

IN THE SUPREME COURT OF THE STATE OF NEVADA

TON VINH LEE,

Appellant,

v.

INGRID PATIN, an individual, and
PATIN LAW GROUP, PLLC, a Nevada
Professional LLC,

Respondent.

Supreme Court Case No.: 82516

District Court Case No. A-18-
723134-C

Electronically Filed
Jul 27 2021 04:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME 1 PART 1

PRESCOTT T. JONES, ESQ.

Nevada Bar No. 11617

MYRALEIGH A. ALBERTO

Nevada Bar No. 14340

RESNICK & LOUIS, P.C.

8925 W. Russell Rd., Suite 220

Las Vegas, Nevada 89148

Telephone: (702) 997-3800

Facsimile: (702) 997-1029

pjones@rlattorneys.com

malberto@rlattorneys.com

Attorneys for Appellant Ton Vinh Lee

INDEX TO APPELLANT'S APPENDIX

Document Description		Location
Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)		Volume 1 Bates Nos. 1–5
Motion for Judgement as a Matter of Law Pursuant to NRCP 50(b) or, in the Alternative, Motion for Remittitur in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 05/13/14)		Volume 1 Bates Nos. 5-29
Exhibits to Motion for Judgment as a matter of Law		
A.	Excerpted Transcript of Trial Testimony of Andrew Pallos, M.D. in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 01/16/14)	Volume 1 Bates Nos. 30-181
Notice of Entry of Order for Motion for Judgement as a Matter of Law Pursuant to NRCP 50(b) or, in the Alternative, Motion for Remittitur in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 07/16/14)		Volume 1 Bates Nos. 182-194
Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 09/11/14)		Volume 1 Bates Nos. 195-196
Complaint in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/17/15)		Volume 1 Bates Nos. 197-201
Affidavit of Service for Defendant Patin Law Group, PLLC in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/31/15)		Volume 1 Bates Nos. 202
Defendants' Motion to Dismiss in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 09/08/15)		Volume 1 Bates Nos. 203-214
Exhibits for Defendants' Motion to Dismiss		
A.	Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 1 Bates Nos. 215-216
B.	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 1 Bates Nos. 217-222

C.	Order on Defendants' Motion to Retax in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 1 Bates Nos. 223-227
D.	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 1 Bates Nos. 228-231
E.	The Trial Reporter Newsletter (February 2014)	Volume 1 Bates Nos. 232-235
F.	Nevada Legal Update Newsletter (Fall 2014)	Volume 1 Bates Nos. 236-239
G.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 1 Bates Nos. 240-242
Affidavit of Service for Defendant Ingrid Patin in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 09/23/15)		Volume 1 Bates Nos. 243
Defendants' Special Motion to Dismiss Pursuant to NRS 41.635-70, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/16/15)		Volume 2 Bates Nos. 244-260
Exhibits for Defendant's Special Motion to Dismiss		
A.	Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 2 Bates Nos. 261-262
B.	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 2 Bates Nos. 263-268
C.	Order on Defendants' Motion to Retax in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 2 Bates Nos. 269-273
D.	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 2 Bates Nos. 274-277
E.	The Trial Reporter Newsletter (February 2014)	Volume 2 Bates Nos. 278-281
F.	Settlement/Verdict Website Screenshot and Defendant's Fee Disclosure	Volume 2 Bates Nos. 282-283

G.	Nevada Legal Update Newsletter (Fall 2014)	Volume 2 Bates Nos. 284-287
H.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 2 Bates Nos. 288-290
I.	Plaintiffs Case Appeal Statement in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 2 Bates Nos. 291-297
J.	Defendants Case Appeal Statement (Cross-Appeal) in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 298-310
K.	Minutes of the Senate Committee on Judiciary (dated 03/23/13)	Volume 2 Bates Nos. 311-313
L.	Certificate of Business: Fictitious Firm Name (dated 10/26/2010)	Volume 2 Bates Nos. 314-318
M.	Reports Transcripts on Jury Trial in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 2 Bates Nos. 315-323
Notice of Entry of Order Denying Defendants' Motion to Dismiss in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/23/15)		Volume 2 Bates Nos. 324-326
Defendants' Motion to Dismiss Pursuant to NRCp 12(b)(5) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 01/27/16)		Volume 2 Bates Nos. 327-335
Exhibits for Defendant's Motion to Dismiss Pursuant to NRCp 12(b)(5)		
1.	Affidavit of Ingrid Patin, Esq. in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 01/27/16)	Volume 2 Bates Nos. 336-338
2.	Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 2 Bates Nos. 339-344
Order Denying Defendants' Special Motion to Dismiss Pursuant to NRS 41.635-70, or in the Alternative, Motion to Dismiss Pursuant to NRCp 12(B)(5) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 02/04/16)		Volume 2 Bates Nos. 345-348

Amended Complaint in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 02/23/16)		Volume 2 Bates Nos. 349-353
Notice of Entry of Order Denying Motion to Dismiss Pursuant to NRCPP 12(b)(5) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 04/11/16)		Volume 2 Bates Nos. 354-357
Second Amended Complaint in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 04/11/16)		Volume 2 Bates Nos. 358-362
Defendants' Renewed Special Motion to Dismiss Pursuant to NRS 41.635-40 in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 05/24/16)		Volume 2 Bates Nos. 363-380
Exhibits for Defendant's Renewed Special Motion to Dismiss Pursuant to NRS 41.635-40		
A.	Notice of Entry of Order Denying Motion to Dismiss Pursuant to NRCPP 12(b)(5) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 04/11/16)	Volume 2 Bates Nos. 381-385
B.	Complaint in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/17/15)	Volume 2 Bates Nos. 386-387
C.	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 2 Bates Nos. 388-393
D.	Order on Defendants' Motion to Retax in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 2 Bates Nos. 394-398
E.	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 2 Bates Nos. 399-402
F.	The Trial Reporter Newsletter (February 2014)	Volume 2 Bates Nos. 403-406
G.	Nevada Legal Update Newsletter (Fall 2014)	Volume 2 Bates Nos. 407-410
H.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 2 Bates Nos. 411-413

I.	Plaintiffs Case Appeal Statement in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 2 Bates Nos. 414-420
J.	Defendants Case Appeal Statement (Cross-Appeal) in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 421-433
K.	Judgment on Jury Verdict for Defendant in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 434-436
L.	Senate Bill No. 444- Committee on Judiciary	Volume 2 Bates Nos. 437-441
M.	Certificate of Business: Fictitious Firm Name (dated 10/26/2010)	Volume 2 Bates Nos. 442-446
N.	Reports Transcripts on Jury Trial in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 2 Bates Nos. 447-451
Order Denying Defendants' Renewed Special Motion to Dismiss Pursuant to NRS 41.635-70, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 09/29/16)		Volume 2 Bates Nos. 452-455
Defendant Ingrid Patin's Answer to Plaintiff's Second Amended Complaint and Counterclaim Against Patin law Group, PLLC in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/07/16)		Volume 2 Bates Nos. 456-468
Order affirming in Part, Reversing in Part and Remanding in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 10/17/16)		Volume 2 Bates Nos. 469-473
Defendant Patin Law's Answer to Plaintiff's Second Amended Complaint and Defendant's Counterclaim in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/18/16)		Volume 2 Bates Nos. 474-491
Defendant Ingrid Patin's Motion for Summary Judgment in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 02/10/17)		Volume 3 Bates Nos. 492-506

Exhibits for Defendant's Motion for Summary Judgment		
A.	Order affirming in Part, Reversing in Part and Remanding in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 10/17/16)	Volume 3 Bates Nos. 507-512
B.	Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 3 Bates Nos. 513-514
C.	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 3 Bates Nos. 515-520
D.	Order on Defendants' Motion to Retax in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 3 Bates Nos. 521-525
E.	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 3 Bates Nos. 526-529
F.	The Trial Reporter Newsletter (February 2014)	Volume 3 Bates Nos. 530-533
G.	Nevada Legal Update Newsletter (Fall 2014) and Nevada Jury Verdict Google Search Results (04/14/15)	Volume 3 Bates Nos. 534-539
I.	Plaintiffs Case Appeal Statement in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 3 Bates Nos. 540-546
J.	Defendants Case Appeal Statement (Cross-Appeal) in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 3 Bates Nos. 547-559
K.	Judgment on Jury Verdict for Defendant in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 3 Bates Nos. 560-562
L.	Senate Bill No. 444- Committee on Judiciary	Volume 3 Bates Nos. 563-567
M.	Certificate of Business: Fictitious Firm Name (dated 10/26/2010)	Volume 3 Bates Nos. 568-572

N.	Reports Transcripts on Jury Trial in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 3 Bates Nos. 573-577
K.	Judgment on Jury Verdict for Defendant in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 3 Bates Nos. 578-580
L.	Second Amended Complaint in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 04/11/16)	Volume 3 Bates Nos. 581-586
Recorder's Transcripts of Proceedings Hearing on May 9, 2017, regarding all Pending Motions in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 06/09/17)		Volume 3 Bates Nos. 587-614
Defendant Ingrid Patin's Motion for Summary Judgment in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 05/30/17)		Volume 3 Bates Nos. 615-636
Exhibits for Defendant's Motion for Summary Judgment		
A.	Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 3 Bates Nos. 637-659
B.	Order affirming in Part, Reversing in Part and Remanding in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 10/17/16)	Volume 3 Bates Nos. 660-665
C.	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 3 Bates Nos. 666-671
D.	Order on Defendants' Motion to Retax in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 3 Bates Nos. 672-676
E.	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 3 Bates Nos. 677-680
F.	The Trial Reporter Newsletter (February 2014)	Volume 3 Bates Nos. 680-684
G.	Nevada Legal Update Newsletter (Fall 2014)	Volume 3 Bates Nos. 685-688

H.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 3 Bates Nos. 689-691
I.	Plaintiffs Case Appeal Statement in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 3 Bates Nos. 692-698
J.	Defendants Case Appeal Statement (Cross-Appeal) in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 3 Bates Nos. 699-711
K.	Judgment on Jury Verdict for Defendant in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 3 Bates Nos. 712-714
L.	Certificate of Business: Fictitious Firm Name (dated 10/26/2010)	Volume 3 Bates Nos. 715-719
M.	Reports Full Transcripts on Jury Trial in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 4 Bates Nos. 720-934
Order Denying Defendant's Motion for Summary Judgement in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 06/05/17)		Volume 4 Bates Nos. 935-938
Notice of Entry of Order Denying Defendant's Motion for Summary Judgement in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/17/17)		Volume 5 Bates Nos. 939-944
Defendants' Motion to Dismiss Pursuant to NRCP 16.1(e)(1) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 07/15/19)		Volume 5 Bates Nos. 945-951
Notice of Entry of Order Denying Defendants' Motion to Dismiss Pursuant to NRCP 16.1(e)(1) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 09/10/19)		Volume 5 Bates Nos. 952-955
Joint Case Conference Report in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/11/19)		Volume 5 Bates Nos. 956-975
Plaintiff Ton Vin Lee Deposition Transcripts in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (dated 07/14/20)		Volume 5 Bates Nos. 976-1025
Defendant Ingrid Patin's Motion for Judgment on the Pleadings, in the Alternative, Motion for Summary		Volume 5 Bates Nos. 1026-1048

Judgment in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/07/20)		
Exhibits to Defendant's Motion for Judgment on the Pleadings, in the Alternative, Motion for Summary Judgment		
1.	Plaintiff Ton Vinh Lee Deposition Transcripts in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (dated 07/14/20)	Volume 5 Bates Nos. 1049-1099
2.	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 5 Bates Nos. 1100-1103
3.	Defendant Ingrid Patin's Answer to Plaintiff's Second Amended Complaint and Counterclaim Against Patin law Group, PLLC in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/07/16)	Volume 5 Bates Nos. 1104-1117
4.	Plaintiff Ton Vinh Lee's Third Supplemental ECC Disclosure in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 06/18/20)	Volume 5 Bates Nos. 1118-1123
5.	Ton Vinh Lee Deposition Transcripts in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (dated 07/14/20)	Volume 5 Bates Nos. 1124-1141
6.	134 Nev., Advance Opinion 87 (filed 11/15/18)	Volume 5 Bates Nos. 1142-1153
7.	Second Amended Complaint in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 04/11/16)	Volume 5 Bates Nos. 1154-1159
8.	Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 5 Bates Nos. 1160-1182
9.	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 5 Bates Nos. 1183-1188
10.	The Trial Reporter Newsletter (February 2014)	Volume 6 Bates Nos. 1189-1192
11.	Nevada Legal Update Newsletter (Fall 2014)	Volume 6 Bates Nos. 1193-1196

12.	Settlement/Verdict Website Screenshot and Defendant's Fee Disclosure	Volume 6 Bates Nos. 1197-1199
Defendant Patin Law Group, PLLC's Joinder to Defendant Ingrid Patin's Motion for Judgment on the pleadings, or in the alternative, Motion for Summary Judgment <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/10/20)		Volume 6 Bates Nos. 1200-1201
Plaintiff's Opposition to Defendant Ingrid Patin's Motion for Judgment on the pleadings, or in the alternative, Motion for Summary Judgment <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/26/20)		Volume 6 Bates Nos. 1202-1216
Exhibits to Plaintiff's Opposition to Defendant's Motion for Judgment on the Pleadings, in the Alternative, Motion for Summary Judgment		
A.	Order Denying Defendant Ingrid Patin's Motion for Summary Judgment in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (dated 06/02/17)	Volume 6 Bates Nos. 1217-1220
B.	Order Denying Defendants' Renewed Special Motion to Dismiss Pursuant to NRS 41.635-70 in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (dated 09/29/16)	Volume 6 Bates Nos. 1221-1234
Notice of Entry of Order Granting Defendant's Motion for Summary Judgment in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/30/20)		Volume 6 Bates Nos. 1235-1250
Plaintiff Ton Vin Lee's Motion for Reconsideration of the Court's Order Granting Defendant Ingrid Patin's Motion for Summary Judgment in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 11/13/20)		Volume 6 Bates Nos. 1251-1266
Exhibits to Motion for Reconsideration to Court's Order Granting Defendant Ingrid Patin's Motion for Summary Judgment		
A.	Order Denying Defendants' Renewed Special Motion to Dismiss Pursuant to NRS 41.635-70, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5) in <i>Lee v. Patin</i> ,	Volume 6 Bates Nos. 1267-1271

	Eighth Judicial Case No. A723134 (filed 09/29/16)	
B.	Transcript of Proceedings- Motion for Preliminary Injunction in <i>Brown v. Elk Point Country Club</i> Ninth Judicial Court Case No. 2020-CV-00124 (dated 10/23/20)	Volume 7 Bates Nos. 1272-1517
C.	Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 09/11/14)	Volume 8 Bates Nos. 1518-1521
D.	Order for Motion for Judgement as a Matter of Law Pursuant to NRCP 50(b) or, in the Alternative, Motion for Remittitur in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 07/16/14)	Volume 8 Bates Nos. 1522-1534
E.	Order affirming in Part, Reversing in Part and Remanding in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 10/17/16)	Volume 8 Bates Nos. 1535-1540
F.	Plaintiff Ton Vinh Lee Deposition Transcripts in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (dated 07/14/20)	Volume 8 Bates Nos. 1541-1591
G.	Order Denying Defendant's Motion for Summary Judgement in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 08/17/17)	Volume 8 Bates Nos. 1592-1597
Ton Vin Lee's Motion to Alter or Amend Judgment Pursuant to NRCP 59(e) in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 11/24/20)		Volume 8 Bates Nos. 1598-1613
Recorder's Transcripts of Proceedings Hearing on September 15, 2020, regarding all Pending Motions in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 01/14/21)		Volume 8 Bates Nos. 1614-1642
Notice of Entry of Order Denying Plaintiff's Motion to Alter/Amend Judgment and Order Continuing Motion for Reconsideration, Defendant Motion for Fees and Costs in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 01/21/21)		Volume 8 Bates Nos. 1643-1653

Notice of Appeal in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 02/18/21)		Volume 8 Bates Nos. 1654-1656
Exhibits to Notice of Appeal		
A.	Notice of Entry of Order Granting Defendant's Motion for Summary Judgment in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 10/30/20)	Volume 8 Bates Nos. 1657-1673
B.	Notice of Entry of Order Denying Plaintiff's Motion to Alter/Amend Judgment and Order Continuing Motion for Reconsideration, Defendant Motion for Fees and Costs in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 01/21/21) and related miscellaneous documents filed by the supreme court	Volume 9 Bates Nos. 1674-1815
Notice of Entry of Order Denying Plaintiff's Motion for Reconsideration in <i>Lee v. Patin</i> , Eighth Judicial Case No. A723134 (filed 02/25/21)		Volume 9 Bates Nos. 1816-1823
Removal from Settlement Program and Reinstating Briefing in <i>Lee v. Patin</i> , Supreme Court Case No. 82516 (filed April 7, 2021)		Volume 9 Bates Nos. 1824

Dated this 21st day of July, 2021.

RESNICK & LOUIS, P.C.

/s/ Prescott T. Jones

Prescott T. Jones, Esq.

Nevada Bar No. 11617

8925 W. Russell Rd., Suite 220

Las Vegas, Nevada 89148

Attorneys for Appellant, Ton Vinh Lee

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAN 22 2014

BY, ALICE JACOBSON, DEPUTY

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

Plaintiff,

vs.

TON VINH LEE, DDS, individually,
FLORIDA TRAVAI, DMD, individually, JAI
PARK, DDS, individually, TON V. LEE,
DDS, PROF. CORP., a Nevada
Professional Corporation d/b/a
SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, and
DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-12-656091-C
DEPT. NO.: XXX

SPECIAL VERDICT FORM

We the jury in the above-entitled action find the following special verdict on the
Questions submitted to us:

Question No. 1: Was Ton Vinh Lee, DDS, negligent in his care and treatment of
Reginald Singletary?

ANSWER: Yes _____ No ☒

If your answer to Question 1 is "no" please sign and return the General Verdict
finding in favor of Dr. Lee.

Question No. 2: Was negligence on the part of Ton Vinh Lee, DDS a cause of injury
to Reginald Singletary?

ANSWER: Yes _____ No ☒

1 If your answer to Question 2 is "no" please sign and return the General Verdict
2 finding in favor of Dr. Lee.

3 Question No. 3: Was Florida Traivai, DMD, negligent in her care and treatment of
4 Reginald Singletary?

5 ANSWER: Yes ✓ No _____

6
7 If your answer to Question 3 is "no" please sign and return the General Verdict
8 finding in favor of Dr. Traivai.

