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1 SOAH DOCKET NO. 529-13-0997
HHSC-OIG CASE NO.: P20111316523848911

2 ANTOINE DENTAL CENTER, (BEFORE THE

3 (Petitioner (

4 vs. (STATE OFFICE OF

5 (TEXAS HEALTH AND HUMAN (

6 SERVICES COMMISSION, (OFFICE OF INSPECTOR (

7 GENERAL, (

8 Respondent (ADMINISTRATIVE HEARINGS

9 _____
10 HEARING

11 VOLUME I

12 TUESDAY, MAY 28, 2013
13 _____

14

15 BE IT REMEMBERED that on this the 28th day of May,
16 2013, between 9:17 a.m. and 5:07 p.m., the above-entitled
17 matter came for hearing at the State Office of
18 Administrative Hearings, William P. Clements Building, 300
19 West 15th Street, Fourth Floor, Austin, Texas, before the
20 Honorable Judge Howard Seitzman and Honorable Judge
21 Catherine Egan; and the following proceedings were
22 reported by Renea Seggern, Certified Shorthand Reporter.

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

2

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4 Honorable Howard Seitzman

Honorable Catherine Egan

5 STATE OFFICE OF ADMINISTRATIVE HEARINGS

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1 P R O C E E D I N G S
2 JUDGE EGAN: We are convening in SOAH Docket
3 Number 529-13-0997, Antoine Dental Center, Petitioner,
4 versus Texas Health and Human Services Commission, Office
5 of Inspector General, Respondent. Today is May 28th,
6 2013, and we are in the William P. Clements building in
7 Austin, Texas.
8 My name is Catherine Egan and I'm one of the
9 administrative law judges assigned to preside over this
10 hearing. With me as co-presiding ALJ is Howard Seitzman.
11 Would you like to introduce yourself?

12 JUDGE SEITZMAN: Hi. Howard Seitzman.

13 JUDGE EGAN: The proceeding will be
14 conducted pursuant to the Administrative Procedure Act and
15 the statutes and rules that governs the Health and Human
16 Services Commission, Office of Inspector General, and the
17 State Office of Administrative Hearings.

18 At this point, let me have the
19 representatives of the parties identify themselves for the
20 record beginning with the Petitioner.

21 MR. CANALES: Yes, Your Honor.

22 JUDGE EGAN: And if you could stand and give
23 your name and spell it and then also any -- introduce the
24 rest of the attorneys that are also appearing in this
25 matter, that would be appreciated.

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1 MR. CANALES: Yes, Your Honor. I'm the
2 attorney in charge for Antoine Dental Center, my name is
3 J.A. Tony Canales, C-a-n-a-l-e-s. Assisting in the case
4 will be Mr. Hector Canales, also will be Mr. Phil Hilder
5 and Mr. Jim Rytting. Mr. Hilder, Mr. Rytting and Mr. Bill
6 Graham will also be assisting in the case. They will be
7 presenting to the court Dr. Kanaan.

8 JUDGE EGAN: I thought it would be easier if
9 you introduced them, but I think it's making it more --

10 THE COURT REPORTER: It's fine.

11 JUDGE EGAN: Okay.

12 MR. CANALES: We also have, of course, Dr.
13 Nazari and we also have Dr. Anderton, who will be
14 assisting us in our case. That's our team. Oh, I'm
15 sorry. Mr. Tom Watkins from Brown McCarroll will be
16 assisting us, also.

17 JUDGE EGAN: All right. And I'll remind the
18 parties, since there are so many attorneys that are
19 present today representing each side, that when you stand
20 to address us, that you identify yourself for the record
21 so it's clear.

22 For Respondent.

23 MR. HARGOVE: Judge Egan, good morning. My
24 name is Dan Hargrove, H-a-r-g-r-o-v-e, and we represent
25 the State of Texas, Office of Inspector General. And on

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1 my team is Mr. Jim Moriarty, Mr. Ketan Kharod, Ms. Caitlyn
2 Silhan. Did I miss anybody?

3 And Raymond, would you introduce your team,
4 please?

5 MR. WINTER: Raymond Winter, W-i-n-t-e-r,
6 with the Attorney General's Office. Also representing the
7 State of Texas, and Margaret Moore. And we also have
8 representatives of the HHSC-OIG with us today.

9 MR. VARELA: Enrique Varela.

10 MR. MEDLOCK: And John Medlock.

11 MR. HARGOVE: Thank you, Judge.

12 JUDGE EGAN: I will also remind the parties
13 that whichever attorney begins a witness will have to stay

14 with that witness throughout the hearing, so we don't
15 permit several attorneys to take one witness. I --

16 MR. HILDER: Judge --

17 JUDGE EGAN: Yes?

18 JUDGE SEITZMAN: Again, if you will identify
19 yourself for the record.

20 MR. HILDER: Phil Hilder. A housekeeping
21 matter, Judge. I believe in Order Number 6 by this court,
22 there was an order that no attorney may participate in
23 this case without showing authority.

24 We are just a bit confused. Mr. Kharod has
25 his own law firm, Kharod Law Firm. We don't believe that
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1 there is authority for him to appear. He doesn't -- he's
2 not under a contract with the Attorney General, the
3 Attorney General's contract went to Mr. Hargrove and Mr.
4 Moriarty, but doesn't extent to a third law firm. So we
5 believe that it would be improper for him to participate
6 in these proceedings.

7 JUDGE EGAN: Response.

8 MR. HARGOVE: Judge, he's been retained by
9 OIG. He works with the law firm of Waters & Kraus, which
10 is my law firm.

11 MR. HILDER: Judge, just in response to
12 that: The contract says that if he is contracted -- if he
13 is a subcontractor, pursuant to 9.2, Assignment of OCC,
14 outside counsel may not assign this OCC or delegate any
15 right or duty under this OCC without prior written
16 approval from the Agency or the Office of Attorney
17 General.

18 JUDGE EGAN: All right. Well, since this is
19 the first time it's been brought to our attention, we are
20 going to -- I will hold off on that to give you time to
21 obtain whatever authority you have to allow Mr. Kharod to
22 represent --

23 MR. HARGOVE: Judge, he's named in the
24 contract and he works with the Law Firm of Waters & Kraus.

25 JUDGE EGAN: Is he going to be taking a
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1 witness this morning?

2 MR. HARGOVE: He is not, Your Honor.

3 JUDGE EGAN: Then we will take a look at it
4 over the lunch break.

5 JUDGE SEITZMAN: He's employed, or I don't
6 know if he's a partner --

7 MR. HARGOVE: Correct. He's employed by
8 Waters & Kraus.

9 JUDGE EGAN: All right. And my
10 understanding is although Antoine Dental Center is the
11 Petitioner in this case, Texas Health and Human Services
12 Commission, which we typically refer to as HHSC, is the
13 party carrying the burden of proof; is that correct?

14 MR. HARGOVE: That is correct, Your Honor.

15 JUDGE EGAN: Because of that, the party

16 carrying the burden of proof is allowed to present their
17 case first, is allowed to begin the opening and closing
18 first.

19 Additionally, I understand, Mr. Canales,
20 that you asked that we invoke the Rule.

21 MR. CANALES: Yes, Your Honor.

22 JUDGE EGAN: Is that still a request?

23 MR. CANALES: Your Honor --

24 JUDGE EGAN: Whatever makes you comfortable.

25 MR. CANALES: If the Court's ruling

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1 regarding the Rule, the 408 ruling, regarding whether or
2 not Mr. Stick can testify as to conversations of
3 settlement or offers of settlement in that Informal
4 Conference Hearing. If the Court will rule that it cannot
5 commit, then I'm not going to call Mr. McClendon.

6 I do need Mr. McClendon as a witness in this
7 case, which will be my rebuttal witness. And I cannot
8 recall when I believe that was kind of a yes or no or we
9 were going to carry that motion, but I never got a
10 straight ruling from the Court, forgive me. So if Stick
11 cannot testify or bring the topic up of 408, then I'm not
12 going to invoke the Rule. Of course, they can invoke the
13 Rule if they wish, but I want the Court to understand
14 where I'm coming from. Mr. McClendon is in the courtroom
15 right now.

16 JUDGE EGAN: Is that the only --

17 MR. CANALES: That's the only witness, I
18 believe, on both sides.

19 JUDGE EGAN: I believe that Judge Seitzman
20 was leaning to excluding that information and I think he
21 stated like a tree in a hurricane, that's how far he was
22 leaning. My inclination is to protect any settlement
23 conference material, but I had not made ruling.

24 MR. CANALES: Yes, Your Honor.

25 JUDGE EGAN: So is the only witness --

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1 because there are a number of people here and I don't know
2 who belongs to whom or whether or not they are witnesses.
3 Are there any other witnesses in the hearing room that are
4 not a party representative?

5 MR. CANALES: Not that I know of, Your
6 Honor. They are all either experts or parties to the
7 litigation.

8 MR. HARGOVE: Your Honor, we have Dr.
9 Altenhoff and she will be our first witness. The
10 gentleman standing up is Dr. Tadlock, who is our expert.

11 JUDGE EGAN: My understanding is there is no
12 objection to having the experts remain in the room.

13 MR. CANALES: Yes, Your Honor. And I also
14 have Dr. Orr in the audience, so my understanding is the
15 Rule doesn't apply --

16 JUDGE SEITZMAN: The Rule generally applies
17 to fact witness. It gets a little bit dicey when you have

18 a mix.

19 JUDGE EGAN: Mr. McClendon --

20 JUDGE SEITZMAN: Let me just ask: Mr.

21 Hargrove, are you still planning on calling Mr. Stick with
22 the purpose of going into the --

23 MR. MORIARTY: Judge, I clearly hear what
24 you say on that, and when that tree fails to blow over, we
25 will call him. Otherwise, we will not call Jack Stick for
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1 that purpose.

2 JUDGE SEITZMAN: Okay. Maybe what we can do
3 is -- I really don't want to delay any further than we
4 already are getting, time in terms of the hearing, maybe
5 we can take up the issue of Mr. Stick right before the
6 lunch break or during the morning break and see if we can
7 get that settled with respect to.

8 MR. MORIARTY: Let me be more clear. I'm
9 not calling Jack Stick for that purpose. I hear what you
10 say and I hear what you say and we will not offer any
11 testimony about things that were said in that conference,
12 settlement conference or not. We will not testify about
13 that.

14 JUDGE SEITZMAN: Thank you, Mr. Moriarty.

15 MR. CANALES: So I withdraw my invoking of
16 the Rule.

17 JUDGE EGAN: So neither party wants the Rule
18 invoked; is that correct?

19 MR. HARGOVE: That is correct.

20 JUDGE EGAN: All right. One final house
21 cleaning procedure, I'm going to go through just what we
22 had admitted so that it's clear.

23 Has somebody given the court reporter a list
24 of their exhibits both from the Petitioner and the
25 Respondent?

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1 MR. CANALES: Our list is in front.

2 JUDGE EGAN: I believe the only exhibit that
3 was objected to for Petitioner was Exhibit 76. Hold on
4 just a second. There were no objections to Petitioner's
5 exhibits except for Petitioner's Exhibit; 76 is that
6 correct?

7 JUDGE SEITZMAN: That was Mr. Houston, Fread
8 Houston. Since Mr. Houston is being held as a rebuttal
9 witness as I understand it, there's not a need to rule on
10 76 at this point.

11 MR. CANALES: Yes, sir.

12 JUDGE SEITZMAN: Is that correct?

13 MR. CANALES: That would be fine.

14 JUDGE EGAN: With respect to Respondent, I'm
15 just going to read the ones that are admitted at this
16 time. Some were offered as demonstrative, others as
17 rebuttal, so I'm only going to go through those that have
18 been admitted.

19 Respondent's R-1, R-2 --

20 MR. CANALES: We didn't get to R-2. We did
21 not get to R-2, we didn't open it. R-2, R-6 and R-10 are
22 the three items that came in that were not -- they were
23 not admitted, Your Honor.

24 JUDGE EGAN: These are Respondent's
25 exhibits?

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1 MR. CANALES: I can make it easier for the
2 Court, Your Honor, if I may. A total of five that we have
3 objections to, I think everything else comes in.

4 JUDGE EGAN: What five do you have
5 objections to?

6 MR. CANALES: R-2, which was the one -- the
7 CD-ROM, we could never open it. R-6, R-10, R-33 -- and
8 R-33 is that report from Dr. Tadlock that was
9 post-deposition -- and R-45 has that settlement, the
10 third-party settlement in there.

11 JUDGE EGAN: And I believe they said they
12 were withdrawing that portion. It was inadvertently
13 included in our 45. So you are withdrawing all your other
14 objections?

15 MR. CANALES: Not withdrawing them; I'm just
16 saying that those with the ones we made objections
17 regarding, for example, all these reports. I think the
18 Court overruled those last week. I made objections on --

19 JUDGE SEITZMAN: We couldn't rule on R-2,
20 because we couldn't get it open. I have it. I was able
21 to open three. One of them -- R-2 had a separate code
22 from 6 to 10, I believe.

23 THE REPORTER: Judge, you are going to have
24 to speak up for me just a little bit.

25 JUDGE SEITZMAN: Okay. We didn't rule on

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1 R-2 because we couldn't get it open last week. Mr.
2 Hargrove sent out the code, there was a separate code for
3 R-2 and a common code then for 6 and 10.

4 Mr. Canales, you weren't able to open R-2?

5 MR. CANALES: That is the so-called RNS and
6 claims data?

7 JUDGE SEITZMAN: Yeah. I have it open, if
8 you would like to see it.

9 JUDGE EGAN: He's since been able to open
10 it; is that correct?

11 MR. CANALES: I have not. It's kind of like
12 a spreadsheet.

13 MR. KHAROD: Your Honor, this could make it
14 easier. What the RNS data is, is raw data which shows the
15 patient number and it's basically a summary of the amounts
16 paid to Antoine Dental, four different patients. I think
17 we could clear this up by -- and we can discuss
18 stipulations later and I don't want to put Petitioner on
19 the spot here, but basically, that would be evidence that
20 Antoine did get paid for claims they submitted.

21 If we can work out a stipulation that, yes,

22 we got paid; the amount paid is not really an issue in
23 this hearing. So that's all it would be used for.

24 MR. CANALES: Maybe they can give it to me
25 during the lunch hour and we can see it at that time.

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1 JUDGE EGAN: All right. Given what's just
2 been said, let me go back through what I believe have been
3 admitted, and correct me if I'm wrong.

4 R-1, R-3, R-4, R-5, R-7, R-8, R-9, R-11,
5 R-12, R-13, R-14, R-15, R-16, R-17, R-18 -- there were a
6 number of exhibits being offered for impeachment so we are
7 reserved ruling on those -- R-29 and R-41; does everyone
8 agree that those have been admitted for the record?

9 (Respondent's Exhibits 1, 3, 4, 5, 7, 8, 9,
10 11, 12, 13, 14, 15, 16, 17, 18, 29, 41 admitted.)

11 MR. HILDER: Judge, I would ask that R-3 be
12 held in abeyance for right now. It would depend if that
13 comes in under 404(b), whether those counts in the
14 complaint in Paragraphs 1, stay or if they are abandoned
15 or stricken by the Court.

16 JUDGE EGAN: We had overruled. We indicated
17 it didn't go to the admissibility but to the weight. But
18 my recollection is that R-3 has been admitted. We
19 certainly draw our attention -- we have read it and noted
20 that the statement that your client has not admitted the
21 truth or the accuracy of the findings of fact, but it is a
22 prior Board order. Any others that were -- anybody
23 believes were admitted that we have not mentioned?

24 MR. MORIARTY: I want to bring your
25 attention on the exhibits that I think will need to be

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1 dealt with. Frankly, it's a clean-up issue. The exhibits
2 that Mr. Canales offered into evidence that you are about
3 in the process to admit, have the patients' names on them,
4 patient identifying information and information like that.
5 I would hold up on accepting those exhibits until that's
6 been cleaned up. We have gone in and redacted all that
7 information and we have renumbered those, but we haven't
8 had time to clean up those exhibits.

9 JUDGE EGAN: You are talking about
10 Petitioner's exhibits?

11 MR. MORIARTY: The Petitioner's exhibit list
12 violates this Court's rules by disclosing the private
13 HIPAA information of all of those patients, and I would
14 encourage the Court to hold off on admitting the
15 Petitioner's exhibits until we have properly -- until they
16 have properly renamed them.

17 We have those exhibits in this housekeeping
18 deal, but I want to put you on notice what you are about
19 to do is to disclose the HIPAA information on those 63
20 patients.

21 JUDGE SEITZMAN: Well, what we had discussed
22 at the final pretrial, because there was also in the
23 materials that came from the Respondent, there were

24 pictures of individuals' faces and stuff, and so I thought
25 what we had agreed to do was we would admit them, but give
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1 the parties leave to substitute a redacted copy for the
2 record copy.

3 MR. MORIARTY: That's fine. And we have
4 done that and we have now done a -- we had redacted all of
5 the identifying data, name and birthday and stuff like
6 that, and we have also gone in and put blanks over the
7 faces. So we will work with the Petitioner on that.

8 MR. CANALES: My paralegal informs me that
9 we have done that. We go by initials.

10 JUDGE SEITZMAN: I think we were all in
11 agreement last week that just -- because we are going to
12 find stuff, I mean, you just try and catch everything, but
13 you don't always catch everything. And so as we go along
14 and both parties catch something, let's just -- whoever
15 exhibit it is, we will agree to redact it, and by the end
16 of hearing, we should have a clean record copy, which is
17 the copy we are concerned about. We can destroy our
18 copies.

19 So Mr. Canales --

20 MR. CANALES: We will do it. Judge Egan,
21 forgive me. R-6 and 10, that is what is called the
22 Attachment A. We objected to those last time.

23 JUDGE EGAN: We have not admitted --

24 MR. CANALES: Okay. Very well.

25 JUDGE SEITZMAN: Because we couldn't open

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1 them. Those where the resumes; were they not?

2 MR. CANALES: No, the Attachment A.

3 JUDGE EGAN: I did not admit R-2, R-6 or
4 R-10.

5 MR. CANALES: Right.

6 JUDGE EGAN: Just make sure the court
7 reporter has a copy of the exhibit list.

8 MR. KHAROD: Your honor, I'm not clear for
9 R-2, is there an objection or is it that they can't open
10 the file? Because we gave -- along with giving them the
11 Court the password, we gave the password to the other side
12 for that one, too. So I'm not sure whether it's a
13 technical issue or whether it's an objection.

14 MR. CANALES: Both.

15 JUDGE EGAN: I believe at this point, he's
16 not had a chance to see the exhibit; is that correct, you
17 could not open it?

18 MR. CANALES: Well, what they have described
19 to me, it's hearsay and it was not prepared by any
20 particular witness, and it is something made for the
21 purpose of litigation and we object to it. 8036, Your
22 Honor.

23 JUDGE EGAN: Okay. We will deal with those.
24 I think you probably need to look at it and open it before
25 you proceed with an objection, take a look at it and see

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1 if you really object to it.

2 MR. HILDER: If I may just revisit the issue
3 with R-3, I would ask that the Court to allow us to renew
4 our objection to R-3 if, in fact, part Number 1 of the
5 petition is somehow not proved or withdrawn or dismissed.
6 Because then the 404(b) does not become applicable to even
7 allow that into evidence. So with that, I wanted to raise
8 my concerns.

9 JUDGE EGAN: When it is offered, you can
10 re-raise your objection.

11 MR. HILDER: Thank you.

12 JUDGE EGAN: Are we ready to proceed to
13 opening statements?

14 MR. HARGOVE: Yes, Your Honor.

15 JUDGE EGAN: Are there any questions before
16 we proceed?

17 MR. CANALES: Yes, Your Honor. Respondent
18 today, at this point, at 8:35 filed something they called
19 a Trial Supplement to Respondent's Complaint.

20 JUDGE EGAN: We received those and we
21 will -- Judge Seitzman and I will review both the request
22 and the response during the lunch hour and make a ruling
23 when we come back.

24 MR. CANALES: So how does this play
25 regarding opening statement?

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1 JUDGE EGAN: According to the Respondent,
2 they have not added anything to this, so I wouldn't
3 imagine it would affect it at all. But if they go outside
4 their pleadings, I'm sure you will object.

5 MR. CANALES: Well, they are going outside
6 their pleadings.

7 JUDGE EGAN: They haven't made their opening
8 statement.

9 MR. CANALES: I want to be sure I'm not
10 agreeing to the so-called supplement, whatever it is. We
11 object to it.

12 JUDGE EGAN: I understand the objection.
13 And at this point, the only thing we are heading to is the
14 opening statements, and if -- I will remind you, opening
15 statements are not evidence, and if we agree with you,
16 then we will -- if there's anything in their opening
17 statement that pertains to the new material or what you
18 believe is new material, we will certainly not consider
19 it.

20 Go ahead and proceed, Mr. Hargrove.

21 MR. HARGOVE: Dan Hargrove for OIG. Judge
22 Egan, Judge Seitzman, did Antoine Dental Center commit
23 Medicaid fraud? Did Dr. Nazari and his clinics, did they
24 use poor Texas kids to commit Medicaid fraud? Did they
25 steal millions of dollars from the Medicaid program? All

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1 of that is not relevant for our purposes today. That's

2 not why we are here. That fight is for another day. That
3 fight is for another proceeding at the overpayment
4 hearing. We think when that time comes, the evidence will
5 overwhelmingly show yes to all those questions.

6 Our purpose is a different matter, our
7 purpose is to show if there's a legal basis to maintain a
8 payment hold because it's not Antoine's money. It's the
9 taxpayer's money, it's the State of Texas' money. And all
10 we have to do is determine if there's prima facie evidence
11 to maintain the payment hold.

12 So what we must show today is if there's
13 prima facie evidence of either a willful misrepresentation
14 involving a reimbursement claim or program violations.
15 Some of the program violations in question are submitting
16 or causing to be submitted a false claim, up-coding,
17 billing for nonreimbursable services, failure to comply
18 with the Medicaid rules, failure to comply with Dr. Nazari
19 and his clinic's provider agreement -- which you will see
20 shortly -- misrepresentation on a prior authorization --
21 and we will talk about what a prior authorization is --
22 and submitting or causing to be submitted a false
23 statement.

24 So this is what we have to prove in order
25 for this tribunal to maintain the payment hold. That's
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1 all we are taking about, is maintaining the payment hold
2 either, A, a willful misrepresentation, or Medicaid
3 program violations.

4 Dr. Altenhoff will talk about what those
5 program violations are. So the standard is extremely
6 important to us. It's a very low standard of proof for
7 this proceeding.

8 So what is the State's burden of proof?
9 Judge, it's prima facia. Prima facia. And let me read to
10 you what that standard means under the law. The prima
11 facia standard requires only the minimum quantum of
12 evidence necessary to support a rational inference that
13 the allegation of fact is true.

14 The minimum quantum of evidence necessary to
15 support a rational inference that the allegation of fact
16 is true.

17 So if this were a criminal court, we would
18 be up here at reasonable doubt, but we are not. If this
19 were a different proceeding, we might be at clear and
20 convincing evidence, but we are not. We are not even at a
21 civil case where we have to show preponderance of the
22 evidence, we are not even at the probable cause stage. We
23 are one step below that, between reasonable suspicion and
24 probable cause.

25 So as you evaluate the evidence and come to
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1 a determination in this case, it's critical to understand
2 what the State's burden of proof is, and that is prima
3 facia.

4 This is a messy slide, let me walk you
5 through it, the program violations that are going to come
6 out over the next couple of days. So let me take you to
7 Step 1.

8 Step 1 -- here is how we are going to show
9 what happened, and the records, most importantly, are
10 going to show this.

11 Step 1, a patient reports to Antoine Dental
12 Center. The patient is examined, and you will hear about
13 this HLD score sheet and Antoine scores the patient on the
14 HLD score sheet; they take x-rays and models. So Antoine
15 Dental Center does all this. Some of the program
16 violations come in at that stage when they have the child
17 there in the chair and the provider, the dentist is
18 scoring the kid or whoever is scoring the child on the HLD
19 score sheet. It's at this stage where some of the program
20 violations come in, where we have misrepresentations, we
21 have a false prior authorization, and the first steps
22 towards a false claim.

23 Because what happens then is the ADC
24 packages up material, information, evidence, that they
25 sign to and they ship it off to TMHP, which is the
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1 contractor that receives these requests for prior
2 authorization for braces and they look at it and they
3 determine whether there's sufficient medical evidence to
4 put braces on a Medicaid beneficiary.

5 So when Antoine ships that off to TMHP, the
6 mere submission of those documents at that stage involves
7 several program violations that you will see in the
8 records.

9 Then TMHP approves the claim, whether that
10 is right or wrong is not relevant today. And then they
11 authorize Antoine to place braces. Antoine then places
12 braces, and then they place braces and they submit a claim
13 for reimbursement. Again, we have another stage where
14 program violations are committed. Throughout this, we
15 have willful misrepresentations.

16 So we have program violations involving
17 noncompliance with the program, billing for
18 nonreimbursable services, misrepresentation,
19 misrepresentation, misrepresentation, false claim when
20 they receive the money.

21 So let's talk a little bit -- you are going
22 to hear some of this from Dr. Altenhoff, we will detail
23 that and pull out the manual, it's important to understand
24 the process that a Medicaid beneficiary goes through to
25 get braces.

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1 So the Medicaid criteria for braces. It's a
2 decision tree, basically. Are braces permitted under the
3 Medicaid program for cosmetic purposes? If they want to
4 do it for cosmetic purposes, no; Medicaid won't pay for
5 cosmetic purposes.

6 Does the child have baby teeth? There are a
7 couple of exceptions we will address. If the child has
8 baby teeth, can't get braces if the child has not had baby
9 teeth; they are called primary teeth. Then does the child
10 need braces? In other words, is there a medical necessity
11 to place braces on that child?

12 If the answer is, yes, there is a medical
13 necessity to place braces on the child, then we go to the
14 next part of the decision tree. And here is the thing,
15 does that child have a severe handicapping malocclusion?
16 A severe handicapping malocclusion. Is the child
17 dysfunctional? Can that child chew or eat? That is what
18 the program is designed for, for children who are
19 dysfunctional. It is not designed to make kids look
20 pretty. It is not designed to have kids with straight
21 teeth.

22 Then the issue is, if there is a severe
23 handicapped malocclusion, which is a very high standard,
24 then we go to the next stage. Yes, then they submit prior
25 authorization for reimbursement. If prior authorization
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1 is approved, then the benefit is issued.

2 This is just one example of a patient. You
3 are going to see quite a few of them, especially over the
4 next couple of days. This is from Antoine's own records.
5 This is a child who presented and these are before
6 photographs, this is how a child presented to Antoine.
7 And as you see, these photographs over the next couple of
8 days, ask yourself, think about it, does this child have a
9 severe handicapping malocclusion? Is this child
10 dysfunctional with her oral health?

11 So what we have here -- and let me just kind
12 of walk you through here. We have photographs from
13 Antoine's records, you have -- there are HLD score sheets.
14 You are going to see some of these, and this is what an
15 HLD score sheet looks like. And then here is how the
16 provider scores the HLD score sheet. Bottom line is, if
17 you get 26 points, that is what they are looking for.
18 They want to get to 26 points because that is their ticket
19 to the Medicaid dollar.

20 And here is where they score it. There are
21 certain functions. If you can't see it, we will wait for
22 Dr. Altenhoff to talk about it, but here is where you are
23 going to see a lot of these records. And I'm not going to
24 go into detail right now, but the teeth in question are
25 the front teeth, not the back teeth.

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1 Do you have a tooth that is ectopically
2 erupted? We are talking about the 12 front teeth. And
3 this is where Antoine -- and Dr. Nazari scored this one,
4 where he is saying, this young girl, every single one of
5 her front teeth is ectopically erupted. And then he signs
6 it, the examiner says here, Dr. Nazari, provider's
7 signature, Dr. Nazari, please submit this score sheet with

8 your records. He scored it 36 points. He sends it off to
9 TMHP.

10 And then we have the rule here .1671(a),
11 submitting or causing to be submitted a misrepresentation
12 or omitting pertinent facts when claiming payment under
13 Medicaid or when supplying information used to determine
14 the right to payment under Medicaid or other Health and
15 Human Services program.

16 So when they send that off, it's false
17 information. That's a program violation. It serves as
18 the basis to maintain this payment hold until we get to
19 the next proceeding to get the State's money back.

20 Now, you don't have to be a Medicaid
21 provider. Dr. Nazari, his providers, they voluntarily
22 enrolled in the Medicaid program. What you will see later
23 is you will see his provider enrollment application. And
24 in that application, he comes to the State, he tells the
25 State, I want to do business with you, Government, I want
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1 to be a Medicaid provider, I want to get on this system.
2 And he enrolled back in 2000 and periodically re-enrolled,
3 and this is from his 2008 application.

4 So this form is required for all applicants.
5 Part I, provider information, Behzad Nazari; there is his
6 address, 6206 Antoine Drive; and there is his signature
7 dated January 9, 2008. Let's pull out a couple parts of
8 this.

9 Dr. Nazari certified to be truthful. In
10 Part II, it says, agreements and certifications: In
11 consideration of the payments authorized under this
12 agreement -- it's a contract he has with the State -- the
13 provider identified in Part I of this agreement agrees or
14 certifies to become familiar -- what this says is he's
15 going to follow the rules and become familiar with the
16 rules and he's going to stay up-to-date with the rules.
17 And Dr. Altenhoff will talk about that.

18 Here is the kicker, in Subparagraph E, it
19 says, he certifies -- Dr. Nazari -- that all information
20 contained in all claims or encountered data submitted by
21 or on behalf of the provider is true, complete and
22 accurate, and can be verified by reference to source
23 documentation maintained by provider in accordance with
24 the manual, which is going to be this document right here
25 which you will hear about. This is the Texas Medicaid
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1 Provider Procedures Manual. You will hear a lot about
2 that. Maybe too much.

3 So he's certified he's going to be true
4 complete and accurate. The provider will provide services
5 for Medicaid recipients in the same manner by the same
6 methods and the same level of quality provided to the
7 general public.

8 In other words, we don't have two different
9 standards of care. We don't have a standard of care for

10 the Medicaid population for poor kids and a standard of
11 care for kids who are not on Medicaid.

12 True, complete and accurate, that's what
13 this case is about. Was he truthful? Was he complete?
14 Was he accurate? And as you go through the next couple
15 days, you will get more of this, and later on in this
16 afternoon. Are these severe handicapping malocclusion?
17 These are four photographs. These are how kids presented
18 to Dr. Nazari.

