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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 II

12 WEDNESDAY, MAY 29, 2013
13 _____

14

15 BE IT REMEMBERED that on this the 29th day of May,
16 2013, between 9:02 a.m. and 5:49 p.m., the above-entitled
17 matter continued 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

3 ADMINISTRATIVE LAW JUDGES:

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 SEITZMAN: Let's go on the record. It
3 is 9 o'clock on Wednesday, May 29th, 2013. This is Day 2
4 of the hearing in Antoine Dental Center versus Texas
5 Health and Human Services Commission, Office of Inspector
6 General, SOAH Docket Number 529-13-0997. Judges Seitzman
7 and Egan presiding.

8 At this time, I will indicate that we had a
9 brief conversation off the record. There are no
10 preliminary matters, so we are ready to go to the
11 Inspector General's next witness.

12 And, Mr. Moriarty, are you questioning the
13 witness?

14 MR. MORIARTY: I am, Your Honor.

15 JUDGE SEITZMAN: You may proceed. And Dr.
16 Orr is your next witness; is that correct?

17 MR. MORIARTY: That is correct.

18 JAMES ORR, D.D.S.,
19 having been first duly sworn, testified as follows:

20 C R O S S - E X A M I N A T I O N

21 B Y M R . M O R I A R T Y :

22 Q Would you introduce yourself to the Judges,
23 please.

24 A Yes, sir. My name is James W. Orr, D.D.S., of
25 Austin, Texas.

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1 Q What is the purpose of the HLD index?

2 A I would think that the HLD index is a fee-driven
3 scoring system to allow for accountability of an
4 orthodontic case to be established for treatment.

5 Q I would think. Do you know what the HLD index is
6 for?

7 JUDGE SEITZMAN: Mr. Moriarty, could you
8 pull the mic a little bit closer to you.

9 MR. MORIARTY: Yes.

10 Q (BY MR. MORIARTY) Dr. Orr, my question is pretty
11 simple. What is the HLD index for?

12 A I would say it's for accountability of submission
13 of an orthodontic case to the Texas Medicaid program.

14 Q You hesitate when you say that. You have
15 hesitated on both of those answers. Do you not know what
16 the HLD index is for?

17 A I probably know.

18 Q You probably know. Would you be kind enough to

19 share that knowledge.

20 A The HLD index has -- goes way back before all of
21 our times and has, I think, different purposes at
22 different times through the years.

23 Q What is it used for today?

24 A It is used for submission of scoring an
25 orthodontic case for the Texas Medicaid program.

0008

1 Q Well, let's see if we can simplify things because
2 these Judges need to understand what is going on. The HLD
3 index is a scoring system that's been in existence for 30
4 or 40 years to aid States in differentiating between
5 children who qualify for Medicaid braces and children who
6 do not; is that true?

7 A That sounds like an excellent explanation to me.

8 Q So my question, sir, is: Is it true?

9 A I would say it's true.

10 Q Okay. Now, when someone like Dr. Tadlock or
11 someone who is actually qualified to do orthodontics
12 evaluates a child for braces, why do they use the HLD?

13 A I'm not clear what you are asking, sir.

14 Q Well, when would a dentist use the HLD form?

15 A In the Texas Medicaid program?

16 Q Is the HLD form used only in Texas?

17 A I understand in other forms it is used in other
18 States.

19 Q Well, you know it's used in other States, don't
20 you?

21 A I don't know that personally.

22 Q Meaning, you haven't personally looked in the
23 laws for California, for example, to know, but you know,
24 as a matter of fact, other States use various forms of the
25 HLD index, don't they?

0009

1 A I can agree to that.

2 Q All right. When an orthodontist wants to
3 evaluate a child for whether that child needs braces, do
4 they use the HLD index?

5 A In the Texas Medicaid program?

6 Q No, sir, that wasn't my question. When an
7 orthodontic is evaluating a child to see if that child
8 needs braces, do they use the HLD index?

9 A Sir, I think they might or might not. I have no
10 way of knowing in private practice if they don't use it.

11 Q You just don't know much about orthodontics
12 practice, do you?

13 A Different individuals around the State, I
14 certainly don't know if they use that form or other forms.

15 Q Well, a reality is that if an orthodontist wants
16 to evaluate a child for braces, if he wasn't seeking
17 payment under Medicaid, there would be no reason to use
18 the HLD index; isn't that true?

19 A That is very possible.

20 Q I didn't ask you whether it was possible, Dr.

21 Orr; I asked you whether it was true.

22 A I don't know if that's true or not, sir.

23 Q Well, let me approach it like this: The test of
24 whether a child is qualified for braces or needs braces is
25 completely different from analysis of whether that child
0010

1 qualifies for braces under Medicaid; true or false?

2 A Let's go through that one more time.

3 Q When an orthodontist is evaluating a patient to
4 determine whether that child has crooked teeth or could
5 benefit cosmetically or otherwise from braces, they don't
6 need the HLD index unless they are seeking payment from
7 the State of Texas to pay for those braces; true or false?

8 A I can't answer that. Every orthodontist in
9 private practice would have different ways of doing it.

10 Q Name some of them.

11 A Scratch pad, but he may or may not want to use
12 that particular format, which we all know that.

13 Q Do you believe that the HLD test is a good test
14 for qualifying a child for Medicaid paid for braces?

15 A Yes and no. That's a very complicated question,
16 very complicated.

17 Q Why don't you give me a simple answer.

18 A Well, I think it's a very good form to use for
19 the Texas Medicaid system. Outside of the Texas Medicaid
20 system, it might have limitations of not being complex
21 sufficiently.

22 Q Why would that be a limitation?

23 A Well, obvious from the first, that the Texas
24 Medicaid system restricts us to the anterior 12 teeth.

25 And as we learned from the excellent presentation
0011

1 yesterday morning, that the analysis for ectopic eruption
2 and eligibility for orthodontic treatment may well be
3 considered from the whole mouth.

4 Q When you were paying or denying claims for
5 National Heritage Insurance Company, what system did you
6 use to determine whether those children were qualified or
7 not qualified for State funds?

8 A The only system that I used was the chapter in
9 the Texas Medicaid provider manual of -- dental chapter.
10 That was the only system that we had or could use.

11 Q Let me see if I can clarify your answer. The
12 Texas Medicaid provider manual didn't exist ten years ago
13 when you were working for National Heritage Insurance
14 Company; isn't that true?

15 A Did not exist?

16 Q You worked at National Heritage Insurance Company
17 from 1995 until 2004?

18 A Yes, sir.

19 Q And they had their own manual of policies that
20 they had been given by the State that they were to
21 enforce, true?

22 A Well, we had -- and I have -- I possess from the

23 1995 -- Texas Medicaid Provider Procedures Manual from
24 1995 on, and I -- to me, that's the Medicaid manual.

25 Q All right. And your job working for National
0012

1 Heritage Insurance Company was to accept or deny claims,
2 true?

3 A That was one of my jobs, yes, sir, true.

4 Q And you have claimed at various times to be the
5 former director of the Texas Medicaid program; true that
6 you have claimed it?

7 A No, not that I have claimed it. Other people
8 certainly have and I was told I was that when I was there,
9 but I would not say and agree that I have claimed that.

10 Q You were told by who that you were the Texas
11 Medicaid dental director?

12 A By my bosses.

13 Q Well, how many -- specifically, who told you
14 that?

15 A I had a dozen bosses at that system.

16 Q All right. Name one.

17 A And they changed frequently.

18 Q Give me the name of one that told you that you
19 were the director of the -- the Texas Medicaid dental
20 director?

21 A Well, I can't remember the last name, but her
22 first name was Sally. She was one of the administrators.

23 Q How much were you making when you were hired in
24 1995?

25 A It would have been close to \$100,000 a year.

0013

1 Q Now, was the process for National Heritage
2 Insurance Company to qualify children for braces any
3 different then than it is today?

4 A Sir, I have no idea what it is today. I can only
5 speculate.

6 Q So you don't profess to be an expert on how a
7 child qualifies for braces in Texas today, correct?

8 A I could read the manual that says it's the
9 comprehensive guide and I can go by that.

10 Q But that's all you know, is picking up a book and
11 reading it?

12 A As much as anybody else. I do not know the
13 internal workings of the contractor that does it now.

14 Q I'm not sure -- I have this feeling that your
15 answer and my question aren't matching, so let me go back
16 and see if I can cover that.

17 Are you or are you not an expert on present
18 day Texas Medicaid policies regarding eligibility for
19 braces?

20 A I know you want a yes or no, but if it's in the
21 manual, I would consider myself to be an expert,
22 certainly, as much as anybody else.

23 Q So to be fair, if I read the manual, I'm an
24 expert; if you read the manual, you are an expert; is that

25 what you are saying?

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1 A I suspect I'm more of one since I'm a dentist.

2 Q But you are not an orthodontist, aren't you?

3 A No, sir.

4 Q And you have never been an orthodontist, have
5 you?

6 A No, sir.

7 Q And you are not an expert on orthodontist work?

8 A No, sir.

9 Q What qualifications does someone need to have to
10 be able to competently score an HLD score?

11 A Basically, they should have a doctor of dental
12 surgery or doctor of medical dentistry degree.

13 Q Anything else?

14 A Well, that was basically. I mean, you could go
15 on and have lots of postgraduate education.

16 Q I'm asking a simple question. What
17 qualifications would someone need to have to be able to
18 competently score an HLD index?

19 A A DDS degree.

20 Q Any DDS?

21 A Well, yes. Our schools are quite the same all
22 over the United States.

23 Q So your answer is that any graduate of a dental
24 program is competent to score the HLD?

25 A Counselor, I'm not sure I would say yes because
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1 there might be some schools that have short courses and
2 others that have extensive courses.

3 Q I'm not trying to pin you down to every single
4 dentist in the world. I am talking generally speaking.
5 Most dentists that get out of school ought to be able to
6 score an HLD?

7 A Yes, sir.

8 Q And I suppose that would -- Dr. Ornish is a
9 dentist; is he not?

10 A Yes, sir.

11 Q You are a dentist, right?

12 A Yes, sir.

13 Q Dr. Nazari is a dentist, right?

14 A Yes, sir.

15 Q And so according to your standard, you guys would
16 be qualified to properly and competently score an HLD?

17 A I'm not sure that I would -- I would be able to
18 say yes to all the adjectives that you throw in there.

19 Q Well, pick out the ones you don't want to say yes
20 to.

21 A One dentist might have a dental degree and only
22 studied minimal orthodontics in school, that's my obvious
23 answer. And others may have taken electives and studied
24 it intensively.

25 Q Well, five minutes ago, the answer to my question

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1 was you need to be a dentist. Now, the answer is you need
2 to be a dentist and you need postgraduate work; is that
3 what you are saying?

4 A No, I didn't say that.

5 Q Well, tell me what you are saying, because I
6 don't understand it.

7 A You have to rephrase the question. I'm not with
8 you.

9 Q Should any dentist reasonably be able to
10 competently score an HLD?

11 A I'll go on a limb and say yes.

12 Q Can only a dentist competently score an HLD?

13 A As opposed to an attorney or an engineer?

14 Q A human being. A dentist over here and a human
15 being over here, could an ordinary human being be trained
16 to competently score an HLD?

17 A I would say no.

18 Q And I don't mean to pick on the Judges --

19 JUDGE SEITZMAN: But you are.

20 MR. MORIARTY: You're probably right.

21 Q (BY MR. MORIARTY) Let me start with me.

22 Obviously, I wouldn't be competent to score an HLD under
23 your standard, right?

24 A Obviously, you would not be?

25 Q Is that what you are saying?

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1 A I agree.

2 Q And these people back here, they wouldn't be able
3 to do it either, would they?

4 A I don't know who they are.

5 Q I don't think any of them is a dentist except Dr.

6 Altenhoff. The others wouldn't be able to tell a

7 difference between qualified and unqualified, would they?

8 That's what you are saying, isn't it?

9 A Yes.

10 Q Now, let me make a point about the HLD scoring.

11 Whether they score a two or a 20, at the end of the day,

12 that doesn't make any difference, does it?

13 A I don't understand the question.

14 Q If they score a two or if they score a 20, they

15 get turned down, right, they don't get braces under

16 Medicaid?

17 A I understand what you are saying, the standard is

18 26 points in Texas.

19 Q That wasn't my question. If they get a two or a

20 20, they don't get braces in Texas, right?

21 A Right.

22 Q And then you don't get ten times as much money if

23 you go from a two to a 20, right?

24 A I'm not sure what that means.

25 Q There isn't functionally any difference between a

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1 score of two and a score of 20, correct?

2 A The case is not approved if it's not 26 points.

3 Q So the answer to my question is, there isn't any
4 functional difference between getting a two and a 20,
5 correct?

6 A There is not any difference.

7 Q And there isn't any difference between getting a
8 26 and a 40, is there?

9 A Not from an administrative standpoint to approve
10 the case, the case would be approved.

11 Q Okay. Now, how much variation from one dentist
12 to another would be acceptable before you start calling
13 foul?

14 A I'm with you, but I don't understand how to
15 answer.

16 Q Well, some of the tests are pretty objective,
17 aren't they?

18 A Some of them are, they are measurable.

19 Q But even if they are measurable, sometimes people
20 get off a little bit on their measurements, right?

21 A Some, yes, sir.

22 Q And some of it is subjective, right?

23 A Completely so.

24 Q Completely so?

25 A Yes, sir.

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1 Q What does completely so mean?

2 A There are areas of the nine criteria in Texas
3 Medicaid that are very, very subjective.

4 Q You said the word, completely?

5 A They are completely subjective.

6 Q What does completely subjective mean?

7 A To me, it means that the person and his training
8 and his attitudes and his mental functions in this area,
9 that he comes up with a certain score.

10 Q What does that mean in English? My question is
11 this, sir: What does -- the Judges need to know -- you
12 are claiming part of the test is completely subjective,
13 what do you mean?

14 A I mean, it depends on the intellectual
15 determination of the person and his emotional and
16 intellectual capacity to read those words and decide how
17 he wants to administer that.

18 Q Let me read to you something from Through the
19 Looking Glass; maybe you don't remember your children's
20 poems.

21 "I don't know what you mean by glory," Alice
22 said. Humpty Dumpty said --

23 MR. ANDERTON: Objection, Your Honor. It's
24 a hostile witness.

25 Q (BY MR. MORIARTY) Humpty Dumpty smiles

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1 contemptuously, "Of course you don't, until I tell you. I
2 meant there is a nice knock-down argument for you."

3 "But glory doesn't mean a nice knock-down
4 argument," Alice objected.

5 "When I use the word," Humpty Dumpty said in
6 a rather scornful tone, "it means just what I said.
7 Choose it to mean neither more nor less."

8 Is that your definition of completely
9 subjective?

10 A Of course not.

11 Q But that's what it sounds like you are saying
12 when you say the test part of the test is completely
13 subjective.

14 A I don't believe the Texas Medicaid manual
15 includes that area that you just read.

16 Q I'm asking you if you are suggesting --

17 MR. ANDERTON: Objection, Your Honor,
18 argumentative.

19 JUDGE SEITZMAN: Overruled.

20 I'm going to give you a little time, but not
21 a lot of time to cover this.

22 Q (BY MR. MORIARTY) Here is my point: Are
23 ordinary people capable of looking at the evidence, the
24 molds, the pictures and drawing, conclusions about whether
25 children have really messed up mouths or not messed up

0021

1 mouths at all? Is that within the skill and expertise of
2 ordinary human beings?

3 A Counsel, I wouldn't have any way of knowing what
4 an individual could know when they see. Is that any way
5 -- wouldn't have any way of knowing that.

6 Q If you were going to train people to score the
7 HLD, how would you train them?

8 A I would not train anybody for HLD unless they
9 were a dentist. There would be too much background
10 knowledge they would have to know to even understand the
11 terminology.

12 Q Okay. What was my question?

13 A It's been a long time ago.

14 Q How would you train people to score the HLD?

15 A A dentist?

16 Q Well, you have said only dentists are qualified
17 to do it. So accepting that definition of qualified, how
18 would you train them to do it?

19 A And you are speaking of the Texas Medicaid HLD?

20 Q Sure.

21 A I would start with having them read the dental
22 chapter of the Texas Medicaid manual and learn it.

23 Q How would you finish?

24 A We would go through standard teaching techniques,
25 questions and answers and clinic problems.

0022

1 Q Let's switch subjects. Did you get employed by
2 the State of Texas as an expert in the All Smiles/Malouf
3 case?

4 A I believe that is correct.

5 Q You say you believe that is correct. I'm not
6 understanding why you are hedging on me. Is it correct or

7 is it not correct?

8 A There's been a lot of cases through the years.

9 Q Were you hired by the State of Texas to review
10 dental cases for the State of Texas against All Smiles?

11 A I'll say yes, because I never referred to it as
12 All Smiles. I think we are talking of the same one, is
13 why I was hesitating.

14 Q How did you refer to it?

15 A You mentioned a name and I think that was what I
16 recognize as the doctor's name.

17 Q Dr. Richard Malouf?

18 A Never heard Richard.

19 Q Dr. Malouf?

20 A Yes.

21 Q From Dallas?

22 A I don't know.

23 Q And when were you hired in that case?

24 A I think that -- I recollect that was in 2008.

25 Q All right. Why were you hired?

0023

1 A I was probably hired because I have done
2 extensive work in that type of activity through the years.

3 Q What type of activity?

4 A Of reviewing cases.

5 Q All right. And why were you to review these
6 cases?

7 A I wouldn't know, Counsel. Somebody wanted it
8 done.

9 Q Okay. Do you have some recollection of who it
10 was you talked to? You don't have to remember their names
11 maybe, if I remember who they worked for.

12 A I know that this was usual, an investigator
13 brought me the material and picked it up.

14 Q What material did he bring?

15 A That would have been the dental charts and
16 material that we usually look at.

17 Q All right. And let me represent to you that I
18 have got these charts over here in boxes and molds and we
19 have got the photographs here and we have the dental
20 records here and we have this stuff properly redacted so I
21 can ask you some questions about it. Let me represent to
22 you, it looks like it's about 50 files.

23 A I'm sorry?

24 Q It's about 50 files. Does that refresh your
25 recollection?

0024

1 A No, sir.

2 Q You don't have any idea how many it was?

3 A I mean, a review case could be anywhere from 40
4 to 70 or 80. They are different.

5 Q Okay.

6 A I don't know.

7 Q Our records show that there were 49. Now, you
8 don't have to take my word for anything. If you want us

9 to go through every record to verify that you reviewed
10 that, I've got time to do it; they probably don't. But
11 let me represent, we have those records and there's 49 of
12 them, okay?

13 A I'll take your word for it, Counsel.

14 Q Now, any time you don't want to take my word for
15 it and you want to go into the record, we will because
16 it's here, all right?

17 A Okay.

18 Q 40 of those All Smiles/Malouf cases you denied,
19 nine of those you approved; is that consistent with your
20 memory?

21 A No, sir.

22 Q Do you disagree with that?

23 A I do not disagree, though.

24 Q Okay. Now, you just don't remember?

25 A I just don't remember.

0025

1 Q And let me represent to you that the files
2 themselves, which the Judges will be able to review, will
3 show how many it is, but that's not particularly relevant
4 right now. When you gave your findings to the State, what
5 happened was Richard Malouf or All Smiles ended up being
6 indicted by the Dallas County District Attorney's Office
7 for criminal violations out of your case; is that true?

8 A I have no idea of that, sir. Never heard of
9 that.

10 Q Did you testify in a criminal case or were you
11 willing to testify in a criminal case?

12 A I did not and I have never heard or had that
13 proposed.

14 Q And were there other expert witnesses in that
15 case besides yourself?

16 A I have no idea, Counsel.

17 Q And are you aware that Malouf ended up paying
18 more than a million-dollar fine for conduct that I believe
19 stemmed from your investigation?

20 A No, sir, I'm not aware of that.

21 Q Are you aware that All Smiles/Malouf were
22 publicly reported like, I think, a year, year-and-a-half
23 go as paying 1.2 million fine for dental misconduct?

24 A No, sir, I'm not aware of that.

25 Q Do you know Richard Malouf?

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1 A No, sir, I do not.

2 Q Let's take a look at some of these files. What I
3 want to do is, I want to see if we can visually understand
4 why you deny cases when you are hired by the State and you
5 approve cases when you are hired by somebody else. I want
6 to -- I'll let you take a look at them and we can look in
7 the files as much as you want to.

8 MR. MORIARTY: Can I have R-78, please.

9 MR. ANDERTON: Objection, Your Honor,
10 relevance.

11 JUDGE SEITZMAN: You haven't made an
12 appearance on the record.

13 MR. ANDERTON: Robert Anderton.

14 JUDGE SEITZMAN: You are objecting to the
15 relevancy of questions about Exhibit 78?

16 MR. ANDERTON: Yes.

17 JUDGE SEITZMAN: I think we dealt with this
18 earlier on. These were the rebuttal impeachment
19 documents.

20 MR. MORIARTY: Yes, sir.

21 JUDGE SEITZMAN: And that's all they are
22 being offered for.

23 MR. MORIARTY: Yes, sir.

24 JUDGE SEITZMAN: The objection is denied. I
25 believe we had dealt with these exhibits earlier in the
0027

1 proceedings and they are being offered for impeachment
2 purposes only.

3 Q (BY MR. MORIARTY) Let me -- Doctor, when we have
4 these side-by-side, the ones that are over here on the
5 left are from your expert work in the All Smiles case
6 where you were working for the State of Texas, and one
7 over here on the right is from Antoine Dental.

8 Now, like I say, we have these electronic
9 records, so if you need to see more or want to see more,
10 maybe we have a mold.

11 MR. MORIARTY: Do you have a mold for this
12 lady on the right? That would be P-17.

13 MR. ANDERTON: Objection, Your Honor. He's
14 asking Dr. Orr to make a decision based on these
15 photographs. We need to see -- Dr. Orr is going to need
16 to see the whole file.

17 JUDGE SEITZMAN: If Dr. Orr wants to see the
18 whole file, he's offered him the opportunity to do so. We
19 will leave that up to the doctor.

20 Q (BY MR. MORIARTY) What I'm going to show you is
21 a video of the Antoine case.

22 MR. CANALES: There is no video identified
23 in the exhibits anywhere, even for impeachment purposes.

24 JUDGE SEITZMAN: I haven't seen a video yet.

25 Q (BY MR. MORIARTY) Let's take a look at this one
0028

1 that you reject and -- let me represent to you that you
2 found four ectopic eruptions and an overjet, so you scored
3 that at 14 points and you denied that case; do you agree?

4 A What it shows there, I agree.

5 Q Now, let's look over here. And do you see a
6 crossbite on the right-hand side, right there?

7 A You know, Counsel, I want to take back what you
8 offered me earlier. I would have to see the rest of the
9 material, the models, the charts. I spend an hour on a
10 chart.

11 Q Let's take a look at the photographs. Let's look
12 at R-19-32, Page 22. These are the photographs of that

13 child. Is that photograph in the upper left help you
14 understand that child's condition?

15 A It probably helps.

16 Q Well, I don't understand probably. Does that
17 photograph help you?

18 A No, sir, not without the rest of the chart.

19 Q We will go through the whole chart.

20 MR. MORIARTY: Let's go back to that
21 photograph, Stacey. Let's have a blow-up of this.

22 Q (BY MR. MORIARTY) Now, what do we see right
23 there?

24 A I don't know what you are asking, sir.

25 Q Do you see a crossbite right there?

0029

1 A That appears to be a crossbite, but I do not
2 review cases in this manner and I don't think I can help
3 you with this unless I have things set out in the didactic
4 way that I'm used to doing.

5 Q Well, I have the folders over there. Do you want
6 me to pull them out?

7 A It would be nice, because I'm used to spending an
8 hour going over every single chart, every page, as I
9 testified previously, and the models.

10 Q We are going to go through these pictures, and we
11 are going to see if you can draw any conclusion from these
12 pictures that you have seen before and that you have
13 scored. If you want to do it the hard way, we are going
14 to go dig the file out, we are going to let you take that
15 hour to go through that file.

16 MR. ANDERTON: Objection, Your Honor. Dr.
17 Orr has said that he can't make a decision based on the
18 photographs. Why are we going to go through the
19 photographs?

20 JUDGE SEITZMAN: It's cross-examination. If
21 Dr. Orr wants all the materials, Mr. Moriarty has offered
22 him all the materials.

23 Q (BY MR. MORIARTY) That is crossbite right there,
24 isn't it?

25 A I prefer to see the case the way I did it

0030

1 previously and the way I'm used to doing it.

2 Q I understand how you have been taught to answer
3 that question, but you didn't even look at the picture if
4 that was a crossbite. Will you look at that picture and
5 tell me if that is a crossbite?

6 A I would rather see the models, the position that
7 those teeth could be and that bite depends entirely on the
8 occlusion.

9 MR. MORIARTY: Let's go back to 22.

10 Q (BY MR. MORIARTY) Do you see that right there on
11 that right-hand side of that little girl's mouth?

12 A I'm sorry, are you speaking to me? I didn't get
13 that.

14 Q I'm asking you a question. Do you see that right

15 there?

16 A I see what you are pointing at, yes, sir.

17 Q That's a crossbite, isn't it?

18 A I would not say that unless I saw the rest of the
19 material, Counsel.

20 Q Do you deny you are testifying under oath before
21 these people? Do you deny that your own eyes show you
22 evidence of a crossbite?

23 A I deny that, because I know that that may not be
24 the correct bite and position of the upper and lower jaws
25 together.

0031

1 Q All right. Let's go to the first page?

2 A Give me the models, the films, the radiographs.

3 Q Does that help you?

4 A No, sir.

5 Q Okay. Let's go to the second page. Does that
6 help you?

7 A No, sir.

8 Q Let's go to the third page. Does that help you?

9 A No, sir.

10 Q Let's go to the fourth page. Does that help you?

11 A No, sir.

12 Q Next page?

13 A No, sir.

14 Q Okay. That help you?

15 A It might if I sat and looked at it awhile.

16 Q How long is it going to take to read it?

17 A I'm a hard copy, I can't have it in front of me?

18 Q Yes, sir, you can have it in front of you. And I
19 have got those records being pulled and we are going to
20 give you your 50 hours to go through them.

21 A Excellent.

22 Q So the next page. Anything on that page help
23 you?

24 A No, sir.

25 Q Next page. Does that help you?

0032

1 A Well, not in that form. It's not of diagnostic
2 value.

3 Q All right. That help you?

4 A No, sir.

5 Q Does that help you?

6 A I would want that beside me.

7 Q Now, let me ask you a question. They scored 30
8 on that, that's the provider at Malouf's operation. Are
9 there ten ectopic teeth for that child?

10 A I have no idea, sir.

11 Q Well, but you looked at the pictures?

12 A No, I didn't.

13 Q All right. Let's look at the next one.

14 A You looked at them.

15 Q Look at the next page. Does that help you?

16 A It might if I had it in front of me.

17 Q Does that help you understand whether that child
18 is qualified for braces?

19 A Along with the other material, if I sat and
20 studied it all together. These are not isolated events.

21 Q What is that piece of paper?

22 A It says it's an arch wire sequence.

23 Q Tell us what that means.

24 A That's not my area, sir. That is apparently a
25 treatment modality.

0033

1 Q Let's go to the next page. All right. Does that
2 help you understand this case?

3 A It might if I had everything else laid out.

4 Q Let's go to the next page. Does this help you?

5 A It probably would, yes, sir.

6 Q What on there would be helpful?

7 A The position of the jaws and the teeth in the
8 jaws.

9 Q And can you see that readily from that data?

10 A You can see some of it, but not complete.

11 Q Would that show a crossbite?

12 A Not necessarily at all. It is not supposed to.

13 Q Well, what material do you look at to determine
14 crossbite?

15 A All of the whole chart.

16 Q Okay.

17 A Including the written notes of description by the
18 doctor.

19 Q Okay. Does this help you understand that case?

20 A I would say no.

21 Q All right. Does this medical history or anything
22 on that form help you?

23 A If I got to sit and study it, it might very well.

24 Q All right. The consent form, does that help you?

25 A Probably not, no, sir.

0034

1 Q Does this form help you, what's been approved by
2 the TMHP?

3 A I would say no.

4 Q This looks like a consent form, does it help you?

5 A No, sir.

6 Q And this looks like the arch wire sequence that
7 we talked about before, does that help you?

8 A No, sir.

9 Q And this looks like instructions to the child,
10 does that help you?

11 A No, sir.

12 Q This looks like a blank piece of paper. I
13 suppose it's not much help.

14 Now, we are at the pictures, do they help
15 you at all?

16 A No, sir.

17 Q This down here where you see that tooth over that
18 tooth and that tooth over that tooth, does that tell you

19 anything?

20 A No, sir.

21 Q All right. Now, do you know what occlusion is?

22 A Yes, sir.

23 Q What is occlusion?

24 A This could take awhile.

25 Q I've got all day.

0035

1 A Okay. Well, occlusion begins with the
2 relationship of a tooth to tooth, side-to-side, and with
3 the opposing teeth, an upper arch against a lower arch.
4 It progresses from there as to how they function against
5 each other, and especially since the lower jaw is the only
6 free-floating jaw in the body.

7 When you look at a photograph of teeth put
8 together, that is literally one position of millions of
9 positions that those teeth could meet each other, upper
10 and lower, because of the numerous sets of muscles that we
11 all know, in dentistry anyway, that are pulling on that
12 jaw and allowing it to seat, whether under stress or at
13 ease.

14 So the occlusion is determined that you see
15 at that moment, it is just what it is at that moment. And
16 it can depend entirely on what we call interferences of
17 where teeth meshing other teeth are at different positions
18 in space, every single time they meet a different way.

19 Q Let me see if I understand what you're telling
20 me. Occlusion is how the teeth fit together?

21 A Well, I was qualifying it at a particular moment
22 in or time, not necessarily -- it might be different when
23 you took another picture.

