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.: 83213
District Court Case No.: A-15-723134-C

APPELLANT'S APPENDIX – VOLUME 4

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INDEX TO APPELLANT'S APPENDIX

A.	Complaint in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 1 Bates Nos. 063-064
B.	Special Verdict Form in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 1 Bates Nos. 065-070
C.	Order on Defendants' Motion to Retax in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 1 Bates Nos. 071-075
D.	Judgment on Jury Verdict in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 1 Bates Nos. 076-079
E.	The Trial Reporter Newsletter (February 2014)	Volume 1 Bates Nos. 080-083
F.	Website Post regarding Jury Verdict	Volume 1 Bates Nos. 084-085
G.	Nevada Legal Update Newsletter (Fall 2014)	Volume 1 Bates Nos. 086-089
H.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 1 Bates Nos. 090-092
I.	Plaintiffs Case Appeal Statement in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 1 Bates Nos. 093-099
J.	Defendants Case Appeal Statements (Cross-Appeal) in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14 & 11/07/14)	Volume 1 Bates Nos. 100-112
K.	Senate Bill No. 444- Committee on Judiciary Minutes (dated 03/28/13)	Volume 1 Bates Nos. 113-115

Exhibits for Defendant's Renewed Special Motion to Dismiss Pursuant to NRS 41.635-40		
A.	Notice of Entry of Order Denying Motion to Dismiss Pursuant to NRCP 12(b)(5) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 04/11/16)	Volume 2 Bates Nos. 183-187
B.	Complaint in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 08/17/15)	Volume 2 Bates Nos. 188-189
C.	Special Verdict Form in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 2 Bates Nos. 190-195
D.	Order on Defendants' Motion to Retax in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 2 Bates Nos. 196-200
E.	Judgment on Jury Verdict in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 2 Bates Nos. 201-204
F.	The Trial Reporter Newsletter (February 2014)	Volume 2 Bates Nos. 205-208
G.	Nevada Legal Update Newsletter (Fall 2014)	Volume 2 Bates Nos. 209-212
H.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 2 Bates Nos. 213-215
I.	Plaintiffs Case Appeal Statement in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 2 Bates Nos. 216-222
J.	Defendants Case Appeal Statement (Cross-Appeal) in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 223-235

K.	Judgment on Jury Verdict for Defendant in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 236-238
L.	Senate Bill No. 444- Committee on Judiciary	Volume 2 Bates Nos. 239-243
M.	Certificate of Business: Fictitious Firm Name (dated 10/26/2010)	Volume 2 Bates Nos. 244-248
N.	Reports Transcripts on Jury Trial in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 2 Bates Nos. 249-253
Order Denying Defendants' Renewed Special Motion to Dismiss Pursuant to NRS 41.635-70, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 09/29/16)		Volume 2 Bates Nos. 254-257
Defendant Ingrid Patin's Answer to Plaintiff's Second Amended Complaint and Counterclaim Against Patin law Group, PLLC in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 10/07/16)		Volume 2 Bates Nos. 258-270
Defendant Patin Law's Answer to Plaintiff's Second Amended Complaint and Defendant's Counterclaim in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 10/18/16)		Volume 2 Bates Nos. 271-288
Defendant Ingrid Patin's Offer of Judgment to Plaintiff in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 01/19/17)		Volume 2 Bates Nos. 289-291
Defendant Patin Law Group's Offer of Judgment to Plaintiff in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 01/26/17)		Volume 2 Bates Nos. 292-294
Defendant Ingrid Patin's Motion for Summary Judgment in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 02/10/17)		Volume 2 Bates Nos. 295-309
Exhibits for Defendant's Motion for Summary Judgment		

A.	Order affirming in Part, Reversing in Part and Remanding in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 10/17/16)	Volume 2 Bates Nos. 310-315
B.	Complaint in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 2 Bates Nos. 316-317
C.	Special Verdict Form in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 2 Bates Nos. 318-323
D.	Order on Defendants' Motion to Retax in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 2 Bates Nos. 324-328
E.	Judgment on Jury Verdict in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 2 Bates Nos. 329-332
F.	The Trial Reporter Newsletter (February 2014)	Volume 2 Bates Nos. 333-336
G.	Nevada Legal Update Newsletter (Fall 2014)	Volume Bates Nos. 337-340
H.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 2 Bates Nos. 341-342
I.	Plaintiffs Case Appeal Statement in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 2 Bates Nos. 343-349
J.	Defendants Case Appeal Statement (Cross-Appeal) in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 350-362
K.	Judgment on Jury Verdict for Defendant in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 363-365
L.	Senate Bill No. 444- Committee on Judiciary	Volume 2 Bates Nos.

		366-370
M.	Certificate of Business: Fictitious Firm Name (dated 10/26/2010)	Volume 2 Bates Nos. 371-375
N.	Reports Transcripts on Jury Trial in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 2 Bates Nos. 376-380
K.	Judgment on Jury Verdict for Defendant in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 2 Bates Nos. 381-383
L.	Second Amended Complaint in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 04/11/16)	Volume 2 Bates Nos. 384-389
Defendant Ingrid Patin's Motion for Summary Judgment in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 05/30/17)		Volume 3 Bates Nos. 390-411
Exhibits for Defendant's Motion for Summary Judgment		
A.	Complaint in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 3 Bates Nos. 412-434
B.	Order affirming in Part, Reversing in Part and Remanding in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 10/17/16)	Volume 3 Bates Nos. 435-440
C.	Special Verdict Form in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 3 Bates Nos. 441-446
D.	Order on Defendants' Motion to Retax in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 3 Bates Nos. 447-451

E.	Judgment on Jury Verdict in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 3 Bates Nos. 452-455
F.	The Trial Reporter Newsletter (February 2014)	Volume 3 Bates Nos. 456-459
G.	Nevada Legal Update Newsletter (Fall 2014)	Volume 3 Bates Nos. 460-463
H.	Nevada Jury Verdict Google Search Results (04/14/15)	Volume 3 Bates Nos. 464-466
I.	Plaintiffs Case Appeal Statement in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 08/08/14)	Volume 3 Bates Nos. 467-473
J.	Defendants Case Appeal Statement (Cross-Appeal) in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 3 Bates Nos. 474-486
K.	Judgment on Jury Verdict for Defendant in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 09/11/14)	Volume 3 Bates Nos. 487-489
L.	Certificate of Business: Fictitious Firm Name (dated 10/26/2010)	Volume 3 Bates Nos. 490-494
M.	Reports Full Transcripts on Jury Trial in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 4 Bates Nos. 495-709
Order Denying Defendant's Motion for Summary Judgement in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 06/05/17)		Volume 5 Bates Nos. 710-713
Notice of Entry of Order Denying Defendant's Motion for Summary Judgement in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 08/17/17)		Volume 5 Bates Nos. 714-719
Defendants' Motion to Dismiss Pursuant to NRCP 16.1(e)(1) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 07/15/19)		Volume 5 Bates Nos. 720-726

Notice of Entry of Order Denying Defendants' Motion to Dismiss Pursuant to NRCP 16.1(e)(1) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 09/10/19)		Volume 5 Bates Nos. 727-730
Joint Case Conference Report in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 10/11/19)		Volume 5 Bates Nos. 731-750
Plaintiff Ton Vin Lee Deposition Transcripts in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 07/14/20)		Volume 5 Bates Nos. 751-800
Defendant Ingrid Patin's Motion for Judgment on the Pleadings, in the Alternative, Motion for Summary Judgment in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 08/07/20)		Volume 6 Bates Nos. 801-823
Exhibits to Defendant's Motion for Judgment on the Pleadings, in the Alternative, Motion for Summary Judgment		
1.	Plaintiff Ton Vinh Lee Deposition Transcripts in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 07/14/20)	Volume 6 Bates Nos. 824-874
2.	Judgment on Jury Verdict in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 6 Bates Nos. 875-878
3.	Defendant Ingrid Patin's Answer to Plaintiff's Second Amended Complaint and Counterclaim Against Patin law Group, PLLC in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 10/07/16)	Volume 6 Bates Nos. 879-892
4.	Plaintiff Ton Vinh Lee's Third Supplemental ECC Disclosure in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 06/18/20)	Volume 6 Bates Nos. 893-898
5.	Ton Vinh Lee Deposition Transcripts in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 07/14/20)	Volume 6 Bates Nos. 899-916
6.	134 Nev., Advance Opinion 87 (filed 11/15/18)	Volume 6 Bates Nos. 917-928