19 Thank you, Judges.

20 MR. CANALES: May I proceed?

21 JUDGE EGAN: Yes, Mr. Canales.

22 MR. CANALES: You will hear testimony from
23 Dr. Nazari and Dr. Kanaan, our two experts --

24 THE REPORTER: I'm sorry. Who?

25 MR. CANALES: Dr. Nazari, Dr. Kanaan and Dr.

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1 Orr. All of them will say that this definition of what
2 constitutes the ectopic eruption is a very subjective
3 matter. You will see people who are doctors in this
4 profession who are all over the place in the grading of
5 it. The question has now arisen as to whether or not a
6 dispute and a professional opinion rises to the level of
7 some type of fraud. That is what they are contending.

8 MR. HARGOVE: Your Honor, I don't want to
9 object, but we have made it clear we are not having to
10 prove fraud in this proceeding.

11 JUDGE EGAN: I understand. This is opening.

12 MR. CANALES: I submit that they have to
13 prove fraud or willful misrepresentation or some type of a
14 false statement. But you have to look as to, how did we
15 get here. And we got here because some time, and the
16 testimony will be from other parties, that there was a
17 television station, WFAA out of Dallas, who ran a series
18 of stories. And in this series of stories all had to do
19 with criticizing the HHSC agency for spending a lot of
20 money in the treating of Medicaid patients.

21 As a result of that, OIG decides to
22 investigate, automatically audit the top 25 providers in
23 the State. Dr. Nazari fell in that category. So there
24 was no probable cause, there was no suspicion, there was
25 nothing except we are going to conduct an audit. When

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1 they conducted this audit, they started a campaign at that
2 time of what is called notifying everybody about payment
3 holds. So they give a payment hold notice and they come
4 over and pick up your records. And I say they, OIG picks
5 up the records. And they start doing these studies,
6 analysis of the files.

7 The files are all in the record. We have
8 photographs, the photograph he showed you was only part of
9 the photograph. You will see the entire paragraph. You
10 are going to see so many teeth in the next couple of days,
11 you are going to be saying, oh, my God. And you are going

12 to be seeing some disparities, where the children's teeth
13 are coming out from the top. They are terrible teeth.
14 And not one time did Dr. Evans, out of the 63 patients,
15 not one time did Dr. Evans approve a single one. Not one.

16 Out of the 63 patients, only one patient
17 passed the HLD score according to Dr. Tadlock. Why is
18 that disparity? It's because of the definition. Dr.
19 Tadlock -- we will show you, that Dr. Tadlock and Dr.
20 Evans are insisting on applying a definition that's
21 outside the manual.

22 Now, to us, I think we have offered into
23 evidence the opinions -- the Agency's decision or the
24 Agency's adoption of the definition by Judge Fekety. She
25 says I'm the Agency, I adopt the findings of Judge

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1 Kilgore, and here they are. And she flat out says, this
2 is the Agency's definition; not the expanded version, not
3 a clarification, but a verse that says, an unusual pattern
4 of eruption such as high labial cuspids or teeth that are
5 grossly out of the long axis of the alveolar ridge. That
6 has been the definition, by the way, that these doctors,
7 my clients, have operated on since Day 1, since they came
8 into the program.

9 And when they came into the program, TMHP
10 approved all these patients. Years later, now they are
11 coming back to redefine the definition. The question is:
12 Where is Dr. Felkner? Where is TMHP? Where is the
13 program violations? Where is that other side of coin?

14 You will never see it. What you will see is
15 that TM -- that OIG is presently under a Federal -- is
16 presently under a Federal -- the Office of Inspector
17 General, Health and Human Services Commission audit, for
18 them to be able to explain whether or not this so-called
19 prior authorization program was working or not. As a
20 response to that, we are here today. There is an internal
21 audit that you will see in evidence came out in 2008 where
22 State OIG conducts an audit of TMHP regarding the prior
23 authorizations. And they say, we are conducting the prior
24 authorizations under this standard. Nobody complained;
25 everything stayed the same.

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1 Dr. Altenhoff will testify, because we have
2 her deposition, I'm sure she's not going to change it,
3 that she was kind of like a consultant for HHSC and that
4 she had these doctors -- they call them shareholder
5 meetings. And not one did she ever speak with TMHP, and
6 not one time did she tell the doctors, you are doing it
7 wrong; you are reading the definition wrong. So I submit
8 to the Court that now, while they don't want to admit it,
9 at least Dr. Tadlock says, that he is applying a different
10 definition. He is going out of the manual.

11 Now, none of the doctors made the rule, none
12 of the doctors can change the rule. All of the doctors
13 have to apply by the rules. Those rules are put out in

14 the manual. You will see that the manual's definition
15 didn't change all until about late 2011; that's where they
16 changed the definitions.

17 Now, all these doctors are going to testify
18 that pursuant to that old definition, their only
19 definition of ectopic eruption, that these doctors made a
20 clear, logistic, fair, dental diagnosis in treating the
21 patients. All of them; not a problem at all.

22 So today, what we have here is nothing but
23 an attempt by OIG to try and recoup some money by pulling
24 out every type of possible post-whatever audit violation
25 that they can dream of to see because it would offset

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1 State dollars going to the Feds.

2 Now these -- all these patients, by the way,
3 were all seen, they all exist, there's no fake patients,
4 all the services were delivered, it's all there. The
5 question in all of them is whether or not these patients
6 qualify.

7 In the case of the Harlingen case, Judge
8 Kilgore said the issue is the application of the HLD
9 score. Judge, when the matter went over to the Agency,
10 and the opinion is also correct, Judge Fekety said the
11 same thing. She went so far to say, oh, my God, these
12 witnesses' experts this OIG brought in. Dr. Evans, Evans
13 has never been a Medicaid provider, he has never done a
14 Medicaid patient, and his testimony was deemed by the
15 Agency as not credible.

16 The testimony you will hear from Dr. Tadlock
17 is similar; never seen a Medicaid patient, has never
18 submitted a Medicaid bill, totally foreign to the Medicaid
19 role. They are hired guns to be able to give you an
20 opinion. And we understand the business; we understand
21 the business, you hire experts to give you their side of
22 case. But there has to be some logic to it.

23 So what Dr. Tadlock has done, he's gone all
24 over the dental world to try and expand the definition of
25 ectopic eruption. the Agency's own position, and the

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1 irony of the whole thing is they are attacking. OIG is
2 attacking the findings of its parent of HHSC's findings,
3 which makes it very unusual for OIG to be attacking the
4 findings of HHSC. HHSC has made a decision; they have
5 made a finding. And they say in the finding what the
6 evidence has been.

7 That's why we filed our motion for
8 collateral estoppel. So the question here today is
9 whether or not the definition applies that it's been all
10 these years. We submitted to you that it does; it hasn't
11 changed at all. So how -- whether or not the testimony of
12 these two doctors, of Tadlock and Evans, has any bearing,
13 I'll submit to you that it cannot.

14 Judge Fekety said, once an agency refers a
15 contested case to SOAH, the SOAH ALJ stands in the shoes

16 of the Agency and may make any findings necessary to
17 resolve legal issues in the case. And that's what they
18 did here. And they issued the authority, they issued the
19 rulings that these -- that makes the findings of fact.

20 We submit to you that these two doctors are
21 incorrectly interpreting the definition of ectopic
22 eruption, that's what this case is all about. Nothing
23 else. Just ectopic eruption. We do it pursuant to the
24 manual, and you will see photographs that are going to
25 shock you, I believe.

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1 He showed you one photograph; you didn't see
2 the whole side of it. But our doctors all honest doctors,
3 they are all hard-working people, they have been subjected
4 to this particular inquiry. And Dr. Nazari will explain
5 each and every one of these cases. We don't have any
6 problem at all defending it. We don't have any problem at
7 all being subjected to cross-examination.

8 So the question is: Does the fact that
9 doctors disagree on the score sheet, does that arise to
10 the level -- does that automatically rise to the level of
11 some type of fraud, willful misrepresentation? Does not
12 to word of the actual doctor work? So we don't have here
13 a case where, oh, my God, these were fictitious patients;
14 we don't have a single one of that.

15 We inquired, by the way, of Dr. Evans and
16 Dr. Tadlock, whether they are alleging that we have done
17 anything wrong fraudulently or falsely. He says -- both
18 of them said, no, all we got hired to do was to pass the
19 score, look at the HLD score, that's all we got hired to
20 do. Dr. Tadlock says it and Dr. Evans says it.

21 So all of a sudden, we are now facing this
22 tremendous amount of legal inquiry to our ability, where
23 basically called fraud, fraudulent doctors, we are called
24 crooks. And I submit to you that you are not going to
25 hear any testimony of that whatsoever.

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1 Thank you.

2 JUDGE EGAN: Would you like to proceed with
3 your direct case?

4 MR. WATKINS: Your Honor, as a result of
5 what Mr. Canales just said, I would file a motion to
6 dismiss. The evidence is clear in this case that the hold
7 letter, which was sent out and dated April 4th, 2012, that
8 is the letter which puts it on hold. The evidence then
9 has to be is what is the prima facia evidence or the
10 reasonable allegation of fraud that existed as of that
11 date, April 4th, 2012.

12 Dr. Tadlock was not hired until June of
13 2012, there is no way that his testimony is relevant to
14 anything having to do with the justification with the
15 primary hold put on this case. The State doesn't get to
16 put on a hold and see if they can come up and justify it.
17 They have got to show that at the time that they issued

18 their letter on April 4, 2012, they had a reasonable
19 allegation of fraud, or as they put it, a prima facia
20 claim at that point.

21 Now, the only other evidence that they have
22 submitted, that's in the evidence that this Court has
23 received, is that of Dr. Evans. He stands in the shoes --
24 the previous SOAH Judge stands in the shoes of the Agency.
25 And that agency has made a finding that Dr. Evans'

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1 testimony is not credible. So therefore, it should not be
2 admitted.

3 So as of April 4, 2012, the only thing they
4 have got to show that this doctor has done anything wrong
5 is a doctor that the Agency has a fact finding, which is
6 binding on it, that his testimony is not credible and
7 another doctor that they went out after April 4th, 2012,
8 to hire to come in and provide testimony to try to shore
9 up a case which was falling apart.

10 We think that based upon that, we should
11 dismiss this case at this point and we feel very strongly
12 about that.

13 Now, if you-all decide to go forward, we at
14 least think that Dr. Tadlock's testimony should be motion
15 in limine'ed out and excluded because it is not relevant
16 to the question of the date when the hold was put on Dr.
17 Nazari, what was the reasonable allegation or the prima
18 facia case. So we move to dismiss the case or, in the
19 alternative, to exclude everything Dr. Tadlock says.

20 JUDGE EGAN: Response?

21 MR. MORIARTY: Y'all set a rule that we have
22 tried to live with, that all dispositive motions were to
23 be filed on or before April 29th. I looked at my
24 calendar, April 29th was awhile ago. That motion is not
25 timely and is not proper.

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1 JUDGE EGAN: The motion is overruled.

2 MR. HARGOVE: I'm sorry, Judge. I thought
3 you were still conferring. We could call Dr. Altenhoff.

4 JUDGE EGAN: You may proceed.

5 LINDA ALTENHOFF, D.D.S.,
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HARGROVE:

9 Q Dr. Altenhoff, will you please state your full
10 name.

11 A Linda Marie Jackson Morris Altenhoff.

12 Q And thank you for being here today; we appreciate
13 your testimony.

14 What is your profession?

15 A I'm a doctor of dental surgery.

16 Q And what do you do for a living right now?

17 A Currently, I'm a policy expert for the Department
18 of State Health Services for dental policy, not only for
19 Medicaid, but also for other public health dental programs

20 for the State.

21 Q I think it's important that the Judges hear a
22 little bit about your background, so let's talk a little
23 bit about your educational background and what you've been
24 doing for the State over the past few years.

25 A Okay. I am a 1984 graduate of the University of
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1 Texas Health Science Center Dental School in San Antonio.
2 I was in private practice in San Marcos, Texas beginning
3 -- shortly after my graduation. And during that time, I
4 served as a Medicaid dental provider for the State of
5 Texas. In 1998, I came to work for -- at that time, the
6 Texas Department of Health, serving as a regional dental
7 director based out of San Antonio, Texas.

8 And during the course of that time, I
9 oversaw the Texas Health Steps Medicaid Dental Program and
10 Medical Program for the State of Texas, as well as other
11 Medicaid-related programs and the public health program
12 for the 28 counties covered under Health Service Region 8.

13 In 2001, I was requested to come to the
14 central office in Austin as an interim division director
15 for the Texas Health Steps Medical Program.

16 Q So what is the Texas Health Steps Medical
17 Program?

18 A Texas Health Steps is the Texas program that's
19 obligate -- or mandated under the Social Security Act, and
20 in particular, the early and periodic screening, diagnosis
21 and treatment plan as mandated by the Federal Government.

22 Q And you were the director of -- the policy
23 director for that?

24 A I was the director of the medical side of Texas
25 Health Steps beginning in April of 2001.

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1 Q Okay. Continue on.

2 A In the course of that, I oversaw the policy
3 development for medical policy for the preventive medical
4 services for Texas Health Steps recipients, which are poor
5 and underserved children who are eligible for Medicaid,
6 birth through age 20, in the State of Texas. And provided
7 guidance to staff, professional staff within Texas Health
8 Steps Medical with regards to medical policy for the
9 children for their preventive health care visits.

10 And also provided additional policy,
11 direction for the Medical Transportation Program, as well.

12 Q And what about the dental services in question,
13 what kind of policy guidance did you provide?

14 A Beginning in 2004, I stepped in as the interim
15 state dental director over the Texas Health Steps Dental
16 Program, as well and took on the responsibilities of
17 participating in the development of dental policy for the
18 Texas Health Steps Dental Program. I have also served in
19 the capacity for the Health and Human Services Commission
20 as the consultant for Medicaid dental policies for
21 children, but also for the Children's Health Insurance

22 Program dental policy.

23 In my capacity with the Department of State
24 Health Services where I'm currently employed, and have
25 been since the transition from the Texas Department of
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1 Health to the Department of State Health Services. I have
2 also served in the capacity as a subject matter expert
3 with regards to dental policy for the Children With
4 Special Health Care Needs Program, as well as the Title V,
5 Maternal and Child Health Program, and our public
6 health -- primary health care program within our agency.

7 Q And is this mostly in the context of the Medicaid
8 program?

9 A The majority of it, yes, is associated with the
10 Medicaid program, but is also is associated with
11 low-income children who do not qualify for Medicaid or
12 other Federal assistance other than the Title V, Maternal
13 and Child Health Program.

14 Q And tell us, Medicaid is a state program, right?

15 A Medicaid is funded by State and Federal. It is a
16 partnership between the State and the Federal Government
17 and is funded in that manner between the State and the
18 Federal Government.

19 Q As it relates to dental policy of the Texas
20 Medicaid program, tell us about that, what your role has
21 been?

22 A My role has been to serve as a consultant to the
23 Health and Human Services Commission as a dental subject
24 matter expert with regards to Medicaid dental policy, not
25 only in the development, but in the review and updating of
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1 that policy. Also as serving in that capacity, I was
2 asked by the Health and Human Services Commission to
3 facilitate quarterly stakeholder meetings in which we had
4 representatives from the Medicaid provider groups across
5 the State come to Austin and meet with us on a quarterly
6 basis.

7 The meetings were held in January, April,
8 July and October of the years starting in October 2004 in
9 which we proactively sought their input with regards to
10 changes that we were considering to take place within the
11 Medicaid dental policy, to get a sense from those
12 providers, what impact that would have for them, what they
13 were seeing within their practices and within the patients
14 that they were treating.

15 But we also invited and had representatives
16 from the three dental schools in the State of Texas
17 because we wanted to know what was being taught
18 academically within those institutions to not only the
19 dental students, but also in the graduate programs with
20 regards to dental services that these children would be
21 accessing.

22 Q You've been a dentist before, right?

23 A Yes, I am currently a dentist, as well.

24 Q And are you on the faculty of any dental schools
25 in Texas?

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1 A I am. I am adjunct faculty in the Department of
2 Community Dentistry, it's now been changed to
3 Comprehensive Dentistry at the University of Texas Health
4 Science Center in San Antonio, their dental school. And
5 also an assistant clinical professor in pediatrics at the
6 Baylor College of Dentistry in Dallas.

7 Q And have you assisted the Department of Justice
8 in any Medicaid dental fraud cases?

9 A I have. I have been and served as a fact witness
10 for the Department of Justice in a Medicaid fraud case
11 that was -- the provider was from Brownwood, Texas and the
12 case was heard in San Angelo. I have also been an invited
13 faculty to the Medicaid Integrity Institute, which is run
14 by the Department of Justice, as well as the centers for
15 Medicaid and Medicare services.

16 Q What was that?

17 A The Medicaid Integrity Institute.

18 Q The Medicaid Integrity Institute, what is that?

19 A It is a training program for Medicaid fraud
20 investigators and other individuals within State Medicaid
21 programs that is run by the Department of Justice in
22 collaboration with the centers for Medicare and Medicaid
23 services. It is housed at the University of South
24 Carolina in Columbia, South Carolina.

25 Q Okay. Let's transition here. Let's talk about

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1 the Texas Medicaid Dental Program. You have talked about
2 Medicaid, that it's a joint program between the Feds and
3 the State. And there's a benefit provided for orthodontic
4 services, correct?

5 A There is, yes.

6 Q Now, before we get to that, let's talk about
7 Medicaid in general. Is it a health insurance program or
8 is it entitlement?

9 A Medicaid is an entitlement program. It is geared
10 to provide health care services to the poorest and most
11 vulnerable individuals within a State. That -- and the
12 dental benefit in the State of Texas is limited to
13 children. So it is children birth through 20 years of age
14 and for the most poor -- those poorest and most vulnerable
15 of those children.

16 Q Now, I know in private insurance there's a copay,
17 is there a copay with this entitlement Medicaid?

18 A Medicaid does not for children. For the birth
19 through 20 years of age group does not allow for copayment
20 to be made. I believe it is felt that would potentially
21 limit the access for these children because the families
22 are juggling, they have very little financial resources.

23 Q They are poor?

24 A They are very poor. A family of four, income and
25 assets, about \$42,000 a year for a family of four. So

0049

1 that is not a lot of money, and for the most part, those
2 individuals, those parents of those children are using
3 those resources to provide shelter and food and clothing
4 for their children.

5 Q Now, going back to the copay. So Medicaid -- a
6 child on Medicaid, there is no financial skin in the game,
7 so to speak?

8 A They do not have any financial responsibilities
9 for the services that are covered and allowed under the
10 Medicaid program.

11 Q Who pays the provider? Is it a
12 reimbursement-type system?

13 A It is. It is paid using Federal and State tax
14 dollars, and currently, in the State of Texas, as has been
15 done for several years, the State has contracted with
16 entities -- outside entities to provide that
17 administration, that claims administering. So not only do
18 they go through the processes of the prior authorization
19 for services, for any services that require that, but as a
20 provider submitting claims, they are responsible for
21 paying for those claims and maintaining the system that
22 goes through to process the claims.

23 Q We will talk about the providers obligations and
24 duties and certifications in a minute here. What's the
25 total Medicaid budget in Texas right now?

0050

1 A For the 2012-2000 biennium, the expenditures and
2 budget as of January of this year was \$40 billion.

3 Q And how many Texas kids are enrolled in Medicaid
4 on average?

5 A On the average for any given month of the year,
6 it's about 2.6 million children. However, as far as the
7 total unduplicated number of children per year that are
8 enrolled and have at least a single day of eligibility and
9 participation in the program, it's about 3.4 million
10 children.

11 Q And what's the -- about the average -- what
12 percentage of our child population in Texas is enrolled in
13 Medicaid?

14 A I'm given -- the numbers that I have seen most
15 recently, over half of the children in the State of Texas
16 between the ages of birth and 18 to 19 years of age are at
17 any given time on Medicaid in the State of Texas.

18 Q Over half?

19 A Over half.

20 Q All right. So before we get to talk about how a
21 provider such as Dr. Nazari becomes a Medicaid provider, a
22 contractor with the State, let's talk about just briefly
23 the rules applicable to the Texas Medicaid program. Go
24 slow, but just briefly tell us what the applicable rules
25 are to the Texas Medicaid program.

0051

1 So, for example, you have the Texas

2 Administrative Code?

3 A Yes, which is based off the Federal regulations
4 associated with the early and periodic screening diagnosis
5 and treatment program. So we have the Administrative Code
6 that sets out program rules within -- from there within
7 policy development for the Texas Medicaid program. We
8 then take those rules within the Texas Administrative Code
9 and develop policy to apply that. That policy is
10 published within the Texas Medicaid Provider Procedures
11 Manual, and as any -- and that manual is published once a
12 year. It's traditionally been published once a year.

13 And during the course of time from -- up
14 until recently within the past year, that's where the
15 primary publishing was, on an annual basis. However,
16 every two months, there was a bulletin that would be
17 issued, and that bulletin would contain any updates to the
18 manual that had occurred in the interim time frame.

19 As we would prepare the manual for the
20 subsequent year, we would take everything that was
21 published within the bulletins and we would incorporate
22 them into the manual so that the manual in the subsequent
23 year would contain all the updates.

24 Q I was hoping to show you up on the screen, but I
25 can't find the right slide. So for the Judges, tell the
0052

1 Judges what that is.

2 A What Mr. Hargrove is holding there is the 2009
3 version of the Texas Medicaid Provider Procedures Manual.

4 Q What does it do as it relates to providers?

5 A It gives providers an overall guidance as to not
6 only what their responsibilities are to become a provider,
7 but also in treating of patients, how to submit claims,
8 how to submit prior authorizations, what services are
9 benefits of the program, what limitations there are,
10 whether those limitations are age or could be also who was
11 qualifying for it, for the services that are being
12 provided. So it really gives a guidance to the providers
13 as to what the program is encompassing.

14 Q So you have the Texas Medicaid Provider
15 Procedures Manual, so for the rest of the day, I want to
16 call it the manual.

17 A All right.

18 Q And in addition to the manual, do you have
19 policies, right? Tell us what those policies are.

20 A Policies are an overview of what the benefit is.
21 It is what the payment is going to be when the service has
22 been provided. It will list in it, again, any
23 limitations, whether it's age limitations, maybe the tooth
24 specifically that that particular service can be provided
25 to or for. It has in there within the policy the
0053

1 adjudication guidelines.

2 It gives the claims administrator direction
3 as to how -- when a claim comes in, how that is to be

4 adjudicated. Especially if it has to be evaluated by an
5 individual, where it cannot go through the system, through
6 the computerized-system within the edits and audits that
7 are contained within that.

8 Q So just quickly going to the manual you have, and
9 we are talking about the 2009 manual, which I have in
10 front of me if you want to look at it. This is Section
11 1.4.8, provider certification assignment. If you could
12 tell us what this means as it relates to a provider's
13 legal duty to the Medicaid program.

14 A This is reinforcing to the providers -- and
15 again, this is in the first section of the manual, which
16 applies to all providers within the Medicaid program. It
17 doesn't matter whether they are a dentist, physician or a
18 pharmacy. But in essence, it's showing --

19 Q Let's talk about the first part here: Texas
20 Medicaid service providers are required to certify
21 compliance with or agree to various provisions of State
22 and Federal laws and regulations. Right?

23 A That is correct.

24 Q Okay. After submitting a signed claim to TMHP,
25 the provider certifies the following, what is the provider
0054

1 certifying to?

2 A That they have personally rendered the service by
3 the billing provider or by somebody under their personal
4 supervision.

5 Q Got it. What is next?

6 A The next is that the information that they are
7 submitting on the claim is true, it is accurate and it is
8 complete.

9 Q Okay. True accurate and complete. This is what
10 a provider certifies and it's in the manual?

11 A That is what they are certifying, it's in the
12 manual, and when they submit a claim, they are
13 recertifying at that point in time that the claim is true,
14 accurate and complete.

15 Q Okay. Then let's go to the next third bullet, we
16 are going to go through this rather quickly. And what is
17 the purpose of this next bullet? Tell us what it means
18 quickly.

19 A That the services that they are rendering,
20 anything they are doing, is medically necessary in the
21 treatment of that child.

22 Q So if they are going to bill Medicaid, if they
23 are going to be a Medicaid provider, they are to provide
24 medically necessary treatment to the child?

25 A That is correct.

0055

1 Q Let's talk about the next bullet here: Medical
2 records document all services billed and the medical
3 necessity of those services.

4 A That is correct. What we are looking for within
5 the Medicaid program is that the records will reflect not

6 only the services provided, but why were they provided;
7 what made it medically necessary for that child to have
8 that particular service provided to them.

9 Q Okay. Let's switch gears. Let's get a little
10 bit down into the weeds. Let's talk about -- tell us what
11 this is.

12 A This is a dental provider enrollment application.

13 Q And we have National Heritage Insurance Company,
14 Texas Medicaid, dated December 21, 2000, right?

15 A Yes.

16 Q And this is Respondent Exhibit R-01.

17 All right, next page. So what do we have
18 here? Tell us, go big and then small.

19 A Okay. May I stand?

20 Q Yes. Do you want the laser pointer?

21 A No. The dental provider, here is showing the
22 provider name as Dr. Nazari, it's giving his physical
23 address, his tax I.D. number, and is coming down to the
24 agreement and certifications that are encompassed within
25 this application.

0056

1 So what it is saying here is that for
2 consideration of payment of authorized services, the
3 provider is in agreement that they will -- that they are
4 licensed and certified to provide the services; that if
5 they fail to comply with the terms of the agreement, that
6 there are some actions that the State can take with
7 regards to it. It is telling them that they must be
8 familiar with what the Texas Medicaid Provider Procedures
9 Manual says, as well as all the bi-monthly updates to the
10 manual, and that they will be familiar with that; that
11 they will comply with all the provisions of it and that
12 all the information --

13 Q Let's slow down. You are going a little too
14 fast. I know you are nervous.

15 A Okay. I'm sorry. They are complying with
16 regards. Here, it goes back to all the information that
17 they are submitting on their claims is true, complete and
18 accurate. And that it can be verified by reference to the
19 materials, the source materials, which would be their
20 charts and the information that they are maintaining
21 within their office associated with that claim.

22 Q Okay. Next page. And then here we have provider
23 agreement and certifications. Go down, all the way to the
24 bottom of the page, and then we have Dr. Nazari's
25 signature, correct?

0057

1 A That is correct.

2 Q All right. Let's go to the next page. Next
3 page. Okay, that's it. Thank you.

4 This is required for a provider to become a
5 Medicaid provider, right?

6 A That is correct.

7 Q So if a dentist wants to do business with the

8 State of Texas, tell us briefly about the application
9 process. Is this the final step?

10 A It is not the final step. Again, a provider --
11 it's not mandatory that a provider enroll, that a dentist
12 enroll to be a Medicaid provider. They are voluntarily
13 requesting to become a provider when they submit this
14 application.

15 Within that, the application is submitted,
16 if there is any missing information, then the claims
17 administrator is going to request that that information be
18 provided so that they can see the full -- the full
19 application. It then -- the claims administrator then
20 verifies that they are currently licensed within the State
21 of Texas to practice, and in this case, a dentist to
22 practice dentistry.

23 It then goes to the Office of Inspector
24 General for a criminal background check. And then once
25 that has been completed, if it has and there is no

0058

1 problems there, then at that point in time, they certify
2 as a Medicaid provider.

3 Q So they come to the State, they want to be a
4 Medicaid provider, and you have a 40-billion-dollar budget
5 to work with, right?

6 A Yes, sir.

7 Q So let's shift gears now and let's talk about the
8 Medicaid Orthodontics Program, R-15-334.

9 You testified earlier about the limitations
10 of the benefits, right?

11 A Yes.

12 Q There are limitations in the Medicaid program?

13 A Yes.

14 Q As it relates to orthodontic services, what are
15 the limitations?

16 A Well, our primary benefit, we are here to correct
17 a severe handicapping malocclusion Now, occlusion -- I
18 think this really needs to be hit on, occlusion is how the
19 teeth come together, how they touch, the upper teeth to
20 the lower teeth. Malocclusion is that touching is not
21 appropriate or not accurate, so it's hitting differently
22 than what the body, under ideal situations, would want the
23 teeth to come together. So we have malocclusion.

24 Handicapping is that, at that point in time,
25 this is preventing that child from being able to chew as

0059

1 maybe their classmate sitting next to them. So from a
2 handicapping aspect, would be that instead of being able
3 to bite off their feet with their front teeth as is
4 intended and then chew with their back teeth to finish
5 chewing it up and breaking it down, they are limited as to
6 how they can accomplish that.

7 Severe comes into the fact that it is not
8 just that maybe there's a couple of teeth out of alignment
9 and, therefore, they are handicapped to some degree. This

10 is severe. This is people who, no matter how they
11 manipulate their mouth, they cannot get teeth together in
12 a manner in which most of us have the opportunity.

13 So example, an open bite, the front teeth,
14 no matter what they do, will never be able to come
15 together to bite off that food that they are trying to
16 bite into. So an apple, a hamburger, something of that
17 nature, they are going to have to cut that up and put it
18 into the back of their mouth to be able to chew.

19 So again, we are there to correct. The
20 benefit for comprehensive orthodontics is the correction
21 of severe handicapping malocclusion.

22 Q Okay. What is this handicapping labio-lingual
23 deviation index?

24 A Handicapping labio-lingual deviation index, or
25 HLD index, has been used by Texas Medicaid to outline
0060

1 several elements of the mouth, focusing only on the six
2 upper and six lower front teeth. So from the canine or
3 the eye teeth or dog teeth, they are sometimes called,
4 forward. So it is your front teeth.

5 Q And when you say -- not the back teeth?

6 A Not the back teeth. All the HLD scoring is
7 around only the 12 front teeth; six upper, six lower.

8 Q Okay. And then --

9 A And it has to have a minimum of 26 points for
10 consideration. But also -- and it is stated further back
11 in the manual along with the definitions on how to score,
12 it talks about not only do they have to have a minimum of
13 26 points, but their bite must be dysfunctional.

14 Q So the mere fact that they have 26 points, is
15 that sufficient to -- for braces to be placed on a child?

16 A No.

17 Q Why not?

18 A Because it has -- you can have where there are 26
19 points could be achieved, but that doesn't mean that that
20 child is still not able to chew their food normally and be
21 able to function from that perspective. Again, here,
22 after it gives all the elements of the definitions with
23 how to score, we come down a little bit further.

24 Q Go to the top, what section are we talking about?
25 We are talking about Section 19.21 of the 2009 manual,
0061

1 says how to score the HLD index, correct?

2 A That is correct.

3 Q And the question on the table is: 26 points
4 alone, is that sufficient?

5 A No.

6 Q And your answer is?

7 A No, it is not.

8 Q Where does it say that in the manual?

9 A Bring it up a little bit further. Right here.

10 The case must be considered --

11 Q Throughout this whole paragraph?

12 A Yes. We tell the providers in the manual that
13 they are to be conservative in their scoring.

14 Q So providers should be conservative in scoring?

15 A Uh-huh. That liberal scoring will not be helpful
16 in evaluating an approval of the case. And we talk about
17 and give them direction that the case must be considered
18 dysfunctional and have a minimum of 26 points on the HLD
19 score sheet to qualify for orthodontic care.

