDGE EGAN: Hold on. Now, you need to  
8 let me rule on the objections before you move on. But  
9 he's answered it. So, it's going to be mootable but  
10 please wait until --

11 MR. WINTER: Please give me a moment to  
12 insert an objection before you answer. Thank you.

13 Q. (BY MR. WATKINS) Well, now, drafting  
14 contracts, do you -- have you ever practiced law  
15 privately?

16 A. Yes.

17 Q. And have you drafted some contracts?

18 A. Not that I can think of.

19 Q. Well, do you know the people who draft  
20 contracts, people who draft statutes, people who draft  
21 regulations have some phrases that they insert in  
22 clauses to eliminate that old expressio unius est  
23 exclusio alterius? Do you know -- do you know any of  
24 those phrases which we stick in there?

25 A. Well, I don't think just because it's in Latin  
0286

1 means -- means anything. I mean, as I -- as I read  
2 this, I don't think that there's anything that's  
3 limiting there.

4 For example, you know, all rings are made  
5 of gold and silver or rings -- I think you said rings  
6 are made of gold and silver is -- is not limiting.  
7 Rings are made of gold and silver and titanium and any  
8 number of other things. If you said all rings are made  
9 of gold and silver, that would be limiting.

10 Q. Well, this says an unusual pattern of  
11 eruption. Now, sometimes, let me suggest to you that,  
12 sir, that in drafting contracts statutes or regulation  
13 will include a phrase like including but not limited  
14 to. You understand what that phrase does to the list  
15 of things that follow after that, right?

16 A. Sure.

17 Q. We put in, for example, and that doesn't limit  
18 the main -- the general terms of the things that  
19 follow, right? And isn't it true that we put in such  
20 as, which doesn't limit the general by those things  
21 that follow the such as? That's true, isn't it, sir?

22 A. You're saying that you say a thing, all rings  
23 such as those made of gold and silver?

24 Q. Yeah. You say, rings can be made of such  
25 things as, such as gold and silver. That doesn't limit  
0287

1 it. You can only limit rings to gold and silver.

2 A. That does not mean you can limit it to gold  
3 and silver.

4 Q. You testified under oath that you believed  
5 that unusual pattern of eruption in this case is  
6 limited to those things that follow the such as.

7 A. I'm not testifying to that.

8 Q. All right. So, if, then, we put something in  
9 that to change what you can put after the such as, that  
10 would be a change to that definition, wouldn't it?

11 A. Well, I -- I don't agree it's a definition but  
12 for --

13 Q. In spite of your testimony?

14 A. -- for -- for the sake of your question, we  
15 can use that word. Such as high labial cuspids or -- I  
16 mean, it would be a -- a physical change but I don't  
17 know that it would necessarily be a substantive change.  
18 I don't know that it would change the meaning.

19 Q. Right. Look at the second enlargement.

20 Ectopic eruption, an unusual pattern of eruption such  
21 as high labial cuspids or teeth that have erupted in a  
22 position that is grossly out of long axis of an  
23 alveolar ridge. Then -- now, that's identical to  
24 what's up at the top, right?

25 A. It is.

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1 Q. Then it follows with ectopic eruption does not  
2 include teeth that are rotated or teeth that are  
3 leaning or slanted especially when enamel-gingival  
4 junction is within the long axis of the alveolar ridge.

5 That changes what the top meaning says,  
6 doesn't it?

7 A. It eliminates teeth that are rotated, leaning  
8 or slanted, yes.

9 Q. Okay. Now, how many of the things that you  
10 looked at that you think were wrongfully submitted, did  
11 not have or are -- were eliminated because they  
12 didn't -- because they had teeth that were rotated or  
13 teeth that were leaning or slanted?

14 MR. WINTER: Objection. Vague.

15 MR. WATKINS: Well, it certainly is. I  
16 intended it to be vague, sir.

17 Q. (BY MR. WATKINS) My question to you is: Do  
18 you have any idea what this change in that definition  
19 did to the applications that your ipso facto going back  
20 and trying to charge these people with fraud? You know  
21 what effect that change had on the submissions they  
22 submitted to you, sir?

23 MR. WINTER: Don't answer that.

24 Objection. That question's clearly  
25 inappropriate. It's hostile. It misstates the

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1 evidence. It's badgering the witness and  
2 argumentative.

3 JUDGE EGAN: It's cross and this is an  
4 experienced expert. He's an attorney. He can manage  
5 himself.

6 You want to rephrase your question? I  
7 think it got lost in here.

8 Q. (BY MR. WATKINS) Have you gone back and  
9 checked to see out of the application that this  
10 petition -- that Dr. Nazari has submitted were -- were  
11 changed because -- were in -- were inappropriate  
12 because of that change in the definition?

13 MR. WINTER: Objection. Misstates the  
14 evidence. The question is founded on a proposition,  
15 which is not in evidence that there was an application  
16 of the second statement description in this case and  
17 that's not been established.

18 JUDGE EGAN: Okay. He -- I believe.

19 MR. WINTER: And the question's predicated  
20 on it. It's inappropriate. It's badgering and it's  
21 argumentative.

22 JUDGE EGAN: Overruled.

23 A. That definition -- and I'm using your word --  
24 of ectopic eruption, which is really a description of  
25 what an ectopic eruption is, appeared in the 2012  
0290

1 TMPPM. This case is a 2011, '10 and '9 case. So, our  
2 expert consultants applied the TMPPMs from 2008 to the  
3 2008 cases, 2009 to the 2009 cases and so on.

4 The 2012 TMPPM isn't relevant to this  
5 investigation. So, there couldn't be a retroactive  
6 application of any new change.

7 But, secondly, I think I would -- I think  
8 I would point out our experts have consistently  
9 indicated that what your clients were scoring as  
10 ectopic eruptions were not ectopic eruptions under --  
11 under any possible construction of the -- of the phrase  
12 ectopic eruption, for the most part, in the period of  
13 the investigative time period.

14 So, irrespective of any -- any description  
15 or definition of ectopic eruption, the experts are  
16 saying all along that it didn't meet the standard.

17 Q. (BY MR. WATKINS) Well, that was because your  
18 experts testified -- you and I were both here -- that  
19 if you went out in the medical literature and you took  
20 a look about what most think an ectopic eruption is  
21 that it wouldn't include slanted or twisted teeth,  
22 didn't it?

23 MR. WINTER: Objection. Mischaracterizes  
24 the testimony of the experts.

25 JUDGE EGAN: Overruled.

0291

1 A. You know, I -- I rely on the expert witnesses  
2 to know and describe to me what an ectopic eruption is  
3 and what an improperly or a properly scored HLD score  
4 sheet is. We had three experts review your client's  
5 cases. Two of them were board certified. One of whom  
6 is a national expert in this field and they all came up  
7 with the same conclusion.

8 Q. (BY MR. WATKINS) My question was: That  
9 conclusion came up because they went outside of the  
10 manual and gave you an opinion as to what they thought  
11 generally accepted understanding of what an ectopic  
12 eruption was -- eruption was, didn't they?

13 MR. WINTER: Objection. Asked and  
14 answered.

15 JUDGE EGAN: Overruled.

16 A. The experts provided an opinion and have  
17 indicated that understanding and defining an ectopic  
18 eruption is a basic premise taught in dental school and  
19 that it's not complicated. I know, because I sat  
20 through Dr. Tadlock's testimony, that he went on and  
21 did extensive research in an effort to educate this  
22 Court about what an ectopic eruption is.

23 I don't know if that answers your

24 question.

25 Q. (BY MR. WATKINS) No, it doesn't.

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1 My question is that they went outside of  
2 what's in the manual to try to provide what a, quote,  
3 generally accepted medical understanding of what  
4 ectopic eruption was in order to get the definition  
5 that you wanted, didn't they?

