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

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HEARING

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19 On the 31st of May, 2013, the following  
 20 proceedings came on to be heard in the above-entitled  
 21 and numbered cause before the Honorable Howard Seitzman  
 22 and Catherine Egan, Associate Law Judges presiding,  
 23 held in Austin, Travis County, Texas.

24 Proceedings reported by Machine Shorthand.

25

0002

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2

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PROCEEDINGS

2 JUDGE EGAN: We're reconvening in SOAH  
3 Docket Number 529-13-0997. It is 9:05 a.m. on May  
4 31st, 2013.  
5 And, Mr. Moriarty, are you ready to call  
6 your first witness --  
7 MR. MORIARTY: I am, Judge.

8 JUDGE EGAN: -- for the morning not the  
9 first one in this case.

10 MR. MORIARTY: Good morning. Before I do  
11 that, I've marked Dr. Ornish's deposition as  
12 Respondent's 86; and I offer Respondent's 86 into  
13 evidence.

14 JUDGE EGAN: Any objection?

15 MR. HECTOR CANALES: Yes. We -- yes, your  
16 Honor. We object to him offering Doctor -- Dr.  
17 Ornish's deposition?

18 MR. MORIARTY: Right.

19 MR. HECTOR CANALES: The entire  
20 deposition?

21 MR. MORIARTY: Their expert's deposition  
22 we're offering it into evidence.

23 MR. TONY CANALES: Can I -- can I answer,  
24 Judge?

25 JUDGE EGAN: No.

0006

1 JUDGE SEITZMAN: It's up to her. I'm a  
2 figurehead this morning.

3 MR. HECTOR CANALES: Your Honor, that  
4 deposition was not marked as a -- as an exhibit in  
5 their case -- in their case in chief and there's -- I  
6 could see using the deposition to impeach a witness, if  
7 he answers differently. That would be offered for that  
8 purpose. But in this case, that would be improper and  
9 it wasn't part of their -- their exhibit list.

10 JUDGE EGAN: Response? Was it part of  
11 your exhibit list?

12 MR. MORIARTY: We had no idea that  
13 Dr. Ornish -- who we were told up until 9:00 or 10:00  
14 o'clock last night was going to be here to testify and  
15 we were looking forward to having the opportunity for  
16 him to share his view of the world with this Court; but  
17 he apparently had personal business, pressing personal  
18 business that caused him to abandon the field of  
19 battle.

20 So, we now offer his entire deposition  
21 into evidence to help this Court understand what  
22 happened here.

23 JUDGE EGAN: Okay. I'm going to allow in  
24 Respondent's Exhibit 86.

25 MR. MORIARTY: And I'll now call Doctor --

0007

1 JUDGE EGAN: So, it is admitted. I'm  
2 sorry.

3 MR. MORIARTY: Thank you, Judge.  
4 Call Dr. Nazari to the stand.

5 MR. HECTOR CANALES: While Dr. Nazari is  
6 approaching, your Honor, if I could, just a  
7 housekeeping, clear up P82?

8 JUDGE EGAN: Yes.

9 MR. HECTOR CANALES: It was brought to our

10 attention that petitioner's offered two exhibit numbers  
11 under -- identified as P82. We have changed one of  
12 those to P82A. So, P82A is the Texas Health & Human  
13 Services Commission, April 4th, 2012, notice of payment  
14 hold letter. And I have made that correction with the  
15 official court copy --

16 JUDGE EGAN: All right.

17 MR. HECTOR CANALES: -- as well.

18 JUDGE EGAN: I believe I handed you my  
19 copy. So, if I could have it back.

20 MR. HECTOR CANALES: Yes. I'm sorry.

21 JUDGE EGAN: And just for the record,  
22 there is another duplication and that's 81. I don't  
23 have those exhibits up here. So, during a break if we  
24 could get that --

25 MR. HECTOR CANALES: We'll work on that,

0008

1 your Honor.

2 JUDGE EGAN: Thank you. All right. Go  
3 ahead and proceed.

4 Would you swear the witness in, please?

5 BEHZAD NAZARI,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MORIARTY:

9 Q. Good morning.

10 A. Good morning, sir.

11 Q. Would you introduce yourself to the Judges,  
12 please?

13 A. I'm Behzad Nazari, B-E-H-Z-A-D first name,  
14 Nazari, N-A-Z-A-R-I.

15 MR. MORIARTY: Stacey, could I have  
16 64-42-004?

17 JUDGE SEITZMAN: Is that 62?

18 MR. MORIARTY: That's Petitioner's  
19 64-42-004.

20 JUDGE SEITZMAN: Thank you.

21 Q. (BY MR. MORIARTY) Dr. Nazari, we have a  
22 document that's been taken from your files that's been  
23 offered into evidence. Have you had the opportunity to  
24 look at this file?

25 A. I believe so.

0009

1 Q. What we see on that file is one of your dental  
2 assistants has filled out the diagnosis on a blank HLD  
3 form before any patient was examined. What I'd like  
4 you to do is I'd like you to look at the Judges and I'd  
5 like you to tell the Judges why your dental assistants  
6 are filling out diagnose -- diagnosis forms without a  
7 patient.

8 MR. HECTOR CANALES: Objection. 601,  
9 lacks foundation.

10 JUDGE EGAN: Overruled.

11 A. If you can compare the previous HLD score

12 sheets with Dr. Kanaan's handwriting, this is  
13 Dr. Kanaan's handwriting. We have never let any  
14 assistants to fill any HLD score sheet with a -- you  
15 dictate to them -- you might see that, you know, I'm  
16 sitting there. I have gloves on. Patient is in the  
17 chair and then we are examining them and they might  
18 fill the numbers for us like overjet, overbite or  
19 whatever it needs to be called and we might see some of  
20 those.

21 I have never and ever, ever let any  
22 person, other than me or Dr. Kanaan or even the general  
23 practice any other doctor to do diagnosis or complete  
24 initial index. Never done that.

25 Q. Which question was it that you were answering?

0010

1 A. That why did I let --

2 MR. HECTOR CANALES: Objection.

3 Argumentative.

4 JUDGE EGAN: Sustained.

5 A. Why did I let the dental assistant to fill

6 this.

7 MR. HECTOR CANALES: Dr. Nazari.

8 JUDGE EGAN: It's sustained.

9 MR. HECTOR CANALES: It's sustained, which

10 means you don't have to answer.

11 THE WITNESS: I'm sorry. Yeah. This is

12 all new to me. I'm sorry.

13 Q. (BY MR. MORIARTY) If I understand your

14 testimony under oath, you've just sworn under oath

15 before this panel that you have never let a dental

16 assistant fill out one of these forms; is that true?

17 A. Under my supervision when I dictate to them,

18 they fill it; otherwise, as far as being a doctor and

19 examining or completing an index, no, sir, I've never

20 done that.

21 Q. You've routinely allowed dental assistants in

22 your practice to do things that are only done by

23 dentists; isn't that true?

24 A. Never.

25 Q. Never?

0011

1 A. No, sir.

2 Q. Okay. So, why don't you explain to this Court

3 what it was that you were taken before the Texas State

4 Board of Dental Examiners for in 2008. Do you remember

5 that?

6 A. Yes, I do.

7 Q. And what happened in that case?

8 A. It was an agreed board settlement and I did

9 not admit I let them -- you know, let any dental

10 assistant do anything that, you know, beyond their

11 descriptive duty.

12 Q. My question, sir, is this: What were you

13 accused of doing, what misconduct were you accused of

14 doing before the dental board?

15 A. If I remember correctly, there was a lack of  
16 blood pressure on the chart and also they had told me  
17 that the changing the elastics and then the wires and  
18 the -- there were accusations of the -- you know, by  
19 the patient that, you know, they put all the brackets  
20 and all the braces, which was not correct, which was  
21 not founded.

22 Q. My question, sir, is this: You were accused  
23 of allowing dental assistants to do dental work,  
24 orthodontics work on your patients and that was the  
25 accusation before the State Board of Dental Examiners;

0012

1 isn't that true?

2 A. It was -- I don't know what that accusation.  
3 But there was a complaint against me by one of the  
4 patients; but as far as, you know, what I was accused  
5 of, I don't know. I did not see the actual complaint  
6 form from the State Board. I don't remember. If you  
7 have it, I can see it.

8 Q. What this form indicates -- and I want the --  
9 you to explain to the Court because they need to know  
10 this.

11 Are you telling this Court that Dr. Kanaan  
12 filled out that entire form?

13 A. That looks to be his handwriting. Class I  
14 molar, crowding, open bite, extract upper right four,  
15 TPA. I believe that's his handwriting. But he --

16 Q. And he did it without any patient identifying  
17 information on the form?

18 MR. HECTOR CANALES: Objection. Form.  
19 Speculation.

20 A. I don't know what Dr. Kanaan did. I cannot  
21 speculate on that.

22 JUDGE EGAN: Hold on. You need to let  
23 me --

24 THE WITNESS: I'm sorry.

25 JUDGE EGAN: Overruled.

0013

1 But you need to let me make a ruling  
2 before you proceed.

3 THE WITNESS: I'm sorry.

4 JUDGE EGAN: I know you're nervous. So,  
5 just slow down a little bit and pause before you answer  
6 a question so that if somebody has an objection, I can  
7 rule on it.

8 THE WITNESS: Yes, ma'am. Yes, ma'am.

9 JUDGE EGAN: Go ahead.

10 A. Okay. I don't know if Dr. Kanaan -- what  
11 Dr. Kanaan did on that day. I do not know. But there  
12 are other identification. We have the X rays in front  
13 on the chairs and we have the chart on the chair. We  
14 don't just look at a blank piece of paper, you know, do  
15 HLDs on parents.

16 JUDGE EGAN: Okay. You have X rays on the  
17 chart or the chair? It wasn't clear.

18 THE WITNESS: On the chair, that's what I  
19 mean. We have a -- everything is digitalized and then,  
20 you know, you have the screen. So, you have the X rays  
21 there and then, you know, you have -- most of the time  
22 you have the pictures of the patients. And then when  
23 we do the examination, there might be a blank form in  
24 front of us that when we fill it but you have the  
25 actual paper chart in front of us so we can -- we know  
0014

1 that there are -- this paper belong to this patient.  
2 We don't just get a piece of paper and then randomly,  
3 you know, examine patients or complete the HLD index  
4 score. We don't do that.

5 JUDGE EGAN: Go ahead.

6 Q. (BY MR. MORIARTY) You don't?

7 A. No, sir.

8 Q. Well, what was the condition of this form  
9 before Dr. Kanaan put paper -- put handwriting on it?  
10 This paper right there that's in front of you, 64-42 --

11 A. What was the condition? I don't know, sir.

12 Q. Sir --

13 JUDGE EGAN: You need to wait.

14 Q. (BY MR. MORIARTY) -- please allow me to  
15 finish my --

16 JUDGE EGAN: I'll instruct the witness,  
17 please.

18 Just wait until he finishes asking the  
19 question.

20 THE WITNESS: Yes, ma'am.

21 JUDGE EGAN: That's why I say pause before  
22 you begin answering.

23 THE WITNESS: Yes, ma'am.

24 Q. (BY MR. MORIARTY) If I understand your claim  
25 here today, you never fill out blank pieces of paper --  
0015

1 Dr. Kanaan does not fill out -- just fill out blank  
2 pieces of paper without patient identification. Is  
3 that what you're saying?

4 A. No, I did not say that, sir.

5 Q. What are you saying?

6 A. What I'm saying is that when we have all the  
7 records related to the patient in front of us, the  
8 paper chart or the X rays so we know that -- who the  
9 patient is and then we fill out the HLD index form. If  
10 their name is missing, later on it's going to be  
11 completed by the dental assistants or, you know, by  
12 a -- one of our, you know, billing persons, it is in  
13 the patient's file.

14 Q. How -- how would you know which patient this  
15 diagnosis goes to?

16 A. Because it belongs to that chart, which is in  
17 front of us. We don't have ten patients on the same

18 chair. You have one patient, one chair, one chart at a  
19 time.

20 Q. So, Dr. Kanaan fills out the diagnosis on a  
21 blank sheet of paper before the name of the patient is  
22 even filled in? That's what you're claiming?

23 A. I don't know.

24 Q. You don't know?

25 A. I don't know. It might have happened. I

0016

1 don't know but I don't see anything wrong with it.

2 Q. I have...

3 No doubt.

4 MR. HECTOR CANALES: Objection. Sidebar.

5 JUDGE SEITZMAN: That's exactly what we  
6 were talking about, Mr. Moriarty. We don't need that.

7 MR. MORIARTY: I apologize. I know better  
8 than that.

9 Q. (BY MR. MORIARTY) All right. Now, when you  
10 testified before the legislature, you testified on  
11 behalf of the Texas Dentists for Medicaid Reform?

12 A. Yes, sir.

13 Q. Who asked you to do that?

14 A. I did.

15 Q. You asked yourself to do that?

16 A. That was my volunteering, yes, sir.

17 Q. And did you meet with anybody before you  
18 testified?

19 A. Did I meet with anybody before I -- yeah,  
20 the -- my colleague dentists.

21 Q. Which ones?

22 THE WITNESS: Do I have to say the names?

23 JUDGE EGAN: Yes.

24 THE WITNESS: I do? Okay.

25 MR. HECTOR CANALES: Well, your Honor, I

0017

1 object to the relevancy --

2 THE WITNESS: I mean, if I have to.

3 MR. HECTOR CANALES: -- of his testimony  
4 before the question.

5 JUDGE EGAN: What is the relevancy of this  
6 question?

7 MR. MORIARTY: I'll prove it up, Judge.

8 Q. (BY MR. MORIARTY) When you testified before  
9 the legislature, you swore under oath before the  
10 legislature that you had never had any paperwork  
11 violations in your entire career as a Medicaid dentist,  
12 isn't that true, or words to that effect?

13 A. I said I have never paperwork violation?

14 Q. Yes, sir.

15 A. I don't believe I said those words.

16 Q. Did you intend to communicate to the  
17 legislature that your record keeping is essentially  
18 flawless?

19 A. I did not intend to do that. No, sir.

20 Q. In fact, your record keeping has substantial  
21 defects in it, doesn't it?

22 A. Probably.

23 MR. MORIARTY: Let's look at Petitioner's  
24 Exhibit 25.

25 Q. (BY MR. MORIARTY) Now, you know we have  
0018

1 asserted that you have -- you're missing a number of  
2 HLD score sheets in the patient files. You're aware of  
3 that, aren't you?

4 A. I believe everything has been in the chart  
5 when we turned it in.

6 Q. That doesn't answer my question, sir.

7 My question, sir, is: You're aware that  
8 the State of Texas says that you have got files that  
9 are incomplete. Specifically there are five files that  
10 are missing HLD score sheets. You're aware that we've  
11 made that assertion, aren't you?

12 A. Yes, sir.

13 Q. And that assertion is true, isn't it?

14 A. I don't believe so.

15 Q. Do you deny that assertion?

16 A. I -- probably yes because I turned in whatever  
17 we had.

18 Q. I don't have any doubt, sir, that you "turned  
19 in whatever I had."

20 My question is: Those records were not  
21 complete; isn't that true?

22 A. I need to look at the records.

23 Q. We will look at the records. We're going to  
24 look at your file.

25 Now, this is actually from your lawyer's  
0019

1 file. That's -- see that P down there at the bottom,  
2 P00417?

3 A. Yes, sir.

4 Q. That means that copy of your patient record  
5 came from your lawyer's files.

6 A. Okay. Yes, sir.

7 Q. All right. Now, that page 001, that's not an  
8 HLD form, is it?

9 A. This one, no, sir.

10 Q. Page 2, that's not an HLD form?

11 A. No, sir.

12 Q. Page 3?

13 A. No, sir.

14 Q. Page 4?

15 A. No, sir.

16 Q. Page 5?

17 A. No, sir.

18 Q. Page 6?

19 A. No, sir.

20 Q. Page 7?

21 A. No, sir.

22 Q. 8?  
23 A. No, sir.  
24 Q. 9?  
25 A. No, sir.

0020

1 Q. 10?  
2 A. No.  
3 Q. 11?  
4 A. No.  
5 Q. 12?  
6 A. No. No.  
7 Q. 13?  
8 A. No, sir.

9 Q. That's it. That's all there is.

10 JUDGE EGAN: Mr. Moriarty, which patient  
11 number is this? I've got the --

12 MR. MORIARTY: Patient -- it's 25,  
13 Petitioner's -- it's Patient 25.

14 Q. (BY MR. MORIARTY) There is no HLD score sheet  
15 in that file, is there?

16 A. I don't see it, no, sir.

17 Q. That's a records violation, isn't it?

18 A. If I don't have it, I don't know. Probably it  
19 is.

20 Q. Do you admit now that you lack the proper file  
21 for Patient Number 25?

22 A. I do not admit to that because you don't have  
23 it, it doesn't mean it did not exist.

24 Q. Sir, the rule is that you're obligated to keep  
25 your patient files in proper order so that when we, the

0021

1 State of Texas, show up to examine your patient records  
2 we can take that patient record, make our copies of  
3 that record and we -- we live and you live with  
4 whatever's in that file at the time we show up to get  
5 it; isn't that right?

6 A. I believe so, yes, sir.

7 Q. And if it's not in the file, the rule in  
8 medicine is it didn't happen; isn't that true?

9 MR. HECTOR CANALES: Objection, your  
10 Honor.

11 A. I --

12 JUDGE EGAN: What's your objection --  
13 objection.

14 MR. HECTOR CANALES: It's -- it's argu- --  
15 it's argumentative, your Honor.

16 JUDGE EGAN: Overruled.

17 A. Can you repeat the question again? The rule  
18 is?

19 Q. (BY MR. MORIARTY) Sir, you're obligated to  
20 keep the HLD score sheet, the molds, the X rays, the  
21 CEF, the consent forms, you're obligated to keep all of  
22 that information in the file, aren't you?

23 A. Yes.

24 Q. And if you fail to do so, you are not entitled  
25 to turn in claims for that file to Medicaid; isn't that  
0022

1 true?

2 A. At the time that we completed the HLD, the  
3 X rays, the photographs and we send to Texas Medicaid  
4 they will not process any -- any pre-authorization  
5 without proper documentation. So, if it is missing and  
6 we did not turn five HLDs that day, it does not mean  
7 that they never existed. It did exist; otherwise,  
8 the pre-auth- -- pre-authorization will never be  
9 processed.

10 Q. Here's my question, sir: When we show up to  
11 get your patient files, we're entitled to rely on  
12 whatever's in the file that day. True?

13 A. That day, I don't know that day is true. That  
14 moment. It might take us a few days to gather all the  
15 information.

16 Q. You're not claiming that you lacked time to  
17 get your files together when we came up to get the  
18 files, are you?

19 A. We -- it took us sometime to get it.

20 Q. Did you have adequate time to gather up all  
21 the proper documents so that we could get all the  
22 proper files?

23 A. I believe so.

24 Q. All right. And you acknowledge that this file  
25 did not have an HLD form and, thus, did not --  
0023

1 A. In that time -- if you don't have it, yes, I  
2 agree with it.

3 MR. MORIARTY: Your Honor, I didn't finish  
4 my question.

5 A. Sorry.

6 JUDGE EGAN: Again, listen to the  
7 question. He's asking you whether or not when they  
8 came up to pick up the file was the HLD score sheet in  
9 the file.

10 THE WITNESS: Okay.

11 A. As you say, it does not exist -- it does not  
12 exist in that time, yes, sir.

13 Q. (BY MR. MORIARTY) All right. And will you  
14 concede that for Patient 44, Patient 48, Patient 51 and  
15 Patient 53, all those files are also missing HLD score  
16 forms, aren't they?

17 A. At the time that they picked up the charts,  
18 yes, sir.

19 Q. All right. Now --

20 JUDGE EGAN: Will you give me those  
21 numbers again? I got 44, 48.

22 MR. MORIARTY: 25, 44, 48, 51 and 53.

23 JUDGE EGAN: Thank you.

24 Q. (BY MR. MORIARTY) Now, when we are evaluating  
25 your conduct based on what we find in your chart, all

0024

1 we've got to go on is what you provide to us; isn't  
2 that true?

3 MR. HECTOR CANALES: Objection. Requires  
4 speculation.

5 The question is asking for Dr. Nazari to  
6 enter the mind of OIG of what they have and don't have.

7 JUDGE EGAN: Overruled.

8 A. I don't know the answer, sir.

9 Q. (BY MR. MORIARTY) Well, you're not claiming  
10 that we're treating you unfairly when we go through  
11 your files and we find a lack of proper documentation?

12 A. I'm not claiming anything, sir.

13 Q. Okay.

14 MR. MORIARTY: Now, let's go to P64-25.

15 Q. (BY MR. MORIARTY) Now, this is the HLD score  
16 sheet for Patient Number 25, correct?

17 A. Yes, sir.

18 Q. Now, let's go to the upper left-hand corner of  
19 that document. Do you know what that is?

20 A. No, sir.

21 Q. Let me represent to you that that is a mark  
22 that indicates that that is the document that -- as it  
23 was Bate stamped by the Texas Health Medicaid  
24 Partnership. That indicates that HLD form did not come  
25 from your records, did it?

0025

1 MR. HECTOR CANALES: Objecting to  
2 testimony by counsel.

3 A. I believe so --

4 MR. HECTOR CANALES: Excuse me.

5 JUDGE EGAN: Do you have a question in  
6 there?

7 MR. MORIARTY: Yes, sir (sic).

8 Q. (BY MR. MORIARTY) This form, this document  
9 P64-025 did not come from your files, did it?

10 MR. HECTOR CANALES: Objection --  
11 objection, your Honor. Lacks foundation. Based on --  
12 the question is based on the number that Dr. Nazari's  
13 already testified he doesn't know.