24 Q Let me ask the question like this: Occlusion is
25 how the teeth fit together; true or false?

0036

1 A True to a limited point.

2 Q Okay.

3 A A limited description.

4 Q Malocclusion is when the teeth don't fit together
5 right, right?

6 A As dentists, we would want to have some
7 descriptive phrases or manners in which they did not fit
8 together.

9 Q Okay. Malocclusion is when teeth really don't
10 fit together, right?

11 A Oh, I like that.

12 Q Is that true?

13 A Yes, sir.

14 Q Now, do we see malocclusion right there?

15 A I can't tell with the picture like that.

16 Q Oh, give me a break. You can't see malocclusion
17 right there?

18 A Well, give me the models and the chart.

19 Q These people really need to know what's going on
20 here and they need to know the truth. What I want you to

21 do is look at them and swear under oath that those
22 pictures don't show malocclusion. Will you do that?
23 A No, I can't do that intellectually, sir. With
24 all due respect to you and the Court, if you can't do it,
25 you can't do it.

0037

1 Q Let's go back to R-78. Let me offer a
2 hypothesis. Some people might see crossbite right there,
3 and under the Texas Medicaid rules, this child would
4 qualify for braces if the doctor submitted the proper form
5 doesn't have to have an HLD score of 26, and this child
6 could receive legitimate care under the Texas policies for
7 crossbite therapy if that's a crossbite, true?

8 A If -- yes, sir. I assume so, I don't know.

9 Q So we are in agreement that if this child is
10 suffering from crossbite on the right or left, this child
11 would actually qualify for braces, for limited braces?

12 A No, sir, I do not agree with that further
13 statement. I would have to see the models and the chart.

14 Q All right. Let's take a look at the little girl
15 on the right. You denied the case on the left, you
16 approved the case on the right. Let's look at the
17 pictures. Let's look at P-17-04, please. Can we agree
18 those teeth are crooked?

19 A Not without my complete chart to analyze, like I
20 did before.

21 Q You can't tell from that, that that's a little
22 crooked?

23 A No, sir.

24 Q You can't tell from that, that's a little
25 crooked?

0038

1 A No, sir.

2 Q Let's go back to the picture. Let's look at this
3 one. Can you tell if that's a little crooked?

4 A No, sir.

5 Q Let's go back. And do you see any other dental
6 conditions that's obvious in those pictures?

7 A No, sir.

8 Q Do you see any ectopic eruptions?

9 A Not that I can isolate there from those pictures.

10 Q What's an open bite?

11 A What is an open bite?

12 Q Yes, sir.

13 A In Medicaid?

14 Q What is an open bite?

15 A It's different things to different people in
16 different situations. There's a lot of answers to that.

17 In Texas Medicaid in the HLD scoring sheet, is that --

18 Q Are you a dentist?

19 A Yes, sir.

20 Q Do dentists deal with things like open bites?

21 A Yes, sir.

22 Q Tell us what an open bite is to a dentist.

23 A I suspect you are asking an open bite is when
24 teeth fail to meet at a terminal position.

25 Q Okay. So this picture right here would give us

0039

1 an indication of an open bite if open bite existed in this
2 case; would it not?

3 A It would not.

4 Q Open bite is when the teeth are -- the front
5 teeth are open, true?

6 A Not like you are doing it. That's not -- it's
7 not enough information, like models and cephs and films,
8 that I could make that determination.

9 Q There's no space between the top teeth and the
10 bottom teeth in this picture, true?

11 A I wouldn't know. I would have to look at the
12 complete case. I don't make these determinations with one
13 picture.

14 Q I want to be fair to you, Dr. Orr. I hear you
15 saying whatever you do -- you ain't answering nothing
16 until I put this stuff in front of you, but my question is
17 a different question. Are people like us capable of
18 figuring -- let's go back to that picture.

19 Are people like the people in this room
20 capable of figuring out that is not an open bite?

21 A No, sir.

22 Q Okay. Only a dentist can figure that out?

23 A Yes, sir.

24 Q And if I was a dentist and we were talking on the
25 phone and you were going to describe to me what you saw in

0040

1 this patient if you thought that was an open bite, how
2 would you describe that to me?

3 A Well, I would want you to have the models and
4 films and material and charts in front of you.

5 Q Let's go through the first page of that. We will
6 go through -- you've been through this file, so we will go
7 through it. Does that help you?

8 A Probably so, yes, sir.

9 Q Next page, that help you?

10 A Probably so, yes, sir.

11 Q Page 3, does that help you?

12 A I would say no.

13 Q Next page, that help you?

14 A No, sir.

15 Q Now, let's go back a page. What are these
16 photographs called?

17 A I'm sorry?

18 Q Do these photographs have a description, a title?
19 What do dentists call pictures like this?

20 A Photographs.

21 Q Well, is it called intraoral photographs?

22 A They could be. Those are not all intraoral, so I
23 don't know that.

24 Q Have you ever seen a set of photographs like this

25 before?

0041

1 A Yes, sir.

2 Q When and where do you see it?

3 A They are all different in all different doctors'
4 presentations.

5 Q Isn't this the material that's required to be
6 given to the State to qualify the child for braces?

7 A It does specify photographs, yes, sir.

8 Q Let's go to Page 5. Does this help you
9 understand whether this child has an open bite?

10 A No, sir.

11 Q What would you need to know?

12 A It would be nice to have models.

13 Q Let's go to Page 6. Does that show an open bite?

14 A No, that doesn't help me.

15 Q My question was: Does it show an open bite?

16 A No.

17 Q Does it show an overjet?

18 A It might.

19 Q Well, I'm not asking you whether it might, I'm
20 asking you whether it does.

21 A My answer is, it might.

22 Q An overjet is what ordinary people call buck
23 teeth, where they are sticking out; is that right?

24 A To you.

25 Q How about anybody that's ever used the term, buck

0042

1 teeth, what are they generally referring to?

2 A I suppose teeth that stick out, Counsel.

3 Q Like that of --

4 A Not necessarily at all.

5 Q Okay. So that doesn't show an overjet either?

6 A I couldn't determine that from that singular
7 picture that way.

8 Q Let's look at the next one. Would it help you if
9 we blew this up?

10 A No, sir.

11 Q Do you see anything that helps you understand
12 this child's condition?

13 A Well, it shows the lateral -- the side view of
14 the teeth.

15 Q Does that help you understand whether this child
16 qualifies for braces?

17 A It might help, along with all the other material.
18 The problem is it's a flat picture of a three-dimensional
19 object.

20 Q All right. Let's go to Page 8. Now, this is a
21 braces-in-progress photograph?

22 A Yes, sir.

23 Q Next -- and that picture wouldn't help you
24 understand whether the child actually qualified for
25 braces?

0043

1 A That is correct, sir. In my mind, once they are
2 in braces, everything is changed.
3 Q Okay. Next picture, and this wouldn't help you?
4 A No, sir.
5 Q Next picture, does that help you?
6 A No, sir.
7 Q Does that help you?
8 A No, sir.
9 Q Does that help you?
10 A No, sir.
11 Q That help you?
12 A No, sir, no, sir.
13 Q That help you?
14 A No, sir.
15 Q That help you?
16 A No, sir.
17 Q Does this help you?
18 A Well, I usually refer to that at some point when
19 I'm going through the chart.
20 Q Now, this doctor actually finds an overjet, true?
21 A Yes, sir, he did.
22 Q And he finds 12 ectopic teeth?
23 A It would appear that way, yes, sir.
24 Q Let's go to the next slide. Now, I'm not sure
25 why this is in there. There were two HLD score sheets in
0044

1 this case. I'm not exactly sure why that is. Let's go to
2 the next page. Does that help you?
3 A No, sir.
4 Q Next page?
5 A No, sir.
6 Q Next page?
7 A No, sir.
8 Q Next page?
9 A No, sir.
10 Q Next page?
11 A No, sir.
12 Q Next page -- so we are now at the end of the
13 file. Do you see this number down here?
14 A Yes, sir.
15 Q That P-17 means that that came from the
16 Petitioner's file. That is the Petitioner's file on that
17 case. Which pieces of paper or information in that file
18 would you have to have or review to be able to determine
19 whether that child actually qualified for braces or not?
20 A Well, I'm used to having what it says in the
21 manual, they are supposed to submit, which used to be
22 models, photographs, radiographs, the paper requests.
23 Q When you reviewed this file, it actually didn't
24 have original radiographs in it, did it?
25 A I don't know, sir.

0045
1 Q Well, but this is the file that you have reviewed
2 to testify in this case?

3 A Yes, sir.

4 Q You don't remember whether it had x-rays in it or
5 not?

6 A I do not, sir.

7 Q So it wasn't important whether it had x-rays or
8 not, correct?

9 A Incorrect, no, sir.

10 MR. MORIARTY: May I approach the witness,
11 Your Honor?

12 JUDGE SEITZMAN: You may.

13 MR. MORIARTY: Let's go back to the
14 photographs set, Stacey. I think it's 22.

15 Q (BY MR. MORIARTY) I'm going to show you --

16 JUDGE SEITZMAN: Do you need some lights?

17 THE WITNESS: Yes.

18 Q (BY MR. MORIARTY) I'm going to show you the
19 original of that file that we got from Dr. Nazari. I want
20 you to make two piles. I want you to make a pile of the
21 stuff on one side that helps you understand that case and
22 a pile of the stuff on the second side that doesn't help
23 you understand whether that child qualified for braces.

24 JUDGE SEITZMAN: While he's doing that,
25 let's go off the record a second.

0046

1 (Off the record.)

2 JUDGE SEITZMAN: All right. Let's go back
3 on the record at 10:09.

4 Dr. Orr, you have had a chance to segregate
5 the papers you need to look at from the papers you don't
6 need to look at; is that correct?

7 THE WITNESS: I have done so, yes, sir.

8 JUDGE SEITZMAN: So, Mr. Moriarty, do you
9 want to pick up your questioning?

10 MR. MORIARTY: Yes, sir.

11 Q (BY MR. MORIARTY) Here is what I want to do so
12 that we are not taking their time and to be fair to you.

13 Ordinary human beings can compare those
14 pictures side by side of one client to another and they
15 can see a great deal of difference in those pictures,
16 can't they?

17 A I can't answer that, Counsel. I don't know if
18 they could or not.

19 MR. MORIARTY: All right. May I approach
20 the witness?

21 JUDGE SEITZMAN: You may. It would be
22 helpful to focus on what Dr. Orr sees or doesn't see.

23 MR. MORIARTY: We lost our true trial
24 partner, Judge. She will be right back.

25 JUDGE SEITZMAN: Okay. Let's go off the

0047

1 record.

2 (Off the record.)

3 JUDGE SEITZMAN: Let's go back on the record
4 at 10:12.

5 Mr. Moriarty.

6 Q (BY MR. MORIARTY) Dr. Orr, you had asked for
7 access to your score sheet on both this All Smiles case
8 and the Antoine Dental case. I'll represent to you that
9 the document that's on the screen, which is R-20-032, is
10 your score sheet from the All Smiles case where you denied
11 that that child qualified for braces. Then I have handed
12 you your score sheet marked P-73-017, and you have that in
13 front of you. So you now have the score sheets where you
14 can see how you scored them.

15 Now, what I would like to do is I would like
16 to go back to R-78, please. And I want to approach you,
17 if I may.

18 JUDGE EGAN: You will need to speak up, I
19 can't hear you.

20 MR. MORIARTY: Yes.

21 Q (BY MR. MORIARTY) Do you have a question?

22 A Are they printing my score sheet on this so I can
23 study it?

24 Q Yes, sir.

25 A Thank you.

0048

1 MR. MORIARTY: What I would like to do, Your
2 Honors, are these are the original unredacted photographs.
3 These are the same photographs that we have already marked
4 in evidence that are redacted, but I would like to have
5 the Court see the original of the actual photographs while
6 I question him.

7 JUDGE SEITZMAN: That's fine, if the witness
8 doesn't need them.

9 Q (BY MR. MORIARTY) Is that okay?

10 A Say again carefully.

11 Q I want to show the original of these photographs
12 from these files to the Judges; is that okay with you?

13 A Absolutely.

14 MR. MORIARTY: Okay. That's the All Smiles.

15 JUDGE EGAN: It's R-20 and P-73-17.

16 MR. MORIARTY: The Nazari document is
17 P-73-017. The All Smiles document is R-20-032.

18 MR. ANDERTON: Do you have dates on these?

19 JUDGE SEITZMAN: As I understand it, the
20 problem is they are not redacted, so look at the originals
21 while you look at the redacted version.

22 MR. ANDERTON: The question is on the --

23 THE REPORTER: I'm not getting what y'all
24 are saying.

25 JUDGE SEITZMAN: Off-the-record discussion.

0049

1 (Off-the-record discussion.)

2 JUDGE SEITZMAN: All right.

3 Q (BY MR. MORIARTY) Dr. Orr, I have -- the Judges
4 have the originals of R-22-032, which is your All Smiles
5 young lady, and they have the originals of the photographs
6 of the P-17-004, for the case that you denied with

7 Antoine.

8 Now, here is my point about these files: I
9 don't understand how you are denying cases like the little
10 girl on the left and you are approving cases like the
11 little girl on the right, suggesting that she's got a
12 total of 34 points. Can you explain that to the Judge,
13 why the patient -- the All Smiles patient doesn't qualify
14 and the Antoine Dental patient does qualify?

15 A Well, with all due respect, sir, I can understand
16 why you wouldn't understand. It's an occlusion, an
17 orthodontic questions that a dentist a trained to look at.
18 I mean that with all due respect. In summation, these
19 cases are totally different, every case is different, and
20 they score with resultant scores different.

21 JUDGE SEITZMAN: I think the question to you
22 is why. Can you explain what the difference is between
23 the two cases? That will get us where we need to be.

24 THE WITNESS: Yes, sir. It's what's on the
25 score sheet of each. I didn't get the paper score sheet

0050

1 on the All Smiles.

2 Q (BY MR. MORIARTY) Let's bring it back up again,
3 a score sheet on All Smiles.

4 A I have a paper on the other one and I wouldn't
5 mind having the paper on the other one since that's the
6 way I've been working since 1974.

7 MR. MORIARTY: He wants his All Smiles score
8 sheet, R-20-032.

9 JUDGE SEITZMAN: While we are waiting on
10 that, do you want him to answer the question with respect
11 to the paper that he does have in front of him?

12 MR. MORIARTY: Yes, sir.

13 Q (BY MR. MORIARTY) My question is real simple.
14 We don't have to understand scoring to understand that the
15 All Smiles case has every appearance of being a lot higher
16 in need for braces than the Antoine Dental case that you
17 approved.

18 A But you must think you understand because that's
19 what you just said in spite of my scoring.

20 Q Okay. Let's go to R-77. Here is the score sheet
21 that we asked for for that lady.

22 A Thank you.

23 Q Now, again -- let's go to R-77.

24 A I have an answer for you, sir, on the previous
25 question.

0051

1 Q Okay. I don't have a question for you, so we
2 don't have to worry about it.

3 JUDGE SEITZMAN: Well, we can wait and take
4 it out of place, Mr. Moriarty, but I think the question
5 that was phrased to him, at least that I did, and I don't
6 know if that was your question, but can you explain the
7 scoring in each of those two cases?

8 THE WITNESS: Yes, sir.

9 JUDGE SEITZMAN: Would you do so?

10 THE WITNESS: Thank you. That's why I
11 wanted to see my score sheet in case I had any notes. And
12 the notes confirm what I was holding here with the models
13 from the All Smiles case, because on my notes you wanted
14 to know a difference. The note says, excess plaster
15 cannot articulate. That means that the upper and lower
16 models cannot be put together to demonstrate how the teeth
17 come together.

18 They are an F quality school project or set
19 of models. They cannot be placed together to confirm or
20 deny what he was earlier trying to say did I see
21 crossbite, did I see that, did I see that. They are
22 worthless; it was a failure.

23 Q (BY MR. MORIARTY) And models are not required by
24 THMP to approve cases, are they?

25 A As I recall, the bulletin that other people in
0052

1 this room could quote better than I in 2005, that they
2 didn't have to be sent in. I don't believe the bulletin
3 specified that that relieved you from the technical aspect
4 of making models, if they were necessary.

5 Q Actually, the rule would be that they are
6 required to keep models, aren't they?

7 A I believe that is correct, sir.

8 Q They are just not required to send them in to the
9 contractor for approval, true?

10 A I believe that is correct, sir.

11 MR. MORIARTY: Could I see R-77? All right.

12 Q (BY MR. MORIARTY) Now again, we have got All
13 Smiles cases where you were the expert for the State on
14 the left and we have Antoine Dental where you are the
15 expert for Antoine Dental on the right.

16 Now, what I want you to do is, I want you to
17 explain to the Judges why the case on the left appears to,
18 in your opinion, not be qualified and the case on the
19 right qualified.

20 A Yes, sir. Could I ask a personal favor that I
21 could police up and not get these confused.

22 Q Yes, sir. Can I help you with that?

23 A Of course. I live in fear of mixing these
24 things. And then they are getting all the material and
25 printouts on this case.

0053

1 Q Now, we are on two new cases, one that you denied
2 on the left when you were an expert for the State and one
3 that you approved on the right.

4 Now, let me ask you to take a look at the
5 photographs on the left. Does that space right there,
6 that space right there, and that space right there, that
7 being on that particular exhibit, that exhibit being
8 R-19-27-005, isn't that a classic open bite?

9 MR. ANDERTON: Objection, Your Honor. We
10 have no way of knowing who is on the right. Can we have

11 it identified?

12 JUDGE SEITZMAN: Can you identify the
13 exhibit number on the right, Mr. Moriarty?

14 Q (BY MR. MORIARTY) The exhibit -- the photograph
15 on the right is from R-00010.

16 MS. SILHAN: It's Patient L-8.

17 Q (BY MR. MORIARTY) Doctor, here is my question --

18 JUDGE SEITZMAN: Can we go one more? Can
19 you make it through one more set of questions.

20 THE WITNESS: Not at my age.

21 JUDGE SEITZMAN: Let's take a ten-minute
22 break.

23 THE WITNESS: You don't have to do that
24 much. Everybody else had one except you and I.

25 JUDGE SEITZMAN: We will make it ten.

0054

1 (Off the record.)

2 JUDGE SEITZMAN: Let's go back on the record
3 at 10:37.

4 Mr. Moriarty.

5 MR. MORIARTY: Thank you, Judge.

6 Q (BY MR. MORIARTY) What I have done during the
7 break, Dr. Orr, is I have given you the original files for
8 Patient Number 19 from All Smiles and Patient Number 8
9 from Antoine Dental. And I have got up on the board a
10 graphic that's R-77 that reflects pictures that were taken
11 off of that. And I have given you opportunity to review
12 the files and review the molds. What I would like to do
13 in this case is I would like to have the Court review the
14 original of the photographs and the original of the molds.

15 Now, let's agree on the molds for the All
16 Smiles case, that mold for the All Smiles case is of no
17 diagnostic value at all, true?

18 A I'm sorry. The previous case?

19 Q No, sir. We are talking about this case that's
20 up on the board right now.

21 A I don't think I said that about this case.

22 Q No, sir, you didn't. I'm trying to get you to
23 where we are now. Do you see the files in front of you?

24 A Yes, sir.

25 Q Have you had a chance to review them?

0055

1 A Yes, sir.

2 Q Can we agree that the mold -- the All Smiles
3 mold, that's the mold right there with the pink on it,
4 that mold isn't diagnostic and wouldn't help anybody
5 understand anything, would it?

6 A I don't think we are together, sir. The pink
7 here, I believe this is and these set of models are
8 Antoine Dental, here.

9 Q I stand corrected, sir. You are exactly right.
10 The Antoine Dental model is diagnostic. The model that's
11 over here to your left, the All Smiles model, that model
12 is broken and cracked and isn't of any value, is it?

13 A Well, in my report, I said that the models were
14 of diagnostic quality, back in '08. Now, they are at
15 minimum diagnostic quality, but I still utilized them and
16 they are very interesting, I might say, especially when
17 compared to the photographs.

18 Q Okay. And when we look at the photographs, what
19 is it that we see on these photographs? And you have the
20 originals in the file in front of you. What is it we see
21 right here?

22 A What we see is what I recorded in 2008, that the
23 upper six front teeth are ectopically erupted and out of
24 position.

25 Q Do we see what a dentist call an open bite; that
0056

1 is, open space between the front teeth?

2 A Not necessarily, because if I might, this is a
3 perfect example of the different bite positions in
4 occlusion that I can put these models so that that is
5 completely closed and he probably bites this way and bites
6 in many other ways, too. A bite like this and teeth like
7 this, they may well mesh and I can make them mesh, is one
8 reason we take these models.

9 We teach students to turn around and think
10 of themselves as a small dentist on the tongue looking
11 out, and that's one of the main ways that you evaluate the
12 interaction between the upper and lower teeth. I can see
13 that they can mesh in different positions, so they took a
14 photograph in one position and then, thank goodness, they
15 took the model and I can see that we have the 18 points
16 contributed by the upper teeth and that was it. Not all
17 cases are the same. These two cases are like apples and
18 oranges.

19 Q I don't doubt that. And this over here, what
20 does that show? You have the pictures and model in front
21 of you. What does that show?

22 A That bite is apparently in a crossbite with the
23 mouth in that position.

24 Q And over here?

25 A That's jumbled teeth.

0057

1 Q That is not a crossbite?

2 A Not necessarily.

3 Q You've got the picture in front of you and the
4 model. Crossbite or not crossbite?

5 A No, I wouldn't say that. I can put these in
6 different positions and articulate the plastered teeth in
7 different bites.

8 Q So you are telling these Judges that this is not
9 an open bite and these teeth right there are not in
10 crossbite, that's what you are telling these Judges under
11 oath?

12 A Absolutely. And that's what I said on that paper
13 and that's what I can show them right here.

14 Q Okay. And when you were working for the State,

15 you denied the young man on the left was appropriately
16 treated and paid for by Medicaid, true?

17 A I don't know if he was or not. What do you mean?

18 Q You've got the score sheet --

19 A Treated?

20 Q -- you said that young man was not qualified to
21 be paid for Medicaid; true or false?

22 A That is correct, he did not qualify.

23 Q Okay. And on the right, this young man -- and
24 you've got the mold and the photographs in front of you
25 for this young man on the right, where you say that this
0058

1 young man had a four-millimeter open bite and 11 points
2 for a labio-lingual spread, right? That's what your
3 report says, right?

4 A They are all different.

5 JUDGE SEITZMAN: I think you need to answer
6 the question. Is that what your report says?

7 THE WITNESS: Yes, sir.

8 JUDGE EGAN: Which patient is this one
9 again?

10 Q (BY MR. MORIARTY) So this kid doesn't have an
11 open bite and this kid does have an open bite. Patient
12 Number 19 does not have an open bite; Patient Number 8
13 does have an open bite?

14 A That is correct, sir.

15 Q I'm sorry. I have made a mistake. This is All
16 Smiles, AS Patient 27, and the patient over here is
17 Patient Number 8?

18 A Yes, sir.

19 Q So this shows an open bite?

20 A Correct, sir.

21 Q So now that we understand the concept of open
22 bite, let us see if we can simplify things. A dime is
23 about a millimeter?

24 A I never measured it, sir.

25 Q Well, we did.

0059

1 A Good.

2 Q Not all of us have those Boley Gauges. Do you
3 see the dime up there?

4 A All right, sir.

5 Q And do you see that little mark right there that
6 shows just a hair over a millimeter?

7 A I'm not sure what you are pointing at, sir.

8 Q Right there. Do you see that line?

9 A Got you. Yes, sir.

10 Q So can we agree that a dime is about a
11 millimeter?

12 A All right, sir. I agree.

13 Q Now, let's go back to R-77.

14 MR. MORIARTY: May I approach the witness?

15 JUDGE SEITZMAN: You may.

16 Q (BY MR. MORIARTY) Now, what I want you -- what

17 I'm holding in my hands right here is the mold for this
18 young man on the right, this is the Nazari.
19 JUDGE EGAN: Patient 8?
20 MR. MORIARTY: Patient 8.
21 Q (BY MR. MORIARTY) I'm holding the model for
22 Patient 8. You have scored it as a four-millimeter open
23 bite and we have agreed that a dime is about a millimeter.
24 Now, the truth is, a dime -- well, we are going to do it
25 with three times. It's under four millimeters.

0060

1 I want you to show the Judges where there's
2 three millimeters or four millimeters of open bite on this
3 model.

4 A Sure. It's very simple. The upper front teeth
5 should have overlapped your three millimeters over the
6 lower front teeth.

7 Q Is that right?

8 A I just said it.

9 Q Well, that makes it right.

10 A Yes, sir.

11 JUDGE SEITZMAN: Okay. That's not going to
12 get us anywhere, so let's just ask the question and let's
13 just answer the question.

14 MR. MORIARTY: I need the HLD scoring sheet.

15 Q (BY MR. MORIARTY) You are telling me how to
16 score open bite, right?

17 A Yes, sir.

18 Q I'm not very bright, so tell me how to score an
19 open bite properly.

20 A In this particular case, these upper front teeth
21 should have been over the lower teeth.

22 Q I need the definition that's on the page before
23 that.

24 JUDGE SEITZMAN: Dr. Orr, let me interrupt
25 and ask you: When you say over, you mean in front of?

0061

1 THE WITNESS: Yes, sir.

2 Q (BY MR. MORIARTY) Now, we are talking about over
3 bite. It says, score the case exactly as measured.
4 Measurement should be recorded from the line of occlusion
5 of the permanent teeth, not from the ectopically erupted
6 teeth in the anterior segment.

7 Now, when it says, measurement should be
8 recorded from the line of occlusion of the permanent
9 teeth, let's see if you can help me here, this is the line
10 of occlusion on the top?

11 A Yes, sir.

12 Q Okay. And this is the line of occlusion on the
13 bottom?

14 A Yes, sir.

15 Q Okay. So if you properly measure from top to
16 bottom, from there to there, you are saying there's three
17 dimes' space?

18 A Yes, sir.

19 MR. MORIARTY: May I show the Court? May I
20 tender this to the Court for inspection?

21 JUDGE SEITZMAN: You may.

22 MR. MORIARTY: What I have just tendered the
23 Court is the original model for that child in question,
24 Patient Number 8 with three dimes.

25 JUDGE SEITZMAN: I'm going to note for the
0062

1 record you gave the three dimes to Judge Egan so I'm not
2 responsible for them.

3 JUDGE EGAN: I'm giving you back your three
4 dimes and the model.

5 MR. MORIARTY: Thank you.

6 MR. ANDERTON: May I see the model?

7 MR. MORIARTY: Of course. Thank you.

8 Q (BY MR. MORIARTY) I'm going to put that model
9 back and I'm going to get these photographs out, if you
10 don't mind.

11 MR. MORIARTY: Now, may I approach the bench
12 again, please?

13 JUDGE SEITZMAN: You may.

14 MR. MORIARTY: What I'm tendering to the
15 Court right now are the originals of the patient
16 photographs for All Smiles 27, AS 27, which is Exhibit
17 R-19-27-005, and for Antoine Dental Patient Number 8,
18 which is R-08-010.

19 Q (BY MR. MORIARTY) Now, you have photographs in
20 front of you, let me see if I understand your position.
21 Your sworn testimony under oath is this young man -- that
22 is, of the All Smiles 27 child -- does not have an open
23 bite?

24 A In the way we do things, that's not a correct
25 statement. Cannot agree with that, because I gave him 18
0063

1 points for the ectopically erupted teeth. That took care
2 of the situation. I could move his models to where --
3 different positions that they definitely do not have an
4 open bite, so that's --

5 Q Okay. So your basic position is this child on
6 the left, when you were working for the State ought to be
7 denied Medicaid braces, and the this child on the right,
8 while you are working for the defense, ought to be
9 approved for Medicaid-paid braces, right?

10 A That is correct.

11 Q Now, you are showing of -- we have done the four
12 millimeters of open bite. Now, you have got the left -- I
13 know I'm going to screw this up. The spread, the
14 labio-lingual spread, what does that mean in English?

15 A That means that you count on the sheet, space
16 between the teeth. If you will go to the definition
17 again.

18 Q You have 11 points?

19 A You just have to go to the --

20 JUDGE SEITZMAN: Just answer the question.

21 The question is: Do you have 11 points for the
22 labio-lingual spread?

23 THE WITNESS: Yes, sir.

24 Q (BY MR. MORIARTY) I'm going to hand you ten
25 dimes and I want you to show the Court where you can put
0064

1 those on that model. I want the record to reflect that
2 you have the model in front of you, that's the actual
3 model from the case that you approved for Antoine Dental
4 where you have been swearing under oath there's an
5 11-millimeter spread, and I want you to show it to me.

6 Show the Judges where you can put 11 dimes
7 between those teeth.

8 A Yes. And that's the 11 spaces we count where the
9 teeth do not contact.

10 Q You have 11 spaces between six teeth?

11 A No, I'm trying to --

12 Q We are only counting front teeth, aren't we?

13 A Upper and lower.

14 Q Front teeth?

15 A Upper and lower front teeth.

16 Q That's only 12 teeth and you are saying there's a
17 millimeter between every single one of those teeth on this
18 model?

19 A In practice, I will qualify that. A
20 qualification in that what we do not want in dentistry is
21 space where the contacts do not touch because the teeth
22 will drift. It may be slightly less than a millimeter, it
23 maybe slightly more. The Medicaid manual only gives us --
24 and says in millimeters that we score it. If it is
25 slightly less, it is slightly less. If it is slightly

0065

1 more --

2 Q For you to draw the conclusion that Antoine
3 Dental is entitled to charge the State of Texas thousands
4 of dollars for this young patient, you have to conclude
5 that you have 11 millimeters of spacing, and if you don't
6 have 11 millimeters of spaces, that child does not
7 qualify; isn't that true?

8 A That's true. I get 11 spaces, as I did when I
9 counted it. Whether they are all a full millimeter, I
10 will let you take exception and qualify that.

11 Q All right. May I have the mold?

12 MR. MORIARTY: And may I approach the bench?
13 I'm certainly not going to need ten of them.

14 JUDGE SEITZMAN: Do you want to join us?

15 JUDGE EGAN: Where is your dime? Two dimes
16 will do. I just need two. I need a clarification.

17 Dr. Orr, when you are counting spaces, I
18 understand it's the first -- if you are just looking at
19 the top set, it's the first, second and third tooth from
20 the center. On the third tooth, do you measure the space
21 between the second and third tooth or the third and fourth
22 tooth?

23 THE WITNESS: Each of those spaces. If
24 there's a space between where the teeth are supposed to
25 contact hard and be in firm contact, including the
0066

1 backside of the third tooth, the canine tooth.