6 MR. WINTER: Objection. Misstates the  
7 evidence. There's -- there's been no evidence in this  
8 proceeding that Mr. Stick wanted any kind of  
9 definition. This is a personal attack now on Mr. Stick  
10 trying to make him out to be some kind of a villain in  
11 this case. Mr. Stick is not the subject of the -- he's  
12 the technical respondent in this matter but he's not  
13 been accused of anything, except in this line of  
14 questioning. There's been nothing of evidence that he  
15 wanted --

16 JUDGE EGAN: This is cross and this is an  
17 experience -- this is an attorney. He can say what he  
18 needs to say.

19 But it's not making any points to ask very  
20 draconian questions. If you want to ask him what he  
21 knows, I'll go with you there; but it's not assisting  
22 us in making a decision in this case.

23 Unless it's assisting you. No.

24 JUDGE SEITZMAN: Nor are -- nor are  
25 objections that go beyond stating the basis of the

0293

1 objection.

2 JUDGE EGAN: Objection.

3 Q. (BY MR. WATKINS) Now, my question then to you  
4 is: You have taken the position in previous testimony,  
5 have you not, that this change, quote/unquote, of this  
6 definition, quote/unquote, didn't change anything and  
7 that people would look at that old definition and apply  
8 this new one because they mean the same thing. Isn't  
9 that -- wasn't that your testimony?

10 MR. WINTER: I would ask -- excuse me. I  
11 would ask that he direct the witness to the page and  
12 line of the testimony if he's going to be asking about  
13 testimony.

14 JUDGE EGAN: If the witness doesn't  
15 remember this -- he's laying a predicate to impeach  
16 him. If he doesn't remember and needs to look at it,  
17 he can; but at this point he's asked him if he said  
18 that before. Witness can either admit or deny it.

19 A. And I don't specifically remember --

20 JUDGE EGAN: Objection. Overruled.

21 A. I don't specifically recollect testifying  
22 about that but I'm happy to read it.

23 Q. (BY MR. WATKINS) Let's go to your deposition  
24 Page 36. We'll start with line 7.

25 MR. WATKINS: 7 through 22.

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1 JUDGE EGAN: Mr. Watkins, you need to pull  
2 the microphone closer to --

3 JUDGE SEITZMAN: Or vice versa, pull  
4 yourself closer to the mic.

5 JUDGE EGAN: Have you finished reading it?

6 THE WITNESS: Yes, ma'am.

7 Q. (BY MR. WATKINS) Now, starting on line 7, you  
8 don't know? You'd have to ask them.

9 Answer: I mean, look, we give the expert  
10 witness the patient files. We give them the relevant  
11 years, the TMPPM and the manuals and we tell them to  
12 review the appropriate provisions as it applies to each  
13 year and appropriately each patient.

14 Now, if the expert says I understand the  
15 definition of 2008 to be X and the expert understands  
16 it to be X as it's defined in 2012, well, that's what  
17 he's going to apply. And my understanding, Tony, is  
18 what every expert understands --

19 Hang on. My -- hang on.

20 -- an ectopic eruption to be the  
21 definition in 2012. The State just happened to clarify  
22 that for your clients and your other clients so there  
23 wasn't any misunderstanding.

24 So, that's at the time when you were  
25 taking the position that this was just a clarification

0295

1 and not a change, correct?

2 A. Ray (sic), again, this was in the context --

3 Q. That was at the time that you were trying to  
4 say -- take the position that this was a clarification  
5 and not a change, correct?

6 A. Well, I can't answer that yes or no.

7 Q. You can't?

8 A. No.

9 Q. In the def- -- in your deposition were you  
10 trying to take the position that it wasn't a change, it  
11 was just a clarification?

12 A. Well, I was working within Mr. Canales'  
13 phraseology of this as a definition. So, operating as  
14 we were -- as we are today, we'll call this a  
15 definition; although I don't agree that it is a  
16 definition. I was explaining to Mr. Canales that this  
17 clarifies any ambiguity in the description of that  
18 phrase, ectopic eruption.

19 Q. And you expected them to apply that  
20 clarification to the things that they reviewed, didn't  
21 you, sir?

22 A. No. I think this testimony very clearly says  
23 we gave them all the testimony -- or all the TMPPMs and  
24 the files and they were directed -- the experts were  
25 directed to use the TMPPMs applicable to the year the

0296

1 service was delivered and render whatever expert

2 conclusions they wanted to render. If, however, an  
3 expert knows an ectopic eruption to be consistent with  
4 the description of ectopic eruption in 2012 that you  
5 had up before, well, then, they would apply that simply  
6 because they know that to be what a -- what an ectopic  
7 eruption is.

8 Q. And all of your experts that have testified  
9 here went outside of the policy to get something that  
10 would justify the belief that this is just a  
11 clarification and not a change, didn't they, sir?

12 A. But -- but, sir, the problem with that  
13 question is it's not a policy. It's -- it's a  
14 description in a -- in a section of the TMPPM that  
15 says, "This is how you fill out the form." It's not a  
16 policy. It's not a definition.

17 Q. I thought --

18 A. It's simply a how to.

19 Q. I thought this was in the policy manual?

20 A. It is.

21 Q. So, it's not a policy?

22 A. It's part of the instructions on how to  
23 complete the form.

24 Q. It's part of the policy?

25 A. Okay. It's part of the policy.

0297

1 MR. WATKINS: Let's go to Page 73 starting  
2 at line 20. And go through Page 74, line 3.

3 Q. (BY MR. WATKINS) Now, your testimony here is  
4 that you got into that business of whether it was a  
5 change or whether it was conflict -- clarification  
6 based on using Mr. Canales' words. Isn't that what you  
7 just told us?

8 A. Yes.

9 Q. Let's look at Page 73 starting at line 20.

10 A. I've read it.

11 Q. Okay. I don't think I'm being agitating. Let  
12 me ask you a couple of more questions.

13 MR. WATKINS: We're not offering that Mr.  
14 Canales was being agitated for the truth of the matter  
15 contained therein.

16 MR. TONY CANALES: Oh, I admit it and  
17 proud of it.

18 Q. (BY MR. WATKINS) I don't think I'm being  
19 agitating. Let me ask you a couple of more questions,  
20 sir. The manual, the TMHP manual, do you believe that  
21 manual is a comprehensive manual, covers everything  
22 that a doctor needs to know regarding the grading, the  
23 grading of deciding whether -- on Page 74, line 1 --  
24 somebody's tooth is ectopic or not?

25 I think it provides a definition of

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1 ectopic eruption.

2 That's not Mr. Canales' words. Those are  
3 your words.

4 A. No, sir. It's in the context of the  
5 deposition where we were using Mr. Canales' description  
6 of it being a definition.

7 Q. And you thought he was right?

8 A. No. But I was willing to use his words in  
9 order to get through that deposition.

10 Q. So, you're saying under oath to this panel  
11 right now that when you say, "I think it provides a  
12 definition of ectopic eruption" that you don't think  
13 you've changed your -- your testimony here today?

14 A. No, I don't. Mr. -- Mr. Canales never asked  
15 me, "Is this a description or is it a definition?"  
16 He -- he used the words definition. I simply agreed  
17 with his usage of the word definition and -- and  
18 explained my answers in the context of definition.

19 Q. You didn't take the position in the deposition  
20 that this was just an explanation and not a definition?

21 A. I'm sorry?

22 Q. Didn't you take the position in your  
23 deposition that that change that we looked at was just  
24 an explanation? It wasn't a change of the definition?

25 A. No. I'm not tracking your question. I'm  
0299

1 sorry.