14 JUDGE EGAN: He can answer whether or not  
15 it came from his file.

16 Go ahead. Overruled.

17 MR. HECTOR CANALES: Then I would request  
18 the entire picture -- the entire sheet be shown to him.

19 JUDGE SEITZMAN: Well, give us -- give us  
20 a second.

21 JUDGE EGAN: All right. Go ahead.  
22 Proceed.

23 MR. MORIARTY: Thank you.

24 Q. (BY MR. MORIARTY) I get old and sometimes I  
25 forget stuff. So, if I've asked this before, I'm just

0026

1 trying to have a clean record. This document P --

2 MR. MORIARTY: What's the Bates number  
3 down on the bottom, Stacey?

4 MR. KHAROD: P64-25-0002.

5 Q. (BY MR. MORIARTY) P64-25-0002 didn't come  
6 from your records, did it?

7 A. If that paper has that stamp on it, no, sir.

8 Q. Okay. So, we're now in agreement that you're  
9 missing five HLD score sheets, correct?

10 A. Yes, sir.

11 Q. Now, let's go to the question of molds. Doing  
12 a dental mold is important for the purpose of properly  
13 evaluating the medical condition of a child; isn't that  
14 true?

15 A. Yes, sir.

16 MR. MORIARTY: Okay. May I approach  
17 counsel, your Honor?

18 JUDGE EGAN: Yes.

19 MR. MORIARTY: And may I approach the  
20 witness?

21 JUDGE EGAN: Yes.

22 JUDGE EGAN: Give counsel an opportunity  
23 to look.

24 MR. MORIARTY: Sure.

25 JUDGE EGAN: I mean, you can put that in

0027

1 front of the witness but let counsel look at it.

2 THE WITNESS: Yes, ma'am.

3 MR. MORIARTY: For the record, I'm not  
4 going to offer this into evidence. I'm going to seek  
5 testimony from it.

6 JUDGE EGAN: Do you have a copy for the  
7 Judges?

8 MR. MORIARTY: I do.

9 JUDGE EGAN: All right. Proceed.

10 Q. (BY MR. MORIARTY) Dr. Nazari, do you remember  
11 when the folks from OIG showed up at your office, what  
12 was that, November of 2011?

13 A. Yes, sir.

14 Q. Now, do you recall the testimony of Jack Stick  
15 yesterday?

16 A. Yes.

17 Q. You were present during the entirety of his  
18 testimony?

19 A. Yes, sir.

20 Q. And you heard Mr. Stick give the numbers for  
21 how many patients you guys had during the time period  
22 before OIG showed up seeking your records and the drop  
23 off in the number of patients?

24 A. Yes, sir.

25 Q. Can you explain that to the Court?

0028

1 A. Explain why there was a drop off?

2 Q. Yes, sir.

3 A. Okay. On -- November when they came in and

4 then next month is December. Okay? December we  
5 usually close between, like -- before the Christmas  
6 holidays and New Year, we are closed. So, it's always  
7 a slow time. Not many patient seek dental treatment.  
8 Between January 1st and March 1st there  
9 was a suspension of all the orthodontic -- you know,  
10 new orthodontic acceptance was completely suspended.  
11 It is a bulletin up there that we can't -- you know, if  
12 you guys allow me, I can show you bulletin showing from  
13 January 'til -- January 1st, 2012, and March or -- or  
14 February 29th that bulletin said they have suspended  
15 all of the pre-authorizations for the new cases.

16 So, it wasn't only me. Nobody in the  
17 state of Texas was sending any -- any cases to the --  
18 to any -- TMHP because that's the time that when we all  
19 found out that there is a problem going on with the  
20 TMHP as far as, you know, pre-authorization process.  
21 Then in month of March they started going through all  
22 the transitions and -- to the new three dental  
23 companies. MCUs they call them, MCA, Delta Dental and  
24 also Dental Quest. Then --

25 JUDGE EGAN: Dental what?

0029

1 THE WITNESS: Dental Quest.

2 A. Then there was a confusion whether these  
3 patients are going to be assigned to the same provider  
4 or not because it went to the -- from the  
5 fee-for-service into an HMO plan, dental DMO plan. I  
6 don't know whatever they want to call it. Then we  
7 don't know who these patients are going to be the  
8 providers and then we're trying to go through all the  
9 applications. We needed to know if we're going to be  
10 approved or not.

11 And immediately sometime in March one of  
12 the companies called MCNA, send me a letter that --  
13 yes, sir.

14 JUDGE EGAN: He's answering your question.

15 MR. MORIARTY: I asked through March.

16 JUDGE EGAN: Okay.

17 MR. MORIARTY: Now he's going on through  
18 March. I'll let him --

19 JUDGE EGAN: He's in March right now is  
20 what I understand.

21 MR. MORIARTY: I'll let him keep going.

22 Q. (BY MR. MORIARTY) Keep talking.

23 JUDGE EGAN: Well --

24 A. No. I'm just telling you -- you asked me why  
25 it dropped. I'm just giving you simple explanation.

0030

1 JUDGE EGAN: You can go ahead and finish  
2 through March.

3 THE WITNESS: Yes, ma'am.

4 A. Then in March -- sometime in March one of the  
5 dental DMO company send me a letter that they have

6 disqualified me because of the same reason we just  
7 mentioned, state board agreed settlement. They don't  
8 want me to treat their orthodontic patients. So, we  
9 were just -- it was the confusion and I could not take  
10 the responsibility to bring any more patients on board  
11 and not being able to treat them. We did not know  
12 what's going on.

13 Dr. Altenhoff did this to us. We were  
14 talking to her and we were going through e-mails,  
15 calling. They changed -- they changed the director in  
16 the Texas Medicaid. Dr. John Roberts came in. We were  
17 talking to them. We were talking to DA. It was mass  
18 confusion. Just because we did not accept any cases  
19 does not mean that, you know, I was trying to hide  
20 something.

21 JUDGE EGAN: Okay. Thank you.

22 Go ahead.

23 Q. (BY MR. MORIARTY) So, you're saying the fact  
24 that your -- your number of new patients submitted --  
25 the fact that that just fell off the charts for the

0031

1 month of December is because it was Christmastime?

2 A. That's one of the reasons, yes, sir.

3 Q. Okay. And then January, February and March  
4 was -- you couldn't sign up any cases?

5 A. January and February -- January and February  
6 was complete suspension. We have the bulletins.

7 Q. Okay. Now, let me ask you this: About -- for  
8 the year -- let's say the year 2010, about how many  
9 new --

10 JUDGE SEITZMAN: I'm sorry. I didn't get  
11 the year. The door closed.

12 What was the year you were talking?

13 MR. MORIARTY: 2010.

14 Q. (BY MR. MORIARTY) For the year 2010 about how  
15 many new orthodontics patients would you have come in  
16 the door per week, per year, per month?

17 A. Coming through the door?

18 Q. Yes, sir. How many new patients?

19 A. Many. I don't know. But, you know, how many  
20 we have sent to Medicaid is different -- I mean, not  
21 Medicaid. TMHP. Probably around -- we were averaging  
22 about -- about a thousand patients, 1200 a year  
23 probably.

24 Q. 1200?

25 A. Yeah. That we were submitting to -- we were

0032

1 submitting to TMHP.

2 Q. My question, sir, is: For whatever number you  
3 were submitting to TMHP, how many came to you for  
4 orthodontic services?

5 A. How many came to me for orthodontic services?

6 I don't know, sir.

7 Q. Well --

8 A. I can't give you an exact number.

9 JUDGE EGAN: Can you give -- do you have  
10 an approximation?

11 THE WITNESS: They came directly seeking  
12 orthodontics on their own? Probably 50 percent of them  
13 about 5-600 patients.

14 JUDGE SEITZMAN: Mr. Moriarty, as I  
15 understood your question to Dr. Nazari is: How many  
16 new patients, be they Medicaid or non-Medicaid, were  
17 coming in in that time period that you've inquired  
18 about.

19 MR. MORIARTY: That's --

20 JUDGE SEITZMAN: Is that your question?

21 MR. MORIARTY: Yes, sir.

22 JUDGE SEITZMAN: Dr. Nazari, do you  
23 have -- nobody's going to hold you to an exact number.  
24 But do you have an estimate of the number of new  
25 patients that came in in that time period?

0033

1 THE WITNESS: Okay. Can I be more clear?  
2 I mean, both private pay and then Medicaid patients  
3 coming in and we actually started the treatment or they  
4 just came in for examination and then they just went  
5 away? I need --

6 JUDGE SEITZMAN: I'll let doctor -- I'll  
7 let Mr. Moriarty clarify his question.

8 MR. MORIARTY: Thank you, Judge.

9 Q. (BY MR. MORIARTY) Were you doing private-pay  
10 and Medicaid --

11 A. Yes, sir.

12 Q. -- clients at that time?

13 A. Yes, sir.

14 Q. What percentage of Medicaid? Which percentage  
15 private pay?

16 MR. HECTOR CANALES: Object to the  
17 relevancy of this, your Honor.

18 JUDGE EGAN: Overruled.

19 A. Probably about 30-40 percent private pay and  
20 70 to 60 percent Medicaid.

21 Q. (BY MR. MORIARTY) So, the 70 or the 60  
22 percent that was Medicaid, about how many perspective  
23 new patients would you have come in in a year?

24 MR. HECTOR CANALES: Are we still -- if I  
25 can ask for some clarification. What year or --

0034

1 MR. MORIARTY: I'll -- I'll clarify.

2 Q. (BY MR. MORIARTY) For the year 2010 -- and  
3 nobody's going to marry you to these numbers. I'm  
4 looking for your best recollection.

5 A. Okay.

6 Q. Okay? For the year 2010 about how many  
7 perspective Medicaid orthodontics patients came to your  
8 clinics?

9 A. Meaning that we did not start treatment, they

10 just came in for examinations?

11 JUDGE EGAN: Yes.

12 Q. (BY MR. MORIARTY) For --

13 A. Just came in for examination. I just want to  
14 clarify that.

15 THE WITNESS: Yes, ma'am.

16 JUDGE EGAN: The entire body.

17 A. Probably we would get -- just Medicaid  
18 population probably we would get about 2,000, 2500.

19 JUDGE EGAN: Per month? Per year?

20 THE WITNESS: No. Per year.

21 JUDGE EGAN: Okay.

22 THE WITNESS: Between the two -- two  
23 offices, I believe, yeah, two offices during that time.

24 JUDGE EGAN: Thank you.

25 Q. (BY MR. MORIARTY) Give me your range of --  
0035

1 would it be no less than 2,000, no more than 3,000?

2 MR. HECTOR CANALES: I'm going to object  
3 at this point in time, your Honor. Just one  
4 anticipation of what this guessing testimony's going to  
5 be used for that Mr. -- it's going to be some sort of  
6 calculation that's later going to be turned in and it's  
7 just improper. These are all guesses and I don't  
8 believe it's proper testimony.

9 JUDGE EGAN: Well, it's an estimation.

10 And he's already testified as to what the estimation  
11 was.

12 MR. MORIARTY: Okay.

13 MR. HECTOR CANALES: And that's my  
14 objection, your Honor, is to having him testify as to  
15 estimations. I don't think that is proper especially  
16 when I think the plan is to use these estimations to  
17 use questions in the future.

18 JUDGE EGAN: When they get to there, you  
19 can raise your objection.

20 MR. HECTOR CANALES: Okay. Thank you,  
21 your Honor.

22 Q. (BY MR. MORIARTY) Well, you were here when  
23 Jack Stick testified that for the three years before --  
24 three years in question --

25 A. Uh-huh.

0036

1 Q. -- that we're looking at your records that you  
2 guys turned in 6500 HLD forms claiming -- wanting  
3 payment for those patients?

4 A. Yes, sir.

5 Q. Do you remember that testimony?

6 A. Yes, sir.

7 Q. The question I have and that I think the Court  
8 has is how many patients came to see you -- what was --  
9 what was the population of potential Medicaid  
10 orthodontics clients who actually came into your  
11 clinics that was then culled down to 6500 patients?

12 MR. HECTOR CANALES: Object to -- I  
13 need -- object to the question, your Honor, because I  
14 believe it's misleading in that it does not state any  
15 time periods. The testimony for -- for -- that Mr.  
16 Stick gave, I believe, was a large range.

17 JUDGE EGAN: You want a time period. I  
18 don't recall what time period Mr. Stick's referring to.  
19 If you do, can you narrow it to that time period?

20 Q. (BY MR. MORIARTY) Let me ask this question  
21 like this. Maybe we can get there this way.

22 A. Yes, sir.

23 JUDGE SEITZMAN: Let me interrupt you for  
24 a second. If Mr. Moriarty doesn't get an answer, I'm  
25 going to be asking the same question because that was  
0037

1 the question we asked earlier is what is the total pool  
2 from which a segment was drawn from.

3 MR. HECTOR CANALES: And I'm not trying to  
4 disrupt that, your Honor. Understand. I just want to  
5 make sure that we're dealing with the right time  
6 periods and that it's clear to the witness because I  
7 think we might be jumbling multiple years. And I  
8 understand the Court wants that information.

9 JUDGE SEITZMAN: And I understand that  
10 you're trying to get comparative time periods.

11 MR. HECTOR CANALES: That's right.

12 Q. (BY MR. MORIARTY) Listen carefully,  
13 Dr. Nazari.

14 A. I -- yes, sir.

15 Q. For the time period before the State showed up  
16 for a record search --

17 A. Yes, sir.

18 Q. -- 2009-2010, what percentage of the potential  
19 Medicaid orthodontics patients that actually came to  
20 your clinics seeking orthodontic services did you  
21 screen so this many didn't -- you sought to give  
22 services for and this many did not? And I'm just  
23 looking for a ratio or a percentage or a sense of  
24 magnitude.

25 A. Yes, sir, I understand that. Probably

0038

1 about -- we submitted probably -- I'm just guessing --  
2 about 70 percent.

3 Q. 70 percent of the patient?

4 A. 70 -- yes, sir.

5 MR. HECTOR CANALES: Might I just have a  
6 running objection to this entire line of estimating  
7 questions, your Honor?

8 JUDGE EGAN: Yes.

9 MR. HECTOR CANALES: Thank you.

10 Q. (BY MR. MORIARTY) Your best sworn testimony  
11 before this panel is that 70 percent of the Medicaid  
12 orthodontics patients that came to your door you  
13 submitted to Medicaid for payment --

14 A. I believe --  
15 Q. -- for --  
16 A. I believe so, sir.  
17 Q. Okay. And can we fairly surmise from these 63  
18 cases that in virtually all of those cases you  
19 submitted claims for those 70 percent of people based  
20 on ectopic eruption?  
21 JUDGE EGAN: If you don't know you can say  
22 you don't know.  
23 A. I don't know. I don't know.  
24 Q. (BY MR. MORIARTY) Okay. All right.  
25 Let's go to -- let's go to that document I  
0039

1 put in front of you, the records affidavit.  
2 A. I didn't say.  
3 Q. Now, how did you find out that the State was  
4 out at your office seeking medical records?  
5 A. I was called by the office manager.  
6 Q. And that office manager would be Mr. Tardy?  
7 A. Yes, sir.  
8 Q. William Tardy?  
9 A. Yes, sir.  
10 Q. He's the gentleman who actually signed this  
11 affidavit, this records affidavit that's in front of  
12 you, correct?  
13 A. Yes, sir.  
14 Q. And he was your office manager and the person  
15 who was responsible for gathering up these medical  
16 records?  
17 A. Yes, sir.  
18 Q. And you wanted him to give all of the medical  
19 records that were in your possession to the authorities  
20 as they requested, correct?  
21 A. Yes, sir.  
22 Q. Okay. Now, I'm not going to offer this  
23 document into evidence because it's got the actual  
24 names of the patients on it; but what I would like to  
25 have you do is go to the second page and you see a  
0040

1 client PCN that's down at the bottom that says --  
2 MR. MORIARTY: May I approach the witness,  
3 Judge?  
4 JUDGE EGAN: Yes, you can.  
5 Q. (BY MR. MORIARTY) I can simplify this,  
6 Dr. Nazari. For this patient -- you see on the form?  
7 A. Yes, sir.  
8 Q. That patient, which we show as Patient Number  
9 43, your office did not provide a dental mold, did it?  
10 A. No, sir.  
11 Q. And for Patient 13, your office did not  
12 provide a dental mold, did it?  
13 A. No, sir.  
14 JUDGE EGAN: If you want to go with him  
15 and stand to see, you're welcome to. It's up to you.

16 MR. HECTOR CANALES: I will, your Honor.  
17 JUDGE EGAN: Okay. We're at Patient 13  
18 did not have a dental mold.  
19 MR. MORIARTY: Yes, ma'am.  
20 Q. (BY MR. MORIARTY) That's true. Patient 13  
21 did not have a dental mold?  
22 A. That's what this marking here.  
23 Q. Well, the records affidavit that was signed by  
24 William Tardy, your office manager, confirms that that  
25 patient did not -- you did not submit a mold for that

0041

1 patient, did you?  
2 A. No, sir.  
3 Q. Okay. Now, there's one that -- there's no  
4 mold for the patient underneath that but let me  
5 represent to you that patient is not one of these 63.  
6 A. Okay.  
7 Q. Okay?  
8 A. Yes, sir.  
9 Q. So, go to the next page and we've got another  
10 missing mold for this child but that child is not one  
11 of these 63 that's in question here.  
12 A. Yes, sir.  
13 Q. Okay. And the next child is Patient Number 32  
14 and there's a missing mold in that case, correct?  
15 A. Yes, sir.  
16 Q. And Patient Number 2, missing mold?  
17 A. Yes, sir.  
18 Q. Patient Number 1, missing mold?  
19 A. Yes, sir.  
20 Q. Patient Number 4, missing mold?  
21 A. Yes, sir.  
22 Q. Three more patients missing mold, but they're  
23 not in the 63. So, they don't matter for this hearing.  
24 A. Okay. Yes, sir.

25 JUDGE SEITZMAN: Excuse me. Since you're  
0042

1 not over there, you're talking about the three that are  
2 grouped together before the very last one on that page?  
3 MR. MORIARTY: Yes, sir.  
4 Q. (BY MR. MORIARTY) And then none of those  
5 three are part of the 63 in question?  
6 A. Yes, sir.  
7 Q. And then one underneath that's Patient Number  
8 48, missing mold?  
9 A. Yes, sir.  
10 Q. Okay. And last page, Patient Number 45,  
11 missing mold?  
12 A. Yes, sir.  
13 Q. Okay. Now, you agree that --  
14 A. You want me to keep this or you --  
15 Q. I think that's all I've got, thank you, on  
16 this one.  
17 Now, you agree --

18 JUDGE EGAN: Hold on just a second. Just  
19 wanted to make sure I got all of them.

20 MR. MORIARTY: 1, 4, 13.

21 JUDGE SEITZMAN: Judge Seitzman gave them  
22 to me. I know what's missing.

23 Q. (BY MR. MORIARTY) Okay. So -- and those  
24 molds are required to be kept by Texas State Board  
25 rules and by the rules that you --

0043

1 A. Yes, sir.

2 Q. Okay. And you didn't -- you didn't have them?

3 A. No, sir.

4 Q. Okay. They're all -- you acknowledge those  
5 are all program violations, aren't they?

6 A. I can -- I don't know. I don't know about  
7 program violations entitled to. It might be.

8 Q. Well, you under- -- I'm sorry. Go ahead and  
9 finish.

10 A. Yeah. It might be, yes.

11 Q. Okay. You understand you're obligated to know  
12 the Medicaid rules and you're obligated to follow them  
13 and if you don't know what they are, you understand  
14 you're obligated to find out what they are?

15 A. Yes, sir.

16 Q. You're obligated to read this manual and  
17 follow it, aren't you?

18 A. Yes, sir.

19 Q. And if you fail to do so, we have the right to  
20 not pay you, don't we?

21 A. I don't know that. I don't know if you're  
22 obligated to do that or not.

23 Q. Okay.

24 A. That's not my decision.

25 Q. All right. Now, we can go to these files if

0044

1 you want to and I'll be happy to. We've got the files  
2 here.

3 But for Patient Number 22 and Patient  
4 Number 48, those records, the records we got from you  
5 do not show pre-treatment X rays, do they?

6 A. I don't remember, sir.

7 MR. MORIARTY: All right. Let's go to  
8 P22.

9 Q. (BY MR. MORIARTY) Now, what I'm going to do  
10 is I'm going to just rapidly go through page by page;  
11 and if you see pre-treatment X rays in there, I want  
12 you to tell me where we are.

13 A. Yes, sir.

14 Q. And we'll start with 220001, 02, 03.

15 A. I'm sorry. Can you go back?

16 Q. Go back.

17 A. That's -- that up there -- no, not this one.  
18 The one up top.

19 JUDGE EGAN: The above one.

20 A. I -- that should be pre-treatment  
21 cephalometrics.  
22 JUDGE EGAN: I can't --  
23 Q. (BY MR. MORIARTY) That's one of the X rays  
24 you're obligated.  
25 A. Yes. No. I'm saying one of them is up there.  
0045  
1 Q. But you're obligated to have more than that?  
2 A. I understand, sir. I'm just trying to point  
3 out to you that --  
4 Q. And this X ray, this panoramic view, that's  
5 during treatment, isn't it?  
6 A. Yes, sir.  
7 Q. So, you lack the pre-treatment X rays in this  
8 file?  
9 A. Can we -- can we go down?  
10 Q. Yes, sir.  
11 03, let's look at the date on that. Is  
12 this post treatment?  
13 A. I believe so.  
14 Q. Okay. So, this doesn't qualify.  
15 Next -- next X -- next, 05. This is  
16 during treatment?  
17 A. You -- I don't believe you have it.  
18 Q. Okay. So, we -- we're in agreement there's no  
19 pre-treatment X ray for Patient 22, correct?  
20 A. Yes, sir.  
21 Q. Do you agree that there's no pre-treatment  
22 X ray for Patient 48?  
23 A. At the time that you picked up -- at the time  
24 that you picked up the records probably we did not turn  
25 it in. But that does not mean that it never existed.  
0046  
1 Q. Sir, I can't possibly evaluate your conduct  
2 with anything other than the evidence you turn over  
3 when we show up, right?  
4 MR. HECTOR CANALES: Objection. It's  
5 argumentative. Sidebar.  
6 A. I don't know, sir.  
7 THE WITNESS: I'm sorry.  
8 JUDGE EGAN: It's been answered.  
9 Go ahead.  
10 Q. (BY MR. MORIARTY) You don't have a  
11 pre-treatment X ray for Patient 48, do you?  
12 A. No, sir.  
13 Q. Okay. Now, do you want to go through the six  
14 no treatment card files particularly 02, 04, 05, 06,  
15 07, 08?  
16 A. I'm sorry. I don't understand your question.  
17 JUDGE EGAN: Run those numbers by --  
18 A. I didn't understand what you mean.  
19 Q. (BY MR. MORIARTY) Patient 2, 4, 5, 6, 7, and  
20 8, what's the -- what's the treatment card?  
21 A. What does that mean? What are you asking?