2 JUDGE SEITZMAN: So you measure the space
3 between three and four?

4 THE WITNESS: Yes, sir.

5 Q (BY MR. MORIARTY) If that's the case --

6 A In practice, that is done.

7 Q When it says the score for this category should
8 be the total in millimeters of the anterior spaces, what
9 are the anterior spaces?

10 A The anterior spaces are on each side of those
11 teeth. You cannot affect Tooth Number 3 and move it in
12 space orthodontically and leave space on one side or the
13 other.

14 JUDGE EGAN: I'm returning your two dimes.

15 MR. MORIARTY: Thank you.

16 JUDGE EGAN: And I'm returning the model.

17 MR. MORIARTY: Thank you.

18 Q (BY MR. MORIARTY) Let's go back to 77. So if I
19 understand -- let me ask you a question: Who were you
20 texting a few moments ago?

21 A My wife.

22 Q Anybody else you were texting?

23 A No.

24 Q Have you been texting any of these lawyers?

25 A No, sir. I apologize, Counsel. She had eye
0067

1 surgery yesterday and I was checking on her. I should
2 have asked you.

3 Q You don't need to ask permission from me to text
4 your wife.

5 A I apologize.

6 Q So your sworn testimony is this child on the left
7 clearly doesn't qualify and the child on the right clearly
8 does?

9 A I don't use words like clearly, but certainly, I
10 stand by the definitive scores for any number of reasons.

11 Q And if our eyes told us that makes no sense at
12 all, it would -- who are we going to believe, you or our
13 own lying eyes?

14 A You are going to believe me, because apples and
15 oranges, every case is different. It would be real simple
16 if they were all the same. We would just crank them out.

17 Q Let's go to R-76.

18 A Is that one of these, Counsel?

19 Q No, sir. This is All Smiles Patient 19 on the
20 left and it's Antoine Dental Patient Number 9 on the
21 right. We are looking at R-19-19-007 photographs on the
22 left and we are looking at P-09-006, Petitioner's 09-006.

23 Now, again, when you are working for the
24 State, your conclusion is this child on the left does not

25 qualify for braces and the child on the right does,
0068

1 correct?

2 A It would appear that way, yes, sir.

3 Q And the child on the left was 11 and had five
4 baby teeth; why is that a problem?

5 A One of the guiding principals of the Medicaid
6 program is to not pay for braces on baby teeth.

7 Q All right. Well, we got nine baby teeth over on
8 the right and you approved that one. Is that --

9 A Either one could have gotten an exception had
10 they written in.

11 Q Okay. Do you have any evidence they tried to get
12 an exception for All Smiles 19?

13 A I don't know. Maybe there is something in the
14 chart.

15 Q Do you have any evidence that they tried to get
16 an exception for Antoine Dental?

17 A I don't know, sir. Maybe there is something in
18 the chart.

19 Q Well, I want you to explain to the Court, and we
20 have the files here if you want to go looking through them
21 again, when you are paid for by one party, you draw the
22 conclusion denied because of baby teeth, and when you are
23 paid by another party, you draw the conclusion approve in
24 spite of baby teeth; tell the Judges why that makes sense.

25 A It makes sense because dentists, when I was
0069

1 dental director, would write in regularly and say that
2 they had a 12-year-old who weighed X pounds, as a large
3 12-year-old, his body growth and teeth eruption pattern
4 was up to a certain point that they needed to go ahead and
5 start the braces and maybe even extract baby teeth that
6 were slow to be lost. And of course, the other situation
7 is vice versa, somebody that might be younger or older,
8 undergrowth to that age.

9 JUDGE EGAN: That the dentist would have to
10 write something that explained this?

11 THE WITNESS: He would write and ask for an
12 exception, and it would go into Medicaid. And if they
13 wrote and it was a decent or a correct or an assumable
14 thing and that was his medical judgment to do it, it was
15 usually approved.

16 Q (BY MR. MORIARTY) Well, let me go back to my
17 question. You reviewed these cases for the State on the
18 one hand and for the defendant on the other hand. They
19 both got baby teeth, one you say approved and the other
20 denied. How do you justify that?

21 A I don't know until I see the chart. I justify it
22 as a said to the Court, every case is different. Just
23 because there's baby teeth -- there's cases come in by the
24 hundreds, I'm sure to Medicaid then and now, with baby
25 teeth still there.

0070

1 Q This one has baby teeth and you denied and this
2 one has baby teeth and you approved it; you can't tell us
3 any difference, true?

4 A Not with those pictures, no, sir.

5 Q The pictures doesn't change the baby teeth,
6 pictures don't have anything to do with baby teeth. They
7 either have them or they don't, right?

8 A I will be glad to review the chart, sir. To
9 answer your question, they are all different. I'm going
10 to say that. And I'm sorry.

11 Q We are going to do this. You've been trained to
12 say, I'll review the chart, so here is what we are going
13 to do, we are going to give you that chart at lunchtime
14 and we are going to give you all the charts you want to
15 review and you can spend all the time you want to do it.
16 And we will give you all the help you want to, okay?

17 A It's whatever you want to do.

18 Q So you determine between now and lunchtime what
19 charts you want and we will give them to you.

20 MR. MORIARTY: Let's go to R-79, please.

21 JUDGE EGAN: What patient is this?

22 MR. MORIARTY: This is Patient 26, All
23 Smiles 26. Let's blow this up over here.

24 Q (BY MR. MORIARTY) Do you see your report that
25 you filed in this case?

0071

1 (Cell phone ringing.)

2 THE WITNESS: Excuse me. Let me turn that
3 off. I'm sorry. I apologize.

4 MR. MORIARTY: Not a problem.

5 Q (BY MR. MORIARTY) Do you see your score sheet on
6 this one?

7 A Yes, sir.

8 Q Let's go back to the photograph. Now, what we
9 have here is an obvious open bite, true?

10 A No, sir.

11 Q What do we have there?

12 A When I look at the chart, the models and the rest
13 of the material, the radiographs --

14 Q We will show you that model at lunchtime and we
15 will visit on it after lunch. Let's look at R-79, Page 6.
16 We will look at your score sheet. This is All Smiles
17 Patient 35. How do you score this one?

18 A I'm trying to see. Five points looks like.

19 Q And that five points comes from maxillary
20 anterior crowding?

21 A Apparently so, yes, sir.

22 Q And you denied this claim, too, true?

23 A I'm sorry?

24 Q You denied this one for All Smiles, correct?

25 A Apparently so, yes, sir.

0072

1 MR. MORIARTY: Let's go to Page 5, R-79,
2 Page 5. And can we put this -- move this where we can

3 also show Antoine Dental Patient 57.

4 Q (BY MR. MORIARTY) What I want you to do, the
5 picture on the right is All Smiles Patient Number 57. I
6 think that is Exhibit P-57. For the picture on the right,
7 you approved that for payment for All Smiles and the
8 picture on the left, you denied that for -- I'm sorry.

9 Picture on the right you approved for
10 Antoine Dental, the picture on the left you denied for All
11 Smiles. I want you to tell the Court the difference
12 between those pictures on the left and the pictures on the
13 right.

14 A I just have to have all that in front of me
15 again, sir.

16 Q Okay. We will show you those, too, at lunchtime.

17 JUDGE EGAN: Let me make sure which two
18 patients. The All Smiles is patient who?

19 MR. MORIARTY: All Smiles Patient 17 and
20 it's Antoine Dental --

21 MS. MANELA: On the left side, it's All
22 Smiles Patient 17, Your Honor, and on the right side, it's
23 Patient 57.

24 JUDGE EGAN: Thank you.

25 MR. MORIARTY: Let's go to R-79, Page 3,

0073

1 please.

2 Q (BY MR. MORIARTY) This is another case where you
3 are -- an All Smiles case that you are denying. This is
4 All Smiles 49. Let me ask you this question: Is this
5 information up there, does that photograph help you at
6 all?

7 A No, sir, not without the rest of chart
8 explanations.

9 Q If I were that little boy's daddy and I wanted to
10 know how he was doing and that's all I had, would you tell
11 me anything about my son?

12 A No, sir.

13 Q That photograph is not of any help to you at all?

14 A Not for Medicaid eligibility at this point.

15 Q Okay. Let's go to R-79, Page 4. We have another
16 All Smiles denial. This is All Smiles Number 19. Can you
17 read your reason for returning that?

18 A Deciduous teeth still in place on 8-06 when case
19 begun. Permanent teeth still deep in bone. Section
20 20.21.3, Medicaid provider manual.

21 Q And let's go back to the photographs. So do you
22 see anything unusual in the photographs in that picture?

23 A I see jumbled teeth.

24 Q And so your position to the State of Texas on
25 that is that child does not have problems that orthodontic

0074

1 -- Medicaid orthodontics should help in Texas?

2 A No, sir, that was not my position.

3 Q What is your position?

4 A My position is what it said there, that what I

5 wrote on the piece of paper.

6 Q We are going to get to a point in a little while
7 where we are going to talk about a severe handicapping
8 malocclusion. With me, as sort of a completely uneducated
9 layman, could I fairly draw the conclusion that that is an
10 example of a severe handicapping malocclusion?

11 A Probably, but I need to see the material.

12 Q Well, you have a tooth up there. Almost
13 everybody would call that ectopic, wouldn't they?

14 A That's ectopic by the State's criteria.

15 Q Even real dentists would call that ectopic,
16 wouldn't they?

17 A A real dentist?

18 Q Somebody who knows what an ectopic eruption is?

19 A I don't know if they would or not, Counsel.

20 JUDGE SEITZMAN: That's argumentative,
21 Counsel.

22 Q (BY MR. MORIARTY) Let's move on to another
23 section, Doctor. And we will pull those files for you at
24 lunchtime so you can take a look at them.

25 A Super.

0075

1 Q Do you know of an organization called Texas
2 Dentists for Medicaid Reform?

3 A I have seen that on a piece of paper. I know
4 nothing about it.

5 Q Do you know any of the people that are out there
6 in the audience?

7 A I know people in that audience.

8 Q Who do we have out there today?

9 A Who do we have?

10 Q Yes, sir. Who is present?

11 JUDGE EGAN: Are you talking about who he
12 knows.

13 Q (BY MR. MORIARTY) If you know.

14 MR. ANDERTON: Objection, relevance.

15 JUDGE SEITZMAN: It's cross. You can answer
16 the question. Other than the legal counsel, do you know
17 anybody else who is sitting out there?

18 THE WITNESS: Not that I can remember their
19 names.

20 Q (BY MR. MORIARTY) And do you know who Greg Ewing
21 is?

22 A I don't believe so, Counsel.

23 Q Did you testify before the House of
24 Representatives?

25 A No, sir.

0076

1 Q Do you know people who did testify before the
2 Texas House of Representatives?

3 A Yes, sir.

4 Q Who do you know?

5 A Mr. Canales.

6 Q Who else?

7 A That's all I can think of right at this moment.

8 Q And I'm not going to ask you about the testimony
9 of Mr. Canales. Are you involved in any way with any of
10 the people involved with the Texas Dentists for Medicaid
11 Reform?

12 A I don't believe so, in any way, no, sir.

13 Q Is it fair to say that, as far as you know,
14 everything Dr. Ornish learned about properly scoring an
15 HLD, he learned in a course that you taught?

16 A That doesn't ring a bell, no, sir.

17 Q If Dr. Ornish testified that he learned to score
18 HLD in a course that you taught, does that remind you of
19 anything?

20 A A course that I taught, use that phrase. Dr.
21 Ornish and I discussed, sat down and discussed Medicaid
22 rules and regulations.

23 Q All right. And did that relate to HLD scoring?

24 A Yes, that was part of it.

25 Q And how long did y'all meet for?

0077

1 A Less than an hour perhaps.

2 Q Where was that?

3 A That would have been at Dr. Ornish's office.

4 Q Who else was present?

5 A No one.

6 Q And how long ago was that?

7 A I'm sorry, Counsel, I don't recall.

8 Q Okay.

9 A It's been months.

10 Q If Dr. Ornish testified under oath that he
11 learned essentially everything he knows about scoring HLDs
12 from you, would you disagree with that?

13 A I would disagree with that, yes, sir.

14 Q Tell us what knowledge he learned besides the
15 information you taught him?

16 A Well, so much of what that would entail would be
17 dental knowledge that he had acquired through his years
18 and years of practice.

19 Q All right. Let's go to R-69, please. Let me
20 tell you what this is, Dr. Orr. This is a demonstrative
21 exhibit that I have made from extracting all of the
22 components of the HLD scoring for the 63 files that are
23 subject -- that are at issue in this case, all right?

24 And let me represent to you that we have a
25 spreadsheet and it's -- the Court will see that, and I

0078

1 will represent to you that I believe that these numbers
2 are very accurate. They may be off -- it may be 1,625
3 ectopic eruptions, but the sort of order of magnitude are
4 very accurate. Are you with me?

5 A Yes, sir.

6 Q So this is a take-off from the data where they
7 submitted to the State of Texas to be paid for Medicaid
8 braces. Are you with me?

9 A Yes, sir.

10 Q And is it clear from that, that the vast majority
11 of their patients they claim to have ectopic eruptions?

12 A That's clear from that presentation.

13 Q Now, I did some math on this, and if you divided
14 1,600 by 29, you get three points for each ectopic
15 eruption, correct?

16 A Yes, sir.

17 Q And so if you did that, divided 1,629 by three,
18 and then you divided that number by 12, that being 12
19 teeth, you ought to come up with an average number of
20 ectopically erupted teeth that they claim their patients
21 had?

22 A I'm not sure I would do it that way because some
23 have more and some have less.

24 Q But I'm asking about average.

25 A I know, I heard that. But I didn't.

0079

1 Q I'll do the math. 1,629 divided by three,
2 divided by 12. Well, I'm coming up with 45 ectopically
3 erupted teeth, so that's clearly not right. The number is
4 whatever it is.

5 A I will take your word it is 45.

6 Q It is not 45. And you know that, don't you, sir?

7 JUDGE SEITZMAN: Let's go on.

8 Q (BY MR. MORIARTY) Now, do you team up with Dr.
9 Anderton or others to hold courses for dentists?

10 A Yes, sir.

11 Q Tell us about that.

12 A We teach a number of subjects at the dental
13 schools and for dental associates when asked.

14 Q All right. And what kinds of things do you teach
15 about?

16 A We teach them about the principles and rules and
17 regulations that dentists should follow, how to organize
18 their offices so that those rules are followed, so that
19 the State board rules are in place.

20 Q Now, let's talk about some of those rules. One
21 of those rule rules is that a dentist is obligated to keep
22 in his office all the supporting materials that would
23 justify turning in claims to the State of Texas, correct?

24 A You will have to be more specific for me, sir.

25 Q A dentist is required under Texas law and Texas

0080

1 Medicaid rules to keep in their office all of the patient
2 records that they use to justify the treatment rendered to
3 a Medicaid patient.

4 A I don't remember the Medicaid manual specifically
5 saying they were required to keep in their office. It
6 specifies what they need to work-up a case, but to keep in
7 their office, you lost me.

8 Q I'm going to pull up my rule cheat sheet. What
9 do you teach doctors about the requirements to keep stuff?

10 Let me represent to you that this is R-15,

11 Page 033. Do you see where it says, failing to maintain
12 for the time required by the rules relevant to the
13 provider records and other documentation that the provider
14 is required by Federal or State law or regulation to
15 maintain? Do you see that?

16 A Yes, sir.

17 Q Among those rules would be the HLD score sheet,
18 correct?

19 A Yes, sir.

20 Q And if the HLD score sheet is not kept in that
21 file, then they have violated the Medicaid rules, haven't
22 they?

23 A I would assume, yes.

24 Q And if they failed to keep the other diagnostic
25 material, including the x-rays, the molds, the diagnostic

0081

1 tests and other material, if they failed to keep that,
2 that would be a program violation, wouldn't it?

3 A We teach that those things are to be kept because
4 of State board rules. So the State board requires that
5 records be kept.

6 MR. MORIARTY: All right. Let's highlight
7 from where it says the documentation, please.

8 Q (BY MR. MORIARTY) So whatever the State board
9 rules require, this is in addition to the State board
10 rules, and this is directly out of the Texas Medicaid
11 manual, which has been admitted into evidence, R-15, Page
12 24, 024; do you agree?

13 A Yes, sir.

14 Q So they got to keep the models, the HLD score
15 sheets, the x-rays, they have to keep all those, don't
16 they?

17 A For both institutions.

18 Q Now, let me ask you this: Does the State, for
19 example, OIG, have the right to go out to their office and
20 say, give us these files?

21 A I would assume so, but I'm not versed in State
22 OIG rules and regulations that well to answer you
23 specifically.

24 Q Well, you know that's how they got the files on
25 the All Smiles case, the Malouf case; they went there and

0082

1 said, we want these files, correct?

2 A So they must do it.

3 Q You know that's what happened in Antoine?

4 A Yes, sir.

5 Q Did you talk to Dr. Nazari about that?

6 A No, sir.

7 Q Have you ever talked to Dr. Nazari?

8 A I have talked to him, yes, sir.

9 Q Now, isn't there a rule in dentistry, that if it
10 isn't in the file, it didn't happen?

11 A Well, there's no rule written with those words.

12 Q Okay. Here is my question: Isn't there a rule

13 in dentistry that if it's not in the file, if you haven't
14 documented it, it's treated as if it didn't happen?

15 A I agree 100 percent with what you are saying and
16 we follow that and we teach that. The exception today is
17 because of the complexity of charts and material in an
18 office is totally different than it was many years ago
19 when a chart might consist of a five-by-seven card and now
20 we have some hard paper charts, we have files in a
21 separate building that might be radiographs, we have
22 digital records of different computer programs and
23 different designated computers.

24 So that's the exceptions that I would -- I
25 would have to -- for your convenience, specify.

0083

1 Q Here is my point: When OIG sent their
2 investigators out to get the records, are they entitled to
3 rely on the dentist to turn over whatever he has that's
4 appropriate to that patient at that time?

5 A I don't know. That's a complicated question. At
6 that time. I would hope that the people that I have
7 worked with at the State through the years that I know and
8 respect a lot, that they would give a dentist an
9 appropriate amount of time to put together what's needed,
10 whether it's minutes or hours or whatever. That's
11 something I have run in to a lot through the years,
12 dentists trying to put together material and having to get
13 things nowadays from two different computers, for
14 instance.

15 Q All right. Let's talk about ectopic eruption.
16 Tell the Court what ectopic eruption means.

17 A Ectopic eruption means the sentence that's in the
18 Medicaid manual that is a comprehensive directions for the
19 dentist, that says an unusual pattern of eruption such as
20 a high labial cuspids or a tooth that's out of the long
21 axis of the alveolar ridge.

22 Q When, as a dentist, were you taught what ectopic
23 eruption means?

24 A Be in the 1970s.

25 Q And did they even have Medicaid in the 1970s?

0084

1 A It was starting and there was predecessor forms
2 of it under Texas law and Texas programs.

3 Q Here is what I'm trying to ask: Is there an
4 accepted dental explanation for what ectopic eruption
5 means?

6 A In Medicaid? Absolutely, 100 percent.

7 Q And is it your contention that that definition
8 applies to all dentists?

9 A It is my contention that that definition applies
10 to anyone who chooses to get paid for doing Medicaid.

11 Q All right. Let's see if we can break ectopic
12 eruption down. What does ectopic mean?

13 A Ectopic could mean several things to different
14 people with a subjective interpretation. Out of place.

15 Q I'm not really sure I understand that, so let me
16 see if I can translate it into Greek. Ectopos is the
17 Greek word for out of place; are you aware of that?

18 A Yes, sir.

19 Q How do you know that?

20 A You just told me.

21 Q Did you know it before that?

22 A I think I was aware. I did go to school.

23 Q Ectopic means out of place, right?

24 A It means that in medicine all over.

25 Q So when we talk about an ectopic pregnancy, we
0085

1 are typically talking about a pregnancy that happens in
2 the fallopian tube?

3 A Possibly, yes.

4 Q It's a pregnancy that happens some place it is
5 not supposed to happen, true?

6 A Yes, sir.

7 Q All right. When you were taught in dentistry,
8 what -- when did you go to dental school?

9 A 1964.

10 Q Were you taught in dental school the meaning of
11 ectopic eruption?

12 A I'm sure I was, sir.

13 Q You were taught while you were in dental school
14 what ectopic eruption means and you were taught that means
15 that was a tooth out of place, true?

16 A Very possibly true.

17 Q You do not deny that that's what you were taught
18 from a scientific standpoint, from a medical standpoint in
19 medical school; a tooth that is out of place is an ectopic
20 eruption?

21 A I'm sorry, sir. But to answer, I'm sure it was
22 more complex than that. I happened to have had a very
23 good orthodontic course as an undergraduate, and I'm sure
24 textbooks and instructors discussed that type of material
25 more than just saying it's this word.

0086

1 Q I can't tell whether you are saying come here or
2 go sick 'em. Are you saying you did or did not get taught
3 what ectopic eruption means in dental school?

4 A I'm sure I did.

5 Q All right. And what you were taught is ectopic
6 eruption is a tooth that is out of place?

7 A Yes, sir, and more. I'm sure more. Thinking
8 back to our courses that we took.

9 Q All right. Were you here yesterday when Dr.
10 Tadlock said he had done an exhaustive study of research
11 and he found more than a thousand articles that dealt with
12 ectopic eruption in the professional literature?

13 A I was, sir.

14 Q Did you disagree with his testimony about what he
15 said the scientific literature says -- defines as ectopic
16 eruption?

17 A No, I didn't disagree.

18 Q All right. If the Judges did research on their
19 own about ectopic eruption, what we are going to see is
20 thousands or at least hundreds of articles explaining what
21 ectopic eruption is, and generally speaking, one of the
22 components is it means a tooth that is out of place, true?

23 A I would expect you are correct, sir.

24 Q Now, if I understand what you are claiming, one
25 of the things you are claiming is that the Texas Medicaid

0087

1 manual changes that definition?

2 A Yes, sir.

3 Q How does it change it?

4 A It's very specific. The manual says it's the
5 comprehensive guide for a dentist performing Medicaid and
6 wishing to be paid in the fee schedule that is Medicaid.

7 Q So a dentist need nothing except what's in the
8 manual to practice competent dentistry?

9 A That is correct, sir.

10 Q And get the manual, read the manual and you can
11 be a competent dentist; that is your position?

12 A No, sir, I didn't say that.

13 Q That's what I understood you to say.

14 A You misunderstood, sir.

15 Q Isn't a dentist obligated to bring all their
16 professional knowledge and skill and expertise and apply
17 the Medicaid rules to be paid for under Medicaid?

18 A I would think so, yes, sir.

19 Q All right. And what is the Medicaid definition
20 for cleft palate?

21 A I'll have to read it off the list of nine that I
22 don't have a copy of that in front of me.

23 Q We can pull that up. I think it's up on the top.
24 All right. Show me where the definition is for cleft
25 palate.

0088

1 A Highlighted.

2 Q Read me the part that's the definition.

3 A Submit a cleft palate case in the mixed dentition
4 only if it can be justified in a narrative why there
5 should be a treatment before the client is in full
6 dentition.

7 Q That's the definition?

8 A That year.

9 Q Are you contending that those words constitute
10 the definition of cleft palate?

11 A No, I didn't say that.

12 Q Okay. My question is: Where does the Medicaid
13 manual define what a cleft palate is?

14 A It's only that -- I believe there are some
15 verbiage we can look up earlier in the dental chapter.
16 There used to be, unless the last few years it's been
17 removed. Somebody would have to look it up, but it used
18 to be Chapter 18.

19 Q Pick a year.
20 A Start back with --
21 Q How about 2008?
22 A -- 2001.
23 Q How about 2008? That's --
24 A No, I was going back before '04.
25 Q Are you saying that the Texas Medicaid manual
0089
1 defines what a cleft palate is?
2 A No, sir, I'm not saying that.
3 Q Does the Texas Medicaid manual define what an
4 overjet is?
5 A Well, it has a paragraph that does say that, yes,
6 sir.
7 Q Does it define overjet?
8 A Yes, sir.
9 Q Let's go back to that. Show me where the
10 definition of overjet is contained in that document?
11 A Where it says overjet.
12 Q Where is the definition?
13 A Underneath it.
14 Q What part of those words constitutes a definition
15 of overjet?
16 A I think the whole sentence is about all that we
17 have.
18 Q No, sir. Don't you have your dental education?
19 A Touche. In Medicaid, you asked me, and I said in
20 the Medicaid manual, that's what we have.
21 Q Let's approach it like this. May we fairly
22 assume that that manual does not define overjet?
23 A That manual defines overjet as the Medicaid
24 practitioner is required to submit a case.
25 Q Explain to us the difference between ectopic
0090
1 eruption and -- how do you differentiate ectopic eruption
2 from crooked teeth?
3 A Crooked teeth is not a term that I use or a
4 dental scientific term, Counsel.
5 Q Human beings use the word crooked teeth, don't
6 they?
7 A I'm sure they do, but dentists don't.
8 Q Is there any difference between a crooked tooth
9 and an ectopic eruption?
10 A I don't know. I don't use the term crooked
11 teeth.
12 Q How about slightly twisted teeth?
13 A No, sir, I don't use that term.
14 Q Well, so you are saying that you have no idea
15 what a crooked tooth is or slightly twisted tooth; is that
16 what you are telling me?
17 A I probably don't have an idea of what those are.
18 Q Now, it appears that 100 percent of the random
19 selection of Antoine Dental cases had ectopic eruptions.
20 Did you hear the testimony yesterday from Dr. Tadlock

21 about how rare ectopic eruptions are?

22 A I did.

23 Q And do you disagree with the testimony about how
24 rare legitimate ectopic eruption are?

25 A I wouldn't say legitimate, but I agree with his
0091

1 discussion, which I thought was excellent.

2 Q And in essence, all of the scientific papers on
3 ectopic eruption describe it as occurring very
4 infrequently, true?

5 A And with the excellent background that he gave, I
6 thought it was very well done.

7 Q Let's go to the definition of ectopic eruption
8 and blow that up, please. What part of the paragraph
9 under ectopic eruption do you contend is a definition, a
10 Medicaid definition?

11 A Certainly, the first five words before the comma.

12 Q All right. Let's talk about the first five
13 words. Let's talk about the second word, unusual. Does
14 unusual have a different meaning to dentists than it does
15 to all the rest of us?

16 A I'm sorry, I would not know that.

17 Q What do you understand unusual to mean?

18 A I understand unusual to mean that it's not the
19 usual pattern that we would expect.

20 Q All right. Now, let's talk. This is an
21 important issue for the Judges. When orthodontists or
22 dentists talk about occlusion, they typically use a word
23 called ideal, true?

24 A We see that, yes, sir.

25 Q Ideal occlusion is teeth in exactly the position
0092

1 that would be the most desirable position, true?

2 A It is still subjective, but I'll agree, true.

3 Q And the vast majority of people, 70, 80,
4 sometimes 90 percent of people do not have ideal
5 occlusion, true?

6 A I would not be prepared to agree to that, no,
7 sir.

8 Q You heard Dr. Tadlock testify about that
9 yesterday and all of his review and all of his science,
10 that the percentages are very high about people who lack
11 ideal occlusion?

12 A Yes, sir.

13 Q And do you agree that at least 50 percent of the
14 people do not have ideal occlusion?

15 A No, sir.

16 Q What percentage do you feel -- what percentage do
17 you claim under oath lack ideal occlusion?

18 A Because I consider that to be an extremely and
19 100 percent subjective evaluation by each person, I don't
20 have a percentage, sir.

21 Q Okay. I want to stop and talk about that. I
22 think we talked about this earlier. Let me see if I

23 understand what you are saying. Ideal occlusion is a 100
24 percent subjective description?

25 A I didn't say that.

0093

1 Q I'm trying to understand. Tell me again. When
2 you say 100 percent subjective, what are you trying to
3 tell the Court?

4 A Can she read it back, what I said?

5 Q Let's -- let me try to clarify it. When you say
6 100 percent subjective, what are you trying to tell the
7 Court?

8 A I would prefer to hear what my own words were.

9 Q Well, then why don't you talk to this young lady,
10 she will be able to take care of you at lunchtime and we
11 can do that. But in the meanwhile, I would request that
12 you answer my question.

13 A Well, I don't know then. I don't remember the
14 sequence of the words. You want an exact what I said on
15 that 100 percent and I don't remember it already.

16 Q When you say the phrase, 100 percent subjective,
17 what is it you are trying to communicate?

18 A I believe we were trying to say that ideal is
19 different to everyone. It is subjective in a different
20 person. One person might see ideal as appearing one way,
21 whether it was technically the same or not.

22 Q So in essence, ideal occlusion has no meaning?

23 A No, I would not say that.

24 Q Well, if it's 100 percent subjective, how would
25 we ever possibly legitimately disagree?

0094

1 A It would be very difficult.

2 Q It would be impossible, wouldn't it?

3 A Well, difficult.

4 Q So if I understand what you are saying, ideal
5 occlusion is one of those concepts in dentistry that
6 nobody has any idea what it is, they just -- everybody has
7 their own opinion; is that what you are saying?

8 A I don't believe I said ideal occlusion, you just
9 brought in occlusion, that's the whole different world. I
10 said ideal, and you were talking about the ectopic
11 eruption arrangement. We have standards of expectations
12 world-wide in occlusion.

13 Q What percentage of people have ideal occlusion?

14 A I have no way of knowing that. I don't think
15 it's in any statistics like he looked up.

16 Q When you got out, first five or ten years out of
17 dental school, how often would you find ectopically
18 erupting teeth?

19 A I couldn't even speculate on that, sir.

20 Q Just have absolutely no idea?

21 A No.

22 Q Often, sometimes, rare, never? Help us.

23 A I couldn't speculate. There's -- there's too
24 many different situations, like where you might be exposed

25 to patients that were specifically sent to you for
0095

1 evaluation or something and those might all have a less
2 than ideal.

3 Q Let's go back to R-69. It's the distribution of
4 scores that Antoine Dental turned in to the State to get
5 paid. Let me represent to you that among that 1,629
6 ectopic eruptions, are every single patient from a random
7 selection.

