

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 2

On the 25th 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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A P P E A R A N C E S

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EXHIBIT INDEX

PETITIONER'S EXHIBITS

NO.	DESCRIPTION	MARKED	ADMITTED
10-A	Deposition Exhibits	365	365
11-A	Deposition Exhibits	365	365
13	Spreadsheet	235	235
14	Document	235	235
15	Document	235	235



1 HEARING OFFICER: Let's go on the record.
2 Okay. We're back on the record. This is the second day
3 of the hearing in Docket No. 529123180. Today is
4 April 25, 2012, and the first thing we're going to take
5 up this morning is a witness, a fact witness, offered by
6 the OIG, Mr. Holley. And there has been an objection
7 raised by the Petitioner and Mr. Canales, you wanted to
8 say something about that.

9 MR. CANALES: Yes, Your Honor, just for the
10 purpose of the record, Your Honor. We know we're in the
11 middle of the cross examination of Dr. Evans that's
12 going to continue, but just in the interest of time I
13 appreciate you giving me the opportunity to object
14 beforehand to Mr. Holley. I would like to be able to
15 show the court real quick like, two documents, if I may,
16 Your Honor. It shows our Petitioner's request for
17 disclosure. And also are some of the request
18 respondent's responding to the witnesses. I have gone
19 through my file, I have discovered they have provided
20 other witness names, but I do not have anywhere in my
21 file where they provided me the name of Mr. Holley. Of
22 course, he was not provided, Your Honor, we would object
23 to him called as a witness. I have asked counsel if
24 maybe I missed it, maybe I didn't read my mail
25 correctly, if they have some type of documentary



1 pleading to show me that they did give me the name and I
2 did not hear a response from them.

3 MR. MEDLOCK: Your Honor, the state would
4 not dispute that we did not disclose Mr. Holley as a
5 fact witness in discovery. We decided to attempt to
6 call Mr. Holley in to clear up any questions or concerns
7 with the third amended complaint that was filed most
8 recently regarding the open dates with the attorney
9 generals Medicaid Fraud Control Unit. And clearing up
10 any issues as to whether or not we simply referred the
11 case over or if the case is actually accepted and opened
12 and we believe Mr. Holley could clear up that
13 information.

14 HEARING OFFICER: Okay. Well, I am going to
15 exclude Mr. Holley. You know, we talked about it on
16 Friday and my concern on Friday when I overruled the
17 motion to strike the third amended complaint, my concern
18 was can we go to hearing this week, whether we need --
19 and it was my understanding that the state's position
20 was what we needed was just a couple of documents to
21 show that the referral had been accepted. So I went
22 forward on that basis feeling like there was no
23 unfairness issue to the Petitioner. Had I known that
24 there was a potential witness then I would have been
25 concerned that maybe they would have needed an



1 opportunity to depose him. So given that he wasn't
2 disclosed and there was no supplementation or mention
3 when we talked about it on Friday, I am going to strike
4 him. So if y' all want to -- I don't know if he's
5 waiting and you want to excuse him.

6 And Mr. Canales, you showed me before we
7 went on the record and opposing counsel some new
8 exhibits that you wanted to offer and they were
9 Petitioner's Exhibits 13, 14, and 15; is that correct.

10 (Petitioner's Exhibits 13-15 marked)

11 MR. CANALES: Yes, Your Honor.

12 HEARING OFFICER: And my understanding was
13 that the OIG had no objections to the admission of those
14 exhibits; is that correct.

15 MR. MEDLOCK: That is correct, Your Honor.

16 HEARING OFFICER: Okay. Petitioner's
17 Exhibits 13, 14 and 15 are admitted.

18 (Petitioner's Exhibits 13-15 admitted)

19 MR. CANALES: Thank you, Your Honor.

20 HEARING OFFICER: Is there anything else we
21 need to do before we proceed with Mr. Garcia's cross
22 examination of Dr. Evans?

23 MR. CANALES: Not from us. I'm sorry, Mr.
24 Garcia. Except, Your Honor, we are conscious of the
25 time and we are going to try to proceed accordingly.



1 HEARING OFFICER: Okay. Super. What was
2 13? 13 was the spread sheet.

3 MR. MEDLOCK: It was the cross reference.
4 Just wanted to make sure we have it.

5 HEARING OFFICER: Sure. Are we good there?

6 MR. MEDLOCK: We are.

7 HEARING OFFICER: Okay. Was there anything
8 y' all had before we went back into the cross
9 examination of Dr. Evans?

10 MS. ALVARDAO: I don't believe there's
11 anything.

12 HEARING OFFICER: Then we can go ahead and
13 get him back up on the stand. Good morning, Dr. Evans.

14 MR. CANALES: I'm going to keep this on my
15 desk until we offer it through the witness.

16 HEARING OFFICER: I'm wondering if we
17 shouldn't move that chair back just a little bit. Be
18 very careful you don't move it more than 3 inches to the
19 right. All right. Now, of course, Dr. Evans, you
20 remain under oath.

21 THE WITNESS: Yes.

22 HEARING OFFICER: Whenever you're ready.

23 CROSS EXAMINATION

24 BY MR. GARCIA:

25 Q. Thank you, Your Honor. Good morning, Dr. Evans.



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1 A. Good morning.

2 Q. Dr. Evans, can you tell me when was the last time
3 you were practicing on a full-time basis?

4 A. I'm not sure exactly what you mean by that. I
5 still have the office that I've always had. I just have
6 a reduced number of patients because I'm not taking new
7 patients, but it's still --

8 Q. Are you still in the same office that you've been
9 practicing for the last 10 years or so?

10 A. I had two offices. And I am in one of them, yes.

11 Q. Where were those two offices?

12 A. One was in Westlake Hills and the other is off of
13 Anderson Mill Road.

14 Q. And was one your main office?

15 A. Was in Westlake.

16 Q. Okay. And the patients that you treated in
17 Westlake, tell me again what period of time have you
18 been practicing in Westlake?

19 A. I've been there since probably 1973,
20 approximately.

21 Q. So in excess of 30 years?

22 A. Yes.

23 Q. Okay. And were your patients either private paid
24 patients or insurance patients?

25 A. Yes.

1 Q. That's what made up your practice?

2 A. Yes.

3 Q. Okay. Dr. Evans, I would like to show you one of
4 your score sheets, which is R -- Bates stamp?

5 MR. MEDLOCK: Yeah.

6 Q. (By Mr. Garcia) Do you recognize that as one of
7 your score sheets.

8 A. Yes, I do.

9 Q. Is it fair to say that the first time you saw a
10 Texas Medicaid HLD score sheet was when you were hired
11 in this case?

12 A. Yes.

13 Q. And, Dr. Evans, you prepared a report in
14 connection with your services as an expert, correct?

15 A. Yes.

16 Q. And that report -- let me hand you which has been
17 marked 0.01 and ask you if you can identify that
18 document?

19 A. Yes.

20 Q. And is that the report that you prepared in this
21 case?

22 A. Yes, it is.

23 Q. And is it fair to say that you only had one
24 complaint against the Harlingen Family Dentistry in
25 connection with your review of the cases?

1 A. Well, there's basically one area that we had
2 discrepancy in, I wouldn't call it a complaint.

3 Q. What was the area?

4 A. Ectopic eruption.

5 Q. So aside from ectopic eruption, you have no other
6 complaints with regard to any of the Harlingen Family
7 Dentistry cases that you reviewed and provided
8 consulting services for?

9 A. I think that's correct.

10 Q. And would you agree with me that your report does
11 not mention anywhere in the report that Harlingen Family
12 Dentistry committed a fraud in connection with the
13 scoring of the audit charts?

14 A. No. I wasn't considering any situation of fraud.

15 Q. And is it fair to say that when you were hired as
16 an expert, you were not asked to look for any facts or
17 evidence that Harlingen Family Dentistry committed fraud
18 or willful misrepresentation in the scoring of their
19 charts?

20 A. I believe that's correct.

21 Q. Do you have any factual evidence that the doctors
22 at Harlingen Family Dentistry committed any fraud in the
23 cases that you reviewed?

24 MR. MEDLOCK: I would object. That's asked
25 and answered.

1 HEARING OFFICER: It sounded like the
2 phrasing might be a little different from the previous
3 question so I'll allow it. You can answer the question.

4 THE WITNESS: Would you repeat the question,
5 please.

6 MR. GARCIA: Could you read back the
7 question?

8 (Requested question was read.)

9 THE WITNESS: I'm not sure how to answer
10 that because I was not looking for fraud. There is
11 discrepancy in what the findings on this ectopic
12 eruption, but that's for someone else to decide, not me.

13 Q. (By Mr. Garcia) Is it fair to say that you have
14 no opinion as to whether or not the doctors at Harlingen
15 Family Dentistry committed any fraud in connection with
16 the scoring of the charts that you reviewed?

17 A. That's probably true.

18 Q. Is the same thing true that you don't have an
19 opinion as to whether or not the doctors at Harlingen
20 Family Dentistry committed any willful misrepresentation
21 in the scoring of the charts that you reviewed?

22 A. No. I don't have any way of knowing that.

23 Q. Is it fair to say that you were never asked to
24 give opinions on any of that?

25 A. That's correct.

1 Q. Doctor, if you could take a look at your report,
2 there's a section in your report where you -- I think
3 it's about the fourth paragraph down where you start
4 talking about ectopic eruption. Do you see that?

5 A. Yes.

6 Q. Is it fair to say that in terms of your review of
7 these cases that with regard to ectopic eruption you
8 strictly relied on the Medicaid provider manuals for the
9 years in question?

10 A. Yes.

11 Q. You did not go to any outside sources to
12 interpret ectopic eruption for the purposes of your
13 rescoring?

14 A. That's incorrect.

15 Q. What's incorrect about it?

16 A. One of the offices that I'm working in part-time
17 I went into the library and I looked at the orthodontic
18 textbooks that this person used when they were in school
19 and I looked through the textbooks for definitions of
20 ectopic eruption and I was unable to find any definition
21 as such. There's a lot of discussion about ectopic
22 eruption, but nothing defined. So the only definition
23 that I could find was the one that's outlined in the
24 Medicaid manual.

25 Q. So your opinions with regard to ectopic eruption

1 are strictly based on your interpretation of the ectopic
2 eruption definition or instruction in the provider
3 manual for the years in question?

4 A. Only in regard to filling out these score sheets.
5 I have other opinions of ectopic eruptions.

6 Q. Now, did you define what the provider manuals say
7 or define ectopic eruption in that fourth paragraph?

8 A. I think so, yes.

9 Q. Are you quoting the provider manual as far as you
10 know?

11 A. As far as I know.

12 Q. And what is the -- what is the definition, as you
13 understand it, in your report?

14 A. An unusual pattern of eruption such as high
15 labial cuspids or teeth that are grossly out of the long
16 axis of the alveolar ridge.

17 Q. Okay. Do you know, Dr. Evans, whether or not
18 this definition has been applied in Medicaid for the
19 past 30 years or so?

20 A. No, I don't.

21 Q. Would it surprise you if it's been the same
22 definition for these 30 years?

23 A. I have no opinion.

24 Q. Let's -- let's go to the first part of the
25 definition. One of the first words in the definition is

1 the word unusual. Would you agree with me?

2 A. Correct.

3 Q. Okay. And what is usual in this context?

4 A. Usual in this context is that the tooth erupts in
5 a vertical position right over the alveolar ridge.

6 Q. In the position that it's supposed to be in?

7 A. Yeah. It may be rotated, but basically in the
8 position.

9 Q. Does the provider manual tell us or give us
10 instruction or definition as to what usual means in this
11 context?

12 A. I don't know that. But I certainly know what
13 usual means. I don't know what the manual says on it.

14 Q. You don't know what the manual says?

15 A. I mean, it says usual. I don't know if it
16 defines usual.

17 Q. You don't know whether or not it defines usual,
18 correct?

19 A. That's probably correct.

20 Q. Do you know whether or not it defines or
21 instructs on the word unusual?

22 A. No.

23 Q. Is there any indication from this instruction and
24 definition how unusual the pattern has to be?

25 A. No.

1 Q. Can it be a little bit unusual?

2 A. I would think so, yes.

3 Q. A lot unusual?

4 A. I would think so, yes.

5 Q. The whole gamut, correct, from a little unusual
6 to a lot?

7 A. As long as its unusual, yes.

8 Q. Okay. Will you agree with me that what one
9 provider used as unusual may differ from what another
10 provider used as unusual looking at the same thing?

11 A. Based on the proper training, I don't think
12 there's much room for -- not much wiggle room there. I
13 mean, any orthodontist should know what is usual. The
14 way that the teeth erupt.

15 Q. Let me show you respondent's RT 47. Do you need
16 a minute to get that?

17 MR. MEDLOCK: No.

18 HEARING OFFICER: While you're doing that
19 would y' all just let me keep an eye on whether there
20 are fact witnesses who may have been sworn in.

21 MR. CANALES: The gentleman that just came
22 in is one of my clients, Your Honor, for the case.

23 HEARING OFFICER: Okay. Just help me keep
24 an eye out.

25 MR. CANALES: I saw him. I saw your

1 reaction. I looked back there.

2 HEARING OFFICER: Okay. Mr. Garcia, what
3 number was that again?

4 MR. GARCIA: This is respondent's T 47
5 initials RG.

6 HEARING OFFICER: Got it. Thank you.

7 Q. (By Mr. Garcia) Dr. Evans, let me show you what
8 RT 47. Bates stamp 19.

9 A. Okay.

10 Q. And ask what is that?

11 A. That photograph shows a patient's teeth.

12 Q. Okay. Will you agree with me that in this photo
13 we're dealing with anterior teeth for the purposes of
14 Medicaid benefits?

15 A. Yes.

16 Q. Will you also agree with me that there's several
17 teeth in these photos that would not fit the definition
18 of usual?

19 A. Yes.

20 Q. Which are the teeth that are not in their usual
21 position?

22 A. Well, I would say the maxillary cuspids, those
23 two, those are obvious and then on the lower, I would
24 probably give them credit for both lower cuspids. And
25 that's getting borderline.



1 Q. Let me stop you there. So are you making a
2 subjective analysis of those last two teeth that you
3 made, that you just brought?

4 A. Well, you know, by definition being on the
5 alveolar ridge, it's on the alveolar ridge.

6 Q. I didn't ask you a single question about the
7 alveolar ridge. We're talking about unusual. What's
8 usual and what's unusual. You just pointed out two
9 teeth that you are unsure about and what I'm getting at,
10 sir, is that not subjective. Are you not saying that --

11 A. No. I would say they're unusual.

12 Q. And could other doctors -- would you expect that
13 other doctors might say that those particular teeth are
14 usual?

15 A. No. I would think they would say they were
16 unusual.

17 Q. Is it your testimony -- if you could hang onto
18 your report. Is it your testimony that orthodontist
19 would render the same opinions looking at the same teeth
20 as to which tooth are usual in their usual position and
21 which teeth are unusual?

22 A. To a large extent they would. But, you know,
23 there would be variation. Not only that there could be
24 variation in the way that they would treat the case.

25 Q. Is that not because identifying whether they're

1 usual or unusual in the subjective realm of analysis?

2 A. I'm not sure what you're getting at. I mean, if
3 you're talking about somewhat unusual or to what extent,
4 you know.

5 Q. That's exactly what I'm talking about.

6 A. Unusual is unusual. They're unusual to me.

7 Q. And the provider manual doesn't give us any
8 guidance as to whether it can be a little unusual, just
9 outside of their ideal position or greatly unusual,
10 sticking way out of the mouth, correct?

11 A. That's correct. So on the score sheets they were
12 scored as unusual.

13 Q. Is it your testimony that you identified in all
14 of your score sheets the teeth that were in an
15 unusual -- in an unusual pattern?

16 A. Well, that's what I was supposed to do. I mean,
17 you would have to show me every one.

18 Q. You did not to that, did you, Dr. Evans?

19 MR. MEDLOCK: I would object.

20 HEARING OFFICER: Your objection being?

21 MR. MEDLOCK: He's not asking a question.
22 He just badgering the witness at that point, making a
23 declarative statement that you just -- you did not to
24 that.

25 HEARING OFFICER: I heard him say you didn't

1 to that, did you? I'll overrule the objection. You can
2 answer, Dr. Evans.

3 THE WITNESS: Okay. Restate the question.

4 Q. (By Mr. Garcia) I'll restate it. Did you
5 identify for purposes of your consulting services each
6 of the anterior teeth that were not in their usual
7 pattern of eruption?

8 A. I attempted to do that, yes.

9 Q. And how did you do that?

10 A. By evaluating the molds or in cases where there
11 were no molds, I used the photographs.

12 Q. And did you attribute a score to those teeth that
13 were in an unusual position?

14 A. Yes.

15 Q. And are those -- only those teeth that you
16 identified as ectopically erupted teeth?

17 A. Restate that, please.

18 Q. The teeth that you say you scored because they're
19 in an unusual pattern, are those the teeth that you
20 scored for ectopic eruption?

21 A. Yes.

22 Q. Let's go to the next -- the next word in the
23 definition. Pattern. The word pattern. How many make
24 up a pattern, Dr. Evans?

25 A. I don't know.



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1 Q. And we don't get any instruction from the
2 provider manuals either, do we? As to what is a pattern
3 and what is not a pattern?

4 HEARING OFFICER: Let's go off the record a
5 minute. Sorry. I thought that I had silenced this.

6 (Discussion off the record.)

7 THE WITNESS: I don't think the manual
8 defines pattern.

9 Q. (By Mr. Garcia) Could a pattern be two, in your
10 opinion as an expert, two teeth?

11 A. Yes.

12 Q. Could it be three teeth?

13 A. Sure.

14 Q. Four teeth?

15 A. Yeah.

16 Q. Six teeth?

17 A. Yes.

18 Q. And nothing in the provider manual gives us any
19 direction on what is or what is not a pattern, correct?

20 A. That's correct.

21 Q. And what one doctor might think is a pattern,
22 another doctor may not agree with that. Would you agree
23 with that?

24 A. That's possible. You're referring to pattern
25 like it's several teeth. One tooth could be a pattern.

1 Q. Okay.

2 A. That one tooth is off the alveolar ridge.

3 Q. One tooth could be pattern. Could two teeth be a
4 pattern?

5 A. I thought we've already agreed on that.

6 Q. We've agreed it can be a number of teeth?

7 A. Correct. Could be 100.

8 Q. And would you agree with me that when one tooth,
9 say, in your one anterior lower tooth is not in its
10 correct position, it's on the ridge, but it's not in the
11 correct position, will you agree with me that there's
12 going to be a tendency for that tooth that's not in its
13 correct position to impact the teeth surrounding it?

14 A. Yes.

15 Q. Will you agree with me that the word pattern is a
16 subjective component of this instruction, what is and
17 what is not a pattern?

18 A. Well, I'm not going to agree with you because I
19 never really thought about that.

20 Q. Is there anything subjective in these first five
21 words of the definition. An unusual pattern of
22 eruption?

23 A. I imagine there's a little bit of subjectivity.

24 Q. Where is it?

25 A. I don't know.



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1 Q. After those first five words, Doctor, will you
2 agree with me that there is a comma after the phrase an
3 unusual pattern of eruption?

4 A. Yes, there is a comma.

5 Q. Okay. What are the next two words?

6 A. Such as.

7 Q. Is the rest of that sentence referring to
8 examples?

9 A. Yes.

10 Q. And is it fair to say that you did not award any
11 points for ectopic eruption unless one of those two
12 examples was met?

13 A. No, that's not correct.

14 Q. Okay. Did you -- did you award any points on any
15 of these score sheets based on the first five words, an
16 unusual pattern of eruption?

17 A. Yes, I did.

18 Q. And give me an idea of which teeth those were?
19 What criteria?

20 A. Usually when you're speaking of high labial
21 cuspids, it refers to the cuspid.

22 Q. So that's one of the examples, correct?

23 A. That's an example.

24 Q. And the other example is grossly out of the long
25 axis of the alveolar ridge?



1 A. Correct.

2 Q. So when you awarded points for ectopic eruption
3 it had to meet one of those two?

4 A. That is not correct. There are other examples --

5 Q. Okay.

6 A. -- of ectopic eruption. One of the cases that
7 you -- I looked at earlier was a perfect example of a
8 cuspid that was high up in the arch and needed to have
9 oral surgery to expose it. That is ectopic and that is
10 now given as an example, but it's certainly --

11 Q. It's not out of the ridge?

12 A. Yes, it's out of the ridge.

13 Q. So it meets the example or doesn't meet the
14 example? The tooth that's still up in the --

15 A. What example?

16 Q. There's two?

17 A. Oh, it meets neither one of those examples of
18 high labial cuspid or -- well, I guess it would be
19 grossly -- well, I wouldn't say it's grossly out of the
20 ridge, but it's not on the ridge.

21 Q. Okay. So you'll agree with me that with respect
22 to the analysis of what counts as an ectopically erupted
23 teeth, we're not limited to just those two examples?

24 A. That's correct.

25 Q. It doesn't say anywhere in the instruction only



1 these two examples, correct?

2 A. That's correct.

3 Q. That puts us back in the first part of the
4 instruction, unusual pattern of eruption, correct?

5 A. Correct.

6 Q. Dr. Evans, I want to talk a little bit about the
7 provider manual itself. I'm going to pull out of the
8 2008 provider manual a page which is Y 65. Let me ask
9 you if you recognize this as a page out of the 2008
10 provider manual?

11 A. Well, it looks like a page from the provider
12 manual. I don't know that it's from 2008.

13 Q. Well, one of them. Would you agree with me?

14 A. It appears to be one.

15 Q. Is that the page that the instructions that you
16 utilized in connection with your scoring of the cases?

17 A. Yes, I think it is.

18 Q. Okay. And under the instruction for anterior
19 crowding, do you see that?

20 A. Yes.

21 Q. What is the first sentence of that instruction?

22 A. "Anterior teeth that require extractions as a
23 prerequisite to gain adequate room to treat the case."

24 Q. And which are the anterior teeth that we're
25 talking about?

1 A. The six anterior's, cuspid to cuspid.

2 Q. The front six?

3 A. Front six.

4 Q. The front six on the top or on the bottom?

5 A. Top and bottom, yes.

6 Q. Do you know how many cases you scored with at
7 least -- with anterior crowding in at least one arch?

8 A. No, I don't.

9 Q. If I represent to you that it's approximately
10 41 cases in your score sheets where at least one of the
11 arches had anterior crowding, would that surprise you?

12 A. I have no opinion on that.

13 Q. Okay. And if your score sheets, 41 of your score
14 sheets show anterior crowding in at least one of the
15 arches, is it your testimony today that in those
16 43 cases you would extract an anterior tooth?

17 A. No.

18 Q. You would not?

19 A. Would not.

20 Q. And what does that first sentence say?

21 A. "Anterior teeth that require extractions as a
22 prerequisite." But it does not say anterior
23 extractions.

24 Q. Doctor, it says the first four words, Doctor,
25 anterior teeth that require extractions. Does it not



1 say that?

2 A. Yeah. But I think you need to read a little
3 more, as a prerequisite to gain space. So to gain the
4 space you don't need to require the extract the anterior
5 teeth to gain space.

6 Q. So if I understand you, you can award anterior
7 crowding in at least one arch, 41 cases, and not extract
8 a single anterior tooth?

9 A. Absolutely. That's correct.

10 Q. You feel that you're following the instructions
11 correctly as you give that opinion, correct?

12 A. Yes.

13 Q. Dr. Evans, do you know Dr. Jim Orr?

14 A. Yes, I do.

15 Q. Did you not, in fact, practice for a period of
16 time just down the road from Dr. Jim Orr?

17 A. Yes, I did.

18 Q. Did you get to know the man?

19 A. Yes.

20 Q. Do you respect him?

21 A. Yes, I do.

22 Q. Are you aware that he is the expert for Harlingen
23 Family Dentistry in this case?

24 A. Yes, I am.

25 Q. And did you not sit through his deposition?



1 A. Yes, I did.

2 Q. Did you listen to his testimony?

3 A. Yes, I did.

4 Q. Did you learn that he was a past Medicaid dental
5 director for a number of years?

6 A. Yes.

7 Q. Did you learn in that deposition that he reviewed
8 these types of cases for prior authorization himself on
9 a daily basis for a number of years?

10 A. Yes.

11 Q. Are you aware that Dr. Orr -- are you aware of
12 any of the scores of Dr. Orr, in the same cases that you
13 evaluated?

14 A. Yes.

15 Q. Are you aware that they're much higher than your
16 scores?

17 A. Yes.

18 Q. Is it your testimony that Dr. Orr is
19 misrepresenting his scores in the analysis that he's
20 done of these cases?

21 A. No. But let me explain this. Dr. Orr graduated
22 from the University of Texas Dental School with a degree
23 in dentistry. That's a very good school and I know he
24 had very good training. I also graduated from the
25 University of Texas Dental School with the same degree



1 and the same training.

2 Q. Sir --

3 A. But Dr. Orr continued to practice general
4 dentistry. I went on and spent three more years of
5 training in orthodontics and I've been to continuing
6 education courses for the last 40 years. Dr. Orr has
7 been in continuing education courses in general
8 dentistry for 40 years. I could not be an expert on
9 anything in general dentistry even though I am a general
10 dentist, because I have not practiced.

11 Q. Sir. Sir. Sir. I have to stop you there. I
12 haven't posed a question. You're just going on into a
13 long narration. I would object to the nonresponsiveness
14 of that answer to my question.

15 HEARING OFFICER: I'll sustain the
16 objection. Dr. Evans, if you will answer the questions
17 and then Mr. Medlock and Ms. Alvarado will have an
18 opportunity to ask you further questions on that.

19 THE WITNESS: So repeat the question.

20 Q. (By Mr. Garcia) Do you know, Dr. Evans, whether
21 or not Dr. Orr is an occlusion specialist?

22 A. I've heard either through him or others that he
23 has had a lot of training in occlusion.

24 Q. Does an occlusion specialist tell people like you
25 an orthodontist where the tooth needs to be for proper

1 occlusion.

2 A. I don't think an occlusion specialist would do
3 that, but certainly you would learn that in school. You
4 don't have to go to an occlusion specialist for that.

5 Q. You are not a board certified orthodontist,
6 correct?

7 A. Correct.

8 Q. Do you know whether or not any of the Harlingen
9 Family Dentistry doctors were board certified
10 orthodontist?

11 A. No, I do not.

12 Q. So if Dr. C. Van Nguyen is a board certified
13 orthodontist, you were not aware of that?

14 A. That's correct.

15 Q. And if Dr. George Franklin was a board certified
16 orthodontist, you were not aware of that either?

17 A. That's correct.

18 Q. And of all the dentist that have looked at these
19 cases, the HLD scoring, those are the two board
20 certified orthodontist that we know of, correct?

21 A. I don't know that.

22 Q. Does a Medicaid provider have to be an
23 orthodontist to provide orthodontic services in
24 Medicaid?

25 A. I don't know that either, but I would assume



1 probably not.

2 MR. GARCIA: We'll pass the witness, Judge.

3 HEARING OFFICER: Mr. Medlock?

4 REDIRECT EXAMINATION

5 BY MR. MEDLOCK:

6 Q. Okay. Some simple questions. Yesterday Mr.
7 Garcia went over in the beginning of your testimony that
8 you scored some of the HLD score sheets in your review
9 incorrect. That you had scored both ectopic and
10 anterior crowding. Was that just a simple oversight on
11 your part.

12 A. Yes, it was.

13 Q. And he said it was only on three occasions?

14 A. That's what was pointed out to me. There could
15 have been more. This is the first time I've completed
16 those sheets.

17 Q. Even if it was only three occasions that he
18 pointed out, would those patients that qualified for
19 orthodontic treatment in your opinion?

20 A. No.

21 Q. Under the HLD score sheet?

22 A. No. Even giving them the extra score they did
23 not qualify.

24 Q. When you became an expert in this case, was it
25 your job to identify fraud?



1 A. No.

2 Q. Was it your job to identify the records for the
3 accuracy of the HLD score sheets?

4 A. Yes.

5 Q. And I believe you -- did you testify that in your
6 opinion that those score sheets, with the exception of
7 one, were inaccurate?

8 MR. GARCIA: Objection, Your Honor. That's
9 a leading question, Judge. The answer is right in the
10 question.

11 HEARING OFFICER: I will sustain that. Can
12 you rephrase, Mr. Medlock?

13 Q. (By Mr. Medlock) In 84 of the 85 patients that
14 you reviewed, what were your findings?

15 A. Well, I found that the scores were very different
16 from the score as I scored them. I'm not sure about the
17 85th one. If we came up with the same score. I just
18 found one that I felt received the 26 points.

19 Q. And Mr. Garcia said that Dr. Alfaro and
20 Mr. Klozik instructed you on the HLD score sheet?

21 MR. GARCIA: Objection, Your Honor. That's
22 a mischaracterization of what was stated. It was a
23 question to him whether or not he was instructed. It
24 wasn't any testimony on my part.

25 MR. MEDLOCK: I'm just restating his

1 question.

2 HEARING OFFICER: Yeah. I don't remember
3 the exact wording of the question. Perhaps you could
4 just remind the witness about that line of questioning
5 and testimony.

6 Q. (By Mr. Medlock) Mr. Garcia asked you about
7 whether or not Dr. Alfaro and Mr. Klozik instructed you
8 on the score sheet. Did they give you specific
9 instructions on how to, per the definition, score the
10 HLD score sheet?

11 A. I'm not quite sure what you mean.

12 Q. Did they tell you to use the manual and reference
13 the manual to score it?

14 A. Yes, they did.

15 Q. But they didn't tell you what scores to put on
16 for the patients?

17 A. Absolutely not.

18 Q. Mr. Garcia just indicated that you were not a
19 board certified orthodontist. Do you have to be board
20 certified to practice orthodontia?

21 A. No. I'm licensed as an orthodontist by the
22 American Association of Orthodontist and Southwestern
23 Society of Orthodontist.

24 Q. And if you were board certified, would that
25 change your diagnosis?



1 A. No, not at all.

2 Q. Mr. Garcia also mentioned several times that you
3 were not a Medicaid provider; is that correct?

4 A. Correct.

5 Q. In your expert opinion as an orthodontist, would
6 you treat a patient differently if you did accept
7 Medicaid?

8 A. No.

9 Q. Versus a private paid patient?

10 A. No.

11 Q. You would treat them all the same?

12 A. Absolutely.

13 Q. Wouldn't make a difference?

14 A. I have several patients in my practice that were
15 treated gratis and I kept no record personally. So I
16 didn't know who was paying and who was not paying. I
17 treated them all the same.