22 Q. You're asking what -- you're asking me what a  
23 treatment card is?

24 A. Yeah. What do you mean there is no treatment  
25 card? I need to know who the patients are before I can  
0047

1 answer.

2 Q. All right. Let's look at Patient Number 2.

3 JUDGE EGAN: Just for my clarification,  
4 Mr. Moriarty, when you say "treatment card," are you  
5 referring to what a layperson typically refers to as  
6 the clinical record where the doctor makes notations?

7 MR. MORIARTY: Yes, ma'am.

8 JUDGE EGAN: Okay.

9 MR. HECTOR CANALES: Your Honor, and we  
10 would object to that. I don't believe that's one of  
11 the areas that is listed in the complaint for a program  
12 violation. I could be wrong but I don't recall that.

13 JUDGE EGAN: Give me a second.

14 MR. MORIARTY: Judge, this would be a date  
15 of service issue.

16 JUDGE SEITZMAN: I'm sorry. I didn't hear  
17 what you said.

18 MR. MORIARTY: It's a date of service  
19 issue.

20 JUDGE EGAN: The pleading from my  
21 recollection, because I actually broke the pleading  
22 down, is that failed to keep records for the time  
23 required and other documents or models required by  
24 federal or state law or regulations or contract to be  
25 maintained -- that they're contracted to be maintained.  
0048

1 So, that is Allegation 1. Let's take a  
2 look at it.

3 JUDGE SEITZMAN: Is this -- is this the  
4 one about the dates of service and failed to make the  
5 actual dates?

6 MR. MORIARTY: Yes, sir.

7 JUDGE SEITZMAN: Okay.

8 JUDGE EGAN: Overruled.

9 This is where you're -- it's here.

10 MR. HECTOR CANALES: These are on  
11 patients -- the first eight patients 2 through 8 or --

12 MR. MORIARTY: No, it's -- I'm sorry.  
13 Please excuse me.

14 Patient 2, 4, 5, 6, 7, 8.

15 MR. HECTOR CANALES: And the contention is  
16 that these treat -- these -- there's no records of  
17 treatment on these -- on those?

18 JUDGE EGAN: The service dates.

19 MR. MORIARTY: It's a date of service  
20 issue.

21 MR. HECTOR CANALES: Okay. All right.

22 JUDGE SEITZMAN: I'm sorry. Is 6 in there  
23 because I didn't get --

24 MR. MORIARTY: Yes, sir.

25 JUDGE SEITZMAN: I got 4, 5, 6, 7, 8.

0049

1 MS. SILHAN: 6 is.

2 Q. (BY MR. MORIARTY) Okay. Let's go to Patient  
3 2, Page 1. There's no date of service on this form, is  
4 there?

5 A. No date of service, yes, sir.

6 Q. Page 2, is there a date of service here?

7 A. I don't see one.

8 Q. Page 3?

9 A. There are different dates there.

10 Q. I'm sorry?

11 A. There were different dates there and that's  
12 the date shipped right there 4/1/09. This is the  
13 laboratory slip that we sent for the study models  
14 4/1/09.

15 Q. I'm sorry. Excuse me. I didn't mean to cut  
16 you off. Go ahead.

17 A. No. That's the date they're going to be  
18 shipped, study models 4/1/09 to the Genesis Orthodontic  
19 Laboratory.

20 Q. All right. But that's one of the services but  
21 that's only one of the services that you billed the  
22 State for on this child, correct?

23 A. I understand your question, yes, sir.

24 Q. Okay. Page 4, no date of service there?

25 A. Well, you have erase there. I mean, there's

0050

1 the date right there under Antoine Dental. There  
2 should be a date. The computer automatically puts the  
3 date on there.

4 Q. Doctor, I'm looking for the dates where you  
5 allegedly treated this child.

6 A. Well, I'm sorry, sir. You are showing me the  
7 wrong documents. You need to go to the progress notes.

8 Q. We're going -- we're going to get there. I  
9 just -- I want to eliminate --

10 A. That's the reason there's a date there.

11 Yes, there is a date there.

12 Q. All right. Let's go to progress notes. Next.

13 Okay. We've gone through the record and  
14 we have no documents in that file to show when you  
15 provided treatment for that child. True?

16 A. Based on these documents that you have, yes,  
17 sir.

18 Q. Okay. So, we don't have a complete and a  
19 thorough medical record for that child justifying the  
20 treatment that you rendered for that child, correct?

21 A. Based on what you have, yes, sir.

22 Q. Okay. Do you want to concede the same thing  
23 is true for 4, 5, 6, 7 and 8 or do you want to go  
24 through them?

25 A. If you don't mind.

0051

1 MR. MORIARTY: All right. Let's go to 4.

2 JUDGE EGAN: And for the record, we're  
3 going through each page in the file of these patients?

4 Q. (BY MR. MORIARTY) All right. We've gone  
5 through -- for Patient 4 we've gone through  
6 Petitioner's 04 through 0007. Do you concede that  
7 there's no date of treatment record for Patient 4?

8 A. Based on what I see on the screen, no, sir.

9 Q. Well, but what you see on the screen's your  
10 file that we got from you, right?

11 A. I believe so.

12 Q. And you agreed that it's lacking dates of  
13 treatment, correct?

14 A. Yes, sir.

15 Q. Okay. Patient -- we're at 5. Let's go  
16 through 5. Same thing, no -- no date of treatment,  
17 right?

18 A. No, sir.

19 Q. Okay. Going to go to 6?

20 A. Please.

21 Q. Okay.

22 MR. MORIARTY: Let's go through it, Stace.

23 Q. (BY MR. MORIARTY) Okay. We got the same  
24 problem on 6, right?

25 A. It seems like it, yes, sir, based on what you

0052

1 have.

2 Q. All right. We've got no proof of when you  
3 treated that child, correct?

4 A. It doesn't look like it on this -- on this  
5 screen, no.

6 Q. Well, I want the record to be clear. Your  
7 files that we got that I've showed you don't have the  
8 date of service of that child that you billed the State  
9 for, true?

10 A. Yes, sir.

11 Q. And you're obligated to provide that  
12 information to the State and it's got to be true and  
13 accurate and correct, right?

14 A. Yes, sir.

15 Q. Okay. And you didn't do that, did you?

16 A. No, sir.

17 Q. Okay.

18 MR. MORIARTY: Let's go to 7, Patient 7.

19 Q. (BY MR. MORIARTY) Okay. We've gone through  
20 all the records on Patient Number 7. You have no  
21 progress notes showing date of service on that file  
22 either, do you?

23 A. No, sir.

24 Q. You want to go through 8?

25 A. Please.

0053

1 Q. Okay. We've gone through all of the -- all of

2 your patient file for the file you've provided the  
3 State for Patient Number 8 and there's no progress  
4 notes in that file, correct?

5 A. Yes, sir.

6 Q. Okay. So, do you now concede that for Patient  
7 2, 4, 5, 6, 7, and 8 those files are not full, complete  
8 and accurate as you are required to keep, correct?

9 A. Yes, sir.

10 Q. Okay. Now, let's -- we've got three children  
11 that you treated that were under 12, Patient 15,  
12 Patient 56 and Patient 60. You know that you treated  
13 and billed for three children under 12, correct?

14 A. I -- can we go through them, please?

15 Q. Sure.

16 JUDGE EGAN: Patient 15?

17 MR. MORIARTY: 15, 56 and 60.

18 Q. (BY MR. MORIARTY) Now, I think -- and I want  
19 you to bear with me on this -- these records are  
20 redacted, which means we've taken all of the patient  
21 identifying information off of the records. Now, we  
22 have the original records here in the courtroom, your  
23 original records, which you're happy to go through, if  
24 you want to. But let me tell you that these records  
25 that we've got up there are redacted.

0054

1 Do you admit that you submitted bills to  
2 the State of Texas for three children who were under  
3 the age of 12 who you were not allowed to treat for  
4 full orthodontic services? Do you concede that?

5 A. No, sir.

6 Q. All right.

7 A. Need to look at the records.

8 Q. Then what I ask you to do is while we're at a  
9 break, you go through those -- find those three files  
10 and you verify that what I'm asserting to the Court is  
11 true that you got three children, Patient 15, Patient  
12 55 and Patient 60. And those three files, your  
13 original files, will show those -- those three were  
14 under age 12.

15 A. Okay, sir.

16 Q. Now, you actually have the right to request an  
17 exemption to THMP to treat a child under 12. There are  
18 some children under 12 that are appropriate for  
19 treatment; isn't that true?

20 A. Yes, sir.

21 Q. And all you have to do is ask for an  
22 exemption -- exemption for that child, correct?

23 A. Yes, sir.

24 Q. And you didn't ask for that, did you?

25 A. I need to look at the records, sir. I don't

0055

1 know.

2 Q. Pardon me?

3 A. I need to look at the records. I don't

4 remember if I did or not.

5 Q. All right. Now, let's go to Patient 23. What  
6 is an extraction request?

7 A. You mean in here?

8 Q. I want -- I want you to tell me -- tell the  
9 judges what an extraction request is.

10 A. If we do it within the office, if we do it in  
11 the office, we write on the -- in the notes. These are  
12 the treatment card that you were asking me or we call  
13 it progress notes. We write it in here. If we have to  
14 send it to a specialty out of the office, then we have  
15 a referral note that, you know, it has the Antoine  
16 Dental Center logo and then our phone number and  
17 everything. And then we give it to -- you know, we  
18 send it to the oral surgeon. We refer to oral surgeon.

19 JUDGE EGAN: I can barely see that. So,  
20 can you highlight where the word -- the words are --

21 Q. (BY MR. MORIARTY) There's nothing on this --  
22 this form, in fact, there's nothing in this file, to  
23 indicate you may -- you had a proper extraction  
24 request, correct?

25 A. I cannot see, sir. You talking about --  
0056

1 JUDGE EGAN: She's going to enlarge --  
2 looks like she's trying to enlarge it.

3 A. It's right in here. Braces on five to five,  
4 need to extract upper --

5 JUDGE SEITZMAN: Okay. Hang on. Hang on,  
6 Doctor.

7 THE WITNESS: I'm sorry.

8 JUDGE SEITZMAN: Pull the microphone to  
9 your left where your water bottle is. From there you  
10 can talk.

11 A. Okay. Right here it says braces on five to  
12 five means the upper teeth and lower teeth starting  
13 from the molars need to extract upper fours and expose  
14 upper fives.

15 Q. (BY MR. MORIARTY) Are you required to have an  
16 extraction request as part of the file?

17 A. Within the office, I don't think so. I don't  
18 know. I don't think so.

19 Q. Okay. I'm trying -- I need some clarity on  
20 that question.

21 Are you or are you not required to have  
22 within your file a proper extraction request? Yes or  
23 no.

24 A. No, sir.

25 Q. Okay. I'm going to ask at the break to look  
0057

1 at 15, 56 and 60.

2 Now, let's switch to another couple of  
3 areas.

4 JUDGE EGAN: Hold on just a second. Did  
5 you --

6 JUDGE SEITZMAN: I just want to be clear  
7 at this point in the record. When we're talking about  
8 "extraction request," we're talking about extraction of  
9 a tooth?

10 MR. MORIARTY: Yes, sir.

11 JUDGE SEITZMAN: And that's what you  
12 understood, Dr. Nazari, talking about extraction --

13 THE WITNESS: Yes, sir.

14 JUDGE SEITZMAN: -- of a tooth?

15 THE WITNESS: Yes, sir.

16 Q. (BY MR. MORIARTY) You're not an orthodontist?

17 A. No, sir.

18 Q. When did you decide to get into the  
19 orthodontics business?

20 A. I graduated in 1998 and in 1999 or 2000 I  
21 started taking some continuing -- continuing education  
22 courses.

23 Q. My question, sir, is: When did you decide to  
24 get into the Medicaid orthodontics business?

25 A. Oh, Medicaid orthodontics I think it was

0058

1 around late 2002-2003.

2 Q. And why did you decide to do so?

3 A. Into Medicaid?

4 Q. Yes.

5 A. Medicaid or --

6 Q. Yes.

7 A. -- in general?

8 I don't know. I just like doing ortho- --  
9 orthodontics.

10 Q. Now, you represented to the Court a little bit  
11 earlier that about 30 percent of your practice in the  
12 past, say 2010 or 2011, was private pay.

13 A. Uh-huh.

14 Q. And 60 or 70 percent of your practice was  
15 Medicaid; is that correct?

16 A. I believe so.

17 Q. And you were signing up and submitting  
18 something over a thousand a year Medicaid patients,  
19 correct?

20 A. In the past few years that you mentioned, yes,  
21 sir.

22 Q. All right. And you're doing purely  
23 private-pay patients today?

24 A. Yes, sir. Well, no. No. I take it back. I  
25 still see my Medicaid patients. We have -- you know,

0059

1 I'm not getting paid because they have nowhere to go.

2 Q. Okay.

3 A. I still see those patients.

4 Q. And for your private-pay orthodontics  
5 patients, how many new private-pay orthodontics  
6 patients have you signed up in the last 60 days?

7 A. In the last 60 days? Probably about hundred,

8 120 between the two offices.

9 Q. Maybe two a day?

10 A. Well, if you're going to divide it by 30 days  
11 a month, which, you know, we are closed on Sundays  
12 and -- however you want to average it, I'll take it.

13 Q. All right. Do you know what an ectopic  
14 eruption is?

15 A. Yes, sir.

16 Q. Now, do you agree with the proposition that  
17 whatever an ectopic eruption is the -- 70 percent of  
18 the patients that had it that came to you -- Medicaid  
19 patients came to you, whatever condition they had, it  
20 certainly wasn't unusual, was it?

21 A. Wasn't unusual?

22 Q. Yes, sir.

23 A. In what term? What do you mean by unusual?  
24 Unusual being irregular and being abnormal, yes, they  
25 were unusual.

0060

1 Q. What does unusual mean to you?

2 A. Which is not -- something that is abnormal,  
3 which is not supposed to be there, not regular.

4 JUDGE EGAN: Okay. I'm getting lost in  
5 this. So, can you just speak a little slower and ask  
6 your question and both -- both of you wait until the  
7 other finishes?

8 Q. (BY MR. MORIARTY) The usual condition of the  
9 Medicaid patients that presented themselves in your  
10 office, the usual condition was whatever it is you now  
11 call ectopic eruptions; isn't that true?

12 A. It's not what I call ectopic eruption. It's  
13 what I was taught which is what I learned from the  
14 manual and from the NHIC how to evaluate ectopic  
15 eruption.

16 Q. My point, sir, is this: There wasn't anything  
17 unusual -- about whatever condition that was, it wasn't  
18 unusual. In fact, it existed in every single one of  
19 these 63 patients, correct?

20 A. It was unusual, sir.

21 MR. MORIARTY: May we take a little short  
22 break? I think I'm about done.

23 JUDGE EGAN: Why don't you pull those  
24 files while we take a break and let him look through  
25 them.

0061

1 MR. MORIARTY: Yes, ma'am. That'll be  
2 good.

3 JUDGE EGAN: And we'll take a 10-minute  
4 break. We'll be back at a quarter after 10:00.

5 (Off the record)

6 JUDGE EGAN: We're convening in SOAH  
7 Docket Number 529-13-0997 and it is 10:23 a.m.

8 And you may proceed.

9 MR. MORIARTY: Thank you, your Honor.

10 Q. (BY MR. MORIARTY) Now, Dr. Nazari, during  
11 the break have you had the opportunity to review your  
12 patient files?

13 A. Yes, sir, I did.

14 Q. And have I correctly asserted to the Court  
15 that on Patient 15, Patient 56 and Patient 60, all  
16 three of those children were under 12 when you treated  
17 them?

18 A. Yes, sir.

19 Q. And you did not request an exemption from the  
20 State for treating those children, did you?

21 A. On --

22 JUDGE EGAN: You need to move the mic  
23 closer or --

24 MR. MORIARTY: Well, somebody moved it.  
25 Sorry.

0062

1 Q. (BY MR. MORIARTY) You did not -- you did not  
2 comply with Medicaid rules when you submitted those  
3 cases, did you?

4 A. I -- I disagree. The first -- first patient,  
5 Patient Number 15, \*\*\*\*\* \*\*\*\*\*.

6 JUDGE EGAN: Don't use names. Please  
7 redact.

8 THE WITNESS: I'm sorry. I'm sorry.

9 JUDGE EGAN: We just refer to them as  
10 Patient Number 15.

11 JUDGE SEITZMAN: Excuse me.

12 And, Stephanie, will you strike that from  
13 the record?

14 Thank you.

15 A. Patient Number 15, can we put her pictures on  
16 the screen, please.

17 Q. (BY MR. MORIARTY) Sir, my question is: Was  
18 she under 12 when you treated her?

19 A. He was under 12.

20 Q. He was under 12?

21 A. He was born January 1, 2008. The rules  
22 allowed us to do this and this is the same case even  
23 Dr. Tadlock approve for braces; and if Dr. Tadlock is  
24 the director and the director of business tells me this  
25 patient needs braces and I send the request and he

0063

1 approves it, I don't see what I did wrong.

2 Q. All right. So, if I understand what you're  
3 saying, what you're telling the Court is even though  
4 the Medicaid rules forbid you to treat a child under 12  
5 without requesting an exemption from that rule, the  
6 fact that they paid it proves to you it was valid?

7 MR. HECTOR CANALES: Objection. Misstates  
8 his testimony.

9 JUDGE EGAN: I believe it does misstate  
10 his testimony, but it's cross.

11 That's not what you said, you're free to

12 say, "That's not what I said."

13 A. Yeah. That's not what I said, sir.

14 I said I asked for -- I submitted all the  
15 documents. I submitted the HLD. I submitted the  
16 request form. I submitted the pictures, all the  
17 necessary X rays. The TMHP director, the expert  
18 witness that Dr. Tadlock is in this case also they  
19 both -- all three of us agree this patient needs  
20 braces.

21 So, what I don't see what I did wrong when  
22 everybody approves that this patient needs braces and  
23 then you come in with this clause that, you know,  
24 because of under age 12. That rule was not enforced in  
25 January, 2008. September or August of 2008 we had to  
0064

1 certify that all the primary had been extracted.

2 Q. All right. How about Patient 56 and 60?

3 A. Yes, sir, just one second, please.

4 JUDGE EGAN: Okay. Let me just make sure  
5 I understand what you just said. Patient 15 was  
6 treated in what year?

7 THE WITNESS: January of 2008.

8 JUDGE EGAN: And at that time it's your  
9 understanding that you were not required to --

10 THE WITNESS: To certify, yes, ma'am.

11 JUDGE EGAN: -- to certify that they were  
12 12 or older?

13 THE WITNESS: Yes, ma'am, because they  
14 changed the forms from --

15 JUDGE EGAN: I just needed that --

16 THE WITNESS: Yes, ma'am.

17 JUDGE EGAN: -- that clarification.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Go ahead.

20 A. I'm sorry. What was the next patient?

21 Q. (BY MR. MORIARTY) Patient 56.

22 A. Oh, these are different numbers, like 9. How  
23 can I identify before calling the name? I want to make  
24 sure.

25 Q. All right. Hang on just a second and I'll

0065

1 help you.

2 MR. MORIARTY: Find me the name --

3 JUDGE EGAN: If you put the picture up, I  
4 bet he can match the picture.

5 MR. MORIARTY: Okay. We can do that.

6 Let's go to 56-0004, please.

7 JUDGE EGAN: All right.

8 Q. (BY MR. MORIARTY) Do you recognize that  
9 child?

10 MS. EGAN: If you look at the picture, you  
11 can make sure you get the right file.

12 JUDGE SEITZMAN: Look for the pictures --

13 JUDGE EGAN: Look for that.

14 JUDGE SEITZMAN: -- in the file.

15 THE WITNESS: I look at the pictures?

16 A. Okay. I got it.

17 JUDGE EGAN: Okay. So, this is Patient  
18 56; is that correct?

19 THE WITNESS: Yes.

20 MR. MORIARTY: Yes, ma'am.

21 JUDGE EGAN: Okay. And you now have the  
22 file for Patient 56?

23 THE WITNESS: Yes.

24 JUDGE EGAN: All right. Proceed.

25 A. Yes. We did the request and we did indicate  
0066

1 on the form that the patient still has three primary  
2 teeth. It's in the form. The documented in here  
3 patient has three primary teeth.

4 Q. (BY MR. MORIARTY) Hang on a second and I'll  
5 help you.

6 A. Yes, sir.

7 MR. MORIARTY: Stacey, go to the form that  
8 goes to the State. Back, back, back. Okay. Go to  
9 two, three, four, five, six, seven, eight, nine, ten,  
10 eleven, twelve, thirteen, fourteen.

11 Q. (BY MR. MORIARTY) You're saying that the form  
12 that's P00- --

13 A. Right here it says, I certify all primary  
14 dentition has been exfoliated. We crossed it out. We  
15 put still has one -- circle on top -- has primary  
16 teeth.