7.	Second Amended Complaint in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 04/11/16)	Volume 6 Bates Nos. 928-934
8.	Complaint in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (dated 02/07/12)	Volume 6 Bates Nos. 935-957
9.	Special Verdict Form in *Singletary v. Lee*, Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 6 Bates Nos. 958-963
10.	The Trial Reporter Newsletter (February 2014)	Volume 6 Bates Nos. 964-967
11.	Nevada Legal Update Newsletter (Fall 2014)	Volume 6 Bates Nos. 968-971
12.	Settlement/Verdict Website Screenshot and Defendant's Fee Disclosure	Volume 6 Bates Nos. 972-974
Defendant Patin Law Group, PLLC's Joinder to Defendant Ingrid Patin's Motion for Judgment on the pleadings, or in the alternative, Motion for Summary Judgment *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 08/10/20)		Volume 7 Bates Nos. 975- 976
Notice of Entry of Order Granting Defendant's Motion for Summary Judgement in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 10/30/20)		Volume 7 Bates Nos. 977-992
Defendant Patin Law Group, PLLC's Motion for Attorneys' fees and interest in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 11/19/20)		Volume 7 Bates Nos. 993-1003
Exhibits for Defendant's Motion for Attorneys' fees and interest		
A.	Declaration of Micah S. Echols, Esq. in Support of Defendant Patin Law Group, PLLC's Application for Attorneys' fees and interest	Volume 7 Bates Nos. 1004-1006
B.	Defendant Patin Law Group's Offer of Judgment to Plaintiff in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 01/26/17)	Volume 7 Bates Nos. 1007-1010

C.	Defendant Patin Law Group's attorney's Fee Transaction Sheets	Volume 7 Bates Nos. 1011-1014
D.	Defendant Patin Law Group's Signed Fee Agreement	Volume 7 Bates Nos. 1015-1019
E.	Plaintiff Ton Vinh Lee's Apportioned Conditional Offer of Judgment in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 06/01/18)	Volume 7 Bates Nos. 1020-
Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and Interest in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 11/19/20)		Volume 7 Bates Nos. 1024-1037
Exhibits for Defendant's Motion for Attorneys' Fees, Costs, and Interest		
A.	Defendant's attorney's Fee Transaction Sheets	Volume 7 Bates Nos. 1038-1044
B.	Defendant's Signed Fee Agreement	Volume 7 Bates Nos. 1045-1048
C.	Defendant Ingrid Patin's Memorandum of Costs	Volume 7 Bates Nos. 1049-1100
D.	Defendant Ingrid Patin's Offer of Judgment to Plaintiff in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 01/19/17)	Volume 7 Bates Nos. 1101-1104
E.	Plaintiff Ton Vinh Lee's Apportioned Conditional Offer of Judgment in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 06/01/18)	Volume 7 Bates Nos. 1105-1108
F.	Defendant Ingrid Patin's Motion for Judgment on the Pleadings, in the alternative, Motion for Summary Judgment in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 08/07/20)	Volume 8 Bates Nos. 1109-1283
G.	Notice of Entry of Order Granting Defendant Patin's Motion for Summary Judgment and Patin Law Group's Joinder	Volume 8 Bates Nos. 1284-1291

Plaintiff Ton Vinh Lee's Supplemental Opposition to Defendant Patin Law Group's Motion for Attorneys' Fees, Costs, and Interest in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 02/03/21)		Volume 9 Bates Nos. 1356-1362
Exhibits for Plaintiff Ton Vinh Lee's Supplemental Opposition to Defendant Patin Law Group's Motion for Attorneys' Fees, Costs, and Interest		
A.	Defendant Patin Law Group's Offer of Judgment to Plaintiff in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 01/26/17)	Volume 9 Bates Nos. 1363-1366
Notice of Entry of Decision and Order on Defendants' Motions for Fees and Costs in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 04/23/21)		Volume 9 Bates Nos. 1367-1386
Order Shortening Time on Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 05/07/21)		Volume 9 Bates Nos. 1387-1392
Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 05/07/21)		Volume 9 Bates Nos. 1393-1403
Exhibits for Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e)		
A.	Defendant Ingrid Patin's Offer of Judgment to Plaintiff in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 01/19/17)	Volume 9 Bates Nos. 1404-1407
B.	Defendant Patin Law Group's Offer of Judgment to Plaintiff in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 01/26/17)	Volume 9 Bates Nos. 1408-1411
C.	Plaintiff Ton Vinh Lee's Supplemental Opposition to Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and Interest in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 02/03/21)	Volume 9 Bates Nos. 1412-1419

Defendant Ingrid Patin's Opposition to Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 05/17/21)		Volume 9 Bates Nos. 1420-1427
Exhibits for Defendant Ingrid Patin's Opposition to Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e)		
A.	Notice of Entry of Decision and Order on Defendants' Motions for Fees and Costs in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 04/23/21)	Volume 9 Bates Nos. 1428-1448
Defendant Patin Law Group's Joinder to Defendant Ingrid Patin's Opposition to Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 05/18/21)		Volume 9 Bates Nos. 1449-1450
Recorded Transcripts of Pending Motions in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 05/18/21)		Volume 9 Bates Nos. 1451-1478
Minute order Denying Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 05/19/21)		Volume 9 Bates Nos. 1479
Recorded Transcripts of Pending Motions in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 06/02/21)		Volume 9 Bates Nos. 1480-1492
Notice of Entry of Order Denying Plaintiff Ton Vinh Lee's Motion for Reconsideration, or in the alternative, Motion to alter or amend judgment pursuant to NRCP 59(e) in *Lee v. Patin,* Eighth Judicial Case No. A723134 (dated 06/11/21)		Volume 9 Bates Nos. 1493-1502
Notice of Appeal in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 07/08/21)		Volume 9 Bates Nos. 1503-1508

Case Appeal Statement in *Lee v. Patin,* Eighth Judicial Case No. A723134 (filed 07/08/21)	Volume 9 Bates Nos. 1509-1511

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EXHIBIT M

EXHIBIT M

CASE NO. A-12-656091

DEPT. NO. 30

DOCKET U

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

SVETLANA SINGLETARY, individually, as the representative of the Estate of REGINALD SINGLETARY, and as parent and legal guardian of GABRIEL L. SINGLETARY, a minor,	)
Plaintiffs,	)
vs.	)
TON VINH LEE, DDS, individually, FLORIDA TRAIVAI, DMD, individually, JAI PARK, DDS, individually, TON V. LEE, DDS, PRO. CORP., a Nevada Professional Corporation d/b/a SUMMERLIN SMILES, DOE SUMMERLIN SMILES EMPLOYEE and DOES I though X and ROE CORPORATIONS I through X, inclusive,	)
Defendant.	)

REPORTER'S TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE JERRY A. WIESE, II

DEPARTMENT XXX

DATED FRIDAY, JANUARY 17, 2014

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

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I N D E X

I N D E X (Continued)

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

8:48 A.M.

P R O C E E D I N G S

* * * * * * *

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

MS. PATIN: Yes.

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

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

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

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

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

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

THE COURT: I don't think so.

MS. GOODEY: Thank you.

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

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

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

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

MR. FRIEDMAN: And join.

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

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

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

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

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

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

You asked for summary judgment on that?

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

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

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

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

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

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

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

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

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

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

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

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

MS. BROOKHYSER: Absolutely.

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

Do you have a position on that?

MS. PATIN: Not at this time.

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

Anything else?

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

THE COURT: We'll wait a minute.

MR. FRIEDMAN: Thank.

THE COURT: Off the record.

(Whereupon a short recess was taken.)

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

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

THE COURT: Go ahead and be seated. Good morning, folks. We're back on the record Case No. A656091.

Do the parties stipulate to the presence of the jury?

MS. PATIN: Yes, Your Honor.

MR. VOGEL: Yes, Your Honor.

MR. FRIEDMAN: Yes, Your Honor.

MR. LEMONS: Yes, Your Honor.

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

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

Mr. Friedman, call your first witness.

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

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

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

THE WITNESS: I do.

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

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

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

THE WITNESS: Absolutely.

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DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. Good morning, Doctor.