9 Question No. 4: Was negligence on the part of Florida Traivai, DMD, a cause of injury
10 to Reginald Singletary?

11 ANSWER: Yes ✓ No _____

12 If your answer to Question 4 is "no" please sign and return the General Verdict
13 finding in favor of Dr. Traivai.

14 Question No. 5: Was Jai Park, DDS, negligent in his care and treatment of Reginald
15 Singletary?

16 ANSWER: Yes _____ No ✓

17
18 If your answer to Question 5 is "no" please sign and return the General Verdict
19 finding in favor of Dr. Park.

20 Question No. 6: Was negligence on the part of Jai Park, DDS, a cause of injury to
21 Reginald Singletary?

22 ANSWER: Yes _____ No ✓

23
24 If your answer to Question 6 is "no" please sign and return the General Verdict
25 finding in favor of Dr. Park.

26 Question No. 7: Was Summerlin Smiles negligent in its care and treatment of
27 Reginald Singletary?

28 ANSWER: Yes ✓ No _____

1 If your answer to Question 7 is "no" please sign and return the General Verdict
2 finding in favor of Summerlin Smiles.

3 Question No. 8: Was negligence on the part of Summerlin Smiles a cause of injury to
4 Reginald Singletary?

5 ANSWER: Yes ✓ No

7 If your answer to Question 8 is "no" please sign and return the General Verdict
8 finding in favor of Summerlin Smiles.

9 If there is any Defendant for whom you have not signed and returned a General
10 Verdict Form please proceed to questions 9 through 16 for that Defendant or Defendants.

11 Question No. 9: What amount of damage, if any, do you find was sustained by Svetlana
12 Singletary for past grief or sorrow, loss of companionship, society, comfort and
13 consortium, and damages for pain, suffering or disfigurement of the decedent?

14 ANSWER \$ 125,000.-

16 Question No. 10: What amount of damage, if any, do you find will be sustained by
17 Svetlana Singletary for future grief or sorrow, loss of companionship, society, comfort and
18 consortium?

19 ANSWER \$ 500,000.-

20 Question No. 11: What amount of damage, if any, do you find was sustained by Gabriel
21 Singletary for past grief or sorrow, loss of companionship, society, comfort and
22 consortium, and damages for pain, suffering or disfigurement of the decedent?

23 ANSWER \$ 125,000.-

25 Question No. 12: What amount of damage, if any, do you find will be sustained by Gabriel
26 Singletary for future grief or sorrow, loss of companionship, society, comfort and
27 consortium?

28 ANSWER \$ 2,000,000.00

1 Question No. 13: What amount of damage, if any, do you find was sustained by Svetlana
2 Singletary for past loss of probable support?

3 ANSWER \$ 60,000-

4 Question No. 14: What amount of damage, if any, do you find will be sustained by
5 Svetlana Singletary for future loss of probable support?

6 ANSWER \$ 300,000.-

7 Question No. 15: What amount of damage, if any, do you find was sustained by Gabriel
8 Singletary for past loss of probable support?

9 ANSWER \$ 60,000.-

10 Question No. 16: What amount of damage, if any, do you find will be sustained by Gabriel
11 Singletary for future loss of probable support?

12 ANSWER \$ 300,000.-

13 Question No. 17: Was Reginald Singletary comparatively negligent?

14 ANSWER: Yes ☒ No ☐

15 If you answered "yes", please proceed to Question No. 18. If you answered "no"
16 please proceed to Question No. 19.

17 Question No. 18: If you answered "yes" to Question No. 17, was the comparative
18 negligence of Reginald Singletary a cause of his injuries?

19 ANSWER: Yes ☒ No ☐

1 Question No. 19: Assuming that 100% represents the total negligence which was the
2 cause of the Plaintiffs' damages, what percentage of this 100% is due to the comparative
3 negligence of Reginald Singletary and what percentage of this 100% is due to the
4 negligence of each of the Defendants?

5	Reginald Singletary	<u>25</u>	%
6	Ton Vinh Lee, DDS	<u>0</u>	%
7	Florida Traivai, DMD	<u>50</u>	%
8	Jai Park, DDS	<u>0</u>	%
9	Summerlin Smiles	<u>25</u>	%
10			
11	TOTAL	<u>100</u>	%

12
13 DATED this 22 day of January, 2014

14
15 
16 FOREPERSON


CLERK OF THE COURT

JASON B. FRIEDMAN, ESQ.
Nevada State Bar No. 11799
STARK, FRIEDMAN & CHAPMAN, LLP
200 W. Sahara, #1401
Las Vegas, NV 89102

Attorneys for Defendants, **TON VINH LEE, DDS and
TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES**

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually,
as the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

Plaintiff,

vs.

TON VINH LEE, DDS, individually,
FLORIDA TRAIVAI, DMD, individually,
JAI PARK, DDS, individually, TON V.
LEE, DDS, PROF. CORP., a Nevada
Professional Corporation d/b/a
SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, and
DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-12-656091-C
DEPT. NO.: XXX

**DEFENDANT TON V. LEE, DDS, PROF.
CORP. dba SUMMERLIN SMILES'
MOTION FOR JUDGMENT AS A
MATTER OF LAW PURSUANT TO
NRCP 50(b) OR, IN THE
ALTERNATIVE, MOTION FOR
REMITTITUR**

**DEFENDANT TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES'
MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(b)
OR, IN THE ALTERNATIVE, MOTION FOR REMITTITUR**

Defendant, TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES, by and
through its attorney of record Jason B. Friedman, Esq., of the Law Firm STARK, FRIEDMAN
& CHAPMAN, LLP, hereby files this Motion for Judgment as a Matter of Law Pursuant to

1 NRCP 50(b) or, in the Alternative, Motion for Remittitur.

2 This Motion is based upon the papers and pleadings on file in this case, the trial
3 transcripts, the Memorandum of Points and Authorities submitted herewith and upon such oral
4 and documentary evidence that may be presented at the time of hearing on this matter.

5
6 Dated: May 13, 2014

STARK, FRIEDMAN & CHAPMAN

7
8 BY: 

9 JASON B. FRIEDMAN, ESQ.

10 Nevada State Bar No. 11799

11 STARK, FRIEDMAN & CHAPMAN

12 200 W. Sahara #1401

13 Las Vegas, NV 89102

14 Attorneys for Defendants,

15 **TON VINH LEE, DDS and TON V. LEE,**

16 **DDS, PROF. CORP. dba SUMMERLIN**

17 **SMILES**
18
19
20
21
22
23
24
25
26
27
28

1 NOTICE OF MOTION

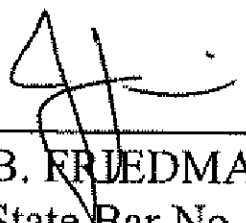
2 **TO: ALL COUNSEL**

3 **TO: ALL PARTIES**

4 Please take notice that the undersigned will bring **DEFENDANT TON V. LEE, DDS,**
5 **PROF. CORP. dba SUMMERLIN SMILES' MOTION FOR JUDGMENT AS A**
6 **MATTER OF LAW PURSUANT TO NRCP 50(b) OR, IN THE ALTERNATIVE,**
7 **MOTION FOR REMITTITUR** on for hearing in this Court, on the 26 day of
8 June, 2014, at 9:00 a.m. in Department XXX of this Court.

9
10 Dated: May 13, 2014

STARK, FRIEDMAN & CHAPMAN

11
12
13 BY: 
14 JASON B. FRIEDMAN, ESQ.
15 Nevada State Bar No. 11799
16 STARK, FRIEDMAN & CHAPMAN
200 W. Sahara #1401
Las Vegas, NV 89102

17 Attorneys for Defendants,
18 **TON VINH LEE, DDS and TON V. LEE,**
19 **DDS, PROF. CORP. dba SUMMERLIN**
20 **SMILES**
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Pursuant to Nevada *Rule of Civil Procedure* (NRCPP) 50(b), TON V. LEE, DDS,
5 PROF. CORP. dba SUMMERLIN SMILES (“Summerlin Smiles” or “Defendant”) respectfully requests that this Court enter an order granting Summerlin Smiles judgment as a
6 matter of law notwithstanding the jury’s verdict in favor of Plaintiffs. This is a renewed
7 motion for judgment as a matter of law, as Summerlin Smiles moved during trial in this matter
8 and at the close of Plaintiff’s case in chief for a directed verdict pursuant to NRCPP 41(b)
9 (NRCPP 50(a)) and the oral motion was denied. The bases of Defendant Summerlin Smiles’
10 oral motion for judgment as a matter of law were that (1) Plaintiff’s sole standard of care
11 expert, Andrew Pallos, D.D.S. (“Dr. Pallos”), did not render a causation or standard of care
12 opinion to the required standard of a reasonable degree of medical probability, and (2) that
13 Plaintiff had failed to establish that a Summerlin Smiles employee had answered a phone call
14 regarding follow-up treatment.

15
16 As the Court will recall, the Court was persuaded by Defendants’ argument that
17 Plaintiff had failed to offer admissible expert opinion “to a reasonable degree of medical
18 probability,” but did not grant the directed verdict because Plaintiff’s Counsel incorrectly
19 claimed that Dr. Pallos had offered opinions to the required standard. However, the trial
20 transcript clearly shows that Plaintiffs’ counsel misinterpreted and misrepresented Dr. Pallos’
21 testimony.

22 At the time of the oral motions for directed verdict, there was some confusion as to
23 which opinions of Dr. Pallos had been offered to a reasonable degree of medical probability.
24 Dr. Pallos had formulated three main opinions regarding the standard of care: (1) informed
25 consent, (2) use of antibiotics, and (3) follow-up with the patient. Dr. Pallos had also offered
26 four “sub-opinions” regarding the main opinion of informed consent, described generally as:
27 (1) telling the patient what will be done, (2) discussing alternative treatments, (3)
28 communicating risks, and (4) obtaining written consent. Confusion arose as to whether Dr.

1 Pallos had offered testimony to a reasonable degree of medical probability as to the three main
2 opinions, or as to only three of the four “sub-opinions” of the informed consent opinion. The
3 confusion apparently arose after Plaintiffs’ Counsel examined Dr. Pallos regarding the fourth
4 requirement of the “informed consent” opinion – obtaining written consent – and continued on
5 with testimony regarding the three remaining “sub-opinions” regarding informed consent.

6 Now that the full transcript is available, the Court can see that Dr. Pallos rendered his
7 opinion only on the issue of “informed consent” to a reasonable degree of medical probability.
8 He did not offer any of his other opinions to that standard, including his main opinions
9 regarding the prescription of antibiotics or follow-up care. Because the Court struck Dr.
10 Pallos’ opinions regarding “informed consent” as lacking foundation, those opinions are no
11 longer valid. Thus, there are no remaining admissible opinions which have been given to a
12 reasonable degree of medical probability. Plaintiff’s most basic burden of proving her prima
13 facie case requires that she offer admissible expert testimony regarding any breach of the
14 standard of care. The law requires that Dr. Pallos’ opinions regarding Summerlin Smiles and
15 any alleged breach of the standard of care be rendered to a reasonable degree of medical
16 probability. As Dr. Pallos did not render the required opinions, the question of Summerlin
17 Smiles’ negligence should never have gone to the jury and judgment as a matter of law in
18 Summerlin Smiles’ favor is required.

19 Further, testimony regarding the standard of care also relates to the issue of whether a
20 Summerlin Smiles employee answered the telephone call from Plaintiff regarding follow-up
21 treatment. Since no testimony was offered establishing Plaintiff’s contact with any
22 identifiable person or Summerlin Smiles employee, and even if it had, there was no testimony
23 regarding the breach of the standard of care for “follow-up” to a reasonable degree of medical
24 probability, Summerlin Smiles’ renewed motion for judgment as a matter of law should be
25 granted.

26 In the alternative, any noneconomic damages award against this Defendant should be
27 reduced through remittitur to \$350,000 pursuant to the cap on non-economic damages found in
28 NRS §41A.035.

1 II.

2 **STATEMENT OF RELEVANT TESTIMONY**

3 Dr. Pallos was presented at the time of trial as Plaintiff's only standard of care expert.
4 Dr. Pallos initially testified that he had three criticisms of the dentists in this case when it came
5 to standard of care:

6 Q: Dr. Pallos, I contacted you with regard to a review of this case,
7 correct?

8 A: Yes.

9 Q: And you have had an opportunity to review all of the
10 documents, case file, dental records, hospital records in this case?

11 A: Yes, I have.

12 Q: And after your review of all of the documents related to this
13 case, did you formulate any opinions with regard to the standard of
14 care?

15 A: Yes, I have.

16 Q: Okay. What are those opinions?

17 A: Okay. Am I free to speak now or – can I just go ahead?

18 Q: Yes.

19 A: Okay, In order to maintain our license, we are – our license –
20 our relationship between the doctor and a patient is governed by what's
21 called the standard of care. That's basically the legal concept. That
22 standard of care is what we have to follow, and it's very excellent. It
23 protects us, and it protects the patient, that we don't harm the patient.

24 One of the things required by the standard of care is that we
25 obtain what's called an informed consent. Very important. That means
26 I – before I cut you, before I do surgery, before I have permission to do
27 those procedures that could harm you, I have to inform you of what I'm
28 going to do. What else could be done instead of what I am proposing to

1 do that I consider to be in your best interest? What other methods are
2 there? And what risks are associated with what I'm going to do? Okay?

3 Then I'm going to ask you, Do you still want to do this? That
4 means I'm obtaining now your consent knowing that you could suffer
5 because of this. And we become partners to make sure you don't suffer
6 much or you recover well. That becomes at least 50 percent of my duty.
7 And it's part of this informed consent.

8 I believe in this case that was not followed, and there was a
9 failure in following the standard of care relative to this item called the
10 informed consent, and I'm more than happy to discuss in detail what I
11 mean by that.

12 Number 2, antibiotics are absolutely crucial if we determine that
13 there had been an infection, there is an infection now, and – or there is
14 a risk of infection. We have to either give the antibiotic, make that
15 antibiotic accessible to that patient, or follow that patient like a dog on
16 a bone to make sure that that person does not need the antibiotic. That,
17 to me, in my opinion, that is the standard of care, and it was violated
18 very much in this case to the very sad ending that we see that, in my
19 opinion, was preventable.

20 Number 3, the follow-up is required, whether I choose to call
21 the patient or I hire an employee who calls the patient on my behalf.
22 Very important not to abandon, neglect, leave that patient. Especially if
23 I give them drugs. Like Vicodin, that impairs their perception, impairs
24 their judgment, and impairs their communication, and then I blame
25 them for not calling me. That's not right. If I tell them, you don't have
26 an emergency if you call me, and then I blame them for thinking that
27 they don't have an emergency, that's unethical. It's unacceptable. It's a
28 violation of the standard of care.

1 So that is my opinion in a nutshell regarding those three
2 categories. And I'm happy to go over starting with No. 1 if you want.

3 See Reporter's Transcript of Jury Trial, attached hereto as **Exhibit A**, at 51:7-53:25.

4 At this point in the testimony, Dr. Pallos began to explain in detail his first opinion, that
5 the standard of care was violated because there was no adequate informed consent:

6 Q: That's what I would like you to do. Let's start with No. 1 and
7 get specific with regard to how the dentist in this case acted below the
8 standard of care with regard to informed consent.

9 **Ex. A**, at 54:1-4.

10 Dr. Pallos used the complete series of intraoral films to explain to the jury what the
11 condition of Mr. Singletary's mouth was, and specifically what the condition of Tooth No. 32
12 was. **Ex. A**, at 54:7-62:3. Dr. Pallos then testified that there were four (4) aspects of an
13 informed consent discussion that are required by the standard of care:

14 Q: Dr. Pallos, now that you've kind of explained to us with regard
15 to this tooth, which is Tooth No. 32, and the condition of that tooth,
16 **can you continue explaining to us how the dentist in this case acted**
17 **below the standard of care with regard to informed consent.**

18 A: It would be my pleasure. Thank you.

19 Okay. **So the first thing regarding the requirement for an**
20 **adequate minimum informed consent is that we tell the patient**
21 **what we want to do because of what is the condition of that tooth.**

22 The condition of that tooth, according to the record, is that there's a
23 periapical radial lucency around Tooth No. 32. That's No. 1. I just
24 explained what that means.

25 Number 2, the pulp is dead. It's necrotic. So that also means the
26 tooth is dead or necrotic, and the nerve is dead. Okay? We have to tell
27 people – the person stuff like that.

28 There's also a periodontal infection around that tooth, and,

1 therefore, there's a chronic infection present. Okay? All of these things.

2 **Now, the second component that's required is that we talk**
3 **about an alternative method.** Okay? Do you want to take out the
4 tooth? Do I have any other choice? What's going to happen to me if I
5 don't do what you say? All right. So that here means Dr. Traivai said,
6 No, I don't see any alternative because if you don't take out this tooth,
7 there's going to be pain, just like you had two months ago. There's
8 going to be infection and spread of infection. Pain, infection, spread of
9 infection. That will motivate you to get out the tooth. Okay. That would
10 have satisfied requirement No. 1. This is the alternative. If you don't do
11 it, here's what's going to happen.

12 **Requirement No. 3 is I have to communicate with you what**
13 **may happen if I do this so that we can get through it together and**
14 **you'll end up better than you are now.** Okay? And what's required
15 there is that I tell about the risks if I do this surgery. And if I don't do
16 anything and there is potential pain, infection, and spread of infection,
17 you minimally have to say, you know, there's a chance that this
18 infection will act up, you're going to have severe pain, you're going to
19 have infection, and you're going to have spread of infection. That's No.
20 1. You have to tell them that.

21 Well, you have to prepare that person so they can figure out
22 what will that feel like. So what that feels like the – pain is easy, okay,
23 everyone knows. But infection means there will be swelling. Okay?
24 And the swelling will not go down. It will grow. If that swelling grows,
25 that's a very bad sign, and you need to contact me, or I will follow up
26 with you and you have to tell me that because you have to take the
27 antibiotic. I prefer that you take the antibiotic sooner. That's up to you
28 or me, for us to decide. **So we have these three requirements.**

1 **After that, the fourth requirement is all these things have to**
2 **be written down, and you get to sign that you still want to do this.**

3 And this is – you’re okay with that, and you’re giving, now, your
4 consent that you understand that – one of the things that I skipped,
5 however you react to my information, I have to answer all your
6 questions and calm you down, and – and answer all your questions
7 again if you have more questions until I have answered all your
8 questions.

9 Once I’ve answered all your questions and you now feel that
10 you can make a – an informed decision, that’s the key, then you either
11 sign this or we don’t have a deal. Okay? So just by signing the paper
12 and not understanding it is not considered the standard of care. It does
13 not meet the standard of care. So they have to understand each of these
14 points. We have to answer all his questions, and then he has to sign the
15 thing saying I understand, I still – I want you to do that, please. So
16 that’s what’s required.