18 Q. As an orthodontist with more than 45 years
19 experience, do you feel that you would need to consult
20 with other providers who did provide Medicaid in order
21 to understand how to score the HLD score sheet?

22 A. No.

23 Q. The TMPPM suffices for itself? The instructions
24 in TMPPM are enough for an orthodontist to be able to
25 score the HLD score sheet?

1 A. Definitely. Yes.

2 Q. What is your opinion regarding the differences in
3 the HLD score sheets you scored compared to the ones
4 scored by the dentist at Harlingen Family Dentistry?

5 A. I just know we had that discrepancy in the
6 ectopic eruption. And I have no idea how they arrived
7 at their scores.

8 Q. In your review did it appear to you that they
9 relied on Medicaid policy when scoring those score
10 sheets?

11 A. I don't think they could have gone by the same
12 instructions that I did, the 2007 to 2011. I don't know
13 maybe there was something else.

14 Q. But based on the policy itself, is it your
15 testimony that you don't think that they could have
16 followed that?

17 A. I don't think so, no.

18 Q. Do you have the exhibit that Mr. Garcia handed
19 you with regard to the definitions?

20 A. I gave it back to him.

21 Q. Well, then I will hand you what's been marked
22 RX -- well, let me go ahead and pull out --

23 MR. GARCIA: What are you looking for, John.

24 Q. (By Mr. Medlock) He handed you RY here; is that
25 correct? Mr. Garcia handed you that?

1 A. Yes. I think it's the same one here.

2 Q. And he went over several lines of questions
3 regarding to anterior crowding; is that correct?

4 A. That's correct.

5 HEARING OFFICER: For the record, this is
6 page 65, correct.

7 MR. MEDLOCK: I believe it is.

8 THE WITNESS: Yes, it is RY 65.

9 HEARING OFFICER: Thank you.

10 Q. (By Mr. Medlock) And in talking about the
11 definition of anterior crowding, you said that you don't
12 necessarily need to extract teeth to score something as
13 anterior crowding; is that correct?

14 A. That's correct. It's evens outlined in the
15 manual.

16 Q. Where is it outlined?

17 A. Under anterior crowding.

18 Q. Could you please read the -- would you please
19 read that full paragraph for the court under the
20 anterior crowding section?

21 A. It says, "Anterior teeth that require extractions
22 as a prerequisite to gain adequate room to treat the
23 case. If the arch expansion is to be implemented as an
24 alternative to extraction, provide an estimated number
25 of appointments required to attain stabilization." So



1 it does mention that there are alternatives.

2 Q. And then the next sentence where it talks about
3 arch length insufficiency, could you please read that?

4 A. "The arch length insufficiency must exceed
5 3.5 millimeters to score for crowding on any arch. Mild
6 rotations that may react favorably to stripping or
7 moderate expansion procedures are not to be scored as
8 crowding."

9 Q. And he mentioned that he would represent to you
10 that in 41 of the patients that you scored had anterior
11 crowding issues. My question to you is, given the
12 multiple alternative that you have in which the score,
13 would you have to necessarily extract anterior teeth?

14 A. I rarely extract anterior teeth.

15 Q. And in your career as an orthodontist spanning 40
16 some-odd years, how many teeth have you ever extracted
17 on an anterior crowding issue?

18 A. I've extracted hundreds, maybe thousands of
19 teeth, but not anterior. Cosmetically that would be a
20 disaster for a patient to extract the anterior teeth.

21 Q. Earlier you were saying that you would not be
22 able to give an expert opinion regarding general
23 dentistry. Why is that?

24 A. I mean, even though I have a degree in general
25 dentistry and can practice general dentistry I don't.

1 If I'm not doing it on a daily basis, I certainly
2 couldn't qualify as an expert.

3 Q. Would it be fair to say that in order to consider
4 yourself an expert in general dentistry you would need
5 to keep up with trainings in the field --

6 A. Absolutely.

7 Q. -- in the field of general dentistry?

8 A. Yes.

9 Q. Attend seminars?

10 A. Absolutely.

11 Q. Treat patients on a daily basis or regular basis?

12 A. Yes.

13 Q. In general dentistry?

14 A. Yes.

15 Q. And would the same apply for orthodontics?

16 A. Yes.

17 Q. That you would have to basically be in the
18 patient's mouth treating for orthodontics on a daily
19 basis?

20 MR. GARCIA: Objection, Your Honor, he's
21 back to leading the question, the answer in the
22 question.

23 HEARING OFFICER: I think that's a fair
24 objection. I'll sustain it.

25 Q. (By Mr. Medlock) Mr. Garcia made a

1 representation to occlusion specialist and that you were
2 in the deposition for Dr. Orr and that Dr. Orr made a
3 statement about his residency was in occlusion. Is
4 occlusion different from orthodontics?

5 A. Well, occlusion is more of a study of the way
6 that the teeth mesh, fit together, bite.

7 Q. But would a residency in occlusion be the same as
8 a residency in orthodontia?

9 A. No.

10 Q. They would be completely different subject
11 matters?

12 A. Yes, definitely.

13 Q. One last question. You are probably just going
14 to have to ball park this figure. How many patients
15 have you treated from start to finish in your entire
16 career as an orthodontist?

17 A. When I sold my main practice in the year 2000, we
18 had done an estimate at that time of how many patients I
19 had treated and I was a little over 10,000 and that was
20 in 2000. So if they add to that the patients I've
21 treated in the past 12 years. So maybe in the
22 neighborhood of 14, 15,000. I don't know exactly.

23 MR. MEDLOCK: I have nothing further.

24 HEARING OFFICER: Mr. Garcia?

25



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1 REXCROSS EXAMINATION

2 BY MR. GARCIA:

3 Q. Just a few questions. Dr. Evans, did you review
4 the deposition of Dr. C. Van Nguyen?

5 A. No.

6 Q. Did you review the deposition of Dr. George
7 Franklin?

8 A. No.

9 Q. These are the two board certified orthodontist,
10 correct?

11 A. I don't know that. I don't know either one of
12 them.

13 Q. Will you assume with me for the purpose of this
14 question that they are both board certified
15 orthodontist?

16 A. Okay.

17 Q. And did you ever call either one of them up to
18 say, how did you come up with these scores?

19 MR. MEDLOCK: Objection, relevance.

20 MR. GARCIA: How is that not relevant.

21 MR. MEDLOCK: All he was asked to do in this
22 case was to review the patient files. It is the
23 investigator's job to do that. It is not an expert's
24 job to call up.

25 HEARING OFFICER: That may be, but I'll

1 allow him to answer the question. You can answer.

2 THE WITNESS: Okay.

3 Q. (By Mr. Garcia) Did you -- it's a yes or no
4 answer, Dr. Evans. Did you call Dr. C. Van Nguyen who
5 I'll represent to you is a board certified orthodontist,
6 to find out how his came up with his scores?

7 A. My answer is I don't know this doctor. In fact,
8 I hadn't even heard the name until today. I was only
9 examining Harlingen Dental. I don't know who the
10 dentists are.

11 Q. So your answer is you never called
12 Dr. C. Van Nguyen?

13 A. No, I did not.

14 Q. And you never called Dr. George Franklin, who
15 I'll represent to you is another board certified
16 orthodontist, about his scores?

17 A. No, I did not.

18 Q. And we know that there's a discrepancy in the
19 scores, correct?

20 A. Correct.

21 Q. Your scores are on one end and Dr. Orr's, these
22 two board certified orthodontist and the other doctor
23 are on the other end, correct?

24 A. Yes.

25 Q. So there's a discrepancy?

1 A. Yes.

2 Q. Is it fraud?

3 MR. MEDLOCK: Objection. I think he's
4 already asked and answered that.

5 HEARING OFFICER: I'll sustain that.

6 MR. GARCIA: Pass the witness.

7 HEARING OFFICER: Anything further?

8 REDIRECT EXAMINATION

9 BY MR. MEDLOCK:

10 Q. Just for clarity. Do you have to be board
11 certified to be an orthodontist?

12 A. No.

13 Q. Does a board certified orthodontist treat
14 patients better than a regular orthodontist?

15 A. No.

16 Q. So essentially between a board certified
17 orthodontist and a regular orthodontist there's no
18 difference?

19 MR. GARCIA: Objection, Your Honor. It's
20 another leading question.

21 THE WITNESS: No difference.

22 HEARING OFFICER: I'll overrule that. You
23 can answer that, Dr. Evans.

24 THE WITNESS: No. There's no difference
25 between a board certified.

1 Q. (By Mr. Medlock) Is there anything special you
2 have to be to be board certified as an orthodontist?

3 A. Yeah. There's written examinations that you take
4 and you have to show some of the cases that you've
5 treated. What most people do when they graduate from
6 school and they take their final exams, they have their,
7 you know, they've been studying for the exams, they've
8 prepared their cases, they've got everything ready and
9 they just, kind of, take all that information and go
10 right over to the board and then they use the same
11 information to take the board, et cetera. And I did not
12 choose to do that.

13 Q. Would you consider yourself less qualified than
14 somebody that's board certified?

15 A. No.

16 MR. MEDLOCK: Nothing further.

17 RECROSS EXAMINATION

18 BY MR. GARCIA:

19 Q. Dr. Evans, I just want to identify the cases that
20 we know for a fact you scored incorrectly, okay? So the
21 judge will know which ones they are.

22 A. Okay.

23 Q. And R001, Judge. Is that one of your score
24 sheets?

25 A. Yes. This one I gave you three extra points.

1 Q. You scored that sheet incorrectly, correct?

2 A. Uh-huh.

3 Q. You did not follow the directions, correct?

4 A. That's correct.

5 Q. Okay. Let me show you R003. Is that another one
6 of your score sheets?

7 A. This one I gave you five extra points.

8 Q. Another score sheet that you scored incorrectly,
9 correct?

10 A. Correct.

11 Q. Did not follow the instructions, correct?

12 A. Correct.

13 Q. An R --

14 A. It's not that I didn't follow the instructions,
15 it's I just overlooked it.

16 Q. This is the first time you've analyzed cases like
17 this as an expert, right?

18 A. That's correct.

19 Q. And RR17?

20 A. Yep.

21 Q. That's another one that you scored incorrectly?

22 A. It's another one that I gave five extra points.

23 Q. And it's a total incorrect score, correct?

24 A. Yes. It's too high. It should have been lower.

25 MR. GARCIA: Pass the witness, Judge.



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1 HEARING OFFICER: Anything further from this
2 witness?

3 REDIRECT EXAMINATION

4 BY MR. MEDLOCK:

5 Q. Just a couple of quick -- as you said these
6 things were oversights; is that correct.

7 A. They were. They were oversights. Fortunately
8 there were no instances where I did not give them enough
9 points. I always gave extra.

10 Q. So --

11 A. In their favor.

12 Q. -- with regard to the patients that he just
13 showed you, none of them would have met the 26 points?

14 A. That is correct.

15 Q. Even with the higher score?

16 A. Even with the higher score did not they make 26.

17 MR. MEDLOCK: Nothing further.

18 HEARING OFFICER: Mr. Garcia?

19 RECROSS EXAMINATION

20 BY MR. GARCIA:

21 Q. And that's the whole point of this -- your entire
22 opinion.

23 MR. MEDLOCK: Objection, that's not a
24 question.

25 Q. (By Mr. Garcia) Sir, nobody meets the points,

1 correct? In all 85 cases, nobody meets the points
2 according to you?

3 A. One. One met them.

4 Q. One.

5 A. Yes.

6 MR. GARCIA: Pass the witness.

7 MR. MEDLOCK: We're done. Nothing further.

8 HEARING OFFICER: Dr. Evans, that concludes
9 your testimony.

10 THE WITNESS: Thanks.

11 HEARING OFFICER: You may step down. What
12 else do we have from the state?

13 MR. MEDLOCK: We are going to read some
14 deposition testimonies. Being that we or not going to
15 be able to call Marcus Holley. I don't know if the
16 court would like to take a short recess at this time.

17 HEARING OFFICER: Yeah. I'm thinking about
18 that. How much deposition testimony do you have.

19 MR. MEDLOCK: It's three different
20 depositions. The parts that I have to read are very,
21 very short. It's a few paragraphs here and there, maybe
22 a page, but that's about it.

23 MR. CANALES: May I inquire, Your Honor,
24 who's the first one?

25 MR. MEDLOCK: The first one will be

1 Dr. Nguyen. Just for reference so you'll have --
2 because I know you want to show some videos. The way I
3 plan to call is Nguyen, Franklin and Teagardin.

4 HEARING OFFICER: Why don't we take a mid
5 morning break for about 15 minutes. We're off the
6 record.

7 (Discussion off the record.)

8 HEARING OFFICER: We're back on the record.
9 And we're going to the take some evidence out of order
10 here. The Petitioner Harlingen Family Dentistry is
11 going to offer some testimony by video deposition and
12 there will probably be some cross read into the record
13 from the deposition by the OIG attorney. So
14 Mr. Canales, why don't you orient us what you're doing
15 first.

16 MR. CANALES: Yes, Your Honor. The very
17 first witness, Your Honor, will be as reflected in P9.
18 P9 reflects the deposition cuts of Dr. Van Nguyen. We
19 will play that and my understanding is that after we
20 play it, if counsel feels I have failed to state certain
21 parts of it, he can read it into the record, Your Honor.
22 So the court has already admitted, by the way, I think
23 P9, it's already in evidence. So we would like to play
24 that for the court. Depending on the time factor,
25 Judge, the next one will be P8 and that's



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1 Dr. George Franklin. Same agreement counsel. I'll play
2 parts of it and counsel will supplement if need be.
3 And, of course, the last one will be P7 and P7 is
4 Dr. Vivian Teagardin. Again, I will play the video and
5 opposing counsel will supplement if he wishes. But all
6 these three 7, 8, 9, I believe they're already admitted
7 into evidence, Your Honor.

8 HEARING OFFICER: Very good. Go ahead
9 whenever you're ready.

10 DIRECT EXAMINATION

11 BY MR. CANALES:

12 Q. The first witness we will call is Dr. Nguyen.

13 (Video deposition of Dr. Nguyen begins.)

14 Q. For the record, sir, can you give us your full
15 name and spell the last name?

16 A. My full name is C. Van Nguyen, last name spells
17 N-G-U-Y-E-N.

18 Q. All right. I take it that's capital C period
19 Vann, V-A-N-N. One N?

20 A. One N.

21 Q. One N. V-A-N, and your last name is spelled
22 N-G-U-Y-E-N?

23 A. Correct.

24 Q. And we pronounce it Nguyen?

25 A. Nguyen, yes.



1 Q. Thank you so much, sir. Now, can you please give
2 us a little bit of your educational background. I take
3 it you are a -- by profession you are a dentist?

4 A. Yes.

5 Q. Can you tell me a little bit about how you became
6 a dentist, which schools you went to and so forth?

7 A. Yes. I went to you UCLA, graduated as a dentist,
8 went to Temple university, residency in orthodontics and
9 I graduated.

10 Q. All right. And can you give us the UCLA, what
11 year was that, sir?

12 A. 2000.

13 Q. And then when you graduated from UCLA I take it
14 that was your undergraduate degree.

15 A. It's called dentistry.

16 Q. Your dentistry degree?

17 A. Yes. DDS.

18 Q. DDD, all right.

19 A. Undergraduate is different.

20 Q. All right. So you got your DDS at UCLA in the
21 year 2000?

22 A. Yes.

23 Q. And before that you received a BA degree or BS
24 de?

25 A. BS degree in engineering and MS degree in

1 engineering.

2 Q. All right, sir. Where did you get the MS degree
3 in engineering, in what year?

4 A. 1979 MS.

5 Q. All right. And where was that at?

6 A. University of Tennessee.

7 Q. Okay. And what was this other degree you have?
8 You have another MS, did you say?

9 A. I have a BS degree in the University of
10 Tennessee.

11 Q. All right, sir. What year was that?

12 A. 1978.

13 Q. All right, sir. And then after becoming a
14 dentist, I think you told us that you are -- you have a
15 speciality in orthodontics?

16 A. Yes.

17 Q. All right. Tell us when did you receive and
18 where did you do your residency?

19 A. I did it at Temple university.

20 Q. And where is that located at?

21 A. Philadelphia, Pennsylvania.

22 Q. All right, sir. And what year did you get your
23 residency there?

24 A. I graduated in 2002.

25 Q. All right, sir. And after graduating in 2002,

1 with a specialty in orthodontics; is that correct?

2 A. When you graduated from a residency, you are
3 board eligible orthodontist.

4 Q. All right, sir. Did you get board certified?

5 A. Yes.

6 Q. And when did you get board certified?

7 A. The year of 2007.

8 Q. All right, sir. And in what state did you get
9 board certified in?

10 A. It's board certified in any states around the
11 United States.

12 Q. What's the title of your board certification?

13 A. A diplomate.

14 Q. A diplomat?

15 A. Of the American Board of Orthodontics.

16 Q. All right. And you received that in 2007, I
17 believe you told us?

18 A. Yes.

19 Q. And today is 2012 so for the last 5 years, where
20 have you been?

21 A. I've been --

22 Q. By that I mean, where have you been practicing
23 at? Forgive me.

24 A. For the last 3 years I've been here in Harlingen
25 Family Dentistry. Prior to that I was up in Dallas

1 working for Apple Orthodontics from 2006 to the end of
2 2008.

3 Q. And then from 2006, 2008, then after that you
4 came down to Harlingen --

5 A. Family Dentistry.

6 Q. Okay. When you came down to Harlingen Family
7 Dentistry, did you come -- for what purpose did you come
8 here, to Harlingen Family Dentistry?

9 A. To treat patients.

10 Q. All right. And to follow -- to practice the
11 field -- which field were you practicing?

12 A. Orthodontics.

13 Q. And do you have -- for Harlingen Family
14 Dentistry, do you have any type of ownership in the
15 business?

16 A. No.

17 Q. What is your status in the business?

18 A. I'm an employee.

19 Q. You're an employee. Very well, sir. And who do
20 you report to as an employee?

21 A. I report to Dr. Teegardin.

22 Q. All right. Dr. Teagardin. All right. Do you
23 also report to Dr. Villarreal?

24 A. Yes.

25 Q. Is Dr. Villarreal present in the deposition?

1 A. Yes.

2 Q. Is that the gentleman sitting here by that table?
3 Dr. Villarreal?

4 A. Yes.

5 Q. Very well. And how -- how do you get patients --
6 you, yourself, sir? How do you get patients here in the
7 Harlingen Family Dentistry office?

8 A. They are referred to me.

9 Q. Very well. And who refers patients to you?

10 A. From various dentists.

11 Q. Okay. And so -- and this referral that you --
12 from various dentists, do you -- do you treat private
13 patients?

14 A. Yes.

15 Q. All right. And do you treat patients who are
16 also Medicaid recipients?

17 A. Yes.

18 Q. And before coming here to Harlingen, did you --
19 when you were at Apple up in Dallas, did you also treat
20 patients there who were Medicaid recipients?

21 A. No.

22 Q. When you came to Harlingen at some point in time,
23 you became a -- did you become a Medicaid provider
24 enrollee?

25 A. Yes.

1 Q. All right. And that happened while you working
2 here in Harlingen?

3 A. Yes.

4 Q. Very well. And when you were working -- when you
5 received your certification as a Medicaid provider
6 enrollee, is that when you started seeing patients here
7 in Harlingen?

8 A. Yes.

9 Q. And in that regard, did you ever receive any type
10 of notification or letters or any type of instructions
11 from the state Medicaid office as to how to bill or how
12 to treat patients or anything like that?

13 A. Yes.

14 Q. All right. And let me show you, for example --
15 I'm going to show you now what I have marked as -- we're
16 going to call this Exhibit N, N dash 1. Is that okay
17 for you, Mr. Reporter? Do you want another Exhibit
18 number?

19 REPORTER: One.

20 Q. But N for the other people? I'll call it N. N
21 will be for Nguyen. N dash one and then the original
22 will be the N2 so forth. Let me show you what is called
23 N1 and ask you if you recognize this particular form
24 before? I'll provide a copy to opposing counsel. Do
25 you recognize what N1 is?

1 A. Yes, I do.

2 Q. Tell us what is N one and how does it work into
3 your practice?

4 A. It's one of the forms that we use to fill out and
5 package to sent to Medicaid office to get pre approval.

6 Q. All right. Now, so we can all understand where
7 we are on this deposition. The Medicaid office that you
8 send it to, is that located in the City of Austin?

9 A. I didn't send it personally.

10 Q. The staff sends it. Have you ever heard of a
11 company called TMHP?

12 A. Yes.

13 Q. Is TMHP the agency that would receive this
14 particular forms?

15 A. Yes.

16 Q. All right. And would those be the people or the
17 agency that you would ask for a preauthorization?

18 A. Yes.

19 Q. All right. Why did you -- why did you submit
20 this particular form to TMHP?

21 A. Because it's a required before we can treat a
22 patient orthodontically.

23 Q. Okay. So was that your understanding?

24 A. Yes.

25 Q. All right. And did you -- how often did you fill

1 out a form like that?

2 A. Every single time I see a patient.

3 Q. Very good. And could you start -- would you
4 expect payment for the services you provided if you did
5 not submit this particular type of form?

6 A. Can you repeat the question?

7 Q. Yes. It's a double question. If you had not
8 submitted this form, form N1, do you think you would
9 have gotten paid?

10 A. No.

11 Q. For your services rendered, right?

12 A. Correct.

13 Q. And why do you believe that?

14 A. I believe that TMHP would have reviewed, would
15 have approved, and given me the authorization to start
16 patient. Therefore I should get paid.

17 Q. So in this particular -- so this is a form that
18 was used basically to -- this form, by the way, it's a
19 blank form. And, but that's the kind of form that you
20 would use to ask for preauthorization to commence work
21 on the children?

22 A. Yes. This is one of the pages, yes.

23 Q. Very well. Let me see and I'll put it back
24 inside. Let me now show you what I have marked now as
25 N2 and ask you whether or not you're familiar with



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1 something called the handicapping labial lingual
2 deviation index otherwise known as HLD? Are you
3 familiar with that particular form?

4 A. Yes.

5 Q. And tell me how you're familiar with that
6 particular form L2 -- N2?

7 A. Well, it's the one that designs the parameters
8 that we have to score these other two to submit to
9 Medicaid.

10 Q. So if you look at the second page of N2, is that
11 the score sheet?

12 A. Yes.

13 Q. And what you have there that's a blank sheet,
14 correct?

15 A. Yes.

16 Q. And the instructions for filling out the form
17 would be in first page of what I have just given you,
18 correct?

19 A. That is correct.

20 Q. And so let me ask you this. Tell me whether or
21 not what was your practice in submitting or entering or
22 filling in the blanks for what is known as N2? When did
23 you do it?

24 A. I do it after we've collected the records.

25 Q. All right. And so what records are you talking

1 about?

2 A. We're talking about models, we're talking about
3 photographs, and x-rays.

4 Q. All right. So a patient would then come in; is
5 that correct?

6 A. Yes.

7 Q. And you would do a model. What does that mean?

8 A. Model would be the cast pulled out from alginate
9 impressions.

10 Q. From what impressions?

11 A. Alginate impressions in a patient's mouth.

12 Q. Sometimes I call those models or I call them or I
13 refer to them as molds, M-O-L-D-S. Are we talking about
14 the same thing? So basically you make a mold out of the
15 patient's mouth?

16 A. Yes.

17 Q. To see where the teeth are located and so forth?

18 A. That is correct.

19 Q. That's part of the package that you would do
20 here?

21 A. Yes.

22 Q. All right. And also you talked about something
23 about photographs. Would you take photographs of the
24 patient's mouth or his teeth?

25 A. Yes. Also photographs of his outside face.

1 Q. Outside face? Okay. And what about x-rays?
2 Would you have x-rays made also?

3 A. Yes.

4 Q. And do they just call x-rays or is there a
5 particular?

6 A. There are two x-rays that we take.

7 Q. Which are?

8 A. Usually the panoramic x-ray and the cephalometric
9 x-ray.

10 THE REPORTER: And the what, sir.

11 THE WITNESS: Cephalometric.

12 Q. (By Mr. Canales) So when you take the panoramic
13 x-ray and the cephalometric x-ray together with the
14 other -- with the photos and the models, you put all
15 that together and what would you do with it?

16 (Video deposition of Dr. Nguyen stopped.)

17 MR. CANALES: I have a copy of the exhibits
18 he's referring to, can I submit them to the court, Your
19 Honor?

20 HEARING OFFICER: Are they --

21 MR. CANALES: They are part of the
22 deposition we are going to be offering into evidence,
23 not as a delegation.

24 HEARING OFFICER: I'm just wondering are
25 they otherwise in evidence?

1 MR. CANALES: Yes, they are. Yes, Your
2 Honor. They are scattered all over the exhibits. He'll
3 be talking about the --

4 HEARING OFFICER: What I'm worried about at
5 this point is just so much duplication of paper that
6 would be more rather than less confusing. If there's
7 anything that he's referring to that's not readily
8 findable in the evidence. Thus far we have --

9 MR. CANALES: It's readily findable, Judge,
10 in the patient's file. Everything he's talking about is
11 will be in the patient's file. All I'm doing is I'm
12 kind of extracting from the patient's files and maybe
13 you can see it -- it's talking about what is N1, for
14 example and so forth and what's N2. That's a blank
15 forms.

16 HEARING OFFICER: Right. And when was the
17 blank form. What was N2 again? Just tell me.

18 MR. CANALES: I'm sorry what was the
19 question?

20 MR. MEDLOCK: It's that definition page that
21 we've gone over several times.

22 HEARING OFFICER: Yeah. Exactly. You know,
23 I mean, I would be happy to look at them, but I would --
24 if there's some reason -- if there's not some special
25 reason for you to offer them I would rather not clutter



1 up the record with more duplication at this point.

2 MR. CANALES: Very well.

3 HEARING OFFICER: If there's something
4 that's in there that's not otherwise in the record and
5 you have reason to want to offer it at this point I
6 would entertain that.

7 MR. CANALES: No. They're part of the
8 patient's file, Your Honor. I just thought it might
9 help you if he talks about N1, N2.

10 HEARING OFFICER: I understand. Could I
11 just have them to look at while we are going through the
12 deposition?

13 MR. CANALES: Of course.

14 HEARING OFFICER: And then I will return
15 them to you.

16 MR. CANALES: Yes. That's my point, Your
17 Honor, but I will represent to the court everything he's
18 talked about it's in evidence, in the volume of the
19 report.

20 HEARING OFFICER: Well, so far I haven't
21 heard anything that causes me to think I wouldn't be
22 able to find it or understand it. If we get to that
23 point, then maybe we can talk about offering something
24 else.

25 MR. CANALES: Yes, ma'am.

1 HEARING OFFICER: Thank you.

2 (Video deposition of Dr. Nguyen begins.)

3 A. We would evaluate those and using instructions as
4 given to me in this sheet.

5 Q. The sheet being N2?

6 A. N2. To score the patient.

7 Q. Very good. And so -- let me back up just so we
8 get the procedure. At this point in time had you --
9 where is the preauthorization request form. Have you
10 sent it out yet?

11 A. Not yet.

12 Q. All right. So when you sent -- when you sent for
13 the preauthorization form, I take it this other
14 information goes along with it?

15 A. Yes.

16 Q. Very well. But in the HLD index goes along with
17 it, too?

18 A. Yes.

19 Q. Now other than the -- other than the form here in
20 front of you, N2, are there any other instructions that
21 you have received from anybody as to how to fill out the
22 form?

23 A. Other than the sheet, no.

24 Q. Very well. And this sheet, for example, gives
25 you a definition, does it not, of ectopic eruption,

1 correct?

2 A. That is correct.

3 Q. All right. Can you just very slowly for the
4 court reporter, can you read us the definition of
5 ectopic eruption that you have there in front of you?

6 A. "Unusual pattern of eruption such as high labial
7 cuspids or teeth that are grossly out of the long axis
8 of the alveolar ridge. Do not include score teeth from
9 an arch if that arch is to be counted in the following
10 category of anterior crowding. For each arch, either
11 the ectopic eruption or anterior crowding may be scored,
12 but not both."

13 Q. Very well. Let's see if you got everything
14 there. Sir, so as you understand that definition that
15 you just read, would you then apply that definition to
16 the second page of the form?

17 A. Yes.

18 Q. All right. And fill in the blank. Now, the
19 form -- is that correct?

20 A. Yes.

21 Q. Now, that form that you have there is from the
22 year 2008. Do you see that at the bottom, the blank
23 form?

24 A. Yes.

25 Q. Let me show you. I'm going to highlight it just

1 so you can see it. Do you see that 2008?

2 A. Yes.

3 Q. All right. So this definition that's used in
4 2008, have you been able to look at the other years and
5 see whether or not the definition changed at all? For
6 example, is that the definition you have for 2007?

7 A. Well, I didn't look at the 2007. I looked at the
8 2009, '10.

9 Q. All right. And is there any difference?

10 A. No.

11 Q. Very well. So the definition is the same; is
12 that correct?

13 A. That is correct.

14 Q. All right. Just to make you a little comfort
15 fitting, I have here 2007 in front of me and I have the
16 definition of ectopic eruption. Let me mark that real
17 quick. Let me show you N3 so we can kind of understand
18 each other.

19 A. Okay.

20 Q. At the very bottom it's got real fine print and
21 you can barely see it, but it's 2007, do you see that,
22 sir?

23 A. Yes.

24 Q. And also do you see the definition of ectopic
25 eruption?

1 A. Yes.

2 Q. Is that identical to what you believe the same
3 thing is for 2008, '9, and '10?

4 A. Yes.

5 Q. So we can now continue with our questioning. And
6 so now you have this definition and so explain to me
7 again now the process. Now, you the molds, you have the
8 x-rays, and you have the photographs. You've got the
9 patient also, of course, right?

10 A. Yes.

11 Q. There's a patient there somewhere. Based on all
12 those things, saying all those things, then you fill out
13 the form?

14 A. That is correct.

15 Q. The question is, sir, is, when you fill out these
16 forms, do you fill out the form with any type of intent
17 to cheat or defraud the State of Texas?

18 A. No.

19 Q. Do you believe you fill out the form with any
20 type of intent to file any type of intentional
21 misrepresentation to the State of Texas?