8 Now, what I would like you to do is explain
9 to the Court, does that make any sense at all?

10 A Well, absolutely, because in any doctor's office,
11 particularly in an orthodontist's office, I think we can
12 make a fair assumption that parents with a child that
13 their sense of ideal, they don't bring the child to the
14 doctor to be analyzed. So the orthodontist sees a
15 self-selected group of people that have less than ideal
16 tooth arrangements in the first place.

17 Q So you don't have a clue how many people you saw
18 with ectopic eruptions your first ten or 15 years out of
19 dental school, but you are telling us there is nothing
20 unusual about a clinic having 100 percent ectopic
21 eruptions?

22 A 100 percent, the charts were opened and were
23 Medicaid patients; is that what you are saying?

24 Q No. I'm asking you: That clinic, that clinic
25 shows 100 percent ectopic eruptions for that random set?

0096

1 A I wouldn't be surprised at all of that. In fact,
2 I would think most orthodontic offices in the State are
3 that way; particularly heavy Medicaid offices that do a
4 lot of Medicaid treatment.

5 Q Are you contending that there's two different
6 definitions; one definition for Medicaid patients and one
7 definition for private pay patients of ectopic eruption?

8 A No, I never contend that, no, sir.

9 Q So if I were a dentist and I had private pay
10 patients, wouldn't I assume an ectopic eruption is a tooth
11 that is out of place?

12 A You might, particularly after that presentation
13 yesterday morning.

14 Q But if I was a Medicaid dentist, all I would be
15 able to know is an unusual pattern of eruption?

16 A That's what it says in the manual, not me.
17 That's what the manual says.

18 Q I understand exactly what the manual says. My
19 question to you is: Isn't it true that usual is teeth
20 that are out of their ideal position, that is what is
21 usual is, isn't it?

22 A Not to me, not at all, no, sir. I disagree with
23 that. I disagreed five minutes ago and I still do.

24 Q Well, you are not an orthodontist, are you?

25 A No, sir.

0097

1 Q You haven't practiced as an orthodontist, have
2 you?

3 A Oh, no, sir.

4 Q You Weren't trained in it, were you?

5 A Somewhat, yes, sir.

6 Q Some, what, 40 years ago?

7 A Well -- and since then, I have studied it, too.

8 But they're in my training, yes, sir.

9 Q You don't work in an orthodontist's clinic?

10 A No, sir, I do not.

11 Q So everything you know about orthodontists'
12 clinics, what their problems are and what kind of patients
13 they get are from people you have talked to and not from
14 your owner personal experience?

15 A That is correct.

16 Q If I'm a dentist who learned what you learned in
17 dental school about ectopic eruptions, isn't it -- don't
18 you have -- are you telling me I have to switch to a
19 different definition if I desire to treat Medicaid
20 children?

21 A Well, you have to only score the anterior 12
22 teeth in the first place, so there's a lot of limitations
23 in that manual should you choose. That's just one of
24 many.

25 Q Now, let me see if I can help the Court. It
0098

1 isn't so critical to understand what ectopic eruption is
2 if you can understand what unusual is, and the real issue,
3 since you seem to be claiming ectopic eruption means
4 anything that's not an ideal occlusion, then if they
5 believe that the usual state of people's mouth are crooked
6 teeth, twisted teeth, teeth slightly out of position, if
7 they believe that was usual and if that's what the science
8 is, then Antoine Dental ought to lose, shouldn't they?

9 A (No audible response.)

10 JUDGE EGAN: You need to make your answers
11 orally.

12 JUDGE SEITZMAN: We don't -- she can record
13 a nod, but we need a yes or no.

14 THE WITNESS: I know, but I didn't discern a
15 question of yes or no. I'm sorry.

16 MR. CANALES: It's a statement.

17 Q (BY MR. MORIARTY) If the usual state in this
18 country of people's teeth are twisted or slightly out of
19 position or candid or crooked as Dr. Tadlock testified,
20 then Antoine Dental's making up all these ectopic
21 eruptions, aren't they?

22 A I did not agree 100 percent with Dr. Tadlock's
23 statement in that regard.

24 Q You were never at any time a director for the
25 Texas Medicaid program, were you?

0099

1 A I thought I was. They told me I was.

2 Q You were never a salaried employee of the State

3 of Texas, were you?

4 A A salaried -- I was a salaried employee as a
5 professor at the University of Texas.

6 Q I stand corrected.

7 A And we did -- go ahead.

8 Q There's two organizations. Let's talk about
9 them. You have the State of Texas and you've got National
10 Heritage Insurance Company. They are not the same, are
11 they?

12 A No, sir.

13 Q When you were the so-called Texas Medicaid
14 director, or whatever you claim your title to be, you
15 didn't work for the State of Texas, did you?

16 A No, sir.

17 Q You worked for National Heritage Insurance
18 Company?

19 A Correct, sir.

20 Q And they gave you whatever title they wanted to
21 give you, but that didn't make you the Texas State
22 Medicaid dental director, did it?

23 A Semantics. That's what they chose to call me and
24 I accepted it.

25 Q Let's look at R-15-005. Do you see that second
0100

1 paragraph, sir?

2 A Yes, sir.

3 Q Do you see that second line where it says, the
4 Health and Human Services Commission?

5 A I'm looking. Yes, sir.

6 Q Would you read that to the Court?

7 A The Health and Human Services Commission, the
8 single State Medicaid agency is responsible for the Title
9 19 program.

10 Q During the time period you were an employee of
11 National Heritage Insurance Company, you were not an
12 employee of HHSC, the single State Medicaid agency, were
13 you?

14 A Not at that time, no, sir.

15 Q All right. Now, do you remember when EDS had the
16 State Medicaid contract, like TMHP, and they were denied a
17 new contract and we switched over to TMHP?

18 A I remember that, yes, sir.

19 Q And tell the Court what changed about the HLD
20 approval process.

21 A I have no idea, Counsel.

22 MR. MORIARTY: Let's go to R-58.

23 Q (BY MR. MORIARTY) If I understand your sworn
24 testimony, you have absolutely no idea what changed when
25 we switched from the insurance company to the State paying
0101

1 for claims; is that your sworn testimony?

2 A No, you asked me about the process, when it
3 changed over, and I said I didn't have any idea at that
4 time.

5 Q Okay. Let's look at the date of this email. Do
6 you know who Amy Neighbors is?

7 A Yes, sir.

8 Q And do you remember emailing her on or about
9 January 31st, 2007?

10 A No, sir.

11 Q Is your email address jamesorrrdds@austin.rr.com?

12 A Yes.

13 Q Does that appear to be an email that you wrote?

14 A Probably.

15 Q Let me represent to you that I have that from
16 State files and I have every reason to believe it's a
17 legitimate email from you. So let's go to the last
18 sentence under that first paragraph.

19 A I understand that since January 1, 2004, there's
20 been a different approval process, both of codes approval
21 and amount of review by a doctor. So any treatment since
22 that date would get my close scrutiny.

23 Q Tell the Judge what you mean.

24 A It means that when you asked me what I knew about
25 the process, I said I didn't know, and I still don't know
0102

1 from that all. I know is that I had -- was gone and no
2 knowledge that things were the same, people were
3 complaining in nonspecific ways in the community, but I
4 certainly didn't know.

5 Q So when you say, I understand that since January
6 1, 2004, there's been a different -- quote, different, end
7 quote, approval process, what did you mean by different in
8 quotes?

9 A Probably just for emphasis.

10 Q Why did you need to tell the State of Texas that
11 you understood that there was a different process,
12 approval process?

13 A Only because everybody -- everybody was talking
14 about that. Different dentists and people would call me
15 and say, should I go ahead and send in cases, are they
16 working, are they set up and doing the process, and I
17 would say, I don't know, I assume so, send something in
18 and try it.

19 Q When you were telling the State of Texas, so any
20 treatment since that date would get my close scrutiny,
21 what were you suggesting?

22 A I wasn't suggesting anything except that -- I
23 think in the previous, Ms. Neighbors asked me if I would
24 do a review for them.

25 Q So any treatment since that date would get my
0103

1 close scrutiny, why would it get your close scrutiny?

2 A Because I might have been asked to review a case.

3 Q And you took an hour each morning to review the
4 plaster molds and the films?

5 A Apparently so, yes, sir.

6 Q Well, that's what you told the State, right?

7 Now, y'all did about \$10 million a year in
8 ortho at that time, right?

9 A I don't know, sir.

10 Q Sir?

11 A I do not know that figure.

12 Q Let me represent to you that I had the numbers
13 pulled up, and for 2002 and 2003, it was about \$10 million
14 a year or ortho; do you agree?

15 A I don't know, sir.

16 Q And you would be reviewing hundreds of cases a
17 week, true?

18 A Possibly.

19 Q And how many ever cases you could get a year that
20 would cover \$10 million, that's how many files you would
21 be reviewing a week, isn't it?

22 A Some weeks there would be few and some weeks
23 many.

24 Q And you said -- what you testified to a little
25 while ago is you took an hour per file, what you testified
0104

1 here is that it took an hour each morning for how many
2 ever number of cases came in?

3 A Sometimes there would be two cases, and sometimes
4 there would be 20. And a lot of them might be held over
5 until the next day.

6 Q So if you had 20, you would just have to work
7 sort of day and night?

8 A No. I might work for an hour at that, because
9 there was probably a 10 o'clock meeting to go to. I did
10 all the administration, prior authorizations, I had half a
11 dozen jobs, had to go to HHSC meetings, policy meetings,
12 medical policy.

13 Q I'm sorry for stepping on you.

14 A I couldn't sit all day and had no intention of
15 sitting all day and neglecting my other duties that my
16 bosses expected me to do and just review orthodontics in
17 that one particular day, because orthodontic review was
18 probably 20 percent of my initial duties.

19 Q And if I understand your sworn testimony that you
20 have given before, you yourself reviewed each and every
21 HLD application and files that was submitted to your
22 insurance company for payment?

23 A Correct, sir.

24 Q Now, you were talking about the dentist, talking
25 about this new approval process or this different approval
0105

1 process, what were they saying?

2 A I don't remember now, sir. I'm sorry, that's
3 been too long ago.

4 Q Let me see if I can help you. Did there come a
5 time when every crooked dentist in the State of Texas
6 figured out that nobody was guarding the bank?

7 MR. ANDERTON: Objection, Your Honor,
8 argumentative.

9 JUDGE SEITZMAN: Sustained.
10 Q (BY MR. MORIARTY) Let me reword that. Is that
11 pretty funny?
12 A Yeah, it is.
13 Q Is this proceeding funny to you?
14 A No, but that was.
15 Q Okay. If there's anything that you want to laugh
16 at?
17 A Probably.
18 Q Okay. Here is my question: Did the dentists of
19 Texas figure out that there was a different approval
20 process, one that would gain your close scrutiny where the
21 contractor quit reviewing the files for substance; that
22 is, they checked them for math, but they didn't check them
23 for medical necessity or appropriateness or treatment?
24 Mr. ANDERTON: Objection, Your Honor.
25 JUDGE SEITZMAN: Let him finish the question

0106

1 before you object.
2 Had you finished your question?
3 MR. MORIARTY: Yes, sir.
4 JUDGE SEITZMAN: What is the objection?
5 MR. ANDERTON: Argumentative.
6 JUDGE SEITZMAN: Overruled.
7 Answer the question.
8 A I have no way of knowing that, sir. No way.
9 Q (BY MR. MORIARTY) Are you aware that the
10 contractor did -- have you heard that people got
11 complained about sending in their x-rays because they
12 realized that nobody at TMHP was actually reviewing the
13 x-rays or reviewing the molds or reviewing the files for
14 approval?
15 A I believe I heard those rumors from talk, not
16 anything substantial by people other than light
17 complaints.
18 Q Tell me when you heard that.
19 A That would have been after 2004 and the years
20 afterwards.
21 Q Can you help this Court in any respect understand
22 what it was that you were communicating in this email
23 about treatment that would get your close scrutiny? What
24 would cause you --
25 A Probably what we just said, that the rumors that

0107

1 we were hearing of people complaining, that they didn't
2 get radiographs sent back or models sent back or they
3 wondered -- speculating if cases were flying through with
4 a switch turned off. That's the only thing I can help
5 tell you, and those, I don't have who said what when. I'm
6 just remembering because of my activities of teaching and
7 State board work cases, talking to people constantly in
8 addition to practicing.
9 Q Now, are you aware that Texas expenditures from
10 orthodontists went from \$10 million a year during your

11 time period to as much as \$248 million, I think, for 2010
12 or 2011?

13 A I was never -- have never been aware of the
14 specific figures.

15 Q Do you disagree?

16 A I don't disagree. I have no way to disagree or
17 agree, either one.

18 Q Tell this Panel the significance of our
19 orthodontic expenditures going up 25-fold in 11 years.
20 Does that tell you anything?

21 A Well, the first obvious significance is that they
22 had -- the dental and medical establishment in Medicaid
23 had been trying for years and years to get fee increases
24 for the providers, to make it feasible that they could see
25 patients and meet their overhead.

0108

1 So I assume, even if you have the same
2 number of providers -- and provider enrollment was also
3 one of the activities, as probably everybody in this room
4 knows, that was one of my instructions that I was supposed
5 to try to recruit doctors to be Medicaid enrolled
6 providers. And if we were successful in that, as the
7 years went by and enrolled more providers, and if there
8 were fee increases that came through, then I would assume
9 that the amount of money would go up, too.

10 Q How much -- tell the Court under oath how much
11 orthodontics' fees have gone up for like D-8080 since you
12 were there in 2003.

13 A I'm sorry, Counsel. I don't know anything. I
14 haven't ever looked or thought about those figures.

15 Q Well, the reality is, you know they haven't gone
16 up -- orthodontic payment rates haven't gone up at all
17 since 2003, have they?

18 A I don't know that, sir. I'll take your word for
19 it.

20 Q All right. Now --

21 MR. CANALES: Excuse me. Can I have a copy
22 -- we don't have a copy of the proposed Exhibit 56. It's
23 not offered in evidence, but I would like to have a
24 courtesy copy.

25 MR. MORIARTY: I will not only tender them a
0109

1 copy, but I'll tender it into evidence. It's R-58 of our
2 exhibits. We have added it to our exhibits. We will get
3 you a copy.

4 MR. CANALES: We would like to be able to
5 have a copy, Judge, of whatever exhibit they are going to
6 be offering instead of afterwards, if we could have that
7 courtesy.

8 JUDGE SEITZMAN: We will take it up in a
9 half-hour, right before we go to lunch.

10 Q (BY MR. MORIARTY) Let's go to R-57. Now, this
11 is another email that you wrote, Dr. Orr. Look at the
12 date. Now, this would have been November 6th, 2002, and

13 let me represent to you that I got this out of our State's
14 files. I don't expect you to remember this. Do you
15 happen to remember who Terry Cook was?

16 A No, sir.

17 MR. ANDERTON: I object. Is this going to
18 be introduced in evidence?

19 JUDGE SEITZMAN: I don't know. Right now, I
20 don't know what it is and what it's going to be used for.

21 MR. ANDERTON: We don't have a copy of it.

22 MR. MORIARTY: Can we go down, Stacey?

23 Would you highlight this, please?

24 MR. ANDERTON: Your Honor, objection. We
25 are putting objects on the screen that is not introduced

0110

1 into evidence and we are just being presented copies of
2 them as they come up. We have not had time and don't know
3 what they are.

4 JUDGE SEITZMAN: They are impeachment. I
5 assume they are impeachment documents. They don't even
6 necessarily have to be tendered into evidence to be used
7 for impeachment. I will give the witness an opportunity,
8 if he doesn't have a copy of that in front of him, to read
9 the entirety of the document before you ask him a question
10 about it.

11 Q (BY MR. MORIARTY) Doctor, let me apologize to
12 you, I don't have the slightest doubt you don't remember
13 these emails and I will be happy to give you a copy of
14 lunch. And you absolutely have the right to read every
15 word, and it won't take long. There are a couple of
16 points that I want to make on it.

17 A I think because of Counsel's intervention, that
18 would probably be the most courteous thing to do. I would
19 just soon read it at my leisure.

20 JUDGE SEITZMAN: I'm afraid you're not going
21 to have a whole lot of leisure, Doctor.

22 MR. ANDERTON: Your Honor, there is no
23 foundation.

24 JUDGE SEITZMAN: It can be used -- if it's
25 being used for impeachment purposes, it's not -- it

0111

1 doesn't have to be tendered into evidence. It can be
2 placed on the screen so he can have an opportunity to read
3 it and everybody else can have a chance to see if so we
4 don't burn up a couple of trees in the process.

5 MR. HILDER: With all due respect, Judge --

6 JUDGE SEITZMAN: I'm only going to hear from
7 Mr. Anderton, he's the counsel.

8 Q (BY MR. MORIARTY) Now, I'll pull out the rule at
9 lunchtime, but I'm not sure -- I'm not sure I understand.

10 It sounds to me like you are taking the position that
11 there's two different medical standards for ectopic
12 eruption for Medicaid children and for non-Medicaid
13 children.

14 Let me represent that this comes from your

15 email. I will let you read it at lunchtime. But you
16 write, the Medicaid program expects a doctor to use the
17 very same ethical, technical and management standards for
18 Medicaid patients as he does for private pay patients.

19 That's the law isn't it?

20 A Counsel, when -- if you have a copy here, in
21 those years when the dental provider signed up to be a
22 Medicaid provider, he signed an enrollment contract in
23 which he agreed to go by the Medicaid rules and so forth.
24 And if it would help the Court, to my knowledge, I never
25 saw, having served as a member of the Texas State Board of
0112

1 Dental Examiners and the Texas State Board of Radiation, I
2 never saw any conflicts between Federal and State Medicaid
3 guidance and the Texas State Board of Dental Examiners.

4 So I can't take an implication from this
5 email that perhaps dentists were in conflict if they tried
6 to see a private patient here and a Medicaid patient in
7 the other room, and that they were conflicted in trying to
8 treat them.

9 Q I'm not making that suggestion.

10 A That's what it seemed to me. I'm sorry. It
11 seemed that way.

12 Q Tell me what you mean when you say that Medicaid
13 program expects a doctor to use the very same ethical,
14 technical and management standards for Medicaid patients
15 as he does for private pay patients. What do you mean by
16 that?

17 A I mean that that's what they have been trained
18 and taught in all their juris prudence courses in and
19 since school and in required courses and that we expect
20 them to behave in that way. That's pretty clear to me.

21 Q And isn't it fair to say that the Medicaid policy
22 might have the right to narrow their options, but it can't
23 expand their options, you can't expand the medical
24 definition?

25 A Well, to answer that, most of the Medicaid
0113

1 manuals have always had a statement that said that if
2 there was a question, that the Medicaid manual also backed
3 up the State board.

4 JUDGE SEITZMAN: Let's go off the record a
5 second.

6 (Off the record.)

7 JUDGE SEITZMAN: We are taking a lunch break
8 and see you at 1:30.

9 (Off the record.)

10 JUDGE EGAN: All right. We are reconvening
11 in SOAH Docket 529-13-0997. It is now 1:35 p.m., on May
12 29th, 2013. And we are still on cross, so you may
13 proceed.

14 MR. MORIARTY: Thank you, ma'am. Before I
15 get started on cross, could I ask that the court reporter
16 inquire of who the people are present so we have it for

17 the record for who is present in the room.

18 JUDGE EGAN: There are a lot of people
19 present in the room.

20 MR. HILDER: Judge, I would object. This is
21 an open courtroom. People can come and go in this
22 courtroom and I think it's unnecessary and I don't think
23 it's proper. Just maybe the attorneys and paralegals that
24 are involved in these proceedings.

25 JUDGE EGAN: You may feel free to introduce
0114

1 yourself to the people that are here during a break, and
2 -- but it's a public hearing and the Rule has not been
3 invoked and it doesn't appear that any of those
4 individuals are witnesses even if the Rule had been
5 invoked.

6 MR. MORIARTY: May I proceed?

7 JUDGE EGAN: Yes, you may.

8 MR. MORIARTY: I would like the record to
9 reflect that over the break, pursuant to Dr. Orr's
10 request, we have made available the following files to
11 him: All Smiles Patient 19, Patient 26, All Smiles
12 Patient --

13 JUDGE EGAN: Can you give me the exhibit
14 number?

15 MR. MORIARTY: Yes. We will have to pull up
16 the exhibit number.

17 JUDGE EGAN: Hold on. I may be able to go
18 ahead and give me the patient number, but at some time I
19 believe -- is it R-19 maybe?

20 MR. MORIARTY: Ketan, what is our exhibit
21 number for our All Smiles patients?

22 MS. MANELA: R-19.

23 JUDGE EGAN: Give me the numbers again.

24 MR. MORIARTY: 19, SF; 26, AJ; 35, AP; 17,
25 AD; 49, JW. And then for Antoine files, he reviewed
0115

1 SW, 9 -- I don't know why that is reversed -- AV, 57; DS,
2 60; and CF, 43.

3 JUDGE EGAN: You are going to have to --

4 MR. MORIARTY: I think we also had AS, 19;
5 and ADC, Patient Number 9.

6 JUDGE SEITZMAN: 9?

7 MR. MORIARTY: Yes, sir.

8 JUDGE EGAN: So it's 9, 57, 60, 43 and 19.

9 MR. CANALES: For the record, they are all
10 laying in front of Counsel's table -- of the witness
11 table, the ones that were viewed and on the side.

12 JUDGE EGAN: One of the problems is, is that
13 we only have one attorney for each side talking and you
14 are not it today, Mr. Canales, on this witness.

15 So, Mr. Anderton, if you have something to
16 say, please say it, but otherwise, let's proceed.

17 MR. CANALES: I apologize.

18 MR. MORIARTY: I would like to say to the

19 Court, where I think it will be particularly helpful to
20 look at the original pictures or the original molds, I
21 will be more than happy to bring them up. And I'm also
22 more than happy to have you guys look at any of them you
23 want to, to the extent of the issue about the original
24 photograph as contrasting to a copy. So I invite you to
25 do that as you see fit.

0116

1 JUDGE SEITZMAN: You are going to put your
2 electronic version up on the screen?

3 MR. MORIARTY: Yes, sir.

4 JUDGE EGAN: And could you speak up just a
5 little bit?

6 MR. MORIARTY: Yes, ma'am.

7 JUDGE EGAN: And, Dr. Orr, can you move the
8 microphone closer to you? And I will remind you that you
9 are still under oath.

10 Q (BY MR. MORIARTY) Dr. Orr, let me see if I can
11 clean up a couple of things and then we will go back to
12 what I consider substance. As I understood your testimony
13 this morning, you testified under oath that when you were
14 telling me that you really needed to see these molds and
15 these files, that you take an hour on every one of these
16 files to review them, true?

17 A Not an hour every time on every one. I don't
18 think I said that. It may have come out, but I didn't
19 mean it that way.

20 Q What range of time do you take to properly review
21 a file?

22 A Anywhere from 15 minutes to an hour, usually
23 longer than 15 minutes. It can take me a half-hour, 45
24 minutes on a case.

25 Q Could you give me your best estimate as the

0117

1 average amount of time it takes you to review one of these
2 cases properly?

3 A I don't think so, Counsel. Some are real
4 quickies and some aren't. Some are really clean. Depends
5 on the clinical material, how nice it was, what it shows.

6 Q Would we fairly assume that you spend an average
7 of say half an hour apiece?

8 A Easy.

9 Q And oftentimes more?

10 A Yes, sir.

11 Q Okay. Now, I don't know how much Medicaid braces
12 patients charge a year, so I just use 2,000, but let me
13 give you a couple of numbers. I'm going to represent to
14 you that I have had research done into how much the State
15 was paying for orthodontics when you were working for that
16 insurance company and it was about \$10 million a year.
17 And I don't know, 2000, 2001, about that time period,
18 okay?

19 A All right, sir.

20 Q And you don't disagree with that number?

21 A I don't disagree. I don't know.

22 Q And if you assume \$2,000 per patient and you
23 divided that into 10 million, what you would get is 5,000
24 patients; do you agree with that number?

25 A That's fine, yes, sir.

0118

1 Q And if you divide that by 250 working days a
2 year, that brings you down to doing 20 reviews per day, 20
3 HLD reviews a day. Are you with me?

4 A 250, that's what we all work?

5 Q Well, 250 days a year is 50 days -- or 50 weeks a
6 month times five. Now, did you work six and seven days a
7 week while you were working for the insurance company?

8 A Not necessarily. But if I could nicely put in on
9 your averages, the dental offices don't necessarily have a
10 consistent five day a week at all. So I mean, you say an
11 average, I mean, one office -- there's offices that work
12 three long days a week, some of them work late in the
13 evening for school kids and don't open in the mornings.
14 There's just a lot of variables that affect your average.
15 I might have days where I might get three or four sets of
16 cases in on the tables when I get there in the morning,
17 and other mornings, there would be 50.

18 Q Well, 20 would be an average?

19 A It's as good as anything else for me.

20 Q So some days, maybe you get 40, and some days,
21 maybe you get five, which average about 20 a day. If you
22 are to be believed and you spend even 15 minutes apiece,
23 you are talking about five hours a day?

24 A It could be sometimes, but not often.

25 Q Well, if you do an hour apiece and they are

0119

1 complicated, you would be spending 20 hours a day.

2 A One of the things that I had at NHIC that I don't
3 always have now is we had excellent staff people that got
4 there early, and we had a criteria that a case was laid
5 out in a certain order, certain materials on these long
6 tables, and they just did it exactly that way right. They
7 were good people, in my opinion. And, I mean, that
8 hastened my activities greatly because if everything
9 wasn't there the way they wanted to lay it down, they
10 boxed it up and sent it back to the provider.

11 Q I want to direct your attention right here where
12 you have in this email that you took one hour each
13 morning. Now, if I got 20 cases and you take -- 20 cases
14 on average and I take one hour a day, then that means you
15 are spending three minutes a file?

16 A Not me.

17 Q Well, were you not telling the truth here, were
18 you spending ten or 12 hours a day doing these or were you
19 not telling the truth when you told the Court early this
20 morning that you spent an hour per file doing these cases,
21 and when you told the Court under oath that you personally
22 reviewed all of those cases while you were a claims agent

23 for National Heritage Insurance Company?

24 A I don't think it was any of those. I've been
25 speaking in generalities and you've been speaking in

0120

1 averages, and I haven't been able to accept your averages.

2 In a nice way, I have said that didn't apply. Some days

3 we would have a little bit come in and some days a lot.

4 Q All right. Now, when you were approving and
5 denying claims for National Heritage Insurance Company,

6 whose pocket did the claims money come out of?

7 A I didn't do that type of bookkeeping or
8 participate. That was over in the financial section.

9 Q Let me ask you like this: National Heritage
10 Insurance Company was an insurance company like State Farm

11 or Farmers or somebody like that, and they got premiums

12 and then they paid claims, right?

13 A I won't say right or wrong, because I wasn't
14 always privileged to all the contractual methods that they

15 did.

16 Q Well, you do know that that changed in 2004 when
17 Texas Medical Health Partnership, THMP, came into affect

18 and the claims agent became purely an administrative agent

19 supposedly reviewing the files and paying claims out of

20 the State of Texas' money?

21 A All right, sir.

22 Q Are you aware that's true?

23 A In a general way, I was aware of that.

24 Q In a general way, you were aware of that?

25 A In a very general way.

0121

1 Q Now, Dr. Tadlock testified yesterday that his
2 research indicated that about four percent of the public

3 has an ectopic tooth. Do you agree, do you disagree or do
4 you just not know?

5 A I believe I testified that I disagreed with that
6 early today.

7 Q And what is the percentage of the population that
8 you would expect to have, based on scientific research,

9 have an ectopic tooth?

10 A Not only do I not know, I doubt if anybody knows.

11 Some of these research papers that people have published
12 that have to spend a lot of money to do studies and

13 examine a lot of people.

14 Q Have you read any of those papers?

15 A Yes, I have.

16 Q Can you name -- and help the Court, tell the
17 Court any research paper you have studied anywhere at any

18 time that says that an ectopic tooth is a tooth that's

19 slightly out of position or twisted or crooked.

20 A I do not have the names. In the last ten years,

21 like other people in this room, we spent time on the

22 computer researching things that have been printed up, but

23 I don't have the names of those at all.

24 Q Can you remember generally when would you have

25 done this research?

0122

1 A I'm sure any time in the last ten years.

2 Q You are swearing under oath you have actually

3 done research into ectopic eruption?

4 A Yes, I have.

5 Q Why?

6 A Just curious what was out there.

7 Q Why would you be curious about that?

8 A Why wouldn't I be? It's part of dentistry and
9 it's something we work in and we had our Medicaid guidance
10 rules and the manual.

11 Q Did you have the same attitude that any good
12 faith opinion by a provider would justify payment while
13 you were working for the insurance company?

14 A I don't think it mattered what my opinion was.
15 They were set up on what you and I would call a trust
16 basis and we -- I certainly didn't know if they were not
17 being trustworthy with a claim.

18 Q What do you mean they were set up on a trust
19 basis?

20 A The whole Medicaid program, as I think you and
21 probably most people in here would realize, it was set up
22 where it was a trustworthy situation between a provider
23 and the Carrier.

24 Q Well, Medicaid ortho is actually trust, but
25 verified, isn't it?

0123

1 A I'm not sure what you mean by that.

2 Q Well, if I was a Medicaid or took a Medicaid
3 child into a provider and they needed a cavity [sic] or
4 they needed a stainless steel cap or pulpectomy --

5 JUDGE EGAN: I think you meant, filling.
6 They don't usually need cavities.

7 MR. MORIARTY: I think you are probably
8 right.

9 JUDGE EGAN: Go ahead.

10 MR. MORIARTY: Sometimes they get a little
11 sassy and a cavity would do them some good.

12 Q (BY MR. MORIARTY) If I took my child -- Medicaid
13 child in to a provider and they had dental work needed
14 other than ortho, would it require prior approval?

15 A Some do and some don't.

16 Q Name a procedure that requires prior approval
17 besides Medicaid orthodontics.

18 A In those days, cast crowns.

19 Q I'm not asking about those days, I'm asking about
20 now.

21 A I would have to check the Medicaid manual now to
22 research an answer.

23 Q Can you give me any example other than ortho that
24 requires prior approval within the last ten years?

25 A I will have to check. I mean, I haven't paid

0124

1 attention to that.