17 **Ex. A**, at 62:10-65:11 (emphasis added).

18 According to Dr. Pallos’ testimony, with regard to his first opinion about informed
19 consent, **there are three requirements regarding the substance of an informed consent**
20 **conversation and a fourth requirement regarding the written acknowledgment of that**
21 **conversation** in order to comply with the standard of care. Plaintiff’s Counsel first focused in
22 on the fourth requirement that the informed consent acknowledgement be made in writing:

23 Q: So let’s start with the fourth part of this. As far as the informed
24 consent form itself, that was provided to Reginald Singletary when he
25 went into the office on April 16th of 2011, do you have any opinion
26 with regard to whether or not that informed consent form was not
27 proper in any way?

28 A: Okay. There’s a form that we all get some kind of version of

1 that form. It's supposed to contain at least these **three ingredients:**
2 **What I want to do, what's the procedure that I want to do, what**
3 **are the alternatives to that procedure, and what are the risks if I do**
4 **this.** It has to contain that. And sometimes people get canned forms,
5 you know, they're all over the place. And to me, these are a dime a
6 dozen. And yes, it meets the standard in that sense. And so I don't have
7 any objection about the form.

8 **Ex. A**, at 65:12-66:2 (emphasis added).

9 Dr. Pallos confirmed that he found no violation of the standard of care regarding his
10 fourth point of the requirement of a written form:

11 Q: Dr. Pallos, I asked you if the form met the standard of care, and
12 you opinion is that –

13 A: Yes.

14 Q: -- it did meet the standard of care –

15 A: Yes.

16 Q: -- correct?

17 **Ex. A**, 66:13-18.

18 After Dr. Pallos testified that the fourth requirement was met, he testified that the
19 “three ingredients” for an adequate informed consent discussion were not met. This is the
20 **only** point in the entirety of his testimony that Dr. Pallos renders an opinion to a reasonable
21 degree of medical probability:

22 Q: Now, with regard to the other **three parts of the informed**
23 **consent discussion**, in what way did Dr. Traivai's informed consent
24 **discussion not meet the standard of care?** You've explained to us
25 what's required. How did it not meet the standard of care?

26 A: Okay. By what happened in this case, by the behavior of this
27 person, he was not prepared to know whether his infection was getting
28 worse to the point where he needed urgent attention and life-saving

1 antibiotics. In my opinion, they fell short of meeting the goal of
2 explaining, listen, it's an infection, You could have another
3 infection. Here's what it would feel like to have an infection, and –
4 and, you know, we have to give you antibiotics for that.

5 So in my opinion, to a reasonable degree of medical
6 certainty, or probability is the way it's – we have to phrase it, they
7 fell below the standard of care in meeting this requirement of
8 giving an effective informed consent. In all three of those points.

9 **Ex. A**, at 66:19-67:12 (emphasis added).

10 Dr. Pallos clearly offered his opinion that the three points of an informed consent
11 discussion, his “three ingredients,” were not met in this case. He used the number three to
12 refer to the “three ingredients” in response to Counsel’s question with regard to the “three
13 parts of the informed consent discussion.” He did not address the fourth aspect of his
14 informed consent discussion (a written consent form) because he had previously testified that
15 the written form met the standard of care. Therefore, it would not be included in his list of
16 violations. After an objection by Defense Counsel, Plaintiff’s Counsel continued her
17 questioning by first **acknowledging that Dr. Pallos had just rendered testimony solely**
18 **regarding his informed consent opinion:**

19 Q: Dr. Pallos, we were talking about the first opinion that you have
20 with regard to informed consent and how the dentist violated the
21 standard of care with regard to the informed consent discussion.

22 **Ex. A**, at 67:24:68:2.

23 At this point in his testimony, Dr. Pallos began to explain the basis for his informed
24 consent discussion. **Ex. A**, at 68:3-69:3. After Dr. Pallos completed his explanation,
25 Plaintiff’s Counsel moved on to Dr. Pallos’ second opinion (regarding antibiotics), making it
26 even more clear that the previous testimony had only been about his first opinion regarding
27 informed consent. **Ex. A**, at 69:12-17. Dr. Pallos rendered and explained his second opinion
28 without testifying that it was within a reasonable degree of medical probability. **Ex. A**, at

69:18-71:16. Dr. Pallos then moved on to an explanation of his third point about the standard of care (lack of follow-up). **Ex. A**, at 71:17-19. After an objection, Dr. Pallos explained his third criticism regarding the lack of follow-up, but did not render this opinion to a reasonable degree of medical probability either. **Ex. A**, at 72:24-73:18. Later in Dr. Pallos' testimony, following an objection from Defense Counsel that Dr. Pallos' opinion regarding informed consent lacked foundation, the Court struck that opinion. **Ex. A**, at 81:21-82:11, and 98:5-10. Dr. Pallos continued to testify at length regarding his opinions, but never once rendered either of his remaining two criticisms to a reasonable degree of medical probability. See **Ex. A**, generally.

III.

LEGAL ARGUMENT

A. LEGAL STANDARD FOR JUDGMENT AS A MATTER OF LAW

NRCP 50(b) states:

Renewing Motion for Judgment After Trial; Alternative Motion for New Trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after service of written notice of entry of judgment and may alternatively request a new trial or join a motion for new trial under Rule 59.

Credibility of witnesses and weight of evidence are not before the court on a motion for a directed verdict. Bliss v. DePrang, 81 Nev. 599, 407 P.2d 726 (1965); Kline v. Robinson, 83 Nev. 244, 428 P.2d 190 (1967), overruled on other grounds. When a motion to dismiss is tendered at the close of the plaintiff's case-in-chief, the court is obliged to draw all permissible inferences for the plaintiff and is not to weigh the evidence at that juncture. This general rule applies whether the trier of fact is a court or a jury. Martin v. Ross, 96 Nev. 916, 620 P.2d 866 (1980). Although it is true that in reviewing the grant of a motion to dismiss, the plaintiff's evidence must be accepted as true and the court must draw all permissible inferences in his favor and not pass upon the credibility of the witnesses nor weigh the evidence, **it is equally true that the plaintiff must present a prima facie case upon which the triers of fact can**

1 **grant relief.** Griffin v. Rockwell Int'l, Inc., 96 Nev. 910, 620 P.2d 862 (1980); Nevada Indus.
2 Dev., Inc. v. Benedetti, 103 Nev. 360, 741 P.2d 802 (1987).

3 A prima facie case for dental malpractice must include admissible expert testimony:

4 **NRS 41A.100 Required evidence; exceptions; rebuttable**
5 **presumption of negligence.**

6 1. Liability for personal injury or death is not imposed upon any
7 provider of medical care based on alleged negligence in the
8 performance of that care unless evidence consisting of expert medical
9 testimony, material from recognized medical texts or treatises or the
regulations of the licensed medical facility wherein the alleged
negligence occurred is presented to demonstrate the alleged deviation
from the accepted standard of care in the specific circumstances of the
case and to prove causation of the alleged personal injury or death[.]

10 As a general rule, a plaintiff must use expert testimony to establish malpractice. Jain v.
11 McFarland, 109 Nev. 465, 851 P.2d 450, 1993 Nev. LEXIS 78 (1993). To prove malpractice,
12 the plaintiff must first establish the accepted standard of medical care or practice, and then
13 must show that the doctors' conduct departed from that standard and legally caused the injuries
14 suffered. Fernandez v. Admirand, 108 Nev. 963, 968-969 (Nev. 1992).

15 To prevail in a malpractice action, the plaintiff must establish the following: (1) that the
16 doctor's conduct departed from the accepted standard of medical care or practice; (2) that the
17 doctor's conduct was both the actual and proximate cause of the plaintiff's injury; and (3) that
18 the plaintiff suffered damages. See Prabhu v. Levine, 112 Nev. 1538 (Nev. 1996). Even where
19 it has been established that the defendant's conduct has been one of the causes of plaintiff's
20 injury, there remains the question of whether defendant will be legally responsible for the
21 injury, the main consideration in such circumstances being foreseeability. Fernandez v.
22 Admirand, 108 Nev. at 972 citing Sims v. General Telephone & Electric, 107 Nev. 516, 524-
23 25, 815 P.2d 151, 156 (1991).

24 Since 1989, the Nevada Supreme Court has held that "a medical expert is expected to
25 testify only to matters that conform to the reasonable degree of medical probability standard."
26 Morsicato v. Sav-On Drug Stores, Inc., 121 Nev. 153, 158 (Nev. 2005) citing Brown v.
27 Capanna, 105 Nev. 665, 671-72, 782 P.2d 1299, 1304 (1989). The Nevada Supreme Court in
28 Morsicato went a step further and held that **standard of care testimony must be stated to a**

1 **reasonable degree of medical probability.** *Morsicato*, 121 Nev. at 158 (Nevada Supreme
2 Court determined that the District Court abused its discretion in failing to strike medical
3 expert's testimony when his medical opinions were never stated to a reasonable degree of
4 medical probability)(emphasis added).

5 Plaintiff's medical expert, Dr. Pallos, never stated his medical opinions to a reasonable
6 degree of medical probability, and as such, Plaintiff did not meet her burden of proof on her
7 prima facie case. Therefore, Plaintiff's case should never have been submitted to the jury and
8 a directed verdict at the close of Plaintiff's case was required as a matter of law.

9 **B. BECAUSE PLAINTIFF DID NOT MEET THE BURDEN OF PROVING HER**
10 **PRIMA FACIE CASE, A DIRECTED VERDICT AT THE CLOSE OF**
11 **PLAINTIFF'S CASE WAS REQUIRED, AND JUDGMENT AS A MATTER OF**
12 **LAW IS NOW THE PROPER REMEDY**

13 At the close of Plaintiff's case in chief during trial, Defendants moved for a directed
14 verdict based upon deficiencies in Plaintiff's case. Plaintiff did not meet the burden of proving
15 her most basic prima facie case. According to NRS §41A.100, Plaintiff must present expert
16 testimony that supports the allegation that Defendant breached the standard of care and that it
17 was this breach that caused Plaintiff injury. According to the Nevada Supreme Court's
18 holding in *Morsicato*, those opinions must be stated to a reasonable degree of medical
19 probability. Dr. Pallos did not do so. Dr. Pallos stated one opinion to a reasonable degree of
20 medical probability – that Dr. Traivai did not engage in three aspects of a proper informed
21 consent discussion, or the “three ingredients” he refers to. However, that opinion was stricken
22 by this Court as lacking foundation. Dr. Pallos' remaining two opinions regarding antibiotics
23 and follow-up were not stated to a reasonable degree of medical probability. Therefore,
24 according to *Morsicato*, Plaintiff failed to meet her burden of proof and a directed verdict was
25 appropriate at that time. Now that a judgment has been entered in favor of the Plaintiff,
26 judgment notwithstanding the verdict is a proper remedy, as the question of Summerlin
27 Smiles' liability should not have been submitted to the jury.

28 Dr. Pallos was presented at the time of trial as Plaintiff's standard of care expert. He

1 initially testified that he had three criticisms of the dentists in this case with regard to the
2 standard of care. **Exhibit A**, at 51:7-53:25. Dr. Pallos then began to explain in detail his first
3 opinion, that the standard of care was violated because there was no adequate informed
4 consent. **Ex. A**, at 54:1-4. In order to explain his testimony, Dr. Pallos left the witness stand
5 and, using the complete series of intraoral films, explained to the jury what the condition of
6 Mr. Singletary's mouth was, and specifically what the condition of Tooth No. 32 was. **Ex. A**,
7 at 54:7-62:3. At this point, Dr. Pallos then testified that there were four (4) aspects of an
8 informed consent discussion that are required by the standard of care. **Ex. A**, at 62:10-65:11.
9 According to Dr. Pallos' testimony, with regard to his first opinion about informed consent,
10 there are three requirements regarding the substance of an informed consent conversation and
11 a fourth requirement regarding the written acknowledgment of that conversation in order to
12 comply with the standard of care.

13 Plaintiff's Counsel first focused in on the fourth requirement that the informed consent
14 acknowledgement be conformed to a writing. **Ex. A**, at 65:12-66:2. Plaintiff's Counsel
15 reiterated that Dr. Pallos found no violation of the standard of care regarding his fourth point
16 of the requirement of a written form. **Ex. A**, 66:13-18. After Dr. Pallos testified that the fourth
17 requirement was met, he testified that the **"three ingredients"** for an adequate informed
18 consent discussion were not met, and this is the only point in the entirety of his testimony that
19 Dr. Pallos renders an opinion to a reasonable degree of medical probability. **Ex. A**, at 66:19-
20 67:12.

21 Dr. Pallos was clearly rendering his opinion that three points of an informed consent
22 discussion- his "three ingredients"- were not met in this case. He used the numeral "three" to
23 refer to the "three ingredients." He did not address the fourth aspect of his informed consent
24 discussion (a written informed consent form) because he had already testified that the form
25 met the standard of care. After an objection by Defense Counsel, Plaintiff's Counsel continued
26 her questioning by first **acknowledging that Dr. Pallos had just rendered opinions solely**
27 **regarding his informed consent opinion.** **Ex. A**, at 67:24-68:2. After Dr. Pallos completed
28 his explanation, Plaintiff's Counsel moved on to Dr. Pallos' second opinion, making it even

1 more clear that the previous testimony had only been about his first opinion regarding
2 informed consent. **Ex. A**, at 69:12-17. Dr. Pallos testified at length regarding his opinions, but
3 never offered his remaining two criticisms to a reasonable degree of medical probability.

4 After Plaintiff rested her case, the Defendants moved for a directed verdict under NRCP
5 41(b) (NRCP 50(a)). Following discussion between Counsel and the Court, it was determined
6 that the issue was, in fact, whether or not Dr. Pallos had rendered his opinions to a reasonable
7 degree of medical probability:

8 THE COURT: Okay. I'm going to give you a chance to argue,
9 but here's what it says in Morsicato, "The medical opinion testimony
10 related to the operation of equipment and not to any medical standard
11 of care. However, the holding in Banks was not intended to modify or
12 change in any way the requirement that medical expert testimony,
13 regarding the standard of care and causation in a medical malpractice
14 case, must be based on testimony made to a reasonable degree of
15 medical probability. Since 1989, this court has held that 'a medical
16 expert is expected to testify only to matters that conform to their
17 reasonable degree of medical probability standard.'"

18 MS. PATIN: I just want to refer you back to the trial testimony.
19 In the beginning, on page 47 beginning on line 15, we go through what
20 his three main opinions are. It's the only time he makes reference to
21 three points.

22 THE COURT: Do you have times on that or no?

23 MS PATIN: There's no times

24 MS GOODEY: We have the PDF, Your Honor.

25 THE COURT: Okay. Tell me what you're referring to.

26 MS. PATIN: On page 47 is when he goes through his three main
27 points. So when I asked him with regard to the standard of care to a
28 reasonable degree of medical probability, he says, with regard to

1 informed consent and those three points, those are the three point, my
2 understanding, is what he was referring to.

3 THE COURT: Where's your question?

4 MS. PATIN: It was an objection. Oh, the question to the
5 reasonable degree of medical probability?

6 THE COURT: Yep.

7 MS. PATIN: Sorry. It got stuck. I have to pull it up again.

8 THE COURT: It's fine. Actually, when he starts talking about
9 his three primary opinions is on the bottom of page 49, and the question
10 is: "And after your review of all of the documents related to this case,
11 did you formulate any opinions with regard to the standard of" –
12 "standard of care?" "Yes I have." "What are those opinions?" And he
13 goes through his three opinions, and then you follow up on the three
14 opinions. And the first one is informed consent, and he had four
15 opinions as it related to that. And he stated those opinions to a
16 reasonable degree of medical probability, but I've already found that he
17 had no foundation for those opinions.

18 MS. PATIN: My understanding when he was testifying is that
19 when he said in those three points, he's referring to his three main
20 opinions not anything – he says informed consent, but he's referring –
21 and those three points, meaning those three main opinions he had on
22 the case. That was my understanding of his testimony.

23 THE COURT: But he specifically said in his answer as it relates
24 to the informed consent. Just so you have that, I think the only time he
25 talked about a reasonable degree of probability was in the middle of
26 page 65. You guys have a copy of this too? Do you need it? She can e-
27 mail it to you too.

28 (Discussion was held off the record.)

1 THE COURT: So, Ms. Patin, I guess my – I’m waiting to see if
2 you can find something that –

3 MS. PATIN: I mean, again, my understanding –

4 THE COURT: -- tell me that

5 MS. PATIN: -- my understanding when he testified to a
6 reasonable degree of medical probability and he said in all three points,
7 he’s referring to his three main opinions in this case. We go through his
8 three main opinions. Then we go through – we begin the first one
9 where he gets off the stand. He explains everything to the jury, where
10 he’s looking at the tooth. We go through everything. He does talk about
11 informed consent. We get down to the bottom, he talks about informed
12 consent again on page 65, and then he says “in all three of those
13 points.” And my understanding when he testified to that, he was
14 testifying to his three main opinions, not three points with regard to
15 informed consent.

16 THE COURT: How do you deal with the fact that the answers
17 says, “So in my opinion, to a reasonable degree of medical certainty, or
18 probability is the way it’s – we have to phrase it, they fell below the
19 standard of care in meeting this requirement of giving an effective
20 informed consent. In all three of those points”? You think the informed
21 consent talks about one thing, but all three of those points refers to his
22 three separate things?

23 MS. PATIN: That was my understanding of his testimony.
24 Because we were talking about his three main points when we began
25 the entire line of questioning as far as what his opinions are in the case.

26 MR. FRIEDMAN: Where are we exactly, Your Honor?

27 THE COURT Page 65

28 MR. VOGEL: What line?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE COURT: Fourteen through 18

MR. VOGEL: Got it. Given the context there, Your Honor, and the fact that he discusses three points with respect to informed consent, I think it's quite clear he was talking about informed consent only.

MS. PATIN: He actually discusses four points with regard to informed consent, not three, which is why I –

THE COURT: He does and you started on the fourth.

MS. PATIN: Which is – so he – he discusses four points, which is why I understood those – in all three of those points to be his three main opinions. He doesn't discuss three points, he discusses four, so ...

THE COURT: I think it's weak, but I think that it might be enough to get you past 41(a). I don't know that I have a choice. I mean, if I grant a 41(a), I know it's going to get appealed. The cases say I have to give every reasonable inference in favor of the nonmoving party. I mean –

MR. VOGEL: Your Honor, the testimony –

THE COURT: -- the fact that there are four points as it related to the informed consent, he says – I mean, this is the only time, I think, in the deposition he talked about reasonable degree of probability. He talks about three points.