17 Q. All right. How about let's go to Patient 60,  
18 please. And would you review that file?

19 A. Yes, sir, I have done that.

20 Q. And do you have an explanation or  
21 justification for treating that child?

22 A. Yes, sir.

23 On the -- both forms on the HLD I mention  
24 that patient has three primary teeth and then on the  
25 certification I did not mark it. I did not certify  
0067

1 that.

2 Q. All right. And did you look at Patient 23 and  
3 Patient 50 with regard to the extraction issue?

4 A. No. I was not provided with the records.

5 Q. All right. We'll -- we'll --

6 Let me ask you another question now. You  
7 were talking just a moment ago about Dr. Tadlock  
8 agreeing that the child under 12 needed braces. Isn't  
9 it true that your expert, Dr. Ornish, concluded that  
10 Patient Number 1, Patient Number 3, Patient Number 12,  
11 Patient Number 17, Patient Number 22, Patient Number  
12 30, 34, 46, 53, 54, 57 and 59 did not qualify as having  
13 a severe handicapping malocclusion as scored on the HLD  
14 index? True?

15 A. I believe so. I don't remember all those

16 numbers that you mentioned. I don't -- I don't know.

17 Q. Let me represent to you, sir, that your  
18 expert's reports that are in evidence show that Patient  
19 1, 3, 12, 17, 22, 30, 34, 46, 53, 54, 57, 59 do not  
20 qualify in his expert opinion.

21 MR. HECTOR CANALES: I object to the  
22 question, your Honor. The witness has testified that  
23 he does not -- he does not know, lacks foundation.

24 JUDGE EGAN: Overruled.

25 You can -- if you don't know, you can

0068

1 state you don't know.

2 A. Yeah. I just don't know by the numbers that,  
3 you know, which are the patients. He might have, you  
4 know -- you have his report.

5 JUDGE SEITZMAN: I didn't get a question  
6 actually. I just got a representation from  
7 Mr. Moriarty that's what the report said but I didn't  
8 have a question following that representation.

9 MR. MORIARTY: All right. I accept that,  
10 Judge.

11 Q. (BY MR. MORIARTY) You know your own expert  
12 found 13 of these cases unqualified?

13 A. 13?

14 Q. 13.

15 A. 13 of them?

16 JUDGE EGAN: If you don't know --

17 Q. (BY MR. MORIARTY) I'm sorry, sir. You're  
18 correct. 12.

19 A. Does it include the interceptive patients?

20 Q. I don't know. The record will reflect that.

21 My question is this: Do you acknowledge  
22 that your own expert found 12 of your cases did not  
23 qualify?

24 A. I don't agree with that, no, sir.

25 Q. Okay. What do you disagree with?

0069

1 A. Well, because you making it very, very broad  
2 assumption. Orthodontics can be many different things.  
3 Couple of them are comprehensive. Couple of them  
4 are -- I mean, most of them are comprehensive. Couple  
5 of them are interceptive. I need to see, you know, if  
6 Dr. Ornish actually has those interceptive also part of  
7 that because interceptive do not need to be 26 points.

8 Q. Well, so, to help the judges, I'll let --  
9 Dr. Ornish's reports are in evidence. So, they'll be  
10 able to check which ones. I just want know whether you  
11 disagree that he found 12 of them didn't qualify?

12 A. I disagree, yes, sir.

13 Q. Okay. And he's a -- he's an orthodontist,  
14 correct?

15 A. Yes, sir.

16 Q. And you're not?

17 A. No, I'm not.

18 Q. Okay. You have no special training in  
19 orthodontics?

20 A. No, sir.

21 Q. You're a general dentist?

22 A. Yes, sir.

23 Q. You have no postgraduate work in orthodontics?

24 A. No, sir.

25 Q. All right.

0070

1 MR. MORIARTY: I pass the witness, your  
2 Honor.

3 CROSS-EXAMINATION

4 BY MR. HECTOR CANALES:

5 Q. Dr. Nazari, what is your understanding of  
6 the -- of whether or not there are exceptions to  
7 qualifying for Medicaid orthodontic treatment, other  
8 than the scoring? What's your understanding, sir?

9 A. The whole understanding -- the whole HLD, if I  
10 may explain it, is -- is a screening. It's a  
11 screening. It's a dia- -- it's not a diagnostic tool.  
12 It's just a screening. It's an index that if a patient  
13 qualifies for Medicaid programs. But there are  
14 patients that they truly need orthodontics and then  
15 based on my understanding you can even send it -- those  
16 patients that they -- even -- even in the manual, it  
17 does state that. If you cannot achieve the point -- 26  
18 points, send a narrative for this patients to be -- you  
19 know, to be considered. That all those patients that  
20 we have sending to -- we got the score of 26, they were  
21 all being rejected. So, there are always exceptions.

22 There are rules published but it's up to  
23 the director of the Texas Medicaid Health Partnership  
24 whether they want to approve it or not. It was the  
25 same way with NHIC.

0071

1 I as a clinician have obligation to my  
2 patients. They come through the door. If they need  
3 braces, I'm going to submit it to them. If they  
4 don't -- if they don't want to pay for it, it's up to  
5 the state say no. I did not -- all these HLDs they're  
6 all completed the way that I was trained more than ten  
7 years ago.

8 Q. Let me -- let me ask -- let me ask you this,  
9 Doctor: Is it consistent with your understanding of  
10 the HLD scoring process and the approval process that  
11 scores under 26 may be approved for Medicaid treatment  
12 under certain circumstances?

13 A. Yes, sir.

14 Q. All right. What are those circumstances where  
15 a score of under 26 would still qualify for treatment?

16 A. One of the examples is an interceptive that  
17 does not need to have any scores.

18 Q. And could you --

19 A. Interceptive mean --

20 Q. What is interceptive treatments?

21 A. Interceptive means limited orthodontics.  
22 Whenever you see a problem -- for example, there are  
23 patients that they suck on their thumb that they  
24 develop this open bite habit. You can -- that can be  
25 part of the interceptive. If you can take molds, you  
0072

1 can take records, send it to the TMHP and then they  
2 look at it. And if they approve it, they will let me  
3 do the work. I will do the work. If they said they --  
4 "We don't want to pay for it," they don't want to pay  
5 for it. So, I don't do the work and I inform the  
6 parents. And at the same time the parents send a  
7 letter, too, that, yes, it's been approved or it's been  
8 rejected.

9 That's one of the examples. I'm sorry.

10 Q. Okay.

11 A. The second example is a true, true -- like a  
12 medical conditions that you -- these people need  
13 braces. Now, what do we mean by the true medical  
14 conditions? I want you to understand we're dentists.  
15 We are not here to do heart transplant or brain  
16 surgeries or whatever. We are in the business of  
17 saving teeth.

18 So, if there is a problem in the back  
19 teeth -- that was one of my biggest criticism of the --  
20 of the HLD to Dr. Altenhoff many, many times that we  
21 concentrate only on the children on the front teeth and  
22 many of the problems on the back are being undiagnosed  
23 and we send it to them. We write narratives. They  
24 keep denying and denying and denying.

25 JUDGE EGAN: Okay. Hold on.

0073

1 MR. MORIARTY: Nonresponsive.

2 JUDGE EGAN: All right. You need to wait  
3 until --

4 Q. (BY MR. HECTOR CANALES) Let's back up a  
5 little bit.

6 A. Okay.

7 Q. Let's go back.

8 JUDGE EGAN: Sustained.

9 Q. (BY MR. HECTOR CANALES) Let's go back to  
10 interceptive treatment. What is cross-bite and does it  
11 have anything to do with interceptive treatment?

12 A. Okay. Interceptive is a broad term. It's a  
13 broad term. It can be many things. It can be, you  
14 know --

15 JUDGE EGAN: Okay. He's just asked you is  
16 cross-bite an interceptive treatment or is it  
17 condition?

18 A. Yes, it can be. Yes, yes, it can be.

19 JUDGE EGAN: Okay.

20 Q. (BY MR. HECTOR CANALES) And so, explain  
21 how -- do you have a -- and do you have an

22 understanding of whether or not cross-bite is an  
23 exception to the 26-point requirement?

24 A. Yes, sir, it is.

25 Q. All right. And so, could you -- could you

0074

1 explain how was cross-bite scored within the HLD, if at  
2 all?

3 A. Well, there is no indication on the HLD index  
4 form that you need to submit it. There is no on- --  
5 when you go through that page with all the tables,  
6 there is no place to put the cross-bite. Because of  
7 cross-bite we are -- you know, we are submitting that.  
8 It even says that on the severe traumatic occlusion on  
9 the second line -- on the second line it says that, you  
10 know, do not include cross-bite, traumatic.

11 So, even for the cross-bite you don't need  
12 to offer any HLD.

13 Q. Okay. Now, what is mix dentition and how is  
14 it significant to the approval process?

15 JUDGE EGAN: What was the first word?

16 JUDGE SEITZMAN: Mixed.

17 MR. HECTOR CANALES: Mixed dentition and  
18 how was that significant to you in these 63 patients at  
19 issue here, sir?

20 A. Mixed dentition is a -- is a time period of a  
21 child that has four -- four -- about four and four in  
22 the lower would be eight front teeth and then four of  
23 the back molars and at the same time has some baby  
24 teeth between. Okay?

25 Q. (BY MR. HECTOR CANALES) All right. Let me --

0075

1 A. That's a mixed dentition. And then --

2 Q. Let me stop you there real quick.

3 A. Okay.

4 Q. Let me stop you there.

5 You were just asked about Patients 15, 56  
6 and 60. Those were the patients that you reviewed over  
7 the break, right?

8 A. Yes, sir.

9 Q. Okay. And on -- 56 was part of your answer --  
10 your explanation as to why that patient qualified, did  
11 it involve this concept of mixed dentition?

12 A. Yes, sir, it did.

13 Q. And what is your understanding of whether  
14 mixed dentition is what -- in terms of an exception to  
15 the 26-point requirement?

16 A. No. It doesn't mean that you -- on the -- on  
17 the 26 point it doesn't need to have the 26 point but,  
18 you know, patients with a mixed dentition that they  
19 truly need braces, you can still submit if you have 26  
20 points.

21 Q. Does it have -- does it -- excuse me.

22 Does it have an impact on the -- on the  
23 re- -- on the age requirement for Medicaid treatment,

24 that meaning mixed dentition?

25 A. No, it doesn't have an impact.

0076

1 JUDGE EGAN: I'm sorry.

2 THE WITNESS: No, it doesn't have an  
3 impact.

4 Q. (BY MR. HECTOR CANALES) Okay. If you have --  
5 is it -- is it true, sir, that if you have mixed  
6 dentition that that is a part of the qualifying --  
7 qualifications determination that -- that you make?

8 A. Yes, sir.

9 Q. All right. And is mixed dentition part of  
10 your -- the basis for your opinions that Patients 56  
11 and 60 qualify?

12 A. Yes, sir.

13 Q. All right. And you stand by that -- stand by  
14 that today towards to Patients 56 and 60?

15 A. Yes, sir.

16 Q. Okay. And Patient 15, was that also a case of  
17 mixed dentition?

18 A. Yes, sir, it was a case of mixed dentition.

19 Q. Now, you were also asked a series of questions  
20 about Patients 2, 4, 5, 6, 7 and 8 regarding  
21 treatment. Do you recall that?

22 A. Yes, sir.

23 Q. All right. Now, could you explain -- you  
24 weren't asked why those patients didn't receive  
25 treatment. Would you, please, explain why?

0077

1 A. Well, the patients came to the office. We  
2 examined them and then, based on our evaluation of the  
3 HLD index and the diagnosis that we made, we made the  
4 determination that, you know, they need -- they  
5 qualify. That -- that was our understanding. We send  
6 it to TMHP director. He approved the cases but those  
7 eight -- seven or eight patients that you just  
8 mentioned, they never came back to receive braces.

9 Q. Now, how long have you been a Medicaid  
10 provider?

11 A. About -- Medicaid provider I believe since  
12 1998.

13 Q. And is it -- has it been your experience since  
14 1998 within the Medicaid provider area that sometimes  
15 patients don't come back?

16 A. Well, not only Medicaid patients, you know,  
17 the cash patients, certain private patients, they don't  
18 come back and it is beyond my control.

19 Q. And is -- is that, sir, what happened with  
20 these particular six patients here? They didn't  
21 return?

22 A. Yes. They did not return and we did not bill  
23 for the full banding, which is the full ADAD. They  
24 gave us the authorization to bill for the -- just the  
25 records to do that and then they gave us authorization

0078

1 to bill for the records. That's all we did. And also  
2 there is another statement or a rule, even if you have  
3 cases denied, you can get paid for two out of every ten  
4 cases that's been denied.

5 Q. Okay. Okay. So -- so, is it possibly, sir,  
6 for you to have a treatment card or a history record of  
7 a patient that didn't return?

8 A. Not orthodontic, no.

9 Q. Okay. All right. Now, you were also asked  
10 about -- I want to go to the time period in November of  
11 2011 through April the 4th of 2012. Okay?

12 A. Yes, sir.

13 Q. All right. Now, what happened in November of  
14 2011 at your office?

15 A. We had some friendly guests came in and then  
16 they just took over the office and we have to provide  
17 them with the -- with the records that they were asking  
18 for. And then --

19 Q. That was when OIG came and got your records  
20 they requested?

21 A. Yes. OIG came and we tried to do that.

22 JUDGE SEITZMAN: Just be sure and let your  
23 counsel finish his question.

24 THE WITNESS: Sorry.

25 JUDGE SEITZMAN: Because the court

0079

1 reporter can't take both of you talking at the same  
2 time.

3 THE WITNESS: Yes, sir.

4 Q. (BY MR. HECTOR CANALES) Were you being  
5 sarcastic, sir, about the "friendly" part?

6 A. Yes. I'm sorry, sir.

7 Q. Now, the other end of the timeline, April the  
8 4th, 2012, why is that a significant date?

9 A. That's the date that I was put on 100 percent  
10 payment hold.

11 Q. Okay. All right. So, let's talk about your  
12 practice between that -- those periods of time and --  
13 and -- with Medicaid. Okay?

14 A. Yes, sir.

15 Q. Now, did the effect -- did the fact that OIG  
16 came in and requesting all these records did that have  
17 an impact, sir, on your -- on you and your attitude  
18 towards being an active Medicaid provider?

19 A. No, sir, not at all.

20 Q. All right.

21 MR. HECTOR CANALES: Now, if we could look  
22 at, Roy, I believe it's P78.

23 Q. (BY MR. HECTOR CANALES) While -- while Roy's  
24 pulling that up, during your time as a Medicaid  
25 provider, what efforts could you describe to the

0080

1 Court --

2 MR. HECTOR CANALES: 78.01.

3 Q. (BY MR. HECTOR CANALES) Did you make efforts  
4 during these -- this decade of Medicaid providing  
5 service to keep up with the program, its rules and  
6 methods?

7 A. Yes, sir, I did.

8 Q. Could you describe to the Court what you did  
9 to continue your education and keep up to date with --  
10 with Medicaid and its -- and what it required of you?

11 A. Well, as far as the continuing education it's  
12 something that, you know, we conduct on our own. But  
13 as far as being --

14 JUDGE EGAN: Slow down, please.

15 A. As far as continuing education, it's something  
16 that, you know, we conduct on our own. And as far as,  
17 you know, keeping up with the Medicaid, we always  
18 received paper copies when NHIC was in charge; and  
19 after that when there was a transition to TMHP, we had  
20 the paper copy. And then they switched also to online  
21 or with an electronic version.

22 JUDGE EGAN: Paper copy of what?

23 THE WITNESS: Paper copy of the bulletins  
24 and the messages.

25 A. And also the actual manual. And in the past  
0081

1 few years they don't provide the paper copy manual.  
2 They just send us the CDs, the CD-ROMS.

3 Q. (BY MR. HECTOR CANALES) And are you familiar,  
4 sir, with what a stakeholder meeting is?

5 A. Yes, sir.

6 Q. All right. And did you -- how did you become  
7 familiar with stakeholder meetings?

8 A. Well, I knew about it through the -- reading  
9 through the bulletins and then first time that I  
10 attended I think it was back in 2008-2009. There was  
11 mention about orthodontic changes.

12 Q. And why did -- why did you attend those  
13 stakeholder meetings?

14 A. To be up to date with the rules and  
15 regulations and also with the benefit changes.

16 Q. How often were those stakeholder meetings  
17 held?

18 A. Every three months, I believe.

19 Q. And -- and what was your -- how -- did you  
20 have a habit in terms of attending or not attending  
21 them?

22 A. I tried to attend as many as I could.

23 Q. All right. Now, we have up on the screen  
24 P78.01 -- 001. And if I could draw your attention to  
25 the middle paragraph there where it begins "prior  
0082

1 authorizations."

2 A. Yes, sir.

3 Q. All right. Could you read, sir, that first

4 sentence up there?

5 A. "Prior authorization: Requests from January  
6 1st, 2012, to February 29th, 2012, prior authorizations  
7 for most orthodontic services will be suspended."

8 Q. And was that consistent with what happened in  
9 your practice, sir?

10 A. Yes, sir.

11 Q. Okay.

12 A. Throughout Texas, the state of Texas.

13 Q. All right. And so, you did not receive from  
14 January 1st, 2012, through February 29th, 2012, any  
15 authorizations from the State of Texas, correct?

16 A. Not only I did not receive, we did not submit  
17 anything because they did not want us to submit  
18 anything.

19 Q. That was your understanding?

20 A. That was what it was mentioned at the  
21 stakeholder meeting. Do not submit anything because  
22 TMHP they have funded -- there was problem with TMHP.

23 Q. Okay. And that was -- that was -- I want to  
24 make sure. That was information you learned at a  
25 stakeholder meeting?

0083

1 A. Yes, sir.

2 Q. All right. Now, from -- from the month of --  
3 for the month of March leading up to April the 4th of  
4 your -- where your payment hold came in, you testified  
5 about your experience with a -- with one of these  
6 managed care organizations?

7 A. Yes, sir.

8 Q. Correct?

9 All right. And would you explain how --  
10 that managed care organization how that affected the  
11 Medicaid submission and pre-authorization during that  
12 month?

13 A. Immediately --

14 Q. You stated -- I think you stated mass  
15 confusion.

16 A. Yes. That's what I was gonna --

17 Q. And I was wanting you to explain that better.

18 A. Yes. Mass -- yeah. It was mass confusion  
19 throughout the whole dentistry, not only dentistry is  
20 medical also. DMA companies came in and each one of  
21 them had their own specific standards. Like they  
22 were -- in dentistry I knew about I can tell, again,  
23 MCNA, Dental Quest and Delta Dental they took over.  
24 And we did not know what's going to happen to our  
25 orthodontic patients, who's going to be taking over

0084

1 these patients.

2 So, that will be very irresponsible of me  
3 to start any cases to submit to anybody that that I'm  
4 going to start this case and then just let them go with  
5 braces because many of these patients they had no

6 provider. They did not assign provider to them for  
7 months and months. From deadline of March 31st, I  
8 believe, they pushed it back another six months. I  
9 cannot, you know, swear to that but they keep pushing  
10 back all these dates and it was mass confusion.

11 How could I undertake more responsibility  
12 with these patients? I just didn't do it. And, plus,  
13 immediately I received a letter -- after 15 years  
14 working for Medicaid MCNA came to me --

15 JUDGE EGAN: Hold on.

16 MR. MORIARTY: Nonresponsive.

17 JUDGE EGAN: Okay. You need to wait until  
18 the next question.

19 Go ahead.

20 A. I'm sorry. I thought I was answering you.

21 Q. (BY MR. HECTOR CANALES) All right. As a  
22 result of the -- of the confusion, did you limit  
23 your -- your acceptance or your -- the processing of  
24 claims?

25 A. Not only we limit it, we just limit it for

0085

1 that time period until we could sort out what's going  
2 to happen to our existing patients.

3 Q. Because you were concerned about whether or  
4 not the patients that you had whether they would remain  
5 with you or they would be reassigned because of the  
6 change in the -- in the system?

7 A. Yes, sir.

8 Q. Okay. Now, what about -- what happened,  
9 Dr. Nazari, to the patients -- and then, of course,  
10 April the 4th the payment hold comes, right?

11 A. Yes, sir.

12 Q. All right. And so -- but when -- on April the  
13 4th, did you still have patients that had been  
14 pre-authorized prior to April the 4th?

15 A. Yes.

16 Q. Do you -- can you give us any estimation, sir,  
17 of how many patients were -- had been pre-authorized  
18 and that were affected by this payment hold?

19 A. Close to 2,000, probably more than 2,000, 2500  
20 patients.

21 Q. Okay. And to make sure I understand, you had  
22 between 2,000 and 2500 patients that were somewhere in  
23 the process of -- of the -- of the orthodontic  
24 treatment that TMHP had approved, right?

25 A. Yes, sir.

0086

1 Q. Okay. And the payment hold notice, what did  
2 you understand would happen to any reimbursement that  
3 you were to receive for what was remaining on the -- on  
4 these 2,000 to 2500 peoples' treatment?

5 A. Well, they stopped paying us, basically.

6 Q. What happened -- and well, what about the  
7 work? What -- what did you -- even though you were not

8 going to be paid, what happened to the patients and the  
9 treatment?

10 A. Well, I treated my patients. I still do.

11 After 14 months I still treat them.

12 Q. So, during this -- during -- from the April  
13 the 4th, 2012, until today, all the patients that were  
14 being treated prior to the payment hold, you've  
15 continued to treat them?

16 A. Yes, sir.

17 Q. Have you continued to incur operational costs  
18 for your practice for all those 2,000 or so patients?

19 A. Yes, sir.

20 Q. Have you continued to have payroll?

21 A. Yes, sir.

22 Q. Have you billed for those services after April  
23 the 4th?

24 A. We keep a record of the billing.

25 Q. Have you billed for it, sir? Have you sent in  
0087

1 a bill to TMHP for us?