2 Q. Well, do you think there's a difference  
3 between an explanation and a -- and a change?

4 A. There can be.

5 Q. Well, do you think that this change that we've  
6 talked about in this definition is just an explanation  
7 and not a change?

8 MR. WINTER: Objection. Vague.

9 JUDGE EGAN: I'm not sure what your  
10 question means. So, you need to rephrase it.

11 MR. WATKINS: I certainly will.

12 Can you put back up the two definitions?

13 Q. (BY MR. WATKINS) All right. In that second  
14 one, the manual change, ectopic eruption does not  
15 include teeth that are rotated or teeth that are  
16 leaning or slanted, right?

17 A. Yes.

18 Q. Is that a change to the definition of ectopic  
19 eruption that's contained in the manual?

20 A. To the extent that there are more words there,  
21 it is a different paragraph than the one before. To  
22 the extent that it -- it alters the -- the description  
23 of what an ectopic eruption is, no.

24 Q. And so, if all of your experts, when they  
25 graded all of the applications filed by Dr. Nazari,  
0300

1 excluded in their grading system teeth that are rotated  
2 or teeth that are leaning or slanted, you'd say that's  
3 consistent with what the previous manual provided?

4 A. Yes. And let me explain it this way. If you  
5 assume for this answer that an ectopic erupted --

6 ectopically erupted tooth is only one thing and that is  
7 a tooth that emerges from the bottom of your chin, then  
8 a tooth -- a tooth that is rotated or slanted or any of  
9 those other things is not an ectopically erupted tooth.

10 What all of the experts said was,  
11 irrespective of that language the things that your  
12 client was scoring as ectopically erupted weren't  
13 ectopically erupted irrespective of whether they were  
14 teeth that are rotated or teeth that are leaning or  
15 teeth that are slanted. They simply weren't.

16 So, that -- that additional language  
17 there, aside from not being available to them -- in  
18 other words, we didn't give them the 2012 manual and  
19 say, "Hey, look at this definition and description  
20 and -- and apply it to -- to these cases." Aside from  
21 the fact that we didn't do that, they knew what an  
22 ectopically erupted tooth was and they said it wasn't  
23 what your client was saying it was.

24 Q. And you do not -- you've already testified.  
25 You don't know which ones of the applications that my

0301

1 client provided were scored, including rotated or teeth  
2 that are leaning or slanted, do you, sir?

3 MR. WINTER: Objection. Mischaracterizes  
4 the witness' prior testimony.

5 JUDGE EGAN: It just asked a question.

6 Rephrase -- reask your question. I didn't  
7 think it was --

8 Q. (BY MR. WATKINS) You do not know sitting here  
9 today how many of the -- of the applications filed by  
10 my client were excluded by your experts because they  
11 scored them, including as ectopic eruptions, teeth that  
12 were rotated or teeth that were leaning or slanted?

13 A. The "they" in your question being your client?

14 Q. Yes. No, no.

15 My client's applications that you  
16 submitted to your experts, do you know how many of them  
17 they said they don't reach 26 because he scored them  
18 when -- if they were rotated or they were slanted or  
19 leaning?

20 A. So --

21 MR. WINTER: Objection. Vague.

22 JUDGE EGAN: Overruled.

23 A. I -- before I answer I want to make sure I  
24 understand. Your client submits an HLD score and calls  
25 the tooth ectopically erupted because it's slanted. An

0302

1 OIG expert says, "Slanted is not ectopically erupted;  
2 therefore, I'm not allowing this," right?

3 Q. (BY MR. WATKINS) Right.

4 A. Do I know how often that happened?

5 Q. Right.

6 A. I don't know. All I know is that 100 percent  
7 of your client's HLD score sheets had inflated scores.

8 MR. WATKINS: Objection. Nonresponsive.

9 JUDGE EGAN: Sustained.

10 Just answer his question.

11 Q. (BY MR. WATKINS) Now, has -- to your  
12 knowledge has the federal government ever clawed back  
13 from the State of Texas any money when either a court  
14 judge or an administrative judge found that there was  
15 no fraud?

16 A. Your question is since March of 2011 when the  
17 Affordable Care Act took place -- or took effect and  
18 the answer is no because we've not had that situation.

19 Q. Do you think the federal -- that would call  
20 for speculation on both of our parts.

21 Now, then, have you ever -- have you  
22 looked at the witness list for this hearing?

23 A. No.

24 Q. Are there any parents -- parents of any of the  
25 children that are the subject of my client's

0303

1 application here in the room that you know of?

2 A. Not that I know of, no.

3 Q. Are there any office staff persons of any of  
4 my -- of my client here?

5 A. I don't know.

6 Q. Have you personally talked to anybody that was  
7 either office staff or a parent or any patients of my  
8 client?

9 A. I know that I've not talked to any employees  
10 of your client. I think it is possible that I've  
11 spoken to a parent. I think it's probable that I've  
12 spoken to parents.

13 Q. And are any of those parents here?

14 A. I -- I still don't see any of them.

15 Q. So, if there are any program violations that  
16 you're alleging, those that your investigators went out  
17 and found out about, you don't have anybody here to  
18 testify about it, do you, sir?

19 A. I'm happy to tell you what your client or your  
20 clients's employees have told us.

21 Q. I'm not asking you that.

22 My question was: Do you have any of the  
23 parents, any of the office staff, any of the people  
24 here who can testify to these program violations that  
25 you've alleged that are outside of your pleadings?

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1 A. No --

2 MR. WINTER: Objection. Argumentative.

3 A. -- not that I know of.

4 JUDGE EGAN: Well, more importantly we're  
5 trying to keep the pleading as the finding. I'm not  
6 sure you want to go into the areas that we have already  
7 excluded.

8 Q. (BY MR. WATKINS) I needed to know -- first of  
9 all, you took the top list of providers, the people

10 that were making the most money, is that correct, 55 of  
11 them?

12 A. Yes.

13 Q. Do you see anything wrong with doing that?

14 A. What I asked for was a list of the highest  
15 utilizers of the orthodontic benefit.

16 Q. Okay.

17 A. I don't see that there's any reason not to  
18 look on the first level at who's using the program the  
19 most.

20 Q. So, if, let's say, the IRS was going to target  
21 people who might be using too much political activity  
22 to get a certain kind of classification, they targeted  
23 the Tea Party, that wouldn't be similar to that?

24 MR. WINTER: Objection. Argumentative,  
25 irrelevant.

0305

1 JUDGE EGAN: Sustained.

2 Q. (BY MR. WATKINS) You think there's nothing  
3 wrong -- I mean, that's no random sample. You took the  
4 ones that earned the most money and that's where you  
5 started for when you had no allegations of fraud, no  
6 evidence of fraud in that group. You took that group  
7 and you started an investigation of that group,  
8 correct?

9 A. No.

10 Q. You didn't start looking at them?

11 A. No. You said we had no allegations and that  
12 we had no proof of fraud and we selected the group and  
13 began investigations on them and that is not correct.

14 Q. You began to see if you could find evidence of  
15 fraud in that group and then that's when you started  
16 the investigation if you found some?

17 A. No.

18 Q. Well, how did you decide whether or not there  
19 was fraud in any of those highest producers?

20 A. Yeah. I think that that's a good question.

21 In that fifth group of 56 initial  
22 orthodontic providers, some, like your client, already  
23 had cases open and so, we reviewed those cases to  
24 determine whether or not there was anything in those  
25 cases that was indicative of fraud or anything in the

0306

1 complaints that we had received. For example, in your  
2 client's case Dr. Felkner had complained about your  
3 client and overutilization in the 2008 case. So, that  
4 kind of raised or heightened our scrutiny of -- of your  
5 client.

