

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
HARLINGEN FAMILY DENTISTRY)

)
)
VS.) NO. 529-12-3180
)
)

TEXAS HEALTH AND HUMAN)
SERVICES COMMISSION,)
OFFICE OF INSPECTOR)
GENERAL)

HEARING
VOLUME 1

On the 24th day of April, 2012, the following proceedings came on to be heard in the above-entitled and numbered cause before Shannon Kilgore, Hearing Officer, held in Austin, Travis County, Texas.



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1 HEARING OFFICER: This is docket
2 No. 529123180, Harlingen Family Dentistry versus Texas
3 Health and Human Services Commission Office of the
4 Inspector General. Today is April 24, 2012. It is
5 about 10:30 in the morning. My name is Shannon Kilgore,
6 I'm the administrative law judge assigned to this case.
7 I would like to begin by asking the parties to identify
8 themselves for the record, beginning with the
9 representatives from the Petitioner, please.

10 MR. CANALES: Good morning, Your Honor, my
11 name is Tony Canales, I represent Harlingen Family
12 Dentistry together with Mr. Oscar Garcia, standing next
13 to me, my client Dr. Juan Villarreal,
14 V-I-L-L-A-R-R-E-A-L, is also present in the courtroom.
15 We represent the petitioners.

16 HEARING OFFICER: Thank you. And y'all are
17 welcome if you want to stand when you address the
18 administrative court you may, but you're welcome to
19 remain seated.

20 MR. CANALES: Thank you.

21 HEARING OFFICER: And for the Office of the
22 Inspector General?

23 MR. MEDLOCK: Your Honor, for the Office of
24 the Inspector General, you have John Medlock along with
25 my co-counsel, Corrie Alvarado.



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1 HEARING OFFICER: Okay. Thank you. It's my
2 understanding that one of the parties wishes to invoke
3 the rule, maybe both parties, I don't know. While we
4 could wait until after opening statements, I would
5 prefer to just go ahead and do it right now if that's
6 the same for all.

7 MR. MEDLOCK: No problem.

8 HEARING OFFICER: Could you identify the
9 fact witnesses who are present in the hearing room right
10 now.

11 MR. MEDLOCK: Present for the state, Your
12 Honor, is Martin Porras.

13 HEARING OFFICER: Could you spell names for
14 me as we go along.

15 MR. MEDLOCK: Martin, M-A-R-T-I-N, Porras,
16 P-O-R-R-A-S, and Bryan Klozik, that's K-L-O-Z-I-K.

17 HEARING OFFICER: K-L-O-Z-I-K?

18 MR. MEDLOCK: Yes.

19 HEARING OFFICER: And Porras was
20 P-O-R-R-A-S-?

21 MR. MEDLOCK: Yes.

22 HEARING OFFICER: And for the Petitioner do
23 you have fact witnesses other than Dr. Villarreal?

24 MR. CANALES: No, Your Honor, we do not. We
25 have fact witnesses, no. They will be by deposition,

1 Your Honor.

2 HEARING OFFICER: Okay. And will you have
3 further fact witnesses, Mr. Medlock who might arrive
4 later?

5 MR. MEDLOCK: Yes.

6 HEARING OFFICER: Okay. If we could have
7 Mr. Porras --

8 MR. CANALES: Forgive me, Your Honor, I do
9 have one this afternoon. Forgive me. I do have Dr.
10 Jerald Felkner, F-E-L-K-N-E-R. He is not present in the
11 courtroom.

12 HEARING OFFICER: Okay. I would just ask
13 y'all to be vigilant and watch for any fact witnesses
14 who may come in during the hearing and we'll stop and
15 deal with that at the time. Mr. Porras and Mr. Klozik?

16 MR. MEDLOCK: They apparently stepped out so
17 they are going to go find them real quick.

18 HEARING OFFICER: Okay. Would you watch for
19 them when they come back in? And did you say that's
20 P-L-O-R or just P-O?

21 MR. MEDLOCK: Just P-O.

22 HEARING OFFICER: Okay. All right.
23 Sometimes I need to hear it three times. Okay. Remind
24 me to go back to that when they come back in, please.

25 MR. MEDLOCK: Okay.



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1 HEARING OFFICER: Okay. There are a few
2 housekeeping matters I would like to take up before we
3 get into opening statements. And since we're getting a
4 late start I think we can go through them pretty
5 quickly. First of all, I would just like to make sure
6 that I have on the record the parties understanding that
7 even though we're talking about 85 different patient
8 files in this case, there is no need for us to have a
9 confidential exhibit in the record identifying, cross
10 referencing, the names of the patients and the numbers
11 or initials by which they will be referenced in the
12 hearing because the parties agree that there's no issue
13 as to that; is that correct.

14 MR. MEDLOCK: That's correct.

15 MR. CANALES: That's correct, Your Honor.

16 HEARING OFFICER: Okay. Very good.

17 Mr. Canales, on Friday you filed a motion for summary
18 disposition which I have read. It was a timely filed in
19 compliance with the procedural rules of the State Office
20 of Administrative Hearings. I am going to deny the
21 motion for summary disposition. However, the arguments
22 that you have made as to the applicable law in your
23 motion are not waived and I will be expecting to hear
24 further on those matters with respect to closing
25 arguments.



1 MR. CANALES: Yes, Your Honor. For the
2 record, the same arguments we made is part of our answer
3 and so I'm not adding anything new that I did not state
4 before. And so we believe it's a matter of law we're
5 entitled to this.

6 HEARING OFFICER: Okay. Well, you know,
7 again, you had asked for summary disposition on Friday
8 and I'm not summarily disposing of any of the claims in
9 this matter based on that motion. However, that doesn't
10 mean that I won't consider those arguments in the final
11 disposition in this case.

12 MR. CANALES: Very well.

13 HEARING OFFICER: At least not the final
14 disposition, but the proposal for disposition.

15 MR. CANALES: Very well.

16 HEARING OFFICER: Okay. I have a few
17 questions for the parties. There seems to be
18 disagreement between the parties about the exact issues
19 before the administrative court in this matter. And
20 what I would like to do, very briefly, is Mr. Medlock
21 first, I would like to give you my understanding of your
22 view of what's at issue here and see if I'm correct
23 about that. I think you think that it is your burden to
24 prove that there is a credible allegation of fraud for
25 which an investigation is pending?



1 MR. MEDLOCK: Correct.

2 HEARING OFFICER: The same rule that talks
3 about the credible allegation of fraud, it's a federal
4 rule, also talks about the possibility for good cause
5 not to impose a payment hold?

6 MR. MEDLOCK: Correct.

7 HEARING OFFICER: Do you believe that the
8 issue of good cause is a potential issue in this matter?

9 MR. MEDLOCK: No, Your Honor, because in
10 this matter we did not use a good cause happens if there
11 was an issue with access of care and that has not been
12 brought up by the petition in this case. Also, the
13 petitioners is not on a 100 percent payment hold. They
14 are only on a 40 percent payment hold and that's with
15 respect to the orthodontic codes that they bill or the
16 portion of their practice that related to orthodontia.
17 So any other -- 60 percent of the billings they make
18 they do receive.

19 HEARING OFFICER: Okay. And, Mr. Canales,
20 understand at this point, I'm just trying to understand
21 Mr. Medlock's position on this. I'm not -- I just want
22 to understand what each party's position is. All right.
23 Mr. Medlock, is it correct that your position is that
24 the acceptance of the referral of this matter of the
25 investigation by the Texas Office of the Attorney



1 General's Medicaid Fraud Control Unit constitutes, per
2 se, credible allegation?

3 MR. MEDLOCK: That is one instance, yes.

4 HEARING OFFICER: Okay. That's one of your
5 arguments?

6 MR. MEDLOCK: Correct.

7 HEARING OFFICER: Okay. You have another
8 claim. You talk about fraud and misrepresentation and
9 then you also argue that a payment hold could be imposed
10 because the same claims are otherwise un reimbursable,
11 correct?

12 MR. MEDLOCK: Correct.

13 HEARING OFFICER: And at this point, I'm not
14 clear what the basis for that otherwise un reimbursable
15 argument are. Is that something that's going to come to
16 light? Are you going to make that clear to me.

17 MR. MEDLOCK: Yes, Your Honor, it will
18 hopefully come to light in the sense that, you know,
19 there are multiple ways in which we can put a payment
20 hold on a provider. Not just under the basis of 455.23
21 in the federal regulations. Our own Texas code of
22 administrative code 1703 allows us to put them on for
23 multiple reasons. One of which is for program
24 violations. And this third is it would be a program
25 violation if we can allege that there is a program



1 violation, then we have the authority to put them on
2 payment hold for that as well.

3 HEARING OFFICER: And are those -- those
4 program violations -- you are alleging that there are
5 program violation in this case?

6 MR. MEDLOCK: Correct.

7 HEARING OFFICER: And again, I don't know
8 yet what those are, but those will be made clear?

9 MR. MEDLOCK: Correct.

10 HEARING OFFICER: Okay. What is your
11 position with respect to -- okay. It's my decision, is
12 there a credible allegation or is my decision was there
13 a credible allegation and supporting information before
14 the Inspector General when the payment hold was put in
15 place?

16 MR. MEDLOCK: I believe it's our view that
17 it would be that there is a credible allegation of fraud
18 that has been verified pursuant to the rules and that we
19 have the right to put them on payment hold.

20 HEARING OFFICER: You see it as kind of a de
21 nova thing as far as payment is concerned, okay. In the
22 helpful information that you provided on Friday, you
23 included an excerpt from the affordable care act.

24 MR. MEDLOCK: Correct.

25 HEARING OFFICER: Could you identify for me

1 precisely which portion of that excerpt you see as
2 relevant to this proceeding?

3 MR. MEDLOCK: It will probably be a couple
4 of instances. It will be 6402 H.

5 HEARING OFFICER: Okay. Right. Right. H2?

6 MR. MEDLOCK: Yes.

7 HEARING OFFICER: Yes. Anything else?

8 MR. MEDLOCK: Just quickly scanning here,
9 but I believe that's the relevant portion, Your Honor.

10 HEARING OFFICER: That's what I thought. Do
11 you know the effective date of this provision?

12 MR. MEDLOCK: The effective date is
13 March 23, 2010.

14 MR. CANALES: What date?

15 MR. MEDLOCK: March 23, 2010.

16 HEARING OFFICER: Okay. You also cited,
17 too, I believe a 2011 amendment to Texas Government
18 Code, Section 531.102 G2?

19 MR. MEDLOCK: Yes.

20 HEARING OFFICER: Do you know the effective
21 date of that amendment.

22 MR. MEDLOCK: That is September 1 of 2011.

23 HEARING OFFICER: Okay. Can you say
24 anything brief and helpful to me about when I'm looking
25 at the body of law that is potentially applicable to

1 this case and I see that there are state statutes and
2 regulations and federal statutes and regulations and
3 they seem to use different language.

4 MR. MEDLOCK: They do.

5 HEARING OFFICER: How do I decide what
6 language is applicable?

7 MR. MEDLOCK: Basically, you kind of have to
8 actually mix the languages because the Medicaid program
9 is a matching program for the Federal government. We
10 receive 60 percent of the funds for the Medicaid program
11 from the Federal government. They impose some of their
12 laws on to us and 531.102 G talks about the Federal
13 allegations which incorporates the code of federal
14 regulation and they also talk about the credible
15 allegation of fraud. And our tax -- our own tax chapter
16 371, it talks about Federal statutes and Federal
17 regulations that are applicable, specifically in 1703 B6
18 which says that we can impose payment holds on for any
19 other statute or regulation.

20 HEARING OFFICER: You assert in the briefing
21 that you have give even me thus far, that a payment hold
22 is mandatory in this case. And I understand your
23 position that it's mandatory based on -- well, let me
24 back up.

25 The only mandatory language I see is in the



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1 federal regulation. Do you agree with that?

2 MR. MEDLOCK: Well, the federal regulation
3 imposes that if we do not place providers on payment
4 suspension when they're under a credible allegation
5 investigation, that we are at risk -- the State is at
6 risk of losing the Federal share of those funds and as
7 such, it is mandate on us to -- if we determine that
8 something has been a credible allegation of fraud that
9 we have to put the providers on payment hold.

10 HEARING OFFICER: Right. Under state law
11 the language seems to be discretionary, however, there's
12 a range of administrative sanctions available to the
13 agency and the agency may take action. But it's really
14 the federal law in your view that has the mandate.

15 MR. MEDLOCK: Well, also incorporate with
16 531 in the government code, 102G, it says that we also
17 have the ability to put them on the credible allegation
18 of fraud rule and therefore, it's our view that because
19 that language is in there that we are mandated by the
20 federal government to take these actions.

21 HEARING OFFICER: Okay. I think we're
22 saying the same thing. I think that we're seeing the
23 mandate to the degree that there is one as coming from
24 the federal law. Okay. And what is your position with
25 respect to how I determine what time period governs the



1 law that's applicable in this case?

2 MR. MEDLOCK: Well, the payment hold rule
3 under 1703 has been on the books since 2005. So -- and
4 part of which talks about we can put a payment hold for
5 any program violations. It's 3711703? And also -- oh,
6 yeah, it talks about the statute of regulations. And as
7 such because these new laws went into effect they're not
8 retro active in nature because either way we could have
9 put them on payment hold. So, therefore, it's a current
10 statute and we have the ability to take those actions
11 and it's a current sanction.

12 HEARING OFFICER: So you're saying, if I
13 hear you correctly, that it's your view that at the time
14 the Office of the Inspector General seeks to take action
15 or takes action, that that's the time we look at for the
16 applicable law?

17 MR. MEDLOCK: Yes. And also 531102 G2 also
18 says, shall when it talks about these payment holds.
19 And under which the code of federal regulations is under
20 that. So therefore, you know, we think it's mandated by
21 state law because that's the current law on the books.

22 HEARING OFFICER: Okay. So you're looking
23 to current law presumably because this is happening now?

24 MR. MEDLOCK: Uh-huh.

25 HEARING OFFICER: Okay. That's very



1 helpful. Thank you. Mr. Canales.

2 MR. CANALES: Yes, Your Honor.

3 HEARING OFFICER: I understand from what
4 you've submitted that your view is that we look to the
5 time the claims for reimbursement were submitted to
6 determine the applicable law?

7 MR. CANALES: Yes.

8 HEARING OFFICER: Okay. You tell me
9 briefly -- Mr. Medlock has said that he believes the
10 issues are whether there is a credible allegation of
11 fraud and that's the primary issue in this case. Can
12 you tell me how you frame the primary issue in this
13 case? Is it different from how he frames it or is it
14 the same?

15 MR. CANALES: It's different in the sense
16 that what's controlling here, I believe, is the Texas
17 Statute and the Texas Regulations, not the so called
18 mandate of title -- of title 42 CFR 455.23. Those
19 regulations and the federal regulations of CFR are
20 regulations that impose some type of a standard or
21 minimum standard on the state. If you go look at 455.1
22 and 455.2, where the regulation comes in, it's all about
23 imposing a standard on the state. The state then
24 pursuant to those regulations must submit some kind of a
25 state plan, and they have. Now, you don't have to have



1 all of them approved as long as you submit a state plan
2 and there's a discretion on the feds to be able to
3 approve your state plan. I submit to the court, that
4 what they have done they have submitted the state
5 administrative actions. So the 455.23 is not
6 applicable. That is just the -- that is just the
7 authority upon which the state seeks to be able to
8 receive this 60 percent money. Whether 60 percent,
9 100 percent, it doesn't make a difference. Harlingen
10 Family does not fall under the amicable control of the
11 453.23, by that I mean the CFR. We don't fall under
12 that. We are under the so-called Texas Statute and so
13 forth. The Texas Statute which is the -- which is
14 recited in Texas government code 531102 G2, that was
15 changed. It was changed as Counsel has admitted. It
16 changed September 1st of 2011. And in September 1st of
17 2011 they added -- they added the following, the
18 following quote to the Texas statute. Quote "Or on
19 receipt of reliable evidence that the circumstances
20 giving rise to the hold of payment invoice involve fraud
21 or willful misrepresentation under the state Medicaid
22 program in accordance with 42 CFR Section 45.23 as
23 applicable, whatever that means. So all our payment
24 hold was done -- was done -- and we were issued the
25 subpoena for the record, the payment hold came in



1 sometime I believe in October. But what they're doing
2 is retro actively applying. So the question is, what
3 does the practitioner fall under. Do we look at 455.23,
4 which is really just a mandate for minimums for the
5 state or do we look for guidance to our statute which is
6 the 455 in the applicable regulations. I submit to the
7 court that the controlling statute is the payment hold
8 is defined before the act was amended. Now, before the
9 act was amended, they had basically -- they had
10 basically two reasons to be able to impose -- to impose
11 the statute and none of them which are alleged here.
12 I'm sorry. They have now alleged one of them, which is
13 the issue of the so-called other referral to a state law
14 enforcement agency. What is called the MFCU, the State
15 Medicare Fraud Control Unit. The question you are going
16 to have before you, Your Honor, is the mere referral,
17 with nothing else, with nothing else, the mere referral,
18 rise to the level of an absolute payment hold. Now, the
19 federal -- the federal statute it kind of leaves it open
20 because they talk about an acceptance of -- an
21 acceptance of a criminal referral. In this particular
22 case, in this case, undisputed evidence is that what
23 they made like an intake, they made a bulk massive
24 referral of cases, all these are called the prior
25 authorization orthodontic cases, to the so-called MFCU



1 Agency, all they have done is acknowledge it, we've
2 received it. Question: The poor professor would say,
3 does that rise to the level of an absolute capture?
4 Well, you know, if it does, if it does, it can only rise
5 if that's -- rise to the level of a credible -- having
6 credible or reliable information of some type of a fraud
7 or willful misrepresentation. Now, can we go behind
8 that clause? Does the -- 423 says nothing, but the
9 Texas statute says, yes, you can. We can have a hearing
10 before the court. So what I submit to the court where
11 we are is, one, they now have, which I objected to their
12 late pleading, that's why they made the late pleading
13 because I think they were in trouble over the issue of
14 the so-called credible evidence. But I think what the
15 court needs to determine is the mere fact of a referral
16 a final? I would concede, Your Honor, that the mere
17 fact that there is some kind of referral or some kind of
18 thing -- that could very well initiate what I call the
19 trap. You have trapped the money. You have issued the
20 payment hold. But that's -- that's -- they submit
21 that's the end of the story. I say we continue.

22 Now, I'm entitled to due process to be able
23 to question the reliability of the credible information.
24 And their position is that, no, you're not. And we say,
25 yes, we are. And I think that's where the court has to



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1 kind of balance the test here with us. Does the
2 practitioner have the right under the statute and the
3 regulations? Do we have the right to inquire as to the
4 reliability or the credibility of this referral?

5 HEARING OFFICER: Okay. And you would see
6 that inquiry as being governed by --

7 MR. CANALES: The state statute.

8 HEARING OFFICER: -- the state statute and
9 the state rules that talk about prima facie evidence?

10 MR. CANALES: Yes, Your Honor, and the
11 federal regulation issue. It's not applicable at all to
12 us because that's just a standard. Now, what they did,
13 by the way, Judge, what they did, when they amended the
14 statute 2011, they added under the Texas statute, they
15 added the following language. In accordance with 42 CFR
16 42.53 as applicable. So, you know, you happen to have a
17 grand jury indictment, you know, I mean, and the MFUC
18 people say, don't pay them anymore, that's a pretty
19 serious allegation to stop payment. That's applicable.
20 But here we have no criminal investigation, we have no
21 criminal subpoenas, we have an administrative inquiry.
22 But the documents that I received over the weekend
23 reflect that there is a letter, what I call an intake
24 letter, there's a letter of about 20 people that have
25 been referred over to MFUC by OIG because they have to.



1 The regulations provide -- the regulations provide that
2 OIG has to keep abreast the Attorney General's Office of
3 all this. So now they're covering themselves saying
4 look this automatic referral closed the books. We now
5 have reliable indecisive. So I submit to the court, if
6 the court is going the rule that 42 CFR 23 is my remedy,
7 why do we have these Texas statutes? Why are we here?
8 I mean, that's what the rule would have been I would
9 have gone to a federal agency somewhere to contest.
10 Obviously we're here because they're trying to put the
11 Texas coverage on hold. But now all of a sudden, this
12 last moment, last week somewhere from the side now they
13 grab 455.23 in an attempt to impose it.

14 So position number one, we do not fall under
15 455.23 at all. We are covered under this particular
16 statute, the Texas state statute. So we have to show --
17 we have oh to -- well, they have to burden themselves
18 some type of liability argument that there is some
19 falsity somewhere.

20 HEARING OFFICER: Okay. I understand.
21 Mr. Medlock, you're prepared to litigate all of it?

22 MR. MEDLOCK: Yes.

23 HEARING OFFICER: Okay. All right. Thank
24 you. That pretty much answers my questions except one
25 extremely simple one. Somebody explain to me the



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1 difference between a prepayment and a post payment hold,
2 please?

3 MR. MEDLOCK: A prepayment hold would be an
4 action which the state basically puts some extra
5 stipulations on when a provider submits a claim for
6 reimbursement. Generally, it goes to an automated
7 process and they can submit them online. However, if we
8 put a prepayment hold on somebody, what we do is we make
9 them submit paper claims and it actually gets reviewed
10 by our physical contractor, Texas Medicaid Healthcare
11 Partnership. And a post payment hold is one in which
12 claims have actually -- when they are actually paid on
13 the back end like they submitted the claims for
14 reimbursement, we essentially open up an escrow account
15 of those claims that would be reimbursed get put into
16 this escrow account.

17 HEARING OFFICER: So they haven't -- I still
18 don't understand.

19 MR. MEDLOCK: In a prepayment case if
20 submitting the paper claims, if it's approved by TMHP,
21 they get reimbursement and the state does not hold those
22 funds. On a post payment hold when they get approved by
23 TMHP the funds travel into the escrow at and not to the
24 provider and those funds are held there until, you know,
25 depending on what the outcome of any litigation is or



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1 settlement negotiations.

2 HEARING OFFICER: So a post payment hold is
3 a more severe action, correct?

4 MR. MEDLOCK: Yes.

5 HEARING OFFICER: None of those payments are
6 going to get made, but a prepayment hold there is a
7 review process and some get paid?

8 MR. MEDLOCK: That's correct.

9 HEARING OFFICER: Okay. That's what we have
10 here? We have a 40 percent prepayment hold?

11 MR. MEDLOCK: Post payment hold.

12 HEARING OFFICER: Post payment hold.

13 MR. MEDLOCK: Yes.

14 HEARING OFFICER: Okay. Mr. Canales, you
15 agree with that I take it? I think that was pretty
16 fundamental.

17 MR. CANALES: That's kind of a fuzzy answer.
18 A -- the way these regulations talk about is either a
19 payment hold versus an over payment hearing somewhere
20 down the road.

21 HEARING OFFICER: Right.

22 MR. CANALES: So we're not talking about an
23 over payment hearing.

24 HEARING OFFICER: Right.

25 MR. CANALES: We're just talking about the

1 payment hold.

2 HEARING OFFICER: Yes.

3 MR. CANALES: And so the mechanics of the
4 payment hold is something that I don't think --

5 HEARING OFFICER: It may not be. I just saw
6 that phrase in the rule and I just wanted to make sure I
7 understand.

8 MR. CANALES: But these terms are, kind of,
9 you know, thrown all over the place in the regs. The
10 statute is clear, but the regs are a little bit more
11 fuzzy. But just clearly, they have the power to be able
12 to say, we owe you some money, the agency says, we owe
13 you some money and we're going to put a hold on it.
14 We're not going to pay you any money until something
15 gets disputed.

16 HEARING OFFICER: Right.

17 MR. CANALES: Whether it's 100 percent.
18 This case we're lucky it's 40 percent. Now, one thing
19 the court has not heard about is something we're going
20 to be calling TMHP. You are going to be hearing a lot
21 about TMHP which is the -- Texas contracting agency.
22 It's the Texas Medicaid Health Partnership.

23 MR. MEDLOCK: Health Care Partnership.

24 MR. CANALES: Health Care Partnership. And
25 so that is just to remind the court that is a private



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1 contractor who is contracted with the State of Texas.
2 HHSC, Health & Human Services Commission, to be able to
3 administer the state Medicaid functions. So if I do
4 something improper, Judge, I advice counsel to correct
5 me. I know they're standing on their toes to try to
6 correct me on this issue. But -- so the payment hold
7 has nothing do with the TMHP. It is the agency HHSC,
8 the Health & Human Service Commission, issues the order.
9 A computer something and it just mechanically just puts
10 a percentage hold on the money.

11 HEARING OFFICER: Okay.

12 MR. MEDLOCK: Well, it's actually the OIG
13 instructs TMHP to put these things on hold. And we'll
14 give that our direction.

15 MR. CANALES: And one the mystery's, by the
16 way, of all this is, where does OIG fit with HHSC? I
17 know the statute is there, they're kind of equal, but
18 one is -- I don't know who is the boss of who. But I
19 know one thing, in this particular litigation, HHSC has
20 their own regulations, by the way, and statutes
21 regarding payment holds. OIG has the same thing. Has
22 their own regulations and statute regarding payment
23 holds. I would presume that we are following only the
24 OIG statute, unless somebody needs to go grab another
25 statute from somewhere else.



1 HEARING OFFICER: Well, that actually is a
2 question I should ask. This is a proposal for decision
3 directed to the office of the Inspector General,
4 correct?

5 MR. MEDLOCK: Correct.

6 HEARING OFFICER: Okay. It shouldn't come
7 as any surprise to you that at the end of the hearing
8 I'll be asking for written briefing on all these
9 disputed legal issues.

10 MR. CANALES: We have no problem with that,
11 Your Honor.

12 HEARING OFFICER: At this point the ones
13 that really jumped out at me are the question about what
14 time period we are looking at that controls what the
15 applicable law is. Questions regarding any differences
16 and they may not be material, between the applicable
17 state and federal laws. And the question of whether a
18 hold in this situation is mandatory or discretionary and
19 why. And if it's discretionary on what basis is that
20 discretion exercised? What governs that decision and
21 whether that's before me.

22 Thank you both very much. That was
23 extremely helpful to me.

24 You had stipulations?

25 MR. MEDLOCK: We did, Your Honor, we have



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1 agreed to certain stipulations.

2 MS. ALVARADO: He's looking for his copy.

3 HEARING OFFICER: Okay. Well, you know, if
4 you want don't to provide them now we can do that later
5 as long as y' all remember to do that.

6 MR. CANALES: Well, we have reduced it to
7 writing and I've got mine initialed.

8 MS. ALVARADO: And we have the original.

9 MR. MEDLOCK: Yeah, we have the original.

10 HEARING OFFICER: If you want to make a copy
11 at break and give it to me.

12 MR. MEDLOCK: Okay. We can do that.

13 HEARING OFFICER: Just don't forget because
14 I really like stipulations.

15 Okay. I think what I would like to do -- do
16 we have our fact witnesses here yet?

17 MR. MEDLOCK: They're sitting outside. We
18 can grab them real quick.

19 HEARING OFFICER: Yeah. I think I would
20 like to swear them in and give them directions.

21 MR. MEDLOCK: Here you go, Your Honor.

22 HEARING OFFICER: Great.

23 MR. MEDLOCK: May I approach?

24 HEARING OFFICER: Yes, please.

25 We have Mr. Porras and Mr. Klozik. Is that



1 correct? If y'all could just stand right over here,
2 please. What I'm going to do is I'm going to go ahead
3 and swear you in. I'm going to ask you to raise your
4 right hand.

5 (Witnesses sworn).

6 HEARING OFFICER: I'm going to ask you
7 please, not to discuss the subject matter of this case
8 or your testimony with each other or any of the other
9 witnesses in this case while the case is pending.
10 You're going to be asked to stay outside the hearing
11 room while you are not testifying. You probably already
12 noticed we don't have the most comfortable facilities.
13 You can stay right out here if you want. There also a
14 little reception room down the way that has some kind of
15 outdated magazines. You're welcome to go down there if
16 you want and you'll be called when it's time for you to
17 testify. Thank you.

18 I think what we ought to do now is go into
19 Mr. Medlock, your opening and then Mr. Canales, you can
20 decide whether you want to reserve your opening until
21 later and then we'll take up the documentary evidence
22 and then we'll start with witnesses. Is there anything
23 else we need to do at this point? Okay. Mr. Medlock,
24 whenever you're ready and you can remain seated if you
25 want.



