

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
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APPELLANT'S APPENDIX VOLUME 4

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Dated this 21st day of July, 2021.

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EXHIBIT M

EXHIBIT M

EXHIBIT M

1 CASE NO. A-12-656091

2 DEPT. NO. 30

3 DOCKET U

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 * * * * *

7 SVETLANA SINGLETARY,)
8 individually, as the)
9 representative of the Estate)
10 of REGINALD SINGLETARY, and as)
11 parent and legal guardian of)
12 GABRIEL L. SINGLETARY, a)
13 minor,)
14)
15 Plaintiffs,)
16 vs.)
17)
18 TON VINH LEE, DDS,)
19 individually, FLORIDA TRAIVAI,)
20 DMD, individually, JAI PARK,)
21 DDS, individually, TON V. LEE,)
22 DDS, PRO. CORP., a Nevada)
23 Professional Corporation d/b/a)
24 SUMMERLIN SMILES, DOE)
25 SUMMERLIN SMILES EMPLOYEE and)
DOES I through X and ROE)
CORPORATIONS I through X,)
inclusive,)
Defendant.)
_____)

20 REPORTER'S TRANSCRIPT OF JURY TRIAL

21 BEFORE THE HONORABLE JERRY A. WIESE, II

22 DEPARTMENT XXX

23 DATED FRIDAY, JANUARY 17, 2014

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

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1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 17, 2014;

2 8:48 A.M.

3
4 P R O C E E D I N G S

5 * * * * *

6
7 THE COURT: All right. Let's go on the
8 record, Case No. A656091. We're outside the presence
9 of the jury. I know there was a motion for sanctions.

10 MS. PATIN: Yes.

11 MS. GOODEY: We clearly talked about this
12 before, Your Honor. I'll keep it short. It's all in
13 the motion. We filed a motion for sanctions under
14 NRCp 37 and NRS 40 -- 47.240. The basis for that is
15 Defendant Lee and Defendant Summerlin Smiles were
16 requested specifically in interrogatories and requests
17 for production to produce evidence of anybody who could
18 have or would have answered the phone. We heard from
19 Cherisse on, I believe Tuesday, that she met with
20 Defendant Lee and provided him a list of employees at
21 Summerlin Smiles -- or at Distinctive Smiles, informed
22 him that the phones were -- from Summerlin Smiles were
23 forwarded to Distinctive Smiles. She also testified
24 that the last time she spoke with defense counsel was
25 May of 2013.

1 So based on that, she -- they had the
2 information. They should have supplemented their
3 responses to discovery, and they were required to
4 produce it under NRCP 16.1. They have an affirmative
5 duty without waiting on a request from us. That
6 information is clearly relevant. They failed to
7 provide it, and sanctions are appropriate in this case.

8 THE COURT: Okay.

9 MR. FRIEDMAN: Your Honor, first of all, we
10 discussed during Cherisse's testimony the fact that any
11 conversations I've ever had with her are
12 attorney-client privileged. So even beyond that, I
13 don't even know what she was talking about in that
14 regard.

15 Similarly, this issue with Distinctive Smiles
16 and the call forwarding is going to be moot. There's a
17 clear reason why these employees were working there are
18 not relevant in this case. And it's going to be
19 established today by Dr. Lee's testimony. We -- we
20 don't -- the calls were not forwarded to Distinctive
21 Smiles. We provided the names of the two people who
22 were working at Summerlin Smiles. The phone call --
23 the phone number that was called on the alleged date of
24 this phone call, those names were provided to counsel.
25 She deposed one of the people. And when she deposed

1 one of the people, Zadia Lopez, Zadia was asked,
2 essentially, every employee she knows. She gave eight,
3 ten names. None of those people were ever deposed by
4 plaintiffs' counsel. All information has been
5 provided -- all relevant information has been provided
6 to plaintiffs' counsel.

7 THE COURT: Okay.

8 MS. GOODEY: As to the -- the names that were
9 provided, Your Honor, those were provided in their ECC
10 disclosure with any information as to who they might
11 be. In addition, the one employee that Cherisse
12 testified that she did not speak with who was working
13 that day at Distinctive Smiles was Anna Villanova
14 or -- or Villanova -- Villa Urbina or something. She's
15 not even sure of her last name. Anna was not listed in
16 that list of employees that was provided by Zadia. So
17 the fact that Cherisse identified them should have been
18 disclosed to us.

19 THE COURT: Probably should have been, but
20 I'm not going to award sanctions. I'm not going to
21 strike an answer for it.

22 MS. GOODEY: Your Honor, we -- I apologize,
23 Your Honor. We also asked in the event you weren't
24 going to strike that answer, we asked for an adverse
25 inference or -- and if Your Honor feels that that's too

1 severe still, we request the permissive inference
2 provided by Bass-Davis.

3 THE COURT: I don't think so.

4 MS. GOODEY: Thank you.

5 THE COURT: I think the sanctions are always
6 discretionary, and I usually use my discretion to deny
7 them. Sorry.

8 MS. GOODEY: I understand, Your Honor. Thank
9 you.

10 THE COURT: Anything else outside the
11 presence before we get going?

12 MR. VOGEL: Yes, Your Honor. Pursuant to
13 Rule 41B, we'd like to make a motion to dismiss any
14 claim for the hospital bills. No witness testified as
15 to reasonableness, necessity, or causal relationship to
16 the events at issue on this case. So there's no basis
17 or foundation for admission of or consideration of by
18 the jury, the St. Rose Hospital bill.

19 MR. FRIEDMAN: And join.

20 MR. LEMONS: I would join on behalf of
21 Dr. Park as well.

22 MS. PATIN: The plaintiff specifically
23 testified that she received a bill from St. Rose
24 Hospital with regard to all of the charges related to
25 Reginald Singletary's care. She testified to the

1 amount of those St. Rose Hospital bills and what was
2 paid for his care.

3 THE COURT: Yeah, that doesn't get it in.
4 You got to have somebody say it's reasonable and
5 necessary and causally related, right?

6 MS. PATIN: Which there is a COR attached to
7 it, but I understand.

8 THE COURT: It gets you authenticity.
9 Doesn't give you foundation.

10 You asked for summary judgment on that?

11 MR. VOGEL: Just a 41B, you know, should
12 be -- that claim should be.

13 THE COURT: It won't be admitted. I mean, I
14 guess the question is: Can they argue it because the
15 testimony came out about it? I don't think so.

16 MR. VOGEL: I don't think they can.

17 THE COURT: No, I don't think you can.

18 MS. BROOKHYSER: Just one other issue, Your
19 Honor, and perhaps we can have the court reporter do a
20 similar word search like we did yesterday, but I don't
21 believe Dr. Buehler testified that his opinions were to
22 any reasonable degree of economic probability. I think
23 that's required.

24 And also, that the tax returns that he
25 testified regarding were never admitted. There's no

1 foundation to admit them because I don't believe
2 there's any custodian of records to authenticate them.
3 So therefore, I don't believe that the economic damages
4 that he testified to should be submitted to the jury
5 and they should also be dismissed.

6 THE COURT: Think the cases that we talked
7 about yesterday apply equally to economic damages?

8 MS. BROOKHYSER: I would be happy to find a
9 case for Your Honor that -- that states specifically
10 that. But yes, I believe that an expert has to testify
11 to a reasonable degree of economic probability the
12 economic opinions that he's given.

13 THE COURT: You know, all the cases that I'm
14 familiar with are talking about medical treatment.

15 MS. BROOKHYSER: And like I said, Your Honor,
16 I'd be happy to find a case that speaks specifically
17 to --

18 THE COURT: Why don't you look because
19 there's got to be some authority for it before I can do
20 that.

21 MS. BROOKHYSER: Absolutely.

22 THE COURT: You may be right. I'm just not
23 sure.

24 Do you have a position on that?

25 MS. PATIN: Not at this time.

1 THE COURT: Okay. I don't know if there's a
2 case that requires that or not for economic damages.
3 So I will just -- we'll hold that -- hold the decision
4 on that one until you provide me with something.

5 Anything else?

6 MR. FRIEDMAN: Just waiting for my client. I
7 just texted him to see if he was on his way, and he's
8 the first witness.

9 THE COURT: We'll wait a minute.

10 MR. FRIEDMAN: Thank.

11 THE COURT: Off the record.

12 (Whereupon a short recess was taken.)

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. Good
18 morning, folks. We're back on the record Case
19 No. A656091.

20 Do the parties stipulate to the presence of
21 the jury?

22 MS. PATIN: Yes, Your Honor.

23 MR. VOGEL: Yes, Your Honor.

24 MR. FRIEDMAN: Yes, Your Honor.

25 MR. LEMONS: Yes, Your Honor.

1 THE COURT: It's 9:00 o'clock, start right at
2 9:00 o'clock. That's kind of unusual, isn't it?

3 Plaintiff rested yesterday, so we are to the
4 defense case.

5 Mr. Friedman, call your first witness.

6 MR. FRIEDMAN: Thank you, Your Honor. I'd
7 like to call Dr. Lee.

8 THE COURT: Doctor, if you'd come up on the
9 witness stand, remain standing, if you would, raise
10 your right hand.

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

15 THE WITNESS: I do.

16 THE CLERK: Please state your name and spell
17 if for the record, please.

18 THE WITNESS: Ton, T-o-n, Vinh, V-i-n-h, Lee,
19 L-e-e.

20 THE COURT: Thank you, sir. I'm going to ask
21 you to do the same as everybody else and try to speak
22 into that microphone.

23 THE WITNESS: Absolutely.

24

25 /////

1 DIRECT EXAMINATION

2 BY MR. FRIEDMAN:

3 Q. Good morning, Doctor.

4 A. Good morning, Jason.

5 Q. What is your profession?

6 A. I'm a dentist.

7 Q. And what school did you attend for
8 undergraduate training?

9 A. I went to college in UC Irvine. In short,
10 that was the University of California Irvine.

11 Q. And what was your major or majors at
12 University of California Irvine?

13 A. You know, when I went to college, I thought I
14 was going to be a lifetime student. I was in college
15 for five years. Double major, biological science,
16 social science with a minor in psychology.

17 Q. And what dental school did you attend?

18 A. I went to the Indiana University School of
19 Dentistry or, in short, IUSD.

20 Q. Why did you choose Indiana University School
21 of Dentistry?

22 A. You know, Indiana University School of
23 Dentistry is one of the top dental schools in the
24 nation. It was really hard for me to decide leaving
25 Southern Cal or sunny California for the Midwest in the

1 winter. But once I received the acceptance from that
2 school, I was overwhelmed. So it was a school that I
3 had to -- to accept it.

4 Q. Why did you decide to become a dentist?

5 A. You know, I always wanted to be a dentist.
6 Where my parents were born and raised, dental care,
7 dental health is completely neglected. And when I grew
8 up, I said that I wanted to do something to change
9 that, and I wanted to be a dentist.

10 Q. Doctor, did you do any internships while you
11 were at Indiana dental school?

12 A. I did do a lot of externships. And probably
13 the one externship that I could really remember was the
14 VA Hospital in Indiana. I remember I was this
15 third-year, fourth-year dental student and just
16 learning how to be and play at practice and be a real
17 dentist. And the veterans there, the retirees, they
18 were so patient. I mean, they knew we were really
19 practicing on them. They never rushed us. They never
20 yelled at us. I mean, they made it as easy to process
21 as possible as you're learning.

22 Q. Thank you.

23 And during your career, as a student and as a
24 dentist, have you won any awards?

25 A. I have. Last year, I won the peer review in

1 Vegas. I've been voted top dentist for the last seven
2 years. I've also been awarded the consumer research
3 for top dentist the last six years. I've been voted
4 Las Vegas's top dentist for the last several years.

5 And when I was in IUSD, the dental school,
6 every year they award one graduating class member the
7 James L. Moss Scholarship for Academic and Clinical
8 Excellence, and then I was on the dean's honor list
9 both dental school and college.

10 Q. Thank you.

11 Do you have any professional affiliations?

12 A. I do. Since graduating, I have been
13 associated with the American Dental Association,
14 otherwise known as the ADA; the Nevada Dental
15 Association, NDA; and then the Southern Nevada Dental
16 Society.

17 Q. And what is Southern Nevada Dental Society
18 peer review?

19 A. It's a volunteer program that I've chosen to
20 do the last couple of years. It's a program that helps
21 mediate or mediate patient complaints. So, for
22 example, when patients have certain complaints about
23 their dentist or certain dental complaints or issues,
24 there's multiple ways they can handle it. One of the
25 ways they can handle it is -- alternatively is to

1 report or file a complaint to the Nevada boards. A
2 second form of complaint issues or filing is like this
3 litigation here. And alternatively, you can also do
4 peer review. And generally the parameters are the
5 same. We get a file complaint, we listen to both sides
6 of the parties, we do clinical and radiographic
7 examinations, and then a judgment is rendered or
8 verdict is delivered.

9 Q. What is the Southern Nevada Dental Society
10 emergency on-call list?

11 A. That's an on-call list that I also volunteer
12 for since 2004. For example, sometimes patients, their
13 dentists, they're on vacation, they're out of town, or
14 people that live here don't have a dentist. Or, for
15 example, some of the tourists that come to town, if
16 they have a dental emergency, a dental crisis, I
17 believe I'm one of 10 or 12 dentists that -- that
18 volunteer on that program for them.

19 Q. And what is your relationship with Desert
20 Canyon Hospital?

21 A. Desert Canyon Hospital is a rehabilitation
22 hospital and sometimes patients are transferred there
23 to work-related trauma, or, you know, they're rehabbing
24 whatever particular medical issues they have. And
25 let's say they have a dental emergency, I'm actually

1 their only dentist on staff there.

2 Q. So you're the only dentist on staff dealing
3 with emergency care at Desert Canyon Hospital?

4 A. I'm their only dentist on staff there.

5 Q. Doctor, how long have you been practicing as
6 a dentist?

7 A. I graduated in 2000, so almost 14 years now.

8 Q. And where have you practiced as a dentist?

9 A. You know, I have both active licenses in both
10 California and Nevada. In California, I practice in
11 Los Angeles and San Diego. And in 2003 is when I moved
12 up here and I practiced here since then.

13 Q. And you opened your own practice in
14 Las Vegas?

15 A. I did. Not -- not first when I moved here in
16 2003. When I moved here in 2003, I was working for a
17 dental office, and I ended up becoming friends with a
18 dentist that had his own practice, and that practice
19 was around for 30 years. In 2004, the dentist retired.
20 I took over their practice. I was able to grow their
21 practice. In 2005, I was able to add an additional
22 practice on the west side of town which is called
23 Summerlin Smiles.

24 Q. And, Doctor, there's been a lot of testimony
25 about front office versus back office at your practice.

1 Can you describe how Summerlin Smiles is
2 organized.

3 A. Sure. I know it's hard because a lot of
4 times there's this -- a lot of dental jargon that's
5 been used during this week, and we hear back office and
6 front office. So if you kind of consider Summerlin
7 Smiles has -- is a dental office, and there's really
8 two parts to a dental office. We have the front office
9 part and the back office part. The front office part
10 does a lot of clerical work, billings, insurances --
11 those are the departments -- reception, appointments,
12 handling phone calls. The back office is composed of
13 different departments, dental assisting, dental
14 hygiene, and dentists themselves there.

15 Q. So the people working in the back all have
16 dental education and experience?

17 A. Absolutely. If you're a dental assistant,
18 you go to dental assisting school. If you're a dental
19 hygienist, you go to dental hygiene school. And,
20 obviously, you're a dentist or a doctor you go to
21 dental school.

22 Q. And what about the people in the front?

23 A. Not necessarily, 'cause a lot of it is
24 clerical work. When you're insurance billing -- or you
25 can certainly go to medical code billing school, but

1 not necessarily. Most of it can be in-house training,
2 you know, answering phone calls, verifying insurances,
3 billing, accounts receivables, things like that. Those
4 can all be trained in office.

5 Q. Doctor, it's -- I heard some testimony that
6 clinical questions called to the front are referred to
7 the back office.

8 What is -- what is -- what was meant by
9 "clinical"?

10 A. Well, clinical is when you're actually
11 working on someone. Clinical is when I'm actually in a
12 patient's mouth or a dental hygienist or dental
13 assistant is actually in the patient's mouth. So
14 clinical is hands-on care treatment, when we're
15 actively in -- we're actively performing procedures or
16 treating patients.

17 Q. And, Doctor, what days of the week are you at
18 Summerlin Smiles?

19 A. I'm at Summerlin Smiles on Thursdays,
20 Fridays, and Saturdays. Actually, I'm a little bit of
21 a workaholic. I do really enjoy what I do.
22 Distinctive, I'm actually there Monday, Tuesday, and
23 Wednesday. So I'm actually six days a week there.

24 Q. So you work six days a week as a dentist
25 between your two offices?

1 A. I do.

2 Q. Is that the same schedule as in 2011?

3 A. Yes.

4 Q. Did you ever provide any treatment to
5 Reginald Singletary?

6 A. No, I did not.

7 Q. Did you ever meet Reginald Singletary?

8 A. No, I did not.

9 Q. Did you ever provide any treatment to
10 Plaintiff Svetlana Singletary?

11 A. No, I did not. And I think that's why I was
12 a little confused during this week. Mrs. Singletary
13 testified this week that I was her treating dentist and
14 also the dentist that provided some care. In fact, I
15 have never met Mrs. Singletary until in this room this
16 week.

17 Q. Have you ever spoken to Plaintiff Svetlana
18 Singletary?

19 A. No, I have not.

20 Q. When did you first become aware of Reginald
21 Singletary?

22 A. I remember that Saturday. It was March -- or
23 April the 23rd, and Dr. Park had received a call, and
24 at that time he had spoken to Mrs. Singletary and, you
25 know, it was discovered that Mr. Singletary was

1 admitted into the hospital. And the three of us
2 decided to go to the hospital to see if we could answer
3 questions or help. Well, I mean, I went with them
4 trying to help them.

5 Q. So the three of you, meaning yourself,
6 Dr. Park, and Dr. Traivai, you all went to the
7 hospital?

8 A. We did.

9 Q. Did you speak with Mrs. Singletary at the
10 hospital?

11 A. No. I have never spoken to Mrs. Singletary.

12 Q. Did Mrs. Singletary ever tell you that she
13 had called Summerlin Smiles and had a conversation
14 about her husband and was told she could not come into
15 the office?

16 A. Not at all. Again, I've never spoken to
17 Mrs. Singletary at all.

18 Q. At some point, you became aware that she
19 alleges she called Summerlin Smiles on April 18th,
20 2011, two days after the extraction, and had a
21 conversation with whoever answered the phone, correct?

22 A. That's correct.

23 Q. Doctor, can you tell me what the routine
24 procedure is for incoming calls for patients or
25 concerning patient complaints following extraction

1 procedures at your dental office?

2 A. Sure. The assumption is the phone call is
3 made. Front desk would pick up the phone call. If
4 it's clinical questions, it would be referred back to
5 the back office, like in the particular case of a
6 patient complaint. And then the back office would
7 definitely get the doctors.

8 Q. And, Doctor, you heard Zadia Lopez's
9 testimony wherein she said essentially that is what is
10 done, correct?

11 A. That's correct.

12 Q. Do you know what day of the week April 18,
13 2011, was?

14 A. That was a Monday.

15 Q. Were you at Summerlin Smiles on April 18,
16 2011?

17 A. No. I was working at Distinctive Smiles.

18 Q. Doctor, in April of 2011, did Summerlin
19 Smiles have an answering machine?

20 A. It did.

21 Q. Is the message content on the machine the
22 same today as it was in April 2011?

23 A. Both practices have this -- generally the
24 same answering machine. You'll call the office. We'll
25 identify the office you're calling, whether it's open

1 or closed and hours of operation. I'll try to say.
2 This isn't verbatim. So, for example, if you were to
3 call Summerlin Smiles, it would say, Hello. Thank you
4 for calling Summerlin Smiles. Our office is closed.
5 Our office hours are Tuesday through Saturday from 9:00
6 to 4:00 p.m. Distinctive Smiles is open Monday,
7 Tuesday, and Wednesday from 8:00 to 4:00 p.m.

8 And then it goes on to say, If you are a
9 patient of record and this is a dental emergency,
10 please call the dental emergency pager at
11 (702) 264-1447. Please leave your name, your number,
12 and a detailed message. We'll get back to you as soon
13 as possible. And they'll repeat, again, for
14 clarification.

15 And obviously, if it's not a dental
16 emergency, the message continues to say that, If this
17 isn't a dental emergency, please leave your name,
18 contact information, and the nature of your call, and
19 we will get back to you in the next business day. And
20 then, Thank you. Have a wonderful day.

21 Q. Doctor, have you ever timed the length of the
22 message?

23 A. I did.

24 Q. How long is it?

25 A. It's one minute and seven seconds.

1 Q. Why did you time it?

2 A. You know, I couldn't understand this issue
3 about this two-minute phone call. I know that when you
4 call our office, let alone any medical or dental
5 office, the phone call always takes longer than two
6 minutes, because the call is made, the call is picked
7 up and, you know, we're going to introduce our office.
8 The staff is going to introduce themselves. They're
9 going to ask who the caller is or if there's a patient
10 in question. We're going to identify the patient
11 because we want to make sure the spelling's correct,
12 the date of birth is correct, and then we'll ask the
13 nature of those questions. That all alone and then
14 pulling records takes longer than two minutes. So I
15 couldn't understand what this two-minute phone call is.
16 So I did time my voice mail, and I said, wait a minute,
17 it's a minute and seven seconds.

18 My only assumption is that on cell phones, if
19 anything is over 60 seconds and plus 1. So it's 61
20 seconds, it's going to show up as two minutes on a cell
21 phone bill.

22 MS. PATIN: Objection, Your Honor.
23 Speculation.

24 THE COURT: Sustained.

25 /////

1 BY MR. FRIEDMAN:

2 Q. Doctor, what is the reason why you have an
3 answering machine answer calls when Summerlin Smiles is
4 closed?

5 A. Well, simply enough, if patients are calling
6 in, we can't anticipate if it's going to be clinical
7 questions. If a doctor's not in that facility and
8 anybody picks up the phone call and it's a clinical
9 question, there's no point. So that's why I have an
10 emergency pager, so that you can contact me at all
11 times.

12 You know, it's -- it's always been like that.
13 So it's hard for me to understand when a doctor's
14 actually not in the facility for a patient to pick up a
15 patient phone call, barring the fact that it would be a
16 clinical question, what would staff say? Well, no,
17 Doctor's not in. Please dial the emergency pager.
18 They allow the voice mail to pick up because there's
19 directions in the voice mail where calls should be
20 forwarded -- or placed not forwarded.

21 Q. Doctor, you heard your former officer
22 manager's testimony that she left your practice because
23 of differences with you in terms of billing and
24 management.

25 Is that the way you remember it?

1 A. That's correct. You know, she's been with me
2 for about eight years. And, you know, the practice was
3 growing and, you know, we begin to have different
4 departments and organization. So when we first
5 started, the practice was really small. You know,
6 everybody knew everybody. And as the practice grew and
7 we've organized the practice into like, again, front,
8 back, and different departments within the front and
9 back. She -- you know, she and I disagreed and -- on
10 the direction of the future where the practice should
11 be. And in the end, you know, we just parted ways.

12 Q. And you heard your former office manager's
13 testimony wherein she discussed a call forwarding
14 system wherein calls were forwarded from Summerlin
15 Smiles to Distinctive Smiles.

16 A. That's correct.

17 Q. But back in April of 2011, were the calls
18 being forwarded from Summerlin Smiles to Distinctive
19 Smiles on Mondays?

20 A. That was impossible. The reason why that's
21 not possible is January 18, 2011, we switched phone
22 companies from CenturyLink to Cox Cable. Our phone
23 system is something called a Hunt Group Service System.
24 So a Hunt Group Service System allowed multiple lines.
25 We have four phone lines, a fax line, and -- and

1 Internet line. Cox Cable and call forwarding are not
2 compatible. So when we signed up with Cox, they did
3 tell us, You're not going to have call forwarding at
4 all, but you're going to have faster Internet service,
5 and that's the reason why we switched from CenturyLink
6 to Cox Cable. So we gave up call forwarding to have
7 faster Internet service.

8 Q. So the Cox Cable system, in conjunction with
9 this Hunt Group multiline phone system you had, the Cox
10 service could not forward calls with that type of
11 system.

12 A. No. It's technologically not capable. Now,
13 I'm not an IT expert or a phone expert, but it wasn't
14 capable.

15 Q. And before January 18, 2011, were the calls
16 forwarded from Summerlin Smiles to Distinctive Smiles?

17 A. Absolutely.

18 Q. And then after January 18, 2011, Summerlin
19 Smiles switched to Cox and call forwarding was no
20 longer available to be used at Summerlin Smiles.

21 A. That's correct.

22 Q. Doctor, what is the emergency pager?

23 A. The emergency pager is a paging system by
24 which you can reach me 24/7. It's generally -- I work
25 Monday through Saturday. You can reach me six days a

1 week clinically during business hours. But, you know,
2 that service is so that after hours, you can reach me
3 Sundays when I'm not working. You can reach me -- it's
4 really for dental emergencies or even questions after
5 any procedures. It's the direct line or direct way by
6 which you can contact me.

7 Q. Who carries the emergency pager?

8 A. I do. I've carried the pager 95 percent of
9 the time. The only 5 percent of the time is because
10 I'm on vacation, I hand it over to Dr. Park and
11 Dr. Traivai. If all three doctors are on vacation, we
12 have colleagues in town and the emergency care is
13 referred to him.

14 To be honest, during this whole week, I've
15 carried the emergency pager with me all week long.
16 It's always been in my breast pocket because, again,
17 the office isn't working, the doctors are here, and we
18 want to make sure that, you know, things are still
19 accessible.