2 A. Yes. We're sending the bills. We are sending  
3 the bills but we are not getting paid.

4 Q. Now -- going through my notes here -- you were  
5 shown, I believe, four patient files, 44, 48, 53 and 51  
6 and the issue was the HLD score sheet. You recall  
7 that?

8 A. Yes, sir.

9 Q. Did you submit any of the 63 cases that are  
10 here -- back up one step.

11 Since this investigation and payment hold  
12 on you has started, have you spent time reviewing the  
13 patient files -- the 63 files at issue in this case?

14 A. I have them, yes.

15 Q. How much time have you spent looking and  
16 preparing for -- for this investigation?

17 A. Personally?

18 Q. Yes, sir.

19 A. At least four or five hours a week, at least,  
20 going through the charts and trying to find out what I  
21 did wrong.

22 Q. Okay. And so, you've become familiar with  
23 those 63 files, correct?

24 A. Yes, sir.

25 Q. All right. And -- and, sir, can you -- based  
0088

1 on that review, can you tell the Court whether or not  
2 there were any instances within those 63 where an HLD  
3 form was not submitted or -- to TMHP?

4 A. No. They were all submitted to TMHP.

5 Q. All right. Has it been your experience, sir,  
6 at any point in time through your decade or so that  
7 TMHP or whoever was the intermediary would approve a  
8 score without the submission of an HLD sheet?

9 A. No.

10 Q. Now, you were present for the testimony of  
11 Mr. Stick, right?  
12 A. Yes, sir.  
13 Q. All right. And did you hear the testimony of  
14 Mr. Stick where he said that TMHP or the intermediary  
15 had breached its responsibility to -- to review HLD  
16 score sheets?  
17 A. Yes, sir.  
18 Q. All right. At any point in time during the --  
19 prior to the submission of the HLD score sheets in  
20 these 63 cases, did you know that?  
21 A. I had no idea. I had no idea.  
22 Q. Was there ever any -- did Texas Medicaid  
23 bull- -- ever any information that you're aware of ever  
24 posted in a Medicaid bulletin that TMHP is -- is absent  
25 or not doing a good job?

0089

1 A. Never.  
2 Q. Is it -- did Medicaid, the manual, put any  
3 responsibility on you, sir, to make sure that TMHP was  
4 providing whatever service it had agreed to provide to  
5 the State?  
6 A. Never. There was -- the only entity that we  
7 ever dealt with was TMHP since 2004. You pick up the  
8 phone. You think you calling the State. You talking  
9 to TMHP. They have a dental director. I thought they  
10 have a dental director. That's what my understanding,  
11 and there are dentists under him. I -- I did not think  
12 that, you know, this was going on. Nobody knew.  
13 Q. Did you regard, sir, TMHP -- or -- and the  
14 State as one and the same?  
15 A. I did. Everybody does.  
16 Q. All right.  
17 A. It says healthcare partnership.  
18 Q. I'd like to go over with you some of the  
19 patient files regarding your scoring and the issue of  
20 ectopic eruption. Okay?  
21 A. Yes, sir.  
22 MR. HECTOR CANALES: If we could pull  
23 up --  
24 Q. (BY MR. HECTOR CANALES) Before I do that,  
25 sir, let's -- let's do a little bit about your

0090

1 educational background --  
2 A. Yes, sir.  
3 Q. -- and -- and your professional experience.  
4 Okay?  
5 Could you please tell the Court about your  
6 educational background?  
7 A. I received a pharmacy degree from Texas  
8 Southern University in Houston back in 1991 and in 1994  
9 I grad- -- I -- I was admitted to University of Texas  
10 Houston branch, dental branch for -- in the dental  
11 program. I graduated in 1998 from the Houston --

12 Houston dental and starting since -- immediately I  
13 started doing continuing education courses in all kinds  
14 of disciplines in dentistry. I have over 750  
15 continuing education hours in orthodontics and  
16 occlusion and another 700 hours in cosmetic  
17 restorative, implant.

18 Q. And -- and with your -- how long -- has your  
19 practice exclusively been in the Houston area?

20 A. Yes, sir.

21 Q. All right. And are you currently licensed  
22 right now?

23 A. Yes, sir.

24 Q. All right. And how long have you maintained  
25 that license? When'd you first get it?

0091

1 A. Since 1998.

2 Q. Okay. And you had it consistently throughout  
3 that time?

4 A. Yes, sir.

5 Q. And since 1998 through current have you  
6 spent -- have you dedicated your professional life to  
7 dentistry?

8 A. Yes, sir.

9 Q. Okay. And where have you -- where have you  
10 practiced?

11 A. In Houston.

12 Q. And with -- do you have a -- your own -- have  
13 you always been at Antoine Dental or have there been  
14 other -- other facilities or practices that you've been  
15 a part of?

16 A. No. I purchased my practice, Antoine Dental  
17 Center, which I named it; and before that I used to  
18 work for different companies.

19 MR. HECTOR CANALES: Now, if we would  
20 begin with P61, Roy; and I'd like to start with the  
21 intraoral photograph.

22 Q. (BY MR. HECTOR CANALES) While Roy is  
23 pulling -- pulling that up, you were also present  
24 yesterday for Dr. Kanaan's testimony?

25 A. Yes, sir.

0092

1 Q. All right. And how long -- how long have you  
2 worked with Dr. Kanaan?

3 A. Since 2006.

4 Q. And how did you meet him?

5 A. We were having a second baby and then my wife  
6 was about, you know, to give birth in October. And  
7 then I put an ad in the Greater Houston Dental Society  
8 and the American Association of Orthodontics. I  
9 think -- one of these magazines. I don't remember.  
10 And then I received a phone call from Dr. Kanaan that  
11 he's moving to the Houston area. And he came in and,  
12 you know, we just got very close, very friendly and,  
13 basically, you know, we started from there.

14 Q. Did you review Dr. Kanaan's qualifications or  
15 look into his background at all prior to hiring him?

16 A. Yes, sir, I did.

17 Q. And what did you find?

18 A. Great resume', great resume'. I mean, very,  
19 very talented, very educated. He had a master in  
20 orthodontics and then he had a fellowship in the, you  
21 know, cleft palate team.

22 Q. Do you recall where he received his training  
23 in those areas?

24 A. Harvard University. He received Harvard and  
25 then in St. Louis University.

0093

1 Q. And within the medical and dental community,  
2 how are -- how are Harvard and St. Louis regarded?

3 A. Very, very prestigious, very prestigious.

4 Q. And what other -- anything else that you  
5 considered before bringing Dr. Kanaan on board?

6 A. His personality, his friendliness, his caring  
7 for the patients.

8 Q. And so, do you -- in having heard the  
9 testimony of Dr. -- of Dr. Kanaan regarding the  
10 textbooks and his view of ectopic eruption as applied  
11 to the Texas Medicaid provider manual's definition of  
12 ectopic eruption, without getting all into detail, do  
13 you agree with Dr. Kanaan and his views?

14 A. Yes, definitely.

15 Q. Right. Do you share those same views as  
16 Dr. Kanaan?

17 A. Yes, I do.

18 Q. And -- and do you -- do you adopt those views  
19 for this proceeding?

20 A. Adopt the views for this proceeding?

21 Q. Yes.

22 A. They -- I was trained to have these views over  
23 ten years ago.

24 Q. Okay. Let's look at -- and in reviewing the  
25 patient charts, are you and Dr. Kanaan -- do you agree

0094

1 or apply the same methodology that Dr. Kanaan did to  
2 the scoring of HLD and the evaluations of these  
3 patients -- these patient charts?

4 A. Well, not hundred percent. There's always  
5 disagreements but, you know, we apply same terminology.

6 Q. And --

7 A. And he always win because he's the specialist.

8 Q. Okay. And were there times over these 63  
9 charts where you and Dr. Kanaan consulted over them  
10 together?

11 A. Oh, many, many times, especially at the  
12 beginning of our relationship.

13 Q. And just for time -- purposes of time when did  
14 that relationship begin?

15 A. Started late 2006. I believe it was early

16 October, 2006.

17 Q. Okay. Very -- very good.

18 Patient -- Patient 61 here, would you  
19 please -- do you have an opinion, sir, as to whether  
20 Patient 61 is -- meets the criteria for Medicaid  
21 orthodontic treatment?

22 A. Based on the previous manual's requirements,  
23 yes, it does.

24 Q. All right. And could you explain -- and we'll  
25 put up whatever -- whatever portion of the chart that  
0095

1 you need. Would you explain or justify to the Court  
2 why Patient 61, in your opinion, is justified under  
3 Medicaid?

4 A. Can I make a little demonstration so we can  
5 get this ectopic eruption the way that I understood?  
6 May I do that?

7 MS. EGAN: Right now you just need to do  
8 question and answer.

9 THE WITNESS: Yes, ma'am.

10 JUDGE EGAN: But if --

11 A. Okay. Yes. If you'll recall there was a  
12 videotape at the beginning that was presented by  
13 Dr. Tadlock. These four teeth right here --

14 JUDGE EGAN: Speak loudly.

15 JUDGE SEITZMAN: You need to turn  
16 around -- if you're going to approach the screen --

17 THE WITNESS: Okay.

18 JUDGE SEITZMAN: -- would you stand to the  
19 right side so you can face --

20 THE WITNESS: I see -- let me see if I can  
21 point the laser.

22 These four teeth up here and then these  
23 four teeth down here -- this four teeth -- let's just  
24 concentrate on this for a minute. These are the first  
25 one they come into the mouth, okay, and everybody  
0096

1 thinks that this and this are ectopic eruptions. But  
2 if you look at the arch these four teeth came in first.  
3 They came in the wrong position. That's why you see  
4 the other two are ectopic.

5 I understand the confusion with the  
6 textbook and then with the -- all the articles of  
7 school now. But this is the way that we were trained  
8 because 10-12 years ago when I look at the Proffit or  
9 the other articles, yeah, this and this are the only  
10 ectopic eruption; but for the Texas medical HLD  
11 purposes, this is the way we were trained. These are  
12 the ones that they're occupying this space, here and  
13 here.

14 And it's not only this. One can argue  
15 with these teeth back here also. You see this tooth is  
16 rotated? That's taking at least 3, 4 millimeter of  
17 space. If you push it this way and this tooth come in

18 here, you can open the space for this one. But  
19 Medicaid tells us this is it. Just concentrate on  
20 this. So, we cannot include -- this is an ectopic  
21 rotation also. That's the way we were trained.  
22 So, we need to push this forward, push  
23 this backward and open space for this tooth to come in.  
24 So, you get six that are ectopic tooth out there.  
25 That's the way we were trained to do so. That's the  
0097

1 way Dr. Orr was also explaining the other day.

2 Q. Did -- did you, sir, in forming your opinions  
3 that these ectopic tiered teeth or ectopic did you rely  
4 on the definition that TMHP provided in its manual?

5 A. Yes, sir, I did.

6 Q. Okay.

7 MR. HECTOR CANALES: Roy, could you put --  
8 please put up side by side, if possible, P64.61? It  
9 should be Bate Number P-01235.

10 Q. (BY MR. HECTOR CANALES) And what is -- what  
11 is this on the right?

12 A. This is the HLD index form right here.

13 Q. Okay. And -- and what does the -- how did you  
14 score Patient 61?

15 A. The same as I just explained. You get upper  
16 right one, upper right two. This is the central  
17 incisor. This is the lateral incisor. This is the  
18 canine, same thing in here. Left side and left side  
19 incisor -- central incisor, left side lateral incisor  
20 and left side the canine. And the same thing with the  
21 lower.

22 Q. And now, could you explain why you did not  
23 score these -- these teeth under anterior crowding?

24 A. Well, because these are truly ectopic. They  
25 are in the wrong place. They are rotated. They are --  
0098

1 they are just grossly out of the long axis of the  
2 range. They fit all the criteria of the ectopic and  
3 also if you go back to the patient's profile and also  
4 if you can go back to the definition of anterior  
5 crowding --

6 Q. Okay. I believe that would be on P65. What's  
7 significant to you about the definition of anterior  
8 crowding?

9 A. Well, let's -- yeah, the face. You see the  
10 face is not a -- is not a protruding face, okay, the  
11 lips.

12 So, if you -- the best thing for this  
13 patient would be try to expand this patient, to expand  
14 the jaws in order for the teeth to fit.

15 Now, if you look at the definition of  
16 anterior crowding, it says anterior teeth that require  
17 extractions as a prerequisite to gain adequate room to  
18 treat the case. And then it gives you a choice, if it  
19 is less than 3.5 millimeter it's not crowding and if

20 you don't do extraction. So, it's not anterior  
21 crowding.

22 These two sentences on the top they were  
23 eliminated from the new manual because it was not the  
24 proper definition.

25 And, again, the anterior crowding is  
0099

1 different what is called orthodontic crowding.  
2 Orthodontic crowding talks about the arch length; but  
3 since they are putting the anterior crowding, we just  
4 concentrate on that and then they came back and they  
5 just put this one, which was in there, they put on the  
6 front right here. Arch length insufficiency must  
7 exceed 3.5 millimeter, which it just -- just does not  
8 match because they are telling us to measure the  
9 anterior teeth -- this is the lack of insufficiency  
10 right in here and then it goes back. It says here arch  
11 length insufficiency.

12 So, the two trays here that we have  
13 rotated, that there is not enough room for it, we can't  
14 include it. So, they're trying to include this in the  
15 new manual.

16 Q. Let me ask you a question. When you scored  
17 Patient 61 --

18 A. Yes.

19 Q. -- were you being consciously indifferent to  
20 the standards of how to score these HLD score sheets  
21 that are -- we see in P65?

22 A. Consciously indifferent? No. I was trained  
23 to -- I was doing my best in order to box myself within  
24 the manual inside of the manual that's their  
25 requirements.

0100

1 Q. And was that the same methodology that you  
2 applied to the remaining 62 cases as well?

3 A. Yes, sir, I did.

4 MR. HECTOR CANALES: Okay. Let's move on  
5 to Patient 62. And if we could, again, I think start  
6 with the photograph, Roy.

7 Q. (BY MR. HECTOR CANALES) And if you could  
8 explain, Dr. Nazari -- well, let me ask. Do you have  
9 an opinion as to whether or not this particular patient  
10 qualifies and is in need of orthodontic treatment?

11 A. Can we look at the CEF, please?

12 Q. Sure.

13 A. Yes. By looking at the pictures and then this  
14 X ray, yes, definitely.

15 Q. Why do you say that?

16 A. Because to me these teeth are completely  
17 ectopic eruption, definitely. All this four on the top  
18 and then -- I mean, all the six on the top and the six  
19 on the lower by any means. By looking at the pictures  
20 and in this X ray, yes.

21 Q. All right.

22 MR. HECTOR CANALES: If we could put up  
23 the HLD score sheet, which is P64.62.  
24 Q. (BY MR. HECTOR CANALES) And is -- based on  
25 your review of the file of Parent 62 is your scoring  
0101

1 consistent with the application of the -- of the  
2 provider manual?

3 A. Yes, I believe so. All six on the top and six  
4 on the -- in the lower jaw.

5 Q. And is your -- is your rationale for scoring  
6 these as ectopic eruption versus anterior crowding  
7 essentially similar to your testimony just a moment ago  
8 regarding Patient 61?

9 A. Yes. I even wrote here ER expansion options  
10 for those patient, to expand the arches.

11 MR. HECTOR CANALES: Now, if we can pull  
12 up Patient 19.

13 Q. (BY MR. HECTOR CANALES) While that's  
14 happening, sir, did you -- were you intending, sir, to  
15 inflate on patient 61 or 62 your scoring of ectopic  
16 eruption there?

17 A. No, sir, not at all.

18 Q. Did you inflate -- intentionally inflate any  
19 scoring with regards to these 63?

20 A. Number. I mean, they have the X rays. They  
21 have the pictures. How could I inflate anything?

22 Q. Again, sir, now we have up here Patient 19.  
23 And, again, sir, do you have an opinion as to whether  
24 or not Patient 19 qualifies under the provider manual  
25 for Medicaid services?

0102

1 A. Up to 2011, based on my understanding, yes.

2 Q. And if we could -- and could you -- could you  
3 explain -- I tell you what --

4 MR. HECTOR CANALES: Let's put up the HLD  
5 P64.19.

6 A. Yes, sir.

7 Q. (BY MR. HECTOR CANALES) Could you explain --  
8 you -- well, what was your scoring -- score here?

9 A. I mean, these are -- I applied the same  
10 methodology that I learned about ten years ago.

11 JUDGE EGAN: Okay. He just asked what the  
12 scoring was. So listen to his question.

13 A. I'm sorry.

14 Q. (BY MR. HECTOR CANALES) That's okay. What  
15 was your score -- total score? Let's start there.

16 A. 40.

17 Q. All right. And what was your ectopic eruption  
18 score?

19 A. 36.

20 Q. And where did the remaining points come from?

21 A. Came from the overjet, I believe.

22 Q. Okay. And could you explain to the judges  
23 your methodology and basis for scoring 36 ectopic

24 eruption points?

25 THE WITNESS: Can we blow up this side?

0103

1 A. Yeah. I applied the same methodology that I  
2 learned about ten, eleven years ago, rotated, the  
3 slanted leaning teeth was considered to be ectopic.  
4 That's the way I did it. That's what I used.

5 MR. HECTOR CANALES: Now, if we could --  
6 if we could pull up Dr. Tadlock's score sheet, which is  
7 R11-019.

8 Q. (BY MR. HECTOR CANALES) Can you tell us  
9 whether or not Dr. Tadlock found some problems with  
10 either the -- either the upper and/or lower anterior  
11 teeth? Can you tell us, based on looking at this,  
12 whether he did or not?

13 A. Yeah. He considered the upper and lower teeth  
14 being as crowding, which is right in orthodontic world,  
15 which is different from the Medicaid, the way they  
16 classify. They --

17 Q. Why do you say that, sir? Why do you say  
18 there's a difference between Medicaid and outside of  
19 Medicaid?

20 A. Okay. Up to this point, this total -- just  
21 imagine this is a separate page from this diagnosis.  
22 This is the HLD index. This has nothing to do with  
23 orthodontics. This is not being taught in any dental  
24 school. This is not being taught in any orthodontic  
25 school, as far as I know.

0104

1 This diagnosis is the one that  
2 orthodontists use how to diagnose the case and then he  
3 applied what he has in orthodontic world, which is  
4 absolutely correct, Class I crowded. And he measured  
5 it by doing -- I do not agree with his measurements. I  
6 mean, anybody -- if you measure from here to here,  
7 probably going to get -- well, I agree because he had  
8 the choice of up to 5 points. He couldn't do more but  
9 you know you have over like a 10 millimeter of  
10 crowding.

11 Q. Under the -- under the -- under the provider  
12 manual's definitions and instructions, do you ever get  
13 four points under anterior crowding?

14 A. No. You need to get either zero or five. You  
15 cannot get four points.

16 Q. So, in your opinion, sir, is four points a  
17 correct score, a true and accurate score under the  
18 program?

19 A. No, sir, it's not.

20 Q. And -- and do you see up above there under  
21 mandibular protrusion and open bite? Do you see the  
22 statements --

23 A. Yes.

24 Q. -- made below those?

25 A. It says see definitions/instruction. It says

0105

1 how to score, which refers to the previous page. It  
2 says how to score and there was a debate whether it's  
3 not. In my mind it was a definition.

4 Q. And what was your understanding of the -- the  
5 words underneath ectopic eruption, whether they were --  
6 were those definitions in your mind or not?

7 A. In my mind, it was definition. In my mind,  
8 definition.

9 Q. And is that how you treated it?

10 A. Yes, I did.

11 Q. Is there any doubt in your professional  
12 opinion, sir, that Patient Number 19 has severe  
13 malocclusion?

14 A. Definitely, yes, sir.

15 Q. And that she is in need of orthodontic  
16 treatment?

17 A. Yes, sir.

18 Q. Under Dr. Tadlock's score, did Dr. Tadlock  
19 score -- would she be approved? Does she meet the  
20 criteria?

21 A. Well, in my opinion, if Dr. Tadlock was a  
22 provider with me, he will send it to Medicaid. It was  
23 up to TMHP whether to approve it or not. So,  
24 regardless of -- in my understanding regardless of what  
25 goes on the HLD, which is a very, very subjective

0106

1 matter. It's up to TMHP dental director to approve it  
2 or not. That's how we thought it was.

3 But if you're just gonna look at the 26  
4 points as being told in the past few days, no. The  
5 clerk is going to rubberstamp as no, if they just going  
6 to look at the 16 points.

7 MR. HECTOR CANALES: Let's put up Patient  
8 16.

9 Q. (BY MR. HECTOR CANALES) And if you could,  
10 again, here, sir --

11 MR. HECTOR CANALES: And then if we could  
12 put up --

13 Q. (BY MR. HECTOR CANALES) That's just to  
14 orientate you, Doctor.

15 MR. HECTOR CANALES: If we could put up  
16 side by side the HLD score sheet for Antoine Dental and  
17 for Dr. Tadlock, which would be P64.16 and then  
18 R11-016.

19 Q. (BY MR. HECTOR CANALES) All right. So, we  
20 have Dr. Tadlock on the right and Antoine Dental on the  
21 left. You with us?

22 A. Yes, sir.

23 Q. Okay. And how many points for ectopic  
24 eruption did Dr. Tadlock score?

25 A. Zero.

0107

1 Q. All right. And how many did you score?

2 A. I scored 30.  
3 Q. Okay. How many points for anterior crowding  
4 did Dr. Tadlock score?  
5 A. Five in the lower mandible.  
6 Q. All right. And did you find any ectopic teeth  
7 on the lower mandible?  
8 A. I -- me, yes, I did.  
9 Q. All right. How many did you find?  
10 A. I found six.  
11 Q. Okay. And so, again, could you please explain  
12 or give your explanation of how the same teeth could be  
13 properly scored as -- as ectopic when Dr. Tadlock  
14 scored them as crowding?  
15 A. But, again, I used the rules and regulations  
16 that, you know, I was told to use, which is in the  
17 manual and from the instructions I received about ten  
18 years ago how to score and Dr. Tadlock used his  
19 orthodontic background and he scored them like that.