1 MR. MEDLOCK: All right. Thank you, Your
2 Honor. The office of Inspector General is charged with
3 investigating a fraud, waste, and abuse in the Texas
4 Medicaid program. As such, the Health & Human Services
5 Commission office of Inspector General opens
6 investigations into providers when allegations of fraud,
7 waste, and abuse have been verified. Today we are going
8 to show that the Petitioner who Harlingen Family
9 Dentistry in this case, who is a provider in the Texas
10 Medicaid program submitted false statement to meet prior
11 authorization requirements. Specifically the provider
12 submitted 85 prior authorization requirement forms and
13 85 corresponding HLD or the Handicap Labial Lingual
14 score sheets which misrepresent the severity of the
15 patients actual dental condition. And was then paid by
16 the Texas Medicaid for services for which those patients
17 would not have otherwise qualified for treatment of
18 orthodontic services.

19 This constituted a credible allegation of
20 fraud which mandated that the OIG place the provider on
21 a payment hold. Furthermore, pursuant to the code of
22 federal regulations 42 CFR. The OIG made a fraud
23 referral to the states Medicaid Fraud Control Agency,
24 the Texas attorney general's office of Medicaid Fraud
25 Control Unit. This referral was accepted and currently



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1 is an open investigation which warranted continuation of
2 our payment hold. And finally the providers actions
3 violated multiple program violations and as such given
4 the OIG the authority to continue the payment hold as
5 well as placing it in the beginning, until the
6 enforcement proceedings have been completed. And even
7 if there is no, you know, credible allegation of fraud,
8 the program violations warrant the action of placing the
9 provider on payment hold.

10 HEARING OFFICER: Okay. Remind me you have
11 one expert witness?

12 MR. MEDLOCK: That's correct.

13 HEARING OFFICER: And you have how many
14 other witnesses.

15 MR. MEDLOCK: We have three. And we'll also
16 be reading some deposition testimony into the record.

17 HEARING OFFICER: Okay. Mr. Canales, do you
18 want to make an opening now or do you want to wait?

19 MR. CANALES: Now, Your Honor, if I may.
20 Thank you, Your Honor.

21 I'm so used to standing up, but I'm holding
22 myself by the side.

23 HEARING OFFICER: Whatever works for you.

24 MR. CANALES: All right. We believe that
25 the evidence in this case is going to show to the court



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1 that the State of Texas has under the Medicaid program
2 provides dental services for indigent children. The
3 State of Texas is under a federal mandate, a couple of
4 lawsuits, that are key here to be able to create
5 outreach and services for indigent children. In the
6 whole gamut of the dental section. One of these gamuts
7 is the providing of the orthodontic services. The
8 statute or the regulations provide that TMHP will create
9 something they call the providers manual. And that's
10 all marked in evidence, Your Honor. This is kind of for
11 each year, we have one for each year. They're
12 uncontested what they say. They're usual the same.
13 They don't say -- they might change a little bit more
14 than different pages or two, but they're the same. In
15 this provider's manual requires that before an
16 orthodontist does orthodontic work on a child, a
17 Medicaid recipient, of course, we have to have certain
18 requirements before. It's got to be a child that's in
19 the program and so forth, you know, it's got to be a
20 Medicaid -- an approved Medicaid recipient. In this
21 case there's no question here, by the way. In all these
22 children that they are approved Medicaid recipients. I
23 mean, that's -- no one has ever raised that question.
24 So what happens is the providers manual says that before
25 you can do this work, orthodontist work, that you must



1 obtain prior authorization before the work is done. And
2 you are going to hear this a lot, by the way. What is
3 called a PA system. Now, this PA system or prior
4 authorization, the court will hear through our experts,
5 it is a system whereby the state has delegated this
6 issue to the TMHP contractor. So TMHP, as a contractor,
7 communicates with providers, the doctors. In my case,
8 Your Honor, Harlingen Family Dentistry has three
9 dentists, by the way, that saw patients here. You'll
10 hear the names Dr. Nguyen, that's N-G-U-Y-E-N,
11 Dr. Franklin, and Dr. Teagardin. Now, these three
12 doctors who are employees of Harlingen Family Dentistry,
13 have these patients in Harlingen, Texas. And they
14 were -- they came to be seen and they get to be
15 evaluated and there is a prior authorization requested
16 from the TMHP and you will see that when the request is
17 made, there are certain documents that TMHP says, we've
18 got to see before we -- it's got to make sense. We've
19 got to have prior authorization. So the prior
20 authorization form they submit it and part of the
21 authorization form says you must send me radiographs.
22 You must send me other information, photographs of the
23 child. And including, by the way, is something that is
24 called the HLD score sheet, which is the gist of this
25 whole case.



1 So TMHP then reviews this documents and the
2 magical number you will hear over and over, Your Honor,
3 is a score of 26. If you have a score above 26, then
4 you qualify, at least under that score sheet, for being
5 approved for the orthodontic services and so the doctor
6 submits this package. At one time, and this is not an
7 issue in this case, but at one time the doctors had to
8 also submit what is called either the models or the
9 molds to TMHP, the cast. I sometimes call it models,
10 sometimes call it molds. A couple of years ago they
11 changed the requirement, TMHP changed the requirement,
12 you don't have to submit the molds. You can keep them
13 at the office. In this case we did all that. So what
14 happens then is mechanically the prior authorization
15 with HLD gets sent over to TMHP, TMHP reviews it and
16 signs off on it. When I say signs off, which, you know,
17 they approve the prior authorization. They communicate
18 of course all in writing, it's all computer generated so
19 far these forms. It comes back to the dentist and the
20 dentist gets the okay, the approval, to proceed forward.
21 The question now, of course, arises as to whether or not
22 the so-called score sheet was correctly -- was correctly
23 diagnosed.

24 The court will hear from two competing
25 experts. You will hear from Dr. Evans, which is the



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1 state's expert and he will -- whatever he says I'm not
2 going argue with what he is going to say. But you will
3 also hear from my expert, Dr. Orr, for the record that's
4 O-R-R. And Dr. Orr will testify about his previous
5 history as a former director of the dental program under
6 an agency called, a contractor called NHIC. NHIC was
7 the pre runner to TMHP. So he knows, you know, you will
8 hear his testimony. And then we are going to have these
9 two experts kind of compete with each other as to why a
10 particular child or patient scored more than 26 or not.
11 But to give the court an advance peak as to what the
12 evidence will be, Dr. Evans position is that none of the
13 85 patients qualified. They all should have been less
14 than 26. We of course have a contrary view.

15 We have taken the deposition of Dr. Evans
16 and take even the deposition of course of Dr. Teagardin
17 and Dr. Franklin. And Dr. Evan we've asked him in the
18 deposition, whether or not there's any type of -- what's
19 a discrepancy, you know, what's the difference as to
20 whether or not he saw any evidence of fraud or
21 intentional misrepresentation. He says, no, there isn't
22 any. This is a question of the definition of something
23 that is called, the so-called, ectopic eruption. You
24 are going to hear a lot about the ectopic eruption. So
25 we submit to the court that what has happened, by the



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1 way, we'll have evidence of this, what has happened at
2 TMHP was that there was a dental director of TMHP and
3 the dental director's name is Dr. Gerald Felkner, who is
4 one of my witnesses. Dr. Felkner is no longer an
5 employee of TMHP, he was discharged. Dr. Felkner will
6 testify as to what the policy was at TMHP and what he
7 expressed to all the dentist as to the definition of a
8 ectopic eruption. The definition of ectopic eruption is
9 included in the so-called HLD form index. One of these
10 forms you'll, Judge, you'll see fill in the score sheet
11 and the back of it has got the definitions. So this
12 whole issue that we have before the court is whether or
13 not these 85 patients have as a representative sample or
14 their property scored by all these three doctors.
15 Doctor -- or will say that they weren't, Doctor -- each
16 of the individual three doctors and then sometimes we
17 took their depositions they would say they scored the
18 way they are meant to be scored. And there's no
19 evidence at all by any of these people that anybody did
20 anything intentionally or willfully or misrepresented
21 any facts to anybody. What has happened, Your Honor, is
22 why are we here today? Is that -- you will hear
23 testimony that there's a dispute as to who would make
24 the prior authorization approvals. I will submit to the
25 court that this is going to be a very, very key case.



1 You would assume that doctor -- that Doctor dental
2 director would make the approvals and he did. But TMHP
3 had a policy, developed this policy and it's in dispute.
4 The policy at TMHP under Dr. Felkner was that if these
5 so-called diagnosis were basically automatically
6 approved by TMHP if they were above 26. If they were
7 below 26 Dr. Felkner would look at them. Now, this is
8 very important, Judge, because we have the audit, there
9 was an internal audit made in 2008 to be part of the
10 record. This audit -- OIG was very critical of TMHP
11 regarding this practice of having none dental or none
12 dentist or none orthodontist review this patient files
13 for prior authorization. In 2008, according to this
14 audit, there was a position made between, kind of like a
15 stalemate, between HHSC and TMHP as to what are we going
16 to do about this. TMHP at that time, pursuant to the
17 audit, responded if you want dentist to look at it, we
18 need a contract change order. Which basically means
19 more money. The contract between TMHP and HHSC did not
20 mandate or require that dentist or any type of qualified
21 dental personnel review these so-called prior
22 authorizations. So it stayed that way from 2008. They
23 were just routinely approved. There were presentations
24 made throughout the state. We have witnesses who will
25 testify that the definition of ectopic eruption was up



1 in the air a little bit. It was pretty clear to
2 everybody what it was.

3 In 2011 last year, you will hear as to what
4 Dr. Milwee the state medicate director of the state
5 HHSC. A NEWS station in Dallas, WFAA, made a so-called
6 one of these expose reports. As a result of that
7 so-called expose reports about the orthodontist, HHSC
8 started looking back into these audits and they
9 determined that they should change the definition of
10 ectopic eruption, which was changed in October of last
11 year. I'm sorry. Effective -- the notice came out in
12 October of 11 and made effective in January. At the
13 same time Dr. Felkner was terminated at TMHP. At the
14 same time after this news story came out, the agency
15 HHSC is required, pursuant to law, to make this referral
16 to their sister agency or stepsister the OIG. OIG is
17 required under a memorandum of understanding that they
18 have with the attorney general's office, Medicaid office
19 to make a referral.

20 You will hear the testimony from the state
21 that they ran a computer analysis and said, let me have
22 the top 20 -- let me have the top 20 orthodontic
23 providers in the State of Texas. And all those -- all
24 that list of top 20 providers was referred over in bulk
25 to the state agency as a report. You will see evidence



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1 in this case, Your Honor, that the state through I think
2 the letter is from Rick Copeland, the attorney general's
3 Medicaid director. He receives it and he says, I
4 acknowledge I receive it, we acknowledge, you know, we
5 have it here. That acknowledgment we received it, we
6 have it here is what they are saying is the so-called
7 investigation of a credible fraud. So I submit to the
8 court that this is the argument that I was referring to
9 and everything I've informed the court you will hear
10 about it. So this referral comes in. They have to do
11 this on a quarterly basis, this so-called constant
12 checking from -- I'm sorry. From OIG if to the MFCU
13 people. MFCU being M-F-C-U, I believe. They have to
14 make this constant reporting of cases they're looking
15 at. And through my examination of some of these
16 witnesses I've asked them whether or not they have --
17 has anybody seen any type of fraud or willful
18 misrepresentation. And every witness that we have
19 inquired of gives us the same response, no, none.

20 What we have here is a difference of opinion
21 between the doctors as to what is ectopic eruption and
22 how do you change it. Now, they take the position, you
23 will hear the evidence, you will see the new definition
24 of ectopic eruption. Dr. Evans will say I'm not
25 applying that I'm applying the old definition. And



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1 under the old definition according to my Dr. Orr,
2 there's a lot of wiggle room as to what ectopic eruption
3 and how do you reach the level 26. That's the reason,
4 Your Honor, we plan to show you some of the so-called
5 patient files where Dr. Evans says, this is a 13 or a
6 14. Orr says, no, this is a 27, 28, 29. So you will be
7 able to look at it. So the issue before you that you
8 will finally at the very end be able to look at is
9 whether or not, one, is there evidence of a fraud -- of
10 defrauding or willful misrepresentation on the part of
11 three doctors. That's Dr. Franklin, Dr. Nguyen and
12 Dr. Teagardin, in the submission of this so-called HLD
13 forms. And we submit to the court, you'll here the
14 testimony and then say, we did not. And you will hear
15 the testimony, of course he's here live, but we will be
16 able to show his previous testimony where he says I have
17 no evidence of anybody misrepresenting or making a fraud
18 claim.

19 So the amount of money that is being trapped
20 or retained as it stands right now is, in our case,
21 close to maybe \$700,000. How much. I've been helped by
22 the audience, Your Honor, and they tell me it's
23 \$850,000. Of course, this is a large -- you will hear
24 the testimony of Dr. Villarreal, he will give you the
25 office -- they do a lot of work other than orthodontist.



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1 They treat -- it's one of the largest practice in family
2 dentistry in Harlingen, Texas. So I think I've kind of
3 given the court a flavor as to where we come from. And
4 to be able to inform the court that the court will bear
5 with me, we'll have some of the videos of the parties.
6 I just could not bring everybody up here for the
7 hearing. We took the depositions and I will comment
8 counsel has been very cooperative in providing me their
9 witnesses and we were accommodating to each other. So
10 we've basically had very few kind of fights between
11 ourselves. But the fight we do have is whether or not
12 the HLD score indexes that were submitted by our
13 clients, were they done with a willful intent to
14 misrepresent or not. And I submit to the court, that
15 this definitions are there. They are there in the state
16 statute. It's got to be willful intent. It's got to be
17 with an intent to deceive, to lie, to cheat, to
18 misrepresent. You'll see none of that, Your Honor, from
19 anybody. Nobody has plead the 5th amendment. Nobody is
20 trying to cover up anything. What we have here and
21 we'll submit to you by playing you the deposition of
22 Mr. Milwee, which is the executive director of agency,
23 all that was done as a reaction to the stories from
24 Dallas where the agency was extremely criticized for
25 allowing TMHP to have this policy of review of the HLD



1 scores by non-dental people. Something that they knew
2 about as a result of this audit that happened 3 or
3 4 years ago. I know it was long winded Your Honor.

4 HEARING OFFICER: Okay. Thank you. That's
5 something that I had been wondering about myself,
6 Mr. Medlock. What do you think the definition -- is
7 there a definition -- where is the applicable definition
8 of fraud or misrepresentation? Seems like there's one
9 in the federal regulation I think that you provided me.

10 MR. MEDLOCK: Yes, there is one there with
11 regard to under 455.23. And then also I believe in our
12 definitions in tack 3711601 there's a definition there
13 as well, but we would also submit that fraud can be
14 inferred through a pattern of behavior and repeated
15 instances of conduct.

16 HEARING OFFICER: Okay. I believe I saw
17 somewhere --

18 MR. CANALES: 531.1011 gives a definition of
19 fraud Your Honor.

20 HEARING OFFICER: 531.1001.

21 MR. CANALES: Yeah. 531.1011 basically.
22 That's the statute that gives you the so-called -- some
23 of the definitions. If you want a copy I can print it
24 on the spot.

25 HEARING OFFICER: No, that's okay. Okay.

1 Thank you.

2 MR. CANALES: Yes, Your Honor.

3 HEARING OFFICER: Documentary evidence.

4 Mr. Medlock, do you want to offer your documents.

5 MR. MEDLOCK: At this time I would offer our
6 Exhibits RA through RWW, and I think Mr. Canales has
7 some objections to those.

8 (Exhibit Nos. RA-RWW marked)

9 MR. CANALES: Let me get my sheet, Your
10 Honor.

11 HEARING OFFICER: Mr. Canales, you have
12 submitted written objections.

13 MR. CANALES: Yes, Your Honor.

14 HEARING OFFICER: And you have indicated
15 earlier that these are all of your objections; is that
16 correct?

17 MR. CANALES: Yes, Your Honor.

18 HEARING OFFICER: Mr. Medlock, I would be
19 interested in hearing from you concerning Exhibit RS and
20 concerning Exhibits RHH through RPP.

21 MR. MEDLOCK: With regard to RS, it's a
22 voluntary statement. At this time we can withdraw that.
23 We will not be offering it. And --

24 MR. CANALES: Excuse me. Which one -- you
25 are withdrawing which one.



1 MR. MEDLOCK: RS. And then with regards to
2 RHH through RPP, being that they are news reports we are
3 not offering them to prove the truth of the matter, but
4 we are offering them to show that this is where some of
5 the fraud referral allegations came from.

6 HEARING OFFICER: Okay. Mr. Canales, I
7 don't know if you need to say anything more about that.
8 You can if you want to. All right. Then RS is
9 withdrawn, Exhibits RHH through RPP will be admitted for
10 a limited purpose. They will not be admitted for the
11 truth of any statements made in them, but just to show
12 that these news reports preceded the OIG's action in
13 what was it you said Mr. Medlock?

14 (Exhibit No. RS withdrawn)

15 MR. MEDLOCK: That they may make up some of
16 the basis of the fraud referrals.

17 HEARING OFFICER: Okay. Give me just a
18 minute.

19 MR. CANALES: Can I have a stipulation on
20 that, Your Honor? That none of those -- can I confer
21 with Counsel that none of those stories relate to
22 Harlingen Family Practice.

23 MR. MEDLOCK: I'm sorry.

24 MR. CANALES: I'm asking a stipulation that
25 none of those stories that appear in the Exhibits RHH

1 through PP do not involve or do not mention Harlingen
2 Family Practice.

3 MR. MEDLOCK: That's true.

4 MR. CANALES: He said that's true, Your
5 Honor. Very well.

6 HEARING OFFICER: Very good. All right. So
7 again, they are admitted for a limited purpose. As to
8 Exhibit RO that will be admitted. The objection is
9 overruled, but it will be admitted for a limited purpose
10 not to show the truth of any facts underlying Dr. Evans
11 opinion. Just to show what facts he relied on and to
12 reflect his opinion to the degree that that Exhibit
13 contains any representation of facts about the score
14 sheets, I will not be considering those representations
15 for the truth. So give me just a moment to make note of
16 that. So RS is withdrawn, Exhibits RO and RHH through
17 RPP are admitted for limited purposes. And all other
18 respondent's exhibits are admitted for all purposes.

19 (Exhibit Nos. RA-RR and RT-RWW admitted)

20 HEARING OFFICER: Okay. On to the
21 Petitioners exhibits. Mr. Medlock, do you have
22 objections to the Petitioners exhibits -- they have
23 exhibits 1 through 12.

24 (Petitioner Exhibit Nos. 1-12 marked)

25 MR. MEDLOCK: We were just handed this this



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1 morning, Your Honor.

2 HEARING OFFICER: Do you want to just take a
3 moment?

4 MR. MEDLOCK: Yes.

5 MR. CANALES: Counsel has informed me that
6 number one, he has no objections.

7 MR. MEDLOCK: That is true. Number one, we
8 don't have objection to.

9 MR. CANALES: Number 2 is a letter that was
10 testified, Your Honor, or introduced during the
11 deposition of Dr. Milwee and item number three was a
12 document that was produced by Linda Altenhoff, who was
13 an employee of HHSC, during her deposition and she gave
14 us that e-mail and we would like to offer all three.
15 They all were produced and they are talked about in the
16 depositions and offered during the depositions.

17 HEARING OFFICER: You're offering Exhibits 1
18 through 12, right?

19 MR. CANALES: Yes, Your Honor, but these are
20 the ones -- I know they're not going to have any problem
21 with the rest of them. I just want to try to narrow it
22 down.

23 MR. MEDLOCK: Yeah, with one, and four
24 through 12 we're okay with those, but with regard to two
25 and three we would offer that Counsel prove those up.



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1 MR. CANALES: Well, we'll be proving it up
2 through the deposition of these witnesses. What it is,
3 Your Honor, letter number two to inform the court, this
4 is a letter whereby as a result of the so-called
5 publicity that came up and so forth, the federal OIG,
6 not to be confused with the state OIG, the federal OIG
7 is auditing the so-called prior authorization
8 controversy that's been -- that has occurred. And
9 number three -- and of course this letter was offered
10 during the deposition of Dr. Milwee, he authenticated it
11 and recognized it. He said yes, there it is so it is
12 not something we haven't seen before. Item number three
13 is an e-mail that was produced by Dr. Altenhoff and it
14 was produced to me by Mr. -- by Counsel. He sent it to
15 me and we had an agreement that that could be produced
16 post deposition and I have it and I would like to offer
17 it into evidence.

18 HEARING OFFICER: Who is the e-mail from?

19 MR. CANALES: The e-mail is from Dr.
20 Altenhoff. And Dr. Altenhoff is talking about -- I've
21 got the actual e-mails in a second Your Honor.

22 HEARING OFFICER: Okay.

23 MR. MEDLOCK: We would object that the
24 e-mail was actually not from her. That and we cannot
25 prove who the e-mail was from or cannot initially state.



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1 It's an e-mail questions and it was sent to someone and
2 then that someone sent it to Dr. Altenhoff and so we
3 cannot verify who initially sent the e-mail. And/or
4 they cannot offer that person to prove the foundation of
5 that he e-mail.

6 MR. CANALES: Let me back up. The
7 Altenhoff -- she is asked in the e-mail to respond to a
8 series of questions. In the deposition she says, yes, I
9 responded to those questions. I don't have the e-mail
10 here with me, but I will give it to you and she provided
11 the answers and that's what's important about it and you
12 can see the deposition, Your Honor, she testified these
13 were her answers.

14 HEARING OFFICER: Let's hold on just a
15 second. Let's go back to No. 2. This is a letter from
16 the federal department of Health & Human Services?

17 MR. CANALES: Yes, from the federal.

18 HEARING OFFICER: And Mr. Medlock you have
19 an authentication objection? Is that what your issue
20 is?

21 MR. MEDLOCK: Correct.

22 MR. CANALES: I submit to this court, this
23 letter was offered in the deposition of Dr. Milwee. He
24 recognized it, he saw it, he said, yes, this is a letter
25 that I received. I don't know what the -- this letter



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1 was provided to me by the state. So how can it be a
2 question of authentication. If I may, Your Honor, I
3 have a copy for the court if you want to look at it.

4 HEARING OFFICER: Do you have -- I don't
5 think I have a set of exhibits from you, Mr. Canales; is
6 that right.

7 MR. CANALES: No, you do not, Your Honor,
8 because everything is in -- being that we agreed to
9 everything in the state, these are the only two in
10 addition to what I have listed here. The score sheets
11 and so forth, but you don't have a hard copy of them.

12 HEARING OFFICER: Right. Right. Okay. And
13 just -- I'm just asking am I going to be working off the
14 record copy?

15 MR. CANALES: Yes, Your Honor.

16 HEARING OFFICER: Okay. That's fine.

17 MR. MEDLOCK: Let me just mark these. Can I
18 inquire of the court, Your Honor, your procedure on
19 stickers? Can I --

20 HEARING OFFICER: You can just write on them
21 if you want.

22 MR. CANALES: Let me show Counsel before I
23 give my copies. If I may, Your Honor, I have marked the
24 so-called issues in controversy as P2 as your July 5,
25 2011, letter from the federal department of OIG and P3



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1 is the so-called e-mail that we were talking about.
2 That will be P3 and P1 I believe that there is a P1
3 audit.

4 MR. MEDLOCK: That is correct.

5 MR. CANALES: Let me just see that's the
6 so-called audit.

7 HEARING OFFICER: So as to P2, Mr. Canales,
8 you are saying that in the deposition -- whose
9 deposition was it?

10 MR. CANALES: I believe Mr. Milwee.

11 HEARING OFFICER: And he is who, remind me.

12 MR. CANALES: Mr. Milwee is the HHSC state
13 Medicaid director.

14 HEARING OFFICER: Okay. And he said what
15 about this letter?

16 MR. CANALES: He acknowledges having
17 received that particular document. He acknowledges that
18 he is under an audit. He acknowledges that they are
19 attempting to respond to that audit. That particular
20 letter was provided to me by the state.

21 HEARING OFFICER: Mr. Medlock, do you have
22 any dispute about Mr. Canale's representation of what
23 was said in the deposition about this letter.

24 MR. MEDLOCK: No.

25 HEARING OFFICER: I'm going to overrule the

1 objection as to P2. P3 --

2 MR. CANALES: P3, Your Honor, is the, we
3 called it Altenhoff e-mail. And the Altenhoff e-mail, I
4 had beforehand, Your Honor, and that's all again in the
5 deposition. I had -- I had requested pursuant to the
6 Open Records Act various e-mails of some of these
7 individuals. And I received that e-mail, but did not
8 have the answers. The e-mail said send these questions
9 to Dr. Altenhoff and she will respond to it. And I
10 believe the applicable one is section -- is question
11 number seven and question number seven there's a
12 question there to Dr. Altenhoff and she responds and
13 then post deposition during the deposition, forgive me,
14 Your Honor. I said, can you give me a copy of your
15 response and said sure. Can you send it to me? Yes. I
16 said send it to me through your Counsel and she said,
17 yes. So Mr. Medlock received it from her and she sent
18 it to me with the understanding that's the e-mail that
19 she's talking about. So what's important about that is
20 that Dr. Altenhoff who is a -- forgive me at this
21 moment. She's either HHSC or OIG, third agency, but her
22 job is to go around to go to these hearings that are
23 called stakeholder hearings, where they convene all
24 the -- they convene the orthodontist and they explain
25 too them what is happening in their world. Kind of like



1 you're continuing education. In this particular case,
2 it's very important that what she responds because she
3 has been designated as a witness in this case. That's
4 why I took her deposition and the question number seven.

5 HEARING OFFICER: I'm less interested in the
6 significance of this e-mail to the case at this point
7 than I am just in the authentication question.

8 MR. CANALES: Very well. Question number
9 seven, Your Honor, the whole issue here is going to be
10 before the court is, what is the state's position
11 regarding the definition of ectopic eruption. Who
12 says -- what is it. And here is a state's version of
13 the interpretation of it. Question number seven --

14 HEARING OFFICER: Right. I see that.

15 MR. CANALES: -- they ask her -- I said we
16 need to know -- forgive me. I'm going to read the whole
17 sentence for the record.

18 HEARING OFFICER: That's okay I don't think
19 you need to.

20 MR. CANALES: She responds -- she responds,
21 I don't believe they're grossly out of the long axis
22 has ever been defined by Texas Medicaid. That is very
23 very important.

24 HEARING OFFICER: Right. And Mr. Medlock,
25 your objection is that you can't tell from this document

1 really what it is?

2 MR. MEDLOCK: Well, not only that because
3 the original e-mail that he was talking about in her
4 deposition was everything with the exception to Linda
5 Altenhoff and we think that this phrase misrepresents
6 the entirety of the definition contained in the Medicaid
7 policy. And as such the best evidence would be, you
8 know, Dr. Altenhoff to testify to what her actual
9 statements were and that she actually responded to these
10 questions.

11 HEARING OFFICER: Okay. I'm sorry. I'm
12 having trouble following this. So do you dispute that
13 this is her talking about these things here?

14 MR. MEDLOCK: Her answer is no, but what we
15 would dispute also is that the foundation laid for this
16 e-mail and that this could be mischaracterized as the
17 entirety of the definition of in question number seven
18 and she would be the best to represent what the accurate
19 Medicaid policy is.

20 HEARING OFFICER: Two questions. I think
21 maybe I'm really -- I understand this is an e-mail from
22 Lee Goodson. Is Lee Goodson characterizing what Dr.
23 Altenhoof thinks or is this Dr. Altenhoff's language in
24 number seven?

25 MR. CANALES: That's her language, Your



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1 Honor.

2 MR. MEDLOCK: Her language is only the part
3 which starts, open bracket comma, Altenhoof, Linda and
4 then forward at that point. Everything else is not her
5 language in any of the responses.

6 HEARING OFFICER: Okay. And who's language
7 is it? It's Lee Goodson's language?

8 MR. MEDLOCK: The e-mail -- I mean, we could
9 only assume, but we do not know, we do not know who came
10 up with the questions.

11 MR. CANALES: Well, Your Honor, I have the
12 deposition here in my mind.

13 HEARING OFFICER: Okay. So it's question
14 and then bracket and then after the bracket is a
15 supposed answer?

16 MR. MEDLOCK: Correct.

17 HEARING OFFICER: Oh, okay.

18 MR. CANALES: And that answer is her answer.

19 HEARING OFFICER: Right.

20 MR. MEDLOCK: The bracket is something she
21 put in there.

22 HEARING OFFICER: Was she deposed?

23 MR. CANALES: Yes.

24 HEARING OFFICER: Did she talk about this?

25 MR. CANALES: Yes.

1 MR. MEDLOCK: She talked about it that she
2 could not, you know, remember if she did see this e-mail
3 and if she did provide answers to it. That's what she
4 testified in her deposition.