22 A. No.

23 Q. The number that you put down there, sir, on that
24 score sheet, where do they come from?

25 A. They come from my own judgment.

1 Q. From your judgment. And your judgement on all
2 those things that we talked about, correct?

3 A. Yes.

4 Q. All right. Let me show you now a package -- N4.
5 I'm going to show you here a package, I'm just giving
6 you a second because I've got to label each page just to
7 be sure that we're on the right sequence. I'm now going
8 to show you a collection of 16 pages, it's under N dash
9 4, and on the side of each page I've got a circle and a
10 number corresponding with each page. Do you see that,
11 sir?

12 A. Yes.

13 Q. All right. And so tell me -- tell me what's N4
14 and what are those 16 pages?

15 A. Yes.

16 Q. All right. Do you recognize the 16 pages? What
17 are they?

18 A. They are the score sheets that I score for
19 different patients.

20 Q. Very well. Now, they've got 16 patients here.
21 And we're going to go through some of these names. Can
22 you tell me, sir, whether or not each of those 16 pages
23 has your signature to it? You have to go through each
24 page real quick like and I want to be sure they all have
25 your signature?



1 A. Yes, they are my signatures.

2 Q. And I take it then that because they have your
3 signature on each page that these were your patients?

4 A. Yes.

5 Q. And each of these patients there were live people
6 that you examined, correct?

7 A. That is correct.

8 Q. And in each of these patients you have -- did you
9 have -- did you have the molds, you have the x-rays, did
10 you have the photographs, everything that you needed to
11 be able to make -- to fill in those forms; is that
12 correct?

13 A. That is correct.

14 Q. Now, each of these forms, by the way, has a score
15 sheet, correct? Has a total score sheet?

16 A. Yes.

17 Q. And the total score sheet that they have is --
18 exceeds either 26 or more than 26. Do you see that?
19 Like the very first one on N1? It's got?

20 A. That's N4.

21 Q. I'm sorry, N4. It has a total score sheet of
22 what?

23 A. Yeah. Total score sheet of 27.

24 Q. 27. And that's for a patient by the name of CA.
25 Am I correct on that?

1 A. Yes.

2 Q. Very well. So in this particular patient you
3 scored a 27?

4 A. That is correct.

5 Q. Now, there's something about the term medical
6 necessity. Do you understand that, sir?

7 A. Yes.

8 Q. Can you tell us whether or not it was medically
9 necessity in this particular case? For this young lady
10 to be able to have -- for you to recommend the State of
11 Texas to be able to pay for some orthodontic work?

12 A. Yes.

13 Q. All right. And do you believe she had -- she
14 had -- do you believe that she had severe malocclusion?

15 A. Yes.

16 Q. And to be able to do all that we've got to go
17 through some of the patient records, correct?

18 A. That is correct.

19 Q. Very well. And in this particular case, in
20 Exhibit N1 that you have there -- I keep calling it N1,
21 but really it's N4. The first page of the it.

22 A. Right.

23 Q. Can you tell us whether or not you misrepresented
24 any facts to the State of Texas?

25 A. Yes, I can.



1 Q. Okay tell me what did you do?

2 A. I scored one point for overjet, two points --

3 THE REPORTER: Sorry, what?

4 THE WITNESS: One point for overjet.

5 Q. (By Mr. Canales) Overjet? O-V-E-R-J-E-T?

6 Overjet?

7 A. Overjet. Two points for overbite and 27 points
8 for ectopic eruption.

9 Q. 24 points?

10 A. 24 points.

11 Q. Right? For a total of?

12 A. 27.

13 Q. 27 points. So this particular patient, the
14 question I had for you is this, sir. Did you
15 misrepresent anything to the State of Texas?

16 A. No.

17 Q. Did you attempt to defraud or cheat or lie to the
18 State of Texas about anything in this patient?

19 A. No.

20 Q. And you scored 27 because?

21 A. That's my judgment. That's how we evaluate.

22 Q. Very well. Let's go to the second patient.

23 That's I believe the patient number two and that's the
24 patient by the name of MC, Junior. Am I correct on
25 that?



1 A. Yes.

2 Q. All right. And just give me the total HLD score?

3 A. 28.

4 Q. 28. Again, I'm going to ask you right now about
5 this particular patient. Do you believe it was
6 medically necessary for this particular patient to
7 receive orthodontic treatment?

8 A. Yes.

9 Q. Do you believe he had severe malocclusion?

10 A. Yes.

11 Q. And do you believe -- did you submit any -- any
12 fraudulent or misrepresentation of any facts to the
13 State of Texas?

14 A. No.

15 Q. Let's go down to the next page. The next page is
16 the somebody by the name of EC. Am I correct?

17 A. Correct.

18 Q. And what was the total score for EC?

19 A. 28.

20 Q. You've got something there on the side that says
21 diagnosis. Do you see that, sir?

22 A. Yes.

23 Q. What does that say?

24 A. It says, "Class two, ectopic eruption, excessive
25 overjet."

1 Q. And is that your handwriting?

2 A. That is correct.

3 Q. And based on the total score of 28, sir, did you
4 find that it was medically necessary for this person to
5 receive orthodontic services?

6 A. Yes.

7 Q. And did you -- you did recommend orthodontic
8 services for the patient?

9 A. Yes.

10 Q. And do you believe this patient had severe
11 malocclusion?

12 A. Yes.

13 Q. All right. And did you receive approval from the
14 State of Texas to perform the services on EC?

15 A. Yes.

16 Q. Now, in each of the 16 page people that you
17 submitted the HLD scores on, in any of those items did
18 you submit anything that was false or fraudulent?

19 A. No.

20 Q. Do you believe, sir, that you submitted anything
21 that was a misrepresentation about anything?

22 A. No.

23 Q. And the bottom line, is, sir, were all those
24 cases -- were all these cases, cases that were medically
25 necessary?



1 A. Yes.

2 Q. In all these people, in all 16 cases, all had
3 severe malocclusion, correct?

4 A. Yes.

5 Q. Now, in all of these 16 cases, the question, sir,
6 is whether or not you padded, you fudged, you increased
7 HLD score in order for these patients to be able to
8 qualify. Did you do that, sir?

9 A. No.

10 Q. Did you base your opinion on the HLD scores on
11 each and every patient based on your independent dental
12 judgment of -- after viewing the patient and the records
13 that you had before you?

14 A. Yes.

15 Q. And in each and every case were these scores your
16 opinions of a -- a true reflection of what your opinion
17 was?

18 A. Yes.

19 (Video deposition of Dr. Nguyen stopped.)

20 MR. Canales: I believe that concludes
21 our -- that concludes our offer, Your Honor. I do not
22 know whether or not that satisfies opposing counsel.

23 HEARING OFFICER: Before we talk about that,
24 let's talk a little bit about the patient names. I
25 notice that they're not redacted from these exhibits

1 and --

2 MR. CANALES: We'll be more than glad to
3 redact them, Your Honor.

4 HEARING OFFICER: I think it would be
5 prudent of us to do that.

6 MR. CANALES: I will do it right now.

7 HEARING OFFICER: If you want -- well, for
8 the record set, I think perhaps what we should do is
9 make arrangements for you to have them redacted so that
10 the court reporter's copy doesn't have the patient's
11 name on it.

12 MR. CANALES: Yes, Your Honor. We can do
13 that.

14 HEARING OFFICER: We can go ahead and work
15 with them for right now.

16 MR. CANALES: It will be very easy, Your
17 Honor. The only thing that's not redacted is the names
18 of the 16 pages of this particular doctor.

19 HEARING OFFICER: Is that it?

20 MR. CANALES: That's it. Just to also
21 educate the court the reason we're talking about 16 is
22 because there were three doctors --

23 HEARING OFFICER: Right.

24 MR. CANALES: -- and they each have so many
25 assigned to them.



1 HEARING OFFICER: That's what I figured.

2 MR. CANALES: This particular doctor had 16
3 patients. And I'll redact it, Your Honor.

4 HEARING OFFICER: And I'm assuming that's
5 true for each of the deposition excerpts for each of the
6 treating orthodontist.

7 MR. CANALES: Yes, Your Honor.

8 MR. MEDLOCK: And Your Honor, because we do
9 refer to names in the depositions, when I'm reading mine
10 would you just like me to give you initials.

11 HEARING OFFICER: Yes, please. And I would
12 ask the court reporter to substitute for the two or
13 three patients who were mentioned in this last excerpt,
14 if you could substitute the initials for the names that
15 would be very helpful.

16 So you wanted to read an excerpt, correct,
17 Mr. Medlock?

18 MR. MEDLOCK: That's correct. An excerpt
19 with regard to Mr. Nguyen's testimony.

20 HEARING OFFICER: Whenever you're ready.

21 MR. MEDLOCK: This is on cross by me. So
22 the questioner would be myself and obviously the
23 respondent is Dr. Nguyen.

24 CROSS EXAMINATION

25 (Deposition of Mr. Nguyen being read.)

1 BY MR. MEDLOCK:

2
3 Are you on straight salary?

4 I'm on commission, actually a percentage we
5 call it.

6 What is the percentage based on?

7 It's based on the amount of money that I
8 produce.

9 Question: So it's based on your total
10 billings?

11 Answer: Yes.

12 Later. Question: Just for the record those
13 five patients I had you look at --

14 MR. CANALES: Can we have a page and line?

15 It would be easier. Just give us a page and line where
16 you're reading from.

17 MR. MEDLOCK: Page 48, starting at Line 18
18 through 25 for the first excerpt. And with regard to
19 the second excerpt starting on Page 53, Line 23.

20 Question: Earlier you were shown an exhibit
21 which had the definition of ectopic eruption on it that
22 comes from to TMHP manual. Is that the only thing you
23 used -- only reference guide you used to determine in
24 your judgment what and an ectopic eruption is?

25 Answer: Yes.



1 Then on Page 69 starting at Line 6.

2 Just for record, those five patients I had
3 you to look at, have you seen an HLD score sheet for
4 those people today prior to you looking at the models?

5 Answer: Can you repeat the question.

6 Those five patients that I showed you, had
7 you seen their HLD shore sheets that you had scored
8 before taking a look at the models today.

9 Answer: Today?

10 Question: Yes.

11 Not today. I looked at them.

12 Did you not take a look --

13 Oh, right here, yes.

14 So you had seen the score before you saw the
15 models?

16 Yes.

17 A lot of times when you were scoring them
18 you said at least nine ectopic eruptions. In your
19 opinion, why do you think nine ectopic eruptions -- nine
20 comes out frequently as being a number of ectopic
21 erupted teeth.

22 Answer: I don't have an opinion one way or
23 the other.

24 (Deposition of Mr. Nguyen being read stops.)

25 MR. MEDLOCK: And that concludes from

1 Mr. Nguyen or Dr. Nguyen.

2 HEARING OFFICER: Okay. Mr. Canales, let me
3 give you back the exhibits from --

4 MR. CANALES: Yes, Your Honor. I will
5 commence to scratch out -- my staff will do it during
6 the lunch hour.

7 HEARING OFFICER: So at the lunch hour let
8 me gave you -- is it just in this binder and volume one
9 that there will be redaction issues.

10 MR. CANALES: Yes, Your Honor.

11 HEARING OFFICER: I'll give you that at the
12 lunch hour.

13 MR. CANALES: We are now going to play the
14 deposition with the court's permission out of sequence.
15 Franklin, again, Your Honor. And, again, Your Honor, we
16 use the same -- we got the exhibits and then look at
17 them and the exhibits here will be F1 for Franklin, Your
18 Honor, and opposing counsel was present. And I'll give
19 him a copy.

20 HEARING OFFICER: Actually, that was helpful
21 to me because I was able to jot down the initials of the
22 patients so I could see which ones they were talking
23 about.

24 MR. CANALES: Do you want a copy of all th
25 is?

1 Your Honor, these are going to be the
2 Franklin depositions.

3 HEARING OFFICER: Thank you.

4 MR. CANALES: Yes, Your Honor. I'm sorry.
5 The Franklin Exhibits. Madam reporter, you have there
6 the other deposition there?

7 Your Honor, at this time we would like to ca
8 Dr. Franklin to the stand, Your Honor.

9 HEARING OFFICER: Okay.

10 MR. CANALES: And I believe all these
11 deposition show that they were sworn to and all the
12 appropriate formulas for taking a deposition were taken.
13 Am I correct, Counsel?

14 MR. MEDLOCK: That is correct.

15 HEARING OFFICER: Whenever you're ready.

16 DIRECT EXAMINATION

17 (Video deposition started.)

18 BY MR. GARCIA:

19 Q. Good morning, Dr. Franklin my name is Oscar
20 Garcia and I represent Harlingen Family Dentistry.
21 Dr. Franklin, can you tell me what your profession is?

22 A. Orthodontist.

23 Q. How long have you been an orthodontist, sir?

24 A. 1983, 30 years.

25 Q. And have you been to dental school?

1 A. Yes.

2 Q. Where did you go to dental school?

3 A. Howard University College of Dentistry,
4 Washington, D C.

5 Q. What year did you graduate?

6 A. I graduated from dental school in the year 1968.

7 Q. And after dental school, is there a process that
8 you go through to become an orthodontist?

9 A. Yes.

10 Q. What is the process that you went through?

11 A. Two years of orthodontic school.

12 Q. Where did you go to two years of orthodontic
13 school?

14 A. Howard University College of Dentistry,
15 Washington, D C.

16 Q. Okay. And did you graduate with a degree in
17 orthodontics?

18 A. Yes.

19 Q. Okay. In what year?

20 A. 1983.

21 Q. So if I understand you correctly, you went
22 through dental school and you went through the
23 orthodontic program there at the same dental school?

24 A. Yes.

25 Q. Okay. Are you a licensed dentist in the State of



1 Texas?

2 A. Yes.

3 Q. How long have you been a licensed dentist in the
4 State of Texas?

5 A. Since 1970.

6 Q. And where is your office?

7 A. At the present I practice with Harlingen Family
8 Dentistry, and that's located in Harlingen, Texas.

9 Q. Okay. And before I move on from your license, is
10 your license on file with the Texas Board -- Texas State
11 Board of Dental Examiners?

12 A. Yes.

13 Q. And are you in good standing with your dental
14 license?

15 A. Yes.

16 Q. And from what years have you practiced with
17 Harlingen Family Dentistry?

18 A. I was there briefly in the year 2005. I left for
19 a certain period of time and returned in the year of
20 2008 until the present time.

21 Q. And did you -- did you provide dental services as
22 a part of your work at Harlingen Dentistry?

23 A. Orthodontics, yes.

24 Q. Strictly orthodontics?

25 A. Yes.

1 Q. Dr. Franklin, are you a Medicaid, Texas Medicaid
2 provider?

3 A. Yes.

4 Q. How long have you been a Texas Medicaid provider?

5 A. 2008. Just with the Harlingen Family Dentistry,
6 those years, 2005.

7 Q. And while you were working with Harlingen Family
8 Dentistry, did you -- I think you've indicated that you
9 treated Medicaid parents?

10 A. Yes.

11 Q. And is there a process that -- that -- that you
12 have to go through to establish whether or not
13 Medicaid's going to pay for the services that are
14 needed?

15 A. Yes.

16 Q. Can you -- can you tell us, you know, starting
17 with the initial examination, what -- what is the
18 process that you go through to determine whether or not
19 you think that person is eligible for Medicaid benefits?

20 A. There's a form called the Handicap labial lingual
21 index form that we submit.

22 Q. Okay. And in an initial evaluation, do you take
23 dental records as a part of the initial examination?

24 A. During the initial exam and you schedule the
25 records, evaluate the records.



1 Q. And what is it that make up the initial records?

2 A. The orthodontic records?

3 Q. The orthodontic records?

4 A. You have a panoramic x-ray, a cephalometric
5 x-ray, you have extra oral and intra oral photographs,
6 and study molds.

7 Q. From this point in the definition and from this
8 point on in the deposition, if I refer to records, can
9 we have an understanding that I'm talking about those
10 initial orthodontic records, unless I say differently?

11 A. Yes.

12 Q. The records can include your panagraph x-ray,
13 your cephalometric tracing, your inter oral and extra
14 oral photos, your HLD scoring, your models, your prior
15 authorization request form, and this HLD score sheet?

16 A. Yes.

17 Q. Does that makeup the initial submission to
18 Medicaid for prior authorization purposes?

19 A. Yes.

20 Q. And can you tell us what is the value of having
21 those records with respect to diagnosing a patient? And
22 I'm talking about Medicaid patients.

23 A. Yes. Well, you do your clinical exam and you can
24 make your decision there. You can measure all the items
25 on the index at that particular time using the patient



1 because sometimes during an exam the patient is better
2 than the models, in my opinion. The models basically
3 confirm a record of what you have more or less observed
4 on the initial visit. So it's more of a confirmation
5 that you take the study models. And they also -- you
6 can verify by measurement if you decide to do so. What
7 you have learned on your initial visit.

8 Q. Is there anything better than a clinical
9 examination for the purposes of making your diagnosis
10 and doing your HLD scoring?

11 A. I get most of my information on the initial
12 examination.

13 Q. Okay. So do you consider that a very important
14 step in the process of evaluating diagnosing the
15 patient?

16 A. Yes.

17 Q. Thank you. I want to hand you what I have marked
18 Franklin Exhibit F1 and ask you if you're familiar with
19 this document?

20 A. Yes.

21 Q. What is that document?

22 A. Handicap labial lingual deviation, HLD index.

23 Q. Okay. And what is the importance of this
24 document reference to Texas Medicaid patients?

25 A. It defines the parameters of the HLD index.

1 Q. And is page 2 of this document essentially the
2 scoring instructions and definitions relative to the HLD
3 index?

4 A. Yes.

5 Q. Okay. And, for instance, there's -- towards the
6 top of the page, there's overjet and millimeters. And
7 does it describe, under overjet and millimeters,
8 basically what you are to do if you find, in your
9 clinical opinion, there's overjet?

10 A. Yes.

11 Q. And is there a process you go through to make
12 those measurements?

13 A. Yes.

14 Q. Okay. And a little further down the page is a
15 heading of ectopic eruption. Do you see that?

16 A. Yes.

17 Q. Can you read for us what the definition of
18 ectopic eruption is?

19 A. "Ectopic Eruption: An unusual pattern of
20 eruption, such as a high labial -- such as high labial
21 cuspids or teeth that are grossly out of the long axis
22 of the alveolar ridge."

23 Q. Okay. And do you see in this definition where
24 there's a comma after the first five words?

25 A. Yes.



1 Q. Is the rest of the sentence after the comma, are
2 those examples?

3 A. Yes.

4 Q. And what are high labial cuspids?

5 A. High labial cuspids would be where you have
6 arsenic deficiencies to such an extent that there's
7 actually no space. This tooth has erupted and the
8 labial fold or the labial cuspid and not into the dental
9 arch of the arch.

10 Q. Okay. With respect to your Medicaid patients, do
11 you use your professional judgment with respect to
12 filling out an HLD score sheet?

13 A. Yes.

14 Q. I'll ask you to flip to the last page of this
15 document and ask you what that is?

16 A. This is the HLD index sheet.

17 Q. Okay. And is this the sheet where you
18 essentially come up with some scores based upon your
19 professional judgment in the case?

20 A. Yes.

21 Q. And do you look at the records as a part of
22 filling out this document?

23 A. Yes. And also the oral exam.

24 Q. Okay. And do you -- going to the first part of
25 the -- the form, there's an area, for instance, for

1 overjet and it says, overjet in millimeters, correct?

2 A. Yes.

3 Q. And how do you -- how does an orthodontist or how
4 do you -- if you had a Medicaid patient that had an
5 overjet, how would you address that column of the form?

6 A. On the original examination you have millimeter,
7 or the millimeter rulers and you can measure from the
8 labial surface to the incisor edge of the maxillary
9 tooth and determine the measurement and that's how
10 you -- and subtract overjet minus two and that will give
11 you a score for that overjet on that particular patient.

12 Q. And is that an objective determination that you
13 can make by measuring?

14 A. That's objective, yes.

15 Q. And is it similar with the overbite that you
16 measure the overbite for the purposes of this next
17 column in the scoring sheet?

18 A. Yes.

19 Q. And do you consider that an objective component
20 of the scoring?

21 A. Yes.

22 Q. Okay. And would that also be true for mandibular
23 protrusion and the open bite columns?

24 A. Yes.

25 Q. You can measure those and come up with basically

1 an objective score for that?

2 A. Yes.

3 Q. And we come to the column for ectopic eruption.
4 And under ectopic eruption would you consider that an
5 objective or a subjective component to the scoring
6 sheet?

7 A. A subjective component.

8 Q. Okay. And there's another column indicating
9 anterior crowding. And how would you go about making a
10 determination of whether or not to score anterior
11 crowding?

12 A. Anterior crowding scored by arsenic deficiency,
13 the amount of arsenic that you have.

14 Q. And as a part of your treatment of Medicaid
15 patients with Harlingen Family Dentistry, when you fill
16 out the HLD scoring sheets, did you follow the
17 instructions as you understood them that are apart of
18 this Exhibit F1?

19 A. Yes.

20 Q. Okay. And with respect to the scoring sheet; is
21 there a minimum score that's required for a Medicaid
22 patient to qualify for benefits?

23 A. Yes.

24 Q. What is that score?

25 A. 26.



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1 Q. Okay. And if a person -- if a Medicaid patient
2 attains a score of 26 or greater, is that an indication
3 that that patient exhibits severe malocclusion?

4 A. Yes.

5 Q. And would that also reflect a medical necessity
6 for treatment of that patient?

7 A. Yes.

8 Q. Let me hand you what has been marked Franklin
9 Exhibit F2 and ask you to take a look at those
10 documents.

11 We're going to go through these sheets one by
12 one, Doctor. I'm going to have some questions for you
13 just generally about the documents and then specific
14 questions.

15 A. Yes.

16 Q. You tell me when you're ready to do that.

17 A. Okay. Yes, I'm ready.

18 Q. Okay. Going to the packet of documents that I've
19 handed you, can you tell us what those documents are?

20 A. Repeat the question, please.

21 Q. Referring to the packet of documents marked F2,
22 can you tell me what those documents are?

23 A. Handicapping labial lingual deviations, HLD index
24 number 4A.

25 Q. And are there several documents included?



1 A. Yes.

2 Q. And do they reflect -- are these HLD score sheets
3 for various patients?

4 A. Yes.

5 Q. Okay. And is your signature on each of the
6 documents that I've handed you in F2?

7 A. Yes.

8 Q. And would these forms, HLD forms and F2, have
9 been filled out by yourself?

10 A. Yes.

11 Q. Okay. And do all of the HLD score sheets in F2,
12 do all of them have a score that is 26 points or more?

13 A. Yes.

14 Q. And, again, is a score of 26 or more, is that an
15 indication of severe malocclusion?

16 A. Yes.

17 Q. And is that also an indication of medical
18 necessity for orthodontic services?

19 A. Yes.

20 Q. Okay. And are these the HLD score sheets for
21 your patients?

22 A. Yes.

23 Q. Okay. And would these forms, these HLD forms
24 along with the dental records that we talked about, the
25 x-rays, photos, ceph tracing models, and maybe not so



1 much the models. Are these forms that would have to be
2 sent in to Medicaid for prior authorization?

3 A. Yes.

4 Q. And do you know if prior authorization was given
5 in these cases?

6 A. Yes.

7 Q. Okay. And do you know who gave it? Was it THMP?

8 A. THMP, yes.

9 Q. I believe that stands for Texas Healthcare &
10 Medicaid Partnerships?

11 A. TMHP.

12 Q. TMHP. Texas Medicaid & Healthcare Partnership.
13 Thank you. Okay. As far as you know, did TMHP give
14 prior authorization in each of these cases?

15 A. Yes.

16 Q. Okay. Now, I would like to talk about these
17 score sheets individually. Okay?

18 A. Yes.

19 Q. And is the first page, does that refer to patient
20 LB?

21 A. Yes.

22 Q. And did you examine LB at the initial
23 examination?

24 A. Yes.

25 Q. And did you have records prepared in connection

1 with LB?

2 A. Yes.

3 Q. And did you diagnose LB?

4 A. Yes.

5 Q. And in the form, towards the bottom, there is a
6 diagnosis section?

7 A. Yes.

8 Q. Is your diagnosis recorded in that section?

9 A. Yes.

10 Q. What is your diagnosis of LB?

11 A. LB had ectopics, he had overbite, overjet, and
12 across bite of number seven.

13 Q. What is the score that was assessed for LB?

14 A. LB had a total score of 32 points.

15 Q. Okay. And how did you -- how was this score
16 arrived at?

17 A. He had a very deep overbite. Eight millimeters
18 minus three which scored as a five and he had nine
19 ectopics.

20 Q. Okay. So five for the over bite and 27 for the
21 ectopic eruptions?

22 A. Yes. Seven total. A total of five for overbite,
23 27 for ectopic eruptions and a total point of 32.

24 Q. Is that an indication of severe malocclusion?

25 A. Yes.



1 Q. Is that an indication of medical necessity?

2 A. Yes.

3 Q. Did TMHP give prior authorization for the
4 rendering of orthodontic services in this case?

5 A. Yes.

6 Q. Did your scoring fall within the definition of
7 ectopic eruption?

8 A. Yes.

9 Q. Was there any misrepresentation on your part in
10 connection with the HLD scoring of LB?

11 A. No.

12 Q. Was there any fraud on your part in connection
13 with the scoring of LB?

14 A. No.

15 Q. Let's move on to the next sheet. Can you tell me
16 what patient was involved in the very next sheet?

17 A. MC.

18 Q. Okay. Did you diagnosis -- did you examine MC?

19 A. Yes.

20 Q. Did you diagnosis MC?

21 A. Yes.

22 Q. Did you review the records in the case of MC?

23 A. Yes.

24 Q. What was your diagnosis of MC?

25 A. Class two division, one ectopics.



1 Q. Did you follow the definition of ectopic eruption
2 in your scoring of MC?

3 A. Yes.

4 Q. What was your score?

5 A. Nine ectopics, which is each tooth by three, nine
6 times three 27, total score 27.

7 Q. Is that an indication of severe malocclusion?

8 A. Yes.

9 Q. Is that an indication of medical necessity for
10 orthodontic services?

11 A. Yes.

12 Q. Did TMHP give prior authorization for the
13 rendering of orthodontic service in this case?

14 A. Yes.

15 Q. Was there any misrepresentation, on your part, in
16 connection with the HLD scoring of MC?

17 A. No.

18 Q. Was there any fraud?

19 A. None.

20 Q. Dr. Franklin, I want to ask in case my memory
21 failed me and I didn't ask the right question. I want
22 to talk about all of these cases that we've just talked
23 about and basically ask the same questions again.

24 With respect to all of the HLD score sheets
25 contained in F1. These are score sheets that you filled

1 out, correct?

2 A. Yes.

3 Q. These score sheets, all of them, are based on
4 your professional judgment; is that correct?

5 A. Yes.

6 Q. In your clinical examination, correct? Would you
7 say that your clinical examination is very important as
8 a part of the process of making these scores.

9 A. Yes.

10 Q. And that's something that you have the benefit
11 of, but a person at TMHP would not, correct? A clinical
12 examination.

13 A. Yes.

14 Q. Did you follow the definition in the Medicaid
15 Provider Manual and instructions -- the definitions and
16 instructions in connection with all of these HLD scoring
17 sheets?

18 A. Yes.

19 Q. In your opinion, was there severe malocclusion in
20 all of those cases contained in F1?

21 A. Yes.

22 Q. And was there an indication for medical necessity
23 for Medicaid orthodontics in all of these cases?

24 A. Yes.

25 Q. Did TMHP give prior authorization for the



1 orthodontic services in all of these cases?

2 A. Yes.

3 Q. And did you expect to get paid for the work you
4 did in all of these cases by TMHP?

5 A. I expected Harlingen Family Dentistry to get paid
6 for all of these cases, yes.

7 Q. Thank you. And in connection with these score
8 sheets that we've discussed, was there any
9 misrepresentation in any way by you in connection with
10 the scoring of these cases?

11 A. No.

12 Q. Is there any fraud relative to anything related
13 to the scoring in connection with these cases?

14 A. No.

15 Q. Did you lie, cheat, or steel, in any way, to
16 Medicaid in connection with the scoring of these cases?

17 A. No.

18 Q. Thank you. Just a couple more questions
19 referring to Exhibit F2, Dr. Franklin. Is it fair to
20 say in each of these cases we have a score in all of the
21 HLD score sheets that we have in these patients, we have
22 a score that's 26 or more?

23 A. Yes.

24 Q. And in all of these cases contained in F2, did
25 these patients teeth exhibit an unusual pattern of



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1 eruption?

2 A. Yes.

3 Q. The teeth were not where you would have expected
4 them to be if they were in their ideal positions; is
5 that correct?

6 A. Yes.

7 Q. Okay. Did you at any time during your time as a
8 Medicaid provider, did you ever get any notice or
9 indication from TMHP that there was anything wrong with
10 your scoring process in any of the cases that you
11 forwarded to them?

12 A. No.

13 Q. Did you feel confident in your ability to score
14 the cases fairly?

15 A. Yes.

16 Q. How long have you been an orthodontist again?

17 A. 30 years.

18 (Deposition of Mr. Franklin being read
19 ended.)

20 MR. CANALES: That concludes our offer, Your
21 Honor.

22 HEARING OFFICER: Mr. Medlock?

23

24 MR. MEDLOCK: Okay. This cross was actually
25 conducted by my co-counsel Corrie Alvarado. Starting on

1 Page 76, Line 16.

2 CROSS EXAMINATION

3 (Deposition of Mr. Franklin being read by
4 Mr. Medlock begins.)

5 BY MS. ALVARDAO:

6 Q. Would you say that the person here -- and I'm
7 going to read the initials and not the actual names.

8 DC is the pre treatment model, correct?

9 A. Answer: Yes.

10 Q. So is this before he's ever had braces or any
11 orthodontic treatment, correct?

12 A. Yes.

13 Q. Would you say he had any problems based on
14 looking at the model for chewing food?

15 A. Problems chewing food? Correct.

16 Q. With his mouth in the state that it currently is,
17 based on the model, would you say that he had any
18 functionality problems with his mouth?

19 A. No. In terms of chewing, no.

20 MR. MEDLOCK: Page 83, Line 4.

21 Q. Based on the state of Mr. I -- and its actually
22 the initials of that patient -- RI. Based on the state
23 of Mr. RI's mouth in the pretreatment model would you
24 say that he had any problems with his bite or
25 functionality in chewing food?