A. Good morning, Jason.

Q. What is your profession?

A. I'm a dentist.

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

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

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

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

Q. And what dental school did you attend?

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

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

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

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

Q. Why did you decide to become a dentist?

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

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

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

Q. Thank you.

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

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

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

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

Q. Thank you.

Do you have any professional affiliations?

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

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

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

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

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

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

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

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

their only dentist on staff there.

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

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

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

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

Q. And where have you practiced as a dentist?

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

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

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

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

Can you describe how Summerlin Smiles is organized.

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

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

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

Q. And what about the people in the front?

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

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

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

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

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

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

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

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

A. I do.
Q. Is that the same schedule as in 2011?
A. Yes.
Q. Did you ever provide any treatment to Reginald Singletary?
A. No, I did not.
Q. Did you ever meet Reginald Singletary?
A. No, I did not.
Q. Did you ever provide any treatment to Plaintiff Svetlana Singletary?
A. No, I did not. And I think that's why I was a little confused during this week. Mrs. Singletary testified this week that I was her treating dentist and also the dentist that provided some care. In fact, I have never met Mrs. Singletary until in this room this week.
Q. Have you ever spoken to Plaintiff Svetlana Singletary?
A. No, I have not.
Q. When did you first become aware of Reginald Singletary?
A. I remember that Saturday. It was March -- or April the 23rd, and Dr. Park had received a call, and at that time he had spoken to Mrs. Singletary and, you know, it was discovered that Mr. Singletary was

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

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

A. We did.

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

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

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

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

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

A. That's correct.

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

procedures at your dental office?

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

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

A. That's correct.

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

A. That was a Monday.

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

A. No. I was working at Distinctive Smiles.

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

A. It did.

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

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

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

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

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

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

A. I did.

Q. How long is it?

A. It's one minute and seven seconds.

Q. Why did you time it?

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

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

MS. PATIN: Objection, Your Honor. Speculation.

THE COURT: Sustained.

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BY MR. FRIEDMAN:

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

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

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

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

Is that the way you remember it?

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

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

A. That's correct.

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

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

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

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

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

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

A. Absolutely.

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

A. That's correct.

Q. Doctor, what is the emergency pager?

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

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

Q. Who carries the emergency pager?

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

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

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

A. No, I did not.

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

A. I wish I did.

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

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

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

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

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

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

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

A. That's correct.

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

A. That's correct.

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

A. That's correct.
Q. Does any staff ever go into Summerlin Smiles on Mondays?
A. They do. Sometimes staff come in to do clerical work, accounting work, insurance work. So sometimes they come in to do those -- the -- the -- like I said, the clerical, the inventories, things like that.
Q. And did you do any investigation to see if any of the staff was in the office on April 18, 2011?
A. I did. When I first heard of the lawsuit, one of the things I did was I wanted to find out which staff was there and if they picked up any phone calls. The only two staff members that were there was Cherisse Lesperance and Zadia Lopez.
Q. And what are their job titles?
A. Cherisse Lesperance was my office manager, and Zadia Lopez is my lead assistant or my back office manager.
Q. And you asked them both about picking up any phone call on April 18, 2011?
A. I did.
Q. And they both told you they did not?
A. Yes.
Q. What is the protocol for when a patient calls

the office when someone actually answers?

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

Q. Why is that protocol followed?

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

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

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

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

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

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

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

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

A. No, I am not.

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

A. No, I'm not.

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

A. No, I'm not.

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

A. That's correct.

MR. FRIEDMAN: Thank you, Doctor. I have

nothing further.

THE COURT: Mr. Vogel.

MR. VOGEL: Just briefly.

CROSS-EXAMINATION

BY MR. VOGEL:

Q. Good morning, Dr. Lee.

A. Good morning.

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

A. Yes.

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

Is that your understanding as well?

A. That's correct.

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

A. That's correct.

Q. Or train them?

A. That's correct.

Q. They don't supervise them?

A. That's correct.

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

THE WITNESS: Thank you.

MR. VOGEL: Actually, take that back.

BY MR. VOGEL:

Q. One of the other things that was discussed was -- by Ms. Lesperance was that Dr. Traivai doesn't do tooth extractions; is that accurate?

A. No, that's not.

Q. Does she do all types of teeth extraction?

A. Absolutely.

Q. Has that always been the case?

A. It's always up to her discretion.

Q. Do you know where Ms. Lesperance got that from?

A. No, I don't.

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

A. At her discretion.

Q. Do you know where Ms. Lesperance was coming up with that?

A. No, I do not.

Q. So since she's been at your practice, has she always done the procedures she feels comfortable doing, including extractions, root canals, fillings?

A. Yeah. Dr. Traivai is a very competent dentist. She diagnoses, treats absolutely on her own.

It's done at her discretion.

MR. VOGEL: Thank you, Doctor.

THE WITNESS: Welcome.

THE COURT: Mr. Lemons?

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

THE COURT: Ms. Patin.

CROSS-EXAMINATION

BY MS. PATIN:

Q. Good morning.

A. Good morning.

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

A. That's correct.

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

A. That's correct.

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

A. That's correct.

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

A. That's correct.

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

any overhead expenses at your offices, correct?
A. They have before.
Q. They've paid overhead expenses?
A. When you -- when you talk about overhead expenses, you mean specifically do they bring in their own equipment?
Q. Do they pay any bills that come into Summerlin Smiles or Distinctive Smiles?
A. No, they don't.
Q. Dr. Park and Dr. Traivai don't pay rent or lease office space from you, correct?
A. No, they don't.
Q. Dr. Park and Dr. Traivai, they engage in the same field of practice as you, correct?
A. That's correct.
Q. They're both dentists in your office?
A. Yes.
Q. And you're also a dentist in your office?
A. Yes.
Q. And all of you provide dental care to the patients that come into the office?
A. That's correct.
Q. And you provide their work space for them to do their dental job?
A. That's correct.

Q. And for them to provide dental care to the patients that come into your office?
A. That's correct.
Q. And you provide their equipment for them to perform their job?
A. Not all their equipment.
Q. They provide their own equipment?
A. There's certain equipment they choose to use. Absolutely.
Q. What equipment do they provide?
A. You're going to have to ask them.
Q. What equipment do you provide?
A. The typical. The equipments is the chairs, sometimes the lights, obviously the lights, the X ray units.
Q. You don't provide any dental instruments to either Dr. Park or Dr. Traivai?
A. Of course.
Q. You also provide them with staff in order for them to perform their jobs, correct?
A. That's correct.
Q. And you pay them per day for the work that they do, correct?
A. That's correct.
Q. And for the days that they work at Summerlin

Smiles or -- and/or Distinctive Smiles?
A. That's correct.
Q. And my understanding is that Dr. Traivai works at Summerlin Smiles Thursday through Saturday.
A. That's correct.
Q. And you pay her for the days that she works.
A. That's correct.
Q. And she exclusively works for your clinic Summerlin Smiles, correct?
A. There's no exclusion in her contract. She's obligated to work at any office.
Q. Are you aware of any other offices that she's ever worked at during the time she's been working at Summerlin Smiles?
A. I've never asked her.
Q. All the forms that are provided to patients, they're generated by your office Summerlin Smiles, correct?
A. That's correct.
Q. And any forms that are provided by -- that are provided to patients at Distinctive Smiles, are generated by -- or have the name Distinctive Smiles on them, correct?
A. That's correct.
Q. That includes post-op instructions, informed

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

A. That's correct.

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

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

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

A. That's correct.

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

A. Yes, I am.

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

A. That's correct.

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

A. Sure. That's correct.

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

background, your experience, correct?

A. That's correct.

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

A. That's correct.

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

Why is that?

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

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

Are you familiar with that section?

A. To the best of my knowledge.

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

A. That's correct.

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

A. That's correct.

Q. And it lists Summerlin Smiles telephone

number as (702) 579-7645, correct?
A. That's correct.
Q. And that's the same phone number that Summerlin Smiles had back -- back in March and April of 2011?
A. That's correct.
Q. And there's also a section under Urgent Care on your website, that --
MR. VOGEL: Your Honor, may we approach?
THE COURT: Sure. Come on up.
(A discussion was held at the bench, not reported.)
THE COURT: Overruled.
BY MS. PATIN:
Q. We were just talking about the Urgent Care section on your website, correct?
A. That's correct.
Q. And under the Urgent Care section, it also lists how to handle dental emergencies, correct?
A. That's correct.
Q. And under dental emergencies, you have listed "Infection or Swollen Face," correct?
A. That's correct.
Q. And under that section, you have "call your dentist as soon as possible"; is that correct?