2 Q Meaning, you don't know the answer?

3 A I do not know the answer.

4 Q Thank you. Isn't it true that you have testified
5 under oath that, even in a case where you would conclude
6 that a patient clearly does not qualify for braces, if a
7 provider testifies that patient is qualified for braces,
8 that's no evidence of malconduct on the part of that
9 provider?

10 A When did I testify to that?

11 Q In your deposition.

12 JUDGE EGAN: You are going to have to
13 clarify which deposition.

14 Q (BY MR. MORIARTY) How about I reword the
15 question. Do you remember having your deposition taken on
16 April 3rd, 2012?

17 A I think so, yes, sir.

18 Q Do you remember taking the position in that case
19 that even though you scored a client as having a five and
20 the dentist scored the patient as having a 27, that that
21 did not characterize -- you would not never characterize
22 that as a misrepresentation; isn't that what you testified
23 to?

24 A As a misrepresentation?

25 Q Yes, sir.

0125

1 A Meaning --

2 Q Well, like a lie.

3 A And I said that would never?

4 Q I'm asking you.

5 A Did I say never?

6 Q I'm asking if you admit or deny that you said
7 that?

8 A I don't know if I said it or not.

9 Q All right.

10 (Video deposition playing.)

11 JUDGE EGAN: Is there a hard copy that could
12 be -- can you give a page and line number of hard copy so
13 that she has it to insert the exact deposition transcript.

14 MR. MORIARTY: I think mine starts slightly
15 differently, but I'm going to give you this and we will
16 see to it that you have the transcript.

17 MR. ANDERTON: Your Honor, we object to
18 this. This deposition was in a totally different case.

19 JUDGE EGAN: This is for impeachment at this
20 point, so overruled.

21 (Video deposition playing.)

22 Q (BY MR. MORIARTY) Do you remember that testimony
23 now?

24 A No, sir.

25 Q Do you deny what you testified under oath in your

0126

1 deposition?

2 A No, sir.

3 Q Is -- so your position is that the mere fact that
4 there's one professional score says it's a five and
5 another score says it's 27 is effectively without meaning;
6 is that your position?

7 A No, sir.

8 Q When you talk about that's his subjective
9 opinion, what is subjective about him saying nine ectopic
10 eruptions and you saying zero? What is subjective about
11 that?

12 A That's different people's opinion of what they
13 observe.

14 Q Well, let me offer another thought. Could it
15 also be a lie?

16 A That's up to you.

17 Q How --

18 MR. ANDERTON: Objection, Your Honor. It's
19 argumentative.

20 Q (BY MR. MORIARTY) I can understand --

21 JUDGE EGAN: Let me rule on that. This is
22 cross, so I'm going to allow you some leeway. So we have
23 his testimony, what he said before in his deposition, so
24 it's pretty clear.

25 Q (BY MR. MORIARTY) Here is what I'm trying to
0127

1 understand about this subjective opinion theory, I can
2 understand how arguing about one tooth or two tooth [sic]
3 being ectopic might be some subjective argument, but how
4 can you have nigh highly-trained, highly-educated all
5 dentists -- I'm sorry, how can you have one dentist who
6 sees nine ectopic teeth and another dentist who has zero?
7 Are you seriously suggesting to this Court that an ectopic
8 eruption is so hard to understand that both of those
9 opinions can be legitimate?

10 A I didn't say it was hard to understand. I said
11 it is very -- I'll say it's very possible that you could
12 have those differences of opinion, yes.

13 Q Can they both be legitimate?

14 A Absolutely.

15 Q So if I understand your theory, ectopic eruption
16 means whatever I say it means and if you don't agree,
17 shame on you; is that what you are saying? Is that the
18 position you are taking?

19 A I'm not taking that position.

20 Q What position are you taking?

21 A I'm talking the position that the manual gives a
22 definition that obviously leaves room for any number -- a
23 limitless number of aberrations of positions of teeth and
24 ectopic eruption.

25 Q Let me see if I can translate that into plain
0128

1 English. If it's in perfect occlusion, it's not an
2 ectopic eruption. If it is not in perfect occlusion or
3 ideal occlusion, you are saying it's an ectopic eruption;
4 is that your position?

5 A No, that is not my position.

6 MR. MORIARTY: Let's read back his answer.

7 Let's read back the answer he gave before.

8 (Record read by Reporter.)

9 Q (BY MR. MORIARTY) If there is a limitless amount
10 of possible positions, how do we know which one is ectopic
11 and which one is not?

12 A It would help if you knew dentistry and new
13 occlusion, and not trying to make a definitive judgment
14 not based on a background of dental knowledge.

15 JUDGE EGAN: Dr. Orr, just answer his
16 question.

17 THE WITNESS: I thought I did. I'm sorry.

18 JUDGE EGAN: You are telling us what would
19 help, he's asked you a very specific question. Listen and
20 answer, please.

21 MR. MORIARTY: Let's go back and read the
22 question.

23 (Record read by Reporter.)

24 A Because of education and experience.

25 Q (BY MR. MORIARTY) If I understand what you are
0129

1 saying, it's magic and only dentists do that magic; is
2 that what you are saying?

3 A No, sir.

4 Q Are you saying that only dentists are capable of
5 understanding what an ectopic eruption is?

6 A No, sir.

7 Q Well, how -- help me understand how I can know
8 what an ectopic eruption is.

9 A Well, with all due respect, I think I just said
10 it starts with having the dental background. It's true,
11 I'm sure, in any profession.

12 Q All right. Let's go back to the files. You have
13 had an opportunity to go through these files at lunchtime;
14 did you not?

15 A Yes, sir.

16 Q And have you actually had some help from Dr.
17 Nazari and his partner, Dr. Kanaan, who helped you at
18 lunchtime go through those files, didn't you?

19 A They walked by and we are talking and I was
20 trying to do my work.

21 Q They were talking to you?

22 A That is correct, but I wasn't listening. I was
23 trying to get my work done and shooing them away.

24 Q What were they saying?

25 A Repeating what they wanted to say.

0130

1 Q Tell me what repeating what they wanted to say
2 means.

3 A They were trying to tell me their -- what I
4 should do, I suppose, but I wasn't listening.

5 Q Didn't hear a word they said?

6 A I heard their words, they weren't registering. I

7 was trying to get my work done.

8 Q How long did you talk to them?

9 A I didn't talk to them.

10 Q How long did they talk to you?

11 A I'm sure several minutes. They tried.

12 Q Did you tell them to leave you alone, you were an
13 expert and you were on the stand and you needed to do your
14 work?

15 A Just told them to leave me alone.

16 Q And your lawyer over here, Mr. Canales, he was
17 over there, too, wasn't he?

18 A He was trying to shoo them away, too.

19 Q He wasn't able to shoo them away?

20 A No, they are bigger than him.

21 Q And was he talking to you, too?

22 A No.

23 Q Did you get all the help you figure you needed in
24 analyzing those files?

25 A Yes.

0131

1 Q So let's take a look at R-76. This is All Smiles
2 Patient 19, it's R-19-19-007. The picture on the left and
3 right are Antoine Dental, P-09-006. I think this was the
4 one where you said that you wanted to see these, and I
5 said, fine, we will just do this at lunchtime.

6 Did you have an adequate opportunity to look
7 at the molds, files and pictures to determine the proper
8 state of these files at lunchtime?

9 A Yes, sir.

10 Q And what I would like you to do is explain to the
11 Judge why the child on the left is denied treatment while
12 you were working for the State and the child on the right
13 you would approve for treatment, even though they appear
14 to be -- to somebody remarkably unsophisticated about
15 dentistry -- pretty much the same case.

16 A I may need some help to identify which of these
17 stacks are the ones you are referring to.

18 Q Do you want me to get Dr. Nazari or Dr. Kanaan to
19 help you?

20 JUDGE EGAN: You don't need to make those
21 kind of comments. They don't impress either of the Judges
22 up here.

23 MR. MORIARTY: Sorry, Judge. I haven't
24 looked at these files and --

25 JUDGE EGAN: I believe it's Patient 19 is

0132

1 the patient we are talking about.

2 MR. MORIARTY: All Smiles 19 and Antoine
3 Dental Patient Number 9.

4 JUDGE EGAN: I believe if you will look at
5 the molds, there's usually a patient number on the
6 backside of them.

7 THE WITNESS: Thank you.

8 A All right, sir, I believe I found them.

9 Q (BY MR. MORIARTY) What's the difference in those
10 two cases?

11 A Well, it's like I said earlier, it's apples and
12 oranges. One has one set of problems and the other has
13 another set.

14 Q What are the problems on the left and problems on
15 the right?

16 A The problems specifically of the All Smiles, as I
17 noted there, the baby teeth are still in place when the
18 case began, and the permanent teeth are still buried in
19 the bone of the jaw and were not really available to be
20 orthodontics. So in orthodontics, that's a nonstarter.
21 If you can't attach the permanent teeth or put bands on
22 them, it's a denial.

23 Q All right. So why -- I'll accept your denial.
24 Why do you accept the case on the right?

25 A Well, the case on the right was an interception
0133

1 -- it wasn't a full-banded case. They were doing limited
2 treatment, and so that has its own set of criteria that is
3 totally different.

4 JUDGE EGAN: What was the condition that
5 Patient 9 had that was being addressed by orthodontics
6 work?

7 THE WITNESS: Which one is 9? I'm sorry.

8 JUDGE EGAN: The child on the right.

9 Q (BY MR. MORIARTY) Let's look at Dr. Orr's score
10 sheet on that one, P-73-008.

11 JUDGE EGAN: Is this Dr. Orr's score sheet
12 put up on the scene?

13 Q (BY MR. MORIARTY) Is that your score sheet?

14 A Yes, that is correct.

15 Q Let me see if I understand your score sheet. You
16 are scoring four millimeters of open bite for 16 points
17 and then 11 points of tooth separation?

18 A Is that the right one?

19 Q Let's go to the top and look at it there.

20 A That's my sheet, it should be six and one.

21 JUDGE EGAN: And that's -- I think at the
22 top, it says 60, so this may not be the correct one.

23 MR. MORIARTY: Pull up 73-08-001.

24 Q (BY MR. MORIARTY) Okay. Do you agree that we
25 got the correct score sheet now?

0134

1 A Yes, sir.

2 Q And what is you are seeing is that all 12 -- I'm
3 sorry -- six teeth are ectopic?

4 A Yes, sir.

5 Q And you are getting eight millimeters spread
6 between the teeth?

7 A Yes, sir.

8 MR. MORIARTY: Let's go back to the pictures
9 P-09-006.

10 Q (BY MR. MORIARTY) Do you have the model on that

11 with you, Dr. Orr?

12 A Yes, I'm holding them.

13 MR. MORIARTY: May I approach the witness?

14 JUDGE EGAN: Yes, you may.

15 MR. MORIARTY: May I show the model to the
16 Court?

17 JUDGE EGAN: Yes. Do you want to look at it
18 first?

19 MR. ANDERTON: No, you go ahead.

20 MR. MORIARTY: Do we have a picture of the
21 model?

22 Q (BY MR. MORIARTY) If I understand your position,
23 your position is there's 11 dimes' worth of space between
24 those anterior teeth?

25 JUDGE EGAN: I thought it was eight.

0135

1 MR. MORIARTY: I'm sorry. Did I misstate
2 that?

3 Q (BY MR. MORIARTY) What does your score sheet
4 say?

5 A Eight.

6 Q I think that's probably right. And you are
7 claiming that the six front teeth -- is it three and
8 three, three up, three down are ectopic?

9 A Three on each side on the upper.

10 MR. MORIARTY: Let's go to R-79, Page 4,
11 please.

12 Q (BY MR. MORIARTY) Let me ask you one more issue.
13 Why did you not score the All Smiles case but you scored
14 that case? Isn't there a rule that in the case of mixed
15 dentition, you are not to score the case?

16 A Isn't there a rule that what, sir?

17 Q In a case of mixed dentition, baby teeth and
18 adult teeth, you are not to score the case?

19 A Not to score, I have never heard that. Might not
20 approve it, unless they apply for an interception when
21 there's mixed dentition.

22 Q All right. And your basis for not scoring the
23 first one is -- what does that say on that top line, zero
24 points?

25 A Yes, sir.

0136

1 Q What does that say?

2 A Zero Points.

3 JUDGE EGAN: What does the rest of it say?

4 THE WITNESS: Also permanent teeth still in
5 solid bone.

6 Q (BY MR. MORIARTY) Why did you score that when
7 you were working for the State as zero points?

8 A Because the permanent teeth are still in solid
9 bone, yes, sir.

10 Q Where is there a rule you don't score when the
11 permanent teeth are still in the bone? Where does that
12 rule come from?

13 A I'm sure I can find something in the manual. But
14 if you can't band a tooth because it is not available in
15 the mouth, you can't band it. It is basic technical
16 correctness; if you can't put an orthodontic attachment on
17 a tooth, which is why one of the two reasons is you don't
18 band baby teeth.

19 Q All right. Well, my question is: Why do you not
20 score that case and you scored the other case? Your story
21 is it's all because some of the teeth are still in the
22 permanent bone? That's your answer.

23 A That's this one. And the other one is that if
24 it's ectopic eruption, it was scored that way. They are
25 totally different cases.

0137

1 MR. MORIARTY: Let's take a look at R-79,
2 Page 4, please -- or is that the one we just -- okay.
3 Let's take a look at R-79, Page 2.

4 JUDGE EGAN: Which patient?

5 MR. MORIARTY: This is All Smiles 26, AJ.

6 THE WITNESS: I'm sorry. Is this a
7 different case?

8 Q (BY MR. MORIARTY) Yes. This is one of your All
9 Smiles.

10 A Let me put those away. I think I probably have
11 it.

12 JUDGE EGAN: What was the patient number?

13 MR. MORIARTY: This is Patient Number 26,
14 AJ. This is an All Smiles case.

15 Q (BY MR. MORIARTY) And you are telling the State
16 that this case should be denied. What does that say down
17 there, where it says XB?

18 A Says what, sir?

19 Q What is that language?

20 A Deny 1,002.

21 Q What's that say after 1,002?

22 A That says -- up there it says, D, which goes with
23 the 1,002, XB.

24 Q What does that mean?

25 A I assume for crossbite, but I'm trying to see if

0138

1 we have the same -- or if I even have that. I don't think
2 they printed that sheet.

3 Q Well, you have the original photographs in front
4 of you. Let me direct your attention to this part of this
5 little girl's mouth. What do you see?

6 JUDGE EGAN: Let him get to the photograph
7 in his file or in the file.

8 THE WITNESS: I'm sorry.

9 JUDGE EGAN: I was asking him to wait until
10 you found the photograph.

11 THE WITNESS: Thank you. I think we are on
12 the same patient. I'm not supposed to say the name out
13 loud, but I don't have pictures, and all I have is models
14 that are broken and are not of diagnostic quality. So --

15 and that's one reason I denied it, the models were not of
16 diagnostic quality. I couldn't determine, which is
17 standard procedure, when you cannot determine score.

18 Q (BY MR. MORIARTY) You are saying that you can't
19 determine if that's a crossbite right there?

20 A Not from that alone, as I have gone over already,
21 so I'm looking for the material here.

22 Q Okay. And there's nothing else in there --

23 A No.

24 MR. MORIARTY: All right. Let's go to R-79,

25 Page 2.

0139

1 JUDGE EGAN: Mr. Moriarty, make sure he's
2 looking at the right file. So you can approach the
3 witness to help him locate the files.

4 MR. MORIARTY: I will, Judge.

5 Q (BY MR. MORIARTY) Let's go to R-79, Page 5, this
6 will be All Smiles 17 and ADC 57.

7 A That would be one of those over there then.
8 These three have been looked at.

9 Q Dr. Orr, I don't see the files here. I think we
10 gave the files to you at lunch, but I don't see the files
11 here so I am not going to ask you.

12 JUDGE EGAN: So you are withdrawing that
13 question?

14 MR. MORIARTY: Yes, ma'am.

15 Q (BY MR. MORIARTY) Let's go to R-79, Page 6, and
16 let's look at Patient 35.

17 A Here it is.

18 MR. MORIARTY: All right. Let's pull up 57
19 ADC on the right. This is Patient 57, Antoine Dental
20 Center, Patient 57.

21 JUDGE EGAN: Thank you.

22 Q (BY MR. MORIARTY) Do you see the All Smiles on
23 the left, and you have denied that one correctly, correct?

24 A I don't know, sir. I'm trying to find my --

25 Q Take your time.

0140

1 A I am trying to get with you here. I think I have
2 the correct one for on the left.

3 Q All right. And is that your findings in this
4 case, that's been shown on the board?

5 A Here is the picture.

6 JUDGE EGAN: Do you have the entire score
7 sheet for that patient?

8 MR. MORIARTY: Yes, ma'am.

9 JUDGE EGAN: Dr. Orr, if you have it in your
10 file, you don't need to pull it up. Do you have it?

11 THE WITNESS: I have the case on the left,
12 yes.

13 Q (BY MR. MORIARTY) What does your score sheet say
14 about the case on the left, please?

15 A Five points, not 26, and recommended crossbite.

16 Q All right. And so can we all agree that would be

17 an appropriate reason to turn that case down, we are not
18 obligated to pay for braces for that child?

19 A That is correct, sir.

20 Q How about the child on the right, whose teeth
21 look remarkably similar?

22 A Let me find that case.

23 Q That case is going to be Antoine 57.

24 A I think this is it here, sir.

25 Q Okay. Let me show you what's been marked as your
0141

1 score sheet for the one on the right.

2 JUDGE EGAN: Mr. Moriarty, this will be the
3 last question before we take our break.

4 MR. MORIARTY: Okay.

5 Q (BY MR. MORIARTY) Do you want to look at that
6 while we take a break?

7 A No. We -- go ahead, sir.

8 Q My question is: We saw the pictures just a
9 moment ago where there was clear denial on the right and
10 we see this one where you are approving this one as having
11 12 points for ectopic teeth and 12 points for 12
12 millimeters of tooth separation. Is that really your
13 professional opinion?

14 A Yes, sir, that's what I turned in. Especially --
15 I remember this case, very concerned about it because of
16 the canines being out of position and actually going in a
17 reverse direction. And the canine teeth are probably --
18 every dentist in the world will agree they are the most
19 important qualitative positioned teeth in the mouth.
20 Everything else depends on them.

21 Q May I approach you, please?

22 A Please.

23 Q And it is your professional opinion that there's
24 12 dimes' --

25 JUDGE EGAN: I don't need your dimes this
0142

1 time.

2 Q (BY MR. MORIARTY) Now, are you seriously
3 claiming under oath that there's 12 millimeters, 12 dimes
4 of space between those teeth, anterior teeth?

5 A Well, I would say it's pretty close and it's a
6 generalization with space, with labio-lingual spaces. I
7 and all the people I know, it's a very difficult -- one
8 might be a half-millimeter, another one might be two
9 millimeters, but you always just count it one when there
10 is a space, because to correct it, you still have to put
11 on the bands and move all the teeth.

12 Q If I understand all that, all that translates to
13 there's 12 millimeters of space there?

14 A That's what we will say in dentistry.

15 Q I don't know much about dentistry, but I know a
16 lot about dimes, and I will give you as many dimes to show
17 me where those dimes can go in between those anterior
18 teeth.

19 A And that's what I just said. You want me to say
20 it again?

21 Q No, I want you to show me.

22 A See the spaces here -- I would rather have the
23 Boley Gauge or -- I mean, the millimeter gauge, but you
24 can see these spaces. What we want -- here is a
25 half-millimeter where there is no contact between these
0143

1 teeth.

2 JUDGE EGAN: We need to stop here and take a
3 break. Back at a quarter to 3:00.

4 (Off the record.)

5 JUDGE SEITZMAN: We are going back on the
6 record.

7 JUDGE EGAN: We are back on the record in
8 SOAH Docket 529-13-0997. It is a quarter to 3:00.

9 And you may proceed with your cross.

10 MR. MORIARTY: Thank you.

11 Q (BY MR. MORIARTY) I have asked you all questions
12 I'm going to ask you about those files. Would you like me
13 to help you move those files from your desk?

14 A They are okay, thank you.

15 Q Let's switch into a different area and talk about
16 TMHP and their review of the HLD scores. TMHP is the
17 company that took over for National Heritage in about
18 2004, right?

19 A Yes, sir.

20 Q And when did you first learn that TMHP was not
21 doing substantive reviews of these cases?

22 A I'm trying to think of a yes-or-no way to -- I
23 never really learned that, to answer your question.

24 Q You never really learned that. What does that
25 mean in English?

0144

1 A That I have no personal knowledge that that was
2 -- is a fact.

3 Q Well, that's not what I asked you. I'm not
4 asking you about your personal knowledge. I'm asking you:
5 When did you first learn that TMHP was not doing file
6 review, substantive reviews of these HLD applications?

7 JUDGE EGAN: Do you mean when did he first
8 hear the rumors that they were not doing a substantive
9 review?

10 MR. MORIARTY: Yes, ma'am.

11 JUDGE EGAN: When did you first hear the
12 rumors that TMHP wasn't doing substantive reviews?

13 THE WITNESS: With the -- to me, the news --
14 when there was news that there was an audit that came out,
15 which might have been '09.

16 Q (BY MR. MORIARTY) Let's go back to the email
17 that we talked about earlier, which I think is 57 or --
18 let's go back to 57, the 2002 email.

19 MR. MORIARTY: That is not the right one.
20 Would you blow that up on top, please? This is the

21 January 31st, 2007, and let's highlight the last sentence
22 of that paragraph.

23 Q (BY MR. MORIARTY) Is this January of 2007 about
24 the time that you learned that there were problems with
25 the approval process?

0145

1 A That's very possible, sir.

2 Q Okay. Well, you knew of it at least by January
3 31st, 2007 because you were writing about it, right?

4 A I don't know, sir.

5 Q Well --

6 A Oh, I'm writing about it. I thought you said I
7 was right about it.

8 Q No, no. You were writing a note to Ms.
9 Neighbors.

10 A Yes. I would say it was a common discussion in
11 the dental community.

12 Q What was the discussion in the dental community?

13 A Exactly what I said right here, that -- a
14 different approval process.

15 Q What was different?

16 A I don't know. I can't say, that's why I just
17 said different in quotes. I don't have any specifics.

18 Q What were others saying?

19 A Nothing more than that, that I had, that I knew.

20 Q Well, wasn't it common knowledge that the --
21 wasn't there a problem were dentists were saying, why do
22 they bother taking my x-rays if they don't bother to look
23 at them?

24 MR. ANDERTON: Objection, he's calling for
25 hearsay.

0146

1 JUDGE EGAN: You can answer the question if
2 you heard that.

3 So your objection is overruled. But I'm not
4 sure where you are going with this or how beneficial it is
5 going to be to the case.

6 Q (BY MR. MORIARTY) Well, let me see if I can
7 encapsulate it with a very short cross. You were not
8 claiming that just because TMHP approved these claims,
9 that these dentists ought to be paid for these claims if
10 these claims were fraudulently submitted; is that true?

11 A No, sir, I was not claiming that.

12 Q And if TMHP were one of these western facades,
13 where you got these big Grecian columns out front and you
14 have a trash can out back and nobody ever reviewed any
15 claims, that would not be justification for a dentist
16 turning in a single false claim, would it?

17 A No. If I understood that, the answer is no.

18 Q The mere fact TMHP was approving these claims
19 does not prove the validity of these claims, does it?

20 A That's another statement. That's another
21 question.

22 MR. ANDERTON: We object. We need to have

23 the entire note up here.

24 JUDGE EGAN: I don't believe he's -- you are

25 welcome to put the entire note up there. It is just

0147

1 difficult to read, but I don't believe he's asking about

2 this anymore. He's asking generic questions.

3 MR. ANDERTON: But the problem is he's

4 responding to this question down here in the email and

5 he's asking him questions that have nothing to do with

6 this response.

7 JUDGE EGAN: I believe his question is --

8 the question that's on the board right now is, you are not

9 claiming if a provider submitted a fraudulent claim that

10 TMHP had approved it, that they should be paid. Is that

11 what you asked?

12 MR. MORIARTY: Yes, ma'am.

13 JUDGE EGAN: So your objection is overruled.

14 MR. MORIARTY: Please read back my question.

15 (Record read by Reporter.)

16 A I guess I would have to say no.

17 Q (BY MR. MORIARTY) It wouldn't be an excuse -- I

18 just want to have a nice clean record on this.

19 A dentist is under a continuing duty to be

20 truthful, accurate and honest even if he knows the claims

21 are not being reviewed, true?

22 A Absolutely, yes.

23 Q And the mere fact that the claims aren't being

24 reviewed is no excuse whatsoever for a dentist submitting

25 a false claim?

0148

1 A I would agree.

2 Q And you agree that every dentist ought to know

3 what an ectopic eruption is?

4 A I'm trying to do yes or no. I want to say with

5 limitations, with all respect. You are in a very esoteric

6 area in dentistry. And we don't have many, you got to

7 understand. It's a pretty simple business, so we get

8 something like that --

9 Q Would you describe the definition of ectopic

10 eruption, as you understand it, to be very fluid, very

11 vague?

12 A No, sir.

13 Q Go ahead.

14 A I really appreciated Dr. Tadlock yesterday

15 morning. I thought he was excellent. And I appreciated

16 that I thought ectopic eruption in his -- what I would

17 call -- his wide world definition, I concur with it. I'm

18 in the position of -- I'm in the position of saying the

19 Medicaid manual that I enforced, no matter who produced

20 it, says it's the comprehensive guide and I have preached

21 that to all the dentists through the years that they had

22 to rely on the manual for rules and correctness.

23 And that the definition of ectopic eruption

24 is what they should go by in the manual. When I

25 interpreted, like it or not, to me, semantically it has a
0149

1 limitless interpretation as far as the recognition by
2 competent dentists of teeth out of position.

3 Q I feel like I'm beating a dead horse, but what I
4 hear you saying is, anything that is not an ideal
5 occlusion is an ectopic eruption; that's what I hear you
6 saying.

7 A I can see legally, in your position, you might
8 say that. I certainly don't mean that anything is.
9 There's -- I'm thinking that you would have to be a
10 dentist to appreciate that these teeth have got intraoral
11 limitations of what they are, and I don't think other
12 dentists are in discussion with me would say, well, I will
13 accept anything.

14 Q Let's see if we can narrow it in this direction.
15 Let's go back to unusual. Do you admit that if the usual
16 condition of people's teeth are to be out of ideal
17 occlusion, if that's the usual condition of their teeth,
18 to be out of occlusion --

19 A I think I have disagreed with that position of
20 Dr. Tadlock's several times.

21 Q What else do you disagree that Dr. Tadlock
22 testified to?

23 A Well, I don't disagree with other things so much
24 as I accept the limitations that are in the -- if you
25 choose to do Medicaid, which is a payment system, and not
0150

1 a technical system that Dr. Tadlock was addressing very
2 nicely, if you choose to do a fee for service in Medicaid
3 and work at that, then it says on Page 1 in most of the
4 manuals, that you will use the manual as a comprehensive
5 guide.

6 So it doesn't matter what I think or I feel
7 about things. If you choose to sign up and actually read
8 the contract that a Medicaid provider signs and utilize
9 the rules that are discussed in the text and then in the
10 pages on the orthodontics -- and it's the same for every
11 other restriction and limitation on the ADA code numbers
12 that we live by in Medicaid, -- it's the same for all of
13 them -- you agree to do it by what's in the manual or you
14 don't do it.

15 Q So your contention is there's one standard of
16 care for private pay patients and there's different care
17 for Medicaid patients; is that what you are saying?

18 A Absolutely not. I think I explained and went on
19 record saying Medicaid is a payment fee system. It is not
20 -- how many times can I say not -- a clinical system in
21 dentistry or medicine. It's a method to pay a provider
22 first.

23 Q Can you tell the Court what a severe handicapping
24 malocclusion is?

25 A I could discuss it, I have before or other people
0151

1 have. But it's an arrangement of the teeth where they are
2 nonfunctional, for whatever reason, in matters of degrees.
3 That's the way I would define it.

4 Q Well, how is that different from a malocclusion?

5 A A malocclusion, I would tell the Court, entails
6 the whole neuromuscular bone system of the head and neck
7 that affects how the teeth function. I would say
8 malocclusion is probably meant to be a more comprehensive
9 entitlement of the whole head, the jaws, and neck and
10 muscles and bone as opposed to the HLD.

11 Q If that's a malocclusion, what's a handicapping
12 malocclusion?

13 A Once again, I'm going to refer back to the fact
14 that these are terms that, as you saw from the discussion
15 yesterday morning, are not that well-defined throughout
16 the world in dental literature, because these terms were
17 adopted, whether it was by the United States, Federal
18 Government or different State governments, in order to
19 have a payment system for Medicaid.

20 Q How about severe, that got a unique dental --

21 A Well, it does to me. Whether you wanted to hear
22 it earlier or not, as an occlusion teacher and one who has
23 worked and done that for all these years in the bite and
24 occlusion, and that is that two teeth opposing each other,
25 for instance, or side to side, they can be off space-wise

0152

1 a tenth of a millimeter and that can be more harmful to
2 the patient than a tooth that is six or eight millimeters
3 out of position.

4 Q Well, let me ask it like this: Is severe
5 handicapping malocclusion or handicapping malocclusion or
6 malocclusion basically something we are not able to
7 understand; you got to be a dentist to understand it? Is
8 that what you are saying?

9 A I don't think a lot of dentists understand it.
10 It is not a dental term. Let me say over and over again,
11 it's become a dental term probably since government
12 contractor paid for care began after probably World War
13 II.

14 Q I'm taking you back. This is R-15-341. Do you
15 see where it is highlighted, where it says, providers
16 should be conservative in scoring? Does the providers
17 should be conservative in scoring have some unique meaning
18 to you as a dentist?

19 A Well, only in what it -- I think it's rather
20 obvious that they should --

21 JUDGE EGAN: He asking you if there is a
22 unique meaning to a dentist as opposed to the rest of the
23 population or does it mean what it says?

24 THE WITNESS: I think it means what it says,
25 is the only thing that I could answer.

0153

1 JUDGE EGAN: Go ahead.

2 Q (BY MR. MORIARTY) Can we agree on this, on the

3 so-called definition for ectopic, that unusual means what
4 it says, too? Unusual means unusual, we are all capable
5 of understanding what unusual is, right?