20 Q Other than crossbite?

21 A Other than crossbite.

22 Q What does this mean?

23 A Crossbite is typically the outer segment of the
24 teeth, the outer cusp of the teeth or surfaces on the
25 upper are going to be on the outside part of the lower.

0062

1 So this is the lower teeth, this is the upper teeth, so
2 here is the outer surface, here is the outer surface,
3 typically, that's how it relates.

4 In a crossbite, it is opposite of that. So
5 let me go this way. Here is normal, here is the upper,
6 here is the lower. In a crossbite, it's just the opposite
7 of that. So that, in essence, the teeth are not -- they
8 can still occlude, they can still come together and touch,
9 but they are in a different relationship than what was
10 originally intended.

11 Q But as it relates to braces in this score, what
12 does that mean?

13 A In this case, crossbite correction, if the child
14 only has a crossbite, then comprehensive orthodontics
15 would not be means in which to treat that. And that's why
16 we have it -- that -- they don't have to have the 26
17 points to correct a crossbite.

18 Q But that doesn't mean if they have a crossbite,
19 they get braces, right?

20 A That is correct. Just because they have a
21 crossbite does not mean that they get comprehensive
22 orthodontic care.

23 Q They must still be dysfunctional and have 26
24 points, right?

25 A That is correct.

0063

1 MR. HARGROVE: Let's pull up R-15-985. This
2 is fine. Can you make it a little bit bigger?

3 JUDGE EGAN: What number again?

4 MR. HARGOVE: This is Section 19.211, and it
5 is Exhibit R-15, Page 342. This is, Judge, called an HLD
6 score sheet.

7 Q (BY MR. HARGOVE) Go big, then small.

8 A This is the score sheet, because the --

9 Q Hold on. Let's back up a little bit. Let's put
10 it in context. What is happening here?

11 A Patient comes to the Medicaid provider, they are
12 put back into the treatment room, they are seen by the
13 dentist. With that, they are going in and they are

14 examining the child's mouth.

15 Q To see if they qualify?

16 A To see whether or not they qualify.

17 Q For braces, right?

18 A Right. And whatever care they may need. So in
19 this case, they are going through and if they have a cleft
20 palate -- meaning, that as the mouth formed, it didn't
21 come and join together completely, then they automatically
22 get 15 points. And actually in a cleft palate case, they
23 would qualify for orthodontics.

24 Q Let's break this down a little bit. Slow down a
25 little bit and let's talk about what this HLD score sheet

0064

1 shows.

2 Conditions observed, which is here, right?

3 A Yes.

4 Q And over here on this column, you have the HLD
5 score column where the dentist places the points?

6 A Places the points that they see.

7 Q Okay. The child, when he's in the chair, the
8 dentist observes -- and a dentist has to do this, right?

9 A Yes.

10 Q A dental assistant could not do this, right?

11 A This is diagnosing, and under the Dental Practice
12 Act, an assistant would not be qualified to do this.

13 Q So if a child has a cleft palate, they get 15
14 points, and that is an extremely rare event, right?

15 A That is correct.

16 Q And if the child has a severe traumatic
17 deviation, then the child would get 15 points?

18 A That is correct.

19 Q And the bottom line is, we are going to total up
20 the points, right?

21 A We are going to get it down and see what the
22 points are for each of these elements and give a total at
23 the bottom.

24 Q And the minimum is -- to qualify if you are
25 dysfunctional is 26 points?

0065

1 A The minimum is 26 points.

2 Q So here, these two events, we don't have that
3 here, so overjet, overbite, mandibular protrusion, open
4 bite in millimeters, ectopic --

5 THE REPORTER: Hold on.

6 MR. HARGROVE: Sorry.

7 A So an overjet, that is where the upper front
8 teeth are over the lower front teeth. In essence,
9 typically, there's about a two-millimeter gap between the
10 upper front teeth and the lower front teeth. In an
11 overjet, that is accentuated. That's why on the score
12 sheet it shows that whatever that measurement is, you take
13 away two millimeters or two points. So if the figure --
14 and it gives an example here -- that was eight millimeters
15 is what was actually measured, you take two millimeters

16 away from it and the score then is six points, and that is
17 what would be entered over in the column under HLD score.

18 Q What about overbite?

19 A Overbite is, again, typically when the front
20 teeth -- the upper and the lower, again, there is an
21 overlap between the incisal or the edges of the teeth,
22 that is usually at three millimeters. So you go in and
23 you measure to see where that is. And in some people,
24 it's so much that the lower front teeth are actually
25 biting into the roof of the mouth, so that is pretty

0066

1 severe.

2 And so you measure that and you subtract
3 three millimeters, you end up with your total points.
4 Again, in this example, five minus three, they have two,
5 and two would be entered over in the HLD score column.

6 Q Okay.

7 A Mandibular protrusion, that is where, again,
8 typically your lower, which is the mandible, is behind the
9 maxilla, which is the upper. So in a mandibular
10 protrusion, it is reverse. Kind of like a bulldog, where
11 the mandible, the lower, is in front of -- and the teeth
12 associated with it, are in front of the upper front teeth.

13 Q Okay. And then open bite.

14 A Open bite is where, again, the incisal edges or
15 the edges of the front teeth don't touch. So that can be
16 due to a number of reasons, but again, it is that when
17 they are biting down, there is a gap, a visible gap
18 between the edge of the upper front teeth and the edge of
19 the lower front teeth.

20 Q And then what about this?

21 A Ectopic eruptions, anteriors only.

22 Q What does that mean?

23 A It means it's only the front teeth. Again, from
24 canine to canine, upper and lower, that's the only place
25 you can score ectopic eruptions.

0067

1 Q And so if there's a tooth that is ectopically
2 erupted, the dentist scores it three points, right?

3 A Three points for each of the teeth that are truly
4 ectopically erupted.

5 Q And there are 12 teeth from which to choose?

6 A That's correct.

7 Q You cannot use the back teeth or posterior teeth
8 to score?

9 A For this purpose, the back teeth do not play into
10 ectopic eruption. So even if there was a back tooth that
11 was out of position, it would not be able to be counted on
12 this score sheet.

13 Q All right. And then what else do we have?

14 A Anterior crowding. And with the crowding, one of
15 the things which it says in the manual is that they cannot
16 score an ectopic eruption and crowding on the same
17 patient. So they score either one or the other, but not

18 both.

19 So this, again, is crowding a maximum of
20 five points, ten points -- I'm sorry -- maximum of ten
21 points; five points for the upper and five points for the
22 lower.

23 Q And the next thing, we have the labio-lingual
24 spread.

25 A That is when there is active spacing between the
0068

1 front teeth. Instead of them coming side-by-side, there
2 is actually a gap between the teeth.

3 Q Okay. And then dentist tallies that all up and
4 scores it?

5 A Yes. And they are also under the diagnosis -- it
6 says in the manual that they are to give the angle
7 classification, which is a recognized classification in
8 dentistry as to the relationship between the upper teeth
9 and the lower teeth and they are to give -- document that
10 diagnosis within this score sheet, as well.

11 Q Okay. So dentist scores all this, he has the
12 child in the chair, and then let's say he makes a
13 determination that he's going to -- that the child, there
14 is a medical indication for braces. What does the dentist
15 do to get reimbursed?

16 A They have to finish completing this, they sign
17 it, give their information there. They also submit with
18 this --

19 Q Okay. Let's go to this. So this is part of the
20 program?

21 A Yes.

22 Q So this is the HLD score sheet?

23 A Yes. They have to submit documentation, as well,
24 to support this.

25 Q So let's pull that up. So the HLD score sheet is
0069

1 one stick in the bundle, right?

2 A One piece of it.

3 Q Before we get into it, tell us in your own words,
4 what is mandatory prior authorization?

5 A That is for the services that have been
6 identified within the manual, and they are stipulated
7 within the manual, that they have to -- the provider has
8 to ask -- has to submit information and request, number
9 one, is this a benefit under the program or not, and if it
10 is, then it gives them the authority -- it goes in and
11 shows them, in essence, it is a benefit, but it is not --
12 just because you have a prior authorization that's been
13 approved, it is not a guarantee of payment.

14 Q Okay. Let's break this down a little bit. So
15 prior authorization is required for all TH Steps
16 orthodontic services except for Procedure Code 8660. What
17 is that code?

18 A The D-8660 is the initial examination, so because
19 -- can't get a prior authorization for that initial exam

20 for orthodontic work-up, that is what the D-8660 code is
21 for.

22 Q Okay. So for braces, the code is what?

23 A For comprehensive orthodontics of the adolescent
24 dentition, it is D-8080.

25 Q Okay. So this is the instruction in the manual
0070

1 telling the dentist --

2 A How they go through to get prior authorization.

3 And mandatory -- it's not only orthodontics, but there are
4 other dental services within the Medicaid dental program
5 that require prior authorization.

6 Q Will you go to 335 and 336? Okay.

7 A As I mentioned earlier, prior authorization is a
8 condition for reimbursement. It is indicating that the
9 services that were submitted are a benefit of the Medicaid
10 program; however, it is not a guarantee of payment.

11 Q Okay. Now go to 335 again. Let's go through the
12 items, you don't have to go into great details. But the
13 items that the dentist must provide when seeking prior
14 authorization to place braces on a Medicaid beneficiary.
15 It's up here on the screen.

16 A They must provide the HLD score sheet.

17 Q Let's go through the --

18 A Okay. There is a treatment plan. That treatment
19 plan, in essence, says, this is what I'm going to do to
20 correct the severe handicapping malocclusion. So it is --
21 would include any extractions of any teeth that are going
22 to need to be removed, it would include whether that child
23 is going to have surgery to also complete the idealization
24 of the bite for them. It's going to include their -- the
25 fact that they are going to band the upper and lower

0071

1 teeth, the monthly visits that it's going to take to
2 complete this treatment. It's going to also include the
3 retainer. So everything that they feel that is going to
4 necessary to treat this child to completion for their
5 orthodontics is going to be included in that treatment
6 plan.

7 Q Let's talk about this. The treatment plan should
8 incorporate only the minimal number of appliances required
9 to properly treat the case. Is this another limitation?

10 A It is a limitation. And again, the purpose for
11 this is along the lines that benefits are there to cover
12 the expenses. Now, if somebody went in and did an exotic
13 treatment over and above what was really needed to get to
14 the basics there of fixing the bite, then we are expending
15 dollars unnecessarily. So this is why it's the minimum
16 number of appliances necessary to properly treat.

17 Q Now, talking about the items that must be
18 included or the orthodontics treatment plan. What is
19 next?

20 A The cephalometric radiographic with the tracing.
21 And this is a side view of the face showing the soft

22 tissues, as well as the teeth.

23 Q And then?

24 A And then it's going to be the HLD score sheet
25 that's been completed and has all of the information true
0072

1 and accurately reflected.

2 Facial photographs, so it's going to be of
3 the child's face. We have already seen an example of that
4 this morning. Full series of x-rays, radiographs or a
5 panoramic. So full series of x-rays is typically 16 to 18
6 films. Panoramic is on a single film and it goes from one
7 side of the head to the other, so that has to be there,
8 and they have to be of diagnostic quality. We have to be
9 able to see what it is that is being presented there.

10 Q This is part of -- and then there's one more
11 thing right here, right?

12 A Any additional information that may play in or
13 needs to be taken into consideration with regards to the
14 treatment.

15 Q Is this where a dentist might provide a narrative
16 to further describe --

17 A They would provide --

18 MR. CANALES: Leading. The document speaks
19 for itself. Now he's suggesting to the witness what it
20 might provide, we object.

21 Q (BY MR. HARGROVE) When, if ever, is a provider
22 required to provide a narrative?

23 A At this point in time, if the score was 24
24 points, but because of something within the child's mouth;
25 say, they have some severe discrepancies with the back
0073

1 teeth, that would play in and give an opportunity within
2 the narrative to explain that and to explain why that
3 child's mouth is dysfunctional, and why they need
4 orthodontic services.

5 Q Okay. And let's go to R-15-985, the mandatory
6 prior authorization request form. Just the top part, go
7 slow. This is part of the 2009 manual, B.70, prior
8 authorization request form. Tell the Judges what this is.

9 A This is where they are, in essence, putting down
10 their treatment plan. This is going to give us the
11 information about the patients, including their Medicaid
12 number and their gender. It is going to tell us and
13 certify to us what information is being provided and
14 submitted with the request.

15 Q So what does the provider have to submit?
16 Models, what are models?

17 A Models are the casts. They take impressions of
18 child's mouth, they pour plaster into it and that forms a
19 model. Now, in 2009, models were not required with every
20 case, but if a case was -- if models were being submitted,
21 this is an opportunity to document that.

22 They also would submit the HLD score sheet,
23 the panoramic x-ray, if they were putting in additional

24 documentation, the narrative, then they would have that
25 marked. The cephalometric x-ray -- if they submitted a
0074

1 full mouth series of x-rays in addition to the Panorex or
2 instead of, they can mark that. The photographs and
3 anything else that they were putting there.

4 Now, the other piece on this is they are
5 marking that this is an orthodontic case, and they are
6 certifying right here, when they check that, that all of
7 the baby teeth, all of the primary and baby teeth have
8 been lost.

9 Q And that is for this code right here. Highlight
10 this part right here.

11 So provider wants to put braces on a child,
12 what is the purpose of this additional item right here?

13 A D-8080, by definition of the American Dental
14 Association in their current dental terminology book is
15 that this is -- D-8080 is comprehensive orthodontic
16 services of the adolescent dentition.

17 In essence, they have lost all of their baby
18 teeth, but their mouth has not gone to full development at
19 that point in time. So D-8080 is that comprehensive
20 treatment where the upper teeth have braces on them, the
21 lower teeth have braces on them and they are fixing the
22 bite.

23 Q So the code, what are these codes? I mean, we
24 are going to see a lot of them, so tell us what they are.

25 A These codes, again, have been established by the
0075

1 American Dental Association; there is a rigorous process
2 in which that occurs, where there are representatives from
3 multiple dental specialties that come together, as well as
4 with insurance company representatives, the insurance
5 industry, and they discuss the codes and they come up with
6 a set of common terminology that would be used when
7 submitting claims to, for insurance purposes, at which
8 Medicaid is a form of insurance.

9 So D-8080 happens to fall within
10 orthodontics, and as I said, under definition of it
11 through the American Dental Association, that is
12 comprehensive orthodontic treatment of the adolescent
13 dentition.

14 Q So we are going to see that code a lot?

15 A Yes.

16 Q Go back to just the top part. So again, we are
17 talking about mandatory --

18 A Mandatory prior authorization.

19 Q And I don't know what the exhibit is right now,
20 but these are the models that orthodontists are taught to
21 do. This is a trimmed model. The pink here is a wax bite
22 showing the relationship, so they have those models to be
23 able to show and document, a medical/legal documentation
24 of how that child presented in their office before they
25 did any treatment.

0076

1 JUDGE EGAN: Just for the record, what you
2 are holding up is a plaster cast of the upper and lower
3 teeth, and a pink --

4 THE WITNESS: Pink wax bite.

5 JUDGE EGAN: In between the two teeth?

6 THE WITNESS: In between the upper and lower
7 models, yes.

8 MR. HARGOVE: Your Honor, we just pulled a
9 random one; it is Petitioner's P-58, Exhibit -- it's the
10 patient.

11 Q (BY MR. HARGOVE) So earlier we talked about the
12 Steps prior authorization, the provider has to provide
13 true, accurate and correct information?

14 A Yes.

15 Q So this is all the information that the dentist
16 then packages up and sends off for what?

17 A They send it off to the claims administrator for
18 review and determination as to whether or not the benefits
19 that they are requesting are benefits for that child in
20 the Medicaid program, and if it is deemed they are, then a
21 letter goes to the provider, as well as to the patient
22 saying that the services have been approved. If they have
23 been denied, same type of correspondence goes out, as
24 well.

25 Q If some of these documents were not correct, they

0077

1 are not true, would that be a program violation?

2 A Any inaccurate information, incorrect information
3 submitted on an HLD score sheet or prior authorization
4 request from would be a program violation, because it's
5 not true, correct, or accurate or complete.

6 Q Okay. So let's go to -- let's switch gears.

7 Let's go to R-15-24. Just walk us through the steps.

8 Provider, dentist, gets all this stuff, sends it off, and
9 gets the authorization to place braces on a child. And
10 then what happens? I mean, the braces are placed on a
11 child?

12 A Child comes in, braces are placed, and then they
13 have a monthly treatment visit. In essence, the brackets
14 that are on the teeth, there's a wire that connects those
15 brackets, and by changing up the way that wire is -- the
16 size of it, as well as any bends that they put in it will
17 help to manipulate and move the teeth in the mouth.

18 Q Let's say a child was treated and Medicaid paid
19 for the services, the dentist. What I have here is R-15,
20 Page 24, if you highlight Section 1.4.3, the whole thing.
21 This is from the manual?

22 A Yes.

23 Q Now, it says 1.4.3, retention of records and
24 access to records and premises. Let me ask you a general
25 question first: Does a Texas dentist who is doing

0078

1 Medicaid work have to maintain certain records?

2 A Yes.

3 Q And what does this paragraph tell the dentist,
4 they are on notice, what records they have to maintain?

5 A This is what this contains within it, as well as
6 who can -- further down, who has access to those records
7 on that premises.

8 Q Let's break it down. So we understand exactly
9 what a dentist, a Medicaid contractor dentist, must
10 maintain. So the dentist must maintain and retain all
11 necessary documentation, records, R&S reports and claims
12 to fully document the services and supplies provided and
13 delivered to a client with the Texas Medicaid coverage.
14 What's the next part?

15 A They also must maintain the medical necessity for
16 those services, so documentation of the medical necessity
17 to include any costs associated with that.

18 Q Okay. And then what about here?

19 A They are also to maintain records and documents
20 necessary to determine whether or not the payment for
21 those services that were due was properly made and that
22 full disclosure was made to the HHSC.

23 Q Okay. So the Medicaid program, let's go through
24 this list now and identify. The Medicaid program requires
25 a dentist to maintain all of these records that are listed
0079

1 here, right?

2 A That is correct.

3 Q And if a dentist failed to maintain the records
4 that are listed here, that would be a program violation?

5 A Yes.

6 Q So let's talk about this. The documentation that
7 a dentist must maintain for how long, by the way?

8 A They must maintain it a minimum of five years.

9 Q All right.

10 A Without limitations, their clinical records, the
11 patient records and any other records that are pertaining
12 to it. So if they requested to have lab work done, and in
13 a dental office they sent out to have an appliance made,
14 then there should be in the record a copy of the order
15 requesting that prescription for that.

16 They should also have a listing of all the
17 services that were provided --

18 Q Let's go bullet by bullet, so we don't --

19 A Okay. So any other records of services, items,
20 equipment, again, that could be the lab request for
21 fabrication of an appliance, any diagnostic tests,
22 documents related to the diagnosis, anything that they
23 used in their professional judgment to make that
24 diagnosis. So in this case, it would be the models, it
25 would be the --

0080

1 Q So they have to maintain the models?

2 A Yes, they have to maintain the x-rays, any and
3 all x-rays that were taken.

4 Q What about do they have to maintain the HLD score
5 sheet?

6 A Yes, because that was part of the documentation
7 pertaining to that patient of what they were requesting.

8 Q And would that be documents related to diagnosis?

9 A Yes, it would be also any other requests for
10 services that they have requested.

11 Q And then so what other -- I think we left off
12 here. What other documents?

13 A It is the charting, what they have within their
14 records to identify how that child presented. And as they
15 are going along, any changes that occurred. The billing
16 records, what did they bill and how did they bill it.
17 Invoices for, again, any services or additional
18 information that they requested, any treatments.

19 Again, that's part of what did they do for
20 that child, any treatment, anything outside, did they --
21 maybe they had to have teeth removed and so they sent them
22 to a general dentist or an oral surgeon for that, that
23 would be part of it, as well.

24 Again, any services that were provided, any
25 laboratory results, x-rays, documentation of delivery. So
0081

1 again, within the patient's records, if they go in to put
2 on the upper braces, then the records need to show that
3 that's what they did on that date. If they provided a
4 retainer, then it shows when that retainer was delivered
5 to the patient and any follow-up that may have been done
6 after that.

7 Q Okay. So they have to maintain these items,
8 right?

9 A Yes, it's a program requirement.

10 Q And if the Medicaid dentist fails to maintain
11 those requirements, it would be what?

12 A A program violation, because it is a program
13 requirement that they maintain it.

14 MR. HARGOVE: Judge, we have been going for
15 -- it's 11 o'clock. Can we have maybe a 15-minute recess?

16 JUDGE EGAN: Go ahead and take a recess. We
17 will be back at 11:15.

18 (Off the record.)

19 JUDGE EGAN: We are back on the record. It's
20 11:25 a.m. Mr. Hargrove, you may proceed.

21 MR. HARGOVE: Thank you, Judge. You need a
22 gavel.

23 JUDGE EGAN: I think they are afraid I may
24 use it inappropriately. Go ahead.

25 Q (BY MR. HARGOVE) All right. Up here we have
0082

1 Section 1.4.3, the records retention rules, it would be a
2 program violation if a provider fails to maintain the
3 items listed here.

4 I just want to go back and quickly touch
5 about the molds. Molds aren't always required to be

6 submitted for prior authorization; is that correct?

7 A That is correct. In late 2004, the policy was
8 changed prior to that, the models were a requirement for
9 the prior authorization process, but the were -- the
10 policy was changed at that point in time. So the models,
11 though they weren't -- didn't have to be submitted with
12 the initial prior authorization request, they did have to
13 be maintained within the provider's offices for access
14 because they were requesting to request from the Texas
15 Medicaid and Healthcare Partnership dental director.

16 JUDGE EGAN: In all orthodontic work, are
17 models made?

18 THE WITNESS: Models have traditionally been
19 made as far as for orthodontics, both pre-treatment,
20 possibly mid-treatment, and post-treatment. There's now
21 the capacity to do it as e-modeling, but they are still
22 available. So there is some representation of child's
23 mouth pre- and post-treatment that is maintained.

24 JUDGE SEITZMAN: I'm a little confused. So
25 they weren't required. So the retention was if they were

0083

1 made, then you had to maintain them, but there wasn't a
2 requirement to make them --

3 THE WITNESS: I'm sorry, Judge. It wasn't a
4 requirement to submit them with the prior authorization
5 request. But from a medical/legal standpoint, from my
6 understanding, you do the pre-treatment records, including
7 the models. In the event that there is a legal action at
8 a later time, where the patient says you made me worse
9 than what I started off with, you would be able to have
10 those models to show -- and other records to show, here is
11 what you presented with.

12 JUDGE SEITZMAN: I guess my question is:
13 Was it required to be made or was it -- well, you could do
14 it as a CYA, if guess if you wanted to. But my question
15 is: Was there a requirement that it be made or simply a
16 requirement that if it was made, it had to be retained?

17 THE WITNESS: Within the Medicaid program,
18 it was that whatever was needed to diagnosis and treat,
19 needed to be done, and therefore, be maintained. I would
20 have to defer to probably Dr. Tadlock to give you more of
21 a requirement from a professional standpoint, whether
22 that's a requirement. But within Texas Medicaid, it was
23 that they -- the models did not have to be submitted, it
24 was inferred that they still had to have the models
25 available.

0084

1 JUDGE SEITZMAN: Okay.

2 Q (BY MR. HARGOVE) So in -- to sum up, if a
3 dentist fails to maintain these records, that could be a
4 program violation?

5 A Yes.

6 Q And if they -- the mere submission of false
7 information as part of the prior authorization, can that

8 be the basis -- can that be a program violation?

9 A It would definitely be a program violation.

10 Q Would it be fair to say that the Medicaid system
11 is based upon an honesty-based system?

12 A The Medicaid system really requires that level of
13 honesty and true submission because of the fact that there
14 are so many children who are being provided with services.
15 The State doesn't have the manpower and resources to go in
16 and double-check everything that's being submitted. And
17 it is just not for the children, everything within
18 Medicaid falls under that requirement.

19 MR. HARGOVE: Okay. Pass the witness,
20 Judges.

21 MR. CANALES: Your Honor, I have provided
22 opposing counsel exhibits -- these are all the Medicaid
23 bulletins. I have provided a copy to the court reporter,
24 I believe. I'm going to be offering them. These are all
25 as a result of her testimony today.

0085

1 JUDGE EGAN: This is Petitioner's Exhibit
2 78?

3 MR. CANALES: 78 through 81. I labeled
4 them.

5 JUDGE EGAN: All right. And they are the
6 Texas Medicaid bulletins?

7 MR. CANALES: Yes, Your Honor.

8 JUDGE EGAN: Is there going to be any
9 objections?

10 MR. HARGOVE: No objection, Judge.

11 JUDGE EGAN: All right. Petitioner's 78
12 through 81 are admitted.

13 Go ahead.

14 (Petitioner's Exhibit Numbers 78 through 81
15 admitted.)

16 CROSS-EXAMINATION

17 BY MR. CANALES:

18 Q Dr. Altenhoff, do you or do you not work for HHSC
19 today?

20 A I do not work for the Health and Human Services
21 Commission today.

22 Q When did you quit working for the HHSC?

23 A I have never been employed by the Health and
24 Human Services Commission.

25 Q Are you employed today by OIG?

0086

1 A No, sir, I am not.

2 Q And is the Office of Inspector General a part of
3 the HHSC?

4 A That is correct, and I'm not employed by them.

5 Q Have you ever been employed by them?

6 A No, sir, I have not.

7 Q And just for the record, your agency that you
8 work for right now is an agency of the State of Texas?

9 A It is.

10 Q And what is the name of that agency?

11 A Texas Department of State Health Services.

12 Q Is that department any way, shape or form

13 associated with a company called TMHP?

14 A The department itself, the Department of State
15 Health Services does have contractual relationships with
16 the Texas Medicaid and Healthcare Partnership.

17 Q What is that?

18 A It is a fiscal agent, a claims administrator for
19 the Texas Medicaid program and other State health care
20 programs.

21 Q In your duties as an employee of your agency, did
22 you have any role at all to play in the review of the --
23 of the creation of this particular manual we are talking
24 about?

25 A Yes, I did.

0087

1 Q And you did that as a representative of what
2 agency?

3 A I did that as a representative of the Department
4 of State Health Services and a consultant to the Health
5 and Human Services Commission.

6 Q And when you were a consultant to the Health and
7 Human Services Commission, were you assigned at all to
8 work with dentists who were having any type of difficulty
9 with the Medicaid program?

10 A That was not part of my assignment, no, sir.

11 Q And in that regard, can you tell us for sure
12 whether or not your last active practice in the field of
13 dentistry was some time prior to 1994; is that correct?

14 A I sold my personal dental practice in April of
15 1994.

16 Q So since 1994, have you been a -- have you
17 consulted or seen private patients?

18 A No, sir.

19 Q And I take it then, have you consulted or treated
20 Medicaid patients?

21 A I have consulted with Medicaid patients.

22 Q Have you had any opportunity to consult or work
23 with the filing of the so-called HLD index?

24 A I'm not sure what you are asking.

25 Q Well, I asked you in your deposition -- let me

0088

1 back up.

2 Have you done any type of orthodontic work
3 at any point in time?

4 A No, sir, I am not an orthodontist.

5 Q So the question is: You have not done any type
6 of orthodontic treatment of patients; is that correct?

7 A That is correct.

8 Q And in that regard, you have not filed any type
9 of Medicaid claim on behalf of any patient seeking
10 orthodontic services?

11 A I have not personally filed a Medicaid claim for

12 orthodontic services for a Medicaid client.

13 Q Now, do you know Dr. Felkner?

14 A Yes, I do know a Dr. Felkner.

15 Q And have you ever worked with Dr. Felkner in the
16 formulation of rules or policies for TMHP?

17 A I have worked with Dr. Felkner on Medicaid dental
18 policy.

19 Q How about policies regarding the prior
20 authorizations, have you worked with him on that field?

21 A In the course of development of Medicaid policy,
22 prior authorization requirements were a part of the
23 discussion.

24 Q And what about, did you ever discuss with Dr.
25 Felkner the 2008 audit that was being conducted by the OIG
0089

1 on TMHP on the issue of prior authorization?

2 A No, I have not.

3 Q Did you ever get to see that audit?

4 A I have.

5 Q Will you agree with me that the definition of
6 ectopic eruption, at least for the years 2008 through
7 2011, did not change?

8 A I would agree with that.

9 Q If I show you -- let's look at P-65. There's a
10 -- what I want to know is whether or not this definition
11 he had awhile ago of ectopic eruption -- Can you go to
12 this particular definition?

13 Can you tell us whether or not this
14 definition here was a constant and consistent definition
15 of ectopic eruption from at least ending in the year 2011?

16 A Beginning when, sir?

17 Q Well, how about 2007.

18 A I would -- yes, I believe that is a consistent
19 definition within the Medicaid manual.

20 Q Do you know how long that definition was there?

21 A In this form?

22 Q Yes.

23 A I could not tell you exactly what year this form
24 showed up. I do know that there was a change in the
25 definition as printed in the manual beginning in 1996.

0090

1 Q Do you know a Dr. Jim Orr?

2 A Yes, I do.

3 Q Do you know what his title was or whether or not
4 he was ever employed with NHIC?

5 A He was employed with the National Heritage
6 Insurance Company and he, my understanding, was employed
7 as their dental director.

8 Q Did you ever have any course of conduct in
9 dealings with Dr. Orr regarding this particular
10 definition?

11 A Not with this particular definition, no, sir.

12 Q And this definition changed, right? It changed.

13 JUDGE EGAN: When?

14 MR. CANALES: I was about to ask her when it
15 changed.

16 Q (BY MR. CANALES) Will you agree with me that
17 this particular definition changed, I believe, if you look
18 now at -- I believe 70.

19 JUDGE EGAN: Petitioner's Exhibit 70?

20 MR. CANALES: Yes, ma'am. What is it again?

21 JUDGE EGAN: Are we referring to
22 Petitioner's Exhibit 69?

23 MR. CANALES: Yes.

24 Q (BY MR. CANALES) I will confess to you, Doctor,
25 that sometimes these manuals have a year up on top, but
0091

1 the copyright on the bottom is the year before, correct?

2 A That's not an accurate statement.

3 Q Tell me what is wrong with it.

4 A In some years, the manual wasn't printed until
5 late in the year of which they are dated. So as far as
6 the copyright goes, it depends on the manual itself and
7 which edition as to whether that's an accurate statement
8 or not.

9 Q So let's look at P-68. I believe we now have a
10 different definition of ectopic eruption. I want to talk
11 to you about that.

12 MR. CANALES: I'm sorry, Judge.

13 Q (BY MR. CANALES) Look at P-70. And I want to
14 ask you about this publication and see what role you had
15 in this publication.