A. That's correct.
Q. And nowhere in the Urgent Care section does it says -- does it say to call an emergency pager; is that correct?
A. That's correct.
Q. Doesn't say to call the ER, correct?
A. No, it does not.
Q. And it doesn't say to call an urgent care, correct?
A. No, because when they call us, we'll assess the situation clinically and we'll refer to our office immediately or to the ER room.
Q. And it doesn't say to call the urgent care, correct?
A. It depends on the nature of the emergency. If somebody's temporary fell off -- if a temporary crown fell off, you're not going to call urgent care. It wouldn't make sense. It's such a broad general thing.
I know you're trying to generalize it, but I'm trying to answer the question so that it would be very specific. If it's an emergency situation, everybody's situation in terms of what's emergency care is how they deem it to be. If a temporary pops off, that's an emergency to some patients. They're

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

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

A. No, it does not.

Q. Thank you, Dr. Lee.

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

Q. There's no question pending.

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

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

THE WITNESS: I'm sorry.

THE COURT: Wait for a question.

BY MS. PATIN:

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

A. Could you speak that again.

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

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

handle patients?

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

A. That's correct.

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

A. That's correct.

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

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

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

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

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

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

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

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

A. That's correct.

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

A. That is correct.
Q. And schedule patients?
A. That's correct.
Q. And properly transfer calls?
A. That's correct.
Q. And handle or properly handle patient complaints?
A. Absolutely.
Q. And it's your office procedure or protocol that when -- that each and every employee on staff is trained to advise patients, depending on the severity of the complaint, to speak with a dentist, come into the dental office, or proceed directly to an urgent care or emergency room, correct?
A. When you say they're trained, are they trained or do they understand that there's a protocol and a process, by -- what that happens by?
Q. I'm asking if that's your protocol in the office.
A. Yes.
Q. So then --
A. I'm sorry. Could you --
Q. Your office protocol --
A. Uh-huh.
Q. -- is that each and every employee on staff

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

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

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

A. Yes.

Q. Thank you.

A. Uh-huh.

Q. That includes Zadia Lopez; is that correct?

A. That is correct.

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

A. That's correct.

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

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

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

A. No. I am --
Q. -- during Zadia's Lopez's testimony.
A. Absolutely. I'm answering your question.
Q. I'm not asking you to speculate with regard to what she was thinking or how she was feeling --
A. Sure.
Q. -- when she was on the stand.
A. Sure.
Q. What I'm asking is if you recall her testimony where she stated that she's an employee at Summerlin Smiles, correct?
A. That's correct.
Q. And she was never trained on how to answer incoming calls, correct?
A. That's correct.
Q. How many Spanish-speakers do you have in your office?
A. Are you asking now or asking then?
MR. FRIEDMAN: Objection, Your Honor. Relevance.
THE COURT: What's the relevance?
MS. PATIN: Credibility of the witness and the testimony.
THE COURT: Come on up for a minute.
/////

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

THE COURT: Go ahead. Overruled.

BY MS. PATIN:

Q. How many Spanish-speakers do you have in your office at Summerlin Smiles?

A. When?

Q. If a call was made --

A. I'm sorry, Counsel. I -- I asked, when are you asking?

Q. Back in April of 2011.

A. I don't recall.

Q. When a call -- if a call comes into Summerlin Smiles and an employee answers the phone, it's the employee's responsibility to advise the patient to speak with a dentist, correct?

A. The front desk picks up the phone, transfers to the back office, and it goes to the doctor.

Q. And so it's the front office staff's responsibility to advise the patient to speak with a dentist, correct?

MR. FRIEDMAN: Objection. Misstates his testimony.

THE COURT: Sustained.

/////

BY MS. PATIN:

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

A. That's correct.

Q. To come into the dental office, correct?

A. That's correct.

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

A. That's correct.

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

MR. FRIEDMAN: Objection. Misstates his testimony.

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

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

BY MS. PATIN:

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

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

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

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

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

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

A. Yes.

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

A. I'm sorry. You --

MR. FRIEDMAN: Your Honor --

THE WITNESS: -- you said Dr. Lee.

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

THE COURT: Sure.

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

THE COURT: Rephrase it.

BY MS. PATIN:

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

A. That's correct.

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

A. That's correct.

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

A. That's correct.

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

A. That's just standard office protocol.

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

A. No.

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

procedures concerning incoming calls?
A. No.
Q. And you don't have any written policies and procedures concerning patient complaints, correct?
A. No.
Q. And the dental records from Summerlin Smiles, you're familiar with those, correct?
A. Yes.
Q. And there's no call documented from Reginald Singletary or Svetlana Singletary on April 18th of 2011, correct?
A. None that I'm aware of.
Q. And on April 18th of 2011, you were actually working at Distinctive Smiles.
A. That's correct.
Q. And it's your testimony that the telephone calls weren't forwarded at that time, correct?
A. It's impossible.
Q. And you were here during the testimony of Cherisse Lesperance, correct?
A. Absolutely.
Q. And she's your office manager for eight years before she left the office, correct?
A. She's my front office -- yes, that's correct.
Q. She was your office manager, correct?

A. Yes, that's correct.
Q. And she testified that the telephone calls were forwarded on that Monday, April 18th of 2011, correct?
A. I don't recall her testimony.
Q. You don't recall her testifying that the calls were forwarded?
A. I have been here all week. I heard a lot of testimony. If you ask me specifically -- if you could read that to me, I'd answer for you.
Q. If she testified that the telephone calls were forwarded on April 18th of 2011, it's your testimony today that she was untruthful on the stand, correct?
A. Say it -- I'm sorry. Could you repeat --
MR. FRIEDMAN: Objection. Argumentative.
THE COURT: Overruled.
BY MS. PATIN:
Q. If Ms. Cherisse Lesperance testified that the telephone calls at Summerlin Smiles were forwarded on Monday, April 18th of 2011, it's your testimony here today that Cherisse Lesperance was untruthful on the stand, correct?
A. I'm going to answer that, and if you wouldn't mind, let me explain.

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

MR. FRIEDMAN: Objection, Your Honor.

THE WITNESS: The answer --

MR. FRIEDMAN: The witness is trying to explain.

THE WITNESS: The answer to that question --

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

THE COURT: You can't interrupt.

THE WITNESS: Sorry. I apologize. Sorry.

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

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

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

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

BY MS. PATIN:

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

A. That's correct.
Q. Is it your understanding that Dr. Park nor Dr. Traivai were ever notified of any incoming call from Svetlana Singletary concerning complaints of Reginald Singletary?
A. That's correct.
Q. You never received a call from an employee at Summerlin Smiles concerning Reginald Singletary's complaints on April 18th of 2011, correct?
A. That's correct.
Q. And while you were working at Distinctive Smiles on April 18th of 2011, no call was transferred to you from Svetlana Singletary, correct?
A. You can't transfer calls from Summerlin Smiles to Distinctive Smiles.
Q. If the call came into Distinctive Smiles --
A. It --
Q. -- no call --
A. It can't -- that's what I'm trying to explain. It can't -- you can't call Summerlin Smiles and have it somehow transferred to Distinctive Smiles. And -- and like I said, I apologize, I'm not being facetious or rude. I'm answering your question. It's not possible.
Q. I understand. No call was forwarded to you

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

A. That's correct.

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

A. That's correct.

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

MR. FRIEDMAN: Objection --

THE WITNESS: That's correct.

MR. FRIEDMAN: -- calls for speculation.

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

THE WITNESS: Could you repeat that again, please.

BY MS. PATIN:

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

A. None that I was aware of.

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

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

Q. So you never prescribed him any antibiotics?

A. That's correct.
Q. You never prescribed him any pain medication after his extraction, correct?
A. I can't prescribe antibiotics or pain medications to a patient that I haven't seen or I don't know a record of.
Q. Correct. So you didn't prescribe any medication to Reginald Singletary.
A. No, that's correct.
Q. You never provided any treatment to Reginald Singletary.
A. That's correct.
Q. You never performed the extraction on Reginald Singletary, correct?
A. That's correct.
Q. It's your testimony that on Monday, April 18th of 2011, there was a recording on the telephone at Summerlin Smiles, correct?
A. That's correct.
Q. In order for that recording to pick up, does the phone have to ring?
A. Yes.
Q. How many times does it ring before the recording picks up?
A. I don't remember. I don't sit there and

listen to the amount of rings.