6 A Probably, yes, sir.

7 Q So the case must be considered dysfunctional and
8 have a minimum of 26 points on the HLD index. Tell me
9 what you understand that to mean.

10 A I have always felt that that sentence I would
11 like -- I would not have written it that way, because
12 it's, like, well, if it's one, it's the other. If it
13 meets the 26 points that they have referred to in the
14 manual in different places, you would probably, without a
15 doubt, have a dysfunctional situation as far as teeth and
16 muscles and occlusion.

17 Q So when it says the case must be considered
18 dysfunctional and have a minimum of 26 points, you are
19 saying the way human beings ought to read that is it
20 really says, the case must be considered dysfunctional or
21 have 26 points; is that the way it ought to be?

22 A Or if it's one, it's the other. You could
23 interpret it that way.

24 Q So whatever and means, it doesn't mean and?

25 A Apparently, it means both, if you are going to
0154

1 consider the and.

2 Q Look, you are the so-called expert on the book.
3 You are the one that's telling us how much you know. I
4 want to know, for the record, what does that sentence
5 mean?

6 A It means them both, and.

7 Q You must have both?

8 A That's what it says.

9 Q Does that -- is that what it means, is that what
10 you understand it to mean?

11 A Yes.

12 Q Does dysfunctional have a unique dental meaning
13 or does it mean the same thing we all know it to mean;
14 dysfunctional, not functional?

15 A I think it means not functional, but in
16 dentistry, it has qualitative and quantitative
17 implications that a dentist ought to know about from
18 studying the textbooks on occlusion and bite and
19 orthodontics.

20 Q But does a dentist also need to study the
21 textbook on what ectopic eruption means?

22 A Well, those same textbooks have some reference,
23 I'm sure, to ectopic eruption, as we learned yesterday
24 morning.

25 Q And you agree with that, don't you? Was that
0155

1 Proffit's, the book?

2 A Not necessarily. I don't particularly care for
3 the word choice that the Proffit text was. I don't
4 disagree with Dr. Tadlock on his world-wide view at all,

5 but in Medicaid treatment, it says you agree legally to
6 follow the provider manual.

7 Q Now, when you examined these 63 files for Antoine
8 Dental, and I don't need -- mean to lock you in. Well, do
9 you remember how much you billed them for reviewing those
10 files?

11 A I do not.

12 Q Do you remember how many hours you billed them?

13 A No, sir, I don't.

14 Q Have you billed them in the last six months or
15 year?

16 A I don't think I have billed them at all.

17 Q Do you have any estimate of time that you spent
18 reviewing those files?

19 A No. I keep a log sheet on any case, and until I
20 finish or something, some reason, I don't tally it up. It
21 could be anywhere from ten to 20 hours, I just don't
22 remember. I don't look at those for months on end.

23 Q I'm going to tender you -- I'm going to show you
24 a document which has not been marked yet and ask you to
25 review it. I don't remember if you remember writing it or

0156

1 not.

2 A I do remember it, yes, sir.

3 Q All right. And how did you happen to write that
4 letter?

5 A I don't remember that, sir.

6 Q Let me ask you this: Do you know somebody named
7 Malone that practices dentistry in San Antonio?

8 A In where?

9 Q San Antonio.

10 A I know Dr. Malone.

11 Q Dr. Scott Malone?

12 A Yes, sir.

13 Q He is actually here, isn't he?

14 A I don't know if he is now. He was yesterday.

15 Q Okay. And did you talk to Dr. Malone about
16 writing that letter?

17 A No, sir.

18 Q I want you to read Paragraph 2. See where it
19 says in 2003, the HHSC hired a contractor; do you see
20 that?

21 A Yes.

22 Q Would you read the second sentence of that
23 letter, that paragraph?

24 JUDGE SEITZMAN: Do you have a copy?

25 JUDGE EGAN: Can we have a copy?

0157

1 MR. MORIARTY: Of course.

2 MR. ANDERTON: Are you entering this into
3 evidence?

4 MR. MORIARTY: I'm using it for impeachment
5 right now.

6 JUDGE EGAN: I don't believe it's being

7 offered into evidence.

8 Q (BY MR. MORIARTY) Do you remember writing that
9 letter?

10 A No, sir. I did write it obviously. It was my
11 opinions, but I don't remember writing it.

12 Q When you say, the company cut expenses -- read
13 the first two sentences of numbered Paragraph 2.

14 A In 2003, the THHSC hired a contractor to
15 administer the dental Medicaid. The company cut expenses
16 by failing to review submitted claims.

17 Q And then you say in 2005, the company cut program
18 controls and costs even more.

19 A Yes.

20 Q How did you learn that?

21 A On the Medicaid bulletin.

22 Q And how did you learn that they cut expenses by
23 failing to review the submitted claims?

24 A That was testimony from different Medicaid
25 providers to me.

0158

1 Q But you were telling -- why were you telling the
2 San Antonio press that?

3 A I don't remember.

4 Q You are not board certified in orthodontics,
5 true?

6 JUDGE EGAN: That's been asked. He's
7 indicated he's not an orthodontist, so I can't imagine
8 he's board certified.

9 Q (BY MR. MORIARTY) And you have described
10 yourself as an occlusionist?

11 A I have not.

12 Q Do you deny describing yourself as an
13 occlusionist?

14 A I deny that.

15 Q What is an occlusionist?

16 A I have no idea, sir.

17 Q Okay. And does the State board or the ADA
18 recognize a specialty as an occlusion?

19 A No, sir.

20 Q And how many patients, Medicaid patients, have
21 you put braces on?

22 A Zero.

23 Q And how many nonMedicaid patients have you put
24 braces on?

25 A Zero.

0159

1 Q And you have not worked for TMHP for more than
2 nine years?

3 A I have not.

4 Q I don't have my copy of the manual, the
5 1,100-page manual, the Texas Medicaid Health Partnership
6 manual, but how much of that manual did you write?

7 A I have no idea, sir.

8 Q Well, the truth is, you didn't write any of it?

9 A Well, no, I didn't attempt to.

10 Q Well, I'm just asking you.

11 A It is not my --

12 Q Are you a member of any dental associations that
13 are specific to orthodontics?

14 A No, sir.

15 Q Have you done any postgraduate work in
16 orthodontics?

17 A No, sir.

18 Q Have you done any peer-reviewed articles written
19 on orthodontics?

20 A No, sir.

21 Q So most of this testimony that you are offering
22 about orthodontics and placing teeth and how to score an
23 HLD is really theoretical, isn't it?

24 A No, sir.

25 MR. MORIARTY: Judge, I have an impeachment
0160

1 question on the occlusionist issue. I will find it in his
2 deposition, but it's going to take me a couple of minutes.
3 In good faith, I believe it's there. I would be happy to
4 pass the witness and have -- I can bring it up on recross.

5 JUDGE EGAN: If it's only going to take you
6 a couple minutes to find, why don't we just -- let's do
7 that right now.

8 THE WITNESS: I can tell you where it was.

9 JUDGE EGAN: Do you know where it is? Why
10 don't you tell him where it is then.

11 THE WITNESS: It's in the Harlingen case.

12 JUDGE EGAN: All right.

13 Q (BY MR. MORIARTY) Did you describe that
14 occlusion is your major specialty area?

15 A Yes, sir.

16 Q And you claim to be an occlusion professor?

17 A Yes, sir, I am.

18 Q But you never claim to be an occlusionist?

19 A To me, that's not a word, sir. I have never
20 heard it before until it came up at that trial.

21 MR. MORIARTY: Okay. I pass the witness.

22 JUDGE EGAN: All right. In reverse order,
23 but do you want to do your direct at this time?

24 MR. ANDERTON: We want -- under the Rule of
25 106, optional completeness, we would like to have this
0161

1 entire --

2 JUDGE EGAN: You need to speak up.

3 MR. ANDERTON: -- entered for the record.

4 MR. MORIARTY: Judge, we have no objection
5 to just offering it. You can use it for whatever
6 purposes. The same way with the emails. I haven't
7 offered the email because I felt like it's in the record,
8 but I will offer the two emails for y'all to consider for
9 whatever purposes.

10 JUDGE EGAN: Hold on. Let me deal with this

11 document first. He has agreed to have this one marked as
12 an exhibit. Do you want to mark it and we can admit it
13 rather than having the witness read it into the record?

14 JUDGE SEITZMAN: It's for impeachment
15 purposes only; is that correct?

16 JUDGE EGAN: Yes, but they want the rule of
17 optional completeness to have the whole thing in the
18 record.

19 MR. CANALES: Can I just write on it, on the
20 outside?

21 JUDGE EGAN: Hold on. I think there are
22 usually some extra ones in here.

23 MR. CANALES: Housekeeping, Your Honor. Can
24 I just butt in for housekeeping purposes?

25 JUDGE SEITZMAN: Yes. Just a minute. We
0162

1 are still on the record.

2 JUDGE EGAN: The document entitled the April
3 14, 2012 letter, that a portion was read -- I believe
4 Paragraph 2 was read into the record by Dr. Orr.

5 Let me go ahead and just confirm that P-82
6 is a letter that you wrote, Dr. Orr; is that correct?

7 THE WITNESS: Yes, ma'am.

8 JUDGE EGAN: And under the rule of optional
9 completeness, Petitioner's attorney asked that the whole
10 thing be read into the record. Both parties have agreed
11 rather than having the witness do that, it can be marked
12 as an exhibit. And it has been as Petitioner's Exhibit
13 82, and it is admitted.

14 (Petitioner's Exhibit Number 82 admitted.)

15 JUDGE SEITZMAN: Let's go back to the emails
16 for a second, because my understanding of the record is
17 those were not offered, they are not in evidence. The
18 witness was asked to read a portion of those into the
19 record, but that wasn't his testimony, he was reading what
20 was put up for impeachment purposes. We don't have
21 anything other than what the witness was asked to read,
22 but he wasn't asked to adopt it as his testimony. He was
23 asked questions about it, and he answered the question.
24 That's my understanding of where we are.

25 MR. MORIARTY: To clean up the record, I'm
0163

1 going to offer both of those emails into evidence.

2 JUDGE EGAN: As what?

3 MR. MORIARTY: 57 and 58, I believe. I have
4 also found the testimony, it wasn't from his deposition,
5 it was from the trial where he talks about being an
6 occlusionist. And I will be prepared to offer that
7 testimony.

8 JUDGE SEITZMAN: Well, we don't need that
9 admitted into the record. You can merely have him read
10 along with you if he doesn't remember saying it.

11 MR. MORIARTY: Yes, ma'am.

12 MR. ANDERTON: We object because the proper

13 predicate was never laid.

14 JUDGE EGAN: Hold on. We have got three
15 different documents -- three different issues. The two
16 emails are Respondent's exhibit.

17 JUDGE SEITZMAN: 57 is the 2007 email; is
18 that right?

19 MR. MORIARTY: Yes, sir. No, I'm sorry. 58
20 is the 2007 email.

21 JUDGE SEITZMAN: And 57 is the 2002?

22 MR. MORIARTY: That is correct.

23 JUDGE EGAN: And these are emails written by
24 Dr. Orr?

25 MR. MORIARTY: Yes, ma'am.

0164

1 JUDGE EGAN: And do you have any objections
2 to Respondent's 57 and 58?

3 JUDGE SEITZMAN: They were offered for
4 impeachment at the time and that's it.

5 MR. MORIARTY: Yes, sir. And I just want to
6 put them in the record and make sure we have a clean
7 record, so we understand I wasn't reading from something
8 somebody else wrote.

9 JUDGE EGAN: They are being offered only for
10 impeachment?

11 MR. MORIARTY: Yes, ma'am.

12 JUDGE EGAN: Any objections to Respondent's
13 57 and 58?

14 MR. ANDERTON: No objection.

15 JUDGE EGAN: Respondent's Exhibits 57 and 58
16 are admitted.

17 (Respondent's Exhibit Numbers 57 and 58
18 admitted.)

19 JUDGE EGAN: Now --

20 MR. MORIARTY: I wasn't at Harlingen. This
21 testimony is not crystal clear on whether he was claiming
22 to be whatever it was, or somebody called him that, so I'm
23 not going to offer that.

24 JUDGE EGAN: All right. So you are
25 withdrawing that question?

0165

1 MR. MORIARTY: Yes, ma'am.

2 JUDGE EGAN: All right. You are finished at
3 this time?

4 MR. MORIARTY: Yes, ma'am.

5 JUDGE EGAN: Okay. Mr. Anderton.

6 MR. ANDERTON: Can we have about a 10-minute
7 break?

8 JUDGE EGAN: We will go ahead and take a
9 10-minute break at the request of the Petitioner.

10 (Off the record.)

11 JUDGE EGAN: We are reconvening in SOAH
12 Docket Number 529-13-0997, May 29th, 2013. It is now
13 3:30.

14 Here is Mr. Anderton, you are about to begin

15 your direct.

16 Dr. Orr, you are still under oath.

17 MR. ANDERTON: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. ANDERTON:

20 Q Dr. Orr, would you please give the Court some
21 information regarding your education and your experience
22 in dentistry.

23 A All right, sir. I graduated from the University
24 of Texas in Houston, 1968, and returned there in 1969 to
25 start a faculty position of the two-year postgraduate
0166

1 rotation through the different departments, including
2 orthodontics. Trained with Dr. Westfall. And after two
3 years, joined the senior faculty, and then I started a
4 long sequence of something like 123 paid trips to Miami to
5 train and teach with Dr. L.D. Pankey over there in
6 occlusion. And subsequently, taught at other universities
7 and practiced in Houston at Kelsey-Seybold Clinic as their
8 dental director for many, many years until I semi-retired
9 to Austin. I am still in practice now, three days a week,
10 and a day or two a week, I will do legal support work.

11 Q Thank you. Dr. Orr, what is the nature of your
12 current dental practice?

13 A I primarily perform restorative crown and bridge
14 practice in a three-man dental practice here in town.

15 Q Do you practice any particular area of dentistry?

16 A Other than crown and bridge, which one evolves to
17 early on, is that occlusion. I get a lot of people
18 referred to me from around the State with temporal
19 mandibular joint problems, malocclusion problems, bite
20 problems, restorative problems, that they need
21 sophisticated restorations in order to stabilize their
22 bite.

23 Q Now, we have talked a lot about orthodontics and
24 you have stated for the record that you are not an
25 orthodontist; is that correct?

0167

1 A That is correct.

2 Q But you do practice a good deal in the area of
3 occlusion, another topic we have spoken a lot about today;
4 is that correct?

5 A That is correct, sir.

6 Q Could you explain to the Court, Dr. Orr, the
7 relationship between occlusion and orthodontics.

8 A Well, occlusion is the guidance behind what you
9 are going to do in orthodontics and where you are going to
10 move the teeth and where you are going to end up.
11 Orthodontics is the very sophisticated art of actually
12 moving the teeth, of putting on braces on people and
13 actually moving the teeth over a period of time.

14 Q So you have heard the term malocclusion. Now, if
15 I understand correctly, from what we have heard yesterday
16 and today, malocclusion would be a situation in which a

17 tooth was not in proper occlusion; is that correct?

18 A That is correct, sir.

19 Q What is the significance, Dr. Orr, of a tooth not
20 being in proper occlusion?

21 A Teeth that are not in proper occlusion have all
22 kinds of side effects, from broken teeth to headaches to
23 helping to cause other teeth to fail in their role in the
24 mouth.

25 Q So if I understand you correctly, Dr. Orr, if a

0168

1 tooth is in malocclusion and is subject to being broken or
2 being lost, would you say that a tooth in malocclusion is
3 dysfunctional?

4 A Yes, sir.

5 Q So that would meet the Medicaid definition of
6 dysfunction?

7 A Yes, sir.

8 MR. MORIARTY: I object to his leading his
9 own witness.

10 JUDGE EGAN: Please don't lead, but -- I
11 don't particular think that was leading, but please don't
12 lead.

13 MR. ANDERTON: Thank you.

14 Q (BY MR. ANDERTON) Thank you, Dr. Orr. I want to
15 get back to that in just a minute. I want to go ahead
16 with your career right now.

17 What year was it that you joined NHIC?

18 A I joined them in 1995.

19 Q In 1995. Now, at that time, Dr. Orr, we heard
20 Dr. Altenhoff yesterday refer to you as the dental -- the
21 Medicaid dental director, I believe it was, for NHIC and
22 Mr. Moriarty referred to you today as the dental claims
23 manager; is that correct? Which one of those is it?

24 A I think both were correct. I certainly was a
25 claims manager and that occupied some 20 percent of my
0169

1 time. The other 80 percent, being all kinds of various
2 duties, managerial duties at Medicaid.

3 Q So what were your duties, Dr. Orr? Would you
4 explain that to the Court, please?

5 A Primarily, one of my most important duties was
6 training the in-house staff of NHIC. I assisted the
7 officers at NHIC and at Texas Department of Health in
8 training in Medicaid policies, what was happening at NHIC.
9 We managed the prior authorization program, we attended
10 weekly and monthly meetings of the medical policy
11 committee of Medicaid and met with people to regularly
12 make and improve policies for Medicaid to comply with
13 Federal and State regulations.

14 Q So in that area, Dr. Orr, in your position, did
15 you have an opportunity to influence, add to, edit,
16 influence a manual at that time?

17 A That is correct, sir. When I arrived there, they
18 asked me to serve on the editorial staff of the manual,

19 and we did. And every year, we -- the dental and also
20 some of the other chapters and aspects and the overall
21 production of the manual, as far as NHIC's role in it, we
22 worked considerably in that.

23 Q So, Dr. Orr, in your experience working with that
24 manual at that time and you have now by virtue of
25 reviewing some of these cases, as we will talk about a
0170

1 little bit more later, had an opportunity to examine some
2 of the recent manuals; is that correct?

3 A Some of them, yes, sir.

4 Q Do you notice any major significant changes in
5 the procedures that were followed according to the manual
6 when you were director and as occurring now?

7 A Well, there certainly have been policy changes,
8 such as in orthodontics and other areas, yes, sir.

9 Q So what would be some of those changes?

10 JUDGE EGAN: Are you talking about in
11 orthodontics or throughout?

12 Q (BY MR. ANDERTON) Throughout the manual.

13 A I think basically, the manual is still the same.
14 One would not to think that it's dramatically different,
15 but policy such as prior authorization of orthodontics and
16 criteria for the recent change, I can't remember the date,
17 is it this year of ectopic eruption in the orthodontic
18 criteria. That may not be in the manual yet. It was
19 published.

20 Q Published as a bulletin; is that your
21 understanding?

22 A I believe so, yes, sir.

23 Q So, Dr. Orr, were you asked to review -- from
24 time to time, to review records from containing
25 allegations regarding potential fraud or misconduct

0171
1 regarding Medicaid cases?

2 A Yes, sir.

3 Q Were you asked to review files regarding Dr.
4 Nazari's case?

5 A Yes, sir, I was.

6 Q So are you familiar with the allegations in this
7 case?

8 A Yes, sir.

9 Q And do you understand the seriousness of the
10 allegations that Dr. Nazari is looking at?

11 A Yes, sir.

12 Q Was -- Mr. Moriarty first questioned you and had
13 to do with the HLD index. Was that HLD index procedure in
14 place at the time that you were with NHIC?

15 A Yes, it was.

16 Q So he asked you, and I'm going to ask you again,
17 to explain to the Court the purpose of the HLD index.

18 A Well, the HLD index score sheet provides the
19 system, the Medicaid program system with a scoring system
20 to be able to identify the eligibility of a patient for

21 the payment of braces.

22 Q So if I understand you correctly, that HLD index
23 has a purpose of determining eligibility for payment of
24 Medicaid; is that correct?

25 A That is correct.

0172

1 Q Does it have anything to do with treatment at
2 all?

3 A I don't think the HLD index does, no, sir.

4 Q So if I understand you correctly, the HLD index
5 is merely a tool for determining eligibility?

6 A That is correct, sir.

7 Q So you heard a good deal yesterday and today, Dr.
8 Orr, regarding the term ectopic eruption. So let's talk
9 about that just briefly. Would you explain again to the
10 Court your definition of ectopic eruption?

11 A My definition is that which is written in the
12 Medicaid manual in the list of definitions of the nine
13 criteria as eligibility for doing braces, and that has a
14 paragraph written for each. And it says that that's the
15 comprehensive criteria if someone chooses to be a Medicaid
16 provider.

17 Q So you mentioned comprehensive criteria. If we
18 go back to the definition, as I understand it, the
19 definition of ectopic eruption, from the time you were
20 Medicaid manager at NHIC up until January 2011, the
21 definition was only five words, an unusual pattern of
22 eruption; is that correct?

23 A That is correct, sir.

24 Q In your opinion, Dr. Orr, are dentists obligated
25 to comply with that definition?

0173

1 A Yes, sir, they are.

2 Q So if I go back to your statement that the manual
3 is comprehensive, what does that mean?

4 A To me, as I understand it, that means that the
5 manual contains all the guidance for the Medicaid program,
6 that one signs up to follow those guidance and rules and
7 will do so as that manual is produced each year.

8 Q So if it's comprehensive, then a dentist should
9 abide by those rules that are in the manual; is that
10 correct?

11 A That is correct, sir.

12 Q Would a dentist have to look elsewhere for a
13 definition or a procedure or a technique that's not
14 described in the manual?

15 A The manual has always had a paragraph that
16 endorsed the correctness of a dentist following the rules
17 and regulations of the State Board of Dental Examiners.
18 And then the Medicaid program did sign an acceptance years
19 ago of the American Dental Association code of numbers
20 that identifies the different procedures that are done in
21 dentistry. That's a proprietary code book, and the State
22 of Texas had to sign an acceptance that they would follow

23 that.

24 Q So if I understand you correctly, a Medicaid
25 provider would have to comply with the guides that are

0174

1 established in the Medicaid manual along with the rules of
2 the Texas State Board of Dental Examiners; is that
3 correct?

4 A That is correct, sir. And in most of the
5 manuals, there's also sections that give guidance that
6 what rules and regulations from the Texas Attorney General
7 that the provider should follow.

8 MR. ANDERTON: Can we take a minute to put
9 up a slide?

10 Q (BY MR. ANDERTON) This is from the 2007 manual,
11 the Texas Medicaid Provider Procedure Manual serves as a
12 comprehensive guide for Texas Medicaid providers and
13 contains information about Texas Medicaid benefits,
14 policies and procedures.

15 Now, is that what you are referring to, Dr.
16 Orr, when you talk about comprehensive?

17 A Yes, sir, that's what I'm referring to.

18 Q So to your knowledge, that was the policy when
19 you were Medicaid director back in 2005 to 2000 -- 1995 to
20 2004 and today; is that correct?

21 A That is correct, sir.

22 JUDGE EGAN: Mr. Anderton, either move the
23 mic closer to you or speak up louder.

24 MR. ANDERTON: Okay. I'm sorry.

25 JUDGE SEITZMAN: But Mr. Canales is right,

0175

1 would you identify that exhibit?

2 MR. ANDERTON: That was from the 2000 --

3 MR. HECTOR CANALES: P-65 of the prior
4 exhibit. For the record, this is R-15.

5 JUDGE EGAN: Thank you.

6 MR. HECTOR CANALES: Which is the 2009
7 manual.

8 Q (BY MR. ANDERTON) Would you read that sentence,
9 Dr. Orr?

10 A The Texas Medicaid Provider Procedures Manual
11 serves as a comprehensive guide for Texas Medicaid
12 providers and contains information about the Texas
13 Medicaid benefits, policies and procedures.

14 Q Thank you, Dr. Orr. That is from the 2009
15 manual. And we can put up 2010, 2011, they are going to
16 say the same thing. So what that means is in my
17 estimation, Dr. Orr, and you seem to agree, that that says
18 that that is a comprehensive guide and that the dentists
19 have to abide by the definitions and by the procedures as
20 established in that manual; is that correct?

21 A Yes, sir.

22 Q Now, Dr. Orr, you mentioned also that you have
23 lectured from time to time?

24 A Yes, sir.

25 Q Do those lectures contain sections regarding the
0176

1 rules of the State Board of Dental Examiners?

2 A Yes, sir. We do have presentations regarding the
3 Texas State board on which I served of -- a dentists --
4 rules and regulations they are supposed to follow.

5 Q Now, did you -- in these lectures, do you
6 encourage and explain to dentists who attend those
7 lectures the importance of complying with all the rules?

8 A That is correct, sir, we do.

9 Q So I want to refer to the email, which is Exhibit
10 R-57. We just entered it as an exhibit, the 2002 email.
11 We can read it. Would you -- down at the bottom, Dr. Orr,
12 where it says, Dear Dr. Cook.

13 A Yes, sir.

14 Q The second paragraph beginning with the, Medicaid
15 program.

16 A Yes, sir.

17 Q Would you read that sentence?

18 A It says: The Medicaid program expects a doctor
19 to use the very same ethical, technical and management
20 standards for Medicaid patients as he does for private pay
21 patients.

22 Q Now, you were trying to say earlier that there
23 was to be a distinction between private pay and Medicaid
24 patients. But it appears to me when you read that, that
25 that means a dentist should comply with all the rules; is
0177

1 that correct?

2 A That is correct, sir.

3 Q And that would include the comprehensive guide as
4 established in the Medicaid manual; is that correct?

5 A Correct, sir.

6 Q So having said that, Dr. Orr, would that not mean
7 that the dentist should comply with the definition as
8 established in the Medicaid manual of ectopic eruption?

9 A Of ectopic eruption and the other eight criteria
10 for orthodontic analysis.

11 Q Thank you, Dr. Orr. Dr. Orr, for the record, you
12 mentioned that you had served on the State Board of Dental
13 Examiners; is that correct?

14 A Correct sir.

15 Q And what years did you serve on that board?

16 A I believe that was '88 to '94.

17 Q And what were your duties on the board at that
18 time, Dr. Orr?

19 A For five of those years, I was Chairman of the
20 Examination Committee that we put on the State board
21 examinations every year. And the rest of the time, we
22 would have monthly meetings and we would have conferences
23 to meet with people to try to satisfy the situation and
24 protect the public where a dentist had a complaint against
25 him.

0178

1 Q And you also mentioned, Dr. Orr, that you had
2 served on the Texas State Board of Radiology; is that
3 correct?

4 A Yes, sir. I served six years on the State Board
5 of Radiology.

6 Q And what were your duties there?

7 A Same thing as the dental board, had regular
8 meetings and I was on committees and we oversaw the x-ray
9 and radiology equipment in dentistry and medicine,
10 hospitals, oil wells, and other industrial-type activities
11 that used radiation in commercial enterprises in the
12 State.

13 Q Dr. Orr, switching back now. Dr. Tadlock's
14 testimony yesterday stated that -- he stated that he has
15 examined hundreds of records and HLD score sheets. Did
16 you hear him say that?

17 A I believe so, yes, sir.

18 Q How many records would you imagine over your
19 career that you have reviewed, Dr. Orr?

20 A Oh, gosh. I started doing review work in the
21 '70s, in the late '70s, and working in legal support.
22 Thousands of cases.

23 Q And you heard him say yesterday, he estimated --
24 or the numbers showed that he spent about six minutes per
25 record; is that correct?

0179

1 A I believe so, yes, sir.

2 Q And understand that you have testified today that
3 you spend as much a half an hour or more?

4 A Yes, sir.

5 Q Is it conceivable to you that you can properly
6 examine a record in six minutes?

7 A No, sir, not if you are going to do as directed
8 and examine the whole record.

9 Q So what is required to be submitted for
10 pre-authorization of one of these records, Dr. Orr?

11 A For orthodontics, it used to be required to send
12 in plaster models of a case, radiographs of both panoramic
13 type, possibly a little small traditional dental films, a
14 cephalometric study, a measurement and tracing of the
15 cephalometric study, a treatment plan, an HLD score sheet
16 with angle classification filled out in it.

17 Q As a general rule, Dr. Orr, is all of that
18 material documentation necessary to determine the
19 pre-authorization?

20 A I would say yes, sir.

21 Q And when you examine a case for
22 pre-authorization, do you examine all of those documents?

23 A We did, yes, sir.

24 Q So you used those in addition to the HLD index;
25 is that correct?

0180

1 A That is correct, sir.

2 Q So if I understand you correctly, it's very

3 difficult for you to have a picture of a case up here on
4 the board and determine whether or not that case met
5 criteria for authorization; is that correct?

6 A Very much so, that is correct.

7 Q So that's why you need more information than you
8 had?

9 A That is correct, sir.

10 Q Now, how many cases for Dr. Nazari -- in Dr.
11 Nazari's case did you examine; do you remember?

12 A I think it was 61 or 63, I'm not positive.

13 Q Now, the records show that out of all those
14 cases, do you remember that you scored 26 points or more?

15 A No, sir, I don't. I could have looked. I don't
16 remember right now.

17 Q Do you know how many cases Dr. Tadlock scored
18 that met the 26-point criteria?

19 A Maybe one. I don't remember exactly. I couldn't
20 hear in the back of the room well.

21 Q We have those numbers, Dr. Orr. I think you
22 scored, I think all of them but one or two, had passed.
23 And then we also had another expert, Dr. Ornish, review
24 those cases. Are you aware of that, Dr. Orr?

25 A Yes, sir.

0181

1 Q So his findings were very close to yours. Would
2 you accept that?

3 A Yes, sir.

4 Q And we also have Dr. Nazari's case. So also, Dr.
5 Orr, we had Dr. Evans score these cases. Are you aware of
6 that?

7 A I believe so, yes, sir.

8 Q So if you look at these cases, Dr. Orr, there's a
9 great disparity between what you and Dr. Altenhoff and Dr.
10 Nazari found as qualifying for pre-authorization and what
11 Dr. Evans and Dr. Tadlock found. Do you understand that?

12 A Yes, sir.

13 Q Can you explain in that context, Dr. Orr, the
14 difference why would there be such a big difference in the
15 disparity between finding no cases that qualified and 63
16 cases that qualified?

17 A Apparently, the difference is the different
18 scoring, people's use of ectopic eruption and the
19 definition that they use.

20 Q So if I understand you correctly, I think it all
21 pretty much boils down to this definition of ectopic
22 eruption; is that correct?

23 A Well, of the nine criteria, several are rather
24 objective because they measure with a millimeter rule, the
25 differences in the teeth position. And then several have

0182

1 more subjectivity to them. And of course, when you get in
2 to the ectopic eruption, it's extremely subjective.