20 Q. Doctor, did you get any emergency pages from
21 plaintiff or Mr. Singletary on April 18, 2011?

22 A. No, I did not.

23 Q. Did you ever get an emergency page from
24 plaintiff or Mr. Singletary at any time?

25 A. I wish I did.

1 Q. Doctor, is the emergency pager number listed
2 anywhere besides on the answering machine?

3 A. It is. It's listed on our website. It's
4 listed on our discharge instructions or what we
5 consider post-op instructions, and it's listed on
6 prescriptions if patients are given prescriptions.

7 Q. Do you know if any prescriptions were written
8 for Mr. Singletary?

9 A. I do. They were for Vicodin and ibuprofen.

10 Q. And what is the protocol of the office in
11 regards to post-op or discharge instruction forms?

12 A. Generally, written and verbal instruction
13 forms. And, obviously, if there's any changes to that,
14 then just call the emergency pager.

15 Q. And as you said, the emergency pager number
16 is on those written instructions that are provided to
17 the patients.

18 A. That's correct.

19 Q. So on April 16, 2011, after the extraction,
20 Mr. Singletary would have walked out of the office with
21 three documents containing the emergency phone number
22 of Summerlin Smiles.

23 A. That's correct.

24 Q. And it's your testimony that Summerlin Smiles
25 was closed on Monday, April 18, 2011.

1 A. That's correct.

2 Q. Does any staff ever go into Summerlin Smiles
3 on Mondays?

4 A. They do. Sometimes staff come in to do
5 clerical work, accounting work, insurance work. So
6 sometimes they come in to do those -- the -- the --
7 like I said, the clerical, the inventories, things like
8 that.

9 Q. And did you do any investigation to see if
10 any of the staff was in the office on April 18, 2011?

11 A. I did. When I first heard of the lawsuit,
12 one of the things I did was I wanted to find out which
13 staff was there and if they picked up any phone calls.
14 The only two staff members that were there was Cherisse
15 Lesperance and Zadia Lopez.

16 Q. And what are their job titles?

17 A. Cherisse Lesperance was my office manager,
18 and Zadia Lopez is my lead assistant or my back office
19 manager.

20 Q. And you asked them both about picking up any
21 phone call on April 18, 2011?

22 A. I did.

23 Q. And they both told you they did not?

24 A. Yes.

25 Q. What is the protocol for when a patient calls

1 the office when someone actually answers?

2 A. Again, our protocol always simply is -- is,
3 you know -- you know, call comes in, front desk would
4 pick up the phone. They would identify the office that
5 you're calling to. The staff is going to, you know,
6 introduce themselves. We are going to ask who the
7 caller is or the patient in question. And then we
8 always go through the standard, you know, patient's
9 name, spelling of name, date of birth, and the nature
10 of the call. If it's billing, it goes to the billing
11 department. If it's -- or insurance goes to the
12 insurance department. But if it's clinical, it
13 actually goes to the back.

14 Q. Why is that protocol followed?

15 A. It's standard office protocol. It's -- you
16 know, we verify to protect patients identity, security,
17 HIPAA laws. And obviously we don't pick up phone calls
18 if we don't know who we're talking to and obviously to
19 address correctly the nature of the call. Those are
20 just standard office protocol.

21 Q. And what is the protocol for when a patient
22 calls in with a dental complaint, as plaintiff said she
23 did?

24 A. Again, if doctors were there, front desk
25 would pick up the phone. That would go to the back,

1 and the back would get the doctors, and we would
2 address the issues.

3 Q. What would have occurred on Tuesday,
4 April 19, 2011 -- hold on a second, Doctor.

5 What would have occurred on Tuesday,
6 April 19, 2011, if the plaintiff communicated that the
7 swelling had worsened since the day before and was
8 migrating to the other side of the neck?

9 A. Oh, I would have referred him immediately to
10 the emergency room.

11 Q. Are you aware of any phone call from
12 plaintiff on Tuesday, April 19, 2011?

13 A. No, I am not.

14 Q. Are you aware of any phone call from
15 plaintiff on Wednesday, April 20, 2011?

16 A. No, I'm not.

17 Q. Are you aware of any phone call from
18 Mr. Singletary on either of those two days?

19 A. No, I'm not.

20 Q. And until Dr. Park spoke with you about this
21 situation on April 23rd, 2011, you had never met Mr. or
22 Mrs. Singletary or had any awareness of either of them
23 as patients or otherwise.

24 A. That's correct.

25 MR. FRIEDMAN: Thank you, Doctor. I have

1 nothing further.

2 THE COURT: Mr. Vogel.

3 MR. VOGEL: Just briefly.

4

5 CROSS-EXAMINATION

6 BY MR. VOGEL:

7 Q. Good morning, Dr. Lee.

8 A. Good morning.

9 Q. There's been some discussion in this case
10 about the relationship of Dr. Traivai and Dr. Park to
11 your practice.

12 A. Yes.

13 Q. And it's my understanding they're independent
14 contractors.

15 Is that your understanding as well?

16 A. That's correct.

17 Q. So is it your understanding they don't hire
18 any of your staff?

19 A. That's correct.

20 Q. Or train them?

21 A. That's correct.

22 Q. They don't supervise them?

23 A. That's correct.

24 MR. VOGEL: That's all I've got for you.

25 Thank you.

1 THE WITNESS: Thank you.

2 MR. VOGEL: Actually, take that back.

3 BY MR. VOGEL:

4 Q. One of the other things that was discussed

5 was -- by Ms. Lesperance was that Dr. Traivai doesn't

6 do tooth extractions; is that accurate?

7 A. No, that's not.

8 Q. Does she do all types of teeth extraction?

9 A. Absolutely.

10 Q. Has that always been the case?

11 A. It's always up to her discretion.

12 Q. Do you know where Ms. Lesperance got that

13 from?

14 A. No, I don't.

15 Q. How about root canals? Does she do root

16 canals?

17 A. At her discretion.

18 Q. Do you know where Ms. Lesperance was coming

19 up with that?

20 A. No, I do not.

21 Q. So since she's been at your practice, has she

22 always done the procedures she feels comfortable doing,

23 including extractions, root canals, fillings?

24 A. Yeah. Dr. Traivai is a very competent

25 dentist. She diagnoses, treats absolutely on her own.

1 It's done at her discretion.

2 MR. VOGEL: Thank you, Doctor.

3 THE WITNESS: Welcome.

4 THE COURT: Mr. Lemons?

5 MR. LEMONS: I have nothing additional to
6 that, Your Honor. Thank you.

7 THE COURT: Ms. Patin.

8

9 CROSS-EXAMINATION

10 BY MS. PATIN:

11 Q. Good morning.

12 A. Good morning.

13 Q. Dr. Lee, you're the president and owner of
14 Summerlin Smiles, correct?

15 A. That's correct.

16 Q. And you're also the president and owner of
17 Distinctive Smiles as well, correct?

18 A. That's correct.

19 Q. And the tooth extraction that was performed
20 on Reginald Singletary by Dr. Park and Dr. Traivai was
21 done at your clinic, Summerlin Smiles, correct?

22 A. That's correct.

23 Q. And that was on April 16th of 2011?

24 A. That's correct.

25 Q. Now, Dr. Park and Dr. Traivai, they don't pay

1 any overhead expenses at your offices, correct?

2 A. They have before.

3 Q. They've paid overhead expenses?

4 A. When you -- when you talk about overhead

5 expenses, you mean specifically do they bring in their

6 own equipment?

7 Q. Do they pay any bills that come into

8 Summerlin Smiles or Distinctive Smiles?

9 A. No, they don't.

10 Q. Dr. Park and Dr. Traivai don't pay rent or

11 lease office space from you, correct?

12 A. No, they don't.

13 Q. Dr. Park and Dr. Traivai, they engage in the

14 same field of practice as you, correct?

15 A. That's correct.

16 Q. They're both dentists in your office?

17 A. Yes.

18 Q. And you're also a dentist in your office?

19 A. Yes.

20 Q. And all of you provide dental care to the

21 patients that come into the office?

22 A. That's correct.

23 Q. And you provide their work space for them to

24 do their dental job?

25 A. That's correct.

1 Q. And for them to provide dental care to the
2 patients that come into your office?

3 A. That's correct.

4 Q. And you provide their equipment for them to
5 perform their job?

6 A. Not all their equipment.

7 Q. They provide their own equipment?

8 A. There's certain equipment they choose to use.
9 Absolutely.

10 Q. What equipment do they provide?

11 A. You're going to have to ask them.

12 Q. What equipment do you provide?

13 A. The typical. The equipments is the chairs,
14 sometimes the lights, obviously the lights, the X ray
15 units.

16 Q. You don't provide any dental instruments to
17 either Dr. Park or Dr. Traivai?

18 A. Of course.

19 Q. You also provide them with staff in order for
20 them to perform their jobs, correct?

21 A. That's correct.

22 Q. And you pay them per day for the work that
23 they do, correct?

24 A. That's correct.

25 Q. And for the days that they work at Summerlin

1 Smiles or -- and/or Distinctive Smiles?

2 A. That's correct.

3 Q. And my understanding is that Dr. Traivai

4 works at Summerlin Smiles Thursday through Saturday.

5 A. That's correct.

6 Q. And you pay her for the days that she works.

7 A. That's correct.

8 Q. And she exclusively works for your clinic

9 Summerlin Smiles, correct?

10 A. There's no exclusion in her contract. She's

11 obligated to work at any office.

12 Q. Are you aware of any other offices that she's

13 ever worked at during the time she's been working at

14 Summerlin Smiles?

15 A. I've never asked her.

16 Q. All the forms that are provided to patients,

17 they're generated by your office Summerlin Smiles,

18 correct?

19 A. That's correct.

20 Q. And any forms that are provided by -- that

21 are provided to patients at Distinctive Smiles, are

22 generated by -- or have the name Distinctive Smiles on

23 them, correct?

24 A. That's correct.

25 Q. That includes post-op instructions, informed

1 consent, and any other forms that are given to the
2 patients?

3 A. That's correct.

4 Q. Dr. Traivai and Dr. Park don't develop their
5 own forms or provide patients with their own forms,
6 correct?

7 A. You mean their own forms, do they modify the
8 post-op instructions or do we tailor to what they're
9 saying?

10 Q. Dr. Traivai and Dr. Park don't -- haven't
11 produced their own forms that are then given to
12 patients, correct?

13 A. That's correct.

14 Q. Are you aware that -- you're familiar with
15 your website, correct?

16 A. Yes, I am.

17 Q. And you're aware that both Dr. Park and
18 Dr. Traivai are advertised as dentists at Summerlin
19 Smiles on your website?

20 A. That's correct.

21 Q. And on the home page, all three of your names
22 come up at the top?

23 A. Sure. That's correct.

24 Q. In fact there's a section under "Meet Us"
25 where there's a description about you, your educational

1 background, your experience, correct?

2 A. That's correct.

3 Q. And there's also a description and a picture
4 of Dr. Park about his education, his experience.

5 A. That's correct.

6 Q. There's no description of Dr. Traivai.

7 Why is that?

8 A. I've asked her for a picture for the longest
9 time. She doesn't like taking pictures. We've
10 struggled with this for the last three years. I mean,
11 us guys, we don't really care what we look like. And
12 so she's so particular about her pictures. So I'm
13 still struggling with her.

14 Q. There's also another section on your website
15 that's identified as "Urgent Care."

16 Are you familiar with that section?

17 A. To the best of my knowledge.

18 Q. And under the Urgent Care section, what it
19 says is that "If you are having a dental emergency,
20 please contact one of our two offices," correct?

21 A. That's correct.

22 Q. And it lists Summerlin Smiles and Distinctive
23 Smiles and the telephone numbers, correct?

24 A. That's correct.

25 Q. And it lists Summerlin Smiles telephone

1 number as (702) 579-7645, correct?

2 A. That's correct.

3 Q. And that's the same phone number that

4 Summerlin Smiles had back -- back in March and April of

5 2011?

6 A. That's correct.

7 Q. And there's also a section under Urgent Care

8 on your website, that --

9 MR. VOGEL: Your Honor, may we approach?

10 THE COURT: Sure. Come on up.

11 (A discussion was held at the bench,

12 not reported.)

13 THE COURT: Overruled.

14 BY MS. PATIN:

15 Q. We were just talking about the Urgent Care

16 section on your website, correct?

17 A. That's correct.

18 Q. And under the Urgent Care section, it also

19 lists how to handle dental emergencies, correct?

20 A. That's correct.

21 Q. And under dental emergencies, you have listed

22 "Infection or Swollen Face," correct?

23 A. That's correct.

24 Q. And under that section, you have "call your

25 dentist as soon as possible"; is that correct?

1 A. That's correct.

2 Q. And nowhere in the Urgent Care section does
3 it says -- does it say to call an emergency pager; is
4 that correct?

5 A. That's correct.

6 Q. Doesn't say to call the ER, correct?

7 A. No, it does not.

8 Q. And it doesn't say to call an urgent care,
9 correct?

10 A. No, because when they call us, we'll assess
11 the situation clinically and we'll refer to our office
12 immediately or to the ER room.

13 Q. And it doesn't say to call the urgent care,
14 correct?

15 A. It depends on the nature of the emergency.
16 If somebody's temporary fell off -- if a temporary
17 crown fell off, you're not going to call urgent care.
18 It wouldn't make sense. It's such a broad general
19 thing.

20 I know you're trying to generalize it, but
21 I'm trying to answer the question so that it would be
22 very specific. If it's an emergency situation,
23 everybody's situation in terms of what's emergency care
24 is how they deem it to be. If a temporary pops off,
25 that's an emergency to some patients. They're

1 supersensitive. They'll call us and we're not going to
2 say go to urgent care. That's misleading.

3 Q. I completely understand that, but what I'm
4 asking you is whether or not your website specifically
5 states to call the urgent care?

6 A. No, it does not.

7 Q. Thank you, Dr. Lee.

8 A. You're welcome. I apologize. I don't mean
9 to be terse in terms of --

10 Q. There's no question pending.

11 A. I know. I just apologize. I don't mean to
12 be terse.

13 THE COURT: Okay, guys. We can't both talk
14 at the same time because the court reporter can't
15 record you both.

16 THE WITNESS: I'm sorry.

17 THE COURT: Wait for a question.

18 BY MS. PATIN:

19 Q. At Summerlin Smiles and Distinctive Smiles,
20 the dentists are allowed to instruct staff with regard
21 to handling of patients, correct?

22 A. Could you speak that again.

23 Q. Are your dentists allowed to instruct the
24 staff as to the handling of patients?

25 A. What do you mean by "instruct the staff" to

1 handle patients?

2 Q. Well, you said that you have front office
3 staff at Summerlin Smiles, correct?

4 A. That's correct.

5 Q. And they're in charge for clerical work,
6 billing and insurance, phone calls, scheduling?

7 A. That's correct.

8 Q. So your dentists aren't allowed to instruct
9 the staff with regard to phone calls, scheduling,
10 billing insurance, or clerical work?

11 A. I'm not in the room with them.

12 Q. You're not in the room with who?

13 A. With the doctors when they're in the rooms
14 with the patients clinically.

15 Q. I'm not talking about with the patients. I'm
16 talking about your staff, your front office staff.

17 Are the dentists not allowed to speak with
18 your front office staff and instruct them with regard
19 to handling of patients?

20 A. No, they're allowed to speak to staff.

21 Q. And the Summerlin Smiles staff, they assist
22 the dentists with the patients, correct?

23 A. That's correct.

24 Q. And the dentists at Summerlin Smiles have to
25 rely on the staff to answer the phones, correct?

1 A. That is correct.

2 Q. And schedule patients?

3 A. That's correct.

4 Q. And properly transfer calls?

5 A. That's correct.

6 Q. And handle or properly handle patient

7 complaints?

8 A. Absolutely.

9 Q. And it's your office procedure or protocol

10 that when -- that each and every employee on staff is

11 trained to advise patients, depending on the severity

12 of the complaint, to speak with a dentist, come into

13 the dental office, or proceed directly to an urgent

14 care or emergency room, correct?

15 A. When you say they're trained, are they

16 trained or do they understand that there's a protocol

17 and a process, by -- what that happens by?

18 Q. I'm asking if that's your protocol in the

19 office.

20 A. Yes.

21 Q. So then --

22 A. I'm sorry. Could you --

23 Q. Your office protocol --

24 A. Uh-huh.

25 Q. -- is that each and every employee on staff

1 is trained to advise patients, depending on the
2 severity of the complaint, to speak with a dentist,
3 come into the dental office, or proceed directly to an
4 urgent care or emergency room, correct?

5 A. That's correct. But the front desk picks up
6 the phone calls. If you're asking do they understand
7 the process, that's what I'm answering.

8 Q. I'm asking if that's your policy and protocol
9 at Summerlin Smiles.

10 A. Yes.

11 Q. Thank you.

12 A. Uh-huh.

13 Q. That includes Zadia Lopez; is that correct?

14 A. That is correct.

15 Q. And you were here during Ms. Lopez's
16 testimony, correct?

17 A. That's correct.

18 Q. And she testified at the time that she wasn't
19 trained with regard to incoming calls at Summerlin
20 Smiles, correct?

21 A. You know, when -- when you're sitting up
22 here, you're nervous. You're trying to listen to the
23 questions, you're trying to --

24 Q. Dr. Lee, I'm just asking if you were
25 present --

1 A. No. I am --
2 Q. -- during Zadia's Lopez's testimony.
3 A. Absolutely. I'm answering your question.
4 Q. I'm not asking you to speculate with regard
5 to what she was thinking or how she was feeling --
6 A. Sure.
7 Q. -- when she was on the stand.
8 A. Sure.
9 Q. What I'm asking is if you recall her
10 testimony where she stated that she's an employee at
11 Summerlin Smiles, correct?
12 A. That's correct.
13 Q. And she was never trained on how to answer
14 incoming calls, correct?
15 A. That's correct.
16 Q. How many Spanish-speakers do you have in your
17 office?
18 A. Are you asking now or asking then?
19 MR. FRIEDMAN: Objection, Your Honor.
20 Relevance.
21 THE COURT: What's the relevance?
22 MS. PATIN: Credibility of the witness and
23 the testimony.
24 THE COURT: Come on up for a minute.
25 /////

1 (A discussion was held at the bench,
2 not reported.)
3 THE COURT: Go ahead. Overruled.
4 BY MS. PATIN:
5 Q. How many Spanish-speakers do you have in your
6 office at Summerlin Smiles?
7 A. When?
8 Q. If a call was made --
9 A. I'm sorry, Counsel. I -- I asked, when are
10 you asking?
11 Q. Back in April of 2011.
12 A. I don't recall.
13 Q. When a call -- if a call comes into Summerlin
14 Smiles and an employee answers the phone, it's the
15 employee's responsibility to advise the patient to
16 speak with a dentist, correct?
17 A. The front desk picks up the phone, transfers
18 to the back office, and it goes to the doctor.
19 Q. And so it's the front office staff's
20 responsibility to advise the patient to speak with a
21 dentist, correct?
22 MR. FRIEDMAN: Objection. Misstates his
23 testimony.
24 THE COURT: Sustained.
25 /////

1 BY MS. PATIN:

2 Q. Dr. Lee, we've already established that it's
3 your protocol at the office to -- that each and every
4 employee on staff is trained to advise patients
5 depending on the severity of the complaint to speak
6 with a dentist, correct?

7 A. That's correct.

8 Q. To come into the dental office, correct?

9 A. That's correct.

10 Q. Or proceed directly to an urgent care or
11 emergency room?

12 A. That's correct.

13 Q. Okay. And so if a call comes into Summerlin
14 Smiles and an employee, such as the front office staff,
15 answers the phone, it's the employee's responsibility
16 to advise the patient to speak with a dentist, correct?

17 MR. FRIEDMAN: Objection. Misstates his
18 testimony.

19 THE COURT: I'm going to let her follow-up.
20 Overruled.

21 THE WITNESS: Could you -- I'm trying to
22 follow what you're asking. Could you repeat that
23 question one more time, please. I'm sorry.

24 BY MS. PATIN:

25 Q. Sure. If a call comes into the office at

1 Summerlin Smiles, it's the employee, the front office
2 staff's responsibility who answers the phone to advise
3 the patient to speak with a dentist, correct?

4 A. They don't advise the patient. They transfer
5 the call to the back and that goes to the doctors.

6 Q. It's their responsibility to, depending on
7 the severity of the complaint, have the caller speak to
8 a dentist, correct?

9 A. They don't assess the -- the -- the severity
10 of the complaint because they don't do clinical issues.

11 Q. Okay. In your answers to interrogatories in
12 this case, you identified Cherisse as the person most
13 knowledgeable concerning handling of patient
14 complaints, correct?

15 A. Yes.

16 Q. And you identified Dr. Traivai and Dr. Lee as
17 the persons most knowledgeable with regard to patient
18 exams, X rays, extractions, cleanings, and
19 administration of prescriptions, correct?

20 A. I'm sorry. You --

21 MR. FRIEDMAN: Your Honor --

22 THE WITNESS: -- you said Dr. Lee.

23 MR. FRIEDMAN: Hold on a second. Objection.
24 Your Honor, may we approach?

25 THE COURT: Sure.

1 (A discussion was held at the bench,
2 not reported.)

3 THE COURT: Rephrase it.

4 BY MS. PATIN:

5 Q. Dr. Lee, with regard to this case, the person
6 most knowledgeable concerning new patient exams,
7 X rays, extraction of wisdom teeth, cleaning, and
8 administration of prescriptions for medication, those
9 would be the dentists, correct? Dr. Park and
10 Dr. Traivai?

11 A. That's correct.

12 Q. And it's also office policy to document the
13 dental records concerning any incoming patient calls,
14 correct?

15 A. That's correct.

16 Q. And that includes patient calls regarding
17 complaints following a procedure, correct?

18 A. That's correct.

19 Q. Do you have any written policies and
20 procedures in your office?

21 A. That's just standard office protocol.

22 Q. Do you have any written policies and
23 procedures in your office?

24 A. No.

25 Q. So you don't have any written policies and

1 procedures concerning incoming calls?

2 A. No.

3 Q. And you don't have any written policies and
4 procedures concerning patient complaints, correct?

5 A. No.

6 Q. And the dental records from Summerlin Smiles,
7 you're familiar with those, correct?

8 A. Yes.

9 Q. And there's no call documented from Reginald
10 Singletary or Svetlana Singletary on April 18th of
11 2011, correct?

12 A. None that I'm aware of.

13 Q. And on April 18th of 2011, you were actually
14 working at Distinctive Smiles.

15 A. That's correct.

16 Q. And it's your testimony that the telephone
17 calls weren't forwarded at that time, correct?

18 A. It's impossible.

19 Q. And you were here during the testimony of
20 Cherisse Lesperance, correct?

21 A. Absolutely.

22 Q. And she's your office manager for eight years
23 before she left the office, correct?

24 A. She's my front office -- yes, that's correct.

25 Q. She was your office manager, correct?

1 A. Yes, that's correct.

2 Q. And she testified that the telephone calls
3 were forwarded on that Monday, April 18th of 2011,
4 correct?

5 A. I don't recall her testimony.

6 Q. You don't recall her testifying that the
7 calls were forwarded?

8 A. I have been here all week. I heard a lot of
9 testimony. If you ask me specifically -- if you could
10 read that to me, I'd answer for you.

11 Q. If she testified that the telephone calls
12 were forwarded on April 18th of 2011, it's your
13 testimony today that she was untruthful on the stand,
14 correct?

15 A. Say it -- I'm sorry. Could you repeat --

16 MR. FRIEDMAN: Objection. Argumentative.

17 THE COURT: Overruled.

18 BY MS. PATIN:

19 Q. If Ms. Cherisse Lesperance testified that the
20 telephone calls at Summerlin Smiles were forwarded on
21 Monday, April 18th of 2011, it's your testimony here
22 today that Cherisse Lesperance was untruthful on the
23 stand, correct?

24 A. I'm going to answer that, and if you wouldn't
25 mind, let me explain.

1 Q. I'm asking you whether or not she would have
2 been untruthful if she testified to the fact that the
3 calls were forwarded on Monday, April 18th of 2011 from
4 Summerlin Smiles to Distinctive Smiles?

5 MR. FRIEDMAN: Objection, Your Honor.

6 THE WITNESS: The answer --

7 MR. FRIEDMAN: The witness is trying to
8 explain.

9 THE WITNESS: The answer to that question --

10 MR. FRIEDMAN: It's not -- Doctor, Doctor,
11 Doctor.

12 THE COURT: You can't interrupt.

13 THE WITNESS: Sorry. I apologize. Sorry.

14 MR. FRIEDMAN: Your Honor, the witness would
15 like to explain, obviously that is not the only choice
16 available to him.

17 MS. PATIN: My question is a yes or no.

18 THE COURT: If he can't answer with a yes or
19 no, he just has to say that.

20 THE WITNESS: I can't answer a yes or no to
21 that question.

22 BY MS. PATIN:

23 Q. You were never notified that Svetlana
24 Singletary called the office concerning complaints of
25 Reginald Singletary, correct?

1 A. That's correct.

2 Q. Is it your understanding that Dr. Park nor
3 Dr. Traivai were ever notified of any incoming call
4 from Svetlana Singletary concerning complaints of
5 Reginald Singletary?

6 A. That's correct.

7 Q. You never received a call from an employee at
8 Summerlin Smiles concerning Reginald Singletary's
9 complaints on April 18th of 2011, correct?

10 A. That's correct.

11 Q. And while you were working at Distinctive
12 Smiles on April 18th of 2011, no call was transferred
13 to you from Svetlana Singletary, correct?

14 A. You can't transfer calls from Summerlin
15 Smiles to Distinctive Smiles.

16 Q. If the call came into Distinctive Smiles --

17 A. It --

18 Q. -- no call --

19 A. It can't -- that's what I'm trying to
20 explain. It can't -- you can't call Summerlin Smiles
21 and have it somehow transferred to Distinctive Smiles.
22 And -- and like I said, I apologize, I'm not being
23 facetious or rude. I'm answering your question. It's
24 not possible.

25 Q. I understand. No call was forwarded to you

1 at Distinctive Smiles while you were working on
2 April 18th of 2011, correct?