1 A. Answer: No.

2 MR. MEDLOCK: Down on line 13 on the same
3 page.

4 Q. Can you read the label allowed on the model for
5 me?

6 A. Answer: JM, initials Dr. GF.

7 MR. MEDLOCK: Skipping to the next page on
8 Page 83, Line 6.

9 Q. Okay. And this patient in the current state
10 using the pretreatment model, would you say that he had
11 any functionality or with their bite?

12 A. No.

13 MR. MEDLOCK: On page 88.

14 Q. Okay. Let's just continue scoring these.

15 MR. MEDLOCK: Sorry that was Line 10.

16 Q. Okay. Let's just continue scoring these.

17 A. Answer: Nine ectopic on MC. Nine ectopic on GC.
18 Ten on AC. Six on DC. Nine on RD. Nine on DD. Nine
19 on MSD. Ten on RI. On BL, nine. JM, nine. SM, nine.
20 ER, 12. CR, nine, LR, nine, CS, nine, RS, nine, LV,
21 nine, and the last one EV, nine.

22 Q. Question: Okay. So that's 16 out of 20 patients
23 contained in the packet that scored nine for ectopic
24 eruptions, correct?

25 A. Answer: Yes. Yes.

1 Q. And can you tell me, in your opinion, why you
2 think the reason is for the high frequency of nine
3 ectopic eruptions amongst these patients.

4 A. Well, you would have to repeat that patient
5 again. High frequency? The frequency?

6 Q. Why do you think it is that the most -- that most
7 patients have nine ectopic eruptions.

8 A. Answer: I don't look at the frequency. It's a
9 matter of how you define the -- the amount of pollution,
10 or the abnormal situation. And if you use -- if you
11 use -- if you have an arch deficiency and you use the
12 ectopic definition that they provided, that is the one
13 that we use and it's the best one that defines the
14 situation.

15 MR. MEDLOCK: And that is all.

16 MR. CANALES: No other questions, Your
17 Honor, and, again, if I may, we have the exhibits --
18 during lunch hour we will retract the names.

19 HEARING OFFICER: Great. Let me ask a
20 question. From the excerpt that you read, Mr. Medlock,
21 there were references to a DC, Delta Charlie; is that
22 right.

23 MR. MEDLOCK: I believe so, yes.

24 HEARING OFFICER: I just did not see --
25 maybe I missed it. A DC in the Franklin.

1 MR. MEDLOCK: He may not have gone through
2 all of them in that video excerpt. I can show you what
3 I read from if you would like, Your Honor.

4 HEARING OFFICER: That's okay. I just
5 wanted to be able to go back if necessary later and see
6 the score sheets that were referred to in the
7 depositions. And is there a Delta Charlie in.

8 MR. CANALES: I'm going to through real
9 quickly. Just bear with me.

10 HEARING OFFICER: Okay. I found it.

11 MR. CANALES: What number is it, Your Honor?
12 At the bottom it's got some numbers.

13 HEARING OFFICER: My -- these exhibits don't
14 have Bates numbers or anything on them, but I did find
15 it. There was a score of 27 on it. I must have just
16 missed it when I went through. Yeah, there it is.
17 Sorry. Thank you. Okay, Mr. Canales, let me return
18 these to you.

19 MR. CANALES: Yes, Your Honor. Your Honor,
20 it's close to noon.

21 HEARING OFFICER: How long is the next one.

22 MR. CANALES: 26 minutes, Your Honor.

23 HEARING OFFICER: Why don't we go ahead and
24 break for lunch and come back about 1:00. We're off the
25 record.

1 (Brief recess.)

2 HEARING OFFICER: We're back on the record.

3 MR. CANALES: Again, Your Honor, allowing --
4 allowing us to out of turn witnesses we or now going to
5 call Dr. Vivian Teagardin. The procedure is a little
6 bit different in this case, Judge. The two other
7 individuals, Dr. Franklin and Nguyen, we -- I said we,
8 the Petitioner was the initial questioner. We set up
9 the questions. In this one I believe Medlock is the
10 starting party. He starts it and then we ask some
11 questions. And I have here for the courts perusal the
12 so-called exhibits. They're called T1 and so forth.

13 And I was not clear with my instructions to be able to
14 scratch out the names. But we will before we give it to
15 the court at the end of the proceedings. I will hand it
16 to the court so you can find of follow the deposition.

17 HEARING OFFICER: Thank you. And you know I
18 don't know that I need these exhibits to the depositions
19 at the end. They won't -- they haven't been offered in
20 evidence --

21 MR. CANALES: We're offering in evidence.
22 They all came in during the deposition. We offer all
23 the exhibits in evidence. They are part of the
24 deposition.

25 HEARING OFFICER: Yeah. I understand that.

1 It was not my understanding that they were part of your
2 offer. And my only concern is that they're all
3 duplicative of other things that are already in the
4 record, right?

5 MR. CANALES: Yes, Your Honor, except one
6 thing. What's in the record -- what's in the record is
7 voluminous somewhere else. This is concise and neat.
8 You can go through it real quick like in the deposition
9 of each party and talk about their HLD scores. And --
10 otherwise you're going to -- otherwise you have to go
11 out there and find 85 patient files, look at the right
12 one and so forth. This way, it's just right there. I'm
13 trying to do it for the convenience of the court, Your
14 Honor.

15 HEARING OFFICER: Right. I understand that.
16 All we have in evidence are the excerpts -- in terms of
17 the depositions of the Harlingen Family Dentistry
18 orthodontists, all we have in evidence are the excerpts
19 in your evidence binders and whatever Mr. Medlock has
20 read into the record, correct?

21 MR. CANALES: And the depositions. We are
22 offering also, of course, what they testified to during
23 the deposition was those exhibits.

24 HEARING OFFICER: Yeah. And I'm trying to
25 think through the convenience factor. So long as I can



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1 see in the excerpts from the depositions or I can see in
2 the transcript from what Mr. Medlock has read what the
3 initials are for the patients and I have your list that
4 gives me their names, I think it would actually be
5 easier for me to go to respondent's Exhibit T and pull
6 that out than it would to have another stack of papers
7 three inches tall. That's my feeling about it.

8 MR. CANALES: That's fine.

9 HEARING OFFICER: So if -- and I think the
10 only question here -- since this stuff was already in
11 the record. I think the only question is the
12 convenience of.

13 MR. CANALES: It's all in the records, Your
14 Honor. Just that if you read somebody's deposition and
15 say well, I was looking at N2, N3, you're not going to
16 find N2, N3 anywhere in the court's files. You'll find
17 it under RVV something.

18 HEARING OFFICER: Well, if they say it's
19 patient DX or -- and if I look at DX and then I go to
20 Exhibit -- Respondent's Exhibit T -- I actually think
21 that would be easier for me. I tell you what let's
22 don't. Let me look at these while --

23 MR. CANALES: The deposition is going on.

24 HEARING OFFICER: -- while the deposition is
25 going on. I will return them to you and then the only



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1 thing you have to redact is the excerpt from the
2 depositions?

3 MR. CANALES: That's right. Very well.

4 HEARING OFFICER: All right. Let's to that.

5 MR. CANALES: At this time, Your Honor. We
6 call Dr. Teegardin by deposition and the record will
7 reflect that she was sworn and here to testify and the
8 examiner in the beginning will be John Medlock, I
9 believe.

10 HEARING OFFICER: All right. Mr. Medlock,
11 are you going to have anything to add?

12 MR. MEDLOCK: Just a couple of closing notes
13 and then I will be done with -- after reading the
14 excerpts.

15 HEARING OFFICER: You do have some stuff --

16 MR. MEDLOCK: Yeah, I do.

17 MR. CANALES: I believe that Dr. Teegardin
18 is -- that's P7.

19 HEARING OFFICER: Could I have your volume
20 one back for the time being so I can look at it?

21 MR. CANALES: Yes, Your Honor. I just gave
22 the volume one to her.

23 HEARING OFFICER: Thank you. I got it.

24 MR. CANALES: This deposition is a little
25 bit longer, 26 minutes.



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1 DIRECT EXAMINATION

2 (Video deposition of Dr. Teegardin begins.)

3 BY MR. CANALES (questions by Medlock):

4 Q. How do you do, Dr. Teegardin. Can you please
5 state your name and spell it for the record?

6 A. Vivian Teegardin. Vivian, V-I-V-I-A-N.
7 Teegardin, T-E-E-G-A-R-D-I-N.

8 Q. My name is John Medlock and this is my co-counsel
9 Corrie Alvarado and we represent the Health & Human
10 Services Commission of the office of the Inspector
11 General in this matter. I'm going to be going through
12 some questions today. If any of the questions that I
13 pose to you, if you don't understand it please ask me to
14 repeat it or rephrase it and we'll try to get it that
15 way. If you don't say anything I'm going to assume you
16 understand the question.

17 A little bit about your educational background.
18 Where did you attend college?

19 A. Pan American University in Edinburg.

20 Q. What about dental school?

21 A. University of Texas Health Science Center in
22 San Antonio.

23 Q. What years, roughly, were those schooling dates?

24 A. The dental school?

25 Q. Yes.



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1 A. It was '85 to '89.

2 Q. Do you have any additional schooling, residency
3 work or any of that kind of stuff?

4 A. No.

5 Q. How long have you been practicing?

6 A. Since 1989. So it's 20 -- almost 23 years.

7 Q. Has it always been an orthodontist or has it been
8 split up?

9 A. I'm a general dentist.

10 Q. General dentist?

11 A. Yes. And I've always done a little bit of
12 everything.

13 Q. How long have you been, like, working as an
14 orthodontist?

15 A. I've done mostly ortho work, let's see, I think
16 that was probably about 2004.

17 Q. A little bit about your training and some
18 education. What kind of training did you receive on how
19 to score the HLD score sheet?

20 A. Like, did I go to class or --

21 Q. Whatever.

22 A. The main training is just reading the manual
23 itself and that's my main training. But when I very
24 first started, I consulted with Dr. Villarreal.

25 Q. And what was in that consultation? Did he kind



1 of instruct you on how score it? What was kind of the
2 basis of that?

3 A. He used to do orthodontics himself. He was doing
4 orthodontics at that time, back in 1990, and I reviewed
5 a few cases with him, yeah. I showed him here's what I
6 did and why, what do you think?

7 Q. Do you know how TMHP arrives at a determination
8 for prior authorization?

9 A. Like, when the paperwork and everything is over
10 there? Uh-huh.

11 Q. Do you know what the score is that is required to
12 gain prior authorization?

13 A. Yes.

14 Q. What is that score?

15 A. 26.

16 Q. When did you learn that that was the score needed
17 to gain prior authorization?

18 A. Day one. 1990. It may have been '89. I can say
19 1990, I just that's when I really did more CE in that
20 area.

21 Q. What is your method when scoring a Medicaid
22 patient using the HLD score sheet?

23 A. How specific?

24 Q. As specific as you want to be.

25 A. Okay. So I have all the records and my chart and

1 I'll take a look at -- I usually do it in my office,
2 privately, by myself. And the paperwork that needs to
3 be filled out as well. So I usually look at the records
4 first, read my notes and then have the sheet and say,
5 okay, patients, you know, I start off right at the top.
6 Cleft? No. I am just consulting my records and my
7 treatment notes as well. Go back and forth and go down
8 the sheet.

9 Q. Dr. Teegardin, I take it you have a license with
10 the State Board of Dental Examiners?

11 A. Yes, I do.

12 Q. And how long have you had your license?

13 A. Almost 23 years.

14 Q. Okay. And are you -- is your license still in
15 full force in that capacity?

16 A. Yes.

17 Q. And I understand that you have been a Medicaid
18 provider for some time now?

19 A. Uh-huh.

20 Q. How long have you been a Medicaid provider?

21 A. A few weeks from starting, getting my license.

22 So 1989. The same.

23 Q. So 1989 until now is some 22, 23 years?

24 A. Uh-huh.

25 Q. That's you've been a Medicaid provider?

1 A. Yes.

2 Q. You've been doing orthodontics during that period
3 of time?

4 A. Yes.

5 Q. Have you been doing HLD scoring during that time?

6 A. Yes.

7 Q. You've practiced for 22, 23 years doing the HLD
8 scoring?

9 A. Yes.

10 Q. Have you changed your scoring, HLD scoring, in
11 any of these 23 years?

12 A. No. Like, the way I do it?

13 Q. Correct.

14 A. No.

15 Q. Has anything changed in the scoring instructions,
16 changed in any material way over those 23 years?

17 A. They've changed the definition more recently --
18 well, the definition is still the same. They just have
19 a little bit of other things they've added, I should
20 say.

21 Q. I'm not referring to recent changes that came
22 into effect this year, maybe January of 2012 -- are you
23 aware of those changes?

24 A. Yes. Yes.

25 Q. And is it fair to say that that change related to

1 not counting under ectopic eruptions teeth that are
2 slanted, rotated, et cetera? Is that the change you're
3 referring to?

4 A. Yes.

5 Q. Before that period of time, I'm trying to span
6 these 23 years and I want to know if the HLD scoring
7 process and instructions has been essentially the same
8 for those 23 years?

9 A. Yes, it has.

10 Q. And have you scored the cases the same?

11 A. Yes.

12 Q. Have you made any changes to the way you score
13 the cases, the HLD scoring, over those 23 years?

14 A. None.

15 Q. So is it fair to say the way you scored cases in
16 1990 is the way you scored cases in 2010?

17 A. Yes.

18 Q. Okay. Let me offer as T3, I believe, -- T2. T2
19 a document and ask you if you can identify that
20 document?

21 A. Yes.

22 Q. What is that document?

23 A. It's the handicapping labial lingual deviation
24 index instructions.

25 Q. And I think if you look to the bottom there's an

1 indication that's copy right 2010; is that right?

2 A. Yes.

3 Q. Fair to say that this document will relate either
4 to the 2010 or 2011 provider manual?

5 A. Uh-huh.

6 Q. Medicaid provider manual?

7 A. Uh-huh. Yes.

8 Q. Would you look at that. What does the document
9 contain?

10 A. Definitions and then on how -- on the HLD -- on
11 the words. And then the HLD score sheet.

12 Q. Okay. So is this -- is this the form that
13 Mr. Medlock was basically asking you questions about the
14 HLD scoring?

15 A. Yes.

16 Q. And have these -- have these scoring sheets or
17 definitions -- I think I asked this question, changed in
18 any material way other than this year?

19 A. No.

20 Q. They've essentially been the same?

21 A. The same.

22 Q. And when you -- I'll ask you to refer to the
23 ectopic eruption definition on age 2. Do you see that?

24 A. Yes.

25 Q. And what is -- let's go through the language of

1 the definition. What is the language there?

2 A. Just read it?

3 Q. Yeah.

4 A. "Ectopic eruption: An unusual pattern of
5 eruption, such as high labial cuspids or teeth that are
6 grossly out of the long axis of the alveolar ridge."

7 Q. And are -- the part of the sentence that refers
8 to the high labial cuspids and the teeth grossly out of
9 the axis of the alveolar ridge, are those examples?

10 A. Yes.

11 Q. And is the first five words in the definition
12 significant to you?

13 A. Yes.

14 Q. What does that mean to you?

15 A. Just the teeth have erupted in an unusual
16 pattern.

17 Q. So is there a usual pattern?

18 A. Yes.

19 Q. What is the usual pattern?

20 A. Straight. Most spaces all in alignment.

21 Q. Is another way to say that the teeth are in their
22 ideal position for function?

23 A. Yes, that is correct.

24 Q. And we're talking about anterior teeth, correct?

25 A. Right.



1 Q. In the upper and lower arches?

2 A. Uh-huh.

3 Q. If something is outside of the usual pattern of
4 eruption, does that kick it over into unusual pattern of
5 eruption?

6 A. Yes.

7 Q. So is it fair to say that any -- is this a
8 subjective component to the HLD scoring or an objective
9 component?

10 A. Subjective. Completely.

11 Q. Would you expect different practitioners to come
12 up with different scoring of ectopic eruption?

13 A. Yes.

14 Q. And why is that?

15 A. Because the way that they would see a case and
16 score it will be -- look at the teeth would be
17 different.

18 Q. Does that relate to the subjectivity?

19 A. Yes.

20 Q. And under the definition of anterior crowding, is
21 there anything in particular in that definition that is
22 significant to you, particularly significant?

23 A. It's just saying that there is a tooth that needs
24 to be extracted.

25 Q. Anterior teeth?

1 A. Anterior tooth, specifically, anterior teeth that
2 require extraction.

3 Q. And being a dentist who has practiced in
4 orthodontics for over 20 years, is extraction of an
5 terrier teeth, front teeth, at either arch something
6 that a dentist commonly does or rarely does?

7 A. Rarely.

8 Q. And what is the reason for rarely extracting an
9 anterior tooth?

10 A. Several.

11 Q. Can you give me some examples?

12 A. Well, you would -- first of all, you don't want
13 to do that because it's kind of changed the aesthetics
14 in the way a patient looks, as well as their function.
15 How you're unbalancing them and you just wouldn't do
16 that. You'll have tooth discrepancy.

17 Q. And is all of what you just said go into the
18 analysis of, in your mind, following these scoring
19 instructions as far as attributing a tooth to ectopic
20 eruption versus anterior crowding?

21 A. Yes.

22 Q. I would like you to look at the score sheet
23 itself, just the last page. In your earlier testimony I
24 believe you indicated that you -- you basically got out
25 your records, got out your notes, you got out this score

1 sheet, and you took it from the top?

2 A. Uh-huh.

3 Q. Is that right?

4 A. Uh-huh.

5 Q. And I need you to say yes or no as opposed to --

6 A. I'm sorry. Yes.

7 Q. Is this the form that you're referring to that
8 you would take it from the top?

9 A. Yes.

10 Q. And do you know if you can include ectopic
11 eruption and anterior crowding in the same arch?

12 A. You cannot.

13 Q. Does it make it very clear in the instructions
14 under ectopic eruption on that form?

15 A. Yes, it's clear.

16 Q. Let me ask you just about your initial visit with
17 the Medicaid patient. And if you can just kind of walk
18 me through the initial visit. What takes place all the
19 way until you're sitting in your desk with your records
20 and your HLD scoring ready to go?

21 A. Being real specific or?

22 Q. Let me ask you some specific questions. Is one
23 of the first things you do with potential Medicaid
24 orthodontic patient bring them into the office?

25 A. Uh-huh.

1 Q. Do you examine the patient?

2 A. Yes, I do.

3 Q. Do you record observation in the mouth of the
4 patient?

5 A. Yes, right into the chart.

6 Q. So you record your impressions or your
7 observation in the chart itself?

8 A. Uh-huh. I'll make some notes.

9 Q. Are those notes important to you?

10 A. Yes.

11 Q. How are they important to you?

12 A. It's important information.

13 Q. Is it going to be used in your analysis with
14 respect to the HLD scoring?

15 A. Yes.

16 Q. Okay. And after you've examined the patient, is
17 that where you make the determination that you think
18 there's enough there to proceed with record taking?

19 A. Yes. Right then and there with the patient.

20 Q. Okay. And are the records that you have made,
21 are those the records that you talked about with
22 Mr. Medlock, the x-rays, the photos, et cetera?

23 A. Yes.

24 Q. So you have those records made, correct?

25 A. Yes.

1 Q. And now you have all your records, you have your
2 notes, and you're ready to do your scoring, correct?

3 A. Yes.

4 Q. Do you use those records in your diagnosis of the
5 patient?

6 A. Yes.

7 Q. And I think you indicated that you take the
8 scoring sheet from the top?

9 A. Uh-huh.

10 Q. And you're reviewing everything you have?

11 A. Uh-huh.

12 Q. Are you exercising your professional judgment?

13 A. Every time.

14 Q. Are you following the instructions?

15 A. Yes.

16 Q. In the HLD -- in the manual itself?

17 A. Yes.

18 Q. Let me show you what we will mark as T3? Are we
19 up to T3? I'll ask you if you can identify this
20 document?

21 A. Yes.

22 Q. What is that document?

23 A. This is my CV.

24 Q. Will you take a moment to look through it?

25 A. Uh-huh.

1 Q. Is it current?

2 A. Yes.

3 Q. Okay. I want to hand you what we're going to
4 mark T4, and ask that you flip through that document and
5 tell me if you recognize this document?

6 A. Yes.

7 Q. What is that document?

8 A. One of my patients, ST.

9 Q. Is this also one of the chart that's been audited
10 by the office of the inspector general?

11 A. Yes, it is.

12 Q. Okay. And is there an HLD score sheet contained
13 in that patient chart?

14 A. I believe it's missing.

15 Q. Okay. And is this a case that treatment was
16 rendered by you to this patient at Harlingen Family
17 Dentistry?

18 A. Can you repeat the question.

19 Q. Was orthodontic treatment rendered to this
20 patient?

21 A. Nothing other than the consult and the records,
22 no.

23 Q. Do you recall why treatment was not rendered?

24 A. Unable to get the patient to get -- to come back
25 in.



1 Q. So this is a case where we don't have a score
2 sheet, but we also don't have treatment?

3 A. No.

4 Q. No or yes?

5 A. No. I'm sorry. Is it is -- say the question
6 again.

7 Q. This is a patient we do not have an HLD score
8 sheet?

9 A. That is correct, we do not.

10 Q. It's also a patient that treatment was not
11 rendered?

12 A. That is correct.

13 Q. And did Medicaid or TMHP pay for any orthodontic
14 services in this case?

15 A. Not that I'm aware of, no.

16 Q. And with respect to that case, I think you've
17 indicated that -- did you examine the patient?

18 A. Yes.

19 Q. You had records made?

20 A. Yes.

21 Q. Did you review those records?

22 A. Yes.

23 Q. Did you diagnose the patient?

24 A. Yes.

25 Q. Did you follow the HLD scoring instructions?



1 A. I'm sure I did, yes.

2 Q. Did you use your professional judgment?

3 A. Yes.

4 Q. Do you recall whether or not it was a case that
5 exceeded 26 points?

6 A. Yes, it did.

7 Q. Okay. Was that an indication of medical
8 necessity?

9 A. Yes.

10 Q. Was that an indication of severe handicapping
11 malocclusion?

12 A. Yes.

13 Q. Was there any fraud done by you in connection
14 with the scoring of this patient?

15 A. None.

16 Q. Did you misrepresent any information in
17 connection with the HLD scoring of this patient?

18 A. No.

19 Q. I would like to hand you what we are going to
20 mark as T5. I'll ask you if you can identify that
21 document? Take a moment to flip through it. Do you
22 recognize those documents?

23 A. Yes.

24 Q. I'll represent to you that these are 46 HLD score
25 sheets. Do they appear to be HLD score sheets?



1 A. Yes.

2 Q. Do they appear to be HLD score sheets of patients
3 that you treated?

4 A. Yes.

5 Q. Okay. I would like you to -- these are in,
6 roughly, alphabetical order. I would like you to flip
7 to MR, kind of towards the back. See if you can get to
8 the R's.

9 A. Uh-huh.

10 Q. Go to the next page?

11 A. Yes.

12 Q. Is that an HLD score sheet?

13 A. Yes.

14 Q. And does that sheet have the patient name
15 indicated?

16 A. No.

17 Q. Do you know which patient this HLD shore sheet
18 relates to?

19 A. Yes.

20 Q. Who is it?

21 A. JS.

22 Q. JS. And how do you know that?

23 A. By my records. I've looked at my records. There
24 was a list of charts that were being reviewed and this
25 is the only one without the name. So then I got it and



1 I looked -- well, must be J's. I took out everything in
2 his chart and looked at it and I can identify by looking
3 at the diagnosis and my notes and this is the same guy.
4 It describes him well.

5 Q. So this is -- there's no doubt in your mind --

6 A. Yes.

7 Q. -- that this HLD score sheet relates to Mr. S?

8 A. That's correct.

9 Q. So is it fair to say that of all the HLD score
10 sheets contained in this exhibit, this particular score
11 sheet is the only one where the patient name is not
12 indicated?

13 A. That's true.

14 Q. Okay. Are these HLD score sheets, do they all
15 relate to Medicaid patients, correct?

16 A. Yes.

17 Q. And are these all patients that you brought into
18 the office and examined?

19 A. I'm just being very literal here. That I brought
20 into -- that I saw.

21 Q. Would these be patients that you rendered
22 treatment to?

23 A. Yes.

24 Q. Would these be patients that you examined?

25 A. Yes.

1 Q. And would these be patients that -- and I'm
2 referring to the same exhibit, T5, are these patients
3 that you have records taken?

4 A. Yes.

5 Q. Full set of records?

6 A. Yes.

7 Q. Did you review the records on each of these
8 patients?

9 A. Yes.

10 Q. Did you utilize those records to diagnose the
11 patients?

12 A. Yes.

13 Q. Is the diagnosis indicated in the respective HLD
14 score sheets?

15 A. Yes.

16 Q. Is your signature contained on these HLD score
17 sheets?

18 A. Yes.

19 Q. Did you follow the provider manual, HLD
20 instructions, in connection with these score sheets?

21 A. Yes.

22 Q. And did you fill out these score sheets?

23 A. Yes.

24 Q. Do all of the cases represented in these HLD
25 score sheets reflect an HLD score of 26 points or more?



1 A. Yes.

2 Q. Did you utilize your professional judgment in the
3 scoring of all of these patients?

4 A. Yes.

5 Q. Is the -- are the scores represented in these HLD
6 score sheets an indication of medical necessity?

7 A. Yes.

8 Q. Are the scores indicated in the HLD score sheets
9 also an indication of severe handicapping malocclusion?

10 A. Yes.

11 Q. Were all of these HLD score sheets submitted to
12 TMHP along with the records and a prior authorization
13 request form?

14 A. Yes.

15 Q. And were they rendered to TMHP for prior
16 authorization?

17 A. Yes.

18 Q. Was prior authorization given by TMHP all of
19 these score sheets?

20 A. Yes.

21 Q. Was there any misrepresentation on your part in
22 connection with the score sheets contained in T5
23 relative to the scoring or the documents that were
24 submitted to TMHP?

25 A. No.



1 Q. Did you commit any fraud in connection with the
2 HLD scoring contained in Exhibit T5?

3 A. No.

4 Q. Did you lie, steal or cheat in any way in any of
5 the patients that are listed in Exhibit T5? T5.

6 A. No.

7 Q. When you were looking at the definition of
8 ectopic eruption, we've already discussed that you have
9 over 20 years of experience with Medicaid orthodontic
10 patients?

11 A. Uh-huh.

12 Q. Would you say during your 20 years of practicing
13 as a Medicaid provider doing orthodontics, what part of
14 that instruction, the first part or the second part of
15 that instruction has been the focus in approvals for
16 orthodontic service in the Medicaid system?

17 A. The first part.

18 Q. What is that?

19 A. An unusual pattern of eruption.

20 (Video deposition for Dr. Teegardin stopped.)

21 MR. CANALES: Your Honor, that concludes our
22 offer of Vivian Teegardin. And I believe the state
23 might have some cross.

24 MR. MEDLOCK: Yes.

25 HEARING OFFICER: Mr. Medlock?



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1 CROSS EXAMINATION

2 (Deposition of Dr. Teegardin being read.)

3 BY MR. MEDLOCK:

4 Q. Beginning on Page 19, Line 3.

5 Question: Do you understand the manual set of
6 the rules in which orthodontist, like yourself, must
7 follow if you want to be reimbursed for services?

8 A. Answer: Yes.

9 Q. On Page 21, Line 2.

10 Have you ever had a patient that was on Medicaid
11 denied prior authorization?

12 A. Answer: I don't think so.

13 Q. Question: A little bit about scoring.

14 A. Answer: Actually, I take that back. Yes, I
15 have.

16 Q. What was the reason for that? Where they didn't
17 agree with the score. Do you remember what you scored
18 them?

19 A. No. It's been a while.

20 Q. About how long ago?

21 A. In fact, there's been a couple of them. Dr. Orr
22 even called me. He was the one that was up there
23 running the program, I believe, or Dr. Shilam
24 (phonetic).

25 Q. You said they disagreed with your score. Do you



1 know what the main focus of the disagreement was about?

2 A. I just remember once Dr. Orr called me and said
3 that it was just like what my -- it was just like what
4 my treatment plan or something like my score was close,
5 but I didn't quite make it. He said I'm going to have
6 to deny that. So he said -- so he did and I said okay.
7 I'll talk to the patient. I don't know specifically the
8 patient's name. I'm not recalling that. Yeah. I think
9 I remember Dr. Orr was last up there in 2004. So it's
10 been a while.

11 Q. Do you remember if you resubmitted or ever went
12 back an resubmitted a narrative for that patient for
13 prior authorization again?

14 A. That particular one, I don't.

15 Q. On Page 27, Line 23.

16 Question: If you get 26 points on the HLD score
17 sheet by say just scoring ectopically erupted teeth, do
18 you score the rest of the HLD score sheet?

19 A. Answer: I know I'm supposed to, but I have to
20 say that there have been times I have looking back
21 reviewing I can tell you that I have left some off where
22 I shouldn't have.

23 Q. On Page 54, Line 10.

24 Question: You had talked about anterior crowding
25 and that required extractions. Under the Medicaid rules

1 in this paragraph, is extraction the only method
2 necessary in order to score something as being
3 anteriorly crowded?

4 A. Answer: Well, the first sentence is the
5 definition there.

6 Q. Question: What is the second -- can you read the
7 second sentence?

8 A. If arch expansion is to be implemented as an
9 alternative to extraction, provide an estimated number
10 of appointments required to obtain adequate
11 stabilization.

12 Q. So wouldn't you agree with me that that means you
13 have two options in order to score something as being
14 anteriorly crowded.

15 A. Options? Yes.

16 (Deposition of Dr. Teegardin being read
17 stopped.)

18 MR. MEDLOCK: That's it.

19 HEARING OFFICER: Mr. Canales, let me give
20 you this back.

21 MR. CANALES: Yes, Your Honor. That
22 concludes our presentation regarding -- we would like to
23 be able to go back before the state's case now and I
24 appreciate you allowing me to put the witnesses out of
25 order.

1 HEARING OFFICER: Very good. Thank you.
2 Take a moment and -- is this information readily
3 accessible? There are three providers, right? We just
4 heard from them. Franklin Nguyen and Teegardin and
5 their patients should add up to 84, 85?

6 MR. MEDLOCK: Yes.

7 MR. CANALES: Yes.

8 HEARING OFFICER: So I'm just trying to
9 see -- Nguyen was 16, right? Does that sound right?

10 MR. MEDLOCK: I believe so, Your Honor.

11 HEARING OFFICER: And then Teegardin was 46.
12 And I'm not real good at math, but does that make how
13 many left for Franklin? 20 some-odd.