3 Q Now, Mr. Moriarty gave you an example, I believe,
4 of having no approvals and then having all approvals. You

5 mentioned, as I recall, subject -- 100 percent
6 subjectivity, I believe is what you said?

7 A Yes.

8 Q So would that explain why -- subjectivity would
9 explain why one doctor would see no teeth in ectopic
10 eruption and another doctor would see five teeth in
11 ectopic eruption?

12 A Yes, sir.

13 Q So are you familiar with, in medicine, the term
14 second opinions, Dr. Orr?

15 A Yes, sir.

16 Q Could that possibly apply to this case?

17 A It could, very much so. Different doctors see
18 things different ways, particularly when they -- their
19 training and thinking so some things are more important
20 than others.

21 Q So could you say, and I believe you did say, if
22 I'm correct, correct me if I'm wrong, you said the doctor
23 who saw no ectopic eruptions opinion is just as valid as
24 the doctor who saw five teeth; is that correct?

25 A That is correct, sir.

0183

1 Q We are talking about a difference of opinion; is
2 that correct?

3 A Yes, sir.

4 Q So if a doctor saw five teeth and scored those as
5 ectopic eruption, is that misrepresentation?

6 A No, sir.

7 Q So would you characterize that as a difference of
8 opinion?

9 A I would, sir.

10 Q Dr. Orr, we haven't talked much in this whole
11 situation regarding Dr. Nazari's files here. We have
12 talked about everything else, we have talked about All
13 Smiles, we have talked about all kinds of things. Would
14 you like to spend some time now at looking at some of Dr.
15 Nazari's cases?

16 A All right, sir.

17 Q What I would like to do, if I take a minute, we
18 are going to pull up some of these cases and we are going
19 to look at the same cases that Dr. Tadlock looked at
20 yesterday. We will talk about his findings and what your
21 findings were. I would like for you to explain to the
22 Court the difference in how you came up with a different
23 opinion.

24 A All right, sir.

25 MR. ANDERTON: Just a minute, Your Honor.

0184

1 Q (BY MR. ANDERTON) I hope you can see that okay,
2 Patient P-1. Dr. Orr, when I look at this case, I believe
3 probably you would agree, this looks pretty good. Hold on
4 just a second.

5 MR. MORIARTY: Judge, I don't want to be
6 jumping up every time, but I think we ought to decide

7 which one of them is going to testify.

8 I object, that's leading.

9 JUDGE EGAN: I sustain. You are leading, so
10 please try to not lead.

11 MR. ANDERTON: I won't lead, Your Honor.

12 JUDGE EGAN: Thank you.

13 MR. ANDERTON: We had so much leading this
14 morning, I got out of sequence.

15 Q (BY MR. ANDERTON) Dr. Orr, Dr. Tadlock looked at
16 this case yesterday, he scored a zero for points in this
17 case.

18 JUDGE EGAN: Somebody get the lights in the
19 back. Thank you.

20 Q (BY MR. ANDERTON) Do you have any comment
21 regarding these photographs, Dr. Orr?

22 A Well, yes, same thing I had previously. I
23 wouldn't mind seeing some of the support material and
24 chart material and my score sheets if I'm going to make
25 comments.

0185

1 Q That's coming, Dr. Orr. My point is here, Dr.
2 Tadlock made his opinion yesterday based on this
3 photograph, is my understanding. Is that your
4 understanding yesterday?

5 A I believe so, yes, sir.

6 Q Now, do you see anything in this photograph that
7 would cause you concern?

8 A Yes. I see some teeth out of position and not in
9 a normal ideal position.

10 Q And which ones are those, Dr. Orr?

11 A I would rather not comment too much until I can
12 look at it either on a model or in different records.

13 Q Do you remember Dr. Tadlock making a statement
14 yesterday that if this case were presented to the
15 orthodontic board, that it would pass?

16 A All right, sir.

17 Q So he found no discrepancy?

18 JUDGE EGAN: Could you identify the exhibit
19 numbers, please?

20 MR. ORNELAS: The exhibit on the left is
21 P-73.1; the exhibit on the right is Exhibit R-11.1.

22 Q (BY MR. ANDERTON) Dr. Orr, do you recognize the
23 document on the left as your score sheet?

24 A Yes, sir.

25 Q I would submit to you that the document on the
0186

1 right is Dr. Tadlock's score sheet.

2 A All right, sir.

3 Q Could you read your comment, Dr. Orr?

4 A On ectopic eruption, I scored Tooth Numbers 22,
5 23, 24, and 7 through 10.

6 Q And up here, Dr. Orr, you scored?

7 A Open bite of one millimeter that got four points,
8 and a mandibular protrusion of one millimeter that got

9 five points.

10 Q Now, Dr. Orr, you didn't come to that conclusion
11 based strictly on those photographs, correct?

12 A No, sir, that is correct.

13 Q So is that saying that you need more information
14 than just the photographs?

15 A Yes, sir.

16 Q Do you recognize this document, Dr. Orr?

17 A Yes, sir.

18 MR. ANDERTON: Can you identify that one?

19 MR. ORNELAS: This is coming from P-1, this
20 is part of P-1, the patient file.

21 Q (BY MR. ANDERTON) Explain for the Court, Dr.
22 Orr, what that tracing represents?

23 A This is the tracing of cephalometric study that
24 shows the lateral view from an x-ray that's been traced.
25 It's a radiographic study where you made a tracing in

0187

1 order to get a view of the side view of where the teeth
2 are in the bone and in the mouth.

3 Q What can you deduce from this tracing, Dr. Orr?

4 A With the anterior teeth, you can deduce two
5 things. Can you blow that up a little bit, that section?

6 JUDGE SEITZMAN: Mr. Anderton -- Dr. Orr,
7 I'll confess at having stared at some of these, it looks
8 like my route on a golf course sometimes. If Dr. Orr can
9 approach and give us an idea of what we are looking at
10 anatomically before he goes into where the teeth are, that
11 would be helpful.

12 MR. ANDERTON: Thank you.

13 JUDGE EGAN: Do you want to loan him your
14 pointer?

15 MR. ANDERTON: Sure.

16 THE WITNESS: This side. This is the side
17 view of the head of the patient, the lower jaw, the back
18 molars that are registered even though we are not allowed
19 to score molars. And this is the palate of the mouth, the
20 hard palate, and the upper jaw that holds the teeth, and
21 the lips. We draw lines from various anatomical landmarks
22 to get an idea of where the teeth are in space. This is
23 also done from the front of the face, which gives you a
24 very nice three-dimensional picture.

25 So one can see the outline of these lower

0188

1 front teeth and the upper front teeth that one of the
2 important things is that they are slightly ahead of a
3 vertical line that's going from the chin up to the noes,
4 the base of the nose. And the other thing is that you can
5 see that there's a millimeter of space when it's in the
6 position here that's between the upper and lower teeth.
7 So we give that four points for that open space in there,
8 I think it was.

9 Q (BY MR. ANDERTON) I believe that's right, Dr.
10 Orr.

11 A I might add for the Court, I don't know how much
12 you want me to talk, but the point of this is it gets back
13 to orthodontics is the treatment that moves the teeth,
14 whereas for me --

15 MR. MORIARTY: I object. There's not a
16 question on the board.

17 JUDGE EGAN: Sustained. You need to wait
18 until he asks a question.

19 THE WITNESS: I'm sorry.

20 JUDGE EGAN: Wait until he asks the rest of
21 the question.

22 THE WITNESS: I was going to explain.

23 Q (BY MR. ANDERTON) Please continue, Dr. Orr.

24 A So in the field of occlusion, it is so --

25 MR. MORIARTY: Judge, I would ask for

0189

1 question-answer. This is direct, it's his own witness.

2 We don't need this narrative.

3 JUDGE EGAN: We have asked him to explain,
4 the Judges have asked him to explain what this diagram
5 means. So we are going to give him a little leeway, but
6 again, avoid leading.

7 JUDGE SEITZMAN: I'll also note that we had
8 the same objection when you had your witness on the stand
9 yesterday and he's an expert, and sometimes a narrative
10 will --

11 MR. MORIARTY: Okay.

12 JUDGE EGAN: Go ahead.

13 THE WITNESS: I wasn't going to go on at
14 length, I was just going to make the point that it is so
15 important to have orthodontic correction, because from an
16 occlusion standpoint, when the patient chews and moves
17 their jaw, these lower front teeth have to ride across the
18 upper teeth. And that's what we call anterior guidance,
19 the protrusive guidance.

20 JUDGE SEITZMAN: Dr. Orr, what is the
21 significance of that line that runs between the two teeth
22 that are shown and out to the right?

23 THE WITNESS: This one here?

24 JUDGE SEITZMAN: Yes, sir.

25 THE WITNESS: That's the line that

0190

1 represents a rather all too straight line of the bite, the
2 plane of occlusion, it can be called. But it is put there
3 so that you can determine angles for the rest of the
4 mouth, but it doesn't have a huge particular significance
5 of itself, other than it gives the dentist an orientation
6 of where the missing teeth are located.

7 JUDGE SEITZMAN: So it's a baseline
8 reference?

9 THE WITNESS: That's a good way to put it,
10 yes, sir.

11 JUDGE SEITZMAN: I'm sorry for the
12 interruption.

13 MR. ANDERTON: Thank you.
14 Q (BY MR. ANDERTON) Dr. Orr, we are going to put
15 up the cephalometric x-ray so you can explain to the Court
16 where this tracing came from.

17 A Well, this is called a lateral plate. It's --

18 JUDGE SEITZMAN: Hold on, Doctor.

19 MR. ORNELAS: This is coming from P-1. This
20 is all part of the patient file, P-1.

21 Q (BY MR. ANDERTON) Dr. Orr, would you please
22 explain where the tracing came from?

23 A This is a lateral plate x-ray that produces a
24 radiograph of the side of the head. Here is the neck
25 coming down to the chin, and here is the teeth across

0191

1 here, the base of the nose. And up here at the base of
2 the skull is a point of bone called the sella turcica
3 that's our base point, and we can look and get an idea of
4 whether this patient has a long deep chin that sticks out
5 in space, whether the teeth are out in front of the chin,
6 or if he has an inadequate chin and may need some type of
7 surgery, as well as orthodontic treatment.

8 Q Thank you, Dr. Orr. So your -- it looks like
9 your score for that case was 27 points. Do you feel
10 that's a correct score?

11 A Yes, sir.

12 MR. ORNELAS: This is P-73.6.

13 JUDGE EGAN: Which patient is this?

14 MR. ORNELAS: Patient 6. The one on the
15 right is R-11.6.

16 Q (BY MR. ANDERTON) Dr. Orr, I represent to you
17 that this is your score sheet on the left, Dr. Tadlock's
18 on the right. Could you just briefly summarize your
19 score?

20 A Yes, sir. This case scored a balance of three
21 points on overjet, one point on overbite, the ectopic
22 eruption of six teeth giving it 18 points, and four points
23 on labio-lingual spread.

24 Q Would you look at Dr. Tadlock's score?

25 A It looks like there's a total of one point for

0192

1 overjet and -- no -- yes, one point for overjet, and
2 that's the balance.

3 Q Thank you. What is that -- can you read that,
4 Dr. Orr?

5 A Not very well, no, sir, I'm not sure.

6 Q It looks like crossbite; is that correct?

7 A It might be.

8 Q Let's look at the photograph.

9 MR. ORNELAS: P-6.

10 THE WITNESS: Can you leave mine up and put
11 this or not? They can't have benefit of my score --

12 Q (BY MR. ANDERTON) There you are, Dr. Orr. Now,
13 you scored, it looks like, on the copy I had, you score as
14 ectopic eruption, so could you show the Court what that

15 ectopic eruption is?

16 A This light is really -- it bleaches out the
17 picture.

18 JUDGE SEITZMAN: It won't turn off. It's a
19 security light that stays on. Do you want the picture
20 blown up for you?

21 THE WITNESS: Yes, please.

22 JUDGE EGAN: Which one?

23 THE WITNESS: Now, I can't remember the
24 scores. You can see here the lower anteriors, how they
25 are forced out and the space between the lower canine
0193

1 teeth is all important where the jaw is a narrowed, it
2 needs to be expanded. The teeth are ectopically erupted.
3 Anterior to the ridge, to the front of the ridge, and
4 pushed off and that has to be corrected. You can see
5 there's space between these teeth when the person is
6 biting, you can't see it as well as we could if we had the
7 models, but you can see the space where the teeth do not
8 interdigitate when they bite and close down so that they
9 can chew and bite food.

10 So it's a dysfunctional bite there. That is
11 where they get the points for the overbite and lack of the
12 -- I can't remember without the --

13 Q So, Dr. Orr, you scored this case 26 points; is
14 that correct?

15 A I believe so, yes, sir.

16 Q Now, that would be the very minimum, correct?

17 A Yes, sir.

18 Q So that would mean that this case is a
19 handicapping malocclusion; is that correct?

20 A That is correct, sir.

21 Q And what is handicapping about that, Dr. Orr?

22 A In that -- even though it's nice looking teeth,
23 in the bite, the bite -- the teeth don't come together in
24 order to adequately chew the food and function as teeth.

25 Q So that means, Dr. Orr, that if those teeth are
0194

1 -- meet the definition of ectopic eruption, they are in an
2 unusual pattern of eruption; is that correct?

3 A That is correct. That's what we call ectopic
4 eruption. That's the contributory, along with the
5 overbite here does not come down over -- the upper teeth
6 don't come over the lower teeth sufficiently.

7 Q So, Dr. Orr, according to previous testimony, if
8 those teeth are in malocclusion, they are dysfunctional;
9 is that correct?

10 A That is correct, sir.

11 Q So that case should be approved in your opinion?

12 A That is correct, sir.

13 Q So Dr. Tadlock scored that case zero; would you
14 disagree with him?

15 A Yes, sir.

16 JUDGE SEITZMAN: Can I interrupt again?

17 THE WITNESS: Yes, sir.

18 JUDGE SEITZMAN: Yesterday, we had some
19 testimony about denominating the teeth and it was 1, 2, 3
20 left; 1, 2, 3 right. Are you using a different numbering
21 system, Dr. Orr?

22 THE WITNESS: Actually, there's a half a
23 dozen different numbering systems around the world.

24 JUDGE SEITZMAN: Can you take that middle
25 photograph on the right and blow that up, please?

0195

1 And can you -- that's a lower; is that
2 correct.

3 THE WITNESS: That is correct.

4 JUDGE SEITZMAN: Point out how you number --

5 THE WITNESS: Here is the midline and this
6 is the lower on that side; 1, 2, 3, and then 1, 2, 3 over
7 here. And you can see how the contact points of the teeth
8 do not meet with each other, and there's as much as two
9 millimeters off in all of these where the teeth are
10 overlapped on each other and -- go ahead.

11 JUDGE SEITZMAN: So you are using the same
12 numbering system that Dr. Tadlock referred to you; 1, 2, 3
13 going left, and 1, 2, going right?

14 THE WITNESS: I do. I use them all
15 sometimes. Sometimes we use 1 through 32.

16 JUDGE EGAN: Because on another patient, you
17 used 22, 24 --

18 THE WITNESS: That was the 1 through 32.

19 JUDGE EGAN: So how do you --

20 JUDGE SEITZMAN: How do you count if you are
21 not using the --

22 THE WITNESS: This would be 22 here, the
23 lower left cuspid tooth, and it would be Number 22, 23,
24 24, and it would be from the midline lower left, 1, 2, 3.

25 JUDGE SEITZMAN: So how do you get to --

0196

1 where do you start counting?

2 THE WITNESS: You start on the upper right
3 with Tooth Number 1 on the upper right wisdom tooth, and
4 you come across 1, 2, 3, 4, the front middle teeth are 8
5 and 9, and then you continue 10 on through 16, and drop
6 down to the lower left wisdom tooth where you go 17, 18,
7 22, 23, 24, 25, 26, 27 is the other canine, and then the
8 lower right premolars are 28, 29, and then this decayed
9 molar is 30, 31 and 32.

10 JUDGE SEITZMAN: All right. And just -- not
11 that it arises, but I'm curious, and if Tooth 22 happens
12 to be missing, it still occupies Space 22? So let's say
13 somebody had one less tooth because 22 was missing, that
14 space would still be where 22 is and the next tooth would
15 be 23; you don't --

16 THE WITNESS: The teeth are their
17 identification numbers rather than the space.

18 JUDGE SEITZMAN: If somebody was missing a

19 tooth, you had two people right up there and one of them
20 was missing what's Number 22.

21 THE WITNESS: It would go from 21 to 23,
22 correct.

23 Q (BY MR. ANDERTON) Dr. Orr, we want to put up the
24 cephalometric on this, maybe that will help to explain.

25 A All right.

0197

1 MR. ORNELAS: This is from P-6.

2 A This is the side view of the skull, that --
3 here's the upper jaw, the side view of the teeth, the
4 lower teeth and the lower jaw. And --

5 JUDGE EGAN: Hold on. Just for
6 identification purposes, because there are several
7 documents within these patients' records, there appears to
8 be a Bates stamp ADC 0000410. So for clarification, if we
9 have those numbers, please reference them. Thank you.

10 Go ahead.

11 Q (BY MR. ANDERTON) Okay. Dr. Orr, is there -- is
12 this a good example of ectopic eruption of those anterior
13 teeth?

14 A Yes, sir.

15 Q Would you explain why, please?

16 A You can see that the outline of the enamel of the
17 teeth, that they don't meet well on the upper and lower
18 teeth.

19 Q So again, if those teeth are in malocclusion,
20 they are dysfunctional, correct?

21 A That is correct, sir.

22 MR. ORNELAS: P-10.

23 Q (BY MR. ANDERTON) Dr. Orr, do you see anything
24 unusual or anything you want to comment on this
25 photograph?

0198

1 A Yes, sir. We have a lot of teeth both in the
2 upper arch looking into the roof of the mouth, and, for
3 instance, the lower front teeth where teeth are not spaced
4 correctly, and you can see where the red light is. For
5 instance, there's a long way from the contact point of
6 this cuspid tooth to the contact point of it's neighboring
7 tooth right there.

8 Another bad aspect is there's a collapse of
9 the bite in that the lower teeth have overerupted and are
10 up and biting into the upper teeth up here; whereas, as
11 you go further back, which is important even though we
12 don't score them, the back teeth are completely out of
13 place and not meshing correctly at all.

14 MR. ORNELAS: The document on the left is
15 P-73.10; the document to the right is R-11.10. This is
16 reference to Patient Number 10, P-10.

17 Q (BY MR. ANDERTON) Dr. Orr, it appears you scored
18 this case 36 points, Dr. Tadlock scored it six points.

19 Can you explain the discrepancy?

20 A Well, if you go back to the picture and maybe

21 blow one up, so you can see a number of things wrong with
22 this picture in that the teeth are basically just not
23 lined up at all, as well as the bite being collapsed,
24 upper and lower. To make a point, you can see that
25 there's already a wear on this little incisor that is a
0199

1 cutting tooth and it's not supposed to be worn at this
2 corner, it's supposed to come across and be squared off.

3 This lateral incisor, which is a weak
4 cutting tooth, is having to function as if it was a canine
5 tooth and guiding the bite. So that the tooth that's
6 supposed to be doing its job is down below it and it is
7 down and forward off the ridge and completely out of the
8 bite until the patient chews out to the side.

9 When they chew out to the side, all of a
10 sudden you see instead of a sharp point on this useful
11 canine tooth, you see a worn edge right here. And you
12 yourself can start looking at people, not just the family,
13 but at the church and grocery store and see if their
14 canines are worn on the edge. And you will know that they
15 have got malocclusion and some dysfunctional teeth that
16 are not lined up correctly. They may be subclinical and
17 living with it, but it is still there.

18 So what we have is this canine tooth where
19 I'm pointing, this red dot is supposed to be lined up, up
20 above here on the backside of this incisor tooth right
21 here. So we are quite a few millimeters off in space, and
22 that's the same for all these teeth. But that's just the
23 one example right there.

24 Here is apparently a retained baby tooth in
25 the front, and you can see the lower incisors here that
0200

1 are out of alignment and the midline between them, right
2 here where I'm running up and down, this midline is
3 supposed to be over several millimeters in the middle of
4 the upper jaw right here. So one of the things that is so
5 important to development of a useful mouth is the midline
6 of the lower jaw and the lower joint all being lined up
7 correctly with the upper.

8 If they are not lined up correctly, it
9 affects all the teeth and they all come out. So I'll have
10 to look at a bite like this and score it, not just one
11 tooth or two teeth, that because the midline is off, the
12 jaw is off to the side and the teeth are all off, it
13 affects all 12 front teeth that Medicaid says you have to
14 use them instead of doing the whole mouth, like I would
15 like to do. So we score all the 12 anterior teeth at 23
16 points apiece, is 36 points. And that's ectopic eruption.

17 This is a rather egregious case of ectopic
18 eruption. It's easy for a non-dentist to get a look and to
19 see. In fact, the further back you go and look, you can
20 see that this tooth, that the gum is at different levels
21 here, and then down, this one goes way up, the tooth is
22 out of position. Compare that over to here, and the gum

23 and the teeth are nowhere near this one is over here.

24 So every tooth is out of the position. You
25 take this lower incisor here that I'm pointing, this red
0201

1 dot is on the edge of this tooth and it's supposed to be
2 up and touching the backside of this tooth. So one of the
3 fundamental things that an occlusion person does when he
4 looks at the bite like this, is -- are any of the contacts
5 from tooth to tooth not touching each other where they are
6 supposed to. Because if they are not, then things just
7 keep collapsing further and teeth get overlapped and get
8 worse and worse and worse, particularly in the teenage
9 years.

10 So in this case, it doesn't take one very
11 far to extrapolate to see that we have an egregious 36
12 points of 12 front teeth out of the position and not
13 functioning. They are totally dysfunctional and what we
14 call an egregious situation.

15 Q So in your opinion, Dr. Orr, this is an unusual
16 pattern of eruption?

17 A Yes, sir, it is.

18 Q And those teeth, in your opinion, then, Dr. Orr,
19 are dysfunctional?

20 A They are, yes, sir.

21 Q Would you say that this case then meets the
22 definition of medical necessity?

23 A Absolutely, yes, sir.

24 Q Dr. Orr, in this case, would it surprise you to
25 learn that Dr. Nazari scored this case zero?

0202

1 A I'm sorry. Scored it --

2 Q Scored it zero.

3 A I don't understand.

4 Q Dr. Ornish also scored it zero. Could you give
5 any kind of explanations as to why that might happen?

6 A Alcohol, sleep deprivation.

7 Q This is Dr. Nazari's score sheet. Can you read
8 that?

9 A No, I'm having trouble. Something impacted 8 and
10 9, the supernumerary tooth, which means an extra tooth.

11 Q Impacted -- Dr. Orr, could it be saying
12 interceptive?

13 A I probably wouldn't pass it because I can't read
14 it, if it was submitted to me.

15 Q Let's look at the x-ray, Dr. Orr.

16 A I wish they were all typed.

17 MR. ORNELAS: This is from P-10.

18 A You can see a number of things on this radiograph
19 that call attention. This tooth is rotated sideways, this
20 looks like an extra tooth here of the enamel that's turned
21 sideways. This tooth is turned sideways. These teeth are
22 up and down, as we saw in the photograph, and nothing
23 meshes in any sense. So maybe they scored zero because
24 there was an apparent supernumerary tooth and impacted

25 upper teeth that may have been made it in their mind that
0203

1 -- either nontreatable or needed to be a more
2 sophisticated surgical treatment. A lot of doctors'
3 offices, they will see this and it goes immediately to an
4 oral surgeon's office.

5 Q Dr. Orr, would it surprise you to learn that Dr.
6 Nazari turned this case in with zero points, and yet, it
7 was approved for treatment?

8 A I guess it would surprise me.

9 Q It wouldn't surprise you that it's being treated,
10 correct?

11 A Correct, sir. They are dysfunctional.

12 Q And even though Dr. Nazari scored this case zero,
13 the case was approved. Does that mean he cheated?

14 A It doesn't mean he cheated, no.

15 Q So he scored everything with zero on his sheet
16 earlier; did you see that?

17 A Yes, sir.

18 Q Is there anything false or misleading about it?

19 A No, sir, nothing.

20 Q So he scored zero, you scored 36, could we call
21 that just a difference of opinion?

22 A I would think so.

23 Q But in your opinion, he didn't try to deceive
24 anybody or provide any false information; is that correct?

25 A No, sir.

0204

1 Q Thank you.

2 MR. ORNELAS: This is P-23, Bates number ADC
3 000102.

4 Q (BY MR. ANDERTON) Anything on that photograph,
5 Dr. Orr, that you would like to comment on?

6 A Yes, sir. It's a real bad problem in dentistry,
7 and that's the narrowing of the arch of the palate across,
8 therefore, not letting space or teeth to come in. And the
9 same thing with the lower teeth. Here is the tongue and
10 here the lower teeth and the lower front teeth.

11 Everything is being squeezed out. Then you can see on
12 this picture here from the frontal view the same thing.
13 You can see how the teeth are overlapped incorrectly, out
14 of position, midline is off and they are squeezed in on
15 each side.

16 These teeth should be out here towards the
17 edge of the picture. For those of you not used to doing
18 orthodontics, even though I'm not an orthodontist, one of
19 the common treatments of this is that the orthodontist
20 will use various -- both removable and fixed appliances to
21 widen the upper and lower arch and make the bone slowly
22 expand over the months. As they expand the bone, it's --
23 to many of us, almost a lovely miracle in that as you
24 expand the arches, the teeth find space to come in
25 straight. It's awfully nice.

0205

1 Around the world in other countries, they
2 don't do a lot of the bands they do. All they do is arch
3 expansion because they don't have the money and the
4 finances, and through the teenage years, the arch
5 expansion will let teeth come in rather nice and straight,
6 or at least straight enough for their standards.

7 Q I want to digress just a minute, Dr. Orr, and
8 expand on something you just mentioned. No pun intended,
9 expansion arches.

10 Mr. Moriarty yesterday made the comment and
11 the notation that a score of 26 is just as valuable as a
12 score of 40. Now, in your opinion, Dr. Orr, would there
13 be -- could there be a difference in the payment or in the
14 reimbursement rate for one that is 26 and one that is 40?

15 A No, sir. No.

16 Q Would one that is 40 possibly require more
17 treatment like the case you just mentioned?

18 A Well, almost always a higher HLD number is going
19 to require more treatment and more thought and a longer
20 period of time for the orthodontist to treat the patient.

21 Q Would that possibly require more appliances to be
22 used?

23 A Well, more appliances as the years went by. The
24 list of appliances that Medicaid has paid for has -- had
25 to be improved and advanced to keep step with orthodontic
0206

1 treatment to specifically accomplish some of these
2 changes.

3 Q So can we conclude from what you just said, Dr.
4 Orr, that a case that scores 26 and one at 40 is no
5 different as far as pre-approval is concerned?

6 A No, sir. Once it makes 26 points, in theory, but
7 not necessarily in practice, the dentist could quit
8 scoring because the program should pay for it if it makes
9 26 points.

10 Q If I understand you correctly, the cases scored
11 40 might require additional treatment?

12 A It might require additional treatment modalities
13 through the years.

14 MR. ORNELAS: This is from P-23, Bates
15 number ADC 000103.

16 Q (BY MR. ANDERTON) Would you explain this picture
17 to the Court?

18 A This is called a panoramic radiograph. The
19 machine goes around the head in a circle and prints out a
20 film that gives you a layout on a flat picture of the
21 upper and lower jaws. As I point right here, here is the
22 temporal mandibular joint on that side in its socket,
23 right here, the glenoid fossa. And the same thing over
24 here. Here is the temporal mandibular joint in its fossa.
25 Here is the ramus of the jaw.

0207

1 Then we start to see the formation of the
2 molars. Here is the wisdom teeth on the lower, second

3 molar and first molar. And you can start to appreciate
4 the -- somewhat normal, somewhat abnormal, teeth coming in
5 at different heights and different levels.

6 This lower cuspid tooth is being crowded
7 out, these teeth are tilted, the lower front teeth at a
8 side. Here would be the midline right here, so that this
9 would be 1, 2, 3, and then 1, 2, 3. And 3 here, you can
10 appreciate the shape of the crown on the canine is a side
11 view because the tooth is out of position, you can see on
12 the radiograph, and it should be rotated 90 degrees. And
13 then in all of these, you can appreciate the nerve chamber
14 down in the middle of the tooth. You can see it better on
15 these molars.

16 This second molar here is -- you can see the
17 nerve chamber in the tooth and it gets open at the bottom,
18 which gives you the approximate age of the person. If
19 this first molar is, what we call, a six-year molar, it
20 erupts at age six and it's the first permanent molar to
21 occur in the mouth on a six-year-old about, this is a
22 12-year molar at age 12, and this is an 18-year old molar,
23 which is the wisdom tooth. Which this jawbone has to
24 really grow out and extend to make space for this wisdom
25 tooth to get out.

0208

1 I have written, amongst lots other things
2 that you don't have, about wisdom teeth and how they
3 destroy the occlusion because they crowd all the other
4 teeth and don't give us space. So you can see this molar,
5 this 12-year molar right here is not through the jawbone
6 and into the mouth. So this patient is probably maybe
7 right at 12 or a little under. As this tooth grows up and
8 out, like its predecessor, the nerve chamber will get
9 smaller and smaller until you get the root tips closed
10 over and sealed like this tooth is here.

11 So that if you took this same x-ray on me at
12 my advanced age, there's almost no nerve chambers left in
13 these molar teeth, they are completely closed over and
14 sealed down because that's the way nature does things.
15 And that's a discussion of that area there.

16 This area has it's problems. We can see the
17 12-year molar and the wisdom tooth.

18 MR. MORIARTY: Did we get that question
19 answered, Your Honor?

20 JUDGE EGAN: Please.

21 Q (BY MR. ANDERTON) Thank you, Dr. Orr. To
22 summarize this case, Dr. Orr, do you find that this
23 occlusion -- do you find, Dr. Orr, that there is
24 malocclusion in this case?

25 A There is at this stage, yes, sir, and it's a

0209

1 dysfunctional bite at this stage.