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

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

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

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

Q. When did that recording change?

A. I don't recall.

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

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

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

A. That's correct.

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

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

Q. You signed a verification page, correct?

A. That's correct.

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

correct.

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

Q. It is very similar.

A. Yes. That's correct. Sorry.

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

A. That's correct.

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

A. I don't recall.

Q. Allow me to refresh your recollection.

A. Sure.

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

A. That's correct.

Q. Do you recall that question?

A. That's correct.

Q. And in response to that question, you

identified Cherisse Lesperance, the office manager, correct?

A. That's correct.

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

A. That's correct.

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

A. That's correct.

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

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

THE COURT: Sustained.

BY MS. PATIN:

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

A. Was that a question being asked?

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

THE WITNESS: I'm confused.

THE COURT: Sustained.

THE WITNESS: You didn't ask that question.

BY MS. PATIN:

Q. I'm asking the question now.

MR. FRIEDMAN: And I object.
THE WITNESS: But you're asking about interrogatories then.
THE COURT: Okay, guys.
MS. PATIN: May we approach?
THE COURT: Sure.
(A discussion was held at the bench, not reported.)
BY MS. PATIN:
Q. I'm not asking you with regard to your answers to interrogatories.
I'm asking you as you sit here today, you never provided any information with regard to an answering machine at Summerlin Smiles, correct?
MR. FRIEDMAN: Objection --
THE WITNESS: You never asked.
MR. FRIEDMAN: -- Your Honor, the question was never asked of him.
THE WITNESS: You never asked me.
THE COURT: Sounds like he gave the same answer that you did.
BY MS. PATIN:
Q. And you never provided any information with regard to a recording that was on any telephone at Summerlin Smiles, correct?

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

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

THE COURT: Sustained.

BY MS. PATIN:

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

A. Are you asking me this --

MR. FRIEDMAN: Objection. Objection.

THE WITNESS: Sorry.

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

THE COURT: Three words.

MR. FRIEDMAN: Sorry.

MS. PATIN: May we approach?

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

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

BY MS. PATIN:

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

A. That is correct.

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

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

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

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

Q. Yes.

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

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

A. Sure. Yeah, that's correct.

Q. And she provided you with those time punch

cards for the employees at Distinctive Smiles, correct?

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

THE COURT: Come up for a minute.

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

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

BY MS. PATIN:

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

A. For Distinctive Smiles?

Q. From April 18th of 2011.

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

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

A. She may have.

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

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

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

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

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

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

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

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

A. I didn't print it out myself.

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

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

BY MS. PATIN:

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

correct?

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

Q. You just printed them and handed them --

A. I didn't print them.

Q. Where did they come from?

A. Cherisse.

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

A. Yes.

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

A. Yes.

Q. And those were provided by you, correct?

A. By my company, sure. By me.

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

THE COURT: Sure.

Ladies and gentlemen, 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 commentary on the trial by any person connected with this case or by any medium of

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

Take five or ten minutes.

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

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

MS. PATIN: No, Your Honor.

MR. VOGEL: No.

MR. FRIEDMAN: No, Your Honor.

THE COURT: Okay. Off the record.

(Whereupon a short recess was taken.)

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

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

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

Do the parties stipulate to the presence of the jury?

MS. PATIN: Yes, Your Honor.

MR. VOGEL: Yes, Your Honor.

MR. FRIEDMAN: Yes, Your Honor.

MR. LEMONS: Yes, Your Honor.

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

THE WITNESS: Yes, Your Honor.

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

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

THE COURT: You may proceed.

BY MS. PATIN:

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

A. That's correct.

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

A. That's correct.

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

documented in the dental records, correct?
A. If a phone call is made -- you're -- answering machines aren't -- when we get an answering machine or get a voice mail, we don't document it on the phone record. Phone records -- or clinical records are only documented when you actually speak to a patient.
Q. So if a message is left on the telephone when the office is closed, and the office staff checks the answering machine, they don't document the incoming calls in the dental records?
MR. FRIEDMAN: Objection. Relevance.
THE COURT: Overruled.
THE WITNESS: We call the patient.
BY MS. PATIN:
Q. So it's not documented in the phone records if there's a message left on the answering machine?
A. When we actually get in contact with the patient, we document that we called or left a voice mail, yes.
Q. So yes --
A. The answer's yes.
Q. It's only documented once a telephone call is made back to the patient, correct?
A. That is correct.

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

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

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

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

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

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

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

A. Not that I'm aware of.

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

A. No.

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

A. No.

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

2011, correct?

A. That's correct.

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

MR. FRIEDMAN: Objection. Relevance.

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

THE WITNESS: That's correct.

BY MS. PATIN:

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

MR. FRIEDMAN: Objection. Relevance.

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

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

THE COURT: Objection's sustained.

BY MS. PATIN:

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

A. That's correct.

Q. And at the time, you saw Svetlana Singletary at the hospital, correct?
A. I did not.
Q. You never saw her?
A. No.
Q. You never spoke to her?
A. No.
Q. You never spoke to Reginald Singletary?
A. No.
Q. You never spoke to the doctors?
A. No.
Q. But you went there to help.
A. I went there -- I was -- I went there right after Dr. Park and Dr. Traivai. We went together, but I went there after them, yes.
Q. And you testified that you went there to help, correct?
A. Absolutely.
Q. But you never spoke to anyone at the hospital?
A. No, I did not.
Q. You also testified that Dr. Traivai performs dental procedures at her discretion, correct?
A. That's correct.
Q. But you don't monitor all procedures that are

performed by Dr. Traivai, do you?
A. That's correct.
Q. And you don't monitor her schedule, correct?
A. She monitors her own schedule.
Q. You don't monitor her schedule.
A. No, I don't.
Q. So you don't know if she's performing or scheduled for a tooth extraction versus a root canal versus a cleaning versus a new patient exam, correct?
A. It's on the computer.
Q. But you don't monitor that, do you?
A. No, I don't.
Q. You don't look at that on a daily basis, do you?
A. No, I don't.
Q. You also testified that all back office goes to dental assistant school, correct?
A. They generally should, yes.
Q. Your specific testimony was that all back office -- all of your back office staff goes to dental school, correct?
MR. FRIEDMAN: Objection. Misstates his testimony.
THE WITNESS: They don't go to dental school. Remember, they go to dental assistant school.

BY MS. PATIN:

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

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

THE COURT: Hold on, guys.

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

THE WITNESS: Sure.

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

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

THE COURT: Please don't.

THE WITNESS: Absolutely.

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

BY MS. PATIN:

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

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

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

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

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

Q. I'm asking you now.

A. All with the exception of one.

Q. Who's that?

A. Jonathan Bradley.

Q. And that's now?

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

Q. And that's currently?

A. That's currently.

Q. Back in March and April --

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

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

A. I don't recall.

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

dental assistant school?

MR. FRIEDMAN: Objection. Relevance.

MS. PATIN: May we approach?

THE COURT: Sure.

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

THE COURT: Objection's overruled.

BY MS. PATIN:

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

A. I don't recall.

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

A. I don't recall.

Q. Did you hire Zadia Lopez?

A. I did.

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

A. That's correct.

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

A. She's had previous dental assisting experience.

Q. But she never went to dental assistant school?

MR. FRIEDMAN: Objection. Misstates his testimony.

THE WITNESS: I don't recall.

THE COURT: Overruled.

THE WITNESS: I don't recall.

BY MS. PATIN:

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

A. I don't recall.

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

A. That's correct.

MS. PATIN: No further questions at this time.

THE COURT: Mr. Friedman, redirect.

MR. FRIEDMAN: Thank you.

REDIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. Just a few things.

Doctor, plaintiff counsel asked you about

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

Why do you believe Cherisse testified the way she did?

MS. PATIN: Objection as to speculation.

MR. FRIEDMAN: I asked his belief.

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

BY MR. FRIEDMAN:

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

MS. PATIN: Objection --

THE WITNESS: I am aware --

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

THE COURT: Overruled.