14 MR. MEDLOCK: It would be about 23, Your
15 Honor.

16 HEARING OFFICER: 23. Okay. And in that
17 exhibit, that last exhibit that you guys offered from
18 OIG does that break it down?

19 MR. MEDLOCK: You mean break it down between
20 the different doctors.

21 MR. CANALES: I did, Your Honor. I have it
22 in my.

23 HEARING OFFICER: Which Exhibit number was
24 that?

25 MR. CANALES: If you go to Exhibit P4, those

1 are the score sheets for Dr. Nguyen. Exhibit P5 are the
2 score sheets for Dr. Teegardin.

3 HEARING OFFICER: All right.

4 MR. CANALES: And No. 6 is the ones for
5 Dr. Franklin. Does that help you?

6 HEARING OFFICER: Yes, very much. Thank
7 you. All right. Mr. Medlock and Ms. Alvarado, further
8 evidence from the state?

9 MR. MEDLOCK: With regard to calling any
10 witnesses, at this time, no, Your Honor. However, at
11 the time we would like to draw the court's attention to
12 our Exhibit R dash EE. We earlier spoke about some of
13 the mandates of the 42 CFR 455.23 and as part of that
14 mandate it talks about if we do not take these actions
15 we are at risk of losing our federal share of the
16 Medicaid money and that exhibit outlines for the court
17 just the amount of money that we're talking about and at
18 this time it's in excess of \$5 million.

19 MR. CANALES: Excuse me, Your Honor. I
20 don't understand the -- is he testifying or arguing?

21 MR. MEDLOCK: I'm just drawing the court's
22 attention to that exhibit.

23 HEARING OFFICER: I think it's kind of by
24 way of argument.

25 MR. CANALES: He's rested.

1 MR. MEDLOCK: I haven't said that yet.

2 HEARING OFFICER: I don't know yet. Okay.

3 Mr. Medlock?

4 MR. MEDLOCK: Nothing further at this time,
5 Your Honor, the state rest, subject to calling any
6 rebuttal.

7 HEARING OFFICER: All right.

8 MR. CANALES: Your Honor, of course, it's
9 traditional to be able to make some type of motion for
10 instructed verdict or motion for a verdict so forth.
11 I've already put on some witnesses, will the court just
12 allow me to carry my motion along to the end of the
13 presentation of the case? I've got two more witnesses
14 without having to be feared that I've waived something.

15 HEARING OFFICER: Yeah. You can do that. I
16 mean, a motion for directed verdict in this context is
17 not entirely applicable.

18 MR. CANALES: I know. I didn't know what
19 else to call it. I need some guidance. What do y' all
20 call it.

21 HEARING OFFICER: Well, you know, I'm not
22 even really sure that such an animal exist in the
23 administrative hearing because I'm not the final
24 decision maker. I issue a proposal for decision, of
25 course, to the final decision maker and so I'm not even



1 sure that it's within my power to just grant something.

2 MR. MEDLOCK: I don't think it's contained
3 within the rules of SOAH.

4 MR. CANALES: Well, it might not be in the
5 rules, but I'm new to this business, but the rules of
6 SOAH incorporate the Texas rules of procedure, except
7 for some things. So I need to see an exclusion. The
8 only thing that have for the court, Your Honor, and I
9 think you told me at the very beginning and I carried
10 it. Is in our -- we filed a motion for summary
11 disposition. I took it exactly out of my answer and in
12 my answer, which I think is something the court can look
13 at. I would like to be able to -- without arguing at
14 this moment, let me argue at the end of the case without
15 causing any type of waiver. And the answer was whether
16 or not these regulations are applicable which they
17 passed in September, there are new regulations now they
18 are trying to retroactively go back and so forth. All
19 I'm saying -- I don't want to argue about it right now,
20 Judge, if you give me the opportunity to argue it at the
21 end of the case either by post submission briefs.

22 HEARING OFFICER: Yes.

23 MR. CANALES: Without waiving -- walking on
24 egg shells not knowing whether I'm waiving something.

25 HEARING OFFICER: No, I understand



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1 completely. And you have raised it in your motion and I
2 said at the beginning of the hearing that I wasn't going
3 to summarily dispose of any of the state's claims, but I
4 did not regard that to have been waived and I continue
5 not to regard that argument to have been waived. And I
6 invite you to brief that in post hearings submission.

7 MR. CANALES: I did file it in part of my
8 answer also.

9 HEARING OFFICER: Yes. Yes. I hear you.
10 It has not been waived and I hope that you will argue
11 that.

12 MR. CANALES: Yes, Your Honor. In that
13 regard I would like to proceed. I would like to make my
14 opening statement. I would like to inform the court
15 that I believe I only have two live witnesses. I'm
16 trying to look at the clock. The first witness will be
17 Dr. Orr and then after Dr. Orr I would like to put
18 Dr. Villarreal and then after that we have two videos,
19 Your Honor, which I believe I don't think we have to --
20 I'm going to offer the deposition of these two parties
21 and I think both of us are under the belief that the
22 court will see them at your leisure without having to
23 see them today. Because one of them takes an hour, an
24 hour and 20 minutes. We did not make any cuts. That
25 will be the deposition of Commissioner Milwee, from HHSC



1 and also of Dr. Altenhoff, both of these parties, Your
2 Honor, they have no personal knowledge of any of the
3 events here. They're policy makers and so I think you
4 need to have a little bit of the policy background on
5 this case, Your Honor.

6 HEARING OFFICER: Okay.

7 MR. CANALES: And with that we will finish.
8 So I think we'll finish today. So may I call Dr. Orr,
9 Your Honor?

10 HEARING OFFICER: You may. And I'm
11 wondering as to the videos, if the parties are in
12 agreement that that's something that I can or should
13 view later? Shall we just mark them as exhibits and
14 admit them and that way they are in the record?

15 MR. CANALES: Yes, Your Honor.

16 MR. MEDLOCK: That is perfectly acceptable.

17 HEARING OFFICER: I think that's the best
18 way to do that. We can do that now or we can do it at
19 the end, whichever you prefer.

20 MR. CANALES: We'll do it as we go along,
21 Your Honor. There's no video on these two individuals
22 it's just the depositions. Just the depositions.

23 MR. MEDLOCK: Just the depositions?

24 HEARING OFFICER: It's just transcripts.

25 MR. CANALES: Yes.



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1 HEARING OFFICER: Okay. Very good.

2 MR. MEDLOCK: That's fine. I think they
3 were already admitted as your exhibits 9 and 10.

4 HEARING OFFICER: Well, that makes it easy.

5 MR. MEDLOCK: So I think they're already
6 admitted so I don't think we have to worry about that.

7 MR. CANALES: Except on this one, Judge, we
8 might want to add the exhibits that came in for both of
9 them. And the exhibits is the so-called -- is the
10 famous e-mail with the first thing that we were started
11 about. I can start off and we can -- this is
12 housekeeping, Judge, at the end we can do it, if you
13 wish.

14 HEARING OFFICER: Actually I would like to
15 do it right now. Where are they in the record?

16 MR. CANALES: Yes, Your Honor. It will be
17 P10 is the deposition of Milwee. P10, Your Honor. And
18 P11 is the deposition of Dr. Linda Altenhoff.

19 HEARING OFFICER: Are these the entire
20 depositions?

21 MR. CANALES: Yes, Your Honor. And what's
22 missing from the depositions here are the exhibits and I
23 will tender those -- I will put them in here.

24 MR. MEDLOCK: And, Your Honor, I know with
25 regard to P11 --



1 MS. ALVARADO: I would argue that the
2 intention is not to include the exhibits from the
3 deposition because one of the exhibits --

4 MR. MEDLOCK: Exhibit No. 3 is the e-mail
5 from -- that Dr. Altenhoff provided the responses to,
6 which we objected to at the beginning.

7 MS. ALVARADO: That you said would go to the
8 weight.

9 MR. MEDLOCK: You would consider the weight
10 of the evidence with regard to that.

11 MR. CANALES: And my response to that was
12 once you read the deposition she identified it and so
13 forth and I have them here, Your Honor.

14 HEARING OFFICER: Well, it is in and I will
15 still consider your objection as to weight. I don't
16 have any problem with it being duplicated as part of the
17 exhibits to the deposition.

18 MR. MEDLOCK: That's fine. We just wanted
19 to remind the court of that.

20 HEARING OFFICER: I agree. And you have no
21 other objections to the exhibits being included? They
22 would be helpful for me to be able to follow I suspect.

23 MR. MEDLOCK: Yeah. I believe the evidence
24 had already come in.

25 HEARING OFFICER: Okay. Okay.

1 MR. CANALES: So I have marked -- these are,
2 Your Honor, are the exhibits.

3 HEARING OFFICER: How have you marked them?

4 MR. CANALES: I've marked them P10 dash.

5 HEARING OFFICER: That's what I was going to
6 suggest, A or something.

7 (Petitioner's Exhibits 10-A and 11-A marked)

8 MR. CANALES: Right. So we have, Your
9 Honor, P10, P11 dash A. We did offer these exhibits as
10 part of the depositions. This is Oiram Salinas, Your
11 Honor, he is my paralegal. He's been with me 20 years,
12 he knows exactly how I screw up things. That's why he
13 had them for me.

14 HEARING OFFICER: I need one of those.

15 MR. MEDLOCK: Tony, how did you mark that?
16 P10, P11?

17 MR. CANALES: P11A. So we have it, Your
18 Honor, P10 dash A and P11 dash A. These are part of the
19 deposition. We did offer those, these exhibits, as part
20 of the deposition, Your Honor.

21 HEARING OFFICER: All right. They are
22 admitted.

23 (Petitioner's 10-A and 11-A admitted)

24 MR. CANALES: Let me go forward now.

25 HEARING OFFICER: Just a second. And,



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1 again, I still have the record copy before me here,
2 right? Up here?

3 MR. CANALES: Of the depositions you don't.
4 It comes out of -- do you have volume one up there.

5 HEARING OFFICER: Okay.

6 MR. CANALES: This is volume one.

7 HEARING OFFICER: Thank you. So you're
8 calling Dr. Orr.

9 MR. CANALES: Dr. Orr, Your Honor.

10 MR. MEDLOCK: And, Your Honor, we would also
11 like to take the witness on voir dire.

12 HEARING OFFICER: All right.

13 MR. CANALES: Can I inquire, Judge, for what
14 purpose?

15 HEARING OFFICER: Yes, you may.

16 MR. MEDLOCK: To inquire about the expert
17 knowledge with regard to the field of orthodontia that
18 Dr. Orr possesses.

19 MR. CANALES: Well, I think it's too late,
20 Judge, because they have never filed an objection
21 before. I think a motion should have been filed before
22 notice. They haven't filed anything. They've known
23 about Dr. Orr since day one. They took his deposition.

24 MR. MEDLOCK: That is true, but we can still
25 challenge his expert qualifications before a tribunal.



1 MR. CANALES: I know you can, Judge, but
2 there's a procedure for that.

3 HEARING OFFICER: Well, you know, typically
4 I get motions to strike before the hearing, but that's
5 usually when I have an order in place requiring that
6 experts be designated prior to the hearing.

7 MR. CANALES: We did designate in this case.

8 MR. MEDLOCK: There was no order.

9 HEARING OFFICER: Yeah, there was no order.
10 I will allow him some questioning.

11 MR. CANALES: Dr. Orr.

12 HEARING OFFICER: Dr. Orr, if you will come
13 up here please and raise your right hand.

14 (Witness sworn.)

15 HEARING OFFICER: Mr. Medlock, whenever
16 you're ready.

17 VOIR DIRE EXAMINATION

18 BY MR. MEDLOCK:

19 Q. Dr. Orr, just for the record, could you please
20 state your name and spell it for the record.

21 A. James Orr.

22 Q. And spell it for the record?

23 A. I couldn't hear you. I'm sorry.

24 Q. Spell it for the record.

25 A. J-A-M-E-S, O-R-R.

1 Q. Are you currently a practicing orthodontist?

2 A. No, sir.

3 Q. Are you a board certified orthodontist?

4 A. No, sir.

5 Q. Have you ever practiced as an orthodontist?

6 A. No, sir.

7 Q. In the last five years have you solely or
8 independently treated a patient in the field of
9 orthodontia from beginning stages to the end of
10 treatment?

11 A. No, sir.

12 Q. Are you a member of any dental associations,
13 trade groups, specifically that are related to the field
14 of orthodontia?

15 A. No, sir.

16 Q. In the last year have you attended any trainings
17 or courses related to orthodontics?

18 A. No, sir.

19 Q. Do you have any postgraduate residency in
20 orthodontia?

21 A. No, sir.

22 Q. What is your specialty?

23 A. Occlusion.

24 Q. Are you a general dentist?

25 A. All dentist are general dentist. I am a general



1 dentist.

2 Q. Is your -- in your practice are you just solely
3 on general dentistry?

4 A. No, sir.

5 Q. Do you see patients for orthodontia?

6 A. No, sir.

7 MR. MEDLOCK: Your Honor, I would move to
8 strike this witness under the rules of evidence 702. As
9 a witness not being qualified as an expert with the
10 necessary skills, knowledge, experience, training or
11 education in the field of orthodontia.

12 HEARING OFFICER: Okay.

13 MR. CANALES: May I follow up, Your Honor,
14 with questions.

15 HEARING OFFICER: Yes, you may.

16 CROSS-VOIR DIRE EXAMINATION

17 BY MR. CANALES:

18 Q. Give us a little bit of background regarding your
19 training as a dentist.

20 A. I would have to think that there's a miss
21 conception that dentist are like physicians. That we
22 have credentialing in certain areas. We do have
23 specialty boards for higher education, but when a
24 dentist graduates from dental school in Texas, he's
25 qualified to perform all of the codes that a dentist is



1 allowed to do.

2 Q. So what is an occlusionist?

3 A. A person who is an occlusionist, as you say, is a
4 person who has studied and works at the way that the
5 teeth contact each other both sideways and up and down.

6 Q. How does that relate to the field of
7 orthodontics?

8 A. A person who is a specialist in occlusion is the
9 person who teaches and tells the orthodontist where to
10 put the teeth.

11 Q. And --

12 A. Orthodontist moves the teeth.

13 Q. Are you such a person?

14 A. Yes, sir, I am.

15 Q. And how do you -- how did you get that specialty?

16 A. Well, I took a two-year residency where I rotated
17 through all the departments including orthodontia at the
18 dental school and then I studied for two years of
19 postgraduate study in occlusion in Miami, Florida.

20 Q. And do you believe, sir, that this specialty that
21 you have on being -- on occlusion, gives you the ability
22 to be an expert to be able to testify regarding HLD
23 scoring?

24 A. That does, plus my experience after that.

25 Q. What experience was that, sir?

1 A. I served almost 10 years as director of dental
2 director for the Medicaid program for Texas.

3 Q. And what did you do -- what was your duties
4 regarding HLD index score sheets during that period of
5 time?

6 A. I approved or disapproved of all the orthodontic
7 cases during that time.

8 Q. And do you believe you were competent and
9 qualified to render those decisions for the State of
10 Texas?

11 A. Yes, sir.

12 Q. And as somebody who is a -- are you still active
13 in the practice of dentistry?

14 A. Yes, sir.

15 Q. And today are you still active in it?

16 A. Yes, sir.

17 Q. Today you still are, you have an office?

18 A. Yes, sir.

19 Q. Where is your office at?

20 A. Four blocks from here.

21 Q. Okay. Do you believe, sir, that your knowledge
22 of being a past dental director and together with your
23 knowledge of how to score an HLD index scores, will be
24 able to assist the court in determining the issues in
25 this case?



1 A. Yes, sir.

2 MR. CANALES: We believe we've qualified
3 him, Your Honor. Pass the witness.

4 HEARING OFFICER: I'm going to allow --
5 Mr. Medlock, did you have anything you wanted to add on
6 your motion?

7 REDIRECT VOIR DIRE EXAMINATION

8 BY MR. MEDLOCK:

9 Q. When you were approving these prior
10 authorizations, is that a clinical position.

11 A. No, sir. Well, it is since you're using clinical
12 materials, but you do not see the actual patient.

13 Q. So you just reviewed score sheets, you didn't
14 actually see the patients?

15 A. I did not see the patient. I had to review --

16 Q. That's the only question I asked. Did you --

17 A. No. I think you asked me something else if you
18 will go back.

19 Q. Move to strike.

20 HEARING OFFICER: Overruled. Why don't you
21 ask another question, Mr. Medlock.

22 Q. (By Mr. Medlock) Would an orthodontist know
23 where to place teeth without the help of an
24 occlusionist?

25 A. He might.

1 Q. Would they have gained that from their training
2 in orthodontia?

3 A. I would hope so.

4 Q. And you haven't been practicing as an
5 orthodontist ever, have you?

6 A. No, sir.

7 Q. And you've never treated a patient from the
8 beginning to the end in the field of orthodontia?

9 A. I have with other people, not by myself.

10 Q. That's the question I asked you. You, yourself,
11 alone, have never treated a patient in the field of
12 orthodontia from beginning to end; is that correct?

13 A. No, sir.

14 Q. Your Honor, I would argue that also under the
15 civil practice an remedies code that in order to qualify
16 for an expert witness in a suit against healthcare
17 provider that the witness has to be practicing within
18 the field of the area of the case. And obviously he has
19 admitted that he has not.

20 HEARING OFFICER: I'm not familiar with that
21 section of the practice and remedies code.

22 MR. MEDLOCK: I've got a copy of it.

23 MR. CANALES: Can you give us the cite
24 again, please?

25 MR. MEDLOCK: It's civil practice and

1 remedies code section 74.402.

2 MR. GARCIA: Do you have a copy for us,
3 Mr. Medlock?

4 MR. MEDLOCK: I do not.

5 MR. CANALES: Oh. That's the one. Excuse
6 me, Your Honor, I'm thinking to myself.. That's a
7 malpractice case.

8 HEARING OFFICER: It is.

9 MR. MEDLOCK: You may have a copy now. But
10 because this is a standard of care issue sometimes when
11 we're talking about these things that it is applicable
12 and give the court's guidance as to the qualities of
13 what a medical expert would need.

14 HEARING OFFICER: Okay. I'm going to
15 overrule the motion to strike. I'm going to allow the
16 witness to testify. You're certainly free in your
17 argument, Mr. Medlock and Ms. Alvarado to make arguments
18 what you believe the relevant qualifications of the
19 expert witness are, but I'm going to allow the witness
20 to testify.

21 MR. CANALES: Thank you, Your Honor. May I
22 proceed, Your Honor.

23 HEARING OFFICER: Yes.

24

25



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1 DIRECT EXAMINATION

2 BY MR. CANALES:

3 Q. Dr. Orr, let's start fresh. We already know how
4 to spell your name, O-R-R, right? All right, Doctor,
5 you've got the give me a yes.

6 A. Yes, sir.

7 Q. There's a moth there kind of flying by. Dr. Orr,
8 were you retained by my office to try and help us render
9 an opinion in this case?

10 A. Yes, sir.

11 Q. And you were retained as an expert?

12 A. Yes, sir.

13 Q. All right. And did you at our request review a
14 whole series of HLD index forms prepared by the doctors
15 from Harlingen Family Dentistry?

16 A. Yes, sir.

17 Q. And did I ask you to review those?

18 A. Yes, sir.

19 Q. And did I ask you also to review the score sheets
20 prepared by the expert in this case, Dr. Evans?

21 A. Yes, sir.

22 Q. All right. So now we've got both things out
23 there, right? Did you happen to go the Harlingen, Texas
24 to visit with Dr. Nguyen, Teegardin -- Franklin, Nguyen
25 an Teegardin?



1 A. Yes, sir.

2 Q. Did you also come to Austin to review some of the
3 molds physically here in Austin, correct?

4 A. Yes, sir.

5 Q. Now after you reviewed all those things, do you
6 believe you have the qualifications to be able to tell
7 us why is there such a disparity between Dr. Evans
8 report and your report?

9 A. Yes, sir.

10 Q. Why is that, sir?

11 A. Well, I do not know the basis to which Dr. Evans
12 made his report. My report and all other reports for
13 the previous 30 or more years are based on the accepted
14 interpretation of the Medicaid rules.

15 Q. All right. Back up a little bit you now. Now, I
16 know what you did and the opinion you you're going to
17 give us. Your background, sir, have you ever been
18 employed by TMHP?

19 A. No, sir.

20 Q. Now, you described yourself a while ago as a
21 former Texas Medicaid dental director. What was your
22 title and who did you work for?

23 A. I worked for -- the name of the organization was
24 NHIC, National Heritage Insurance Corporation. Which
25 was Texas Medicaid during those years.



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1 Q. And the subsequent agency to or contractor at the
2 NHIC was TMHP?

3 A. Yes, sir. NHIC went out of business and TMHP
4 took over.

5 Q. Tell us about your duties, you know, what were
6 you duties at NHIC?

7 A. My duties were everything from general
8 administration of the dental program to representing the
9 Medicaid program at state meetings, to being a resource
10 to the Health & Human Services on dental, to working
11 with the Texas Department of Health, to administering
12 the approval process only of the orthodontic program,
13 the approval and prior authorization process of all of
14 the different dental codes that required administration.

15 Q. Let me see if I can narrow down your job from
16 this wide so we can help the court as to what exactly --
17 what was your duties relating to the so-called prior
18 authorization program regarding orthodontics?

19 A. I was in charge of the administration of the
20 program and I personally approved or disapproved and
21 consulted with the providers of every single orthodontic
22 Medicaid case during those years.

23 Q. What does that mean?

24 A. Means I either said yes or no.

25 Q. You said yes or no to the prior authorization?

1 A. Yes, sir.

2 Q. Did the prior authorizations come with a package,
3 some kind of information?

4 A. Yes, sir. They were -- the providers were
5 required to submit specified material that said so in
6 the provider manual and every morning the staff would
7 set everything out so that at my convenience I could
8 process the material.

9 Q. All right. And when you say process the
10 material, was the so-called HLD index score sheet part
11 of that process?

12 A. Yes, sir.

13 Q. All right. And so you reviewed them on behalf of
14 NHIC?

15 A. Yes, sir.

16 Q. Just for the record, NHIC had a contract at that
17 time, did it not with HHSC?

18 A. I would think that's correct, sir.

19 Q. There they were the contractors or the
20 administrators of the Texas Medicaid program?

21 A. Yes, sir.

22 Q. Just for the record, right? You agree, sir, that
23 during that period of time you approved some HLD scores
24 and you disapproved other HLD scores?

25 A. I'm sorry?

1 Q. You approved some reports, you approved some HLD
2 score sheets and you disapproved some others ones?

3 MR. MEDLOCK: Objection. Leading.

4 THE WITNESS: Yes, sir.

5 MR. CANALES: I won't lead, Your Honor.

6 Q. (By Mr. Canales) Tell us what criteria that you
7 used to disapprove or to approve?

8 A. Yes, sir. The process was outlined in the
9 Medicaid Provider Manual and that's the process that we
10 followed. We reviewed the clinical material that had
11 been submitted.

12 Q. And I keep hearing about this term, this level
13 26. What is that?

14 A. There's always been in Texas, 26 points required
15 to approval a Medicaid orthodontic request.

16 Q. Have you been able to look at the manuals and
17 tell us whether or not this minimum score of 26 has been
18 there since at least since you were at NHIC?

19 A. Yes, sir, it has.

20 Q. And it has continued to the present time?

21 A. As far as I know.

22 Q. And --

23 HEARING OFFICER: Mr. Canales, could you
24 remind me or Dr. Orr could you remind me the years you
25 were with NHIC.

1 THE WITNESS: Yes, ma'am. Early 1995
2 through the end of 2003.

3 HEARING OFFICER: Okay. Thank you, I'm
4 sorry.

5 Q. (By Mr. Canales) And when you were serving in
6 this position, you've told us that you're the person who
7 was in charge of the review process, correct?

8 A. Yes, sir.

9 Q. A little while ago I heard -- I don't know if you
10 heard or not the testimony of Dr. Teegardin. Where she
11 says in her deposition that she had a conversation with
12 you regarding some particular patient. Do you recall
13 hearing that a while ago?

14 A. I could not hear at the back of the room.

15 Q. So when you served as a dental director of NHIC,
16 can you tell us whether or not it was your custom or
17 practice to call doctors, dentist, to tell them that the
18 scores were deficient or the scores didn't match or that
19 there was a reason to not to make the prior
20 authorization?

21 A. Yes, sir, that was my custom. Just about every
22 morning.

23 Q. What would you do, sir?

24 A. I would call the providers who had submitted
25 clinical material that was lacking in correctness or in

1 score points.

2 Q. All right. And why would you do that?

3 A. Because my superiors and I felt that was a
4 correct role for me to pursue.

5 Q. And when you did that, when you made those calls,
6 was there any type of subsequent amendment to the score
7 sheets?

8 A. Oh. There probably was sometimes where the
9 provider maybe wasn't as experienced or they should have
10 been or didn't recognize certain technical subtle
11 aspects to a case and they might reapply, they might
12 not.

13 Q. In that regard, what definition did you use for
14 ectopic eruption?

15 A. The definition that was printed in the manual.

16 Q. And as far as you know -- have you seen the
17 manuals of 2010 all the way back to when you served in
18 office?

19 A. Yes, sir, I've seen all of them.

20 Q. Has the definition changed?

21 A. No, sir.

22 Q. It's still the same?

23 A. Yes, sir.

24 Q. All right. Do you know whether or not -- do you
25 have any knowledge, sir, as to whether or not HHSC or

1 TMHP or any other governmental agency has ever put out a
2 bulletin, a news sheet, or anything else explaining
3 about ectopic eruption? Other than what appears in the
4 manual?

5 A. I have seen nothing.

6 Q. You didn't do it while you were there?

7 A. No, sir.

8 Q. And you have not seen anything after that?

9 A. I have not, sir.

10 Q. And so you heard the testimony here of Dr. Evans?

11 A. Yes, sir.

12 Q. And you were present at his deposition?

13 A. Yes, sir.

14 Q. And he was present at your deposition? All
15 right. And so let's -- have I asked you to select some
16 patient charts to be able to explain to the court why is
17 there such as discrepancy between your score and the
18 doctor's score, Dr. Evans score?

19 A. Yes, sir.

20 Q. In essence, before we get individually, can you
21 tell us why? Why is there such a discrepancy between
22 your score and Dr. Evans score?

23 A. I'm at a loss as to why. As to what clearly
24 appears that recently somebody has decided to interpret
25 ectopic eruption by only the two examples that are given



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1 in the rule, but that's all that we know.

2 Q. All right. Let me give you the -- I had the
3 definition here on ectopic eruption. Let me bring your
4 attention, sir, to one of the exhibits already in
5 evidence, which I believe is P15, Your Honor. We can
6 explain to the court what P15 is. You're talking about
7 the definition and so forth, right? Do you have it
8 here. That's P15, right?

9 Now, it's general overview, tell me what does a
10 mangled state regarding the definition of ectopic
11 eruption?

12 A. I'm not sure how much depth you wish me to...

13 Q. Well, whatever you think will help the court.

14 A. I think it would help the court to understand
15 that the previous seven criteria judging material for
16 26 points are mostly objective in nature. And that
17 you -- if you know dentistry, you know that you use up
18 the different situations that dental science has chosen
19 to place the human tissue into, if it's right or wrong.
20 So that by the time you get to ectopic eruption you are
21 left with a subjective evaluation of what you have left.

22 Q. All right. Let me just stop you right now. This
23 poor, Judge, we hit her cold with all this stuff a
24 couple of weeks ago. She's never heard of this stuff
25 before. So I want to make it as easy as possible for



1 all of us to understand.

2 So you have there in front of you P15, correct?
3 And I'll represent to you this comes out of the manuals,
4 out of the definition. Now, when you are talking about
5 the subjectivity and you talked about the first item,
6 there is something called the cleft pallet? That's the
7 first page, not the first page, I'm sorry, the page
8 before. Here's the cleft pallet, right?

9 A. Yes, sir.

10 Q. And then the page jumps over to the rest of the
11 definitions, correct?

12 A. Yes.

13 Q. I'm going to give you this. This is easier for
14 you to hold this page.

15 A. All right.

16 Q. So am I right as you go down the seven items
17 you're talking about, all those are the issues that are
18 subjective? Objective? Go down the items. You have
19 cleft pallet?

20 A. Yes, sir.

21 Q. All right. And then after that you have the
22 severe traumatic deviations and so forth?

23 A. Yes, sir.

24 Q. All those things can be measured; is that
25 correct, sir?



1 A. Yes, sir.

2 Q. So the very first one that cannot be measured is
3 the ectopic eruption; is that correct?

4 A. Yes, sir.

5 Q. Under ectopic eruption, tell the court here, the
6 definition here how your meaning of this definition is
7 different than Dr. Evans?

8 A. It appears to me that my definition and that of
9 all of dentistry that I've been aware of in my career,
10 is that the rule is the first five words. Always has
11 been and I do not know or understand, as much as I
12 respect Dr. Evans, I do not understand how and why this
13 initiative came from that chooses to ignore the obvious
14 semantic and use of the first five words that all of
15 dentistry has gone by all these years. There's -- in
16 two examples and, of course, one could think of
17 literally hundreds of examples of bones and teeth that
18 are examples.

19 Q. So I've asked you to be able to give some
20 examples on some files. Can you tell me -- do you have
21 those files there with you?

22 A. They are here somewhere, yes, sir.

23 Q. You don't have them up here?

24 A. I do not have them with me, no, sir.

25 Q. I thought you had them with you?



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1 A. I can get in the back of the room.

2 Q. Go get them in the back of the room.

3 A. I have a list.

4 Q. Go get your list. That way I've got my list,
5 you've got your list and they are already in evidence,
6 Your Honor.

7 MR. MEDLOCK: Is he still -- is this a list
8 towards the end of your exhibit list? Is this the list
9 that was in the back of you --

10 MR. CANALES: Yes.

11 MR. MEDLOCK: -- of the location log?

12 MR. CANALES: Yes. Apparently, Judge, my
13 problem is I had two notebooks. You've got one and I
14 gave one to the other side. So I've been left without a
15 notebook.

16 MR. MEDLOCK: Can I stand here for a second
17 so I can kind of --

18 MR. CANALES: I'll give it right back, Your
19 Honor.

20 MR. GARCIA: Judge, are there some folders
21 in your notebook? Some manilla folders?

22 HEARING OFFICER: I just gave mine to
23 Mr. Canales.

24 MR. MEDLOCK: Does this help you?

25 Q. (By Mr. Canales) Look now at tab number 12. Are

1 these the patient files that you have selected to be
2 able to discuss with the court?