3 A. That's correct.

4 Q. And you never saw Reginald Singletary
5 following the extraction, correct?

6 A. That's correct.

7 Q. No appointment was ever scheduled for
8 Reginald Singletary between April 18th of 2011 and
9 April 21st of 2011, correct?

10 MR. FRIEDMAN: Objection --

11 THE WITNESS: That's correct.

12 MR. FRIEDMAN: -- calls for speculation.

13 THE COURT: Overruled. He can say what he
14 knows.

15 THE WITNESS: Could you repeat that again,
16 please.

17 BY MS. PATIN:

18 Q. No appointment was ever scheduled for
19 Reginald Singletary between April 18th of 2011 and
20 April 21st of 2011.

21 A. None that I was aware of.

22 Q. And you never prescribed any antibiotics to
23 Reginald Singletary, correct?

24 A. Mr. Singletary was not a patient of mine.

25 Q. So you never prescribed him any antibiotics?

1 A. That's correct.

2 Q. You never prescribed him any pain medication
3 after his extraction, correct?

4 A. I can't prescribe antibiotics or pain
5 medications to a patient that I haven't seen or I don't
6 know a record of.

7 Q. Correct. So you didn't prescribe any
8 medication to Reginald Singletary.

9 A. No, that's correct.

10 Q. You never provided any treatment to Reginald
11 Singletary.

12 A. That's correct.

13 Q. You never performed the extraction on
14 Reginald Singletary, correct?

15 A. That's correct.

16 Q. It's your testimony that on Monday,
17 April 18th of 2011, there was a recording on the
18 telephone at Summerlin Smiles, correct?

19 A. That's correct.

20 Q. In order for that recording to pick up, does
21 the phone have to ring?

22 A. Yes.

23 Q. How many times does it ring before the
24 recording picks up?

25 A. I don't remember. I don't sit there and

1 listen to the amount of rings.

2 Q. And how long did you say the recording
3 lasted?

4 A. I think it was a minute and seven seconds.

5 Q. And you actually timed the recording that was
6 on the telephone on April 18th of 2011?

7 A. I did when I heard about this phone call.

8 Q. When did that recording change?

9 A. I don't recall.

10 Q. So you don't recall if it changed before or
11 after April 18th of 2011?

12 A. To the best of my knowledge, I don't recall.

13 Q. My office sent you interrogatories which are
14 questions that you had to answer, correct?

15 A. That's correct.

16 Q. And you answered those questions under oath,
17 under penalty of perjury, correct?

18 A. You mean in front of -- under oath as in --
19 in a deposition or in this courtroom?

20 Q. You signed a verification page, correct?

21 A. That's correct.

22 Q. Saying that your responses to any questions
23 that I asked you in the interrogatories, that you
24 declared under penalty of perjury, under the laws of
25 the State of Nevada, that the foregoing are true and

1 correct.

2 A. No, that's correct. I -- you mean like this
3 process where I raise my right hand?

4 Q. It is very similar.

5 A. Yes. That's correct. Sorry.

6 Q. So your understanding is that you were
7 supposed to be truthful in your answers to
8 interrogatories?

9 A. That's correct.

10 Q. And at the time, I asked you who could have
11 or would have answered the phone on April 18th of 2011,
12 correct?

13 A. I don't recall.

14 Q. Allow me to refresh your recollection.

15 A. Sure.

16 Q. In Interrogatory No. 20, I asked you, "Please
17 identify any and all employees and/or agents of
18 defendant, Ton V. Lee, DDS, Professional Corp., dba
19 Summerlin Smiles, that could have or would have
20 answered incoming calls at the office on April 18th of
21 2011".

22 A. That's correct.

23 Q. Do you recall that question?

24 A. That's correct.

25 Q. And in response to that question, you

1 identified Cherisse Lesperance, the office manager,
2 correct?

3 A. That's correct.

4 Q. And Zadia Lopez, front office staff, correct?

5 A. That's correct.

6 Q. Zadia Lopez is actually back office staff,
7 correct?

8 A. That's correct.

9 Q. You didn't identify the fact that Summerlin
10 Smiles had an answering machine, correct?

11 MR. FRIEDMAN: Objection. Relevance. That
12 wasn't a question that was asked.

13 THE COURT: Sustained.

14 BY MS. PATIN:

15 Q. You never provided any information with
16 regard to whether or not Summerlin Smiles had an
17 answering service on April 18th of 2011, correct?

18 A. Was that a question being asked?

19 MR. FRIEDMAN: Objection, Your Honor. That
20 question wasn't asked.

21 THE WITNESS: I'm confused.

22 THE COURT: Sustained.

23 THE WITNESS: You didn't ask that question.

24 BY MS. PATIN:

25 Q. I'm asking the question now.

1 MR. FRIEDMAN: And I object.

2 THE WITNESS: But you're asking about
3 interrogatories then.

4 THE COURT: Okay, guys.

5 MS. PATIN: May we approach?

6 THE COURT: Sure.

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

9 BY MS. PATIN:

10 Q. I'm not asking you with regard to your
11 answers to interrogatories.

12 I'm asking you as you sit here today, you
13 never provided any information with regard to an
14 answering machine at Summerlin Smiles, correct?

15 MR. FRIEDMAN: Objection --

16 THE WITNESS: You never asked.

17 MR. FRIEDMAN: -- Your Honor, the question
18 was never asked of him.

19 THE WITNESS: You never asked me.

20 THE COURT: Sounds like he gave the same
21 answer that you did.

22 BY MS. PATIN:

23 Q. And you never provided any information with
24 regard to a recording that was on any telephone at
25 Summerlin Smiles, correct?

1 MR. FRIEDMAN: Objection. The question was
2 never asked of him.

3 THE WITNESS: You never asked. You've never
4 asked me.

5 THE COURT: Sustained.

6 BY MS. PATIN:

7 Q. Dr. Lee, you never provided the names of any
8 employees at Summerlin Smiles or Distinctive Smiles
9 having any knowledge about the facts and circumstances
10 of this case or the telephone call on April 18th of
11 2011, correct?

12 A. Are you asking me this --

13 MR. FRIEDMAN: Objection. Objection.

14 THE WITNESS: Sorry.

15 MR. FRIEDMAN: That's partially irrelevant as
16 to Distinctive Smiles, and he already testified he did
17 provide information, the two people who were working on
18 the date of the alleged phone call.

19 THE COURT: Three words.

20 MR. FRIEDMAN: Sorry.

21 MS. PATIN: May we approach?

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

24 THE COURT: I guess there's an objection
25 pending. It's sustained.

1 BY MS. PATIN:

2 Q. Dr. Lee, you were present during Cherisse
3 Lesperance's testimony, correct?

4 A. That is correct.

5 Q. And Ms. Lesperance testified that the -- that
6 time punch -- well, that the telephone calls were
7 forwarded to Distinctive Smiles on April 18th of 2011,
8 correct?

9 A. If that's what you're saying in her
10 testimony, to the best of my knowledge, that's correct.

11 Q. And because the telephone calls -- she
12 testified that because the telephone calls were
13 forwarded to Distinctive Smiles from Summerlin Smiles
14 on April 18th of 2011, that time punch cards were
15 printed for those employees, correct?

16 A. I'm sorry. You said time punch cards?

17 Q. Yes.

18 A. We -- we don't time punch cards. We just
19 clock in and clock out on the computer. It's not a
20 time punch card.

21 Q. When you clock in and clock out on the
22 computer at Summerlin Smiles, it's identified as a time
23 punch card, correct?

24 A. Sure. Yeah, that's correct.

25 Q. And she provided you with those time punch

1 cards for the employees at Distinctive Smiles, correct?

2 MR. FRIEDMAN: Objection. Attorney-client
3 privilege, attorney work product.

4 THE COURT: Come up for a minute.

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

7 THE COURT: Overruled as to this question,
8 but I would reask it.

9 BY MS. PATIN:

10 Q. Dr. Lee, did Ms. Cherisse Lesperance provide
11 you with any time punch cards for the employees at
12 Distinctive Smiles?

13 A. For Distinctive Smiles?

14 Q. From April 18th of 2011.

15 A. She does payroll. I don't do payroll.
16 She -- sometimes she'll put that on my desk if that's
17 what you're asking me. But did I look at it? She does
18 payroll. You're asking me about payroll, right?

19 Q. I'm not asking you about payroll. I'm asking
20 you whether or not Mrs. Lesperance provided you with
21 time punch cards for the employees at Distinctive
22 Smiles on April 18 of 2011.

23 A. She may have.

24 Q. And it's your testimony that Cherisse
25 Lesperance and Zadia Lopez were the only employees at

1 Summerlin Smiles on April 18th of 2011 at about
2 10:30 a.m., correct?

3 A. To the best of my knowledge, they were there
4 on that day.

5 Q. Were you provided with time punch cards for
6 both Cherisse Lesperance and Zadia Lopez?

7 A. She handles payroll. The assumption is if
8 you said they placed that on my desk or in my office,
9 sure.

10 Q. You produced time punch cards for Zadia Lopez
11 and Cherisse Lesperance in this case, correct?

12 A. If you said I produced it, I printed that out
13 on the computer, it came out, and I gave it to you. So
14 I guess I produced it.

15 Q. So when you printed it out on the computer,
16 you looked at it, correct?

17 A. I didn't print it out myself.

18 MR. FRIEDMAN: Objection. Assumes facts not
19 in evidence.

20 THE COURT: I don't know if it does based on
21 his last answer. Overruled.

22 BY MS. PATIN:

23 Q. When you printed out the time punch cards,
24 you looked at the time punch cards to make sure that
25 they were for Zadia Lopez and Cherisse Lesperance,

1 correct?

2 A. I didn't look at the time punch cards.

3 Q. You just printed them and handed them --

4 A. I didn't print them.

5 Q. Where did they come from?

6 A. Cherisse.

7 Q. Cherisse printed the time punch cards for her
8 and Zadia Lopez?

9 A. Yes.

10 Q. And those are the two time punch cards that
11 were provided in this case?

12 A. Yes.

13 Q. And those were provided by you, correct?

14 A. By my company, sure. By me.

15 MS. PATIN: Your Honor, I think my client is
16 asking for a break, and I think this would be a good
17 breaking point, if we could take a quick five-minute
18 break.

19 THE COURT: Sure.

20 Ladies and gentlemen, during our break,
21 you're instructed not to talk with each other or with
22 anyone else, about any subject or issue connected with
23 this trial. You are not to read, watch, or listen to
24 any report of or commentary on the trial by any person
25 connected with this case or by any medium of

1 information, including, without limitation, newspapers,
2 television, the Internet, or radio. You are not to
3 conduct any research on your own, which means you
4 cannot talk with others, Tweet others, text others,
5 Google issues, or conduct any other kind of book or
6 computer research with regard to any issue, party,
7 witness, or attorney, involved in this case. You're
8 not to form or express any opinion on any subject
9 connected with this trial until the case is finally
10 submitted to you.

11 Take five or ten minutes.

12 (The following proceedings were held
13 outside the presence of the jury.)

14 THE COURT: We are outside the presence of
15 the jury. Anything we need to put on the record,
16 Counsel?

17 MS. PATIN: No, Your Honor.

18 MR. VOGEL: No.

19 MR. FRIEDMAN: No, Your Honor.

20 THE COURT: Okay. Off the record.

21 (Whereupon a short recess was taken.)

22 THE MARSHAL: All rise for the presence of
23 the jury.

24 (The following proceedings were held in
25 the presence of the jury.)

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

4 Do the parties stipulate to the presence of
5 the jury?

6 MS. PATIN: Yes, Your Honor.

7 MR. VOGEL: Yes, Your Honor.

8 MR. FRIEDMAN: Yes, Your Honor.

9 MR. LEMONS: Yes, Your Honor.

10 THE COURT: Thank you. Doctor, just be
11 reminded you're still under oath.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: You guys do your best to try not
14 to talk over each other.

15 MS. PATIN: And I'll try to slow down.

16 THE COURT: You may proceed.

17 BY MS. PATIN:

18 Q. Dr. Lee, you testified that there was a
19 recording on the Summerlin Smiles phone on April 18th
20 of 2011, correct?

21 A. That's correct.

22 Q. And that recording -- part of that recording
23 asked the patient to leave a message, correct?

24 A. That's correct.

25 Q. And if a message was left, it would be

1 documented in the dental records, correct?

2 A. If a phone call is made -- you're --
3 answering machines aren't -- when we get an answering
4 machine or get a voice mail, we don't document it on
5 the phone record. Phone records -- or clinical records
6 are only documented when you actually speak to a
7 patient.

8 Q. So if a message is left on the telephone when
9 the office is closed, and the office staff checks the
10 answering machine, they don't document the incoming
11 calls in the dental records?

12 MR. FRIEDMAN: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: We call the patient.

15 BY MS. PATIN:

16 Q. So it's not documented in the phone records
17 if there's a message left on the answering machine?

18 A. When we actually get in contact with the
19 patient, we document that we called or left a voice
20 mail, yes.

21 Q. So yes --

22 A. The answer's yes.

23 Q. It's only documented once a telephone call is
24 made back to the patient, correct?

25 A. That is correct.

1 Q. It's not documented that a message was
2 actually left on the -- on the answering machine.

3 A. Could you repeat that, because I know what
4 you're trying to ask, but I'm trying to answer you as
5 easy as possible or simply as possible.

6 Q. It's not documented in the dental records
7 that a message was left on the answering machine,
8 correct?

9 A. That's not correct. Because when you call
10 our office, any answering machine, we will call back.
11 It's always documented.

12 Q. And I'm asking if the message is documented
13 in the dental records.

14 A. Oh, yes. I'm sorry. Yes.

15 Q. Was there any message documented in this case
16 on April 18th of 2011?

17 A. Not that I'm aware of.

18 Q. Did you ever return a message from Svetlana
19 Singletary from a call on April 18th of 2011?

20 A. No.

21 Q. Are you aware if anyone returned a call to
22 Svetlana Singletary on April 18th of 2011?

23 A. No.

24 Q. Dr. Traivai and Dr. Park performed a routine
25 extraction on Reginald Singletary on April 16th of

1 2011, correct?

2 A. That's correct.

3 Q. And you would agree that the procedure should
4 be coded properly, correct?

5 MR. FRIEDMAN: Objection. Relevance.

6 THE COURT: I'm going to allow it, see where
7 it goes.

8 THE WITNESS: That's correct.

9 BY MS. PATIN:

10 Q. And if it was a routine extraction that was
11 performed on Reginald Singletary on April 18th, 2011,
12 it would be improper to code it as a surgical
13 extraction, correct?

14 MR. FRIEDMAN: Objection. Relevance.

15 THE COURT: What's the relevance of this?
16 Come on up, guys.

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

19 THE COURT: Objection's sustained.

20 BY MS. PATIN:

21 Q. Dr. Lee, you testified that after Svetlana
22 Singletary called Summerlin Smiles on that Saturday,
23 April 23rd of 2011, you went to the hospital along with
24 Dr. Park and Dr. Traivai, correct?

25 A. That's correct.

1 Q. And at the time, you saw Svetlana Singletary
2 at the hospital, correct?

3 A. I did not.

4 Q. You never saw her?

5 A. No.

6 Q. You never spoke to her?

7 A. No.

8 Q. You never spoke to Reginald Singletary?

9 A. No.

10 Q. You never spoke to the doctors?

11 A. No.

12 Q. But you went there to help.

13 A. I went there -- I was -- I went there right
14 after Dr. Park and Dr. Traivai. We went together, but
15 I went there after them, yes.

16 Q. And you testified that you went there to
17 help, correct?

18 A. Absolutely.

19 Q. But you never spoke to anyone at the
20 hospital?

21 A. No, I did not.

22 Q. You also testified that Dr. Traivai performs
23 dental procedures at her discretion, correct?

24 A. That's correct.

25 Q. But you don't monitor all procedures that are

1 performed by Dr. Traivai, do you?

2 A. That's correct.

3 Q. And you don't monitor her schedule, correct?

4 A. She monitors her own schedule.

5 Q. You don't monitor her schedule.

6 A. No, I don't.

7 Q. So you don't know if she's performing or

8 scheduled for a tooth extraction versus a root canal

9 versus a cleaning versus a new patient exam, correct?

10 A. It's on the computer.

11 Q. But you don't monitor that, do you?

12 A. No, I don't.

13 Q. You don't look at that on a daily basis, do

14 you?

15 A. No, I don't.

16 Q. You also testified that all back office goes

17 to dental assistant school, correct?

18 A. They generally should, yes.

19 Q. Your specific testimony was that all back

20 office -- all of your back office staff goes to dental

21 school, correct?

22 MR. FRIEDMAN: Objection. Misstates his

23 testimony.

24 THE WITNESS: They don't go to dental school.

25 Remember, they go to dental assistant school.

1 BY MS. PATIN:

2 Q. I'm sorry. Dental assistant school. My
3 mistake.

4 A. I'm sorry -- say that -- you said all back
5 staff, though.

6 THE COURT: Hold on, guys.

7 Doctor, if your attorney makes an objection,
8 you have to let him make the objection for the record
9 and let me rule on it before you interrupt and try to
10 answer. Okay?

11 THE WITNESS: Sure.

12 THE COURT: I know that you have a desire to
13 answer the question, but if he's trying to -- trying to
14 protect your interests by making objections, you have
15 to let him object; you have to let me rule.

16 THE WITNESS: I know. I do that all the
17 time. I'm sorry.

18 THE COURT: Please don't.

19 THE WITNESS: Absolutely.

20 THE COURT: The objection's sustained. But I
21 think you already rephrased the question, so try again.

22 BY MS. PATIN:

23 Q. Okay. Dr. Lee, you testified that all back
24 office goes to dental assistant school, correct?

25 A. That's not correct. You said all back

1 office. Remember, back office is dental hygienist,
2 dentists, and -- and doctors -- or dental assistants.
3 They all go to different schools.

4 Q. With regard to your dental assistants in the
5 office, all of your dental assistants go to dental
6 assistant school, correct?

7 A. Are you asking me now or you asking me then?

8 Q. I'm asking you now.

9 A. All with the exception of one.

10 Q. Who's that?

11 A. Jonathan Bradley.

12 Q. And that's now?

13 A. B-r-a-d-l-e-y.

14 Q. And that's currently?

15 A. That's currently.

16 Q. Back in March and April --

17 A. I apologize. That's Cheyenne Wells. Jon
18 goes to dental assistant school. Cheyenne Wells.
19 Sorry.

20 Q. Back in March and April of 2011, was there
21 anyone in your back office who was a dental assistant
22 who had not gone to dental assistant school?

23 A. I don't recall.

24 Q. Back in 2008, were there any dental
25 assistants in your back office that did not go to

1 dental assistant school?

2 MR. FRIEDMAN: Objection. Relevance.

3 MS. PATIN: May we approach?

4 THE COURT: Sure.

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

7 THE COURT: Objection's overruled.

8 BY MS. PATIN:

9 Q. Dr. Lee, back in 2008, were there any dental
10 assistants in your back office that had not gone to
11 dental assistant school?

12 A. I don't recall.

13 Q. Do you recall whether or not Zadia Lopez went
14 to dental assistant school?

15 A. I don't recall.

16 Q. Did you hire Zadia Lopez?

17 A. I did.

18 Q. And you hired her to be a dental assistant in
19 your office?

20 A. That's correct.

21 Q. And she performed dental assistant procedures
22 from -- for about a year and a half after she was hired
23 at Summerlin Smiles?

24 A. She's had previous dental assisting
25 experience.

1 Q. But she never went to dental assistant
2 school?

3 MR. FRIEDMAN: Objection. Misstates his
4 testimony.

5 THE WITNESS: I don't recall.

6 THE COURT: Overruled.

7 THE WITNESS: I don't recall.

8 BY MS. PATIN:

9 Q. You don't recall if she went to dental
10 assistant school?

11 A. I don't recall.

12 Q. But it's your understanding that Zadia Lopez
13 did perform dental assistant tasks in your office for
14 that first year and a half she was working there,
15 correct?

16 A. That's correct.

17 MS. PATIN: No further questions at this
18 time.

19 THE COURT: Mr. Friedman, redirect.

20 MR. FRIEDMAN: Thank you.

21

22 REDIRECT EXAMINATION

23 BY MR. FRIEDMAN:

24 Q. Just a few things.

25 Doctor, plaintiff counsel asked you about

1 Cherisse Lesperance's testimony regarding the
2 forwarding of phone calls from Summerlin Smiles to
3 Distinctive Smiles.

4 Why do you believe Cherisse testified the way
5 she did?

6 MS. PATIN: Objection as to speculation.

7 MR. FRIEDMAN: I asked his belief.

8 THE COURT: Yeah, but it -- I think it's
9 still speculation. Sustained.

10 BY MR. FRIEDMAN:

11 Q. Are you aware of whether or not a
12 postoperative appointment was scheduled for
13 Mr. Singletary at the time of the extraction?

14 MS. PATIN: Objection --

15 THE WITNESS: I am aware --

16 MS. PATIN: -- outside the scope of cross.

17 THE COURT: Overruled.

18 THE WITNESS: I am aware that he had a
19 postoperative extraction. I believe it was April 23rd,
20 2011, for a post-op -- post-op visit.

21 BY MR. FRIEDMAN:

22 Q. So he had an appointment scheduled one week
23 post extraction.

24 A. Yes, he did.

25 Q. And is it the protocol of your office to

1 return all messages that are left on the Summerlin
2 Smiles's answering machine?

3 A. Yes, it is.

4 Q. And once those calls are returned, then they
5 are documented in the chart?

6 A. That's correct.

7 MR. FRIEDMAN: Thank you. I have nothing
8 further.

9 MR. VOGEL: No questions.

10 MR. LEMONS: No questions, Your Honor.

11 THE COURT: Anything else?

12 MS. PATIN: No questions.

13 THE COURT: Ladies and gentlemen, any
14 questions for Dr. Lee?

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

17 THE COURT: All right, folks, there's one
18 question that I'm not going to ask. We'll mark that
19 the Court's next in order.

20 One question I will ask: Doctor, what is the
21 follow-up care provided to a patient by Summerlin
22 Smiles after tooth extraction -- after a tooth
23 extraction?

24 THE WITNESS: It depends on the type of
25 extraction that's been performed. If it's a routine

1 extraction, the protocol always is to have the one-week
2 post-op. And it's really at the discretion of the
3 doctor. If it's a surgical extraction, then, again,
4 would be the one-week post-op and a phone call,
5 depending on, like I said -- the question is so open,
6 because surgical -- I'm not an oral surgeon. You know,
7 I don't typically do surgical extractions at all. So
8 when you ask me that question, generally, the -- the
9 protocol would be a one-week post-op, and depending on
10 the doctor who's performing the procedure, would
11 generally call the patient. Again, depending on the
12 nature of the procedure, if it's a routine extraction,
13 it's a one-week post-op.

14 THE COURT: Okay. Thank you, Doctor.

15 We'll mark that the Court's next in order.

16 Mr. Friedman, any follow-ups based on that
17 question?

18 MR. FRIEDMAN: No, Your Honor.

19 MR. VOGEL: No, Your Honor.

20 THE COURT: Mr. Lemons?

21 MR. LEMONS: No, Your Honor.

22 THE COURT: Ms. Patin?

23 MS. PATIN: Yes, Your Honor.

24 THE COURT: Go ahead.

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Q. I wasn't able to hear you very clearly, but you said if it was a surgical extraction, the typical follow-up would be a one-week post-op appointment as well as a phone call, correct?

Q. And you also stated you have never performed a surgical extraction, correct?

Q. Do you do surgical extractions in your office?

A. I have before. Absolutely.

Q. And when you performed a surgical extraction in your office, did you follow your protocol of a one-week post-op and a telephone call after the surgical extraction?

MR. FRIEDMAN: Objection. Relevance.

THE COURT: Sustained.

BY MS. PATIN:

Q. Routine and surgical extractions are performed in your office, correct?

1 A. That's correct.

2 Q. And they're performed by the dentists in your
3 office, both you, Dr. Traivai, and Dr. Park, correct?

4 A. Depending on the doctor, sure.

5 MS. PATIN: No further questions.

6 THE COURT: Anything else?

7 MR. FRIEDMAN: No, Your Honor.

8 MR. VOGEL: No, Your Honor.

9 THE COURT: Thank you, Doctor.

10 Mr. Friedman, your next witness.

11 MR. VOGEL: Yes, just one second.

12 Your Honor, we're going to call Dr. Christian
13 Sandrock.

14 THE COURT: Are you calling him or is he
15 calling him?

16 MR. VOGEL: He's a joint witness.

17 THE COURT: Okay. Doctor, we're going to ask
18 you to step up here on the witness stand. If you
19 would, remain standing, raise your right hand, please.

20 THE CLERK: You do solemnly swear the
21 testimony you're about to give in this action shall be
22 the truth, the whole truth, and nothing but the truth,
23 so help you God.

24 THE WITNESS: I do.

25 THE CLERK: Please state your name and spell

1 it for the record, please.

2 THE WITNESS: May I sit?

3 THE COURT: You may.

4 THE WITNESS: Okay. Christian Sandrock.

5 Last name is -- first name is Christian,

6 C-h-r-i-s-t-i-a-n. Last name Sandrock,

7 S-a-n-d-r-o-c-k.

8 THE COURT: Thank you.

9

10 DIRECT EXAMINATION

11 BY MR. VOGEL:

12 Q. Good morning, Doctor.

13 A. Morning.

14 Q. How are you?

15 A. I'm okay. I'm a little tired, but okay.

16 Q. Work late last night?

17 A. Till about 1:00 a.m. Not so bad.

18 Q. All right. Well, if you could, for the jury,

19 just so we can introduce you here, could you give a

20 little bit of an explanation of your education,

21 training, and experience. Just a thumbnail sketch,

22 please.

