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CAUSE NO. 529-13-0997

HHSC-OIG CASE NO. P20111316523848911

ANTOINE DENTAL CENTER) BEFORE THE STATE OFFICE
)
VS.) OF
)
TEXAS HEALTH AND HUMAN)
SERVICES COMMISSION,)
OFFICE OF INSPECTOR GENERAL) ADMINISTRATIVE HEARINGS

ORAL VIDEOTAPED DEPOSITION OF

DR. LARRY TADLOCK

April 19, 2013

ORAL VIDEOTAPED DEPOSITION OF DR. LARRY

TADLOCK, produced as a witness at the instance of the
Petitioner and duly sworn, was taken in the above-styled
and numbered cause on April 19, 2013, from 9:13 a.m. to
3:29 p.m., Autumn J. Smith, Certified Shorthand Reporter
in and for the State of Texas, reported by computerized
stenotype machine at the offices of Texas Health and
Human Services Commission, Office of Inspector General,
11101 Metric Boulevard, Building I, Austin, Texas 78758,
pursuant to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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A P P E A R A N C E S

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A P P E A R A N C E S (Continued)

ALSO PRESENT:

Mr. Roy Ornelas, Videographer

Mr. Anthony Goodall

Mr. John Vondrak

Mr. Scott Malone

Mr. Behzad Nazari

Ms. Margaret DeAnda

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1 THE VIDEOGRAPHER: My name is Roy
2 Ornelas, Jr. I work for the law firm of Canales and
3 Simonson in Corpus Christi, Texas. The date is
4 April the 19th, 2013. The time is -- anybody have the
5 time?

6 MS. DEANDA: 9:13.

7 THE VIDEOGRAPHER: -- 9:13 a.m. We are
8 now on the record.

9 (Witness sworn)

10 DR. LARRY TADLOCK,
11 having been first duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. GARCIA:

14 Q Would you please state your name for the
15 record?

16 A Larry Tadlock.

17 Q And where do you live?

18 A 624 Creekview Lane, Colleyville, Texas.

19 Q Dr. Tadlock, my name is Oscar Garcia. I'm here
20 to take your deposition on behalf of Antoine Dental
21 Center. Do you understand that?

22 A Yes, sir.

23 Q Are you in good health and good frame of
24 mind --

25 A Yes, sir.

1 Q -- to give your deposition?

2 With me is Tony Canales and Tom Watkins.
3 They're also attorneys as part of the team in addition
4 to Tony Goodall. Do you understand that?

5 A Yes, sir.

6 Q What is your profession?

7 A My profession is orthodontics.

8 Q I'm going to give you a couple of ways we can
9 make this deposition a little easier. One way will be
10 if you listen to my question and just pause slightly
11 before you answer. The court reporter will really
12 appreciate that. If we can get away from uh-huh or
13 huh-uh, yes or no. And if you don't understand
14 something, will you let me know and I'll try to rephrase
15 my question. Is that okay?

16 A Yes, it is.

17 Q Okay. You're doing good. One of the goals I
18 think that we're going to have to have today as a part
19 of this deposition is try to translate the technical
20 dental nomenclature into layman's terms so that the
21 judge who is not a dentist, as far as I know, can
22 understand what you're talking about. Will you try to
23 do that in this deposition?

24 A Yes, sir, I will.

25 Q Thank you. Dr. Tadlock, are you a Medicaid

1 provider?

2 A I am not currently a Medicaid provider. I have
3 been.

4 Q When were you a Medicaid provider?

5 A 2011 until they changed the -- and went to the
6 insurance companies, and I did not renew.

7 Q So half a year, a year, two years? What period
8 of time?

9 A Not a full year, probably.

10 Q And before that time, had you ever been a
11 Medicaid provider?

12 A No.

13 Q When were you first hired as an expert in any
14 orthodontic case?

15 A June of 2011, I believe was the first time.

16 Q What case was that?

17 A Well, there were two cases simultaneously. One
18 was a federal case, which was Goodwin.

19 Q Okay.

20 A And that was a contract that -- well, the
21 contract actually didn't happen until August, but I was
22 asked to be involved in the case in June.

23 Q Did you testify?

24 A I wrote a report, but there was no -- there was
25 no court hearing.

1 Q So did you give a deposition?

2 A No. He pleaded guilty.

3 Q Okay. So what you did is tender a report and
4 that was --

5 A That's right.

6 Q -- the extent of -- the extent of your
7 involvement?

8 A That's correct.

9 Q What was the second case?

10 A I'm not sure I remember, but it might have been
11 Casson, C-A-S-S-O-N.

12 Q Okay. Was that a federal case, an OIG case?

13 A It's an OIG case.

14 Q And OIG is Office of Inspector General?

15 A Yes.

16 Q Was it federal OIG or state OIG?

17 A I believe it was state OIG.

18 Q And did you testify in that case?

19 A I did not.

20 Q Did you render a report in that case?

21 A Yes, I did.

22 Q Did you give a deposition in that case?

23 A I did not.

24 Q Okay. Are you currently in private practice?

25 A Yes.

1 Q Where?

2 A Keller, Texas.

3 Q And how many patients do you see a week?

4 A Currently, I see about 150 patients a week.

5 Q Do you work by yourself in this facility, or do
6 you have partners or associates?

7 A I work by myself.

8 Q 150 patients a week. Is that what you said?

9 A In my private practice, yes.

10 Q And is it fair to say that none of those
11 patients are Medicaid patients?

12 A It is fair to say that none of my current
13 patients are Medicaid patients.

14 Q Okay. And when was the last time you treated a
15 Medicaid patient in your facility as far as you know?

16 A Well, I actually have Medicaid patients at the
17 dental school but not in my private practice currently.

18 Q Okay. The Medicaid patients that you have in
19 the dental school, did you make the submissions for
20 preauthorization on behalf of those patients?

21 A I was involved in the scoring for many of the
22 patients, some of which are not even mine; but Phil
23 Campbell, who is the chairman of the department, is the
24 one who is responsible for the final scoring or for the
25 submission. And so the submissions go in under the

1 chairman.

2 Q I'm struggling with the phrase "I was involved
3 in the scoring"?

4 A It means that I looked at the score.

5 Q And what was the significance of --

6 A And the records. Excuse me.

7 Q What's the significance of you looking at the
8 score if someone else is going to sign off on it?

9 A Well, the significance would be to you, would
10 be that I agreed with the score or disagreed with the
11 score.

12 Q Okay. But if I understand your testimony, it
13 was another doctor that actually rendered the final
14 score?

15 A That's correct.

16 Q And that was doctor who?

17 A Phil Campbell.

18 Q How many cases at the dental school did you
19 render the final score and sign your name on the dotted
20 line of the HLD Index?

21 A Zero.

22 Q How many patients are we talking about that
23 went through the dental school?

24 A 700.

25 Q What dental school?

1 A Baylor.

2 Q So if I understand your testimony -- and for
3 what years?

4 A Well, until yesterday, so I would say for the
5 last four or five years, four years.

6 Q So if we say four years, it's -- I'm not a
7 mathematician. It's a little over a hundred a year or
8 close to 200 a year?

9 A Probably.

10 Q Okay. And these -- these are Medicaid patients
11 that everything that was required to be sent in to the
12 fiscal agent for the State was sent in and were approved
13 for treatment?

14 A Every patient, all 700 were examined. So
15 patients that net the score were submitted for
16 treatment.

17 Q And did --

18 A We could -- out of that 700, we have 20 or 22
19 that were qualified for treatment.

20 Q Okay. So out of those 700 that you examined,
21 is it your testimony that those 700 patients, the
22 records and the preauthorization documents were sent in
23 to the fiscal agent for the State for -- to see if they
24 qualified or were they held back?

25 A No.

1 Q So we're only talking about 20 to 22 cases
2 where HLD scores were submitted to --

3 A More than that were submitted but not many more
4 than that. More than that were submitted and some were
5 declined. Most of the declines have been recently.

6 Q And if I understand your testimony, your
7 involvement in the preauthorization part of it for those
8 20 to 22 patients was that you looked at the score and
9 either agreed or disagreed with the score?

10 A Or examined the patient or examined the records
11 and agreed or disagreed with the score. That's correct.

12 Q Okay. And once again, none of these -- on none
13 of these preauthorization documents does your name
14 appear as the physician that submitted the case to
15 Medicaid for preauthorization?

16 A That's correct.

17 Q Okay. Do you know Dr. Nazari who is back here
18 to my right? You ever met this gentlemen?

19 A No.

20 Q Have you ever talked to this gentlemen over the
21 phone or in any way, email, whatever?

22 A Not that I'm aware of.

23 Q Okay. Have you ever met his partner, a doctor
24 by the name of Wael Kanaan, a licensed Texas
25 orthodontist that practices with Dr. Nazari?

1 A Not that I'm aware of.

2 Q You ever heard the name before?

3 A No, sir.

4 Q Any communications of any kind with that
5 gentlemen?

6 A Not that I recall.

7 Q Okay. Okay. Is it fair to say that when you
8 were first hired as an expert back in June of 2011, you
9 began a process of what I call "peer reviewing" the work
10 of other orthodontists?

11 A May I qualify my answer?

12 Q Sure.

13 A I would say no in that it's not -- it was not
14 peer review. It was evaluation of the records based on
15 the instructions I was given, either by OIG or by the
16 federal attorneys, so on the case that I looked at. So
17 in -- and may I continue?

18 Q No. Let me ask another question.

19 A Sure.

20 Q Here's what I'm trying to get a feel for: When
21 was the first time you sat down and you got the models,
22 the HLD score sheet, the cephalometric X-ray, the inner
23 oral photos, and everything else that you needed to
24 make -- to render an opinion as to whether or not that
25 particular case qualified for Medicaid benefits,

1 orthodontic benefits?

2 A As a reviewer?

3 Q Yes.

4 A That was in June.

5 Q June of 2000...?

6 A '11.

7 Q '11. So that's the first time you sat down and
8 looked at a complete chart and all the records?

9 A Of someone else's.

10 Q Of someone else's?

11 A Correct.

12 Q And never before that date?

13 A That's correct.

14 Q Okay. It's June 2011. Correct? Is that
15 right?

16 A (Nodding head up and down).

17 Q You have to say yes or no.

18 A As a reviewer for an employ -- working for the
19 State or for -- working for the State, yes. June 2011.

20 MR. GARCIA: Give me the first one.

21 A I'm sorry. I'm sorry. That's not true.
22 That's not true.

23 Q (BY MR. GARCIA) Okay. What is true?

24 A It is June 2012. It's June 2012. I got my
25 dates wrong.

1 Q June 2012. A year later --

2 A It's a year later. That's correct.

3 Q -- is the first time you sat down and looked at
4 another doctor's chart --

5 A Yes. Yes.

6 Q -- to give an opinion.

7 A Yes.

8 Q Specifically --

9 A The names are the same as I testified before.
10 The cases are the same. Everything is the same, but the
11 date is June 2012.

12 Q So are you telling me that these cases we were
13 talking about earlier we need to advance a year --

14 A Yes.

15 Q -- to 2012?

16 A Yes.

17 Q So the federal case and the Casson case,
18 it's --

19 A Yes.

20 Q -- June 2012?

21 A Yes.

22 (Exhibit No. T1 marked)

23 Q (BY MR. GARCIA) All right. Let me show you
24 what I have marked as T1, which is Tadlock -- which is a
25 WFAA --

1 A Yes.

2 Q -- news story. Do you remember that?

3 A Yes, I do.

4 Q Okay. Do you remember being interviewed for
5 that?

6 A Yes, I do.

7 Q How many times did the WFAA interview you?

8 A Well, for the initial interview -- or for the
9 initial broadcast, I think they interviewed me one time,
10 and then they interviewed me one additional time.

11 Q What was the subject of the interview?

12 A Medicaid dollars spent by the State of Texas.

13 Q And did you take the -- did you state or did
14 you have the opinion that Medicaid orthodontists were
15 abusing the Medicaid system back on the date of this
16 news story May 13, 2011?

17 A I believe my opinion was that there was no
18 oversight.

19 Q Okay.

20 A And the...

21 Q Okay. I understand that's what you're -- what
22 you stated. I'm asking you, when did you first develop
23 an impression that Medicaid orthodontists were abusing
24 the Medicaid system?

25 A 2010. I had two former -- and may I explain?

1 Q I just need the date.

2 A Okay.

3 Q We're going to get around to that in a minute.

4 A Okay.

5 Q So what did you say? 2010?

6 A Yes.

7 Q Okay. When? May? Is that what you said?

8 A No.

9 Q Just 2010?

10 A 2010, last half of 2010.

11 Q All right. Now, let me -- I would like you to
12 take a look at what you said, the statements that were
13 attributed to you in that story. If you look down about
14 a third of the page, there's a statement that says,
15 "There's no legitimated approval process". Did you make
16 that statement?

17 A I don't think I said legitimated but --

18 Q Okay. What would you have said? Legitimate?

19 A I might have said legitimate.

20 Q Okay. And who set up the legitimate approval
21 process or the illegitimate approval process?

22 A That would be the State.

23 Q Okay. And how did the State go about approving
24 this process or creating this process?

25 A Well, they have a review process for records

1 that are sent in.

2 Q Okay. Is it fair to say that -- and if you
3 don't know, tell me -- the State contracted with a
4 fiscal agent for the times in question in this case with
5 a contractor by the name of the Texas Medicaid and
6 Healthcare Partnerships?

7 A That's my understanding.

8 Q And I'm going to refer to them as TMHP. And is
9 it also fair to say that TMHP became contractually
10 obligated to administer the prior authorization process
11 on behalf of the State?

12 A I wouldn't know that.

13 Q Okay. Well, you indicated in your earlier
14 testimony that you did Medicaid yourself in your office
15 in 2011. Is that right?

16 A That's correct.

17 Q And where did you send your prior
18 authorizations?

19 A That would be to TMHP.

20 Q Okay. And who approved or disapproved of your
21 prior authorization requests?

22 A TMHP.

23 Q Okay. So can we agree that the Medicaid
24 doctors had no part in creating the system that was
25 established by the State?

1 A I think we can agree.

2 Q Okay. So by the time you gave this news
3 story -- I want to make sure I understand you -- you had
4 already come to the conclusion that Medicaid
5 orthodontists were abusing the Medicaid system?

6 A No.

7 Q Okay. Earlier I asked you, when did you come
8 to the impression, conclusion, opinion, whatever you
9 want to call it, that Medicaid orthodontists were
10 abusing the Medicaid system; and I heard you to say
11 2010. Was I incorrect?

12 A I believe you were incorrect.

13 Q Okay. Tell me.

14 A If I may explain?

15 Q I'm just looking for a date, Doc. We'll get to
16 the explanations.

17 A Then I would say -- if you're asking for when
18 did I know?

19 Q What -- first of all, when did you believe, and
20 then when did you know?

21 A When did I believe that there was abuse?

22 Q Yes.

23 A Then that would be in late 2010.

24 Q Okay. When did you --

25 A Or the potential for abuse in late 2010.

1 Q Okay. Fair enough. When did you feel like you
2 knew for sure?

3 A That there was abuse and that would be after I
4 became a reviewer or began to review some cases.

5 Q In 2012?

6 A In 2012.

7 Q You also make the statement or it's attributed
8 to you that "there's no accountability". Do you
9 remember making that statement?

10 A I do.

11 Q And what was the basis of that?

12 A That has to do with the review process.

13 Q Nothing to do with the orthodontic providers?

14 A That's correct.

15 Q You also said, it's been attributed to you,
16 that there are no -- "there's no checks and balances"?

17 A That is correct.

18 Q Remember making that statement?

19 A I do.

20 Q And what was the basis of that statement?

21 A Again, on the review process.

22 Q Okay. So if I take the totality of your
23 comments, is it -- is it a fair statement that,
24 basically, your problem was with the process that was in
25 existence more than the providers themselves?

1 A That's correct.

2 Q And isn't it also fair to say that none of
3 these doctors could approve anything on their own and
4 expect to get paid?

5 A I believe that's correct.

6 Q When did you come to the conclusion that --

7 MR. GOODALL: Could we ask the witness to
8 speak a little bit louder? We got a lot of room noise
9 in here.

10 THE WITNESS: Sure.

11 MR. GARCIA: Thank you.

12 Q (BY MR. GARCIA) When did you develop your
13 understanding of how a Medicaid patient qualified for
14 benefits, what the criteria was?

15 A I believe when we began taking them at the
16 dental school.

17 Q And that was in did you say?

18 A I don't know the exact answer to that, but...

19 Q Okay. I thought I wrote it down, but you said
20 four years ago?

21 A It's four or five years ago so 2007 --

22 Q 2008?

23 A -- '8.

24 Q Okay.

25 A And that date is easy to get, by the way.

1 Q Okay. You mentioned earlier that Dr. Campbell
2 rendered the final scores at the dental school --

3 A Yes.

4 Q -- for the 20 or so patients we're talking
5 about?

6 A Yes.

7 Q Did he also conduct the examinations for those
8 20 to 22 patients?

9 A He was one -- yes. The answer is yes.

10 Q Every single patient that was approved?

11 A Yes.

12 Q Okay. How often did you disagree with
13 Dr. Campbell's scores?

14 A Not often, and if I did disagree, it didn't
15 make a difference as to whether the patient was 26 or
16 above. So in the disagreement -- or bring it below 26.
17 So in none of the cases was the disagreement either to
18 say I didn't think they would qualify or that they would
19 qualify.

20 Q Okay. So is it a fair statement that you --
21 there was never out of these 20 to 22 cases that were
22 approved or any of the others that were submitted, that
23 you disagreed with the doctor, Dr. Campbell, or whoever
24 had the final sign-offs to the extent that you thought
25 it should not have been submitted?

1 A Correct.

2 Q Okay. Dr. Campbell, have you -- I think you
3 answered this partly, but tell me how many depositions
4 have you given?

5 MR. CANALES: You called him Campbell.
6 His name is Tadlock.

7 MR. GARCIA: Sorry. Sorry.

8 Q (BY MR. GARCIA) Dr. Tadlock, I apologize.

9 A This would be the second.

10 Q Okay. This is the second deposition, and the
11 first was in the federal case?

12 A No. Actually, the first was --

13 Q No. Casson?

14 A No.

15 Q Okay.

16 A Many years ago in another case.

17 Q What kind of case? Was it a case against you?

18 A No, it was not.

19 Q Tell me about the case. What was it about?

20 A The case was a civil suit against a general
21 dentist for orthodontics. I was not involved in the
22 case. I was not -- I was only involved in the case
23 because I had visited with the dentist about some issues
24 regarding some other patients, and the attorney for the
25 plaintiff in this case heard about my visit with the

1 dentist and subpoenaed me for a deposition.

2 Q Okay. And you --

3 A About that -- about that conversation with the
4 dentist.

5 Q So is it a fair statement that you really --
6 you were not serving as an expert for either side --

7 A That's correct. I was not.

8 Q -- you were just kind of a witness, basically?

9 A Yeah. Actually, they attempted to force me to
10 be an expert, and I had to get my attorney involved to
11 say that I was not. And then we were okay to go ahead.

12 Q Very good. Very good. And tell me, other than
13 the federal case and the Casson case, what other cases
14 are you serving as an expert or have you ever served as
15 an expert?

16 A I've written a report for Allied, for National.

17 Q National Orthodontics?

18 A National Orthodontics.

19 Q Okay.

20 A The other one is for a Dr. Herscher, I believe.

21 Q Kirscher?

22 A Herscher.

23 Q Herscher. Okay.

24 A I'm sorry. I don't remember the names, but
25 it's probably seven in total, six or seven.

1 Q You're currently an expert in seven cases?

2 A Six or seven.

3 Q Six or seven. And are all of these OIG cases,
4 state OIG cases?

5 A Currently, only one is a federal case.

6 Q Okay. One federal and the rest are state --

7 A Correct.

8 Q -- OIG?

9 A Correct.

10 Q None of them are Attorney General or district
11 attorney cases, nothing like that? They're either one
12 federal OIG case or approximately six state OIG cases?

13 A (Nodding head up and down).

14 Q Is that right?

15 A That's pretty close.

16 Q And have your opinions been consistent in all
17 of those cases with regard to ectopic eruption and
18 what's required to meet for Medicaid orthodontic
19 services?

20 A I believe so.

21 Q Okay. Sir, do you have a law degree?

22 A No.

23 Q Do you have any formal legal training?

24 A I do not.

25 Q Have you ever been a party to a lawsuit?

1 A I have not.

2 Q Okay. Have you done anything to prepare for
3 this deposition?

4 A I reviewed my notes. I reviewed the summary
5 that I have regarding the scores that I gave and
6 reviewed my notes that I've made regarding ectopic
7 eruption.

8 Q Anything else?

9 A That's about it.

10 Q Okay. Did you meet with anyone to prepare for
11 this deposition?

12 A Other than this morning, no.

13 Q Okay. Did you read any witness statements?

14 A For?

15 Q As a part of preparing for this deposition or
16 as a part of this case?

17 A The only witness statements I've read not a
18 part of this case. They had nothing to do with this
19 case.

20 Q Okay. Well, I'm only asking about this case.
21 Did you read -- did you review any depositions from
22 other cases as a part of your involvement in this case?

23 A No.

24 Q So is it your testimony -- is it your testimony
25 you've never reviewed a deposition that I took of a

1 doctor by the name of Charles Evans?

2 A The only thing I've seen regarding any
3 testimony was a -- published online, I did a Google
4 search of a Harlingen case and whatever final report was
5 written. That's the only thing I've ever reviewed.

6 Q Are you referring to the --

7 A It was a hearing.

8 Q -- proposal for decision by the administrative
9 judge at the State Office of Administrative Hearings?

10 A I believe so.

11 Q Did you read that entire decision?

12 A I believe so.

13 Q Did you read what it had to say about ectopic
14 eruption?

15 A Yes, I did.

16 Q We'll talk about that in a little while.

17 Did you review any transcripts from any
18 hearing of any kind as a part of your involvement in
19 this case?

20 A No, sir.

21 Q Did you look at any videos?

22 A No, sir.

23 Q Did you review any books of any kind to prepare
24 for this deposition?

25 A Well, to prepare for the definition -- for the

1 deposition, not specifically; but reviewed -- I reviewed
2 books and/or research related to ectopic eruption. Yes.