5 MR. CANALES: We're going to play the
6 deposition, Your Honor, for the court.

7 HEARING OFFICER: I tell you what --

8 MR. CANALES: I have it highlighted.

9 HEARING OFFICER: I understand your
10 concerns, Mr. Medlock and what I'm going to do is
11 formally I'm going to overrule your objection. I'm
12 going to admit this, but I am most certainly going to
13 take your objection into consideration with respect to
14 any weight I give this. I'll look at the deposition and
15 we'll figure it out.

16

17 MR. MEDLOCK: Thank you, Your Honor.

18 MR. CANALES: Two more things for
19 housekeeping, Your Honor.

20 HEARING OFFICER: Just before we get to
21 that, Petitioners Exhibits 1 through 12 are admitted.

22 (Petitioner's Exhibits 1-12 admitted)

23 HEARING OFFICER: Yes, Mr. Canales.

24 MR. CANALES: I was going to hand over to
25 the court, Your Honor, for the court's noontime reading



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1 enjoyment. I've highlighted page 32 of her deposition,
2 what I think are the applicable parts of -- regarding
3 the issues.

4 HEARING OFFICER: Well, you know I've ruled
5 on the objection and what I prefer you would do is make
6 an argument in closing argument about that.

7 MR. CANALES: Yes, Your Honor.

8 HEARING OFFICER: If you think that's
9 important.

10 MR. CANALES: We are going to play part of
11 the deposition anyway. We'll play it. If I may, Your
12 Honor, one more thing.

13 HEARING OFFICER: Yes.

14 MR. CANALES: Here's a copy of P1, it's a
15 so-called audit that we are talking about. Here's P1,
16 Your Honor.

17 HEARING OFFICER: Thank you. Okay. All
18 right. Mr. Medlock, who is your first witness.

19 MR. MEDLOCK: The first witness would be
20 Martin Porras.

21 HEARING OFFICER: Okay. And about how long
22 do you think his direct is going to take?

23 MR. MEDLOCK: Maybe anywhere between 20 and
24 30 minutes.

25 HEARING OFFICER: Okay. What I'm trying to



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1 figure out is should we take lunch and start with
2 witnesses afterward or would y'all prefer to get a
3 start?

4 MR. MEDLOCK: I think it would probably be
5 better to start afterwards.

6 HEARING OFFICER: Okay. What do you think?

7 MR. CANALES: Afterwards.

8 HEARING OFFICER: Why don't we take one hour
9 and come back at 12:45. We are off the record. Thank
10 you.

11 (Brief recess.)

12 HEARING OFFICER: We're back on the record
13 in docket No. 529123180. After our lunch break and we
14 have another fact witness for the Inspector General,
15 Marcus Holley, is he present? Mr. Holley, could you
16 just step right overhear, please. I'm going to go ahead
17 an swear you in. Could you raise your right hand,
18 please?

19 (Witness sworn.)

20 HEARING OFFICER: You're going to be asked
21 to remain outside the hearing room until the time of
22 your testimony. If you could please, do not discuss the
23 subject matter of this case or your testimony with any
24 other of the witnesses in the case while the proceeding
25 is going on.



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1 A. Yes.

2 HEARING OFFICER: Thank you. Go ahead and
3 step out. I wonder if we ought the get the door.

4 MR. CANALES: May I address the court, Your
5 Honor?

6 HEARING OFFICER: Yes.

7 MR. CANALES: Marcus Holley I believe his
8 name is, H-O-L-L-E-Y. I have no recollection of him
9 being listed as a witness. Maybe Counsel can refresh my
10 memory if I've missed it. If he is not listed as a
11 witness I think it's too late to call him today as a
12 witness.

13 HEARING OFFICER: Is there discovery on
14 point?

15 MR. MEDLOCK: Yes. He is going to be
16 testifying with regard to the issue that we discussed on
17 Friday, the fraud referral and the letters sent to MFUC.
18 He works for that agency and he can testify to the
19 letters that we submitted to you on Friday.

20 MR. CANALES: Well, but we did ask for
21 discovery of the witnesses. We asked for disclosures.
22 And that's the problem that we get at the very end
23 someone comes in like that. So we would object to
24 calling in Mr. Holley as a witness in this case because
25 I've had no opportunity to know what he is going to be

1 talking about. He was not -- I'm trying to find my
2 discovery real quick so I can show the court, but I
3 think he will concede he was never listed as a witness
4 in this case.

5 HEARING OFFICER: Right. There was
6 discovery on point asking for the witnesses.

7 MR. MEDLOCK: Well, he has no personal
8 knowledge of the OIG's investigation. The only thing
9 that he will be testifying to is receipt of the letter
10 from the OIG, the fraud referral, and the certification
11 that MFCU made back to us of the investigation.

12 HEARING OFFICER: But I guess my question
13 is, there was discovery on point about the witnesses to
14 be called in this case, correct?

15 MR. MEDLOCK: Just general fact witnesses
16 regarding the investigation of the case with regard to
17 the payment hold.

18 HEARING OFFICER: I tell you what.
19 Mr. Canales, why don't you when you get a chance -- when
20 is Mr. Holley going to be called as a witness?

21 MR. MEDLOCK: He will be after Dr. Evans,
22 our expert, so he will be fourth.

23 HEARING OFFICER: Why don't -- Mr. Canales,
24 why don't you gather up, like at a break or something,
25 and make that argument an re-urge that argument later,

1 okay?

2

3 MR. CANALES: Yes, Your Honor, I will to
4 that.

5 HEARING OFFICER: Okay. All right. So are
6 we calling Mr. Porras at this point?

7 MR. MEDLOCK: Yes. Today we call Martin
8 Porras.

9 HEARING OFFICER: Mr. Porras, if you'll come
10 up here and have a seat, right here. You have already
11 been sworn in. You remain under oath.

12 A. Yes.

13 HEARING OFFICER: Whenever you're ready,
14 Mr. Medlock.

15 DIRECT EXAMINATION

16 BY MR. MEDLOCK:

17 Q. How are you doing?

18 A. Just fine.

19 Q. Can you please state your name and spell it for
20 the record.

21 A. It's Martin Porras, M-A-R-T-I-N, last name is
22 P-O-R-R-A-S.

23 Q. Can you briefly describe your educational
24 background.

25 A. I have a BA in government.



1 Q. Anything else? Further degrees, masters?

2 A. No.

3 Q. Can you give me your prior work experience?

4 A. Prior work experience. I've been with the Health
5 & Human Services Commission for about 18 years.

6 Q. And what are the different titles of the jobs
7 that you've had?

8 A. I started off as an eligibility specialist and
9 then I came into OIG. Conducted Medicaid recipient
10 fraud and then finally I got into the Medicaid provider
11 fraud area with the OIG MPI.

12 Q. And how long have you been with the OIG MPI unit?

13 A. With the OIG MPI Unit approximately 9 years.

14 Q. And what is your current title with the OIG?

15 A. I am an investigator 7.

16 Q. What are some of your duties as an investigator
17 for the OIG MPI Unit?

18 A. Primarily what I do is I work full scale
19 investigations of Medicaid for fraud, waste, and abuse
20 dealing with specifically provider fraud.

21 Q. Now, as your capacity as an investigator for the
22 OIG, are there any trainings that you attend?

23 A. As they come up, we attend different trainings,
24 dealing with different focuses on investigative
25 techniques, interviewing skills, case presentations,

1 things of that nature. Trends.

2 Q. All right. Do any of these trainings or seminars
3 that you attend deal with issues of fraud, waste, and
4 abuse in the Medicaid area?

5 A. They do.

6 Q. So it's safe to say you've had training and
7 experience with regard to investigating fraud?

8 A. Yes.

9 Q. You mentioned something that you investigate full
10 scale cases. How long would a full scale case take from
11 start to completion?

12 A. It can take anywhere from a year or two depending
13 on the complexity.

14 Q. So it's safe to say these cases are complex in
15 nature?

16 A. Yes, they are.

17 Q. And they take a lot of time to investigate?

18 A. They do.

19 Q. Currently at any given time, how many cases do
20 you have assigned to you?

21 A. I would say between 20, 25.

22 Q. And in your time here at the OIG, about how many
23 times or how many cases have you completed your
24 investigations on?

25 A. I would think between full scale, between ten,

1 15.

2 Q. With regard to this case, how did you become
3 involved in this case?

4 A. I became involved -- it was assigned to me from
5 management and it's just like any other case that we
6 receive, you know, we do preliminary research audit and
7 move forward from there as we see appropriate.

8 Q. So you've gotten assigned this case. With regard
9 to the provider Harlingen Family Dentistry, how did you
10 begin your investigation?

11 A. I began this as I do with other investigations,
12 you know, you familiarize yourself with the nature of
13 the complaint, look at the manuals to the sections that
14 pertain to the provider type in this case, dentistry
15 specifically orthodontics. And that's how I began.
16 Once we decide to move forward with the case, we send a
17 request to our investigative -- investigative data and
18 quality assurance unit. They do a workup on it. Get
19 more specific information on the provider, provider
20 type, TPI's things of that nature. At that point they
21 will generate a list, a records request that we use to
22 move forward with the case.

23 Q. Now, you say that once you've -- what you just
24 said, once you kind of determine a case has merit, what
25 is a determination that a case has merit?



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1 A. Usually by the time it reaches full scale status
2 our intake unit has pretty much validated the -- that
3 the case has merit. We look to see if there is a
4 program violations and that's how we move forward with
5 that.

6 Q. So would it be fair to say that by the time it
7 gets to full scale and a lot of the allegations and
8 complaints have been verified?

9 MR. CANALES: Judge, I know there's no jury
10 and so forth, but I just -- the inner part of me is
11 leading. I know the court is-- that's a lot of leeway
12 on the very beginning of preliminary questions. I'm not
13 one to really get up and complain constantly, but these
14 questions are a little bit too much leading, a little
15 bit too much suggestion in the answers. I would object
16 to the from of the question as leading. I don't plan to
17 do it constantly, you know, I know the court -- and
18 we're at the issues, but.

19 HEARING OFFICER: I'll sustain the objection
20 this time. Can you rephrase, Mr. Medlock.

21 MR. CANALES: Thank you.

22 Q. (By Mr. Medlock) I'll just move on. You said as
23 part of your investigation you familiarize yourself with
24 manuals?

25 A. Yes.

1 Q. May I approach?

2 HEARING OFFICER: Yes.

3 Q. (By Mr. Medlock) I'm going to hand you what's
4 already been admitted Exhibit RX, State's Exhibit RX.
5 Could you briefly tell the court what this exhibit is.

6 A. It appears to be a copy of the 2007 Texas
7 Medicaid Provider Procedures Manual. Specifically the
8 sections on provider enrollment and responsibilities and
9 also Section 19 on the section for dentist.

10 Q. What is the significance of this manual?

11 A. The manual is -- it sets out the rules and
12 regulations that the providers are supposed to abide by
13 whenever participating in the Medicaid program.

14 Q. As part of your investigation, did you review a
15 copy of this manual?

16 A. Yes.

17 Q. Did you review other years of the manual?

18 A. I believe I looked through from 2007 through
19 2011.

20 Q. Were those the dates of service in this
21 investigation?

22 A. Yes.

23 Q. If you could turn to the Bates numbered page
24 RX60?

25 A. Okay.



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1 Q. Could you read the highlighted part, I believe it
2 starts with 19.22 orthodontic services TH steps?

3 A. Yes.

4 Q. Could you read that first -- the first couple of
5 highlighted things for me there?

6 A. "19.22.1 Mandatory prior authorization. Prior
7 authorization is required for TH steps orthodontic
8 services except for procedure code D8660."

9 Q. And what does that mean?

10 A. That in order for a dental provider to provide
11 orthodontic services, that they need to be prior
12 authorized or approved by TMHP.

13 Q. And there's another highlighted sentence right
14 after the next paragraph that starts with prior
15 authorization. Can you read that sentence for me,
16 please?

17 A. "Prior authorization is a condition for
18 reimbursement. It is not a guarantee of payment."

19 Q. And what does that mean?

20 MR. CANALES: I'm going to object to form of
21 the question to this witness, Your Honor. I don't know
22 that he's competent to be able to give us an
23 interpretation of what it means. It speaks for itself
24 of what it says. We object to the witness.

25 MR. MEDLOCK: I would say that as an

1 investigator who deals with these manuals every day that
2 he is extremely qualified to understand what this is
3 because as an investigator he has to interpret this with
4 regard to his investigations.

5 MR. CANALES: I think if he could give us
6 his interpretation it would be his personal
7 interpretation, it could be somebody else. If he has
8 got an official policy of what the interpretation is so
9 be it, but this is not asking for an official
10 interpretation. He's asking what does it means to him?
11 What it means to him is not material relevant.

12 HEARING OFFICER: I'm going to overrule the
13 objections. I'll consider it with respect to weight,
14 but I'm going to allow the witness to answer. You can
15 go ahead.

16 Q. (By Mr. Medlock) Could you please. What does
17 that mean?

18 A. I understand that to mean that in order for --
19 it's one of the prerequisites for getting reimbursement
20 is prior authorization and then it adds there that it's
21 not a guarantee of payment.

22 Q. Okay. As part of your investigation, do you
23 request any other documents?

24 A. Yes. We typically request the provider
25 agreement. That's the TMP, Texas Medicaid Provider

1 enrollment agreement, enrollment documents. Sometimes
2 we request certified copies of licenses as appropriate
3 also.

4 Q. As a part of this investigation, did you request
5 the prior enrollment -- a provider enrollment agreement?

6 A. Provider enrollment agreement was requested from
7 the intake unit. So once I received this full scale
8 investigation, that had already been requested.

9 Q. Okay. I'm going to hand you what's been marked
10 RI. May I approach?

11 HEARING OFFICER: Yes.

12 MR. MEDLOCK: I'm going to hand copies to,
13 Your Honor, because this is part of a disk and it's got
14 voluminous copies.

15 HEARING OFFICER: Thank you.

16 Q. (By Mr. Medlock) Can you briefly describe for
17 the court what this document is.

18 A. It appears to be a Medicaid provider agreement
19 for Harlingen Family Dentistry.

20 Q. I will direct you to the first page, page 53
21 under section 1.1, agreements and documents constituting
22 agreement. And there's a highlighted portion there.
23 Could you please read that sentence for the court?

24 A. Yes. "Provider agrees to comply with all of the
25 requirements of the provider manual as well as all state

1 an federal laws and amendments governing or regulating
2 Medicaid."

3 Q. Thank you. If you flip to the next page, page 54
4 or Bates stamp 54 under 1.2.3, could you read the first
5 sentence that's highlighted?

6 A. It says, "This agreement is subject to all state
7 and federal laws and regulations relating to fraud and
8 abuse in healthcare and the Medicaid program."

9 Q. Thank you. I want the go back to Exhibit RX for
10 a second. If you turn to page 61 under the section --
11 I'm sorry. Flip the page, the Bates stamped page 61,
12 under the section 19.22.3 benefits and limitations,
13 could you read that highlighted portion right there?

14 A. Yes. "Orthodontic services include the
15 following: Correction of severe handicapping
16 malocclusion as measured on the handicapping labial
17 lingual deviation index." It says, "Refer to page 19-47
18 for information on how to score the HDL. A minimum
19 score of 26 points is required for full banding
20 approval. Only permanent distension cases are
21 considered."

22 Q. On the second half of that column I think there's
23 another highlighted bullet point that starts with
24 orthodontic services, could you read that as well?

25 A. "Orthodontic services for cosmetic purposes only

1 are not a benefit of Medicaid or TH steps."

2 Q. Thank you. I think that's all with that. Now,
3 how did you determine that records needed to be
4 collected this case?

5 A. Can you explain?

6 Q. Well, records collected in this case?

7 A. I did collect records.

8 Q. Did you generate a list in order -- which records
9 to collect in this case?

10 A. Like I said earlier, the IDQA unit that does this
11 part of the investigation provided me with a list. They
12 generated the list.

13 Q. So this IDQA department, is that contained in the
14 office of the Inspector General?

15 A. Yes, it is.

16 Q. So they generate this list? Once you got this
17 list, what did you do with the list?

18 A. Once I got the list, I drafted the record request
19 letter and associated documents. This list accompanied
20 that records request letter and I plan to collect
21 records on it.

22 Q. Okay. So you went down and you collected the
23 records. Is that what you're saying?

24 A. Yes.

25 Q. About how many records did you collect in this

1 case?

2 A. I believe it was 161 patient records and the
3 corresponding dental models. I think there was about 20
4 or so missing of the dental models, but all the patient
5 records.

6 Q. Did you collect all the records in one day?

7 A. Yes.

8 Q. Did you get an affidavit for those records?

9 A. I did.

10 Q. May I approach?

11 HEARING OFFICER: Yes.

12 Q. (By Mr. Medlock) I'm going to hand you what's
13 states marked RT. Can you briefly describe for the
14 court what this document is?

15 A. It's a copy of the records affidavit and an
16 evidence receipt along with the record request list that
17 I filled out when I collected the records.

18 Q. And, Your Honor, I would also submit to you that
19 part of RT is the actual patient files which have
20 already been admitted.

21 HEARING OFFICER: Right.

22 Q. (By Mr. Medlock) So you've gone down to the
23 provider, you've collected these records, what did you
24 do after that?

25 A. Well, once we filled out the records affidavit

1 and the evidence receipt, I returned back to Austin and
2 I submitted all the information -- all the case records
3 and dental models and miscellaneous business records to
4 the evidence coordinator and they were placed in the
5 evidence room under lock and key.

6 Q. So you brought the evidence back to Austin. It's
7 under lock and key. I'm going to ask you to go back to
8 RX one last time. Under page 60 or the page Bates 60.

9 A. Okay.

10 Q. On the bottom right hand side there, there's a
11 section that talks about what a provider must submit for
12 prior authorization. Can you read that highlighted
13 portion?

14 A. "Request for orthodontic services must be
15 accompanied by all the following documentation. An
16 orthodontic treatment plan, cephalometric radiograph with
17 tracing models, completed and scored handicapping labial
18 lingual deviations sheet, diagnosis of angle class,
19 26 points required for approval of noncleft pallet
20 cases. Facial photographs, treatment plan that must
21 include all procedures required to complete full
22 treatment. For example, extractions orthonathic
23 surgery, upper and lower appliances, monthly adjustment
24 appliance removal, if indicated. Special orthodontic
25 appliances, bracket replacements, et cetera, full series



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1 of radiographs or a panoramic radiograph. Any
2 additional pertinent information as determined by the
3 dentist or requested by TMHP's dental director."

4 Q. Thank you. As part of your investigation, did
5 you look to see if the patient records that you
6 collected from the provider contain these things?

7 A. Yes, I did.

8 Q. Did you know -- did you observe any missing
9 records or any of these missing elements within the
10 records?

11 A. There might have been a missing HLD score sheet
12 or two. I don't recall exactly. But I know that the
13 majority of these things were in there.

14 Q. Are there program violations for incomplete
15 records?

16 A. For incomplete records? I understand that
17 there's certain documents that are required to be
18 included in every patient records, so, yes, there is.

19 Q. After you've collected the records and you put
20 them in the evidence room, did you give any of these
21 records to a consultant for review?

22 A. Yes.

23 Q. Who was that consultant?

24 A. The case was assigned to Dr. Charles Evans.

25 Q. Did he, in fact, take the records?

1 A. He did.

2 Q. Did you give him any instructions about how to
3 review the files that you had given him?

4 A. I did not.

5 Q. Do you know if he reviewed the records?

6 A. Yes.

7 Q. Approximately how long did he review the records?

8 A. It was three or four weeks.

9 Q. Did he record his findings anywhere?

10 A. Yes, he did.

11 Q. Where would he have recorded any findings?

12 A. He recorded his findings on an excel work sheet
13 and also I believe he took measurements and filled out
14 the HLD score sheets.

15 Q. So after Dr. Evans finished with the review, what
16 did you do as part of your investigation?

17 A. After he finished his review, I took a look at
18 his findings and found that he had determined that I
19 believe in 84 out of the 85 records that he had reviewed
20 that they did not meet the prior authorization
21 requirement of 26 points on these HLD score sheets. And
22 as a result of that, I determined that this was a
23 credible allegation of fraud.

24 MR. CANALES: I object to the form of the
25 question. He's rambling, Judge, to what he determined.

1 No question is asked.

2 MR. MEDLOCK: I asked what he determined
3 from his investigation and he was giving an answer
4 before he was interrupted.

5 HEARING OFFICER: I'll overrule the
6 objection. You said you made a determination of --

7 Q. (By Mr. Medlock) You made a determination of the
8 credible allegation.

9 A. So as per our instructions in our department,
10 once we find a credible allegation of fraud we're
11 supposed to present that information to our sanctions
12 division in order to implement a vendor payment hold.

13 Q. Did you recommend anything in this meeting?

14 A. All I did was present information stating that,
15 you know, these were the consultant's findings and that
16 as per his findings, you know, this is -- it didn't meet
17 the prior authorization requirements and that it should
18 never have been authorized or paid out.

19 Q. Did you recommend a payment hold?

20 A. Yes.

21 Q. Was a provider actually placed on hold?

22 A. He was.

23 Q. Is the hold 100 percent?

24 A. Initially it was 100 percent, but an adjustment
25 was made later to 40 percent.



1 Q. And what was the adjustment to 40 percent for?

2 A. I believe sanctions made a request to implement
3 the payment hold on 100 percent, but only of the
4 orthodontic codes and as it turned out, TMHP isn't able
5 to separate those. Because I believe the TPI's it
6 encompassed both general dentistry and orthodontic
7 services. So we determined that about 40 percent of
8 those billings were due to orthodontic services and I
9 think that's why it was decided go with 40 percent
10 instead of 100.

11 Q. Does the office of Inspector General make fraud
12 referrals to the Texas attorney general's office
13 Medicaid Fraud Control Unit?

14 A. Yes.

15 Q. Do you know if a fraud referral was made in this
16 case?

17 A. It was.

18 Q. May I approach?

19 HEARING OFFICER: Yes.

20 Q. (By Mr. Medlock) I'm handing you State's Exhibit
21 RVV. Could you briefly describe what this document is?

22 A. Yes, it's a copy of --

23 MR. CANALES: Excuse me, Doctor. Now, that
24 he's identified it can I just look at it. I think it is
25 one of the ones I made an objection to. Let me just

1 confirm.

2 Yes, Your Honor.

3 MR. MEDLOCK: Actually you did not make an
4 objection to that and it was admitted earlier.

5 MR. CANALES: I thought I made a written
6 objection to RVV?

7 MR. MEDLOCK: Not to that one.

8 MR. CANALES: Then I will object now. It
9 wasn't admitted before.

10 MR. MEDLOCK: The judge already ruled on it.

11 HEARING OFFICER: RVV was admitted.

12 MR. CANALES: Then I made a mistake. I
13 should have objected to it. I will now re- object to
14 it. Consider my argument. RVV is that letter that was
15 I think turned over to us last weekend. If this is the
16 letter where I believe that they are trying to establish
17 a connection with the OIG. We would object to it being
18 not timely produced. We would object to it outside the
19 cause of action that we complained about.

20 HEARING OFFICER: I'm going to overrule the
21 objection. RVV is in.

22 Q. (By Mr. Medlock) Could you, once again, briefly
23 describe what this document is?

24 A. It is a referral letter to the office of the
25 attorney general's office from our office regarding the



1 suspension of payments in the case of Harlingen Family
2 Dentistry.

3 Q. In your experience as an investigator, do you
4 make fraud referrals to the state's Medicaid Fraud
5 Control Unit?

6 A. I have.

7 Q. Are these cases generally accepted by the
8 Medicaid Fraud Control Unit?

9 A. Yes, they are.

10 Q. So have you completed your investigation in this
11 case?

12 A. Yes, I have.

13 Q. Okay. At the completion of your investigated
14 case, do you make recommendations?

15 A. I do.

16 Q. Okay. What are some of those recommendations
17 that you've made?

18 A. On this case?

19 Q. Yes.

20 A. I believe the recommendation was to -- that there
21 were program violations. Specifically dealing with the
22 HLD score sheets and them not meeting the prior
23 authorization requirements. There's a recommendation to
24 collect on an overpayment range of an overpayment that
25 was identified. And I believe we just recommended that



1 sanctions, you know, deal appropriately with any
2 penalties or sanctions.

3 Q. Was your findings also based on some of the
4 recommendations and findings that Dr. Evans submitted to
5 y'all?

6 A. Yes. Primarily.

7 Q. And based on -- if Dr. Evans findings were true,
8 were there misrepresentation on the HLD score sheets?

9 A. If Dr. Evans calculations are correct, then, yes,
10 there were -- the HLD score sheets had 26 points or
11 above when they shouldn't have. They shouldn't have
12 been.

13 Q. And if those calculations are correct, would the
14 provider have been reimbursed for those services?

15 A. They wouldn't have been entitled to any
16 reimbursement at all.

17 Q. And if the Petitioner had submitted these HLD
18 score sheets with the scores that Dr. Evans had found,
19 would TMHP have granted prior authorization?

20 A. Can you say again, please.

21 Q. If the Petitioner in this case had submitted
22 those same prior authorizations, but with the scores
23 Dr. Evans found, would TMHP have granted prior
24 authorization of those services?

25 MR. CANALES: I'm going to object to the

1 form of the question. Ask the witness to speculate a
2 third parties state of mind. What would the image do --

3 MR. MEDLOCK: He's had the ability to see
4 and he knows what TMHP does and he knows what Dr. Evans
5 scored and what the Petitioner scored. And it's been
6 clear that 26 points is the defining line with regard to
7 HLD score sheets so it's a calculation of a number and
8 you can determine that.

9 MR. CANALES: Forgive me, Your Honor, but
10 that might be his position, but the question to this
11 witness is he's asking this witness to speculate or give
12 us a state of mind what a third party would do and I
13 think it's un permissible. We object.

14 HEARING OFFICER: Well, I understand your
15 objection. I think Mr. Medlock, if you would just
16 rephrase and confine your question to the witness's
17 understanding about what would have happened based on
18 the rule about the 26 points I think would be fine. So
19 if you will just rephrase.

20 Q. (By Mr. Medlock) If any of the scores that
21 Harlingen had submitted were under 26 points, would they
22 have been granted prior authorization?

23 A. I don't believe so. I think there's exceptions
24 made if they submit other paperwork or extenuating
25 circumstances. I think I've heard that they may be



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1 approved, but generally if it doesn't meet the 26, no.

2 Q. As part of your investigation you also reviewed
3 Dr. Evans report; is that correct?

4 A. Yes.

5 Q. Did you know -- did Dr. Evans make any findings
6 of dysfunction with regard to the patient?

7 MR. CANALES: I'm going to object to what
8 Dr. Evans did or did not do, Your Honor. Dr. Evan's is
9 here to testify and we object it would be hearsay.
10 Dr. Evans can testify himself. We do not need this
11 gentleman to be interpreting Dr. Evan's mind.

12 HEARING OFFICER: Well, I'm not sure where
13 this is going and it seems like a pretty benign
14 background question. If the witness's answer doesn't
15 comport with you understanding of what was in Dr. Evan's
16 report, make another objection, but I'm going to allow
17 him to answer at this point.

18 Q. (By Mr. Medlock) The question was, in reviewing
19 Dr. Evans report, did he find any dysfunction with the
20 patients?

21 A. I'm not sure what you mean by dysfunction.

22 Q. Well, did he make any findings of dysfunction?
23 Like there was any functionality problems with the
24 patients?

25 MR. CANALES: Leading. I'm going to object.

1 HEARING OFFICER: Overruled.

2 MR. CANALES: He doesn't know.

3 THE WITNESS: I don't recall. I think the
4 majority had to do with just the points that should have
5 been scored.

6 MR. MEDLOCK: I pass the witness. Subject
7 to redirect.

8 CROSS EXAMINATION

9 BY MR. CANALES:

10 Q. You've got some of your document there in front
11 of you. I just want to be able to clarify something.
12 Let's start off with the I believe the provider
13 agreement for Harlingen. Do you have that in front of
14 you.

15 A. Yes, sir.

16 Q. What is the exhibit number of that one?

17 MR. MEDLOCK: That is RI and it's Bates
18 stamped 53 through 61.

19 MR. CANALES: That's correct, Your Honor.

20 Q. (By Mr. Canales) RI page 53. Do you have that
21 in front of you, sir?

22 A. Yes, sir.

23 Q. This particular provider agreement, is a provider
24 agreement signed by Harlingen, correct? Harlingen
25 Family Dentistry, right?