6 But keep in mind at that time we were also  
7 cognizant of the 2008 audit report which suggested that  
8 nobody at ACS was minding the store. So, in looking at  
9 the top utilizers, one of the things that we were --  
10 that we were watching for was whether or not there was  
11 a significant increase in that particular provider's

12 utilization of the program because that would indicate  
13 an awareness that they could submit forms to -- to ACS  
14 and get approvals very quickly.

15 So, it wasn't a -- it wasn't simply a,  
16 "How much did this provider bill? Let's open an  
17 investigation." I think there was a little bit more  
18 thought that went into it than that. But having said  
19 that, I also think that it is appropriate to look at  
20 high utilizers of any benefit program to determine  
21 whether or not there is overutilization that occurs;  
22 and if the answer's no, then you close the case. And  
23 if the answer's yes, then you move forward.

24 Q. And you -- it would be fair to say, wouldn't  
25 it, that you were using, what you would call, the  
0307

1 Willie Sutton Rule?

2 JUDGE EGAN: I don't know what the Willie  
3 Sutton Rule is.

4 Q. (BY MR. WATKINS) Willie Sutton Rule's where  
5 he said -- why did he rob banks and he said because the  
6 money's there?

7 A. Because that's where the money is.

8 Q. Yeah.

9 A. Right.

10 Q. And you quoted that as why you picked these  
11 high folks.

12 A. When a provider utilizes a program  
13 extensively, it increases the likelihood that there is  
14 waste, fraud or abuse in that utilization. If we take  
15 a look -- if we pull files and we take a look and  
16 there's nothing wrong, there's nothing wrong. We close  
17 the case and we move on. If there's something wrong,  
18 then we've identified it and we have an opportunity  
19 either to remedy the problem, to provide education or  
20 in egregious circumstances, we put a payment hold on  
21 and move forward toward recoupment or sanctions.

22 Q. And have you ever testified at the National  
23 Conference of State Legislators?

24 A. No.

25 Q. Have you given -- have you talked to them?  
0308

1 A. Yes. I've given a speech there.

2 Q. Okay. And in that speech did you say, "We  
3 have problems with orthodontists and dentists abusing  
4 the system. So, we identified the top 50 utilizers.  
5 Identified about \$400,000 million in overpayments and  
6 conducted a series -- actually we're in the middle of  
7 conducting a series of investigations on those  
8 providers"? Did you say that?

9 A. I don't remember.

10 MS. MOORE: Your Honor, this witness needs  
11 a break. If we can take five minutes.

12 THE WITNESS: I've got to make childcare  
13 arrangements. I just need to send a text to my wife.

14 JUDGE EGAN: Okay. Let's go off the  
15 record for a couple of minutes.

16 MS. MOORE: Thank you. Appreciate the  
17 courtesy.

18 (Off the record)

19 JUDGE EGAN: We're going back on the  
20 record, SOAH Docket Number 529-13-0997. It is now 5:10  
21 p.m. on May 30th, 2013. You may proceed with cross.

22 Q. (BY MR. WATKINS) Are you familiar with the  
23 Frew case?

24 A. Yes.

25 Q. Do you think that case had anything to do with  
0309

1 the increased participation by providers under the  
2 Medicaid Act?

3 A. I think that -- I think that that's a -- a  
4 really good question.

5 I think that -- I know that Frew did not  
6 increase orthodontic reimbursement rates. It did,  
7 however, increase dental reimbursement rates. So, I  
8 think that there is a strong probability that dentists  
9 were drawn into the Medicaid program because of the  
10 higher dental reimbursements rates. However, that  
11 doesn't explain the additional provider increase in  
12 orthodontic providers, that is to say any orth- --  
13 anybody who billed in orthodontic coding. And I think  
14 the conclusion there is that the Frew increases in  
15 dental rates took dental rates from an abysmal basement  
16 to probably a mediocre or meager first floor. But I do  
17 think that a substantial number of the 338 percent  
18 increase in orthodontic providers migrated from the  
19 dental practice area to the orthodontic practice area  
20 because they understood very quickly that there was a  
21 lot more money to be made in the orthodontic program.

22 Q. And it is true that every application that my  
23 client has made for reimbursement for orthodontics has  
24 been approved by the State of Texas?

25 A. No.

0310

1 Q. Why not?

2 A. ACS is a private company acting as a  
3 third-party claims administrator administering claims  
4 for -- for Title XIX. I think it is accurate to say  
5 that the nondental professionals that ACS employed  
6 processed all of your client's prior authorizations  
7 without reviewing the background information. The  
8 possible exception of that, sir, would be for any of  
9 those interceptive treatments that I think even ACS was  
10 referring to a dental director.

11 Q. Didn't you testify earlier that there's a  
12 contract with TMHP from the State of Texas?

13 A. Yes, the State of Texas let a contract through  
14 the RFP process.

15 Q. And that they became -- and I believe your

16 word was, they became the agent for reviewing and  
17 approving?

18 A. They are the State's claims paying agent, yes.

19 Q. All right. As the agent, then, their act is  
20 that of the State in terms of approving their --  
21 approving the application?

22 A. I think it is -- the answer to your question  
23 is yes. But I think it is important also to understand  
24 that ACS was acting outside the scope of its contract.  
25 So, if you're -- it's going back a long way for me; but  
0311

1 if you're acting outside the scope of your agency,  
2 you're not acting as an agent.

3 Q. So, your position is gonna be that the conduct  
4 of the agent was outside of its scope when they were  
5 approving applications?

6 A. Look, I'm not -- I'm not a contracts lawyer.  
7 All I can tell you is the State of Texas contracted  
8 with ACS to do a meaningful prior authorization  
9 process. I have not seen any indication other than  
10 that ACS was not doing that, that it was simply  
11 approving 95 percent of the prior authorizations of  
12 which 90 percent were routinely approved by low-level  
13 clerks. And that is not what the contract  
14 contemplates.

15 Q. Well, they may have been doing the job poorly;  
16 but approving the applications is not outside the scope  
17 of the agency created by that contract, is it, sir?

18 A. Look, you know, again I'm not a contracts  
19 lawyer and I'm not sure how you -- where -- where the  
20 line is between doing a job poorly, not doing it at all  
21 and doing a job outside the scope of your agency. All  
22 I'm telling you today is that what the contract  
23 contemplated in terms of prior authorization approvals,  
24 ACS does not appear to have been doing at any time.

25 Q. Now, then, the -- but the original question  
0312

1 was: All of the applications by my client were  
2 approved by the only process that the State of Texas  
3 had in place to approve or deny those applications.

4 MR. WINTER: Objection. That is not what  
5 the original question was. Misstates the question.

6 JUDGE EGAN: Well, answer the question he  
7 just asked.

8 A. They were approved by ACS outside the scope of  
9 what the contract contemplated but we were approved by  
10 ACS.

11 Q. (BY MR. WATKINS) They were approved by the  
12 only process the State of Texas had in place to approve  
13 or deny these applications?

14 A. I can't agree with that because the only  
15 process is -- is inaccurate and the process was the  
16 wrong process. It wasn't -- it wasn't a process at  
17 all. It was simply a move the paper from the left side

18 of the desk to the right side of the desk. If this  
19 number says 26, then it's approved and that's not a  
20 prior authorization.

21 JUDGE EGAN: All right. Mr. Stick, let me  
22 just ask a simple question. Was there any other entity  
23 that had authority from HHSC to do prior authorization  
24 reviews during the time period that's relevant in this  
25 proceeding?

0313

1 THE WITNESS: No. Only ACS.

2 JUDGE EGAN: That's it.

3 MR. WATKINS: I wish I had asked that.

4 JUDGE EGAN: I thought you were trying --

5 JUDGE SEITZMAN: I would have objected.

6 Q. (BY MR. WATKINS) Now, I want to talk a minute  
7 about the -- your random sampling process. That  
8 accuracy ended up with 145 cases in the petition.  
9 That's not accurate, right?