23 A. Sure. No problem. So I'm a physician, so an

24 M.D., and I trained in pulmonary critical care and

25 infectious disease medicine. So I did my undergraduate

1 degree back in New Jersey where I was raised and went
2 to Rutgers University. Then went to Georgetown Medical
3 School for med school, and then moved out here in 1996.
4 Have to think about that for a minute. So 1996 to
5 Davis, California, where I did my residency for three
6 years and then my subspecialty training in infectious
7 disease, pulmonary and critical care medicine for an
8 additional five years. And that, I would finish, if I
9 add that out, that was 2004 when I finished that. I
10 then did a year in Lund, Sweden, where I did a master's
11 in public health after that and then joined the faculty
12 at the University of California Davis thereafter.

13 Q. All right. And what is your current
14 occupation?

15 A. So my current occupation is I'm a -- the full
16 title is associate professor of medicine, but
17 essentially I'm a professor at UC Davis School of
18 Medicine.

19 Q. What's involved in being an associate
20 professor of medicine?

21 A. It's a mixture of different things, but
22 essentially I break -- my time is broken up between
23 patient care, teaching, some administrative roles, and
24 then -- and then research. And I can break down the
25 percentages if you like.

1 Q. Sure.

2 A. It's about -- roughly about 40 to 50 percent
3 patient care, and most of that is performed in
4 hospital. I do have a clinic where I see patients once
5 a week. So some of it is on an outpatient setting, but
6 mostly that's inpatient. The teaching occurs both in
7 classroom settings as well as bedside when I'm doing my
8 patient care. And then I spend the rest of my time, I
9 would say about 25 percent time is -- is research, and
10 another 25 percent time is administrative. I'm
11 director of the ICU at UC Davis, so that's the
12 administrative component.

13 Q. Are you board certified?

14 A. I am.

15 Q. What areas of medicine are you board
16 certified?

17 A. Currently I'm board certified in infectious
18 disease, pulmonary medicine, and critical care
19 medicine.

20 Q. And what does it mean to be board certified?

21 A. After you finish your subspecialty training,
22 so for me those five years, you sit for an examination.
23 And if you pass that examination, you are board
24 certified. And then every ten years, you have to
25 retake that examination. And in the intervening ten

1 years, they have -- it's called maintenance of
2 certification. You have a number of duties that you
3 will do to show that you're keeping up on your work.

4 So there will be like small projects, and,
5 you know, patient satisfaction surveys. They have
6 practice tests you take. So every ten years, you take
7 the test, but in between you keep up work for that.

8 Q. All right. Have you been published at all in
9 the areas of infectious diseases?

10 A. Yes, I have.

11 Q. I've gone through your CV. You have numerous
12 presentations as well?

13 A. Yes.

14 Q. Have you authored any chapters in any
15 textbooks of medicine?

16 A. Yes, I have.

17 MR. VOGEL: Your Honor, at this time, I'd
18 like to ask that Dr. Sandrock be recognized as an
19 expert in infectious diseases, internal medicine, and
20 pulmonary diseases.

21 THE COURT: Any objection?

22 MS. PATIN: No, Your Honor.

23 THE COURT: He'll be so recognized.

24 MR. VOGEL: Thank you.

25 /////

1 BY MR. VOGEL:

2 Q. Doctor, you were asked to review some records
3 in this case; is that a fair statement?

4 A. That's correct, yes.

5 Q. And do you recall what you were asked to do
6 with respect to this case?

7 A. My recollection is that I was given a number
8 of records and I was asked to render my opinion as to
9 the series of events and the intertwining infection
10 that occurred with Mr. Singletary.

11 Q. And do you recall what records you reviewed?

12 A. I don't remember -- remember them all
13 offhand. I did have them on my statement. But I did
14 review records from his dental office, from both his
15 visit and -- and extraction, as well as the emergency
16 room and hospital visits after that, and some
17 depositions.

18 Q. Very good.

19 And you authored a report as well?

20 A. I did, yes.

21 Q. Is that right there? We've got a binder
22 behind you there. Want you to have your report for
23 you. It's the smaller binder.

24 A. Okay. Okay.

25 Q. And if you look in there, there's an

1 Exhibit B.

2 A. Yes.

3 Q. Is that your report?

4 A. Yes, it is.

5 Q. Okay. And that sets out the records that you
6 reviewed?

7 A. Yes. So the records listed there, yes.

8 Q. So the dental charts, the St. Rose Hospital
9 records, radiology films, certificate of death, autopsy
10 report, things along those lines?

11 A. That's correct.

12 Q. All right. Did you also review some
13 literature to make sure that what you were -- the
14 opinions you're offering were current and up to date?

15 A. That's correct. I referenced -- excuse me.
16 I reviewed and referenced two pieces of literature, one
17 was a clinical practice guideline for surgical
18 prophylaxis and the other was prevention of infective
19 endocarditis.

20 I do apologize. If I speak fast, let me
21 know. It's my New Jersey upbringing, so ...

22 Q. Why did you review these two pieces of
23 medical literature?

24 A. The guidelines are often change -- are
25 frequently changing. So as medical societies meet on a

1 regular basis, they may or may not come out with new
2 recommendations, or new evidence may come out in
3 between their meetings that may support or refute
4 recommendations that they had in the past. So these
5 were just more recent documents, reviewing those --
6 those medical groups' recommendations.

7 So they essentially get together and review
8 all the literature and issue a recommendation, which is
9 a guideline, not -- you know, certainly not law, but
10 makes some recommendations.

11 Q. And now, the literature that you reviewed,
12 did that confirm the opinions that you're going to be
13 offering here today?

14 A. I would say confirmed and supported, yes.

15 Q. Are all the opinions you're going to be
16 offering here today to a reasonable degree of medical
17 probability?

18 A. Yes, sir, they are.

19 Q. All right. What I'd like to do here is start
20 going through your expert report. It looks like it's
21 broken down into five basic opinions, correct?

22 A. Correct.

23 Q. All right. If you could, for the jury, could
24 you explain your first opinion with respect to
25 Mr. Singletary's condition, what happened to him.

1 A. Sure. My first opinion was that
2 Mr. Singletary -- Mr. Singletary prepared -- presented,
3 excuse me, to the hospital with and subsequently died
4 from severe and overwhelming sepsis from Ludwig's
5 angina associated with a tooth extraction on April 16th
6 of 2011.

7 I guess the simple explanation of that is, is
8 that he had a severe infection that essentially
9 extended down through his neck and into his
10 mediastinum, which is the middle portion of our body
11 here in between both of the lungs. That's sort of
12 where our heart and the great vessels like the aorta
13 sit, and that infection sort of traveled down into this
14 area. And with many overwhelming infections -- I know
15 in the news today we're hearing a lot about influenza
16 and people dying from the flu, and that's a classic
17 viral infection. As with many infections, the body
18 ramps up a pretty large immune response. And with that
19 immune response, you can get lots of your organs
20 damaged and injured. So, for example, the lungs can be
21 damaged and harmed, the kidneys, the liver and so
22 forth.

23 And in my review of the medical records, he
24 had findings of sepsis and severe septic shock which
25 means not only was the infection localized here, it had

1 spread throughout his body. His blood pressure was
2 very low and couldn't be sustained without medications.
3 His heart, you know, stopped working and was working
4 irregularly. Lungs -- the lungs are infected. The
5 kidneys shut down, the liver shut down, and so forth.
6 And that -- that, you know, infection was a process
7 that -- where the bacteria traveled down the fascial
8 planes or the tissue planes into the chest to cause
9 this overwhelming infection.

10 Q. Was this a rapid process for Mr. Singletary?

11 A. Yes, very rapid.

12 Q. And how rapid?

13 A. You know, I think in my statement here, I
14 said the exact time of onset is unknown. It's hard to
15 say. But in reviewing the records, he -- if I recall
16 correctly, he, you know, certainly had the extraction
17 on Saturday. I think it was April 16th if my dates are
18 correct.

19 Q. You are.

20 A. He had swelling and pain which was present on
21 Monday. And then certainly on Tuesday, he still had,
22 you know, some pain and swelling that he reported. But
23 Tuesday evening into Wednesday is when his clinical
24 symptoms started to -- started to advance. And it was
25 probably at that point, I think on Tuesday, the 7 --

1 Tuesday, the 19th, where things began to -- to probably
2 advance quickly.

3 Ludwig's angina or, you know, any form of
4 rapid necrotizing mediastinitis is -- it's very rapid.
5 And usually that's something we look at in terms of
6 hours and minutes and not in terms of days.

7 Q. We'll get to more detail in a second.

8 So let's move on to your second opinion. I
9 think -- have you finished with your first one?

10 A. Yes, sir.

11 Q. Okay. So what was your second opinion?

12 A. My second opinion was that Mr. Singletary did
13 not require antibiotics in the pre- and immediate
14 postoperative period on April 16th, 2011.

15 Q. Okay. Why did Mr. Singletary not require
16 antibiotics before the extraction on April 16th?

17 A. So there's a number of different reasons why
18 we may use or -- you know, an oral surgeon may use
19 antibiotics in a dental extraction. And on the
20 reference of my literature, the most common is that you
21 have either a prosthetic device in place or a heart
22 valve issue or abnormality. So, you know, many people
23 have a valve replacement, so one of their mitral aortic
24 valves may be replaced. That, you know, valve is a
25 mechanical or prosthetic material or a bioprosthetic

1 material. And that means it's at risk for having
2 bacteria settle in on it.

3 Many of us know -- if you know people have
4 artificial knees or hips, they may have a pacemaker in
5 place, any device like that is at risk for having
6 bacteria settle on it. So if you're to undergo, you
7 know, a dental extraction, you may -- the fancy term we
8 use is translocate. But as the tooth comes out,
9 bacteria may slip into our bloodstream and happens when
10 we brush our teeth and when we have colonoscopies,
11 these are common things. But at-risk people, you know,
12 with valvular problems in their heart and so forth are
13 at increased risk for the bacteria settling on the
14 valve or in other parts of their body. So the evidence
15 based on those guidelines I mentioned suggests that you
16 would give antibiotics prior to the procedure to reduce
17 that risk. And in the review of Mr. Singletary's
18 records, he did not report any such medical history
19 that would put him at risk for this.

20 Secondly, at least, you know -- and, again,
21 I'm not a dentist, but, you know, we work with oral
22 surgeons regularly in my profession.

23 Q. Let me stop you there.

24 A. Sure.

25 Q. Is it common for dentists and oral surgeons

1 to contact you with infectious disease issues?

2 A. You know, depends what you mean by common.
3 But we get called regularly. So I would say we have
4 a -- you know, an ear, nose, and throat team, and we do
5 have an oral facial surgeon as part of that. So if
6 they have a more advanced infection, we get consulted
7 regularly. We may get calls exactly about what we're
8 talking about now since I do infectious disease and do
9 a lot of, you know, heart surgery and postoperative
10 heart management as part of my critical care time. We
11 will regularly get called that, you know, I have this
12 patient and, you know, they might have an allergy to
13 penicillin, what's the antibiotic you would recommend
14 at this point? Or would you give antibiotics in these
15 certain situations? So we do get called -- called
16 regularly for that.

17 And secondly is that, at least based on the
18 notes, I could see from the dentist's office as well as
19 the -- you know, just the immediate notes I was able to
20 record, is he didn't have an active acute infection in
21 his oropharynx.

22 So he was having a tooth extraction, but, you
23 know, usually if someone has a big abscess or swelling
24 or pus draining out, those are instances where we would
25 actually go ahead and, you know, potentially give

1 antibiotics prior to the extraction as opposed to a
2 tooth that, you know, doesn't necessarily have that --
3 that level of swelling.

4 Some people may have varying degrees of
5 gingival or gum irritation or swelling. That, you
6 know, is not something we normally will give
7 antibiotics for. Some dentists do as their practice,
8 but it's not normally part of our recommendation.

9 Q. All right. And has there been a concern in
10 the medical community with organisms or bugs becoming
11 resistant to antibiotics?

12 A. Absolutely, yeah.

13 Q. And so are antibiotics prescribed as much now
14 as they used to be?

15 A. Actually, they're not. It's much less. And
16 one of my jobs which, you know, there's many at the
17 university, but one is we actually have implemented an
18 antimicrobial stewardship service. It's a fancy term,
19 but, you know, you're a steward of good practice. And
20 we actually review all the antibiotic starts, the
21 reasons why they're started on our patients in the
22 hospital and clinic. And if it doesn't seem that it's
23 indicated, we actually pull back because some of the
24 side effects, whether it's anything from a rash and an
25 allergic reaction all the way through to a

1 drug-resistant organism are pretty profound. So we've
2 actually cut back our use dramatically in the last
3 decade.

4 Q. So with respect to Mr. Singletary, was there
5 any reason to give him antibiotics immediately after
6 the extraction?

7 A. No. From the records that I could tell, no.

8 Q. For the reasons you just stated?

9 A. No. That's correct, yeah.

10 Q. Okay. And what was your third -- third
11 opinion that you offered in this case?

12 A. So my third opinion was that the
13 administration of antibiotics to Mr. Singletary by
14 Dr. Traivai on April 18th would not have prevented --

15 (Clarification by the Reporter.)

16 THE WITNESS: I know medical words, too,
17 which is hard.

18 -- prevented the progression towards severe
19 necrotizing mediastinitis and death.

20 BY MR. VOGEL:

21 Q. Okay. So just so I'm clear, on the 18th,
22 antibiotics wouldn't have changed his outcome?

23 A. Yeah. This is -- so, you know, in medicine,
24 we obviously can't say everything with 100 percent
25 certainty. You know, medicine is hard to put anything

1 at 100 percent. But it's certainly more likely than
2 not that antibiotics would not have made a difference.
3 And --

4 Q. Why is that?

5 A. And I'll try, and hopefully I'll be slow in
6 the anatomy for you. The type of infection that he
7 had, this necrotizing mediastinitis is -- it's very
8 rapid. And it's also very hard to detect. So when we
9 do see these cases, they often can progress really,
10 honestly, in hours, you know, from 8 or 12 hours prior
11 to their presentation and near death is when this can
12 often start.

13 And many of us have become familiar with a
14 flesh-eating bacteria. You read about these on the
15 news. This is actually the same process. It's just,
16 you know, in the neck and the mediastinum or the middle
17 portion of our chest. Traditionally, you hear about it
18 on the leg or the arm. And if you listen in the news,
19 people will report that they watched the infection
20 march up their leg, literally hour by hour. And that's
21 often what occurs.

22 And in reviewing Mr. Singletary's records, he
23 had, you know, at least when he received the CAT scan
24 when he arrived in the hospital on that Wednesday,
25 there was signs of infection and different stages, you

1 know, in his posterior pharynx and retropharyngeal
2 space -- and I'll explain that in a minute -- and a few
3 other areas in his neck. And these are fascial planes
4 that allow the bacteria to actually travel very
5 quickly. So even though this is a very rare and
6 fulminate disease, the bacteria can move quickly in the
7 body.

8 Q. I don't know what fascial planes means.

9 A. Yeah. So we'll -- we'll explain that. I'm
10 sorry. I'm trying to think of a good laymen's term.
11 But you can imagine if you get a injury in your finger
12 and you want -- the bacteria need to travel. They have
13 to go through skin, and then, you know, other soft
14 tissue, fat and muscle to work their way down. And the
15 body has these different layers of tissue, and it's
16 actually a natural defense for us, you know. So it's
17 very hard to move from fat into muscle and vice versa,
18 for bacteria to do that. They have to climb their way
19 through different cells, and our body fights it well.

20 If you get the infection in a certain level
21 of tissue, so, for example, in between the fat and the
22 muscle, and the infection decides not to move up and
23 down between the different layers but to travel along
24 the layer, so, for example along a muscle layer or
25 along a fat layer, it doesn't have that same natural

1 defense. So it can work its way upwards. And certain
2 bacteria, streptococcus -- let me know if I need to
3 spell that -- streptococcus species which was found in
4 his blood is notorious for releasing toxins that allows
5 it to advance in that layer. So it actually doesn't
6 move up and down.

7 So an example would be if you had the
8 infection in your throat, we would see it actually come
9 out as a sore throat with redness or you might get
10 swelling in your neck. Instead, it actually
11 intentionally travels down in these planes very quickly
12 rather than sort of bringing itself to the surface like
13 a boil or an abscess that we're used to. It actually
14 moves a different direction. And those types of
15 infections, while rare, are -- are very fatal. And,
16 you know, they're often very surgical. Antibiotics,
17 you know, really don't make a very big difference. You
18 have to immediately go in with -- No. 1, recognize it
19 early. But No. 2, immediately go in and actually
20 debride and stop that advancing bacteria.

21 So that's why you see in the news when
22 someones has flesh-eating bacteria in their leg, they
23 amputate the leg very high. They don't mess around,
24 and they do it quickly. So, you know, unfortunately,
25 in Ludwig angina, I mean, in a matter of hours, the

1 bacteria can make its way from the back of your throat
2 all the way down in the mediastinum around the heart in
3 a very short amount of time.

4 Q. Was there anything in the testimony that you
5 reviewed from Mrs. Singletary that leads you to believe
6 that this was not going on on that Monday, April 18th?

7 A. You know, again, more likely than not, I -- I
8 didn't have evidence to think that that was going on on
9 that Monday. From what I can read from the testimony,
10 Mr. Singletary had pain and swelling. There was not a
11 fever or other, you know, drainage that was obvious.

12 The other thing which, sometimes if you're
13 lucky, lucky as a patient and a doctor, you get a clue
14 where you might get, you know, some -- some swelling
15 that's detectable in certain areas or ways. And when I
16 reviewed the records of Mr. Singletary's arrival on
17 Wednesday, you know, and they did -- you know, you
18 probably saw in the records they put a breathing tube
19 in his throat initially.

20 Q. Thursday you mean?

21 A. Excuse me, Thursday, yeah. When they put a
22 breathing tube in his throat initially, you know, I was
23 able to review the records at least of the emergency
24 room physician in that initial examination of his
25 oropharynx and gum. And there was, you know, nothing

1 that was coming to the surface suggestive of infection.

2 The CAT scan did see things, obviously, but
3 on clinical exam, they didn't. And if it wasn't
4 present on Wednesday or Thursday, the likelihood of it
5 being present that Monday was -- was even less.

6 Q. All right. And, Doctor, I'll represent to
7 you that Mrs. Singletary testified from that witness
8 stand that on the morning of April 18th, Mr. Singletary
9 had swelling and pain in his cheek.

10 MS. PATIN: Objection, Your Honor. May we
11 approach?

12 THE COURT: Sure.

13 (A discussion was held at the bench,
14 not reported.)

15 THE COURT: Objection's overruled.

16 MR. VOGEL: Thank you, Your Honor.

17 BY MR. VOGEL:

18 Q. Doctor, I'll represent to you that
19 Mrs. Singletary testified from that witness stand
20 earlier in this trial, that on Monday, April 18th, in
21 the morning, a call was placed to Summerlin Smiles, and
22 the symptoms that were relayed to -- that were
23 supposedly relayed, that he had some swelling in his
24 cheek and also that he had pain. And that she left for
25 work and returned later on that evening, sometime

1 around 9:00 or 10:00 in the evening, and the symptoms
2 were the same.

3 Is that consistent with your understanding
4 of -- are those symptoms, that progression, is that
5 consistent with what you're saying here today?

6 MS. PATIN: Objection, Your Honor. Misstates
7 the testimony.

8 THE COURT: I don't know if it does. The
9 jury will have to decide. Overruled.

10 THE WITNESS: It does not.

11 BY MR. VOGEL:

12 Q. Does it support your opinion?

13 A. It does, yes.

14 Q. How so?

15 A. If he had an active infection with, you know,
16 early tracking of this bacteria down in his
17 retropharynx -- excuse me, in these different, you
18 know, tissue levels in his chest, he would have
19 progressed with his symptoms over the course of Monday.
20 So it's -- it's very unusual for our patients to have
21 that active disease and really have no change over the
22 course of a six- or eight-hour day.

23 Q. All right. And so --

24 THE COURT: Mr. Vogel, we need you to speak
25 up a little bit. Jurors are having a hard time hearing

1 you.

2 MR. VOGEL: My apologies.

3 BY MR. VOGEL:

4 Q. All right. So your review of the records
5 after Monday, the 18th, can you state to any reasonable
6 degree of medical probability approximately when you
7 believe this infection started progressing in
8 Mr. Singletary?

9 A. If I had to say with some probability -- and
10 it's, again, unknown exactly -- I would say it most
11 likely began at some point on Tuesday, you know,
12 probably afternoon to evening into Wednesday.

13 Q. And you base that on?

14 A. Progression of his symptoms at that time.

15 Q. All right. Now, we were discussing your
16 third opinion. Have we discussed everything in that
17 one, or we ready to move on to No. 4?

18 A. I think we reached everything.

19 Q. Okay. What was your fourth opinion?

20 A. My fourth opinion was that the evaluation of
21 Mr. Singletary by Dr. Traivai on April 18th, 2011,
22 would not have prevented the progression towards -- and
23 I'll go slow again -- severe necrotizing mediastinitis
24 and death.

25 Q. And why is that?

1 A. Similar to the main comments that I'm making
2 here, I think that he had none of the findings on
3 Monday that would suggest mediastinitis; that I think
4 detection would have been very, very difficult by even
5 the most astute or the most quality clinician.
6 Mediastinitis is -- you know, often we're unable to --
7 to detect it in most cases. It's very, very hard
8 because of the rapid progression. And by the time we
9 do find it, it's -- you know, patients are extremely
10 sick. We often are unable to -- to detect it early,
11 No. 1.

12 And No. 2, that, you know -- and, again, I'm
13 just going off of the records, you know, pain and
14 swelling, while present in mediastinitis, is not really
15 the only symptom. And if he had that -- you know, I'm
16 not a dentist, so what's considered normal swelling or
17 not is beyond my purview. But in general, the
18 additional findings of fever and, you know, different
19 forms of instability would have been present on Monday
20 had he had this disease. Even with early disease, most
21 patients start having some chest pain and coughing and
22 other symptoms of irritation as the bacteria makes its
23 way down into the chest. And in absence of that, I
24 think the findings, you know, would have been minimal
25 on that Monday.

1 Q. Okay. And you got this one final opinion as
2 well, No. 5?

3 A. Yes. The fifth opinion was that
4 Mr. Singletary needed emergent surgery on April 21st,
5 2011, for treatment of his necrotizing mediastinitis.
6 And the main reason for this point is that many
7 infectious diseases are considered surgical in nature,
8 and we're often taught that antibiotics will take care
9 of the issue. But in this case, antibiotics are part
10 of the treatment, but really the mainstay of treatment
11 in any form of mediastinitis or even in an abscess is
12 actually surgical intervention. So in this case, you
13 know, he would have needed extensive surgery,
14 including, you know, debridement or removing of all
15 that dead necrotizing tissue, washing out of all the
16 bacteria and opening of his chest in order to -- you
17 know, to have any correction. And in Mr. Singletary's
18 case, you know, by that Wednesday, and even that
19 Thursday and Friday, he was -- you know, and the
20 doctors' notes outline this nicely at the hospital, he
21 was too clinically unstable. So they were just -- he
22 was too sick, essentially, to even go into the
23 operating room.

24 And in many cases of mediastinitis and acute
25 necrotizing mediastinitis like this, we -- they present

1 just so sick that even the mainstay of treatment, which
2 is taking him to the operating room, is just impossible
3 for us to do. So just the initiation of general
4 anesthesia would cause the patient to -- you know, to
5 often die. So we try to stabilize them for a period of
6 time in hopes that we get to a point where we can take
7 them to the operating room. But in many cases, it's --
8 it's just not successful.

9 Q. It's my understanding that shortly after he
10 arrived at the hospital, he had a cardiac arrest; is
11 that accurate?

12 A. That's correct. I think that was probably in
13 between that Thursday and Friday, if I remember
14 correctly.

15 Q. Is it -- that part of your understanding as
16 to why they couldn't do surgery? Or explain that.

17 A. Yeah. So, you know, there's -- that is one
18 of the many reasons. So when you come into the
19 hospital this sick, and in Mr. Singletary's case, you
20 know, by that Thursday or Friday when surgery would be
21 considered, his kidneys were shutting down, his liver
22 was shutting down, you know, he did have a cardiac
23 arrest. It was becoming increasingly difficult for him
24 to extract oxygen through his lungs into his
25 bloodstream. And these are all, unfortunately, in the

1 process of a severe infection, and we see that
2 regularly.

3 But, you know, as we know, if you're going to
4 go to the operating room, you need to have an adequate
5 level of oxygen in the tissues. You need to be able to
6 at least, if you can, have your kidneys working to be
7 able to manage a form of dialysis, because many of the
8 meds we will give during the surgery need to be cleared
9 or they become toxic. Our liver is the organ that
10 makes our clotting products. So they're the ones that
11 actually stop our bleeding, and if the liver is
12 suffering and dysfunctional, which it was in his case,
13 you know, the bleeding will be so severe you couldn't
14 even do surgery due to the excessive bleeding.

15 So he had multiple findings on those days
16 that precluded him from surgery.

17 Q. Okay. I'm sorry. I neglected to ask you a
18 question earlier about your Opinion No. 2 about the
19 giving or not giving of antibiotics.

20 And that has to do with this issue that
21 Mr. Singletary apparently had chronic periodontitis?
22 Is that your understanding?

23 A. That's what I remember from the record, yes.

24 Q. Is that an indication to give antibiotics?

25 A. You know, again, and this is taking my

1 infectious disease perspective not my dental
2 perspective that I don't have. But is -- as an
3 infectious disease doctor for chronic periodontitis or,
4 you know, gingivitis, or any periodontal disease, in
5 the absence of an acute abscess with pus in place, we
6 routinely do not give antibiotics in those cases, you
7 know, whether there's going to be an a extraction or
8 not.

9 Much of what happens in periodontal disease
10 revolves around -- and I'll try not to get too
11 technical -- but it's actually, you know, bacterial
12 count or bacterial control. We all know we have
13 bacteria in our mouth. It's not a sterile space. It's
14 never going to be. But, you know, when we have severe
15 periodontal disease and tooth decay, that's sort of an
16 excess -- you know, excess bacteria are part of that
17 process. And so very often, we will go through
18 measures to, you know, remove excess bacteria.