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1 A. Yes, sir.

2 Q. Can you give us a date of when this agreement was
3 entered into and signed? Give yourself time, I'm going
4 to refer you to page 58, 59. Do you see it there in the
5 back? Can I approach, Judge, just to kind of help him
6 out a little bit?

7 HEARING OFFICER: Yes.

8 THE WITNESS: Does it start with
9 determination?

10 MR. CANALES: Yeah. It's not stapled. What
11 they gave you is not stapled. Do you want to staple it?
12 It will probably be better for us to work with.

13 HEARING OFFICER: I have a stapler right
14 here.

15 Q. (By Mr. Canales) I'll put all this together right
16 here that way we don't lose it. All right. We're on
17 the right document.

18 Next to the end it doesn't show too clear what
19 the Bates number is, I think it's 59. But do you see a
20 date on that particular document?

21 A. It's October 8, 1999.

22 Q. All right. So is it your position that this
23 document is a document that controls in this case, this
24 document is dated 1999?

25 A. I believe so. I know that there's -- through the

1 years there's other documents that TMHP has.

2 Q. I understand that, but right now the document
3 you're referring to is this particular RRI document, is
4 a document is dated 1999?

5 A. Yes.

6 Q. Correct. Of course. And do you know whether or
7 not at this point in time, 1999, any of the regulations
8 that we're talking about here today were they applicable
9 way back then. Do you know?

10 A. I don't know.

11 Q. Okay. One more thing. You've told us that you
12 went to the Harlingen Family Dentistry and I don't think
13 you gave us a date. Do you have a document to refresh
14 your memory when you showed up at Harlingen?

15 A. I believe it was July 25th, 2011, but let me
16 double check.

17 Q. All right. We have a receipt and the receipt is
18 signed July 29, 2011. Does that kind of refresh your
19 memory?

20 A. That's when I collected the records which was a
21 Friday.

22 Q. Let's explain to the court what you did. When
23 you arrived in Harlingen, Texas, at the office of
24 Harlingen Family Dentistry, did you make a surprise
25 appearance or did you make an appointment there



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1 beforehand?

2 A. It was unannounced.

3 Q. Unannounced. So when you made an unannounced
4 appearance did the staff attempt to address your needs?

5 A. Yes.

6 Q. And when you appeared unannounced, I take it you
7 gave them a subpoena or you gave them some type of piece
8 of paper requesting certain documents?

9 A. A records request letter. The list.

10 Q. And you requested that they provide those
11 immediately to you?

12 A. I believe the deadline was three days.

13 Q. And you gave them a period of time to collect
14 these records? You gave them a period of time to
15 collect the records?

16 A. Yes, sir.

17 Q. And the collection of the records included the
18 patient's files and the molds?

19 A. Yes.

20 Q. And do you know whether or not some of these
21 patients files had been closed or not for a period of
22 time?

23 A. If they had been closed.

24 Q. Yeah. In other words, they're not active
25 patients anymore?



1 A. No. I didn't know.

2 Q. All right. And so the time period when you
3 showed up in July 29th, of '11, were you asking for
4 records that were -- that were for current records or
5 for a period the last five years?

6 A. On July 25th, the letter asked for the patients
7 that were on this records request list and for a
8 definite investigation period which I believe was June
9 of '07 through May of 2011.

10 Q. They were going back about five years?

11 A. More or less, yes, sir.

12 Q. And so in summary, would you say that the staff
13 of Harlingen Family Dentistry, were they cooperative
14 with you?

15 A. Yes.

16 Q. And did they attempt to drop whatever -- let me
17 back up. So whenever you showed up that was during a
18 regular practice dentistry day; is that correct?

19 A. Yes, it was.

20 Q. So did they assign somebody to respond to your
21 needs?

22 A. Yes.

23 Q. All right. And it took a couple of days to
24 respond to your needs?

25 A. Yes.



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1 Q. Did they refer -- did they explain to you that
2 not all the files were there at the office. They were
3 somewhere in storage?

4 A. I don't recall. I'm sorry.

5 Q. Do you recall whether or not all the molds were
6 there at the location or were they in storage somewhere
7 else?

8 A. I'm sorry. I don't recall.

9 Q. Very well. At the end of all this you signed --
10 did you ask the staff to sign some type of receipt, an
11 inventory receipt of what you took?

12 A. Yes, I did.

13 Q. Very well. And there were some items that were
14 not there as you told us, right?

15 A. Correct.

16 Q. Do you know whether or not a subsequent search
17 found those documents and sent them over to I believe to
18 Mr. Medlock?

19 A. I'm not aware of that.

20 Q. Did you ever go back and see whether or not
21 100 percent of the molds were provided and 100 percent
22 of the HLD forms were provided?

23 A. No.

24 Q. Do you realize that all -- everything was
25 provided that you asked for?

1 A. I don't recall.

2 Q. You have no knowledge of that?

3 A. No.

4 Q. Let me see if I understand what -- once you
5 picked up the files, and I am talking about the dental
6 files, you also picked up some of the molds, right?

7 A. Yes.

8 Q. You came back to Austin?

9 A. Yes.

10 Q. And you turned this over to Doctor -- you put it
11 in a secure place somewhere?

12 A. Yes.

13 Q. And then later on you turned them over the
14 Dr. Evans?

15 A. Yes.

16 Q. So the question I have for you, sir, is did you
17 anymore contact at all in this case regarding whether or
18 not to get an update of files that were missing or had
19 not been turned over to you?

20 A. I don't recall.

21 Q. Okay. So you had no contact at all. Once you
22 gave the files to Dr. Evans, you are out of the case?
23 I'm sorry. You're out of the picture regarding the
24 collection of documents that perhaps you didn't get in
25 the very beginning; is that right?



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1 A. Yes.

2 Q. So between July 29, '11, when you collected, you
3 didn't tell me, when did you turn these over to
4 Dr. Evans, what date?

5 A. I believe it was sometime in September of 2011.

6 Q. All right.

7 A. I'm not sure of the exact date.

8 Q. And so somewhere in between, there was a payment
9 hold, right?

10 A. Yes.

11 Q. And do you recall the date of the payment hold?

12 A. Well, I think the payment hold came after that in
13 November.

14 Q. All right. I've got the date right here. I'm
15 not trying to give you any trick questions. It's all
16 documented. So let me see if I've got the update. Let
17 me gave you the payment hold. I'm trying to get the
18 sequence of events. The sequence -- you picked up the
19 documents, you put them in storage, payment hold and
20 then you gave it to Dr. Evans?

21 A. No. I believe Dr. Evans was done with his review
22 prior to -- that's what prompted the payment hold.

23 Q. Oh, I see. Let me get my payment hold.

24 A. His findings.

25 Q. And so did you assist Dr. Evans at all in



1 reviewing these files?

2 A. No, sir.

3 Q. Did Dr. Evans give you a report?

4 A. After he was done, I received an expert report.

5 Q. And after you got this expert report, that's when
6 you made the payment hold?

7 A. No. No. It was once I reviewed his findings,
8 once he was done with his review.

9 Q. Then you made the payment hold?

10 A. Yes, sir.

11 Q. All right. And I take it that other than
12 reviewing what Dr. Evans did, did you ever go back to
13 confer with any of the doctors regarding why they formed
14 or certain opinions on the HLD index?

15 A. I'm sorry. Could you explain that.

16 Q. Let's back up again. Did you ever return back to
17 Harlingen Dentistry to be able to inquire or question
18 any of the doctors that filled out the HLD index forms?

19 A. While I was there I spoke to, I believe, three of
20 the orthodontist.

21 Q. And do you recall their names?

22 A. Yes. Dr. Vivian Teagardin, I know it's Nguyen.
23 Dr. Nguyen, Dr. Teagardin, and I'm sorry. His name
24 escapes me right now.

25 Q. Now, I have a copy here of the so-called payment

1 hold hearings and I think it says, "First amendment
2 notice of payment hold October 26, 2011." Does that
3 refresh your memory?

4 A. It sounds about right.

5 Q. We've got a record date.

6 HEARING OFFICER: Yes.

7 THE WITNESS: Okay.

8 Q. (By Mr. Canales) That's the amended and I think
9 there was one right before, probably the day before.
10 Let me see. Okay. So we know, then, between July when
11 you showed up in October 6th, when the payment hold was
12 made, did you go back and talk to any of the doctors,
13 that's question I have for you.

14 A. When I was initially there to collect the
15 records, I spoke to the orthodontist that were there.
16 I'm not sure maybe within a week's time, there was one
17 of the orthodontist that wasn't working that week and I
18 had a conversation with him on the phone.

19 Q. Very well.

20 A. But returning to -- I didn't return to Harlingen
21 Family Dentistry.

22 Q. Here's a notice of payment hold September 30,
23 2011. Does that refresh your memory as to when the
24 payment holds were made? The very first one?
25 September 30, 2011?



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1 A. Yes.

2 Q. All right. So what I had given you before was an
3 amended, but that was the beginning. So you saw between
4 July when you picked up the records and September 30,
5 2011, that's when you received information from Dr. Evans
6 that things that convinced you to be able to issue the
7 payment hold?

8 A. Yes.

9 Q. And since you delivered the items to Dr. Evans,
10 at that point, you were under the impression that there
11 were some documents were missing, correct? By documents
12 we mean patient files or molds, or whatever.

13 A. I'm not sure if there was any missing molds in
14 those 85 or not. I don't recall.

15 Q. Okay. But do you know now today, sir, whether or
16 not all 85 HLD index score sheets were submitted? That
17 you have copies of them and all the molds were
18 submitted? Do you know that at all?

19 A. If the ones that were missing were submitted?

20 Q. Yeah.

21 A. No.

22 Q. You have no knowledge of that? Very well. This
23 Exhibit RVV that you have there in front of you?

24 MR. MEDLOCK: It's the fraud letter.

25 THE WITNESS: Okay.



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1 MR. CANALES: I'm just going to staple these
2 just so we can have it under control.

3 Q. (By Mr. Canales) This letter is a letter I
4 believe that you talked about. Mr. Medlock writing a
5 letter, correct?

6 A. Yes.

7 Q. Writing a letter to Mr. Marcus Holley? Am I
8 right on that?

9 A. Yes.

10 Q. It RVV and it's dated September 28th, 2011?

11 A. Yes.

12 Q. And you belong to the agency of OIG; am I
13 correct?

14 A. I do.

15 Q. And in that regard, on September 28th, 2011, when
16 that letter was written, I thought Dr. Evans had those
17 files? I thought Dr. Evans had the patient files? He
18 had not seen them.

19 A. I'm sorry. I'm not following you.

20 Q. September 28, 2011, when that letter was written?

21 A. Right.

22 Q. Where were the patient files that you collected
23 from Harlingen Family Dentists? Where were they being
24 kept.

25 A. I would have to check to see if they were -- I

1 have to look at the chain of custody to see if they were
2 back in the evidence room or whether they were still.

3 Q. All you did was turn them over to the custodian
4 of the evidence of your department, correct?

5 A. Yes.

6 Q. And they somehow or another or you caused those
7 files to be given to Dr. Evans?

8 A. I did.

9 Q. All right. And you never reviewed those files
10 once you turned them in to the custodian of the
11 evidence, correct?

12 A. No.

13 Q. But between the Valley and coming to the
14 custodian of the records, I take it that's here in
15 Austin, somewhere, correct?

16 A. Yes.

17 Q. Did you or did you not review those files? Other
18 than for contents, what was inside of them. Did you
19 make any type of independent determination of those
20 files?

21 A. Did I look in each individual file to see what
22 was in there?

23 Q. Yes. To see if you understood the HLD score
24 index or anything like that. Did you do anything like
25 that?

1 A. I know that I had looked at HLD score sheets once
2 Dr. Evans had done his review and saw that they -- that
3 they were below the 26 points. But to go individually,
4 a patient by patient to see what was in there, I just
5 assumed that what I had collected was still in there.

6 Q. And you're assuming that what Dr. Evans found is
7 correct basically, correct?

8 A. Yes.

9 Q. All right. Do you know -- do you know whether or
10 not Dr. Evans gave a deposition in this case?

11 A. I think he did.

12 Q. All right. Have you been told about his
13 questions and answers on the deposition that Dr. Evans
14 has express had he found no findings of fraud or
15 intentional misrepresentation anywhere?

16 A. No.

17 Q. Nobody ever told you that?

18 A. That he didn't find?

19 Q. Yes.

20 A. No.

21 Q. All right. And you're saying that there is fraud
22 or misrepresentation here based on the difference --
23 based on Dr. Evans reports, that's what you're saying?

24 A. Yes.

25 Q. And we're not talking about anything else that



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1 you're asking for the payment hold except for that
2 particular narrow issue of the HLD score, correct?

3 A. Right.

4 Q. You -- that letter is not written by you? The
5 letter that you have in front of you?

6 A. Correct.

7 Q. And I take it you must have had some kind of
8 discussion with Mr. Medlock regarding the writing of
9 that letter?

10 A. Yes.

11 Q. And the discussion -- was the discussion having
12 to do with whether or not you had credible allegation of
13 fraud?

14 A. I guess, you know, at this point it was accepted
15 that there was a credible allegation of fraud. And I
16 believe the conversations I had with him regarding that
17 letter was that I knew it had to go out and I knew I
18 needed a copy for my file.

19 Q. Well, why did it have to go out? What are you
20 talking about? What had to go out? Forgive me.

21 A. I'm sorry. The referral letter.

22 Q. Why did it have to go out?

23 A. Because I believe the procedure is that sanctions
24 would have to notify the office of attorney general
25 about this payment hold.



1 Q. Okay.

2 A. And receive input or okay from them.

3 Q. Okay. So by the time this letter was written,
4 this letter called RVV, September 28, 2011, the decision
5 had already been made to make a payment hold, correct?

6 A. I believe so, yes.

7 Q. And that decision was solely made by the author
8 of this letter, Mr. John Medlock?

9 A. I believe so.

10 Q. And the decision to make the payment hold was it
11 made by you?

12 A. I requested the payment hold.

13 Q. And you requested the payment hold based on the
14 issue of what Dr. Evans told you?

15 A. Yes.

16 Q. And did you make any notes of what Dr. Evans told
17 you about this, any notes at all?

18 A. I don't think so.

19 Q. And do you have any recollection at all what the
20 false statements was in the HLD index score sheets?

21 A. The false statement I believe were the higher
22 measurements.

23 Q. When you went back to talk to any of the doctors
24 in this case, either by phone or in person, did you ask
25 either Dr. Teagardin or Dr. Franklin or Dr. Nguyen, why



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1 they scored a particular patient 26?

2 A. No, I didn't. I just asked them who had filled
3 out the sheets.

4 Q. And were you satisfied with the answer they gave
5 you?

6 A. Yes.

7 Q. And the answer was?

8 A. That they had. They themselves had.

9 Q. They had. All right. So the only program
10 violation we're talking about is the so-called HLD
11 scoring sheet?

12 A. I believe so.

13 Q. And you -- you agree that lying and
14 misrepresenting is not permitted under the so-called
15 Medicaid system, correct? You agree with that?

16 A. I agree.

17 Q. And you agree that lying or defrauding or
18 cheating is not permitted anywhere, right?

19 A. Yes.

20 Q. In this particular case, sir, do you know whether
21 or not there's a difference of opinion between two
22 doctors between what the score is? Or you believe that
23 Dr. Teagardin, Dr. Franklin, and Dr. Nguyen,
24 intentionally lied about something?

25 A. I've heard that there's different opinions.



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1 Q. Yes, sir. And so when I go back, then, to my --
2 you testified about Exhibit RX regarding the so-called
3 mandatory prior authorization?

4 A. Yes.

5 Q. Did you go back and find out whether or not each
6 and every of these 85 files had the required documents
7 to be able to go to TMHP so they could rely on prior
8 authorizations?

9 A. I didn't review them all, but I know that there
10 were.

11 Q. So did you ever go talk to somebody at TMHP to
12 ask them why did you approve this?

13 A. I didn't.

14 Q. Do you know whether or not TMHP had a policy of
15 approving or disapproving score sheets above or below
16 26?

17 A. The policy regarding denying those below, yes.

18 Q. So what was the policy of TMHP whenever they
19 would receive a score sheet of above 26 as far as you
20 know?

21 A. My understanding is that they would be approved.

22 Q. Do you know whether or not TMHP had -- back up.
23 Bad question.

24 Is there -- do you know whether or not there's an
25 agreement, a contract, between HHSC and TMHP regarding

1 how to administer the Medicaid program?

2 A. I believe so.

3 Q. And that's a provider manual you were talking
4 about a while ago, correct?

5 A. Yes.

6 Q. And this provider manual that you were talking
7 about -- do you agree that just because you ask for
8 prior authorization are you or are you not going to get
9 paid for services?

10 A. Just because you asked for it.

11 Q. Yeah. Right. That's what you said a while ago,
12 right? There's a lot of wires here, I've got to be
13 careful. Forgive me, Your Honor. I'm going to put that
14 one back.

15 This is what you testified to a while ago. What
16 I have here is RX, page 6. I believe Mr. Medlock asked
17 you about that part?

18 A. Right.

19 Q. You see that?

20 A. Yes.

21 Q. Let's read that apart again.

22 A. It says, "Prior authorization is a condition for
23 reimbursement. Is not a guarantee of payment."

24 Q. Right. So not being a guarantee of payment,
25 meaning that just because you have to require prior



1 authorization means you're not going to get paid or you
2 might get paid?

3 A. I'm sorry.

4 Q. Prior authorization -- just because I file for
5 prior authorization does that mean I'm going to get
6 paid?

7 A. No.

8 Q. It's not a guarantee of payment?

9 A. Right.

10 Q. What makes it a guarantee of payment?

11 A. That these --

12 MR. MEDLOCK: I'm going to object that it
13 calls for speculation because that's something better
14 found with an employee of TMHP.

15 MR. CANALES: Well, he opened the door,
16 Judge.

17 HEARING OFFICER: I'm going to let the
18 witness answer if he knows.

19 Q. (By Mr. Canales) Let me see if can help you.

20 A. Okay.

21 Q. If I just file a blank prior authorization
22 request, am I going to get paid?

23 A. No.

24 Q. If I file a prior authorization report
25 application with my HLD score, with x-rays and

1 photographs and so forth, will I get paid? If they
2 approve it?

3 A. If they approve it.

4 Q. If they approve it, then I get paid, right?

5 A. Right.

6 Q. So as far as you know -- do you know whether or
7 not all these patient files were filed appropriately
8 with prior authorization and were they all approved?

9 A. Like I said, I viewed some of them with the prior
10 authorization and they were approved.

11 Q. And so payment was made?

12 A. Right.

13 Q. So we're not talking about guaranteed payment.
14 We're talking about whether or not those HLD score
15 sheets were false?

16 A. Right.

17 Q. Do you agree, sir, that each -- that each of
18 these 85 patients, they're real people?

19 A. Yes.

20 Q. And do you agree that each of the 85 patients
21 were appropriately qualified under Medicaid?

22 A. Eligible for Medicaid, yes.

23 Q. And do you agree, sir, that each of these 85
24 patients received the services that were billed for? In
25 other words, they all got braces?

1 A. I believe so.

2 Q. And so the only question we have here is whether
3 or not the HLD score is correct?

4 A. Right.

5 Q. Let me see if I understand, just for the record.
6 Are you a dentist?

7 A. No.

8 Q. Do you have any type of training at all in the
9 field of dentistry, like a dental assistant, dental
10 hygienist, so forth?

11 A. No.

12 Q. And in your employment with the OIG, are you a
13 certified peace officer?

14 A. No.

15 Q. And in your employment with OIG, do you have the
16 power to arrest somebody?

17 A. No, I don't.

18 Q. And in your employment with OIG, are you a
19 member -- are you a member of the attorney general's
20 Medicaid Fraud Control Unit?

21 A. No.

22 Q. Otherwise known as MFCU. MFCU. Forgive me, I
23 always want to put an A at the end, Your Honor. You
24 know what I'm talking about, right?

25 A. Yes.



1 Q. M-F-C-U, MFCU. But I take it that you work close
2 with MFCU?

3 A. Not close, but I know that when we are doing an
4 investigation, we try to cross reference their open
5 cases to see, you know, so we won't step on each other
6 toes there.

7 Q. And this issue of cross referencing and not
8 stepping on each other's toes, in this particular case
9 you made a referral to MFCU, correct? The agency?

10 A. Mr. Medlock --

11 Q. I'm sorry. Mr. Medlock made a referral to the
12 agency, correct?

13 A. Yes.

14 Q. That letter speaks for itself, right? It says
15 they're doing it?

16 A. It does.

17 Q. Do you know whether or not MFCU has done anything
18 in this case?

19 A. I don't.

20 Q. You don't know?

21 A. I know that they opened it. They have an open
22 case.

23 Q. What does open mean?

24 A. Well, they accepted the referral and they
25 thought -- I'm sorry.



1 Q. This is an intake system somebody put it in the
2 computer?

3 A. Right.

4 Q. And -- but all they received was the letter from
5 John Medlock, correct?

6 A. Right.

7 Q. Did you prepare a report in this case and forward
8 it to MFCU?

9 A. I prepared a report.

10 Q. All right. And you prepared a report that you
11 forwarded to MFCU?

12 A. No.

13 Q. So all MFCU had was a letter that you had there
14 before you?

15 A. I'm guessing that's it.

16 Q. Okay. Very well. And so the letter that you had
17 there before you -- back up. I already asked that
18 question. Let me go forward now.

19 So you've been on this case, then, I take it and
20 other cases you explained, you investigated other
21 orthodontist, correct?

22 A. No, sir.

23 Q. This is the only orthodontist case you've gotten?

24 A. Yes, sir.

25 Q. Do you have any knowledge at all as to whether or

1 not OIG or Mr. Medlock, who works at, whether or not
2 they made a massive or a report of about 20 orthodontist
3 to MFCU.

4 A. I know that several cases were open. As far as
5 the referrals being made I don't know about that.

6 Q. Do you know whether or not this massive reporting
7 to MFCU, they all had to do with the same issue that is
8 the HLD issue?

9 A. I think in general they do. I'm not sure about
10 the specifics of every case.

11 Q. Were you aware of any type of television news
12 that came out regarding this issue of the HLD scores out
13 of Dallas?

14 A. Yes, I was.

15 Q. And before that news came out, before the news
16 came out, had you been assigned at all to investigate
17 this matter? And this matter I mean the HLD score
18 sheets of Harlingen?

19 A. No.

20 Q. So do you know whether or not -- you gave me a
21 little bit of reference. You went to talk to Harlingen
22 because you were told by one of your supervisors to go
23 deliver a notice for the files?

24 A. I was assigned a case. I was assigned the
25 investigation.

1 Q. And don't give me too much details on it, but are
2 you stationed in the Valley, sir?

3 A. No, sir.

4 Q. Are you stationed here in Austin?

5 A. I am.

6 Q. And when you got assigned this case, did you ask
7 why you were assigned this case or what they had done
8 wrong or what they suspected?

9 A. Well, we -- well, when we receive the assignment,
10 we get a brown folder and it has different background
11 information, claims information, complaint form.

12 Q. Well, do you know, sir, whether or not a citizen
13 any type of citizen complained about Harlingen Family
14 Dentistry?

15 A. I don't think so.

16 Q. And do you know whether or not the school -- I
17 mean, the notice or the publication that came out in the
18 news regarding the Dallas HLD issue, was that what
19 prompted this investigation?

20 A. It is mentioned in the complaint. As far as --
21 can you define prompted?

22 Q. It began.

23 A. I would guess, yeah. Yes.

24 Q. So do you know, sir, whether or not Dallas -- I'm
25 sorry. Do you know whether or not Harlingen Family

1 Dentistry had anything to do with the stories in Dallas?

2 A. I don't believe it had anything to do with the
3 article.

4 Q. Had nothing to do with it? So if Harlingen
5 Family Dentistry did not have anything to do with the
6 Dallas stories, what caused, as far as you know, what
7 did your file contain as causing you to go out there and
8 ask for the patient files and everything else that you
9 did?

10 A. Well, as part of the complaint did talk about
11 reports being run on the -- on various providers, the --
12 with the highest dollars in orthodontic services and I
13 believe Harlingen Family Dentistry was up there.

14 Q. Okay. And by up there, you mean -- see if this
15 refreshes your memory. Do you recall whether or not
16 your agency ran some kind of statistical dollar amount
17 and selected the top 20 providers of orthodontic
18 services and those are the people that were out there --
19 you were sent out there to get records from? Does that
20 refresh your memory?

21 A. Similar to that. I'm not sure if it was 20 or
22 whatever it was.

23 Q. So Harlingen was one of those, whether it is 20
24 or subject to it, but Harlingen is one of those people
25 that got selected?



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1 A. Yes.

2 Q. And once they got selected you went down there
3 and picked up the records?

4 A. Yes.

5 Q. And we now have the rest of the story, right?
6 You gave the records to Evans and so forth, right?

7 A. Yes.

8 Q. And so in that regard, let me go back to my
9 initial question. I know now what you did. What has
10 MFCU done since that letter from John to them? The
11 letter that we have there in front of you, RX --

12 MR. MEDLOCK: I'm going to object to
13 speculation. It's asking what another agency that he is
14 not employed with is doing.

15 MR. CANALES: I'll rephrase it. Just his
16 personal knowledge of it.

17 HEARING OFFICER: Fine.

18 Q. (By Mr. Canales) Just what you know, what you
19 know that MFCU has done in this case regarding since
20 September 20, 2011?

21 A. Other than opening the case based on our referral
22 I don't know anything else.

23 Q. You don't know anything else?

24 A. No.

25 Q. You are the case agent, correct? In this



1 particular case?

2 A. Yes, sir.

3 Q. And the case agent means what?

4 A. I conduct the investigation, I write up the
5 report and submit it.

6 Q. So if anybody would know if somebody is stepping
7 around your toes, an investigator, another agency, you
8 would know, right?

9 A. If they let me know. If once they -- my
10 understanding is if they have an open case, they are
11 going to start working it, they see that we have an open
12 case. They would --

13 Q. But as far as you know, as far as you have seen
14 and observed an heard, nobody is working this case
15 except you? Am I right on that?

16 A. That I know of.

17 Q. Am I right on that, sir, yes or no?

18 A. Yes.

19 Q. Okay.

20 A. I need to stand up for a little bit.

21 HEARING OFFICER: While you're up. I'm
22 going to move this chair back a little bit so that
23 you're more in line with the microphone.

24 THE WITNESS: All right.

25 MR. CANALES: Did you offer RUU?

1 MR. MEDLOCK: Not at this time.

2 MS. ALVARADO: Everything is admitted now.

3 Q. (By Mr. Canales) Let me show you RUU, Your
4 Honor. I'm going to give you, if I can just -- you can
5 hold this big notebook in front of you. Okay. RUU.
6 Now, that's a letter from the attorney general's office
7 to somebody named Barbara Jordan, Associate Counsel. Do
8 you see that?

9 A. Yes, sir.

10 Q. And it's a very short letter, but you can see
11 there's a column there and a bunch of like a spread
12 sheet. Let's not worry about what's behind the black
13 part. It says, "I certify," see if I'm reading
14 correctly. "I certify that the providers listed below
15 continue to be under investigation by the Medicaid Fraud
16 Control Unit," correct? And they listed Harlingen
17 Family Dentistry? Did I read that correctly?

18 A. Yes.

19 Q. That's our case here?

20 A. Yes.

21 Q. All right. Turn to the next page. "If you have
22 any questions or information call Marcus Holley.
23 Sincerely, Rick Copeland." Right? Is this the type of
24 response that you get when they accept -- they accept
25 something for investigation?



1 A. I believe we're supposed to give quarterly
2 updates on our referrals and say something similar to
3 that. I haven't seen that style.

4 Q. In this case have you received any quarterly
5 reports, as far as you know?

6 A. I'm sorry. I would have to look in my file. We
7 typically do.

8 Q. So do you know, sir, whether or not MFCU,
9 Medicaid Fraud, have they requested a payment hold?

10 A. I don't know.

11 Q. The only person -- I'm sorry. The only
12 institutional organization that has requested a payment
13 hold is OIG through Mr. John Medlock; is that correct?
14 As far as you know?

15 A. As far as I know.

16 Q. The question about the definition or how you get
17 to the score 26 on the HLD score sheet. Have you
18 received any type of teaching or any type of classes as
19 to how a dentist reaches a score of a level 26?

20 A. No.

21 Q. So are you -- you aware at all about of the
22 definition of ectopic eruption? Do you know what it
23 means or where it came from?