10 MR. WINTER: Objection. Misstates the  
11 evidence.

12 JUDGE EGAN: I'm sorry. I didn't hear the  
13 question.

14 Q. (BY MR. WATKINS) There is the figure 145  
15 cases in the petition that's on file here. That's not  
16 an accurate number?

17 MR. WINTER: Objection. Vague.

18 JUDGE EGAN: Overruled.

19 A. The number -- I don't know that number 145. I  
20 didn't -- I haven't read the pleadings, but that number  
21 did not come from the random sampling. They're two  
22 different things.

23 Q. (BY MR. WATKINS) It didn't come from the data  
24 that you-all provided to your lawyers?

25 A. So, the random sampling process tells us the

0314

1 number of cases to draw in order to obtain a  
2 statistically valid random sample. That number was 85  
3 through stage two, 63 through stage one and that's what  
4 we drew. Once the case gets transferred to sanctions,  
5 you'd have to ask the lawyer who drafted the petition  
6 how they ended up with 145 problems. I don't know the  
7 answer to that.

8 Q. Now, is that random sample software that you  
9 use Excel software?

10 A. Some of it is Excel software.

11 Q. Well, you've had other cases where you have  
12 had to pull down your claim because the random sample  
13 process was found to be defective, have you not?

14 A. I have not, no. I don't know whether OIG has.

15 Q. All right. So, you were not present when Mr.

16 B. D. McCullough testified in one of the previous cases  
17 brought by OIG?

18 A. I don't know who that is.

19 Q. But you do have Excel as part of the software

20 that you use for your random sample?

21 A. I believe that is part of the seeding step.

22 Q. Now, you're familiar with the hold letter that  
23 went out on April 4th, 2012, correct?

24 A. To your client?

25 Q. Yes.

0315

1 A. I don't know that I've ever read it but I'm  
2 generally familiar with hold letters.

3 Q. Well, do you have any argument with the date  
4 that it went out on April the 4th, 2012?

5 A. Not particularly. I mean, that sounds about  
6 right.

7 Q. Do you need to look at the letter to confirm  
8 that date?

9 A. Yes.

10 Q. Okay.

11 MR. WATKINS: I hand the witness P82.

12 MR. WINTER: Do you have a copy for me,  
13 Counsel?

14 A. Okay. I've taken a look at it.

15 Q. (BY MR. WATKINS) So, that's the correct date,  
16 April 4th?

17 A. April 4th is the notice of payment hold.

18 Q. Okay. I want you to tell me all the credible  
19 allegations of fraud you had on April the 4th, 2012.

20 A. Paragraph 1.

21 JUDGE EGAN: Did you want to have this  
22 offered into evidence?

23 MR. WATKINS: Unless he wants to argue --  
24 I'm just asking for the date April the 4th, 2012.

25 A. I -- the date of the letter's April 4th, 2012.

0316

1 MR. WATKINS: That's all I need, Judge. I  
2 will offer it.

3 JUDGE EGAN: All right. Any objections to  
4 Petitioner's Exhibit 82?

5 MR. WINTER: No objection, P82.

6 JUDGE EGAN: Exhibit P82 is admitted into  
7 evidence. I'm going to hand my copy to the court  
8 reporter.

9 MR. WINTER: Judge, while we have a slight  
10 pause here, I am -- if I may -- I don't anticipate any  
11 objection -- I want to compare this with our file copy  
12 to make sure it comports with it.

13 JUDGE EGAN: It's already been admitted.  
14 So, if it's the wrong one, let us know.

15 JUDGE SEITZMAN: I think we're pending --  
16 I think we have a question pending. I think we're  
17 waiting on Mr. Stick's answer to the question.

18 A. You're asking me where I see fraud or where  
19 the allegations of fraud are?

20 Q. (BY MR. WATKINS) No. My question is: You've  
21 testified at great length about all this stuff you

22 knew. I want to know what credible allegations of  
23 fraud you knew about at the time that you caused this  
24 letter to be issued.

25 A. Well, we were cognizant of inflated HLD  
0317

1 scores. We had spoken to at least one parent who  
2 indicated she never took her child for braces to  
3 Antoine Dental but there were billings for that  
4 Medicaid number.

5 We were aware of appliances that your  
6 client billed for, that he never put into the mouth of  
7 a -- of a child. We were aware of complaints that your  
8 client had billed for Medicaid-paid services to -- that  
9 he billed the recipient or the recipient's parent or  
10 guardian for Medicaid-paid services. We were aware  
11 that your client was using noncertified, nonauthorized  
12 individuals to perform nondelegable dental services.

13 We were aware that your client was  
14 billing, on a number of occasions, for services to  
15 patients that seemed impossible given the time  
16 limitations in a day. That's what's coming to my mind  
17 right now.

18 Q. Okay. Now, then, have any of those parents  
19 testified at this hearing?

20 A. I don't believe so.

21 Q. You've -- you were aware of appliances not  
22 used. Has anybody here testified about appliances not  
23 used?

24 A. Not to my knowledge.

25 Q. Has anybody testified about complaints about  
0318

1 the billing?

2 A. Not that -- not when I was in the room.

3 Q. Has anybody here testified about noncertified  
4 people doing nondelegable services?

5 A. I don't -- I don't know.

6 Q. Has anybody here testified about the fact that  
7 they're billing for a number of services in the day  
8 that was unusual or impossible or whatever word you  
9 used?

10 A. I think I talked about it earlier.

11 Q. You did?

12 A. I think I did.

13 Q. Anybody here testify to those -- to that  
14 excessive number that was done in a short period of  
15 time, besides you?

16 A. I don't think so.

17 Q. Now, inflated HLD scores, who did you rely on  
18 to tell you that the H- -- I mean, you're not qualified  
19 to determine if the HLD scores are inflated yourself,  
20 are you?

21 A. No.

22 Q. Okay. Who did you rely on to determine if the  
23 HLD scores were inflated?

24 A. Well, we had three experts review the file.

25 Q. Who were they?

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1 A. Dr. Evans, Dr. Tadlock, Dr. Petrick.

2 JUDGE EGAN: Who's the last doctor?

3 THE WITNESS: Petrick.

4 Q. (BY MR. WATKINS) All right. Now, Dr. Petrick  
5 has not testified here today?

6 A. Correct.

7 Q. And you've not submitted any kind of evidence  
8 from Dr. Petrick in this hearing?

9 A. No, I don't believe so.

10 Q. All right. Dr. Evans -- quoting from proposal  
11 for decision in SOAH Docket Number 529-12-3180 Page 34,  
12 Finding Number 33 --

13 JUDGE EGAN: Is that the Harlingen case?

14 MR. WATKINS: Yeah.

15 Q. (BY MR. WATKINS) -- Dr. Evans' view of  
16 ectopic eruption and his scoring of the patients at  
17 issue lack credibility, reliability or indicia of  
18 reliability and do not verify the allegations of fraud  
19 against HID.

20 That finding of fact has become the  
21 position of the department, has it not?

22 MR. WINTER: Objection. Relevancy. This  
23 is based upon facts of a totally different matter  
24 that's not before this tribunal before these ALJs.

25 Dr. Evans has not been presented before

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1 you, Dr. -- Judge Seitzman or you, Judge Egan. This is  
2 improper to take a proceeding that's totally irrelevant  
3 to this one and inject it in this proceeding.