3 Q Are those -- are those referenced in your
4 summary that you rendered in this -- your report in this
5 case?

6 A The actual references are not.

7 Q Okay. Are some of the references to books in
8 there?

9 A Yes.

10 Q And did you review your report before you came
11 here today?

12 A Briefly, yes.

13 Q Okay. Have you reviewed any other orthodontic
14 expert's reports as a part of your involvement in this
15 case?

16 A No, I have not.

17 Q Okay. Did you review your -- I'm going to say
18 it one time and one time only -- Handicapping
19 Labio-lingual Deviation Index, HLD. We're going to
20 refer to it as HLD -- your HLD scores in this case?

21 A Not individually. I looked at them
22 collectively just as a -- frankly, I looked more at
23 their numbers than I did mine.

24 Q Okay. "Their" meaning, those of the providers
25 at --

1 A Yes.

2 Q -- Antoine Dental Centers?

3 A Yes.

4 Q Okay. Is this the -- and is it fair to say
5 that this is the first case where you rendered HLD
6 scores in a capacity of a testifying expert?

7 A This is the first case that I've been deposed
8 on.

9 Q Okay. But this is not the first time that you
10 looked at patient charts and looked at the models and
11 rendered opinions as to another orthodontist's scores?

12 A This is not the first case.

13 Q Which was the first?

14 A Casson was the first and Goodwin also. I mean,
15 they were congruent.

16 Q And did you agree with the scores of those
17 doctors or disagree?

18 A I would say I disagreed.

19 Q Okay. Did you look at everything that you
20 needed to look at: the panoramic X-ray, the models, the
21 inner oral photos, the -- whatever is required to be
22 submitted to TMHP? Did you review everything --

23 A If it was --

24 Q -- that you needed to look at to render your
25 scores?

1 A If it was available.

2 Q Okay.

3 A Yes.

4 Q And if it was not available, you did not look
5 at it?

6 A And it should be noted that not everything was
7 available.

8 Q Okay. We're going to talk about that.

9 Are you confident in the scores that you
10 rendered in this case?

11 A I think I'm confident in the scores that I
12 rendered. Yes.

13 Q Were there any errors in any of your scores?

14 A I think it's reasonable to say that there can
15 always be errors. There is always an opportunity for an
16 error. So --

17 Q Is it --

18 A -- I don't --

19 Q Okay.

20 A I don't think I can say that all scores are
21 perfectly scored.

22 Q So when you finished the process of scoring
23 these cases, did you feel like -- did you feel good
24 about your scores; or did you think, well, I might have
25 missed a few?

1 A I feel good about the scores.

2 Q Okay. Did you review the opinions that you
3 rendered in this case that are summarized in your
4 report?

5 A I just briefly did, yes, before this morning.

6 Q Did you look at everything that you needed to
7 look at, the models, so on and so forth, all the records
8 that you needed to look at? Did you look at everything
9 you needed to look at to render those opinions?

10 A In circumstances where models don't exist, I
11 rendered an opinion based on the photographs.

12 Q Did you look at everything that was available
13 to you --

14 A Yes.

15 Q -- to render your opinions?

16 A Yes.

17 Q Did you overlook anything that was in front of
18 you that you could have looked at to render your
19 opinions?

20 A I don't believe I overlooked anything.

21 Q You feel good about those -- you feel confident
22 in your opinions that are rendered in your summary
23 report?

24 A Yes.

25 Q You aware of any errors in your opinions in

1 that report?

2 A I'm not aware of any errors.

3 Q None stand out in your mind?

4 A None stand out.

5 Q Okay. And is there anything you want to
6 correct that's in your summary report or relating to
7 your scores or relating to your opinions?

8 A I don't believe so.

9 Q Doc, what is -- what is comprehensive
10 orthodontic treatment?

11 A That is treatment from beginning to end,
12 treatment of a malocclusion from start to finish,
13 involves all and any necessary braces and appliances.

14 Q What is a malocclusion?

15 A A malocclusion --

16 Q In layman's terms.

17 A -- in layman's terms is a discrepancy in the
18 bite from ideal.

19 Q And is there an ideal in orthodontics that you
20 try to end up at or as close to the ideal as you can end
21 up?

22 A There is an ideal.

23 Q And we're talking about ideal position for the
24 teeth in occlusion?

25 A Yes.

1 Q Anything else?

2 A Well, there is an ideal that we are looking
3 for. It's the goals of treatment, and it's alignment
4 and occlusion.

5 Q And are these ideals commonly understood in the
6 orthodontic world amongst your colleagues?

7 A I would like to think so.

8 Q And I would imagine it wouldn't surprise you if
9 there's some debate or some disagreement over what the
10 ideals are. Is that a fair statement?

11 A There might be.

12 Q Okay. Is there something that is less than
13 comprehensive orthodontic treatment that orthodontists
14 do?

15 A Yes.

16 Q Is interceptive treatment an example of
17 orthodontic treatment that's not comprehensive or can it
18 be?

19 A Yes.

20 Q Give me another example of something that
21 orthodontists do that is less than comprehensive
22 orthodontic treatment. Might you just use a retainer?

23 A Sure. Sure. Any sort of limited treatment,
24 limited to the patient's chief complaint.

25 Q Okay. How does a patient qualify -- or how did

1 a patient qualify for Medicaid orthodontic treatment for
2 the years 2008 to 2011? What has to happen?

3 A Well, you have to submit the records that are
4 required, models, photographs, ceph pan.

5 Q Let's get that out of the way.

6 A Okay.

7 Q When we say records, we're talking about the
8 inner oral photos, we're talking about a panoramic
9 X-ray, we're talking about a cephalometric radiograph
10 with tracing perhaps?

11 A Yes.

12 Q We're also talking about the dental models or
13 dental casts?

14 A Yes.

15 Q What have I left out? Have I left something
16 out? I probably did.

17 A Extraoral photographs.

18 Q So that's -- when we talk about records, that's
19 what we're talking about. Can we agree on that?

20 A Yes, we can.

21 Q Okay. So let me let you continue. You've
22 indicated you've got to submit your records to TMHP.
23 You've got to submit your HLD score sheet?

24 A That's correct.

25 Q Also you've got to submit a preauthorization

1 request that itemizes your treatment plan. Is that
2 correct?

3 A That's correct.

4 Q What else needs to be sent in?

5 A You're required to have a patient consent form.

6 Q And I'm -- yeah. Go ahead. I'm just talking
7 about what do you need to send TMHP so that they have
8 everything they need to decide whether or not they're
9 going to preauthorize the case or not preauthorize the
10 case?

11 A Well, in the HLD form, you have to classify the
12 malocclusion.

13 Q Right.

14 A Angles clarification.

15 Q Is there a score that has to be met?

16 A It has to be 26.

17 Q Or more?

18 A Or more.

19 Q Okay.

20 A Or have specific -- meet specific exceptions
21 that automatically qualify.

22 Q Okay. So what -- what are the exceptions?

23 A Cleft palate. That usually has a malocclusion
24 associated with it, it does, and a malocclusion that
25 results from trauma.

1 Q Anything else?

2 A For interceptive, there's crossbite treatment.
3 I think that's all I can think about right now.

4 Q Okay. What about -- what about this situation
5 where a doctor is uncertain whether or not the patient
6 meets 26 points or not? Are those cases to be sent in?

7 A They certainly can be with an error.

8 Q Okay. And can those cases, even though they
9 don't have 26 points, qualify for orthodontic benefits?

10 A It's possible, yes.

11 Q Okay. Does your report, your summary -- and
12 we're going to introduce it in a minute -- does your
13 report say anything about the exceptions that we just
14 talked about?

15 A No. My report has no exceptions listed.
16 That's correct.

17 Q Did you keep those exceptions in mind as you
18 reviewed the patient charts of my client?

19 A I was asked only to review and score the HLD.
20 That's all I was asked. So I reviewed the records
21 submitted for scoring the HLD. I was not asked to
22 review appliances, treatment, anything related.

23 Q Doctor, are you -- let's just cut to the
24 chase -- are you telling me that you did not give my
25 client the benefit of the exceptions that are enumerated

1 in the manual as a part of your analysis?

2 A If the -- I scored the HLD scores. If the --
3 if the patient had exceptions that were listed or if
4 they were there, then those should have been noted by
5 me. If the exceptions are not there, if it wasn't a
6 cleft palate, then it would not have been noted by me.
7 So I scored the HLD based on the records.

8 Q Doctor, what I'm hearing is I'm hearing tunnel
9 vision: Does this patient have 26 points or not? Is
10 that a fair statement or not?

11 A I was asked to score HLD. If it had exceptions
12 as cleft palate...

13 Q Any of them, Doctor?

14 A If any of them had cleft palate, I would have
15 noted it.

16 Q Doctor, any of the exceptions. Did you give my
17 client the benefit of the exceptions that are in the
18 manual?

19 MR. VARELA: Objection; form.

20 Q (BY MR. GARCIA) You can answer.

21 MR. VARELA: You can answer.

22 A I think I did.

23 Q (BY MR. GARCIA) You think -- are you sure?

24 MR. VARELA: Form.

25 A Like I said, is it possible to have missed one?

1 Is it possible to have made a mistake? You asked that.
2 Yes, it's possible.

3 Q (BY MR. GARCIA) Who asked you to -- what were
4 you asked to do in this case? You were just asked to
5 render HLD scores?

6 A That's correct.

7 Q That's it?

8 A That's it.

9 Q You were -- were you asked to examine every
10 case, every case to see if it fit the cleft palate
11 exception? Were you asked to do that?

12 A I was asked simply to review the records and
13 render an HLD score.

14 Q Okay. Did you give my client the benefit of
15 the exception for cleft palate in each and every case
16 that you reviewed?

17 MR. VARELA: Objection; form.

18 A I believe I did.

19 Q (BY MR. GARCIA) Did you give my client the
20 benefit or did you have in mind and consider the
21 exception for crossbite therapy --

22 MR. VARELA: Objection; form.

23 Q (BY MR. GARCIA) -- in each and every case
24 that you reviewed?

25 A I believe I did.

1 Q Did you do the same with severe traumatic
2 deviation?

3 MR. VARELA: Objection; form.

4 A I believe I did.

5 Q (BY MR. GARCIA) Okay. Have you ever
6 submitted an HLD case for orthodontic services on your
7 own to TMHP?

8 A No.

9 Q Not even in your private practice?

10 A No.

11 Q Okay. If I understood you, you were in private
12 practice. You were doing Medicaid for less than a year?

13 A That's correct.

14 Q Was someone else in your office doing it?

15 A No.

16 Q And you were not doing it?

17 A I saw the patients, I examined them, I scored
18 them.

19 Q Did you sign off on the score?

20 A I did.

21 Q Okay.

22 A None of them were submitted. None of them
23 met --

24 Q Okay.

25 A -- none of them were close to 26.

1 Q So in all of the Medicaid patients that you saw
2 in 2011, not a single one qualified for orthodontic
3 services in your opinion?

4 A That's correct.

5 Q Okay.

6 MR. GARCIA: Now we need the next
7 exhibits.

8 Q (BY MR. GARCIA) Doctor, do you -- do you know
9 what Medicaid dental directors in the past such as
10 Dr. Felkner or Dr. James Orr considered a narrative for
11 the purposes of prior authorization?

12 A I'm not sure what they considered.

13 MR. GARCIA: We need all of them, all
14 four.

15 A So, no, I'm not sure what they would consider
16 an appropriate narrative.

17 Q (BY MR. GARCIA) Okay. So if it turns out
18 that they considered the HLD score sheet and all the
19 records that were attached and the preauthorization
20 request form the narrative, do you have a problem with
21 that?

22 A I think whoever reviews it and is reviewing the
23 narrative, if it's approved, it's approved.

24 Q Okay. But I'm talking about what's considered
25 a narrative. If they considered basically what you

1 submit to TMHP as the narrative with no separate
2 document, do you have a problem with that?

3 A No.

4 Q Thank you. I want to give you --

5 MR. CANALES: It's 208.

6 Q (BY MR. GARCIA) I want give you the
7 orthodontic sections of the Texas Medicaid Manual for
8 years 2008, 2009, and 2010.

9 MR. CANALES: And '11.

10 Q (BY MR. GARCIA) And '11.

11 MR. CANALES: They're all in order right
12 there.

13 MR. GARCIA: This look likes the same
14 one. Are these the same -- this is a stack.

15 MR. CANALES: It's a copy.

16 THE VIDEOGRAPHER: It's a copy.

17 MR. GARCIA: What is this? The next one.

18 MR. CANALES: Yes. They're in order.

19 (Exhibit No. T2 marked)

20 Q (BY MR. GARCIA) I've marked as T2 the
21 orthodontic section of the Medicaid manual for 2000 --
22 that should be the 2009 one. Yeah.

23 (Exhibit No. T3 marked)

24 Q (BY MR. GARCIA) And I'm giving you as T3 the
25 Medicaid orthodontic section of the manual, and I

1 believe that is going to be the 2010 edition.

2 MR. CANALES: Here's '9, '10, '11, extra
3 copies if you need.

4 MR. GARCIA: Okay. I've given him '8 and
5 '9. Now we're giving him '10 as T4.

6 (Exhibit No. T4 marked)

7 Q (BY MR. GARCIA) The 2010 version of the
8 orthodontic section of the Medicaid manual.

9 MR. GARCIA: Where's '11? Oh, here's
10 '11. Oh, right here.

11 (Exhibit No. T5 marked)

12 Q (BY MR. GARCIA) Give you as T5 the 2011
13 version. Can I look at them real quickly to make sure I
14 gave you the right ones?

15 A Sure.

16 MR. VARELA: I've got two 2010s, 2009,
17 and 2008.

18 MR. GARCIA: Okay. We've got one T2 says
19 2008. T3 says 2009. I don't know why T4 says 2009.
20 Where's 2010? Where's the '10 --

21 THE WITNESS: I've got a '10.

22 MR. GARCIA: Let me pull this sticker
23 here. I'm remarking as the 2010 T4 and then T5 is 2011.
24 Okay. Now I've got them.

25 Q (BY MR. GARCIA) And I take it you --

1 MR. CANALES: Excuse me. Just so we can
2 have housekeeping. Everyone has got a copy, you got
3 copy?

4 MR. VARELA: No. I've only got 2008 and
5 2010.

6 MR. CANALES: We've got sets for
7 everybody.

8 MR. VARELA: I just need '11.

9 MR. GARCIA: Here's 2011.

10 MR. CANALES: Let me get back on the
11 record again. T2 is 2008, T3 is 2009, T4 is 2010, and
12 T5 is 2011. And at the bottom of each of these
13 documents, there's a copyright figure there. You can
14 see it.

15 MR. GARCIA: Are we all on the same page?

16 MR. CANALES: Thank you for allowing me
17 to interrupt.

18 Q (BY MR. GARCIA) Doctor, I want to -- let's
19 look at the 2000 -- the first one that I gave you.

20 A Okay.

21 Q I want you to go about the second of the last
22 page. Maybe let me find it for you. I'm going to be
23 talking about a page that's page 19-45, and it's the
24 page that talks about when a doctor is uncertain about
25 the score of 26 points. Do you see that? It's kind of

1 down there.

2 A Uh-huh.

3 Q Can you read where it starts "if attaining",
4 paragraph that starts if attaining. Can you read that?

5 A (As read): "If attaining a qualifying score of
6 26 points is uncertain, providers should include a brief
7 narrative when submitting the case. The narrative must
8 reduce the time necessary to gain final approval and
9 reduce shipping costs incurred and resubmit -- to
10 resubmit records."

11 Q Okay. So is it a fair statement that if a
12 doctor is uncertain of the score, he's to submit the
13 score along with a brief narrative?

14 A Yes.

15 Q Okay. Doctor, which -- which were the cases
16 that you reviewed that Dr. Nazari and his associate were
17 certain about?

18 MR. VARELA: Objection; form.

19 Q (BY MR. GARCIA) Do you know?

20 A I don't think I would have any way of knowing
21 except that the HLD score was submitted.

22 Q Likewise, you would have no idea what cases
23 they were uncertain of that met the 26 points. Is that
24 a fair statement?

25 A Fair statement.

1 Q Is it also possible that they were uncertain
2 about each and every case that they submitted that you
3 reviewed?

4 MR. VARELA: Objection; form.

5 Q (BY MR. GARCIA) Is it?

6 A Possible.

7 Q Okay. And where does the certainty come from?
8 Doesn't the certainty come from the prior authorization
9 process at TMHP?

10 A I personally don't believe so.

11 Q Okay. Who certifies the services or authorizes
12 the services?

13 A TMHP.

14 Q Okay.

15 (Exhibit No. T6 marked)

16 Q (BY MR. GARCIA) Let me also give you our next
17 exhibit.

18 MR. VARELA: Oscar, we've been going
19 about an hour. Anybody want to take a break?

20 MR. GARCIA: Yeah. Sure.

21 THE VIDEOGRAPHER: Off the record.

22 (Recess: 10:10 a.m. to 10:17 a.m.)

23 THE VIDEOGRAPHER: Back on the record.

24 Q (BY MR. GARCIA) Dr. Tadlock, let me ask you a
25 couple questions about your private practice. If I

1 understood your earlier testimony, you said that you
2 were doing Medicaid in 2011 in your private practice?

3 A I was a Medicaid provider during that time.

4 Q And how many cases in 2011 did you examine,
5 patients, Medicaid?

6 A Probably about 30 patients.

7 Q Is it your testimony you felt like none of
8 those 30 patients qualified for orthodontic services?

9 A Yes.

10 Q Of those 30 patients, did you treat any of
11 those patients as a private pay patient?

12 A I treated one of those patients for free, no
13 charge.

14 Q So is your answer that you treated none of
15 those patients as a private pay patient for a fee?

16 A Correct.

17 Q Why did you get in Medicaid in 2011, become a
18 provider?

19 A Because of the school, because I was involved
20 in it in school, and there may come a time where I need
21 to submit and be the signator on the scores sheets and
22 be the name of the provider there.

23 Q Is it a fair statement, Doc -- what school are
24 we talking about?

25 A Baylor.

1 Q Baylor School of Dentistry?

2 A Uh-huh.

3 Q Is it a fair statement that you had little or
4 nothing to do with the Medicaid orthodontic patients at
5 Baylor Dental School?

6 A No.

7 Q Okay. And what percentage of the treatment --
8 of the Medicaid patients at Baylor Dental school were
9 you responsible for?

10 A Probably two or three patients out of the 20.

11 Q Were strictly your patients?

12 A Were patients that I was involved in treating.

13 Q Well, I'm just really struggling with, you
14 know, 'I'm kind of involved with the man next door to
15 me,' but what does that mean? I'm struggling with I was
16 kind of involved -- tell me exactly what you mean when
17 you say "I was involved" in these patients.

18 A Involved in the exam, involved in the treatment
19 plan.

20 Q Did you do the exam?

21 A Yes.

22 Q Did you do the treatment plan?

23 A Did I do the treatment? No. A resident does
24 the treatment.

25 Q Did you do the treatment plan?

1 A Supervise and approve the treatment plan.

2 Q But not sign off on it?

3 A Yes -- no, I sign off on the treatment plan for
4 the school. Yes.

5 Q I'm talking about -- just talking about the
6 Medicaid patients at the school.

7 A No.

8 Q So you did not -- how many patients of the
9 Medicaid orthodontic patients at Baylor School of
10 Dentistry did you examine, just you?

11 A Well, at the school, there is no "just you".

12 Q Okay.

13 A So there are always others involved in an exam,
14 in a -- in formulating a treatment plan. So there's
15 never a just me at the school.

16 Q So there's you and the students and your
17 colleagues?

18 A Potentially, and Dr. Campbell, yes.

19 Q Okay. Is it fair to say that someone other
20 than you was in charge of the Medicaid patients and the
21 program for Medicaid patients at Baylor School of
22 Dentistry?

23 A Yes.

24 Q Who was it?

25 A Dr. Campbell.

1 Q Not you?

2 A I was not in charge of the Medicaid program.
3 That's correct.

4 Q Okay. Doctor, let me hand you the next
5 exhibit, which is going to be T6. And this is a
6 section --

7 MR. GARCIA: Do we have a stapler
8 somewhere?

9 MR. CANALES: They're single pages.

10 THE VIDEOGRAPHER: They're single page.

11 MR. GARCIA: Oh, they're single pages.

12 Okay. Give me the next one as well.

13 MR. CANALES: Single pages also.

14 MR. GARCIA: Okay.

15 (Exhibit No. T7 marked)

16 Q (BY MR. GARCIA) Let me hand you -- I think
17 you already have it, but I'm just going to break it down
18 to a single page. For T6 I'm going to hand you a
19 section out of the 2008 manual, and one of the sections
20 in there is Section 19.197 Orthodontic Procedures and
21 Fee Schedule. Do you see that?

22 A Yes.

23 Q And I'm also going to hand you as T7 a page out
24 of the -- what do you call it -- the current dental
25 terminology, the CDT?

1 MR. CANALES: CDT.

2 MR. GARCIA: What is it? How do you say
3 it?

4 MR. CANALES: The CDT, the current
5 dental.

6 Q (BY MR. GARCIA) Whatever. You tell me what
7 that's out of?

8 MR. CANALES: The Current Dental Code.

9 Q (BY MR. GARCIA) Current -- I think it's
10 terminology. Do you recognize that type of a document?
11 Does it have a CT code on it -- CDT?

12 A CDT.

13 Q What does that stand for, CDT?

14 MR. GARCIA: Come on peanut gallery.

15 DR. NAZARI: Current Dental Terminology.

16 Q (BY MR. GARCIA) Current Dental Terminology.
17 Does that sound right? Do you have it?

18 A It's for the purpose of insurance coding.

19 Q Okay. So do you have that in front of you?

20 A Yes.

21 Q Okay. And can you see in the -- towards the
22 bottom of the page, Interceptive Orthodontic Treatment,
23 D8050 and D8060?

24 A Yes.

25 Q Does Medicaid orthodontics allow for

1 interceptive orthodontic treatment?

2 A Yes.

3 Q And does -- is interceptive orthodontic
4 treatment one of the exceptions to the 26 point HLD
5 requirement?

6 A Well, it's separate. You don't have to qualify
7 for --

8 Q You don't need 26 points.

9 A -- 26 points. That's correct.

10 Q Okay. And did you give my client -- is that
11 what you followed when you looked at the interceptive
12 cases that you reviewed relative to my client?