16 JUDGE EGAN: Exhibit 70 is Mr. Milwee's
17 deposition.

18 MR. CANALES: Yes, but it's already in
19 evidence, Your Honor.

20 Q (BY MR. CANALES) Now, you talked about the
21 manual, correct?

22 A Yes, sir.

23 Q And I think you also spoke about this so-called
24 bulletins, right?

25 A Yes, sir.

0092

1 Q What do you call this? Is this kind of a news
2 flash or something like that, that comes out?

3 A I have no idea what this is.

4 Q It says at the very top, see that?

5 A It says, Intouch News from the Texas Health and
6 Human Services Commission.

7 Q Yes. Have you seen this type of publication
8 before?

9 A No, sir.

10 Q Do you know whether or not this is used as a
11 quick news release to the providers?

12 A I do not know. You would have to ask someone
13 from HHSC.

14 Q Very well. Let's see if -- the date of this
15 particular exhibit, by the way, is at the very top. It

16 says, September/October 2011; do you see that?

17 A Yes, sir.

18 Q Does this refresh your memory as to when things
19 began to change with regard to the definition of ectopic
20 eruption at HHSC?

21 A I do not see that this reflects any clarification
22 or change of the definition.

23 Q Sometimes things are called clarifications,
24 sometimes they are called updates and sometimes things are
25 called changes; do you agree with that?

0093

1 A Yes, sir.

2 Q The new definition that came out regarding
3 ectopic eruption some time in this time period, would you
4 classify that as a change?

5 A I would classify that as a clarification.

6 Q And if the bulletin describes it as a change, you
7 would disagree with the bulletin?

8 A If that's how they described it, then I would
9 have to disagree with it.

10 Q Let's look at that bulletin. I believe the
11 bulletin -- I want to hand it to you. I believe it will
12 be P-81. Here is P-81. Are you familiar with P-81, at
13 least with the format for the Texas Medicaid bulletin?

14 A I am familiar with this format, yes.

15 Q If you go to Page 3, at the bottom on Page 3, you
16 will see on Page 3 different terminologies that says
17 clarifications, corrections, updates; do you see that?

18 A I see where it says updates and correction and
19 clarification, yes, sir.

20 Q And now, if we go over to the page at -- Page 45.

21 A Which page? I'm sorry.

22 Q Keep on going, it will be Page 45. Does that
23 purport to say clarification or does it purport to say
24 changes?

25 A It says, changes to orthodontic prior

0094

1 authorization that started January 1, 2012.

2 Q Yes. And do you know what changes those were?

3 A It is elicited here.

4 Q And the change -- did it change the comprehensive
5 orthodontic services and so forth?

6 A On page -- which page, sir?

7 Q The following page, it says, changes.

8 A Page 46?

9 Q Yes.

10 A At the top of the page, it says, TH Steps
11 orthodontic dental benefit has changed.

12 Q The point I'm trying to make with you is that if
13 you say clarification, that means one thing; if the
14 document here says changed, you disagree with the Medicaid
15 bulletin?

16 A I would -- it depends on what specific item you
17 are talking about. There have been some changes and this

18 documents some changes, but it could also be contained in
19 here, clarifications.

20 Q Well, I submit to you that if we talk about the
21 definition of ectopic eruption, you say that is a
22 clarification or a change?

23 A Clarification.

24 Q Now, you have spoken about some -- for example,
25 the HLD score sheet on the certification, I think you
0095

1 talked about that one. Counsel showed you an HLD score
2 where they had to certify; remember that one?

3 A Yes, sir.

4 Q And do you know whether or not that was also the
5 subject of a bulletin?

6 A I do not know.

7 Q Well, let's look at Exhibit Number 79. It is
8 going to be coming up for you in a second.

9 In Exhibit 79, can you tell us whether or
10 not Exhibit 79 has a date? Go up to the second page. Can
11 you tell us whether or not the form that you were
12 discussing earlier regarding this so-called certification
13 came into being effective September 1, 2008?

14 A I would not be able to truthfully answer one way
15 or the other.

16 Q And if we go to the next page, that's the
17 certification they are adding. Would you agree or
18 disagree with me, that's the certification they are
19 talking about effective September 1, 2008?

20 A I would need to see the other piece again,
21 please. Mr. Canales, what I'm seeing here is it's talking
22 about a revised prior authorization form and that this
23 revised form would be the only one that will be accepted
24 as of September 1, 2008.

25 Q Right. And that revised form is the next page,
0096

1 correct?

2 A Since it's in this bulletin and referenced, then
3 yes, this would be the revised form.

4 Q So the point I'm trying to obtain from you is
5 whether or not a little while ago when you testified, that
6 this so-called certification, you gave the impression that
7 it has been there all the time and that's not correct,
8 that's the wrong impression to leave; do you agree?

9 A No, I don't agree.

10 Q Well, the bulletin says it became effective
11 September 1, 2008, that's when they added this.

12 A I don't know that that's when they added it, it
13 may have been in the form that was used prior to September
14 1, 2008.

15 Q In that regard, are you telling us that if I look
16 at any form prior to 2008, I will be able to find the same
17 certification, or maybe it's not there?

18 A I'm not sure. You would have to look at the
19 forms used prior to that time.

20 Q And the reason you are not sure about it is
21 because you did not have a hands-on managerial or
22 consultant work regarding the prior authorization process;
23 is that correct?

24 A I did not participate in the prior authorization
25 process.

0097

1 Q And the parties who participated in that process
2 was TMHP and the dentist, correct?

3 A That is correct.

4 Q And in this particular case and in all cases, by
5 the way, the doctor submitted the prior authorization form
6 to TMHP, as far as you know?

7 A TMHP, and prior to that, to National Heritage
8 Insurance Company.

9 Q And do you know whether or not TMHP in this
10 particular case, the Antoine case, that they ever rejected
11 any of the prior authorizations submitted?

12 A I would have no knowledge of that.

13 Q Do you know whether or not TMHP at any time ever
14 complained about the quality or the records of Antoine?

15 A I would not have no information with regards to
16 that.

17 Q And I take it, you have not -- have you or have
18 you not conducted some type of audit of the Antoine cases?

19 A I have not.

20 Q So you are not here to talk about anything
21 specific about Antoine; it's strictly the policy issues?

22 A That is correct.

23 Q You were -- do you recall an email that you and I
24 have spoken about in the depositions, an email that you
25 prepared?

0098

1 A I recall discussing an email during my
2 deposition, yes, sir.

3 Q Now, that particular email, which I believe it's
4 71. Let's get that email out.

5 JUDGE EGAN: What is the exhibit, please?

6 MR. CANALES: P-71-04.

7 Q (BY MR. CANALES) So we can understand that
8 particular email, the background being that somebody asked
9 that you respond to certain questions regarding the
10 ectopic eruption, correct?

11 A I was asked to respond to a number of questions.

12 Q And these questions that you were asked to
13 respond, there was something part of your official duties
14 as a consultant, correct?

15 A Yes, sir.

16 Q And so for example -- do you know why these
17 questions were being asked of you?

18 A The questions were posed by an individual with
19 the Office of Inspector General at the Health and Human
20 Services at the Federal level.

21 Q And that's because, at this point in time, they

22 were in the process of conducting some type of audit, the
23 Federal OIG was going to conduct an audit of the State,
24 HHSC; is that correct?

25 A At the time that these questions were posed to
0099

1 me, I did not know exactly the basis for the questions.

2 Q Okay. Do you know whether or not that audit by
3 the Federals of the State OIG-HHSC agency regarding prior
4 authorization, do you know whether or not that audit has
5 been completed?

6 A I do not know.

7 Q Were you ever interviewed for that audit?

8 A Yes, I was.

9 Q Were the questions asked of you in that audit
10 have to do with ectopic eruption and prior authorizations?

11 A I don't recall the exact questions that were
12 posed to me.

13 Q Let's look at Question Number 1. The question
14 asked of you on Question Number 1 -- it's kind of like a
15 -- is required questions that you talked about. They
16 asked of you about the cephalometric radiograph with
17 tracing is required. What should the orthodontist submit
18 to TMHP? Should it be submitted on an actual radiograph
19 or printed on white paper, and you said what?

20 A The current orthodontic policy allows for the
21 dental provider to submit a copy of the actual
22 cephalometric radiograph, which could be printed on plain
23 paper. The tracings are an overlay on tracing paper that
24 shows various standardized angles, traces the first
25 permanent molars, and upper and lower central incisors.

0100

1 The tracings help the dentist to determine the most
2 appropriate treatment plan.

3 Q So the Judges can understand, you received this
4 email and your response is the response in blue?

5 A That is correct.

6 Q And so let me scroll down to Question Number 2.
7 They asked you a question about what documentation is
8 acceptable, and you respond to Question Number 2?

9 A Under current policy, the supporting
10 documentation must be in the patient's record, but can
11 also be requested by the TMHP dental director. I will
12 have to defer to Dr. Felkner for input regarding what he
13 and his prior authorization team require in order to
14 accurately assess the medical necessity for their
15 determination of the authorization.

16 Q So the response to this is, you didn't know the
17 answer, correct, and you said go talk to somebody else?

18 A That is exactly right.

19 Q And that somebody else is Dr. Felkner?

20 A Yes.

21 Q And Dr. Felkner, at that time, was the TMHP
22 dental director?

23 A That is correct.

24 Q For the record, then Dr. Felkner, at this point
25 in time, did he work or was he employed by OIG?

0101

1 A Not that I'm aware of.

2 Q Did he work or was he employed by HHSC?

3 A No, sir.

4 Q He worked for a private contractor?

5 A Yes, sir.

6 Q TMHP, correct?

7 A Yes, sir.

8 Q Again, they asked you in Step Number 3 -- well,
9 they talk about TH Steps Policy 31, what is TH Steps
10 Policy 31? Is that the same thing as the manual?

11 A No, sir, it is not.

12 Q What is this?

13 A There is a policy document in which paragraphs
14 within that are numbered, so this is within the policy.
15 It's Paragraph Number 31 that they are referencing.

16 Q And they were asking you a series of questions
17 regarding and your response was?

18 A I will have to defer to Dr. Felkner for input
19 regarding what exceptions, if any, he allows under the
20 current policy.

21 Q Because you didn't know the answer?

22 A No, sir, I didn't know the answer.

23 Q The next one talks about a transfer. Let me get
24 to the point. Go down further. Let me get to the real
25 point. Six, I believe. Number 7 is the main question of

0102

1 all these.

2 Here is what it says, the question to you
3 was: TH Steps Policy 45.6 states that ectopic eruption is
4 an unusual pattern of eruption, such as high labial
5 cuspids or teeth that are grossly out of the long axis of
6 the alveolar ridge. So what would be considered grossly
7 out of the long axis?

8 Now, this is a policy, by the way, that has
9 been on the books ever since you can recall, correct?

10 A Ever since the orthodontic -- I'm sorry. As far
11 as this --

12 Q The definition.

13 A Which definition are you referencing?

14 Q Right here. The definition of ectopic eruption.

15 A Which part of it?

16 Q Whatever reads right here. 45.6 states that
17 ectopic eruption is an unusual pattern of eruption such as
18 high labial cuspids or teeth that are grossly out of the
19 long axis of the alveolar ridge.

20 My question to you is: Is this definition
21 the same definition that applied -- we saw awhile ago in
22 19.1 in 2007, 2008, 2009, 2010, is it the same definition
23 that was there?

24 A Yes, sir.

25 Q All right. And they asked you a question, right?

0103

1 A Yes, sir.

2 Q They asked you, what would be considered grossly
3 out of the long axis; we need to know this in case we
4 decide to use medical review. And you responded?

5 A That I don't believe that grossly out of the long
6 axis has ever been defined by Texas Medicaid.

7 Q What does that mean?

8 A Meaning that as a dentist and for a dental
9 professional, "grossly" is a common term, "out" is, "of"
10 is, "the" is, "long" is, and "axis" is; therefore, it was
11 not felt that the Texas Medicaid program had to redefine
12 what is typically identified within the English language.

13 Q And this is something within the manual, correct?

14 A Yes, sir.

15 Q And would you agree with me, Doctor, that what
16 controls in this case and every case is what the manual
17 says?

18 A Yes, sir.

19 Q The manual is -- the manual cannot be -- can the
20 manual be changed by an individual provider?

21 A No, sir, it may not.

22 Q Can the manual be changed by Dr. Altenhoff?

23 A In my capacity working for the State and as a
24 consultant to the Health and Human Services Commission,
25 yes, it can.

0104

1 Q Did you ever change the definition of ectopic
2 eruption under the periods of time we are talking about?

3 A No, sir, I did not.

4 Q Tell me whether or not an outside consultant,
5 Dr. Tadlock or Dr. Evans, can they change the definition
6 of ectopic eruption?

7 A No, sir, they cannot.

8 Q So it is what it is?

9 A It is what it is.

10 Q And are you familiar with the opinion of Judge
11 Kilgore that was approved by HSC, Judge Fekety, regarding
12 the definition of ectopic eruption?

13 MR. HARGOVE: Objection, Your Honor. I
14 think that is irrelevant.

15 JUDGE EGAN: Overruled.

16 Q (BY MR. CANALES) Are you familiar with that
17 decision, the Harlingen decision by Judge Kilgore that was
18 affirmed by and adopted by Judge Fekety of HHSC appeals?

19 A I'm aware that an opinion was rendered.

20 Q And did you read the opinion?

21 A Briefly.

22 Q And did you read it briefly or enough to
23 understand that the definition of ectopic eruption as it
24 states there is what controls?

25 A I don't recall that exactly.

0105

1 Q Let's go to 70.06. Are you familiar with 70.06?

2 A I have read this, yes.

3 Q And did you read it shortly before coming to
4 trial here today?

5 A No, sir.

6 Q And when you read this, what conclusion did you
7 obtain from reading this report?

8 A That the Office of Inspector General at the
9 Health and Human Services Commission had performed an
10 audit of the prior authorization process utilized by Texas
11 Medicaid and Healthcare Partnership and had found some
12 concerns and had issued some recommendations.

13 Q As a result of this audit, when did you receive a
14 copy of this audit? When, if you can recall? In all
15 fairness, just generally the year, whatever.

16 A Early 2009.

17 Q And after you received it in that particular time
18 period, did you ever make aware or inform your -- the
19 dental orthodontic providers of this particular audit?

20 A No, sir, I did not.

21 Q You had -- there is something called a
22 shareholders' meeting. What is that?

23 A There was a stakeholders' meeting.

24 Q Stakeholders' meeting, forgive me. Tell me what
25 a stakeholder's meeting is and what is your role in those.

0106

1 A Stakeholder meetings were opportunities for
2 Medicaid dental providers and other interested parties to
3 come to Austin and meet with myself and other
4 representatives from the Health and Human Services
5 Commission, representatives from the oral health branch of
6 the Department of State Health Services to talk about and
7 to proactively elicit and vet with them potential changes
8 to Medicaid dental policy, to discuss with them concerns
9 that had been raised in questions brought to me by
10 stakeholders in the interim time frames, through email or
11 phone call, and to discuss with them their -- give me
12 input with regards to their process and what they were
13 thinking about the potential changes that were being
14 considered by the state.

15 THE REPORTER: Excuse me. I am having a
16 technical problem and I need to go off the record for a
17 moment.

18 (Off the record.)

19 THE REPORTER: Sorry about that. Go ahead.

20 Q (BY MR. CANALES) The stakeholder meeting, is
21 this a meeting open to the public?

22 A Yes, sir, it is.

23 Q And do you know whether or not orthodontists,
24 dentists are -- dentists who provide services to Medicaid
25 are invited?

0107

1 A Dentists who provide services to Medicaid
2 participated, and yes, they were encouraged to come to the
3 meetings.

4 Q Can you tell me whether or not this is an open
5 meeting where someone from the back room can shout a
6 question of you and ask you what's happening here, that
7 kind of thing?

8 A That happened on a number of occasions, so yes,
9 sir.

10 Q And you could equally respond to them, right?

11 A If I had the information and could accurately
12 respond to them, yes, I did.

13 Q Was there -- did there come a time some time
14 before January 1st of 2012 where you informed -- did you
15 inform the stakeholders of the change of the definition of
16 ectopic eruption or the clarification, as you say?

17 A I don't recall that I gave that clarification.

18 Q And let me show you this document that's, I
19 believe, 71-03. Again, can you highlight it?

20 Do you recall this document -- whether the
21 first time the new definition came out was published?

22 A I recall this document. I do -- since there was
23 not a new definition, then this didn't contain a new
24 definition.

25 Q Let's go to Page 8 of it. That is now a
0108

1 different definition. It's a different definition; is
2 that correct?

3 A It is -- the first sentence is the same as what
4 has been in the manual since 1996. The second sentence is
5 the clarification that was provided.

6 Q And in that second sentence, you say that
7 clarification was not there before?

8 A No, sir.

9 Q It had something else, right?

10 A There was -- again, you would have to go back. I
11 believe there was a notation or something.

12 Q So did this particular definition cause any type
13 of discussion in your next subsequent stakeholders'
14 meeting?

15 A This clarification -- this was issued in 2012.
16 The next stakeholder meeting would have been either the
17 January or April 2012 stakeholder meeting, and I don't
18 recall that this was specifically raised. There was a lot
19 of drama in both of those meetings.

20 Q What do you mean there was a lot of drama? I
21 cannot imagine drama between a whole series of
22 orthodontists, dentists and you?

23 A I don't know that it was specifically aimed at
24 me.

25 Q What was the drama about?
0109

1 A During that time in the January 1, was just prior
2 to transition from a fee-for-service environment for the
3 dental services to a managed-care environment for the
4 dental services in Medicaid. There was a lot of angst
5 about what that change -- how that was going to impact the

6 provider base. And so there was about 165 individuals in
7 the audience for that meeting and all of them had their
8 own particular concerns that they were passionately
9 addressing during the meeting.

10 Q Even at this meeting, would you agree that none
11 of these passionate concerns had the collective power to
12 change this particular language; is that correct? That's
13 the language now that was on the books put out by HSC and
14 TMHP, correct?

15 A This language, they had been notified of it and
16 nobody during -- that I recall, during either that meeting
17 in January of 2012 or the April meeting in 2012 raised any
18 concerns about this definition or this change in
19 clarification.

20 Q Do you recall people complaining to you about the
21 definition of ectopic eruption and you responded, well,
22 why don't you just go Google it?

23 A Yes.

24 Q What was that about?

25 A October of 2011, during the stakeholder meeting,
0110

1 Dr. Paul Dunn stood up and asked about ectopic eruption,
2 that there seemed to be confusion around that. And I
3 suggested to him -- gave him the information out of the
4 manual that it was an unusual pattern of eruption, such as
5 high labial cuspids and teeth grossly out of the long axis
6 of the arch, and that if he -- that as a professional, as
7 a dentist, I felt that that should have been fairly easily
8 understood, and that if there was a need, perhaps they
9 should Google it to see.

10 Q Where is TMHP in all this process? They are the
11 ones approving or disapproving the prior authorizations,
12 right? Or are they?

13 A There were representatives of TMHP at that
14 meeting.

15 Q And as a result of them being there, did TMHP
16 announce to the dentists a change of policy or a change of
17 definition or a clarification of ectopic eruption?
18 Anybody announce from TMHP there?

19 A No, sir, they did not. Not in October of 2010.

20 JUDGE EGAN: 2010?

21 MR. CANALES: 2011, I believe.

22 THE WITNESS: I'm sorry.

23 JUDGE EGAN: I had down that it was --

24 THE WITNESS: 2011.

25 Q (BY MR. CANALES) Do you think that one of the
0111

1 reasons you referred to them to go seek information from
2 Google was because you could not answer the question
3 regarding ectopic eruption? You could not do it?

4 A No, sir, that's not accurate.

5 Q Well, Dr. Dunn was certainly not satisfied with
6 your answer, right?

7 A You would have to ask him, I'm not sure.

8 Q You would agree with me that whatever answer
9 there was or is, it should be found in the manual?

10 A The manual explains it.

11 Q And the manual is what everybody is bound by?

12 A The manual explains to the dental professionals
13 who, by virtue of their professional training, should
14 understand what it says.

15 Q And they should understand pursuant to the
16 definitions and instructions given in the manual, correct?

17 A Again, these are not terms that are not found
18 within both either medical dictionaries or within
19 Webster's dictionary.

20 Q So would you agree with me that those terms not
21 found there, it is a very subjective test then, as to what
22 is an ectopic eruption?

23 A The terms are defined within those elements and I
24 don't believe that it is that subjective.

25 Q But it is subjective.

0112

1 A Then you have your right to your opinion.

2 Q Well, more than that, the question for you,
3 Madame, is whether or not is the HLD scoring definition of
4 ectopic eruption for the year in question we are talking
5 about, is that -- is that definition subject to a
6 subjective interpretation?

7 A It is subject to the individual's opinion.

8 Q That being subjective, right? I can't hear you.
9 Is that a yes?

10 A Yes.

11 MR. CANALES: Can I confer with counsel for
12 a second?

13 JUDGE EGAN: Yes.

14 MR. CANALES: Pass the witness.

15 JUDGE EGAN: Before we go to redirect, we
16 have got some questions and then we will open it up for
17 redirect and recross based on our questions.

18 EXAMINATION

19 BY JUDGE SEITZMAN:

20 Q I just have a couple questions, Doctor. During
21 your direct with Mr. Hargrove, you went through and
22 several times you testified that submitting inaccurate
23 information was a program violation; is that correct?

24 A Yes, sir.

25 Q My question is: Is every inaccuracy or error,

0113

1 are they all program violations? In other words, no
2 matter what the severity of the inaccuracy, do they arise
3 to the same level?

4 A I believe they would all be considered program
5 violations as to the severity, that's not for me to judge.

6 Q So if, for example, since I don't know the
7 patients' names, any similarities to a patient actually in
8 this case is purely coincidence, as put in the bottom of a
9 fiction movie, but let's suppose all the documentation

10 showed the patient as Randall Smith; spelling with two Ls
11 in Randall. And somewhere in the scoring, I made a typo
12 and I did Randall as one L instead of two; obviously
13 inaccurate, right?

14 A Yes, sir.

15 Q Now, is that a program violation because I
16 submitted on one piece of paper with Randall as one L
17 instead of two?

18 A I would think it could be considered a program
19 violation.

20 Q And so -- but you don't make any judgment as to
21 the severity of the violation?

22 A No, sir, I do not.

23 Q Who does?

24 A I don't know for sure.

25 Q So is it your opinion -- are you familiar with

0114

1 the policies and everything that a typographical error on
2 a spelling of a first name should be treated the same as a
3 identification of a patient at the wrong -- of the wrong
4 age? Let me make it easy for you, identifying a
5 23-year-old as an 18-year-old, so somebody who qualifies
6 for the program as opposed to somebody who doesn't.

7 A They are both inaccuracies. Given that the name
8 Randall could be spelled in various connotations, I would
9 think that would potentially have less of a program -- be
10 a lesser program violation than having a discrepancy such
11 as age.

12 Q So simply tagging something as a program
13 violation doesn't tell us very much unless we know what
14 the underlying inaccuracy is; would that be correct?

15 A Given this, when they are -- when a provider is
16 submitted documentation, whether it is for a prior
17 authorization or for a claims for reimbursement purposes,
18 if it is -- if it's going to impact whether or not the
19 benefits are provided and paid for, are allowed and paid
20 for, to me, that makes it a more significant program
21 violation than if they have misspelled a child's name as
22 being Randall with one L instead of two on a piece of
23 document.

24 So does that answer your question?

25 Q It does. So there is a common sense approach.

0115

1 In other words, what I was getting from the testimony is
2 that any inaccuracy can be a program violation, but it's
3 kind of like speeding 20 miles over the speed limit versus
4 one mile; they are both technically speeding, but they
5 have different consequences?

6 A I would think that would be an accurate
7 presumption.

8 JUDGE SEITZMAN: Those are all the questions
9 I had.

10 EXAMINATION

11 BY JUDGE EGAN:

12 Q Just a question regarding the process with the
13 prior authorization. I understand that a package is
14 submitted, reviewed and approval is either given or
15 declined for the procedure. From what I heard you say and
16 what is in the manual, that's not a guarantee of payment.
17 So is there a second opportunity to review and determine
18 medical necessity when the claim for payment comes in?

19 A Judge, you asked if there is an opportunity to
20 review it again, I believe that there is that opportunity.
21 How frequently that opportunity is exercised, I don't
22 know.

23 Q Who -- what entity determined whether or not a
24 claim for payment was going to be paid?

25 A TMHP, Texas Medicaid Healthcare Partnership has
0116

1 that responsibility.

2 Q So they had both the responsibility to do prior
3 authorizations and to make -- to review the claims and pay
4 those that were valid?

5 A Yes, ma'am.

6 JUDGE EGAN: I just wanted to clarify.

7 All right. Mr. Hargrove, any redirect?

8 MR. HARGROVE: Thank you, Judge.

9 REDIRECT EXAMINATION

10 BY MR. HARGROVE:

11 Q Earlier in response to Mr. Canales' question
12 about -- he kept on trying to get you to say that these
13 are in the manual, that these are definitions. Will you
14 put that document up now? Highlight the title.

15 So is it your understanding that in the
16 manual here, Section 19.21, these aren't definitions, but
17 they are instructions on how to score the HLD score sheet;
18 is that your understanding?

19 A That is my understanding. This is guidance and
20 instructions to the providers as to how to score.

21 Q Okay. And now the manual is not written for a
22 layperson, is it, especially with the orthodontic section,
23 correct?

24 A The manual, I don't believe it's written for a
25 layperson, no.

0117

1 Q It is written with the understanding that this is
2 a dentist who is being instructed on how to score this,
3 correct?

4 A Yes, sir.

5 Q So a dentist learns about ectopic eruption in
6 dental school?

7 A Yes, sir.

8 Q And then so, basically, these instructions, there
9 are instructions on how to fill out the document to the
10 right, which is the HLD score sheet; is that your
11 understanding?

12 A Yes.

13 Q Now, in terms of the issue about whether a claim

14 is approved or not, is it your understanding that -- well,
15 a provider must provide truthful and correct information
16 when seeking -- when submitting a prior authorization,
17 right?

18 A That is correct.

19 Q And at that stage, that could be a program
20 violation if there's, for example, a misrepresentation
21 about the true HLD score, correct?

22 A Yes, sir.

23 Q And it's -- issues, I think, that were mostly
24 discussing about, for example, whether -- going back to
25 your direct testimony about the limitations of the

0118

1 benefit. So the issue about the -- what is important, are
2 those issues about misrepresentations related to
3 limitations of benefits or eligibility determinations; is
4 that your understanding?

5 A Yes, sir.

6 Q And your department -- in your capacity, you
7 don't decide to what extent or under what circumstance OIG
8 might be seeking a violation, correct?

9 A That is correct.

10 MR. HARGOVE: Thank you, Judge.

11 MR. CANALES: One question.

12 RE-CROSS-EXAMINATION

13 BY MR. CANALES:

14 Q At the stakeholders' meeting, whatever you said
15 at the stakeholder meeting, do you believe that your
16 representations are to be relied on by the attendees?

17 A Are you talking about any particular stakeholder
18 meeting, sir?

19 Q The one that -- do you recall Dr. Nazari being at
20 a stakeholders' meeting, first of all?

21 A Yes, I do.

22 Q Do you recall Dr. Nazari asked you questions at a
23 stakeholders' meeting?

24 A Yes, I do.

25 Q Do you recall that whatever response you made to
0119

1 Dr. Nazari's questions, that Dr. Nazari is entitled to
2 rely on your representations? Whatever you said, is he
3 entitled to rely on them?

4 A Excuse me?

5 Q Was he entitled to rely on any representations
6 you made to Dr. Nazari regarding the prior authorization
7 process?

8 A I would say, yes, sir.

9 Q And do you believe that TMHP -- do you believe
10 that -- do you know whether or not TMHP, at any point in
11 time, wrote a letter complaining -- asking for an audit of
12 Dr. Nazari's patients' prior authorization files or any
13 other doctor; do you know about that?

14 A I don't know.

15 Q Do you know if it ever happened?

16 A Whether TMHP requested?
17 Q Yes.
18 A I don't know.
19 Q And the reason you don't know is because it never
20 happened, right?
21 MR. HARGOVE: Objection.
22 JUDGE EGAN: Sustained.
23 Q (BY MR. CANALES) Will you agree with me that
24 this entire ectopic eruption payment hold issue all began
25 as a result of the WFAA stories in Dallas?

0120

1 MR. HARGOVE: Again, Your Honor, I object.
2 JUDGE EGAN: If she knows, she can answer.
3 Q (BY MR. CANALES) Okay. Do you know?
4 A I don't know.
5 MR. CANALES: Okay. Thank you. No other
6 questions.
7 MR. HARGOVE: Just one question, Judge.
8 JUDGE EGAN: Hold on. Let me just caution,
9 I have let this go a little bit further, but on redirect
10 and recross, y'all are limited to what has been brought
11 up. And so I will strictly do that with future witnesses.
12 MR. HARGOVE: I hear you, Judge.
13 JUDGE SEITZMAN: But that's why we want to
14 ask our questions before you go to redirect.
15 MR. HARGROVE: Okay. May I ask one more
16 question?
17 MR. CANALES: I passed him. One more bite.
18 I've got one more after that.
19 JUDGE EGAN: Well, it's going to be limited
20 to his redirect.
21 Go ahead.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. HARGROVE:

24 Q Is it your understanding that TMHP, they did not
25 create the policy, the policy is created by the State; is

0121

1 that correct?
2 A It is the State's responsibility to develop
3 Medicaid policy.
4 MR. HARGOVE: Okay. Thank you.
5 FURTHER RECROSS-EXAMINATION
6 BY MR. CANALES:
7 Q And this policy is published and printed out
8 under TMHP?
9 A The actual policies are not published.
10 Q The manual publishes the rules for all the
11 providers to be able to follow, correct?
12 A The manual provides guidance to providers.
13 Q And the manual is published under the title of
14 TMHP?
15 A TMHP has the contractual responsibility to
16 publish the manual.
17 Q I understand that. Just one more question.

18 But the manual is published by TMHP?

19 A I think I have --

20 Q The answer to that is yes?

21 A Yes.

22 MR. CANALES: Thank you.

23 JUDGE EGAN: Anything further?

24 MR. HARGOVE: No, Judge.

25 JUDGE EGAN: Anything further?

0122

1 MR. CANALES: No, Your Honor.

2 JUDGE EGAN: You are excused.

3 DR. ALTENHOFF: Thank you very much.

4 JUDGE EGAN: It is 12:30. How long do y'all

5 want for break? Is an hour long enough?

6 MR. CANALES: Yes.

7 MR. HARGOVE: Yes.

8 JUDGE EGAN: Who will be the next witness?

9 MR. HARGOVE: Dr. Tadlock, Judge.

10 JUDGE EGAN: Okay. Then we will be back

11 here at 1:30.

12 (Off the record.)