24 A. I've heard of it.

25 Q. Yes, sir. We've all heard of it, but do you

1 understand the definition of it?

2 A. I would have to look it up.

3 Q. Very well. That's fine. And so the answer to
4 that is you don't know, right? Are you leaving that up
5 to the doctors?

6 A. Yes.

7 Q. All right. Hold on just a second, Your Honor.

8 Prior to coming here today, sir, did you have an
9 opportunity at all to review or listen to the deposition
10 of either Dr. Teagardin, Dr. Franklin, or Dr. Nguyen?

11 A. No.

12 Q. Prior to coming here today, sir, did you have an
13 opportunity to review the deposition of Dr. Evans?

14 A. No.

15 Q. How about Dr. Orr?

16 A. No.

17 MR. CANALES: I think that's all the
18 questions I have, Your Honor.

19 HEARING OFFICER: Mr. Medlock?

20 REDIRECT EXAMINATION

21 BY MR. MEDLOCK:

22 Q. I have a couple. Earlier Mr. Canales asked you
23 if you announced yourself to Harlingen Family Dentistry
24 when you went down there to collect the records. You
25 said that you did not. Why don't you -- or why did you

1 not announce your presence?

2 A. It's just how we conduct our investigations. We
3 find it's a better approach to get the, I guess, the
4 information in it's -- I want to say its natural state
5 to where, you know, we're there, we give them a
6 timeline, we offer assistance in gathering the records.
7 So typically we won't let anyone know we're coming out.

8 Q. When you say natural state, what do you mean by
9 natural state?

10 A. Well, we want the records as they stand, as
11 they're kept. We hope to get an accurate reflection of
12 what, you know, how a record is kept and we feel that
13 that's the best way to get that.

14 Q. Are there any worries that they won't be in a
15 natural state if you announce your presence beforehand?

16 A. I know -- I'm not speaking about this case
17 specifically, but in the past, there's been situations
18 where providers will gather records or make copies or
19 have the records just right for us when they really
20 weren't. I'm not sure.

21 Q. When you say they're not right for us, can you
22 clarify that?

23 A. Well, I don't know how to phrase this. We just
24 want the records as they're kept on a daily basis on
25 that. We don't want anything added or taken away or



1 altered. That's basically.

2 Q. So you're worried about the providers could alter
3 records?

4 A. Right.

5 HEARING OFFICER: Let's go off the record
6 just a minute.

7 (Discussion off the record.)

8 HEARING OFFICER: Back on the record.

9 Q. (By Mr. Medlock) Mr. Canales asked you about
10 whether or not these -- that if the records at Harlingen
11 Family Dentistry had submitted for prior authorization,
12 if they met a score of 26 would they be approved and I
13 believe you said yes?

14 A. Yes.

15 Q. To that regard, if there were misrepresentations
16 on those HLD score sheets and the number -- and the
17 misrepresentation equalled 26, would those have been
18 approved?

19 MR. CANALES: Speculation, Your Honor. We
20 object to it on the third party about TMHP.

21 HEARING OFFICER: Well, again, I'll let him
22 answer to the degree that he knows or to the degree of
23 his understanding.

24 Q. (By Mr. Medlock) Based on what you know of TMHP
25 policy. If there were misrepresentations on the HLD

1 score sheets would they have been approved for prior
2 authorization?

3 A. If they had 26 on there. I'm not real familiar.
4 I'm not sure if they go back and remeasure or what the
5 situation is, but I think if it's a legitimate 26 points
6 that it would be approved.

7 Q. If it's legitimate?

8 A. It would be approved.

9 Q. And you talked about the program violations in
10 this case. Can the same conduct apply to multiple
11 program violations?

12 A. Can the same -- I'm sorry?

13 Q. Can the same act constitute multiple violations
14 of our program, of 1617?

15 A. I think so.

16 Q. And you also talked about the AG's office and
17 when they run their investigations. Do they always or
18 do you know whether or not the AG conducts
19 investigations when the office of Inspector General is
20 conducting the same investigation?

21 A. It's been my experience that they have and they
22 would -- we just avoid each other's clients or
23 investigation period.

24 Q. But y'all can run investigations on the same
25 providers at the same time?

1 A. Yes.

2 Q. And would you know necessarily every time if the
3 AG has an investigation running concurrently on your
4 case?

5 A. If I was contacted by the investigator that's
6 assigned to the case there, yes.

7 Q. But if you weren't contacted, would you know if
8 the AG's office was necessarily conducting the same
9 investigation on the same provider?

10 A. I don't think so. Just -- I know that they have
11 an open case list.

12 HEARING OFFICER: There was another person
13 who just came in. Not a fact witness. Thank you.

14 Q. (By Mr. Medlock) Mr. Canales made reference --
15 Mr. Canales made reference to the provider enrollment
16 agreement and he asked you to read a date on it and
17 asked you if that document was enrolled. I believe you
18 said something to the effect that there were multiple
19 documents. Do you know if the provider enrollment
20 agreement has stayed relatively the same over the years?

21 A. I believe it has. I know that some of those
22 other documents would be if they were adding performing
23 providers or if there's changes that they moved or if
24 they wanted to get a different program, there's re-
25 enrollment also, re-enrollment paperwork.

1 Q. And with regard to any of the missing documents.
2 When you collected the records, were there any missing
3 models?

4 A. There was. There was about 20 missing models.

5 Q. And do you know if Harlingen Family Dentistry has
6 provided those models to the office of Inspector
7 General?

8 A. I don't know.

9 Q. But they haven't provided them to you?

10 A. Not to me.

11 MR. MEDLOCK: I have nothing further, Your
12 Honor.

13 RE CROSS EXAMINATION

14 BY MR. CANALES:

15 Q. A couple of questions on some new topics that he
16 opened. So we can educate the Judge about how the
17 system works. Would you agree with me that the prior
18 authorization forms that are submitted to TMHP contains
19 photographs, contains the radiographs and contains the
20 application for HLD index and the score sheet, correct?

21 A. Yes.

22 Q. Now, those records are kept by whom?

23 A. I know they submit them to TMHP.

24 Q. Right. Right. Do you know whether or not TMHP
25 keeps those records or are those records shipped back to

1 the dentist?

2 A. I'm not sure.

3 Q. So let's agree on one thing for sure. Do you
4 know whether or not the so-called models or molds are
5 submitted as part of the prior authorization forms?

6 A. Yes.

7 Q. So your position is they were submitted to them?

8 A. Yes.

9 Q. How were they -- if they were submitted to TMHP,
10 how did they wind up back at the office of Harlingen; do
11 you know?

12 MR. MEDLOCK: I'm going to object that it
13 calls for speculation of what TMHP does.

14 HEARING OFFICER: Well, he asked, do you
15 know so I'm going to allow.

16 Q. (By Mr. Canales) So whenever you went to
17 Harlingen Family Dentistry, had you asked already or had
18 you inquired from TMHP if they had the prior
19 authorization forms, the score sheet, the photographs
20 and so forth? Did you inquire them?

21 A. I'm sorry. That's prior?

22 Q. Yeah, prior to?

23 A. No.

24 Q. After you received the documents from Harlingen,
25 did you compare with TMHP's records to see if they were

1 identical? In order to avoid the fraud that you're
2 talking about people fixing things and so forth?

3 A. No, I didn't.

4 Q. All right. So TMHP? -- whatever was submitted to
5 TMHP you did not touch; is that correct?

6 A. I believe afterwards I requested the prior
7 authorization documents from TMHP.

8 Q. All right. And so once you requested TMHP
9 documents you were able to then compare the TMHP
10 documents with the Harlingen documents, correct?

11 A. I didn't compare them.

12 Q. All right. Do you know if anybody compared them?

13 A. I believe I submitted those to Mr. Medlock.

14 Q. Okay. And so did you ever get a response from
15 Mr. Medlock as to whether or not all 85 patient files
16 were there, all 85 molds were there, all 85 HLD score
17 sheets were there?

18 A. I don't believe so.

19 Q. You never did that?

20 A. No.

21 Q. We have a stipulation of facts, Your Honor. I
22 want to be sure.

23 HEARING OFFICER: I have it.

24 MR. CANALES: I'll give her my copy. Just
25 bear with me and let me see if I can find it. Can I

1 just borrow it just for a second?

2 HEARING OFFICER: Yes.

3 MR. CANALES: There's a stipulation of facts
4 here that we can get on the record right now.

5 HEARING OFFICER: That was filed with SOAH,
6 right?

7 MR. CANALES: Yes.

8 MR. MEDLOCK: We'll upload it, but it was
9 hand delivered to you.

10 HEARING OFFICER: Okay. If these are
11 uploaded then there's no need to --

12 MR. MEDLOCK: These weren't. These
13 conferred on yesterday and then we handed them to you
14 morning, but we can upload them for you.

15 HEARING OFFICER: Please do. That would be
16 great. Then they will be part of the official file.

17 MR. CANALES: If I may, Your Honor, just for
18 the purpose of the court I don't have to read all 13
19 stipulations?

20 HEARING OFFICER: Please don't.

21 MR. CANALES: But I'm going to pick one of
22 them.

23 HEARING OFFICER: All right.

24 MR. CANALES: I'll pick one. Number six,
25 "Stipulation between the parties Harlingen Family

1 Dentistry submitted prior authorization request and HLD
2 score sheets for orthodontic treatment of the Medicaid
3 patients at issue."

4 HEARING OFFICER: Any further questions of
5 this witness.

6 MR. CANALES: Yes, Your Honor. One more
7 question. So as we sit here today and we look at what
8 you picked up and what you saw and so forth, the only
9 issue regarding evidence of fraud that you were able to
10 find is on the HLD index score sheets? That's what
11 we're limited to, correct.

12 THE WITNESS: Yes.

13 Q. (By Mr. Canales) And that is limited to
14 information that you received from Dr. Evans?

15 A. Yes.

16 Q. That's all the questions I have, Your Honor.

17 HEARING OFFICER: Anything further of this
18 witness.

19 MR. MEDLOCK: No, Your Honor.

20 HEARING OFFICER: That concludes your
21 testimony, Mr. Porras. Again, during the pendency of
22 these proceedings please don't discuss the subject
23 matter of your testimony or the case with the other
24 witnesses in the case.

25 THE WITNESS: Okay.



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1 HEARING OFFICER: Thank you. You may step
2 down.

3 Is there any possibility that Mr. Porras
4 would be recalled in this case?

5 MR. MEDLOCK: I don't see --

6 MR. CANALES: He might be, Judge, regarding
7 Dr. Evans. So I would ask that the rule -- he can go
8 about his business. If we need him I'll talk to Counsel
9 about it.

10 HEARING OFFICER: Okay. All right. So you
11 need to leave --

12 MR. MEDLOCK: Just leave that out there
13 with --

14 HEARING OFFICER: Thank you.

15 MR. MEDLOCK: Judge, can we take a
16 five-minute break.

17 HEARING OFFICER: Okay. We're off the
18 record. We'll be back in five minutes.

19 (Brief recess.)

20 HEARING OFFICER: We're back on the record.
21 Mr. Medlock?

22 MR. MEDLOCK: I'm going to refer to my
23 Counsel Corrie Alvarado.

24 MS. ALVARADO: Your Honor, the state would
25 like to call its second fact witness, Bryan Klozik to

1 the stand.

2 HEARING OFFICER: All right. Mr. Klozik, if
3 you will come on up here, please. You've already been
4 sworn in. Of course you remain under oath. Go ahead
5 and take a seat.

6 Whenever you are ready Ms. Alvarado.

7 DIRECT EXAMINATION

8 BY MS. ALVARADO:

9 Q. Good afternoon, Mr. Klozik. Can you please,
10 state and spell your name for the record?

11 A. Brian Klozik, last name is spelled K-L-O-Z-I-K.

12 Q. Thank you. And can you briefly describe your
13 educational background for me.

14 A. I graduated from Sam Houston State University in
15 1991 with a degree in criminal justice.

16 Q. And do you have any further education or degrees?

17 A. High school education and college and I have
18 currently hold a -- the designation of certified fraud
19 examiner from the Association of Certified Fraud
20 Examiners.

21 Q. Can you tell me a little bit about your prior
22 work experience.

23 A. I worked for the attorney general's Medicaid
24 Fraud Control Unit prior to coming the Texas Health &
25 Human Service Commission office of Inspector General in

1 1997. And I've been here with the OIG -- it was OIE
2 first and then OIG for about 15 years now.

3 Q. Okay. In what capacity are you currently
4 employed?

5 A. An investigator.

6 Q. And how long was that that you said you've been
7 employed by OIG?

8 A. Approximately 15 years. I think it's 15 years
9 this December.

10 Q. Okay. Now, let's talk about your involvement
11 with this particular case. How exactly did you come to
12 be involved with the case regarding Harlingen Family
13 Dentistry?

14 A. In May of 2011 a news station out of Dallas
15 started publishing some news stories and exposes about
16 Medicaid billings related to orthodontia services for
17 Medicaid program. That information of course came to
18 our office, our agency, and in order to evaluate what we
19 maybe -- what type of exposure the state would be
20 looking at as far as the Medicaid billing providers to
21 get a handle on how we might want to look at this. I
22 decided a report should be generated to be looked at the
23 billings by these providers.

24 Q. Okay. So you decided to look into the news
25 stories that you saw reported. Did any of those news

1 stories speak correctly to Harlingen Family Dentistry?

2 A. Not that I recall, no.

3 Q. And was it the regular practice of the office to
4 begin investigations or look into providers based off of
5 news stories?

6 A. Yes. I would say we treat that type of
7 information as a complaint. So, yes, we would look into
8 that type of information, but we would not -- we would
9 evaluate other criteria and information that we develop
10 as far as trying to evaluate that to base -- to base our
11 decision on whether or not to move forward on the
12 investigation.

13 Q. And what other types of sources for case
14 referrals does OIG receive?

15 A. We receive referrals from recipients, other
16 providers, other regulatory agencies such as licensure
17 boards.

18 Q. Okay. So based on multiple sources, OIG opens
19 cases for differing reasons from time to time --

20 A. Correct.

21 Q. -- just depending on what source of information
22 you receive?

23 A. Correct.

24 Q. Okay. So in this particular case, some news
25 stories brought the -- is it the orthodontic situation

1 to light?

2 A. Correct.

3 Q. And you decided to have a report generated you
4 said?

5 A. Correct.

6 Q. Okay. I'm going to hand you what's previously
7 been admitted as States's Exhibit RWW. May I approach,
8 Your Honor?

9 HEARING OFFICER: Yes.

10 Q. (By Mr. Alvarado) Does this document look
11 familiar to you, Mr. Klozik?

12 A. Yes.

13 Q. This is a copy of the report that you had
14 generated based off the information that you obtained
15 from the news stories?

16 A. Correct.

17 Q. Okay. Can you please tell me what the parameters
18 were set out in page 1 of that report.

19 A. The parameters set out was to get results back
20 that would show paid dollar amounts for dentist in the
21 Texas Medicaid program for calendar year 2010 who had
22 billed procedure codes that were related to the
23 diagnostic workup, the upper and lower braces, the
24 dental adjustments of those braces and the retainers.

25 Q. And page 2, you set out different parameters; is

1 that correct? Can you specify those for me, please?

2 A. The second report was specifically asked to
3 return results on, again, all Medicaid providers who had
4 billed procedure codes related to special orthodontic
5 appliances.

6 Q. And why did you decide to run two separate
7 reports?

8 A. I thought it would be objective to run a report
9 based on just the braces, the diagnostic workup, the
10 adjustment for the retainers, because in my years of
11 experience I understand orthodontia billing and a prior
12 authorization for full banding upper and lower braces is
13 usually consisting of a core component of a set of
14 procedure codes. And that's, again, the diagnostic
15 workup of braces, the adjustments and the retainers.
16 And I thought to compare, for lack of a better term,
17 apples to apples. I wanted to just see all of the
18 billings and dollars paid for with those codes.

19 Q. And so why did you decide specifically to pull
20 out the billings for the special orthodontic appliances?

21 A. Well, in my experience over the years it's come
22 to my attention that billings for -- a high utilization
23 of special orthodontic appliances can be indicative of
24 potential fraud, waste, and abuse so I wanted to look at
25 that separately.



1 Q. And what did the culmination of these reports
2 reveal to you after you ran them?

3 A. It showed -- both reports showed or demonstrated
4 high utilization of dollars paid by the providers who
5 had billed these codes in addition to the unique number
6 of clients and claims that were paid to these providers.

7 Q. Okay. And in your experience, what did the
8 results of that report indicate to you?

9 A. That showed me that -- well, whenever you have
10 high utilization of certain procedure code, whether it's
11 one procedure code or a group of procedure codes and it
12 doesn't matter if it's dental or if it's medical. High
13 utilization of any type of procedure codes can be
14 reliable and indecisive of potential fraud, waste, and
15 abuse. When you look at the first report with the
16 braces and then look at some of the providers on there,
17 it also appears on the special orthodontic report those
18 things together can again be reliable and indecisive of
19 intentional fraud, waste, and abuse that need further
20 investigation.

21 Q. And did Harlingen Family Dentistry appear on the
22 reports that you ran?

23 A. Yes.

24 Q. And what did the office of Inspector General do
25 with the information that you obtained from those



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1 reports?

2 A. We eventually opened up cases on the top 25 or 26
3 providers related to high utilization of orthodontia
4 billing.

5 Q. And was Harlingen Family Dentistry one of those
6 top billing 25 providers?

7 A. Yes.

8 Q. And that was for orthodontic procedure codes,
9 correct?

10 A. Correct.

11 Q. I would like to ask you a little bit about your
12 specific involvement with this case, because your
13 reports concern multiple orthodontic providers, correct?

14 A. Correct.

15 Q. Specifically how -- what was your involvement
16 with this particular case on Harlingen Family Dentistry?

17 A. Beyond the provider appearing in this report my
18 first involvement with this case was when we had our
19 first meeting with Dr. Charles Evans to meet with him to
20 transfer the medical records that the investigator
21 secured in his investigation to Dr. Evans and to provide
22 him with certain documents that he would need to assess
23 these client records and compare them to the Medicaid
24 billing.

25 Q. And beyond your providing Dr. Evans with some



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1 information that would be helpful to him to review the
2 case, I believe you -- you also said you had involvement
3 with transferring the records to Dr. Evans?

4 A. I was in the room when the records -- I didn't
5 actually transfer the records, but, yes, the records
6 were in the room and I think investigator took care of
7 that.

8 Q. And outside of that involvement, do you have any
9 direct involvement with the investigation of the
10 provider?

11 A. No.

12 Q. Okay. Let me ask you, in your capacity as an
13 investigator with the office of Inspector General, are
14 you familiar with 42 CFR 455.23?

15 A. Yes.

16 Q. And what requirement does that regulation contain
17 that is pertinent to investigations conducted by office
18 of inspector general?

19 A. Well, my understanding of that regulation is if
20 we -- if we determine we have a credible allegation of
21 fraud we're required to make referrals to our Medicaid
22 Fraud Control Unit.

23 Q. Do you know what OIG's current policy is
24 regarding that requirement?

25 A. At any given point in our investigations we feel

1 we have obtained evidence that merits a credible
2 allegation of fraud, we will staff that with our house
3 attorneys and ultimately make a referral to the Medicaid
4 Fraud Control Unit.

5 Q. Okay. Let me ask you, as an investigator for the
6 office of inspector general, are you familiar with TMHP?

7 A. Yes.

8 Q. And do you know anything about the TMHP prior
9 authorization process for Medicaid orthodontia?

10 A. Yes.

11 Q. Okay. Well, based on your investigative
12 experience and your experience working for the office of
13 inspector general, did you ever -- did you ever identify
14 what you thought were any issues with the prior
15 authorization process with TMHP?

16 A. In the past complaints regarding orthodontia
17 providers had been brought to OIG's attention and when
18 you look at the -- when you generate reports on these
19 providers and saw high utilization of orthodontia
20 billing, there was a question -- I questioned whether or
21 not that process was comprehensive and thorough.
22 Because, of course, there's information that I was aware
23 of that indicated perhaps that there wasn't a very
24 thorough process in place there. And so because having
25 that type of knowledge, when you see high utilization,



1 someone like me has to question whether or not providers
2 might be exploiting a process at TMHP that's not very
3 robust or thorough in order to get prior authorizations
4 approved for payment.

5 Q. So based off of your knowledge about that
6 information about complaints that the office of
7 inspector general received on providers, did you open
8 other investigations on providers based on such
9 information?

10 A. Prior to what we're talking about here --

11 Q. Yes.

12 A. -- on this list, yes, we opened up other
13 investigation on those providers.

14 MS. ALVARADO: Thank you. No further
15 questions, Your Honor.

16 CROSS EXAMINATION

17 BY MR. CANALES:

18 Q. So I take it that you opened up an investigation
19 on everybody that came off your hot list of high income
20 producing dentist?

21 A. No.

22 Q. Well, you have a list there, right?

23 A. Right.

24 Q. In front of you?

25 A. Right.

1 Q. And all those people were referred over to MFCU,
2 correct?

3 A. No.

4 Q. All right. So that list represents, that you
5 have there in front of you, represents what?

6 A. A list of providers who had high cumulative paid
7 dollars, high number of clients who were receiving
8 services.

9 Q. And how many of those did you make a referral to
10 MFCU?

11 A. I would be speculating if I have to answer that
12 right now. I don't know.

13 Q. You don't know. Okay. Very well. Now, what you
14 were telling us, by the way, is that this -- you had
15 some type of a knowledge about the TMHP approving too
16 many of these HLD forms? Is that what you're telling
17 us?

18 A. Correct.

19 Q. Do you know whether or not that knowledge came
20 from an audit that was made by OIG of TMHP back in 2008?

21 A. I'm aware of that audit, yes.

22 Q. And are you aware in that audit that there was
23 some criticism by OIG of TMHP that they didn't have any
24 type of dental directors or dental staff reviewing these
25 files?

1 A. I'm aware of the content of the OIG audit, yes.

2 Q. Let me show it to you. It's already in evidence
3 by the way. And this is No. 2. No. 1. I think it's
4 called P1. I have a copy of P1. This is P1 and it's
5 already in evidence.

6 A. Okay.

7 Q. Let me refresh your memory. You can have this
8 right here beside you so you can have your hands free.
9 Do you recall whether or not this is what caused you to
10 have a concern that you expressed to us a while ago?

11 A. I would say that's part of it.

12 Q. Okay. And this particular concern that you have
13 had to do with the TMHP approving too many HLD index
14 cases? Is that the bottom line?

15 A. That's one of my concerns.

16 Q. And this concern that you have, by the way, was
17 pursuant to that report?

18 A. I want to say not solely due to this report.

19 Q. Well, I want to talk about that report. That's
20 what we have right now.

21 A. Okay.

22 Q. Based on that report, do you know, sir, whether
23 or not that report was a public record?

24 A. My understanding this is a public record.

25 Q. And do you know whether or not based on that



1 report, do you know whether or not OIG or HHSC took any
2 actions regarding that report?

3 A. I do not know.

4 Q. Okay.

5 A. I only know that OIG turns the reports over to
6 the program area for HHSC. We do not set policy at OIG.

7 Q. And so -- but whatever questions came up in that
8 report it was happened over to whatever officials that
9 existed that were responsible to answer for the
10 questions that came up on that audit, correct?

11 A. We turned it over to the entity in HHSC where
12 they're responsible for that.

13 Q. So between '08, between '08 and the time that you
14 had this meeting with -- where you were asked to make
15 this analysis, did you do anything to inquire of TMHP
16 what their policies were regarding the approval of HLD
17 index scores?

18 A. I did not make any inquiries.

19 Q. Did you ever make any inquiries of the dental
20 director of TMHP being Dr. Gerald Felkner as to what was
21 the policy?

22 A. No, I did not.

23 Q. Did you make any type of inquiry or suggest, for
24 example, that they should be investigated to MFCU or
25 anybody else?

1 A. No.

2 Q. And that's because you had no basis of any time
3 to -- you had no basis or any evidence of any type of
4 wrongdoing regarding the HLD scoring, correct?

5 A. Repeat that again.

6 Q. Did you have any basis, any factual basis, to be
7 able to request that TMHP's procedure of approving the
8 HLD scores be reported for wrongdoing?

9 A. It had already been reported.

10 Q. Who reported it?

11 A. OIG.

12 Q. Reported it where? In the report you have in
13 front of you, in P1?

14 A. Yes. This report was a record of the findings of
15 the TMHP prior authorization process and was turned over
16 to.

17 Q. Yes, sir. Do you know the response of TMHP to
18 the concern by OIG regarding not having enough people to
19 look at the HLD scores?

20 A. I never seen a response from TMHP.

21 Q. Do you know what -- don't fold it, it's part of
22 evidence.

23 A. Sorry. Sorry.

24 Q. Do you know, sir, whether or not that document
25 that you have in there has a response by all the

1 parties?

2 A. No. I don't know.

3 Q. Very well. All right. So you would agree with
4 me, sir, that whatever response there is, you're unaware
5 of it because you have not seen that particular report
6 in detail?

7 A. I have not seen any type of response, correct.

8 Q. All right. And if there's a response in there
9 you missed it, right?

10 A. Yes.

11 Q. Okay. Very well. Now, back up the story. You
12 hear about the news reports in Dallas, correct?

13 A. Correct.

14 Q. And based on that -- receiving those news
15 reports, did you on your own request for this audit that
16 you made -- this limited audit that you made or were you
17 instructed to create it?

18 A. I, on my own, went and consulted with another
19 director in our -- in our department to get a report
20 generated. So, yes, it was me.

21 Q. All right. And based on that, you came out with
22 a report that you have in your hand that showed all
23 the -- all the high users, I believe you said?

24 A. Yes, correct. The high -- the Medicaid providers
25 with high utilization of orthodontia services.



1 Q. But that's all the facts you had. Did you know
2 at that time why they were billing so high? Did you
3 have any facts on that?

4 A. Facts?

5 Q. Facts?

6 A. Facts, no. I could draw some conclusions as to
7 what --

8 Q. But I don't want to argue with you, but you can
9 have conclusions, you can draw conclusions out of this
10 or facts. Did you have any facts to draw any
11 conclusions?

12 A. No.

13 Q. Did you have any facts at all -- back up.

14 Had you ever heard of Harlingen Family Practice
15 before you wrote that -- you ran that report?

16 A. No, I do not.

17 Q. And after the report was prepared and it came
18 out, did you instruct anybody at the office, at your
19 office, OIG's office, to go out there and look at the
20 records of Harlingen Family Practice? Family Dentistry?

21 A. Repeat that one more time.

22 Q. Once you received the report in front of you, I
23 need the get the name of it. This report is number --

24 MR. MEDLOCK: RWW.

25 Q. (By Mr. Canales) Once you received the

1 information from the newspaper, you took it upon
2 yourself to do a computer search, a computer run,
3 correct?

4 A. Correct.

5 Q. And you asked for certain criteria from the
6 computer?

7 A. Correct.

8 Q. And with the criteria that came out they gave you
9 what's RWW, right?

10 A. Correct.

11 Q. What you were asking from the computer is to give
12 you a list of providers in the State of Texas?

13 A. Correct.

14 Q. That apparently had submitted or had high dollar
15 payments, correct?

16 A. Correct.

17 Q. All right. But before you did this, the question
18 is, did you have any type of prior information of any
19 type of wrongdoing or anything improper by Harlingen
20 Family Dentistry?

21 A. No, I did not.

22 Q. And these other individual that came out right
23 here, all right. Do you know as a result of your
24 report, do you know how many people were being -- now
25 became -- started being audited as a result of your



1 inquiry?

2 A. At least as a result of this report?

3 Q. Yes.

4 A. At least 25.

5 Q. At least 25. All right. Now, these 25 names, do
6 they have something in common? For example, do they
7 have something in common? Do they have in common
8 because they're a certain part of the state.

9 A. No.

10 Q. Do they have something in common because they're
11 all individuals?

12 A. No.

13 Q. Do they have something in common because they're
14 all companies or corporations?

15 A. No.

16 Q. What is it they have something in common, money?

17 A. They all had high volumes of dollars and unique
18 clients and claims of orthodontia services.

19 Q. Other than that that's all you knew, right. You
20 can have whatever conclusion you want to have, but
21 that's all the report came out?

22 A. If you're asking me about the report that's all I
23 have in the report, correct.

24 Q. And based on that -- based on that facts that you
25 have, those 20, 25 people within the recipients of were



1 they the -- were they the recipients of so-called audit
2 letters from OIG?