13 A I believe so. I believe so.

14 Q Okay.

15 A I can't be 100 percent certain without looking
16 at each of them.

17 Q All right. We'll get to that. And the
18 crossbite, what about the crossbite therapy cases?
19 Those are also cases that don't require 26 points.
20 Correct?

21 A I believe that's one of the exceptions.

22 Q Okay. And did you give my client Antoine
23 Dental Center the benefit of those exceptions?

24 MR. VARELA: Objection; form.

25 Q (BY MR. GARCIA) Did you include that

1 particular exception and apply it to the cases of
2 Antoine Dental Center?

3 A I believe so.

4 Q Okay.

5 A Yes.

6 Q If you did not, if you did not, are your
7 opinions reliable in this case?

8 MR. VARELA: Objection; form.

9 A Yes.

10 Q (BY MR. GARCIA) Okay. I want to ask you
11 again, Doc, did you review these cases with tunnel
12 vision just looking for whether or not they met 26
13 points on the HLD or not and nothing else?

14 MR. VARELA: Objection; form.

15 Q (BY MR. GARCIA) That's what you were asked to
16 do, wasn't it?

17 A I was asked to look at them regarding the HLD
18 score. Yes.

19 Q Of 26 points?

20 A I was asked to score them.

21 Q Okay. And was the focus of what you were asked
22 to do the score?

23 A The focus of what I was asked to do was to
24 score them, yes.

25 Q Okay. Very well. Have you prepared any

1 written statements? And I think you mentioned this. I
2 think you said you prepared some notes and you prepared
3 a summary of your opinions. Is that correct?

4 A Yes.

5 Q Anything else?

6 A I -- I've been working on a summary of ectopic
7 eruption. So -- but that summary is not related
8 specifically to this case.

9 Q And the summary that we're talking about is
10 your report in this case. Correct?

11 A (Nodding head up and down).

12 Q We'll talk about it more down the road, but the
13 summary is your report. Correct?

14 A I'm not sure I understand your question.

15 Q The document that you gave OIG to give us --

16 A Is my final report, yes.

17 Q Okay. It's your final report, and you say it's
18 a summary in the report, do you not?

19 A I think the report states that I limited --
20 that the review was for HLD scores only.

21 Q Okay. We're going to get your to report in a
22 minute, but is your report a summary of some type?

23 A It was a report of the records that I reviewed.

24 Q Okay. I guess what I'm getting at, is there
25 something that's more extensive than that report,

1 something that's more elaborate, another report?

2 A Not related to this case but related to ectopic
3 eruption.

4 MR. GARCIA: Can we turn that off? It's
5 going to get very hot. Can we turn this off?

6 MR. CANALES: It's off.

7 MR. GARCIA: Please don't distract me
8 again.

9 MR. CANALES: You're not a judge yet.

10 (Laughter)

11 MR. CANALES: And even if you were a
12 judge -- by the way, I love to distract judges.

13 MR. GARCIA: Well, you're doing it.

14 MR. CANALES: That's my calling in life.

15 MR. GARCIA: You're doing a great job.

16 MR. CANALES: Just trying to help you
17 there.

18 Q (BY MR. GARCIA) Is there one and only one
19 report that you tendered to OIG?

20 A Regarding this case?

21 Q This case.

22 A Yes.

23 Q Okay. And did you send in -- did you send in a
24 draft of your report to OIG that was unsigned by you?

25 A I'm sure that I did, yes. It has my name at

1 the bottom but it's...

2 Q Have your signature?

3 A It has my name at the bottom of it. It doesn't
4 have a signature on it.

5 Q Okay. And who did you send it to?

6 A Brian Klozik.

7 Q Why did you send an unsigned report in to Brian
8 Klozik instead of a final report with your signature?

9 A I always keep the final report with me, and
10 it's signed and picked up by people that work for OIG.

11 Q Did you make --

12 A Signed in front of them. They notarize it. So
13 that's how it's done.

14 Q Did Mr. Klozik ask you to make any changes to
15 your report?

16 A No.

17 Q Did you make any changes to your report?

18 A I -- I mean, that's possible, yes.

19 Q On your own?

20 A Yeah, that's possible.

21 Q Do you recall having the input of OIG or any
22 other person to make changes to the initial report that
23 you submitted?

24 A No.

25 Q Who is Brian Klozik?

1 A Brian is, as far as I'm concerned -- the -- my
2 contact with OIG. He's the person who asks me to review
3 specific cases and gives me specific instructions as to
4 the review.

5 Q Is he the one that gave you the specific
6 instruction to score the cases of Antoine Dental Center?

7 A Yes.

8 Q All right. How often did you meet with Brian
9 Klozik?

10 A I've met him two or three times.

11 Q What was the purpose of the first meeting?

12 A Discussion of the process and the discussion of
13 the first case that I was to review.

14 Q What was this process?

15 A He actually didn't do a lot of that. Priscilla
16 Alfaro was the person I was working with at the time.

17 Q Okay. What did Mr. Klozik tell you about the
18 process?

19 A He didn't go over much except the spreadsheet
20 that we use, how to fill the spreadsheet out. The rest
21 of it was done by Priscilla Alfaro.

22 Q Did Priscilla Alfaro or Brian Klozik have
23 discussions with you about the interpretation of ectopic
24 eruption?

25 A They asked me about it, yes, but it was not an

1 extensive discussion. But we -- I do believe that we
2 had some discussion about it.

3 Q And what did you tell them about it?

4 A I told them what I knew about ectopic eruption.

5 Q And, I mean, can you summarize what you told
6 them?

7 A I'm not sure I can summarize it. More or less
8 it was that I understood the definition of -- I
9 understood what ectopic eruption was.

10 Q Did they ask for examples of what teeth would
11 qualify for ectopic eruption and which ones wouldn't --
12 would not?

13 A No.

14 Q Okay. What was your second meeting with Brian
15 Klozik about?

16 A I'm not sure.

17 Q Are these meetings in person?

18 A Well, the two or three, yes, in person.

19 Q So if I understand your testimony, you don't
20 recall what the second meeting was about with Brian
21 Klozik?

22 A No.

23 Q What was the third meeting about?

24 A This morning at 8 o'clock, and it just was hi.

25 Q Was there any discussion about ectopic eruption

1 this morning?

2 A Certainly not between Brian and I.

3 Q Okay. I'll get to that. So is it your
4 testimony that the only substance of your meeting with
5 Brian Klozik was that you said hello to him?

6 A That's correct.

7 Q Okay. Have you met with opposing counsel with
8 regard to this case?

9 A Meeting for the first time this morning.

10 Q Okay. How long did you meet?

11 A Less than one hour.

12 Q What was discussed?

13 A The process of the deposition, who was going to
14 be here, how it was going to go. That was it.

15 Q Was there a discussion about ectopic eruption?

16 A There were some statements by me --

17 Q What were --

18 A -- regard --

19 Q What were the statements?

20 A It had to do with where I was in the review of
21 the term ectopic eruption and that --

22 Q What did you say?

23 A -- was -- well, I said that I had reviewed
24 textbooks, research literature, and that I had a few
25 more reviews to do, a few other things to add; but

1 otherwise, I was pretty far along in a review of ectopic
2 eruption.

3 Q Okay. And did you identify for counsel which
4 teeth count for ectopic eruption and which teeth don't?

5 A No, because I think -- no, I didn't.

6 Q Okay. Okay. Were you given any instructions
7 or guidance by opposing counsel for this deposition?

8 A No.

9 Q Was your methodology discussed -- the
10 methodology that you used with respect to your analysis
11 of the Antoine Dental Center cases?

12 A No.

13 Q What is your methodology? What methodology did
14 you apply to the Antoine Dental Center cases?

15 A I look at the records.

16 Q I got you.

17 A And measure the models, fill out the form.

18 Q Okay. In your analysis of these cases, Doctor,
19 do you recall scoring any slanted teeth that were on the
20 alveolar ridge as ectopic eruption?

21 A I wouldn't think so. I don't recall that.

22 Q Okay. Do you recall if you counted any leaning
23 teeth that were on the alveolar ridge as ectopic
24 eruption? Did you score those for ectopic eruption?

25 A I don't recall that.

1 Q Okay. Is it likely?

2 A It's not likely. It's possible --

3 Q Okay.

4 A -- for a tooth to be ectopic and on the ridge.

5 Q Okay. Do you recall scoring any teeth that
6 were on the alveolar ridge as ectopic eruption?

7 A Well, I don't recall that.

8 Q Okay. Is it likely?

9 A It's not likely.

10 Q Okay.

11 A It is possible.

12 Q We'll get into that. Is it your opinion,
13 Doctor, that ectopic eruption -- teeth that could be
14 scored as ectopic eruption teeth must be off of the
15 alveolar ridge?

16 A I think that is one form of ectopic eruption.
17 That's not the only form.

18 Q Okay. One form of ectopic eruption are teeth
19 that are off of the alveolar ridge, they're not sitting
20 right on the ridge. Correct?

21 A They're off of the ridge.

22 Q And is that your opinion?

23 A That's one form. Yes.

24 Q Okay. What's another form?

25 A Teeth that are transposed. A tooth that erupts

1 out of its place, swapped with another tooth. So a
2 canine that erupts, swapped with the first premolar,
3 still a canine, it would be ectopic. A canine that
4 erupts towards the palate could partially be in the
5 ridge, but if it's over the lateral incisor, that would
6 be ectopic.

7 Q Okay. We'll get into that.

8 MR. GARCIA: Next exhibit.

9 (Exhibit No. T8 marked)

10 Q (BY MR. GARCIA) I'm going to mark this
11 document as T8. I'm going to show you a document that
12 is a Medicaid policy change and ask you to look at the
13 bottom of page 8. First of all, let me ask you if you
14 recognize this document?

15 A Yeah. Yes.

16 Q You do. Before I ask you questions about it,
17 do you agree that high labial cuspids are teeth -- and
18 teeth that are grossly off of the ridge are just
19 examples of ectopic eruption?

20 A Yes.

21 Q If you'll turn to the bottom of page 8 where it
22 talks about ectopic eruption. Do you see it?

23 A Yes.

24 Q Can you read that paragraph that starts off
25 with "ectopic eruption"?

1 A Sure. (As read): "Ectopic eruption: An
2 unusual pattern of eruption such as high labial cuspids
3 or teeth that have erupted in a position that is grossly
4 outside the long axis of the alveolar ridge. Ectopic
5 eruption does not include teeth that are rotated or
6 teeth that are leaning or slanted especially when the
7 enamel gingival junction is within the long axis of the
8 alveolar ridge."

9 Q What you just read, is that the definition of
10 ectopic eruption that you applied to the cases of
11 Antoine Dental Center?

12 A The first sentence of that is, yes.

13 Q How about the second one?

14 A No.

15 Q Okay. And we talked a little bit about your
16 methodology, the methodology you used for the Antoine
17 Dental Center cases, and you felt like you applied that
18 methodology consistently?

19 A I believe so.

20 Q Okay.

21 MR. GARCIA: Let me have the next
22 exhibit.

23 (Exhibit No. T9 marked)

24 Q (BY MR. GARCIA) Doctor, do you know -- have
25 you ever heard of or do you know a gentlemen by the name

1 of Fread Houston?

2 A No.

3 Q You ever heard that name before?

4 A I don't believe so.

5 Q I'm going to hand you as T9 the testimony of
6 Fread Houston that was submitted at a legislative
7 committee meeting -- hearing, actually.

8 I'll represent to you that -- and it says
9 it in the document that Fread Houston was the former
10 director of sanctions for this place where we are, the
11 State OIG. Would you like a minute to look that over?

12 A Sure.

13 (Pause)

14 (Witness perusing document)

15 A Okay.

16 Q (BY MR. GARCIA) Okay. You ready?

17 A Sure.

18 Q In the middle of the page, I'll represent to
19 you that Fread Houston says (as read): "I received
20 expert reports that were unsigned by the expert. I was
21 told the expert reports were edited by enforcement
22 management to remove statements that were supportive of
23 a provider's actions."

24 Is it your testimony, we can agree, that
25 you submitted an unsigned report to OIG. Correct?

1 A That is correct.

2 Q Is it your testimony that your expert report
3 was not edited by enforcement management in any way?

4 MR. VARELA: Objection; form.

5 A That's correct.

6 Q (BY MR. GARCIA) Okay. A little further down
7 Mr. Fread Houston states in the last paragraph (as
8 read): "Under the orthodontic initiative the Agency" --
9 referring to OIG -- "retroactively applied a new
10 Medicaid policy interpretation regarding ectopic
11 eruptions and declared past orthodontic treatment to be
12 fraud or willful misrepresentation under the new
13 credible allegation of fraud mandate."

14 Dr. Tadlock, are you and did you
15 retroactively apply the new definition that I just
16 showed you to the cases of Antoine Dental Center?

17 A Absolutely not.

18 Q Okay. Were you asked by anyone at OIG to apply
19 the new definition to the cases of Antoine Dental
20 Center?

21 A Absolutely not.

22 Q Very well. I think we talked earlier, Doctor,
23 that your profession is you're an orthodontist, and you
24 also told me where your office is. Right?

25 A Yes.

1 Q In Keller, Texas. Correct?

2 A Yes.

3 Q How long have you been practicing as an
4 orthodontist?

5 A Twenty-five years.

6 Q Have you practiced in other locations beyond
7 your Keller location?

8 A Well, in North Richland Hills, which was about
9 four miles or so.

10 Q Can you say that a little bit --

11 A North Richland Hills.

12 Q Okay. And anywhere else?

13 A I have a satellite office in Bridgeport.
14 That's actually within a dental -- dentist office.

15 Q And during the course of your practice as an
16 orthodontist, is it fair to say that your private
17 practice did not involve the treatment of Medicaid
18 orthodontic patients?

19 A My private practice did not involve treatment
20 of Medicaid patients. That's correct.

21 Q So is it also fair to say you've never treated
22 a Medicaid orthodontic patient in any of your offices in
23 your lifetime?

24 MR. VARELA: Objection; form.

25 A In my private practice.

1 Q (BY MR. GARCIA) The answer is yes?

2 A The answer is yes.

3 MR. GARCIA: Next exhibit.

4 (Exhibit No. T10 marked)

5 Q (BY MR. GARCIA) I hand you what's going to be
6 marked as T10 and ask you if you recognize that
7 document?

8 A Yes.

9 Q Is that a copy of your curriculum vitae?

10 A Yes.

11 Q Would you take a few moments to look at it and
12 see if it's current?

13 A It's pretty current. I've had several other
14 lectures, teaching events since then, but it's pretty
15 current.

16 Q Does it list the dental schools that you've
17 attended?

18 A Yes. Yes.

19 Q And the professional associations that you're a
20 part of?

21 A Yes.

22 Q Okay. Doctor, on a separate subject matter,
23 are you a whistle blower in any of the Medicaid
24 orthodontic cases?

25 A No.

1 Q Are you a part of any qui tam lawsuit against
2 any of the Medicaid orthodontic providers in the State
3 of Texas?

4 A No.

5 Q Have you had any discussions with a lady by the
6 name of Christine Ellis about the Texas Medicaid
7 orthodontic cases?

8 A No.

9 Q Do you know who she is?

10 A I know of her. I don't believe I've ever met
11 her.

12 Q Doctor, when you were in -- I take it you went
13 to a school to be trained in orthodontics?

14 A Yes.

15 Q Where?

16 A University of Texas, Houston.

17 Q Okay. And when you were in that program, did
18 all of your faculty members have the same opinions and
19 treatment philosophy with respect to orthodontics?

20 A No.

21 Q Okay. Was there always agreement on whether or
22 not an orthodontist should or should not extract teeth?

23 A Not always.

24 Q Okay. Is it a fair statement to say that all
25 orthodontists do not treat patients in the same exact

1 way?

2 A Yes.

3 Q Is it a fair statement that some orthodontists
4 favor extractions in their practices?

5 A No.

6 Q That's not a fair statement?

7 A I don't believe so.

8 Q Okay. Have you met orthodontists that favor
9 extracting teeth as the way to develop enough space
10 within the ridge to get the teeth in ideal alignment?

11 A No.

12 Q Okay. So you've never met an orthodontist that
13 you ever considered for a -- as an extraction guy?

14 A Well, those are labels that are placed on
15 people, but those labels don't come from me. I
16 understand the decisions that are made. There are --
17 there are cases where there is a difference of opinion
18 between how it should be treated, and that may involve
19 whether teeth should be removed or not removed or which
20 teeth should be removed. So there's not 100 percent
21 agreement, but if the objectives are properly addressed,
22 then it narrows the differences between extraction,
23 nonextraction. But I --

24 Q Doctor, are you telling me that you've never
25 met an orthodontist in your 25 years that has sat and

1 told you, 'Look, if I need to create space, most of the
2 time I'm going to extract teeth to create that space'?

3 A That's correct.

4 Q Never met anyone like that?

5 A I don't know anyone like that.

6 Q Have you ever heard anyone that, 'He's an
7 extraction guy, he's an extraction guy, he's an
8 extraction guy'?

9 A Of course.

10 Q You hear that all the time.

11 A I don't know about all the time, but I've heard
12 it. Yes.

13 Q Okay. And how about have you met doctors --
14 orthodontists that favor expanding the arch as the way
15 to create space for the teeth and kind of use
16 extractions as a last resort kind of thing? Have you
17 met those kind of doctors? Are you aware of those kinds
18 of doctors?

19 A I've heard the same thing that you just said.
20 I personally don't know any who -- I mean, again, it's
21 based on the goals, not based on the treatment.

22 Q Okay.

23 A So I don't personally know any. They may be,
24 that may be their personal opinion, but they don't come
25 to me and say I prefer doing this over that.

1 Q Okay. But in the orthodontic world, can we
2 agree that someone says, 'He's an expansion guy, he's an
3 expansion guy, he's an expansion guy, he favors
4 expansion of the arch'?

5 A I'm sure someone would say that, yes -- could
6 say that.

7 Q And is there anything wrong with either
8 philosophy?

9 A I think so, yes.

10 Q You think there is?

11 A Yes, I do.

12 Q And I take it you're the type of orthodontist
13 that kind of calls them as you see them. You know, if
14 you can expand without extractions, you try to do that;
15 and if the circumstances require extractions, you do
16 extractions. Is that fair?

17 A I think that the objectives of the treatment
18 drive the treatment decision. So the -- if the case --
19 there are -- there will always be borderline cases of
20 extraction and non-extraction, and so I would say that
21 if I were to make a general statement, it would be the
22 younger orthodontist is more likely to move towards
23 expanding and not extracting. That would be a general
24 statement with not a lot of proof behind it but --

25 Q Right. Right.

1 A -- just my general statement.

2 Q What about the -- what is the Tweed philosophy?
3 Are you familiar with that?

4 A I am familiar with that.

5 Q What is it?

6 A Well, it's named after an orthodontist Charlie
7 Tweed. He was an orthodontist in the late 20s through
8 50s, early 60s -- or 60s. And he was taught by Charlie
9 Angle (as spoken) who preceded him. Prior to that they
10 didn't have a bracket that could control the tooth. So,
11 basically, they pushed everything out. Charlie --

12 Q Expansion?

13 A Expanded, right. And that's in the early 1900s
14 through about 1920.

15 Q Is there anything wrong with that philosophy?

16 A Well, again, it's a treatment, and --

17 Q Okay. Is it --

18 A -- there would be something wrong with the
19 philosophy, yes. As a philosophy, if you're bringing it
20 as a philosophy, yes, it would be wrong.

21 Q In your opinion?

22 A I think in Charlie Tweed's opinion, some of the
23 cases violated principles of facial cosmetics as well as
24 bone health, periodontal health, and other things.

25 Q Is it an accepted philosophy for the treatment

1 of orthodontic patients, or is it a rouge philosophy for
2 treatment of orthodontic patients?

3 A I would say expansion or extraction should not
4 be a philosophy driving treatment.

5 Q Okay.

6 A So both would be wrong if you -- if you're
7 going into a patient's care with the intent of doing one
8 or the other.

9 Q Okay. And is -- is the -- is it called the
10 philosophy, is it referred to as the Tweed philosophy?

11 A The Tweed philosophy is --

12 Q You've heard of that?

13 A -- referred to as -- and the philosophy is --

14 Q No. I just want to know is it referred to as a
15 philosophy, or is it referred to as something else?

16 A By others who look at it, yes.

17 Q Okay. And is it still being practiced today?

18 A Yes, it is.

19 Q For how many years has it been practiced?

20 A A long time. Since, like I said, the 30s.

21 Q Does a Tweed Foundation exist?

22 A Yes.

23 Q Okay. I guess what I'm getting at in
24 orthodontics, you're going to have an array -- you tell
25 me if this is a fair statement -- there's going to be an

1 array of treatment options depending on the case; and
2 basically, there's a number of different ways to skin a
3 cat, let's say, in the orthodontic world. Is that a
4 fair statement or not?

5 A I think that is there a generally accepted
6 standard of care that applies across the board?
7 Unfortunately, there is not. That's my view.

8 Q Okay.

9 A And --

10 Q So but -- you may see a case and you may think,
11 'You know what? The only way for me to get to the ideal
12 position that I'm trying to get is to extract teeth.'
13 And if you do that, there's nothing wrong with that if
14 that's your opinion, your clinical opinion. Correct?

15 A Sure. Correct.

16 Q And on the flip side, you may say, 'You know,
17 it's pretty crowded. But I think I can get there if I
18 expand the arch enough to create the room, and I don't
19 have to do extractions.' There wouldn't be any -- if
20 that was what the clinical need was, there wouldn't be
21 anything wrong with that approach, would there?

22 A There would not be anything wrong with that
23 approach.

24 Q Doctor, do you have a license in the State of
25 Texas?

1 A Yes.

2 Q Are you in good standing?

3 A Yes, I believe so.

4 Q Okay. And your license is active?

5 A Yes.

6 Q Are you or have you ever been the subject of
7 any state board of dental examiner complaints?

8 A Not that I know of.

9 Q Okay. And are you board certified in
10 orthodontics?

11 A Yes.

12 Q When did you become board certified in
13 orthodontics?

14 A I believe 1995.

15 Q And have you continued to be board certified in
16 orthodontics since 1995?

17 A Yes.

18 Q Are you a member of the American Association of
19 Orthodontists?

20 A Yes.

21 Q Do you know -- I'm going to refer to them as
22 the AAO -- do you know if the AAO recognizes the Texas
23 Medicaid HLD scoring system as a scientifically valid
24 measure of the need for orthodontic treatment?