3 A. I believe so, yes, sir.

4 Q. All right. I'm going to give them back to the
5 Judge. Pull out your file. And these particular
6 patient files, 12, look at them. And they also -- you
7 have the accompanying HLD scores, right?

8 A. Yes, sir.

9 Q. And you've got also the scores that Dr. Evans
10 made, right? Now, we've got to be able to protect the
11 children's identity here and you can give me your score
12 sheet number and then we'll -- and the initials of the
13 patient so we can kind of understand what we're talking
14 about. All right, sir?

15 So give me the very first one. Tell me what did
16 you score -- the name of the patient?

17 A. The initials of the patient?

18 Q. Yes.

19 A. This is case number two, the initials of the
20 patient were capital D and a capital A.

21 Q. Okay. And let me see, do you have a translation
22 there of the sheet? That will be, Your Honor, Evans --
23 that will be number 2, right. This will be number seven
24 for HSSC.

25 HEARING OFFICER: And you know that helpful

1 chart that you gave me earlier that I can't seem to put
2 my hand on. I see it here. It's not an exhibit, right?
3 Did you make it an exhibit.

4 MR. CANALES: Yes, ma'am. I made this the
5 new one with initials I made that an exhibit.

6 HEARING OFFICER: That's 13, right?

7 MR. CANALES: Yes, Your Honor.

8 HEARING OFFICER: Very good. All right. So
9 you said this is HHSC.

10 MR. CANALES: If you go down the list for
11 his list and he said it is number two and you go to
12 number two on his side, the corresponding number for
13 HHSC is number seven.

14 HEARING OFFICER: Number seven. Yes. Got
15 it. Thank you.

16 Q. (By Mr. Canales) On this particular patient,
17 with initials DA?

18 A. Yes, sir.

19 Q. What score did you give this patient?

20 A. My total score was from 28 to infinity.

21 Q. What does 28 to infinity mean?

22 A. That's my way of scoring that 28 meant that there
23 were at least 26 points and infinity meant that there
24 was teeth -- tooth or teeth that were beyond
25 measurement.



1 Q. Now what score did Dr. Evans give for the
2 provider?

3 A. If I'm correct it's 14.

4 Q. So under the Evans score this patient did not
5 qualify for an HLD score, correct?

6 A. No, sir.

7 Q. But under your scoring it did?

8 A. Yes, sir.

9 Q. Tell the court -- would it be easier for you
10 to -- if you have a copy of it there or one put on the
11 screen to be able to show the court? You can tell us --
12 show the court here why you believe it's 28?

13 A. It's 28 because there was overjet of teeth
14 sticking out beyond the upper teeth, sticking out beyond
15 the lower teeth. And so then there was two points for
16 overbite, where some of the upper teeth lapped over the
17 lower teeth more than they ideally should. I have their
18 position.

19 Q. I'm about to put up the screen, Judge, so we can
20 all be on the same page.

21 HEARING OFFICER: I've got those. And the
22 score sheets are under 14; is that right? Dr. Orr's
23 score sheets?

24 MR. CANALES: Yes, Your Honor, Dr. Orr's
25 score sheet is under 14.

1 HEARING OFFICER: And so this one is -- do
2 we have a page number.

3 MR. CANALES: Yes, Your Honor, it will be --
4 if you look at the very top it will be number two.

5 HEARING OFFICER: Thank you very much.
6 Okay. Got it. I think I'm finally on board.

7 Q. (By Mr. Canales) I'm going to give you a pointer
8 here. So -- is it working Dr. Orr? Maybe those
9 batteries?

10 A. Sometimes. I have to really press hard and then
11 it goes off on it's own.

12 Q. All right. Well maybe, if the court -- if the
13 thing is not working maybe you can stand up, with the
14 court's permission and go up there; is that okay?

15 HEARING OFFICER: Mr. Medlock, do you have
16 any objection if Dr. Orr walks over there because he
17 can't make his pointer work? The pointer he is talking
18 to --

19 THE WITNESS: It comes and goes.

20 Q. (By Mr. Canales) It comes and goes. It's not
21 working. All right. Let's go forward.

22 A. I don't mind talking from here, if you don't
23 mind.

24 Q. Okay. Go ahead. I'm going to leave this right
25 here. All right. Talk to me about this.

1 A. The upper teeth are jettted out beyond their
2 supportive bone, the alveloar bone.

3 Q. Which is the upper teeth just so the court can
4 know?

5 A. On the upper left square -- somebody has got to
6 move a hand. Thank you. And then on the lower left is
7 the picture that shows the overjet of the teeth. And
8 it's also a good example of the upper teeth, of the
9 ectopic eruption of the unusual pattern of erupted
10 teeth.

11 Q. So under this scenario or this grading
12 system --I'm going to repeat it again, Judge, but just
13 for the record. Under this scenario, Dr. Evans grading
14 of this child's dentures did not qualify because he gave
15 her a what, a 14?

16 A. Yes, sir.

17 Q. And you gave her a 28?

18 A. Yes, sir.

19 Q. Now, just so that it can help the court
20 understand this one. Tell me where the three points
21 come in and so forth. Like on your score sheet?

22 A. Well, there's three points for each tooth that's
23 ectopically erupted graded tooth. And we got eight
24 incisors teeth across the front. Four upper and four
25 lower that were graded ectopic eruptions. So three



1 times eight is 24.

2 Q. Can I ask him to just go up there and point the
3 fingers so that the court understands which teeth he's
4 talking about? Can he do that?

5 HEARING OFFICER: I think the pointer is
6 working okay. Why don't we stick with that until it
7 malfunctions.

8 MR. CANALES: He's the pointer right now.

9 MR. MEDLOCK: I'm trying to interpret what
10 he's saying.

11 HEARING OFFICER: I see your delima. I just
12 think it would be easier, especially for counsel for OIG
13 if the witness were here.

14 MR. CANALES: Yes, Your Honor, it will be
15 fine.

16 HEARING OFFICER: So let's --

17 Q. (By Mr. Canales) You count where the pointer is
18 now, do you count that tooth that he's pointing at right
19 now?

20 A. No, sir. That's tooth is a canine tooth and I
21 mentioned the four incisors, the four cutting teeth
22 across the front. Yeah. Right there where he has
23 the --

24 Q. So that one?

25 A. Yes, sir.

1 Q. That's one, two, three, four?

2 A. Yes, sir.

3 Q. All right. So you gave four and you reflect that
4 in your page -- you reflect that in your exhibit,
5 correct?

6 A. Yes, sir.

7 Q. All right. So is it your opinion, sir, from your
8 background and so forth that this child had a dental
9 necessity of having braces that didn't qualify?

10 A. Yes, sir.

11 Q. If Dr. Evans says this child did not qualify, is
12 that just -- is that a difference of opinion between you
13 and him regarding -- what's it based on?

14 A. I do not know, sir. I'm sorry.

15 Q. All right. Let's go to the next patient?

16 MR. GARCIA: Which one is it?

17 THE WITNESS: It's my number five patient in
18 the review.

19 Q. (By Mr. Canales) Your number five?

20 A. It's LB.

21 Q. Just a second. Your number five?

22 MR. GARCIA: HHSC 67.

23 Q. (By Mr. Canales) All right. 67. So let's look
24 now at this particular score sheet. You gave this
25 patient a score sheet a score of what, sir?



1 A. 36 points.

2 Q. And Dr. Evans gave this patient a score of how
3 many points?

4 A. 19 points.

5 Q. Let's look at that child's mouth right there? So
6 under Dr. Evans measurements, was -- this child would
7 not have received any type of braces paid by the State
8 of Texas, correct?

9 A. That's correct, sir.

10 Q. And under your view, this child is a 36?

11 A. Yes, sir.

12 Q. So tell me -- so your view, sir, do you believe
13 this child was in need of braces?

14 A. Yes, sir. We have 12 front teeth, six above, six
15 below that are all out of place off of the alveolar
16 supporting ridge of bone. Dramatically off the ridge.

17 Q. Can I ask you, sir, why do you believe there's a
18 discrepancy between your opinion and his opinion?

19 A. The same thing that everybody here can see is
20 that somebody has chosen to only utilize the two
21 examples of ectopic eruption rather than the decades old
22 rule that frankly everyone in the world uses.

23 Q. Okay. Does this photograph of this child reflect
24 an unusual pattern of eruption pursuant to the
25 definition?



1 A. Yes, sir.

2 Q. The definition we have, of course, comes out of
3 T15 and says, "An unusual pattern of eruption, comma,
4 such as high labial cuspids or teeth that are grossly
5 out of the long axis of the alveolar ridge." That's the
6 definition you use, correct?

7 A. Yes, sir.

8 Q. And under that definition, do you believe there's
9 an unusual pattern?

10 A. Yes, sir.

11 Q. All right. Let's go to the next page.

12 A. My next one is --

13 Q. Give me your number first of the next page.

14 A. My number is 11.

15 Q. Just bear with me. Your number 11 is the state's
16 85. Is the court following me, Your Honor? Forgive me
17 for --

18 HEARING OFFICER: I'm sorry. I got
19 distracted for a moment there. We've moved on to 411?

20 MR. CANALES: Yes, Your Honor.

21 HEARING OFFICER: Got it.

22 Q. (By Mr. Canales) Which is the same thing as --

23 A. YC.

24 Q. It's the initial YC or HSC number 85.

25 HEARING OFFICER: Right.

1 Q. (By Mr. Canales) And this young lady that we
2 have here, what did Dr. Evans score this child?

3 A. I do not have that score, sir. It somehow did
4 not get to me.

5 Q. I have here 12?

6 A. You have the chart.

7 Q. I have the chart.

8 A. 12 points, sir.

9 Q. And what did you score this child at?

10 A. 30 points.

11 Q. Can you tell me, sir, just from looking at this
12 photograph what is this right here?

13 A. That's a high labial cuspid. That's a canine
14 tooth that is blocked out. Has no space in which to
15 assume its rightful position.

16 Q. And the photograph I'm looking at, seems like the
17 top teeth -- what I would call the buck teeth, the ones
18 in the front are really covering all the way to the
19 bottom?

20 A. Yes, sir, they have an overbite.

21 Q. And your opinion, sir, what did -- seeing this
22 photograph, seeing the mold, seeing the patient files,
23 you had an opportunity to see all those, correct?

24 A. Yes, sir.

25 Q. What did this -- what did you score this child



1 as?

2 A. I scored this person at 30 points.

3 Q. 30 points? So under your criteria this child
4 would have received -- should receive dental assistance?

5 A. Yes, sir.

6 Q. And which are the teeth that exhibited an unusual
7 pattern for ectopic eruptions?

8 A. Go to the upper left picture and you can see how
9 the two front teeth are pushed inward. They should be
10 more outward. And then in opposition to that, the two
11 teeth on the left side of the two front teeth, the two
12 teeth on the right side of the two front teeth, those
13 four teeth are all pushed outward.

14 Q. Any difficulty in your reaching a conclusion that
15 this child has an HLD level of --

16 A. No, sir. That's an easy decision.

17 Q. All right. Let's go to the next one. Again,
18 when I say the next one you're going to give me your
19 number and give me the time to look up the translation.

20 A. Number 13.

21 Q. Your number 13 equals HSSC number seven. And
22 that's a patient by initials AC; am I correct?

23 A. AC.

24 Q. And in this particular case tell me the score
25 that Dr. Evans gave this child.

1 A. I think it's ten.

2 Q. All right. And my notes reflect a five, but it
3 doesn't make any difference. Under Evans scoring he did
4 not reach a level 26?

5 A. That's correct, sir.

6 Q. All right. And you scored this child as a level,
7 HLD level what?

8 A. 36.

9 Q. Explain to the court why this child has a level
10 36.

11 A. Well, the upper front teeth overbite the lower
12 front teeth. The lower teeth -- the lower front teeth
13 skeletally go up a bit too far up behind the front teeth
14 so that there's upper lower jaw discrepancy that does
15 not fit. And there's spaces between the teeth that are
16 not supposed to be there because these teeth are flared
17 out and off of the upper alveolar bone.

18 Q. Now, if I go back to this famous definition that
19 I know that we're all getting tired of hearing
20 constantly. And if I was just to describe an ectopic
21 eruption, as either high labial cuspid or teeth that are
22 grossly out of the long axis of the alveolar ridge and
23 that's it, no unusual pattern, just the two -- the last
24 sentence, would Dr. Evans be correct?

25 A. I would think not.

1 Q. Why is that, sir?

2 A. Well, the patient would not attain the minimum
3 number of points.

4 Q. If you just used his scoring of just the -- is
5 that correct?

6 A. Apparently so, sir.

7 Q. But the way you read it he would reach the score?

8 A. Yes, sir.

9 Q. And the reason is why?

10 A. Because of the malocclusion, the teeth out of
11 position and the bone out of position.

12 Q. And how do you compare that to the definition?

13 A. It complies with the definition of an unusual
14 pattern.

15 Q. All right.

16 A. Of eruption.

17 Q. So this particular patient has an unusual pattern
18 of eruption that qualifies, in your opinion, at least
19 for a level -- what did you say it was?

20 A. Yes, sir.

21 Q. Exceeds 26, right?

22 A. Yes, sir.

23 Q. But what was it again.

24 A. I'll have to look back, but it exceeds 26. We
25 had 36 points.

1 Q. 36 points?

2 A. Yes, sir.

3 Q. Versus his five points?

4 A. 10 points.

5 Q. Well, that's a lot of difference, is it not?

6 A. Yes, sir.

7 Q. Let's go to the next patient you have there?

8 A. That would be my number 15, AC.

9 MR. CANALES: Just bear with me.

10 HEARING OFFICER: AM? No.

11 THE WITNESS: AC. My number 15.

12 MR. GARCIA: 19? HHSC 19?

13 MR. CANALES: Yes, that's right.

14 Q. (By Mr. Canales) your Orr number 15 equals HSSC
15 number 19. And that's what initials patient AC; is that
16 correct, sir? AC?

17 A. Yes, sir. A C.

18 Q. All right. Now, AC then, in this particular
19 case, Dr. Evans scored this patient with a what level?

20 A. 16 points.

21 Q. All right. So under 16 this child is not
22 eligible -- under his system this child would not be
23 eligible for braces?

24 A. That's correct.

25 Q. Orthodontic services. Am I correct on that?



1 A. That's correct, sir.

2 Q. You graded this child as a what?

3 A. 36 to infinity.

4 Q. Again, give me the infinity part.

5 A. The teeth are so far out off of the supporting
6 bone as to the past irrelevant score. It will take a
7 heroic clinical effort to...

8 Q. To what?

9 A. Treat the child.

10 Q. So this particular child here with a level 36, in
11 your opinion, I take it that -- does he have ectopic
12 eruption?

13 A. Yes, sir.

14 Q. Explain for the court and for the record where
15 the ectopic eruption occurs.

16 A. The ectopic eruption is the unusual pattern of
17 eruption of all of the 12 anterior teeth.

18 Q. What happens to a child when they grow up if they
19 don't have the teeth corrected?

20 A. I don't know. That's what's been so nice about
21 Medicaid taking care of people like that. That they
22 don't have -- then have social and psychological
23 problems hopefully. You can see even the back teeth are
24 in cross bite and incorrect. Medicaid does not count
25 the back teeth.



1 Q. All right. So all Medicaid pays for is for teeth
2 coming from the cuspids forward?

3 A. No. Medicaid will pay for the full set of
4 braces, but the scoring criteria is only based on the
5 front 12 incisor type teeth.

6 Q. Six on, top on bottom?

7 A. Yes, sir.

8 Q. So somehow or other you have to get the
9 26 points?

10 A. Yes, sir.

11 Q. And you certainly qualified this patient. You
12 qualified this patient?

13 A. Yes, sir.

14 Q. Just like Dr. Teegardin did and everybody else
15 did, right? The only person who didn't qualify this
16 patient is Dr. Evans, correct? That's right?

17 A. Apparently so, yes, sir.

18 Q. All right. Is this an example of ectopic
19 eruption?

20 A. Yes, sir.

21 Q. Go to the next one.

22 A. My number 16.

23 Q. Bear with me.

24 MR. GARCIA: 33.

25 Q. (By Mr. Canales) It has been yelled from the

1 crowd that Orr number 16 equals --

2 A. MC, Junior.

3 Q. MC, Junior and that's HSSC number 33. So if I go
4 look at file number 33, which is the score sheet made by
5 Dr. Evans, Dr. Evans gave this child a score sheet of
6 15; is that correct?

7 A. Again, I did not get that number of Dr. Evans.
8 You've got it there. Yes, sir. 15.

9 Q. All right. And you gave this child a level?

10 A. 34 points.

11 Q. All right. Now, this mouth, forgive me when I
12 say mouth, but what I'm looking at is a mouth of teeth,
13 is not as ugly as the one we saw before. But you still
14 gave this child a 34?

15 A. Yes, sir.

16 Q. Again, tell me where do the 34 points come from
17 according to your examination of these records.

18 A. Yes, sir. 16 points came from an open bite from
19 the cephalometric study that is enclosed.

20 Q. What does that mean again?

21 A. A cephalometric study is an x-ray film, a
22 radiographic study of the side of the head, and then a
23 tracing is made of that to see the angles of where the
24 bones and the teeth fit into the skull.

25 Q. And this study is part of the file that the court

1 has, correct?

2 A. Yes, sir.

3 Q. If she wants to see it she can go the file and
4 see the sketching and so forth, right?

5 A. Yes, sir.

6 Q. And this particular child has a what did you say?
7 An overbite?

8 A. An open bite.

9 Q. Open bite?

10 A. Yes.

11 Q. What does an open bite mean?

12 A. An open bite means that the upper and lower teeth
13 do not engage each other as tightly as one would like in
14 the usual pattern.

15 Q. Which best describes what you're talking about,
16 the middle photograph?

17 A. Maybe the lower right film. To the dentist you
18 can see the space that exist between the upper and lower
19 teeth. I don't know if you have the cephalometric
20 films.

21 Q. No. For dental reasons, why is it important to
22 close it? Why is it bad to have the open bite?

23 A. Oh, it's a dysfunctional bite to have and for
24 many health reasons.

25 Q. The question was asked by some of these dentist,



1 I mean, could he chew food?

2 A. Certain foods he could not perhaps.

3 Q. But is this -- is this photograph or these
4 photographs depict in your opinion ectopic eruption
5 pursuant to the definitions?

6 A. Yes, sir.

7 Q. And ectopic eruption with a score of 36 -- 34?

8 A. Yes, sir, total.

9 Q. This child needs braces; is that correct?

10 A. Yes, sir.

11 Q. And this child got braces. All these children
12 got braces?

13 A. All right, sir.

14 Q. They all submitted payments and they got paid.
15 All right. Let's go to the next one. Again, let me
16 have your Orr number?

17 A. My next one is 17.

18 Q. All right. Orr 17 equates to HSSC number 34. So
19 if I go look at the score sheet for Dr. Evans on level
20 34, I would get a score sheet by Dr. Evans of 11. All
21 right, sir. And what did you give this child.

22 A. 36 points.

23 Q. Does this child's photographs depict -- if I'm
24 seeing the file, do you have an opinion as to whether
25 this child had an ectopic eruption in an unusual



1 pattern?

2 A. Yes, sir.

3 Q. And you say a 36, right?

4 A. Yes, sir.

5 Q. Give us an explanation of how you got to 36.

6 A. You can look at all the photographs and you can
7 see that the teeth are out of position on the upper
8 left. There's an incisor in the roof of the mouth.

9 Q. Excuse me. What is that again? Incisor?

10 A. There's an incisor tooth.

11 Q. That's kind of like two teeth behind the other,
12 right?

13 A. Yes, sir. One behind the other. And then on the
14 upper right picture you can see how the lower front
15 teeth are off of the bone and twisted, rotated
16 completely out of position. And even though I'm not an
17 orthodontist, to an occlusion person when those lower
18 cuspid teeth are -- have no chance to mesh with the
19 upper cuspid teeth, that's when we have a debilitating
20 orthodontic situation.

21 Q. Forgive me, what does that mean?

22 A. The Judge knows.

23 Q. Okay. But I need to know, too. What does that
24 mean?

25 A. The bite will never mature into a competent bite

1 of the upper and lower teeth.

2 Q. Can this kid chew meat?

3 A. Possibly.

4 Q. Possibly.

5 A. With trouble.

6 Q. So the question I have for you now is, the same
7 question I will ask you for the other files, does this
8 represent an ectopic eruption?

9 A. Yes, sir.

10 Q. And is this something that you are used to
11 seeing, sir, throughout the many years that you served
12 as NHIC and as a consultant afterwards?

13 A. Yes, sir.

14 Q. Is there any doubt in your mind that his child --
15 his level exceeds a score level of 26?

16 A. No, sir.

17 Q. No doubt about it?

18 A. No doubt.

19 Q. Even doctor -- even if Dr. Evans says no, you
20 disagree with him on that.

21 A. Yes, sir.

22 Q. All right. Okay. Let's go to the next one.

23 A. That would be patient 26.

24 Q. Just bear with me.

25 A. EG.



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1 Q. Got to find him. Just a minute.

2 MR. GARCIA: 45.

3 Q. (By Mr. Canales) All right. Your patient 26
4 equals Dr. Evans HHSC number 45. And there's where a
5 patient with initials EG; is that correct, sir?

6 A. Yes, sir.

7 Q. And does your notes reflect that Dr. Evans scored
8 this child with a level 17?

9 A. All right, sir.

10 Q. Now, you understand that Dr. Evans of all the 85
11 charts that he saw he only passed one. You understand
12 that?

13 A. Yes, sir.

14 Q. You heard his testimony, right?

15 A. Yes.

16 Q. So in this particular child that we have here,
17 tell me what was your score? What was the HLD score on
18 this child?

19 A. 38 points. This is a good example of the
20 limitations of a quantitative scoring system. In that
21 as you can see in the lower center picture, the teeth
22 are at different levels of sticking out and different
23 levels of -- of being lined up. And you can see in the
24 lower right photograph the same thing. If you measure
25 to one point you get one score. If you measure to



1 another tooth you get a different score. If you measure
2 to another tooth a different score. On all four of
3 those teeth across. So you go by the way to measure
4 that it says in the book and you can play with a
5 measuring ruler for hours if you wanted to and trying to
6 get a definitive answer.

7 Q. If you were the -- when you were NHIC director
8 and in charge of the prior authorization dental program,
9 if you saw something like this you would approve it,
10 right?

11 A. Yes sir.

12 Q. You would give it a score of a 38?

13 A. Yes, sir.

14 Q. And even though today you're not a dental
15 director of any sort, you're now in the private business
16 of consulting, but today you still give it a 38?

17 A. Yes, sir.

18 Q. Any reason why you would want to change your
19 style of grading between when you were at NHIC and now?

20 A. No, sir.

21 Q. Why not? That's what the rules say?

22 A. Well, that's what the Medicaid manual says to do.
23 And so that's what we go by.

24 Q. And this particular child has a 38, correct?

25 A. Yes.



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1 Q. Is this a representative sample of an ectopic
2 erupted tooth? Teeth?

3 A. I don't know if it's a representative sample, but
4 it's a good example.

5 Q. Why is that?

6 A. It's traumatic and it shows the teeth off the
7 bone, an unusual pattern. Some teeth in, some teeth
8 out. It's a most unusual situation compared to all the
9 teeth lined up straight.

10 Q. I'll ask you --

11 A. The thing about a case like this is --

12 MR. MEDLOCK: Objection. He didn't ask a
13 question.

14 MR. CANALES: That's fine. Don't add
15 anything else.

16 HEARING OFFICER: Sustained.

17 Q. (By Mr. Canales) What's unusual about this case?
18 Now you can answer it. What's unusual about it?

19 A. The thing that's unusual about this case is that
20 all of these cases have been bedded in dental offices.
21 So what you're seeing are perhaps a number of cases
22 where parents brought children in to Medicaid dental
23 providers and inquired about a need for orthodontics.
24 And so there could have been one to more providers did
25 their own scoring before it ever came to.

1 Q. So this child here obviously, in your opinion
2 qualified for the definition of ectopic eruption?

3 A. Yes, sir.

4 Q. And you would disagree with the findings of
5 Dr. Evans?

6 A. Yes, sir.

7 Q. Let's go to the next one. Let me have your next
8 number.

9 A. That is number 27.

10 Q. Just hold on. Okay. Number 27, Orr 27, equals
11 Dr. Evans HSSC number 23. And Dr. Evans scored this
12 child with a grade of score of 11 points. Do you see
13 that? And you scored this one as -- what did you score
14 this child?

15 A. A 36.

16 Q. That's a tremendous amount of difference of
17 discrepancy between you and Dr. Evans, correct? Is that
18 right, sir?

19 A. Yes, sir.

20 Q. Now, explain to me how you got to level 36 -- to
21 36 points?

22 A. This child has both an open bite where the upper
23 and lower teeth do not mesh correctly and an unusual
24 pattern of eruption where the teeth are tilted off of
25 the alveolar ridge and the supporting bone and are not



1 down all the way into their occlusion either.

2 Q. I've been missing some of the points about
3 suffering through severe handicapped malocclusion. Is
4 this child suffering from that?

5 A. Probably so, yes, sir.

6 Q. How about the ones we have previously seen?

7 A. Yes, sir.

8 Q. All right. Let's look at the next page.

9 A. All right, sir.

10 Q. I see we're getting my e-mails, Judge?

11 A. It's my number 40.

12 Q. Just bear with me.

13 MR. GARCIA: 48.

14 Q. (By Mr. Canales) Orr number 40, Your Honor, is
15 Dr. Evans HSSC number 48. And you scored -- Dr. Evans
16 scored this as a level nine. Do you see that one, sir?
17 And you scored it as a what?

18 A. 34.

19 Q. All right. Now, why did you score this 34 when
20 Dr. Evans scored this child as a level nine. What
21 happened? Why -- why this gross disparity between your
22 numbers and Dr. Evans numbers. Can you explain that?

23 A. No, sir. To me it's ectopic eruption. The teeth
24 are in an unusual pattern of eruption. There's overjet,
25 there's probably some over bite. The lower jaw canines



1 are out off the healthy bone and out in space.

2 Q. If Dr. Teegardin scored this child over 26 you
3 would haven't any quarrel with that would you?

4 A. No, sir.

5 Q. And do you believe that there's any type of --
6 and this photograph and the ones we've seen before, do
7 you think there's any type of false or intentional
8 misrepresentation or defrauding the way these charts
9 have been graded?

10 A. No, sir.

11 Q. So I think you've told us -- just one more thing.
12 I'm going to the -- what's this -- explain this tooth.
13 Is that the same tooth?

14 A. No, sir. You're looking at the lower left side
15 and on the other side of the wall we're looking at the
16 lower right side of the patient. The lower left side is
17 the lower cuspid tooth that spoke of.

18 Q. And in the front picture you can see both of
19 them, correct?

20 A. Yes, sir.

21 Q. And you can see the top two teeth covering the
22 bottom teeth?

23 A. Yes.

24 Q. What do you call that? What do you call that,
25 sir, when this happens? When the two front teeth are

1 covering the bottom?

2 A. The over bite, yes, sir.

3 Q. In your opinion, sir, is this child a child that
4 qualifies exceeding 26 points?

5 A. Yes, sir.

6 Q. Is this child a child that should receive the
7 benefits of state Medicaid orthodontic work?

8 A. Yes, sir.

9 Q. Do you see any problem at all in the submission
10 of this particular child -- this child SH to the state
11 to qualify for the Medicaid program?

12 A. No, sir.

13 Q. I see where the child qualifies and so forth --
14 this child should receive it, correct?

15 A. Yes, sir.

16 Q. All right, sir. Let's go -- how many more have
17 you got to go so I can tell the court?

18 A. One more. My number 51.

19 Q. Bear with me just a second. Your number 51 is --
20 that's Orr 51, equals Dr. Evans HSSC number 53, Your
21 Honor.

22 A. And that's AL.

23 Q. We've got AL dash L, something like that. All
24 right. That's because we've got two other people with
25 the middle initials. So we kind of put an extra L



1 there. AL for the first name and L for the last name.
2 So let's talk about this individual. Do you have there
3 what Dr. Orr -- what Dr. Evans scored that child as a
4 level 15?

5 A. Yes, sir.

6 Q. Scored 15, right?

7 A. Yes, sir.

8 Q. And you scored this child as a what?

9 A. 45.

10 Q. 45. That's the highest number I've seen so far.
11 Do you agree with that?

12 A. It could get higher.

13 Q. It could get higher? So this 45 -- I hate to say
14 this looks like we've got two sets of teeth one in front
15 of the other one, doesn't it? So tell me about this
16 particular child with HLD index score. Why did you give
17 45?

18 A. The patient has both an open bite where the teeth
19 do not come together. The lower jaw is -- you could say
20 strong, sticks out in different adjectives and
21 particularly the lower teeth, canine teeth and all of
22 the upper incisors and canines are in an unusual pattern
23 of eruption.

24 Q. Now, under Dr. Evans score he would not have
25 approved this child for state Medicaid assistance; is

1 that correct?

2 A. Correct, sir.

3 Q. And under the definition that you work under,
4 ectopically erupted, you would qualify this child?

5 A. Yes, sir.

6 Q. Just like what Dr. Teegardin did?

7 A. Yes, sir.

8 Q. Is this severe malocclusion?

9 A. Is this what, sir.

10 Q. Severe malocclusion?

11 A. Yes, sir, and dysfunctional.

12 Q. Do you have any other ones?

13 A. No, sir.

14 Q. We have a total of 85, correct? Have a total of
15 patients?

16 A. Yes, sir.

17 Q. And this was a representative sample that you
18 selected to show the court?

19 A. Yes, sir.

20 Q. And there's other ones that you might have and
21 look at, correct?

22 A. Yes, sir.

23 Q. All right. Are you aware, sir, as to whether or
24 not -- let's back up. Have you in the past treated
25 Medicaid patients?



1 A. Yes, sir.

2 Q. How far in the past have you treated Medicaid
3 patients?

4 A. Off and on because I've almost always been in a
5 practice with one, two, or three associates and
6 sometimes I do certain aspects of treatment.

7 Q. Okay. Very well. And so this particular child
8 is a child -- within your opinion that deserves to
9 qualify?

10 A. Yes, sir.

11 Q. May I have a second to confer with counsel, Your
12 Honor?

13 HEARING OFFICER: Sure.

14 MR. CANALES: Pass the witness, Your Honor.

15 HEARING OFFICER: Why don't we take a
16 10-minute break. We're off the record.

17 (Brief recess.)