3 A. The recipients, no. Oh. When you say recipients
4 do you mean the providers.

5 Q. Yes. Were they -- did somebody go out there
6 and --

7 A. At various points in time, then, yes, someone
8 presented to their offices.

9 Q. All those 20, 25 people?

10 A. Correct.

11 Q. Did all those 25 people, I say people, but
12 entities combined, correct? Did they all receive
13 payment holds?

14 A. No. No.

15 Q. How many on your list received payment holds?

16 A. I don't know, I would be speculating. I don't
17 know at this point. Counsel, you have to understand
18 that we wouldn't place a payment hold until we had a
19 credible allegation of fraud. That happens at various
20 point in the investigation.

21 Q. I understand. I'm trying to find out when did it
22 happen in this case versus other cases? In this
23 particular case when you issued -- you made that search
24 you did not have an allegation of fraud by anybody,
25 correct? Did you have a credible allegation of fraud



1 when you commenced it back -- the research?

2 A. At that point, no. No.

3 Q. Whenever a request for documents was made to the
4 provider, at that moment did you have -- did you have
5 some type of a credible evidence of fraud?

6 A. No.

7 Q. All right. When the documents were selected and
8 picked up and given to an expert, at that point in time
9 did you have evidence of fraud, credible evidence of
10 fraud?

11 A. No.

12 Q. It didn't happen until there was a difference --
13 until there was an opinion expressed by a doctor,
14 correct?

15 A. I would say that once that an expert reviewed
16 those records, then that's when we felt we had a
17 credible allegation of fraud.

18 Q. So that is the pivotal point in this particular
19 case, in all these cases as to whether or not fraud
20 occurred, correct?

21 A. I would say that that would be correct.

22 Q. And so did you have an opportunity, sir, at any
23 point in time to review the 85 patient files that were
24 picked up by Mr. Porras?

25 A. I didn't review those files.

1 Q. You didn't review any files, correct?

2 A. No.

3 Q. When the files were provided over to Dr. Evans,
4 I'll point to -- I want you to assume they were provided
5 to Dr. Evans, we heard testimony about that. You say
6 you were present, correct?

7 A. Yes.

8 Q. And do you know when that date occurred?

9 A. No, I don't recall the date.

10 Q. And you were present when those documents
11 provided to Dr. Evans, why were you present, sir?

12 A. I was present because this was, I believe, again
13 this was Dr. Evans first review with us and I have a lot
14 of background in dental cases. I worked a lot of dental
15 cases back when I was an investigator years ago. So I
16 wanted to make sure that he understood the documents
17 that we were providing him. Doctor -- there's another
18 physician in our office that routinely meets with our
19 consultants, but since dental is not her area of
20 expertise she asked me to come into the meeting with
21 Dr. Evans. So it's basically that I have a lot of
22 experience with dental and so I thought it would be
23 important that I was there and, of course, Dr. Alfaro
24 invited me, too.

25 Q. So at that point in time you had this meeting at



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1 the OIG office, I take it?

2 A. Correct.

3 Q. All right. And besides the doctor you mentioned
4 it was you and Dr. Evans?

5 A. And the investigator.

6 Q. And the investigator. And the investigator being
7 who? Do you recall who he was?

8 A. Mr. Porras.

9 Q. So all of basically were -- physically handed
10 over the 85 files to Dr. Evans?

11 A. Correct.

12 Q. At that point in time, the question again is, you
13 don't recall the date on that one?

14 A. I do not recall the date.

15 Q. At that point in time, sir, did you have any type
16 of credible evidence or any type of evidence at all of
17 any type of fraud?

18 A. I seem to have a recollection that the
19 investigator had secured some sort of testimony from a
20 recipient about a service not rendered. I can't -- I
21 seem to have a recollection about that, I can't say with
22 100 percent certainty, but that would be one allegation.

23 Q. Regarding the issue of HLD index?

24 A. Not at that point.

25 Q. Not at that point. There was nothing there,



1 correct? Am I right? There's nothing there at that
2 point, there's nothing there?

3 A. Nothing more than reliable indicies of potential
4 fraud, waste, and abuse due to the high utilization.

5 Q. So anybody that has a high use all of a sudden is
6 suspected of fraud?

7 A. Well, again, those are red flags. They are
8 anomalies. The potential fraud, waste, and abuse could
9 exist which warrants further investigation.

10 Q. But you had no facts for that. That's -- I mean,
11 someone has got to be up on the top list, right?
12 Someone has got to be the top, right?

13 A. Sure.

14 Q. So whoever is lucky enough to be in the top 20,
15 top 30 is going to get flagged for an investigation?
16 That's what happened in this case, correct?

17 A. Correct.

18 Q. All right. Now, let's go back to the meeting you
19 had with Dr. Evans. Would you agree with me, sir, that
20 at that point in time regarding the HLD index story, you
21 had no credible evidence of any type of fraud
22 whatsoever?

23 A. Not at that point because he had not reviewed the
24 records.

25 Q. After he reviewed the records he gave you a



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1 report?

2 A. I think that would be mischaracterizing to say I
3 got the report. I wasn't given the report.

4 Q. Did you ever receive a report from Dr. Evans?
5 Being that you were present when that thing was given to
6 him.

7 A. I may have seen a report. There's been a lot of
8 cases so I'm not sure if I have ever seen that
9 particular report.

10 Q. You said there have been a lot of other cases.
11 Other orthodontist cases?

12 A. Yes.

13 Q. All with the same --

14 A. Other orthodontist cases, other dental cases
15 unrelated to orthodontia.

16 Q. But all relating regarding the issue of HLD
17 index?

18 A. Okay.

19 Q. Am I right on that, sir? When you say there's
20 been other cases --

21 A. Yes.

22 Q. -- I'm trying to -- don't give me the name of the
23 people.

24 A. I'm not.

25 Q. I don't want to hear that. I just want to know



1 whether they have something in common. These other
2 cases you're looking at, do they have in common the
3 issue of the HLD index score sheet.

4 A. Yes.

5 Q. Can I have a second Your Honor?

6 HEARING OFFICER: Sure.

7 Q. (By Mr. Canales) Since you met with Dr. Evans
8 were you present when he received the documents, I
9 think, the patient files?

10 A. Correct.

11 Q. Since that time, sir, have you had any
12 opportunity at all to interview or interview either Dr.
13 Teagardin, Dr. Franklin, or Dr. Nguyen?

14 A. No.

15 Q. Have you had an opportunity at all to -- back up.
16 Do you know Dr. Orr?

17 A. Yes.

18 Q. Do you know that Dr. Orr is the expert for the
19 Petitioner?

20 A. Yes.

21 Q. And you -- have you worked in the past with
22 Dr. Orr?

23 A. Yes.

24 Q. How have you worked with Dr. Orr in the past?

25 A. As an I investigator Dr. Orr served as a



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1 consultant for OIG on some investigations that I
2 conducted of dental providers. So Dr. Orr would have
3 been the expert. He would have reviewed the records.
4 In other situations he -- if I needed guidance on a
5 case, like, he knew about certain procedures he served
6 as a resource to me.

7 Q. Very well. Now, when Dr. Evans -- when you met
8 Dr. Evans on that day, being transferred the files to
9 him, had you met Dr. Evans before?

10 A. No.

11 Q. Is this the first time you had worked with
12 Dr. Evans?

13 A. Yes.

14 Q. Dr. Orr? How many times have you worked with
15 Dr. Orr? Let's talk first in years.

16 A. I would say from '97 to about 2007, 10 years at
17 least.

18 Q. And during those -- and during that period of
19 time of at least 10 years at least, have you had
20 occasions to be on Dr. Orr's same side?

21 A. Yes.

22 Q. And have you relied on Dr. Orr's opinion in the
23 past?

24 A. I have.

25 Q. And do you believe that Dr. Orr is a truthful

1 person?

2 A. I have no reason to say no. I have no reason to
3 say otherwise.

4 Q. So you believe he's a truthful person?

5 A. Yes.

6 Q. And do you believe that Dr. Orr is a competent
7 dentist in the field of the scoring of HLD scores and so
8 forth?

9 A. I would be speculating if I said -- I don't know.
10 I am not privy to his role with that. I wasn't there
11 when he did that so I don't know.

12 Q. Very well. Very well. Let me ask you this. Do
13 you know whether or not Dr. Orr in the past has served
14 as dental director of in NHIC?

15 A. Yes, I know that.

16 Q. And what -- as far as -- did you work for NHIC?

17 A. No.

18 Q. Do you know what NHIC was?

19 A. They were the physical intermediary for the State
20 of Texas. They paid Medicaid claims.

21 Q. Did they do the same thing that TMHP does?

22 A. Yes.

23 Q. And do know Dr. Gerry Felkner?

24 A. Yes.

25 Q. Have you had dealings with Dr. Gerry Felkner?



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1 A. Yes.

2 Q. Do you believe that Dr. Felkner is a truthful
3 person?

4 A. I don't know.

5 Q. You have worked with him, right?

6 A. I didn't work with Dr. Felkner in the same
7 capacity as I worked with Dr. Orr. It was not a side by
8 side type working relationship. It was more --

9 Q. I accept that, sir. But on Dr. Orr he is a
10 truthful person?

11 A. I would say yes.

12 Q. Only for the record, I know this already, are you
13 a dentist, sir?

14 A. No.

15 Q. Do you have any type of dental background?

16 A. As far as educational, no.

17 Q. Are you certified as a dental hygienist, dental
18 assistant, any other type of dental work?

19 A. No.

20 Q. But you have been around in the dental field,
21 you've told us, as an investigator?

22 A. Yes.

23 Q. I take it you've been an investigator in this
24 dental field for OIG even before it became OIG, for how
25 many years?



1 A. At least 7 years, yes.

2 Q. Let's talk about MFCU. Have you ever worked for
3 MFCU, the Medicaid --

4 A. Fraud Control Unit.

5 Q. Have you ever worked for them?

6 A. Yes.

7 Q. When did you quit working for them?

8 A. I think it was around December of 1996.

9 Q. And that's part of the attorney general's office,
10 correct?

11 A. Correct.

12 Q. Just for the record, that agency is not a part of
13 OIG nor a part of HSSC, correct?

14 A. Correct.

15 Q. And the last ten, 12 years, have you ever had an
16 occasion to work side by side with MFCU in the
17 investigation of fraud?

18 A. Yes.

19 Q. And when you were working side by side with them,
20 do they assign an agent?

21 A. Yes.

22 Q. In this particular case, do you know what agent
23 they have assigned?

24 A. No.

25 Q. Why is that, sir?



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1 A. I'm not the investigator assigned to OIG. So I'm
2 not -- I just don't have that knowledge of who the
3 cosigned investigators are in MFCU.

4 Q. And the last question, you agree that this whole
5 investigation regarding the HLD index issue was started
6 as a result of the news stories out of Dallas?

7 A. No.

8 Q. Where did it start?

9 A. Well, I mean, that is a first indicator of what
10 started this, but as I said, we develop our own
11 information when we hear allegations or complaints. We
12 just don't initiate investigations based off a news
13 story.

14 Q. But the allegations and complaints you received
15 in this case was from the news stories in Dallas?

16 A. Yes. That was the first information we got on
17 that.

18 Q. Based on that you saw it, you started looking
19 into it?

20 A. Correct.

21 Q. Did you make a referral of this case at all, of
22 this particular, Harlingen case, to the attorney
23 general's office?

24 A. I didn't. I believe our office did.

25 Q. But you did not?

1 A. I personally did not, no.

2 Q. And does your office have a requirement that
3 every quarter or something you have to be able to report
4 to MCFU whatever cases you believe are involved in
5 fraud?

6 A. I don't feel comfortable answering that question
7 because that's not a responsibility of the department I
8 work in. I'm aware that I believe that that is a
9 requirement, but I don't feel comfortable answering it.

10 Q. The requirement is -- I want you to feel comfy.
11 The requirement is that there is -- there is a reporting
12 system; is that correct?

13 A. Yes.

14 Q. Is there a reporting system from OIG to MFCU of
15 any case that you believe there could be fraud?

16 A. There is -- I'm not sure. Maybe you ought to
17 rephrase the question.

18 Q. Well, is there a reporting system?

19 A. If we feel there's a credible allegation of fraud
20 then we make a referral to them.

21 Q. A referral. And does the referral stick in the
22 MFCU unit or does it come back?

23 A. I'm not sure I understand what you're asking.

24 Q. Well, a referral -- perhaps when you make a
25 referral of the case, do you lose control of the case?

1 A. Not necessarily. We have, I would say
2 co-jurisdiction to work cases -- administrate cases
3 parallel with a criminal case as long as we don't
4 interfere with what they are doing.

5 Q. And you would agree that if MFCU is going to
6 receive a referral, they are going to accept the
7 referral you would be notified of the acceptance of that
8 referral?

9 A. We would -- we are.

10 Q. You are?

11 A. Yes.

12 Q. In this particular case, do you know if there has
13 been an acceptance of that referral?

14 A. I believe there has.

15 Q. Do you have a particular document or anything
16 like that?

17 A. I don't have a that.

18 Q. You don't have a document?

19 A. No.

20 Q. Let me show you --

21 HEARING OFFICER: Can y'all verify for me
22 that this is not a fact witness.

23 MR. MEDLOCK: No, not a fact witness.

24 HEARING OFFICER: Thank you.

25 Q. (By Mr. Canales) Let me show you kind of a form

1 letter type and see if you recognize this form letter.
2 It's RUU. See if you recognize the form letter. I know
3 it's not written by you or to you.

4 A. Right.

5 Q. But it's just a form letter.

6 A. Right. This is the first time I'm seeing that.

7 Q. So you don't recognize the letter as a form
8 letter?

9 A. No. Well, I mean, I can tell it's a form letter,
10 but I'm just saying I have never seen this letter
11 before.

12 Q. This particular letter is RUU dated March 5,
13 2012. It's from the attorney general's office to
14 Barbara Jordan, right? And it involves Harlingen Family
15 Dentistry. Do you see that?

16 A. Uh-huh.

17 Q. And it says, "I certify that the providers listed
18 below continue to be under investigation by the Medicaid
19 Fraud Control Unit"?

20 A. Okay.

21 Q. Is this the letter that your talking about? The
22 type of letter you're talking about where they accept
23 the referral?

24 A. No. I believe that we routinely receive letters
25 back in individual cases or make referrals to Medicaid



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1 provider, to our unit, that says we have accepted this
2 referral and we have opened a criminal investigation.

3 Q. But other than opening up a master index of a
4 file that's been referred, what else has happened? What
5 else happens? In this particular case, other than you
6 made a referral, correct?

7 A. Correct.

8 Q. They say I've got -- it I appears to be under
9 investigation.

10 A. Uh-huh.

11 Q. Do you know whether or not anything has happened?

12 A. No. I --

13 MS. ALVARADO: I would object. I don't know
14 that Mr. Klozik knows the current policy of MFCU. He
15 left in 1996, I believe.

16 THE WITNESS: Correct.

17 HEARING OFFICER: Well, I mean he just said
18 he doesn't know what happens so I'll overrule the
19 objection.

20 MR. CANALES: Thank you so much, Your Honor.
21 No other questions.

22 HEARING OFFICER: Thank you. Anything
23 further?

24 REDIRECT EXAMINATION

25 BY MS. ALVARADO:

1 Q. Yes, Your Honor. So Mr. Klozik, you said that
2 you were not the investigator of the case of Harlingen
3 Family Dentistry; is that correct?

4 A. Correct.

5 Q. And when you were present when the records were
6 transferred to the consultant in the case, Dr.
7 Charles Evans, your purpose there was basically to
8 facilitate the transfer, correct?

9 A. Facilitate the transfer although it wasn't my
10 charge to transfer the records to do the physical
11 transfer, but what I was there for was to make sure that
12 Dr. Evans understand stood the documents we were giving
13 him on the flash drive, which was the spread sheet and
14 the components of the Texas Medicaid providers procedure
15 manual. Make sure he could navigate through the spread,
16 you know, open the flash drive and things of that
17 nature.

18 Q. But you didn't have any other substantive
19 involvement in investigating the case?

20 A. No.

21 Q. Okay. When we were discussing your educational
22 background and your work history you mentioned that you
23 were a certified fraud examiner?

24 A. Uh-huh.

25 Q. As part of the requirements to become certified



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1 as a fraud examiner, do you have to study or learn about
2 patterns for identifying fraud?

3 A. No. That's not a requirement.

4 Q. Okay. Have you learned through your experience
5 that when you see certain indicators as you mentioned
6 earlier like high utilization of certain codes, high
7 billing patterns, have you learned to identify things
8 that could potentially indicate or be indicative of
9 activity that could be fraudulent?

10 A. Certainly. If you're familiar with the data of
11 the provider you're looking at you can easily identify
12 patterns that send up red flags, billing anomalies that
13 could be indicative of fraud, waste, and abuse. It
14 would warrant further investigation.

15 Q. You said earlier in this case that you were aware
16 of some issues that OIG was having with TMHP because of
17 the audit, correct?

18 A. Uh-huh.

19 Q. And so that was in 2008 or earlier, was it not?

20 A. Correct.

21 Q. And later you became aware of some news stories
22 out of Dallas that identified some orthodontic providers
23 for high billing of orthodontic codes, correct?

24 A. Correct.

25 Q. And then based on that information and coupled

1 with your knowledge of the TMHP prior authorization
2 process and the issues with the orthodontic process, is
3 that not also what prompted you to run the report that
4 you ran?

5 A. It also did. And I've had conversations with
6 prior consultants looking at orthodontic cases where the
7 HLD scoring was already an issue on post -- on
8 retrospective reviews. So I had that component to
9 consider in -- to consider -- factor in my
10 decision-making also.

11 Q. So you already had some prior knowledge. I
12 believe Mr. Canales said that you had no direct facts
13 linking to Harlingen Family Dentistry specifically, but
14 you had general knowledge of issues with HLD scoring
15 sheets and orthodontic providers in general?

16 A. That would be correct.

17 Q. Okay. And this report that you ran, this kind of
18 data mining, is this one of the ways that you -- that
19 OIG normally opens cases or detects potential providers
20 for investigation?

21 A. It can be if an issue is brought to our attention
22 that we feel is indicative across a certain provider
23 type, we'll run reports to look at the providers from
24 that angle, from that aspect.

25 Q. Okay. Would you say, based on your experience as

1 an employee of OIG that it would be a violation of the
2 provider agreement to put false or misleading
3 information on a claim that was submitted by a provider?

4 MR. CANALES: I'm going to object to the
5 form of the question of this witness, Your Honor, it's
6 such a vague question. The document speaks for itself.
7 I don't think he's qualified to give us expertise on
8 this issue. We object.

9 HEARING OFFICER: I'll overrule the
10 objection and allow the witness to answer it if he
11 notes.

12 THE WITNESS: Can you repeat the question?

13 Q. (By Ms. Alvarado) Yes, I can. Based on your
14 experience as an investigator and as an employee of the
15 office of inspector general, are you aware that a
16 provider has to sign a provider enrollment agreement to
17 be a provider with the Medicaid program?

18 A. Yes.

19 Q. And would you say that it is a violation of the
20 agreement for a provider to submit false or misleading
21 information on a claim that they submit to the program?

22 A. Yes. We have a specific tack code violation that
23 spells out that is a program violation to submit false
24 information on a prior authorization document.

25 Q. Okay. And in your experience and your knowledge

1 of the Texas administrative code that's applicable to
2 the office of inspector general, would you say that the
3 same type of conduct can apply to various program
4 violations or numerous program violations?

5 A. Yes.

6 Q. Okay. Doctor -- Mr. Canales talked about your
7 prior experience with Dr. Orr and you said that he was a
8 consultant previously for the office of inspector
9 general, correct?

10 A. Yes.

11 Q. And when Dr. Orr was a consultant with the office
12 of inspector general, did he follow Medicaid policy and
13 review cases for our office?

14 A. Yes, he did.

15 Q. And when Dr. Orr was a dental director for
16 current TMHP which was formally Natural Heritage
17 Insurance Company, NHIC, would Dr. Orr have reviewed
18 similar orthodontic cases to the case that -- for prior
19 authorization such as the subject matter of the case
20 here?

21 MR. CANALES: Object to form of the question
22 unless he has knowledge of it, Your Honor.

23 THE WITNESS: I'm going to ask you to repeat
24 that one more time.

25 HEARING OFFICER: Me, too.



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1 Q. (By Ms. Alvarado) Sorry.

2 MR. CANALES: We object on no foundation on
3 the knowledge.

4 HEARING OFFICER: Okay. Both the witness
5 and I need to hear the question again.

6 Q. (By Ms. Alvarado) okay. You stated earlier that
7 you've worked for HHSC for how long?

8 A. Approximately 15 years.

9 Q. Okay. And Dr. Orr -- are you familiar with the
10 facts that Dr. Orr was the dental director for National
11 Heritage Insurance Company from 1995 to 2003?

12 A. Yes.

13 Q. And in his position as a dental director for
14 National Heritage Insurance Company during those dates
15 of service, do you know whether or not Dr. Orr would
16 have reviewed and approved prior authorization?

17 HEARING OFFICER: I'll sustain the
18 objection. You're talking about a private insurance
19 company, right?

20 MS. ALVARADO: No. It's the former name of
21 the claims administrator that is now TMHP.

22 MR. MEDLOCK: It is the Medicaid's physical
23 contractor at the time.

24 HEARING OFFICER: I'll overrule the
25 objection. You may answer the question.

1 THE WITNESS: Yes. I'm aware that that
2 would have been part of his capacity as dental director
3 to approve prior authorization for orthodontia services.

4 Q. Based on your knowledge of Medicaid policy, has
5 the HLD scoring sheet changed substantially or
6 substantively from, you know, the time period where Dr.
7 Orr would have been the dental director to the present
8 time?

9 A. No.

10 Q. Okay.

11 A. No. I'm saying, no, I do not believe that it has
12 changed substantively.

13 Q. So Dr. Orr would have reviewed and approved
14 basically the same types of HLD sheets that are the
15 subject matter of this case, correct?

16 A. Yes.

17 MS. ALVARADO: No further questions, Your
18 Honor.

19 RECROSS EXAMINATION

20 BY MR. CANALES:

21 Q. Before you made this review study that you made,
22 had there been any type of -- had there ever been any
23 type of charges or filed against any orthodontist for an
24 HLD score sheet?

25 A. No. There were investigations in progress.

1 Q. So the answer --

2 A. Of that issue, but nothing --

3 Q. So the answer was there's none?

4 A. To the best of my knowledge, no.

5 Q. And will you agree with me, sir, that before June
6 of 2010, there have been no referrals at all by your
7 agency to MFCU regarding HLD index scores?

8 A. I couldn't say that. I wouldn't say that.
9 That's not true. I wouldn't know. I couldn't sit here
10 and tell you, I would be speculating. We very well
11 could have referred an issue like that on a provider
12 case to MFCU. I wouldn't have that information here in
13 front of me right now to answer that question.

14 Q. Well, let me show you and see if I can show you a
15 document that I believe -- I want to ask whether or not
16 you recognize this particular document as a document
17 that was part of that flash drive that was given to
18 Dr. Evans. I just want to ask -- first of all, don't
19 tell me what it says. I just want to know if you
20 recognize this as part of the flash drive documents?

21 A. Yes.

22 Q. All right. Is this -- is this -- just for the
23 record, is this a series of documents that were given to
24 Dr. Evans when he was introduced to the records of
25 Harlingen Family Dentistry?

1 A. Yes.

2 Q. And this particular form that you have there in
3 front of you, I'm -- ask you whether or not the very
4 last part, see if it refreshes your memory regarding any
5 previous complaints filed with the attorney general's
6 office. And I want you to look at the highlighted
7 parts. Easy reference.

8 A. "There are no open cases according to the AG MFCU
9 case pending report 531" -- that statement is unique to
10 Harlingen Family Dentistry only.

11 Q. Let me back up. You went to fast for me. Read
12 it for me again. What does it say?

13 A. "There are no open cases according to the AG MFCU
14 case pending report dated 5/31/2011."

15 Q. And so you're saying that this refers only to
16 specifically to Harlingen?

17 A. Correct.

18 Q. Well, the next sentence it says, "There are no
19 other open cases with this provider."

20 A. Well, as part of our preliminary work of process
21 we look to see if we had any other existing
22 investigation on the same provider.

23 Q. Everything here's on the same provider?

24 A. Yes. Everything's on the same provider.

25 Q. Just so we can be clear then, for this provider,



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1 prior to your report, prior to your inquiry, there is no
2 pending cases at all or inquiries or investigations
3 against Harlingen Family Dentistry?

4 A. Yes.

5 Q. Very well. This report has a date. I just want
6 the get the dates of when people met. Tell me whether
7 or not this date refreshes your memory as to when the
8 date was between you and Dr. Evans. It's got a date of
9 June 30, 2011, does that help you at all?

10 A. All I can tell you from this is this -- my
11 meeting with Dr. Evans would have took place sometime
12 after 6:30, 2011.

13 MR. CANALES: That's all the questions I
14 have.

15 MS. ALVARADO: No further questions, Your
16 Honor.

17 HEARING OFFICER: All right. Mr. Klozik,
18 that concludes your testimony. You may step down.
19 Please, refrain from discussing the subject matter of
20 your testimony of this case with other witnesses in the
21 case while the case is pending. Does Mr. Klozik, need
22 to remain available?

23 MS. ALVARADO: Not for us.

24 MR. CANALES: Not for us, Your Honor.

25 HEARING OFFICER: Okay. You're excused.



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1 Next witness for OIG.

2 MR. MEDLOCK: The state would call
3 Dr. Charles Evans.

4 HEARING OFFICER: All right. Dr. Evans, if
5 you would just come up and raise your right hand,
6 please.

7 (Witness sworn.)

8 HEARING OFFICER: Go ahead and have a seat.

9 THE WITNESS: Thank you.

10 HEARING OFFICER: When you're ready,
11 Mr. Medlock.

12 DIRECT EXAMINATION

13 BY MR. MEDLOCK:

14 Q. Doctor, could you please state your name and
15 spell it for the record?

16 A. Charles Evans, C-H-A-R-L-E-S, last name Evans,
17 E-V-A-N-S, DDS.

18 Q. Could you briefly describe your educational
19 background for the court?

20 A. Yes. I attended dental school at the
21 University -- you want to go.

22 Q. Start there.

23 A. I attended dental school at the University of
24 Texas, dental branch in Houston. Graduated in the 1967.
25 And from 1967 to 1971 I was -- did an orthodontic

1 residency which is a preceptorship in Hutchinson,
2 Kansas. Following that I came to Austin, Texas, and
3 have been in exclusive practice of orthodontics for 41,
4 42 years.

5 Q. Do you have any specialties or certifications in
6 orthodontia?

7 A. Yes, I do.

8 Q. What are those?

9 A. Well, I had -- I was doing my training in Kansas
10 so I completed the Kansas Dental Board as a dentist.
11 And then I took the Kansas Specialty Board and received
12 a specialty license in orthodontics in Kansas. Texas
13 does not have a specialty board but I'm certified in
14 orthodontics by the Southwestern Society of Orthodontics
15 and the American Association of Orthodontists.

16 Q. And just for clarity, how long have you been
17 practicing as an orthodontist?

18 A. Well, actually since 1967. 45 years.

19 Q. And how did you become involved with this case?

20 A. I received a call, I think it was from Dr.
21 Priscilla Alfaro and asked if I would be interested in
22 being a consultant. I met with her and we discussed the
23 situation. Eventually I was hired as a consultant.

24 Q. With regard to the case, what materials were you
25 given to review as a consultant?

1 A. This case I was given patient chart, patient file
2 which included I think photographs, x-rays, treatment
3 card that they actually filled out, the dates and the
4 work performed on each date on the patient. And in most
5 cases study models.

6 Q. Were you given any materials by Dr. Alfaro to use
7 as criteria in your review?

8 A. Yes. I was given the HLD score sheets and was
9 asked to score each of the patients. I think there was
10 85 or 86 parents involved that I was asked to score.

11 Q. Were there any other documents that you were
12 given to aid in your review?

13 A. Yes. I was given copies of the orthodontic
14 portion of the TMPP manual. And there was a little zip
15 drive or a thumb drive which had I guess the records of
16 all of these patients.

17 Q. Do you remember what years of the manual you were
18 given to review for this case?

19 A. I think on that zip drive was 2007 to 2011 and I
20 looked over the orthodontic portions of that, but I was
21 also given a hard copy of the orthodontic portion and
22 that's actually what I used is the hard copy.

23 Q. Was the hard copy the same as the electronic
24 version?

25 A. Yes, it was.

1 Q. And any different manuals that you received
2 either electronic or hard copy, did you notice any
3 changes in the orthodontic policy?