MS. PATIN: And it's the exact same three points that are identified in his expert report.

THE COURT: Well, we don't know what three points it's referring to. That's the confusion.

MR. FRIEDMAN: Your Honor, maybe we should take some time and brief this issue because, obviously, it's very important. And I'm trying to pull it up on this screen right here.

MR. LEMONS: Your Honor, just it – that last paragraph of that

1 answer has been isolated. But the answer itself is all about informed
2 consent.

3 THE COURT: It is.

4 MR LEMONS: It's all about explaining to the patient enough so
5 that the patient would be informed and know what – that entire answer
6 is that. It has nothing to do with the other issues despite an
7 interpretation begin given to it, the – the actual literal words don't say
8 that.

9 THE COURT: The problem is he talks about four points as it
10 related to informed consent, and he has three points that are his primary
11 criticisms.

12 MS. PATIN: And then the other issue, it doesn't say and in all
13 three of those points. It's a completely different sentence referring to in
14 all of those three points. Or in all three of those points.

15 THE COURT: Yeah, I think I'm going to deny a 41(a) for now.

16 **Exhibit A**, at 177:7-183:17.

17 The entire determination of Defendants' NRCP 41(b) (NRCP 50(a)) oral motions rested
18 on the interpretation of what Dr. Pallos meant when he was testifying to "three" points –
19 whether he was referring to his three main criticisms or whether he was solely referring to his
20 three (of four) opinions regarding informed consent. Plaintiff's interpretation, despite the plain,
21 literal language used by Dr. Pallos, was that Dr. Pallos was referring to his three main
22 criticisms when he rendered an opinion to a reasonable degree of medical probability.
23 However, now that the entire transcript is available and one can look to what Dr. Pallos
24 actually testified to, it is clear that Plaintiff's interpretation was incorrect. Dr. Pallos was not
25 referring to his three main criticisms, but rather to what he termed the "three ingredients" that
26 need to be included in an informed consent discussion; the "three ingredients" that he
27 determined were not present in this case. This is made clear by both Dr. Pallos' plain language
28 and the fact that, in the context of the testimony in question, he was testifying about informed

1 consent. Plaintiff's counsel was specifically questioning Dr. Pallos on informed consent only.
2 The call of Plaintiff's question was with regard to the "three points of the informed consent
3 discussion" that Dr. Pallos felt fell below the standard. When he concluded his informed
4 consent opinions, Plaintiff's counsel moved on to a discussion of Dr. Pallos' second main
5 opinion, then his third.

6 Should the Court continue to accept Plaintiff's Counsel's interpretation, the Court
7 would allow Plaintiff to add in testimony that Dr. Pallos did not give. In short, Plaintiff failed
8 to extract the required testimony from her expert regarding the reasonable degree of medical
9 probability. While the law requires the Court to give every reasonable inference to a
10 nonmoving party, adding in testimony that was not given is not reasonable. Plaintiff should not
11 be permitted to add testimony that Dr. Pallos did not give in front of the jury, and it would be
12 improper to infer that Dr. Pallos testified to more than he actually did, even in the face of a
13 request for judgment as a matter of law.

14 The fact of the matter is that Defendants' oral Motion for a Directed Verdict was
15 defeated because of Plaintiff's Counsel's erroneous interpretation of Dr. Pallos' testimony.
16 Now that the testimony is available in its entirety, it is clear that Dr. Pallos' testimony did not
17 meet the required standard of *Morsicato*. Dr. Pallos did not render his opinions to a reasonable
18 degree of medical probability. He was not talking about his three main criticisms when he
19 uttered those words; he was talking about the "three ingredients" of informed consent only. It
20 would be a grave miscarriage of justice to allow an improper verdict to stand when the very
21 reason that the question of Defendants' liability was submitted to the jury at all was because
22 Plaintiff argued testimony that was not offered. Plaintiff did not meet her burden of proof
23 under NRS §41A.100. Therefore, a directed verdict at the close of Plaintiff's case was
24 appropriate. Viewing the evidence in the light most favorable to the nonmoving party, it is
25 clear that Plaintiff did not meet her burden of proving her prima facie case. Dr. Pallos'
26 testimony did not satisfy the requirement of *Morsicato* and NRS §41A.100, and Defendant is
27 therefore entitled to judgment notwithstanding the verdict.

1 **C. IN THE ALTERNATIVE, NONECONOMIC DAMAGES SHOULD BE**
2 **REDUCED TO \$350,000 PURSUANT TO NRS §41A.035**

3 If this Court denies Defendant's Motion for Judgment as a Matter of Law, then, in the
4 alternative, Plaintiff's noneconomic damage award against Summerlin Smiles must be reduced
5 by remittitur to \$350,000 pursuant to the damages cap found in NRS §41A.035.

6 NRS §41A.035 states:

7 **NRS 41A.035 Limitation on amount of award for noneconomic**
8 **damages.** In an action for injury or death against a provider of health
9 care based upon professional negligence, the injured plaintiff may
recover noneconomic damages, but the amount of noneconomic
damages awarded in such an action must not exceed \$350,000.

10 After jury trial in this matter, the jury awarded noneconomic damages to Plaintiff
11 Svetlana Singletary in the amount of \$625,000.00 and noneconomic damages to Plaintiff
12 Gabriel Singletary in the amount of \$2,125,000.00. Pursuant to a prior Order of this Court,
13 both Plaintiffs are capped at \$350,000 of noneconomic damages from each Defendant.
14 Therefore, the \$2,125,000.00 in noneconomic damages awarded to Plaintiff Gabriel Singletary
15 must be reduced by remittitur to \$700,000, or a capped amount of \$350,000 against this
16 Defendant.

17 **IV.**

18 **CONCLUSION**

19 Based upon the foregoing, Defendant Summerlin Smiles respectfully requests that this
20 Honorable Court enter judgment notwithstanding the verdict in its favor.

21 Dated: May 13, 2014

STARK, FRIEDMAN & CHAPMAN

22
23 BY: _____

JASON B. FRIEDMAN, ESQ.

Nevada State Bar No. 11799

STARK, FRIEDMAN & CHAPMAN

200 W. Sahara #1401

Las Vegas, NV 89102

Attorneys for Defendants,

27 **TON VINH LEE, DDS and TON V. LEE,**

DDS, PROF. CORP. dba SUMMERLIN

28 **SMILES**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE
Singletary v. Lee, D.D.S., et al.
Case No. A-12-656091-C

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of STARK, FRIEDMAN & CHAPMAN, LLP and that on May 13, 2014, I caused the above and foregoing documents entitled: **DEFENDANT TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES’ MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(b) OR, IN THE ALTERNATIVE, MOTION FOR REMITTITUR** to be served as follows:

 X by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Santa Ana, California; and/or

 Pursuant to EDCR 7.26, to be sent via facsimile;
 to be hand-delivered to the attorney listed below at the address indicated below; and/or
 via electronic mail to the attorneys listed below:

Lloyd W. Baker, Esq. Ingrid Patin, Esq. BAKER LAW OFFICES 500 South Eighth Street Las Vegas, Nevada 89101	(702) 369-4949; (702) 360-3234 Fax Attorneys for Plaintiff, SVETLANA SINGLETARY, individually, as the Representative of the Estate of REGINALD SINGLETARY, and as parent and legal guardian of GABRIEL L. SINGLETARY, a Minor
S. Brent Vogel, Esq. Amanda J. Brookhyser, Esq. LEWIS, BRISBOIS, BISGAARD & SMITH, LLP 6385 S. Rainbow Blvd., Suite 600 Las Vegas, Nevada 89118	Attorneys for Defendant, FLORIDA TRAIVAI, D.M.D.



JEANNETTE DARROW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 CASE NO. A-12-656091

2 DEPT. NO. 30

3 DOCKET U

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 * * * * *

7 SVETLANA SINGLETARY,)
individually, as the)
8 representative of the Estate)
of REGINALD SINGLETARY, and as)
9 parent and legal guardian of)
GABRIEL L. SINGLETARY, a)
10 minor,)

11 Plaintiffs,)
vs.)

12)
TON VINH LEE, DDS,)
13 individually, FLORIDA TRAIVAI,)
DMD, individually, JAI PARK,)
14 DDS, individually, TON V. LEE,)
DDS, PRO. CORP., a Nevada)
15 Professional Corporation d/b/a)
SUMMERLIN SMILES, DOE)
16 SUMMERLIN SMILES EMPLOYEE and)
DOES I through X and ROE)
17 CORPORATIONS I through X,)
inclusive,)

18)
Defendant.)
19)

20 REPORTER'S TRANSCRIPT OF JURY TRIAL

21 BEFORE THE HONORABLE JERRY A. WIESE, II

22 DEPARTMENT XXX

23 DATED THURSDAY, JANUARY 16, 2014

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
25 CA CSR #13529

1 APPEARANCES:

2 For the Plaintiff:

3 BAKER LAW OFFICES
4 BY: INGRID M. PATIN, ESQ.
5 500 South Eighth Street
6 Las Vegas, Nevada 89101
(702) 360-4949
ingrid@bakerattorneys.net

7 For the Defendant Florida Traivai, DMD:

8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 BY: S. BRENT VOGEL, ESQ.
6385 South Rainbow Boulevard
Suite 600
10 Las Vegas, Nevada 89118
11 (702) 893-3383

12 For the Defendant Ton Vinh Lee, DDS and Summerlin
13 Smiles:

14 FORD WALKER HAGGERTY & BEHAR
15 BY: JASON B. FRIEDMAN, ESQ.
3960 Howard Hughes Parkway
Suite 500
16 Las Vegas, Nevada 89102
(702) 990-3580
jfriedman@fwhb.com

17
18 For the Defendant Jai Park, DDS:

19 LEMONS, GRUNDY & EISENBERG
20 BY: EDWARD J. LEMONS, ESQ.
6005 Plumas Street
Third Floor
21 Reno, Nevada 89519
(775) 786-6868
22 rgv@lge.net

23

24

* * * * *

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS:	PAGE
<u>JOHN BUEHLER</u>	
Direct Examination by Ms. Patin	5
Cross-Examination by Ms. Brookhyser	16
Redirect Examination by Ms. Patin	20
 <u>ANDREW PALLOS, M.D.</u>	
Direct Examination by Ms. Patin	41
Cross-Examination by Mr. Friedman	106
Cross-Examination by Mr. Vogel	118
Cross-Examination by Mr. Lemons	135
Redirect Examination by Ms. Patin	136
Recross-Examination by Mr. Friedman	150

INDEX TO EXHIBITS

NUMBER	DESCRIPTION	PAGE
5	Photograph	57

1 and have the witness read it. And I -- I -- I --
2 I'm -- I am just assuming that that is not going to be
3 attempted, because it would be improper. But instead
4 of raising it, I couldn't do it in three words in front
5 of the jury.

6 THE COURT: It would be a violation of the
7 exclusionary rule. I would agree.

8 MR. LEMONS: All right. Thank you, Your
9 Honor.

10 THE COURT: Anything else?

11 MS. PATIN: I think we're ready.

12 THE COURT: Okay.

13 THE MARSHAL: All rise for the presence of
14 the jury.

15 (The following proceedings were held in
16 the presence of the jury.)

17 THE COURT: Go ahead and be seated. Welcome
18 back, folks. We're back on the record, Case No.
19 A656091. Do the parties stipulate to the presence of
20 the jury?

21 MR. VOGEL: Yes, Your Honor.

22 MR. FRIEDMAN: Yes, Your Honor.

23 MR. LEMONS: Yes, Your Honor.

24 MS. PATIN: Yes, Your Honor.

25 THE COURT: Thank you. Plaintiffs may call

1 their next witness.

2 MS. PATIN: Dr. Andrew Pallos.

3 THE MARSHAL: Just watch your step.

4 THE COURT: Good morning, Doctor. We're
5 going to ask you to step up on the witness stand, if
6 you would, remain standing, and raise your right hand,
7 please.

8 THE CLERK: You do solemnly swear the
9 testimony you're about to give in this action shall be
10 the truth, the whole truth, and nothing but the truth,
11 so help you God.

12 THE WITNESS: I do.

13 THE CLERK: Please state your name and spell
14 it for the record, please.

15 THE WITNESS: Andrew Pallos, P-a-l-l-o-s.

16 THE COURT: Thank you, Doctor. Try to talk
17 into the microphone so everybody can hear you.

18 THE WITNESS: Hello. Okay.

19

20 DIRECT EXAMINATION

21 BY MS. PATIN:

22 Q. All right. Good morning, Dr. Pallos.

23 A. Good morning.

24 Q. Will you please give us a little bit about
25 your educational background, the dental school you

1 going to strike the last -- the part of the last answer
2 that dealt with the doctor's private practice and his
3 individual practice. That's not relevant. We're here
4 to talk about standard of care. Okay?

5 So go on from there.

6 BY MS. PATIN:

7 Q. Dr. Pallos, I contacted you with regard to a
8 review of this case, correct?

9 A. Yes.

10 Q. And have you had an opportunity to review all
11 of the documents, case file, dental records, hospital
12 records in this case?

13 A. Yes, I have.

14 Q. And after your review of all of the documents
15 related to this case, did you formulate any opinions
16 with regard to the standard of care?

17 A. Yes, I have.

18 Q. Okay. What are those opinions?

19 A. Okay. Am I free to speak now or -- can I
20 just go ahead?

21 Q. Yes.

22 A. Okay. In order to maintain our license, we
23 are -- our license -- our relationship between the
24 doctor and a patient is governed by what's called the
25 standard of care. That's basically the legal concept.

1 That standard of care is what we have to follow, and
2 it's very excellent. It protects us, and it protects
3 the patient, that we don't harm the patient.

4 One of the things required by the standard of
5 care is that we obtain what's called an informed
6 consent. Very important. That means I -- before I cut
7 you, before I do surgery, before I have permission to
8 do those procedures that could harm you, I have to
9 inform you of what I'm going to do. What else could be
10 done instead of what I am proposing to do that I
11 consider to be in your best interest? What other
12 methods are there? And what risks are associated with
13 what I'm going to do? Okay?

14 Then I'm going to ask you, Do you still want
15 to do this? That means I'm obtaining now your consent
16 knowing that you could suffer because of this. And we
17 become partners to make sure you don't suffer much or
18 you recover well. That becomes at least 50 percent of
19 my duty. And it's part of this informed consent.

20 I believe in this case that was not followed,
21 and there was a failure in following the standard of
22 care relative to this item called the informed consent,
23 and I'm more than happy to discuss in detail what I
24 mean by that.

25 Number 2, antibiotics are absolutely crucial

1 if we determine that there has been an infection, there
2 is an infection now, and -- or there is a risk of
3 infection. We have to either give that antibiotic,
4 make that antibiotic accessible to that patient, or
5 follow that patient like a dog on bone to make sure
6 that that person does not need the antibiotic, if we
7 choose not to prescribe that antibiotic. That, to me,
8 in my opinion, that is the standard of care, and it was
9 violated very much in this case to the very sad ending
10 that we see that, in my opinion, was preventible.

11 Number 3, the follow-up is required, whether
12 I choose to call the patient or I hire an employee who
13 calls the patient on my behalf. Very important not to
14 abandon, neglect, leave that patient. Especially if I
15 give them drugs. Like Vicodin, that impairs their
16 perception, impairs their judgment, and impairs their
17 communication, and then I blame them for not calling
18 me. That's not right. If I tell them, You don't have
19 an emergency if you call me, and then I blame them for
20 thinking that they don't have an emergency, that's
21 unethical. It's unacceptable. It's a violation of the
22 standard of care.

23 So that is my opinion in a nutshell regarding
24 those three categories. And I'm happy to go over
25 starting with No. 1 if you want.

1 Q. That's what I would like you to do. Let's
2 start with No. 1 and get specific with regard to how
3 the dentist in this case acted below the standard of
4 care with regard to informed consent.

5 A. Okay. Excellent. Going to take a quick
6 drink.

7 Okay. According to the Nevada statute that
8 was shared with me during my deposition, an informed
9 consent, this is where I inform you and you choose to
10 give me your consent to do a surgical procedure. The
11 first thing required is that I tell you what the
12 procedure is that I'm about to do or want to do, which
13 is -- can I be specific now regarding this patient,
14 Singletary, and the tooth number?

15 Q. Yes.

16 A. Okay. This is a case involving a tooth that
17 was extracted. So the procedure that was proposed in
18 this case is called an extraction. We're going to
19 remove that tooth because that tooth has acted up on
20 you before, and in my opinion, right now, that tooth is
21 necrotic. Necrotic means it's infected to the point
22 where it has destroyed part of the inside of the tooth.
23 Okay?

24 And I'm going to give you what Dr. Traivai in
25 this case would have had to say to this patient based

1 on my understanding of her own testimony. So she found
2 this tooth to have what's called a periapical lesion on
3 the radiograph, and I can explain to you, if you want
4 me to, what that is.

5 Q. Could you, please.

6 A. Right now?

7 Q. Yes.

8 A. Oh, can you put up the X ray?

9 Q. Yes.

10 A. Okay.

11 Q. If you take a look at the binder right behind
12 you, the large binder on that back table.

13 A. The small one?

14 Q. The large one.

15 A. What am I doing?

16 Q. If you turn to Exhibit 5, you'll see the
17 radiology films from Summerlin Smiles.

18 A. Okay. Do you want me to hold that up or --

19 Q. Well, if you'll direct me as to which film
20 you relied upon with regard to your expert opinion in
21 this case --

22 A. Well, no --

23 Q. -- and which one assists you?

24 A. -- I was explaining --

25 Q. Yes, and which would assist you in your

1 testimony here today.

2 A. Okay. Are you able to put up the complete
3 set of -- of the X rays, like on this page? 104-S?

4 MS. PATIN: Your Honor, permission to publish
5 104-S from the Summerlin Smiles radiology films.

6 MR. VOGEL: I don't have any objection to it
7 as long as it's noted for the record this isn't the
8 actual film. This was a photocopy.

9 THE COURT: Are we admitting it?

10 MS. PATIN: The actual -- sorry?

11 THE COURT: I mean, are we admitting
12 Exhibit 5 or no?

13 MR. FRIEDMAN: I'm -- can we approach, Your
14 Honor?

15 THE COURT: Come on up, yeah.

16 (A discussion was held at the bench,
17 not reported.)

18 THE COURT: All right. So if I understand
19 correctly, we're going to -- parties agree to admit
20 Exhibit 5, but only page 104-S; is that correct?

21 MS. PATIN: Yes, Your Honor.

22 MR. FRIEDMAN: Yes, Your Honor.

23 MR. LEMONS: Yes, Your Honor.

24 THE COURT: All right. 104-S is admitted.

25 So if you want to put it up to help him explain his

1 testimony, that's fine.