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

BY MR. FRIEDMAN:

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

A. Yes, he did.

Q. And is it the protocol of your office to

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

A. Yes, it is.

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

A. That's correct.

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

MR. VOGEL: No questions.

MR. LEMONS: No questions, Your Honor.

THE COURT: Anything else?

MS. PATIN: No questions.

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

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

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

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

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

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

THE COURT: Okay. Thank you, Doctor.

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

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

MR. FRIEDMAN: No, Your Honor.

MR. VOGEL: No, Your Honor.

THE COURT: Mr. Lemons?

MR. LEMONS: No, Your Honor.

THE COURT: Ms. Patin?

MS. PATIN: Yes, Your Honor.

THE COURT: Go ahead.

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RECROSS-EXAMINATION

BY MS. PATIN:

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?

A. Depending on the -- I guess the -- the procedure.

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

A. I don't typically do surgical extractions. I didn't mean I never perform. I don't typically do surgical extractions.

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?

A. That's correct.
Q. And they're performed by the dentists in your office, both you, Dr. Traivai, and Dr. Park, correct?
A. Depending on the doctor, sure.
MS. PATIN: No further questions.
THE COURT: Anything else?
MR. FRIEDMAN: No, Your Honor.
MR. VOGEL: No, Your Honor.
THE COURT: Thank you, Doctor.
Mr. Friedman, your next witness.
MR. VOGEL: Yes, just one second.
Your Honor, we're going to call Dr. Christian Sandrock.
THE COURT: Are you calling him or is he calling him?
MR. VOGEL: He's a joint witness.
THE COURT: Okay. Doctor, we're going to ask you to step up here on the witness stand. If you would, remain standing, raise your right hand, please.
THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God.
THE WITNESS: I do.
THE CLERK: Please state your name and spell

it for the record, please.

THE WITNESS: May I sit?

THE COURT: You may.

THE WITNESS: Okay. Christian Sandrock. Last name is -- first name is Christian, C-h-r-i-s-t-i-a-n. Last name Sandrock, S-a-n-d-r-o-c-k.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. VOGEL:

Q. Good morning, Doctor.

A. Morning.

Q. How are you?

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

Q. Work late last night?

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

Q. All right. Well, if you could, for the jury, just so we can introduce you here, could you give a little bit of an explanation of your education, training, and experience. Just a thumbnail sketch, please.

A. Sure. No problem. So I'm a physician, so an M.D., and I trained in pulmonary critical care and infectious disease medicine. So I did my undergraduate

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

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

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

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

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

Q. Sure.

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

Q. Are you board certified?

A. I am.

Q. What areas of medicine are you board certified?

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

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

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

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

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

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

A. Yes, I have.

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

A. Yes.

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

A. Yes, I have.

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

THE COURT: Any objection?

MS. PATIN: No, Your Honor.

THE COURT: He'll be so recognized.

MR. VOGEL: Thank you.

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BY MR. VOGEL:

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

A. That's correct, yes.

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

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

Q. And do you recall what records you reviewed?

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

Q. Very good.

And you authored a report as well?

A. I did, yes.

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

A. Okay. Okay.

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

Exhibit B.

A. Yes.

Q. Is that your report?

A. Yes, it is.

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

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

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

A. That's correct.

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

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

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

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

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

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

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

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

A. I would say confirmed and supported, yes.

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

A. Yes, sir, they are.

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

A. Correct.

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

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

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

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

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

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

A. Yes, very rapid.

Q. And how rapid?

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

Q. You are.

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

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

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

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

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

A. Yes, sir.

Q. Okay. So what was your second opinion?

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

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

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

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

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

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

Q. Let me stop you there.

A. Sure.

Q. Is it common for dentists and oral surgeons

to contact you with infectious disease issues?

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

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

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

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

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

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

A. Absolutely, yeah.

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

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

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

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

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

Q. For the reasons you just stated?

A. No. That's correct, yeah.

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

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

(Clarification by the Reporter.)

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

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

BY MR. VOGEL:

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

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

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

Q. Why is that?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Thursday you mean?

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

that was coming to the surface suggestive of infection.

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

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

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

THE COURT: Sure.

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

THE COURT: Objection's overruled.

MR. VOGEL: Thank you, Your Honor.

BY MR. VOGEL:

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

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

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

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

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

THE WITNESS: It does not.

BY MR. VOGEL:

Q. Does it support your opinion?

A. It does, yes.

Q. How so?

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

Q. All right. And so --

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

you.

MR. VOGEL: My apologies.

BY MR. VOGEL:

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

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

Q. And you base that on?

A. Progression of his symptoms at that time.

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

A. I think we reached everything.

Q. Okay. What was your fourth opinion?

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

Q. And why is that?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Is that an indication to give antibiotics?

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

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

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

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

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

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

A. From my review of the records, yes.

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

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

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

A. Yes sir, they have.

MR. VOGEL: Thank you, Doctor.

I pass the witness.

MR. FRIEDMAN: I have nothing, Your Honor.

MR. LEMONS: No questions, Your Honor.

THE COURT: Ms. Patin.

/////

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.

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

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

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

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

A. That's correct.

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

A. That's correct.

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

Is that not an infection or evidence of an infection?

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

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

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

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

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

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

Q. And this bacteria can travel through the bloodstream, correct?
A. That's correct.
Q. And this bacteria can travel through the bloodstream following a surgical procedure such as an extraction.
A. That's correct.
Q. Do you agree with Dr. Traivai that Reginald Singletary had a chronic infection present?
A. I would say that that is -- not having examined him and only relying on her notes, that's the best -- I can only rely on her notes based on that definition. So I can't -- I -- not examining him, it's hard for me to tell or make an agreement.
Q. And you did have an opportunity to review the Summerlin Smiles records in this case?
A. That's correct.
Q. And your -- it's your understanding based upon those records that Reginald Singletary was diagnosed with severe generalized chronic periodontitis?
A. That's correct. Based on her notes, yes.
Q. And you're not a dentist, correct?
A. That is correct.
Q. You're not trained as an oral surgeon?

A. That's correct.

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

A. That's correct.

Q. What does susceptible mean?

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

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

bacteria that Mr. Singletary was diagnosed with, correct?

A. That's correct.

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

A. Yes.

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

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

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

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

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

That's your testimony here?

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

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

Q. When would oral antibiotics have made a difference?

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

Q. Ever?

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

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

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

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

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

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

A. I think as well, yes.

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

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

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

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

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

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

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

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

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

Q. Where does the infection start?

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

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

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

teeth?

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

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

What type of alternative diagnosis?

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

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

swelling?

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

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

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

A. Uh-huh.

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

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

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

MR. FRIEDMAN: Can we approach, Your Honor?

THE COURT: Come on up.

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

THE COURT: Go ahead and rephrase it.

BY MS. PATIN:

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

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

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

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

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

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

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

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

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

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

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

A. Uh-huh.

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

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

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

A. No, ma'am.

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

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

A. That's my statement, yes.

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

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

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

complaints?

A. Of course.

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

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

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

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

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

Does that change your opinion in any way?

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

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

A. That does not change my opinion, no.

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

A. That's correct.

Q. Why is that?

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

Q. So antibiotics would not have prevented the bacteria from transitioning into that plane.
A. More like than not, correct.
Q. What's the purpose of antibiotics? Isn't it to fight bacteria?
A. It is, yes.
Q. I'll represent to you that Dr. Traivai testified that swelling is a sign of infection.
Do you disagree with Dr. Traivai?
A. I do not, no.
Q. And what are your rates for file review?
A. I have to look it up, but I think it's either 400 or 425 an hour.
Q. And what about trial testimony?
A. The same.
Q. And you would agree that bacteria is susceptible to antibiotics, correct?
A. This particular bacteria?
Q. Yes.
A. Yes, correct.
Q. The bacteria that Reginald Singletary had?
A. Yes.
Q. Is it possible to have an infection in the beginning stages and not have a fever?
MR. VOGEL: Object to form. Your Honor,

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

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

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

BY MS. PATIN:

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

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

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

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

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

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

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

A. So not necessarily, no.

MS. PATIN: No further questions at this time.

THE COURT: Any more?

MR. VOGEL: Just briefly.

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

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

See you back about 12:45.

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

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

MS. PATIN: No, Your Honor.