4 A. No, I didn't.

5 Q. Were you given any direction by any OIG
6 representative with respect to how much leniency you
7 should employ in your review?

8 A. Yeah. Dr. Alfaro we went over this and talked
9 about the different ways of how the score, but I was
10 also instructed that if it was borderline or close, to
11 be lenient and tend to give a little more to the
12 previous HLD sheet.

13 Q. So would it be correct to say that if there was a
14 close call in your professional dental judgment to give
15 the benefit of the doubt to the provider?

16 MR. GARCIA: I'm going to object to that
17 question, Judge. That calls for speculation as to
18 what's a close call.

19 MR. MEDLOCK: He just mentioned it.

20 HEARING OFFICER: I'll overrule the
21 objection. You can answer the question.

22 THE WITNESS: Yes. That is the case. In
23 fact, I think as I reviewed my couple of score sheets I
24 actually made some changes as I went back. The
25 variation between my score and their score was just

1 incredible. So I just went back over some and I'm
2 trying to think how on earth can they come up with these
3 scores? What among I doing wrong? So I went back and
4 made some changes, you know, actually giving them a
5 higher score.

6 MR. GARCIA: Judge, I'm going to object on
7 the nonresponsiveness of that response. He's just
8 narrating. There's no question before him.

9 HEARING OFFICER: I'll sustain that
10 objection.

11 Q. (By Mr. Medlock) Did you review those patient
12 files that Dr. Alfaro gave you?

13 A. Yes, I did.

14 Q. Were those patient files originals or copies?

15 A. I really am not sure. I would assume they would
16 be copies, but I don't know.

17 Q. Today are you prepared to discuss the findings of
18 your review?

19 A. Yes.

20 HEARING OFFICER: Mr. Medlock, can I
21 interrupt you for just a second?

22 MR. MEDLOCK: Yes, Your Honor.

23 HEARING OFFICER: I have a question. Do the
24 parties -- well, I have a question for both of you I
25 guess. Do the parties agree or are you going the

1 address in the testimony that the materials that are in
2 response to Exhibit T are the same materials that
3 Dr. Evans reviewed? Is that something that is a matter
4 that's disputed?

5 MR. MEDLOCK: I don't believe it is.

6 HEARING OFFICER: We agree that's what's in
7 RT is what Dr. Evans saw?

8 MS. ALVARADO: All the patient files,
9 correct.

10 MR. CANALES: Yes, Your Honor.

11 HEARING OFFICER: Okay. Isn't RT where the
12 patient files are?

13 MR. MEDLOCK: That is correct, Your Honor.

14 MR. CANALES: All 85 patient files are
15 there. The only thing is it's a color photographs part,
16 but I think we can clarify that. But the T documents,
17 RT documents, are the documents that the Harlingen
18 Family Dentistry provided to the state. And those are
19 the ones that came into evidence and we all agree that
20 these are the same ones that were seen by Dr. Evans, by
21 Dr. Orr.

22 MR. MEDLOCK: There's no question.

23 MR. CANALES: There's no question about it.

24 HEARING OFFICER: Very good. Sorry to
25 interrupt. Thank you.

1 Q. (By Mr. Medlock) Dr. Evans, in your -- generally
2 speaking, in your expert opinion, why might a person
3 need orthodontics?

4 A. Well, sometimes they have a handicapping
5 malocclusion, sometimes it's just cosmetic, you know,
6 over the years I've had patients come into my office
7 they I felt did not need orthodontics. But for one
8 reason or another their parents wanted them to have it.

9 Q. As you said some people come in for cosmetics.
10 Do some people come in just for cosmetic purposes?

11 A. Yes.

12 Q. In your review of the manuals, did you come to
13 any understanding of whether or not cosmetic purposes
14 were allowed by Medicaid policy?

15 A. Would you repeat that again, please.

16 Q. Can a patient that's a Medicaid patient seek
17 treatment for cosmetic purposes only in Medicaid?

18 A. No. I think the manuals specifically says no to
19 that.

20 Q. And does the Medicaid manual set out certain
21 criteria that must exist in order for a patient to be
22 covered under Medicaid for orthodontia?

23 A. Yes, it does.

24 Q. We're going to go ahead and talk about some of
25 those criteria. I'm going to hand you what's already



1 been marked States Exhibit, another copy of RX. Can you
2 briefly describe what this document is?

3 A. It's a Texas Medicaid Providers Procedure Manual
4 for the year 2007.

5 Q. And is this a copy of one of the years that you
6 reviewed?

7 A. I think so.

8 Q. If you can turn to the Bates number page 67 for
9 me, please.

10 A. Okay.

11 Q. And the highlighted phrase there under 19.23.1,
12 "How to score the handicap labial lingual deviation or
13 HLD index." Do you see that?

14 A. Yes, I do.

15 Q. And if you flip to the next page, under it says
16 19.23.2, "HLD score sheet." Do you see that as well?

17 A. Yes.

18 MR. GARCIA: What page are you on, John?

19 MR. MEDLOCK: Starting on page 67. Now
20 we've moved to page 68.

21 Q. (By Mr. Medlock) And then flip one more page,
22 page 69, can you briefly describe what that is?

23 A. That is the HLD score sheet.

24 Q. Okay. And is this what you used to -- when you
25 reviewed the patient files to score the patient's files?

1 A. That is correct. I completed one of these sheets
2 for each patient.

3 Q. And can you briefly describe, for the court, what
4 is on this sheet?

5 A. Well, the patient's name, address, and the
6 conditions observed. Conditions being cleft pallet,
7 severe traumatic deviation, overjet, overbite,
8 mandibular protrusion, open bite, ectopic eruption, and
9 anterior crowding.

10 Q. And are there points awarded for certain areas of
11 these categories?

12 A. Yes.

13 Q. And according to Medicaid policy how many points
14 must a person receive in order to qualify for Medicaid
15 treatment?

16 A. Well, according to policy, they must have
17 26 points and a handicapping malocclusion.

18 Q. You said and a handicapping malocclusion?

19 A. Correct.

20 Q. What do you mean by handicapping malocclusion?

21 A. Well, handicapping would be if they were --
22 difficulty eating, or have problems with speech.

23 Q. Could we classify that -- would it be accurate to
24 classify that as the patient has a functionality
25 problem?



1 A. Yes.

2 Q. If you'll turn back to Bates numbered page 67,
3 the how to score. Is this a section you used to
4 determine how to score the HLD score sheet? And what I
5 mean by that, is this the -- are these the parameters
6 you used to score the HLD score sheet?

7 A. Yes.

8 Q. If you'll turn to the next page for me, please,
9 you'll see that there's a highlighted portion under the
10 word ectopic eruption. Could you please read that
11 section for the court?

12 A. "Ectopic eruption, an unusual pattern of eruption
13 such as, high labial cuspids or teeth that are grossly
14 out of the long axis of the alveolar ridge. Do not
15 include or score teeth from an arch if that arch is to
16 be counted in the following category of anterior
17 crowding. For each arch either the ectopic eruption or
18 anterior crowding may be scored, but not both."

19 Q. Okay. And just for reference for the court, how
20 many teeth can -- under the Medicaid policy, can be
21 scored as ectopic?

22 A. Well, it's classified as just anterior teeth so
23 that would be the three front teeth on either side of
24 the midline. So it would be six teeth on the top and
25 six teeth on the bottom.



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1 Q. So that would be a total of 12 feet?

2 A. Total of 12.

3 Q. The 12 front teeth?

4 A. Correct.

5 Q. Because I'm not an orthodontist and sometimes
6 some of those phrases escape my knowledge, can you
7 briefly describe for the court what a high labial cuspid
8 is?

9 A. A high labial cuspid is one that generally erupts
10 to the cheek side or the lip side of the alveolar ridge.
11 Usually that occurs because of crowding. The cuspid is
12 most often the last tooth to come in the sequence of
13 things. You know, at age 6 the two front teeth come in.
14 The 6-year molars come in and that more or less sets the
15 distance. And then over the next five years as the
16 other teeth come in they take their place. The cuspid
17 or the eye tooth generally being the last one in, if
18 there's no room for it, often times it will erupt up
19 higher to the outside. Sometimes it comes in toward the
20 roof of the mouth.

21 Q. And you talked about an alveolar ridge. Can you
22 describe for the court what actually an alveolar ridge
23 is?

24 A. The alveolar ridge is a horseshoe shaped ridge in
25 the jaw, upper and lower jaw, over which where the teeth



1 erupt. As the teeth come in, the bone that surrounds
2 the teeth is called an alveolar bone. It's a much
3 softer bone as opposed to the hard bone of the legs and
4 arms and whatever. And that bone is generally there
5 because the teeth are there. And the teeth come in, in
6 this horseshoe position basically because, well, number
7 one, they have a tendency to come in just vertically and
8 then you've got the strong, but intermittent tongue
9 force that's pushing out on the teeth and a more
10 constant, but lighter lips and cheek force is pushing in
11 which more or less establishes this balance.

12 Q. And in the definition of ectopic eruption it
13 talks about teeth that are grossly out of the long axis
14 of the alveolar ridge. Can you explain for the court
15 what that exactly means?

16 A. Repeat that, please?

17 Q. The definition talks about teeth being grossly
18 out of the long axis of the alveolar ridge. Can you
19 describe for the court what that actually means?

20 MR. GARCIA: Your Honor, I'm going to object
21 to what it means. What it means to him, Your Honor.

22 MR. MEDLOCK: I would say as an orthodontist
23 of more than 45 years of service and an expert in this
24 case, he is more than qualified to give an opinion as to
25 what that means.



1 HEARING OFFICER: I'll overrule the
2 objection. You can answer the question.

3 THE WITNESS: Well, by being grossly out of
4 the ridge we're not talking about just a minor
5 difference. I mean, the tooth can come in and be just a
6 little bit crowded to the outside or the inside. But
7 still in a normal position. Certainly not a tooth that
8 would be rotated or turned you wouldn't consider that
9 being off of the ridge. It's on the ridge, but maybe
10 turned a little bit. To be grossly out of the ridge
11 would be if it's really coming in up high and way out of
12 position like a labial cuspid or maybe under the roof of
13 the mouth, I've seen a lot of those teeth. Particularly
14 the cuspids that are actually growing horizontally.
15 Some are even inverted going up. I mean, that is --
16 that's grossly off the alveolar ridge.

17 Q. (By Mr. Medlock) And you kind of spoke about
18 this a little bit, but given the two examples we just
19 kind of went over. The high labial cuspids grossly out
20 of the long axis of the alveolar ridge. Do any of those
21 necessarily speak to rotated or crowded teeth?

22 A. Well, no, but sometimes the crowded condition can
23 cause the tooth to erupt in an abnormal position. But
24 also if you're looking at a tooth that's just rotated, I
25 mean, it's very possible particularly since we're



1 talking about anterior teeth. These anterior teeth
2 began to erupt, particularly the two front ones at age
3 6, six and a half. The next teeth maybe by 7. So they
4 can come in a perfect position, but over the years as
5 the other teeth come in and things get crowded those
6 teeth that were maybe in perfect position at age 6 or 7
7 can now be crowded and rotated. So you certainly
8 couldn't consider that as an ectopic eruption.

9 Q. So if a tooth is on the alveolar ridge and it
10 might be slightly rotated, would it be ectopic?

11 A. No.

12 Q. Referring back to the Exhibit RX on page -- on
13 Bates page 68, under the highlighted portion with the
14 heading, "Anterior crowding," are you there yet?

15 A. Yes.

16 Q. Could you please read that highlighted section
17 under anterior crowding?

18 A. "Anterior crowding is anterior teeth that require
19 extractions as a prerequisite to gain adequate room to
20 treat the case. If the arch expansion is to be
21 implemented as an alternative to the extraction provide
22 an estimated number of appointments required to obtain
23 adequate stabilization. Arch length insufficiency must
24 exceed three and a half millimeters to score for
25 crowding on any arch. Mild rotations that may react



1 favorably to stripping or moderate expansion procedures
2 are not to be scored as crowding."

3 Q. Under that definition of the Medicaid policy that
4 you just read for the court, if crowding does not exceed
5 the three and a half millimeters, would it qualify for
6 anterior crowding for scoring purposes on the HLD score
7 sheet?

8 A. No.

9 Q. Furthermore, if there is anterior crowding, does
10 Medicaid policy say you have to extract teeth?

11 A. No.

12 Q. If you were to extract teeth for an issue with
13 anterior crowding, which teeth would you extract?

14 A. The normal sequence for extraction is the first
15 bicuspid, which is the fourth tooth back from the
16 midline. And the reason you do that is because, of
17 course, the four front teeth are probably the weakest
18 teeth and it would be the easiest to treat if you
19 extracted those. But for cosmetic reasons we almost
20 never extract those teeth. Then the third teeth back,
21 which is the eye tooth, which is just a very strong long
22 rooted tooth forms at the corners of the mouth. So I
23 think in my 47 years I've only extracted one of those
24 teeth and it was on a man in his 40's. I would never
25 have done it to a child. So we take out the tooth



1 behind that.

2 Q. So just for clarity, if you were to extract the
3 tooth you would not extract any of the front six or
4 bottom six?

5 A. No. Well, there may be a sever case where you
6 might, but ordinarily, no, you would not.

7 HEARING OFFICER: Someone just came in. I
8 don't know if I need to keep interrupting.

9 MR. MEDLOCK: I don't know who walked in.

10 HEARING OFFICER: Someone in the back row.

11 MS. ALVARADO: He's fine.

12 HEARING OFFICER: Thank you. I'm sorry.

13 MR. MEDLOCK: I understand. It's not a
14 problem.

15 HEARING OFFICER: I don't know how many fact
16 witnesses we have out at this point.

17 MR. CANALES: I have one, Judge, and I've
18 told him to come back tomorrow.

19 HEARING OFFICER: So I don't need to keep
20 doing this today.

21 MS. ALVARADO: Our last one is out in the
22 hall.

23 HEARING OFFICER: All right. Very good.
24 Thank you.

25 Q. (By Mr. Medlock) Okay. Getting back to this

1 exhibit. If you could refer back to the same page,
2 Bates page 68, you see the section under labial lingual
3 spread in millimeters?

4 A. Yes.

5 Q. The first highlighted paragraph, could you read
6 that out loud for the court, please?

7 A. It says, "Provider should be conservative in
8 scoring. Liberal scoring will not be helpful in the
9 evaluation and approval of the case. The case must be
10 considered dysfunctional and have a minimum of 26 points
11 on the HLD index to qualify for any orthodontic care
12 other than cross bite correction. Half mouth cases
13 cannot be approved."

14 Q. In reading that definition you came across the
15 word -- you came across the phrase, the case must be
16 considered dysfunctional. What is dysfunctional mean to
17 you?

18 A. Well, dysfunctional is it would be very similar
19 to what we discussed about handicapping. The patient
20 could not chew properly, could not masticate their food,
21 they would have speech problems.

22 Q. Furthermore, it says it has -- it says
23 dysfunctional and meet a minimum 26?

24 A. Correct.

25 Q. To qualify for orthodontic care. So must there

1 not also, besides the 26 points on the HLD score sheet,
2 also be diagnosis of dysfunctionally?

3 A. Correct.

4 Q. There's a paragraph that follows that. Could you
5 please read that paragraph?

6 A. "The intent of the program is to provide
7 orthodontic care to clients with handicapping
8 malocclusion to improve function. Although aesthetics
9 is an important part of self esteem, services that are
10 primarily for aesthetics are not within the scope of
11 benefits of this program."

12 Q. When it makes reference to aesthetics, in your
13 opinion, as an expert, what -- what are they referring
14 to when they talk about aesthetics?

15 A. Just basically the attractiveness.

16 Q. Would that be fair to characterize as also
17 cosmetic?

18 A. Cosmetic definitely.

19 Q. And if a patient came to you only with cosmetic
20 or aesthetic issues, would they be able to qualify under
21 the HLD score sheet for Medicaid orthodontics?

22 A. No, they would not.

23 Q. I'm going to ask you a series of questions
24 regarding the review that you did.

25 HEARING OFFICER: Before you do that

1 Mr. Medlock, could you ask a question for me? If you've
2 asked this already I apologize. Can you just elicit a
3 definition for labial lingual spread.

4 Q. (By Mr. Medlock) Dr. Evans, what is a labial
5 lingual spread?

6 A. That's just talking about spacing between the
7 teeth, gaps between the teeth.

8 HEARING OFFICER: Thank you.

9 Q. (By Mr. Medlock) May I approach?

10 HEARING OFFICER: Yes.

11 Q. (By Mr. Medlock) I'm handing you what's been
12 admitted as State's Exhibit RT, number 40. Can you
13 briefly describe what this exhibit is?

14 A. Looks like one of the patients that I scored.

15 MR. GARCIA: Your Honor, if we could have
16 just a second so that we could access that.

17 HEARING OFFICER: Sure.

18 MR. MEDLOCK: It's our number 40.

19 Q. (By Mr. Medlock) Can you briefly describe, again
20 for the court, what that exhibit is?

21 A. It's a patient records on one of the patients
22 that I had looked at.

23 Q. And I'm also going to hand you what's been
24 admitted as States Exhibit RR.

25 May I approach?

1 HEARING OFFICER: Yes.

2 Q. (By Mr. Medlock) Bates number 40, Bates page
3 number 40. Do you recognize that document, Dr. Evans?

4 A. Well, I recognize it as one that I completed, HLD
5 score sheet that I completed. I don't know who the
6 parent is.

7 Q. But it -- but it's an HLD score sheet that you
8 filled out?

9 MR. GARCIA: I'm sorry. What's the number?

10 MR. MEDLOCK: It's Exhibit RR, Bates stamp
11 40. The Bates page should also refer to the page number
12 as well.

13 HEARING OFFICER: I'm sorry. The Bates page
14 for RR is?

15 MR. MEDLOCK: Bates page 40.

16 HEARING OFFICER: 40?

17 MR. MEDLOCK: Yes.

18 MR. GARCIA: Not three R's, two R's.

19 HEARING OFFICER: I only have --

20 MR. MEDLOCK: R dash R.

21 HEARING OFFICER: Yes. I seem to be lost.

22 Ah. Not RRR.

23 MR. MEDLOCK: Correct. R dash R.

24 MR. GARCIA: Respondent's R.

25 HEARING OFFICER: Got it.



1 MR. MEDLOCK: Are we all on the same page.

2 HEARING OFFICER: Yeah.

3 Q. (By Mr. Medlock) okay. And Dr. Evans, that
4 document I just handed you, R dash R, you said that it
5 was a score sheet that you filled out; is that correct?

6 A. That's correct.

7 Q. What score did you give the patient that you
8 reviewed in this case?

9 A. The total is one.

10 Q. How did you arrive at that score?

11 A. I graded the overjet as being three millimeters
12 and on the score sheet you are to subtract
13 two millimeters. So three subtracted the two and ended
14 up with one. You subtract two because two is generally
15 the normal average amount of overjet that a patient
16 should have. So the excess overjet would be one.

17 Q. In looking at the Exhibit R2, the patient file
18 there, could you pull the score sheet for Harlingen
19 Family Dentistry? The HLD score sheet?

20 A. Yes.

21 Q. What did the patient from Harlingen score this
22 patient?

23 A. They scored 26.

24 Q. How did they arrive at this score?

25 A. Well, where I scored one for overjet, they scored

1 two, which is -- that's reasonable. But in the area of
2 ectopic eruption, teeth that are grossly off the
3 alveolar ridge they scored eight teeth. I mean, there's
4 know way you could look at these photographs and see
5 eight teeth off the alveolar ridge. In fact, this is a
6 perfect example of what I had said earlier. The only --

7 MR. GARCIA: Your Honor, I'm going to
8 object. He's not responding to a question. He's just
9 narrating.

10 HEARING OFFICER: I'll sustain. Could you
11 ask another question?

12 Q. (By Mr. Medlock) Are there any rotated or
13 slanted teeth?

14 A. I can see one.

15 Q. Is that rotated or slanted tooth off the alveolar
16 ridge?

17 A. No.

18 Q. Are there any high labial cuspids?

19 A. No.

20 Q. Is there anything in your looking at that
21 photograph that would be grossly out of the long axis of
22 the alveolar ridge?

23 A. No.

24 Q. Do you agree with the score that Harlingen --

25 A. No.

1 Q. -- submitted? Do you agree with the number of
2 ectopic eruptions?

3 A. No, absolutely not.

4 Q. In your opinion, are any of these teeth outside
5 the usual pattern of eruption?

6 A. No. There's one lower anterior tooth that's a
7 little bit crowded. Not three and a half millimeters,
8 but even though it's a little rotated and crowded it's
9 still on the alveolar ridge.

10 Q. And does this appear to be a pretreatment photo?

11 A. Yes.

12 Q. In your expert opinion you talked about crowding.
13 Could you categorize any of these teeth as anterior
14 crowding per the Medicaid policy manual?

15 A. I can characterize it as anterior crowding, but
16 not three and a half millimeters of crowding. So by
17 TMPP manual, no, it cannot be scored as crowding.

18 Q. Okay. In your expert opinion, could this patient
19 be considered as having a dysfunction or a handicap
20 malocclusion?

21 A. Absolutely not. If this patient has a
22 handicapping malocclusion everybody in this room does,
23 too.

24 MR. GARCIA: Objection, Your Honor.

25 MR. MEDLOCK: It's his opinion.

1 MR. GARCIA: Can I state my objection, Your
2 Honor? He goes into a narrative after the question.
3 There is no question posed.

4 HEARING OFFICER: Well, that time I think he
5 was just expanding very briefly. I will overrule the
6 objection and allow that.

7 Q. (By Mr. Medlock) Could you finish what you were
8 saying.

9 A. Well, I was just saying that if, I mean, no one
10 has perfect teeth or not many people. I would like to
11 think maybe my orthodontic patients have perfect teeth.
12 But, yeah, if this is handicapping, everybody in the
13 room would probably have a handicapping malocclusion.

14 Q. So in your expert opinion, would this patient
15 have qualified for Medicaid orthodontic treatment?

16 A. No.

17 Q. I'm going to hand you -- we're done with that
18 file. May I approach?

19 HEARING OFFICER: Yes.

20 Q. (By Mr. Medlock) I'm going to hand you Exhibit
21 RT 58. Your Honor, we're going to be doing this several
22 times.

23 HEARING OFFICER: Sure. So this is RV?

24 MR. MEDLOCK: RT, oh, yeah, the patient,
25 yes, is RV, correct.

1 Q. (By Mr. Medlock) And could you briefly describe
2 for the court what this is?

3 A. This is the records of another patient that I
4 looked at.

5 Q. And now I'm going to hand you what the state has
6 had admitted R dash R, Bates page 58. Do you recognize
7 that document, Dr. Evans?

8 A. Yes. It is an HLD score sheet that I completed
9 assuming for this patient.

10 Q. And what did you score this patient in your
11 review?

12 A. I scored this patient two points.

13 Q. And how did you arrive at that score?

14 A. I mentioned the overjet as being 4 millimeters,
15 minus the two for normalcy, which left a balance of two.
16 And that was my two points.

17 Q. And can you please pull the HLD score sheet
18 contained in the file that Harlingen submitted. And
19 what did the orthodontist from Harlingen score?

20 A. They scored 27 points.

21 Q. And how did they arrive at that determination?

22 A. Well, they had five points for overjet, minus two
23 which is three. One more than what I have and I feel
24 like that's reasonable. But they also scored
25 eight points for ectopic -- I mean eight teeth for being



1 ectopic at three points each, which gives them
2 24 points, but I found no ectopic.

3 Q. So -- and to go back on something. How many --
4 just for -- to refresh my memory, how many teeth can be
5 ectopic under the Medicaid policy?

6 A. The maximum number is 12.

7 Q. And they scored how many?

8 A. Eight.

9 Q. So in the opinion of Harlingen Family Dentist
10 there were only four teeth that were not ectopic?

11 A. Correct.

12 Q. And do you agree with the number of ectopic teeth
13 that were scored?

14 A. No.

15 Q. And your expert opinion, are there any teeth
16 outside the usual pattern of eruption?

17 A. No.

18 Q. Are there any teeth that are grossly out of the
19 long axis of the alveolar ridge?

20 A. No.

21 Q. Are any of these teeth high labial cuspids?

22 A. No.

23 Q. In your expert opinion, could this patient be
24 considered as having a dysfunction or a handicapping
25 malocclusion?



1 A. No. The patient does have one -- a retained baby
2 tooth in the lower front. But that's not handicapping.

3 Q. That doesn't cause an issue? So in your expert
4 opinion, would this patient qualify for Medicaid
5 orthodontic treatment?

6 A. No.

7 Q. Thank you. Now I'm going to hand you a patient
8 file that's been marked RT 52.

9 MR. GARCIA: Your Honor, before we get to
10 this one could we take a short break.

11 HEARING OFFICER: Certainly.

12 MR. MEDLOCK: I've got no objection to that.

13 HEARING OFFICER: Let's go off the record
14 for 10 minutes and then we'll only have time for about
15 another 45, 50 minutes of testimony before we have to
16 break for the day. We're off the record.

17 (Brief recess.)

18 HEARING OFFICER: We're back on the record.

19 Q. (By Mr. Medlock) Dr. Evans, I'm going to hand
20 you another patient that the state has marked RT 52.
21 Can you briefly describe what that is for the record?

22 A. It's another patient record from Harlingen
23 Dental.

24 Q. Did you review that during the course of your
25 review?

1 A. I think I did.

2 Q. I'm going to now hand you the State's Exhibit R
3 dash R, Bates number 52. Do you recognize this
4 document, Dr. Evans?

5 A. Yes. This is an HLD score sheet that I
6 completed. And I believe it's for this patient.

7 Q. What did you score this patient on the HLD score
8 sheet, Dr. Evans?

9 A. Yes, I did.

10 Q. What score did you give that patient?

11 A. I gave this patient a score of two, which I
12 measured the overjet as being 4 millimeters, subtracting
13 the two for normalcy, left a balance of two. And that
14 was the only problem that I saw with this patient.

15 Q. And if you could look in the patient file there,
16 RT 52 and pull the score sheet for Harlingen. What did
17 they score this patient?

18 A. They scored the patient 27.

19 Q. And how did they arrive at that score?

20 A. Well, they had four points for overjet, minus the
21 two which left them a value of two, which is the same
22 thing I that had. They also gave them one point for
23 overbite, which I did not have. And then the big
24 discrepancy is that they scored eight of out of the 12
25 anterior teeth as being ectopic of which I scored none.



1 Q. Do you agree with this score that Harlingen
2 submitted?

3 A. No, I do not.

4 Q. Do you agree with the number of ectopic eruptions
5 that Harlingen scored on this HLD score sheet?

6 A. No, I do not.

7 Q. In your expert opinion, are any of these teeth
8 outside the usual pattern of eruption?

9 A. No, they're not.

10 Q. Are any of these teeth out of the long axis of
11 the alveolar ridge?

12 A. No, they are not.

13 Q. Does this patient have any high labial cuspids?

14 A. No.

15 Q. Could you categorize any of these teeth that they
16 scored as anterior crowding?

17 A. Well, there's a small amount of lower anterior
18 crowding. But again, it's not three and a half
19 millimeters.

20 Q. And it would have to be at least three and a half
21 millimeters per Medicaid policy; is that correct?

22 A. That is correct.

23 Q. In your expert opinion, does this patient have
24 any dysfunction or handicap malocclusion?

25 A. Well, there's a slight open bite on the right



1 side probably from a tongue thrust, but I wouldn't say
2 that it's handicapping.

3 Q. And would it be dysfunctional at all?

4 A. No, I wouldn't think so.

5 Q. In your expert opinion, would this patient
6 qualify for Medicaid orthodontic treatment?

7 A. No.

8 Q. I'm going to hand you what the state has marked
9 RT 81. May I approach, Your Honor?

10 HEARING OFFICER: Yes.

11 Q. (By Mr. Medlock) Can you please describe what
12 that document is?

13 A. This is -- looks like another patient from
14 Harlingen Dental.

15 Q. And did you review this patient as part of your
16 review for the state?

17 A. I think possibly so.

18 Q. I'm going to hand you what's been marked R dash
19 R, number -- Bates number 81. Can you -- do you
20 recognize that document, Dr. Evans?

21 A. Yes. This is my HLD score sheet and it appears
22 to be for this patient.

23 Q. And what score did you arrive at when you
24 reviewed this file?

25 A. Two points. Four points for overjet, minus the

1 two for normalcy left a balance of two and that was the
2 only score that I gave him.