19 We've learned over time that, you know, just
20 administering antibiotics, they'll kill the bacteria,
21 but they don't really treat the disease. It's things
22 like regular teeth cleaning, flossing, you know, and
23 management of your teeth that really reduce that which
24 is why, you know, this -- this disease, Ludwig's
25 angina, or the progression into, you know, acute

1 necrotizing mediastinitis, was very common, you know --
2 not very common, but was much more common a few hundred
3 years ago. This is something that is very rare today,
4 and it's not because we give everybody antibiotics all
5 the time. It's because people went to the dentist and
6 started in teeth care.

7 Q. Is it your understanding in this case
8 approximately three weeks before the extraction, he had
9 a teeth cleaning?

10 A. From my review of the records, yes.

11 Q. Is that something that you would expect to
12 reduce the amount of bacteria in the mouth?

13 A. It should help start the healing process for
14 periodontal disease, yes.

15 Q. Doctor, again, I'm going to ask you again,
16 have all the opinions you have rendered here this
17 afternoon -- or this morning been to a reasonable
18 degree of medical probability?

19 A. Yes sir, they have.

20 MR. VOGEL: Thank you, Doctor.

21 I pass the witness.

22 MR. FRIEDMAN: I have nothing, Your Honor.

23 MR. LEMONS: No questions, Your Honor.

24 THE COURT: Ms. Patin.

25 /////

CROSS-EXAMINATION

BY MS. PATIN:

Q. Good morning, Dr. Sandrock.

A. Good morning.

Q. When you first began testifying, you went over some of the records that you reviewed in this case, correct?

A. That's correct.

Q. And listed in your report are those records that you reviewed; is that correct?

A. Yes, that is correct.

Q. And not listed here is the deposition of Svetlana Singletary, correct?

A. That is correct, yes.

Q. And this is the only report that you have in this case. It was never supplemented; is that correct?

A. That is correct.

Q. In paragraph 1 of your expert report, there's some details with regard to Reginald Singletary's complaints from April 16th of 2011 until April 21st of 2011.

Where did you obtain that information?

A. So this is the first paragraph on page 2?

Q. Correct. Under your Brief Summary of the Case.

1 A. So that was in the Brief Summary of the Case.
2 So that was probably at least listed here from -- I
3 would say, if I had to make the best estimate, might
4 have been the complaint from the Affidavit of Andrew
5 Pallos and from a number of the -- at least the other
6 records that I was able to have here. So -- but that
7 would probably be the most -- most likely
8 recommendation.

9 Q. Okay. But you never reviewed Svetlana
10 Singletary's deposition, correct?

11 A. Prior to this statement here, I did not.
12 Subsequent to the statement, I did, yes.

13 Q. But prior to writing your report, you never
14 reviewed her deposition testimony.

15 A. That's correct.

16 Q. In your Opinion No. 2, you stated that there
17 was no evidence of any infection seen on April 16th of
18 2011, and that was the date of the extraction, correct?

19 A. That's correct.

20 Q. And I'll represent to you that Dr. Traivai
21 testified at the time of her deposition that Reginald
22 Singletary had periodontal infection present at Tooth
23 No. 32.

24 Is that not an infection or evidence of an
25 infection?

1 A. So I would say that has to depend. So, you
2 know, the definition of infection is pretty broad. The
3 meaning I would have here would have been one of
4 abscess or abscess drainage that would involve swelling
5 and redness and not periodontal disease. So, you know,
6 in -- so obviously the spectrum of an infection can be
7 broad. So in that case, I would have not considered
8 periodontal disease an infection for this
9 documentation.

10 As I mentioned before, I consider that
11 usually bacterial overgrowth as opposed to an infection
12 that we would intervene and treat.

13 Q. And you would agree that periodontal
14 infection is an infection, correct?

15 A. I don't know if I would agree with that. I
16 think it's dependent on the level. Usually I use a
17 more general term "periodontal disease," and then it
18 can progress from an infection, which, you know,
19 usually has disease that's made its way underneath the
20 gums and has more signs versus just bacterial
21 overgrowth and gingival swelling.

22 Q. You would agree that a periodontal infection,
23 that it is bacteria overgrowth, correct?

24 A. Yes. Bacteria are involved if we use that
25 definition, yes.

1 Q. And this bacteria can travel through the
2 bloodstream, correct?

3 A. That's correct.

4 Q. And this bacteria can travel through the
5 bloodstream following a surgical procedure such as an
6 extraction.

7 A. That's correct.

8 Q. Do you agree with Dr. Traivai that Reginald
9 Singletary had a chronic infection present?

10 A. I would say that that is -- not having
11 examined him and only relying on her notes, that's the
12 best -- I can only rely on her notes based on that
13 definition. So I can't -- I -- not examining him, it's
14 hard for me to tell or make an agreement.

15 Q. And you did have an opportunity to review the
16 Summerlin Smiles records in this case?

17 A. That's correct.

18 Q. And your -- it's your understanding based
19 upon those records that Reginald Singletary was
20 diagnosed with severe generalized chronic
21 periodontitis?

22 A. That's correct. Based on her notes, yes.

23 Q. And you're not a dentist, correct?

24 A. That is correct.

25 Q. You're not trained as an oral surgeon?

1 A. That's correct.

2 Q. With regard to your Opinion No. 3, you stated
3 that Mr. Singletary's infection, and you say
4 specifically, Mr. Singletary grew *S. anginosus* which
5 was fully susceptible to the common oral antibiotics
6 that Dr. Traivai would have used, for example,
7 clindamycin, penicillin. That's correct?

8 A. That's correct.

9 Q. What does susceptible mean?

10 A. Susceptible means that the -- and I'll give a
11 longer answer so it's contained, but -- and then a
12 shorter answer. The shorter answer is that the -- the
13 antibiotics would work against that specific bacteria,
14 meaning it would kill them. And there actually is a
15 standard way this is done in all microbiology
16 laboratories, and they will actually test the
17 antibiotic against that specific bug in a standardized
18 fashion. And there's certain levels of antibiotic that
19 we know will kill, and if they don't obviously kill the
20 bacteria at that level, we can consider them resistant.
21 So susceptible means, you know, also sensitive or that
22 the antibiotic would have killed the bacteria.

23 Q. So your testimony is that the antibiotics
24 that Dr. Traivai would have used such as clindamycin or
25 penicillin, would have worked against the specific

1 bacteria that Mr. Singletary was diagnosed with,
2 correct?

3 A. That's correct.

4 Q. And you were testifying with regard to the
5 rapid progression of his infection, correct?

6 A. Yes.

7 Q. How do you know that the sublingual abscess
8 and necrotizing mediastinitis were not present on
9 April 18th of 2011?

10 A. So certainly I don't know with 100 percent
11 certainty, but it's definitely more likely than not
12 that they were absent on that Monday, the 18th. And
13 that's based on the clinical findings I can see from
14 Dr. Traivai's notes, and -- and the description
15 thereof. Usually those patients, because of rapid
16 disease, will have other findings. If you have
17 bacteria in your bloodstream, it's extremely rare to --
18 you know, especially this bacteria which is pretty
19 virulent or aggressive, for you not to have fever and
20 other systemic findings. So pain and swelling alone
21 and -- with the presence of, you know, mediastinitis
22 like this, would be extremely unusual.

23 Q. So when would antibiotics need to be
24 prescribed in order to prevent the progression of
25 Reginald Singletary's infection?

1 A. So there -- again, that's a great question.
2 And part of my statement here is that antibiotics alone
3 may not have actually prevented the progression. If
4 they would have, it would have been at that moment
5 where the bacteria started to progress down those
6 tissue levels into the chest, which, you know, if I'm
7 going to make my best, you know, educated guess, it
8 would have been sometime Tuesday night, you know, into
9 Wednesday.

10 Q. So if antibiotics were prescribed on Tuesday
11 night and into Wednesday, it would have prevented the
12 progression of Reginald Singletary's infection.

13 That's your testimony here?

14 A. No. I would say that it -- it may or may not
15 have, and I would say more likely than not, it would
16 have not have. Because once this process starts,
17 antibiotics can be administered, but it's also, as I
18 mentioned, a surgical disease. So, you know, if you --
19 you'd have to get it right before that point where you
20 have enough bacteria growing that it's a problem, but
21 it's not actually transgressed through into those
22 tissue planes down which, quite honestly, is extremely
23 difficult which is why this is a very hard disease to
24 treat. But you'd have to pick that sweet spot where
25 you -- you'd get there. Once it gets in the tissue

1 planes, I think oral antibiotics would have not made --
2 you know, more likely than not would have not made a
3 difference.

4 Q. When would oral antibiotics have made a
5 difference?

6 A. I don't think they would have made a
7 difference here.

8 Q. Ever?

9 A. I think more likely than not, it would not
10 have made a difference, that's correct.

11 Q. So it wouldn't have made a difference if oral
12 antibiotics were prescribed on April 16, 2011, at the
13 time of the extraction?

14 A. It's my opinion that more likely than not, it
15 would have not made a difference, yes.

16 Q. And if oral antibiotics were prescribed on
17 that Sunday, April 17th of 2011, it wouldn't have made
18 a difference.

19 A. My opinion, more likely than not, would not
20 have made a difference, that's correct.

21 Q. And on that Monday, it wouldn't have made a
22 difference.

23 A. I think as well, yes.

24 Q. And on Tuesday, it wouldn't have made a
25 difference.

1 A. It -- it might have, but I think still
2 greater than 50 percent chance this would have
3 progressed even with oral antibiotics on that Tuesday,
4 yes.

5 Q. So explain to me what you're saying about
6 Tuesday. If oral antibiotics were prescribed on
7 Tuesday, it may have made a difference?

8 A. So, again, nothing in medicine is 100 percent
9 certain. So I can't say it with 100 percent certainty
10 that it absolutely would not have made a difference
11 because, again, there is that sweet spot right where
12 the bacteria make their way into those fascial planes.
13 And if he had a dose of antibiotics right at that time,
14 could it have made a difference? It's possible. But
15 more likely than not, it would not have made a
16 difference with -- with the presentation that he was.

17 Q. So if oral antibiotics may have made a
18 difference on Tuesday, why wouldn't it have made a
19 difference on Monday?

20 A. Because at that point, I don't think the
21 bacteria had grown enough and -- you know, again, the
22 fancy term is translocated, but would not have grown
23 enough where it made its way into that tissue plane and
24 gone down. And essentially what I'm saying is that the
25 necrotizing mediastinitis and infection was not really

1 present on Monday. So it would not have made a
2 difference because it was not present then.

3 Q. So you're saying having oral antibiotics in
4 your system on that Monday wouldn't have made a
5 difference because the infection hadn't gone down into
6 the mediastinitis?

7 A. That's correct. And then on --

8 Q. Where does the infection start?

9 A. So interestingly enough, I mean, it's always
10 a good question, but it actually very often doesn't
11 even need to be an infection starting. So it can very
12 often start in that tissue plane. So you could have
13 bacteria in your mouth that is not actively an
14 infection and it makes its way into the tissue plane,
15 or that area, you know, in the back of your throat
16 where it's -- where it can actively grow and then it
17 starts right there.

18 So you can actually have this disease -- and,
19 honestly, the last case I saw of it, the person had
20 perfectly normal and great healthy teeth. So it --
21 usually the bacteria are coming from the oral cavity,
22 and they can make their way into the tissues, and then
23 the infection starts there.

24 Q. And in this case, did the -- did Reginald
25 Singletary have the -- this perfect oral mouth or

1 teeth?

2 A. From Dr. Traivai's records, no.

3 Q. You mentioned in your opinion, under No. 4,
4 that necrotizing mediastinitis can be difficult to
5 diagnose and may only present with pain or swelling,
6 and these findings can be subtle and often lead to
7 alternative diagnosis.

8 What type of alternative diagnosis?

9 A. People may actually be diagnosed -- so I can
10 say, for example, in the last case that I saw of this
11 was a young gentleman who was a college student and he
12 was diagnosed with a neck strain, for example. Or
13 someone may be diagnosed with a sore throat or they --
14 you know, often it's labeled as musculoskeletal or a
15 neck pain when they come in or they may have swelling
16 that, you know, people think is unrelated to that, or
17 some -- I've seen a few cases where they've said it's
18 an early presentation of a cold. So, you know, an
19 upper respiratory tract infection.

20 Q. So is it your opinion that had Reginald
21 Singletary gone into the dentist's office on April 18th
22 of 2011 with complaints of pain and swelling in his
23 cheek and in his neck two days following a tooth
24 extraction in that area of the mouth, that there was
25 some alternative diagnosis for the pain and the

1 swelling?

2 A. I think that is certainly possible that there
3 could have been alternative diagnosis, which would have
4 been that this is a normal process of the tooth
5 extraction. And, again, I can't comment not as a
6 dentist, but -- you know, whether -- what's considered
7 normal or not in this case as part of that process, but
8 I -- you know, that could certainly be plausible, that
9 this is a normal trajectory of a tooth extraction.

10 And very often, you know, that may be the
11 case, that they think it's -- you know, that we -- we
12 see certainly alternative diagnoses when these cases
13 present.

14 Q. Let me ask you as an infectious disease
15 doctor: If you saw a patient in your office two days
16 post tooth extraction or if you were consulted on a
17 case two days post tooth extraction and that patient
18 presented with pain, increased pain, swelling in the
19 cheek and in the neck --

20 A. Uh-huh.

21 Q. -- your opinion would be that there may be
22 some alternative diagnosis and that it wasn't related
23 to the tooth extraction?

24 MR. FRIEDMAN: I'm going to object that it
25 assumes facts not in evidence.

1 MR. VOGEL: She kind of changed it there.
2 She asked a hypothetical and then switched it. It's an
3 improper question.

4 MR. FRIEDMAN: Can we approach, Your Honor?

5 THE COURT: Come on up.

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

8 THE COURT: Go ahead and rephrase it.

9 BY MS. PATIN:

10 Q. As an infectious disease doctor and in your
11 infectious disease opinion, is it your opinion that if
12 a patient presented to your office or if you were asked
13 to consult on a patient that had had a tooth extraction
14 two days prior with complaints of pain and swelling in
15 the cheek and in the neck, that you would believe that
16 there was some alternative reason for this particular
17 pain and swelling?

18 A. I would say no. If I saw, you know,
19 Mr. Singletary as best described, you know, from the --
20 the records we have on that Monday, the 18th, you know,
21 he did have, you know, swelling and pain, had a tooth
22 extraction two days prior, you know, more likely than
23 not I would have assumed that's from the -- you know,
24 the -- certainly the tooth extraction. Absolutely.
25 You know, the -- so yes.

1 Q. Would you agree that pain and swelling in the
2 cheek and in the neck, as an infectious disease expert,
3 is a sign of infection?

4 A. In and of itself or in conjunction with other
5 findings?

6 Q. I'm talking about with regard to the patient
7 in this case with complaints of pain and swelling in
8 the cheek and the neck, in your expert opinion, would
9 that be a sign of infection?

10 A. It may or may not be. So it's -- it's not
11 necessarily in of itself, no.

12 Q. How is it not in and of itself a sign of
13 infection?

14 A. Because pain and swelling, you know, is a
15 common occurrence after any form of trauma. So in this
16 case, you know, Mr. Singletary's case, his trauma was a
17 tooth extraction. So -- and that could happen
18 independent of any form of infection.

19 So usually we look, you know, pain and
20 swelling in of itself -- and, again, I'm speaking in a
21 vacuum, you know, usually we're doing a physical exam
22 and we use our eyes in addition to hearing the
23 stories -- the story of the patient, but just pain and
24 swelling doesn't always lead us to jump to the
25 diagnosis of infection. Usually we look for something

1 else that would be there, such as fever, or we do an
2 exam -- you know, we would do an oral exam and look and
3 find something that would really suggest infection.
4 Or, you know, maybe if we examined him, in the swelling
5 we found something that suggested an abscess rather
6 than generalized, you know, tissue swelling that is
7 common with trauma. That may lead us in one direction
8 over the other. So, you know, in and of itself, pain
9 and swelling, it's hard to say.

10 Q. Now I'm just talking about swelling
11 specifically in the actual neck.

12 A. Uh-huh.

13 Q. Swelling of the neck, you're saying, is not a
14 sign of infection.

15 A. Again, it's like before, that it may or may
16 not be a sign of infection.

17 Q. Based on the records that you reviewed in
18 this case, do you have any reason to believe that
19 Reginald Singletary had suffered any neck strain or was
20 suffering from sore throat or an upper respiratory
21 infection?

22 A. No, ma'am.

23 Q. You mentioned in your opinion that if
24 Mr. Singletary was seen by Dr. Traivai on April 18th of
25 2011, he more likely than not would have had no

1 additional interventions or antibiotics prescribed as
2 his clinical exam would have been underwhelming, thus
3 not altering his outcome; is that correct?

4 A. That's my statement, yes.

5 Q. So is it your understanding -- and I'm basing
6 this on the statement here in your report -- that only
7 a clinical exam would have been performed by
8 Dr. Traivai on April 18th of 2011?

9 A. I'm -- you know, I am making -- you know,
10 obviously I have Dr. Traivai's records. That's the
11 best I had. She -- you know, he was not seen on the
12 18th. And then I used the records based on the
13 hospital admission and his examination then, where they
14 reported -- you know, two of the physicians did not
15 comment and actually said a normal neck. One of them
16 said minimal gingival swelling and a very open airway
17 when they put the breathing tube. So relying on that
18 and working backwards in time by a few days, especially
19 since clinically he got worse during that time, I can't
20 imagine he would have findings that would be present on
21 Monday that would be suggestive of that.

22 Q. Do you think it's important when you see a
23 patient in the office who comes in with complaints that
24 not only you do a clinical exam, but you also talk to
25 the patient to get the patient's history and

1 complaints?

2 A. Of course.

3 Q. So if Dr. Traivai were provided on April 18th
4 of 2011 with Reginald Singletary's patient complaints
5 and patient history over the last two days, that it's
6 still more likely than not that no additional
7 interventions or antibiotics prescribed based upon a
8 clinical exam and the patient complaints would have
9 been underwhelming and thus not altering his outcome?

10 A. I think based on the records that I have, I
11 don't -- I would still stand by that, that if he was
12 seen on that day, I think he would have had, you know,
13 I'm sure, you know, facial swelling, and as he
14 reported, some neck swelling, but not all the findings
15 that would be consistent with, you know, mediastinitis
16 or an advancing abscess. And I -- I would agree that I
17 think no further -- more likely than not, no further
18 interventions would have occurred.

19 Q. So you don't think that if he presented on
20 April 18th and Dr. Traivai saw him in the office and
21 did a clinical exam and heard his patient complaints
22 that antibiotics would have been prescribed.

23 A. Based on what I can read from the records
24 here, I would say probably not. And as an ID expert,
25 probably not.

1 Q. I'll represent to you that Dr. Traivai
2 testified that antibiotics would be indicated if a
3 patient experienced swelling of the extraction site
4 following a tooth extraction.

5 Does that change your opinion in any way?

6 A. It does not because I would probably need a
7 date of the swelling in relation to the tooth
8 extraction.

9 Q. April 18th of 2011, two days after the
10 extraction.

11 A. That does not change my opinion, no.

12 Q. And it's my understanding that you disagree
13 with Dr. Marzouk, who's our expert in the case, that
14 had antibiotics been prescribed on April 18th of 2011,
15 Reginald Singletary would have lived?

16 A. That's correct.

17 Q. Why is that?

18 A. I think based on my earlier testimony, I
19 think that this was a rapidly progressing disease, that
20 antibiotics are not the single treatment, that this
21 involves surgical intervention. And even if he got the
22 antibiotics on that Monday, I think more likely than
23 not, you know, these -- so I'm -- more likely than not,
24 the bacteria would have translocated into that tissue
25 plane and made its way down into the mediastinum.

1 Q. So antibiotics would not have prevented the
2 bacteria from transitioning into that plane.

3 A. More like than not, correct.

4 Q. What's the purpose of antibiotics? Isn't it
5 to fight bacteria?

6 A. It is, yes.

7 Q. I'll represent to you that Dr. Traivai
8 testified that swelling is a sign of infection.

9 Do you disagree with Dr. Traivai?

10 A. I do not, no.

11 Q. And what are your rates for file review?

12 A. I have to look it up, but I think it's either
13 400 or 425 an hour.

14 Q. And what about trial testimony?

15 A. The same.

16 Q. And you would agree that bacteria is
17 susceptible to antibiotics, correct?

18 A. This particular bacteria?

19 Q. Yes.

20 A. Yes, correct.

21 Q. The bacteria that Reginald Singletary had?

22 A. Yes.

23 Q. Is it possible to have an infection in the
24 beginning stages and not have a fever?

25 MR. VOGEL: Object to form. Your Honor,

1 this -- it's not relevant. Possibilities aren't the
2 standard.

3 THE COURT: Yeah, but it's cross-examination.
4 I'm going to allow it under the Williams case.

5 THE WITNESS: I think it depends on the cause
6 of the infection.

7 BY MS. PATIN:

8 Q. Tell me about what the difference is and the
9 cause of the infection.

10 A. So, for example, with the stomach flu, which
11 we're all familiar with, so that's, you know, cruise
12 ship virus that we're all familiar with, it's actually
13 more common that you have nausea and vomiting in the
14 absence of fever in many cases, and you may never have
15 a fever that entire time. And this is flu season, so
16 influenza, for example, you could have about a 6- to
17 12-hour period where the infection begins to take hold,
18 and you actually do not have a fever present at all.

19 So there is a window or a period of time
20 where it's possible in some cases with bacteria,
21 usually in necrotizing disease, the fever and the
22 early -- you know, first stages of what would be
23 considered an infection, usually go hand in hand
24 because these bacteria release a lot of toxins. Just
25 like toxic shock which we're -- is one that we're

1 familiar with, they produce all these toxins which
2 destroy the tissues and allow them to travel, you know,
3 across and through the body. Those toxins are very --
4 you know, the fancy term we call it is pyrogenic, but
5 they actually induce a fever very quickly.

6 So many of these patients, right when the
7 infection starts, they have a high fever. And when
8 they present -- you know, and the same with
9 streptococcus which is in the same group. Pneumonia,
10 the first thing a patient will say is that they have
11 these shaking chills. They felt great, and right at
12 4:00 o'clock today, I had shaking chills. That's the
13 first thing they notice is the fever before anything
14 else. So I think it really depends on the type of
15 infection.

16 It's a very long answer. I'm sorry.

17 Q. In this case, the bacteria that was in
18 Reginald Singletary's mouth that then traveled into the
19 mediastinum, would he have had fever when the bacteria
20 was present before it traveled into the mediastinum?

21 A. So not necessarily, no.

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

24 THE COURT: Any more?

25 MR. VOGEL: Just briefly.

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REDIRECT EXAMINATION

BY MR. VOGEL:

Q. Doctor, your payment for your testimony, does that go to you?

A. It's -- it depends. But in general, it depends. Today it will not, no.

Q. Who does it go to?

A. It goes to the University of California.

MR. VOGEL: Thank you. That's it.

THE COURT: Anything else from here?

MR. FRIEDMAN: No, Your Honor.

MS. PATIN: No further questions.

THE COURT: Ladies and gentlemen, any questions for the doctor? No hands.

Thank you, Doctor. Appreciate your time.

THE WITNESS: Thank you.

THE COURT: Folks, we're going to take a little bit of an early lunch. We're going to have you go till about 11:45 to 12:45 today. And we'll come back and finish up as much as we can this afternoon.

During our break, you're instructed not to talk with each other or with anyone else, about any subject or issue connected with this trial. You are not to read, watch, or listen to any report of or

1 commentary on the trial by any person connected with
2 this case or by any medium of information, including,
3 without limitation, newspapers, television, the
4 Internet, or radio. You are not to conduct any
5 research on your own, which means you cannot talk with
6 others, Tweet others, text others, Google issues, or
7 conduct any other kind of book or computer research
8 with regard to any issue, party, witness, or attorney,
9 involved in this case. You're not to form or express
10 any opinion on any subject connected with this trial
11 until the case is finally submitted to you.

12 See you back about 12:45.

13 (The following proceedings were held
14 outside the presence of the jury.)

15 THE COURT: We are outside the presence of
16 the jury. Anything we need to take care of, Counsel?

17 MS. PATIN: No, Your Honor.

18 MR. FRIEDMAN: No, thank you.

19 MR. LEMONS: No, thank you, Your Honor.

20 THE COURT: Okay. Off the record. Thanks,
21 guys.

22 (Whereupon a lunch recess was taken.)

23 THE MARSHAL: All rise for the presence of
24 the jury.

25 /////

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, Case
5 No. A656091.

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

8 MR. FRIEDMAN: Yes, Your Honor.

9 MR. LEMONS: Yes, Your Honor.

10 MS. PATIN: Yes, Your Honor.

11 THE COURT: Thank you. All right. The
12 defense may call their next witness. I think we're
13 just kind of calling whoever's available.

14 MR. LEMONS: Yes, I think so, Your Honor.
15 Thank you. Then we would call Dr. David Levitt at this
16 time.

17 THE MARSHAL: Levitt?

18 THE COURT: Good afternoon, Doctor. We're
19 going to ask you to, if you would, please step up on
20 the witness stand, remain standing, please, and raise
21 your right hand.

22 THE CLERK: You do solemnly swear the
23 testimony you're about to give in this action shall be
24 the truth, the whole truth, and nothing but the truth,
25 so help you God.

1 THE WITNESS: I do.

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

4 THE WITNESS: David Levitt. Last name
5 L-e-v-i-t-t.

6 THE CLERK: Thank you.

7 THE COURT: Thank you, Doctor. Go ahead and
8 be seated. I'm going to ask you to try to speak into
9 the microphone so everyone can hear you well.