MR. FRIEDMAN: No, thank you.

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

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

(Whereupon a lunch recess was taken.)

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

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

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

Do the parties stipulate to the presence of the jury?

MR. FRIEDMAN: Yes, Your Honor.

MR. LEMONS: Yes, Your Honor.

MS. PATIN: Yes, Your Honor.

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

MR. LEMONS: Yes, I think so, Your Honor. Thank you. Then we would call Dr. David Levitt at this time.

THE MARSHAL: Levitt?

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

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

THE WITNESS: I do.

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

THE WITNESS: David Levitt. Last name L-e-v-i-t-t.

THE CLERK: Thank you.

THE COURT: Thank you, Doctor. Go ahead and be seated. I'm going to ask you to try to speak into the microphone so everyone can hear you well.

You speak up too, Mr. Lemons.

MR. LEMONS: I'll do that, Your Honor. Thank you.

DIRECT EXAMINATION

BY MR. LEMONS:

Q. Afternoon, Dr. Levitt.

A. Afternoon.

Q. Are you a dentist?

A. I am.

Q. And do you have a specialty?

A. I'm a general dentist with a subspecialty with oral implantology.

Q. And when you say you're a general dentist, does that mean you have practiced taking all kind of patients in a way similar to what you understand

Dr. Park's practice to be?

A. My practice -- my private practice is limited to implants and procedures that involve implants. However, I do a lot of charity work, and in the charity work I do general dentistry very much like Dr. Park and Dr. Traivai.

Q. Can you give the jury an idea of your educational background, an outline of it, please.

A. I went to dental school at the University of Southern California. I graduated in 1977. So that's -- I'm just shy of 34 years practicing dentistry. I did an advanced training at numerous institutions in the field of implantology and oral surgery. And I've been practicing continually with a five-year gap when I went to work for an implant company full time and stopped practicing. That was in 1996 to 2001.

Q. Dr. Levitt, to practice in the field that you practice in, did you have postgraduate training?

A. I did.

Q. Would you describe that, please.

A. The Medical College of Georgia, a nine-month part-time program in oral implantology. The Michigan Institute, it's a private educational institute, a two-year program in oral implantology. Loma Linda

University, I did that for five years, again, part time in oral surgery and oral implantology. That covers the majority of it.

Q. Doctor, you mentioned that you do -- you volunteer to provide care outside of the context of your practice?

A. I do.

Q. Could you describe that for us, please.

A. I'm on the board of directors of something called Dental Care for Children. We treat adults as well as children. However, we go down to Mexico four times a year and treat indigents. We go to Haiti three times a year and treat indigents. And also in Southern California in Hispanic neighbors, we treat indigents. We do everything from cleanings to implants and everything in between.

Q. And the in between, does that include extractions as well?

A. Hundreds upon hundreds of extractions.

Q. And when you're seeing those patients, are you seeing them in a general dentistry context, as a general dentist?

A. We are. We have no specialists that come down with us except for one endodontist. That's a root canal specialist. Otherwise, it's all general dentists

or dental students. Last trip, we had 25 dental students come with us as well.

Q. Are you involved in teaching?

A. I am. The students that come to the clinics put on by Dental Care for Children, most of them, interestingly enough, come down to learn how to do extractions. Extractions are not taught very well in the dental schools. For instance, where I graduated, the University of Southern California, you only have to take out six teeth to graduate. You're certainly not going to learn how to take out teeth in doing six teeth. So a lot of these students come down to learn how to take out teeth, to learn how to do extractions. And my job on these trips, primarily, rather than delivering care, is to teach the students. That's one way I teach.

Another way I teach is -- privately, I do weekend courses for graduate dentists on oral implantology and oral surgery. I do those all over the United States and Canada. We put on 14 of them last year.

Q. And are you also an invited guest lecturer at various educational places?

A. It's been a little while since I've been invited to a university. However, over the years, I've

been an invited guest lecturer at numerous universities, study clubs, and private institutions, including --

Q. Were you involved in teaching in the residency program at Travis Air Force Base?

A. That's one of the places. I was -- for many years, six or seven years, I was invited once a year to do an implantology day at Travis Air Force Base. Wonderful place to teach because the dental clinic overlooks the runway, and you see these big C-5s coming down as you're trying to do dentistry. A little disconcerting at first. I got used to it, though.

Q. Thank you, Doctor.

Has your lecturing also included invitations to the Scripps Institute, USC School of Dentistry, and institutions like that?

A. I don't think I've been invited to USC. I have been invited to UCLA. Scripps as well. Numerous, numerous institutions have invited me as a guest lecturer on various occasions.

Q. And have you published in your field?

A. I have. I have two or three journal articles, and I'm also one of the contributors to a textbook on oral implantology.

Q. Can you describe for the jury, since you're

talking about implantology -- I mean, you understand, of course, that you've reviewed the case and are here to testify that this case involves an extraction of a wisdom tooth.

A. Yes.

Q. And you've agreed to testify as an expert in this case, true?

A. I have.

Q. What is your experience with extractions of the type that occurred in this case that qualifies you as an expert in -- in testifying here today?

A. I do wisdom teeth extractions on a regular basis. Other than the teeth tend to be angled, they're not any different than any other extraction. So I have done thousands of extractions.

Q. And you're familiar with the standards of care that apply in those situations.

A. Yes, I am.

MR. LEMONS: Your Honor, I'd ask that Dr. Levitt be recognized as an expert in the field he's testifying in.

THE COURT: Any objections?

MS. PATIN: No objection.

MR. FRIEDMAN: No, Your Honor.

MR. VOGEL: No, Your Honor.

THE COURT: He'll be so recognized.

MR. LEMONS: Thank you, Your Honor.

BY MR. LEMONS:

Q. Dr. Levitt, did I ask you to review this case some months ago?

A. You did.

Q. And when I asked you to review the case, what -- what information did you have available to you?

A. I brought my cheat sheet because there was a lot of information.

Q. Before I sent those things you're going to talk about, though, did you know anything about this case at all?

A. No.

Q. And when I called to ask you to review it, did I say that we would send you information to review?

A. You did.

Q. And did -- did I do that?

A. You sent me quite a stack of information.

Q. Would you describe, please, what it is that you reviewed that forms the foundation for your opinions.

A. The records and X rays of Summerlin Smiles, the records of St. Rose Dominican Hospital, the records of the Clark County coroner, depositions of Dr. Traivai

and Mrs. Singletary. And just this week, the deposition of Dr. Pallos, and deposition of Dr. Marzouk.

Q. And as result of your review of these materials, did you form certain opinions regarding this case?

A. I did.

Q. Are the opinions that you're going to state here today to a reasonable degree of medical probability?

A. They are.

Q. Did you form an opinion as to whether Dr. Park complied with the standard of care?

A. I did.

Q. Was Dr. Park negligent in this case?

A. Dr. Park was within the standard of care, did nothing negligent at all.

Q. Did Dr. Park cause harm to this patient?

A. He did not.

Q. Based on your review of the materials that were available to you, did you have an understanding of how Dr. Park became involved in the care of Mr. Singletary?

A. I do have an understanding.

Q. And could you please describe your

understanding.

A. Dr. Traivai was attempting to remove the tooth, attempting to extract the tooth, and was having a hard time. So she asked Dr. Park to come in and give a hand. He showed her a different instrument. He popped the tooth out for her. Literally, in his words, it took one minute. So literally popped the tooth out for her. And after that, he left the room and had no further contact with the patient and no further input.

Q. Did you know from the records whether there was any complication as a result of this extraction?

A. There was no complication that day.

Q. Would it be accurate to describe this extraction as a routine extraction?

A. It would be.

Q. Now, when Dr. Park performed that -- that consultation or that -- that assist for Dr. Traivai on this patient, did he become the treating dentist?

A. He did not.

Q. Did he provide treatment to Mr. Singletary in extracting the tooth, however?

A. He did provide some treatment. He picked up an instrument called an elevator, put the elevator in the mouth, and used it to take the tooth out.

There's two ways to take out a tooth. You

can grab a forcep which, for all practical purposes, is a pair pliers, just a bent pair of pliers, and you can try wiggling the tooth out. You can also take an elevator which, for all practical purposes, is like a screwdriver and you pry the tooth out.