2 (Plaintiff's Exhibit 5 was admitted into
3 evidence.)

4 BY MS. PATIN:

5 Q. Would you mind flipping to the computer
6 screen.

7 A. Is this the one for the jury?

8 Q. Yes. So you'll be able to see the actual
9 film on your screen --

10 A. Can you turn that?

11 Q. -- and the jury can also see the film on
12 their screen.

13 A. Oh, okay. That's good. Who just did that?

14 Q. She's just rotating it so that you can see it
15 better.

16 Do you recognize this photograph?

17 A. Yeah. It's the same as this.

18 Q. Is this -- is this -- what is this a
19 depiction of that we're looking at here?

20 A. Okay. This is called a complete series of
21 intraoral films. That means it's -- intraoral means in
22 the mouth, means you have to have single films in the
23 mouth to show each tooth, and it's the best way to
24 diagnose teeth individually.

25 So this is a -- periapical is when you show

1 the roots. Apex means the tip of the root. So
2 periapical means around the root, and you can see the
3 whole root.

4 So, for example -- can you guys see if I --
5 oh, look at that. Okay. I pointed -- there's an arrow
6 where I pointed, and that shows the roots. So that's
7 called a periapical film. And --

8 Can you enlarge that film just for discussion
9 purposes?

10 MS. GOODEY: It won't.

11 THE WITNESS: Oh, okay. Okay. If you -- if
12 you could see it thoroughly, then around the tip --
13 should I go -- may I go there and show them?

14 THE COURT: If that will help you.

15 THE WITNESS: Yeah. This may be a little
16 hard for you, but put up with me for a second.

17 This is the root -- can you guys hear me
18 okay?

19 JURORS: Yes.

20 THE WITNESS: This is the root. If you look
21 carefully around the root, there is a dark outline.
22 That's the periodontal ligament. That's where the
23 tooth attaches to bone. And in between the two,
24 there's a ligament. Okay? That ligament, you can
25 follow it all the way around the roots. Okay?

1 When there is a periapical radial lucency,
2 that periodontal ligament gets blown away. And that's
3 what we call -- and -- and it creates kind of a dark
4 spot. So let's look up here. See, like right here,
5 there's a little attachment. And then suddenly, it
6 just -- you don't even know where it is because it
7 becomes so wide, the ligament is gone. Okay? It's
8 blown away. That's what we call a periapical radial
9 lucency. It means that -- all that means is the X ray
10 looks dark. It's not really brilliant.

11 So around this tooth, there's such a radial
12 lucency. And it's the same as this tooth. And then
13 there's another tooth over here. And these teeth have
14 been broken off at the root. So they've been there,
15 you know, dead for a long time, who knows how long, to
16 the point where it's destroyed the bone around it.
17 Okay?

18 Now, the tooth that we're interested in is
19 this one (witness indicating) No. 32. This is the one
20 that was extracted, and this is -- the whole debate is
21 about this one tooth. Okay?

22 Now, Dr. Traivai said this tooth was
23 necrotic. Okay? That means that inside the tooth --
24 see this dark area inside the tooth? It looks like a
25 crown shape inside and there's this little dark area in

1 the middle of the root? What's in the middle of the
2 root is a canal, and it's called a root canal. And in
3 that canal, the tooth gets fed, and this is called the
4 pulp which is inside this chamber. The tooth gets fed
5 with blood vessels and nerves, and -- and when there's
6 a pain, it's because that nerve acts up and it hurts.
7 Because it's encased in this hard casing, and it's
8 trying to swell up. It's like if you hit your thumb,
9 it can swell up. But a tooth can't so it hurts even
10 more. For the tooth to die, it has to be attacked by
11 bacteria to the point where it totally destroys the
12 nerves and the blood vessels that live inside that
13 tooth that make it live. So that tooth is dead.

14 So she says that the pulp is necrotic. That
15 means the pulp is dead. That means the tooth is dead.
16 It's virtually not alive, not being fed by -- every
17 time your heart beats, blood goes through that tooth,
18 but now, it's dead. It doesn't get any of that.

19 Okay. Often the tooth will react with pain.
20 Like, if you hit it, it will hurt a lot. Just by
21 touching it sometimes. That would be an acute kind of
22 thing where you would use the word "abscess," "acute
23 abscess." And that means around the edge of the root
24 there's -- there's an acute infection. Acute means
25 seriously active to where it's doing a lot.

1 This up here, these are infections, but
2 they're not acute. They're chronic. They've been
3 there months, months, probably years, you know. We
4 don't know how long they've been there. Could have
5 been many years. Okay?

6 So here this tooth where you cannot see the
7 end, Dr. Traivai diagnosed that as being a dead tooth.
8 Okay? And infected around -- all around the tooth with
9 a -- periodontal infection.

10 Now I have used two terms per -- periapical
11 infection is around the apex of the root of the tooth.
12 Periodontal means just around the tooth. Okay?
13 Periodontal. Peri means around. Dontal means tooth.
14 It's an infection around the tooth, and that is a
15 chronic infection.

16 So this patient had a chronic infection in
17 the opinion of the doctor who treated or at least got
18 the consent. Okay? So she had to tell him this. You
19 know, your tooth is dead. Your pulp is necrotic. You
20 have a periodontal infection. You have a chronic
21 infection. There exists that infection. Okay. So
22 that's No. 1 she had to tell him this.

23 Number 2, are there alternatives to taking
24 out the tooth --

25 MR. FRIEDMAN: Objection, Your Honor.

1 There's no question pending.

2 THE WITNESS: I'm still answering No. 1, the
3 question about how the -- the informed consent --

4 MR. VOGEL: Your Honor, the witness should
5 not be arguing.

6 THE COURT: Let's let the attorney ask you
7 another question. Okay?

8 THE WITNESS: Sure.

9 BY MS. PATIN:

10 Q. Dr. Pallos, now that you've kind of explained
11 to us with regard to this tooth, which is Tooth No. 32,
12 and the condition of that tooth, can you continue
13 explaining to us how the dentist in this case acted
14 below the standard of care with regard to informed
15 consent.

16 A. It would be my pleasure. Thank you.

17 Okay. So the first thing regarding the
18 requirement for an adequate minimum informed consent is
19 that we tell the patient what we want to do because of
20 what is the condition of that tooth. The condition of
21 that tooth, according to the record, is that there's a
22 periapical radial lucency around Tooth No. 32. That's
23 No. 1. I just explained what that means.

24 Number 2, the pulp is dead. It's necrotic.
25 So that also means the tooth is dead or necrotic, and

1 the nerve is dead. Okay? We have to tell people --
2 the person stuff like that.

3 There's also a periodontal infection around
4 that tooth, and, therefore, there's a chronic infection
5 present. Okay? All of these things.

6 Now, the second component that's required is
7 that we talk about an alternative method. Okay? Do
8 you want to take out the tooth? Do I have any other
9 choice? What's going to happen to me if I don't do
10 what you say? All right. So that here means
11 Dr. Traivai said, No, I don't see any alternative
12 because if you don't take out this tooth, there's going
13 to be pain, just like you had two months ago. There's
14 going to be infection and spread of infection. Pain,
15 infection, spread of infection. That will motivate you
16 to get out the tooth. Okay. That would have satisfied
17 requirement No. 2. This is the alternative. If you
18 don't do it, here's what's going to happen.

19 Requirement No. 3 is I have to communicate
20 with you what may happen if I do this so that we can
21 get through it together and you'll end up better than
22 you are now. Okay? And what's required there is that
23 I tell about the risks if I do this surgery. And if I
24 don't do anything and there's potential pain,
25 infection, and spread of infection, you minimally have

1 to say, you know, there's a chance that this infection
2 will act up, you're going to have severe pain, you're
3 going to have infection, and you're going to have
4 spread of infection. That's No. 1. You have to tell
5 them that.

6 Well, you have to prepare that person so they
7 can figure out what will that feel like. So what that
8 feels like the -- pain is easy, okay, everyone knows.
9 But infection means there will be swelling. Okay? And
10 the swelling will not go down. It will grow. If that
11 swelling grows, that's a very bad sign, and you need to
12 contact me, or I will follow up with you and you have
13 to tell me that because you have to take the
14 antibiotic. I prefer that you take the antibiotic
15 sooner. That's up to you or me, for us to decide. So
16 we have these three requirements.

17 After that, the fourth requirement is all
18 these things have to be written down, and you get to
19 sign that you still want to do this. And this is --
20 you're okay with that, and you're giving, now, your
21 consent that you understand that -- one of the things
22 that I skipped, however you react to my information, I
23 have to answer all your questions and calm you down,
24 and -- and answer all your questions again if you have
25 more questions until I have answered all your

1 questions.

2 Once I've answered all your questions and you
3 now feel that you can make a -- an informed decision,
4 that's the key, then you either sign this or we don't
5 have a deal. Okay? So just by signing the paper and
6 not understanding it is not considered the standard of
7 care. It does not meet the standard of care. So they
8 have to understand each of these points. We have to
9 answer all of his questions, and then he has to sign
10 the thing saying I understand, I still -- I want you to
11 do that, please. So that's what's required.

12 Q. So let's start with the fourth part of this.
13 As far as the informed consent form itself that was
14 provided to Reginald Singletary when he went into the
15 office on April 16th of 2011, do you have any opinion
16 with regard to whether or not that informed consent
17 form was not proper in any way?

18 A. Okay. There's a form that we all get some
19 kind of version of that form. It's supposed to contain
20 at least these three ingredients: What I want to do,
21 what's the procedure that I want to do, what are the
22 alternatives to that procedure, and what are the risks
23 if I do this. It has to contain that. And sometimes
24 people get canned forms, you know, they're all over the
25 place. And to me, these are a dime a dozen. And yes,

1 it meets the standard in that sense. And so I don't
2 have any objection about the form.

3 I'm very strong that that form, if you
4 just -- it's just like downloading something on the
5 Internet, and it says, you know, if you want this, you
6 have to agree to these terms.

7 MR. VOGEL: Your Honor, I'd like to object.
8 The question was did the form meet the standard of
9 care. He's now editorializing on --

10 THE COURT: Sustained.

11 MR. VOGEL: Thank you.

12 BY MS. PATIN:

13 Q. Dr. Pallos, I asked you if the form met the
14 standard of care, and your opinion is that --

15 A. Yes.

16 Q. -- it did meet the standard of care --

17 A. Yes.

18 Q. -- correct?

19 Now, with regard to the other three parts of
20 the informed consent discussion, in what way did
21 Dr. Traivai's informed consent discussion not meet the
22 standard of care? You've explained to us what's
23 required. How did it not meet the standard of care?

24 A. Okay. By what happened in this case, by the
25 behavior of this person, he was not prepared to know

1 whether his infection was getting worse to the point
2 where he needed urgent attention and life-saving
3 antibiotics. In my opinion, they fell short of meeting
4 the goal of explaining, listen, it's an infection. You
5 could have another infection. Here's what it would
6 feel like to have an infection, and -- and, you know,
7 we have to give you antibiotics for that.

8 So in my opinion, to a reasonable degree of
9 medical certainty, or probability is the way it's -- we
10 have to phrase it, they fell below the standard of care
11 in meeting this requirement of giving an effective
12 informed consent. In all three of those points.

13 MR. VOGEL: Your Honor, may I voir dire the
14 witness on the basis for that opinion?

15 MS. PATIN: He'll have an opportunity to
16 cross-examine the witness.

17 MR. VOGEL: Your Honor, this is a key --

18 THE COURT: Come on up for a minute, guys.

19 (A discussion was held at the bench,
20 not reported.)

21 THE COURT: Overruled for now. Just let you
22 address it on cross.

23 BY MS. PATIN:

24 Q. Dr. Pallos, we were talking about the first
25 opinion that you have with regard to informed consent

1 and how the dentist violated the standard of care with
2 regard to the informed consent discussion.

3 What is your knowledge with regard to the
4 informed consent discussion? Did you have an
5 opportunity to review Dr. Traivai's deposition
6 testimony in this case?

7 A. Yes, I reviewed the deposition testimony, and
8 she said she talked to him.

9 Q. And do you base your opinion with regard to
10 the fact that the dentist fell below the standard of
11 care with regard to informed consent on what your
12 understanding was of the discussion from Dr. Traivai's
13 deposition testimony?

14 A. No. I don't know what was in that
15 discussion.

16 Q. What's the basis for your opinion with regard
17 to the standard of care regarding informed consent?

18 A. The basis for my opinion is that that person
19 was getting worse and worse and believed that he did
20 not have an emergency.

21 Q. And what do you base that on?

22 A. I base that on his behavior which I base on
23 the description from Svetlana that he had tremendous
24 pain on Monday and that they called the office, and
25 that the swelling got worse and spread, and that the --

1 the swelling spread more by Tuesday and by Wednesday,
2 and the pain got worse not better, and he trusted that
3 he did not have an emergency.

4 THE COURT: All right. I'm going to
5 reconsider my last decision, and I'm going to let
6 Mr. Vogel voir dire him on this issue.

7 MR. VOGEL: And, Your Honor, I don't think I
8 need anything else. I think that was adequate right
9 there.

10 THE COURT: All right.

11 BY MS. PATIN:

12 Q. With regard to your second opinion,
13 Dr. Pallos, that they failed to alert this patient to
14 his potential need for infection fighting antibiotics
15 in case of increasing pain and swelling, how did the
16 dentist act below the standard of care with regard to
17 your second point or second opinion in that case?

18 A. The second point is that no antibiotics,
19 evidently, were offered, according to the record; that
20 they didn't believe the antibiotics were necessary.
21 And that totally contradicts the diagnosis that was
22 made by the doctor. And that's the reason I also
23 believe that she did not explain to him what she knew
24 to be true about an infection in that tooth at the time
25 of the extraction. And I covered what she said.

1 So the discussion about antibiotics I believe
2 was not had and certainly was not had to the point
3 where they gave him a choice.

4 See, the standard of care gives us freedom.
5 We can say, Take this prescription now, or, Take this
6 prescription if this and this happens. What they did
7 is they gave him Vicodin, extra strength. That's the
8 strongest over-the-counter antibiotic -- anti -- I mean
9 narcotic. When you give somebody a narcotic and you
10 don't give them an antibiotic, you are now Velcroed to
11 that patient because that patient, his perception has
12 been altered, his judgment is impaired, and his
13 communication has been impaired and is very
14 questionable.

15 So from then on, to rely on that person to
16 alert you that he's getting worse is outrageous. And
17 this whole thing is outrageous not to offer
18 antibiotics, not to prescribe antibiotics, and not to
19 follow up to make sure that he doesn't need
20 antibiotics.

21 MR. LEMONS: Your Honor, I would object and
22 move to strike that answer as not addressing the
23 standard of care.

24 THE WITNESS: And that, in my opinion, is the
25 standard of care.

1 THE COURT: Hold on, hold on, hold on. You
2 don't get to keep arguing over his objection. Okay?

3 THE WITNESS: I'm sorry. I apologize.

4 THE COURT: I'm going to overrule it for now.
5 BY MS. PATIN:

6 Q. With regard to your third point --

7 A. Can I say something about the previous or
8 not?

9 THE COURT: No. You can wait till there's
10 another question.

11 THE WITNESS: Okay. Thank you.

12 BY MS. PATIN:

13 Q. Is there any other basis for your second
14 point or second opinion in this case?

15 A. Well, I just wanted to make clear that this
16 is entirely about the standard of care, in my opinion.

17 Q. With regard to Point No. 3, how did the
18 dentist act below the standard of care with regard to
19 your Point No. 3?

20 A. Well, Point No. 3 is the requirement to
21 follow up that is part of our license requirement, so
22 that we make sure this person gets -- the damage we
23 create when we do a surgery, that they can recover and
24 they are recovering and not getting worse and dying.
25 This is our responsibility, to keep our patients alive.

1 It was not done here. Dr. Traivai never called.
2 Dr. Park never called. None of the staff called.
3 MR. VOGEL: I'm going to object, Your Honor.
4 Again, this isn't standard of care testimony. This is
5 just his opinion on preference.
6 MR. LEMONS: Agreed. Join.
7 MR. FRIEDMAN: Join.
8 THE COURT: Overruled.
9 THE WITNESS: I think that's ridiculous that
10 this is not a standard of care --
11 THE COURT: There's not a question, Doctor.
12 THE WITNESS: Okay. Sorry.
13 BY MS. PATIN:
14 Q. You can continue answering the question.
15 A. All right. I'm sorry. You know, I accept
16 very few cases --
17 THE COURT: You don't get to argue with the
18 attorneys, Doctor.
19 THE WITNESS: I --
20 THE COURT: Answer the questions, please.
21 THE WITNESS: Okay. All right. I apologize.
22 So that's my opinion.
23 BY MS. PATIN:
24 Q. With regard to when Svetlana Singletary
25 called on behalf of Reginald Singletary to report the

1 significant postsurgical symptoms and your opinion with
2 regard to the fact that he was denied timely care and
3 given incorrect advice and assurances that caused him
4 to delay seeking care elsewhere, how did the dentist
5 act below the standard of care with regard to those
6 opinions?

7 A. Well, okay. The whole idea is if -- if I
8 call or my wife calls and says, you know, he's getting
9 worse, he's not getting better, and to be told you
10 don't have an emergency, you don't need to see a
11 doctor, and this thing will get better on its own, wait
12 four, five days and you -- and you trust that
13 information, then instead of getting better, you keep
14 getting worse and die, that is not a good way to take
15 care of people. In my opinion, it's outrageously
16 outside the standard of care to treat people like that,
17 and that's what happened, based on my understanding, in
18 this case.

19 Q. In your opinion, Dr. Pallos, was Dr. Traivai,
20 as well as Dr. Park, treating dentists in this case?

21 A. Yes, both of them treated the patient.

22 Q. And what do you base that opinion on?

23 A. The -- the testimony and the record that
24 obviously Dr. Traivai was treating the patient, and
25 Dr. Park said, I extracted the tooth. So he did

1 actually the work. He's -- he was actually the
2 treating dentist in this case and just as responsible
3 as Dr. Traivai.