10 You speak up too, Mr. Lemons.

11 MR. LEMONS: I'll do that, Your Honor. Thank
12 you.

13

14 DIRECT EXAMINATION

15 BY MR. LEMONS:

16 Q. Afternoon, Dr. Levitt.

17 A. Afternoon.

18 Q. Are you a dentist?

19 A. I am.

20 Q. And do you have a specialty?

21 A. I'm a general dentist with a subspecialty
22 with oral implantology.

23 Q. And when you say you're a general dentist,
24 does that mean you have practiced taking all kind of
25 patients in a way similar to what you understand

1 Dr. Park's practice to be?

2 A. My practice -- my private practice is limited
3 to implants and procedures that involve implants.
4 However, I do a lot of charity work, and in the charity
5 work I do general dentistry very much like Dr. Park and
6 Dr. Traivai.

7 Q. Can you give the jury an idea of your
8 educational background, an outline of it, please.

9 A. I went to dental school at the University of
10 Southern California. I graduated in 1977. So
11 that's -- I'm just shy of 34 years practicing
12 dentistry. I did an advanced training at numerous
13 institutions in the field of implantology and oral
14 surgery. And I've been practicing continually with a
15 five-year gap when I went to work for an implant
16 company full time and stopped practicing. That was in
17 1996 to 2001.

18 Q. Dr. Levitt, to practice in the field that you
19 practice in, did you have postgraduate training?

20 A. I did.

21 Q. Would you describe that, please.

22 A. The Medical College of Georgia, a nine-month
23 part-time program in oral implantology. The Michigan
24 Institute, it's a private educational institute, a
25 two-year program in oral implantology. Loma Linda

1 University, I did that for five years, again, part time
2 in oral surgery and oral implantology. That covers the
3 majority of it.

4 Q. Doctor, you mentioned that you do -- you
5 volunteer to provide care outside of the context of
6 your practice?

7 A. I do.

8 Q. Could you describe that for us, please.

9 A. I'm on the board of directors of something
10 called Dental Care for Children. We treat adults as
11 well as children. However, we go down to Mexico four
12 times a year and treat indigents. We go to Haiti three
13 times a year and treat indigents. And also in Southern
14 California in Hispanic neighbors, we treat indigents.
15 We do everything from cleanings to implants and
16 everything in between.

17 Q. And the in between, does that include
18 extractions as well?

19 A. Hundreds upon hundreds of extractions.

20 Q. And when you're seeing those patients, are
21 you seeing them in a general dentistry context, as a
22 general dentist?

23 A. We are. We have no specialists that come
24 down with us except for one endodontist. That's a root
25 canal specialist. Otherwise, it's all general dentists

1 or dental students. Last trip, we had 25 dental
2 students come with us as well.

3 Q. Are you involved in teaching?

4 A. I am. The students that come to the clinics
5 put on by Dental Care for Children, most of them,
6 interestingly enough, come down to learn how to do
7 extractions. Extractions are not taught very well in
8 the dental schools. For instance, where I graduated,
9 the University of Southern California, you only have to
10 take out six teeth to graduate. You're certainly not
11 going to learn how to take out teeth in doing six
12 teeth. So a lot of these students come down to learn
13 how to take out teeth, to learn how to do extractions.
14 And my job on these trips, primarily, rather than
15 delivering care, is to teach the students. That's one
16 way I teach.

17 Another way I teach is -- privately, I do
18 weekend courses for graduate dentists on oral
19 implantology and oral surgery. I do those all over the
20 United States and Canada. We put on 14 of them last
21 year.

22 Q. And are you also an invited guest lecturer at
23 various educational places?

24 A. It's been a little while since I've been
25 invited to a university. However, over the years, I've

1 been an invited guest lecturer at numerous
2 universities, study clubs, and private institutions,
3 including --

4 Q. Were you involved in teaching in the
5 residency program at Travis Air Force Base?

6 A. That's one of the places. I was -- for many
7 years, six or seven years, I was invited once a year to
8 do an implantology day at Travis Air Force Base.
9 Wonderful place to teach because the dental clinic
10 overlooks the runway, and you see these big C-5s coming
11 down as you're trying to do dentistry. A little
12 disconcerting at first. I got used to it, though.

13 Q. Thank you, Doctor.

14 Has your lecturing also included invitations
15 to the Scripps Institute, USC School of Dentistry, and
16 institutions like that?

17 A. I don't think I've been invited to USC. I
18 have been invited to UCLA. Scripps as well. Numerous,
19 numerous institutions have invited me as a guest
20 lecturer on various occasions.

21 Q. And have you published in your field?

22 A. I have. I have two or three journal
23 articles, and I'm also one of the contributors to a
24 textbook on oral implantology.

25 Q. Can you describe for the jury, since you're

1 talking about implantology -- I mean, you understand,
2 of course, that you've reviewed the case and are here
3 to testify that this case involves an extraction of a
4 wisdom tooth.

5 A. Yes.

6 Q. And you've agreed to testify as an expert in
7 this case, true?

8 A. I have.

9 Q. What is your experience with extractions of
10 the type that occurred in this case that qualifies you
11 as an expert in -- in testifying here today?

12 A. I do wisdom teeth extractions on a regular
13 basis. Other than the teeth tend to be angled, they're
14 not any different than any other extraction. So I have
15 done thousands of extractions.

16 Q. And you're familiar with the standards of
17 care that apply in those situations.

18 A. Yes, I am.

19 MR. LEMONS: Your Honor, I'd ask that
20 Dr. Levitt be recognized as an expert in the field he's
21 testifying in.

22 THE COURT: Any objections?

23 MS. PATIN: No objection.

24 MR. FRIEDMAN: No, Your Honor.

25 MR. VOGEL: No, Your Honor.

1 THE COURT: He'll be so recognized.

2 MR. LEMONS: Thank you, Your Honor.

3 BY MR. LEMONS:

4 Q. Dr. Levitt, did I ask you to review this case
5 some months ago?

6 A. You did.

7 Q. And when I asked you to review the case,
8 what -- what information did you have available to you?

9 A. I brought my cheat sheet because there was a
10 lot of information.

11 Q. Before I sent those things you're going to
12 talk about, though, did you know anything about this
13 case at all?

14 A. No.

15 Q. And when I called to ask you to review it,
16 did I say that we would send you information to review?

17 A. You did.

18 Q. And did -- did I do that?

19 A. You sent me quite a stack of information.

20 Q. Would you describe, please, what it is that
21 you reviewed that forms the foundation for your
22 opinions.

23 A. The records and X rays of Summerlin Smiles,
24 the records of St. Rose Dominican Hospital, the records
25 of the Clark County coroner, depositions of Dr. Traivai

1 and Mrs. Singletary. And just this week, the
2 deposition of Dr. Pallos, and deposition of
3 Dr. Marzouk.

4 Q. And as result of your review of these
5 materials, did you form certain opinions regarding this
6 case?

7 A. I did.

8 Q. Are the opinions that you're going to state
9 here today to a reasonable degree of medical
10 probability?

11 A. They are.

12 Q. Did you form an opinion as to whether
13 Dr. Park complied with the standard of care?

14 A. I did.

15 Q. Was Dr. Park negligent in this case?

16 A. Dr. Park was within the standard of care, did
17 nothing negligent at all.

18 Q. Did Dr. Park cause harm to this patient?

19 A. He did not.

20 Q. Based on your review of the materials that
21 were available to you, did you have an understanding of
22 how Dr. Park became involved in the care of
23 Mr. Singletary?

24 A. I do have an understanding.

25 Q. And could you please describe your

1 understanding.

2 A. Dr. Traivai was attempting to remove the
3 tooth, attempting to extract the tooth, and was having
4 a hard time. So she asked Dr. Park to come in and give
5 a hand. He showed her a different instrument. He
6 popped the tooth out for her. Literally, in his words,
7 it took one minute. So literally popped the tooth out
8 for her. And after that, he left the room and had no
9 further contact with the patient and no further input.

10 Q. Did you know from the records whether there
11 was any complication as a result of this extraction?

12 A. There was no complication that day.

13 Q. Would it be accurate to describe this
14 extraction as a routine extraction?

15 A. It would be.

16 Q. Now, when Dr. Park performed that -- that
17 consultation or that -- that assist for Dr. Traivai on
18 this patient, did he become the treating dentist?

19 A. He did not.

20 Q. Did he provide treatment to Mr. Singletary in
21 extracting the tooth, however?

22 A. He did provide some treatment. He picked up
23 an instrument called an elevator, put the elevator in
24 the mouth, and used it to take the tooth out.

25 There's two ways to take out a tooth. You

1 can grab a forcep which, for all practical purposes, is
2 a pair pliers, just a bent pair of pliers, and you can
3 try wiggling the tooth out. You can also take an
4 elevator which, for all practical purposes, is like a
5 screwdriver and you pry the tooth out.

6 So Dr. Traivai was trying get it out with a
7 forcep. That wasn't working. He took the elevator and
8 popped it out.

9 Q. And either method of attempting to do the
10 extraction is appropriate?

11 A. Yes.

12 Q. Have you in fact been involved in similar
13 requests of other dentists to assist in the way that
14 Dr. Park did?

15 A. In Mexico and in Haiti, that happens all the
16 time, especially in Haiti because the Haitian
17 population has very, very dense bone. Teeth are hard
18 to get out. And so a dental student or a dentist
19 without a whole lot of experience will be in the middle
20 of extraction and say, Help. I do that all the time.

21 Q. Is there a situation where the person such as
22 Dr. Park or yourself would become the treating dentist
23 for that patient? Is there a situation where it could
24 occur that that might happen?

25 A. Well, in this situation, if Dr. Traivai said,

1 Could you please simply take over and go ahead and
2 write prescriptions or follow-up or whatever it is
3 that's going to be done, I'm stepping out, I have
4 another patient in another room, I haven't got time,
5 then they become the treating dentist. In this case,
6 that didn't happen.

7 Q. And Dr. Traivai continued to take care of
8 Mr. Singletary, true?

9 A. Yes, she did.

10 Q. Now, is there anything about Dr. Park's
11 assistance in this case and his treatment of
12 Mr. Singletary that you found to be below the standard
13 of care?

14 A. No. Dr. Traivai was in the standard of care
15 as well.

16 Q. And is Dr. Park's assistance of Dr. Traivai,
17 did you form an opinion as to whether that complied
18 with the expected standard of care?

19 A. That was definitely within the standard of
20 care.

21 Q. Is there anything about the extraction which
22 was negligent in any way?

23 A. No.

24 Q. Was there anything about Dr. Park leaving the
25 room and going on with other patients that was

1 negligent in any way?

2 A. No. The tooth came out. All was well.

3 Q. Did you also look at this case for the
4 purpose of assessing whether antibiotics should have
5 been prescribed for Mr. Singletary on the day of the
6 extraction?

7 A. I did.

8 Q. And did you form an opinion on that question?

9 A. It's not the standard of care to routinely
10 give antibiotics for an extraction. The only time we
11 would give antibiotics for an extraction is if there
12 was active infection going on. And there was no
13 indication in the records that this case had any active
14 infection. There was no swelling, no pus or purulent
15 exudate, no evidence of infection.

16 Q. Dr. Pallos wants you to assume -- testify --
17 and you reviewed Dr. Pallos's deposition, correct?

18 A. I did.

19 Q. Dr. Pallos came in yesterday and testified
20 that this patient had an acute infection on April 16th.

21 Do you agree --

22 MS. PATIN: Objection, Your Honor.

23 THE COURT: What's the objection?

24 MS. PATIN: Can we approach?

25 THE COURT: Sure. Come on up.

1 (A discussion was held at the bench,
2 not reported.)

3 THE COURT: Overruled.

4 MR. LEMONS: Thank you, Your Honor.

5 BY MR. LEMONS:

6 Q. Doctor, I want you to assume, Dr. Levitt,
7 that Dr. Pallos testified that there was an acute
8 infection in Mr. Singletary's tooth on April 16th.

9 Do you agree with that opinion?

10 A. No, I don't.

11 Q. And could you describe for the jury why that
12 opinion is not correct in your view.

13 A. Obviously Dr. Pallos and I didn't have the
14 privilege of seeing the patient. The only thing we
15 have to go on is the records. And when there's an
16 acute infection, it should say in the records somewhere
17 that there was pus, swelling, pain. None of those
18 things were present.

19 Q. Is -- is the -- of those, is the finding of
20 pus something that you would expect to be documented if
21 it was present?

22 A. Exudate would be the word they use, and it
23 definitely would be documented.

24 Q. It was suggested by Dr. Pallos -- I want you
25 to assume it was suggested in -- in -- in this -- now,

1 this is not a quote, but I'm going to outline what I
2 understood him to be saying. And that is that you need
3 to allow the patient to follow up by, perhaps, giving a
4 prescription to the patient that could -- for
5 antibiotics that could be filled later, between the
6 time of the April 16 extraction and the return visit a
7 week later.

8 Do you have an opinion as to whether that
9 would comply with the standard of care if it were done?

10 A. I think I heard you just say that you would
11 give a prescription to the patient and allow the
12 patient to make the decision as to whether or not they
13 should take it.

14 Q. And that's -- I've outlined what I understood
15 Dr. Pallos to be suggesting.

16 A. That's simply not done. If you're going to
17 give a prescription, it's the doctor's instructions as
18 to what to do with it not the patient making a decision
19 as to what to do with it.

20 The only time I would make an exception to
21 that is pain medication. You certainly can give a
22 prescription for pain medication and say, Take this if
23 you need it. Then it is, of course, up to the patient.
24 But not an antibiotic or a heart medication or anything
25 else.

1 Q. So to do that would not -- would not be in
2 compliance with the standard of care.

3 Is that your testimony?

4 A. No, it would not.

5 Q. In your opinion, Doctor, would there be any
6 reason in this case for Dr. Park to intervene in
7 Mr. Singletary's care beyond the request of
8 Dr. Traivai?

9 A. No.

10 Q. Yesterday, Dr. Pallos, I want you to assume,
11 read for the jury a quote from your report that
12 indicated that -- that if there was a complicating
13 factor involved in an extraction, that antibiotics
14 could be called for. He was interpreting your
15 statement that no antibiotics were required here
16 because there were no complicating factors.

17 Are you with me?

18 A. Yes.

19 Q. All right. So my question to you is: Based
20 on your review of this case, were there any such
21 complicating factors in this case that would have
22 required the prescription of antibiotics on the 16th of
23 April?

24 A. No. This is a simple extraction. There were
25 no complicating factors.

1 Q. And when you said that in your report, you
2 knew what the facts of this case were at that time,
3 correct?

4 A. I had read that stack of stuff you gave me.

5 Q. All right. All right. So Dr. Levitt, have
6 all the opinions that you've stated here today with
7 regard to Dr. Park's involvement been to a reasonable
8 degree of medical probability and dental probability?

9 A. They have.

10 MR. LEMONS: That's all I have, Your Honor.
11 Thank you.

12 MR. FRIEDMAN: I don't have any questions,
13 Your Honor.

14 MR. VOGEL: No questions.

15 THE COURT: Ms. Patin, cross?

16 MS. PATIN: Yes.

17

18 CROSS-EXAMINATION

19 BY MS. PATIN:

20 Q. Hi, Dr. Levitt.

21 A. Hi. May I say congratulations?

22 Q. Thank you.

23 A. Okay.

24 Q. Dr. Levitt, you were asked to render an
25 opinion regarding the care and treatment that was

1 provided by Dr. Park in this case, correct?

2 A. Yes, I was.

3 Q. And according to the documents that you
4 listed earlier, you didn't review Dr. Park's
5 deposition, correct?

6 A. I did not.

7 Q. And you said that you did have an opportunity
8 to review some other deposition testimony that was
9 provided to you, Dr. Pallos and Dr. Marzouk, correct?

10 A. Yes, I did. And Dr. Traivai and
11 Mrs. Singletary.

12 Q. And this is the only report that you've
13 provided in this case, correct?

14 A. It is.

15 Q. There's no supplements to your report; is
16 that correct?

17 A. No supplements.

18 Q. Would you agree that a treating dentist
19 reviews the medical chart and history of a patient
20 before providing care to that patient?

21 A. Define treating dentist.

22 Q. A dentist who treats a patient in the office.

23 A. A dentist who is in charge of the care
24 reviews the medical history, et cetera. Someone who
25 comes in to assist does not.

1 Q. What about someone who comes in to assist,
2 would that treating dentist or would that dentist
3 review X rays of the patient?

4 A. It would depend on the case.

5 Q. So you would agree that a treating dentist
6 reviews X rays of a patient?

7 A. Once again, it depends on what's being asked
8 of the dentist who's assisting.

9 Q. If the dentist is being asked to extract a
10 tooth, would you agree that they review X rays of the
11 patient?

12 A. They would.

13 Q. Would you agree that a treating dentist
14 performs a physical examination of the patient before
15 he treats the patient?

16 A. Again, I'm having trouble with treating
17 dentist and dentist who's offering to assist. It
18 sounds like you're putting the two in the same
19 sentence, and --

20 Q. Why don't you tell me the definition of a
21 treating dentist.

22 A. Someone who's in charge of the care of the
23 patient.

24 Q. So you would agree that someone who's in
25 charge of the care of the patient will perform a

1 physical examination of the patient prior to performing
2 any dental work on that patient?

3 A. I would say head and neck examination. Is
4 that what you mean by physical examination, head and
5 neck?

6 Q. We're talking about the mouth, so yes.

7 A. Okay. Thank you.

8 Q. Okay. And you gave me the definition of a
9 treating physician. What about assisting physician or
10 dentist?

11 A. Someone who aids in completion of a
12 procedure.

13 Q. And would you agree that someone who aids in
14 the completion of a procedure performs a physical
15 examination of the patient prior to performing any type
16 of procedure on that patient?

17 A. No.

18 Q. Would you agree that an extraction is the
19 actual removal of the tooth from the mouth?

20 A. Yes.

21 Q. And would you agree that Dr. Park provided
22 treatment in this case?

23 A. He did.

24 Q. In your opinion -- you've had an opportunity
25 to look at the records, correct?

1 A. Yes.

2 Q. In your opinion, during the extraction of
3 Reginald Singletary on April 18th of 2011, what did
4 Dr. Park do differently than Dr. Traivai?

5 A. Picked up a elevator and elevated the tooth
6 out of the socket. She was attempting to take the
7 tooth out with a forcep.

8 Q. Is there anything else that Dr. Park did
9 differently than Dr. Traivai?

10 A. Not that I'm aware of.

11 Q. Based upon your review of the records and
12 X rays, did Reginald Singletary have dense bone?

13 A. The only way you can determine dense bone is
14 to do a scan, a cone beam scan, which is like a CT scan
15 except for dentistry. And you can get a measurement of
16 density off a cone beam scan. Otherwise, X rays really
17 don't tell you a bunch about bone, about dense bone.

18 Q. Was that done in this case, that scan?

19 A. No.

20 Q. What's your understanding of the telephone
21 call on April 18th of 2011 by my client, Svetlana
22 Singletary, after the extraction and follow-up?

23 A. I understand there was a phone call made to
24 the office. It was answered by an office employee.

25 Q. And based upon your review of

1 Ms. Singletary's deposition, are you aware of the
2 complaints that were conveyed during the telephone
3 call?

4 A. I am.

5 Q. What were those complaints?

6 A. That he had pain and swelling.

7 Q. Do you know where the swelling was?

8 A. I don't recall. Can we review the document?

9 Q. I'll represent to you that it was pain and
10 swelling of the cheek and the neck.

11 A. Okay.

12 Q. Based upon those complaints two days after a
13 tooth extraction, is it your opinion that antibiotics
14 would be indicated at that point?

15 A. Wisdom teeth extractions very often have pain
16 and swelling in the cheek and neck at two days. So I
17 wouldn't say antibiotics are indicated at that point,
18 no.

19 Q. So it's not your opinion that swelling of the
20 neck requires antibiotics or antibiotics are not
21 indicated?

22 A. That is correct.

23 Q. And in your practice, if a patient came in
24 two days post extraction of a wisdom tooth and they had
25 pain, swelling in the cheek and in the neck, you

1 wouldn't prescribe antibiotics at that point.

2 MR. LEMONS: Your Honor, this is -- this
3 is -- the question is what the standard of care
4 requires, not as -- as --

5 THE COURT: Sustained.

6 MR. LEMONS: -- as the Court has ruled.

7 THE WITNESS: Am I supposed to answer?

8 MS. PATIN: No.

9 BY MS. PATIN:

10 Q. In your opinion, based upon the standard of
11 care, would antibiotics be indicated if a patient came
12 into the office two days post extraction of a tooth
13 with pain and swelling in the neck and in the cheek?

14 MR. FRIEDMAN: Objection. Incomplete
15 hypothetical.

16 THE COURT: Overruled. He can answer based
17 on what he was given.

18 THE WITNESS: I didn't hear you. Am I
19 supposed to answer?

20 THE COURT: You can answer.

21 BY MS. PATIN:

22 Q. You can answer.

23 A. Yes.

24 Q. Based upon the standard of care, what are the
25 proper instructions for a follow-up of a routine

1 extraction?

2 A. Patient will be given some gauze. They'll be
3 told to bite on the gauze for 20 minutes to stop
4 bleeding. They'll be told to replace the gauze if the
5 bleeding continues. Usually told to be -- to put ice
6 on their face to help with swelling. Chew on the other
7 side. Don't use a straw. Don't smoke anything,
8 cigarettes, pipes, cigars, et cetera. Call the office
9 if anything unusual occurs.

10 Q. And based upon the standard of care, what are
11 the proper instructions for follow-up for a surgical
12 extraction?

13 MR. LEMONS: Your Honor -- relevance, your
14 Honor. No -- this case doesn't involve a surgical
15 extraction.

16 THE COURT: Sustained.

17 MS. PATIN: May I approach?

18 THE COURT: Sure.

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

21 BY MS. PATIN:

22 Q. You mentioned that one of the proper
23 instructions for follow-up of a routine extraction is
24 that the patient call the office if there's any -- I'm
25 not sure if you said complications or issues. If you

1 can remind me what you said, I'd appreciate it.

2 A. If swelling increases past the third day, if
3 pain increases past the second day, if bleeding doesn't
4 stop, call the office.

5 Q. And if Reginald Singletary, or his wife on
6 behalf of him, called the office on April 18th of 2011,
7 would that be following the proper instructions?

8 A. Yes.

9 Q. You were talking about complicating factors.
10 One of the statements in your report is, "With proper
11 instructions for follow-up, it is not usual to
12 prescribe antibiotics post extraction without some
13 other complicating factor being involved."

14 And you mentioned that there were no
15 complicating factors on April 16th of 2011, correct?

16 A. Correct.

17 Q. Were there any complicating factors on
18 April 18th of 2011?

19 MR. LEMONS: Objection. Calls for
20 speculation, Your Honor.

21 THE COURT: He can testify as to what he
22 knows. Overruled.

23 THE WITNESS: Based on Mrs. Singletary's
24 deposition, she stated that there was swelling,
25 swelling going into the neck. That would be a

1 complicating factor.

2 BY MS. PATIN:

3 Q. Would you agree that a treating dentist is
4 responsible for the follow-up care of his or her
5 patient based upon the standard of care?

6 A. Yes.

7 MS. PATIN: No further questions at this
8 time.

9 THE COURT: Mr. Lemons.

10 MR. LEMONS: Thank you, Your Honor. Just a
11 couple.

12

13 REDIRECT EXAMINATION

14 BY MR. LEMONS:

15 Q. Dr. Levitt, do you have your report there in
16 front of you?

17 A. I do.

18 Q. What is the date of your report? What's the
19 date on your signature on the last page?

20 A. Oh, thank you. 7/12/13.

21 Q. And at the time that you did that report, you
22 didn't have Dr. Park's deposition, correct?

23 A. That's correct.

24 Q. Do you know when Dr. Park's deposition was
25 taken?

1 A. No, I don't.

2 Q. Just to clarify and follow up on plaintiffs'
3 counsel last questions regarding obligations of a
4 treating dentist, it's your opinion in this case that
5 Dr. Park provided treatment but was not the treating
6 dentist; is that true?

7 A. That is true.

8 MR. LEMONS: That's all I have, Your Honor.
9 Thank you.

10 THE COURT: Anything else for this gentleman?

11

12 CROSS-EXAMINATION

13 BY MR. VOGEL:

14 Q. Doctor, based on the questioning by
15 Ms. Patin, did that change any of your opinions that
16 you hold in this case?

17 A. No.

18 Q. So it's still your opinion that Dr. Traivai
19 met the standard of care in this case?

20 A. It is.

21 Q. Is that your opinion to a reasonable degree
22 of medical probability?

23 A. It is.

24 MR. VOGEL: Thank you.

25 MR. FRIEDMAN: Nothing, Your Honor.

1 THE COURT: Anything else?

2 MS. PATIN: Just one follow-up.

3

4 RECROSS-EXAMINATION

5 BY MS. PATIN:

6 Q. Dr. Levitt, after Dr. Park's deposition was
7 taken, were you ever provided with a copy of it?

8 A. I'm not sure.

9 Q. Do you recall reviewing Dr. Park's
10 deposition?

11 A. I recall the description of picking up an
12 elevator and popping the tooth out. That couldn't have
13 come from anyone's deposition but Dr. Park's. It could
14 have come from Dr. Traivai, so I really don't recall
15 reviewing it.

16 MS. PATIN: No further questions.

17 THE COURT: Anything else?

18 MR. VOGEL: No, Your Honor.

19 MR. LEMONS: No, Your Honor. Thank you.

20 THE COURT: Ladies and gentlemen, any
21 questions? We got one.

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

24 THE COURT: All right, Doctor, I've got two
25 questions. The first one I'm not going to ask, but the

1 second one I will.

2 Does chronic periodontal disease imply
3 infection?

4 THE WITNESS: No. Acute periodontal disease
5 implies infection. Chronic means something very low
6 grade. Without any exudate -- that's pus -- without
7 any swelling, there's no acute infection going on.

8 THE COURT: Okay. We'll mark that Court's
9 next in order.

10 Mr. Lemons, any follow-ups based on that one?

11 MR. LEMONS: No, Your Honor. Thank you.

12 MR. FRIEDMAN: No, Your Honor.

13 MR. VOGEL: No, Your Honor.

14 MS. PATIN: No, Your Honor.

15 THE COURT: Okay. Thank you, Doctor.

16 Appreciate your time.

17 Next witness for the defense.

18 MR. FRIEDMAN: We'd like to call Dr. William
19 Ardary M.D., D.D.S. I believe he's outside.

20 THE COURT: Good afternoon, Doctor. We're
21 going to ask you to step up on the witness, if you
22 would, remain standing, and raise your right hand,
23 please.