18 HEARING OFFICER: Okay. We are back on the
19 record. Mr. Medlock?

20 CROSS-EXAMINATION

21 BY MR. MEDLOCK:

22 Q. Yes. Dr. Orr. Have you ever testified for the
23 state before?

24 A. Yes, sir.

25 Q. In what capacity? As an orthodontist, as a

1 general dentist?

2 A. As a member of various state organizations.

3 Q. What was the content of your testimony? Was it
4 in general dentistry? Was it about orthodontia?

5 A. Many, many subjects. I've testified on behalf of
6 the State Dental Board as a member.

7 Q. I'm asking you the content of your testimony, not
8 who you've testified before?

9 A. I thought you did.

10 Q. What was the content of your testimony?

11 A. Violations of Medicaid rules, state board rules,
12 state laws.

13 Q. Did any of the cases deal with orthodontics?

14 A. No, sir.

15 Q. So this would be the first time you have ever
16 testified in a hearing regarding the study or the
17 orthodontics?

18 A. Yes, sir.

19 Q. And would it be fair to say this is also the
20 first time that you've testified regarding scoring of an
21 HLD score sheet?

22 A. I don't think so. I remember when I was at
23 Medicaid that we had some hearings that involved the
24 qualification of patients and HLD and 26 points.

25 Q. Were those in-house hearings within TMHP?

1 A. HHSC.

2 Q. HHSC? But they weren't before a SOAH?

3 A. No, sir. Not SOAH.

4 Q. Or a district court?

5 A. No.

6 Q. Have you prepared any written statements
7 regarding this case or any other orthodontic cases that
8 you're an expert for?

9 A. Just this one.

10 Q. Just the expert report?

11 A. Just the one report, yes, sir.

12 Q. I'm talking about written statements in general
13 on any ortho cases?

14 A. No, sir.

15 Q. That you might be an expert in?

16 A. No, sir.

17 HEARING OFFICER: Mr. Medlock, could you do
18 me a favor. These mics don't pickup unless you're right
19 on top of it. Could you move closer?

20 MR. MEDLOCK: Sure. Sorry, Your Honor.

21 Q. (By Mr. Medlock) If I handed you a letter dated
22 April 14th, of 2012, regarding Medicaid orthodontics,
23 you wouldn't remember that letter?

24 A. I just don't know, Counsel. I would have to see
25 what you're talking about.

1 Q. May I approach?

2 HEARING OFFICER: Yes.

3 MR. GARCIA: Is there a copy for us?

4 Q. (By Mr. Medlock) Do you recall this letter,
5 Dr. Orr?

6 A. Oh, yes. I didn't write it as a letter to
7 anybody.

8 Q. Right. But is it a written statement of your
9 words?

10 A. It is a written statement, yes, sir.

11 Q. That is what I just asked you. I asked you --

12 A. I did not understand that. I apologize.

13 Q. Okay. Contained in this letter you talk about in
14 2005 the company and I'm assuming you mean TMHP?

15 A. I don't know.

16 Q. Well?

17 A. You have to let me see it, too.

18 Q. Let me read the sentence. "The company cut
19 program controls and cost even more. You see that
20 doctors don't make a profit from public service. A
21 contractor has to make a profit."

22 A. Yes.

23 Q. What do you mean that?

24 A. I mean exactly what I said there. That was my
25 opinion as to what was going on in Texas.



1 Q. Do you work for TMHP?

2 A. No, sir.

3 Q. How do you know that to be accurate?

4 A. It's an opinion.

5 Q. So it's fair to say that that's your opinion,
6 it's not the accurate representation of policy of --

7 A. Absolutely not. That's all my opinion.

8 Q. Can you read the paragraph six, the first two
9 sentences right here.

10 A. Yes. I'm reading.

11 Q. Out loud.

12 A. Oh. "Come 2011 --

13 MR. CANALES: If he's going to read it, can
14 offer the whole letter into evidence? If he's going to
15 read part of it, it's not in evidence.

16 HEARING OFFICER: Well, he can ask him
17 questions about it even if it's not in evidence.

18 MR. CANALES: He's asking him to read the
19 paragraph. I didn't object before -- is this your
20 letter that you wrote? If is this your opinion, that's
21 fine, but now he wants to read the whole paragraph.

22 MR. MEDLOCK: I said the first two
23 sentences.

24 MR. CANALES: I will submit if it's one
25 sentence I would submit he's got to offer the whole



1 thing in evidence and I have no objection to the letter
2 becoming in evidence, Your Honor. And I will offer it
3 when he finishes.

4 HEARING OFFICER: Are you going to ask for
5 further parts?

6 MR. CANALES: Just that.

7 HEARING OFFICER: And the purpose of your
8 asking for it to be read is?

9 MR. MEDLOCK: First off, prior and
10 consistent statements and it goes to his prejudicial
11 nature towards HLD scoring index and the State of Texas.
12 And it probably actually reflects his opinion as to why
13 he scored the HLD score sheets so high, in the state's
14 opinion.

15 HEARING OFFICER: You're using this to
16 impeach this witness is what you're saying?

17 MR. MEDLOCK: Yes.

18 HEARING OFFICER: I don't think he needs to
19 offer it so I'm going to allow him to -- you can read
20 what was asked of you.

21 Q. (By Mr. Medlock) The first two sentences in the
22 paragraph six.

23 A. "In 2011 the THHSC now has in retrospect changed
24 the criteria and rules for Texas citizens to receive
25 Medicaid orthodontic care. THHSC now wants to take back

1 all the last 10 years fees from the dentist so the state
2 starts with accusing the dentist of too many claims for
3 too much money."

4 Q. In the last 10 years were you not part of this
5 system? Because you were a dental director and you
6 prior approved -- prior authorized these services?

7 A. Until the end of 2003, yes, sir.

8 Q. And that would be within the last 10 years from
9 2011?

10 A. Yes.

11 Q. So you're saying that you were wrong and that you
12 approved services that weren't correct?

13 A. No, sir, I'm not saying that.

14 Q. That's kind of what your statement says?

15 A. Well, that's your opinion. That's not my opinion
16 of what I was trying to say.

17 Q. But those are your words?

18 A. All right, sir. Thank you.

19 Q. So would it be fair to say that when you were at
20 NHIC that you approved things you probably shouldn't
21 have?

22 A. No, sir, I would not say that.

23 Q. Again, I would offer that those were your words?

24 MR. CANALES: Argumentative with the
25 witness, Judge. The document speaks for itself.

1 HEARING OFFICER: I'll sustain.

2 Q. (By Mr. Medlock) Do you have a contract to
3 testify with HHSC?

4 A. I do not believe so, no, sir.

5 Q. Do you have a contract to testify with the
6 attorney general's office?

7 A. I have a contract to be a reviewer for the
8 attorney general's office.

9 Q. So it's fair to say you have a contract to work
10 for the state?

11 A. I've had one every year for many years.

12 Q. How much are you being paid for your testimony?

13 A. I haven't -- I don't know yet.

14 Q. Do you have an hourly fee?

15 A. I have an hourly fee, yes, sir.

16 Q. Is it different for a hearing?

17 A. Yes, sir, it's different for a hearing. More
18 than reviewing cases.

19 Q. Earlier you said you treated Medicaid patients.
20 Was that as a general dentist?

21 A. Yes, sir.

22 Q. So you have never treated Medicaid patients as an
23 orthodontist?

24 A. No, sir.

25 Q. When you were dental director at NHIC from '95 to

1 2003, did you review and approve all orthodontic prior
2 authorization claims?

3 A. Yes, sir.

4 Q. Were those -- all those approvals solely on your
5 own?

6 A. No, sir.

7 Q. They were -- but you just said that you approved
8 all of the claims?

9 A. I did. My name was the approval name on every
10 one of them.

11 Q. So you said, but you did not approve all the
12 claims. I mean, you did not approve all the prior
13 authorizations; is that correct?

14 A. I did approve them all, yes, sir.

15 Q. On your own?

16 A. No, sir.

17 Q. Who helped you?

18 A. A lot of times, a couple of times a month, a
19 orthodontist, retired orthodontist, would drop by the
20 office and we would go over difficult cases and discuss
21 the scientific aspects of the orthodontics.

22 Q. So it's fair to say that in cases that you were
23 having difficulty in you reached out to a specialist who
24 was an orthodontist?

25 A. That sometimes happened, yes, sir. Plus I



1 telephoned those people constantly.

2 Q. I'm talking about the people with TMHP?

3 A. Yes, sir.

4 Q. Or NHIC?

5 A. NHIC.

6 Q. Who is that person?

7 A. Dr. George Shilam (phonetic).

8 Q. When y' all reviewed these difficult cases that
9 were outside the realm of -- that you felt you needed to
10 consult with an orthodontist on, what do those reviews
11 consist of?

12 A. Well, first of all, I wouldn't say that I felt I
13 needed to. Usually it was because there was one
14 important aspect to a case that was nice to have someone
15 with whom to discuss it.

16 Q. And again, what were the reviews consisted of?

17 A. Usually the subjective amounts to a case, such as
18 ectopic eruption.

19 Q. And as dental director, you said that -- so as
20 dental director you didn't feel comfortable scoring
21 those on your own so you asked -- you reached out for
22 help?

23 A. I don't think I said I didn't feel comfortable
24 scoring them on my own.

25 Q. Well, if you felt confident in your ability to

1 review all these claims, why need an orthodontist to
2 help you?

3 A. I didn't. He had a contract to come by
4 occasionally.

5 Q. Again, if he had a contract to come by
6 occasionally was it required in his contract that he had
7 to speak with you?

8 A. I have no idea. I'm sorry. He had been coming
9 by occasionally long before me.

10 Q. But the state probably wouldn't have had someone
11 else on contract if they felt that your general
12 dentistry requirements were enough to approve all these
13 orthodontic claims?

14 MR. CANALES: Objection form of the
15 question. Asking him what the state would have
16 something out of his realm of opinion. He's asking
17 about third party state of mind. Would the state have
18 known something about something -- I forgot, but he's
19 not asking his opinion, but the state's opinion. So I
20 think it's an improper question.

21 HEARING OFFICER: Dr. Off, if you have
22 personal knowledge about why this contract existed you
23 can testify about that otherwise, no.

24 THE WITNESS: I have no way of knowing what
25 they thought. I sometimes wondered myself.

1 Q. (By Mr. Medlock) If you wondered yourself then
2 why seek his review?

3 A. I should have said about many, many subjects
4 other than scoring 26 points.

5 Q. But those were conversations y' all had about
6 scoring 26 points?

7 A. Or scoring particular points or the degree of
8 pathology of some unfortunate recipient.

9 Q. So it's fair to say that y' all reviewed HLD
10 score sheets together?

11 A. Occasionally.

12 Q. When you called providers about the correctness
13 of the scores, what types of things were incorrect in
14 your opinion?

15 A. There's so many. As simple as where they place
16 the ruler if they had prejudices or preferences as to
17 measuring the objective measurements. Certainly the
18 interpretation of ectopic eruption and what it meant and
19 what was usual and what was unusual.

20 Q. You just said that you talked to him about where
21 they placed the ruler. Without actually being there and
22 seeing them do it, how do you know where they placed the
23 ruler?

24 A. Had no idea. That's why they called and we would
25 discuss.



1 Q. But you said you just called them and would tell
2 them about that?

3 A. No. No. They would call me and ask me things
4 like that. I would call them when they got a denial.

5 Q. And my question was, when you called providers
6 about the correctness of their scores, what types of
7 things were incorrect and you said where they placed the
8 ruler. Is that an incorrect statement on your part?

9 A. Probably so. I apologize to you. I didn't
10 understand the specificness of what you asked.

11 Q. Isn't it true that you were present when
12 Dr. Evans testified in the last two days?

13 A. Yes, sir.

14 Q. And earlier you heard him testify to instances
15 where that, in his opinion, ectopic teeth could be
16 outside the two definitions in the manual?

17 A. I don't recall that exactly, sir.

18 Q. I would submit to you that he did in that
19 statement?

20 A. All right. That's fine, yes, sir.

21 Q. So wouldn't be it correct that he didn't just
22 rely on the two examples when forming his definition of
23 unusual pattern of eruption.

24 A. I'm sorry?

25 Q. As I stated earlier that he didn't rely on the

1 two examples, I submitted to you that he said that in
2 his testimony?

3 A. All right.

4 Q. Then -- and then you said earlier that it seems
5 that in this case that only those two definitions or
6 only those two examples were used to score ectopic
7 eruptions, referencing Dr. Evans scores. But as I
8 submitted to you he said, that he did not just use those
9 two examples. So wouldn't it be correct that he didn't
10 just rely on those two examples and that he used the
11 definition unusual pattern of eruption?

12 A. That's a tough double negative for me. I would
13 assume he -- hope he used the first five words of the
14 sentence. I do not know.

15 Q. You said earlier the scoring for ectopic eruption
16 is subjective, correct?

17 A. Is subjective.

18 Q. You worked for NHIC for a number of years; is
19 that correct?

20 A. Yes, sir.

21 Q. As part of your role as dental director, did you
22 ever submit policies?

23 A. Constantly.

24 Q. Changes in rules?

25 A. Constantly.

1 Q. Part of that being changes in the manuals?

2 A. Constantly.

3 Q. And today you said that, you know, it's so
4 subjective that you having a problem with the
5 definition; is that correct? As being just unusual
6 pattern of eruption?

7 A. Yes, sir.

8 Q. Why didn't you seek to clarify it in all those
9 years that you were dental director?

10 A. I did. I was one of 35 people that were the
11 medical policy committee.

12 Q. Why wasn't it changed?

13 A. I have no idea, sir, I was not on that level.

14 Q. Could it be that it wasn't subjective?

15 A. I do not know, sir.

16 Q. Could it also be that the people that were on
17 that 35 member committee felt that it was a good and
18 accurate measure of what an ectopic eruption is?

19 A. I do not remember pushing to get ectopic eruption
20 changed that you're saying that I did.

21 Q. So you didn't -- so if you didn't push for it,
22 you generally accepted it to be a good and accurate
23 definition?

24 A. Yes, sir.

25 Q. One that any orthodontist could probably follow

1 without question? Do you have a response? You can't
2 shake your head, she's got to....

3 A. I suppose you're right, sir. I don't know what
4 they would think.

5 Q. But you were in the meetings with those and so y'
6 all had those discussions, correct?

7 A. Not about ectopic eruption, no, sir.

8 Q. So in the nine years you were dental director and
9 in the back of your head you probably have this thought
10 that we should change it, but it was never discussed in
11 these policies or rule changes?

12 A. I do not remember it being discussed at all in
13 those medical policy meetings.

14 Q. So you're saying you never brought it up in these
15 meetings?

16 A. I'm sure I did not bring that up.

17 Q. So it's safe to say at the time you were
18 comfortable with the definition of ectopic eruption, in
19 those nine years as dental director?

20 A. Yes, sir.

21 Q. Okay. I'm having a little trouble understanding
22 how from '95 you could be so comfortable with the
23 definition of ectopic eruption and today you're having
24 issue with it being on the score sheet. Could you
25 please clarify that for me?

1 A. I'm not having trouble with it on the score
2 sheet.

3 Q. I believe, you know, you said that in your --

4 A. Oh, in my letter.

5 Q. -- in your letter that you've had problems with
6 it?

7 A. I'm referring specifically to the apparent use of
8 the words after the comma.

9 Q. So why didn't you have a problem with it from '95
10 to '03 and now you have a problem with it when those --
11 as you testified that those -- that that has been in
12 there in the manual for, you know, as long as you can
13 remember?

14 A. I don't think anybody in Texas Medicaid has ever
15 seen the words after the comma as anything except two
16 examples.

17 Q. But I just told you Dr. Evans didn't rely on
18 those two examples. So are you saying that you're okay
19 with this scoring?

20 A. No, sir, I'm telling you I do not know what went
21 through any other dentists head. It's a subjective
22 evaluation.

23 Q. A subjective evaluation in which you had the
24 ability to try to the change policy, but you did not; is
25 that correct?

1 A. I did not want policy changed on that question.

2 Q. Earlier you talked about your report and you've
3 generated hundreds of reports and that you wrote your
4 reports based on accepted interpretations of Medicaid
5 rules?

6 A. I don't follow you. I'm sorry.

7 Q. Earlier when you were speaking with Mr. Canales
8 you talked about writing -- it was in your report and
9 you talked about hundreds of reports and that you
10 reviewed this case on accepted interpretations of
11 Medicaid rules. What are those accepted
12 interpretations?

13 A. I'm not sure I follow you, but whatever it is
14 it's -- whatever has always been in the Medicaid
15 Provider Manual.

16 Q. Well, I mean, those were your words,
17 interpretations. An interpretation is something outside
18 of what's the words on the page. Can we agree to that?

19 A. No, sir. Respectfully I couldn't agree to that.

20 Q. So you were only talking about the words on the
21 page, nothing else?

22 A. What's in the manual.

23 Q. Nothing outside of that?

24 A. Not in Medicaid.

25 Q. No subjective opinion that you may have with



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1 regard to the definition of ectopic eruption today?

2 A. Only what I can take from that criteria in the
3 manual.

4 Q. Isn't it true that Medicaid policy dictates that
5 you not only have 26 points, but that a patient also
6 have dysfunctional with regards to their mouth?

7 A. Yes, sir.

8 Q. Okay. And that's in the manual?

9 A. Yes, sir. That's in the manual.

10 Q. Let's talk a little bit about some of the
11 patients that you've just scored with Mr. Canales. Kind
12 of go the same order that you did. Number 67, well it's
13 our number 67.

14 A. Did you write down what my number is.

15 Q. It's whichever -- I think it's the second person.

16 A. Number two?

17 Q. It's LV?

18 A. Yes, sir. DA?

19 HEARING OFFICER: It's your No. 5.

20 THE WITNESS: The second one. I'm sorry.

21 HEARING OFFICER: LV, right?

22 THE WITNESS: I've got it. LB?

23 Q. (By Mr. Medlock) Yeah. B as in boy.

24 A. All right, sir.

25 Q. And this is -- if you don't mind we'll use your



1 color photo because I don't believe the one that the
2 state has -- okay. That's the patient file and I've got
3 your score sheet here.

4 A. All right, sir.

5 Q. On your score sheet you scored 36 points; is that
6 correct?

7 A. Yes, sir.

8 Q. And how did you arrive at that determination?

9 A. Because I found 12 teeth that I felt were in an
10 unusual pattern of eruption.

11 Q. And for purposes of Medicaid and unusual pattern
12 of eruption is ectopic eruption, how many can you have?

13 A. For Medicaid, you can have 12 teeth.

14 Q. So you scored all 12 teeth?

15 A. Oh, yes, sir.

16 Q. All six top all, six bottom --

17 A. Yes, sir.

18 Q. -- as ectopic? Can we turn to the photograph.
19 In looking at the photograph, how are the front two
20 teeth ectopically erupted.

21 A. Well, how are they?

22 Q. How are they?

23 A. You can see it better in this photograph.

24 Q. Please describe how?

25 A. They're flared out, they're all off the bony



1 ridge, they're out of the usual pattern of eruption.

2 Q. These bottom teeth?

3 A. Same thing. Same description. Same words.

4 Q. Does that look like the bone continues all the
5 way through?

6 A. Not to me. I know what the shape of the bone is
7 underneath there.

8 Q. Are you an orthodontist?

9 A. No.

10 Q. Is Dr. Evans an orthodontist?

11 A. I said he is.

12 Q. Let's see number 85. This is the next patient 85
13 YC.

14 A. And my number?

15 Q. We're going in line so it would probably be your
16 third patient.

17 HEARING OFFICER: 11.

18 THE WITNESS: 11.

19 MR. GARCIA: What are we on, John.

20 MR. MEDLOCK: It's the third one down, YC so
21 it's our number 85.

22 HEARING OFFICER: It's 411.

23 Q. (By Mr. Medlock) Okay. How did you arrive at
24 your score?

25 A. This patient got three points for overbite and

1 27 points for ectopic eruption.

2 Q. Why, in your opinion, is that not anterior
3 crowding?

4 A. Well, it's not anterior crowding. It's ectopic
5 eruption.

6 Q. I'm asking your opinion why is it not anterior
7 crowding?

8 A. Because it's an unusual pattern of eruption.
9 It's not teeth crowded necessarily at all.

10 Q. How are the teeth -- I believe in this pattern,
11 how are those ectopic?

12 A. It's a pattern because it goes tooth, tooth,
13 tooth, everyone of them. It's not one single tooth out
14 of a place. It's six teeth in a pattern, it says the
15 word pattern since you asked. It's an unusual pattern.

16 Q. Did you not hear Dr. Evans testify that one tooth
17 could be a pattern?

18 A. I heard him. I like it.

19 Q. So you're saying that only one tooth could be
20 pattern?

21 A. It might. I don't see it very often, but it
22 might.

23 Q. But in this instance, which of these bottom teeth
24 are ectopic?

25 A. Each of these.



1 Q. So the entire --

2 A. I think I scored.

3 Q. -- so the entire bottom --

4 A. Yes.

5 Q. -- is ectopic?

6 A. Actually I scored 23 through 26.

7 Q. Is that the -- just for the court's record, 23
8 through 26 what are those?

9 A. That's the lower four incisors.

10 Q. So each tooth has a number?

11 A. Yes, sir.

12 Q. Just for clarity of the court.

13 A. Yes, sir.

14 Q. All six of those bottom teeth --

15 A. All four of those incisors.

16 Q. Four bottom teeth?

17 A. Yes, sir.

18 Q. Are ectopic?

19 A. Yes, sir.

20 Q. They're off the alveolar ridge?

21 A. They don't have to be. They're an unusual
22 pattern of eruption.

23 Q. Let's go back to LB for a second, the first
24 patient.

25 MR. GARCIA: Is that 67, John.

1 MR. MEDLOCK: It was the first one we did.

2 MS. ALVARADO: Yes, it is.

3 Q. (By Mr. Medlock) I was just handed a note here
4 that says that, our Dr. Evans reviewed the pictures
5 showing that the teeth were flared out. Where did you
6 get that picture?

7 A. I'm not sure. I must have gotten it from the
8 chart that was furnished to me.

9 Q. Well, if I was to submit to you that we had
10 original patient records, where would you have gotten
11 that?

12 A. I wouldn't know if you wouldn't know, Counsel.

13 Q. So --

14 A. I really don't. Sorry.

15 Q. So if we had -- where did you get your records
16 from?

17 A. I probably got it -- did I get it from y' all?
18 Did I pick it up? I go over to the metrix office and
19 look at these things and pick things up. I could have
20 gotten it very well from the practice. I could have
21 gotten it from the Counsel. I'm sorry. I do not know.

22 Q. We may come back to that. Number 19. It's RT19,
23 it's a state's number 19.

24 MR. GARCIA: The initials?

25 MR. MEDLOCK: AC, yes.

1 HEARING OFFICER: So it's 415?

2 MR. MEDLOCK: 415, that's correct.

3 HEARING OFFICER: What are the initials on
4 that?

5 MR. MEDLOCK: AC.

6 Q. (By Mr. Medlock) Do you have it there, Doctor?

7 A. Yes, sir, I do.

8 Q. I'm looking at your photograph there. You scored
9 12 ectopic eruptions, correct?

10 A. Yes, sir.

11 Q. So all six upper and all six lower teeth --

12 A. Yes, sir.

13 Q. -- had ectopic; is that correct?

14 A. Correct, sir.

15 Q. And Dr. Evans scored what?

16 A. 16.

17 Q. 16 is what Dr. Evans scored?

18 A. I think.

19 Q. And how did he get his score?

20 A. I don't know. I do not know, sir.

21 Q. I believe when you referenced this patient you
22 talked about that they might have social problems later.
23 Why is that?

24 A. That's speculation on my part.

25 Q. Well, you made the statement. So, I mean, I



1 would like to know why you made that statement.

2 A. Speculation on my part that other people might
3 conceivably make fun of them because of their
4 appearance.

5 Q. Let me hand you what's been already marked
6 State's Exhibit RX. It's a provider's procedure manual.
7 And it's Bates RX, Bates page 68. And the last
8 highlighted paragraph, can you read that for the court?

9 A. "The intent of the program is to provide
10 orthodontic care to clients with handicapping
11 malocclusion to improve function. Although aesthetics
12 is an important part of self esteem, services that are
13 primarily for aesthetics are not within the scope of
14 benefits of this program."

15 Q. Would it also be fair to say that you consider,
16 as you just gave your opinion, that this patient may
17 have some ascetical problems later in life. Do you
18 consider aesthetics when you scored these patients?

19 A. No, sir, because that rule says primarily.

20 Q. So you've never -- you don't take aesthetically
21 or cosmetic issues when you scored any of these
22 patients?

23 A. Not with Medicaid, no, sir.

24 MS. ALVARADO: Are you skipping number 70?

25 MR. MEDLOCK: I'll come back to it. No.

1 Let's go to 70.

2 MS. ALVARDAO: Number 70, AC.

3 Q. (By Mr. Medlock) What did you score?

4 A. 36.

5 Q. How did you arrive at that score?

6 A. 36. 12 anterior teeth.

7 Q. So once again, you scored all 12 teeth as being
8 ectopic?

9 A. Yes, sir.

10 Q. Okay. Did you score this patient conservatively?

11 A. As opposed to?

12 Q. Liberally?

13 MR. CANALES: I'll object to the --

14 MR. MEDLOCK: It's contained.

15 MR. CANALES: It's argumentative, Your
16 Honor.

17 THE WITNESS: We don't score that way.

18 MR. CANALES: Oh, okay. He answered it.
19 I'll withdraw.

20 HEARING OFFICER: I was about to overrule
21 the objection.

22 Q. (By Mr. Medlock) When you say we don't score
23 that way, what do you mean by we?

24 A. Occlusionist as you called me.

25 Q. I think you called yourself that.

1 MR. CANALES: Argumentative. Objection.

2 THE WITNESS: The other counsel did.

3 HEARING OFFICER: Overruled.

4 Q. (By Mr. Medlock) Can you point out why there's
5 no issue with labial lingual spread in this case?

6 A. Oh, there is.

7 Q. Did you score it?

8 A. Oh, no.

9 Q. But in some of the case you scored 27 or 28 to
10 infinity, correct? Why wouldn't you score if there's
11 labial lingual spread here, why didn't you score that?

12 A. I just didn't see the need for.

13 Q. Does the HLD score sheet tell you to score
14 everything?

15 A. The HLD score sheet it's a subjective and when I
16 score ectopic eruption it's subjective.

17 Q. That's not the question I asked you. Does the
18 HLD score sheet ask you to score everything?

19 A. I think so, but you would have to show it to me.

20 Q. Exhibit P15.

21 A. "Enter score of zero if the condition is absent."

22 Q. Right.

23 A. Oh. I didn't -- did I not put. I did put zero.

24 Q. Right. But you just said in your testimony that
25 you saw labial lingual spread, but you did not include



1 it?

2 A. You asked me if I saw labial lingual spread and I
3 said, yes.

4 Q. Right. And what did you put for it?

5 A. I put zero.

6 Q. Well if you saw it why didn't you record it?

7 A. I didn't need to it wasn't necessary.

8 Q. Why wasn't it necessary?

9 A. Because I had 36 for ectopic eruptions.

10 Q. So if you scored everything the way it was
11 supposed to be scored, scoring everything you saw for
12 overjet, everything you saw for over bite, everything
13 you saw for ectopic eruption and labial lingual spread,
14 why didn't you score it?

15 A. Well, I don't think in dentistry that dentist do
16 that. When there's an egregious situation.

17 Q. Would it be an oversight not to record a number
18 there?

19 A. I wouldn't consider it an oversight.

20 Q. Does Medicaid say that you have to accurately
21 score out the score sheet?

22 A. I thought it said I had to put a zero there?

23 Q. But you just said in your testimony that you saw
24 something there?

25 MR. CANALES: Hold on. The question is

1 argumentative, Your Honor.

2 THE WITNESS: Back and forth all day.

3 HEARING OFFICER: Well, I guess I'm going to
4 sustain that only because I think you've made your
5 point, Mr. Medlock. If I hear something new that's
6 different.

7 Q. (By Mr. Medlock) Does the manual say to
8 accurately score the patient's condition.

9 A. You would have to show me. I don't remember the
10 words exactly.

11 Q. Number 45, RT 45.

12 HEARING OFFICER: We're at 26.

13 Q. (By Mr. Medlock) How many ectopic eruptions did
14 you score for this patient?

15 A. 33.

16 Q. So that's 11 teeth, correct?

17 A. Yes, sir.

18 Q. Which one anterior tooth did you not score as
19 ectopic?

20 A. That would be number six.

21 Q. Can you show on the photograph for the Judge
22 which one that is?

23 A. That would be -- let me find the best picture.
24 That would probably be this tooth right here, that's in
25 good position.

1 Q. And can you point to the overhead or under --
2 this is on the side view. Which overhead?

3 A. This one.

4 Q. Which one? I'm sorry?

5 A. This one. Where my finger is.

6 Q. Okay. How is that different than all the other
7 11 teeth?

8 A. Because surfaces of the tooth could function well
9 with the other teeth when they were straightened up.

10 Q. Is the tooth next to it crooked?

11 A. Yes, sir, it's out of position.

12 Q. Is it on the alveolar ridge?

13 A. It's part of the -- the rest of the pattern of an
14 unusual pattern.

15 Q. If it's part of the pattern and that tooth is
16 next to a crooked tooth, why is that not part of the
17 pattern?

18 A. That tooth is not part of the pattern. I just
19 said that tooth's in a good position. It could function
20 with the lower corrected tooth.

21 Q. Can you explain how something would qualify as
22 anterior crowding as a non orthodontist?

23 MR. CANALES: Object to the question, Your
24 Honor.

25 HEARING OFFICER: I'll sustain the objection

1 to the latter part of that question. I think the
2 question was, can you explain how something can be
3 anterior crowding.

4 THE WITNESS: Well, there's a number of
5 criteria, speaking strictly as a non orthodontist and as
6 an occlusion person who wants things lined up perfectly.
7 You start with the midline of the upper and the lower
8 midline. You start with the skeletal midline. You go
9 to the cephalometric studies and to the radiographs and
10 to the panographic films and you look at all of it to
11 see what is lined up and where the roots go below the
12 tooth. Because part of the most important part of this
13 as any orthodontist can tell you is what happens with
14 the roots underneath the crown of the tooth.

15 Q. According to -- that was a long-winded answer.
16 According to anterior crowding under the Medicaid
17 manual, what does that say?