4 MR. WATKINS: I believe that Dr. Evans'  
5 testimony was found --

6 JUDGE SEITZMAN: Hang on a second. Let us  
7 talk.

8 JUDGE EGAN: Hold on.

9 MR. WATKINS: Okay. Excuse me.

10 JUDGE EGAN: I'm trying -- we're trying to  
11 figure out exactly what your question was. Was it --  
12 was the question whether or not the state -- HHSC  
13 adopted that finding?

14 MR. WATKINS: No. My question is:  
15 Whether or not that -- that fact finding has become the  
16 position of this department because it deals all over  
17 and this is a fact finding. That's the question to him  
18 right now.

19 JUDGE EGAN: I'm going to overrule the  
20 objection.

21 MR. WINTER: I insert a different  
22 objection, Judge. Is that that question -- well, I'll  
23 withdraw my objection for right now. But...

24 A. Sir, is your question whether the Office of  
25 Inspector General has adopted the position that

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1 Dr. Evans is not a credible witness?

2 Q. (BY MR. WATKINS) My question to you is:  
3 Whether or not the law requires the Office of Inspector  
4 General to accept Fact Finding 33 as being the fact?

5 A. Well, I'm not advised what -- what the law  
6 requires in that area; but I agree with you that that  
7 fact finding is a fact finding.

8 Q. Okay. Now, then prior to April 4th of 2012,  
9 other than Dr. Evans, you mentioned Dr. Tadlock.  
10 Correct?

11 A. I'm sorry?

12 Q. The three experts that you said you relied  
13 upon for the letter to go out April the 4th, 2012, you  
14 listed Dr. Tadlock?

15 A. No, sir.

16 Q. Okay.

17 A. Your question was not, "What experts did you  
18 have prior to April 4th, 2012?" Your question was,  
19 "What basis did you have to think that the HLD scores  
20 were inflated?" And you didn't tell me you wanted me  
21 to limit it to April 4th.

22 Q. My question to you, sir, was what evidence --  
23 what credible evidence of fraud -- credible allegation  
24 of fraud did you have prior to April 4th, 2012? And  
25 you listed Dr. Tadlock.

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1 JUDGE EGAN: If you misunderstood the  
2 question, could you identify who you relied on?

3 THE WITNESS: Right. Yes, ma'am.

4 A. On April 4th the only orthodontist that we had  
5 reviewing this case was Dr. Evans.

6 Q. (BY MR. WATKINS) All right. And other than  
7 your awareness for people who have not testified and  
8 Dr. Evans, who has been found that his view of ectopic  
9 eruption lacks credibility, what other credible  
10 allegations of fraud did you have on April the 4th of  
11 2012 when that letter was issued?

12 MR. WINTER: Objection. Argumentative and  
13 based upon an irrelevant proposition.

14 JUDGE EGAN: Rephrase your question  
15 without adding the inflammatory language, please. Are  
16 you asking him what other credible evidence besides  
17 Dr. Evans --

18 MR. WATKINS: After 45 years you think I  
19 can be less inflammatory and talk slower. I need to  
20 learn to do both those things, Judge. I apologize.

21 Q. (BY MR. WATKINS) Other than Dr. Evans and the  
22 awareness that you testified to, for which we've agreed  
23 nobody has testified to those facts here, what other  
24 credible allegations of fraud did you have on April  
25 4th, 2012?

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1 A. I'm hesitating because the -- the evidence --

2 I'm trying not to parse what you're saying. You're  
3 asking what other support for the credible allegations  
4 of fraud did we have?

5 Q. I'm asking you what credible allegations of  
6 fraud did you have other than Dr. Evans and those  
7 things that you listed that nobody has testified to  
8 here in -- in this hearing?

9 A. I'm -- I'm not aware that we had any.

10 Q. Okay. Have you ever taken a report from an  
11 expert and changed it to eliminate favorable stuff in  
12 the report to my client?

13 A. No.

14 Q. Never?

15 A. No.

16 MR. WATKINS: If I might confer with  
17 co-counsel for about ten minutes, we may be close to  
18 being through.

19 JUDGE EGAN: We'll take a 10-minute break.  
20 (Off the record)

21 JUDGE EGAN: We're reconvening in Docket  
22 Number 529-13-0997. It is quarter to 6:00 p.m., May  
23 30th, 2013.

24 And, Mr. Winter, do you have any redirect?

25 MR. WATKINS: I'm --

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1 JUDGE EGAN: Oh, well, you're not  
2 finished?

3 MR. WATKINS: Not finished.

4 JUDGE EGAN: I'm so sorry. Go ahead.

5 Q. (BY MR. WATKINS) Have you taken any action  
6 against TMHP for their failure to do what you thought  
7 they should have done?

8 MR. WINTER: Objection.

9 I'm gonna caution the witness that I think  
10 perhaps you can answer that question in a high level  
11 but the question appears to me to be designed to lead  
12 into matters that are privileged. And I want to  
13 caution the witness to be careful in his response to  
14 that question.

15 MR. WATKINS: Well, let me rephrase.

16 Q. (BY MR. WATKINS) Have you taken any action  
17 that are public records against TMHP? Have you  
18 subpoenaed their records? Have you filed suit against  
19 them? Have you done anything publicly that would  
20 indicate that what you're saying about TMHP was true?

21 A. We have filed no public documents and are not  
22 required to subpoena documents.

23 Q. All right. Did you have -- do you have any  
24 evidence -- I'm not -- I won't ask it that way.

25 Now, you indicated that the -- you had

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1 done no acts that would prevent Dr. Nazari from  
2 presenting applications and, therefore, you testified  
3 as to what the drop in applications was after going

4 into managed care. Do you remember that testimony?

5 A. I think you're conflating a couple of  
6 statements I made. The first one was that after we  
7 took records from Dr. Nazari's office I saw a marked  
8 decline in the number of prior authorizations he  
9 obtained from 106 average per month to ten.

10 There was another question about whether  
11 we had taken any action against Dr. Nazari that would  
12 have prevented him from submitting those claims and the  
13 answer is no. And I checked this morning and he is  
14 still an enrolled Medicaid provider.

15 Q. Okay. Well, my question to you then is: Do  
16 you think that if you put a hold on his income, you  
17 pick up his records and you make a referral to the  
18 criminal division that that wouldn't be acts that might  
19 discourage him from filing applications?

20 MR. WINTER: Objection. Calls for  
21 speculation.

22 MR. WATKINS: I'm asking him to speculate.

23 MR. WINTER: He's asking the witness to  
24 speculate as to Dr. Nazari's mindset.

25 JUDGE EGAN: It does call for some

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1 speculation. Rephrase your question. If you do it  
2 generically then --

3 Q. (BY MR. WATKINS) Generally do you think that  
4 would discourage doctors if you make a criminal  
5 referral on them, pick up their records and put a  
6 payment hold on them?

7 MR. WINTER: Same objection.

8 JUDGE EGAN: Overruled.

9 MR. WINTER: He's asking the --

10 JUDGE EGAN: overruled.

11 A. I think that if a provider was aware that he  
12 or she was submitting documents that were false, that  
13 would -- those actions would dissuade them from  
14 submitting any further documentation, yes.

15 Q. (BY MR. WATKINS) Well, what if -- what if  
16 they were submitting documents that weren't false? Do  
17 you think that would defer a doctor's filing  
18 applications?

19 A. I think that if a provider is not submitting  
20 false documentation that the most probable course of  
21 action in this circumstance would have been to -- would  
22 have been to make available to OIG mitigating  
23 circumstances that OIG could use to justify a good  
24 cause exception and either reduce or eliminate the  
25 payment hold.

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1 And, secondly, it would be my -- I'm  
2 trying to imagine how I would act in this situation.  
3 And I think if I knew I had done nothing wrong, I would  
4 continue to treat my patients and continue to submit  
5 bills and continue exactly what I'd been doing all

6 along, secure in the knowledge that I had not done  
7 something wrong and that it would work out.