13 JUDGE SEITZMAN: Let's go on the record.

14 It's 1:31, we are back on the record.

15 There was a supplemental motion on a

16 complaint that came in this morning, so Judge Egan is

17 prepared to take that up.

18 JUDGE EGAN: We reviewed the trial

19 supplement to the Respondent's complaint, and the motion

20 to supplement at this late date is going to be denied.

21 MR. MORIARTY: Judge, can I speak to that

22 issue?

23 JUDGE EGAN: Yes.

24 MR. MORIARTY: Let me tell you why that

25 supplement was filed and let me tell you that it is a

0123

1 supplement, not an amendment, as it's been contrasted.

2 JUDGE SEITZMAN: What we got from it was

3 that there were overcounts in the -- based on -- in the

4 original complaint based on a spreadsheet, and now you

5 were trying to make clear exactly how many patients in

6 each of the categories were actually a part of this case.

7 MR. MORIARTY: Can I speak to the issue?

8 It's not an overcount. It is a spreadsheet. There were

9 never 145 patients at issue. There's always been 63

10 patients at issue. Now, I want to apologize for asking to

11 supplement at that late today, but as this Court knows, we

12 got hired three weeks ago and we figured out last week

13 that our pleadings do not candidly disclose to you the

14 issues that you need to face.

15 We are seeking to supplement our pleadings

16 to add clarity to the Court so you know what's in front of

17 you, so you know whether the evidence actually meets our

18 pleadings. We have actually gone beyond the

19 supplementation and we specified the specific patients for

20 who are at risk.

21 Here is what happened, and it's just a duty
22 of candor that causes us to file this. We discovered last
23 week that these pleadings were wrong. The State figured
24 out the pleadings were wrong after the time to amend the
25 date, and they let it sit. We discovered that and we
0124

1 said, wait a minute. We owe a duty of candor to the Court
2 so they know what is at risk. Now, the Petitioners, and
3 we have always known that there are 63 patient files at
4 risk. So this 145 HLD scores can't possibly be true.

5 And for you to figure out how to render a
6 proper verdict in this case, you have to know what's
7 really at issue.

8 JUDGE SEITZMAN: I don't mean to cut you
9 off, but I'm going to, so I guess I do mean to cut you
10 off. Let me use my umpiring skills, as I do it. We
11 understood this. We understood this weeks ago when the
12 special exceptions was raised by Mr. Canales. So we have
13 understood all along that there were fewer patients than
14 there were counts. That's why I say there was some other
15 counts because, as it was explained to us, a patient had
16 visits that was ten counts. So we understood that.

17 The trouble that I think arises, and you can
18 make it clear in your closing and make it clear in your
19 brief and do all that, but the trouble arises in that the
20 100 percent hold was brought on the basis of what was
21 alleged in the complaint. And I think the Petitioners
22 have -- I think we think the Petitioners have the right to
23 attack that and continue to show the errors. So we
24 understand it, we appreciate it. It is not new to us.

25 Again, it was brought up some weeks ago on
0125

1 the special exceptions motion and we are not prohibiting
2 you from correcting it, but we are just saying we are not
3 going to allow you to supplement your complaint at this
4 time. You can do it as part of the closing portion of
5 your case.

6 MR. MORIARTY: I appreciate that. The Court
7 earlier dealt with the issue of whether Ketan had the
8 authority to appear before the Court. I have got a copy
9 of the contract if the Court would care to see it.

10 JUDGE SEITZMAN: Sure. Has Mr. Canales seen
11 it?

12 MR. MORIARTY: I have no doubt he actually
13 saw it before we did. It's the last page.

14 MR. HILDER: Judge, I object. And the
15 objection is that Mr. Kharod still has his own law firm,
16 he is not an employee of the Waters Kraus firm. He has a
17 web site with the State Bar of Texas and specifies that
18 he's had his firm since 2002. And if he's to be a part of
19 this case, then I suppose they can hire him as an
20 independent contractor perhaps, but it doesn't purport to
21 conform to the contract.

22 He has his own firm, he was not hired by the
23 AG's Office, and therefore, he should be stricken.

24 JUDGE SEITZMAN: He's listed in the contract
25 and we are going to be satisfied with that for now, and
0126

1 pursue what other avenues you wish to pursue.

2 JUDGE EGAN: Thank you.

3 JUDGE SEITZMAN: All right. So just for
4 clarification, that motion to strike him as counsel is
5 overruled.

6 Now, we are ready to proceed with the next
7 witness.

8 MR. HARGROVE: Yes. Kharod is my right-hand
9 man.

10 We are. Judges, we would call our expert,
11 Dr. Larry Tadlock.

12 JUDGE SEITZMAN: Would you take a seat,
13 Doctor.

14 LARRY TADLOCK, D.D.S.,
15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HARGROVE:

18 Q Dr. Tadlock, good afternoon.

19 A Good afternoon.

20 Q Would you please state your full name.

21 A Larry Paul Tadlock.

22 Q What do you do for a living?

23 A I'm an orthodontist.

24 Q Where do you practice?

25 A Keller, Texas.

0127

1 Q Let's talk about your educational background.

2 A Okay.

3 Q Starting with dental school, where did you go to
4 dental school?

5 A I went to Baylor College of Dentistry and
6 graduated in 1984.

7 JUDGE SEITZMAN: Doctor, excuse me. I'm not
8 sure -- can you tap on the mic and make sure it is
9 working. You may need to pull it towards you.

10 Q (BY MR. HARGROVE) Continue. I'm sorry.

11 A Baylor College of Dentistry, graduated in 1984.

12 Q And then after you graduated from Baylor College
13 of --

14 A I was -- I was --

15 Q Hold on. We can't talk over each.

16 So after Baylor College of Dentistry, what
17 did do you?

18 A I was in general dental practice for two years,
19 and then went back to residency program in Houston,
20 University of Texas, Dental Branch Houston, and got my
21 orthodontic certificate and a Master's in biomedical
22 sciences, graduating in 1988.

23 Q Okay. At that time, did you become an

24 orthodontist?

25 A Yes.

0128

1 Q And you've been an orthodontist since 1988?

2 A Yes.

3 Q And as an orthodontist, what have you been doing
4 since 1998 [sic]?

5 A Since 1988?

6 Q 1988, I'm sorry.

7 A Was in private practice for a number of years
8 full-time, and then about 13 years ago, began to -- began
9 as an educator at Baylor College of Dentistry, just a
10 little over 13 years ago, and maintained my private
11 practice. And I've been doing that ever since.

12 Q And the Baylor College of Dentistry, is it now
13 Texas A&M?

14 A It is.

15 Q So they took a step up in the world, right?

16 A No, actually -- well, we will leave that for
17 another day.

18 Q Have they taught you how to whoop?

19 A Not going to happen, but I'm an employee of Texas
20 A&M, yes.

21 Q My wife will teach you later.

22 A Okay.

23 Q And you've been on the faculty -- what is your
24 title at Baylor?

25 A Associate Clinical Professor.

0129

1 Q And you've been in that position for 13 years?

2 A Yes.

3 Q Tell us as Associate Clinical Professor at Baylor
4 College of Dentistry, what do you do?

5 A Well, I lecture almost every week for an hour to
6 the residents, eight to nine different groups, first-,
7 second- or third-year. It's a three year program now.
8 And then I have -- I supervise patient care with the
9 residents from 9:00 to noon.

10 Q And when you say residents --

11 A Those are orthodontic graduate students.

12 Q These are dentists who are going through a
13 residency program in orthodontics?

14 A Yes. They graduated from dental school and they
15 are accepted into the orthodontic programs and the hours,
16 and so for the next three years, they are orthodontic
17 residents.

18 Q As a clinical professor, what are your other
19 additional duties?

20 A Besides supervising patient care, then I also
21 supervise work with the residents on research and work
22 with other faculty members on different research projects,
23 as well.

24 Q And is the research related to orthodontics?

25 A Yes.

0130

1 Q And how many residents do you supervise on
2 average per year?

3 A There are six in each class, so we have 18 every
4 year. We just graduated a class, so we have 12 right now
5 until the first week of July, and we have our new class
6 coming in.

7 Q Would it be fair to say that in addition to your
8 duties at Baylor, you are a researcher, but you are also a
9 wet-finger orthodontist, right?

10 A Absolutely, three days a week.

11 Q And the patients are patients actually treated at
12 Baylor?

13 A Yes, we have patients at Baylor.

14 Q And tell us about how -- a little bit about those
15 patients that you treat at Baylor?

16 A Well, it's a teaching institution, so we don't
17 just accept every patient that comes in. We accept
18 certain types with -- most are difficult, because we want
19 the students to learn the most difficult patients. So
20 that's what we accept, we screen and accept those.

21 Q And Baylor is a Medicaid provider, correct?

22 A We are, and we do see Medicaid patients. We
23 don't have very many, only because we believe we score it
24 properly, but we -- our conversion rate, I don't know the
25 current number, but it's less than 25. We have between 20

0131

1 and 25 patients; we have screened close to 700 Medicaid
2 patients.

3 Q So just so I understand it correctly, a patient
4 who is a Medicaid beneficiary may get referred to you at
5 Baylor, correct?

6 A Yes.

7 Q And so in that capacity, Baylor is providing
8 Medicaid services, right?

9 A Yes.

10 Q And you are, in your capacity at Baylor, a
11 Medicaid provider, correct?

12 A Well, I am a -- in my capacity under the umbrella
13 of Baylor, yes, a Medicaid provider.

14 Q And have you been a Medicaid provider?

15 A Yes.

16 Q And with these Medicaid beneficiaries at Baylor,
17 are you actually treating these children?

18 A Yes, we treat them with the residents, with the
19 students. They are assigned to a student and the faculty,
20 sometimes several faculty is assigned, but we are assigned
21 to monitor the students and the treatment. We make
22 diagnostic and treatment plan decisions. The students
23 don't get to make the decisions, but that's how we do it.

24 Q And have you ever assisted in scoring a Medicaid
25 beneficiary at Baylor to determine --

0132

1 A Yes.

2 Q Hold on. You have got to let me finish.

3 To determine whether the patient meets the
4 eligibility criteria for braces under the Texas Medicaid
5 program?

6 A Yes.

7 Q And tell us how many times you think you have
8 done that?

9 A Well, I have probably looked at several hundred
10 HLD score sheets.

11 Q Several hundred?

12 A Several hundred. There's no way I can put a
13 number on that.

14 Q And these are patients that you are trying to
15 determine whether they are eligible for braces under the
16 Texas Medicaid program, correct?

17 A Correct.

18 Q But it sounds like not all of them get past
19 Baylor and your screen process, correct?

20 A Correct.

21 Q Why is that?

22 A Because they are not anywhere close to the score
23 of 26. It is not a severely handicapping malocclusion as
24 defined by the HLD index.

25 Q All right. So I also want to talk about, you as
0133

1 an expert, what other hats you wear in life, what other
2 professional hats you wear. As I understand it, you are a
3 board member of the American Board of Orthodontists?

4 A Yes.

5 Q What is the American Board of Orthodontists?

6 A The American Board of Orthodontists is the only
7 sanctioned certifying body for the profession of
8 orthodontics. We are sanctioned by the American Dental
9 Association and the American Association of Orthodontists.

10 Q And you are board certified in orthodontics?

11 A Board certified, and I am a director. There are
12 eight directors from around the United States.

13 Q And you are one of the eight?

14 A I am one of the eight.

15 Q What is the obligation as a director of that?

16 A Well, the American Board of Orthodontists is
17 essentially the standard bearer for the profession. We
18 are -- our objectives are to protect the public, Number
19 One. Number Two is to issue examinations for the purpose
20 of both certification, and then for continued
21 certification. Those examinations are written during a
22 residency program. The students are required to take the
23 written exam, and then the oral exam is voluntary and it
24 is any time after graduation.

25 We participate in developing certifying

0134

1 boards around the world and -- and among those would be
2 Brazil that we did last year, and Columbia that I will
3 work with this summer. And then the other critical aspect

4 is that we work closely with educational programs around
5 the country and in Canada to help improve the quality of
6 education in those programs.

7 Q As it relates to the exams, the written exam and
8 the oral exams, what role do you play? Do you, for
9 example, help draft the exams and administer the exams?

10 A Yes. We are responsible for creating, writing
11 and administering both exams. The written exam is
12 administered through the Pearson VUE Testing Centers. The
13 clinical exam is at our testing center in Saint Louis, and
14 we do about three to four exams, about 30 days a year of
15 examinations.

16 Q Are you about to step into the role of the Chair
17 of the --

18 A Clinical committee. I'll be Chair of the
19 clinical committee at the end of this year and responsible
20 for administering the clinical exam.

21 Q And in your capacity as the professor at Baylor
22 and a director of the ADO, how did you become interested
23 in Medicaid issues in addition to your treatment?

24 A Well, I guess you mean interested in as, did I --
25 when did I hear of problems or potential problems?

0135

1 Q That is correct.

2 A Sometime in 2010, and I can't pin the exact date
3 down. Over a period of months, I had two former students
4 of mine call and ask to meet with me about concerns in the
5 practice where they were working. And then another
6 graduate of the Houston program who was referred to me
7 asked to call me about it. And that was the first that I
8 had heard of anything happening.

9 Q All right. And in addition to all the other
10 matters that we discussed, do you also research in the
11 field of orthodontics?

12 A I do, yeah, at the school.

13 Q At the school at Baylor?

14 A Yeah. The other thing that I'm involved in as a
15 -- on the education side is I'm a site visitor for the
16 Commission on Dental Accreditation, which is the
17 accrediting body. We are under the umbrella of the U.S.
18 Department of Education. And as a site visitor, I'm
19 charged with -- every program goes through an
20 accreditation process. Most of them are pretty reasonable
21 and -- but in any event, we are basically randomly
22 selected to go to programs and evaluate their programs to
23 see they are meeting the accreditation standards set by
24 CODA.

25 Q In addition to all those other duties and honors

0136

1 and obligations that you have, are you in private practice
2 as an orthodontist, as well?

3 A Yes.

4 Q And you have your own private clinic?

5 A Yes.

6 MR. HARGOVE: Judge, I would offer Dr.
7 Tadlock as an expert in this case.

8 MR. HECTOR CANALES: Your Honor, we would
9 object to Dr. Tadlock's opinions in this case because his
10 opinions, as we brought to the Court's attention, this
11 case centers around the April 4th, 2012 notice of payment
12 hold that HHSC gave to Antoine Dental Clinic, and Dr.
13 Tadlock was not hired in this case until May 28th, over a
14 month after that notice was given. His report in this
15 case was not -- his opinions were not made until nearly a
16 year later, in February of 2013.

17 Therefore, Your Honor, under Rule of
18 Evidence 702 and 403, his opinions do not bear on the
19 matter at issue, the April 4th notice of payment hold;
20 that will not assist this Court in determining the facts
21 of the payment hold that was delivered back in April since
22 he was not a part of that determination. So we would
23 object to his opinions.

24 JUDGE SEITZMAN: Objection is overruled and
25 he will be received as an expert as tendered.

0137

1 MR. HARGOVE: Thank you, Your Honor.

2 Q (BY MR. HARGOVE) Dr. Tadlock, you were retained
3 by the OIG as an expert to review 63 patient files,
4 correct?

5 A Yes.

6 Q Tell us briefly what your review consisted of?

7 A I was asked to review the records to score and
8 evaluate the HLD scores. So I used the records to score
9 the HLD index.

10 Q All right. We are going to look at a patient
11 file, but before we do that, let's talk briefly about some
12 of the teeth and orthodontic issues. We will spend a
13 couple minutes on this. If I could get you up on your
14 feet, and what I would like you to do is -- you are an
15 expert, tell the Judges -- do you need a laser pointer?

16 A I will take it.

17 Q If you would please, tell the -- let's play this
18 video, and then if you can describe for us what you are
19 seeing.

20 A It's kind of scary looking.

21 JUDGE SEITZMAN: If you can get to where you
22 are not standing between us and the screen, that way you
23 are also facing the court reporter.

24 Q (BY MR. HARGOVE) Why don't you come over here,
25 and you are going to have to speak up a little bit.

0138

1 A I can do. This simply just shows primary teeth
2 or baby teeth erupting into the mouth, and these are the
3 permanent teeth that are erupting. And this is really
4 pretty much inconsequential, except for what we are
5 calling these teeth. So if -- feel free to interrupt me
6 if you have any questions.

7 But for the purposes of HLD scoring, I think

8 you have already heard that it is pretty much right
9 through here, in the front of the mouth. This being the
10 midline, the way the teeth are counted is pretty simple.
11 Starting at the midline, one, two, three, and then one,
12 two, three going this way. If I say -- I'm going to try
13 to say front and back because that makes a lot of sense.
14 If I accidentally say anterior, it means front, but stop
15 me, Court Reporter, and I'll say front.

16 These are the --

17 MR. HECTOR CANALES: Your Honor, I would
18 object to this narrative and proceed on a
19 question-and-answer basis rather than just the narrative
20 and lecture basis.

21 I understand there's a little leeway here,
22 but I think question-and-answer is appropriate.

23 JUDGE SEITZMAN: It's helpful to the Court
24 at this point. It's overruled.

25 You may proceed.

0139

1 A Front teeth start right here at the canine;
2 everything behind the canine is back teeth. That's pretty
3 simple. These front four are the incisors, and that's
4 pretty much the limit of what we need to know in order to
5 know which teeth we are looking at and what we are
6 counting.

7 Q (BY MR. HARGOVE) If we could just quickly
8 identify the name of the teeth one more time.

9 A This is the central incisor, the next one over is
10 the lateral incisor, and then you have the canines. And
11 the same for the lower, these are central incisors, and
12 that's lateral incisor and that's a canine.

13 Q And just to make sure we have got it right. One,
14 two, three; one, two, three is how it is scored?

15 A Yes.

16 Q And same thing on the bottom, one, two, three;
17 one, two, three?

18 A Yes.

19 Q Tell the Judges why that scoring method is
20 important for our purposes?

21 A Well, because when identifying teeth that you are
22 scoring or -- that's just how orthodontists identify the
23 teeth. There are other dental numbering systems. This is
24 pretty simple, and that's what we use. On the HLD index,
25 you will see which teeth are scored as ectopic based on

0140

1 the teeth, one, two or one, two, three, that sort of
2 thing.

3 Q Let's look at a patient file. P-1, please. This
4 is a patient file produced by Antoine Dental Center.
5 These are pre-authorization images of this young man,
6 correct?

7 A Yes.

8 Q Tell us about what you observed about this
9 patient.

10 A Well, can I just go through and show what is in
11 the chart, just to show you what we are looking at. When
12 we are asked by -- as a reviewer to review a chart for,
13 let's say, in this case, the HLD index, what I'm looking
14 for in order to score it, photographs. There are other
15 parts of the chart, the cephalometric radiograph, which is
16 the x-ray of the side of the head, the panoramic
17 radiograph, which is just sort of as you looked at
18 earlier. This is the tracing of the cephalometric
19 radiograph, there are points on there that are selected,
20 identified and then measurements made from that tracing.
21 These are other parts of the paperwork that is in the
22 chart, health history. Basically, it's a full chart,
23 whatever they had in there is in there.

24 Q What is this?

25 A These are the chart notes, these would be

0141

1 filings.

2 MR. HARGROVE: Zoom up on that a little bit.

3 Q (BY MR. HARGROVE) So this is a -- is this a
4 request for a prior -- this is a receipt that they have
5 been authorized to perform braces, right, based upon the
6 information provided?

7 A Yes.

8 Q And we have talked about some codes, but what is
9 that code D-8080?

10 A It's comprehensive treatment.

11 Q And that's what we are talking about, braces?

12 A Yes.

13 Q Okay.

14 A Those are the ones that the HLD score sheets --

15 Q Let's make that bigger. Now, tell us what this
16 document is here.

17 A This is the HLD score sheet.

18 Q Now, Dr. Altenhoff already went through this a
19 little bit. Tell us again what we are looking at.

20 A We are looking at the different sections of the
21 HLD score sheet for the purpose of calculating 26 or
22 determining the score as to whether the patient meets a
23 severely handicapping malocclusion. So each one of these
24 -- cleft palate is an exception, but starting down here,
25 there's overjet, overbite, we have some pictures of that.

0142

1 It will be a little bit easier in a moment. Mandibular
2 protrusion, open bite, ectopic eruption, crowding.

3 MR. HARGROVE: Let's zoom on this part.

4 A This is an indication that they scored in the
5 upper right-hand side, Tooth Number 1 and Tooth Number 2,
6 this side 1 and 2, so forth, for eight ectopic teeth, all
7 the incisors, upper and lower.

8 MR. HARGROVE: Can you bring us in an image
9 of the pre-authorization photo and match it with the
10 scoring? Highlight this and then highlight the scoring.

11 Q (BY MR. HARGROVE) So again, we earlier counted

12 the teeth, 1, 2, so how does that show us how the teeth
13 match up with the scoring?

14 A The teeth that were scored as ectopic eruption
15 were these four teeth, the four incisors. This tooth, the
16 next one over, keep going, and then this tooth, the next
17 one over, and then the bottom four incisors.

18 Q So because they scored those four teeth here, how
19 many points did Antoine score?

20 A Four top and four bottom, so eight total teeth;
21 three points per tooth is 24 points.

22 Q So if they scored one tooth ectopic, they get
23 three points, right?

24 A Yes.

25 Q And they scored, in this case, eight teeth as
0143

1 ectopic, correct?

2 A Yes.

3 Q This might be a good time to talk about what is
4 ectopic eruption.

5 A The definition of ectopic eruption, that is, I
6 believe, generally accepted is a textbook definition.
7 Bill Proffit is the author of the textbook; it is the
8 leading textbook in orthodontic programs. It is required
9 reading for preparation for the American Board of
10 Orthodontists' written exam, and that exam is required by
11 all residents. The definition in Dr. Proffit's textbook
12 is --

13 Q And just to be clear, we are looking at R-50,
14 which is an expert of Professor Proffit's textbook?

15 A Right. Ectopic eruption says occasionally
16 malposition of a permanent tooth bud before it erupts as
17 it is developing -- it's called a tooth bud. Malposition
18 of the tooth bud can lead to eruption in the wrong place.
19 This condition --

20 Q What does that mean, the wrong place?

21 A Well, it means --

22 MR. HECTOR CANALES: I object to speculation
23 as to what Dr. Proffit means by wrong place. It speaks
24 for itself.

25 JUDGE SEITZMAN: Overruled. You may answer.

0144

1 A The wrong place means, in simple terms, you are
2 not going into your own house, you are next door, you are
3 two houses over, you are a street over. Ectopic eruption,
4 most people think of teeth and don't understand it, but a
5 lot of people understand what ectopic pregnancy is. It's
6 a pregnancy outside the uterus; it's not inside the
7 uterus. It can be a number of different places outside
8 the uterus, so it is not one spot outside the uterus, but
9 it's outside nonetheless.

10 Ectopic eruption in the wrong place means
11 it's outside of the place where it was planning to go.
12 Now, what Dr. Proffit says is this eruption most often
13 occurs -- most likely occurs in the upper first molar. So

14 for Texas Medicaid, we don't score those. Most often, it
15 does occur in the upper first molar.

16 Q (BY MR. HARGOVE) You know Dr. Proffit?

17 A Yes.

18 Q And in your capacity as director of the ABO, you
19 visit dental schools?

20 A That's correct.

21 Q And in that capacity, are dental students taught
22 about what ectopic eruption is?

23 A Absolutely. This textbook -- the first edition
24 of this textbook was 1987 and I was a resident. That
25 definition has not changed since 1987. It's been exactly

0145

1 the same. In his latest -- his latest is the fifth
2 edition that just came out, they have additional examples
3 of ectopic eruption. But the definition that he uses has
4 not changed.

5 Q Read this line here.

6 A He says in the previous paragraph that ectopic
7 eruption most often occurs in the first molars, and the
8 research supports that. But he says, ectopic eruption of
9 other teeth is rare, but can result in transposition. In
10 other words, an even worse case of ectopic eruption is the
11 tooth erupts in some wild position. As I said, more than
12 a house over; it's way over.

13 And so -- but otherwise, ectopic eruption of
14 other teeth besides the first molar is rare. There is a
15 photograph down here I want to show you. These are some
16 examples of ectopic eruption. These teeth were designed
17 to go here. They have erupted underneath the lower molars
18 moving this direction.

19 Here is one that did that, erupted
20 underneath the lower molars. This is the jaw joint. This
21 is where the lower jaw meets the skull, this is in forward
22 of that, and attempting to erupt outside of the jaw into
23 what would be a very dangerous area, actually. These are
24 medically compromising.

25 This is another example of ectopic eruption.

0146

1 It is an upper canine that's erupting. This is the spot
2 where it belongs and it's erupting over to the side.

3 Those are examples of ectopic eruption. In
4 some cases, they cause medical issues; they erupt into the
5 sinus, they erupt into -- basically, into the floor of the
6 nose, they can erupt out through the side of the face,
7 they can erupt into the chin and go all the way around.
8 Those are ectopic teeth.

9 MR. HARGROVE: Okay. If you would pull up
10 R-48 and R-37 at 79.

11 Q (BY MR. HARGROVE) What I want to do is talk
12 about how to score an HLD score sheet, which you do at
13 Baylor --

14 JUDGE EGAN: You will need to speak up, I
15 can barely hear you.

16 MR. HARGOVE: Sorry, Judge.

17 Q (BY MR. HARGOVE) What I would like to do is talk
18 about how to score an HLD score sheet, which you have done
19 at Baylor, correct?

20 A Yes.

21 Q And here is the -- in the definition, it cites
22 how to score -- the instructions on how to score the HLD
23 score sheet, correct?

24 A Yeah. We can -- this is a photograph of how the
25 first one, overjet, is scored. But basically, it is --

0147

1 this is a Boley Gauge, if you ever wanted to know what
2 that looked like, that is what it looks like.

3 Q So we are talking about overjet?

4 A This is overjet. And when Dr. Altenhoff was
5 using her hands, what she was trying to depict is the
6 upper teeth extending over the lower. And you are
7 measuring that distance.

8 Now, it is a linear measurement, but that
9 measurement could vary depending on where I put the ruler.

10 And I don't think anyone is arguing, at this point, that
11 it's one millimeter off one way or the other.

12 Q What about overbite?

13 A Overbite, as you can see here, they are using a
14 pencil to mark how far down -- again, Dr. Altenhoff's
15 visual. How far down the upper teeth extend over the
16 lower teeth, they mark that and measure it. As Dr.
17 Altenhoff said, for overjet, you subtract two points from
18 your total; for overbite, you subtract three.

19 Go to mandibular protrusion. This is a
20 measure, where they marked on the pencil, this is a
21 measure of the overbite. Again, it's a linear
22 measurement; it's pretty objective, but it's not 100
23 percent objective because the width of the pencil could be
24 eight-tenths of a millimeter. But it is pretty close.

25 Go back to mandibular protrusion. This is,

0148

1 as Dr. Altenhoff talked about, the lower teeth being ahead
2 or out in front, the bulldog that she mentioned. Again,
3 this is just a measure of how far the greatest amount that
4 this extends beyond the upper.

5 Open bite is this, it's a measure of this.

6 As you can see, not all these teeth are open. I think in
7 order to be reasonable and fair, you score the greatest
8 amount of open bite.

9 No, don't show that. Ectopic eruption, I
10 will talk more about that in a little bit. We have
11 already heard some about it. And I think that Mr. Canales
12 is right, that all of this hinges on what ectopic eruption
13 is or isn't. And unless you would like me to clarify, I'm
14 just trying to get through to -- as long as you are
15 understanding where I'm going or what this is, I don't
16 want to keep repeating what Dr. Altenhoff was already
17 saying.

18 Q Okay. Let's take a look at some patient files
19 that were produced by Antoine, P-1. Doctor, let me
20 identify this exhibit, this is R-53. And starting with
21 this, can you make this image even bigger? Which image
22 would you like to use to describe ectopic eruption?

23 A This one. I can point, too. This is an example
24 of ectopic eruption. This tooth that's erupted here and
25 laying over a back tooth, this tooth belongs right here.

0149

1 This is the same thing; this tooth that's laying over that
2 back tooth on top of it, it belongs right here. So that
3 is an example of ectopic eruption, from the literature,
4 from the lower lateral incisors.

5 MR. HARGROVE: Okay. Pull up the next
6 imagine.

7 Q (BY MR. HARGROVE) And this is R-31-A.

8 A This is an example of an ectopic canine; it
9 belongs here on the lower left-side and it is erupting
10 into the floor of the mouth, underneath the tongue. This
11 is an ectopic upper left canine that's erupted outside of
12 the arch, and is almost transposed almost beyond this
13 tooth.

14 And this one is the upper right canine that
15 is erupting towards the roof of the mouth. Those are
16 examples of ectopic teeth.

17 This is another example using an x-ray.
18 This is a canine that is supposed to be right here, and
19 it's erupted towards the midline, towards the roof of the
20 mouth, and basically has caused these teeth, the roots, to
21 completely dissolve. That is another example of ectopic
22 eruption. This is a different view of the same thing, a
23 little bit different direction, and you can see it's
24 headed right down -- and of course, when you look in the
25 mouth, you don't see that, but on the x-ray, you see it's

0150

1 coming right down that permanent incisor.

2 This is what it looks like in the mouth.
3 Ultimately, this permanent tooth was completely dissolved.
4 The ectopic tooth, which again, belongs over here, and
5 these are very difficult, if not impossible, to switch.
6 It was brought down because that tooth was lost into that
7 position. That's an ectopic eruption.

8 MR. HECTOR CANALES: What exhibit are we
9 looking at?

10 MR. HARGROVE: R-31.

11 Q (BY MR. HARGROVE) This is R-31-L again. What are
12 we looking at here, Doctor?

13 A This is an example of an ectopic, upper left,
14 central incisor, the midline is right here, that is the
15 right central and the right lateral, and this is an
16 ectopic, upper left, central incisor that is coming
17 straight out towards the lip. This has been surgically
18 exposed and this is ectopic eruption. This is what we
19 teach and this is why we teach it, because as

20 orthodontists, we are the last line of defense for this.
21 We are charged with correcting these problems.
22 Q Let's -- you have done some research into -- you
23 talked earlier about the prevalence of ectopic eruption.
24 You said the first molar is the first tooth to come out.
25 Will you tell the Judges about the prevalence, based upon
0151

1 your research and survey of the literature, about the
2 prevalence of ectopic teeth?

3 MR. HECTOR CANALES: I object to this point.
4 It's outside the scope of the witness' report that was
5 provided in this case. He has already testified he was to
6 score the HLD score and that's it. I think he's gone
7 beyond what he was designated to testify in this case.

8 JUDGE SEITZMAN: Well, he's an expert, I'm
9 going to give him some leeway in explaining. I'm sure
10 this has something to do with the way he scored it, so I
11 will allow it.