20

In his opinion, after 25 years of  
21 practicing orthodontist and not seeing a single  
22 Medicaid patient, it's very hard for it to convert. It  
23 was hard for me to also understand how this work.  
24 Still I send cases and I talk to the NHIC director and  
25 I learn from them and then I adopted this.

0108

1 Q. Does a score of five on the lower teeth by  
2 Dr. Tadlock indicate to you that he saw some  
3 abnormality on the lower jaw?

4 A. Yes, definitely.

5 Q. But you and he have a difference of opinion as  
6 to how to describe or score that abnormality?

7 A. Yes, sir.

8 Q. Okay. Did -- in using the provider manual,  
9 what was your methodology with regards to a rotated or  
10 leaning tooth? In other words, how did you treat it?  
11 Was it included or excluded from your consideration of  
12 ectopic eruption?

13 A. It was included in my understanding of ectopic  
14 eruption.

15 JUDGE EGAN: I'm sorry?

16 THE WITNESS: It was included in my  
17 understanding of ectopic eruption.

18 Q. (BY MR. HECTOR CANALES) And presently has  
19 that changed?

20 A. Presently with the new definitions that are --  
21 I learned in the past few months, yes.

22 Q. So, is it fair to say that you counted some  
23 rotated or slanted teeth within these 63 that under the  
24 new present definition would not be counted?

25 A. Yes, sir.

0109

1 Q. Okay. Is that based on the -- on the changed  
2 definition of ectopic eruption?

3 A. Yes, sir.

4 Q. Had you -- had that definition been changed  
5 prior to 2012, would you have been willing to apply and  
6 abide by whatever definition or instructions Medicaid  
7 provided regarding the scoring of HLD?

8 A. Yes. With regard the scoring of HLD, yes,  
9 definitely.

10 Q. All right.

11 MR. HECTOR CANALES: If we could pull up  
12 the photograph for Patient 25.

13 We'll move on. We've got a glitch on 25  
14 there. Let's see if we can fix that.

15 29, let's do 29.

16 Can you just take out the upper and lower  
17 white and blow up on the -- on the...

18 Q. (BY MR. HECTOR CANALES) Okay. What do you  
19 see here, Doc?

20 A. This six on the top they're not in the right  
21 position. They're ectopic. And then the teeth in the  
22 lower as you see they're more forward. And then I  
23 believe even with the new guidelines, this tooth right  
24 here is ectopic because the enamel-gingival junction is  
25 not within the alveolar ridge.

0110

1 Q. All right. Let's stop --

2 A. That's -- yes.

3 Q. Let's stop right there. Stop right there.

4 The alveolar ridge and outside of the  
5 conjunctive, does -- does that ridge -- do you have an  
6 opinion, sir, as to whether or not -- first of all, is  
7 that defined specifically any further than when it's  
8 mentioned in the manual? Is there any other specific  
9 definition of it that you're aware of in the manual?

10 A. No, just --

11 Q. All right. So, your understanding of that  
12 ridge, is that ridge or in that axis one dimensional?  
13 Two dimensional? Three dimensional? Do you have an  
14 opinion?

15 A. It's three dimensional.

16 Q. Okay. And so, could you explain to the Court  
17 how that ridge -- why that's important to you and how  
18 that work -- how that ridge is in a three-dimensional  
19 form?

20 A. Yes. The ridge has a height, has a width and  
21 then width and it has transverse also. So, the teeth  
22 can erupt in any position. We call it labio-lingual.  
23 It can be mesial distal, which is drifting right and  
24 left; or it can be up and down. So, there are three  
25 axis; and if you refer to the picture in Draker also,

0111

1 he said there are three planes in human body. There  
2 are three planes. You've got sagittal which is this  
3 right in here that is right and left. You've got  
4 caudal, which is front and back and. You've got  
5 anterior-posterior transfer that goes like this.

6 So, teeth have its own coordinates like  
7 000, 111, 222, however you want to do that. So, when  
8 you're out of it, it's irregularity.

9 Q. All right. And do you see some of that here?

10 A. Definitely, sir. I see definitely.

11 This patient it is not treated -- again,  
12 we are dentists. We are not here saving hearts or  
13 brains or whatever. We're here to save teeth.

14 This tooth is not treated this patient is  
15 gonna lose -- lose this tooth and you see trauma from  
16 occlusion. If they want to give this patient three  
17 points, that's fine. With the new definition, it's  
18 only two; but in order to correct this, you need to  
19 move everything around. That's the way we were  
20 trained. All say we need to move around are ectopic.

21 Q. And so, do you -- do you have an opinion  
22 whether or not there's dysfunction here?

23 A. Yes, sir, that's definite dysfunction right in  
24 here.

25 MR. HECTOR CANALES: Okay. And can we put  
0112

1 up the HLD 64.29?

2 Q. (BY MR. HECTOR CANALES) This will be your HLD  
3 score, sir.

4 MR. HECTOR CANALES: 64.29.

5 All right. And then if you could put next  
6 to that Dr. Tadlock's score, which is R11-029.

7 Q. (BY MR. HECTOR CANALES) While that's coming  
8 up, you -- what was your total score, sir?

9 A. 24 for ectopic and mandibular protrusion five,  
10 29.

11 Q. For a total of 29?

12 Okay. And Dr. Tadlock on the left here  
13 had a total score of what?

14 A. Five. He did agree with the mandibular  
15 protrusion only but he did not consider those six being  
16 ectopic.

17 Q. So, the difference here between you and  
18 Tadlock is simply your interpretation of ectopic  
19 eruption?

20 A. Yes, sir.

21 Q. Are you familiar, sir, with whether or not  
22 the -- the manual gave any instruction to you as to  
23 whether or not you were to be aggressive or  
24 conservative on your scoring?

25 A. Yes. Be conservative.

0113

1 Q. Did you follow that -- that instruction?

2 A. Yes.

3 MR. HECTOR CANALES: Could we pull up the  
4 HLD score sheet 64.14?

5 Q. (BY MR. HECTOR CANALES) All right. And what  
6 was your ectopic score?

7 A. 30, ten teeth.

8 Q. All right. Out of a maximum of 12, correct?

9 A. 12, yes, sir.

10 Q. All right.

11 MR. HECTOR CANALES: Can we put up the  
12 intraoral photograph, Patient 14, yes.

13 Q. (BY MR. HECTOR CANALES) So, on your --

14 MR. HECTOR CANALES: Can we leave the  
15 score sheet up, Roy?

16 Q. (BY MR. HECTOR CANALES) Oh, on the ectopic  
17 eruption scoring, which teeth did you not score?

18 A. Well, I could have scored all of them but  
19 there wasn't any need. You know, we reached 26. You  
20 don't want to -- you just want to make sure that the  
21 conditions that are present you do them so -- you know,  
22 you had the overjet present. We did that and then this  
23 front -- looking at this there's nothing there for the  
24 canines to erupt right there. If I can see the pano, I  
25 can be sure. Based on my notes I scored the ones that  
0114

1 were visible in the mouth ridge.

2 Q. Could they have been -- would you -- could you  
3 have been justified, sir, in scoring all 12 teeth as  
4 ectopic in this case rather than 10?

5 A. If I can look at the pano, to...

6 Q. Okay.

7 A. Yes, definitely. See this canine doesn't come  
8 up front -- even the premolars don't have enough room  
9 here to erupt. This one. There's just not enough room  
10 for them to come. Just not enough space, not enough  
11 room for them to erupt and you see the lower. You see  
12 how these teeth are going.

13 Q. And is there any -- do you have an opinion,  
14 sir, as to whether or not Patient 14 qualifies for  
15 Medicaid treatment under the program?

16 A. Qualified in the past. Everything be  
17 recorded. Qualified in the past, in my opinion it was.

18 MR. HECTOR CANALES: Okay. If we could  
19 turn to the intraoral photos of Patient 32.

20 Q. (BY MR. HECTOR CANALES) And if you could  
21 explain to the -- to the judges how spacing affects  
22 your -- your scoring of ectopic teeth.

23 A. You can look at the smile. The upper arch  
24 have not developed as properly as the -- as the -- as  
25 much as the lower arch. And then we can see the  
0115

1 slanted teeth, how slanted they are and how slanted  
2 these lower teeth are. And then we need to expand the  
3 upper as much as we can bring them forward. And you  
4 see where this canine is this upper canine is also  
5 supposed to be on this lower canine right in here.  
6 That's where the teeth are supposed to be.

7 So, we need to expand the upper jaw from  
8 front to the back in an anterior-posterior transfer,  
9 anterior-posterior dimension. And then as much as we

10 can, we need to stop the growth of the lower jaw.

11 And if I'm correct, even with the new  
12 guidelines -- I don't remember but probably this  
13 patient would qualify. This might be a surgical class,  
14 so, Class III. Even with the new guidelines probably  
15 would qualify.

16 Not on the ectopic eruption, you know, as  
17 far as being surgical because they changed the -- they  
18 changed the criteria because they are trying to get  
19 more into orthodontic world than --

20 (Court reporter interruption.)

21 A. They are trying to get closer to orthodontic  
22 world rather than being in the HLD because HLD was not  
23 a good index to provide orthodontic treatment for the  
24 patients who really need braces or orthodontic  
25 treatment.

0116

1 Q. Okay. Let me --

2 MR. HECTOR CANALES: Let's pull up the  
3 patient photos for Patient 35.

4 Q. (BY MR. HECTOR CANALES) Now, Dr. Nazari, do  
5 you have an opinion as to whether Patient 35 is in need  
6 of orthodontic treatment?

7 A. Yes, definitely. Looking at this --

8 Q. Why?

9 A. Looking at this, the slant teeth they are  
10 based on the -- even -- even I could, you know -- even  
11 with the new definitions, these teeth might be slanted  
12 that -- they would qualify as ectopic because  
13 enamel-gingival junction it should be at the alveolar  
14 ridge, which, in my opinion, they are not. Alveolar  
15 ridge comes and should stop right in here.

16 The thing is when you have teeth that are  
17 slanted, the bone is going to go after them. I mean,  
18 where -- where is -- where's the alveolar going to  
19 stop? Where's it going to stop? Wherever the tooth  
20 goes the bone is to go after it. So, you need to have  
21 an alveolar ridge. That's the whole thing Dr. Orr  
22 elegantly described. You need to have a nice alveolar  
23 ridge, nice alveolar ridge not --

24 Q. And are those -- are those teeth outside of  
25 the ridge?

0117

1 A. In my opinion, they are.

2 Q. All right.

3 MR. HECTOR CANALES: Can we show the --  
4 put up the tracing, Roy?

5 Q. (BY MR. HECTOR CANALES) And would you explain  
6 to the panel how the tracing would assist or not assist  
7 you in this particular case with making determination  
8 of the -- of a tooth being outside the ridge?

9 A. To be honest with you, you don't need to have  
10 tracing on this; but, you know, you can see the  
11 measurements. 130 is not normal. Even for

12 African-American patients it's not normal. Should be  
13 around -- like around 105, 100 at the end of the day;  
14 and then this one should be around 90 degree, not 129  
15 degree. Probably the African-American degree is like  
16 95, 100. This is not normal for -- for anybody. Even  
17 don't have to have tracing, you just see -- see this  
18 bite.

19 Q. This is -- do you have an opinion, sir,  
20 whether or not you see an unusual pattern of eruption  
21 here on patient --

22 A. It is very unusual.

23 Q. And which teeth is it unusual?

24 A. All six of the front teeth, all of the front  
25 teeth.

0118

1 MR. HECTOR CANALES: All right. And so,  
2 could you, Roy, put up P64.35? This is the HLD  
3 scoring.

4 Q. (BY MR. HECTOR CANALES) All right. And so,  
5 which teeth did you score as ectopically erupted?

6 A. We did the four upper front teeth and four  
7 lower front teeth.

8 Q. And is that consistent with the tracing and  
9 the X rays and the photographs that you just saw?

10 A. I believe so. If this matches that, it should  
11 be consistent.

12 Q. Okay.

13 A. It has been on -- you know, it's been  
14 underscored also to include the canines.

15 Q. Okay.

16 MR. HECTOR CANALES: And if we could put  
17 up R11-35, Dr. Tadlock's score sheet, to compare to  
18 Antoine Dental.

19 Q. (BY MR. HECTOR CANALES) Did -- what did  
20 Dr. Tadlock score for ectopic eruption?

21 A. He scored zero.

22 MR. HECTOR CANALES: All right. Let's  
23 pull up Patient 25 file, Roy. We're going to go  
24 through each page of it.

25 Q. (BY MR. MORIARTY) Okay. Patient -- Patient

0119

1 25 is one of the files that counsel went over with you  
2 regarding the presence of a -- or absence of a -- of an  
3 HLD score sheet. Okay?

4 A. Yes, sir.

5 Q. All right. And if we could flip -- flip  
6 through it, see if -- to see if it's -- to see if it's  
7 there.

8 Okay. And I think we went through. In  
9 this particular set of files, it's not there, right?

10 A. Yes, sir.

11 MR. HECTOR CANALES: Okay. If we can put  
12 up P64.25.

13 A. Yes, sir.

14 Q. (BY MR. HECTOR CANALES) This is --

15 A. No. This is the approval form that we  
16 received from TMHP.

17 Q. Here it comes. Here it comes. It hadn't come  
18 up there.

19 So, this is the HLD score sheet for same  
20 patient, Patient 25?

21 A. I believe so.

22 Q. And it was -- and it was pre-author- -- and  
23 you got pre-authorization approval for Patient 25,  
24 correct?

25 A. Yes.

0120

1 Q. All right. So, how did it get there? How --  
2 how did -- how did this HLD score sheet for Patient 25,  
3 how did it get to TMHP?

4 A. We completed the form. We packaged -- all the  
5 X rays, all the necessary documents, the photos and  
6 then we packaged them and we send them to TMHP.

7 MR. HECTOR CANALES: Go back one page,  
8 Roy.

9 A. And then we received authorization.

10 Q. (BY MR. HECTOR CANALES) And what is -- what  
11 is this that we're looking at, sir?

12 A. This is mandatory prior authorization request  
13 form that we completed for the patient on the date of  
14 1/30/07.

15 Q. And does it say -- is there a portion, an area  
16 there for HLD to be checked?

17 A. Right in here. It says HLD.

18 Q. Did you ever --

19 MR. HECTOR CANALES: You can take that  
20 down, Roy.

21 Q. (BY MR. HECTOR CANALES) Did you ever, sir,  
22 misrepresent in any of these -- in any scores, whether  
23 these 63 or beyond, did you ever misrepresent any  
24 scoring of your HLD scores to -- to TMHP?

25 A. No, sir.

0121

1 Q. Okay. Did you use -- did you ever substitute  
2 your own opinion for -- or standard for that of TMHP  
3 and the manual?

4 A. My own opinion --

5 Q. Yeah.

6 A. -- for the -- for the manual?

7 No. I --

8 Q. In other words, did you follow -- did you  
9 follow it?

10 A. Yeah, I followed. I mean, some of the things  
11 in my professional opinion when it comes to the HLD  
12 index, I used my subjective judgment, my personal  
13 opinion.

14 Q. If it was defined, if they gave you -- for  
15 instance, an ectopic eruption, if they gave you a

16 definition and a specific instruction, did you ever  
17 substitute your own definition or ignore their  
18 instruction ever?

19 A. No. You can't. You can't. If you're bond  
20 with this company or any other company, you can't. We  
21 deal with all the insurance companies also every day.

22 Q. And -- and do you have an opinion, sir, as to  
23 whether or not there was some level of subjectivity  
24 within the HLD scoring?

25 A. Yes, I do.

0122

1 Q. Thank you very much.

2 MR. HECTOR CANALES: Pass the witness.

3 THE WITNESS: Thank you.

4 JUDGE EGAN: We have some questions before  
5 we turn it over to -- for recross.

6 Go ahead.

7 JUDGE SEITZMAN: Go ahead.

8 JUDGE EGAN: Were you aware that TMHP was  
9 being audited in 2008 by the -- by OIG?

10 THE WITNESS: No, I had no idea.

11 JUDGE EGAN: Did you ever hear any  
12 discussions about the findings of that audit?

13 THE WITNESS: During that time, no. We  
14 just found out after the news break, which was in May  
15 of 2011 -- 2010 that's the time that we find out that  
16 something going on with TMHP.

17 JUDGE EGAN: And "the news" you mean at  
18 the televised story --

19 THE WITNESS: Televised broadcast  
20 somewhere from Dallas --

21 JUDGE EGAN: Okay.

22 THE WITNESS: -- that they were inves- --  
23 first time we found out there was a problem. And --

24 JUDGE EGAN: All right. That's all I  
25 have.

0123

1 JUDGE SEITZMAN: Doctor, I just have a  
2 couple of questions that really involves the process  
3 from when -- and I'm just going to focus on Medicaid  
4 patients.

5 THE WITNESS: Yes, sir.

6 JUDGE SEITZMAN: -- when a Medicaid  
7 patient comes into your office either by referral or  
8 because they walk in through the process.

9 THE WITNESS: Yes, sir.

10 JUDGE SEITZMAN: And I want to make sure I  
11 understand your testimony.

12 So, if I as the patient came in and let's  
13 say for all other purposes -- because you can tell by  
14 looking at me I'm under the age of 20 -- that I qualify  
15 for Medicaid. So, I walk in and -- and so, as I  
16 understand it, the first things that -- first thing  
17 that happened is that there's a measurement, a

18 valuation, a diagnosis. Is that essentially correct  
19 the first group of things? I'm not talking about  
20 filling out all the paperwork. I'm just trying to  
21 understand what happens, what you submit, what you're  
22 paid for and then we'll get to the -- to the next part.

23 So, I come in. You evaluate me and you  
24 take measurements, X rays --

25 THE WITNESS: Yes, sir.

0124

1 JUDGE SEITZMAN: -- and make some kind of  
2 a scoring and a diagnosis. Is that essentially  
3 correct?

4 THE WITNESS. What happens is when the  
5 patients come in either they -- you know, they want to  
6 get braces or they want to get examined as general  
7 patient. Then we take the X rays first. We take the  
8 X rays first and then we see the patient. Either me or  
9 Dr. Kanaan examine the patient and complete the HLD  
10 score sheet. Then we process all the photographs and  
11 during the time that we were required to submit the  
12 study models, we would take the molds. We would take  
13 the molds and send it to the laboratory. Within four  
14 or five days, from the laboratory we will receive the  
15 molds. We package everything together. Send it to  
16 NHIC or TMHP, which is all, I believe, in 2005.

17 JUDGE SEITZMAN: Okay. And so, you submit  
18 that. And then -- let's assume it's pre-authorized.  
19 I'm going to break the question down into two  
20 components.

21 Let's assume that the submission does  
22 receive the prior authorization.

23 THE WITNESS: Yes, sir.

24 JUDGE SEITZMAN: Okay. Whether or not you  
25 treat me --

0125

1 THE WITNESS: Uh-huh.

2 JUDGE SEITZMAN: -- are you compensated by  
3 Texas Medicaid for that initial measurement, evaluation  
4 process?

5 THE WITNESS: Okay. It's going to take  
6 about two sentence of explaining. The initial  
7 consultation there's a code for it, which is called  
8 8660. That initial consultation is -- you can charge  
9 \$15. If the patient -- if you just do consultation and  
10 you do not present anything to Medicaid or TMPH because  
11 you do the consultation. But if the patient is  
12 approved for braces you're not entitled to that; and if  
13 the patient comes in and they are approved, you can  
14 bill for the records, along with the procedure that you  
15 do. The first procedure that we do is called complete  
16 banding.

17 JUDGE SEITZMAN: Well, I'm not -- I'm not  
18 getting to the treatment yet.

19 THE WITNESS: Yes.

20 JUDGE SEITZMAN: Because what I want --

21 THE WITNESS: For that portion for that  
22 treatment if they authorize you, yes, you can bill for  
23 it.

24 JUDGE SEITZMAN: And if I come in as a  
25 Medicaid patient and my question is am I eligible for  
0126

1 the dental care --

2 THE WITNESS: Uh-huh.

3 JUDGE SEITZMAN: -- because of the  
4 parameters and you submit a request for prior  
5 authorization and it's declined, are you compensated  
6 for any of the work that you did in preparing and doing  
7 the measurement, evaluation and diagnostic work for the  
8 submission of that prior authorization?

9 THE WITNESS: Out of every ten patients  
10 for two of them.

11 JUDGE SEITZMAN: Okay.

12 THE WITNESS: Out of it because that was  
13 the main concern at the beginning back in 2000. If I  
14 may elaborate that, you know, I was talking to Dr. Orr  
15 that, "You know, well, I don't know. I don't want to  
16 spend a hundred dollars on every patient and send it  
17 and be denied." He told me as an encouragement for the  
18 provider to take care of the needy kids, "We pay two  
19 out of every ten denial."

20 JUDGE SEITZMAN: So, there's a ratio?

21 THE WITNESS: There was a ratio. For  
22 every two out of ten denial, you will get paid.

23 JUDGE SEITZMAN; All right. So, I have  
24 received -- you have received prior authorization to  
25 treat me as a Medicaid patient and I elect not to  
0127

1 return, what records have you generated just in that  
2 initial phase of doing the prior -- the submitting the  
3 request for the pre- -- prior authorization?

4 A. The X rays that you see, the two X rays, one  
5 is the cephalometric or the head and then one is the  
6 other one, the panoramic, and then those other ones,  
7 those eight photographs and the HLD and then the molds,  
8 the molds --

9 JUDGE SEITZMAN: And the tracing.

10 THE WITNESS: -- and then the tracing.  
11 All those.

12 JUDGE SEITZMAN: All right. Will you have  
13 created a treatment plan for me?

14 THE WITNESS: Well, based on the  
15 Medicaid -- second paper that when you look at the  
16 second sheet, it says prior authorization. That's the  
17 treatment plan which we submit to the -- to the  
18 Medicaid, to the TMHP that we -- basically there are  
19 four orthodontics. It's very simple. You have the  
20 upper banding, lower banding and then how many  
21 adjustments that you think you're going to be seeing

22 and Medicaid and TMHP had a standard 26 months, unless  
23 it would go over. Then you would request for  
24 additional adjustments.