2 Q So in your opinion, this case qualifies for
3 preauthorization?

4 A It probably does, yes, sir.

5 MR. ORNELAS: P-28, ADC 001221.

6 Q (BY MR. ANDERTON) Dr. Orr, do you see anything
7 unusual in this photograph?

8 A I'll try to be briefer, but this is not quite as
9 dramatic as the previous one. But we have a narrow arch
10 and we have teeth coming in without space for them to
11 arrive between their neighboring teeth. You can see on
12 the lower teeth down here the same thing, there's not
13 enough space in the jawbone for those teeth. I'll let you
14 go on.

15 Q So in your opinion, Dr. Orr, is that ectopic
16 eruption?

17 A This is ectopic eruption, yes, sir. You can see
18 it, especially over here. If you look at the front
19 surface of this tooth, as you look into the cutting edge
20 of the tooth -- I'm sorry, I don't think that's a very
21 good picture, but you can --

22 THE WITNESS: You can go back where it was.

23 A I wanted to show the Court that the back point of
24 this tooth is supposed to be at this time touching the
25 front side point of this tooth. So there's quite a

0210

1 dramatic difference between those two. This one also --
2 this point should be out here further. So -- over here,
3 this point, this tooth is rotated like 20 degrees out to
4 the front. So whether it was arch expansion or braces,
5 this patient would benefit because -- especially these
6 front six teeth are dysfunctional position by the
7 definition of an unusual pattern of eruption.

8 Q (BY MR. ANDERTON) So therefore, they should
9 qualify for treatment under the Medicaid program?

10 A I would think that would, yes, sir.

11 MR. ORNELAS: This is P-42, Bates number ADC
12 000056.

13 Q (BY MR. ANDERTON) Dr. Orr, please comment on
14 this photograph.

15 A This picture here, by now, the Court is probably
16 starting to appreciate the lack of width of the palate of
17 the roof of the mouth, the need to spread these teeth out.
18 In fact, on the subtle side of it, you can look in here
19 and you could even -- looking straight into the roof of
20 the mouth and you can actually see the front surface of
21 this tooth and of this tooth where they touch against the
22 lips. So they are crowded, squeezed a lot more than one
23 would even suspect.

24 And then these six teeth out on the front,
25 the incisors that we are going to score, they are leaned

0211

1 over and pushed out and off of the ridge that -- of bone
2 that is supporting them. So we are looking here,
3 everybody can feel behind their upper front teeth, they
4 have got a little bump there, that's the nerve bundle that
5 controls all this area and plays a part in the bite and
6 where the teeth go.

7 And when you look down and see this nerve bundle,
8 what you would like to see, whether it's in the mouth or
9 on the models, you would like to be able to see the
10 cutting edge of these incisor teeth a lot closer to this
11 nerve bundle like right here. So we know, even without
12 looking at models or anything else, that these teeth are
13 flared out and are in a dysfunctional cutting position to
14 cut food and incise.

15 On the lowers --

16 Q Excuse me. Let's look at the cephalometric --

17 A All right, sir.

18 MR. ORNELAS: Again, from P-42, ADC 000058.

19 THE WITNESS: Are you going to go up one
20 more?

21 MR. ANDERTON: Yes.

22 THE WITNESS: I didn't mean size-wise. I
23 meant are you going to go to a tracing or not?

24 Q (BY MR. ANDERTON) I want to look at the x-ray
25 first. Could you comment on any ectopic eruption you may
0212

1 see there, Dr. Orr?

2 A Maybe you are seeing something I'm not seeing.
3 I'm saying that I would prefer to have more overbite here,
4 have these upper teeth down another couple of millimeters
5 over the lower front teeth here, and it looks like there's
6 dark space here that should not be here. The teeth look,
7 to me in this film, like they are position-wise very much
8 out in front from where they should be.

9 And part of it is the patient's complete
10 skull, which is why you take this picture. We have got a
11 long chin that drops down to a point as opposed to
12 somebody that would be a square chin, where the bottom of
13 the jawbone would come across, where my light is right
14 here. So we have almost a lot of extra bone, and this
15 pointing down, but then we have a really, almost a
16 depression, from the teeth on up to the base of the nose
17 on up the nasion and the front of the forehead that maybe
18 as the patient gets a lot older, it will grow, maybe not.

19 But from the standard viewpoint, this line
20 of the front of the bone could go out here several
21 millimeters further on out here, would be perhaps a more
22 ideal. So that we have a long face and a long chin. And
23 if they did braces on this, there would be every
24 opportunity to let this grow, hold certain parts of the
25 teeth and let the skull grow.

0213

1 There's orthodontists probably in the room
2 that could talk better than I could about it, but one of
3 the areas I studied is skull and facial development. And
4 the skull and bony development of all this head area, as
5 it grows down and forward is what affects the occlusion
6 and the meshing of the teeth. And that is what is so
7 criminal to us in occlusion.

8 Q Let's take a quick look at the tracing, Dr. Orr.

9 MR. ORNELAS: Again, P-42, ADC 000059.

10 A And In this tracing, especially you can see, here
11 is the line that the Judge asked about here, the
12 horizontal line that gives us a baseline, and here is the
13 vertical line going up the front to the nasion at the base
14 of the nose between the eyebrows. But then we find the
15 whole upper front teeth are out in front and beyond this
16 line, as is the bone that's holding them.

17 One of the things that all these pictures,
18 we haven't had time to talk about, is where is the root
19 and where is the bone. That's so important to me in
20 occlusion, it's so important to an orthodontist, because
21 the orthodontist can't put teeth out in space if there's
22 not bone underneath holding the root. You have to have
23 fundamental support underneath. And I, in the occlusion
24 parts with the crowns of the teeth, I have to have the
25 root underneath in order to have the teeth meshing crown
0214

1 to crown within. So it's like a partnership deal in that.

2 Q So bottom line, Dr. Orr, this case was, in your
3 opinion, a dysfunctional case with malocclusion; is that
4 correct?

5 A Yes.

6 Q And qualified for funding under the Medicaid
7 program?

8 A Yes.

9 JUDGE EGAN: Be careful about leading.

10 MR. ORNELAS: This is P-43, Bates ADC
11 000432.

12 Q (BY MR. ANDERTON) Any comment on this case, Dr.
13 Orr?

14 A Not too much. There's missing teeth, and I can't
15 really tell from here. I can see down here that we are
16 missing -- I think the Judge alluded to this earlier, what
17 if a tooth is missing. Here is a premolar and a premolar
18 and it looks like we are missing a canine tooth possibly
19 here, the space is closed up.

20 THE WITNESS: No, go back to the lower where
21 I was talking. Hold it right there.

22 A So that the cutting edge of these lower teeth,
23 that's right here, I would like it to be back here further
24 in an ideal bite where the lower right canine tooth is.
25 This would be LR 3. So you can see there's a tremendous
0215

1 space between the back point of this incisor, the front
2 point of this canine, then in a complete and set of
3 braces, that's my requirement in occlusion when I check
4 them, that they have got to be touching correctly, the
5 side to the teeth. And that's where we get the mutual
6 support.

7 Think about this arch and these teeth right
8 here, and think about the early orthodontist long before
9 today's crop of orthodontists, they would take either a
10 silver dollar or silver 50 cent piece, and that was what

11 they would wash and put in the mouth in the insides of all
12 these teeth, had to touch perfectly around the silver
13 dollar, and then the professor knew that he had them lined
14 up correctly.

15 Q (BY MR. ANDERTON) Thank you, Doctor. We are
16 going to look at the x-ray in this case.

17 MR. ORNELAS: This is from P-43, Bates
18 number ADC 000433.

19 Q (BY MR. ANDERTON) Dr. Orr, do you see anything
20 unusual in this case, Dr. Orr?

21 A I was trying to see if this was either an extra
22 tooth or bone down here. Do we have any documentation
23 that there's an extra tooth there? No?

24 JUDGE EGAN: Right now, it is your
25 opportunity to answer, not ask questions. So you have --
0216

1 THE WITNESS: Well, I think there was.

2 Q (BY MR. ANDERTON) Dr. Orr, we have to identify
3 it, hold on.

4 MR. ORNELAS: Same patient, P-43, Bates
5 number ADC 000434.

6 Q (BY MR. ANDERTON) Dr. Orr, please look at the
7 tip of the chin on this case.

8 A It looks like we have a tooth buried in the chin
9 that has not erupted, and is supposed to be up here
10 somewhere with its mates up in this area.

11 MR. ORNELAS: On the left side, we have
12 P-73.43; on the right side is R-11.43.

13 Q (BY MR. ANDERTON) Dr. Orr, can you explain to
14 the Court your finding there on the ectopic eruption?

15 A From the previous film, I had scored a balance of
16 three points for overjet and one point for overbite. And
17 then I found ten teeth that were ectopically erupted and
18 were dysfunctional, and so on the HLD sheet, that got 30
19 points for a total of 34 points for this case.

20 Q I refer you now to Dr. Tadlock's HLD score sheet.

21 MR. ANDERTON: Can you highlight overjet?

22 Q (BY MR. ANDERTON) Explain what Dr. Tadlock found
23 in scoring this case and look at that sheet, Dr. Orr.

24 A Well, we are supposed to take two points away
25 from whatever we measure, because that symbolizes a
0217

1 reasonably normal amount of difference between the teeth.
2 So if he measured three points and took two away and he
3 had one point of overjet, and when you think of overjet,
4 think of a jet plane taking off at the airport and those
5 teeth are jetting out and that's how you remember it, as
6 opposed to overbite is where you bite down and the upper
7 teeth bite down over the lower front teeth either not far
8 enough or too far.

9 Q How many points did Dr. Tadlock score in this
10 case?

11 A He scored one point.

12 Q Now, if you look under ectopic eruption, how many

13 points did he score for ectopic eruption?

14 A Three points per tooth.

15 Q How many did Dr. Tadlock score in this case?

16 A He scored zero for ectopic eruption in this case.

17 Q Was that an ectopic eruption tooth that we saw in
18 the previous x-ray?

19 A Yes, sir, that was an impacted tooth. Certainly,
20 ectopic eruption in the most basic sense.

21 Q In your opinion, did Dr. Tadlock miss that?

22 A He either missed it or chose not to score it, for
23 some reason. I really don't know.

24 Q Okay. So in your opinion, Dr. Orr, how many
25 points did you score?

0218

1 A I scored 34 points.

2 Q So in your opinion, does this case qualify as a
3 handicapping malocclusion?

4 A Yes, sir. Absolutely, it needs treatment.

5 Q In your opinion, is this a dysfunctional case?

6 A It is a dysfunctional case.

7 Q Thank you.

8 MR. ORNELAS: This is P-44, Bates number ADC
9 000370.

10 Q (BY MR. ANDERTON) Any comment on this
11 photograph, Dr. Orr?

12 A It's a nice case because it has a little bit of a
13 number of things. It's got teeth that are off the bony
14 ridge without bony support. It has teeth that don't
15 contact there. As we talked about yesterday, some
16 rotated, some out of position. All of these incisors,
17 they are anterior front to the ridge, too much over
18 towards the lip.

19 The lowers, you see the same thing. We are
20 only supposed to talk about the front six teeth or front
21 12 teeth, but as you look down on to the tongue, you can
22 see too much of the frontal surface of the back teeth.
23 But we are not scoring them. But we are scoring here and
24 here is another example of how the front contact point of
25 this little incisor, or cuspid probably, should be

0219

1 touching the side one of this one and they should all be
2 lined up for mutual support.

3 On this picture here, you can see that we
4 have the back teeth meshing, but in the front teeth, we do
5 not have an overlap and we have got teeth hitting that are
6 twisted, as you saw in this picture. Down here, they are
7 twisted and hitting the lower incisors and probably
8 holding everything up, so that it's not going to go.

9 Over here, you can see -- so the patient
10 moved forward and we have an overbite and then we have all
11 these teeth out of position and not lined up against each
12 other's contact points. So we have a dysfunctional case
13 that would definitely qualify.

14 Q Thank you, Dr. Orr.

15 MR. ORNELAS: P-46, ADC 000691.
16 Q (BY MR. ANDERTON) Can you comment on this case,
17 Dr. Orr?
18 A Just briefly, that we have got teeth out of
19 position, coming in in the roof of the mouth, not enough
20 space for them. We have a narrowing of the palate in the
21 roof of the mouth as measured from molar to molar, and
22 then you measure again from bicuspid to bicuspid and then
23 the arch narrows as we go to the front teeth.
24 When you look at the lower teeth picture
25 where the tongue here, which is kind of pulled back a
0220
1 little, but as you see, we have got a much too narrow arch
2 across here, from bicuspid to bicuspid, so that the lower
3 six front teeth are forced forward and off of the ridge to
4 the front.
5 Q I'm going to put your score sheets up.
6 A All right, sir.
7 MR. ORNELAS: On the left side is P-73.46;
8 on the right side is R-11.46.
9 Q (BY MR. ANDERTON) Can you explain, Dr. Orr, your
10 comments there under ectopic eruption, please?
11 A Well, I just have the comment, and then the six
12 teeth of the upper teeth gives us 18 points. And then the
13 anterior crowding, the mandibular teeth, the lower teeth,
14 get five points automatically for being crowded. So the
15 four points for the open bite, 22 and the 5, one above,
16 gives it 28 points on the HLD score. So it's
17 dysfunctional bite.
18 Q Thank you, Dr. Orr.
19 JUDGE EGAN: Hold on just a second. We are
20 going to go ahead and take a 15-minute break.
21 (Off the record.)
22 JUDGE EGAN: We are reconvening in SOAH
23 Docket 529-13-0997. It is now 5:25 p.m.
24 Go ahead and proceed with your direct.
25 MR. ANDERTON: Thank you, Your Honor.
0221
1 Put up case 54, please.
2 JUDGE EGAN: You mean Patient 54?
3 MR. ANDERTON: Yes.
4 MR. ORNELAS: This is P-54, Bates ADC
5 000332.
6 Q (BY MR. ANDERTON) Can you comment on this
7 photograph, Dr. Orr?
8 A Yes, sir. This patient also showed, like a
9 couple of the ones you have seen, a lot of crowding of the
10 palate, the narrow palate between this premolar and this
11 premolar across here, with the result that these six teeth
12 are squeezed out of the front and over the ridge, which
13 results in none of the contacts touch each other
14 correctly. Things come to a point up here.
15 On the lower, we have the same thing, here
16 is the tongue and we have got the space across the

17 premolars is not as much as we need, and so we have the
18 lower six front teeth squeezed out.

19 If you don't mind, I wouldn't mind taking a
20 personal liberty for a moment and saying that somebody
21 that set up this Medicaid program knew what they were
22 doing. I haven't discussed this with any --

23 JUDGE EGAN: Hold on. Unless it's a
24 response to a question, this is a question-and-answer
25 process, so just listen to his question and answer that.

0222

1 THE WITNESS: Okay. Sure.

2 A So he asked, there's crowding of these lower six
3 front teeth to the point of it ectopically erupted across
4 the lower front teeth.

5 MR. ORNELAS: On the left side is P-73.54;
6 on the right side is R-11.54.

7 Q (BY MR. ANDERTON) Dr. Orr, would you explain
8 your score sheet, please?

9 A So on those front 12 teeth, I had ten of them
10 that were ectopically erupted and out of correct position
11 for a total of 30 points.

12 Q (BY MR. ANDERTON) And then explain, please, Dr.
13 Tadlock's?

14 A Dr. Tadlock got one point for overjet and then
15 the rest are zeros. So he had a total of one point on the
16 case. So I'm going to -- failure to understand to me, the
17 teeth in an unusual position are very obvious.

18 Q So in your opinion, Dr. Orr, of this case, is
19 this case dysfunctional?

20 A Yes, and should be scored 30 points at least on
21 the HLD index as dysfunctional teeth.

22 Q Does it meet the qualifications of authorization
23 for treatment under the Medicaid program?

24 A Yes, sir, it does.

25 MR. ORNELAS: P-57, ADC 000017.

0223

1 Q (BY MR. ANDERTON) Can you comment on this case,
2 Dr. Orr?

3 A Yes, sir. We have got some missing teeth. Some
4 premolars in each quadrant here, maybe somebody took them
5 out to try to make space, but we have a real bad cuspid
6 situation over here. You can see where the upper cuspid
7 actually fits way down between and is wedging apart these
8 lower teeth, it's pushing this cuspid out off the ridge to
9 the front.

10 As a result, these lower front teeth have
11 collapsed inward and they are up underneath the upper
12 teeth where they should not be. So on the surface there,
13 those teeth and the arrangement and the arch certainly
14 meets the criteria.

15 Q Thank you, Dr. Orr.

16 MR. ANDERTON: Can we have the x-ray?

17 MR. ORNELAS: This is from P-57, ADC 000019.

18 MR. ANDERTON: Can you blow that up?

19 THE WITNESS: It's kind of hard to see much.
20 MR. ORNELAS: P-57, ADC 000018.
21 Q (BY MR. ANDERTON) Dr. Orr, do you see any
22 missing teeth in that x-ray?
23 A Yes, I do. I see what I was speaking of, the
24 missing premolars in these quadrants right here, and you
25 see the space and you see what, then as the patient grows
0224
1 up, to be a bad periodontal situation, because this root
2 tip is a long way from this root tip.
3 JUDGE EGAN: Hold on. It would be easier if
4 you just answer his question. He asked you if you see any
5 missing teeth, you said yes. Now let him ask his next
6 question.
7 THE WITNESS: Oh, okay.
8 Q (BY MR. ANDERTON) Where are the missing teeth,
9 Dr. Orr?
10 A Where I'm pointing here --
11 JUDGE EGAN: Which would be canine?
12 THE WITNESS: That would be 4 on that side,
13 lower right 4 and this would be lower left 5. This would
14 be upper right 4 and this would be upper right 5.
15 Q (BY MR. ANDERTON) So would that constitute
16 ectopic eruption, Dr. Orr?
17 A The other teeth are allowed to erupt ectopically
18 now because, for whatever reason, there are missing teeth,
19 yes.
20 MR. ORNELAS: Left side is P-73.57; right
21 side is R-11.57.
22 Q (BY MR. ANDERTON) So, Dr. Orr, it appears on
23 your score sheet that you scored that 26 points?
24 A I did.
25 Q Is that the minimum amount?
0225
1 A That's the minimum necessary that was able to get
2 that number of points to qualify for an HLD approval.
3 Q Would you qualify this case strictly based on
4 your HLD score, Dr. Orr?
5 A Yes.
6 Q But did you also find that there was ectopic
7 eruption creating a malocclusion as a result of your
8 findings on the x-ray?
9 A Yes, sir.
10 Q So you would conclude from that, Dr. Orr, that
11 this is a handicapping malocclusion?
12 A It is, yes, sir.
13 Q Is it dysfunctional?
14 A Yes, sir, it is.
15 Q And qualifies for treatment under the Medicaid
16 program?
17 A Correct, sir.
18 Q In spite of the fact that Dr. Tadlock did not
19 qualify this case?
20 A He had a total of four points.

21 Q So you would disagree with his findings?
22 A Yes, sir.
23 Q Let's take one more case, Number 62.
24 MR. ORNELAS: P-62, Bates number ADC 000004.
25 Q (BY MR. ANDERTON) Comment on those photographs,
0226

1 please, Dr. Orr.
2 A Let's start with the upper arch here, the roof of
3 the mouth. And one can see that we have lost a tremendous
4 amount of space and loss of arch width, if it ever
5 occurred, and the teeth are all pushing to the front. And
6 there should be several millimeters on each side, more
7 space, which I think most of you can appreciate now, that
8 this should have correct alignment and none of these teeth
9 are touching. So the upper six teeth certainly are
10 ectopically erupted there.

11 The lower six teeth, you can see that the
12 canines are forward of the ridge and pushed out. Nothing
13 meshes with the upper teeth. You can see in this picture.
14 And the lower front teeth are all crowded to the front to
15 where none of their contacts touch correctly, so this
16 mouth should qualify for at least 26, if not 30 points, of
17 probably -- and is a dysfunctional occlusion.

18 Q Would this be a good case of ectopic eruption,
19 Dr. Orr, considering those upper anterior teeth?

20 A Yes, sir, it would.

21 Q Would it surprise you to find that you scored
22 this case 36 points?

23 A It would not, sir.

24 Q Dr. Tadlock scored 14.

25 A Good for him. Got him up a little.

0227

1 Q Again, would you disagree with his findings in
2 this case?

3 A Yes, sir, I would.

4 Q Thank you. Dr. Orr, we have a lot more cases
5 that we could bring up, but I think that we have shown and
6 we have looked at the cases that Dr. Tadlock looked at
7 yesterday. Could you conclude from that, Dr. Orr, that
8 the cases that you looked at that you commented on here
9 all meet the qualifications for pre-authorization under
10 the Medicaid program?

11 A Yes, sir, they do.

12 Q Are you satisfied, Dr. Orr, that there was no
13 false information or inaccurate information submitted by
14 Dr. Nazari?

15 A That is correct, sir.

16 Q So in each of these cases, it is my understanding
17 that you testified that each of those met the definition
18 of dysfunction?

19 A Yes.

20 Q And they should all qualify?

21 A That is correct, sir.

22 Q Dr. Orr, considering your experience and

23 training, do you feel like you are more than
24 well-qualified to testify as an expert in this case?

25 A Yes, sir, that is correct.

0228

1 Q Do you find in any way that Dr. Nazari
2 misrepresented anything to your knowledge?

3 A Nothing of what we have seen, no, sir.

4 Q Are you satisfied with your testimony in this
5 case, Doctor?

6 A Yes, sir, I am.

7 MR. ANDERTON: We pass the witness.

8 MR. MORIARTY: Let's put R-58 up on the
9 screen, please.

10 RE-CROSS-EXAMINATION

11 BY MR. MORIARTY:

12 Q I'm going to try to cut through this pretty
13 quickly, and I'm going to show you some things.

14 MR. MORIARTY: May I approach the witness?

15 JUDGE EGAN: Yes, you may. This is Exhibit
16 58.

17 Q (BY MR. MORIARTY) And on the bottom spacing,
18 which you put Plaintiff's 74 at Page 20, do you remember
19 your role in the Harlingen Family Dentistry case?

20 A Yes, sir.

21 Q And in that case, you offered testimony that you
22 personally approved or disproved every orthodontic
23 Medicaid prior authorization request, every single one;
24 that's what you testified to under oath, isn't it?

25 A All right, sir.

0229

1 Q All right, sir, what does that mean?

2 A All right. Yes, sir.

3 Q You testify -- you swore under oath, just like
4 you swore to tell the truth to these people, you swore
5 that you personally approved every single one of those
6 cases?

7 A All right, sir.

8 Q All right, sir. Now, let's go to Page 74 at 37,
9 Item 36.

10 JUDGE EGAN: What is the --

11 MR. MORIARTY: I'm sorry. Petitioner's 74
12 at 37, Paragraph 36.

13 Blow up 36, please.

14 Q (BY MR. MORIARTY) The finding of fact in that
15 case based on your sworn testimony was that you are an
16 occlusion specialist who was the Texas Medicaid dental
17 director. You are not an occlusion specialist and you
18 weren't the Texas Medicaid director, were you?

19 A Well, I think that I am both or was both, yes.

20 Q Let's go to your testimony given on April 25th.
21 And do you remember the discussion we had earlier about an
22 occlusionist, and as I recall your story from earlier
23 today was, I don't know what an occlusionist is; do you
24 remember that?

25 A Yes, sir.

0230

1 Q How about your sworn testimony on April 25th,
2 2012, when you were asked the question: So, Doctor, what
3 is an occlusionist?

4 A Well, I answered them -- because I don't know
5 that there is any such thing.

6 Q I think my question, sir, is same question: What
7 is an occlusionist; and what was your answer at that day
8 before that Court under oath? Read your answer.

9 A That day, I said that it was a person who had
10 studied and works at the way that the teeth contact each
11 other, both sideways and up and down.

12 Q So you do know what an occlusionist is?

13 A Yes, sir.

14 Q And by the way, you are such a person, true?

15 A I have never used that word until it came up that
16 day. I don't consider myself one.

17 Q Well, you may not consider yourself one, but when
18 you were asked under oath, are you such a person, what was
19 your answer?

20 A I said an orthodontist moves the teeth, and then
21 somebody asked, are you such a person, and I said yes,
22 sir, I am.

23 Q Okay. So you have sworn to this Court that you
24 are not an occlusionist and you don't know what it is, but
25 when you were asked on that occasion what an occlusionist

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1 is, you told them and you told them you were one?

2 A I think you are right. To be more specific, yes,
3 sir. And I apologize to the Court.

4 Q And do you believe, sir, that this specialty that
5 you have on being an occlusion gives you the ability to be
6 an expert to be able to testify regarding HLD scoring; and
7 your answer was?

8 A That does.

9 Q There is no such specialty as occlusion, is
10 there; in fact, it's a violation of the very rules that
11 you enforce for the State Board of Dental Examiners for
12 you to suggest that you are an occlusionist specialist,
13 isn't it?

14 A I never held out to be an occlusionist and I
15 never said with a capital S, there's a specialty. Of all
16 people, I know that there's no specialty in occlusion.

17 Q You appeared before a panel of judges, just like
18 these judges, and you swore under oath when you were asked
19 you were an occlusionist and you had a residency in
20 occlusion and that qualified you as a specialist, you
21 testified to that --

22 A You went too far. I didn't have a residency in
23 occlusion. I had a general practice residency that
24 covered all the different areas.

25 Q Doctor, you are going to learn one of these days,

0232

1 don't go down that path. Let's go to the deposition on
2 April 3rd, 2012. Is there any additional schooling like
3 prep trade schools, the higher-like education other than
4 dental school; read your answer.

5 A I suffered through a two-year residency at the
6 University of Texas.

7 Q And the next question was: And what was the
8 focus of that residency?

9 A The focus of that residency was occlusion. It
10 was a general practice residency.

11 Q I don't see that. Where is that on your sworn
12 testimony? The question was: And what was the focus of
13 that residency, your sworn answer was occlusion, period;
14 true or false?

15 A No, that's true.

16 Q Okay. Now, are we entitled to know the truth
17 about what you do and what you don't do?

18 A Yes, sir.

19 Q (BY MR. MORIARTY) Let's pull up the one-hour
20 business, the 57, the email. I'm going to offer testimony
21 tomorrow and I'm going to ask you --

22 JUDGE EGAN: It's R-58, I believe.

23 Q (BY MR. MORIARTY) I'm going to ask you to accept
24 this: In the year 2000, there were 7,894 cases that you
25 swore under oath you personally approved; 2001, 9607;

0233

1 2002, 12,992 cases you have sworn under oath you
2 personally approved, okay? Do you understand those
3 numbers?

4 A Yeah. But cases went through orthodontically
5 without my signature. They just automatically went
6 through the system and came in digitally.

7 Q You know, you are going to learn. Let's go to --

8 JUDGE EGAN: No comments.

9 Q (BY MR. MORIARTY) Let's go to Page 377, Line 15.
10 Let me see if I can narrow down your job from this side,
11 so we can help the Court to understand exactly what your
12 duties were related to the so-called prior authorization
13 program regarding orthodontics. And, sir, your answer.
14 Read what you told that Court under oath.

15 A I was in charge of the administration of the
16 program and I personally approved or disapproved and
17 consulted with the providers of every single orthodontic
18 Medicaid case from those years.

19 Q Do you want to run from that answer?

20 A Of course not, it's true.

21 Q So I have done the math and they will be just as
22 hard on me as if they will you if they think I'm lying.
23 That's 51 cases a day. You assume 250 days, work days a
24 year; that's 51 cases per day. This is for the 12,992.

25 Now, if you worked one hour --

0234

1 MR. MORIARTY: Email 57.

2 Q (BY MR. MORIARTY) Now, if you were doing what

3 you claimed in this email, that it took one hour each
4 morning, you had 1.17 minute per day and you worked all
5 day long doing those -- you had to work one hour. You
6 could spend one minute and 17 seconds per deal. If you
7 worked all day long, you could do 9.4 minutes per deal.

8 Now, you swore under oath before these
9 Judges and they remember it, it took an hour to do it.
10 Remember, when I put those pictures up there, you wanted
11 to say those pictures, you couldn't see them, you couldn't
12 tell what it is; do you remember that?

13 A No, sir.

14 MR. MORIARTY: Pass the witness.

15 REDIRECT EXAMINATION

16 BY MR. ANDERTON:

17 Q Dr. Orr, is there, to your knowledge, a
18 recognized specialty in occlusion as recognized by the
19 American Dental Association?

20 A No, sir, there is not.

21 Q Do you know if there is a specialty in temporal
22 mandibular joint disorders?

23 A There is not.

24 Q Do you know a dentist who hold themselves out as
25 specialists in temporal mandibular joint disorders?

0235

1 A I do not, no, sir.

2 Q Do you know any dentist who hold themselves out
3 as specialists in cosmetics?

4 A I know dentists that use that term, but no.

5 Q So is there a recognized specialty in cosmetics?

6 A No, sir, there is not.

7 Q So one could -- could one call themselves a
8 specialist in any of those areas that I mentioned?

9 A You could, and especially -- I used that term
10 with the little S, not as a specialty of the AGD -- of the
11 ADA.

12 Q So are we concluding that you didn't hold
13 yourself out to be an occlusion specialist?

14 A That is correct, sir.

15 MR. ANDERTON: Pass the witness.

16 MR. MORIARTY: I have no further questions
17 of this witness.

18 JUDGE EGAN: Any questions? You are
19 excused. Thank you.

20 We are going to go off the record and
21 discuss tomorrow's schedule.

22 (Proceedings adjourned.)

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1 C E R T I F I C A T E

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STATE OF TEXAS)

3 COUNTY OF TRAVIS)

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I, Renea Seggern, CSR, in and for the State of Texas,
do hereby certify that the above-captioned matter came to
hearing before the State Office of Administrative Hearings
on the 29th day of May, 2013, as hereinbefore set out.

I FURTHER CERTIFY that the proceedings of said
hearing were reported to me, accurately reduced to
typewriting under my supervision and control and that the
foregoing pages are a full, true, and correct
transcription of said proceedings.

I FURTHER CERTIFY that I am neither attorney or
counsel for, related to, nor employed by any parties to
the action of these proceedings and, further, I am not a
relative or employee of any counsel employed by the
parties hereto or financially interested in the action.

SUBSCRIBED AND SWORN to under my hand and seal of
office on this the _____ day of _____, 2013.

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