25 A Actually, I think they have supported the

1 Salzmann Index, which is HMAR.

2 Q That's wasn't my question.

3 A All right.

4 Q Want me to read it again?

5 A Sure, please.

6 Q Do you know if the AAO recognizes the Texas
7 Medicaid HLD scoring system or any HLD scoring system as
8 a scientifically valid measure of the need for
9 orthodontic treatment? Do you know?

10 A I would say my best answer would be, I don't
11 know if they have given that level of an approval of any
12 index.

13 Q Approval or rejection. Correct?

14 A Approval or rejection.

15 Q Okay. Would it surprise you -- which would
16 surprise you more: If they accept it or they reject it?

17 A Well, again, I know that they have supported a
18 different index.

19 Q So you would expect them to reject it. Is that
20 right?

21 A By virtue of supporting a specific index, I
22 would expect that -- I suppose you can say that is
23 rejection.

24 Q Okay.

25 MR. GARCIA: Next exhibit.

1 Q (BY MR. GARCIA) I want to give you the good
2 news in this case. You're right.

3 (Exhibit No. T11 marked)

4 Q (BY MR. GARCIA) I'm going to hand you what's
5 been marked T11, and this is an article that's title "A
6 useful insight into 2 occlusal indexes: HLD,
7 parentheses, Md and HLD, in parentheses, CalMod".

8 A Uh-huh.

9 Q Have you ever seen that?

10 A Yes, I have.

11 Q Okay. And I've highlighted a section for you
12 and if you could read for me the second sentence of that
13 section?

14 A Beginning with "The AAO".

15 Q Yeah.

16 A Okay. (As read): "The AAO stated that it does
17 not recognize any index rating classification or coding
18 system as scientifically valid more -- measure of the
19 need for orthodontic treatment."

20 Q Okay. So can we agree that the AAO does not
21 recognize the HLD process -- the HLD process that it was
22 used in the State of Texas for the years in question as
23 a scientifically valid measure of the need for
24 orthodontic treatment?

25 A I think we can.

1 Q Thank you. Do you know what the basis is for
2 the AAO's rejection of the HLD scoring index in Texas
3 other than they kind of favor a different method?

4 A I would be guessing. I would say I do not
5 know.

6 Q Are you an officer of the AAO?

7 A I am not currently an officer of the AAO.

8 Q Do you expect to become an officer of the AAO?

9 A I've been a past president of the Southwestern
10 Society.

11 Q Of AAO?

12 A Of the Southwestern Society of the AAO. But I
13 am not currently, and I do not expect to be an officer
14 in the AAO.

15 Q Do you believe the AAO's lack of support for
16 the HLD index is the reason that they have moved away
17 from it and gone to managed care organizations?

18 A Would you restate that?

19 Q Okay.

20 A Please.

21 Q Do you agree that the State of Texas has a year
22 or so ago started a process of getting away from the HLD
23 scoring index?

24 A Yes.

25 Q And what have they gone to?

1 A Insurance companies, managed --

2 Q Managed care organizations?

3 A Yeah.

4 Q And do you believe that the AAO's lack of
5 acceptance of the HLD index is part of the reason for
6 the State to change over to the managed care
7 organizations?

8 A I have no idea.

9 Q Okay. All right. Doctor, have you ever been
10 employed by the Texas Department of Health and Human
11 Services Commission other than in a capacity as an
12 expert?

13 A No.

14 Q You never worked directly for that agency?

15 A No.

16 Q Did you ever work directly for the TMHP?

17 A No.

18 Q Okay. Have you ever worked for any Medicaid
19 contractor --

20 A No.

21 Q -- in the past?

22 A No.

23 Q No?

24 A No.

25 Q Okay. Do orthodontists generally refer to the

1 straightening of teeth in orthodontics?

2 A Can you be more specific? I mean, that is what
3 we do. Right?

4 Q Right. I mean, I'm just the layman.

5 A Okay.

6 Q You try to straighten the teeth.

7 A Sure. Sure.

8 Q And what are considered straight teeth? Are
9 they ideally aligned?

10 A Ideally aligned, sure.

11 Q Do doctors refer to a balanced facial profile
12 in orthodontics?

13 A Yes.

14 Q Okay. What is that?

15 A Well, besides symmetrical fifths from going
16 from side to side and vertical thirds similar, you can't
17 always change those. But balanced facial profile refers
18 to profile view, and it refers to lips position relative
19 to nose and chin.

20 Q Are straight and a balanced facial profile the
21 goal of orthodontics?

22 A Those are global goals, yes.

23 Q You have a website, don't you?

24 A Yes, I do.

25 Q Okay.

1 A I haven't touched it in a long time.

2 Q Is it fair to say that there is an ideal
3 position that you expect teeth to erupt into for proper
4 occlusion and proper alignment?

5 A No. I don't think you can expect teeth -- I
6 think you can define what you think is ideal alignment
7 and what you think is ideal occlusion, but you can't
8 expect teeth to erupt into that position.

9 Q Have you ever seen a patient that came into you
10 and their teeth erupted into ideal position for proper
11 occlusion and proper alignment?

12 A A patient?

13 Q Yeah.

14 A Well, if they're -- they're not going to be a
15 patient if they have straight teeth.

16 Q Well, they're not going to be a patient. A
17 person?

18 A I've seen a few.

19 Q Where you just saw them, you go, 'Wow, it's
20 perfect'?

21 A Yeah. I've seen a few.

22 Q Okay. Thank you. And do the teeth that are
23 not in this ideal position or ideal alignment, do they
24 tend to be in malocclusion?

25 A They're not ideally aligned. Now, malocclusion

1 I would define more in how it relates the top to the
2 bottom, so not necessarily. You can have teeth that are
3 not aligned and the occlusion to be okay.

4 Q Okay. And what is malocclusion in layman's
5 terms?

6 A Well, it's how the upper and lower teeth relate
7 to each other.

8 Q And there's a certain position that
9 orthodontists want the teeth ideally to be in for
10 occlusion purposes. Correct?

11 A Correct.

12 Q Okay. How long have you maintained -- how long
13 have you maintained your website?

14 A I don't know the answer to that.

15 Q More than 10 years?

16 A Perhaps. It was done probably 10 years ago.

17 Q Okay. Who provided the content for your
18 website?

19 A Most of it probably was canned through a
20 company called Televox.

21 Q Are you responsible for the --

22 A Yes.

23 Q -- the content --

24 A Yes.

25 Q -- on your website?

1 A Yes, I am.

2 Q Are you not responsible for just about anything
3 that happens in your practice or related to your
4 practice --

5 A Yes.

6 Q -- under the State Board of Dental rules?

7 A Yes, I am.

8 Q So you would be responsible for any infractions
9 that were -- that happen in your office?

10 A Yes, I would.

11 Q Okay. Goes to the top. Right?

12 A Yes, it does.

13 Q Right.

14 MR. GARCIA: Next exhibit.

15 THE VIDEOGRAPHER: Take a break, change
16 the tapes?

17 MR. GARCIA: I guess we'll have to take a
18 break and change the tapes.

19 THE VIDEOGRAPHER: Off the record.

20 (Recess: 11:12 a.m. to 11:27 a.m.)

21 THE VIDEOGRAPHER: Back on the record.

22 Q (BY MR. GARCIA) Doctor, earlier I handed you
23 several exhibits that contained the orthodontic sections
24 of the manual for the years in question in our case, '08
25 through '11. Do you recall that?

1 A Yes.

2 Q Did you review those orthodontic sections as a
3 part of your analysis of this case?

4 A I have reviewed those in the past, yes.

5 Q Okay. And did you do your best to try to
6 follow the requirements of those manuals for the years
7 in question?

8 A I would say so.

9 Q Okay. And did you rely on other materials
10 beyond the manual in those years for your analysis?

11 A No, I don't believe I did. I believe that the
12 analysis and the score would come from the manuals.

13 Q Okay. And is it fair to say that, really, this
14 case, if you wanted to boil it down to two words, it
15 boils down to ectopic eruption?

16 A That would be my take.

17 Q Okay. And for the purposes of ectopic
18 eruption, did you limit yourself in your analysis of
19 these cases to the provider manuals for the years in
20 question?

21 A For the interpretation of ectopic eruption, in
22 order to follow the manual as I understood it, I
23 followed the manual; but I also looked at many other
24 sources of the term ectopic eruption.

25 Q Okay. And let me ask you, are the manuals, the

1 ones that I handed you, the Texas Medicaid Provider
2 Procedures Manual, is that a comprehensive guide for
3 Medicaid providers?

4 A No. I don't believe it can be a comprehensive
5 guide.

6 Q You don't?

7 A No. I think that, for example, deviations as a
8 result of trauma, there's an awful lot of medical dental
9 knowledge that's necessary to determine what might
10 qualify or how it would. So...

11 Q Do you know -- first of all, what parts of the
12 manual for the years in question did you review? Was it
13 just the orthodontic section or were there other
14 sections or any sections?

15 A I didn't review other sections, no. So it was
16 mostly the orthodontic section.

17 Q Okay. Do you -- do you have something else to
18 say?

19 A No.

20 Q Do you know whether or not the manual says it's
21 a comprehensive guide for Texas Medicaid Providers? Do
22 you know?

23 A I think it does say comprehensive guide. I
24 believe it calls itself that.

25 Q Okay. Very well. And so if I'm understanding

1 you for the purposes of your analysis for the years in
2 question with respect to ectopic eruption, you looked at
3 materials outside of the manual in your analysis of the
4 cases of Antoine Dental Center?

5 A For the purposes of defining ectopic eruption,
6 I looked at additional information.

7 Q And can you tell me where in the manual are you
8 directed to look outside of the manual to other sources
9 for the interpretation of ectopic eruption?

10 A I think the manual instructs the provider to
11 fill out and to score it correctly. The manual
12 instructs the providers -- you are a provider by virtue
13 of being a doctor. So the manual is not the medical
14 textbook or the dental textbook. The manual is for
15 Medicaid treatment. So I think the manual implies that
16 you must rely on information outside of the manual
17 itself in order to treat Medicaid patients.

18 Q That's your opinion?

19 A My opinion.

20 Q Okay. It does not state in any of those
21 orthodontic sections that I gave you that you are to
22 look outside of the manual to figure out what ectopic
23 eruption is or is not. Is that a fair statement?

24 A That's probably a fair statement?

25 Q Well, I need to know if it is or isn't. So if

1 you can take a look at the manuals and find for me where
2 it says if you don't understand ectopic eruption, go to
3 the Proffit book or go to Google or go somewhere else.
4 It doesn't say that, does it, Doctor?

5 A And it doesn't say don't to -- don't go.
6 You're asked to give your professional judgment. That's
7 my opinion.

8 Q Okay. So if dental directors that have
9 administered this Medicaid program say that the manual
10 is the Bible for the purposes of treating Medicaid
11 orthodontic patients, is it your testimony that they're
12 wrong?

13 A I haven't heard that, and I don't know in what
14 context that statement was made.

15 Q And isn't that the whole problem with this
16 ectopic eruption. It's not defined. Many aspects of
17 the definition of ectopic eruption are not defined in
18 the manual. Is that a fair statement?

19 A Not from where I sit. Not my opinion. That's
20 not my opinion.

21 Q Okay. Well, we're going to get into that.

22 Let me ask you, do you have a Texas
23 Medicaid Provider number?

24 A I did.

25 Q In your private practice or at the dental

1 school?

2 A I had a number, so I'm not sure I can answer
3 that. My private practice, I presume.

4 Q Did -- do you not understand or do you not know
5 that you must have a provider --

6 A You --

7 Q Let me finish. -- you must have a provider
8 number for each location where you're providing Medicaid
9 orthodontic services?

10 A Yeah, I do believe that's right. I don't
11 remember how I set it up. I don't remember.

12 Q Okay. Is your best recollection that you have
13 a Medicaid Provider number for one of your private
14 practices or you did?

15 A Well, my recollection is that when I initially
16 set it up, that was the intent.

17 Q In 2011?

18 A Well, the process for setting it up began
19 before 2011.

20 Q Okay.

21 A It actually began in 2010.

22 Q Okay.

23 A So and I would say my -- my initial intent was
24 in the private practice, but I can't recall because I
25 know I changed that because of the dental school

1 situation. So I can't recall.

2 Q Did you have a Texas Medicaid Provider number
3 that related to your involvement in the Medicaid
4 patients at the school of dentistry?

5 A I don't recall. I mean, I'm sure that's easy
6 to discover is what is the -- where would the Medicaid
7 license be, what address it would be related to, and
8 whether it was both or one.

9 Q Okay. Does a Medicaid provider have to
10 enter -- for the years in question, enter into a
11 provider agreement with TMHP?

12 A Yes.

13 Q And is there an application that is made?

14 A Yes.

15 Q And a contract that is signed?

16 A Yes.

17 Q And did you sign one for your private practice,
18 as far as you know?

19 A I believe I did.

20 Q Did you sign one for the school of dentistry,
21 as far as you know?

22 A I don't remember.

23 Q And we know that your provider number never
24 showed up on any Medicaid patient that was at the dental
25 school. Correct?

1 A That's correct.

2 Q Okay. Now -- and you said earlier that there
3 were a number of patients that qualified for services at
4 the dental school. I think you said 20 to 22, something
5 like that --

6 A Correct.

7 Q -- over the years?

8 What was the dental condition that
9 qualified them for services, if you recall? How did
10 they qualify those 22 patients?

11 A Well, some had significant overbites, one was a
12 surgical patient with severe crowding, some ectopic
13 teeth. Some were Class III severe underbites.

14 Q What is Class III?

15 A Severe underbite, lower jaw protruding.

16 Q (Gesturing) Like this?

17 A Uh-huh.

18 Q Okay. Did any make it on ectopic eruption
19 alone?

20 A No.

21 Q With respect to orthodontics and the teeth that
22 we're talking about, are the teeth in three dimensions?

23 A Yes.

24 Q Okay. And when we're dealing with Medicaid --
25 with orthodontics, are we also talking about various

1 planes?

2 A Yes.

3 Q Okay. What are the planes, P-L-A-N-E-S?

4 A There is the occlusal plane. There's the
5 mandibular plane. Some people use the Frankfort
6 horizontal plane.

7 THE WITNESS: Sorry about that.

8 Q (BY MR. GARCIA) Okay. Is there such a thing
9 as a vertical plane?

10 A Vertical plane? Well, there are vertical --
11 there is vertical. So I don't know that I've heard of a
12 vertical plane as an independent.

13 Q Okay. Is there a transverse plane, a plane
14 that runs kind of this way through the skeleton? What
15 is a transverse plane?

16 A We usually refer to it as the transverse
17 dimension, but transverse is width. It's this way.

18 Q Okay. And would a vertical plane also be
19 referred to as a frontal plane?

20 A I'm not sure. I mean, I'm not sure where
21 you're getting that information.

22 Q Tell me if you agree with this or not: Frontal
23 plane also known as vertical plane, an imaginary plane
24 that passes longitudinally through the head
25 perpendicular to the sagittal plane dividing the head

1 into front and back.

2 Do you agree or disagree with that?

3 A Vertical plane, I get that. That would be,
4 like I said, the vertical this way. Frontal plane is
5 not a -- I've never heard it called frontal plane.

6 Q And is a transverse plane an imaginary plane
7 that passes through the head at right angles to the
8 sagittal and frontal planes dividing the head into upper
9 and lower halves?

10 A You can put a transverse plane anywhere you
11 want. So you could put it there and divide the head any
12 way you like.

13 Q Okay. Is there something called an AP plane.
14 Ever heard of that?

15 A Well, again, it's a dimension. Anterior,
16 posterior is the same as sagittal.

17 Q Okay. And are these planes significant to
18 orthodontists?

19 A They are the dimensions, as you mentioned,
20 three dimensions in which you evaluate and diagnose
21 patient problems.

22 Q So I take it your answer is, yes, they are
23 significant in the practice of orthodontics?

24 A Yes.

25 Q Thank you. What is a cephalometric radiograph?

1 A It's radiation. It used to be from a standard
2 source or a static source. Some digital X-ray machines.
3 Most now are movable, but it's radiation that passes
4 through the head from one side, left side to the right
5 side. Some reverse it, and there is a target or film or
6 a sensor on the opposite side of the head that then
7 records the imagine. And it's a head -- the imagine
8 that's recorded is a head in profile view.

9 Q Thank you. And is that utilized in the
10 practice of orthodontics?

11 A Yes.

12 Q Is it also utilized in conjunction with tracing
13 models or tracing?

14 A Tracing, yes.

15 Q And what is the purpose of doing any tracing on
16 the cephalometric radiograph?

17 A To measure the discrepancy of the upper jaw or
18 the lower jaw. The relationship of jaws to the base of
19 the skull, and the relationship with the teeth to the
20 jaws themselves.

21 Q Okay. And are there various reference points
22 that are utilized in the tracing to determine different
23 degrees of, say, the maxillary incisors and the
24 mandibular incisors?

25 A Yes.

1 Q Okay. And what would be an ideal range or an
2 angle for the maxillary incisors in degrees?

3 A It depends on the reference plane that you're
4 using. If the reference plane is sella -- with two
5 Ls -- to nasion, N-A-S-I-O-N, then that measurement is
6 around 100 degrees.

7 Q Okay. Is 105 degrees a reasonable --

8 A Yes, it is.

9 Q Okay.

10 A And there are other factors, but in general --

11 Q Yeah.

12 A -- that's correct.

13 Q I'm just talking generally speaking.

14 Now, with respect to the mandibular
15 incisors, is 90 degrees from whatever reference point
16 that is utilized a reasonable angle that orthodontists
17 look for?

18 A Probably 95, but that range can be 90 to 98.

19 Q So --

20 A And, again, varies with certain other factors.

21 Q Right. Right. But generally speaking, when
22 you're looking at that side view of the radiograph and
23 you're looking at the angle -- the maxillary incisors
24 are they not the front teeth of the upper jaw?

25 A Correct.

1 Q And the mandibular incisors, are they not the
2 lower front teeth -- the front teeth of the lower jaw?

3 A That's correct.

4 Q And so when you're looking at this
5 cephalometric radiograph and considering you're
6 treatment of the case, are you trying to bring the
7 maxillary incisors into the range of 100 or 105 degrees
8 from that particular -- from the reference point?

9 A Generally.

10 Q Just generally?

11 A Right.

12 Q And, likewise, for the lower jaw, are you
13 trying to bring the angle of those mandibular incisors
14 to 90 to 95 degrees from the reference point, the --

15 A I would say 90 to 98, but, yes, generally.

16 Q Okay. Thank you. What is the alveolar ridge?
17 What is that?

18 A That's the bone, actually, that surrounds the
19 teeth.

20 Q Thank you. Is it also referred to as an arch?

21 A It is.

22 Q And does it -- does it not come in different
23 shapes?

24 A It does come in different shapes.

25 Q What are the different shapes?

1 A It actually -- the research supports that it's
2 many different shapes but the typical --

3 Q Yes.

4 A -- is broad or...

5 Q So a broad one, is that one that's just too
6 wide, wider than it should be, broader than --

7 A Not necessarily. It can be -- certain patients
8 have broad arch forms and it's perfectly normal for
9 them. So square -- square, ovoid, taper.

10 Q Okay. Taper would be kind of pointed?

11 A A little more pointed.

12 Q Yeah. Okay. And do those -- say a tapered
13 arch, does that tend to lead to crowding in cases?

14 A No. I think you can have crowding in any --

15 Q In any case?

16 A -- in any arch form.

17 Q Okay. Thank you. Thank you. What is a --
18 what is a -- before I get to that.

19 Are there circumstances where the
20 alveolar ridge or the arch, due to the circumstances of
21 the case, the orthodontist wants to expand that arch?

22 A There are circumstances.

23 (Interruption)

24 A My phone is off so...

25 Q (BY MR. GARCIA) What was your answer, Doc?

1 MR. GARCIA: He's doing that on purpose.
2 He knows it's my last day.

3 A Yes. There are -- if I believe -- I remember
4 your question correctly, there are circumstances within
5 which you -- the orthodontist could determine that they
6 need to broaden the arch.

7 Q (BY MR. GARCIA) Just give me some general
8 examples of when you would need to expand the arch?

9 A In a crossbite situation, so you're expanding
10 the upper.

11 Q Would it -- could it also be just too much
12 crowding? Could you expand it as a -- for the purposes
13 of allowing for more teeth in the arch -- more room for
14 the teeth in the arch?

15 A With limited -- I would say that is more
16 limited.

17 Q Okay.

18 A But it's possible, but it's limited.

19 Q Okay. And would there also be scenarios where
20 you would want to reduce the arch, make it smaller than
21 it is?

22 A There are circumstances where you might need
23 to.

24 Q And do orthodontists use appliances that exert
25 forces to either expand the arch or reduce the arch

1 depending on the goals of the orthodontic treatment?

2 A Yes.

3 Q Okay. What is a crossbite in layman's terms?

4 A I must start by defining the ideal position of
5 the upper teeth positioned somewhat outside of the
6 lower. So teeth don't hit edge to edge or tip to tip.
7 The upper teeth are slightly outside the lower.

8 A crossbite is when a -- an upper tooth
9 is fitting inside of a lower, and it can be the reverse
10 of that where an upper back tooth fits completely
11 outside of the lower.

12 Q Okay. And what do orthodontists try to do
13 about crossbites?

14 A Correct them.

15 Q Okay. And are there a variety of different
16 ways that you might go about trying to correct a
17 crossbite?

18 A Yes.

19 Q Can you give me some examples?

20 A Any -- if it's a posterior crossbite, meaning
21 back teeth, the back teeth are in crossbite where the
22 uppers are slightly inside the lowers and you expand the
23 upper. Depending on the amount of expansion, it could
24 be a -- any type of expanding device generally works.
25 It can be slow expansion with wires. It can be faster

1 expansions with a rapid palatal expander. Basically,
2 you're on the inside pushing out by any number of --

3 Q Thank you. Did you do your best to identify
4 the crossbite cases in the -- that you reviewed relative
5 to Antoine Dental Center?

6 A I think so.

7 Q Did you ignore any of the crossbite cases that
8 you reviewed?

9 A I wouldn't intentionally ignore a crossbite
10 case.

11 Q I guess what I'm really trying to get at, Doc,
12 and you can help me. We're going to go through the
13 cases, Doc. But if the reality is, is that you for the
14 most part just scored the cases and did not focus on the
15 exceptions, is that the reality of what happened here;
16 or did you focus on the score and focus on the
17 exceptions in each and every case?