25 JUDGE SEITZMAN: All right. And if I  
0128

1 get -- you get prior authorization to treat me and I  
2 come back in as a patient and you put the braces on or  
3 whatever, then what record are you generating with  
4 respect to, I think we call them, progress notes.

5 THE WITNESS: Yes.

6 JUDGE SEITZMAN: I think that's what we  
7 call them with physicians.

8 THE WITNESS: Yes.

9 JUDGE SEITZMAN: So, would you create a  
10 progress note record at that time?

11 THE WITNESS: Yes.

12 JUDGE SEITZMAN: Okay. And if I didn't  
13 come back and so, you got prior -- you received prior  
14 authorization but I elected for whatever reason --

15 THE WITNESS: Yes.

16 JUDGE SEITZMAN: -- not to return, maybe I  
17 moved to a different state --

18 THE WITNESS: Yes, sir.

19 JUDGE SEITZMAN: -- would there be a  
20 progress note?

21 THE WITNESS: Different progress notes,  
22 yes, sir. They're different.

23 JUDGE SEITZMAN: There would.

24 THE WITNESS: Yes. The one first initial  
25 consultation is different than the one we generate for  
0129

1 the active patients.

2 JUDGE SEITZMAN: Okay. And so what -- so,  
3 what would the progress note look like for the initial  
4 consultation?

5 THE WITNESS: I need to show you one. I  
6 don't know if anybody would be kind enough to show one  
7 of them. The one that they were showing that has long  
8 lines.

9 JUDGE SEITZMAN: I said I had a few  
10 questions. They're just A, B, C parts. They're just a  
11 few questions that have a lot of components.

12 THE WITNESS: No, not this one.

13 JUDGE SEITZMAN: Let's leave that up a  
14 minute. Roy, would you leave -- I understand.

15 Roy, would you leave that up a minute?

16 Okay. All right. And, Roy, can you  
17 identify for the record.

18 MR. ROY ORNALES: This is P3, Page 8,  
19 ADC001384.

20 JUDGE SEITZMAN: And, Dr. Nazari, I know  
21 this is not what you were looking for. But this is the  
22 progress note that you were talking about earlier that  
23 you would write or create and maintain if you were

24 actually treating me and just not initially seeing me;  
25 is that correct?

0130

1 THE WITNESS: No. This is for the -- when  
2 the patient comes in the first time, this is the  
3 reg- -- this is included in the registration. And in  
4 this we do all general dentistry. There is a column  
5 the things that we have done to the patient and that's  
6 the explanation on that side.

7 THE WITNESS: Yeah. Sorry. This is --  
8 and then if the patient we do this side or the patient  
9 comes back for the orthodontic care, then we use what  
10 is usually used in orthodontic care charts, which is  
11 different than this.

12 JUDGE SEITZMAN: Okay. So, Roy, my  
13 eyesight's not that good. Can you expand just a  
14 portion of this? It doesn't matter which portion.

15 Okay. So, Dr. Nazari, do you know is this  
16 a patient who came in for initial consultation and did  
17 not return or do you know -- can you tell by looking at  
18 these progress notes what the nature of this patient  
19 was?

20 THE WITNESS: I don't have my signature in  
21 here but I believe this was -- came in for the regular  
22 checkup.

23 JUDGE SEITZMAN: Do you need to see more  
24 of the document?

25 What I'm really trying to understand --

0131

1 and I'm not doing it very artfully. So, let me just --  
2 what I'm trying to understand is what the progress  
3 notes or what the notations or documents that you would  
4 create for somebody who came in for an initial  
5 evaluation --

6 THE WITNESS: Uh-huh.

7 JUDGE SEITZMAN: -- or consultation versus  
8 the notes or documents you would create for somebody  
9 who came in for a follow-up where you actually, then,  
10 put the bands on, did the treatment.

11 THE WITNESS: Yeah. That is transferred  
12 to the other form. This is the registration form, part  
13 of it. This is for the general. If I can go over and  
14 show you on the other one.

15 JUDGE SEITZMAN: Do you know which  
16 document you need?

17 THE WITNESS: Yes, the one that has all  
18 the orthodontics.

19 JUDGE SEITZMAN: As we have been pretty  
20 much through the hearing, we're in Roy and Stacey's  
21 hands. We're in pretty good hands.

22 Okay. Roy, can you identify the document  
23 for the record?

24 MR. ROY ORNALES: This is Patient Number  
25 3, Bate Number ADC001383.

0132

1 JUDGE SEITZMAN: Dr. Nazari, is this the  
2 type of document you were talking about?

3 THE WITNESS: No. This is diagnosis form.

4 JUDGE SEITZMAN: Okay. Let's talk --  
5 let's talk about that for a minute.

6 THE WITNESS: This is a diagnosis form.

7 JUDGE SEITZMAN: So, if I come in --

8 THE WITNESS: Yes, sir.

9 JUDGE SEITZMAN: -- and you do the  
10 measurement and evaluation, diagnosis, is this one of  
11 the documents you would create?

12 THE WITNESS: Yes, sir.

13 JUDGE SEITZMAN: All right. And you would  
14 create this document whether or not you actually, then,  
15 treated me; is that correct?

16 THE WITNESS: Yes, sir.

17 JUDGE SEITZMAN: All right. Let's go off  
18 the record a second.

19 (Off the record)

20 JUDGE SEITZMAN: All right. We're back on  
21 the record at one minute after noon.

22 Okay. So, Roy, you've pulled up a  
23 document. Can you identify it, please, sir?

24 MR. ROY ORNALES: P23, Bate Number  
25 ADC0000090.

0133

1 JUDGE SEITZMAN: All right. And I'll  
2 indicate for the record that this is what was shown on  
3 the screen is from one of the files, Doctor, that you  
4 have in front of you that you were actually holding up  
5 the form or is that --

6 THE WITNESS: No. This is a different  
7 one.

8 JUDGE SEITZMAN: But this is a form you  
9 were looking for?

10 THE WITNESS: Yes.

11 JUDGE SEITZMAN: All right. Tell me what  
12 you call this and describe what it is.

13 THE WITNESS: This is progress notes that  
14 we use for all of the active orthodontic patients,  
15 which we document in here that -- where we put the  
16 brackets on and what you going to be doing. This is  
17 the diagnosis part and basically every time that they  
18 come in for some kind of, you know, treatment,  
19 adjustments and banding the back -- you know, the back  
20 teeth, you document right in here.

21 JUDGE SEITZMAN: All right. So, if I were  
22 looking through the records and I'm just trying to  
23 identify this and I wanted -- if I wanted to see a  
24 patient and look at the treatment notes of a patient  
25 that you or for Dr. Kanaan that Dr. Kanaan had treated,

0134

1 then I would be looking for a form that in the -- has a

2 large left to right center column that says treatment  
3 notes; is that correct?

4 THE WITNESS: Yes, sir.

5 JUDGE SEITZMAN: All right. And if I'm  
6 looking at a form that says progress notes, that is --  
7 those -- those are not treatment notes; is that  
8 correct?

9 THE WITNESS: No. It's the same as this.  
10 Progress notes, treatment notes, this is it.

11 JUDGE SEITZMAN: All right. There was --  
12 okay. So -- so, I'm trying to make it real easy when I  
13 go back --

14 THE WITNESS: Yes, sir.

15 JUDGE SEITZMAN: -- and read this four-day  
16 record and I need to know which form I'm trying to look  
17 at. So, treatment notes are exactly what they say --

18 THE WITNESS: Yes, sir.

19 JUDGE SEITZMAN: -- treatment.

20 And that's what I'm -- that's what I'm  
21 confused about because I thought progress notes are  
22 what you called your registration notes or your intake  
23 notes but they didn't indicate --

24 THE WITNESS: Oh, that's a different --  
25 that's a different form --

0135

1 JUDGE SEITZMAN: That's what I'm trying --

2 THE WITNESS: -- for the general -- for  
3 the general practice. And then we call this progress  
4 notes also but they use a different term that we don't  
5 use in our -- we call this progress notes also.

6 JUDGE SEITZMAN: All right.

7 THE WITNESS: They use a different term.  
8 Treatment notes or treatment card.

9 JUDGE SEITZMAN: For where you do the  
10 orthodontic work?

11 THE WITNESS: Yes. We -- between our  
12 practice we just got progress notes. We call all of  
13 them progress notes, treatment and progress.

14 JUDGE SEITZMAN: Okay. Well, I'm trying  
15 to understand when I look at a form --

16 THE WITNESS: Yes.

17 JUDGE SEITZMAN: -- what I -- what I'm  
18 looking at. So, when I look at a form in which the  
19 patient just came in for initial --

20 THE WITNESS: The initial.

21 JUDGE SEITZMAN: -- review --

22 THE WITNESS: Initial should be on that  
23 sheet that you just showed me. The first time that  
24 they come in, no treatment is going to be there.

25 JUDGE SEITZMAN: And it's entitled --

0136

1 JUDGE EGAN: Talking about this?

2 THE WITNESS: Yes, yes.

3 JUDGE SEITZMAN: -- progress notes at the

4 top?

5 THE WITNESS: Yes.

6 JUDGE SEITZMAN: And when you actually  
7 perform the treatment, then we look at the one that's  
8 got a large center column called treatment notes; is  
9 that correct?

10 THE WITNESS: Yes, sir.

11 JUDGE SEITZMAN: And that's how I would  
12 differentiate between the two forms?

13 THE WITNESS: Yes, sir.

14 JUDGE SEITZMAN: So, for this point that  
15 has a treatment note, I should be able to find a  
16 previous progress note which indicates the initial  
17 visit?

18 THE WITNESS: Which should be in that  
19 paper.

20 JUDGE SEITZMAN: Okay. All right. Thank  
21 you.

22 And I apologize it was kind of sequitous  
23 getting there but I just want to make sure I understand  
24 what was going on.

25 That's all the questions I have. Thank

0137

1 you.

2 JUDGE EGAN: Mr. Moriarty?

3 MR. MORIARTY: Thank you, Judge. Before I  
4 get started, I'd like to reoffer into evidence  
5 Respondent's Exhibit 3, which is the 2007 or 2008 Texas  
6 State Board of Dental Examiners records regarding the  
7 complaint that he had at the Dental Board.

8 Now let me see if I can --

9 JUDGE EGAN: I've got it -- I have it down  
10 as already admitted. So, Respondent's Exhibit 3 --

11 JUDGE SEITZMAN: I think our note -- I  
12 think our discussion on that it went to the  
13 admissibility not the --

14 MR. MORIARTY: Okay.

15 REDIRECT EXAMINATION

16 BY MR. MORIARTY:

17 Q. Who trained you how to score an HLD score  
18 sheet?

19 A. I believe Dr. Orr.

20 Q. And when and where did he do that?

21 A. I called him several times and then we  
22 discussed the manual and then he told me that get some  
23 cases, send it to me and then we go over them together.

24 Q. Okay. And when was that about?

25 A. Late 2002, early -- in that neighborhood.

0138

1 Q. Okay. And when did you feel like you had  
2 adequately gained knowledge of how to properly fill out  
3 an HLD score sheet?

4 A. Probably took me like one or two years.

5 Q. Okay. 200- -- would have been by 2004?

6 A. 2004-2005.

7 Q. And have you maintained a relationship with  
8 Dr. Orr since that time?

9 A. No, sir.

10 Q. All right. And do you see him periodically or  
11 talk to him or socialize with him at all?

12 A. Not at all.

13 Q. How did you select him, if you selected him,  
14 to be your expert in this case?

15 A. I did not, sir.

16 Q. Okay.

17 A. I did not.

18 Q. And did Dr. Orr teach you this -- this theory  
19 that ectopic eruption means any tooth that is twisted  
20 or turned or crooked?

21 A. Did he teach me that theory?

22 Q. Yes, sir.

23 A. We can say that, probably, yes.

24 Q. Okay. Now, I think this is a question that  
25 the judges would really like to know the answer to.

0139

1 MR. HECTOR CANALES: Sidebar.

2 JUDGE EGAN: We'll let you know what  
3 questions we really want to know the answers to.

4 MR. MORIARTY: That's probably right.

5 JUDGE EGAN: So, just --

6 JUDGE SEITZMAN: It may be a question  
7 Mr. Moriarty really wants to ask so he can get some  
8 information to us.

9 Q. (BY MR. MORIARTY) It's your sworn testimony  
10 before these judges that you had no idea --

11 A. Uh-huh.

12 Q. -- that the Texas State -- that the TMPH was  
13 not doing the medical reviews of these tens of  
14 thousands of HLDs?

15 A. No, sir.

16 Q. Is that your testimony?

17 A. That's my testimony, yes, sir.

18 MR. MORIARTY: Could I see R58, please.

19 I'd like to blow up that top paragraph, the bottom two  
20 sentences or bottom sentence of that paragraph and the  
21 sentence above that.

22 Q. (BY MR. MORIARTY) You heard Dr. Orr's  
23 testimony --

24 MR. HECTOR CANALES: I'm going to object  
25 at this point. There's been no foundation laid with

0140

1 the witness as to this -- as to this e-mail.

2 JUDGE EGAN: Okay. He hasn't -- he hasn't  
3 finished his question. Until he asks a question --

4 MR. HECTOR CANALES: Well, I just heard  
5 that question wasn't even going to attempt to -- to do  
6 it.

7 JUDGE EGAN: He's asking him a question

8 about that document and your client can ask him if  
9 he --  
10 Q. (BY MR. MORIARTY) You were present when  
11 Doc- --

12 MR. MORIARTY: I'm sorry.

13 JUDGE EGAN: Go ahead.

14 Q. (BY MR. MORIARTY) You were present when  
15 Dr. Orr testified about that e-mail that he wrote in  
16 January of 2007?

17 A. This --

18 MR. HECTOR CANALES: Objection, your  
19 Honor. There's no foundation for --- I don't know what  
20 e-mail. Is he referring to this e-mail? He hasn't --  
21 there's no foundation questions with this e-mail or the  
22 conversation in this question about it.

23 JUDGE EGAN: I believe he's identified it  
24 as Respondent's Exhibit 58. Your objection is  
25 overruled.

0141

1 MR. HECTOR CANALES: The witness hasn't  
2 identified that he even knows what this e-mail is.

3 JUDGE EGAN: He has asked -- he has asked  
4 him if he heard the testimony about this document.  
5 That's the question before your -- your client.

6 MR. HECTOR CANALES: I'm sorry. I didn't  
7 hear that in the question. I apologize.

8 JUDGE EGAN: Is that what you asked?

9 MR. MORIARTY: Yes, ma'am.

10 JUDGE EGAN: All right. Go ahead.

11 MR. TONY CANALES: If not, now.

12 Q. (BY MR. MORIARTY) You heard Dr. Orr's  
13 testimony about this e-mail?

14 A. Well, I remember this e-mail but exactly what  
15 he said I don't remember to be honest with you --

16 Q. Okay.

17 A. -- because it's long day eight -- eight hours.

18 So, what happened, I don't know.

19 Q. And he clearly points out that he is aware  
20 that there is a different approval process and he  
21 remarks, So, any treatment since that date would get  
22 his close scrutiny.

23 A. Okay.

24 Q. You see that?

25 My question to you is: Do you really deny

0142

1 under oath that you had no knowledge that THNP had  
2 opened the door and that anybody that submitted a form  
3 that had 26 on it was going to get approved  
4 essentially?

5 A. Yes. I never knew that. I had no idea what  
6 was going on in the background.

7 Q. Never had -- no orthodontist ever talked to  
8 you about that?

9 A. No, never.

10 Q. Came as a complete surprise to you when you  
11 first learned of it?

12 A. Yes, definitely.

13 Q. When did you learn about it?

14 A. Whenever everybody started talking about it  
15 back in, like, 2011.

16 Q. Okay. Wasn't discussed at any stakeholder's  
17 meetings?

18 A. Stakeholder meetings as I remember there was a  
19 discussion about changing orthodontics back in 2009 or  
20 something like that. There was going to be a change.

21 Q. Okay. That was the change to the managed  
22 care?

23 A. I -- it wasn't managed care. It was about  
24 they were going to go through more orthodontic  
25 evaluation rather than using the HLD index. They were

0143

1 going with the orthodontics. I have expressed  
2 complaint about TMHP that they do not approve all the  
3 cases that really need braces that, you know, they have  
4 problem with the posterior teeth. I have taken that  
5 position. But as far as if they are not looking at it,  
6 I have no idea they're not looking at it.

7 Q. All right. And is it fair to say that you  
8 learned everything that was important about scoring an  
9 HLD from Dr. Orr?

10 A. Is it fair to say? To probably 60 percent, 70  
11 percent, yes.

12 Q. Okay. Can you help these judges understand  
13 the difference between a child that needs braces or can  
14 benefit from braces and a child that actually qualifies  
15 for braces under Medicaid?

16 A. Well, there are some conditions in the back  
17 the patient might need to have -- patient might have,  
18 you know, very good front teeth and sometimes they have  
19 problem in the back. And then HLD just does not  
20 provide the treatment for those kids. That's what I  
21 have express complaint about.

22 Q. Is essentially what your testimony is is that  
23 there's an unlimited supply of children who could  
24 benefit from braces?

25 MR. HECTOR CANALES: Objection. Misstates

0144

1 testimony.

2 A. No.

3 MR. HECTOR CANALES: It's argumentative.

4 JUDGE EGAN: Sustained.

5 Rephrase the question.

6 Q. (BY MR. MORIARTY) Is there a huge percentage  
7 of children -- is it your contention there's a huge  
8 percentage of children that could benefit from braces?

9 A. Yes, sir.

10 Q. And how does that automatically convert to  
11 severe handicapping malocclusion?

12 A. Okay. You need to define that.

13 Q. I need to define it?

14 A. No. I -- I -- we need to define that, if I

15 may.

16 Q. Okay.

17 A. Okay. Based -- again, severe handicap  
18 malocclusion, handicapping when it comes to the mouth,  
19 when the teeth they are not doing what they supposed to  
20 do, when the canines are not in proper position -- just  
21 like on the picture that we just showed -- I believe it  
22 was the last patient -- where you have the canine, the  
23 upper and lower canine, they're not occluded properly,  
24 they're not doing what they're supposed to do, that's  
25 the malocclusion. That's the handicapping on that side

0145

1 of the patient that they're not occluding. That's --

2 that's the one that, you know, we are going by.

3 Q. Is that --

4 A. Or with the teeth in the front are not

5 touching, they're not biting, that's handicap

6 malocclusion.

7 Q. Is it your contention that malocclusion and

8 handicapping malocclusion mean the same thing?

9 A. Okay. Are we talking about Medicaid or we

10 talking about the literature outside Medicaid?

11 Q. We're talking about the medical definition,

12 the dental definition of handicapping malocclusion.

13 Is -- is it your testimony malocclusion means exactly

14 the same thing as handicapping malocclusion?

15 MR. HECTOR CANALES: I'm gonna object to

16 the question as I think it's confusing in that it's

17 not -- doesn't specifically define whether we're in the

18 Medicaid manual or outside of the Medicaid manual.

19 JUDGE EGAN: Can you clarify?

20 MR. MORIARTY: I'll withdraw that

21 question, Judge.

22 And I'll pass the witness.

23 MR. HECTOR CANALES: No questions, your

24 Honor.

25 JUDGE EGAN: Then you're excused. Thank

0146

1 you very much.

2 THE WITNESS: Thank you.

3 JUDGE EGAN: We're going to go off the

4 record for just a second.

5 (Off the record)

6 JUDGE SEITZMAN: All right. We're back on

7 the record at 12:40. And before she walks out the

8 door -- Roy's staying for a little bit -- but I want to

9 thank Roy and Stacey. We both do. You guys have done

10 a wonderful job and y'all have been cooperating with

11 each other and the counsel. So, no matter whose

12 exhibits they were you were able to pull them up.

13 Y'all did a great job because without you we'd be here

14 until next week, I'm sure. So thank you.  
15 MS. STACEY MANELA: As much as I like both  
16 of you, I'd rather leave today.  
17 JUDGE SEITZMAN: You are free from your  
18 restraints as long as counsel's letting you go.  
19 MS. STACEY MANELA: Thank you for the  
20 kudos. It was a pleasure.  
21 JUDGE SEITZMAN: All right. Let's take  
22 up, Mr. Moriarty.  
23 MR. TONY CANALES: Well, Before he does  
24 that can we get an announcement that they're resting?  
25 JUDGE EGAN: That's what we're doing.

0147

1 JUDGE SEITZMAN: That why I'm going to  
2 him. But I think he's going to do something before he  
3 rests.  
4 So, Mr. Moriarty?  
5 MR. MORIARTY: Yes, your Honor, before I  
6 rest HHSC has filed with the Court a proffer of  
7 rebuttal testimony from Dr. Linda Altenhoff and frankly  
8 the tender is exactly what's in the -- in the  
9 pleadings. So, it'd be acceptable to the State if the  
10 Court just accepted that as a proffer of her testimony.  
11 JUDGE SEITZMAN: Mr. Canales -- I'm sorry.  
12 I cut Mr. Moriarty off. Did --  
13 JUDGE EGAN: Were you finished?  
14 MR. MORIARTY: Yes. Yes, ma'am.  
15 JUDGE SEITZMAN: Mr. Canales?  
16 MR. TONY CANALES: Yes, your Honor.  
17 Respectfully we would object to the  
18 proffer on various grounds. One, we do not believe  
19 it's a rebuttal. We do not believe it's a rebuttal and  
20 it's not -- I saw the proffer. We do not think it's  
21 challenging anything that has been said. But we would  
22 object to the calling of a witness twice to a State's  
23 case. My understanding for the purpose of the record  
24 is that -- I've got to look at the reporter. She's  
25 looking to me under the arm. Excuse me.