12 Overruled.

13 Q (BY MR. HARGOVE) Is this R-51? Okay. Go ahead
14 and talk.

15 A The whole thing to me is bizarre because the
16 definition as I learned it -- what ectopic eruption was
17 when I learned it and has been every week or month or
18 whenever I discussed it, has been the same, hasn't
19 changed. So -- but --

20 MR. HECTOR CANALES: Your Honor, I'm sorry
21 to keep interrupting, but our exhibits don't go up past,
22 what, 46, and we now have something up there labeled R-51.

23 MR. KHAROD: That's an article he made
24 reference as part of his literature review. We may have
25 jumped the gun on putting it up there.

0152

1 Q (BY MR. HARGOVE) So just describe what your
2 survey of the literature shows and we will talk about
3 these articles.

4 A I did a search of PubMed, that's what we do when
5 we are looking up -- the issue is we are either
6 evidence-based or we are just simply opinion-based. I
7 believe we are a profession that is evidence-based. So I
8 did a search of PubMed. PubMed is 80 countries, it's a
9 government-run search engine, 80 countries, about 4,500
10 journals. PubMed returned and I searched for ectopic
11 eruption in any field in the article, so that is title,
12 citation, abstract, keywords and anywhere in the body,
13 basically, anywhere for the phrase.

14 You can do this with Google. Dr. Altenhoff
15 actually gave good instructions. You can search it on
16 Google. You can use Google Scholar, which limits it to
17 research articles, and you can get anything and everything
18 you want on ectopic eruption. If you search Google and
19 put in ectopic eruption, you get about 9,800 hits. If you
20 limit it to the exact phrase, it comes down to a little
21 over 200 or 300 hits.

22 But through PubMed, that's what we do at the
23 school and we can manage the citations better. I returned
24 about 1,300 articles, some of those are in foreign
25 languages I can't look at.

0153

1 The bottom line is this, there are no
2 references to teeth that are rotated or tipped. There
3 are -- ectopic eruption in every article is a tooth that
4 is away from, it is out of place, it is in the wrong
5 place. Not most of them, many of -- not most of them, all
6 of them. Many of the articles, many of these take
7 ectopic -- and I'm sure this is the way it is in law.
8 There's evidence on both sides. There's give and take and
9 maybe a preponderance of the evidence, and we have that in
10 some medical issues.

11 But this is overwhelming. It has always
12 been. The earliest reference I can find was 1938, but it
13 referenced other people talking about ectopic eruption.
14 And the earliest references where of the molar as Dr.
15 Proffit talked about. Those references continued, as well
16 as the canine erupting off to the side. If you take and
17 do a search of ectopic eruption in PubMed with only the
18 title or the abstract or the keywords, so just limiting it
19 to a research article or paper that is focusing on some
20 aspect of ectopic eruption, you get a little over 100
21 articles.

22 Of those, half are referring to ectopic
23 molars. Of the other half, half of those are talking
24 about ectopic canines, the -- Tooth Number 3.

25 The remainder of that, so 25 percent of the
0154

1 total sample, are all the other teeth; ectopic lower
2 molars, ectopic lower wisdom teeth, ectopic lower lateral
3 incisors that you saw. Those are the others. But in
4 every case, they are teeth that are out of the position,
5 they are not here in turn; they are out, they are
6 somewhere else.

7 That's the definition of ectopic eruption
8 that existed that started in 1938 or somewhere before
9 then. It has existed in its same form since then, up to
10 '87 when Dr. Proffit wrote its eruption in the wrong
11 place, and that definition has not changed.

12 Q Now, if you could bring up the article in your
13 survey of the literature, you came across this Thilander
14 Article, correct?

15 MR. HARGROVE: This would be R-51, which we
16 will offer shortly.

17 Q (BY MR. HARGROVE) Tell us what this Thilander
18 article is about.

19 A Okay. So --

20 Q Go to the title first.

21 A The search included articles that were
22 epidemiological studies, so studies of the incidents of
23 dental problems. Ectopic eruption is classified under,

24 and in most textbooks, it's under the term "dental
25 anomalies" or "dental problems."

0155

1 So ectopic eruption is an eruption problem;
2 it's an eruption event. So not all epidemiological
3 studies are looking for -- to classify ectopic eruption.
4 This is -- there are some that are very good, this is one
5 of the best ones.

6 Birgit Thilander is actually from Sweden.
7 This study was done on kids in Columbia, 4,724 children.
8 So it's not a small sample; it's a large sample. And I
9 actually have a chart that shows it better.

10 JUDGE SEITZMAN: Before we get into talking
11 about the details of this exhibit, I don't want to talk
12 about something that is not in evidence, so is this being
13 offered simply to show that this formed a portion of the
14 basis for his opinion or is it being offered for the truth
15 of the matter?

16 MR. HARGOVE: It is one basis of his
17 opinion, Your Honor, so not for the truth of the matter.

18 MR. HECTOR CANALES: We would object, Your
19 Honor. It is not offered for the truth of the matter, it
20 is hearsay, Your Honor.

21 JUDGE SEITZMAN: It's not being offered for
22 the truth of the matter, so there is no hearsay objection.
23 It's being offered to show a basis in part for the
24 expert's opinion.

25 MR. HECTOR CANALES: We would still object
0156

1 under those grounds, Your Honor.

2 JUDGE SEITZMAN: Objection is overruled.
3 It's admitted, but for the limited purpose.

4 (Respondent's Exhibit Number 51 admitted.)

5 Q (BY MR. HARGOVE) So again, let's focus here.
6 You are talking about the prevalence of ectopic teeth.

7 A Well, the first thing is the prevalence of how
8 our teeth normally are straight. Our teeth -- normally --
9 do teeth normally erupt in a straight position or do teeth
10 erupt crooked? And the epidemiological studies --

11 MR. HECTOR CANALES: Your Honor, this
12 testimony is for the truth. They may have offered it
13 under the guise of this, but the testimony here, he's
14 directly trying to say that what the report says is what
15 occurs. It's irrelevant to the -- it's undisputed in this
16 case that it is the definition and that the manual
17 controls. Dr. Altenhoff has already testified to that.

18 We are now going outside of that and since
19 it's undisputed that it is the manual's definition that
20 controls, this entire testimony and the use of this study
21 is irrelevant, and it is being offered for the truth of
22 the matter despite their representation that it isn't.

23 JUDGE SEITZMAN: It's overruled. It goes to
24 the weight of the expert's testimony that's being offered,
25 not for the truth of the matter. He's simply telling us,

0157

1 to my understanding, why he formed the opinions that he
2 did and that he relied in part on this in forming his
3 opinions. And if the definition is different than the
4 manual's, it goes to the weight of his testimony.

5 You may proceed.

6 THE WITNESS: Thank you.

7 A Okay. So this is in -- this is a literature
8 review that Dr. Thilander used in the purpose of setting
9 up her study. This is the percentage of malocclusion's
10 prevalence in terms of percent of malocclusion. Over here
11 are the percentages of malocclusion based on different
12 population samples.

13 So it is 79 percent, 83 percent, 82 percent,
14 basically a large percentage of patients have crooked
15 teeth. They are not hideously crooked, these are just
16 measures of, do teeth erupt straight, do teeth erupt in an
17 ideal position, and the answer to that is no.

18 Q (BY MR. HARGOVE) So the normal condition of a
19 tooth is what?

20 A Well, the teeth do not usually erupt straight.
21 Teeth usually -- talking about a population sample, teeth
22 are usually not straight, there is some degree. Now, it
23 varies between mild, moderate and severe, but a very small
24 percentage of patients erupt with ideally straight teeth.

25 Q Okay. Can you talk about the -- does this

0158

1 article discuss the prevalence of ectopic teeth?

2 A It does, but it is going to be easier to find in
3 my chart.

4 MR. HARGOVE: Judge, to be more efficient,
5 if we could have a five-minute break, so we can cue up
6 some records as opposed to searching through them. We can
7 just take a quick break in place.

8 JUDGE SEITZMAN: All right. Is there
9 anything else you can cover with this witness while that
10 is being cued up?

11 MR. HARGOVE: Let's go to P-1, Case Number
12 1, which was offered by Antoine.

13 Q (BY MR. HARGOVE) What I would like you to do is
14 tell us about what your -- you reviewed this patient file,
15 correct?

16 A Yes, I did review this. They scored -- we showed
17 this earlier, they scored eight front teeth ectopic. I
18 scored no front teeth ectopic. This patient's occlusion
19 is near perfect. There are some mild rotations in the
20 front, but in terms of how the back teeth fit, this -- I
21 mean, the teeth are close enough to straight that it might
22 qualify as passing the certification process from the
23 American Board of Orthodontists. There is nothing there I
24 scored ectopic.

25 Q Just to be clear, we are looking at P-1, and this

0159

1 is the pre -- this is the photograph that was submitted to

2 TMHP by Antoine requesting braces, correct?

3 A Yes.

4 Q And in your opinion, Dr. Tadlock, are the teeth
5 in question, do those qualify as ectopically erupted
6 teeth?

7 A No.

8 Q And in your opinion, based upon your
9 observations, does that young man have a severe
10 handicapping malocclusion?

11 A No.

12 Q And in your opinion, Doctor, is he dysfunctional
13 with his oral health?

14 A Well, based on the photographs I am looking at
15 and the type of occlusion, there are other issues related
16 to dysfunction, but no, I don't see any dysfunction
17 there.

18 Q What was the final score that Antoine scored on
19 this young man?

20 A 26 total; 24 on ectopic teeth.

21 Q Okay. Would you like to see other records in
22 that case file?

23 A No.

24 Q Please cue up P-6. Again, another record
25 produced by Antoine Dental. Again, this is another
0160

1 photograph that Antoine submitted seeking authorization --
2 prior authorization to do braces on the child. If you
3 could bring up the HLD score sheet.

4 A Again, same thing. They scored all eight
5 incisors; upper 1, 2 on both sides, and lower 1, 2 on both
6 sides.

7 Q Let's make it bigger here. Tell us again.

8 A The 1 and 2, both right and left, so there are
9 four upper incisors scored and the same for the lower.
10 Four lower incisors, according to the note, were scored as
11 ectopic. There are no teeth ectopic there.

12 Q Is it your opinion, based upon the images,
13 whether this child had a severe handicapping malocclusion?

14 A No, they did not have a severe handicapping
15 malocclusion.

16 Q Is it your opinion that the score in there is a
17 misrepresentation of patient's true condition?

18 A I think scoring these teeth as ectopic is a
19 misrepresentation of the condition of the patient.

20 Q And would it be your opinion that that would be
21 false information as scored by Antoine?

22 A It is certainly not true information. It is not
23 true. It would be false information that these are
24 ectopic, yes.

25 Q Anything else?

0161

1 Would you please bring up P-54, another --
2 I'm sorry, 28.

3 JUDGE EGAN: Which exhibit, I'm sorry?

4 MR. HARGOVE: P-28?

5 A Again, the score that they scored was all four
6 upper incisors and all four lower incisors, total of eight
7 for 24 points.

8 Q (BY MR. HARGOVE) Do you have any opinion about
9 whether the teeth in question are ectopic eruption?

10 A Those teeth are not ectopic.

11 Q And based upon your review of the file, did this
12 child present with a severe handicapping malocclusion?

13 A No.

14 Q Based upon what you observed in the file in your
15 review, if Antoine had reported these teeth as ectopically
16 erupted, in your opinion, would that be false?

17 A Yes.

18 Q What is the true condition of those teeth?

19 A They are not ectopic.

20 Q Okay. If you could bring up P-54. Walk us
21 through it again.

22 A Here, the score is all 12 front teeth, possible
23 to score 1, 2, 3, so 1, 2, 3 there; 1, 2, 3 here; and then
24 the same, 1, 2, 3; 1, 2, 3. All 12 teeth were scored as
25 ectopic.

0162

1 Q Is it true those teeth are ectopic?

2 A Those teeth are not ectopic.

3 Q So as reported on the HLD- score sheet, would
4 that information be false or true?

5 A That information would be false if they are
6 scored ectopic.

7 Q Why is that? Because those teeth are not
8 ectopic?

9 A They are not ectopic. They are not erupted in
10 the wrong place.

11 Q And based upon your review of the patient file,
12 did that patient present with a severe handicapping
13 malocclusion?

14 A No.

15 Q P-57. All right, if you could tell us what you
16 observed, Dr. Tadlock.

17 A The score -- Antoine score is, again, eight. So
18 four upper incisors, 1, 2; 1, 2. And then four lower
19 incisors; 1, 2 and 1, 2. So it's all of these teeth here,
20 here, here and here.

21 Q And do you have an opinion about whether those
22 teeth are ectopically erupted?

23 A They are not ectopic.

24 Q And do you have an opinion about whether that
25 child suffers from a severe handicapping malocclusion?

0163

1 A I don't believe it suffers from a severe
2 handicapping malocclusion.

3 Q If we could go to P-42.

4 JUDGE SEITZMAN: That's one that will need
5 to be corrected.

6 MR. HARGOVE: We will take care of that,
7 Judge. Just to be clear, we are using Antoine's --

8 JUDGE SEITZMAN: I understand.

9 MS. SILHAN: She is redacting.

10 MR. HARGROVE: We need P-54.

11 JUDGE EGAN: You said 42, I thought.

12 MR. HARGOVE: 42, I'm sorry.

13 Q (BY MR. HARGOVE) Okay. Tell us what you observe
14 about this.

15 A This one was difficult for me to tell exactly.

16 It appears that it's 1, 2; 1, 2. It certainly is 1, 2
17 there. This looks a little harder to see, but it appears
18 to be 1, 2, it's right over these. It's a total of 24
19 points, which means it's eight teeth that are scored.

20 Now, the interesting thing is, I scored
21 these two canines as ectopic and none of these as ectopic.
22 And like the other measurements, there is a place in which
23 some subjectivity comes into play. For example, if these
24 teeth were a little closer into the arch, would they be
25 considered ectopic, how much difference does it have to

0164

1 be. Those are questions that I believe are harder to
2 answer, those are the areas of subjectivity in terms of
3 scoring ectopic eruption.

4 It's definitely out of the arch and pretty
5 far out of the arch. And is it grossly? I don't know,
6 but I scored those as ectopic. Antoine Dental did not
7 score those as ectopic, but scored those as ectopic.

8 Q Is it your opinion that Teeth 1, 2; 1, 2, are, in
9 fact, truly ectopically erupted?

10 A Those teeth are not ectopically erupted.

11 Q Okay. And what about -- is it your opinion where
12 that child suffered -- even with correctly two ectopic
13 teeth, if that child suffered from a severe handicapping
14 malocclusion?

15 A I want to correct it, but it is a cosmetic issue;
16 probably has some functional issue. But by what the State
17 uses in terms of the HLD index to determine handicapping
18 malocclusion, in my opinion, it doesn't qualify.

19 Q Okay. All right. We are not going to go through
20 every patient chart. We have gone through those six, but,
21 Dr. Tadlock, you reviewed all 63 patient charts, correct?

22 A Yes.

23 Q We don't have time to go through all 63 patient
24 charts, but if you could just highlight this and tell us
25 what this summary shows.

0165

1 A This is --

2 Q First of all, did you create this?

3 A Yes, I did.

4 Q And what information -- where did the information
5 come for you to create this chart?

6 A This is from Antoine's scores. These are their
7 ectopic scores on their HLD score sheets.

8 Q As I understand, you took their score sheets and
9 you made a spreadsheet?

10 A Yes, I did.

11 Q Explain to us what the two columns are in yellow
12 and green.

13 A The gray represents the midline so that it's 1,
14 2, 3 teeth on either side of the midline. This separates
15 upper from lower. So the opportunity to score ectopic
16 eruption can be in any one of these squares for any of the
17 patients, a total of 12. This would be Patient 1. 12
18 total squares for each patient are possible. These are
19 the scores over here; my scores and their scores.

20 Q Scroll down. All right. So --

21 MR. HECTOR CANALES: Your Honor, at this
22 point, I need to object. There's a document that is being
23 used that is not in evidence and we would object to that,
24 Your Honor. No proper predicate has been laid and I think
25 they are going to start looking at totals and summaries of
0166

1 scores and patients, I assume, that -- of which no
2 predicate or no evidence is in the record.

3 JUDGE SEITZMAN: Has this document been
4 previously tendered?

5 MR. HARGOVE: Judge, it's a summary under
6 Rule of Evidence 1006 of the -- and the data comes from
7 Antoine. It's a summary of voluminous data that Dr.
8 Tadlock has -- rather than go through patient by patient
9 by patient, it's a summary that he charts how Antoine
10 scored each of their patients with an ectopic tooth under
11 1006. It's just -- rather than go through all the patient
12 files, it's admissible for that purpose as a summary.

13 JUDGE SEITZMAN: Well, I think one of the
14 issues that's being raised is it wasn't previously
15 submitted. Are you tendering this for the truth of the
16 matter or what is its purpose?

17 MR. HARGOVE: It's admissible under 1006,
18 Your Honor, as a summary of voluminous data.

19 JUDGE SEITZMAN: But there was a time to
20 tender exhibits, that time has passed.

21 MR. HARGOVE: May I have a moment, Judge?

22 JUDGE SEITZMAN: You may. Let's go off the
23 record for a second.

24 (Off the record.)

25 JUDGE SEITZMAN: We are back on the record
0167

1 at six minutes after 3:00 and we had an off-the-record
2 discussion. Let me see if I can summarize it and ask the
3 parties if that is their understanding and agreement.

4 The chart that we were discussing before we
5 went off the record is marked as R-49. It is my
6 understanding that it will be tendered and no objection to
7 the document as tendered with the following changes to the
8 document; that is, that everything below Row 63 of the
9 chart will be excluded from the exhibit, with the

10 exception of the footer, which identifies the document.

11 Let me ask you, Mr. Canales, is that your
12 agreement and understanding?

13 MR. HECTOR CANALES: Yes, it is.

14 JUDGE SEITZMAN: Is that your agreement and
15 understanding, as well, Mr. Hargrove?

16 MR. HARGOVE: It is, Judge.

17 JUDGE SEITZMAN: So R-49 as altered pursuant
18 to the agreement is admitted without objection.

19 (Respondent's Exhibit Number 49 admitted.)

20 JUDGE SEITZMAN: I believe, Mr. Hargrove, we
21 were in your direct.

22 MR. HARGROVE: Thank you, Judge. Let me get
23 just oriented here.

24 Q (BY MR. HARGOVE) First of all, I want to go a
25 little bit more into this chart. And tell us what this

0168

1 column here is, which is highlighted Antoine HLD?

2 A That is the column where I registered Antoine's
3 HLD score.

4 Q From the records provided to you?

5 A From the records provided, yes.

6 Q And this column here, where it says, ectopic
7 scores, it's gray highlighted, what does that column show?

8 A That was their score of ectopic eruption on their
9 HLD index.

10 Q And then you have Tadlock HLD column, what is
11 that?

12 A Yes. That is my score on the HLD index.

13 Q And then, I guess, the ectopic score is?

14 A My score.

15 Q So ectopic is a subset of the total HLD score,
16 right?

17 A Yes.

18 Q Now, I noticed you have reviewed -- you had 63
19 patients to review, but you only scored or tallied up 59;
20 why is that?

21 A Those -- the ones that are grayed out were ones
22 that did not have an HLD score sheet provided by the
23 provider. There was no -- they did not have an HLD score
24 sheet in the chart.

25 Q So, for example, this would be Patient Number 10?

0169

1 A Correct.

2 Q So Patient 10 has no HLD score sheet in Antoine's
3 file for you to score?

4 A Correct.

5 Q And again, you were using Antoine's records,
6 right?

7 A Yes.

8 Q And then same thing with 44, 51 and 53, correct?

9 A Yes, that is correct.

10 Q So that's why it is gray, because there was no
11 score sheet that you had in which to score. Scroll down

12 more.

13 And we're talking about upper and lower
14 here, correct?

15 A Yes.

16 Q And 1, 1, 1 means that they marked it. So of the
17 59 patients that you had HLD score sheets, how many did
18 Antoine score as being ectopically erupted?

19 A 100 percent of the patients were scored on the
20 upper right central incisor.

21 Q So 100 percent of their patients, they calculated
22 or they scored as having an ectopically erupted tooth?

23 A Yes.

24 Q And what about this tooth, which would have been
25 the other incisors?

0170

1 A It was actually one -- one they didn't score, but
2 two percent less, so 98 percent.

3 Q And then going to the next tooth over on the
4 left, what is the name of that tooth?

5 A That's the upper right lateral incisor.

6 Q And it's the number -- it's in the place marked 2
7 for HLD scoring. What was the percentage that Antoine
8 scored for their patients?

9 A They scored 58 out of the 59 patients, or 98
10 percent.

11 Q And what about the other tooth on the other side?

12 A Exact same score for that one, as well.

13 Q And then on the -- would this be the canine?

14 A Yes.

15 Q And what's the percentage of how they scored
16 their patients?

17 A That's the upper right canine or Tooth Number 3
18 on the right side, and they scored it 23 times, or 39
19 percent.

20 Q And what about the other canine?

21 A The upper left canine was scored 20 times, or 34
22 percent.

23 Q And then lower, we have the numbers here, so
24 let's go here. So the lower 3 place?

25 A The lower right canine was scored 20 times for 34

0171

1 percent; the lower right lateral incisor, 53 times for 90
2 percent; the lower right central incisor, 55 times for 93
3 percent; the lower left central incisor, 55 times for 93
4 percent; the lower left lateral incisor, 54 times, 92
5 percent; and the lower left canine, 20 times for 34
6 percent.

7 Q And then your conclusion is what?

8 A Of all the patients they scored with some amount
9 of ectopic eruption, I believe the lowest one is 12 points
10 or four teeth for ectopic eruption.

11 Q And you had -- of the total 708 teeth that could
12 be scored, they scored 533 teeth as being ectopically
13 erupted, correct?

14 A Yes, 75 percent of the total possible teeth to
15 score.

16 Q And how does that compare from what you have
17 observed in your practice? And let's talk about the
18 literature.

19 A Can you use that?

20 Q Yes. So I have put up on the screen for you
21 R-54, this is a summary that you have done of the
22 literature, correct? What is this, Dr. Tadlock?

23 A This is just a summary of some epidemiological
24 studies that were within the original search that --
25 within my original search. And in all of these are
0172

1 studies with the exception of Dr. Proffit's textbook,
2 which I put -- listed here. And these are serious
3 epidemiological studies with large population samples.

4 This one, the second one, is Peter Buschang.
5 I work with Peter every Thursday, he's a Ph.D.
6 anthropologist. He is -- well, he's done a number of
7 these; he has over 250 publications. The sample size was
8 over 9,000 patients. They evaluated the -- the only thing
9 they really were looking at was what is called
10 irregularity of teeth; are teeth straight or are they
11 irregular.

12 Now, in this measurement, they weren't just
13 measuring rotation. They were also measuring position to
14 each other. They were not measuring ectopic teeth, but in
15 this -- in their study, they found that 83 percent of the
16 patients had some degree of rotated or tipped or
17 malpositioned. The term is irregularity, but irregular
18 teeth basically. So the percentages -- if you look in
19 dental anomalies, for example, the percentages of dental
20 anomalies, just like the other chart in Thilander Study,
21 which was here, that other chart had percentages of
22 malocclusion. This is dental anomalies; missing teeth is
23 one example, missing enamel is another example. Ectopic
24 eruption is an example of a dental anomaly.

25 In the sample, 1,000 here, 92 percent had
0173

1 some level of dental anomaly. But when they looked at --
2 and then crowding, about 50 percent. Bite problems,
3 anywhere from 19 to 40 percent. But when they looked at
4 ectopic eruption, in relationship to all the other things,
5 ectopic eruption is six percent, nine percent, 1.5 percent
6 in Thilander Study.

7 Bill Proffit says that it's rare. And this
8 study -- by the way, these are populations around the
9 world. This study was transposed teeth -- those are teeth
10 that move over and around another tooth -- .4 percent is
11 the reported number for teeth that are transposed. This
12 is consistent. This is consistent with all the literature
13 that exists on ectopic eruption.

14 Q Let me ask you a question: For the purposes of
15 scoring on the HLD score sheet, we only look at anterior

16 teeth, the front teeth, correct?

17 A Yes.

18 Q So those percentages, do they include just
19 anterior tooth or all teeth?

20 A They include all teeth. Remember, that the
21 sample is that half those teeth are back teeth. Half of
22 the ectopic number will be ectopic molars. So it's
23 reasonable to cut that number in half, to only talk about
24 anterior teeth.

25 Q I believe you testified earlier that the most
0174

1 common ectopic tooth would be the first molar?

2 A The first molar is the most common. The second
3 one is the canines, upper canines, first; lower canines
4 and lateral, second. But the upper first molar and the
5 upper canines are the most common, by far.

6 Q So when you compare Antoine's data and how they
7 scored their patients as having ectopically erupted teeth
8 to which you have observed in your own practice at Baylor
9 and the literature, what is your conclusion?

10 A Well, my conclusion is that it's incomprehensible
11 for me to see how you could have scored ectopic eruption
12 on 100 percent of the patients, 75 percent of the
13 available teeth. One of the things that's not in here, in
14 reports that look at multiple anomalies for the same
15 patient -- say, an ectopic eruption or missing teeth,
16 congenitally missing, the chance of having the other one
17 on the opposite side or bilateral or even two anomalies,
18 that chance is infinitesimally smaller.

19 And yet, in Antoine's patients, all of his
20 patients have bilateral or multiple ectopic teeth.

21 Q What is the probability of a patient having
22 multiple ectopic teeth?

23 A That many, less than one percent.

24 Q Okay. I want to go back to Baylor --

25 A Let me rephrase that. That many on that

0175

1 patient's sample, zero. It's not possible.

2 Q Okay. I want to talk about your work at Baylor.
3 I think you testified you attempted to qualify for
4 Medicaid braces in approximately 700 patients that
5 presented at Baylor; is that about right?

6 A Yes. Now, you can't attribute all 700 to me. In
7 fact, Phil Campbell has done more of those exams than I
8 have, and in most cases, when I've been involved in the
9 exam, there have been multiple doctors or multiple people,
10 even residents involved in screening Medicaid patients.

11 Q And of that large patient population, how many
12 did you all score as qualifying for braces under the Texas
13 Medicaid?

14 A I would say we have qualified probably 25, 26
15 patients, somewhere in there.

16 Q Out of 700, approximately?

17 A Out of 700, yes.

18 Q And those patients that you determined didn't
19 meet the qualifications or the eligibility, did you submit
20 them for requests for prior authorization?

21 A Only some of them. I mean, you are not supposed
22 to submit just every single patient. If you determine
23 they don't meet the HLD score, then -- and they are not
24 even close, you don't submit them.

25 Q So you did not submit patients who did not
0176

1 qualify?

2 A I would say most we did not submit. Some were
3 and some were rejected.

4 Q One other matter, do teeth -- what's a normal
5 state of a tooth to be, slightly rotated, turned or to be
6 straight?

7 A No, no. As the studies show, only about seven or
8 eight percent of the patients have ideally straight teeth,
9 and everything else from there is crooked to a degree.

10 Q And in your review of the literature and in your
11 experience, has a twisted tooth or rotated tooth ever been
12 called an ectopic tooth?

13 A Not ever.

14 Q Do you have an opinion about whether Antoine
15 misrepresented the true score on an HLD score sheet of
16 their patients that you reviewed?

17 A I certainly think the ectopic eruption score was
18 misrepresented from what ectopic eruption is.

19 Q And do you believe that score to be false?

20 A I believe the score is false, yes.

21 Q And what is your opinion about whether this
22 population in Houston has bilateral ectopic teeth?

23 A It's not possible.

24 Q And what is your opinion about whether Antoine
25 Dental, the patient files you reviewed, what is your
0177

1 opinion about whether Antoine misrepresented whether the
2 children in question had a severe handicapping
3 malocclusion?

4 A I think in every case, it was the ectopic
5 eruption score that put them over -- well, not in every
6 case. I scored one of the patients as needing the 26.
7 But it was their score of ectopic teeth that put all of
8 those patients over the 26.

9 Q And do you have an opinion whether Antoine
10 misrepresented on prior authorizations, whether their 63
11 patients in question have a severe handicapping
12 malocclusion according to the HLD score sheet scoring
13 system?

14 A I think clearly by virtue of picking the teeth
15 and scoring those as ectopic, they misrepresented the HLD
16 score.

17 Q What did you observe about the pattern?

18 A I think the upper and lower incisors were scored
19 on almost every patient. I would have to look back at the

20 numbers to see, but the pattern was that upper and lower
21 -- the four teeth upper incisors and the four teeth lower
22 incisors were basically scored on almost every patient.
23 MR. HARGOVE: If I may have, Judge, a moment
24 to confer.

25 JUDGE SEITZMAN: You may.

0178

1 MR. HARGOVE: We will pass the witness,
2 Judge.

3 JUDGE SEITZMAN: Mr. Canales?

4 CROSS-EXAMINATION

5 BY MR. HECTOR CANALES:

6 Q Good afternoon, Dr. Tadlock. My name is Hector
7 Canales. We have never met before today, right?

8 A Correct.

9 Q You and I have not had an opportunity to discuss
10 the Antoine Dental case, right?

11 A Right.

12 Q But on April 19th, you did give a deposition in
13 this case, right?

14 A Yes.

15 Q Have you had an opportunity, sir, since giving
16 your deposition to review your testimony in that case?

17 A I have had an opportunity, but I did not take it.

18 Q And you understand that that testimony in your
19 deposition was also under oath as your testimony here
20 today?

21 A Yes.

22 Q Thank you very much. Now, your interpretation of
23 ectopic eruption does not include a rotated or slanted
24 tooth, correct?

25 A If the ectopic tooth is rotated, and many of them

0179

1 are, then it is ectopic, but it is not ectopic because
2 it's rotated.

3 Q That's right. So essentially, that is if the
4 tooth is on the ridge, on the alveolar ridge, and it is
5 rotated, your methodology and the opinions that you
6 reached in this case does not include or characterize that
7 as ectopic eruption, correct?

8 A Never been written up in the literature.

9 Q Now, that's right, your opinion is ectopic
10 eruption does not include teeth that are rotated or
11 slanted and on the ridge, right?

12 A No. So, for example, I showed an example of
13 lower lateral incisors, they were rotated with the facial
14 surface of the tooth pointed straight up; they were
15 leaning backwards over the first premolar; they were on
16 the ridge. But they were ectopic.

17 Q Those were molars, though, right?

18 A No, those were lower laterals. They would be
19 scored on the HLD index.

20 Q Regardless, you agree, sir, that the first time
21 that -- the first time Medicaid and the provider manual

22 discussed the inclusion or exclusion of rotated teeth
23 within the definition of ectopic eruption was in the 2012
24 rendition of the definition, correct?

25 MR. HARGOVE: I apologize for objecting,
0180

1 Your Honor, but that is a mischaracterization. Dr.
2 Altenhoff was clear that that's not a definition. It's an
3 instruction on how to score.