18 A Well, without question, I focused on scoring
19 each case.

20 Q Right.

21 A Now, being more specific about did I focus on
22 exceptions equally, I don't think I can answer your
23 question like that. I can say I focused on scoring the
24 HLD score.

25 Q Did you -- did you have a checklist as you

1 looked at the cases where you said, 'Okay, let's --
2 let's see if this case meets the 26 points as required,'
3 and then another section that says, 'Let's see if any of
4 these exceptions apply'?

5 A Well, I generally looked at the exceptions
6 first.

7 Q Did you have a checklist to remind you to look
8 for the exceptions in each of the cases of Antoine
9 Dental Center?

10 A Other than the score sheet, no.

11 Q Okay. I think we've agreed that you do not
12 need 26 points to do crossbite therapy in Medicaid
13 orthodontics. Correct?

14 A To do crossbite therapy, that's correct.

15 Q Okay. All right. What is interceptive
16 treatment?

17 A Treatment designed to intercept developing
18 dental facial problems.

19 Q And is there -- do you do interceptive
20 treatment in your private practice?

21 A Yes.

22 Q On a regular basis?

23 A Yes. When necessary, yes.

24 Q And are there any age requirements that relate
25 to interceptive treatment?

1 A Well, interceptive generally refers to, not
2 age, but developmental age. So it would be mixed
3 dentition. Usually, it's a combination of -- you can
4 get a general age range; but in a specific patient, if
5 they have mixed dentition, meaning baby teeth and
6 permanent teeth, and you're treating them, not for
7 comprehensive, but for interceptive, as an orthodontist,
8 it would be interceptive. If your goal is to --

9 Q Wait a minute. Wait a minute. I think we're
10 getting lost here. I'm just asking you if there's an
11 age requirement.

12 Can you -- do you have to wait till
13 they're 12 years old or can you do it at seven years of
14 age?

15 A No. You can do it earlier.

16 Q Okay. So in orthodontics, one of the manuals,
17 one of the first things it says is orthodontic services
18 are limited to the treatment of children of 12 years of
19 age or those that have exfoliated their primary
20 dentition.

21 A Right.

22 Q Do you agree with that statement?

23 A (Nodding head up and down).

24 Q So you can -- let me let you answer. Do you
25 agree?

1 A They have no primary dentition.

2 Q Right. They're either 12 years old, or they're
3 less than 12 years old but they've exfoliated all their
4 primary dentition?

5 A I agree that it says that, yeah.

6 Q And that you can treat those types of patients
7 under those circumstances in Medicaid orthodontics?

8 A Yes.

9 Q Okay. Now, another exception to the age of 12
10 years of age is the interceptive treatment. Correct?

11 A Yes.

12 Q Would you agree that you treat many patients
13 with interceptive treatment that are seven, eight years
14 old, six?

15 A Many?

16 Q A number of them.

17 A Some.

18 Q Okay. And do you -- you tell me, at what age
19 can you do interceptive treatment in private practice?

20 A Well, I think you could probably do it as early
21 as five or six years old if you deemed that necessary.

22 Q Okay. And is age seven an appropriate age
23 depending on the circumstances of the case?

24 A Depending on the circumstances.

25 Q And do you not actually say that on your

1 website?

2 A I mean, that's the American Association's
3 recommendation --

4 Q Well, do --

5 A -- for...

6 Q Okay. What do you --

7 A So I'm sure it says that. I'm sure that the
8 website says that, yes, which means that I say that,
9 yes.

10 Q Does your website say (as read): "Why is age
11 seven considered the optimal time for screening? By age
12 of seven" -- and this is under the early treatment
13 category.

14 A Right.

15 Q Does it also say, "By the age of seven, the
16 adult first molars erupt establishing the backbite."

17 Does it say that?

18 A Yes.

19 Q Okay. Does it also say (as read): "What are
20 the advantages of interceptive treatment? Some of the
21 most direct results of interceptive treatment are
22 creating room for crowded erupted teeth, creating facial
23 symmetry through the -- through influencing jaw growth,
24 reducing the risk of trauma to protruding front teeth,
25 and preserving space for unerupted teeth"?

1 A Yes.

2 Q Thank you. And I think we've agreed that
3 Medicaid allows for interceptive treatment. We've gone
4 through that. Correct?

5 A Uh-huh.

6 Q And is it your testimony here today falling
7 back to the same thing --

8 A Right.

9 Q -- did you identify the interceptive
10 treatments -- the interceptive treatment cases that were
11 a part of your analysis? Did you identify the cases
12 that were interceptive treatment cases of Antoine Dental
13 Center?

14 A I don't think you've asked that exact question
15 before, and the answer is probably no. I scored the HLD
16 score.

17 Q Okay. So can we agree that you did not utilize
18 that exception with respect to Antoine Dental Center?

19 MR. VARELA: Objection; form.

20 A I don't know that that's -- I don't know that I
21 agree with that.

22 Q (BY MR. GARCIA) Okay. Did -- do you recall
23 identifying a single case of interceptive treatment
24 related to Antoine Dental Center?

25 A Well, I don't recall because I've looked at

1 some other cases since then. So is it possible that
2 there was a case that had interceptive treatment? I
3 don't know. I mean...

4 Q I'm not talking about one case, Doctor. I'm
5 talking about several cases.

6 A I don't know the answer to that. I mean, like
7 I said, I don't recall.

8 Q And, likewise, on the crossbite therapy, I'm
9 not talking about overlooking one case, Doctor. I'm
10 talking about several cases. So I ask you again,
11 Doctor, did you overlook those exceptions in your
12 analysis?

13 MR. VARELA: Objection; form.

14 A I don't think so.

15 Q (BY MR. GARCIA) Okay. And if you did -- if
16 you -- if you ignored several crossbite therapy cases
17 that would qualify for the exception and you ignored
18 several interceptive treatment cases that would qualify
19 for orthodontic treatment and neither of which would
20 require 26 points, if that is true, are the opinions
21 that you're rendering in this case reliable?

22 A Yeah. I think they are reliable.

23 Q Okay. Is it fair to say, Doctor, that you
24 never -- you, yourself, on behalf of yourself have never
25 prepared any request for preauthorization for submission

1 to TMHP?

2 A Yes.

3 Q Is it also fair to say that you've never
4 received any approvals or denials from TMHP?

5 A Yes.

6 Q Is it fair to say that you've never received
7 any feedback from TMHP personnel on claims processing or
8 HLD scoring?

9 A No. As a -- as a provider --

10 Q Yes.

11 A -- or as a reviewer?

12 Q Provider.

13 A That's true, yes.

14 Q Is it fair as a provider, you've never received
15 any feedback from any TMHP dental director on processing
16 or scoring?

17 A I had a conversation with Linda Altenhoff.

18 Q She's not -- I'll represent to you, she's not a
19 TMHP dental director. Never was.

20 A So then the answer would be no.

21 Q Okay. Doctor, has anyone ever made you
22 aware -- do you know who Dr. James Orr is?

23 A Just the name. Don't know him.

24 Q Has anyone ever made you aware that Dr. James
25 Orr was the dental director for the predecessor of TMHP

1 the NHIC, National Heritage Insurance --

2 MR. GARCIA: What is it, Tony?

3 Q (BY MR. GARCIA) -- Company?

4 A No.

5 Q Don't know. And you've never met Dr. Orr?

6 A Not that I know of.

7 Q You've never talked to Dr. Orr?

8 A Not that I know of.

9 Q You have no idea how Dr. Orr administered the
10 Medicaid orthodontic program during the eight years of
11 service?

12 A None other than I read in the court report.

13 Q Okay. Has anyone ever told you -- have you
14 ever heard that many of the orthodontic providers that
15 are on payment hold by OIG, have you ever heard that
16 Dr. James Orr personally trained them on HLD scoring?

17 A No.

18 Q And you certainly never called him to find out
19 what his thoughts were on HLD scoring, did you?

20 A I didn't call him. No.

21 Q And, likewise, you did not call Jerry Felkner,
22 the dental director for TMHP, for any direction from him
23 on how the Medicaid orthodontic program was being
24 administered in reference to HLD scoring?

25 A No.

1 Q Do you know of any publication or bulletins
2 authorizing the use of outside manuals or textbooks to
3 define ectopic eruption?

4 A I think if I understood your previous question
5 I think you asked that. The answer is, I don't know of
6 any document or memo that states you should look outside
7 for the definition.

8 Q You think it's implied. Is that right?

9 A That's correct.

10 Q Okay. Did you ever attend any seminar or
11 shareholder meeting relative to Medicaid providers that
12 gave guidance on the issue of ectopic eruption.

13 A No.

14 Q Okay. And I think we've kind of covered this,
15 but did you ever consult with any practicing Medicaid
16 orthodontic provider and have a discussion with them
17 about how do you score ectopic eruption and why?

18 A Yeah.

19 Q Yeah. Did any orthodontic provider that you
20 talked to ever suggest to you that the scoring that was
21 done was much more liberal than your own methodology for
22 scoring?

23 A Yes.

24 Q What doctors were those?

25 A Well, the doctor I talked to most would be

1 Carroll Sherman.

2 Q And what did she have to say?

3 A It's a he.

4 Q He. What did he have to say about how the
5 program was actually administered with respect to
6 ectopic eruption for the years 2008 to 2011?

7 A Well, I don't know that -- I would say the
8 conversation took place sometime in 2010 perhaps, and
9 the conversation was not specifically in how it was run
10 but in how he was submitting the cases.

11 Q And what did he tell you about ectopic
12 eruption? What counted or didn't count?

13 A Well, just said that he submitted it with a
14 higher number and ...

15 Q Have you kept up with the HHSC and TMHP updates
16 and bulletins relating to orthodontia?

17 A I wouldn't say that I've kept regularly up to
18 date. No.

19 Q Okay. Do you know that as a Medicaid provider
20 and a provider that's signed a Medicaid agreement, that
21 you're obligated to do that?

22 A Yeah.

23 Q But you didn't do it?

24 A Well, I certainly wasn't a provider once they
25 switched so...

1 Q What about when you were a provider? Is it
2 your testimony that you kept up with the HHSC and TMHP
3 updates and bulletins related to Medicaid orthodontia as
4 required by your Medicaid agreement?

5 A I think I reviewed them, yes.

6 Q Okay. Did you ever check with anyone at TMHP
7 about your idea that the interpretation -- or the manual
8 implies that you should go to outside sources to opine
9 on what is ectopic eruption or what isn't?

10 A Probably not anyone at TMHP.

11 Q Did you talk to any representative from TMHP
12 about ectopic eruption, for example, Dr. Felkner?

13 A No.

14 Q Are you aware of the requirements of the
15 provider agreement that you signed with Texas Medicaid?

16 A I think so.

17 Q Okay. Are you familiar with the federal and
18 state laws that relate to Texas Medicaid providers as
19 required by the Medicaid agreement?

20 A I think so.

21 Q You ever received any training whatsoever by
22 Texas Medicaid in the treatment of Medicaid orthodontic
23 patients?

24 A No specific training.

25 Q Okay. We talked about this a little bit, but

1 what is the process for a Medicaid provider -- someone
2 who wants to be a Medicaid provider to become a Medicaid
3 provider? It's an application, provider agreement.

4 Correct?

5 A Yes. It's a lengthy application.

6 Q Thank you.

7 A A lengthy agreement.

8 Q And we've agreed that TMHP's role is as the
9 fiscal agent for the State of Texas in the
10 administration of the Texas Medicaid Orthodontic
11 Program. Correct?

12 A I believe so.

13 Q And for the years in question, were you aware
14 that TMHP was contractually obligated to have personnel
15 to review the preauthorization requests submitted by
16 Texas Medicaid orthodontic providers?

17 A I don't know that I was aware. I would assume
18 so.

19 Q TMHP, in fact, had personnel to review the
20 prior authorization requests submitted by Texas Medicaid
21 orthodontic providers. Correct?

22 A Yes.

23 Q Okay. Can a Texas Medicaid provider for the
24 period in question bypass the preauthorization process?

25 A I don't believe so.

1 Q Would they -- should they expect to be paid
2 without prior authorization from TMHP?

3 A I wouldn't think so.

4 Q Do the orthodontic providers for the period in
5 question approve or disapprove any prior authorization
6 request?

7 A No.

8 Q That's up to TMHP. Correct?

9 A Correct.

10 Q And also we talked about earlier if they're
11 uncertain about their score or every score, it's up to
12 TMHP to give prior authorization. Correct?

13 A It's up to TMHP to authorize.

14 Q We talked about what submissions have to be
15 made for the approval of orthodontic treatment for the
16 period in question and those are the records. Correct?
17 The --

18 A Yes.

19 Q -- orthodontic treatment plan, cephalometric
20 radiograph with tracing models, completed and scored HLD
21 sheet with diagnosis of angle class, facial photographs,
22 full series of radiographs or panographic radiograph?

23 A Yes.

24 Q Do you need the dental cast or dental models to
25 do your analysis of orthodontic cases in your capacity

1 as an expert?

2 A I think you should have them, yes.

3 Q Okay. Do you realize that TMHP, there was a
4 period of time where they did not require the submission
5 of dental casts or dental models?

6 A I do realize that Texas at one time -- and
7 other states as well don't all require a model.

8 Q Do you know what years Texas Medicaid or TMHP
9 did not require the submission of dental casts or dental
10 models?

11 A No, I don't.

12 Q Did you have a discussion with Dr. Linda
13 Altenhoff about ectopic eruption or HLD scoring?

14 A Yes. A brief discussion, yes.

15 Q What was discussed?

16 A How teeth were scored overall as far as
17 ectopic, what's reasonable, and this was a conversation
18 over the phone.

19 Q When was this discussion?

20 A I'm not sure. I want to say in -- I believe I
21 called regarding a question of my application. So it
22 would have been before I had my application approved --

23 Q 2010 maybe?

24 A So probably.

25 Q Okay. And did you disagree or agree with her

1 as to her interpretation of what teeth did or did not
2 qualify under scoring for ectopic eruption?

3 A I would say there was probably more agreement
4 than disagreement.

5 Q What was the area of agreement?

6 A Teeth that are blocked out of the arch, teeth
7 that are outside of the arch. I don't particularly like
8 that Texas limits ectopic to interior teeth. I think
9 the single most reported ectopic tooth is the upper
10 first molar. So I prefer to add posterior teeth, but
11 obviously, that's not a requirement.

12 Q Is it a fair statement, as we go through your
13 charts, that the teeth that you counted or the vast
14 majority of the teeth that you counted for ectopic
15 eruption were teeth that were blocked out of or outside
16 of the arch?

17 A Yes.

18 Q Will you agree that very -- none or very, very
19 few teeth sitting on the arch itself were counted as
20 ectopic eruption by you in the analysis of the Antoine
21 Dental Center cases?

22 A That's probably true.

23 Q Okay. If the judge in this case finds that
24 that -- that only counting teeth that are blocked out or
25 outside of the arch is the incorrect standard to apply

1 to these cases, will you agree with me that your
2 opinions are invalid?

3 A I wouldn't.

4 Q Okay. Did you read in the decision, the SOAH
5 decision that you read online, that the judge in that
6 case stated that what mattered for the purpose of
7 ectopic eruption was an unusual pattern of eruption?

8 A I read that.

9 Q And do you also agree that the rest of it,
10 everything after the "such as" in that definition are
11 merely examples?

12 A They are examples.

13 Q Will you agree with me that there can be a
14 countless number of situations that would fall into the
15 category of unusual pattern of eruption?

16 A There are -- countless is probably not -- I
17 would not agree with.

18 Q A high number?

19 A I would not agree with that.

20 Q Okay. And if the former Texas Medicaid dental
21 director says that that is, in fact, the case, that
22 there are many, many circumstances where the interior
23 teeth will qualify within the definition of an unusual
24 pattern of eruption, is it your testimony that he's
25 wrong?

1 A Yeah. My testimony is, it's not an unusual
2 pattern of eruption.

3 Q Okay. And we'll get into it. We talked a
4 little bit about the person that hired you, and I
5 believe you said it was Priscilla Alfaro?

6 A Alfaro, yes.

7 Q And when did she hire you?

8 A Maybe May of 2012. We made that mistake
9 before.

10 Q Did you ever make the --

11 A End of May. I want to May 28th, 9th,
12 somewhere.

13 Q Did you have any discussion with her about your
14 feelings about ectopic eruption?

15 A I'm sure we discussed it. I scored some cases
16 here.

17 Q And did you ever tell her that for the purposes
18 of scoring ectopic eruption, primarily, the teeth have
19 to be blocked out or outside of the arch?

20 A I believe we probably talked about the
21 definition of ectopic eruption, and so I don't know that
22 I -- I don't recall telling her anything specific.

23 Q Was that your opinion at the time?

24 A My opinion has always been that ectopic
25 eruption is any number of places other than just the

1 interior teeth, so I --

2 Q What do we deal with in Texas Medicaid
3 orthodontics?

4 A We deal with interior teeth. That's how it's
5 measured.

6 Q Okay.

7 A So when you limit to that, then you're limited
8 to the number of events that have ever been listed as
9 ectopic or qualified or stated as ectopic. So from my
10 perspective, it limited scoring to a certain type.
11 Those were teeth just as explained in the examples.
12 Those are two examples.

13 Another would be a tooth that's
14 transposed in the interior region not outside the ridge
15 or a tooth that's within the ridge but palatal erupting
16 over another tooth.

17 Q When you visited Ms. Alfaro, did you review any
18 cases with her and tell her how you would score those
19 cases?

20 A I scored -- I don't know -- 15 cases, 20 cases
21 here.

22 Q To -- for the purposes of testifying as an
23 expert or for the purposes of being hired as an expert?

24 A Just for the purposes of -- I assumed it was a
25 training type of...

1 Q Doctor, did you ever feel in any way that OIG
2 was cherry-picking their experts to have a certain
3 methodology related to ectopic eruption?

4 MR. VARELA: Objection; form.

5 A I never thought that.

6 Q (BY MR. GARCIA) But what you are saying is,
7 before you were hired, you had to pass a test, this is
8 how I score ectopic eruption?

9 A No. Actually --

10 MR. VARELA: Objection; form.

11 A -- that's not -- that's not true.

12 Q (BY MR. GARCIA) But you did score 15 cases
13 and let them know what was ectopic eruption in your view
14 before you were hired?

15 A No. That's not true. I was here. I was
16 already told I was a -- going to be a reviewer, an
17 expert, and I was here for the training that they put me
18 through. So part of that was to score some cases.

19 Q Why did you need any training?

20 A Well, there were certain things they went
21 through so -- including the spreadsheet so...

22 Q Why did you need to score any cases?

23 A I didn't personally.

24 Q Did they tell you why they wanted you to score
25 cases?

1 A No.

2 Q Did it bother you that they wanted you to score
3 cases?

4 A Not at all.

5 Q And what year was this 2000...?

6 A May of 2012.

7 Q So long before May 2012, you had developed the
8 opinion that Texas Medicaid orthodontic providers were
9 abusing the system. Correct? Didn't we already go over
10 that?

11 A That some perhaps were, yes.

12 Q So you walked into this training with that
13 opinion?

14 A Sure.

15 Q You think that -- that you can be an unbiased
16 expert carrying that opinion with you into this process?

17 A Yeah. The answer to that is yes.

18 Q Okay. Who conduct -- who asked you
19 specifically to score cases when you were going to
20 be...?

21 A Priscilla did, the case score.

22 Q Let's get the timing of this. Before you
23 scored those cases, had you signed a contract or
24 agreement with OIG to be their expert?

25 A I had a blue notebook with everything already

1 in it so --

2 Q Did you hear my question?

3 A I did hear your question. I can't answer
4 specifically if I had signed or not signed prior to
5 that. That was the training date.

6 Q Had you --

7 A So from my -- my understanding was that I was
8 hired as of already.

9 Q So you don't know?

10 A They gave me a case to leave with, so I assume.

11 Q You don't know -- Doctor, are you telling me
12 you don't know when you signed a contract to be the
13 expert? Was it before that or after that? What is your
14 best recollection?

15 A My best recollection would be before, but
16 that's not how it happened with the Attorney General on
17 the federal case.

18 Q I'm not asking you about those.

19 A Okay. So therein lies the confusion. I
20 believe it was before. I can't say for sure that it was
21 before.

22 Q Okay. And are you aware of any experts that
23 were approached by OIG that scored cases and were not
24 hired by OIG?

25 A No.

1 Q Did you ever have the feeling that your
2 continued employment as an expert for OIG would depend
3 upon how you scored those cases in the training?

4 A Never.

5 Q You really think you would be here today, Doc,
6 if you scored cases the way the other Medicaid
7 orthodontic providers that are under investigation
8 scored the cases?

9 MR. VARELA: Objection; form.

10 Q (BY MR. GARCIA) Answer.

11 A If I believed as they did, I wouldn't be here,
12 period.

13 Q Okay. And is there any chance -- has it
14 entered your mind that you might just be wrong?

15 A Not really.

16 Q Okay. You never checked with the dental
17 director. You never had any Medicaid training. You
18 never talked to a Medicaid orthodontist, how was it
19 done, how was the program administered; and can you say
20 you don't have any doubt about your opinions after
21 everything we've done here today and there's more to
22 come?

23 A So I gave you the name of one I talked to.
24 There were three others. They were all whistle blowers,
25 so those I won't name. The answer is yes. Their

1 understanding of how to score was the same as mine. So
2 I don't have --

3 Q My question to you, Doc, as far as we've gone
4 in this deposition, are you sitting here telling me that
5 you don't have any doubts about your opinion yet that
6 you've rendered in this case?

7 A I don't have any doubt about how to score
8 ectopic eruption.

9 Q Do you have any doubt as to whether or not you
10 identified the cases that would qualify under
11 exceptions? I bet you do.

12 MR. VARELA: Objection; form.

13 Q (BY MR. GARCIA) If you don't, you should.

14 MR. VARELA: Objection; form.

15 A Can I answer?

16 Q (BY MR. GARCIA) Yeah.

17 A With as many questions as you've asked, the
18 answer is yes, I have had doubt.

19 Q Do you have serious doubts that you missed the
20 majority of the crossbite therapy cases that would
21 qualify for exception and have no relationship to 26
22 points?

23 A I'm not sure.

24 MR. GARCIA: I can't read that.

25 Q (BY MR. GARCIA) Doc, you're being compensated

1 for your time?