3 Q. And contained in that patient file that I gave
4 you, would you please tell me what the doctors from
5 Harlingen Family Dentistry submitted on their HLD score
6 sheet?

7 A. They scored 26 points. Two points for the
8 overjet, the same as what I scored, but again, they had
9 eight out of the 12 anterior teeth as being ectopic.

10 Q. Do you agree with the score that the doctors from
11 Harlingen Family Dentistry scored on that score sheet?

12 A. No.

13 Q. Do you agree with the number of ectopic eruptions
14 scored on that score sheet?

15 A. No, I can't see any ectopic eruptions.

16 Q. Are any of the teeth, contained in that
17 photograph, outside the usual pattern of eruption?

18 A. No.

19 Q. Are any of the teeth -- could be classified as
20 high labial cuspids?

21 A. No.

22 Q. Are any of them out of the long axis of the
23 alveolar ridge?

24 A. No.

25 Q. In your expert opinion, could this patient be

1 scored any anterior crowding per the Medicaid policy?

2 A. Again, there's a slight amount of crowding.
3 Probably in the neighborhood of 1 millimeter. And that
4 being less than three and a half, it would not qualify
5 for Medicaid.

6 Q. Do any of those teeth appear that they need to be
7 extracted for anterior crowding reasons?

8 A. No extractions. I would never extract teeth in a
9 case like this.

10 Q. In your expert opinion, is there any dysfunction
11 or handicap malocclusion with this patient?

12 A. None.

13 Q. In your expert opinion, would this patient
14 qualify for Medicaid orthodontics?

15 A. No, would not.

16 Q. If this patient came to you for treatment would
17 you treat this patient?

18 A. I would probably treat the patient, but not with
19 braces. I might do nothing on the upper teeth and
20 possibly a retainer of some kind on the lower teeth and
21 to complete that in three to six month.

22 Q. Would it be fair to say that that treatment might
23 be more of a cosmetic in nature?

24 A. Definitely.

25 Q. I'm going to hand you what's been marked RT 56.



1 Again, for the court, can you please describe what that
2 document is?

3 A. It appears to be another Harlingen patient.

4 Q. And did you happen to review this patient in the
5 course of your review?

6 A. I think so.

7 Q. I'm going to hand you what the state has marked R
8 dash R, Bates number 56. Do you recognize that
9 document, Dr. Evans?

10 A. Yes. This is my HLD score sheet for this
11 patient.

12 Q. What score did you give this patient, Dr. Evans?

13 A. I gave her a total of ten points. I had a
14 measurement of five millimeters for the overjet, minus
15 three for the normalcy, which left a balance of two. I
16 scored one tooth as being ectopic and I gave five points
17 for lower corroding for a total of ten.

18 Q. And just for clarity, I think you said you gave
19 them two points for overjet. Did you give them
20 two points for overjet or overbite?

21 A. I'm sorry. Over bite, yeah.

22 Q. I just wanted to clear that up. We had talked
23 about -- you said that you subtract 2 millimeters in the
24 overjet. Do you not also -- do you not also subtract a
25 millimeter measurement when you're scoring overbite?



1 A. Overbite. Yes, you subtract three.

2 Q. And why is that?

3 A. That's considered normal.

4 Q. Could you please tell me what the dentist from
5 Harlingen Family Dentistry scored?

6 A. They scored 30 points.

7 Q. And how did they arrive at that score?

8 A. They had no score for overjet or overbite and ten
9 of the 12 teeth as being ectopic. Ten times
10 three points for each one was a total of 30 points.

11 Q. And you said that you scored one ectopic
12 eruption; is that correct?

13 A. Correct.

14 Q. Could you, on that photograph, point to the tooth
15 that you're referring to for the court?

16 A. That tooth right there.

17 Q. Could you identify it for the record?

18 A. Yes. It's the upper right cuspid and it's -- I
19 would consider this borderline.

20 Q. Borderline. So you gave them the benefit of the
21 doubt?

22 A. Correct.

23 Q. And you also scored for anterior crowding?

24 A. Yes.

25 Q. Could you kind of illustrate for the court what

1 the anterior crowding is?

2 A. Well, that's the lower front teeth are crowded.
3 I could probably give a borderline of one ectopic on the
4 lower, but the scoring, you know, you can't score for
5 both. It's one or the other. If, had I given that one
6 ectopic, they would have gotten three points. By
7 scoring it as crowding they got five. So I gave them
8 the higher score.

9 Q. So you would agree with Harlingen Family
10 Dentistry there's at least one ectopic tooth in this
11 patient?

12 A. Well, I'm not so sure I would agree with it, but,
13 you know, it's borderline.

14 Q. But there's not ten?

15 A. Oh. Definitely not ten.

16 Q. In your expert opinion, does this patient have
17 any issue with dysfunction or handicapping malocclusion?

18 A. Wait. There is a problem. Let me back up. I
19 said I gave them this one borderline. That's not the
20 one I gave them because I have in my notes they have an
21 impacted upper left cuspid. So that is definitely
22 ectopic. It's still up under the tissue. I don't know
23 which direction it's growing in without looking at the
24 x-ray, but that tooth needs surgical exposure. So,
25 yeah, I would say even though this patient only had a



1 score of ten, this patient needs treatment. But I
2 believe the manual states that in cases like this, they
3 need to send an accompanying letter or something
4 explaining. There was no letter or anything explaining
5 any extenuating circumstances, but I would say this
6 patient needs treatment.

7 Q. But they wouldn't qualify under Medicaid?

8 MR. GARCIA: Objection, Your Honor, it's
9 leading.

10 THE WITNESS: I think they probably -- they
11 might qualify.

12 HEARING OFFICER: Hold on a second. Could
13 you rephrase, Mr. Medlock?

14 Q. (By Mr. Medlock) Based on the score that you
15 submitted, would they have qualified for Medicaid
16 orthodontics?

17 A. Based on the score of ten points, no. Had they
18 sent a letter, maybe?

19 Q. I hand you now what's been marked as State
20 Exhibit RT 47. Can you identify that document for the
21 record?

22 A. It's another of the Harlingen patients.

23 Q. And did you review this patient as part of your
24 record?

25 A. I think so.

1 Q. I'm also going to hand you what's been marked as
2 Exhibit RR -- R dash R, Bates number 47. Can you
3 identify that document, Dr. Evans?

4 A. Yes. This is the HLD score sheet that I
5 completed for this patient.

6 Q. And what did you score this patient, Dr. Evans?

7 A. I scored 20 points.

8 Q. Okay. And how did you arrive at your score?

9 A. Well, I mentioned an overbite of
10 five millimeters, minus the three that you subtract for
11 normalcy, which left a balance for two, two points
12 there. And I scored six teeth as being as ectopic,
13 which gave them 18 points. I would like to say on this
14 patient --

15 Q. No question asked.

16 A. Oh. All right.

17 Q. What did the dentist from Harlingen Family
18 Dentistry score this patient?

19 A. They scored 31 points.

20 Q. And how did they arrive at their score?

21 A. Well, I gave them two for overbite and they
22 scored one for overbite, which is still reasonable. But
23 they had ten teeth, ten of the 12 as being ectopic, for
24 30 points. So for a total of 31.

25 Q. And do you agree with the score that Harlingen

1 Family Dentistry submitted?

2 A. No.

3 Q. Do you agree that there's ten ectopic teeth?

4 A. No.

5 Q. But you agree there's at least six?

6 A. Yes.

7 Q. So based on your score of this patient, would
8 that patient have qualified for Medicaid orthodontics?

9 A. No.

10 Q. Now, I'm going to hand you what's been marked
11 RT 77, do you recognize this document, Dr. Evans?

12 A. Yes. It's a Harlingen patient.

13 Q. Did you happen to review this file as your
14 review?

15 A. I think so.

16 Q. I'm also going to hand you what's been marked R
17 dash R, Bates number 77. Do you recognize this
18 document, Dr. Evans?

19 A. Yes. It's an HLD score sheet that I completed.

20 Q. What score did you give this patient?

21 A. I gave a score of seven.

22 Q. And how did you arrive at that score?

23 A. Well, I scored two teeth for ectopic and one
24 point for the labial lingual spread.

25 Q. Okay. What did the dentist from Harlingen score

1 this patient?

2 A. They scored 30 points. They had ten of the 12
3 teeth as being ectopic.

4 Q. Do you agree with that score, Dr. Evans?

5 A. No, I don't.

6 Q. In your expert opinion, would this patient have
7 qualified for Medicaid orthodontics?

8 A. No, I don't think so.

9 Q. But you agree there's at least two ectopic teeth?

10 A. Yes.

11 Q. And can you demonstrate for the court which teeth
12 you're referring to?

13 A. In this case it's a high labial cuspid and the
14 one on the other side is questionable, but I'll give
15 them that.

16 Q. And that first high labial cuspid you pointed to.

17 A. Yes.

18 Q. It said something in there that's off the
19 alveolar ridge?

20 A. Yes.

21 Q. How is that off the alveolar ridge?

22 A. Well, it's just not -- you know, all the other
23 teeth are in nice alignment on the ridge and this one is
24 to the cheek side, which means labial. And it's high so
25 it's a high labial cuspid.



1 Q. Outside the other two teeth that you said were
2 ectopic, are any of the other teeth off the alveolar
3 ridge?

4 A. No.

5 Q. And I may be asking this again, but would this
6 patient have qualified for Medicaid orthodontics in your
7 expert opinion?

8 A. No.

9 Q. Dr. Evans, in your testimony you talked about
10 scoring anterior crowding and ectopic eruption and how
11 you cannot score both. If your review did you happen to
12 score patients with both issues of anterior crowding and
13 ectopic eruptions?

14 A. Yes, I did.

15 Q. And why was that?

16 A. It was just an over site on my part. This is the
17 first case that I've done with OIG and I just -- it was
18 just an over site. The sad thing is that it was an over
19 site to the benefit of Harlingen and they still didn't
20 make the 26 points, even with me giving them double
21 score.

22 Q. So in awarding more points than allowed you said
23 that Harlingen still would not have met the 26 points;
24 is that correct?

25 A. That's correct.



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1 Q. In your testimony you said several times that
2 they were a point or two off with regard to either an
3 overbite or an overjet and that that was reasonable.
4 Why is that reasonable?

5 A. Well, when you're measuring the distance for
6 overbite and overjet, it's -- you're dealing with the
7 thickness of the tooth. You're using a millimeter gauge
8 or a millimeter rule and, you know, I may have come up
9 with two and a quarter or two and a half and, you know,
10 they might have been two and three quarters. So we just
11 rounded it up or whatever. So, you know, there can be a
12 variation of a millimeter, possibly two, but not anymore
13 than that.

14 Q. Earlier you said something about the
15 discrepancies in scoring; is that correct? You said
16 that between what you found in your review and the
17 scores at Harlingen submitted that you found huge
18 discrepancies?

19 A. Yeah. There was a large amount.

20 Q. So in your expert opinion, is that type of
21 discrepancy would that -- is that unreasonable? In your
22 opinion, did they score those -- is that score that that
23 they scored unreasonable?

24 A. Well, I'm -- I don't know what they used for
25 their scoring method. I was going by the TMPP whatever

1 manual. And I think they must have been using another
2 scoring method.

3 Q. So in your expert opinion, using the manual,
4 could they have arrived at the scores that they arrived
5 at the same way that you score the manual?

6 A. I don't see how.

7 Q. And we just went through seven of the patient
8 files. How many did you review in this case?

9 A. I think it might have been 58.

10 Q. Could it have been 85?

11 A. 85. Yeah. I was close.

12 MR. CANALES: No, you weren't. Sorry.

13 Q. (By Mr. Medlock) Did you find similar issues
14 with the other 78 patient files that you reviewed
15 outside the ones we just went over?

16 A. Yes.

17 Q. And those would be the -- the high numbers of
18 ectopic eruptions scored?

19 A. Correct.

20 Q. And out of the 85 patient that you reviewed, how
21 many met the 26 point requirement per your review?

22 A. One.

23 Q. Did that person seek treatment?

24 A. I think, no. That person did not seek treatment.

25 Q. In your expert opinion, were the scores presented

1 by Harlingen Family Dentistry accurate representations
2 of the patient's actual dental condition?

3 A. No.

4 Q. In your opinion, did the -- dentist from
5 Harlingen accurately apply the definition of ectopic
6 eruption as it's defined in the Texas Medicaid Provider
7 Procedure Manual?

8 A. No.

9 Q. We'll pass the witness. Subject to redirect.

10 CLARIFYING EXAMINATION

11 BY HEARING OFFICER:

12 Q. Okay. Let me just ask one clarifying question
13 and forgive me, Dr. Evans, if you have already answered
14 this question. Would you tell me again what overjet
15 means?

16 A. Overjet is the way that the upper teeth protrude
17 forward. Overbite is the depth this way.

18 HEARING OFFICER: Okay. Thank you.

19 Mr. Garcia?

20 MR. GARCIA: Yes, Your Honor.

21 HEARING OFFICER: You're going to be doing
22 the cross?

23 MR. GARCIA: Yes.

24 HEARING OFFICER: About how much do you
25 anticipate having. I'm just looking for a ball park.



1 In your initial cross, I don't mean.

2 MR. GARCIA: Judge. Could be a couple
3 hours, could be three hours.

4 HEARING OFFICER: Okay. All right then. We
5 have about 25 minutes and why don't you go ahead and get
6 started.

7 CROSS EXAMINATION

8 BY MR. GARCIA:

9 Q. Dr. Evans, I think you indicated this is the
10 first time you have ever served as an expert?

11 A. That is correct.

12 Q. Correct? And is it fair to say you've never been
13 a Medicaid provider?

14 A. That is correct.

15 Q. I would like to ask you if I could approach, Your
16 Honor?

17 HEARING OFFICER: Yes.

18 Q. (By Mr. Garcia) Earlier you testified to
19 Mr. Medlock that you had incorrectly scored several
20 cases, correct?

21 A. Correct.

22 Q. I want to ask you about that and let me show you
23 what is RT 1 and ask if you can identify it?

24 A. It's one of the Harlingen patients.

25 Q. Let me show you what's R1 -- RR, Bates stamp 1.



1 A. Okay.

2 Q. Are you there yet, Judge? And let me ask you, do
3 you recall my taking your deposition sometime ago?

4 A. Yes, I do.

5 Q. And do you recall me asking you whether or not
6 you understood the instructions for ectopic eruption and
7 anterior crowding?

8 A. No, I don't recall, but I assume you did.

9 Q. Okay. So I take it then, you don't recall your
10 answer either to my question about whether or not you
11 understood the instructions in the provider manual for
12 ectopic eruption and anterior crowding?

13 I asked you, Doctor, in your deposition,
14 "Dr. Evans, in your analysis of this case, your review
15 of the definitions of ectopic eruption and anterior
16 crowding, did you not understand the instructions of
17 those two rules." And I'll ask you to read your answer.

18 A. "I'm not sure. This is the first case that I
19 filled out these forms for and I obviously made a
20 mistake."

21 Q. So you weren't -- your answer to me was you were
22 not sure that you understood the instructions, correct?

23 A. You're confusing me. No, I understood the
24 instructions, but I made a mistake and I scored both
25 ectopic and anterior crowding. Yeah, I know what the



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1 instructions were.

2 Q. And does it not tell you in Exhibit RR, Bates
3 stamp 1 under ectopic eruption instruction on the sheet
4 itself?

5 A. Yes.

6 Q. Not to do exactly what you did?

7 A. Yes, it does.

8 Q. And what is it that you did wrong?

9 A. I gave Harlingen credit for both and I should
10 have only given them credit for one.

11 Q. And do you not only did it on this occasion you
12 did it on at least two other occasions, correct?

13 A. Correct. I think so.

14 Q. And you are here today to testify on behalf of
15 the state that your scores are accurate and Harlingen
16 Family Dentistry scores are inaccurate, correct?

17 A. No, I don't believe I said that. I tended to
18 agree with all of the overbite, overjet -- the
19 discrepancy we had was only on ectopic eruption.

20 Q. Dr. Evans, you've never treated a Medicaid
21 patient?

22 A. That's correct.

23 Q. You've never submitted a claim for orthodontic
24 services to NHIC or TMHP?

25 A. That's correct.

1 Q. You have no idea how they process those claims?
2 NHIC and TMHP, do you?

3 A. That is correct.

4 Q. And in serving as the expert for the state in
5 this case, did you consult with any Medicaid orthodontic
6 providers in connection with your job as the expert for
7 the state?

8 A. No.

9 Q. Did you consult with anybody at TMHP in the prior
10 authorization process department?

11 A. Only when I was first hired on and they gave me
12 the sheets and we went over how to do the scoring and so
13 forth.

14 Q. That is not personnel from the Texas Medicaid &
15 Healthcare Partnership, correct?

16 A. Correct.

17 Q. You met with people from the office of inspector
18 general, correct?

19 A. Correct.

20 Q. And you met with particularly a
21 Dr. Priscilla Alfaro, correct?

22 A. I met with her and Bryan Klozik.

23 Q. And Dr. Priscilla Alfaro instructed you on the
24 HLD scoring, correct?

25 A. Yeah. I think both of them did.



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1 Q. Why did you need any instruction on the HLD
2 scoring if you're an orthodontic expert?

3 A. Probably didn't.

4 Q. Not only did you meet with Dr. Priscilla Alfaro,
5 you also met with the MPI director, Bryan Klozik and
6 discussed the HLD scoring with him as well, correct?

7 A. If that happened it was not on two occasions, it
8 would have been both together at the same time.

9 Q. Sir, did it happen?

10 A. Well, you are asking me something that happened
11 six or eight months ago. I don't remember exactly what
12 was discussed at the meeting.

13 Q. Well, let's go back to your deposition then. If
14 you could -- if you could -- this is on Page 62, line 19
15 of your deposition. Question is by Mr. Medlock about
16 Bryan Klozik. I'll go up a little further to line 15,
17 "Who is Bryan Klozik?" Mr. Medlock indicated he's a
18 former NPI director and I asked, "Former who?"
19 Mr. Medlock indicated, "MPI Director. He's still on
20 staff here. Y'all will be taking his deposition." I
21 asked you, "What was your discussion with him." And you
22 said?

23 A. "I don't recall specifically."

24 Q. And then I asked you what?

25 A. "Did it relate to the HLD scoring?"



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1 Q. And what was your answer?

2 A. "I'm sure it did."

3 Q. Doctor, you are not a board certified
4 orthodontist, are you?

5 A. No.

6 Q. In fact, you are a retiring dentist, correct?

7 A. I'm trying to retire, but I'm still working.

8 Q. Did you indicate to me in your deposition that
9 you were in the process of retiring?

10 A. Correct. Probably so. I don't remember.

11 Q. Judge, how much further would you like. Would
12 you like me to continue?

13 HEARING OFFICER: Yeah, we have another
14 15 minutes.

15 Q. (By Mr. Garcia) In this case you were asked by
16 Dr. Alfaro to do what?

17 A. To be a consultant and to go over these cases and
18 complete an HLD score sheet on each patient.

19 Q. And you didn't realize that you were going to be
20 the expert in this case when that happened, did you?

21 A. No, I did not.

22 Q. And although you've never been a Medicaid
23 provider or handled Medicaid claims, was it your
24 testimony at the deposition that I took that you had
25 experience in the 1970's with the same exact form, the



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1 HLD form?

2 A. That's not correct. I had experience with a
3 somewhat similar form. I have no idea if it was the
4 same exact form.

5 Q. Is it your testimony here today that you did not
6 tell me that in your deposition? That you had
7 experience with the same exact form?

8 A. I'm telling you that I've had experience with a
9 similar form. I can't say that it's the same exact
10 thing from 1971.

11 Q. What was different about it?

12 A. I have no idea. I just know it was with the
13 CHAMPUS program of the Armed Forces and it was a
14 similar, some kind of -- I say similar score sheet. It
15 had to be completed. I don't know how many points or
16 what points were assigned.

17 Q. Dr. Evans, did you have an opportunity to review
18 your deposition?

19 A. Yeah, I kind looked at it quickly.

20 Q. Did you understand what you were reading?

21 A. I think so.

22 Q. I'm going to show you in your deposition on page
23 22, starting on line 13. We were discussing your
24 experience with the CHAMPUS. Does that look like what
25 we're talking about?

1 A. At my deposition, yes.

2 Q. Okay. This is your deposition?

3 A. Okay.

4 Q. Do you agree with that?

5 A. Yes.

6 Q. Okay. And I asked you towards the end you
7 indicated you had a lot of experience with the forms,
8 correct?

9 A. Yes.

10 Q. And I asked you what on Page 23, Line 1?

11 A. "Is it the exact same form?"

12 Q. And what was your answer?

13 A. "I think so." But continue on. "You're
14 testifying that they're the same form?" I couldn't say
15 exactly. I think they are. They're similar.

16 Q. Okay. So your first response was that it was the
17 same exact form, correct?

18 A. I think so, I said.

19 Q. Was that your first response?

20 A. Yes.

21 Q. Okay. In fact, did you not tell me in your
22 deposition that with this form whether the same or
23 similar to the HLD score you qualified 500 patients for
24 services?

25 A. I don't believe I can guarantee 500 either.



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1 Q. You don't believe --

2 A. I just said a lot of patients. I don't know how
3 many years that was involved, but, no, I did qualify a
4 lot of patients, but I can't say 500 patients from 1971.

5 Q. You can't say that now or you couldn't say that
6 then. Which one?

7 A. I couldn't say it now and then or then.

8 Q. And you've never said that; is that right?

9 A. No. I'm not going to say I never said that. You
10 wouldn't be saying what you're saying if you didn't have
11 it down there in writing. But I just don't recall.

12 Q. Sir, I don't have it in writing. I have your
13 deposition. What you said.

14 A. Okay. Show me.

15 Q. Question, Page 25, Line 3, "How many cases -- how
16 many cases can you tell us that you would have processed
17 under this scoring?" What was your answer, sir?

18 A. "I would say a minimum of 500." But let's
19 continue reading.

20 Q. I'm asking the questions. He'll get a chance to
21 allow you to elaborate, but you just told us here today
22 you would have never said that and here it is.

23 A. What do you mean. I didn't say I would never
24 have said that, did I. I'm saying I don't recall. I
25 don't know.



1 Q. Okay. Let's take for argument sake, Doctor, that
2 you got 500 cases approved, okay? Under this CHAMPUS
3 program with a similar form, okay? Are you with me?

4 A. We'll say that.

5 Q. Okay.

6 A. But I'm not saying that's accurate, but I'll go
7 along with you.

8 Q. And you got paid for those cases that were
9 approved, correct?

10 A. Yes, I did.

11 Q. And that same form -- that same form has the item
12 for ectopic eruptions, correct?

13 A. If you could show me one of those forms, I could
14 agree with you. But I don't have the form and I don't
15 know that they're exactly the same. And I'm --

16 Q. So when you indicated that it was the same form
17 or a similar form in your deposition, are you now saying
18 that's incorrect, that's wrong?

19 A. No. I'm saying that I think it was similar. But
20 I cannot say that it was the same.

21 Q. Doctor, let me pull out RR, Bates stamp number 2.
22 Do you recognize that document?

23 A. Yes.

24 Q. What is that document?

25 A. It's an HLD score sheet.

1 Q. That you did, correct?

2 A. Correct.

3 Q. What is different about this form from the form
4 you used in the '70s to qualify four or 500 patients?

5 MR. MEDLOCK: I'm going to object speculate
6 to speculation.

7 THE WITNESS: How many times do I have to
8 tell you --

9 MR. MEDLOCK: Doctor, I'm going to object to
10 speculation. We don't have that form from the '70s so
11 he would have no way after 40 years of service to know
12 what was on that form.

13 MR. GARCIA: Other than --

14 MR. MEDLOCK: That would be the best
15 evidence to say what was on that form.

16 MR. GARCIA: Other than his recollection,
17 Judge, and we have testimony from him.

18 MR. MEDLOCK: I believe the testimony --

19 MR. GARCIA: Can I finish?

20 MR. MEDLOCK: I believe the testimony is
21 that they were similar. He cannot recall specifically
22 what was on that form. And without that form, it would
23 be speculative in nature for him to say exactly what was
24 on that form.

25 HEARING OFFICER: I agree with that. And I

1 would also like to ask you, Mr. Garcia, if you could
2 help me understand the point of this lengthy line of
3 questioning about the 1970 CHAMPUS program. Just help
4 me understand where we're going with this.

5 MR. GARCIA: It's a very quick point, Your
6 Honor. You achieve a point score of 26 points. Largely
7 from ectopic eruptions and what I want to know is when
8 he was getting paid he could qualify four to 500
9 patients, it's in his deposition.

10 MR. MEDLOCK: I would argue that they're two
11 different programs, two different rules with two
12 different requirements and as we don't have those rules
13 or requirements or the forms that he submitted that it's
14 irrelevant.

15 HEARING OFFICER: Well, that's what I don't
16 understand. I don't understand. Since we don't know
17 what was on that form, I don't understand how we can
18 possibly make any kind of meaningful analysis.

19 MR. GARCIA: He indicated that he had a lot
20 of experience in his deposition with the same exact form
21 or at a minimum a similar form.

22 HEARING OFFICER: Right.

23 MR. GARCIA: He testified to that.

24 HEARING OFFICER: And I understand that.

25 And I think you have elicited testimony about that, but



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1 I don't see where we're going from here. I don't see
2 why you're adding to what you've already done.

3 MR. GARCIA: It has do with the ectopic
4 eruption. I want him to explain how they could qualify
5 back then under a similar form and all of the Harlingen
6 cases do not qualify.

7 MR. MEDLOCK: Again, I would make the
8 similar objection is that the programs are different and
9 we don't know what the qualifications for the CHAMPUS
10 program were for reimbursement and they could be
11 completely separate issues and it's not -- the CHAMPUS
12 program is not at issue in this case.

13 MR. GARCIA: He did not testify that the
14 program was different. He testified, I have a lot of
15 experience with this form.

16 MR. MEDLOCK: With a similar form.

17 HEARING OFFICER: Right. He said a similar
18 form. He said he doesn't remember what the similarities
19 are. So here's what I'm going to do. If you can ask
20 that question again about the ectopic eruption in
21 particular, I think we can all suspect what the
22 witness's answer is going to be and then let's move on.

23 MR. GARCIA: Okay.

24 Q. (By Mr. Garcia) Do you recall in the CHAMPUS
25 program how many points you had to have for a person to

1 qualify?

2 A. I do not.

3 Q. Can you explain to us, from your recollection,
4 how 400 to 500 patients of yours qualified for benefits
5 in the CHAMPUS program?

6 A. I cannot explain because I cannot even tell you
7 if there was 400 or 500. It was just a lot of patients,
8 45 years ago. I have no idea. I can tell you it was a
9 point system and I had to send in the x-rays and the
10 molds and the photographs, which is what is going to --
11 is taking place now. That's the similarity.

12 HEARING OFFICER: Is this a good stopping
13 point Mr. Garcia?

14 MR. GARCIA: I think so, Judge.

15 HEARING OFFICER: All right. Why don't we
16 go ahead and break for today and is there any need to
17 start early in the morning or shall we come back at
18 9:00? Are you all comfortable with coming back at 9:00?

19 MR. MEDLOCK: I'm okay with 9:00, Your
20 Honor.

21 MR. GARCIA: What time did you say?

22 MR. MEDLOCK: 9:00 is perfect. 9:00 is
23 fine.

24 HEARING OFFICER: Okay. Very good.

25 MR. CANALES: What are we going to do

1 tomorrow, Judge, we're going to kind of break into
2 video. So you won't see video for a long time. I'll
3 put a video and witness kind of help the court.

4 HEARING OFFICER: And we will complete
5 Dr. Evans testimony. You have one --

6 MR. MEDLOCK: We have one more fact witness
7 and then we'll have a couple of excerpts from
8 depositions to read into the record.

9 HEARING OFFICER: Okay. And, you know, you
10 don't -- in this context, again, if you -- if you want
11 to read them.

12 MR. MEDLOCK: They are very small
13 highlighted portions. It's not lengthy at all, Your
14 Honor.

15 HEARING OFFICER: Very good. We're off the
16 record.

17 (Hearing recessed.)
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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
 HARLINGEN FAMILY DENTISTRY)
)
)
 VS.) NO. 529-12-3180
)
)
 TEXAS HEALTH AND HUMAN)
 SERVICES COMMISSION,)
 OFFICE OF INSPECTOR)
 GENERAL)

I, Janalyn Reeves, CSR, certify that the foregoing is a correct transcription of the proceedings in the above-entitled matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially or otherwise interested in the outcome of the action.

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