4 Q. In what way was Dr. Park also as responsible
5 as Dr. Traivai?

6 A. Because as soon as he picked up --

7 MR. LEMONS: Objection, Your Honor. If this
8 is going to touch on matters related to previously
9 discussed issues --

10 THE COURT: It's his opinion.

11 MR. LEMONS: Okay.

12 THE COURT: I'm going to allow it for now.
13 You can address on cross.

14 MR. LEMONS: All right. Thank you, Your
15 Honor.

16 THE WITNESS: Could you repeat it?

17 MS. PATIN: Actually, I don't remember my
18 question exactly.

19 THE COURT: Question was: "In what way was
20 Dr. Park also as responsible as Dr. Traivai?"

21 THE WITNESS: Okay. As a dentist, if I pick
22 up an instrument, and I -- and I touch the patient and
23 I treat the patient and I do the actual procedure to
24 which that patient agreed, I become a treating doctor
25 at that moment, and I am as much or more his dentist at

1 that moment than the person who asked for my help. I
2 treated that patient. As far as that patient is
3 concerned, I'm his doctor, and there's no other option
4 here. You know, you become responsible. That's what
5 the standard of care is. As soon as you insert
6 yourself and become a treating dentist, you are now
7 governed by the same standard to which we are all held
8 liable every day.

9 BY MS. PATIN:

10 Q. Dr. Pallos, in your opinion, was there
11 appropriate follow-up care by the dentists in this
12 case?

13 A. My whole Point No. 3 was that they lacked in
14 the follow-up care. Not only did they lack, which is
15 one thing, but they misinformed this patient to where
16 he trusted that he did not have an emergency as a
17 result of a phone call interaction with one of the
18 staff who represents all the dentists.

19 MR. VOGEL: Your Honor, can we approach
20 again?

21 THE COURT: Come on up.

22 (A discussion was held at the bench,
23 not reported.)

24 THE COURT: Go ahead.

25 /////

1 BY MS. PATIN:

2 Q. Dr. Pallos, based upon the standard of care,
3 in your opinion, who was responsible for appropriate
4 follow-up care of a dental patient who's undergone a
5 dental procedure?

6 A. Could you repeat that last part.

7 Q. Based upon the standard of care, in your
8 opinion, who was responsible for the appropriate
9 follow-up care of a dental patient that's undergone a
10 dental procedure?

11 A. Okay. Any dentist who has a license who
12 treats a patient is responsible for follow-up care and
13 to make sure that patient recovers and does not die.
14 That person should survive the surgery to which he
15 consented.

16 Q. Are there any regulations of Summerlin Smiles
17 that were breached by Dr. Traivai? Or regulations,
18 office protocols of Summerlin Smiles that were breached
19 by Dr. Traivai?

20 MR. VOGEL: Object to foundation.

21 THE COURT: Sustained.

22 BY MS. PATIN:

23 Q. Dr. Pallos, have you had an opportunity to
24 review the Summerlin Smiles' dental records?

25 A. Yes.

1 MS. PATIN: Would you mind switching to the
2 ELMO?

3 BY MS. PATIN:

4 Q. And we're taking a look at the clinical notes
5 from the dental records, correct?

6 A. Yes.

7 Q. And these are for Reginald Singletary,
8 correct?

9 A. Yes.

10 Q. Taking a look at April 16th of 2011, that's
11 the date of the extraction; is that correct?

12 A. Yes.

13 Q. How was that extraction described? Is it
14 described as a routine extraction, simple extraction?

15 A. It says "routine extraction."

16 Q. And would you agree that this was a routine
17 extraction?

18 A. Well, in the sense of the definition of
19 routine is that you do it like this over and over.
20 It's almost mechanical. This was not routine in that
21 sense because the -- the treating doctor, the first
22 treating doctor asked for help from the second treating
23 doctor. So it's totally not routine, I assume. That
24 would be very unusual routine.

25 Q. But it's identified as a routine extraction

1 on the clinical notes, correct?

2 A. And also as an extraction without
3 complications. And that, to me, has a different
4 meaning.

5 Q. When you take a look at this document here,
6 with regard to coding of the actual extraction, for
7 April 16th of 2011, do you recognize the dental code
8 that's used there?

9 A. Yes, D7210 for a surgical extraction.

10 Q. Do you believe that it was appropriate for
11 this to be coded as a surgical extraction and
12 identified as a routine extraction in the actual
13 clinical notes?

14 MR. VOGEL: Object. Relevance, Your Honor.
15 It's not an issue in this case.

16 MR. FRIEDMAN: Join.

17 MR. LEMONS: Join.

18 THE COURT: Can you tell me how it is?

19 MS. PATIN: It's -- may we approach?

20 THE COURT: Sure. Come on up. Told you you
21 folks were going to get used to the white noise.

22 (A discussion was held at the bench,
23 not reported.)

24 THE COURT: Objection's sustained.

25 /////

1 BY MS. PATIN:

2 Q. Dr. Pallos, based on your review of the
3 records in this case and the case file that was
4 provided to you, including Dr. Lee's answers to
5 interrogatories, what was the office protocol with
6 regard to answering of patient calls and patient
7 complaints?

8 A. Dr. Lee stated, to my recollection, that
9 every staff member is trained to -- when they receive a
10 phone call, to refer that phone call to the dentist --
11 if it's related to a clinical issue to a dentist for
12 the dentist to handle or to refer the patient to urgent
13 care or emergency -- emergency room.

14 Q. And is it your understanding there was a
15 violation of this office policy or procedure with
16 regard to Reginald Singletary?

17 A. Well, if the testimony that I understand is
18 correct and believe, then instead of referring to the
19 doctor or to the emergency room or to an urgent care
20 center, the opposite was done, which was to assure the
21 patient that this problem would resolve, go away within
22 four, five days. And absolutely a violation of this
23 policy.

24 Q. And was that violation below the standard of
25 care?

1 A. Absolutely. I already testified strongly to
2 that. That's the worst type because not only was it a
3 violation of referral, but actually giving an assurance
4 to somebody who was looking for am I having a problem
5 or not because, most people at that point, they do not
6 know whether they have a problem or not. So to be told
7 you don't have an emergency, and then to be -- then to
8 be blamed to believe that he has an emergency, that's
9 not right, and that's below the standard of care.

10 Q. Based upon your opinion with regard to
11 informed consent, and taking a look at the informed
12 consent form that was signed by Reginald Singletary and
13 Dr. Traivai -- I apologize. I know the print's
14 small -- is it your opinion that Reginald Singletary
15 was uninformed and unprepared to insist on getting
16 attention when needed?

17 MR. VOGEL: Object. Foundation.

18 THE COURT: Why don't you rephrase it.

19 BY MS. PATIN:

20 Q. Dr. Pallos, you prepared an expert report in
21 this case?

22 A. I did.

23 Q. And as part of your opinion, you provided
24 expert testimony with regard to informed consent or the
25 lack of thorough informed consent, correct?

1 A. Yes.

2 Q. And what was your opinion with regard to
3 whether or not Reginald Singletary was informed or
4 prepared as far as getting attention that was needed
5 once he developed complications following the wisdom
6 tooth extraction?

7 MR. VOGEL: Object to foundation. Asked and
8 answered.

9 THE COURT: I'm going to allow it.

10 BY MS. PATIN:

11 Q. You can answer, Dr. Pallos.

12 THE COURT: Go ahead.

13 THE WITNESS: Yeah, but would you mind
14 repeating it.

15 THE COURT: "... what was your opinion with
16 regard to whether or not Reginald Singletary was
17 informed or prepared as far as getting attention that
18 was needed once he developed complications following
19 the wisdom tooth extraction?"

20 THE WITNESS: Thank you.

21 My opinion is that if Dr. Traivai had told
22 him all the things that I know she knew about the
23 condition of the tooth that she was about to extract
24 and the potential risks and alerted him that this is
25 potentially very serious and -- I believe it might have

1 overcome the assurances on the telephone from an
2 employee that totally contradicted that information.
3 That's my basis for my opinion, and that is my opinion,
4 that it was below the standard of care to not confront
5 people and get him to understand that.

6 MR. VOGEL: Your Honor --

7 BY MS. PATIN:

8 Q. Do you believe --

9 MR. VOGEL: Your Honor, we move to strike as
10 without foundation.

11 THE COURT: Sustained.

12 Ladies and gentlemen, I'm going to have to
13 instruct you to disregard that last answer.

14 BY MS. PATIN:

15 Q. Do you place any blame on Reginald Singletary
16 for how he responded to the advice he received from
17 Summerlin Smiles?

18 A. How he responded to what?

19 Q. Sorry. Do you place any blame on Reginald
20 Singletary for how he responded to the advice he
21 received from the dentists from Summerlin Smiles?

22 A. I don't blame him at all. First of all, he
23 was given Vicodin, extra strength. Number 2, he knew
24 that something was wrong by Monday morning, and he did
25 exactly what he knew he was told, which is call the

1 office. And I don't blame him one bit for doing that.
2 He did that.

3 Q. In your opinion, and based upon the standard
4 of care, is it the responsibility of the treating
5 dentist to manage the follow-up care of a patient after
6 a wisdom tooth extraction?

7 A. After any surgery, of course, including
8 wisdom tooth extraction. I've said that, yes.

9 Q. In your opinion, and based upon the standard
10 of care, is it the responsibility of the treating
11 dentist to ensure that proper instructions are given to
12 the patient by their staff?

13 A. Absolutely.

14 Q. In your opinion, based upon the standard of
15 care, is it the responsibility of the owner of the
16 clinic to ensure that proper instructions are given to
17 the patient by the staff?

18 A. Yes.

19 Q. Based upon your review of the case file, are
20 you aware as to whether or not Dr. Lee, Dr. Park, and
21 Dr. Traivai were informed of the telephone call on
22 April 18th of 2011?

23 A. Am I aware whether they were informed about
24 the phone call?

25 Q. Yes.

1 A. I'm not aware that they were informed.

2 Q. Does this lessen their responsibility for
3 follow-up care, in your opinion and based upon the
4 standard of care?

5 A. It certainly makes it more difficult for them
6 to follow the standard of care, and what's left is all
7 the other options. Let me say there are many options
8 to fulfill the standard of care. I've named at least
9 six in my deposition. And the fewer of these work, the
10 higher the risk that something is not going to come out
11 right. And this was a big loss, in my opinion, that
12 they were not informed that this patient called and had
13 a problem.

14 And so, yes, it's still our job to follow up,
15 and it's our job to make sure our -- our employees
16 don't mistreat people. So we're still -- we're still
17 on the line for this. We can't just say, oh, I have an
18 incompetent employee; therefore, I'm not responsible
19 for the outcome in this case. That is absolutely
20 outrageous and against the standard of care, in my
21 opinion.

22 Q. Dr. Pallos, did you review the other two
23 expert reports in this case, the two experts that were
24 identified by defendants, Dr. Ardary and as well as
25 Dr. Leavitt?

1 A. Those two, yeah. And two more besides that,
2 yes.

3 Q. Let's take a look at Dr. Leavitt's opinion.

4 A. Okay.

5 Q. There is a small binder behind you. And if
6 you turn to exhibit -- in the small binder, if you turn
7 to Exhibit E.

8 Is that the report of Dr. Leavitt that you
9 reviewed in this case?

10 A. Yes, it is.

11 Q. Okay. And do you have any criticism of
12 Dr. Leavitt's report or his opinions with regard to the
13 standard of care?

14 A. Do you want to refer to something specific
15 or --

16 Q. I can.

17 A. Okay.

18 Q. Do you agree with the opinion that Dr. Park
19 didn't become a treating dentist by providing
20 assistance with the extraction on April 16th of 2011?

21 A. Yes, the argument here is that Dr. Park just
22 provided assistance to the real treating doctor, but
23 there's no such thing. If you -- if -- if -- if the
24 doctor treats the patient, it's not advice. It's not
25 consultation. It's not assistance. It's treatment.

1 He rendered treatment. And I totally disagree with
2 that. There's no such category.

3 Q. Do you agree with the opinion of Dr. Leavitt
4 that Dr. Park was not responsible for the discharge
5 prescription and instructions?

6 A. As soon as he became the dentist and actually
7 did the major work, he did the work here, he was as
8 responsible as Dr. Traivai. And yes, he was fully
9 responsible for any follow-up in that case.

10 Q. Dr. Leavitt also puts in his expert report
11 that it's not common to prescribe antibiotics post
12 extraction without some other complicating factor.

13 Do you agree with this opinion of
14 Dr. Leavitt?

15 A. Well, in -- in this case, we know that the
16 tooth was necrotic. The tooth had a periapical radial
17 lucency. We know that the tooth had a periodontal
18 infection that was chronic at the time. And,
19 therefore, there is a preexisting infection and cause,
20 very important cause to be aware of that and to give
21 antibiotics.

22 So I disagree that in this case, he would
23 look for other additional complicating factors. It's
24 not required. That is already a very, very important
25 factor that's valid in and of itself, in my opinion.

1 Q. Would you agree that increased pain and
2 swelling in the face, jaw, and neck are complicating
3 factors requiring antibiotics post extraction?

4 A. Okay. Increasing pain, instead of decreasing
5 pain, that's the crucial thing. The first couple of
6 days, really, you can't tell much because the trauma
7 from the surgery will create pain and swelling, and --
8 and that's inflammation, and you don't know at that
9 point. But after -- according to their handout, after
10 48 hours, for sure, you should be getting better. The
11 patient should decrease the pain and the swelling.
12 Instead of increasing, it should decrease. And --

13 Did I answer that?

14 Q. Yes. Did you also have an opportunity to
15 review Dr. Ardary's expert report?

16 A. Yes, I reviewed that.

17 Q. Okay. I believe that's in front of you as
18 well as Exhibit C. Do you recognize that as the report
19 that you reviewed from Dr. Ardary in this case or
20 Ardary?

21 A. Yes, it is.

22 Q. And I'm taking a look at his opinions
23 beginning on page 2. Do you have any criticism or
24 opinion with regard to Dr. Ardary's report and opinions
25 in this case?

1 A. Well, may I quote from this to -- to --

2 Q. Yes.

3 A. Okay. He -- Dr. Ardary, he says, "Infections
4 are known to occur with or without medical or dental
5 intervention."

6 Okay. What that means is he wants to say
7 that infections -- this infection may be unrelated to
8 dental intervention. Has nothing to do with the fact
9 that he just had a surgical operation. And I
10 understand he -- he has nowhere else to go, but I
11 totally disagree with this.

12 Q. Any other opinions contained within the
13 report that you disagree with?

14 A. He states, "Usually, there are many factors
15 that may lead to infection, none of which may be caused
16 by the clinician."

17 Again, theoretically, that's absolutely true.
18 But in this case, it's so ridiculous because it's so
19 obvious what happened here. There was an extraction
20 and there was a preexisting infection and that
21 infection took off. And it was the dentist's
22 responsibility to make sure that didn't happen. And
23 antibiotics are the way to -- to resolve infections.

24 I think that goes to -- those two sentences I
25 quoted goes to the heart of what he said with which I

1 totally have to disagree.

2 Q. Dr. Ardary, in his report, also makes a
3 comment that "The procedure was noted to be routine and
4 without complications."

5 A. Yes.

6 Q. Do you agree with that statement contained
7 within Dr. Ardary's report?

8 A. I already explained the routine part I don't
9 agree with, but the without complications seems to be
10 true. Dr. Park said it took him about a minute.

11 Q. Dr. Ardary also states that "appropriate
12 consent was given." Is that something else that you
13 disagree with as far as Dr. Ardary's opinion in this
14 case?

15 A. I think I made --

16 MR. VOGEL: I'm going to object. It lacks
17 foundation for that opinion.

18 THE COURT: Sustained.

19 MS. PATIN: With regard to the question that
20 I just asked?

21 THE COURT: Yep.

22 BY MS. PATIN:

23 Q. Dr. Ardary also states within his report that
24 "Mr. Singletary most likely developed infection from an
25 unusually virulent organism which was not part of his

1 normal flora."

2 Do you agree with this opinion of Dr. Ardary?

3 A. Well, okay, that's a theoretical point that
4 such an infection may exist. But he had enough
5 virulent infection in his mouth to make it a very
6 direct correlation. We don't have to invent, you know,
7 out of the blue virulent infections in this case.

8 I disagree that that's relevant. It's
9 possible, yes.

10 Q. Do you agree that "Cleaning of teeth,
11 improved oral hygiene, and extraction of symptomatic
12 teeth will cure or prevent infection" as Dr. Ardary
13 states?

14 A. Well, infections that are chronic will be
15 cured by those things, especially the clean -- the
16 surgical cleanup, like extraction of those two broken
17 teeth that I showed you. They will clean up, yes. I
18 agree with that statement.

19 Q. What about with regard to Tooth No. 32? Do
20 you agree that cleaning of teeth, improved oral
21 hygiene, and extraction of Tooth No. 32 would cure or
22 prevent infection?

23 A. Well, that was certainly the intention and
24 should be, and it should have done that, and it would
25 have done that if he had just had proper care.

1 Q. Do you agree with Dr. Ardary's opinion that
2 "Occurrence of such infections does not imply that
3 there was a breach in the standard of care or that the
4 care received was below the standard of the community"?

5 A. Oh, I -- that's a theoretical statement. And
6 I always have to say yes, everything's possible. But
7 it's not relevant, in my opinion, because we have in
8 front of us a very dramatic occurrence that it's
9 obvious to me, it's outrageously obvious, what happened
10 here.

11 Q. Going back to the statement by Dr. Ardary
12 that "Mr. Singletary most likely developed infection
13 from an unusually virulent organism which was not part
14 of his normal flora," can you explain to us what --
15 what that means, "virulent organism which was not part
16 of his normal flora"?

17 A. Okay. The flora -- in our mouth, we have
18 bacteria, and although the sum total of those bacteria,
19 the word "flora" is used to describe those bacteria
20 that normally exist in a healthy -- quote/unquote,
21 healthy mouth.

22 Like, Mr. Singletary's mouth could be
23 considered healthy or average, even though he had
24 broken teeth and chronic infections. So part of his
25 so-called normal flora would also include what we call

1 virulent or potentially virulent, means very toxic
2 microorganisms.

3 And he's saying that also it could be that it
4 doesn't exist in the normal flora. And theoretically
5 that's obviously true also. But it's theoretical.
6 It's not relevant. It doesn't, to me, mean anything
7 to -- relevant to this case.

8 Q. Are there any other criticisms that you have
9 of Dr. Ardary's report or his opinions contained within
10 his report?

11 A. No.

12 Q. Dr. Ardary and our expert, Dr. Marzouk, both
13 state that "The infection that Reginald developed is
14 rare."

15 Do you agree that it is a rare infection?

16 A. Well, it's very, very rare that it got out of
17 hand like that, and that's good for all of us. It's
18 good for our profession. If that's what they mean, I
19 totally agree with that. Should be even more rare
20 because it's preventible.

21 Q. It's preventible using what?

22 A. Antibiotics.

23 Q. Do you believe that, as Dr. Ardary puts,
24 "This type of severe infection is rare in occurrence
25 and is not something that could be predicted, foreseen,

1 or prevented by any clinician"?