2 A Yes.

3 Q At what rate?

4 A \$150 an hour.

5 Q How much time -- how much time did it take you
6 to evaluate the Antoine Dental Center cases?

7 A I don't recall. Not nearly as long as others.

8 Q What's your best estimate?

9 A Six hours.

10 Q Okay. So six --

11 A Maybe eight.

12 Q Okay. Six to eight hours, and how many cases
13 were there?

14 A Sixty-three.

15 MR. GARCIA: What does that divide into,
16 mathematicians?

17 DR. NAZARI: 900 to 1200.

18 MR. GARCIA: No, no. There's eight hours
19 and he reviewed 64 cases, so how much time does that
20 give on average.

21 MR. MALONE: Eight per hour.

22 MR. GARCIA: How many?

23 MR. MALONE: Eight per hour.

24 MR. GARCIA: Eight. Eight times eight.
25 So eight minutes average.

1 MR. MALONE: A couple every 10 minutes,
2 about 5 to 7 minutes apiece.

3 Q (BY MR. GARCIA) Does that sound right? I've
4 given you the eight hours. Yes?

5 A If you say so. I can do it less than that in
6 some situations but just to score it.

7 Q Do you think if you could do that in less time,
8 that maybe you overlooked some things you should have
9 looked at?

10 A The faster you get, the more you overlook.

11 Q Do you think as we go on, we're going to find
12 out that that happened in this case?

13 A If I overlooked interceptive, we'll find out,
14 yes.

15 Q Did you state that when you were hired, you
16 received a blue notebook?

17 A Yes.

18 Q What was in that blue notebook?

19 A Standards or the TMHP manual, an example of the
20 spreadsheet along with the codes and the descriptions of
21 the codes, the definitions related to the HLD score
22 index. That's about all I remember.

23 Q Did I ask you this: Is your hourly rate the
24 same whether you're in court or out of court?

25 A You know, honestly, that I don't know.

1 Q And do the invoices -- have you submitted
2 invoices to the OIG?

3 A Yes.

4 Q And do those invoices accurately reflect your
5 time in this case?

6 A Yes.

7 Q Okay. And are they -- have you submitted
8 what -- when did you submit your last invoice?

9 A Well, it's probably been over a month since my
10 last invoice.

11 Q Okay. And in the blue book that you received,
12 did you receive the 2012 version of the manual?

13 A I believe I received several copies of the
14 manual. So a -- so, yeah, probably did receive the
15 2012.

16 Q And do you know -- do you recall whether or not
17 you utilized all of the manuals as a part of your
18 analysis of the Antoine Dental?

19 A I certainly attempted to.

20 Q Thank you.

21 MR. GARCIA: How you doing?

22 MR. VARELA: Want to go to lunch, break
23 for lunch?

24 MR. GARCIA: Up to you.

25 MR. VARELA: Let's do it, yeah.

1 MR. GARCIA: I'm ready to keep going
2 unless you guys want to -- what do y'all want to do?
3 We're going to break.

4 THE VIDEOGRAPHER: We're off the record.

5 (Recess: 12:31 p.m. to 1:32 p.m.)

6 THE VIDEOGRAPHER: We're back on the
7 record.

8 Q (BY MR. GARCIA) Dr. Tadlock, we're back after
9 a lunch break. Couple questions about your private
10 practice.

11 How many days a week do you practice?

12 A Three.

13 Q Three days a week. How long have you practiced
14 for three days a week in your private practice?

15 A Well, three days, probably a year.

16 Q Okay. So is it fair to say for the last year
17 proceeding this date, you practiced three days a week in
18 your private practice?

19 A Please repeat that.

20 Q Is it fair to say that in the year that
21 proceeds today --

22 A Yes.

23 Q -- that you averaged three days a week in
24 private practice. Yes?

25 A Yes.

1 Q And how many days a week during that same
2 period of time did you work at the dental school?

3 A One day. Some days -- some weeks, two.

4 Q One to two days?

5 A One to two days.

6 Q Okay. And before this year period before that,
7 how many days a week did you work in private practice?

8 A Three and a half.

9 Q For how many years?

10 A Well, 11 years.

11 Q Okay. And is the same one to two days a week
12 for the dental school for that?

13 A It was a half day to one day.

14 Q Okay. And how many -- how many staff personnel
15 do you have in your private practice?

16 A I have five.

17 Q Okay. And how long have you had five staff
18 members to make a -- to work in your practice?

19 A Probably two or three years.

20 Q Did you have more staff in the years proceeding
21 that?

22 A A certain number of years, yes.

23 Q Okay. Doctor, earlier you talked about the
24 decision from the State Office of Administrative
25 Hearings on the Harlingen case that you read.

1 A Uh-huh.

2 Q You indicated to me that you read the entire
3 decision?

4 A Well, I perused the entire decision.

5 Q Okay. And are you aware that HHSC has adopted
6 that decision and had made that decision its final
7 order?

8 A I'm not sure of that.

9 Q I represent to you that that's true.

10 A Okay.

11 Q Did -- did the SOAH decision establish what
12 criteria is to be utilized for the purposes of ectopic
13 eruption?

14 MR. VARELA: Objection; form.

15 A So are you -- may I repeat the question in a
16 way that I think I'm understanding it is --

17 Q (BY MR. GARCIA) Did the SOAH decision that
18 we're talking about identify the basis for which ectopic
19 eruption teeth could be scored in Medicaid orthodontics?

20 MR. VARELA: Objection; form.

21 A I'm not sure I understood that as the way
22 you're representing it.

23 Q (BY MR. GARCIA) What did you understand?

24 A That that was determined for that case and in
25 that -- in that ruling.

1 Q If -- if Medicaid has adopted that decision as
2 its final order, is that the law that applies to these
3 cases?

4 MR. VARELA: Objection; form.

5 A I don't know the answer to that.

6 Q (BY MR. GARCIA) Okay. And in your analysis
7 of your -- of these cases for Antoine Dental Center,
8 did -- was your analysis consistent with the SOAH
9 decision or was it a departure from the SOAH decision?

10 MR. VARELA: Objection; form.

11 A My analysis would certainly be different than
12 what I read in that --

13 Q (BY MR. GARCIA) What was the difference --

14 A -- in that decision.

15 Q What was the difference?

16 A The difference would -- the only way to compare
17 it would be the percentage of cases that were scored
18 approved regarding ectopic eruption and a percentage of
19 cases that were not scored approved.

20 Q Do you recall --

21 A So --

22 Q Okay. Go ahead.

23 A The definition was stated in the ruling, the
24 same first part of the definition or first part of the
25 description that's in the Texas Medicaid manual. So

1 that didn't change in terms of the actual statement in
2 my view.

3 Now, the interpretation that was approved
4 in that ruling resulted in a higher percentage of
5 approval than the percentage of my review.

6 Q Okay.

7 A That's -- that's probably the best way I can
8 compare.

9 Q Do you recall that the expert in that case had
10 the opinion that only one or none of the cases he
11 reviewed qualified for orthodontic benefits?

12 A Yes.

13 Q And do you recall that the judge decided
14 somewhere in the range of about 96 percent qualified for
15 Medicaid orthodontic treatment?

16 A I didn't understand that the judge ruled that.
17 I do understand the judge ruled in favor of the provider
18 and their expert's testimony.

19 Q Okay. And did you see any similarities between
20 your orthodontic background and the orthodontic
21 background of Dr. Charles Evans who testified in that
22 case?

23 A I wouldn't say there were a lot of
24 similarities.

25 Q Okay. Well, Dr. Evans testified that he never

1 consulted with the past dental directors to gain insight
2 in determining ectopic eruption and neither did you.
3 Correct?

4 A Correct.

5 Q Okay. Dr. Evans testified that he never
6 consulted with any practicing Medicaid orthodontists to
7 gain some insight into the interpretation of ectopic
8 eruption and neither did you.

9 MR. VARELA: Objection; form.

10 Q (BY MR. GARCIA) Correct?

11 A Not true.

12 Q That's not true?

13 A That's not true.

14 Q Okay. The ones you talked about were the
15 whistle blowers?

16 A No. One was not, three were.

17 Q Okay. So you talked to three whistle
18 blowers --

19 A And I want to make -- so that I'm specific. I
20 went to the one personally. I went to the one who was
21 not. The three whistle blowers came to me.

22 Q Okay. So you talked to one that was not a
23 whistle blower and three whistle blowers?

24 A Correct.

25 Q And were those whistle blowers making the

1 assertion that the Medicaid orthodontists in their cases
2 were abusing the Medicaid system?

3 A They made that assertion with other assertions.
4 By the way, the other person that I didn't mention that
5 I speak with every week, so it's somebody I talk to, is
6 Phil Campbell. Dr. Campbell is the chairman of the
7 department at Baylor. So he and I talk every week. We
8 don't talk about ectopic eruption every week, but we
9 talk every week.

10 Q Is another similarity between you and Charles
11 Evans the fact that he never treated a Medicaid
12 orthodontic patient in his private practice and you
13 never treated a Medicaid patient in your private
14 practice?

15 A Well, that might be coincidental.

16 Q Isn't a similarity?

17 A I suppose.

18 Q Okay. And is another similarity that Dr. Evans
19 chose to look outside of the manual for guidance in the
20 interpretation of ectopic eruption and you looked
21 outside of the manual for guidance in the interpretation
22 of ectopic eruption?

23 MR. VARELA: Objection; form?

24 Q (BY MR. GARCIA) If he did that, is it a
25 similarity?

1 A Sure.

2 Q Okay. And if Dr. Evans took the position in
3 that case that the only teeth that you could count for
4 scoring of ectopic eruption were teeth that were off of
5 the ridge and you've testified that you only counted
6 teeth that were blocked out of or off the ridge for the
7 most part, is that not another similarity?

8 MR. VARELA: Objection; form.

9 A Sure.

10 Q (BY MR. GARCIA) Okay. Can you think of
11 anything that separates you or makes you dissimilar from
12 Dr. Evans and his opinions and your opinions?

13 A Dissimilar to our opinions?

14 Q In what way are you --

15 A Or to --

16 Q In what way are your opinions dissimilar to
17 those of Charles Evans, who also happens to be an expert
18 in this case?

19 A Well, I don't know him. I never met him, and
20 I've never seen any of his scores. So I can't say what
21 he scored where. So I really can't make a statement
22 about are we similar in scoring.

23 Q Did you see any -- any parallels in the
24 Harlingen case of Dr. Evans' opinions in that case to
25 your opinions in this case?

1 MR. VARELA: Objection; form.

2 A The parallel would be that the percentage that
3 he believed approved in that case is similar to the
4 percentage that I believe should be approved in this
5 case.

6 Q (BY MR. GARCIA) Okay. And, Doctor, do you
7 understand that the OIG is asking for millions upon
8 millions of dollars from Antoine Dental Center based on
9 your opinion?

10 A I don't know what they're asking.

11 Q I'm going to represent to you --

12 MR. GARCIA: How many millions of dollars
13 is it?

14 DR. NAZARI: About 15.

15 Q (BY MR. GARCIA) \$15 million. And after
16 everything that we've already gone over, Doctor, and I
17 want you to look inside yourself if this was you, are
18 you comfortable, are you still comfortable passing
19 judgment without any significant Medicaid frame of
20 reference on Antoine Dental Center?

21 MR. VARELA: Objection; form.

22 A I am completely comfortable explaining to you
23 stating what ectopic eruption is and what it isn't.

24 Q (BY MR. GARCIA) What your opinion is.

25 A What my opinion is.

1 Q Will you accept that there's a possibility that
2 you're wrong after looking at the SOAH decision?

3 A I would not accept the possibility that there
4 is a different definition of ectopic eruption or that
5 there is a different set of examples of ectopic eruption
6 that have never been published, discussed, or taught.

7 Q Okay. And, Doctor, can you -- are you willing
8 to admit you have no idea what Dr. Jerry Felkner, how he
9 was administering the orthodontic program with reference
10 to ectopic eruption?

11 A I don't have personal knowledge of that.

12 Q Is the same not true -- you have no idea how
13 Dr. James Orr for the eight years that he was there when
14 he was personally reviewing each and every submission of
15 what qualified for ectopic eruption and what did not
16 qualify?

17 A I don't have personal knowledge of what he did
18 as director.

19 Q And in light of the fact that you have no idea
20 how the program was administered -- and I'll represent
21 to you that it was from -- Dr. Orr was from 1995 to 2003
22 and then Dr. Felkner picked it up. That's a long time
23 for this program. You don't know how it was
24 administered and you feel comfortable passing judgment
25 on Dr. Nazari?

1 A I feel comfortable in telling you my opinion of
2 ectopic eruption, whether it's related to the HLD score
3 or outside of it.

4 Q Not knowing how the program was administered
5 since 1995 from the dental directors, are you sitting
6 here today telling us that you feel your opinions in
7 this case are reliable?

8 A Yes.

9 Q Getting back to when you were hired, I just
10 want to quickly go over what materials you were given.
11 You were given a blue book. It had the manuals in it
12 '08 through 2012. It had your spreadsheet. It had
13 your --

14 A Coding information.

15 Q -- coding information. What else did it have?

16 A A little document on how to write an expert
17 report.

18 Q Tell me about that one.

19 A Well, it was just things to include.

20 Q Like what?

21 A Background, methodology, what you looked at,
22 how you reviewed it, and then --

23 Q Is there any --

24 A -- what your findings were, and then state --
25 it had on it somewhere to state about the codes and what

1 the codes meant and when they were used.

2 Q Did it ask you to insert your methodology, or
3 did it have a methodology?

4 A It just said use the methodology that you used.
5 In other words, what did you review.

6 Q And were you given a stick drive or a thumb
7 drive?

8 A I was given a -- with the first case, a flash
9 drive.

10 Q And what was on that flash drive?

11 A On that flash drive was the same thing -- some
12 of the same thing, which was the manuals; some updates
13 as well as the -- in some cases actual records were on
14 the thumb drive; models were on the thumb drive, but
15 they were digital; and then the spreadsheet.

16 Q Okay. So have we covered every single thing
17 that you were given by OIG to perform your services as
18 an expert in this case?

19 A As far as I know.

20 Q Okay. Doctor, we've talked about it. We
21 haven't introduced it, and I probably need a copy of
22 your expert report. Some of these exhibits we're not
23 going to use.

24 MR. GARCIA: Do you have it, Tony? I
25 need a copy --

1 MR. CANALES: I'll get it in a second.

2 MR. GARCIA: -- of his expert report.

3 MR. CANALES: You want a hard copy?

4 MR. GARCIA: I want a hard copy. I've
5 got mine. Does anybody have an extra copy of his
6 report? No. Let's go off the record for a minute to
7 get one.

8 THE VIDEOGRAPHER: Off the record.

9 (Recess: 1:50 p.m. to 1:53 p.m.)

10 (Exhibit No. T12 marked)

11 THE VIDEOGRAPHER: We're back on the
12 record.

13 MR. GARCIA: Thank you.

14 Q (BY MR. GARCIA) Doctor, I would like to hand
15 you what's been marked as T12 and represent to you that
16 this is a copy of the report that you have tendered in
17 this case and ask you if you acknowledge that as your
18 report in this case.

19 A Yes.

20 Q And is that the only report in this case?

21 A Yes.

22 Q Okay. And I think we went over this. You
23 referred to it as a summary, but is there another
24 document that is something more than a --

25 A No, no.

1 Q -- summary?

2 A No.

3 Q No. And is it true that you did not review the
4 individual procedures bill to determine if they were
5 properly documented?

6 A That's true.

7 Q Is it true that you did not assess the medical
8 necessity of any orthodontic appliances that were
9 utilized?

10 A That is true.

11 Q Is it true that your report was limited to the
12 HLD scores that you did?

13 A Yes.

14 Q Is it also true that you were not asked by OIG
15 to render opinions about fraud or misrepresentation?

16 A That would be true.

17 Q Okay. Is it also true that you did not render
18 any opinions about fraud or misrepresentation in your
19 report?

20 A I don't believe I did that.

21 Q Okay. Now, as a part of your report, dental
22 records were provided to you. Correct?

23 A Yes.

24 Q And we discussed what makes up dental records,
25 did we not?

1 A Yes.

2 Q Okay. A spreadsheet was provided to you,
3 you've agreed. Correct?

4 A Yes.

5 Q Was more than one spreadsheet provided to you?

6 A I don't believe so.

7 Q Okay. As part of -- as a part your review, did
8 you review the contents that were on the stick drive or
9 thumb drive?

10 A Yes. I viewed the contents. I'm not sure
11 about review all of the contents of the stick drive. I
12 certainly didn't review the Excel spreadsheet in detail
13 beyond what I was asked.

14 Q When was your report prepared?

15 A February probably.

16 Q Can you look on the second page?

17 A February 20th.

18 Q How many patient charts did you review?

19 A Sixty-three, I believe.

20 Q Okay. Walk me through what you did to review
21 each chart.

22 A Pulled the records out that -- pulled the
23 initial -- usually pulled the initial diagnosis sheet
24 out, pull the records out, look through the chart for --
25 to make sure all the records were there, pulled them

1 out, look at the records, score the models.

2 Q Is that everything you did to score the cases,
3 as far as you recall?

4 A I think so.

5 Q Doctor, can you tell me if there's anywhere in
6 your report that discusses the exceptions to the 26
7 point requirement?

8 A There's not any.

9 Q We've agreed that there are a number of
10 exceptions that would apply. Correct?

11 A There are some, yes.

12 Q Crossbite therapy, cleft palate?

13 A Yes.

14 Q Severe traumatic deviation?

15 A Right.

16 Q Cases of mixed dentition?

17 A Interceptive treatment.

18 Q Interceptive treatment. And also the case
19 of -- strike that.

20 Okay. And you make the statement that in
21 the middle part of your first page (as read): "These
22 records are also used to determine a score on the
23 Handicapping Labio-lingual Deviation, HLD sheet, to
24 verify the patient met the minimally required 26 points
25 in order to qualify for orthodontic services."

1 Correct?

2 A Yes.

3 Q And was that the focus of what you did?

4 A It was the focus of what I did, yes.

5 Q Doctor, you refer to the definition in the
6 Medicaid manuals of -- for ectopic eruption. Correct?

7 A Yes.

8 Q And I think we've agreed that it's the first
9 part of the definition that is controlling, "an unusual
10 pattern of eruption". Correct?

11 A I can accept that, yes.

12 Q And have we also agreed that what the remaining
13 part is, are just examples; and by remaining part, such
14 as high labial cuspids or teeth that are grossly out of
15 the long axis of the alveolar ridge?

16 A Yes.

17 Q Doctor, is the definition unusual -- the term
18 "unusual" in the definition, is that defined anywhere in
19 the manual?

20 A No.

21 Q Is the term "pattern" defined anywhere in the
22 manual?

23 A Not that I'm aware of.

24 Q What makes up a pattern? How many do you have
25 to have to make up a pattern?

1 A Eruption pattern is the overall pattern --

2 Q I didn't ask you about eruption pattern. Just
3 a pattern, any pattern. Is one a pattern?

4 A It could be an unusual type, unusual.

5 Q Okay. And eruption -- is eruption defined in
6 the manual?

7 A Not that I'm aware of.

8 Q Okay. Will you agree with me that because many
9 of these terms in the definition are not defined, that
10 that definition is completely subjective?

11 A I don't.

12 Q You do not?

13 A No.

14 Q Okay. Are you willing to say -- state that it
15 is your opinion that it is objective, an unusual pattern
16 of eruption?

17 A No.

18 Q What is it?

19 A Well, in defining, if you limit the definition,
20 if you simply say -- because ectopic eruption had a
21 definition long before this came about. So the
22 definition that I know of, the definition that exists
23 within the profession is a definition. If you -- that
24 is -- that is not inconsistent with the definition that
25 Texas uses. Limiting, though, taking the Texas

1 definition and limiting it to an unusual pattern of
2 eruption --

3 Q The Texas Medicaid definition.

4 A The Texas Medicaid definition and limiting to
5 that and simply saying the others are examples in any
6 and other -- any and other type of eruption can fit into
7 ectopic is not supported by anything. So as a -- so
8 this comes -- as I said before, if you're a physician or
9 you're a dentist, you come with a certain level of
10 knowledge to the provider level.

11 Q Let me ask you this then so I just want to make
12 it very clear. You did not limit yourself -- okay -- to
13 the definition of an unusual pattern of eruption on its
14 own? You looked back on what you thought was ectopic
15 eruption?

16 A The day I graduated from dental school, I had
17 already been taught what ectopic eruption was. When I
18 graduated from orthodontic residency, that term
19 expanded. Before I signed or agreed to be a provider or
20 agreed to be a reviewer --

21 Q Okay. Let me stop you there.

22 Okay. You learned what ectopic eruption
23 is, but you never learned what the Texas Medicaid
24 orthodontic providers, Dr. Jim Orr and Dr. Jerry
25 Felkner, administered as the definition of ectopic

1 eruption, did you?

2 A Never called them.

3 Q In hindsight, do you think it would have been a
4 good idea to call them?

5 A Not in my view. The requirement, the
6 requirement is that we fill it out accurately and apart
7 from a definition far more descriptive than what that
8 is. There's no way I personally was going to sign off
9 on that kind of interpretation.

10 Q So is it your testimony the term unusual
11 pattern of eruption cannot be applied in the Medicaid
12 orthodontic program unless you look to outside sources
13 to tell you what it is?

14 A Ectopic eruption is ectopic eruption. It
15 existed before Texas Medicaid. So simply calling it an
16 unusual pattern of eruption doesn't change what ectopic
17 eruption is.

18 Q Okay. We'll come back to that one. You make
19 the statement in your -- in your report that (as read):
20 "The textbook Contemporary Orthodontics by Bill Proffit
21 is currently used in every orthodontic program in the
22 United States."

23 Have you verified that every single
24 orthodontic program in the United States utilized that?

25 A If they don't, they are in violation of the

1 Commission on Dental Accreditation.

2 Q That's not my question. Have you verified that
3 they are in fact --

4 A I have not verified, in fact, that every
5 program uses it.

6 Q So you're speculating in that statement, are
7 you not?

8 A I would be speculating, yes.

9 Q Okay. You also make the statement that (as
10 read): "Rotated or tipped teeth have never been used as
11 example of ectopic -- examples of ectopic eruption and
12 have never been classified as ectopic in any textbook or
13 orthodontic literature."