18 A. I'll have to read it to you if you'll hand it to
19 me.

20 Q. I believe there's a copy right there.

21 A. Oh, it's up here. "Anterior teeth that require
22 extractions as a prerequisite to gain adequate room to
23 treat the case."

24 Q. Can you continue reading the whole paragraph?

25 A. "If the arch expansion is to be implemented as an

1 alternative to extraction, provide an estimated number
2 of appointments required to obtain adequate
3 stabilization. Arch length insufficiency must exceed
4 three and a half millimeters to score for crowding on
5 any arch. Mild rotations that may react favorably to
6 stripping or moderate expansion procedures are not be to
7 be scored as crowded."

8 Q. So it's fair to say that there are multiple ways
9 you can score something as being anterior crowded?

10 A. I wouldn't say that. I would say there's a
11 lengthy explanation, but I wouldn't call it multiple
12 ways.

13 Q. Do you only have to extract teeth?

14 A. Well that first sentence is pretty clear, isn't
15 it?

16 Q. Well, what about the next sentence, where it says
17 "If the arch expansion is to be implemented as an
18 alternative to extraction." So does that not give you
19 an alternative to extraction, under the definition of
20 anterior crowding?

21 A. I do not see it that way.

22 Q. So the words alternative to extraction mean
23 nothing to you?

24 A. No. It means a lot to me thank goodness. It
25 just says if the arch expansion is to be implemented.

1 Q. As an alternative to extraction?

2 A. To extraction.

3 Q. So you could -- an orthodontist --

4 A. But would you still score anterior crowding?

5 Q. It sounds like it to me.

6 A. But then it says it requires extractions of the
7 anterior teeth.

8 Q. It does not say that if you read the definition.

9 MR. CANALES: I'm going to object.

10 HEARING OFFICER: I do think we're getting
11 out of the question and answer. Maybe we could go back
12 to that.

13 Q. (By Mr. Medlock) So you would submit that the
14 only way any orthodontist submitting an HLD score sheet
15 with an anterior crowding on it you would have to
16 extract the tooth?

17 A. No. I wouldn't say that Counsel. It means that
18 if you score anterior crowding then you better be
19 prepared to go on and do some form of expansion device,
20 perhaps. It does say that.

21 Q. So there are alternatives?

22 A. There is an alternative, yes. I didn't mean to
23 say there was not.

24 Q. If you'll pull back that one last time. I'm
25 going to hand you what's been marked R40, RT40, it's a

1 patient file that Dr. Evans scored yesterday.

2 MR. CANALES: Dr. Orr, it will be your
3 number 30.

4 MR. MEDLOCK: I'm sorry. I'm sorry.
5 Dr. Evans scored.

6 MR. CANALES: I'm reminding Dr. Orr that
7 that would be his number 30. Initials NG, I believe.

8 THE WITNESS: I don't have a number 30, but
9 I'm glad to look at it.

10 Q. (By Mr. Medlock) I've got your score sheet here.
11 If you would like to look at that?

12 A. Very good.

13 Q. What did you score?

14 A. I scored a total of 31 points.

15 Q. And how did you arrive?

16 A. I got -- I'm sorry. 26 points apparently. I got
17 overjet two points, 24 points for ectopic eruption, and
18 five points for mandibular anterior crowding, for a
19 total of 31.

20 Q. So 31 was the score?

21 A. Yes, sir.

22 Q. Okay. Based on that photograph, could you point
23 out for the judge whether those teeth are ectopic?

24 A. The teeth that are ectopic. I think I scored
25 crowding also.



1 Q. So you scored crowding and ectopic?

2 A. Apparently so.

3 Q. So because you scored more than six that means
4 you scored ectopic on top and bottom; is that correct?

5 A. No. I said I scored mandibular teeth 22 by 25,
6 the lower incisors, 24 points. Including the uppers
7 there, but I scored five points for here and I should
8 have totaled 26. The five was probably -- should not
9 have been scored in addition.

10 Q. So doesn't it clearly state that you can only
11 score one or the other?

12 A. Oh. Yes.

13 Q. So that would be a mistake on your part?

14 A. I'm in good company.

15 HEARING OFFICER: Mr. Medlock, where in the
16 record is Mr. -- is Dr. Orr's score sheet for this
17 patient?

18 MR. MEDLOCK: It is actually under --

19 MS. ALVARADO: RSS.

20 MR. MEDLOCK: RSS.

21 HEARING OFFICER: Okay.

22 Q. (By Mr. Medlock) So it's fair to say you --

23 A. I'm in good company.

24 Q. You made a mistake? Yes or no you made a
25 mistake.



1 A. I made a mistake, Counsel.

2 Q. Does that patient have any functionality
3 problems?

4 A. I never heard the word functionality until I met
5 you. Ever. In my life.

6 Q. Well, okay. I will rephrase. Is that a --

7 A. A dysfunctional problem?

8 Q. Does that patient have a dysfunction?

9 A. Exactly. Yes, sir.

10 Q. How does that patient have a dysfunction?

11 A. Well, you can see it first by the abnormal wear
12 that's on these front teeth. They're eight to
13 ten percent shorter already in this person from grinding
14 them down. That's a function problem that requires --
15 it's corrected with orthodontics.

16 Q. Does this person have a problem chewing food?

17 A. Very probably.

18 Q. Speech problems?

19 A. Don't know.

20 Q. One more.

21 A. Can I put this back.

22 Q. Yeah. You can hand that back to me. It's RT58.
23 That's your score sheet. What did you score that
24 patient?

25 A. I scored this patient 26.



1 Q. How did you arrive at that score?

2 A. Three points net for overjet, one point net for
3 over bite, four points net for open bite, and 18 points
4 for ectopic eruption.

5 Q. So that would be six ectopic teeth?

6 A. Yes, sir.

7 Q. And which teeth did you score as ectopic?

8 A. The upper anterior teeth.

9 Q. The upper teeth?

10 A. The upper six -- I'm sorry. The upper six
11 anterior teeth.

12 Q. On the overhead photograph, which of those six?

13 A. That's these six right here.

14 Q. How are those ectopic?

15 A. Well there's -- they're out off of the
16 anterior -- the alveolar bone where they should.
17 They're anterior to the bone more than they should be.
18 They don't -- there in an unusual pattern. When you
19 look into a well made photograph it's how much also of
20 the inside surface of the tooth that you see.

21 Q. So you're saying that those -- that that patients
22 top six teeth were all ectopic, correct?

23 A. Those were that I counted, yes, sir.

24 Q. And they're off the alveolar ridge?

25 A. No, sir, not necessarily.

1 Q. But they were unusual?

2 A. They're trying to get off the alveolar ridge.
3 But that's not the reason that you would score them.

4 MR. CANALES: Your Honor, just for the
5 record that was HSSC number 58, which equals 78 on
6 Dr. Orr, that's patient RV, V like in Victor.

7 HEARING OFFICER: Thank you.

8 Q. (By Mr. Medlock) So with regards to all the
9 patients you've seen and scored in this case, would you
10 have treated them with braces to correct their
11 conditions?

12 A. Yes. I would have approved them for correction.

13 Q. Would you have treated them with braces to
14 correct the conditions?

15 A. I could have.

16 Q. And just for the record, how many patients have
17 you treated, start to finish, in orthodontics in your
18 entire career solely?

19 A. Zero.

20 Q. Okay.

21 A. As I told you.

22 MR. MEDLOCK: Pass the witness.

23 MR. CANALES: No questions, Your Honor.

24 HEARING OFFICER: Dr. Orr, that concludes
25 your testimony.



1 MR. CANALES: Your Honor, we would like to
2 call to the witness stand our last live witness Dr. Juan
3 Villarreal.

4 (Witness sworn.)

5 DIRECT EXAMINATION

6 BY MR. GARCIA:

7 Q. Would you please state your full name for the
8 record?

9 A. My full name is Juan Villarreal.

10 Q. And what is your occupation.

11 A. I'm a dentist.

12 Q. And are you a general dentist?

13 A. Yes.

14 Q. And are you licensed by the State Board of Dental
15 Examiners?

16 A. I am.

17 Q. Is your license in good standing and in full
18 force and effect?

19 A. Yes.

20 Q. How long have you been a licensed dentist in the
21 State of Texas?

22 A. 29 years.

23 Q. And where have you practiced dentistry in those
24 29 years?

25 A. I practiced in Harlingen, Texas since 1983.



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1 Q. Do you practice alone?

2 A. No.

3 Q. How many dentists work with you at Harlingen
4 Family Dentistry?

5 A. We have about 12 different dentist.

6 Q. Do any of those dentist have specialties?

7 A. Yes.

8 Q. Can you give the court a description of the
9 specialties?

10 A. We have Dr. Nguyen, who's an orthodontist. We
11 have Dr. Franklin, who's an orthodontist. We have
12 Dr. Teegardin, who's a general dentist who does
13 orthodontics. We have Dr. Dutta, who's a pediadontist.
14 We have Dr. Vargas, who's a pediadontist. We have
15 Dr. Lopez, who is a pediadontist. The rest of the
16 dentist are general dentist.

17 Q. And what array of dental services do you provide
18 at Harlingen Family Dentistry?

19 A. We basically provide all the -- from oral surgery
20 to general dentistry.

21 Q. Would it be fair to say that your practice is
22 basically a one stop shopping place for dental services?

23 A. Yeah. We're 26,000 square feet. I have 150
24 employees.

25 Q. How many employees do you have?



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1 A. 150.

2 Q. Are you one of the largest dental offices in the
3 country?

4 A. We are.

5 Q. In Harlingen, Texas?

6 A. Yes.

7 Q. Do you have policies in effect to help manage
8 this practice?

9 A. Yeah. We have a general policy manual that
10 applies to dental practice and we have different
11 policies in place.

12 Q. Do those policies go towards following federal
13 and state laws that would apply to the practice?

14 A. Definitely.

15 Q. And does Harlingen Family Dentistry provide
16 dental services in the Medicaid arena?

17 A. Yes, it does.

18 Q. In all of the different areas that you just
19 discussed?

20 A. Yes.

21 Q. And do you have policies in effect in your
22 practice geared towards properly providing services to
23 Medicaid within your office?

24 A. Yes, we do.

25 Q. Do you, in fact, -- you are the owner of



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1 Harlingen Family Dentistry, are you not?

2 A. Right.

3 Q. And do you not have systems in place to audit
4 your practice, to check to see that you're following
5 Medicaid programs?

6 A. We do. We actually have a chart on it where we
7 actually go over the records of dentist in our practice,
8 the patients they treat. We review them and make sure
9 the diagnosis is correct. That things are documented in
10 the record. Having served on dental board, the State
11 Board of Dental Examiners, I like to apply those rules
12 to my dental practice and anything else that applies.

13 Q. Tell me about your service to the State of Texas
14 on the State Dental Board of Dental Examiners.

15 A. Well, I had the opportunity to serve from 2001 to
16 about 2008 as an examiner.

17 Q. And as a part of that, did you preside over
18 licensing issues and alleged violations against dentists
19 and complaints?

20 A. I did. And we helped with the standard of care
21 and set up the rules for standard of care.

22 Q. Were you elected to an office within the board of
23 dental examiners?

24 A. Yes, I was. I was the secretary to the board.

25 Q. Is that basically the second in command from the

1 presiding officer?

2 A. Yes, it is.

3 Q. And did you assume responsibility to review and
4 audit or review patient charts that had complaints tied
5 to them?

6 A. I did. I spent my weekends, a lot of hours on
7 that.

8 Q. How many of those charts do you think you
9 reviewed?

10 A. The year I was secretary I think we had like 1400
11 complaints and I think I reviewed every single one of
12 them.

13 Q. That was a part of your service to the State of
14 Texas?

15 A. Exactly.

16 Q. And have you practiced in the area of
17 orthodontics?

18 A. Yes, I have.

19 Q. Specifically in the area of Medicaid
20 orthodontics?

21 A. Yes.

22 Q. For what years?

23 A. Back when I started in 1983, actually about 1984
24 I was the only general dentist in the Valley actually
25 doing orthodontics for kids. The orthodontist were not



1 doing it at the time because they did not pay enough.

2 Q. And as a part of your participation in Medicaid
3 orthodontics, were you familiar with the HLD scoring
4 system and the instructions tied to that scoring index?

5 A. Exactly.

6 Q. And tell me again the years you were doing the
7 orthodontics? Medicaid orthodontics?

8 A. 1983 to about 2003, somewhere in there.

9 Q. 20 years?

10 A. Yes.

11 Q. And has the instruction for ectopic eruption --
12 was it the same that we have today back in those
13 20 years that you practiced?

14 A. It was the same.

15 Q. In those 20 years that you practiced Medicaid
16 orthodontics, did HHSC or the office of inspector
17 general ever challenge any of your scoring of ectopic
18 eruption?

19 A. No.

20 Q. Did you follow the instruction for ectopic
21 eruption?

22 A. I did.

23 Q. And if you scored a tooth in those 20 years for
24 ectopic eruption, would it have met the criteria of an
25 unusual pattern of eruption?



1 A. Yes, it would have.

2 Q. Do you work closely with Dr. Teegardin?

3 A. I do.

4 Q. And does she help manage the orthodontic services
5 for Harlingen Family Dentistry?

6 A. She basically took over my cases when I stopped
7 doing orthodontics.

8 Q. And did you visit with her when she first got
9 started on scoring cases for Medicaid orthodontic cases?

10 A. Yeah. She also started about, I think it was
11 1989 or 1990 started doing cases and I worked with her
12 on cases and we had a chart we'd review and we actually
13 diagnosed cases together.

14 Q. Would you have discussions about what would be an
15 unusual pattern of eruption for ectopic eruption
16 purposes on the score sheet?

17 A. We did.

18 Q. Dr. Villarreal, what has changed over these
19 30 years, in your opinion, on the interpretation of
20 ectopic eruption?

21 A. Well, my opinion when I was doing it and I think
22 over time as dental directors changed also the
23 philosophy changed. Even though the definition is the
24 same it's how it's interpreted. Especially ectopic
25 eruption being very subjective. So one of the things we



1 did in our practice is we constantly stayed in
2 communication with the dental director. In fact Dr.
3 Orr -- I used to always call him on cases and review
4 cases with him and he would kind of guide me through the
5 process. Sometimes there were disagreements. Like
6 there was something that I might have graded and he
7 disapproved. A lot of times in talking with him and
8 running a narrative, he would, you know, either approve
9 it or disapprove it again, but I knew where I stood with
10 it. I think over the years that kind of has changed.

11 Q. What would you expect to happen if you submitted
12 a case during your 20 years to Medicaid for orthodontic
13 services and it was denied? Would you expect
14 Dr. Jim Orr to give you a call?

15 A. A lot of times he would. He would call me and
16 say, you know, I don't agree with you on this case and
17 we would talk about the case. And either I see his
18 viewpoint or he sees mine and I resubmit with a
19 narrative or something.

20 Q. Was he helpful to you in developing an
21 understanding of what was and what was not ectopic
22 eruption for HLD purposes?

23 A. It definitely was very helpful because I can see
24 what they are looking for in their system of approving
25 the cases. We get pressured from the patients wanting

1 the treatment and I -- well tell them we're going to
2 send it in, but we're not sure they are going to approve
3 this one and sometimes they would and sometimes they
4 wouldn't.

5 Q. That was during your 20 years of doing
6 orthodontic services?

7 A. Right.

8 Q. Did you ever receive any notice from HHSC, you
9 know, in the last 10 years that HHSC or TMHP was not
10 reviewing the records and the scoring that was submitted
11 to them?

12 A. No, I didn't. In fact, I mentioned we do a chart
13 on it and we have orthodontist in our practice that are
14 board certified and I know that the HHSC, you know, or
15 TMHP basically approved the case or disapproved them. I
16 figured that they would know exactly whether to approve
17 or disapprove. So the chart audits were more on other
18 parts in general dentistry.

19 Q. Do you have any doubts as to whether or not
20 Dr. Teegardin, Dr. Nguyen, and Dr. Franklin, do you have
21 any doubts about the scoring that they had submitted for
22 the cases that are under review?

23 A. I looked at some of these cases and there is some
24 disagreements on some cases that I probably wouldn't
25 have sent in, you know, that would be my opinion and

1 that's the subjective part. But sometimes talking to
2 them because they had a clinical impression that I
3 didn't. I didn't get to see the patient and they would
4 explain to me the reason they were submitting it that
5 way.

6 Q. Were there cases where the orthodontist, Franklin
7 or Nguyen, the board certified orthodontist, would show
8 you whatever you might have missed in the analysis?

9 A. Exactly. And usually, you know, their have
10 viewpoint on it and I had mine, but pretty much I would
11 agree with what they were doing. I got to see all their
12 work, I got the see the patients and the work they were
13 doing also. I really respect these guys because they to
14 do a quality job on these patients.

15 Q. Did you ever have any indication from either of
16 those doctors, Nguyen, Franklin or Teegardin, that they
17 were trying to lie, cheat, or steal, or fudge in any way
18 to Texas Medicaid in connection with the orthodontic
19 services?

20 A. No. And my experience is running as dental
21 practice I've had dentist that to do things that I don't
22 agree with that are not there. And if they would have
23 had that idea they wouldn't be there.

24 Q. Does that fall back on the policies that you've
25 instituted with one of the largest dental practices in

1 the country to make sure you do things right?

2 A. Definitely.

3 MR. GARCIA: I pass the witness, Judge.

4 CROSS EXAMINATION

5 BY MR. MEDLOCK:

6 Q. It's already been established, but just for
7 further clarity, Harlingen Family Dentistry is a
8 provider in the Texas Medicaid program; is that correct?

9 A. Yes, sir.

10 Q. And as part of becoming a provider you sign a
11 provider enroll agreement?

12 A. Yes.

13 Q. Under which things you agree to certain terms and
14 conditions to become a provider to get reimbursed for
15 services, is that correct?

16 A. Yes, sir.

17 Q. Let me show you a copy of one of the portions of
18 the provider enrollment agreement. We spoke earlier
19 with it with one of the other witnesses?

20 MR. GARCIA: John, can I see where you're
21 looking at.

22 HEARING OFFICER: If you could tell us where
23 it is in the record.

24 MR. MEDLOCK: It's RI, Bates page 53. It's
25 the one we used yesterday. RI, Bates page 53.

1 Q. (By Mr. Medlock) Do you recognize this is a
2 provider enrollment agreement for Harlingen Family
3 Dentistry or an excerpt cause you have many, correct?

4 A. Right.

5 Q. All right. Under the heading one dash one, it
6 says, "Agreements and documents constituting the
7 agreement." Can you read the highlighted section of
8 that paragraph.

9 MR. CANALES: Judge, can I approach because
10 we can't find it.

11 HEARING OFFICER: Yes.

12 MR. CANALES: I want to see what he's
13 talking about.

14 Q. (By Mr. Medlock) Again, I'm showing you the same
15 thing. One dash one under the "Agreements and documents
16 constituting" could you read the highlighted portion
17 there?

18 A. Yes, sir. "Provider agrees to comply with all
19 the requirements of the provider manual as well as all
20 state and federal laws and amendments governing and
21 regulating Medicaid."

22 Q. So any laws pertaining to the Texas Medicaid
23 program you have to abide by those; is that correct?

24 A. Right.

25 Q. And on the second page under 1.2.3, the

1 highlighted portion there, could you read that?

2 A. "This agreement is subject to all state and
3 federal laws and regulations relating to fraud and abuse
4 in healthcare and the Medicaid program."

5 Q. So any of those laws that pertain to that
6 Harlingen would be subject to?

7 A. Exactly.

8 Q. Is that correct? There's one more. Under 1.3 on
9 Bates page 56 under 1.3.1, the highlighted portion
10 there.

11 A. "Provider certifies that information submitted
12 regarding claims or encounter data will be true and
13 accurate and complete. That such information can be
14 verified by source documents in which data entries made
15 by the provider."

16 Q. So reading of that last paragraph, everything
17 that's submitted by Harlingen, you certify to be true
18 accurate and correct?

19 A. Yes, sir.

20 Q. And are you aware that the Texas Medicaid manual
21 dictates the rules in which orthodontist or actually any
22 provider in the program must follow?

23 A. Yes.

24 Q. And anything outside of that context is a
25 violation?

1 A. Yes, sir.

2 Q. You said you have two orthodontist and a general
3 dentist who practice in orthodontia; is that correct?

4 A. Yes, sir.

5 Q. How do you pay those orthodontist?

6 A. Dr. Franklin gets paid a salary per day, a daily
7 right. Dr. Nguyen gets paid a commission.

8 Q. What about Dr. Teegardin?

9 A. And Dr. Teegardin gets paid a commission.

10 Q. What is that commission based on?

11 A. It's basically based on production -- actually
12 percentage of collections.

13 Q. Would it be fair to say the more they bill the
14 more they receive in payment?

15 A. Yes.

16 Q. Earlier you talked about when you had reviewed
17 some of your orthodontics -- orthodontist work that you
18 had some disagreements in some of their scores. If you
19 were -- had been scoring those and you thought that
20 person did need services under Medicaid, would a
21 narrative have helped maybe get that person approved?

22 A. Well, depends on how the narrative is written.
23 There's also function, you know, you talked about
24 functionality and it appears that that's your word, but
25 basically it's, you know, it's a tongue thrush and



1 there's other things involved in the clinical
2 examination that could be added on to the record.

3 Q. So -- but it would help aid to TMHP in reviewing
4 the case?

5 MR. GARCIA: Object. Your Honor, I've got
6 to object because he's referring to the state of mind of
7 TMHP and how they would interpret something. He's
8 asking him to comment on what TMHP thinks.

9 MR. MEDLOCK: I'm actually asking him what
10 he thinks if it would help. I didn't ask that TMHP
11 would approve it and according to policy a narrative can
12 be written. Supplemented.

13 HEARING OFFICER: I'll let him answer. He's
14 testified that he's had a lot of discussions with
15 Dr. Orr when he was the dental director. If it's his
16 perception it might be helpful and I'll allow him to
17 answer that question. I'll overrule the objection.

18 THE WITNESS: Well, they do ask for
19 narratives like for example on implants, you know, they
20 ask for narratives. In fact, they didn't ask for them a
21 year ago, but now recently they're asking for narratives
22 in just about everything.

23 Q. You don't have to submit it, but it's optional,
24 correct?

25 A. Well, now they're almost requiring a narrative.

1 Q. Previously during the time period?

2 A. They weren't, but we optionally we would add it
3 on to clarify something.

4 Q. You spoke about if somebody was committing -- was
5 being a bad actor you would dismiss that person?

6 A. Yeah.

7 Q. If one of your orthodontist was trying to defraud
8 the Medicaid program would they necessarily tell you
9 that?

10 MR. GARCIA: I'm going to object, Your Honor.
11 This goes to the state of the mind of another person.

12 HEARING OFFICER: You know, if
13 Dr. Villarreal, if you've had any experience that would
14 cause you to be able to answer that question you can
15 answer. If you --

16 THE WITNESS: Well let me answer the
17 question because I think, you know, we do have a system
18 in place. If a dental assistant sees something that is
19 not correct also. I mean, assistants can also pickup on
20 things that are correct or not correct. They will
21 report it. We have a report system in our office. So I
22 would check that orthodontist or whoever it is by the
23 report system.

24 Q. (By Mr. Medlock) Mr. Garcia talked about being
25 one of the larger providers of dental services. Since

1 2007, has your billings to the Medicaid program gone up?

2 A. The fees went up a few years ago so it also
3 increased the amount of money coming back from Medicaid.

4 Q. And say in the last year, how much did you get
5 reimbursed by? Let's just say 2011 from Texas Medicaid?

6 A. 2011? I'm not really sure. I know during
7 depositions you guys asked me that question. It was
8 around \$5 million.

9 Q. Would that be the whole practice or was that just
10 specific to orthodontia?

11 A. I think it's pretty much the whole practice.

12 Q. I'm sorry?

13 A. It includes the pediadontist and general
14 dentistry.

15 Q. So that's everything?

16 A. Yeah.

17 Q. I think in the deposition you said it was
18 somewhere in the nature of \$12 million?

19 A. No. You might want to look at it because I know
20 I didn't use 12.

21 Q. Oh. Would the \$12 million figure be more of
22 Medicaid and private pay?

23 A. That was everything.

24 Q. Okay. So \$5 million Medicaid?

25 A. Right.



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1 Q. Of that how much are your Medicaid services?

2 A. I think 40 percent of that is ortho.

3 MR. MEDLOCK: Okay. We have nothing
4 further.

5 REDIRECT EXAMINATION

6 BY MR. GARCIA:

7 Q. Just one question. Doctor, let's set aside the
8 Medicaid. Dentist that have not done Medicaid. Is
9 there a compensation model for dentist that have kind of
10 been around for years that is based on production.

11 A. Yes. You know, it can be both ways either salary
12 or per daily rate or production. Most providers like
13 the production because it, you know, they have more
14 opportunities to make a little bit more.

15 Q. And how many years have you been practicing?

16 A. 29.

17 Q. And has that model of dentist getting paid for
18 their production been around in all those years?

19 A. Pretty much.

20 Q. So is there anything unusual about the way
21 Dr. Teegardin and Dr. Nguyen are paid in your office?

22 A. It's pretty customary I think that most practices
23 do it that way.

24 Q. And it's not an incentive for them to lie, steal,
25 or cheat the Medicaid system, is it?

1 A. No.

2 Q. Would they work there for you if they were lying,
3 stealing, and cheating from Medicaid or anybody else?

4 A. No.

5 MR. GARCIA: Pass the witness.

6 RECROSS EXAMINATION

7 BY MR. MEDLOCK:

8 Q. Two questions. You said it wasn't -- that the
9 percentage on billings is not an incentive or intended
10 to be for people to bill high amounts to receive more
11 compensation. But could it also be that way that way?
12 That somebody in order to get a higher salary wants to
13 bill more?

14 A. It could be. It depends on the person's level of
15 competence and how fast they do things. Some people are
16 faster and they like to make a little more money. I
17 mean, that's an option.

18 Q. But it could -- if somebody did want to lie,
19 cheat, and steal, a compensation package like that could
20 necessarily say that somebody would want to bill more?

21 A. It's always possible. But I don't think that's
22 always set up in our practice.

23 Q. The three orthodontist or two orthodontist and
24 the general dentist who does orthodontia, do they still
25 work for your practice?

1 A. Dr. Franklin recently decided to retire. So he's
2 not working, he resigned.

3 Q. He resigned?

4 A. Yes.

5 Q. And it's because he wanted retire?

6 A. And he was a little upset over this Medicaid
7 issue.

8 Q. The Medicaid issue pertaining to this case?

9 A. Pertaining to, you know, what is going on with
10 the payment hold and also with cases started -- cases
11 started being denied, too. So there's hardly any work
12 in Medicaid now.

13 MR. MEDLOCK: Pass the witness.

14 REDIRECT EXAMINATION

15 BY MR. GARCIA:

16 Q. Dr. Villarreal, what is -- what is your opinion
17 of the character of Dr. Teegardin.

18 MR. MEDLOCK: Objection, relevance.

19 HEARING OFFICER: Overruled.

20 Q. (By Mr. Garcia) What is her character? Is she
21 an honest and truthful person in your experience?

22 A. Well, Dr. Teegardin is also -- has been there
23 since 1989, in our dental practice and I have full
24 confidence and faith in her. I know she's a very caring
25 person and does a great job with patients and services

1 patients in our practice.

2 Q. When you or not there in the office is
3 Dr. Teegardin your second in command?

4 A. She's a deputy executive director for our
5 organization so she helps also with the administrative
6 side of it.

7 Q. In your experience is Dr. Nguyen an honest and
8 truthful person?

9 A. Dr. Nguyen is very meticulous in what he does and
10 he's very honest and ethical about what he does.

11 Q. And in your experience with Dr. Franklin has he
12 been an honest and truthful person?

13 A. Yes, he has. He does very high quality dentistry
14 and orthodontics.

15 MR. GARCIA: Pass the witness.

16 MR. MEDLOCK: Nothing further Your Honor.

17 HEARING OFFICER: Dr. Villarreal that
18 concludes your testimony.

19 THE WITNESS: Thank you.

20 HEARING OFFICER: Further evidence from the
21 Petitioner?

22 MR. CANALES: Yes, Your Honor. We would
23 like to offer the depositions. We do not have the video
24 we have the written depositions. I think they are
25 already in evidence anyway. The depositions of

1 Dr. Altenhoff and the depositions of Dr. Milee. He's
2 not a doctor, forgive me. Mr. Milwee. Am I right on
3 that?

4 MR. MEDLOCK: That's correct.

5 MR. CANALES: They are referred to under in
6 my notebook. I forgot the exhibit number right off.

7 MR. MEDLOCK: I think are nine and ten or
8 something around there.

9 HEARING OFFICER: Let me look at my exhibit
10 list. Nine and 10.

11 MR. CANALES: And if we have exhibits also
12 attached to them? 9A what we referred to before.

13 HEARING OFFICER: Right.

14 MR. CANALES: And if I can just have a
15 second to inquire of counsel housekeeping, because
16 sometimes I forget things. My committee tells me,
17 Judge, that I should shut it down and we rest, Your
18 Honor.

19 HEARING OFFICER: All right. Rebuttal from
20 OIG or do you close?

21 MR. MEDLOCK: The state closes, Your Honor.

22 HEARING OFFICER: Okay. Let's talk about
23 closing arguments for a moment. And why don't we just
24 go off the record a minute.

25 (Discussion off the record.)



1 HEARING OFFICER: Okay. So we're going to
2 have initial closing arguments due from both parties by
3 the close of business on May 29th. And then reply
4 arguments will be due on June 11th. Please, cite to the
5 record as much as you possibly can. And address the
6 various legal issues that we talked about at the
7 beginning of the hearing. And I will also issue an
8 order, probably tomorrow, memorializing this post
9 hearing schedule and if anyone needs to change it y' all
10 just arrive at an agreement and send me a motion.

11 MR. MEDLOCK: Just quickly for clarity, when
12 we submit our closing arguments, send it to yourself and
13 also opposing counsel?

14 HEARING OFFICER: Yes.

15 MR. CANALES: We file it electronically in
16 other words.

17 HEARING OFFICER: Yes. Yes. That will work
18 fine. Okay. Is there anything else we need to do
19 before we go off the record. I can't think of anything.
20 I think we're all up to date on exhibits. All right. I
21 thank both parties very much and we will go ahead and
22 adjourn.

23 (Hearing adjourned.)
24
25



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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.

Janalyn Reeves

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