24 /////

25 /////

1 THE CLERK: You do solemnly swear the
2 testimony you're about to give in this action shall be
3 the truth, the whole truth, and nothing but the truth,
4 so help you God.

5 THE WITNESS: Yes.

6 THE CLERK: Please state your name and spell
7 it for the record.

8 THE WITNESS: Should I sit down?

9 THE COURT: You can.

10 THE WITNESS: Yes. It's William Clark
11 Ardary, A-r-d-a-r-y.

12 THE COURT: Great. Thank you, Doctor. I'm
13 going to ask you to try to continue to speak into that
14 microphone so everyone can hear you better.

15 MR. FRIEDMAN: Thank you.

16

17 DIRECT EXAMINATION

18 BY MR. FRIEDMAN:

19 Q. Good afternoon, Doctor.

20 A. Hello.

21 Q. You've been retained in this case by my
22 client, Dr. Lee and Summerlin Smiles, as well as on
23 behalf of Dr. Florida Traivai, correct?

24 A. That's correct.

25 Q. Okay. What is your profession, Doctor?

1 A. I'm an oral and maxillofacial surgeon.

2 Q. And what school did you attend for your

3 undergraduate training?

4 A. Undergraduate, I went to Idaho State

5 University in Pocatello, Idaho.

6 Q. And then you went on to dental school?

7 A. I did.

8 Q. What dental school did you attend?

9 A. University of Southern California.

10 Q. And did you receive any awards or

11 distinctions at USC dental school?

12 A. A few, yes.

13 Q. Graduated with honors?

14 A. Yes.

15 Q. Second in your class?

16 A. Yes.

17 Q. Doctor, what is the James Irvine Foundation

18 Fellowship?

19 A. It was an award for academic excellence.

20 Q. And you received that?

21 A. Yes.

22 Q. What is the Founders Award?

23 A. I believe it was an award in the area of

24 pathology with academic excellence.

25 Q. And you received that award?

1 A. I did.

2 Q. Doctor, what is the American Association of
3 Oral and Maxillofacial Surgeons Award?

4 A. That's the award given by the American
5 Association of Oral and Maxillofacial Surgeons to an
6 undergraduate student that shows excellence in that
7 field of study.

8 Q. And you received that award?

9 A. I did.

10 Q. Doctor, what is Omicron Kappa Upsilon?

11 A. It's an honor fraternity.

12 Q. Were you a member of that honor fraternity?

13 A. Yes, I was.

14 Q. And what is Alpha Tau Upsilon?

15 A. Another honor fraternity.

16 Q. Were you a member of that honor fraternity?

17 A. Yes.

18 Q. And, Doctor, what is Phi Kappa Phi?

19 A. Another fraternity -- honor fraternity.

20 Q. You were a member of that honor fraternity?

21 A. I believe I was, yes.

22 Q. Doctor, what did you do after graduating from
23 USC dental school?

24 A. I went into a residency in oral and
25 maxillofacial surgery.

1 Q. And what was the length of that residency?

2 A. That was three years.

3 Q. Three-year residency?

4 A. Yes.

5 Q. And so when you completed that residency, you

6 were an oral surgeon?

7 A. That's correct.

8 Q. Do you have any further training or education

9 beyond dental school and your three-year residency to

10 become an oral and maxillofacial surgeon?

11 A. Yes, I do.

12 Q. And what further training or education have

13 you completed?

14 A. Following my residency program, I attended

15 the University of Southern California School of

16 Medicine and graduated in 1985 with a medical degree.

17 Q. So you are both a physician and a dentist.

18 A. That's correct.

19 Q. And did you complete any internships in

20 internal medicine?

21 A. I did. I completed my internship in internal

22 medicine at the L.A. County Hospital in 1986.

23 Q. Have you done any teaching?

24 A. I have.

25 Q. Where have you done teaching?

1 A. At the University of Southern California, at
2 the LAC USC Medical Center.

3 Q. Were you the director of postgraduate
4 residency training in the oral and maxillofacial
5 surgery department?

6 A. I was.

7 Q. Did you hold any other positions during that
8 time?

9 A. Yeah. I -- I also was appointed as a
10 chairman of the department, and I also took over the
11 director of dentistry at the L.A. County Hospital as
12 well.

13 Q. So you were their director both at the
14 hospital, at L.A. County USC Medical Center, as well as
15 the chairman of the maxillofacial surgery department at
16 USC dental school?

17 A. That's correct.

18 Q. And what is the American Association of Oral
19 and Maxillofacial Surgeons?

20 A. That's our organized body that governs the
21 practice and whatnot of our specialty, oral and
22 maxillofacial surgery.

23 Q. And what is the American Board of Oral and
24 Maxillofacial Surgery?

25 A. Yeah. That's kind of a branch of the

1 American Association, but it's your -- your boards are
2 an additional evaluation, both testing clinically and
3 in written test to become what is called board
4 certified. It verifies that you attended residencies
5 and that you achieved a certain level of training
6 competency.

7 Q. And are you board certified?

8 A. I am.

9 Q. What is the American Society of Dental
10 Anesthesiology?

11 A. Well, in oral maxillofacial surgery, a lot of
12 us administer our own anesthesia for patients. And
13 people may recall, you go to the oral surgeon commonly
14 to get a wisdom tooth out or something like that. A
15 lot of patients will prefer general anesthesia or
16 sedation, so anesthesia is a significant part of our
17 specialty.

18 And that is another organized group that
19 governs dental anesthesiology. You don't have to be an
20 oral surgeon to be a member of that, but those of us in
21 dentistry that also practice and administer anesthesia
22 usually are a member of that. And I also am a fellow
23 of that society as well.

24 Q. So you're a fellow of the American Society of
25 Dental Anesthesiology?

1 A. Right. That means there was another board
2 examination that was administered and went through that
3 process as well.

4 Q. And how long have you been licensed to
5 practice dentistry?

6 A. Since 1980, 34 years.

7 Q. How long have you been a licensed physician?

8 A. Since 1986.

9 Q. Do you have any privileges at any hospitals?

10 A. I do. Arcadia Methodist Hospital in
11 California.

12 Q. And you have a private practice?

13 A. I do.

14 Q. How long have you had a private practice?

15 A. Since 1986 as well.

16 Q. And are you published?

17 A. I have published, yes.

18 Q. Where have you published?

19 A. I published in the American Association of
20 Oral and Maxillofacial, the journal of our society, our
21 specialty. I publish in the Triple O journal, which is
22 oral pathology, oral medicine, and endodontics, that
23 journal. I've also published in the Journal of
24 American Dental Association.

25 Q. Thank you.

1 MR. FRIEDMAN: At this time, I would like to
2 qualify Dr. Ardary as an expert in oral surgery and as
3 a medical doctor.

4 THE COURT: Any objection?

5 MR. VOGEL: No, Your Honor.

6 MS. PATIN: No objection.

7 THE COURT: He'll be so recognized.

8 BY MR. FRIEDMAN:

9 Q. Now, Doctor, did you review the dental X rays
10 and records from Summerlin Smiles in this matter?

11 A. I did.

12 Q. And based on your review, you saw that
13 Dr. Traivai examined Patient Reginald Singletary,
14 correct?

15 A. That's correct.

16 Q. And that was on March 24th, 2011?

17 A. That's correct.

18 Q. Do you recall what her findings were?

19 A. Yeah. I believe that she diagnosed, like, a
20 severe generalized chronic periodontitis.

21 Q. What is periodontitis?

22 A. Perio -- well, step back to give a little
23 explanation. Periodontia is what is composed of the
24 teeth, the supporting structures of the teeth,
25 periodontal ligament and the supporting alveolar bone,

1 and the gingiva or the gum tissues. That's the
2 periodontia. Periodontitis is an inflammatory
3 condition that involves those structures.

4 Q. And what does it mean that the periodontitis
5 was severe?

6 A. It's -- it's a classification of the
7 intensity of the process compared to maybe mild or
8 moderate.

9 Q. What does it mean that the periodontitis was
10 generalized?

11 A. It involved all the quadrants in the oral
12 cavity.

13 Q. And what does chronic mean?

14 A. The duration. It would mean that it's
15 long-standing usually greater than times of six months.
16 Chronic would be long-standing duration as opposed to a
17 acute which would be something that just came up like
18 overnight.

19 Q. Based on your view, you saw that Dr. Traivai
20 recommended scaling and root planing, correct?

21 A. That's correct.

22 Q. What is scaling and root planing?

23 A. Scaling or root planing are an important part
24 of managing periodontitis. To step back again, as we
25 all know, just from general function, use of your

1 teeth, you collect a biofilm which consists generally
2 of maybe plaque, which is more of a softer material,
3 and/or calculus which is calcified material. And in
4 that biofilm, there's harboring your normal oral flora
5 bacteria. And so scaling and root planing is the
6 process of cleansing the teeth and the periodontal --
7 general periodontal ligament area under the gum tissues
8 and the teeth themselves, and it's an important part of
9 managing periodontitis.

10 Q. So for the layperson like myself, scaling and
11 root planing is cleaning under the gums to treat
12 periodontitis.

13 A. Essentially, yes.

14 Q. According to the records, was the scaling and
15 root planing done for Mr. Singletary?

16 A. I believe it was done on the 24th by the
17 hygienist, if I recall from the records.

18 Q. Okay. And Dr. Traivai also recommended the
19 extraction of Tooth No. 32, correct?

20 A. She did.

21 Q. Was that extraction completed?

22 A. I believe that was done on, like, April 16th,
23 2011. It was taken out. I believe so, yes.

24 Q. What type of tooth is Tooth No. 32?

25 A. It's a third molar.

1 Q. And a third molar is also referred to by
2 laypeople as a wisdom tooth?

3 A. That's correct.

4 Q. Where is Tooth No. 32 located in the mouth?

5 A. It's in the lower right quadrant. It's the
6 most posterior tooth -- if you have all 32 of your
7 teeth, it's the most posterior tooth present in the
8 lower right quadrant.

9 Q. When you say "posterior," for the layperson,
10 that's the one way in the back.

11 A. Yeah, way back by -- close to the angle of
12 the jaw, in this vicinity.

13 Q. And can you describe for us what you mean by
14 "the angle of the jaw."

15 A. Well, that's just a turn in your normal
16 anatomy from what is called the ramus to the body of
17 the mandible. And it sits -- the wisdom tooth, the
18 third molar, would sit just anterior to that deflection
19 in the body of the mandible.

20 Q. Thank you.

21 Doctor, do you regularly extract third molars
22 or wisdom teeth in your practice?

23 A. Almost daily.

24 Q. Approximately how many third molar
25 extractions would you estimate that you do on a monthly

1 basis?

2 A. A fair number. Maybe anywhere from 60 to 80
3 wisdom teeth on a busy month.

4 Q. So you extract 60 to 80 wisdom teeth a month
5 in your practice.

6 A. Approximately, yeah.

7 Q. I'm going to make you do a little bit of math
8 here. Do you have an estimate as to how many third
9 molar extractions you've completed over the course of
10 your career?

11 You know what, that's way too much math for
12 the day. It's a whole lot.

13 A. It's a few thousand.

14 Q. Doctor, based upon your review of the records
15 and other materials in this matter, did Dr. Traivai's
16 treatment plan, recommending scaling and root planing
17 and extraction of Tooth No. 32, comply with the dental
18 standard of care?

19 A. Yes, it did.

20 Q. And you're providing that opinion to a
21 reasonable dental and medical probability?

22 A. Absolutely.

23 Q. And what is your opinion of Dr. Traivai's
24 treatment of the patient?

25 A. That her treatment was well within the

1 standard of care and appropriate for this particular
2 patient.

3 Q. And upon what do you base that opinion?

4 A. On my education, training, and experience,
5 and a review of the records.

6 Q. And you reviewed Plaintiff Svetlana
7 Singletary's deposition transcript, correct?

8 A. Yes, I did.

9 Q. And you saw that she alleges that she called
10 Summerlin Smiles on April 18th, 2011, two days after
11 the extraction of the third molar, correct?

12 A. That's correct.

13 Q. And you saw in her deposition that she
14 testified that she told whoever it was that answered
15 the phone that Mr. Singletary had a tooth extraction
16 Saturday and he's in a lot of pain, his neck is
17 swollen, his cheek is swollen, can we come in?

18 Do you recall that testimony?

19 A. I do recall that.

20 Q. Doctor, have you or your office received
21 calls from patients after completing third molar
22 extractions?

23 A. Absolutely, yes.

24 Q. Thousands of times?

25 A. A lot of calls on questions on postoperative

1 questions, yes. Many, many times. Thousands, yeah.

2 Q. Is it unusual for a patient to complain of
3 pain two days after a third molar extraction?

4 A. No. It's very -- very typical.

5 Q. Is it unusual for a patient to complain of
6 swelling in the neck two days after Tooth No. 32 is
7 extracted?

8 A. No, that would not be atypical either.

9 Q. Why do you say that?

10 A. Because of the location of the tooth and
11 where swelling normally will be anticipated following a
12 third molar surgery. The location of the tooth is,
13 like I was describing, more posteriorly and near the
14 musculature of the jaw. One of the main muscles that
15 makes you close, the masseter. When that surgical
16 insult causes the postoperative swelling and edema, the
17 swelling typically can involve the cheek, the angle of
18 the jaw, and this part of the anterior neck generally
19 (witness indicating).

20 Q. Doctor, is it unusual for a patient to
21 complain of swelling in the cheek two days after a
22 third molar extraction?

23 A. No. That would be typical as well.

24 Q. Doctor, was anything that plaintiff alleges
25 she said in the call that she allegedly made atypical

1 for an extraction of Tooth No. 32 two days post?

2 A. No, it was not, not atypical at all.

3 Q. What type -- what types of things would you
4 look for as red flags that maybe there is something
5 other than the usual pain and swelling secondary to a
6 third molar extraction?

7 A. Right. Things that would be atypical would
8 be the presence of fever. Fever, maybe fever and
9 chills; presence of malaise, which is really not
10 feeling very well. Also, just a general fatigue.
11 Those -- those are the types of things. Maybe severe
12 limited opening. Those type of things is what you
13 would -- would maybe be atypical.

14 Q. So those things would need to have been
15 communicated for such post-op symptoms to be considered
16 atypical secondary to an extraction of Tooth No. 32?

17 A. Yes. You'd have to have something more than
18 typical pain or swelling to alert anybody that
19 something atypical was happening in the postoperative
20 course.

21 Q. And according to plaintiff's deposition, she
22 didn't mention any of those things during her alleged
23 phone call, correct?

24 A. I do not believe that she did.

25 Q. In terms of this case, is it important that

1 the patient already had an appointment scheduled for
2 follow-up?

3 A. Yes.

4 Q. Why is that?

5 A. Well, it is generally a good medical and
6 dental practice to follow your patients afterwards to
7 assure that they're on track with the healing. And it
8 also complies with the standard of care.

9 Q. And, Doctor, you reviewed plaintiff's
10 deposition wherein she testified that the person who
11 answered the phone left her with the impression that
12 the symptoms she described were normal after wisdom
13 tooth extraction and that they should get better the
14 following day or the day after that.

15 You saw that, correct?

16 A. I do recall that, yes.

17 Q. And in your opinion as an oral surgeon and
18 physician, was the information that plaintiff was
19 allegedly provided accurate and in compliance with the
20 standard of care?

21 A. Yes.

22 Q. And you state that opinion and all of your
23 opinions here today to a reasonable dental and medical
24 probability, correct?

25 A. Yes, I do.

1 Q. Doctor, did you review plaintiff's deposition
2 wherein she testified that on the day after her alleged
3 phone call to Summerlin Smiles, that the swelling in
4 the patient's neck got a little bigger and began to
5 move to the other side of his neck?

6 A. I do recall that.

7 Q. Now, if plaintiff had called Summerlin Smiles
8 that day and communicated that the swelling in the
9 patient's neck got a little bigger and began to move to
10 the other side of his neck, would that have been a red
11 flag that something unusual was occurring?

12 A. That would have been a red flag. That --
13 that's an atypical, especially the migration to the
14 other side of the neck. That would be very atypical.

15 Q. And based on your review of plaintiff's
16 deposition and the materials in your case -- in this
17 case, it's your understanding that plaintiff did not
18 call Summerlin Smiles with this information, correct?

19 A. Yes, that's my understanding that she did not
20 call Summerlin Smiles or any other healthcare
21 professional, as I recall.

22 Q. Doctor, based upon your review of all the
23 records and materials in this case, is it your opinion
24 that Dr. Lee and Summerlin Smiles complied with the
25 dental standard of care?

1 A. Yes.

2 Q. And, Doctor, did you come to the opinion that
3 Dr. Lee and Summerlin Smiles -- neither Dr. Lee nor
4 Summerlin Smiles caused any harm to this patient,
5 Mr. Singletary, or plaintiff in this matter?

6 A. No, they caused no harm in my opinion.

7 Q. Doctor, I'm going to ask you the same
8 question relative to Dr. Traivai.

9 Based upon your review of all the records in
10 this matter, is it your opinion that Dr. Traivai
11 complied in all respects with the dental standard of
12 care?

13 A. Yes, she did.

14 Q. And based upon your review of all the
15 materials in this case, is it your opinion that
16 Dr. Traivai did not cause any harm to the plaintiff or
17 the patient in this matter?

18 A. That's correct, that would be my opinion.

19 Q. And these opinions that you have provided are
20 all to a reasonable dental and medical probability?

21 A. Yes.

22 Q. Thank you.

23 MR. FRIEDMAN: I have nothing further,
24 Doctor.

25 THE COURT: Mr. Vogel.

1 MR. VOGEL: Just a little follow-up. If I
2 may, may I unplug the ELMO and plug my computer in
3 there?

4 THE COURT: That's fine. Is it easier to do
5 it there than --

6 MR. VOGEL: No, it's actually not.

7

8 CROSS-EXAMINATION

9 BY MR. VOGEL:

10 Q. Can you see that, Doctor?

11 A. I do. I see a panoramic X ray.

12 Q. Have you seen that before?

13 A. I have.

14 Q. In this case, which tooth are we talking
15 about, Doctor?

16 And that screen you've got there is a touch
17 screen. You can actually draw on it.

18 A. Oh, really? Tooth No. 32 is this tooth right
19 there.

20 MS. PATIN: Objection, Your Honor. May we
21 approach?

22 THE COURT: Come on up.

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

25 MR. VOGEL: My apologies, Doctor. That

1 hasn't been admitted into evidence yet.

2 BY MR. VOGEL:

3 Q. Did you review X rays in this case?

4 A. I did.

5 Q. If you could, there's a big binder behind

6 you, No. 5.

7 A. The thick one?

8 Q. Yeah. And I believe there's an exhibit.

9 It's No. 5.

10 A. Yes.

11 Q. All right. I believe the panoramic X ray, is

12 that the last one in that exhibit there?

13 A. It appears so.

14 Q. Have you seen that X ray before?

15 A. Yes, I have.

16 Q. Is that part of the materials you reviewed as

17 being documentation from Summerlin Smiles?

18 A. Yes, it is.

19 Q. Is that documentation that you reviewed that

20 was from Summerlin Smiles related to Reginald

21 Singletary?

22 A. Yes.

23 Q. Is that part of the evidence that you relied

24 upon in coming to your conclusions in this case?

25 A. Yes.

1 Q. Do you have any reason to believe that this
2 is not the document that it's purported to be?

3 A. No, I do not.

4 MR. VOGEL: Your Honor, I move to admit
5 Exhibit No. 5, the panoramic X ray.

6 MS. PATIN: Objection, Your Honor.

7 THE COURT: Come on up, guys.

8 (A discussion was held at the bench,
9 not reported.)

10 THE COURT: We're just going to allow the
11 X ray to be used as demonstrative, at least at this
12 time.

13 MR. VOGEL: That's fine. I appreciate that.
14 Thank you.

15 Could we have it back up so the jury can see
16 it?

17 THE COURT: See if I can get that one for
18 you.

19 BY MR. VOGEL:

20 Q. Okay. So is your arrow pointing to Tooth
21 No. 32?

22 A. Yes, it is.

23 Q. Okay. Now, you reviewed the deposition of
24 Dr. Pallos; is that right?

25 A. I did.

1 Q. Do you recall his testimony wherein he
2 indicated something to the extent that he did not see
3 any evidence of an infection?

4 A. I do.

5 Q. I'll represent to you that just yesterday, he
6 changed that opinion. He testified now that he
7 believes there was infection at the time, and he says
8 what he -- what he claims he's -- he's basing that on
9 is that there was an apical abscess or apical
10 radiolucency.

11 Do you see any evidence of that on this
12 X ray?

13 A. There's absolutely no apical radiolucency on
14 this X ray.

15 Q. All right. And if you could -- why do you
16 say that? What about this X ray makes you say that?

17 A. Well, first off, it's not there. To be
18 descriptive, what is there is what we call a
19 mesioangular incline, tilting to the front, wisdom
20 tooth with a spec of calculus right under my arrow. We
21 also have some bone loss typical of periodontitis.

22 Q. The jury can't see where you're pointing.

23 MR. VOGEL: With the Court's permission, can
24 you come down and --

25 THE WITNESS: Yeah, right in that pocket,

1 that triangle of space.

2 THE COURT: Doctor, he's asking that you step
3 down.

4 THE WITNESS: I'm sorry.

5 MR. VOGEL: The jury can't see what you're
6 pointing to really on the screen.

7 THE WITNESS: Oh, it's on this screen.

8 MR. VOGEL: Yeah, it's on here too. I'm
9 sorry.

10 THE WITNESS: Yeah. I need my pointer would
11 be better. See if you get rid of that arrow. There's
12 a triangular dark shadow. That's bone loss. Bone used
13 to be up on the tooth. It's now dropped down.

14 THE COURT: Okay. You're going to have to
15 talk a lot louder if you're going to talk over there.
16 Okay?

17 MR. VOGEL: There's a microphone right here,
18 if you want to project that.

19 THE WITNESS: If I hold it. I was speaking a
20 little low. Okay.

21 Anyway, the bone level is -- is here, as you
22 can see the crest of it. This is now a pocket or a
23 space in between the tooth. This collects bacteria,
24 plaque, calculus. That's a sign of periodontitis.

25 THE MARSHAL: Doctor, try this.

1 THE WITNESS: Is that working?

2 That's a sign of periodontitis. You see

3 here's a little fleck of calculus. That's difficulty

4 in cleaning that tooth. That's what was needing to be

5 scaled off of there because that's a risk for further

6 periodontitis. When you have all of the collection of

7 plaque and calculus, the bone gets inflamed and it

8 backs away from that. If that process continues and

9 you start losing teeth, there's already significant

10 bone loss on the back part of the second molar. And

11 that's significant because that's why this tooth should

12 come out because it's a factor in -- in promoting more

13 periodontitis, more periodontal disease.

14 The periapical region is this region right

15 here on the bottom of the tooth. There is no

16 periapical radiolucency. There's no periapical lesion

17 in this case. What you see here is the mandibular

18 canal.

19 If you look here, this is where your sensory

20 nerve comes in from your brain into the lower jaw, into

21 the jaw, and it supplies sensation to all the teeth.

22 And you can see the stripe here. It comes in here at

23 the mandibular foramina, and that's the stripe. That's

24 supposed to be there all the way to here, and it comes

25 out in your chin, called the mental nerve, m-e-n-t-a-l,

1 mental. And -- and that's what is the dark line.
2 That's not a periapical lesion. That's normal anatomy.
3 A true lesion would be more similar to if
4 this was -- right here. If you can see here on this
5 tooth on the top, this is a little bit of periapical
6 shadowing which would be consistent. Because this
7 tooth here, see how it's missing its crown and it's
8 broken down? And now, that nerve is reacting and
9 causing a little bit of inflammation at the end. And
10 it usually causes a circle that can be seen as an -- as
11 a darkness. That's a apical lesion. There's no
12 periapical radiolucency on this Tooth No. 32.

13 BY MR. VOGEL:

14 Q. All right. Now, it's my understanding that
15 this tooth, though, was -- had like a necrotic pulp?

16 A. It could have a necrotic pulp. That's true.
17 That would require other testing. It could have been
18 necrotic.

19 Q. And does that mean that it's got an
20 infection?

21 A. No, it does not mean it has infection. That
22 means it is necrotic.

23 Q. Do you know what day those X rays were taken?

24 A. My understanding, they were taken the 24th of
25 March.

1 Q. March 24th?

2 A. The first day that the patient was seen I
3 believe.

4 Q. So roughly three weeks before the extraction?

5 A. Yes.

6 Q. If that Tooth No. 32 had an abscess or
7 infection on March 24th, 2011, what sort of symptoms
8 would you expect the patient to be exhibiting at that
9 time?

10 A. An acute apical abscess?

11 Q. Correct.

12 A. Oh, boy. This patient would not have waited
13 three weeks to get the tooth out. Because an apical
14 abscess that's acute usually is associated with
15 swelling, pain, pressure, buildup, and usually limiting
16 patient activity, ability to chew, sometimes ability to
17 sleep. An acute apical abscess is not going to be sat
18 upon. Nobody's going to sit on that. That's going to
19 require treatment. There would be definitely symptoms.

20 Q. What's your understanding of what
21 Mr. Singletary's pain complaints were with respect to
22 that tooth at that time?

23 A. There was no pain at this time. I think he
24 had complained that there was some pain a month or two
25 earlier. But at this time, there was -- pain had

1 resolved.