14 Did you --

15 A Not any that I could find.

16 Q Well, you don't say any that you could find.
17 You said "any". You want to withdraw that?

18 A No. But we can add any reviewed textbook or
19 research articles.

20 Q Okay. And have you, in fact, reviewed all the
21 textbooks and all the orthodontic literature to assure
22 yourself that rotated or tipped teeth have never been
23 used as examples of ectopic eruption?

24 A I think that's a valid statement.

25 Q Okay. Likewise, have you reviewed every

1 textbook and orthodontic literature to demonstrate that
2 rotated teeth -- rotated or tipped teeth have never been
3 classified as ectopic in any textbook or orthodontic
4 literature?

5 A I have not reviewed every textbook ever
6 published.

7 Q So are you speculating in that statement?

8 A I'll just say I haven't reviewed every textbook
9 ever published.

10 Q You also make the statement (as read): "And no
11 other state using the HLD index allows rotated or mildly
12 tipped teeth to qualify as ectopic."

13 Have you personally reviewed every other
14 state that -- that uses the HLD Index to support that
15 statement?

16 A I believe so.

17 Q And if it turns out that here in Texas rotated
18 or tipped teeth did qualify for ectopic eruption, are
19 you just flat wrong?

20 MR. VARELA: Objection; form.

21 A It may well have been a culture. It's never
22 been written or never been stated in any document I've
23 ever seen.

24 Q (BY MR. GARCIA) I'm not talking about the
25 culture. I'm talking about what happened. How the

1 program was administered.

2 A Well, again, as a provider, I'm going to go off
3 what's written. I'm required to do what's written,
4 what's there.

5 Q Okay. So is it your testimony here today if
6 rotated teeth were ever counted from 1995 till the time
7 that Jerry Felkner left, which was a year or two ago,
8 that they administered the program wrong?

9 A As a provider, I would be completely
10 uncomfortable with putting anything down and sending it
11 in if -- and submitting it as a case --

12 MR. GARCIA: I've got to object to your
13 answer. It's completely nonresponsive, Doctor.

14 A Then please repeat your question.

15 Q (BY MR. GARCIA) My question is: If rotated
16 or tipped teeth have ever been utilized in the Medicaid
17 program from 1995 to, say, 2010 -- okay -- if they have
18 been utilized, in fact, in the Medicaid program, are you
19 just -- have they administered the program wrong? Has
20 it been --

21 A I would say they poorly administered the
22 program if --

23 Q So you're in a better position than these
24 dental directors who administered the programs for years
25 to tell us which ectopic -- which teeth qualify for

1 ectopic eruption.

2 MR. VARELA: Objection; form.

3 Q (BY MR. GARCIA) Is that your testimony?

4 MR. VARELA: Objection; form.

5 A My testimony is with regard to ectopic
6 eruption. If they wanted something different, they
7 should have changed and specifically stated what they're
8 looking for, but it is not ectopic eruption.

9 Q (BY MR. GARCIA) Can you open your mind up to
10 the possibility that maybe it was purposely left rather
11 broad so that the dental director could make the
12 decision on medical necessity?

13 MR. VARELA: Objection; form.

14 A I would completely approve that. My issue is
15 it left all the guys out to lurch. This is -- is the
16 approval the end all? I mean, if...

17 Q (BY MR. GARCIA) Do you -- are you -- is it
18 your testimony that Dr. Orr during his time of
19 administration when he personally reviewed -- and I'll
20 represent to you he personally reviewed every single
21 orthodontic submission -- that the definition was not
22 sufficient for him to administer the program?

23 A It's certainly not sufficient for the providers
24 who were -- who were providing the treatment.

25 Q And do you have any reason to dispute my

1 statement that Dr. Orr personally trained many of the
2 orthodontic providers that are -- that are under
3 investigation by OIG?

4 A Not at all.

5 Q You make the statement that (as read):

6 "Ideally aligned, in parentheses, straight teeth, are
7 not unusual."

8 Do you recall that statement -- "are not
9 usual".

10 A Yes.

11 Q Do any of the manuals that you've gone through
12 make that statement?

13 A Not that I'm aware of.

14 Q You also make the statement, (as read): "That
15 decades of research support that over 80 percent of the
16 U.S. population has teeth that erupt with some degree of
17 irregularity or misalignment."

18 A Yes.

19 Q Okay. Do any of the manuals that relate to the
20 years in question make that statement?

21 A No, I'm sure they don't.

22 Q You also make the statement (as read): "That
23 rotated and tipped teeth are the usual pattern of
24 eruption."

25 A Yes.

1 Q Do you recall that?

2 A Yes.

3 Q Is there anywhere in the manual that state --
4 makes that statement?

5 A Not that I'm aware of.

6 Q Can we agree that all of those statements are
7 statements that are not a part of any of these manuals?

8 A I think we can.

9 Q You also make the statement (as read): "That
10 no textbook or orthodontic literature has ever described
11 alveolar protrusions or retrusions as ectopic."
12 Correct?

13 A Correct.

14 Q Did you personally review every textbook and
15 orthodontic literature to satisfy yourself that that
16 statement is true?

17 A I reviewed enough to satisfy myself, but not
18 every textbook or every research.

19 Q So if you did not review every textbook and
20 every bit of research, are you not speculating in that
21 statement?

22 A Sure.

23 Q You indicated earlier that you did not feel
24 that the manual's definition of an unusual pattern of
25 eruption was subjective. Correct?

1 A I don't believe the definition of ectopic
2 eruption is suggestive.

3 Q I'm asking you, sir, is the definition utilized
4 in the manual, the first five words "an unusual pattern
5 of eruption," is that subjective in nature or objective
6 in nature?

7 A If you're coming at it as not a dentist, then
8 it would be clearly subjective.

9 Q And if you're coming at it as a dentist?

10 A You already know what the definition is. It's
11 not subjective.

12 Q And it's not objective either, according to
13 you. Correct?

14 A I think there are situations where it's not
15 objective. That's true.

16 Q What are those situations?

17 A I think when you're looking at teeth that are
18 blocked out of the arch, are they blocked out enough or
19 not enough? Those are subjective judgments.

20 Q So there is certainly a subjective component to
21 those five words, even to dentists?

22 A Yes.

23 Q And if it's primarily objective, why do you
24 need to look at outside sources to -- to understand that
25 definition?

1 A I don't.

2 Q Okay. Is it fair to say that in your analysis
3 of these cases, there was only one case that met the
4 26 point requirement in your opinion?

5 A That's probably fair to say.

6 Q You have to speak up just a little bit.

7 A I think that's fair to say.

8 Q Okay. And in every case that you reviewed, you
9 reviewed the dental records. Correct?

10 A Yes.

11 Q Okay. And did you use the same scoring
12 methodology for all the cases?

13 A Yes.

14 Q Were you consistent?

15 A I believe so.

16 Q Is severe handicapping malocclusion required
17 for the treatment of Medicaid orthodontic patients?

18 A That is the general requirement, yes.

19 Q How is it determined?

20 A By the HLD score.

21 Q Okay. Can you tell us what is an HLD scoring
22 index?

23 A Well, it's an index to basically determine a
24 level of -- in its -- in its original writing, it's a
25 level of disfigurement. Now Texas takes out the

1 cosmetic part, says it can't be cosmetic, but it is a
2 level of malocclusion measured according to the
3 deviations that are in this particular index.

4 Q Do you know how long Texas has used the HLD
5 scoring index?

6 A I'm not sure about that.

7 Q Would it surprise you that it's been in excess
8 of 30 years?

9 A No, it would not.

10 Q How long have you utilized the HLD scoring
11 index in your career?

12 A Well, not very long comparatively. Three
13 years.

14 Q Okay. And the scoring index requires the
15 filling out of a scoresheet. Correct?

16 A Yes.

17 Q How did you learn how to fill out a scoresheet?

18 A Well, I suppose talking to Medicaid providers
19 and reading the instructions.

20 Q Will you agree with me that the Medicaid
21 providers that you talked to did not necessarily score
22 the patients the same way you did?

23 A Two did, one did not.

24 Q Okay. The HLD scoring index for the years in
25 question contains instructions, does it not?

1 A Yes.

2 Q Did you read those instructions as a part of
3 your evaluation of the cases for the period in question?

4 A I have read those instructions for the period
5 in question.

6 Q Okay. And did you apply the information in
7 those instructions into your analysis of these cases?

8 A I believe so.

9 Q Okay. Now, there are different categories on
10 the scoresheet, and you can pull up a scoresheet from
11 one of the -- one of the orthodontic sections towards
12 the back. Do you have one in front of you?

13 A Uh-huh, yes.

14 Q And the first category is cleft palate. Do you
15 see that?

16 A Yes.

17 Q And -- and is -- is there any subjective
18 component to rendering a score for cleft palate?

19 A Probably not.

20 Q Okay. So would you consider that objective?

21 A Yes.

22 Q The next category is severe traumatic
23 deviations. Correct?

24 A Yes.

25 Q Is there any subjective component to the

1 scoring of a severe traumatic deviation?

2 A I wouldn't think so.

3 Q Would you consider that an objective score?

4 A I think so.

5 Q The next column is overjet. Correct?

6 A Yes.

7 Q And is there a subjective component to the
8 scoring of overjet?

9 A There's not much subjectivity.

10 Q Do you consid -- do you consider it objective?

11 A Yes, I do.

12 Q Okay. And when you're looking -- what is
13 overjet?

14 A It's distance between upper and lower front
15 teeth.

16 Q Distance between upper and lower --

17 A Lower front teeth. The greatest -- the
18 greatest difference between the upper and lower front
19 teeth in a horizontal plane.

20 Q Is it the extent that the front teeth extend
21 past the lower teeth?

22 A Yes.

23 Q But not how deep, right, it's just how far?

24 A Correct.

25 Q Okay. And when you have these teeth and you're

1 looking at these teeth, are some of these teeth going to
2 tend to be rotated?

3 A Yes.

4 Q Are some of these teeth going to tend to be
5 slanted?

6 A Yes.

7 Q Leaning?

8 A Perhaps.

9 Q I'm talking about the anterior teeth.

10 A Yes.

11 Q Correct?

12 A Uh-huh.

13 Q And -- and does the manual give instruction as
14 to where you measure from?

15 A No. That's why I said mostly. Mostly.

16 Q Can we -- can we agree that there's a great
17 deal of subjectivity to the scoring of overjet?

18 A I don't believe so. The difference between --
19 if you score it from one side of the arch to the other,
20 no one scores it that way. You don't learn how to score
21 it that way. So it's from antagonistic teeth. So you
22 pick the largest one and follow the directions.

23 Q What are the directions on the scoring of
24 overjet?

25 A Labial of lower to -- or the most retruded to

1 labial of the most protruded or labial of the upper in
2 the case of a normal overjet.

3 Q Okay. And does it -- in the case of rotated
4 lean or slanted teeth, teeth that you're -- which teeth
5 are you going to measure from?

6 A You're going to measure the greatest
7 measurement that you can get.

8 Q Where does it say in the manual that you --

9 A It doesn't. It doesn't.

10 Q Does that not render it subjective, Doctor?

11 A I don't believe so. Not in -- if you want to
12 nitpick what's subjective, you can say, 'Well, it's
13 objective because it's measurement, but it's subjective
14 because there are points at which you can measure from.'
15 There are differences. If you take a totally rotated
16 tooth, you can't argue to me that you measure from --
17 and the tooth is rotated totally sideways, the actual
18 distance is from the closest. If you measured the
19 farthest distance to the most outer point, that's not --
20 that's not an overjet.

21 Q And it doesn't -- it does not say any of that
22 in the manual?

23 A But those are things that you learn in dental
24 school and you learn in orthodontic school. Those are
25 things you have to come -- you don't come untrained.

1 Q Okay. So is this another departure from --
2 from what the manual states?

3 MR. VARELA: Objection.

4 Q (BY MR. GARCIA) Using an outside reference?

5 MR. VARELA: Objection; form.

6 A It's a measurement.

7 Q (BY MR. GARCIA) Okay, Doctor. So if I have a
8 rotated tooth that I'm measuring from and I choose
9 the -- the least distance between the upper and lower
10 jaw, okay, have I made a mistake?

11 A Well, in my view, you have. You've
12 underestimated the amount of overjet.

13 Q Even though the manual doesn't give you
14 direction which way to do it?

15 A Sure.

16 Q And some orthodontic providers might --

17 A Sure they would.

18 Q -- score it that way. Correct?

19 A Sure they would.

20 Q And to --

21 A They're hurting the score.

22 Q And to --

23 A They're cheating themselves.

24 Q And to -- and on the flip side, someone might
25 measure the greatest distance between --

1 A They might.

2 Q -- those two teeth?

3 A They might.

4 Q And those two cases are going to render a
5 different score?

6 A Correct.

7 Q Okay. And because they're going to -- they
8 have a tendency or a possibility of rendering a
9 different score, that makes it subjective. Does it not?

10 A Again, it is a relatively objective
11 measurement, as I said, mostly. And you can't -- I
12 mean, you -- you -- in my view, you can't argue that
13 represents overjet, the largest measurement.

14 Q Do you know if all the dental schools teach the
15 scoring of -- of overjet the same way that you were
16 taught?

17 A I wouldn't know that answer.

18 Q Okay. Let's go to overbite, the next category.
19 What is overbite?

20 A It's the vertical relationship of the upper and
21 lower teeth. It's how far --

22 Q Okay.

23 A -- the upper teeth extend --

24 Q Okay.

25 A -- down oververtically over the lower.

1 Q Okay. And is there any part of the measurement
2 of overbite that would be considered subjective in your
3 opinion?

4 A Yes. Same as the last one.

5 Q Okay. Tell us.

6 A Well, again, which teeth you pick to determine.
7 It's probably less subjective but...

8 Q There's an objective component and also a
9 subjective component to it. Correct?

10 A Sure. Sure. Sure.

11 Q How about mandibular protrusion? What is that?

12 A Lower teeth in front of the upper teeth
13 forward.

14 Q Lower teeth...

15 A Outside of the forward.

16 Q Outside of the forward. Okay. And -- and is
17 there a -- is there a subjective component to the
18 measurement of mandibular protrusion?

19 A As in the others, there is which teeth you
20 pick. So, yes.

21 Q Same as the others, part of it's objective;
22 part of it's subjective?

23 A Yes.

24 Q Okay. Open bite. What is open bite?

25 A The opposite of overbite. Teeth not

1 overlapping -- front teeth not overlapping, so they are
2 apart this way.

3 Q Okay. And is there any -- any subjective
4 component to the measurement of open bite?

5 A There is a subjective component, and that would
6 be which teeth you measure.

7 Q Is there an objective component to it in
8 your -- in your mind?

9 A Sure. It's a linear measurement from incise
10 ledge to incise ledge so...

11 Q Have we agreed as to ectopic eruption that
12 there is a subjective component to ectopic eruption?

13 A Yes.

14 Q But in your mind, there's also an objective
15 component?

16 A Yes.

17 Q Okay. Anterior crowding, is there a subjective
18 component that?

19 A The measurement of crowding, yes.

20 Q And to award points for anterior crowding,
21 how -- how do you go about awarding points for anterior
22 crowding?

23 A Well, you can only award the points if you
24 don't use ectopic eruption in the same arch, and that
25 has to be 3 and a half millimeters of crowding. And...

1 Q So assuming you have 3 and a half millimeters
2 of crowding, what -- what is the score for that
3 particular arch?

4 A You can score five points for that arch.

5 Q Can you score less?

6 A I was told you could score the amount of
7 crowding that exists in the arch.

8 Q Does it --

9 A If it's more than three and a half, it's either
10 four or five.

11 Q Does the manual and the directions in the
12 manual say that you can do that?

13 A I don't believe it says that exactly.

14 Q Does it actually have an equal sign of five
15 points?

16 A Each, yes.

17 Q Okay. Can you tell me where in the manual it
18 instructs you or differentiates between ectopic eruption
19 and anterior crowding?

20 A Where in the manual?

21 Q Yeah.

22 A It states in the instructions to scoring HLD
23 that you should not score both in the same arch, that
24 you score the worst of the two.

25 Q Where does it say you score the worst of the

1 two?

2 A The one with the highest score.

3 Q Okay. Where does it say that?

4 A It's in the instructions to it. Record the
5 more -- under Ectopic Eruption (as read): "Record the
6 more serious condition. Do not include teeth that are
7 to be counted as anterior crowding."

8 Q Where are you reading from?

9 A "Ectopic Eruption", under that definition.

10 Q Okay. Right here. Okay. Let's move on to
11 labio-lingual spread. What is that?

12 A How does Texas use it, or what is it?

13 Q What does Medicaid -- what is it? What is it
14 for the purpose --

15 A Texas measures it as space between the teeth.

16 Q Okay. And is there a subjective component to
17 that measurement?

18 A Just as with overjet, yes, definitely.

19 Q So can we agree that the majority of these
20 measurements have some subjective component to them?

21 A I think that's reasonable.

22 Q Thank you.

23 MR. GARCIA: Has it been going an hour?

24 You want to take a break or keep going?

25 MR. VARELA: Has it been an hour? Yeah,

1 it's been an hour. Yeah, let's take a bathroom break.

2 THE VIDEOGRAPHER: Off the record.

3 (Recess: 2:30 p.m. to 2:40 p.m.)

4 THE VIDEOGRAPHER: Back on the record.

5 MR. GARCIA: Madam Court Reporter, what's
6 our next exhibit number?

7 THE REPORTER: 13.

8 MR. GARCIA: 13. Roy, if I could have
9 the spreadsheet.

10 Q (BY MR. GARCIA) Doctor, let me hand you what
11 I'm going to call "the spreadsheet" for lack of a
12 different term, and ask you if that looks like a
13 spreadsheet that you've utilized?

14 A It does.

15 Q It does?

16 A Uh-huh.

17 Q Okay. Before we get to the spreadsheet, I'm
18 going to ask you a few more questions. Okay?

19 Doctor, when anterior teeth are in ideal
20 position, are the teeth well aligned in the three planes
21 of space?

22 A Yes.

23 Q When the anterior teeth are in ideal position,
24 are they in ideal contact in occlusion?

25 A Yes.

1 Q When anterior teeth are in the ideal position,
2 are the teeth in an ideal position in relation to the
3 skeletal structures of the face?

4 A Yes.

5 Q Okay. What is a high labial cuspid?

6 A A tooth that erupts outside of the arch high
7 above the other teeth and, usually, it's blocked out.
8 Usually, it does that due to crowding, but it's to the
9 outside. It's outside the arch.

10 Q Do you recall counting teeth as ectopically
11 erupted teeth that were high labial cuspids in the
12 analysis of these cases?

13 A I don't recall. Could have or don't recall.

14 Q What is a transposed tooth?

15 A A tooth that erupts switched with another
16 tooth.

17 Q Okay. Tooth A should be in a certain place
18 and, actually, Tooth B is in that certain place that
19 Tooth A should be?

20 A Actually, it involves both. And tooth A is
21 over perhaps where B should be, and B is where A is.

22 Q I got you.

23 A It can be worse than that, but that's one
24 example.

25 Q What is the long axis of the alveolar ridge?

1 A Generally, it's the center of the alveolar
2 ridge.

3 Q So if a --

4 A Following the angle of the ridge so...

5 Q Okay. So if an orthodontic provider was to
6 take the ridge and draw a line basically in the middle,
7 you know, the surface of the ridge all the way around,
8 would that be the long axis of the alveolar ridge?

9 A To follow your line of questioning, it would in
10 part be true and in part of it not be true. It's not
11 that simple.

12 Q Okay.

13 A The ridge itself is not perfectly straight up
14 and down. In some aspects it has a forward slant. So
15 the center of that ridge is not necessarily the center
16 when you're looking straight down on it.

17 Q And when you are looking straight down on it,
18 what imaginary line would you expect to see that makes
19 up the long axis of the alveolar ridge?

20 A It would be an arc or an arch. That's why they
21 call it an arch.

22 Q And would it be equally spaced, you would have
23 as much space on one side of that imaginary line as on
24 the other side of that imaginary line?

25 A Yeah, the problem is that because the arch

1 itself is three dimensional, you're just simply looking
2 straight down on it in one dimension. So that
3 particular mark in that spot may not be the exact
4 center, but you're not far off.

5 Q Okay. Thank you. Is the term "grossly"
6 defined in the Texas Medicaid manual relative to the
7 definition of ectopic eruption?

8 A No.

9 Q Okay. Is the term long axis defined in the
10 Medicaid manual?

11 A No.

12 Q Is the alveolar ridge defined in the Medicaid
13 manual?

14 A No.

15 MR. GARCIA: I think we're ready, Tony,
16 to start with the first chart on the list there, the
17 spreadsheet.

18 MR. CANALES: Every time I turned it on,
19 he got mad at me. So I turned it off.

20 MR. GARCIA: It gets real hot in here.

21 MR. CANALES: What document do you want,
22 sir?

23 MR. GARCIA: I would like to bring up the
24 inner oral photos for Zach --

25 MR. CANALES: What number?

1 MR. GARCIA: No. 1, Zachary Mayes.

2 Q (BY MR. GARCIA) Also, Doctor, do you happen
3 to have your -- a copy of your HLD scoresheets with you?

4 A I don't.

5 Q You don't?

6 MR. CANALES: We have them right here in
7 the notebook.

8 Q (BY MR. GARCIA) I'm not going to introduce
9 these into evidence, but I'm going to hand you a
10 notebook that contains your HLD scoresheets and the
11 number that we're going to take them up so you can have
12 it for your review.