8 Q. Well, let's assume for a moment that you had  
9 done something wrong. Let's say for any of the public  
10 jobs that you held, what if there was an ethics  
11 question raised about each of those employments? Do  
12 you think it would preserve the status quo if we can  
13 put a hold on your check so you didn't get paid until  
14 those things got decided?

15 MR. WINTER: Objection. Mis- -- again,  
16 Judge, Mr. Stick here has not been properly named --  
17 accused in any proceeding here. He's not on trial.  
18 The State's process here is not on trial.

19 This is nothing more than a backhanded  
20 attempt to inject matters that are wholly irrelevant to  
21 this proceeding into this proceeding now. It's an  
22 effort -- and if you read the whole deposition that was  
23 put up, you'll see the flagrancy in the questions that  
24 were propounded to Mr. Stick in that deposition and you  
25 can start with page 73 that's been proffered already.

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1 It's inappropriate.

2 JUDGE EGAN: We just need you -- we don't  
3 need your argument. Just make your objection so I can  
4 rule on it and we can move on. These are getting to be  
5 long and drawn --

6 MR. WINTER: Question is improper and  
7 argumentative, Judge.

8 MR. WATKINS: May I respond?

9 JUDGE EGAN: Yes, briefly.

10 MR. WATKINS: I've got to work on that  
11 He opened it up when he said this is what he  
12 would do. So, I'm asking him what he would do given  
13 the hypothetical situation; and then, secondly, of  
14 course, his credibility is at issue in this case and  
15 I'm trying to attack the credibility.

16 JUDGE EGAN: Overruled. The objection's  
17 overruled.

18 You can go ahead.

19 A. What was your question?

20 Q. (BY MR. WATKINS) My question is: Assume for  
21 a moment that there were ethics questions hanging over  
22 your head for any public office that you had and that  
23 during that period of time that those things were  
24 hanging over your head we put a hold on your check.

25 Do you think that that would be preserving

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1 the status quo, as you testified to earlier?

2 A. Well, I don't think that your example is  
3 the -- is analogous to your clients' situation. Your  
4 client is obligated to submit truthful prior  
5 authorization requests. It appears that he did not do  
6 that. There is credible allegations -- there is  
7 credible evidence that he did not do that.

8 If the State of Texas continued to pay  
9 him, the State is at risk for losing all of the money  
10 and your client was billing over \$2.6 million, \$2.7  
11 million a year. So, I can't agree that the  
12 circumstances that you've described are even analogous  
13 to those of your client's.

14 Q. Well, you indicated that he's required under  
15 the Medicaid Act to be honest. Aren't you required  
16 under -- in my hypothetical to conduct your position in  
17 public office as ethical conduct?

18 A. I don't understand your hypothetical.

19 Q. Well, let's say, for example, hypothetically  
20 that you might be a municipal judge and you were  
21 dismissing tickets while you were the judge for  
22 contributions to the city. Would that be ethical  
23 conduct?

24 A. Well, if that had happened, I assume that  
25 there would be a complaint filed with the State  
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1 Commission on Judicial Conduct and I assume that the  
2 State Commission on Judicial Conduct would have issued  
3 a reprimand. But that didn't happen and it didn't  
4 happen.

5 Q. My question to you was: If you were doing  
6 that, would that be ethical conduct?

7 A. I don't serve on the State Commission on  
8 Judicial Conduct. So, I don't have an opinion about  
9 that.

10 Q. So -- so, you wouldn't know one way or the  
11 other whether that was ethical conduct?

12 A. What I'm saying to you is that I'm not  
13 prepared to answer that question today because I  
14 haven't read the judicial canons.

15 Q. Okay. Even while you were a judge?

16 A. Oh, I did when I was a judge; but I've not  
17 reviewed them recently. And I don't know the answer to  
18 your question.

19 Q. All right. So, still my question is: Would  
20 it be preserving the status quo in those situations if  
21 we put a hold on your check and not pay you while those  
22 things were pending?

23 MR. WINTER: I'm going to renew my  
24 objection, Judge; and the question is argumentative. It  
25 assumes facts not in evidence. It's totally irrelevant  
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1 to the matters that are before this tribunal and  
2 Mr. Stick is not on trial.

3 JUDGE EGAN: Overruled.

4 A. I think that the answer I would give to your  
5 question is this: If there were a law that required  
6 not paying a judge accused of ethical violations and if  
7 that law also said that withholding a salary was  
8 mandatory upon establishing a credible allegation, that  
9 is to say verified allegations with reliability,

10 indicia of reliability, then I think the situations  
11 would be analogous and then I would say, yes, it is  
12 preserving the status quo under those circumstances.

13 But they're -- those circumstances don't  
14 exist.

15 Q. Well, what if -- what if you hypothetically  
16 were charged with a violation of the law. While that  
17 case was pending, do you think we -- if we put a hold  
18 on your check that would be the status quo?

19 MR. WINTER: I want to renew my objection,  
20 Judges, to this line of questioning. If the Court --  
21 the ALJs have granted him some leeway --

22 JUDGE EGAN: I have.

23 MR. WINTER: -- he's made his point,  
24 Judges, respectively. I think it's inappropriate and  
25 it's abusive.

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1 JUDGE EGAN: I don't know if it's that.  
2 But it is getting fairly redundant and  
3 he's not going to agree with you and he has answered  
4 your question. I don't think he's going to change it  
5 no matter what scenario you pose to him. So...

6 MR. WATKINS: I pass the witness.

7 JUDGE EGAN: All right. Judge Seitzman  
8 has a couple of questions.

9 JUDGE SEITZMAN: Mr. Stick, do you know  
10 when the hundred percent hold was put in place? The  
11 letter that came in was dated April 4th. But do you  
12 know when the hold went into effect?

13 THE WITNESS: The action request, which we  
14 would have sent to ACS and the managed care companies,  
15 would have gone out a day or two prior to April 4th. I  
16 don't know when April 4th was. If April 4th was a  
17 Monday, then the action request went out -- went out  
18 that day.

19 Otherwise, there's usually a one-day lag  
20 between taking the action and the letter going out.

21 JUDGE SEITZMAN: So, the action occurs and  
22 then the letter goes out or the letter goes out and  
23 then the action occurs?

24 THE WITNESS: The action occurs. Then the  
25 letter goes out.

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1 JUDGE SEITZMAN: Okay. So, if the letter  
2 went out on April the 4th, then it's my understanding,  
3 then, that the action would have conquered a business  
4 day before -- generally a business day before that?

5 THE WITNESS: Generally, yes.

6 JUDGE SEITZMAN: You talked about -- and  
7 it seems like days ago but it was only hours ago --  
8 about taking the top, I think you said, 56 orthodontic  
9 providers. Those 56 do you know what percentage,  
10 roughly, those 56 represented of total orthodontic  
11 providers in the Medicaid program in Texas?

12 THE WITNESS: At one point I looked up the  
13 total number of orthodontic providers and my  
14 recollection is there are I think in the neighborhood  
15 of 400 who are enrolled in the Medicaid program. I  
16 think that that's the right answer.

17 JUDGE SEITZMAN: And then you indicated  
18 that when it went to managed care there were three  
19 DMOs. Now, there's two DMOs. Do you know how many  
20 providers there are currently that are getting -- still  
21 get prior authorization, correct, under -- from those  
22 two DMOs, orthodontic providers?

23 THE WITNESS: I don't know. I don't know  
24 how many there are right now. I think it is somewhat  
25 less than 400 but I don't know the number.

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1 JUDGE SEITZMAN: At some -- and let me  
2 pick something that I don't think is in play here. If  
3 I do step on -- you know, if I step on somebody's toes,  
4 let me know.