2 A. In my opinion, that's totally ridiculous.

3 Q. Why is that?

4 A. Well, because, as I said, if that person who
5 answered the phone would have invited Mr. Singletary
6 into the office and said, Let us take a look, there was
7 plenty of time to reverse that infection. On Monday,
8 there was plenty of time. On -- on Saturday, after it
9 was done, there was plenty of time. On Tuesday,
10 probably it was still relatively possible. By
11 Wednesday, he probably needed IV antibiotics. And by
12 Thursday, you know what happened, you know. But there
13 was a window of opportunity that we as dentists must
14 pursue and be totally aware of, and not --

15 MR. VOGEL: Your Honor, I object as not
16 responsive to the question. He's going on.

17 MR. FRIEDMAN: It's beyond his expertise.

18 MR. LEMONS: Join.

19 THE COURT: It's not beyond the question. He
20 was asked what his opinion was, and then he was asked
21 to explain his opinions, so I think he's explaining.
22 It's overruled.

23 BY MS. PATIN:

24 Q. You can continue.

25 A. May I finish?

1 Q. Yes.

2 A. I just want to say, this is totally my
3 experience. Okay. I'm not making this up. I'm not
4 here to blow smoke. Thank you.

5 Q. And --

6 MR. FRIEDMAN: Objection, Your Honor. Move
7 to strike as nonresponsive.

8 THE COURT: Sustained.

9 MS. PATIN: Would you mind repeating the
10 prior question. I apologize.

11 THE COURT: You asked: "Do you believe that,
12 as Dr. Ardary puts, 'This type of severe infection is
13 rare in occurrence and is not something that could be
14 predicted, foreseen, or prevented by any clinician'?"

15 He said that was ridiculous. You said why.
16 He explained it, and then we had some objections.

17 BY MS. PATIN:

18 Q. Dr. Pallos, I know you were interrupted while
19 you were explaining to me as to why it's not something
20 that could be -- or why it is something that could be
21 predicted, foreseen, or prevented by a clinician.

22 Did you have any additional opinion or
23 comment with regard to why this type of infection could
24 be predicted, foreseen, or prevented by a clinician?

25 MR. VOGEL: I object as relevant -- on

1 relevance ground. It has nothing to do with the
2 standard of care.

3 MS. PATIN: It's in his expert report.

4 THE COURT: Overruled.

5 THE WITNESS: Can you say the words again.

6 BY MS. PATIN:

7 Q. Dr. Ardary, in his expert report on behalf of
8 the defendant, stated that "This type of severe
9 infection is rare in occurrence and is not something
10 that could be predicted foreseen, or prevented by a
11 clinician."

12 A. Okay.

13 Q. And I was asking you to explain how it could
14 be something that -- or you were stating how it could
15 be something that is predicted, foreseen, or prevented
16 by a clinician when we were interrupted, and I was
17 asking you to explain that.

18 A. If we start assuming that we cannot predict,
19 foresee, or prevent infections, we would have an excuse
20 to mismanage every case. It's absolutely unwise and
21 against the standard of care, certainly against
22 everything I was taught, to assume that I can't prevent
23 an infection, that I can't help somebody, that they're
24 doomed, and I can't help them. This is against what --
25 what our job is. Our job is to prevent problems and to

1 save teeth and to save lives. That's our job. And --
2 and to now say it's unrelated to anything we did, I
3 just think it's a shame.

4 Q. Based upon your review of the records in this
5 case, the deposition testimony that you've reviewed as
6 well, the entire case file itself, is it your opinion
7 that a physical exam could have been done on Reginald
8 Singletary on April 18th of 2011 had he been called
9 into the office to determine whether or not antibiotics
10 would be prescribed at that point?

11 A. Could a physical exam have been done? You're
12 asking that?

13 Q. Yes. A physical --

14 A. Yes, it could have been done.

15 Q. And had a physical exam been performed, can
16 you opine as to whether or not antibiotics would have
17 been prescribed?

18 A. I would hope absolutely antibiotics would
19 have been prescribed because this patient was getting
20 worse, not better.

21 MS. PATIN: No further questions at this
22 time.

23 THE COURT: All right. Told you, folks,
24 we're going to take a little bit later lunch. I was
25 planning on about 12:45, but I think this is a good

1 breaking point. So I'm going to go ahead and give you
2 your lunch now. It's 12:30. We're still going to take
3 an hour and a half today just because I have to be
4 somewhere from 1:00 to 2:00. So I'm going to have you
5 come back at 2:00 o'clock. All right.

6 During our break, you're instructed not to
7 talk with each other or with anyone else, about any
8 subject or issue connected with this trial. You are
9 not to read, watch, or listen to any report of or
10 commentary on the trial by any person connected with
11 this case or by any medium of information, including,
12 without limitation, newspapers, television, the
13 Internet, or radio. You are not to conduct any
14 research on your own, which means you cannot talk with
15 others, Tweet others, text others, Google issues, or
16 conduct any other kind of book or computer research
17 with regard to any issue, party, witness, or attorney,
18 involved in this case. You're not to form or express
19 any opinion on any subject connected with this trial
20 until the case is finally submitted to you.

21 See you back at 2:00.

22 (The following proceedings were held
23 outside the presence of the jury.)

24 THE COURT: You can go too, Doctor. Just
25 come back before 2:00 o'clock.

1 THE WITNESS: May I leave that?

2 THE COURT: That's fine.

3 All right. We're outside the presence of the
4 jury. You need to make a record on anything?

5 MR. VOGEL: Your Honor, if I understand
6 correctly, you've stricken his opinion with respect to
7 the informed consent issue; is that accurate?

8 THE COURT: I think I can rule as a matter of
9 law that there's no foundation for his opinion -- his
10 informed consent opinion, yes.

11 MR. VOGEL: All right. That's the only
12 opinion that was offered at the time of his deposition.
13 In fact, for the first time today, he completely
14 contradicted his deposition testimony. I ask that it
15 not be considered with respect to our motion for
16 summary judgment because at his deposition -- I'm
17 reading from page 53, starting at line 6.

18 "Let me ask you this: Is it your opinion
19 that the defendants fell below the standard of
20 care by not giving him a prophylactic
21 prescription for antibiotics?

22 "ANSWER: No."

23 That's one of the potential things they could
24 have done, so he had no criticism there, which he's
25 changed today.

1 And on page 56, starting at line 4:

2 "So you're not saying that anyone in this

3 case was below the standard of care for not

4 giving a prescription for antibiotics before or

5 on the day of the extraction, correct?

6 "Yes."

7 He completely changed his testimony here

8 today. So on that basis, Your Honor, I ask the summary

9 judgment be granted with respect to that issue which

10 would only leave the issue with respect to the phone

11 call and whether or not Dr. Traivai is responsible for

12 the actions of the employee on the phone call.

13 THE COURT: What about his general opinion

14 that follow-up was required?

15 MR. VOGEL: Well, that -- well, we can go to

16 that.

17 THE COURT: Because one of the things he said

18 today was whether or not the doctor makes a phone call

19 or somebody on his behalf makes a phone call --

20 MR. VOGEL: No.

21 THE COURT: -- somebody should be following

22 up with the patient.

23 MR. VOGEL: Let me find that testimony as

24 well, because he's testified that the follow-up plan

25 that was in place met the standard of care.

1 MR. LEMONS: And if we could supplement that,
2 Your Honor, just by what I advised the Court before he
3 testified that he said that what the problem was is
4 that there wasn't a -- an assurance that follow-up was
5 obstructed by an incompetent employee. And he said --
6 actually, he came close to admitting to that today
7 where he said we can't do our -- we can't comply with
8 the standard of care if we're not told.

9 THE COURT: He didn't say that today, though.

10 MR. LEMONS: He said makes it harder, what
11 you don't know.

12 THE COURT: He did.

13 MR. VOGEL: So then on page 57:

14 "QUESTION: The plan. I understand that's
15 your opinion, but the plan itself met the
16 standard of care on behalf of Dr. Traivai, the
17 plan for follow-up.

18 "I agree with that. On behalf of
19 Summerlin Smiles, I agree with that.

20 "On behalf of Dr. Park?

21 "Yes."

22 So he agreed the follow-up plan was fine.

23 His only criticism had to do with the phone call. That
24 was it.

25 MS. PATIN: Your Honor, with regard -- with

1 regard to the testimony that's been presented at the
2 time of the deposition, as well as the testimony that's
3 been presented at the time of trial, the expert report
4 that was provided, the affidavit that was provided,
5 defendants will have an opportunity to cross-examine
6 Dr. Pallos on all of that.

7 Just because certain questions were asked and
8 answered at the time of deposition, certain questions
9 were asked and answered at the time of trial, it goes
10 to what his understanding was of the question and his
11 response to that question. And that's why defendants
12 will have an opportunity to cross-examine him, and the
13 credibility will be determined of this expert by the
14 jury.

15 But the opinions that he testified to today
16 are included within his expert report and expert
17 affidavit, and some of which are also included in his
18 deposition testimony, all of which have been provided
19 to defendants.

20 THE COURT: Sounds like there's some
21 testimony that's contrary to what he testified to in
22 his deposition.

23 MS. PATIN: Which they can address at the
24 time of cross-examination.

25 MR. VOGEL: The point is we shouldn't have

1 to. That's why we have summary judgment motions.
2 That's why usually you're allowed to depose experts in
3 a timely manner which she prevented us from doing, and
4 we had to do it a week before trial.

5 MS. PATIN: We're not going --

6 MR. VOGEL: Had this been done, Judge, the
7 summary judgment would have been heard a long time ago,
8 and she wouldn't have been able to muddy it up here at
9 trial. That's why I'm asking, based on the motion for
10 summary judgment and the testimony that's contained in
11 there and the testimony that he gave today with respect
12 to his opinion on the informed consent, which is the
13 only one he had at the time of deposition, I ask that
14 summary judgment be granted on that basis.

15 MR. LEMONS: And, Your Honor, counsel keeps
16 referring to other things, like attached to the
17 complaint and given a long time ago. At his deposition
18 he said, These are my opinions. He -- he had other
19 materials available to him but said that he would --
20 kind of rethought it and today was going to give all
21 his opinions. And he -- that was on January 3rd.

22 MR. VOGEL: Less than two weeks ago. And he
23 was asked at the end of the deposition, Is that all of
24 the opinions you intend to offer in this case? And I
25 asked him, Is there anything else you'd like to add so

1 as to not be misunderstood? And then I asked him, Have
2 you had a full and fair opportunity to express all of
3 yours opinions? He said yes to each of those
4 questions.

5 MS. PATIN: Which were his opinions based on
6 the questions that were asked by counsel at the time of
7 his deposition.

8 THE COURT: All right, guys. I think the
9 whole informed consent issue that he's testified to
10 today, I think he actually kind of buried himself and
11 said he had no foundation for it. So that issue is
12 going to be gone. I don't know how you want to deal
13 with that as far as instructing the jury. We'll have
14 to deal with that later.

15 But I think I'm going to allow -- I'm just
16 going to have you cross on the rest of them. If it's
17 something that was addressed in his report, even though
18 he said something contrary in his deposition, it's
19 something that you're on notice of. I'm going to allow
20 it to go forward on those issues, so you can cross him
21 and bring it up -- bring up the contradictions. See
22 how he deals with them.

23 MS. PATIN: Thank you, Your Honor.

24 THE COURT: Anything else outside the
25 presence?

1 MR. VOGEL: I don't think so.

2 MS. PATIN: The motion with regard to

3 sanctions to make --

4 THE COURT: I haven't looked at it yet.

5 MS. PATIN: No, to make a copy of it.

6 THE COURT: That's fine. You can make a copy

7 so they have a copy, and just drop a copy in my

8 chambers, and I'll try to look at it during lunch some

9 time.

10 MR. VOGEL: What's the basis of the motion?

11 MS. PATIN: It's a motion for sanctions

12 against defendant Dr. Lee and Summerlin Smiles, and

13 then Dr. Lee personally pursuant to NRCP 37 and

14 NRS 47.250.

15 MS. GOODEY: It should say 240. I think

16 that's probably a typo. That's my fault.

17 THE COURT: Make a copy during lunch and give

18 it to the other side, and we'll address it later on.

19 Come back -- come back at 2:00.

20 MS. PATIN: Thank you, Your Honor.

21 MR. VOGEL: Thank you, Your Honor.

22 THE COURT: Off the record.

23 (A lunch recess was taken.)

24 THE MARSHAL: All rise for the presence of

25 the jury.

1 (The following proceedings were held in
2 the presence of the jury.)

3 THE COURT: Go ahead and be seated. Welcome
4 back, folks. We're back on the record in Case
5 No. A656091.

6 Do the parties stipulate to the presence of
7 the jury?

8 MR. VOGEL: Yes, Your Honor.

9 MS. PATIN: Yes, Your Honor.

10 MR. FRIEDMAN: Yes, Your Honor.

11 MR. LEMONS: Yes, Your Honor.

12 THE COURT: Hope you enjoyed your long lunch.
13 It doesn't happen often in here. Appreciate you guys
14 bearing with me because I needed a long lunch today.

15 So who do we have on the stand? Dr. --

16 MS. PATIN: Dr. Pallos.

17 THE COURT: Dr. Pallos, is he still -- still
18 around, right?

19 MS. PATIN: He is. He's just waiting in the
20 room out there.

21 THE COURT: Bring him back in. Are we going
22 to do Mr. Friedman first?

23 MR. FRIEDMAN: Yes, Your Honor.

24 THE COURT: Good afternoon, Doctor. I'm not
25 going to have you resworn again. Just be reminded

1 you're still under oath. All right. Thank you.

2

3 CROSS-EXAMINATION

4 BY MR. FRIEDMAN:

5 Q. Good afternoon, Doctor. My name's Jason
6 Friedman. I represent Dr. Lee in this matter.

7 You testified earlier that you're not a
8 dental specialist, correct?

9 A. Yes.

10 Q. A general dentist is not a recognized
11 specialty in dentistry, true?

12 A. That's what I said.

13 Q. And what is an oral and maxillofacial
14 surgeon?

15 A. A specialist in dentistry. A certain
16 category.

17 Q. How is an oral and maxillofacial surgeon
18 different than a general dentist?

19 A. He's limited to only oral surgery procedures,
20 as I said, and works on extraction of teeth and
21 rearranging the maxillofacial complex basically.

22 Q. How many years of extra training is required
23 to go from being a general dentist to an oral and
24 maxillofacial surgeon?

25 A. I'm not sure anymore. Maybe four.

1 Q. Are all oral and maxillofacial surgeons
2 medical doctors as well?

3 A. No.

4 Q. So an oral and maxillofacial surgeon who is
5 also a medical doctor has even more training than the
6 typical oral surgeon; is that true?

7 A. Yes.

8 Q. Third molars are also called wisdom teeth,
9 correct?

10 A. Yes.

11 Q. And you would agree that third molar
12 extractions are a large part of the specialty of oral
13 surgery, correct?

14 A. Typically.

15 Q. And this case involves the extraction of
16 Tooth No. 32, correct?

17 A. Absolutely.

18 Q. And Tooth No. 32 is a third molar or wisdom
19 tooth, correct?

20 A. Still correct.

21 Q. And where is Tooth No. 32 located in the
22 mouth?

23 A. On the lower right, the last tooth.

24 Q. Down at the jaw angle?

25 A. Yes. The very back.

1 Q. What is the jaw angle?

2 A. The jaw angle is the angle of the jaw, the
3 mandible, the lower jaw.

4 Q. And would you consider it to be down about
5 here, Doctor, way in the lower part, in the corner,
6 kind of the corner where the jaw meets towards the
7 chin?

8 A. The jaw comes to an angle, maybe?

9 Q. Excuse me?

10 A. The jaw comes to an angle? Exactly.

11 Q. Thank you.

12 A. Yeah, you're welcome.

13 Q. You reviewed Plaintiff Svetlana Singletary's
14 deposition transcript in this case, correct?

15 A. I did.

16 Q. And you saw that in her deposition, she
17 alleges that she called Summerlin Smiles on April 18th,
18 2011, less than two days after the extraction of the
19 third molar in this matter, correct?

20 A. Yes.

21 Q. And isn't it true that you base your
22 understanding of Mr. Singletary's condition at the time
23 of the alleged phone call on the deposition of one
24 person, Plaintiff Svetlana Singletary?

25 A. That is true.

1 Q. And plaintiff testified at her deposition
2 that a woman answered the phone when she called
3 Summerlin Smiles on April 18, 2011, true?

4 A. That is true.

5 Q. And plaintiff did not ask the woman what her
6 position was, correct?

7 A. Probably correct. You know, I could look it
8 up if it's important.

9 Q. I'll see if I can refresh -- refresh your
10 recollection.

11 A. Thank you very much.

12 Q. This is from plaintiff's deposition, page 85,
13 line 17.

14 "When you spoke with the female" --

15 MS. PATIN: Just one moment.

16 MR. FRIEDMAN: Uh-huh.

17 MS. PATIN: You said page 85?

18 MR. FRIEDMAN: Page 85 of plaintiff's
19 deposition.

20 BY MR. FRIEDMAN:

21 Q. Doctor, page 85 --

22 MS. PATIN: No objection, Your Honor.

23 MR. FRIEDMAN: I'm sorry.

24 THE COURT: Thank you.

25 Go ahead.

1 BY MR. FRIEDMAN:

2 Q. Page 85, line 17 of the plaintiff's
3 deposition.

4 A. When you say plaintiff, who do you mean?

5 Q. Ms. Singletary.

6 A. Okay.

7 Q. And you did review her deposition transcript.

8 A. I did.

9 Q. Okay. Thank you.

10 "QUESTION: When you spoke with the
11 female, did you ask her what her position was
12 at the office?

13 "ANSWER: I didn't. I did not."

14 And plaintiff also testified at her
15 deposition that she didn't know whether the person who
16 answered the phone was a dentist or a receptionist or
17 what their position was or even if they had a position,
18 correct?

19 A. Yes, she had no idea.

20 Q. Isn't it true that you have reviewed all the
21 documents and evidence in this case, and nowhere in
22 those materials is there any evidence that whoever
23 answered the phone was actually an employee of
24 Summerlin Smiles?

25 A. I have no knowledge beyond what we have

1 established.

2 Q. Thank you.

3 And you are merely assuming that a phone call
4 occurred and the phone was answered at Summerlin
5 Smiles, correct?

6 A. I'm trusting the testimony of Svetlana
7 Singletary.

8 Q. So that's your assumption, correct?

9 A. If that's what you want to call the
10 assumption, yes.

11 Q. Okay. Isn't it true that you can't state to
12 a reasonable probability that whoever answered the
13 phone was an employee of Summerlin Smiles or Dr. Lee?