4 JUDGE SEITZMAN: He's an expert. He's
5 capable of answering the question without being instructed
6 how to answer it.

7 A I believe that's right; however, it is
8 characterized clarification or definition, excluding
9 rotating teeth was in 2012.

10 MR. HECTOR CANALES: If you would, put up
11 P-81.

12 Q (BY MR. HECTOR CANALES) If I could draw your
13 attention to the screen, sir. This is the instruction
14 that is contained within the May/June 2012 Medicaid
15 bulletin. Are you familiar with that?

16 A I have seen it before, yes.

17 Q And the highlighted section, you would agree,
18 sir, was not present in the provider manual prior to 2012,
19 right?

20 A I believe you are right.

21 Q And in all the cases that you reviewed, the 63
22 cases you reviewed, you will agree, sir, that it is the
23 prior language, the prior editions, the 2011 and earlier
24 editions, that apply, correct?

25 A I agree.

0181

1 Q And I take it from your earlier testimony in this
2 subject matter here, that you think highly of
3 Mr. Buschang; is that who you said you worked with
4 closely, you talk to every day, Mr. --

5 A I see him every Thursday.

6 Q And you think highly of him?

7 A Yeah, sure.

8 Q Okay. And according to Mr. Buschang, he did a
9 study on the United States -- population of the United
10 States and he found that 83 percent of the population had
11 rotated teeth, right?

12 A Yes.

13 Q And that's pretty high, right?

14 A It wasn't rotated. The term is irregular. The
15 index used is Little's Irregularity Index, which is not
16 necessarily a measure of rotation. It is under-rotated
17 for the simple purpose of keeping it simple. If I put
18 irregularity in there, it's a little bit different. And I
19 explained that when I went over it.

20 Q I understand. But you wrote rotated, right?

21 A Yes. And I explained it different.

22 Q So it says here, the prevalence of cooked teeth
23 or malocclusion, that's what you were trying to -- the

24 message that you were trying to deliver here to the Court
25 was, the percentage of -- or prevalence of malocclusion,
0182

1 right?

2 A Yes.

3 Q And within that, rotated teeth are under the
4 heading of malocclusion, right, according to your little
5 summary here?

6 A That's the title of it all, yes. But -- yeah.

7 Q All right. Sir, when you reached -- did you
8 reach all of these opinions that you have had in this case
9 after April 4th of 2012?

10 A No, absolutely not.

11 Q Did you review any of the 63 patient files in
12 this case prior to April 4th, 2012?

13 A Did I review the patient files? I reviewed them
14 prior to our deposition, yes.

15 Q Right. And your deposition was in this year, of
16 2013?

17 A I'm sorry, no. I'm sorry, you are right. I did
18 that on my deposition, I apologize. No, I didn't review
19 records prior to 2012.

20 Q That's right. So HHS-OIG, the lawyers here in
21 front of you represent them, they did not have the benefit
22 of your opinions when they issued the notice of payment
23 hold on April 4th, 2012, correct?

24 A Correct.

25 Q Because you -- I mean, you testified in a
0183

1 deposition, but you didn't even get hired until over a
2 month later, right?

3 A Correct. Yes, correct.

4 Q In May?

5 A Yes. Checking dates, yes.

6 Q In fact, the report that you wrote in this
7 particular case, you didn't write your report until
8 February 20th of 2013, correct?

9 A That is correct.

10 Q And in your findings, 62 out of the 63 patients
11 of the files that you reviewed, you scored below 26,
12 right?

13 A I did.

14 Q And it is true, is it not, that -- but regardless
15 of the fact that you scored all but one below 26, isn't it
16 true, sir, that more than one qualified for treatment
17 under the Medicaid program?

18 A There were two for sure that were filed under
19 interceptive treatment, that would have been under
20 interceptive treatment, and that was some assumptions
21 which turned out to be bad, I admit that. But -- so those
22 two, and I would have to leave the remainder ones that had
23 crossbites up to HHS to determine whether those were filed
24 for crossbite treatment or not.

25 Q All right. Well, there's a lot in that answer.

0184

1 Let me break that down. What you are referring to is, you
2 made in your deposition a month or so ago, you conceded
3 that you made numerous errors or mistakes in your scoring
4 of these 63 patients, correct?

5 A I would say the error was in lower -- crowding,
6 excuse me -- that error was for some patients and it was
7 one point. And I would be glad to talk about that. The
8 other errors of crossbite, I don't believe are errors if
9 -- as I understood it, and as I was handed the records,
10 they were filed as 8080, which is comprehensive treatment
11 and require an HLD score sheet. That's what I did.

12 Q Do you recall, sir, in your deposition just over
13 a month ago that there were 17 cases where you either made
14 an error of scoring or you withdrew your opinion, that
15 those particular cases didn't qualify under Medicaid?

16 A I was presented by the person giving me the
17 deposition in saying that -- in implying that, and I
18 responded that the patients, if they were filed for
19 crossbite therapy, then they may qualify for crossbite
20 therapy. I didn't concede that they would qualify for
21 comprehensive treatment based on the crossbite.

22 Q Sir, 17 out of -- 17 mistakes out of 63 files,
23 that's roughly 25 percent, right?

24 A Again, pull the crossbite patients out. The only
25 ones you can talk about are the ones that are -- the

0185

1 crowding numbers, and that's one point for each patient.

2 JUDGE SEITZMAN: Doctor, you need to answer
3 the question asked, otherwise, you are going to be here
4 until tomorrow afternoon.

5 Q (BY MR. HECTOR CANALES) 17 out of 63 is roughly
6 a 25 percent error rate, right?

7 A Again, the 17 is your number, so if you want to
8 do the math with that, then okay.

9 Q Now, you mentioned just a few terms to give the
10 Court a little bit of background here. You mentioned a
11 term of crossbite. It's true, is it not, that crossbite
12 is an exception to the requirement to have 26 points in
13 order to qualify for Medicaid treatment?

14 A Qualified for crossbite therapy.

15 Q So it's an exception, correct?

16 A Not for comprehensive treatment.

17 Q But an exception, nonetheless, within the
18 program, correct?

19 A Okay, yes.

20 Q And another example of an exception to the 26
21 points is interceptive treatment; is that correct?

22 A Correct.

23 Q And just briefly, could you describe what is
24 interceptive treatment?

25 A Interceptive treatment is on kids that still have

0186

1 some level of baby teeth, and the idea is to intercept

2 problems before they are -- before they cause greater
3 problems.

4 Q And are there any other exceptions that you are
5 aware of?

6 A Cleft palate.

7 Q So we have identified three. Are there any
8 others?

9 A Trauma.

10 Q Any others?

11 A Not that I can think of right now.

12 Q And you testified -- you testified in your
13 deposition that you should have included and looked for
14 those exceptions as part of your review of the 63,
15 correct?

16 A I believe that the record shows that the
17 crossbite patients were filed as 8080, so I would not have
18 given crossbite exception. They were filed as 8080 as
19 comprehensive treatment, so I would have scored the HLD
20 score sheet. The two interceptive cases would have not
21 been included in the score.

22 Q Sir, my question to you was: As part of your --
23 as part of what you were hired to do in scoring these
24 patients, you should have looked at the exceptions that
25 were part of the scoring process, right?

0187

1 A I take -- yes, you are right. Of course.

2 Q And you missed some of those exceptions, right?

3 A I missed two of them.

4 Q And not only did you miss some of those, but you
5 also misscored on some -- on the chart, as well as on the
6 crowding, right? You misscored there?

7 A On the crowding.

8 Q And let me ask you a little bit about your
9 background and familiarity with HLD scoring. Are you
10 currently a Medicaid provider?

11 A My name is currently under Medicaid as a
12 provider.

13 Q Do you have any patients that are Medicaid
14 patients?

15 A There are no patients assigned to my name.

16 Q Is it true that you never worked for -- let me
17 ask this: Do you know or are familiar with TMHP, that
18 entity?

19 A A little bit, yes.

20 Q And I take it, as being -- having done the
21 provider -- saying you have a provider number, that in
22 doing so, you have signed all the documents and things
23 that were showed earlier with Dr. Altenhoff?

24 A I did at one time, yes.

25 Q And in doing so, you became familiar with the

0188

1 rules and standards of being a Medicaid provider?

2 A I think so, yes.

3 Q It's true that you never attended a stakeholder

4 meeting, though, right?

5 A That's true.

6 Q Do you receive the bulletins?

7 A Yes.

8 Q Do you -- since you don't have a Medicaid -- any
9 Medicaid patients assigned to you, do you read them?

10 A Usually, we talk about them at the school, but
11 they come to all the full-time faculty orthodontists at
12 the school.

13 Q And you were present for the testimony of Dr.
14 Altenhoff?

15 A For some of it, yes.

16 Q Some of it or all of it?

17 A I think all of it. I stepped out for a moment
18 and came back in.

19 Q Do you agree with Dr. Altenhoff that the manual
20 is -- the Medicaid manual is what controls in this
21 particular case?

22 A In this situation, absolutely not. I don't agree
23 with it.

24 Q You -- in forming your opinion, you rely upon
25 definitions regarding ectopic eruption that are found
0189

1 outside of the provider manual, correct?

2 A As a doctor, we are responsible for those. We
3 learn those, we were taught those.

4 JUDGE SEITZMAN: You just need to answer the
5 question.

6 A Yes, I did absolutely.

7 Q (BY MR. HECTOR CANALES) And in applying
8 information from outside, the -- your view of ectopic
9 eruption is not limited to the front teeth, to the
10 anterior teeth, correct?

11 A As an orthodontist, that is correct.

12 Q But it is true, is it not, that the Medicaid
13 provider manual limits ectopic eruption and limits the
14 scope to the front teeth?

15 A Yes, it is.

16 Q So wouldn't you agree, sir, that that is an
17 example of a difference between the Medicaid rules and the
18 orthodontic experience that you have outside of Medicaid?

19 A In terms of scoring, yes.

20 Q Would you agree, sir, that Medicaid, within its
21 authority and discretion, has the right and the ability to
22 define ectopic eruption as it saw fit?

23 A Yes.

24 Q Now, prior to forming your opinions in this
25 particular case, did you speak with anybody at TMHP about
0190

1 how HLD scores were administered from 2007 through 2011?

2 A No.

3 Q And you didn't have this -- since you didn't
4 attend any of these stakeholder meetings, you didn't have
5 the benefit of any of the discussion and information that

6 was provided by TMHP or any of its representatives to the
7 orthodontic public, correct?

8 A Not true. Phil Campbell, Chairman at Baylor, did
9 go, and we did discuss things that were said at
10 stakeholders' meetings.

11 Q You would have heard it secondhand?

12 A Yes.

13 Q But you didn't hear it firsthand?

14 A I did not.

15 Q And prior to forming your opinion, did you
16 consult at all with Dr. Altenhoff?

17 A I have consulted with Dr. Altenhoff on a couple
18 of occasions. I don't remember if I talked to her about
19 ectopic eruption.

20 Q And did you -- prior to forming your opinion, did
21 you discuss with anybody at TMHP how from the years that
22 are relevant in this case, from 2007 to 2011, did you go
23 and talk to anybody at TMHP to find out how they were
24 administering these HLD scores and how they were
25 interpreting ectopic eruption under the provider manual?

0191

1 A No.

2 Q Would you think that a fair ectopic eruption
3 could be fairly described as a tooth being in an abnormal
4 position?

5 A It's in the wrong place.

6 Q How about abnormal position, do you have any
7 problem with describing it as being in an abnormal
8 position?

9 A Probably not. Probably not. That's probably the
10 AAO's definition.

11 Q Abnormal position, you don't have any problem
12 with that?

13 A No, I don't think so.

14 Q And that's a different description than, I think,
15 what you testified to earlier as having found as abnormal
16 -- wrong place?

17 A It's not a different definition. You may have a
18 different interpretation, but that's not a different
19 definition.

20 Q I think you said or you testified that Dr.
21 Proffit had defined ectopic eruption as being in the wrong
22 place; is that fair?

23 A Yes.

24 Q And do you see the difference between the wrong
25 place and an abnormal position?

0192

1 A No.

2 Q And would you agree that a rotated tooth could be
3 in an abnormal position?

4 A I think it's a rotated tooth.

5 Q Sir, would you agree that a tooth that is rotated
6 would be in an abnormal position?

7 A No, I wouldn't. It's not reported like that in

8 the literature anywhere. It is rotated.

9 Q But a rotated tooth isn't normal, is it?

10 A A rotated tooth is relatively normal in the
11 population.

12 Q Well, you mean it happens a lot, right?

13 A Most of the time.

14 Q Were you here when that -- when they started off
15 and showed that animation to the Court with the skeleton
16 kind of scary thing and the teeth came in; do you remember
17 that?

18 A Yes, uh-huh.

19 Q Did any of those teeth come in rotated or
20 crooked?

21 A No.

22 Q Because within orthodontics, the goal in
23 orthodontics is to bring teeth into their intended normal
24 position of being straight, right?

25 A Correct.

0193

1 Q So -- but rotated is not the way God intended the
2 teeth to come in?

3 A I would have to ask God that question. Since it
4 happened, he probably did.

5 Q Now, as part of -- do you recall -- I believe you
6 testified that you read the decision of Judge Kilgore and
7 Judge Fekety, correct?

8 A Whatever was published on-line, I read some of
9 that, yes.

10 Q And you read the part that deals with your
11 testimony in this case about ectopic eruption. I think
12 you testified to that in your deposition, right?

13 A Yes.

14 Q Because it affects your opinions, right?

15 A What affects my opinions?

16 Q The decision of a Court on what the proper
17 definition or interpretation of ectopic eruption is with
18 regards to the provider manual, right?

19 A I don't think it affected my opinion regarding
20 ectopic eruption. It probably affected my thoughts on the
21 whole thing, but not my opinion on what ectopic eruption
22 is.

23 Q Would you agree, sir, that the debate that we are
24 having here and the dispute that is at the center of your
25 opinion is the interpretation and application of ectopic
0194

1 eruption as it's described in the provider manual?

2 A I think there is a dispute over what ectopic
3 eruption is, yes.

4 Q And do you agree or disagree with Dr. Altenhoff,
5 that the provider manual's description and definition of
6 ectopic eruption involves subjective interpretation?

7 A Well, I disagree with her in part in that ectopic
8 eruption, as I showed and demonstrated and as is reported
9 in the literature, is pretty objective. It's in the wrong

10 place. I also showed in a photograph that when ectopic
11 eruption gets closer to the ridge and as sort of
12 relatively within the position where it goes, there is
13 some subjectivity to it. So yes.

14 Q And you would agree that Dr. Altenhoff is in a
15 much better position than you are with regards to
16 understanding how the Medicaid manual and its definitions,
17 including an ectopic eruption, were utilized?

18 A She's in a far better position to understand how
19 the manual is used and applied.

20 Q And it's under the manual that a Medicaid
21 provider must operate, right?

22 A You must follow the manual.

23 Q You know that you cannot substitute your opinion
24 or your view of ectopic eruption from that of the manual,
25 right?

0195

1 A Wrong. Ectopic eruption is ectopic eruption.

2 Q Can you count -- your view includes ectopic
3 eruption as including the molars, right?

4 A Ectopic eruption in its definition includes the
5 molars.

6 Q And that is the view that is accepted within the
7 orthodontic community, correct?

8 A That is ectopic eruption, yes.

9 Q But that is not the view of the Medicaid provider
10 manual, right?

11 A The scoring of ectopic eruption is limited and
12 decided on by the State of Texas.

13 Q Under the State of Texas Medicaid provider
14 manual, can you score a back tooth as ectopically erupted?

15 A No.

16 Q But that would be completely proper in the
17 orthodontic world, right?

18 A It would be ectopic, yes.

19 Q Now, I want to go to the definition of ectopic.
20 Start with 65, P-65. While he is pulling that up, I
21 apologize if I have covered this before, but the provider
22 manual, this provider manual, this one is for 2009. The
23 definition of ectopic eruption is the same for P-65, which
24 I believe is the 2008 version, all the way through 2011,
25 right?

0196

1 A Yes.

2 Q So I don't have to put up each year, they are
3 going to be the same?

4 A Yes.

5 Q Now, ectopic eruption, an unusual pattern of
6 eruption; do you agree with that?

7 A Yes.

8 Q And now after that phrase, there's a comment. It
9 says: Such as high labial cuspids or teeth that are
10 grossly out of the long axis of the alveolar ridge.

11 Did I read that right?

12 A Yes.

13 Q You would agree that after the, such as, that the
14 manual is describing examples of what an unusual pattern
15 of eruption would be?

16 A Yes.

17 Q And you have testified beforehand that that is a
18 nonexclusive list of an unusual pattern of eruption,
19 correct?

20 A Yes.

21 Q There could be many others?

22 A Yes, there could.

23 Q And there is a dispute between you and Dr. Nazari
24 and Antoine Dental as to whether or not a rotated tooth
25 could be an unusual pattern of eruption, fair?

0197

1 A I think he picked teeth that weren't rotated, but
2 we will -- I will go with -- there is a dispute, yes.

3 Q All right. But fair to say that nowhere within
4 this description of ectopic eruption does the -- did the
5 Medicaid provider manual exclude or say that a rotated
6 tooth is not a pattern of eruption, correct?

7 A Well, it's because the definition existed.
8 Ectopic eruption existed. The Medicaid book doesn't
9 define everything we do. It doesn't say what you can and
10 can't do orthodontically; you learn that in school.
11 Ectopic eruption we learned in school.

12 Those are two examples. Absolutely. But
13 ectopic eruption is an unusual pattern of eruption. I
14 have established that teeth are normally not straight, so
15 if they are normally not straight and teeth are unusual,
16 this is the eight percent, the six percent, five percent,
17 four percent.

18 JUDGE SEITZMAN: I'm going to ask you one
19 more time. Answer the question that's asked. If we stray
20 from that, then I'm going to instruct you to answer yes or
21 no or I can't answer yes or no.

22 THE WITNESS: I'm sorry. Thank you.

23 MR. HECTOR CANALES: Put up P-74. And
24 specifically going to look to what's written on the page
25 as Page 34.

0198

1 Q (BY MR. HECTOR CANALES) While he is pulling that
2 up, I'm going back -- I want to take you back to the
3 decision of Judge Kilgore and Judge Fekety, that's what
4 I'm pulling up here. And it's lengthy, but on Page 34, I
5 would like to draw your attention -- well, let's just
6 start -- that will work.

7 For context, let's back up because I believe
8 this comes up in the findings of fact, so we can give
9 everybody some context. So go back up a page.

10 Okay. Here we are dealing with Section 6,
11 these are the findings of fact.

12 MR. HARGOVE: Judge, I object. I don't see
13 how this is relevant at all. It's another proceeding,

14 another set of facts, another patient's set of files.
15 JUDGE SEITZMAN: I'm going to overrule the
16 objection.
17 Q (BY MR. HECTOR CANALES) So just to orient you,
18 we are on the findings of fact.

19 A Sure.

20 Q They are numerous, so let's go to Finding of Fact
21 Number 26. The first one there is that the manual's
22 reference to high labial cuspids and teeth grossly out of
23 the long axis of the alveolar ridge are nonexclusive
24 examples of ectopic eruption.

25 Do you agree with that finding of fact?

0199

1 A Yes.

2 Q Now, the second -- Number 27, the manual's
3 definition of ectopic eruption is vague and requires the
4 exercise of subjective judgment to interpret. That's
5 consistent with what Dr. Altenhoff testified to this
6 morning, correct?

7 A I don't remember if she said that or not.

8 Q Well, but it is true, is it not, that the Finding
9 of Fact Number 27, that the definition of ectopic eruption
10 is vague and requires subjective judgment; that's true,
11 correct?

12 A I don't agree with that.

13 Q Okay. Do you know Dr. Evans?

14 A No.

15 Q Have you ever discussed your opinions in this
16 case with Dr. Evans?

17 A No.

18 Q Has he ever discussed his opinions with you?

19 A No.

20 Q Have you read any of his reports or depositions
21 or anything?

22 A I have not read any of his reports or
23 depositions. No, I haven't read -- I have not read his
24 deposition.

25 Q And let me ask you this: In your review of the
0200

1 63 patient files, did you score a tooth as ectopic that
2 was rotated or slanted and on the ridge?

3 A I scored one tooth that was one full tooth off,
4 that was not rotated at all. It was on the ridge, but it
5 was -- it was in the position of the lateral incisor.

6 Q I believe you testified that it is possible to
7 have an ectopic tooth that is on the ridge, right?

8 A Yes, I did.

9 Q Okay. So just because a tooth is on the ridge
10 does not mean that it cannot be properly identified as
11 ectopic?

12 A I believe that is true, yes.

13 Q Sorry for the double negative there.

14 A That's okay.

15 Q Are you critical of any scoring by Antoine Dental

16 that were -- or their characterization of a tooth as
17 ectopic if that tooth was on the alveolar ridge?

18 A My decision to score it ectopically, it did not
19 have to be off the ridge to score it ectopically and I
20 believe I scored one that way.

21 Q So I take it, going back to your earlier
22 testimony, that you did not do any investigation or
23 inquiry prior to forming your opinion with regards to how
24 TMHP or HHSC administered or interpreted ectopic eruption,
25 that you are not familiar with how they ran the program?

0201

1 A Well, again, I did the -- I did score patients in
2 my office, but never had one that scored. But I started
3 at the school, so working with the people at the school, I
4 mean, that's where -- and Dr. Campbell was going to those
5 meetings, so I didn't see a need for me to go, as well.

6 Q But you were not -- you did not familiarize
7 yourself -- during the relevant times of this case, you
8 did not familiarize yourself with the practice of prior
9 authorization and the basis of how that prior
10 authorization was either granted or not granted by TMHP,
11 right?

12 A I don't think that's true. Through the school,
13 we submitted a number of cases, all of which I knew what
14 was going on -- most of which I knew what was going on in
15 terms of the submission of those patients. So I'm not
16 sure what your question is about what I did or didn't
17 know.

18 Q Your experience was limited to whatever you sent
19 in and how they responded to you, right?

20 A I would say that's mostly true. Although again,
21 Dr. Campbell was the one communicating and going to the
22 stakeholders' meeting, communicating more with Dr.
23 Altenhoff and TMHP.

24 Q But you understand, sir, when you were hired in
25 this case, that you had an opportunity at that point in

0202

1 time to go in -- and before giving an opinion in this
2 case, that you could go in and you could ask and actually
3 find out what really -- what TMHP was thinking, what their
4 methodology was and how things were actually working
5 behind the scenes for pre-authorization purposes; you
6 could have done that, right?

7 A I don't remember when I -- when I became a
8 reviewer. The Medicaid process had been turned over, I
9 believe, already to the insurance, the three different
10 insurance groups or -- but to answer your question, I did
11 not go to TMHP at any time, that is correct.

12 Q And you will agree -- scroll down there to
13 Finding 31. You will agree, sir, that the definition and
14 interpretation of ectopic eruption that TMHP was using
15 during this relevant time period was a greater and more
16 expansive definition than the one you are using?

17 A We got no communication with regard to that,

18 there was nothing in writing that was ever sent, so my
19 understanding of that did not come until reviewing the
20 cases.

21 Q So the answer is, yes, TMHP's definition and use
22 during the relevant time period was more expansive than
23 the definition you are relying upon for your opinions here
24 in this case, right?

25 A I don't know that I can speak to what their
0203

1 interpretation was.

2 Q Because you didn't go and ask them before coming
3 here today and giving your opinion and sending your bill
4 to be paid for your services, right?

5 A Except for the definition is --

6 THE WITNESS: If I may.

7 JUDGE SEITZMAN: Go ahead.

8 A The definition is an unusual pattern of eruption
9 that Texas Medicaid uses. But ectopic eruption existed
10 long before, and it is an unusual pattern of eruption.

11 Q (BY MR. HECTOR CANALES) You assume, sir -- in
12 forming your opinions in this case, you assumed, did you
13 not, that TMHP's application of their rule fit what your
14 experience was outside of the Medicaid manual process,
15 correct?

16 A My definition is what it is based on everything
17 that existed in the literature in terms of ectopic
18 eruption. So if TMHP changed the rules, I never got
19 anything in writing. I never saw anything in writing.
20 The State didn't change anything as far as I know until
21 the 2012.

22 Q And you would agree, sir, that TMHP and the
23 change of their rule, the P-81, that says no slanted or
24 rotated teeth, that that didn't come out and either you
25 didn't get it, Antoine Dental didn't get it, nobody in the
0204

1 State got that, prior to 2012, right?

2 A That is correct.

3 Q Now, let's pull up -- you discussed a Patient 1,
4 let's put up -- give me one second here.

5 MR. HECTOR CANALES: 64.01, Page 64.01.

6 Q (BY MR. HECTOR CANALES) This is Patient 1; do
7 you recall Patient 1?

8 A Yes.

9 Q What I would like to draw your attention to here,
10 now this is Antoine Dental's score sheet, correct?

11 A Looks like it, yes.

12 Q It is not yours?

13 A Right.

14 Q And I want to focus in on the score there of
15 overjet; do you see that?

16 A Yes.

17 Q What is the score for overjet?

18 A The score was two.

19 MR. HECTOR CANALES: Now, put up R-11

20 side-by-side to that one, if possible.

21 Q (BY MR. HECTOR CANALES) Now, your overjet score
22 is zero, right?

23 A Yes.

24 Q So we have a discrepancy between --

25 A I scored from photos and x-rays, not from models.

0205

1 So that has to be with an asterisk that's at the bottom of
2 the page.

3 Q And you made a note of that, right, that you
4 scored it from the x-rays and models?

5 A Yes.

6 Q Now, but nonetheless, you put a score down,
7 correct?

8 A Yes.

9 Q And now, sir, given what you know, is a -- are
10 you here to say that a difference in the opinion or
11 scoring here of overjet between zero and two, that that is
12 a willful misrepresentation that rises to the level of a
13 serious program violation?

14 A I certainly can't in this situation because I
15 don't have the model, and the model very well may measure
16 four just as they have. So photographs are a little
17 difficult to use, you can get close, but that's -- so
18 there is no way I can say anything like that based on
19 this.

20 Q Okay. Now, but if a doctor would disagree with
21 you and have a difference of opinion in terms of the
22 measurement of what it is, in your experience, that
23 wouldn't be unusual in your case?

24 A That is correct.

25 Q That docs would have different scores, right?

0206

1 A That is correct. Yes, it would not be unusual to
2 have. And certainly, there are studies showing the fact
3 that multiple measurers do not measure exactly the same
4 amount.

5 Q And that is due to the subjective nature of
6 scoring -- the scoring in this HLD score sheet?

7 A You are not going to have someone score 12 or 13
8 when two or three people say that it's four. Any
9 measurement that you do, and we do this at the American
10 Board and this is how we calibrate examiners in measuring
11 models, with a bell curve and a distribution and there is
12 a range.

13 Q But the mere -- I'm sorry. Go ahead and finish.

14 A It's okay. I'm sorry.

15 Q The mere fact that two orthodontists come up with
16 different measurements or scores in this HLD score sheet,
17 you would agree that that does not mean that they have
18 misrepresented something willfully or they have done
19 something wrong, right?

20 A Yes, you are correct.

21 Q Because there's a subjective nature to this,

22 right?

23 A To some of this, yes.

24 Q For instance --

25 MR. HECTOR CANALES: Put up R-7 and R-11

0207

1 next to each other. I'm going to be focusing on both of

2 these on the -- okay.

3 Q (BY MR. HECTOR CANALES) So R-11 here on the

4 right, this is what we were just looking at, where you

5 scored zero on the overjet, right?

6 A Yes.

7 Q And you know Dr. Evans is another retained

8 orthodontist in this case by OIG, just like you?

9 A I think I knew that.

10 Q All right. So here, Dr. Evans scored on the same

11 thing -- he notes down here that this is just based on

12 photos, but he scored a two, right? If you'll recall

13 Antoine Dental scored two, right?

14 A Right.

15 Q And you scored zero?

16 A Right.

17 Q Now, does this mean that you -- if your score was

18 submitted, that you would be committing a program

19 violation or fraud?

20 A No. I don't believe so.

21 Q We haven't gotten to that point yet, whether

22 difference of opinion on overjet, overbite, even ectopic

23 eruption between orthodontists means that you are a liar

24 and a fraud, right?

25 A If you are talking about linear measurements,

0208

1 then no group of ten is going to all agree on a

2 measurement unless they talk about it. If you are talking

3 about ectopic eruption, I don't agree with -- I think

4 there -- as I explained in the discussion of ectopic

5 eruption, there is a point at which there is subjectivity,

6 but that's up to a point. And at that point, there would

7 be, in my opinion, a difference of opinion between --

8 there could be a difference of opinion between reasonable

9 people.

10 Q All right. P-64.10. I'm pulling up here Patient

11 Number 10, and this is the score sheet, HLD score sheet,

12 of Antoine Dental, okay?

13 While he is doing that, you testified in

14 your definition, did you not, that in reviewing these 63

15 patients, that you estimated that you spend between six

16 and eight hours on this -- on this task, correct?

17 A I think that is my testimony. I'm not sure -- I

18 would have to ask what was billed or have to look what was

19 billed to know what the time was.

20 Q But that was your testimony under oath just a

21 month ago?

22 A Sure it was.

23 Q And if you do the basic math, between six and

24 eight hours and there's 63 patients, you are going
25 anywhere between six to eight minutes per file, right?

0209

1 A Eight minutes per scoring.

2 Q And you knew, sir, that in reviewing those 63
3 patients, that your opinions were going to be used in this
4 case, right?

5 A Yes.

6 Q And you knew, sir, that this is a serious matter
7 with serious allegations against my clients, right?

8 A Yes.

9 Q And so I'm sure that you believe that six to
10 eight minutes was an appropriate amount of time for you to
11 spend to come in and give an expert opinion, right?

12 A I am spending eight minutes on a chart to score
13 an HLD score is enough.

14 Q Were you rushed?

15 A Did I rush? No. I'm sure that -- well, there
16 were -- I made the assumption -- I understood that they
17 were all 8080 and they weren't, so that's a problem. But
18 it's a problem of what I was asked to do and what I did.
19 I get that. I missed one ectopic eruption, ectopically
20 erupted tooth on a panorex. I have got one name on a
21 sheet that's the wrong score. I know I did that. Those
22 were pointed out in the deposition.

23 Q You are speaking of mistakes and errors that you
24 made?

25 A I am speaking of those mistakes, that's right.

0210

1 One case that had the wrong name where I did not pick
2 ectopic -- or I think I picked ectopic teeth when there
3 were none. And then one ectopic tooth on a panorex that
4 Antoine also did not score, we both missed it. So --

5 Q My -- but you knew, sir, during the six to eight
6 hours when you were looking at it, you knew that your
7 opinion could affect the outcome of this litigation,
8 right?

9 A Correct.

10 Q And you knew that the outcome of this litigation
11 could affect not only a dental practice, but their
12 employees, their families and all the like, correct?