5 MR. WATKINS: Can we object?

6 JUDGE SEITZMAN: You can object.

7 Actually I sustained a hearsay objection  
8 to one of my questions before early on in my career.  
9 It was a very good objection. But I was able to  
10 rephrase my question so it didn't fall for hearsay.

11 Let's assume that -- and do you mind if I  
12 call TMHP or whatever the entity just the  
13 intermediary --

14 THE WITNESS: That's fine.

15 JUDGE SEITZMAN: -- because I'm used to  
16 that with CMS and --

17 THE WITNESS: Sure.

18 JUDGE SEITZMAN: All right. So, if  
19 intermediary takes an action -- like they just say, you  
20 know, the 20 -- it doesn't matter if it's 20 or 25.  
21 We're just going to approve 25 years old for Medicaid  
22 orthodontic care and the OI- -- and the OIG finds out  
23 about it, then what -- or the agency finds out about  
24 it, then what -- we don't have the contract in front of  
25 us. And we've asked for it and I'm sure it'll be

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1 provided. But generally do you know what kind of  
2 actions, then, either the OIG or the agency itself how  
3 does it deal with the intermediary?

4 THE WITNESS: Sure. So, the Health &  
5 Human Services Commission can take action on the  
6 contract under those circumstances. They could impose  
7 a payment hold on their own. They could impose  
8 liquidated damages. Those are the two that jump to my  
9 mind immediately. They can impose corrective action.  
10 They can sanction them. I think under certain  
11 circumstances they can terminate the contract if  
12 there's a big enough problem.

13 OIG has available to it all of the actions

14 that we could take against a provider. So, we would  
15 look at the intermediary in those circumstances as a  
16 provider. We could put them on a payment hold. We  
17 could sanction them. We could refer them for  
18 education. We could do those kinds of things. We  
19 could seek recoupment.

20 Under the contract by the way the Health &  
21 Human Services Commission could also seek recoupment  
22 for those -- for those breaches under contract.

23 JUDGE SEITZMAN: Okay. So, to the extent  
24 that they pre-authorize 20 years old they don't -- the  
25 agency wouldn't recover for that but to the extent that  
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1 they were pre-authorizing doing work for and approving  
2 25 years old, that -- that was the difference that you  
3 talked about recoupment. If part of the work was valid  
4 and part of the work was outside the contract or  
5 invalid, you go after the invalid.

6 THE WITNESS: Exactly.

7 JUDGE SEITZMAN: Those are the questions  
8 that I had. Thank you.

9 JUDGE EGAN: All right. You're --

10 MR. WATKINS: This time.

11 JUDGE EGAN: You're through.

12 Mr. Winter, you ready to recross? Excuse  
13 me. Redirect?

14 MR. WINTER: Can I take a short break,  
15 Judge? Probably won't take very long. Just a minute.

16 JUDGE EGAN: We'll just all stand. You're  
17 welcome to stand up.

18 JUDGE SEITZMAN: Go off the record.

19 JUDGE EGAN: We'll go off the record for a  
20 short period.

21 (Off the record)

22 JUDGE EGAN: We took a very short break, I  
23 think less than a minute. So, we're back on the  
24 record.

25 Mr. Winter, you may proceed with redirect.  
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1 MR. WINTER: Thank you, Judge.

2 REDIRECT EXAMINATION

3 BY MR. WINTER:

4 Q. Mr. Stick, just in response to the question  
5 from Judge Seitzman, regardless of any action that  
6 either HHSC may make or HHSC or OIG -- OIG may take  
7 with respect to the, quote, intermediary or the ACS  
8 Healthcare contractor -- regardless of what any action  
9 the State may take with respect to the contractor, does  
10 that relieve the provider from his obligation or her  
11 obligation to fully comply with all Medicaid rules and  
12 regulations?

13 A. No.

14 Q. Even if HHSC or OIG, once you've taken action  
15 to recoup funds from the intermediary, does that

16 foreclose OIG or the State acting either through HHSC  
17 or your office --

18 MR. WATKINS: Objection. Leading.

19 Q. (BY MR. WINTER) -- or any other office --

20 MR. WINTER: I haven't finished the  
21 objection yet. I think he can object after I finish it  
22 but I'd like him not to interrupt me.

23 Q. (BY MR. WINTER) -- regardless of any recovery  
24 action that OIG takes or HHSC takes, does that preclude  
25 the State from pursuing any remedy it may have

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1 available against the agency provider?

2 MR. WATKINS: Objection. Leading.

3 JUDGE EGAN: Overruled.

4 A. If -- if HHSC or OIG had recouped from the  
5 intermediary the full amount of what would be an  
6 overpayment in that case -- so, qualifying 25 years old  
7 for dental care to the tune of a million dollars, if we  
8 recouped -- either one of us recouped a million dollars  
9 from the intermediary, we would not, then, go to the  
10 provider and seek to recoup another million dollars.  
11 Let's assume that it was just one provider who did it.

12 But we could still sanction the provider.  
13 We could -- we could assess a monetary penalty for  
14 submitting a false claim. We could refer the provider  
15 for education. We could -- I mean, we can -- we can do  
16 anything we want, except for -- for recoupment, if we  
17 had fully recouped.

18 If we've only partially recouped, then we  
19 could seek partial recoupment the remaining part from  
20 the provider and, of course, nothing precludes the  
21 intermediary from trying to sue the provider to recoup  
22 money as well, if there was something going on there.

23 Q. (BY MR. WINTER) So, if I understand your  
24 answer, the State would not go after the same money  
25 twice. If you recovered, say, 25 million from the

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1 intermediary, you wouldn't recover that same 25 million  
2 again from the provider?

3 A. That's -- that's correct.

4 Q. But it would not foreclose the State from  
5 pursuing other remedies that may be available against  
6 the provider for its violations?

7 MR. WATKINS: Object to leading.

8 JUDGE EGAN: I'm sorry. I couldn't --

9 Overruled.

10 A. Nothing -- nothing would preclude the State  
11 from pursuing administrative remedies, administrative  
12 sanctions for a program violation. The only -- the  
13 only remedy that would be precluded -- the only  
14 sanction that would be precluded would be the  
15 recoupment. However, I would also add that if -- if  
16 this were clearly intentional conduct on the part of  
17 the provider, then, of course, exclusion from the

18 program is always a possibility as well.

19 MR. WINTER: Thank you, sir. I pass the  
20 witness.

21 MR. WATKINS: No further questions.

22 JUDGE EGAN: All right. You are excused.

23 All right. It's a little after -- little

24 after 6:00, 6:10. We'll reconvene tomorrow morning at

25 9:00.

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1 And we'll go off the record to discuss

2 how -- how we'll proceed tomorrow.

3 (Record adjourned)

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1 THE STATE OF TEXAS )

2 COUNTY OF LEE )

3 I, Stephanie McClure Lopez, Court Reporter in and  
4 for the State of Texas, do hereby certify that the  
5 above and foregoing contains a true and correct  
6 transcription of all portions of evidence and other  
7 proceedings requested in writing by counsel for the  
8 parties to be included in this volume of Reporter's  
9 Record, in the above-styled and numbered cause, all of  
10 which occurred in open hearing and were reported by me.

11 I further certify that this Reporter's Record of the  
12 proceedings truly and correctly reflects the exhibits,  
13 if any, admitted by the respective parties.

14 WITNESS MY OFFICIAL HAND this the \_\_\_\_\_ day of  
15 \_\_\_\_\_, 2013.

16

17

STEPHANIE McCLURE LOPEZ, CSR

18

Texas CSR 3483

Expiration: 12/31/13  
KEN OWEN & ASSOCIATES, LP.  
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