14 A. I have no knowledge who that person was.

15 Q. So that's a correct statement?

16 A. That is correct.

17 Q. And if you assumed that rather than someone
18 answering the phone on April 18, 2011, plaintiff
19 instead reached the answering machine and the answering
20 machine gives an emergency pager number, that would
21 comply with the standard of care, in your opinion,
22 correct?

23 A. I said that in my deposition.

24 Q. And you agree with that today, correct?

25 A. Yes. It's a whole different assumption.

1 Q. You recall that in plaintiff's deposition,
2 she testified that she told whoever it was that
3 answered the phone on April 18, 2011, that
4 Mr. Singletary had a tooth extraction Saturday, and
5 he's in a lot of pain. His neck is swollen, his cheek
6 is swollen, can we come in, correct?

7 A. Can I assume you're reading from the
8 deposition? Because I don't know word for word. If
9 you want me to look it up or --

10 Q. That's all right.

11 A. In general, I agree with that.

12 Q. I will -- I can read it if you need me to --

13 A. I would just like you to reference it
14 exactly, then we don't have any argument.

15 Q. Sure.

16 A. So whatever it says, I trusted that.

17 Q. Okay. Perfect. And you reviewed it.

18 A. But I can stipulate to the whole thing.

19 Q. Okay. You stipulate to the deposition
20 testimony that you reviewed?

21 A. I do. So if you're going to read it to me,
22 the answer's going to be yes.

23 Q. Do you recall in plaintiff's deposition
24 wherein she testified that the person who answered the
25 phone left her with the impression that the symptoms

1 she had described were normal after wisdom tooth
2 extraction, and that it should get better the following
3 day.

4 A. Are you quoting exactly now?

5 Q. I can read it to you.

6 A. Yeah, please read it to me.

7 Q. Okay. It's on page 41, line 23, to page 42,
8 line 3.

9 MS. PATIN: No objection.

10 BY MR. FRIEDMAN:

11 Q. "QUESTION: All right. So after the phone
12 call, what were you thinking?"

13 Plaintiff answered:

14 "What was I thinking? That it might have
15 been the normal process after the wisdom tooth
16 extraction and that it should get better
17 tomorrow or and -- or the day after."

18 That refreshes your recollection, Doctor?

19 A. Absolutely.

20 Q. Okay.

21 A. I'm fine with that.

22 Q. And plaintiff's alleged phone call occurred
23 less than 48 hours after the extraction, didn't it?

24 A. Yes, it did.

25 Q. But contrary to plaintiff's impression that

1 the symptoms would get better the next day, the
2 symptoms actually got worse the next day, correct?

3 A. Can you read that part to me?

4 Q. Sure. I'll read it again.

5 A. Just read them to me. I would be happy to
6 acknowledge.

7 Q. Okay. Well, this is just a -- a question for
8 you, Doctor.

9 A. Okay.

10 Q. Isn't it true that contrary to plaintiff's
11 impression that she formed after the alleged phone call
12 that the symptoms would get better the next day, the
13 symptoms actually got worse the next day?

14 A. Yes, I have testified to that.

15 Q. Mr. Singletary was more swollen on the 19th
16 than the 18th, correct?

17 A. That is what I said and understood.

18 Q. And that's a correct statement.

19 A. Yeah.

20 Q. In fact, according to the plaintiff's
21 deposition that you reviewed, on the day after her
22 alleged phone call to Summerlin Smiles on the 19th --
23 the alleged phone call on the 18th, the following day,
24 the 19th, the swelling in the patient's neck got a
25 little bigger and began to move to the other side of

1 his neck.

2 A. You want to read to me? I acknowledge I
3 remember something like that, yes.

4 Q. Okay. Page 84, line 21.

5 MS. PATIN: No objection.

6 BY MR. FRIEDMAN:

7 Q. "QUESTION: Uh-huh. I think you said
8 earlier that the swelling had either grown or
9 kind of moved across his neck.

10 "Did I get that right?"

11 "ANSWER:" -- plaintiff's answer:

12 "It moved. It got a little bigger. It
13 started -- before it was more on the side and
14 started going on this side.

15 "And when did you first notice that?

16 "ANSWER: That Tuesday."

17 Which you understand to be the 19th, correct,
18 Doctor?

19 A. I do. And I acknowledge that.

20 Q. Based on your review of the plaintiff's
21 deposition and the materials in this case, is your
22 understanding that plaintiff did not call Summerlin
23 Smiles with this information, correct?

24 A. You mean did she call again on the 19th?

25 Q. And so --

1 A. It's my understanding she did not.

2 Q. It's your understanding that she did not
3 report that the swelling had gotten bigger from the
4 18th to the 19th and had migrated from one part of the
5 neck to the other, correct?

6 A. That is correct.

7 Q. And it's also your understanding that
8 Mr. Singletary did not call Summerlin Smiles with this
9 information, correct?

10 A. That is correct.

11 Q. And it's your belief that Mr. Singletary was
12 doing quite worse the day after that, on April 20th,
13 correct?

14 A. Than the 19th, yes.

15 Q. And even though plaintiff was left with the
16 impression after her alleged phone call to Summerlin
17 Smiles on April 18 that the symptoms should get better
18 the following day or the day after, the symptoms
19 continued to get worse, correct?

20 A. That is correct. And they were waiting for
21 the four, five days.

22 Q. And you understand that neither plaintiff nor
23 Mr. Singletary ever called Summerlin Smiles, or any
24 healthcare provider for that matter, on the 19th or the
25 20th, even though the symptoms did not get better as

1 plaintiff was impressed that they would, correct?

2 MS. PATIN: Objection, Your Honor.

3 Cumulative. This has already been testified -- may we
4 approach?

5 THE COURT: Sure. Come on up.

6 (A discussion was held at the bench,
7 not reported.)

8 THE COURT: Overruled.

9 BY MR. FRIEDMAN:

10 Q. Do you have the question in mind, Doctor?

11 A. No. Sorry.

12 Q. That's all right.

13 You understand that neither plaintiff nor
14 Mr. Singletary called Summerlin Smiles, or any
15 healthcare provider for that matter, on the 19th or the
16 20th, even though the symptoms did not get better but
17 had gotten progressively worse.

18 A. That is correct.

19 Q. As far as your retention on this case, you
20 were referred this case by another dentist in
21 Las Vegas, correct?

22 A. Indirectly.

23 Q. He told you he didn't want the case, correct?

24 A. Something like that. That's what I remember.

25 MR. FRIEDMAN: Thank you. I don't have

1 anything further.

2 THE WITNESS: Thank you very much.

3 THE COURT: Mr. Vogel.

4 MR. VOGEL: Thank you, Your Honor.

5

6 CROSS-EXAMINATION

7 BY MR. VOGEL:

8 Q. Good afternoon, Dr. Pallos.

9 A. Hi.

10 Q. Now, Doctor, one of the first things that
11 kind of struck me, one of the first things you said
12 when you sat down here and started testifying today is
13 you indicated you like money.

14 And it's my understanding you charge \$600 per
15 hour for your testimony; is that correct?

16 A. Today, I do, yes.

17 Q. And isn't it true that you testify on behalf
18 of the plaintiff or the patient 95 percent of the time?

19 A. As far as the -- the things that go to court,
20 yes.

21 Q. That's what you testified in your deposition,
22 correct?

23 A. That is correct.

24 Q. And isn't it also true --

25 A. You're talking about testimony in court

1 and -- and at deposition. That's -- that was the
2 subject, right.

3 Q. Correct. Is there --

4 A. Yeah, that's what I'm saying. I agree
5 totally with what you said.

6 Q. Is there some other arena that you testify in
7 other than in deposition and in court?

8 A. No. I was thinking of case reviews, which
9 are, you know, much broader.

10 Q. I'm talking about your testimony.

11 A. I hear you.

12 Q. So 95 percent on -- 95 percent on behalf of
13 the patient or the plaintiff.

14 A. Absolutely. And it may be 100 actually.

15 Q. It may be 100 percent?

16 A. Yeah.

17 Q. And it's also my understanding you haven't
18 testified against a doctor in your area, Laguna Niguel;
19 is that correct?

20 A. That is correct.

21 Q. But you're willing to come here and testify
22 against a doctor in Las Vegas.

23 A. Absolutely.

24 Q. And you're not licensed in Nevada, correct?

25 A. That's what I said.

1 Q. And you don't have any academic appointments
2 at any dental schools?

3 A. That's what I said.

4 Q. You've never treated a patient with Ludwig's
5 angina, correct?

6 A. That is what I said.

7 Q. It's my understanding you actually disagree
8 with the diagnosis in this case, that Mr. Singletary
9 had severe periodontitis.

10 Your opinion is that it was only mild to
11 moderate, correct?

12 A. No, that was not it. I disagreed with the
13 generalized idea.

14 Q. Doctor, you remember having --

15 A. It was --

16 Q. Doctor, do you remember having your
17 deposition taken back just less than two weeks ago,
18 January 3rd?

19 A. I do.

20 MR. VOGEL: Your Honor, we don't have the
21 original, to my knowledge. We have a certified copy
22 and I believe an agreement that we can use a certified
23 copy.

24 MS. PATIN: Yes.

25 MR. VOGEL: Can I publish this and approach

1 the witness?

2 THE COURT: That's fine.

3 MR. VOGEL: Thank you.

4 THE COURT: You want it stamped?

5 MR. VOGEL: Thank you.

6 THE WITNESS: And you're correct in what
7 you're saying, that I said it --

8 MR. VOGEL: I don't have a question for you
9 yet.

10 THE WITNESS: Okay.

11 MS. PATIN: Your Honor, just a clarification
12 with regard to publication of the deposition. Is the
13 entire deposition going to be published to the jury?

14 THE COURT: No.

15 MR. VOGEL: No.

16 BY MR. VOGEL:

17 Q. Doctor, if you could, please turn to page 29.

18 Are you on page 29?

19 A. Oh, yes, I'm there.

20 Q. Okay. Reading, starting on line 23. My
21 question to you is, Did I read this accurately?

22 Okay?

23 A. Wait, wait. You're line 23?

24 Q. Line 23. And my question to you is: Did I
25 read these lines correctly?

1 "In my opinion, it would be much better
2 called localized generalized mild to moderate
3 periodontitis with localized areas of severe
4 periodontitis."

5 Did I read that correctly?

6 A. May I -- may I say that --

7 Q. No, sir. My question is: Did I read that
8 correctly?

9 A. That you read correctly --

10 Q. Thank you.

11 A. -- but I made a correction to that --

12 Q. I understand that.

13 A. -- on the errata sheet.

14 Q. Doctor -- Doctor --

15 THE COURT: You'll have a chance when --

16 THE WITNESS: Oh, okay.

17 THE COURT: -- Ms. Patin stands up again.

18 THE WITNESS: Thank you so much.

19 BY MR. VOGEL:

20 Q. Now, it's also my understanding it's your
21 opinion that the extraction of Tooth No. 32 was
22 appropriate, correct?

23 A. It is my opinion.

24 Q. It was for optimal oral health? You agree
25 with that?

1 A. I did agree with that. I do.

2 Q. And you also agreed that the records support

3 that the extraction procedure itself as well as the

4 need for the extraction were within the standard of

5 care, correct?

6 A. Yes.

7 Q. You also agreed that the occurrence of

8 infections does not imply there's a breach of the

9 standard of care, correct?

10 A. Say that again, please.

11 Q. You agree the occurrence of --

12 A. I'm having trouble hearing you, sir.

13 Q. I'll move the microphone closer.

14 MR. VOGEL: Can everyone hear me?

15 BY MR. VOGEL:

16 Q. Doctor, you agree the occurrence of

17 infections does not imply there's a breach of the

18 standard of care, correct?

19 A. You mean the fact that there is an existing

20 infection does not violate the standard of care?

21 That's what you're asking?

22 Q. I'm reading basically right out of your

23 deposition testimony, sir.

24 A. Oh, okay. Where are you reading?

25 Q. All right. Let's go to page 32.

1 Are you on page 32?

2 A. Yes.

3 Q. My question to you is: Did I read this

4 correctly? Beginning at line 10:

5 "Let me continue, and it will be more

6 clear.

7 "'The occurrence of such infections does

8 not imply there's a breach of the standard of

9 care or that the care received was below the

10 standard of care within the community.'

11 "I think that is true."

12 Did I read that correctly?

13 A. Yes, you read that excellently.

14 Q. Okay. Now, it's also your opinion that you

15 do not believe Mr. Singletary had an acute infection at

16 the time of the extraction, correct?

17 A. I may have said that at the time, yes.

18 Q. And you agree with that, correct?

19 A. Well, I reviewed other -- you know, the

20 testimony again, and I found significant testimony to

21 contradict that opinion, so --

22 Q. Well, Doctor, did you see anything in the

23 records that contradicts that opinion?

24 A. Yes.

25 Q. You had all the records at the time of your

1 deposition, did you not?

2 A. Yes, I did.

3 Q. Doctor, I believe it's your testimony you
4 spent, I believe -- I think six or eight hours
5 preparing for your deposition, correct?

6 A. I sure did.

7 Q. And somehow between January 3rd and today,
8 you've come up with new opinions?

9 A. I -- I've come up with clarification.

10 Q. Doctor, it doesn't sound like a clarification
11 to me. It sounds like you changed your opinion.

12 A. The clarification is that what you read is --
13 is exactly what I believed. And I found that the
14 doctor believed something different. So I -- so I did,
15 today, present that to the jury.

16 Q. So, Doctor, based on your review of the
17 records, the dental chart, the X rays, you don't
18 believe he had an acute infection on the date of the
19 procedure April 16, 2011, do you?

20 A. That is what I said in my deposition.

21 Q. Thank you.

22 Mr. Friedman just went over the progression
23 of Mr. Singletary's condition with you in the days
24 after April 18th, 2011.

25 Are you aware of the changes that occurred

1 each day?

2 A. Only from what I read in the testimony that
3 was just read to us.

4 Q. Are you aware that on April 20th, he started
5 having difficulty speaking?

6 A. I believe that's true. And it may have been
7 before that also.

8 Q. Are you aware that he had difficulty
9 swallowing that day?

10 A. Yes. And it may be even prior.

11 Q. Are you aware that he had difficulty eating
12 that day?

13 A. Yes.

14 Q. Are you --

15 A. You're talking about Thursday now?

16 Q. No. I'm talking about Wednesday, April 20th.

17 A. Okay. If you want to read it to me, then
18 I'll acknowledge if that's what it said, absolutely.
19 So I just don't recollect specifically. If you want me
20 to look it up, I can.

21 Q. No, sir. I'm asking -- I assume you came
22 here prepared to testify about this case; is that fair?

23 A. To the best of my recollection, I do.

24 Q. You would agree that his condition in the
25 days following the extraction is an important key in

1 this case, correct?

2 A. That is correct.

3 Q. All right. So on April 19th, he had more
4 swelling than he did the day before, correct?

5 A. I think we've established that, yes.

6 Q. Right. Then on the 20th, we've got at
7 least -- maybe before, but certainly on the 20th, we've
8 got difficulty swallowing, correct?

9 A. Okay. I'm going to grant that to you if you
10 can read it to me. It's not a problem. It's just that
11 some testify that the swallowing difficulty happened
12 earlier and some -- some of the records say it happened
13 later. To me, it's not important. If you want to know
14 precisely, just read it to me, and I'll do exactly what
15 I did.

16 Q. I'm just going on -- I'm asking your
17 understanding of the chart.

18 A. Okay.

19 Q. So --

20 A. That is my understanding.

21 Q. Okay. Were you aware that according to the
22 testimony in this case by Ms. Singletary, that by the
23 evening of April 20th, he started vomiting?

24 A. Okay. I know he was vomiting. Was that --
25 you're talking Wednesday night?

1 Q. I'm talking about Wednesday night.

2 A. I believe it was Wednesday during the night.

3 Q. All right. And then on Thursday, were you
4 aware that in the morning, he was continue -- well,
5 strike that.

6 Were you aware that on the morning of the
7 21st, he had -- Mr. Singletary advised his wife that he
8 didn't sleep the night before?

9 A. That may well have happened.

10 Q. But were you aware of that?

11 A. I don't recall specifically what night. I
12 believe it was that night, and he hardly slept. He was
13 vomiting. He was very, very sick.

14 Q. Very sick. Coughing?

15 A. Possibly with vomiting.

16 Q. Coughing so much that he thought he broke his
17 ribs?

18 A. I don't recall that. If you read it to me,
19 I'll -- I'll acknowledge it.

20 Q. You don't recall any testimony --

21 A. That he broke his ribs? No.

22 Q. You don't recall any testimony, evidence in
23 this case that he broke his -- that he thought he had
24 broken his ribs on the morning of the 21st?

25 A. As I sit here right now, I don't remember the

1 rib fractures, no.

2 Q. Okay. Do you know what time Mr. Singletary
3 finally called 911 on --

4 A. I don't know precisely what time he called
5 911. I'm just glad he did.

6 Q. Have you reviewed the text messages that
7 Ms. Singletary produced in this case?

8 A. I haven't seen those.

9 Q. Were you aware that those indicate that it
10 wasn't until approximately 5:45 in the evening that 911
11 was called?

12 A. I was not aware.

13 Q. So it's your -- your understanding here today
14 that Mr. Singletary didn't call anybody on the 19th as
15 the swelling increased, correct?

16 A. That is correct.

17 Q. He didn't call anybody on the 21st, as the
18 swelling increased, the pain increased, with difficulty
19 swallowing, difficulty eating, difficulty speaking
20 increased, correct?

21 A. Are you referring to the 21st now or the
22 20th?

23 Q. No, I'm talking about the 20th now.

24 A. I heard you say 21st.

25 Q. Well, I meant --

1 A. Maybe you can read it back.

2 Q. My apologies. My apologies. I meant the
3 20th.

4 A. Okay. That's Wednesday.

5 Q. That's Wednesday.

6 A. Yeah. I -- I -- I -- that's my
7 understanding, yes.

8 Q. And no one called.

9 And then on the 21st, when he thinks he's
10 broken his ribs, he's now vomiting, he didn't sleep the
11 night before; is that your understanding?

12 A. Yes.

13 Q. And you don't hold the patient responsible at
14 all for his own health in that situation; is that your
15 testimony?

16 A. That was my testimony, yes.

17 Q. It's my understanding you have no issue or
18 problem with the post-op instructions that were given
19 to Mr. Singletary in this case; is that correct?

20 A. The written ones, that is correct.

21 Q. Okay. You feel those were the proper
22 instructions to be given to someone after an
23 extraction?

24 A. Yes, they were sufficient.

25 Q. And you also believe that the post-op plan