0148

1 JUDGE EGAN: Move the mic a little bit  
2 closer to you.  
3 MR. TONY CANALES: Yes. I have --  
4 JUDGE SEITZMAN: You object, I take it?  
5 MR. TONY CANALES: I object.  
6 JUDGE SEITZMAN: Thank you.  
7 MR. TONY CANALES: They've rested  
8 already -- they haven't rested yet.  
9 JUDGE SEITZMAN: All right. So, I  
10 listened to the recording of Dr. Altenhoff's testimony  
11 last night -- actually tell the truth it also went into  
12 very early this morning -- and my recollection of that  
13 recording was that during Mr. -- and I listened to it  
14 from beginning to end. And she probably doesn't want  
15 to relive it but I did for her.

16 My recollection is that Mr. Canales asked  
17 her some questions about the language in the manual,  
18 especially with ectopic -- with respect to ectopic  
19 eruption and my recollection is is that she called it a  
20 definition and then they had a discussion about whether  
21 it was a change or a clarification of that wording.  
22 And then on redirect she indicated that these were  
23 instructions to professionals as how to score the score  
24 sheets and that they were expected to -- that this --  
25 these were not written for lay people and that they  
0149

1 were expected to bring their professional background  
2 and education and experience to before in terms of  
3 defining the terms and the words in those terms.

4 So, and I -- and I'll also say that my  
5 recollection is that during Mr. Canales'  
6 cross-examination he and Dr. Altenhoff had a discussion  
7 about whether the words had a plain meaning and you can  
8 go to the dictionary and look at them.

9 So, this seems to be duplicative of that  
10 tender.

11 The other issue in terms of bringing  
12 Dr. Altenhoff back as a rebuttal witness, our standard  
13 has been that it's -- a rebuttal witness is to address  
14 things that couldn't be addressed in the case in chief.  
15 In other words, could you have reasonably anticipated  
16 the issue with respect to a Medicaid definition versus  
17 a nonTexas Medicaid general practitioners' definition.

18 And I'd be reliving the scene in  
19 Casablanca when the director of police is astounded to  
20 find out that there's gambling going on in Rick's  
21 establishment and then he gets paid his winnings. So,  
22 I don't think that there was -- that there is any  
23 reason to believe that this was not reasonably  
24 anticipated.

25 So for those two grounds, then, the  
0150

1 motion -- or the request to tender the rebuttal  
2 testimony will be denied.

3 If you'd like to make an offer of proof at  
4 this time, I will allow you to do so. And since you  
5 have a written submission, if you'd like to go ahead  
6 and tender that as your offer of proof exhibit, then  
7 you can do so with the court reporter. Generally we  
8 would be off the record and we would leave but it's  
9 such a short deal, if you'd like to do it now, proceed.

10 MR. MORIARTY: Thank you.

11 I'm going to mark a document labeled  
12 Respondent 88 and it is the State's offer of proof and  
13 I'll tender that to the court reporter. I've tendered  
14 copies to the Court and to my opposing counsel.

15 With that, the State rests.

16 JUDGE SEITZMAN: Actually the state --  
17 yeah. We'll take up -- I think with the State resting,

18 both sides have rested, we've got some exhibit issues  
19 to deal with and we'll deal with that. And I think  
20 we've got some motions. Let's go ahead and deal with  
21 exhibits, if that's okay.

22 MR. TONY CANALES: Yes, your Honor. Well,  
23 now that both sides have rested, we do have some  
24 motions. I --

25 JUDGE SEITZMAN: Let's -- can we deal with  
0151

1 the exhibits before we deal with the motions?

2 MR. TONY CANALES: Yes, sir. With regard  
3 to the exhibits, your Honor, I'd like to make sure that  
4 the Court -- that the record reflects that Exhibits P 1  
5 through 85 -- all the P exhibits are -- we've offered  
6 them. I think they are in evidence. And I -- I do not  
7 recall whether the Court --

8 JUDGE SEITZMAN: 76 was reserved pending  
9 Mr. Houston's testimony. And since that hasn't been  
10 admitted, 76 would not be admitted at this time.

11 MR. TONY CANALES: And -- but all -- it  
12 was 86 we reserved. My faithful companions tell me --  
13 what is it?

14 Okay. P -- you're right, your Honor.  
15 That one was reserved. But our exhibits go all the way  
16 through P86 and we have a question on P77. That was my  
17 spreadsheet with all the -- with all the HLD score  
18 sheets.

19 JUDGE SEITZMAN: I think y'all were going  
20 to --

21 MR. TONY CANALES: Yes.

22 JUDGE SEITZMAN: -- update that.

23 MR. TONY CANALES: Yeah. And I have  
24 tendered mine to them. I have not heard from them and  
25 I have no problem at all if they would like to be able

0152

1 to offer their own spreadsheet or just correct mine.  
2 But I have not heard from anybody.

3 JUDGE SEITZMAN: I thought P77 was  
4 admitted with the understanding that if the parties  
5 agreed that there was a mathematical or a  
6 transpositional error it would be corrected --

7 MR. TONY CANALES: Right.

8 JUDGE SEITZMAN: -- and a correct version  
9 would be substituted in the --

10 MR. TONY CANALES: And I stand to be  
11 corrected. That's all.

12 JUDGE SEITZMAN: -- would be substituted  
13 into the final record copy. That's my understanding.

14 MR. KHAROD: That was my understanding as  
15 well. I think the other -- when we were having that  
16 discussion, another part of the discussion that came  
17 out that everyone would be allowed to submit whatever  
18 summaries of the score sheets they would feel  
19 appropriate as long as they meet the information that's

20 there. I think Judge Egan had mentioned something  
21 about having a --

22 MR. TONY CANALES: Excuse me.

23 MR. KHAROD: Excuse me.

24 JUDGE SEITZMAN: Go ahead.

25 JUDGE EGAN: Let him finish.

0153

1 JUDGE SEITZMAN: Go ahead.

2 MR. KHAROD: Judge Egan had made a comment  
3 about getting a -- the type of spreadsheet that we had

4 done for -- that Dr. Tadlock had presented --

5 JUDGE SEITZMAN: The tooth by --

6 MR. KHAROD: -- the tooth by tooth type of  
7 breakdown or the -- and I think what I had mentioned  
8 along with that was a component-by-component breakdown  
9 of an HLD score. Instead of just giving the top line  
10 score, that each expert had this total as their  
11 cumulative score also having a spreadsheet that  
12 reflected these are the components for that score.

13 The information is already in evidence in  
14 all the score sheets. It would just be a matter of  
15 presenting that in a form for you.

16 JUDGE SEITZMAN: Do you have an exhibit  
17 number you want to give that?

18 MR. KHAROD: I can give it Exhibit R89.

19 JUDGE SEITZMAN: All right.

20 MR. TONY CANALES: I cannot --

21 JUDGE SEITZMAN: I understand you cannot  
22 if there's an error -- if you think there is an error  
23 or something. Again, all we're talking about are a  
24 summary of all of the various large pieces of paper  
25 that we have that kind of puts it into a score book for

0154

1 us to look at, a play by play as opposed to having to  
2 watch the videotape all over again. So, it's basically  
3 77.

4 JUDGE EGAN: I don't remember the number.

5 JUDGE SEITZMAN: P77 but it's also an  
6 expansion of the spreadsheet that came under  
7 Dr. Tadlock.

8 MR. KHAROD: Right.

9 JUDGE SEITZMAN: So, it's basically  
10 Tadlock expanded to also be like 77. But take a look  
11 at it. I mean, we will -- do you have a problem  
12 admitting it --

13 JUDGE EGAN: It's these two.

14 JUDGE SEITZMAN: -- subject to -- subject  
15 to the parties --

16 JUDGE EGAN: No.

17 JUDGE SEITZMAN: All right. So, what's  
18 the number again?

19 MR. KHAROD: That --

20 JUDGE SEITZMAN: That you got on your

21 new --

22 MR. KHAROD: The new exhibit would be R89.

23 JUDGE SEITZMAN: So, all right. So,  
24 subject to you having an opportunity to review it -- I  
25 understand that you haven't had it -- it will be  
0155

1 tentatively admitted as R89. If you have a -- if you  
2 have an objection and you can't get it resolved, let us  
3 know and we'll deal with it in a telephone conference  
4 call.

5 MR. TONY CANALES: I want to be sure  
6 exactly -- it goes against my grain. I cannot agree to  
7 something I have not seen.

8 JUDGE SEITZMAN: I understand.

9 MR. TONY CANALES: R89 I have not seen.

10 JUDGE SEITZMAN: I understand you're not  
11 agreeing to it but I'm ordering you to at least look at  
12 it. You'll get an opportunity to look at it, confer.  
13 If there's an error and you can't work out or there's a  
14 disagreement as to something, you can't work it out,  
15 then let us know and we will do it.

16 But we'll tentatively admit an R89 in the  
17 general description as described. R77 is in subject  
18 to being -- I mean, P77 is in --

19 MR. TONY CANALES: Right. Thank you.

20 JUDGE SEITZMAN: -- subject to any  
21 mathematical or transpositional error that needs to be  
22 corrected.

23 You have another exhibit I believe.

24 MR. KHAROD: I have one more exhibit, your  
25 Honor. I have R87 here. This is the contract that the  
0156

1 Court had requested. This is the -- I have a CD with  
2 the contract with ACS Healthcare, the TMHP contractor  
3 for 2002, 2008. Also on the CD it has the RFPs for  
4 2002 and 2008 as well as the responses to the RFPs.

5 I've marked this as R87. We've given one  
6 to counsel already and I have two for the Court and one  
7 for the court reporter.

8 MR. TONY CANALES: I have seen it.

9 JUDGE SEITZMAN: Mr. Canales?

10 MR. TONY CANALES: I have no objection to  
11 it.

12 JUDGE SEITZMAN: All right. So, R87 then  
13 will be admitted without objection.

14 MR. WINTER: Judge, may I make a  
15 clarification on this just for the record?

16 JUDGE SEITZMAN: Mr. Winter?

17 MR. WINTER: Yesterday I think we spoke to  
18 the contract itself offline, off the record is quite  
19 voluminous. So, there are six documents on the disk  
20 that was just tendered, two contracts for 2002-2008,  
21 one each, the RFPs for 2002 and 2008, one each, from  
22 the agency, and the responses by the contractor for  
23 both years.

24 There are many change orders and other  
25 amendments to the contract that, again, as we stated  
0157

1 yesterday are quite voluminous that are not included.  
2 So, consequently, if somebody should decide there's  
3 something else that they want to look at, we can confer  
4 and we can make it happen. We just want to make sure  
5 that that's not the entirety of the contract population  
6 because, again, it's quite voluminous.

7 JUDGE SEITZMAN: Thank you. Thank you  
8 forth clarification and representation. And I think  
9 we're going to be dealing with the shallow I prefer.  
10 But if somebody needs to drill down to the saline  
11 level, let us know and we can -- we can by agreement  
12 supplement the scope of -- of that.

13 So, with that 87 is admitted.

14 JUDGE EGAN: R87.

15 JUDGE SEITZMAN: R87 is admitted.

16 Does that -- subject to any other  
17 corrections or redactions that need to be made to the  
18 record copy, which you may catch as you go along and  
19 which the parties are free to do -- please just advise  
20 the opposing party of any correction or redaction that  
21 needs to be made.

22 Are there any other matters that need to  
23 be -- oh, you wanted to clarify. That's right. You  
24 wanted to clarify with respect to -- did you have  
25 another exhibit? It was --

0158

1 MR. KHAROD: There was one thing -- I  
2 don't know if this is the thing you're referencing. I  
3 know in one of the exhibits -- this might be what you  
4 were talking about, too -- R45, counsel was kind enough  
5 to point out it had some inadvertent, like, other  
6 information in there, too. We'll just substitute in  
7 there.

8 MR. TONY CANALES: I agree to change.

9 MR. KHAROD: No. You actually -- thank  
10 you for pointing it out to us, too. So, we'll make  
11 sure that's correct.

12 JUDGE EGAN: What is the R --

13 MR. KHAROD: R45, I think the Court's  
14 version of that exhibit -- it's an exhibit I don't  
15 think we even used anyway. It just had other papers  
16 from our office that got put in there as well.

17 JUDGE SEITZMAN: There were two  
18 impeachment documents that you wanted to make sure had  
19 been admitted for impeachment purposes.

20 MR. KHAROD: I'm sorry. Thank you for  
21 reminding me.

22 R19 and R20. R19 are the patient records,  
23 dental roles and radiographs for All Smiles patients  
24 and R20 are the HLD score sheets that were completed by  
25 Dr. Orr in his review of All Smiles.

0159

1 JUDGE SEITZMAN: And my recollection is --  
2 but in case my recollection is wrong, we'll clarify for  
3 the record -- R19 and R20 were admitted for impeachment  
4 purposes only.

5 MR. MORIARTY: Yes, sir.

6 JUDGE SEITZMAN: And R45 was admitted  
7 because it's not on the court reporter's list?

8 MR. KHAROD: I don't think we even  
9 introduced it, your Honor. We just had it --

10 JUDGE EGAN: Oh, okay.

11 MR. KHAROD: It was in our early  
12 submission but we never used it.

13 JUDGE SEITZMAN: So, is it being tendered  
14 or what's --

15 MR. KHAROD: No. I'm just saying if we  
16 need to clean that up because there's an extra --  
17 there's documents unrelated to this case that got put  
18 in the case file. We can just change that out.

19 JUDGE SEITZMAN: All right. So, as the  
20 parties go through this, if -- if there is an agreed  
21 additional document that you think will be helpful  
22 either to the Court or to the parties in briefing and  
23 you reach agreement on it, just please let us know and  
24 as long as it's by agreement we will have no problem  
25 supplementing the evidentiary record with that because

0160

1 I realize, as you go back and you start working on this  
2 stuff, you may realize that an additional summary or  
3 reconfiguration of the data may be helpful.

4 Mr. Canales?

5 MR. TONY CANALES: I can't recall if we  
6 said it on the record or off the record regarding R2,  
7 R6 and R -- and they're not -- they're not admitted.

8 JUDGE SEITZMAN: R2, 6 and 10 were not  
9 admitted.

10 MR. TONY CANALES: Thank you very much.

11 JUDGE SEITZMAN: And, again, P76 was not  
12 admitted.

13 JUDGE EGAN: Not admitted.

14 MR. TONY CANALES: Yes, sir.

15 JUDGE SEITZMAN: All right. Does that  
16 take care of all the evidence at this point?

17 All right. Let's go to motions.

18 Mr. Canales?

19 MR. TONY CANALES: I'm going to have my  
20 colleague make that.

21 MR. WATKINS: First motion, your Honor,  
22 is --

23 JUDGE SEITZMAN: Identify yourself.

24 MR. WATKINS: Tommy Watkins.

25 We're here on an April 4th, 2012, hold to

0161

1 determine whether or not the hold was justified when it

2 was issued. The evidence before the Court now, after  
3 everybody has closed, is that Dr. Tadlock was not hired  
4 until after when the -- when they went back and tried  
5 to hire somebody to justify the thing that they had  
6 already done; and, therefore, could not possibly  
7 legally serve as a credible allegation of fraud as of  
8 April 4th, 2012. Dr. Evans was not called as a witness  
9 after he was discredited in a previous hearing and,  
10 therefore, everything that he relied upon is not before  
11 evidence of the Court.

12 Mr. Stick has testified that other than  
13 stuff that he was aware of but there were no patients,  
14 there were no parents, there were no other people who  
15 testified live here. So, everything he had would have  
16 been hearsay based upon what he heard or what was  
17 rumor. And, therefore, that does not justify a  
18 credible allegation of fraud. There's limitations of  
19 the petition in which they have tried to introduce  
20 claims and evidence and issues that are outside the  
21 petition and should not be properly admitted.

22 The alleged program violations might be  
23 relevant for a board complaint. They might be  
24 represented for trying to get a repayment but it does  
25 not rise to the level as the Court has heard here today  
0162

1 to a credible allegation of fraud, which would justify  
2 the hold.

3 The idea that a hold is simply a status  
4 quo and has no affect, of course, is obviously not  
5 right. It affects the rights of the people here to  
6 continue their practice. And we move to dismiss the  
7 complaint based on the inadequate allegation of  
8 credible evidence of fraud to justify the hold.

9 JUDGE SEITZMAN: Okay. Motion's denied.  
10 Any other motions?

11 MR. TONY CANALES: Yes, your Honor.

12 We would like -- we would for the Court,  
13 really, to consider as pleadings that have basically  
14 been abandoned. The first complaint under the  
15 complaint is called petitioner failed to maintain  
16 records and other documents that -- and we would  
17 like -- I'm using the same motion for director. I  
18 guess motion for one for judgment I guess on that issue  
19 and then the other one is the one about -- I believe it  
20 will be the complaint that says that based on credible  
21 allegation of fraud MFCU -- I think that's Medicaid  
22 Fraud Control Unit --

23 (Court reporter interrupts.)

24 MR. TONY CANALES: Opened and continues an  
25 investigation.

0163

1 JUDGE SEITZMAN: MFCU. And I think he  
2 said the Medicaid --

3 MR. TONY CANALES: Medicaid Fraud Control

4 Unit.

5 JUDGE SEITZMAN: -- Fraud Control Unit.

6 MR. TONY CANALES: And so, we would like  
7 to be able to also record to a judgment on that -- a  
8 dismissal on that one.

9 JUDGE SEITZMAN: The Court will deny the  
10 motions at this time but as the Court -- as the judges  
11 go through the pleadings and the evidence, we will deal  
12 in the -- in the decision with any pleadings or -- that  
13 have been abandoned as well as anything that hasn't  
14 been proved up.

15 MR. TONY CANALES: And the last one is the  
16 fourth paragraph talks about petitioner received  
17 payment for services in items which are not  
18 reimbursable. Specifically talking about the age of  
19 under 12 years of age. We believe that that's also a  
20 matter we'd ask for judgment.

21 JUDGE SEITZMAN: That will be taken up in  
22 the decision as well.

23 Good thing I write notes because I forget.  
24 Sometimes I forget that I wrote a note.

25 We talked earlier while we were off the

0164

1 record that there are -- there is physical evidence,  
2 the molds, the actual X rays, other items that may have  
3 been tendered to the intermediary or recovered by the  
4 OIG investigators when -- with the files.

5 Let me just state this for the record and  
6 make sure that the parties agreed; and if I get it  
7 wrong, I know y'all will tell me. But the physical  
8 molds, the X rays, the other hard original evidence  
9 will stay with the parties, which is where it has been.  
10 Some of it, I think, is with OIG. There may be some  
11 also with -- with Antoine. That'll be kept with the  
12 parties or their attorneys.

13 The Court and the record copy will reflect  
14 the paper and the digital, electronic images that have  
15 been submitted. I just want it noted for the record so  
16 that if some later reviewing entity or Court needs  
17 access to the physical evidence, the hard mold, the  
18 actual mold, that there'll be something in the record  
19 that indicates where it is.

20 And do you think the parties will just be  
21 able to provide the Court something to indicate for  
22 what they have in their possession?

23 MR. HARGROVE: We can make an inventory  
24 and then send it to y'all.

25 MR. TONY CANALES: Yes.

0165

1 JUDGE SEITZMAN: Okay. That'll be  
2 helpful. Thank you.

3 And that way there's just a tracer as to  
4 where that evidence is.

5 All right. We're all tired. It's Friday.

6 We thank you. Everybody wants to go.  
7 Is there anything that we need to take up  
8 before we adjourn the hearing?  
9 Pursuant to the off-the-record discussion  
10 we had earlier, the parties are going to confer, work  
11 on a proposed briefing outline and a proposed schedule.  
12 As we indicated very early on, I think we both prefer  
13 simultaneous filings of initial briefs and simultaneous  
14 filings of closing briefs.  
15 That we -- Judge Egan and I will also  
16 confer on certain issues that we want briefed and to  
17 the extent that we don't find it in your proposed  
18 draft, we'll talk about it and we'll have a -- at least  
19 one conference call to -- to have this discussion. But  
20 it's not going to be today and it won't be Monday. So,  
21 we'll give you -- give you a week or so, you know, a  
22 couple of weeks to talk about it.  
23 Stephanie indicated earlier that it'd  
24 probably be at least two weeks before you get your  
25 record copy.

0166

1 So, understanding everything kind of  
2 begins to flow from that in terms of the briefing  
3 schedule, that's fine.  
4 Okay. Mr. Hargrove, did you have anything  
5 else?  
6 MR. HARGROVE: I'm good, Judge.  
7 JUDGE SEITZMAN: Mr. Canales?  
8 MR. TONY CANALES: No, sir.  
9 JUDGE SEITZMAN: Thank everybody who sat  
10 through these long proceedings in those wooden chairs.  
11 Thank you very much.  
12 And we are finally adjourned and off the  
13 record at 1:02.  
14 (Hearing concluded)

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0167

1 THE STATE OF TEXAS )  
2 COUNTY OF LEE )  
3 I, Stephanie McClure Lopez, Court Reporter in and  
4 for the State of Texas, do hereby certify that the  
5 above and foregoing contains a true and correct  
6 transcription of all portions of evidence and other  
7 proceedings requested in writing by counsel for the

8 parties to be included in this volume of Reporter's  
9 Record, in the above-styled and numbered cause, all of  
10 which occurred in open hearing and were reported by me.

11 I further certify that this Reporter's Record of the  
12 proceedings truly and correctly reflects the exhibits,  
13 if any, admitted by the respective parties.

14 WITNESS MY OFFICIAL HAND this the \_\_\_\_\_ day of  
15 \_\_\_\_\_, 2013.

16  
17 \_\_\_\_\_  
18 STEPHANIE McCLURE LOPEZ, CSR

19 Texas CSR 3483  
Expiration: 12/31/13

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