13 A Correct.

14 Q And as a professor, as a professor of -- and
15 teacher of dental students in the State, I'm sure you
16 expect your students to take seriously when they are given
17 tasks, when you give them tasks to do?

18 A Right.

19 Q And you grade them on certain -- on the work
20 product that they turn in to you, right?

21 A Right.

22 Q Now, that we have Patient 10, Antoine Dental --
23 what was the HLD score that they submitted to Medicaid?

24 A Is that Case 10?

25 Q Yes, sir.

0211

1 A The score looks like zero.

2 Q And you have a criticism with the score of zero?

3 A No, no criticism.

4 Q Is this the one that passed? Of the 63, you said
5 one passed, is this the one that passed in your book?

6 A I don't remember what the case number was that I
7 scored 26 on.

8 Q Let's pull it up. R-11. Can you put it
9 side-by-side with R-11, 10.

10 What did you score, sir?

11 A I scored a six.

12 Q And you would agree that one of the mistakes you
13 made, it should really even be seven, right, under your
14 terms?

15 A Correct. It should be one more, seven.

16 Q Now explain to Judge Seitzman and Judge Egan why
17 it should be seven instead of six and the mistakes that
18 you made.

19 A Crowding is measured beginning at
20 three-and-a-half millimeters of crowding. You have to
21 have three-and-a-half millimeters to score -- to get
22 credit for crowding. The way that crowding is measured on
23 the HLD index, if you meet the 3.5 millimeter crowding
24 standard, you get five points. The way I scored it was
25 the exact amount of crowding, so if the crowd was four, I

0212

1 scored it four instead of five. Once the crowding was
2 five, it was always five. So that's how I learned it,
3 that's how I scored it. But that is not the correct way.

4 Q You made a mistake, right?

5 A I didn't score it correctly. I didn't make a
6 mistake based on what I was doing, but that is a mistake
7 nonetheless.

8 Q Zoom in here on that anterior crowding section.
9 Now, this particular form, it clearly spells out, does it
10 not, that if you got anterior crowding, it's either on the
11 upper and lower -- I'm interpreting max and min -- it's
12 five points, right?

13 A When I look at it now, yes, I think it's clear.

14 Q Pretty straightforward, right?

15 A Probably about as straightforward as those get.

16 Q When you scored these sheets, you were supposed
17 to look at the entire patient file, right?

18 A I was asked only to score the HLD score.

19 Q But in order to score, to do a truthful, accurate
20 and complete -- that's the standard that's been -- that
21 they talked about earlier, OIG talked about earlier this
22 morning, right, truthful, accurate and complete, right?

23 A Okay, yes.

24 Q Do you agree?

25 A Yes.

0213

1 Q Do you remember them putting it up on the screen,

2 blowing up the section that says, truthful, accurate and
3 complete?

4 A I couldn't see the screen, but I will take your
5 word for it.

6 Q So in order to -- for you to do your job and earn
7 the fee that you were getting for this, for scoring these
8 and to be truthful, accurate and complete, you agree that
9 you should have looked at the entire patient file, right?

10 A I agree that, in hindsight, I should have
11 objected to only scoring the HLD scores and should have
12 reviewed the entire chart, including chart notes,
13 appliances used and everything.

14 Q So are you telling the Court that you did not
15 look at the entire file when you were scoring these HLDs?

16 A I had the entire file; I did not go through the
17 chart notes. I was asked essentially not to, to review
18 only the HLD scores and score those.

19 Q So you would agree that in order to do a
20 truthful, accurate and complete score -- for instance, you
21 probably should have looked at the x-rays, right?

22 A Yeah, those do.

23 Q But you know, sir, because we brought this up in
24 your deposition, you know, sir, that on Patient 10 here,
25 that you did not provide a truthful, accurate and complete
0214

1 HLD score because you didn't look at the x-ray, right?

2 A I looked at an x-ray. I'm not sure what x-ray I
3 looked at. Antoine didn't score it either, so I can't
4 testify to what x-ray I looked at. I obviously -- the
5 x-ray on my deposition that was showed to me clearly had
6 an ectopic tooth. If that is the x-ray that was in the
7 chart, and I assume it is, I have no reason to assume
8 otherwise, then that tooth was missed.

9 Q Let's go to Antoine -- to this description area
10 here. It says there's Impact Number 8 and 9; see that?

11 A Uh-huh.

12 Q And then it says, interceptive; do you see that?
13 Are you with me?

14 A Yes.

15 Q Intercptive treatment, that's one of those
16 exceptions to the score that you testified earlier to?

17 A That is correct.

18 Q And if we look over here on your diagnosis, you
19 do what -- you say what, any mention of Impacted 8 or 9?

20 A Impacted 8 or 9, no.

21 Q And an impacted tooth, that's a tooth down below,
22 that you can't see with the naked eye?

23 A It's actually Tooth Number 8 and 9, that would be
24 two upper central incisors, and I would have to look at it
25 to see whether that was accurate or not.

0215

1 Q Pull up the x-ray for P-64, Patient 10.

2 JUDGE EGAN: Tooth 8 and 9 are what?

3 THE WITNESS: Two upper middle front teeth.

4 That is the different numbering system.

5 Q (BY MR. HECTOR CANALES) Now, you didn't look at
6 this x-ray prior to scoring the sheet, did you?

7 A I couldn't recall whether I looked at that x-ray
8 or not. I looked at an x-ray.

9 Q It's a pretty gnarly x-ray, you would agree,
10 right? Did you hear my question?

11 A I did hear your question. Well, it certainly
12 looks gnarly. The answer to that is yes. These x-rays
13 are not the best ones to evaluate in terms of space
14 available, but it appears just as you are looking at it,
15 yes, it's gnarly.

16 Q But your score sheet doesn't reflect all the
17 conditions that are present here on this x-ray?

18 A I would say -- well, let me look at the whole
19 chart.

20 MR. HECTOR CANALES: Tell you what, let's
21 put up this picture. Put up the intra-oral photos. I
22 guess it's going to come off P-64, P-10.

23 Q (BY MR. HECTOR CANALES) Sir, you would agree
24 that Patient 10 qualifies for treatment within the
25 Medicaid program, correct?

0216

1 A Yes. As interceptive, yes.

2 Q And within your report -- let me find that real
3 quick. But you didn't approve, this is not -- you didn't
4 approve Patient 10 in your opinion or your report, did
5 you?

6 A I did not approve it. Again, the assumption was
7 that they were all 8080s.

8 JUDGE EGAN: I'm sorry. What is -- your
9 voice is dropping and I can't hear you.

10 THE WITNESS: I'm sorry. When the files
11 were handed to me, I understood from that that these were
12 comprehensive treatment cases only and to be cased by HLD.

13 JUDGE SEITZMAN: That's the D-8080?

14 THE WITNESS: That's the D-8080.

15 Q (BY MR. HECTOR CANALES) Who told you that?

16 A Who told me to score that? Brian Klozik, he told
17 me to score the HLD index only.

18 Q And who is -- and what's Mr. Klozik's sick's
19 role?

20 A With OIG.

21 Q Is he an orthodontist?

22 A No.

23 Q Is he a dentist?

24 A No.

25 Q So you took instructions from a nondentist and

0217

1 nonorthodontist as to how to score HLD?

2 A Not how to score it, but what to do with the
3 patient records.

4 Q Okay. So as a result of Mr. Klozik's
5 instructions to you, you didn't look at the full picture

6 or full -- all the information that you otherwise would
7 have?

8 A I didn't look at the patient chart in terms of
9 treatment notes or what it was billed.

10 Q Now, certainly the score sheet, Antoine Dental
11 score sheet, that are all zeros, you would agree that that
12 is not a case where they inflated or exaggerated the
13 number of ectopic teeth present, right?

14 A Correct.

15 Q But that's the last line of your report that you
16 submitted, was that the HLD scores were inflated by
17 exaggerating the number of ectopic teeth present, right?

18 A Taking the entire sample that -- the answer to
19 that is yes.

20 Q Let's look at P-64-43. All right. I'll
21 represent to you, this is the score sheet of Antoine
22 Dental, and it appears to have a score total score of 27;
23 do you agree?

24 A Yes.

25 Q And it looks like on the ectopic side, there's 24
0218

1 points, right?

2 A Yes.

3 Q And the diagnosis includes impacted; do you see
4 that?

5 A Yes.

6 Q And then in orthodontic code, can you decipher
7 that 3 and the little lines around it?

8 A It would appear to be lower, but other than that,
9 I wouldn't be able to tell.

10 Q A lower Number 3?

11 A It would appear to be that.

12 Q It's certainly a 3, but which 3 we will leave
13 open for debate, but certainly there is a 3 involved?

14 A Right.

15 Q Let's go to R-11-43, this is your score sheet of
16 the same patient. I'm sorry. You do it on the hard copy
17 it doesn't have it on the digital.

18 Okay. Your total score is one, right?

19 A Yes.

20 Q So we have 27 versus one, right?

21 A Yes.

22 Q And how many points did you give for ectopic
23 eruption?

24 A None.

25 Q And here we have a slight difference on the --
0219

1 that's overjet there, two versus one, right? That's the
2 subjectivity; do you agree?

3 A Yes.

4 Q And now on your diagnosis, any mention of an
5 impacted tooth or anything with regard to a Number 3?

6 A No, that's the one I said earlier, mentioned
7 earlier.

8 Q Let's pull up the x-ray on Patient Number 43.
9 Now, in this particular x-ray, there is an obvious ectopic
10 tooth; is there not?

11 A Yes.

12 Q But despite that obvious ectopic tooth, you
13 missed it?

14 A I did miss that one.

15 Q Do you have a pointer right there in front of
16 you? Could you point out to the Judges the obvious tooth
17 that you missed?

18 A Right there.

19 Q Where?

20 A Right here. That tooth belongs right there, that
21 tooth is ectopic.

22 Q What about the top of --

23 A You mean this? Yes.

24 Q Where?

25 A Right there.

0220

1 Q Right there?

2 A Uh-huh.

3 Q Okay. Now, sir, if one of your students turned
4 in a score sheet and missed this tooth, you would give
5 them an F, wouldn't you?

6 A I missed it, yes.

7 Q Even an Aggie dentist should have caught that
8 one, right?

9 A No comment.

10 Q But in all seriousness, that's not even close, is
11 it?

12 A No. That's an ectopic tooth and actually
13 transposed, yes.

14 Q Is it causing damage to the lower teeth, this
15 ectopic tooth?

16 A I think there's a good chance that it could be,
17 yes. The research says, yes, that there's probably a 60,
18 50 percent chance that damage is occurring.

19 Q Now, in outside of the Medicaid world, are
20 indexes such as the HLD index that we have here, are they
21 -- isn't it true that they are rejected as scientifically
22 invalid?

23 A You are talking about indexes to determine
24 severely handicapping patients, correct?

25 Q Yes, sir.

0221

1 A I think that there are certainly -- well,
2 probably. Statistically, the terms are specificity and
3 sensitivity. And if I may, I'll explain that.

4 Q Well, let me --

5 A I'll say yes.

6 THE WITNESS: Sorry, Judge.

7 Q (BY MR. HECTOR CANALES) So, for instance, you
8 testified in your deposition that the American Association
9 of Orthodontists does not accept as a scientifically valid

10 index as a measure, right?

11 A For determining handicapping.

12 Q And that is a serious difference here between --
13 the world that you are in, sir, you are a professor, you
14 are not dealing primarily with Medicaid, but there is a
15 big difference between that world and the Medicaid
16 provider manual, right?

17 A I'm not sure what you are asking.

18 MR. HECTOR CANALES: Don't shake your head
19 at the answers. Don't coach the witness.

20 MR. HARGOVE: I did not do that at all.

21 JUDGE SEITZMAN: Counsel, don't talk to each
22 other.

23 MR. HARGOVE: Judge, I did not do that at
24 all?

25 A I will be glad to answer the question. I really

0222

1 didn't see him. I'm focused on you. If you can rephrase
2 where I understand it, I will be glad to answer.

3 Q (BY MR. HECTOR CANALES) My question is: Is it
4 not true that the American Association of Orthodontists
5 rejects as scientifically valid indexes like the one we
6 are using in this particular case?

7 A May I explain more than yes or no?

8 Q It's a yes-or-no question.

9 JUDGE SEITZMAN: You can answer yes or no,
10 answer. If you can't, say you can't answer it yes or no.

11 A I believe that the American Association of
12 Orthodontists has rendered an opinion that -- I don't know
13 that they have looked at every index, but they have
14 rendered an opinion that it is statistically not valid to
15 meet the need that they are looking for.

16 Q (BY MR. HECTOR CANALES) Now, do you have the
17 benefit of knowing why Medicaid, Texas Medicaid would
18 choose to use a program or an HLD index that the American
19 Association of Orthodontists rejects?

20 A My understanding is they don't. They supported
21 one at one time and that was the Salzman, and they spent
22 a lot of time and energy in trying to put it together. So
23 it's not that they reject the principal of an index, they
24 just haven't found one that they look the most. I can't
25 say any reason why Texas would choose HLD over any -- over

0223

1 the Salzman or over any other type of index.

2 Q There isn't any orthodontist within the State
3 that's not directly working for Texas Medicaid or HHSC,
4 who has the power to control that decision, right?

5 A Suppose that's right.

6 Q You didn't have any control over them choosing
7 this HLD index, right?

8 A Right.

9 Q You didn't have any control over how they
10 described ectopic eruption and what qualified in it?

11 A Right.

12 Q And neither did Antoine Dental, fair?

13 A I'll pull it back enough to say there are --
14 there are -- whether it be a anatomy, whether it be any
15 number of things that we learn as dentists, ectopic
16 eruption being one of those, that apply long before
17 Medicaid existed even in the State of Texas. So I get --
18 I understand that we didn't have control over which index
19 they choose, but they chose it.

20 Q That's right. Now, you -- the summary sheet,
21 this little chart that came in, there are several areas
22 where there is just gray all the way across. And I assume
23 that indicates you were missing the HLD score sheet; am I
24 reading it right?

25 A I believe that's right.

0224

1 Q And the first one on there is Patient 10. Do you
2 have that in front of you?

3 A That's the one we just looked at.

4 Q So obviously, your summary that shows there is no
5 HLD score sheet, that is wrong, right?

6 A Actually, no. Those are pulled out, I believe,
7 for the purposes of the numbers. For the purpose of
8 counting at the bottom, that is pulled out.

9 Q Okay. All right. So we don't have an issue of a
10 missing HLD score sheet on Numbers 10, 44, 51 or 53; is
11 that right?

12 A I don't know about the others. I would have to
13 look to see whether they are missing the score sheet or
14 not.

15 Q Well, that's what you testified to. Did I not
16 hear you correctly that 10, 44, 51 and 53 were missing HLD
17 score sheets?

18 A I think I said that, but I'm pretty sure that 9
19 and 10 were interceptive treatment. So for counting, I
20 believe that's right, yes.

21 Q Let's -- but 10 isn't missing, we just looked at
22 10, right?

23 A Yes, you are right.

24 Q So if you said earlier that 10 was missing, you
25 are taking that back, right?

0225

1 A Okay, yes.

2 Q And so the next one, let's go to the next one you
3 said was missing, 44. Do you agree that's what you
4 testified? Do you want to look at it?

5 A If it's grayed out, there is a reason why it's
6 not there.

7 MR. HECTOR CANALES: Put up P-64.44.

8 Q (BY MR. HECTOR CANALES) All right. Sir, I'll
9 represent to you that this is the HLD score sheet for
10 Patient 44. If that's the case --

11 A And it was in the -- it was in the chart, right?
12 Not --

13 Q Sir, here is the score -- here is the score sheet

14 for Patient 44. That is totally inconsistent with your
15 testimony that it's missing, right?

16 A Can I see that sheet?

17 Q Yes, sir.

18 A I see the score sheet up there.

19 Q Somehow you made another mistake, right?

20 A I'm not going to say that. There were -- the --
21 I would have to go back and look in the chart, through the
22 chart, the records that's in the chart to see whether that
23 was there or not.

24 Q Sir, when did you make that summary?

25 A Within the last week.

0226

1 Q Did you make it or somebody else do it for you?

2 A Nobody else made it.

3 Q So you had to base it on something that it was
4 missing, right?

5 A Yes.

6 Q Well, regardless of how it happened, your summary
7 is wrong, right?

8 A Assuming that was in the chart, then it would be
9 wrong.

10 Q All right.

11 A I'll be glad to add it to the chart. I would
12 like to add it to the chart.

13 Q I'm going to represent you that there are also
14 HLD score sheets for 51 and 53. Put them up there so we
15 can get through this a little quicker.

16 Did you rely, sir, upon the attorneys or
17 whoever from OIG to provide you with the necessary
18 information to render your opinions in this case?

19 A No.

20 Q Did you tell them, give me the whole chart?

21 A I didn't get the chart from them. The charts
22 came from OIG.

23 Q All right. I'll represent to you, looking at the
24 screen here, are Patients 51 and 53 HLD score sheets. My
25 question to you is the same: Do you agree that there they

0227

1 are and your testimony is, they are not there?

2 A I certainly didn't see them.

3 Q Would you now, sir, agree that your summary
4 should be changed to reflect that there are no missing HLD
5 score sheets?

6 A I would love to.

7 Q Will you?

8 A Yeah.

9 Q Okay. Thank you very much.

10 MR. HECTOR CANALES: May I confer one
11 moment?

12 JUDGE SEITZMAN: You may.

13 Q (BY MR. HECTOR CANALES) Very quickly. What I
14 was getting at in my questioning in terms of documents
15 that you received, let me ask: Have you ever been --

16 served in the role of a retaining witness prior to this?

17 A No.

18 Q Did you -- do you realize, sir, that although
19 they are paying for your time, that you have the ability
20 to ask them to provide you all necessary records that you
21 need to form your opinion?

22 A I suppose I didn't know, but I would have asked
23 if I needed it, I guess.

24 Q And did you -- through your involvement with
25 Medicaid, you are familiar with and the existence of TMHP
0228

1 for rendering your opinions in this case, right?

2 A Familiar with the existence, yes.

3 Q You know they are the ones that provide or don't
4 give preauthorization?

5 A Yes.

6 Q And that those where the records to go to, so
7 when Baylor submits its records and its HLD sheet, you
8 know that those sheets go to TMHP, right?

9 A Yes.

10 Q So you would agree that, with that knowledge,
11 that you knew that if things were missing, HLD score
12 sheets were missing, that TMHP is the place that they
13 should have gone, right?

14 A They should have gone, sure.

15 Q Did you ask TMHP or ask anybody at OIG to get the
16 HLD score sheets that were in the possession of TMHP?

17 A No. If I didn't have it, I just marked it as
18 missing.

19 Q You assumed that they weren't there if you didn't
20 have it?

21 A I assumed they weren't there.

22 MR. HECTOR CANALES: Thank you very much. I
23 have no further questions. Pass the witness.

24 JUDGE EGAN: I have a couple of questions to
25 clarify your earlier testimony.
0229

1 EXAMINATION

2 BY JUDGE EGAN:

3 Q You have been on the stand for a while, so I'll
4 try to refresh your memory. My notes indicate that you
5 believe that Baylor has seen approximately 700 Medicaid
6 patients?

7 A Screened 700 Medicaid patients.

8 Q And of those -- and of those, 25 to 26 patients
9 were actually approved for braces, for want of a better
10 word?

11 A That's pretty close to the right number.

12 Q My math is horrible, so I just want to make sure,
13 I would say that's about 3.5 percent of the screened
14 patients?

15 A That is correct.

16 Q Did you have any input into the sample that was
17 selected by OIG to review in this case from Antoine?

18 A No. I have asked about how it was determined,
19 but other than that, I had no input.

20 Q Do you know how many Medicaid patients were
21 screened by Antoine between November 2008 and August 2011?

22 A I actually asked if that's possible to find out,
23 but it was -- I don't know that it's possible. I guess
24 somebody should know.

25 Q But you don't know?

0230

1 A I don't know.

2 Q So just in the case of Baylor, you know what the
3 screen amount was. But in the case of Antoine, you don't
4 know how many Medicaid patients were screened, so the
5 percentages are based solely on the sample that was pulled
6 to be reviewed?

7 A Correct. And if I may, my understanding is that
8 it is a reliable scientifically valid sample.

9 Q Who told you that?

10 A OIG told me that. I can't vouch for the method
11 at all. I don't even know what software or what science
12 is behind it.

13 Q Do you know whether or not it was a random sample
14 of providers that were investigated?

15 A I do not know that answer.

16 Q If you can look at your summary, I'm trying to
17 make sure I understand. It's R-49. If you can look in
18 the columns that appear to summarize how many -- the
19 scoring that was actually done by you and by Antoine?

20 A Yes.

21 Q There are a couple -- the scoring is usually
22 marked with blue or gray, but there are a couple of places
23 where it is white.

24 A No reason for that. Accidental.

25 Q Okay. That's what I needed to make sure.

0231

1 A Same with the white numbers, that was accidental.

2 Q The first two rows?

3 A Yes.

4 JUDGE EGAN: Thank you.

5 EXAMINATION

6 BY JUDGE SEITZMAN:

7 Q Doctor, let me see if I can put your direct and
8 cross on a bumper sticker. Let's take Mr. Canales' cross
9 first.

10 If the relevant definition of ectopic
11 eruption was -- for Medicaid during the relevant time
12 period was broader than the definition you use, then your
13 opinion as to HLD scoring might be different; is that
14 correct?

15 A I don't see how you can broaden it enough to
16 include the teeth that were included wholly.

17 Q I'm not saying for all the HLD scores, but for
18 some of the HLD scoring, would your opinion differ at all?

19 A Well, I have always wanted them to include back

20 teeth.

21 Q I'm just talking about the anterior tooth, but if
22 the definition of ectopic eruption, the debate that you
23 and Mr. Canales had for several hours, if the definition
24 was broader than the definition that you used, would your
25 opinion be different as to some of the HLD scoring?

0232

1 A I think if -- the answer to that is if it's
2 ectopic eruption and it's stated the same, my opinion
3 would be my opinion. If the State changed and altered the
4 definition to be broader, absolutely, it would include
5 whatever the State decides to include.

6 Q So the flip side then, the other bumper sticker,
7 Mr. Hargrove's direct, if the definition you used is
8 correct, then with the notations that have been made with
9 errors or whatever in the scoring that you did on your
10 sheet, but with those corrections, then you would not be
11 changing your opinion of your scoring?

12 A That is correct. Ectopic eruption is an unusual
13 eruptive event.

14 Q So we come down to whether the State Medicaid
15 definition was more expansive than the definition that you
16 have used for your scoring?

17 A Yes.

18 JUDGE SEITZMAN: Mr. Hargrove?

19 REDIRECT EXAMINATION

20 BY MR. HARGROVE:

21 Q Describe for the Judges the code D-8080, what is
22 that code?

23 A D-8080?

24 Q Correct.

25 A That is the code for comprehensive treatment.

0233

1 Q And when we say comprehensive treatment, we are
2 talking about braces?

3 A Braces on all the teeth.

4 Q And there is a different code for crossbite,
5 correct?

6 A Yes.

7 Q And you would agree with me, for crossbite, you
8 would not use an HLD score sheet, correct?

9 A That is correct.

10 Q Okay. So if they are seeking reimbursement for
11 crossbite only, there wouldn't be -- you shouldn't expect
12 to see an HLD score sheet in a patient file?

13 A You shouldn't expect to see it.

14 Q If we could pull up R-15-341, and if you could
15 blow up the very top, Section 19.21.

16 This part of the manual is telling a
17 provider how to score the HLD score sheet, correct?

18 A Yes.

19 Q If you can go to the full thing, pull up the full
20 page, highlight it.

21 Let me ask you this, Doctor: Anywhere on

22 Section 19.21 do you see instructions to a provider, to a
23 dentist, to score crossbite on the HLD score sheet?

24 A No, unless it's mandibular protrusion, and then
25 it is scored under mandibular protrusion.

0234

1 Q What I want to get at is -- go down to -- go down
2 further, under labio-lingual. It says that the --
3 highlight where it says, provider should be conservative
4 in scoring.

5 So that's how dentists are instructed to
6 score, to be conservative in scoring, liberal scoring will
7 not be helpful in evaluation and approval of the case,
8 correct?

9 A Correct.

10 Q Because this is a limitation and defined benefit,
11 right?

12 A Yes.

13 Q If you could go to the score sheet, the next
14 page. All right. Here, this is an HLD score sheet,
15 right?

16 A Yes.

17 Q And there's nowhere here to score crossbite
18 therapy, correct?

19 A Correct.

20 Q And crossbite therapy, again, is under a
21 different code, correct?

22 A Yes.

23 Q So if we could pull up Patient File 10. Now, the
24 records that were presented to you in reference to your
25 chart, this young man -- the records presented to you when

0235

1 you pulled out your chart, you saw the records that were
2 obtained from Antoine when we were there -- and scroll
3 through the records, please.

4 JUDGE SEITZMAN: You changed exhibits.

5 MR. HARGOVE: I did, Judge. This is P-44.

6 Q (BY MR. HARGOVE) Go back. So those are the
7 codes there, correct, D-8080?

8 A Yes.

9 Q Go down, keep going through the file. No HLD
10 score sheet, correct?

11 A Correct.

12 Q So in your summary, R-49, you had no -- the file
13 simply did not have an HLD score sheet, correct?

14 A I didn't see one there.

15 Q And these are Petitioner's -- these are Antoine's
16 records, correct?

17 A If you say so.

18 Q It's marked P-44, so that is their mark.

19 A Okay.

20 Q If you could go to Petitioner 74, this is the --
21 Antoine asked you questions about this earlier, not this
22 paragraph, but other paragraphs. If you take a moment and
23 read Paragraph 28, and then I have a question for you.

24 A Okay.

25 Q You don't know what the record is from that case,
0236

1 right?

2 A Right.

3 Q But in terms of the last part of that sentence,
4 non-Medicaid understanding of the specifics of the meaning
5 of ectopic eruption among orthodontic providers. Is it
6 your opinion that there is a definition of ectopic
7 eruption?

8 A Absolutely.

9 Q All right. And in the manual --

10 A It's learned in every dental school and every
11 orthodontic program in the country.

12 Q And in the manual, which is written for dentists,
13 they should understand what ectopic eruption means,
14 correct?

15 A Yes.

16 Q And it is an instruction on how to score ectopic
17 eruption, correct?

18 A Yes.

19 Q I want to go back to your Baylor work, when you
20 treat Medicaid beneficiaries. Just tell me a little bit
21 about that. You actually do, in your capacity, treat and
22 see and screen Medicaid beneficiaries at Baylor, correct?

23 A Yes.

24 Q And as it relates to the information you
25 received, in scoring the HLD score sheet, anything that
0237

1 you heard today, does that change your opinion about the
2 opinions that you rendered earlier at the conclusion of
3 your testimony?

4 A No.

5 Q And whether there is a presence of crossbite and
6 a coding for crossbite, does that change your opinion
7 whether Antoine misrepresented scoring their patients as
8 having ectopically erupted teeth on their score sheets?

9 A Not on those that were D-8080.

10 Q On D-8080?

11 A Correct.

12 Q Does the fact that the manual says only use front
13 teeth, does that in any way change the definition of
14 ectopic eruption?

15 A No, it doesn't change the definition. It limits
16 it to front teeth.

17 Q And would you agree with me that there are not
18 two definitions of ectopic eruption; in other words, one
19 for the Medicaid world and one for the non-Medicaid world?

20 A I'm not sure how to answer that. I think there's
21 ectopic eruption, period, and there is a definition of
22 ectopic eruption. And what the State chooses -- you know,
23 their definition based on what it is, an unusual pattern
24 of eruption, is exactly like the definition that is
25 ubiquitous in the dental community.

0238

1 JUDGE EGAN: I'm sorry, speak up.

2 THE WITNESS: The definition of an unusual
3 pattern of eruption is exactly as it occurs and is written
4 in the literature and is written in the textbooks. So in
5 my view of the Texas definition, while not very
6 descriptive, is similar to textbook's definition of
7 ectopic eruption.

8 MR. HARGOVE: May I have a minute, Judges?

9 JUDGE SEITZMAN: You may.

10 (Off the record.)

11 Q (BY MR. HARGOVE) All right. Doctor, based upon
12 your cross-examination, do you still hold the opinion that
13 -- of the patient files that you reviewed, the records
14 that you reviewed, about whether these Antoine patients
15 suffered from a severe handicapping malocclusion?

16 A The majority of them did not.

17 MR. HARGOVE: I'll pass the witness. Thank
18 you.

19 JUDGE SEITZMAN: Now, subject to the scope
20 of the --

21 MR. HECTOR CANALES: I'm satisfied with my
22 bumper sticker and questions.

23 JUDGE SEITZMAN: Maybe I should go first
24 next time.

25 Is there anything else parties want to take

0239

1 up with this witness today?

2 Doctor, you may sit down. Thank you very
3 much. Shall we recess for the day?

4 MR. HARGOVE: Sounds good, Judge.

5 JUDGE SEITZMAN: Who is our first witness
6 tomorrow?

7 MR. HARGOVE: Can we think about that,
8 Judge?

9 MR. MORIARTY: We talked about Dr. Orr.
10 They wanted to call him first thing tomorrow and that is
11 fine with us.

12 JUDGE SEITZMAN: 9 o'clock with Dr. Orr?
13 Mr. Canales, that works?

14 MR. CANALES: Yes, we are good.

15 JUDGE SEITZMAN: Before we go off the
16 record, let me take a second on behalf of Judge Egan and
17 myself to thank each party's computer operator back there
18 for doing a wonderful job on the fly, not only getting
19 what your attorneys wanted, but getting everything blacked
20 out that needed to be blacked out. Thank y'all very, very
21 much.

22 All right. If there is nothing else, we
23 will recess and we are off the record at 5:07. Thank you.

24 (Proceedings adjourned.)

25

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1 C E R T I F I C A T E

2
3 STATE OF TEXAS)
4 COUNTY OF TRAVIS)
5

6 I, Renea Seggern, CSR, in and for the State of Texas,
7 do hereby certify that the above-captioned matter came to
8 hearing before the State Office of Administrative Hearings
9 on the 28th day of May, 2013, as hereinbefore set out.

10 I FURTHER CERTIFY that the proceedings of said
11 hearing were reported to me, accurately reduced to
12 typewriting under my supervision and control and that the
13 foregoing pages are a full, true, and correct
14 transcription of said proceedings.

15 I FURTHER CERTIFY that I am neither attorney or
16 counsel for, related to, nor employed by any parties to
17 the action of these proceedings and, further, I am not a
18 relative or employee of any counsel employed by the
19 parties hereto or financially interested in the action.

20 SUBSCRIBED AND SWORN to under my hand and seal of
21 office on this the _____ day of _____, 2013.
22
23
24
25

26 Renea Seggern, CSR #7262
27 Certificate Expires 12-31-2014
28 Ken Owen & Associates, Cert #115
29 801 West Avenue
30 Austin, Texas 78701
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