2 Q. Is it fair to say that you disagree with
3 Dr. Pallos's opinion in that respect?

4 A. In terms of this tooth having an acute apical
5 abscess?

6 Q. Correct.

7 A. Absolutely would disagree, 180 degrees.

8 Q. Is that based on the lack of pain?

9 A. Based on radiographic findings and the lack
10 of symptoms, lack of pain particularly.

11 Q. Thank you, Doctor. Have a seat. Thank you,
12 Doctor.

13 Now, is there any difference in the technique
14 for removing a third molar versus other teeth?

15 A. Not in this case.

16 Q. Not in this case? Why do you say that?

17 A. Because it's any erupted tooth.

18 Q. What does that mean?

19 A. It's into the oral cavity. You have enough
20 tooth structure to get what we call a purchase on.

21 Q. Okay. Now, in this gentleman's case, how
22 would you -- how would you characterize the oral
23 condition based on that X ray?

24 A. It's poor condition.

25 Q. Poor condition? Is it in such a condition

1 that would require a referral to a periodontist?

2 A. Not necessarily.

3 Q. Is that a judgment call by the dentist?

4 A. Yes.

5 Q. Just so I'm clear, are all the opinions that
6 you've rendered here today regarding Dr. Traivai
7 meeting the standard of care, are those all to a
8 reasonable degree of medical probability?

9 A. Yes.

10 MR. VOGEL: Thank you, Doctor. I appreciate
11 it.

12 THE COURT: Mr. Lemons?

13 MR. LEMONS: I have no questions, Your Honor.

14 THE COURT: Ms. Patin?

15 MS. PATIN: Just one second, Your Honor.

16 MR. VOGEL: Do you want these left up there?

17 MS. PATIN: No.

18 MR. VOGEL: I assume you don't want that left
19 up there.

20

21 CROSS-EXAMINATION

22 BY MS. PATIN:

23 Q. Hi, Dr. Ardary.

24 A. Hello there.

25 Q. I actually think I've been pronouncing your

1 name wrong, so I'm glad you pronounced it for us today.

2 Just to go back to the X ray that you were
3 just looking at, during your testimony, you testified
4 that there was no apical radiolucency at Tooth No. 32?

5 A. That's correct.

6 Q. So you disagreed with Dr. Pallos's testimony,
7 correct?

8 A. That's correct.

9 Q. Do you also disagree with Dr. Traivai's
10 testimony?

11 A. If she said there was a periapical lesion?

12 Q. Yes.

13 A. I would be in disagreement with that.

14 Q. Did you have a chance to review Dr. Traivai's
15 deposition in this case?

16 A. I did.

17 Q. And do you recall reading that Dr. Traivai
18 said that Tooth No. 32 had to be extracted because it
19 was nonrestorable?

20 A. I believe so. I don't have an exact recall,
21 but yeah, that would be true.

22 Q. I'll represent to you that she did say that
23 the tooth had to be extracted because it was
24 nonrestorable. And I asked her why it was
25 nonrestorable and she said there was apical

1 radiolucency.

2 And you disagree with Dr. Traivai, correct?

3 A. In terms of the apical area, there's no
4 apical radiolucency. There is some radiolucency around
5 it, but it's not at the apex of the tooth.

6 Q. Okay. So it's your testimony that there is
7 radiolucency, but it's not apical radiolucency as
8 Dr. Traivai testified to.

9 A. Yeah, because you can see there was nothing
10 at the end of the tooth.

11 Q. And you mentioned that you reviewed quite a
12 few records in this case, including the dental records
13 of Summerlin Smiles, medical records from St. Rose
14 Hospital, and you said you reviewed some other
15 documents, I believe deposition transcripts?

16 A. I did review other documents including
17 deposition transcripts, that's correct.

18 Q. Did you review any -- any other documents
19 besides depo transcripts?

20 A. I did review, from an infectious disease
21 doctor, an opinion letter or another write-up. I did.

22 Q. And after you reviewed all those documents,
23 you didn't supplement your report, correct? This is
24 the only report in the case?

25 A. That's the only report I was asked to write,

1 yes.

2 Q. Now, my understanding is that you are
3 licensed in California with the State Board of Dental
4 Examiners, correct?

5 A. That's correct.

6 Q. And you are not licensed here in Nevada,
7 correct?

8 A. No, I am not.

9 Q. Taking a look at your expert report under
10 your Discussion on page 2, you make a comment that
11 "appropriate consent was given." It's in your first
12 paragraph under Discussion.

13 A. Yes.

14 Q. How do you know appropriate consent was
15 given?

16 MR. VOGEL: Object, Your Honor. This claim
17 has already been dismissed.

18 THE COURT: It has.

19 MS. PATIN: It's part of his opinions. I'm
20 just questioning how he was able to come to this
21 opinion.

22 MR. FRIEDMAN: Objection. Relevance.

23 MR. VOGEL: It's not relevant, Your Honor.

24 THE COURT: Sustained.

25 /////

1 BY MS. PATIN:

2 Q. Dr. Ardary, does scaling and root planing
3 remove all bacteria of the mouth?

4 A. All of it? No, it's not going to remove all
5 of it.

6 Q. So there's no guarantee that even if scaling
7 and root planing is done that all the bacteria in the
8 mouth will be removed, correct?

9 A. Well, of course not, because it's -- bacteria
10 is going to reside in other locations and on -- on the
11 teeth.

12 Q. And you would agree that a dental surgery
13 such as an extraction may cause bacteria in the mouth
14 to enter the bloodstream and cause infection.

15 A. I would agree that it may cause bacteria to
16 enter the bloodstream. Whether it causes infection or
17 not is -- is not predictable.

18 Q. I'll represent to you that Dr. Traivai
19 testified that after scaling and root planing, there's
20 still no guarantee that an infection will not form
21 following a tooth extraction.

22 Do you agree?

23 A. You can never guarantee that an infection
24 will not occur in a postoperative wound. That would
25 be -- I would agree with that.

1 Q. In your report, you also make a comment that
2 "There are many factors that may lead to infection."
3 Correct?

4 A. That's correct.

5 Q. What are those many factors that you're
6 referring to?

7 A. I think mostly I was referring to the
8 patient's state of their immune system and general
9 health.

10 Q. And based upon your review of the medical
11 records in this case -- well, I should say the dental
12 records in this case, was there any reason to believe
13 that Reginald Singletary had a compromised immune
14 system?

15 A. No. He presented with a clear medical
16 history. You would not assume that he would.

17 Q. And that he was in good general health.

18 A. That's my recollection based on a review of
19 his completion of the health history.

20 Q. Would you agree that if the infection is not
21 treated or if an infection is not treated, it can lead
22 to death?

23 A. I would agree that it is possible that
24 certain infections, if not treated, could lead to
25 death, yes.

1 Q. What about the infection in this case?

2 A. Well, I'm not aware that there was any

3 infection at the time of the extraction of the tooth.

4 Q. Are you -- you did review the St. Rose

5 medical records, correct?

6 A. That's correct.

7 Q. So you're aware that Mr. Singletary did

8 develop an infection, correct?

9 A. He did develop an infection, that's correct.

10 Q. And would you agree that if the infection was

11 not -- if -- is not treated, it can lead to death?

12 A. I would agree that an infection, if not

13 treated, could lead to death.

14 Q. This infection from the St. Rose medical

15 records that Mr. Singletary developed.

16 A. The type of infection that he had, if not

17 treated, could lead to death, that's -- that's true.

18 Q. Would you agree that antibiotics is the

19 appropriate treatment for infection?

20 MR. VOGEL: Object to form. Vague.

21 MR. FRIEDMAN: It's beyond the scope of his

22 expertise.

23 THE COURT: Overruled.

24 THE WITNESS: Now, could you repeat the

25 question, please?

1 BY MS. PATIN:

2 Q. Would you agree that antibiotics is the
3 appropriate treatment for infection?

4 A. That's a very vague question because
5 antibiotics -- what type of infection? Infection
6 where? You really have to define that further because
7 if you wanted to get into a discussion on the use of
8 antibiotics in infection, it gets to be very complex.
9 And if you want to refer to dental infections
10 particularly, not necessarily every dental infection is
11 indicated to have -- to having antibiotics as the
12 treatment of choice. This is where there's a myth in
13 the use of antibiotics. Matter of fact, if you look at
14 the literature --

15 Q. I apologize. I'll get more specific for you.
16 I thought we were talking about this case with regard
17 to infection, so let me rephrase that for you.

18 Would you agree that antibiotics is
19 appropriate treatment for the infection that Reginald
20 Singletary developed in this case?

21 A. Yes, once -- once he presented to the
22 hospital, giving antibiotics was appropriate, that's
23 correct.

24 Q. And so is it your opinion that antibiotics
25 wasn't indicated prior to his arrival at the hospital?

1 A. Absolutely. They were not indicated prior to
2 his arrival at the hospital.

3 Q. I'll represent to you that Dr. Traivai
4 testified that swelling in the neck after a tooth
5 extraction can occur due to infection.

6 Would you agree?

7 A. It could occur as a result of infection, yes.

8 Q. I'll represent to you that Dr. Traivai
9 testified that antibiotics would be indicated if a
10 patient experienced swelling of the extraction site
11 following a tooth extraction.

12 Do you agree?

13 A. That antibiotics should be given just on the
14 premise of swelling?

15 Q. Dr. Traivai's testimony is that antibiotics
16 would be indicated if a patient experienced swelling of
17 the extraction site following a tooth extraction.

18 Do you agree?

19 A. No, I do not agree with that.

20 Q. I'll represent to you that Dr. Traivai
21 testified that swelling is one sign of infection.

22 Would you agree?

23 A. That's correct.

24 Q. And is it your opinion that the infection
25 that developed by Reginald Singletary could not have

1 been prevented by a clinician with prescription of
2 antibiotics?

3 MR. FRIEDMAN: Objection. Vague as to time.

4 MS. PATIN: I'm quoting his report, Your
5 Honor.

6 THE COURT: I'll allow it.

7 THE WITNESS: Can you repeat the question,
8 please.

9 THE COURT: The question: Is it your opinion
10 that the infection that developed in Reginald
11 Singletary could not have been prevented by a clinician
12 with a prescription of antibiotics?

13 THE WITNESS: Yes. His particular type of
14 infection would not have been prevented or its course
15 altered just with antibiotics alone because it required
16 a surgical intervention in this particular type of
17 infection.

18 BY MS. PATIN:

19 Q. At what point was surgical intervention, in
20 your opinion, necessary?

21 A. Once it was assessed that there was an
22 invasion of the deep fascial planes -- once you invaded
23 the deep fascial planes of the jaw and neck area with
24 the accumulation of gases that were detected on the CT
25 scan, that requires urgent surgical treatment.

1 Q. And that was determined when he was in the
2 hospital as of April 21st of 2011, correct?

3 A. That's right. You would need special testing
4 to determine that.

5 Q. Is it common practice and within the standard
6 of care for a dentist to prescribe antibiotics to a
7 patient when it's necessary?

8 A. When it's necessary, yes. It is in the
9 standard of care to prescribe antibiotics when they are
10 necessary, that's -- that's right.

11 Q. And based upon the standard of care, if there
12 are complaints two days post wisdom tooth extraction of
13 pain, swelling in the neck and cheek, is it your
14 opinion -- opinion that antibiotics would be indicated
15 at that point?

16 A. Not necessarily, no.

17 Q. So antibiotics would not be necessary if
18 there was pain -- complaints of pain or swelling in the
19 neck and cheek.

20 A. No, because it could be consistent with
21 surgical edema, and that's not an indication for the
22 use of antibiotics.

23 Q. And what would be the signs and symptoms of
24 surgical edema?

25 A. Pain, swelling, edema.

1 Q. Swelling where?

2 A. Of the surgical site and the surrounding
3 tissues. Depends upon the magnitude of the response of
4 the patient. You operate on people and do surgical
5 procedures that induces an inflammatory response, and
6 that is -- part of that response is swelling and a
7 release of chemicals by your body that produce pain.

8 Q. How would you treat surgical edema?

9 A. Usually it's managed by supportive care, like
10 the application of ice. If it was significant, you
11 could prescribe certain steroidal medicine. And you
12 can do local pressure techniques following the
13 procedure to minimize that surgical edema. But most of
14 the time, it's going to run its course and resolve
15 naturally by the healing process of the patient.

16 Q. And if a patient came into the office with
17 complaints of pain and had swelling in the neck and in
18 the cheek, would you be able to determine if it was
19 from an infection versus surgical edema?

20 A. You may or may not be able to make a
21 distinction of that at that time without further
22 evaluation.

23 Q. Under what circumstances would antibiotics be
24 indicated following a tooth extraction?

25 A. When there's infection that involves -- a

1 systemic -- significant systemic infection.

2 Q. How would you diagnose that?

3 A. You diagnose it based on the patient's
4 symptoms, clinical signs, clinical findings, additional
5 tests like radiographs, blood tests, cultures,
6 sensitivities.

7 Q. And all of that would be done in the dental
8 office?

9 A. Could be. But testing would require a
10 microbiology lab. You would send the specimen to a
11 lab.

12 Q. Would you agree that a treating dentist is
13 responsible for the follow-up care of his or her
14 patient?

15 A. Sure.

16 Q. Would you agree that -- let me rephrase.

17 If a patient called your office with
18 complaints of pain and swelling in the cheek and the
19 neck, would you have the patient come into the office?

20 A. I may or may not. Depends on the clinical
21 circumstances of -- of how that information was -- was
22 received.

23 Q. Under -- I'm sorry.

24 Under what circumstances would you have the
25 patient come in?

1 A. When there would be clinical findings or
2 symptoms that would be atypical for what you would
3 expect two days postoperative procedure. At two days,
4 it would be very typical to have pain and swelling,
5 especially on a wisdom tooth in those areas. And I
6 think, as I've already indicated, where I would have --
7 definitely want to see the patient if they complained
8 of fever, chills, malaise, altered mental status,
9 things like that, that show -- and something different
10 than routine postoperative edema.

11 Q. When you say you would have to base that on
12 clinical findings, how would you make these clinical
13 findings without seeing the patient in the office?

14 A. Well, you wouldn't. You would -- you
15 could -- ask additional questions. If the patient was
16 talking to me, I would ask additional questions
17 regarding the state of that. And if it seemed
18 consistent with postoperative edema, most prudent
19 practitioners could -- could make a statement that,
20 well, that sounds pretty typical for this point in
21 time. If there's any changes to that condition, we
22 would -- we would need to check you.

23 Q. You mentioned typical versus atypical
24 symptoms. Should both typical and atypical symptoms be
25 explained or communicated to the patient following the

1 tooth extraction?

2 A. If the patient had indicated something that
3 was atypical, then you could make the distinction and
4 comparison between what would be expected, like pain
5 and swelling, to something that would not be expected,
6 like fever and chills, and say that this is something
7 that's now a little atypical. It's not normally
8 expected. That would raise a red flag that something
9 else is going on other than normal postoperative
10 recovery, and that evaluation could then be --
11 suggested to be more -- more urgent.

12 Q. Based upon the standard of care, should the
13 typical and atypical symptoms be included in the
14 post-op instructions?

15 A. Um, not -- not necessarily. The typical --
16 because you have to do what's typical and common. And
17 what is common is -- is swelling, recovery, and -- and
18 what to expect. Because that's what most people
19 expect. I mean, you can't list every single atypical.
20 It would not be within the standard of care to have to
21 list every atypical possible symptom that could --
22 could develop because you can't predict those. You
23 have to be reasonable in what you're -- in informing
24 patients.

25 Q. So you would depend on the patient to call

1 you if he or she developed any atypical symptoms
2 following a tooth extraction even though it's not
3 necessary that you inform the patient as to what
4 typical versus atypical symptoms are?

5 A. Well, most of us would encourage our patients
6 to call with -- with any of these problems so that you
7 can be evaluated or can make an assessment if there was
8 any questions. I mean, I think that's prudent of most
9 offices.

10 But we do depend upon -- not everyone can go
11 home with the patient, so you really do depend upon the
12 patient telling you or indicating that something is up,
13 to try to make some type of a fair assessment on the
14 postoperative period because the patient goes home, and
15 they're there to recover on their own. So we do depend
16 upon patients calling back in or coming back into the
17 office if there are particular questions or problems
18 develop.

19 Q. Or if they have atypical symptoms, correct?

20 A. Atypical symptoms as well as typical symptoms
21 mainly.

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

24 THE COURT: Anybody else?

25 MR. VOGEL: Couple of quick follow-ups.

1 your patients to follow your reasonable post-op
2 instructions?

3 A. That's correct.

4 Q. And would you agree with Dr. Pallos when he's
5 testified in this case that post-op instructions in
6 this case met the standard of care?

7 A. Would I agree with that -- that the
8 postoperative instructions met the standard of care
9 that were given as far as I know that they were given?
10 They -- as far as I know, the post-op instructions that
11 were given met the standard of care.

12 MR. VOGEL: Thank you, Doctor.

13 MR. FRIEDMAN: I have nothing, Your Honor.

14 THE COURT: Ms. Patin, any follow-ups?

15 MS. PATIN: One follow-up.

16

17 RECROSS-EXAMINATION

18 BY MS. PATIN:

19 Q. Dr. Ardary, does it meet the standard of care
20 if a patient is told by office staff that pain and
21 swelling are normal and that they should follow up in
22 four to five days and they'll be called in for an
23 appointment?

24 A. Well, when -- you have to go back and look at
25 what is standard of care. And standard of care is what

1 most prudent offices, office staff, do under similar
2 circumstances. And so my answer to that is yes, it met
3 the standard of care. Because in this circumstances
4 with what was presented or allegedly presented to the
5 office staff was typical and routine for a wisdom tooth
6 or third molar removal, and that most offices initially
7 would expect that to be something that was normal and
8 usual and customary, and that if everything worsened to
9 then please call back and return and then you'll need
10 evaluation. So it met the standard of care.

11 Q. What if the office staff that answered the
12 phone doesn't have any dental training?

13 MR. FRIEDMAN: Objection. Irrelevant.

14 THE COURT: Overruled.

15 THE WITNESS: Well, to be honest with you,
16 most of staff that are hired in dental or medical
17 offices may not have any official medical or dental
18 staff training. That -- there are some schools that
19 teach in dentistry how to deal with the assisting
20 aspects of things. But most of us hire people off and
21 then train them.

22 So there is no organization or educational
23 opportunity or state-run operation that I'm aware of
24 that prepares front office staff on how to manage the
25 phone or the front office. So most people, it would

1 not require specialized training to be able to -- to do
2 that job.

3 BY MS. PATIN:

4 Q. And so is it your opinion that it's within
5 the standard of care that front office staff that
6 doesn't have specialized training advise patients as to
7 care or postoperative care?

8 MR. FRIEDMAN: Object to relevance to this
9 case.

10 MR. VOGEL: Misstates his testimony.

11 MR. FRIEDMAN: Misstates testimony. He
12 testified about the information that's provided.

13 THE COURT: I'm going to allow it based upon
14 how it was asked.

15 THE WITNESS: Repeat the question again for
16 me, please.

17 MS. PATIN: Sorry, Your Honor.

18 THE COURT: Is it your opinion that it's
19 within the standard of care that front office staff
20 that doesn't have specialized training advise patients
21 as to care or postoperative care?

22 THE WITNESS: It can be within the standard
23 of care for them to advise patients if -- if instructed
24 so correctly, yes.

25 /////

1 BY MS. PATIN:

2 Q. Instructed by whom?

3 A. Well, the dentist or physician that's in the
4 office.

5 MS. PATIN: No further questions.

6 THE COURT: Anything else?

7 MR. VOGEL: No, Your Honor.

8 MR. LEMONS: Nothing, Your Honor.

9 THE COURT: Ladies and gentlemen, any
10 questions? I don't see any hands.

11 Thank you, Doctor. Appreciate your time.

12 Got another witness or you want to take a
13 break?

14 MS. GOODEY: Need to take a quick break, Your
15 Honor. I'm sorry.

16 THE COURT: Let's take a quick break.

17 Ladies and gentlemen, during our break,
18 you're instructed not to talk with each other or with
19 anyone else, about any subject or issue connected with
20 this trial. You are not to read, watch, or listen to
21 any report of or commentary on the trial by any person
22 connected with this case or by any medium of
23 information, including, without limitation, newspapers,
24 television, the Internet, or radio. You are not to
25 conduct any research on your own, which means you

1 cannot talk with others, Tweet others, text others,
2 Google issues, or conduct any other kind of book or
3 computer research with regard to any issue, party,
4 witness, or attorney, involved in this case. You're
5 not to form or express any opinion on any subject
6 connected with this trial until the case is finally
7 submitted to you.

8 See you in about five or ten minutes.

9 (The following proceedings were held
10 outside the presence of the jury.)

11 THE COURT: We're outside the presence of the
12 jury. Anything we need to take care of on the record,
13 Counsel?

14 MS. PATIN: No, Your Honor.

15 MR. VOGEL: No, Your Honor.

16 MR. FRIEDMAN: No, Your Honor.

17 THE COURT: Is that the last expert you had
18 for today?

19 MR. VOGEL: Yes.

20 MR. FRIEDMAN: Yes.

21 THE COURT: Going to put one of the -- one
22 of -- you want to put your defendant on the stand at
23 least for a while today?

24 MR. VOGEL: Sure.

25 THE COURT: Still want to end by about 3:30,

1 but that still gives us about an hour.

2 All right. Off the record.

3 (Whereupon a short recess was taken.)

4 THE MARSHAL: All rise for the presence of
5 the jury.

6 (The following proceedings were held in
7 the presence of the jury.)

8 THE COURT: Go ahead and be seated. We're
9 back on the record, Case No. A656091.

10 Do the parties stipulate to the presence of
11 the jury?

12 MR. VOGEL: Yes, Your Honor.

13 MR. FRIEDMAN: Yes, Your Honor.

14 MR. LEMONS: Yes, Your Honor.

15 MS. PATIN: Yes, Your Honor.

16 THE COURT: Okay, folks, I'm going to do the
17 same thing I did to you yesterday, had to bring you
18 back in to get your personal stuff. It's 2:30. I told
19 you that we were going to end at 3:30 today anyway.
20 Instead of breaking up one of the witnesses today and
21 into Tuesday, since it's a long weekend, we're just
22 going to wait and put the next witness on on Tuesday
23 morning. We're going to start Tuesday at
24 10:00 o'clock. I have a calendar that morning, but
25 we'll be done so that we can start by 10:00 o'clock.

1 And the attorneys all still assure me that the case
2 will be done on Wednesday. So you just got Tuesday and
3 Wednesday left of next week. So we'll go to that
4 point.

5 During our break -- I'm going to admonish you
6 again. I'll say it slow because we have a long
7 weekend. Please don't go home and talk to anybody
8 about the case.

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

24 We'll see you back Tuesday morning at 10:00.
25 Have a good weekend. You can leave the notepads right

1 there in the chairs. Nobody else will be here.
2 (The following proceedings were held
3 outside the presence of the jury.)
4 THE COURT: All right. We're outside the
5 presence. Anything else we need to take care of,
6 Counsel?
7 MR. VOGEL: No, Your Honor.
8 MS. PATIN: No, Your Honor.
9 THE COURT: All right. Off the record.
10 We'll see you Tuesday.
11 (Thereupon, the proceedings
12 adjourned at 2:40 p.m.)
13
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CERTIFICATE OF REPORTER

STATE OF NEVADA)
)
COUNTY OF CLARK)

ss:

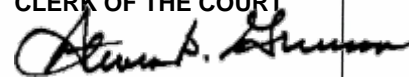
I, Kristy L. Clark, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify: That I reported the proceedings commencing on
Friday, January 17, 2014, at 8:48 o'clock a.m.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
13th day of March, 2014.

Kristy Clark
KRISTY L CLARK, CCR #708



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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **TON VINH LEE,**
11 **Plaintiff,**
12 **v.**

CASE NO.: A-15-723134-C

DEPT: ~~26~~ XXVI

13 **INGRID PATIN, an individual, and PATIN**
14 **LAW GROUP, PLLC, a Nevada Professional**
15 **LLC,**
16 **Defendants.**

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT INGRID
PATIN'S MOTION FOR SUMMARY
JUDGMENT**

17
18 PLEASE TAKE NOTICE that the Order Denying Defendant Ingrid Patin's Motion for
19 Summary Judgment was entered on June 2, 2017. A copy of the document is attached.

20 DATED this 5th day of June, 2017.

21 **RESNICK & LOUIS, P.C.**

22 */s/ Prescott T. Jones*

23 _____
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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that service of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT INGRID PATIN'S MOTION FOR SUMMARY JUDGMENT** was served this 5th day of June, 2017, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

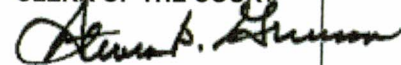
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An Employee of Resnick & Louis, P.C.



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8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

12 **TON VINH LEE,**

13 **Plaintiff,**

14 **v.**

15 **INGRID PATIN, an individual, and PATIN**
16 **LAW GROUP, PLLC, a Nevada Professional**
17 **LLC,**

18 **Defendants.**

CASE NO.: A-15-723134-C

DEPT: 26

ORDER DENYING DEFENDANT
INGRID PATIN'S MOTION FOR
SUMMARY JUDGMENT

19 Defendant, Ingrid Patin's *Motion for Summary Judgment*, filed February 10, 2017, and
20 Defendant, Patin Law Group, PLLC's *Joinder to Motion for Summary Judgment*, filed February
21 15, 2017, came on for Hearing on May 9, 2017, before the Honorable Judge Gloria J. Sturman.

22 The Court having read and considered the pleadings on file, oppositions and replies
23 thereto, having heard the oral arguments of counsel, and having considered the matter and being
24 fully advised, and good cause appearing therefore, finds as follows:

25 **THIS COURT FINDS** that ^{*genuine material*} ~~an issue of fact related to the truth or falsity of the alleged~~
26 ~~defamatory statement~~ exists which necessitates denial of summary judgment;
27
28

1 **THIS COURT HEREBY ORDERS** that Defendant, Ingrid Patin's *Motion for Summary*
2 *Judgment*, and all joinders thereto, are DENIED WITHOUT PREJUDICE.

3 DATED this 1 day of June, 2017.

4
5
6 
DISTRICT COURT JUDGE

7
8 Submitted by:

9 **RESNICK & LOUIS, P.C.**

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11 

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