13 A Okay.

14 MR. GARCIA: Do we have them? Okay.

15 I don't need that. He has that. He has
16 his own. I'm not concerned with Dr. Nazari's. Can you
17 make it bigger?

18 Q (BY MR. GARCIA) Doctor, can you see the inner
19 oral photos for Patient No. 1?

20 A Yes.

21 Q Okay. And do you have your scoresheet in front
22 of you?

23 A I have my scoresheet, yes.

24 Q And what was your score?

25 A Zero.

1 Q Okay. And as you look at the top anterior
2 teeth, we deal with the six front teeth. Correct?

3 A Uh-huh.

4 Q In both the upper and lower jaw in Medicaid
5 orthodontics. Correct?

6 A Yes.

7 Q Looking at the -- the top six teeth, can you
8 see where I'm indicating?

9 A Yes.

10 Q Okay. Which of those teeth are in their ideal
11 position?

12 A They're all pretty much in an ideal position.

13 Q They're all?

14 A Based on just the photograph.

15 Q Okay. And which of the teeth --

16 A They're not perfectly straight, but
17 position-wise, they're ideal.

18 Q Okay. Which of the top -- the six anterior
19 teeth in the maxilla are in malocclusion?

20 A None are in malocclusion.

21 Q Okay.

22 A There's a slight overjet of the upper left
23 canine viewing the occlusion. Now you asked about
24 occlusion.

25 Q Right.

1 A So it would be the center photograph but that
2 overjet is slight.

3 Q Are you talking about this tooth?

4 A No. One more over. Right there.

5 Q What about saying about this tooth?

6 A Go to --

7 Q This is the upper three?

8 A Upper left three.

9 Q Upper left three.

10 A Go to the center photograph on the bottom row.
11 I'm just simply looking at the amount of overjet right
12 there. There is a slight amount of overjet.

13 Q Okay. So --

14 A And it could be position of the photograph.

15 Q Okay. All right. Now let's look at the bottom
16 anterior teeth. Which of the bottom anterior teeth are
17 in their ideal position?

18 A Position-wise, they're all in ideal position.
19 There's a couple teeth, two teeth, two central incisors
20 are rotated, but they're position-wise where they're
21 supposed to be.

22 Q And are any of the anterior lower teeth in
23 malocclusion?

24 A No.

25 Q Okay.

1 A There's overlap and a mild amount of crowding
2 but, no.

3 Q Okay. And if this patient was a private
4 patient that came to your office, would you opine that
5 that patient needed orthodontic treatment?

6 A If they asked me for what is the credible
7 treatment need, I would say that cosmetics is the
8 primary treatment need if they're concerned about the
9 lower. I cannot say that anything else there will cause
10 any issues for them.

11 Q Doctor, do you need the models to render a
12 complete opinion --

13 A Yes.

14 Q -- with regard to the questions?

15 A A complete opinion, yes.

16 Q Okay.

17 MR. GARCIA: We have to go off the
18 record.

19 THE VIDEOGRAPHER: Off the record.
20 (Brief recess)

21 THE VIDEOGRAPHER: Back on the record.

22 MR. GARCIA: Which is the first case we
23 want to talk about? Is it Patient No. 4?

24 MR. CANALES: Yes.

25 MR. GARCIA: If you could bring up

1 Patient No. 4.

2 Q (BY MR. GARCIA) And, Doctor, if you could
3 address your attention to --

4 MR. GARCIA: Do we have an extra copy of
5 his HLD scoresheets anywhere? No, I -- yeah. Bring
6 them out.

7 Q (BY MR. GARCIA) Doctor, before we -- let me
8 flip through this notebook for a second before we start
9 talking about that case. Can I see the notebook?

10 A Sure.

11 Q Okay. Let's talk about this case --

12 MR. GARCIA: Can you -- can you get that
13 any lighter, Tony?

14 MR. CANALES: It's a light factor. Open
15 the door a little bit, turn off the lights, and see what
16 happens.

17 Q (BY MR. GARCIA) Doctor, is this a crossbite
18 case?

19 A Yes.

20 Q Does --

21 A Posterior left, yeah.

22 Q Does this case require 26 points to qualify for
23 Medicaid orthodontics?

24 A It would not require 26 points.

25 Q Do you withdraw your objections to the

1 qualification of this case for Medicaid orthodontics?

2 A I withdraw the -- I believe the answer to that
3 is yes. I would withdraw the disqualification. I
4 wouldn't withdraw the scoring, but I would withdraw the
5 disqualification.

6 Q Would you agree with me the scoring has no
7 application to qualification of this case?

8 A I believe that's true.

9 Q Okay. So this is a case that you're changing
10 your report in favor of the provider. Correct?

11 A I think that's probably reasonable.

12 Q Okay.

13 MR. GARCIA: What's the next one?

14 DR. NAZARI: 27.

15 Q (BY MR. GARCIA) Can I see this?

16 MR. GARCIA: What's the next one? What
17 is the next one?

18 MR. CANALES: No. 27.

19 MR. GARCIA: Okay. Hold on. Let's go to
20 No. 6. Go to No. 6.

21 MR. CANALES: Go to No. 6?

22 MR. GARCIA: Yeah, No. 6.

23 Q (BY MR. GARCIA) Can you take a look at your
24 scoresheet for Patient No. 6, Doctor? Do your own notes
25 indicate that's a crossbite case?

1 A Yes, it does. It indicates it's a single tooth
2 crossbite.

3 Q Does the 26 points apply to this case?

4 A I think based on the current definition of
5 crossbite, it would not apply.

6 Q Would not apply?

7 A The 26 points would not apply.

8 Q Okay. So do you --

9 A As you stated.

10 Q Do you agree with me that this case qualifies
11 for Medicaid orthodontics?

12 A It qualifies for crossbite --

13 Q Therapy.

14 A -- therapy.

15 Q In Texas Medicaid?

16 A In Texas Medicaid.

17 Q And you change your report to -- to that
18 effect. Correct?

19 A I will change -- yes, to remove that from the
20 disqualified.

21 Q So it just changed from disqualified to
22 qualified. Correct?

23 A Yes.

24 Q All right. Before we go to 27, I would like
25 you to review your scoring index on Patient No. 10.

1 A Right.

2 Q And take a look at your scoring for anterior
3 crowding.

4 A Right.

5 Q And what was your score?

6 A Four was the score.

7 Q Did you incorrectly score the anterior crowding
8 in that case?

9 A Well, I think --

10 Q Should it be a five?

11 A I will accept that five can certainly be an
12 answer.

13 Q Can you point to anywhere in the Medicaid
14 instructions --

15 A I cannot.

16 Q -- that allows you to score a four?

17 A I cannot.

18 Q Does the instruction -- does it say right in
19 the sheet that if you have crowding it equals five
20 points in the column there for anterior crowding on the
21 scoresheet itself, sir?

22 A It does on the scoresheet, yes.

23 Q Did you incorrectly score anterior crowding in
24 that case? Will you agree that you did?

25 A I'll agree.

1 Q Thank you.

2 DR. NAZARI: No. 10.

3 MR. GARCIA: Just let me do what I'm
4 doing.

5 Q (BY MR. GARCIA) Will you agree with me on
6 Patient No. 12 you incorrectly scored anterior crowding
7 in that case?

8 A I scored it at four --

9 Q Will you agree --

10 A -- and it could be scored five, yes.

11 Q Well, will you agree with me that you
12 incorrectly scored the anterior crowding in this case,
13 Patient No. 12?

14 A I will agree that I did not score it as five
15 points.

16 Q Okay. This is -- are you looking at the inner
17 oral photos for Patient No. 12?

18 MR. GARCIA: Are they up on the screen?

19 MR. CANALES: Patient 12. That's
20 Patient 12.

21 MR. GARCIA: Inner oral photos.

22 Q (BY MR. GARCIA) Are those the inner oral
23 photos that you reviewed in your analysis of this case?

24 A I assume -- I would say yes.

25 Q Okay. And you scored the case in accordance

1 with these photos. Fair?

2 A I would say that's not -- that's not this.

3 Q Okay. Do we have --

4 A I don't see -- I don't see 2 millimeters of
5 overjet, 2 millimeters of overbite. I don't see ectopic
6 upper right three.

7 Q Let me stop you for a second.

8 MR. GARCIA: Do we have the patient chart
9 for this?

10 MR. VARELA: Yes. We have them right
11 here.

12 MR. GARCIA: If you could allow him to
13 look at the patient chart for this patient.

14 Q (BY MR. GARCIA) Specifically, Doctor, if you
15 can look for the inner oral photos that you had on the
16 chart.

17 A Right there.

18 Q Can I see it?

19 A Sure.

20 MR. GARCIA: Can you put the photos back
21 up?

22 Q (BY MR. GARCIA) I'll pose a question to you
23 again, Doctor. Are those the inner oral photos that you
24 utilized in the scoring of this patient?

25 A I don't see how they could be based on my

1 score.

2 Q How did you arrive at your score?

3 A I'm not sure, but it wasn't from this.

4 Q Because you cannot verify how you arrived at
5 your score, will you agree to withdraw your score?

6 A Yes.

7 Q Okay. Thank you. Doctor, if I could show you
8 your HLD for Patient No. 19. Patient 19, would you
9 agree with me you incorrectly scored anterior crowding
10 with this patient?

11 A As 9 instead of 10.

12 Q Okay. You agree, sir? Yes?

13 A Yes.

14 Q Thank you.

15 MR. GARCIA: Twenty what? If you could
16 bring up the inner oral photos for Patient 27.

17 MR. CANALES: Yes, sir.

18 MR. GARCIA: Thank you, sir.

19 Q (BY MR. GARCIA) We have the models, and we
20 have photos too. Okay. Doctor --

21 MR. GARCIA: See if we can show that. We
22 don't need to see her face so much as the teeth.

23 MR. CANALES: Excuse me.

24 Q (BY MR. GARCIA) Doctor, is this a crossbite
25 case?

1 A There is a single tooth in crossbite similar to
2 the other molar -- similar to the other case. So --

3 Q Did -- go ahead.

4 A It has a single tooth crossbite.

5 Q Do the 26 points apply to this case?

6 A I think based on the definition, the answer
7 would be, no, that it would not apply.

8 Q So do you agree with me that this case
9 qualifies for Texas Medicaid orthodontic treatment in
10 the form of crossbite therapy?

11 A Probably right, yes.

12 Q Yes. Okay. Thank you.

13 Let me show you Patient 33. Will you
14 agree with me that you incorrectly scored anterior
15 crowding in this patient?

16 A As four instead of five.

17 Q Yes, you agree?

18 A Yes.

19 Q Thank you. Patient 33, will you agree you
20 incorrectly -- on Patient 34, you incorrectly scored
21 anterior crowding on this patient?

22 A Yes. As 4 millimeters instead of five points.

23 Q So you agree?

24 A I'll accept that, yes.

25 Q Thank you.

1 MR. GARCIA: On which one? 34?

2 DR. NAZARI: Yes.

3 MR. CANALES: Just give me a number.

4 MR. GARCIA: Thirty-four.

5 Q (BY MR. GARCIA) Is this a crossbite case,
6 Doctor?

7 A It's an anterior crossbite, single tooth. It
8 doesn't appear to be incomplete crossbite with the
9 posterior tooth. So I'm not sure how I would score it.
10 Canine with the upper right lateral is not in crossbite
11 or doesn't appear to be. So I might not score it as a
12 crossbite case.

13 Q Could it be scored as a crossbite case for the
14 appropriate Medicaid manual?

15 A I think it probably could be.

16 Q It could. And if it could, would it have
17 qualified for crossbite therapy in the Texas Medicaid
18 program?

19 A I think it's possible, yes.

20 Q Are you willing to give Antoine Dental Center
21 the benefit of the doubt?

22 A Yeah, I think so.

23 Q Yes?

24 A Yes.

25 Q Thank you. And the last question about what

1 might qualify and what might not qualify, does that --
2 is that supportive of our discussion about subjectivity
3 of some of the analysis in these cases?

4 A Oh, sure.

5 Q Thank you.

6 MR. GARCIA: Where are we?

7 DR. NAZARI: Thirty-nine.

8 MR. GARCIA: Thirty-nine?

9 DR. NAZARI: Yes.

10 Q (BY MR. GARCIA) Doctor, will you agree with
11 me on Patient 39 you incorrectly scored anterior
12 crowding?

13 A As 4 millimeters instead of five points, yes.

14 Q Thank you. On Patient 42, wouldn't you agree
15 with me you incorrectly scored anterior crowding?

16 A Same thing, yes.

17 Q Thank you. Will you agree with me on
18 Patient 44 that you incorrectly scored anterior
19 crowding?

20 A Same thing, yes.

21 Q Thank you.

22 DR. NAZARI: Patient 45, please.

23 MR. GARCIA: If we could get the photos
24 for 45.

25 Q (BY MR. GARCIA) Is this a crossbite case,

1 Doc?

2 A Upper left canine is the one that appears to be
3 in crossbite not with the lower first premolar. So it's
4 only a partial. Again, I probably would not call this a
5 crossbite case but...

6 Q Will you give Antoine Dental Center the benefit
7 of the doubt and agree that this patient qualifies for
8 crossbite therapy in the Texas Medicaid program?

9 A I think the answer is yes.

10 Q Thank you. Will you agree with me on
11 patient --

12 MR. GARCIA: What patient? 46?

13 DR. NAZARI: Yes.

14 Q (BY MR. GARCIA) -- that this is a crossbite
15 case which qualifies for crossbite therapy in the Texas
16 Medicaid orthodontic program?

17 A It is a crossbite of the upper right canine.

18 Q So you agree with me that it does qualify for
19 orthodontic crossbite therapy?

20 A Or crossbite therapy, yes.

21 Q Yes. Thank you. Doctor, will you agree with
22 me that you incorrectly scored anterior crowding on
23 Patient No. 50?

24 A As 9 instead of 10.

25 Q Yes?

1 A Yes.

2 Q Thank you. Doctor, will you agree with me on
3 Patient 58 you incorrectly scored anterior crowding with
4 regard to this patient?

5 MR. GARCIA: It's 58.

6 Q (BY MR. GARCIA) Yes?

7 A As 4 millimeters instead of five points, yes.

8 Q Thank you.

9 MR. CANALES: Go back to 58.

10 MR. GARCIA: And what do we need, the
11 inner oral photos?

12 DR. NAZARI: Inner oral photos, yes.

13 Q (BY MR. GARCIA) Doctor, let me show you on
14 Patient 58 your notation in the ectopic eruption section
15 of the scoresheet. What is the notation? What is the
16 notation on the scoresheet?

17 A It looks like it says, "Lower left five".

18 Q Lower left five?

19 A Yeah.

20 Q Okay. Doc --

21 A But it's not anterior, so it didn't qualify.

22 Q So should that notation be on this scoresheet?

23 A Well, I just noted it for myself, the points
24 were zero so --

25 Q Has no application to Medicaid orthodontics,

1 does it?

2 A It doesn't have anything to do with the score.
3 That's why the score is zero.

4 MR. CANALES: Move on?

5 Q (BY MR. GARCIA) Doctor, will you agree with
6 me that Patient 63 is a crossbite therapy case that
7 qualifies for Texas Medicaid orthodontic treatment?

8 MR. GARCIA: Go to the photos.

9 A Yeah, I think so. Yes. Yes.

10 Q (BY MR. GARCIA) So you agree with me that it
11 does qualify?

12 A Yeah, I think so.

13 Q And in all of these cases that we've discussed
14 that relate to crossbite, you agree that you withdraw
15 them from your report and accept that they did qualify
16 for Medicaid orthodontic services. Correct?

17 A For crossbite therapy, yes.

18 Q Okay. Thank you. Go back to Patient No. 9,
19 and I'm going to ask you, Doctor, if this case qualifies
20 for Texas Medicaid orthodontic treatment for
21 interceptive treatment? Do you need to see the panel?

22 A Probably, yes.

23 MR. GARCIA: If we could see the panel.
24 There you go.

25 A I probably wouldn't.

1 Q (BY MR. GARCIA) You would not. Are you
2 stating that it is not permissible for Antoine Dental
3 Center to submit this case under the Medicaid manual
4 rules in existence at the time for interceptive
5 treatment?

6 A I don't believe so.

7 Q Okay. Have we agreed that interceptive
8 treatment is an exception to the 26 points requirement?

9 A I think it can be, yes.

10 Q Okay.

11 MR. GARCIA: Let's go to No. 10.

12 Q (BY MR. GARCIA) Will you agree with me,
13 Doctor, that this case presents as an interceptive
14 treatment case that qualifies for orthodontic benefits
15 in the Texas Medicaid program. Do you need to see the
16 panel?

17 A No.

18 Q Looks pretty bad?

19 A Yeah, I believe so.

20 Q Does qualify. Correct?

21 A Yes.

22 Q And you agree that you would change your report
23 to include this as a qualifying case. Correct?

24 A Yeah, I think so.

25 MR. GARCIA: Let's see the panel on this

1 patient.

2 MR. CANALES: Same patient, No. 10?

3 MR. GARCIA: No. 43, please.

4 DR. NAZARI: Don't put it up. Let me
5 show it to you.

6 MR. GARCIA: What do we need to see?
7 Let's see the panel in this case.

8 Q (BY MR. GARCIA) What was your score on
9 Patient 43, Doctor?

10 MR. GARCIA: Stop there.

11 MR. CANALES: Frozen.

12 A My score says one.

13 Q (BY MR. GARCIA) And what -- how did they get
14 one point?

15 A According to my scoresheet, overjet.

16 Q Okay. Doctor, did you review the cephalometric
17 radiograph in this case and the panel? Can you answer
18 that question? Can you recall if you reviewed --

19 A Well, I can't recall on this specific case.

20 Q Was it your practice --

21 A But my practice, yes, was to look at ceph and
22 pan.

23 Q In all of these cases that you reviewed.
24 Correct?

25 A Yes.

1 Q Okay.

2 MR. GARCIA: Let's show him the panel.

3 Q (BY MR. GARCIA) Look at the lower arch there,
4 Doctor. Anything look unusual to you?

5 A Yeah. Ectopic canine, transposed canine.

6 Q Right here, right there?

7 A Yeah.

8 Q Totally missed that one didn't you, Doctor?

9 A I did.

10 MR. GARCIA: Go to the south.

11 Q (BY MR. GARCIA) What's that?

12 A Yeah, that's it.

13 Q Doctor, how is it possible to miss that on two
14 X-rays? Please tell me. Is it because you never looked
15 at them?

16 A No, that's not true.

17 Q Were you wearing your glasses?

18 A I think so. It's definitely there.

19 Q So you didn't give the -- you didn't give my
20 client the benefit of a score that they should have
21 gotten for that tooth. Correct?

22 A That's correct.

23 Q And is this one of the cases that you would
24 have averaged eight minutes reviewing the files or less?

25 A However long it takes me, is however long it

1 takes me.

2 Q Okay. Doc, now after everything we've
3 discussed are you still comfortable passing judgment as
4 an expert on Antoine Dental Center?

5 A My role was to score the models. My
6 instructions were to score and review the models, and I
7 reviewed the treatment that was done, appliances that
8 were used. So I'm passing judgment on the score --

9 Q And we know that your scores in many cases are
10 in error. Correct?

11 A In some cases, they're a point off. In this
12 case, that would be three points off.

13 Q And there's a number of cases that qualify that
14 you said didn't qualify. Correct?

15 A That I scored and disqualified on HLD score.

16 Q And you were wrong. You were wrong?

17 A To do that, that's correct.

18 Q Okay. And you're still comfortable passing
19 judgment on \$18 million or however million dollars it is
20 that's going to affect this man's life, you're
21 comfortable that your opinions in this case are reliable
22 and should be relied upon by the judge in this case?

23 A I'm comfortable about the definition of ectopic
24 eruption and the scoring of ectopic eruption. I'm
25 comfortable about scoring, and we've discussed the

1 exceptions to that.

2 Q And if the -- if this was reversed, if
3 Dr. Nazari was doing this to you, how would you feel
4 about it?

5 MR. VARELA: Objection; form.

6 Q (BY MR. GARCIA) A non-Medicaid --

7 A I understand that. I didn't cause that. I'm
8 not causing this. I simply scored the models.

9 Q Let me ask you: Do you understand that you,
10 sir, and you alone in your opinions are driving this
11 case? This case hinges upon your opinions. Do you
12 understand that?

13 MR. VARELA: Objection; form.

14 A I believe the case was started and treated by
15 the provider. My scores are my scores. What the State
16 chooses to do with that is their choice. It's not my
17 choice. I'm not driving this.

18 Q (BY MR. GARCIA) Okay. And you feel that your
19 opinions in light of everything we've discussed in this
20 deposition continue to be reliable?

21 A My opinions in terms of qualifications using
22 the HLD score are reliable.

23 Q Do you know what the allegations are in this
24 case?

25 A No.

1 MR. GARCIA: I would like to take a
2 break, and we may have to just be in recess on this
3 deposition.

4 THE VIDEOGRAPHER: Off the record.

5 (Exhibit No. T13 marked)

6 (Recess: 3:23 p.m. to 3:29 p.m.)

7 THE VIDEOGRAPHER: Back on the record.

8 Q (BY MR. GARCIA) Dr. Tadlock, have you
9 understood my questions here today?

10 A I think so.

11 Q Have you responded honestly and truthfully to
12 my questions?

13 A Yes.

14 Q Do you have any -- can you think of anything
15 you want to change about your testimony?

16 A I don't think so.

17 MR. GARCIA: Mr. Canales, you have
18 something to say?

19 MR. CANALES: I think we ought to have a
20 big hoorah for the operator of the leader. Other than
21 that, we shouldn't have any questions. Pass the
22 witness.

23 MR. GARCIA: I don't have any further
24 questions.

25 MR. VARELA: Save ours for trial.

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MR. GARCIA: Thank you, Doctor.
THE VIDEOGRAPHER: Off the record.
(Deposition concluded at 3:29 p.m.)

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CAUSE NO. 529-13-0997

HHSC-OIG CASE NO. P20111316523848911

ANTOINE DENTAL CENTER) BEFORE THE STATE OFFICE
)
VS.) OF
)
TEXAS HEALTH AND HUMAN)
SERVICES COMMISSION,)
OFFICE OF INSPECTOR GENERAL) ADMINISTRATIVE HEARINGS

REPORTER'S CERTIFICATION

ORAL VIDEOTAPED DEPOSITION OF DR. LARRY TADLOCK

April 19, 2013

I, Autumn J. Smith, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

That the witness, DR. LARRY TADLOCK, was duly
sworn and that the transcript of the deposition is a
true record of the testimony given by the witness;

That the right to read and sign the deposition
transcript was waived;

That pursuant to information given to the
deposition officer at the time said testimony was taken,
the following includes all parties of record and the
amount of time used by each party at the time of the

1 deposition:

2 Mr. Garcia (4 hours 37 minutes)
3 Attorney for Petitioner
4 Mr. Varela (No time)
5 Attorney for HHSC-OIG

6 I further certify that I am neither counsel
7 for, related to, nor employed by any of the parties in
8 the action in which this proceeding was taken, and
9 further that I am not financially or otherwise
10 interested in the outcome of this action.

11 Certified to by me on this 22nd day of
12 April 2013.

13

14

15

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