So Dr. Traivai was trying get it out with a forcep. That wasn't working. He took the elevator and popped it out.

Q. And either method of attempting to do the extraction is appropriate?

A. Yes.

Q. Have you in fact been involved in similar requests of other dentists to assist in the way that Dr. Park did?

A. In Mexico and in Haiti, that happens all the time, especially in Haiti because the Haitian population has very, very dense bone. Teeth are hard to get out. And so a dental student or a dentist without a whole lot of experience will be in the middle of extraction and say, Help. I do that all the time.

Q. Is there a situation where the person such as Dr. Park or yourself would become the treating dentist for that patient? Is there a situation where it could occur that that might happen?

A. Well, in this situation, if Dr. Traivai said,

Could you please simply take over and go ahead and write prescriptions or follow-up or whatever it is that's going to be done, I'm stepping out, I have another patient in another room, I haven't got time, then they become the treating dentist. In this case, that didn't happen.

Q. And Dr. Traivai continued to take care of Mr. Singletary, true?

A. Yes, she did.

Q. Now, is there anything about Dr. Park's assistance in this case and his treatment of Mr. Singletary that you found to be below the standard of care?

A. No. Dr. Traivai was in the standard of care as well.

Q. And is Dr. Park's assistance of Dr. Traivai, did you form an opinion as to whether that complied with the expected standard of care?

A. That was definitely within the standard of care.

Q. Is there anything about the extraction which was negligent in any way?

A. No.

Q. Was there anything about Dr. Park leaving the room and going on with other patients that was

negligent in any way?

A. No. The tooth came out. All was well.

Q. Did you also look at this case for the purpose of assessing whether antibiotics should have been prescribed for Mr. Singletary on the day of the extraction?

A. I did.

Q. And did you form an opinion on that question?

A. It's not the standard of care to routinely give antibiotics for an extraction. The only time we would give antibiotics for an extraction is if there was active infection going on. And there was no indication in the records that this case had any active infection. There was no swelling, no pus or purulent exudate, no evidence of infection.

Q. Dr. Pallos wants you to assume -- testify -- and you reviewed Dr. Pallos's deposition, correct?

A. I did.

Q. Dr. Pallos came in yesterday and testified that this patient had an acute infection on April 16th.

Do you agree --

MS. PATIN: Objection, Your Honor.

THE COURT: What's the objection?

MS. PATIN: Can we approach?

THE COURT: Sure. Come on up.

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

THE COURT: Overruled.

MR. LEMONS: Thank you, Your Honor.

BY MR. LEMONS:

Q. Doctor, I want you to assume, Dr. Levitt, that Dr. Pallos testified that there was an acute infection in Mr. Singletary's tooth on April 16th.

Do you agree with that opinion?

A. No, I don't.

Q. And could you describe for the jury why that opinion is not correct in your view.

A. Obviously Dr. Pallos and I didn't have the privilege of seeing the patient. The only thing we have to go on is the records. And when there's an acute infection, it should say in the records somewhere that there was pus, swelling, pain. None of those things were present.

Q. Is -- is the -- of those, is the finding of pus something that you would expect to be documented if it was present?

A. Exudate would be the word they use, and it definitely would be documented.

Q. It was suggested by Dr. Pallos -- I want you to assume it was suggested in -- in -- in this -- now,

this is not a quote, but I'm going to outline what I understood him to be saying. And that is that you need to allow the patient to follow up by, perhaps, giving a prescription to the patient that could -- for antibiotics that could be filled later, between the time of the April 16 extraction and the return visit a week later.

Do you have an opinion as to whether that would comply with the standard of care if it were done?

A. I think I heard you just say that you would give a prescription to the patient and allow the patient to make the decision as to whether or not they should take it.

Q. And that's -- I've outlined what I understood Dr. Pallos to be suggesting.

A. That's simply not done. If you're going to give a prescription, it's the doctor's instructions as to what to do with it not the patient making a decision as to what to do with it.

The only time I would make an exception to that is pain medication. You certainly can give a prescription for pain medication and say, Take this if you need it. Then it is, of course, up to the patient. But not an antibiotic or a heart medication or anything else.

Q. So to do that would not -- would not be in compliance with the standard of care.

Is that your testimony?

A. No, it would not.

Q. In your opinion, Doctor, would there be any reason in this case for Dr. Park to intervene in Mr. Singletary's care beyond the request of Dr. Traivai?

A. No.

Q. Yesterday, Dr. Pallos, I want you to assume, read for the jury a quote from your report that indicated that -- that if there was a complicating factor involved in an extraction, that antibiotics could be called for. He was interpreting your statement that no antibiotics were required here because there were no complicating factors.

Are you with me?

A. Yes.

Q. All right. So my question to you is: Based on your review of this case, were there any such complicating factors in this case that would have required the prescription of antibiotics on the 16th of April?

A. No. This is a simple extraction. There were no complicating factors.

Q. And when you said that in your report, you knew what the facts of this case were at that time, correct?

A. I had read that stack of stuff you gave me.

Q. All right. All right. So Dr. Levitt, have all the opinions that you've stated here today with regard to Dr. Park's involvement been to a reasonable degree of medical probability and dental probability?

A. They have.

MR. LEMONS: That's all I have, Your Honor. Thank you.

MR. FRIEDMAN: I don't have any questions, Your Honor.

MR. VOGEL: No questions.

THE COURT: Ms. Patin, cross?

MS. PATIN: Yes.

CROSS-EXAMINATION

BY MS. PATIN:

Q. Hi, Dr. Levitt.

A. Hi. May I say congratulations?

Q. Thank you.

A. Okay.

Q. Dr. Levitt, you were asked to render an opinion regarding the care and treatment that was

provided by Dr. Park in this case, correct?
A. Yes, I was.
Q. And according to the documents that you listed earlier, you didn't review Dr. Park's deposition, correct?
A. I did not.
Q. And you said that you did have an opportunity to review some other deposition testimony that was provided to you, Dr. Pallos and Dr. Marzouk, correct?
A. Yes, I did. And Dr. Traivai and Mrs. Singletary.
Q. And this is the only report that you've provided in this case, correct?
A. It is.
Q. There's no supplements to your report; is that correct?
A. No supplements.
Q. Would you agree that a treating dentist reviews the medical chart and history of a patient before providing care to that patient?
A. Define treating dentist.
Q. A dentist who treats a patient in the office.
A. A dentist who is in charge of the care reviews the medical history, et cetera. Someone who comes in to assist does not.

Q. What about someone who comes in to assist, would that treating dentist or would that dentist review X rays of the patient?

A. It would depend on the case.

Q. So you would agree that a treating dentist reviews X rays of a patient?

A. Once again, it depends on what's being asked of the dentist who's assisting.

Q. If the dentist is being asked to extract a tooth, would you agree that they review X rays of the patient?

A. They would.

Q. Would you agree that a treating dentist performs a physical examination of the patient before he treats the patient?

A. Again, I'm having trouble with treating dentist and dentist who's offering to assist. It sounds like you're putting the two in the same sentence, and --

Q. Why don't you tell me the definition of a treating dentist.

A. Someone who's in charge of the care of the patient.

Q. So you would agree that someone who's in charge of the care of the patient will perform a

physical examination of the patient prior to performing any dental work on that patient?

A. I would say head and neck examination. Is that what you mean by physical examination, head and neck?

Q. We're talking about the mouth, so yes.

A. Okay. Thank you.

Q. Okay. And you gave me the definition of a treating physician. What about assisting physician or dentist?

A. Someone who aids in completion of a procedure.

Q. And would you agree that someone who aids in the completion of a procedure performs a physical examination of the patient prior to performing any type of procedure on that patient?

A. No.

Q. Would you agree that an extraction is the actual removal of the tooth from the mouth?

A. Yes.

Q. And would you agree that Dr. Park provided treatment in this case?

A. He did.

Q. In your opinion -- you've had an opportunity to look at the records, correct?

A. Yes.
Q. In your opinion, during the extraction of Reginald Singletary on April 18th of 2011, what did Dr. Park do differently than Dr. Traivai?
A. Picked up a elevator and elevated the tooth out of the socket. She was attempting to take the tooth out with a forcep.
Q. Is there anything else that Dr. Park did differently than Dr. Traivai?
A. Not that I'm aware of.
Q. Based upon your review of the records and X rays, did Reginald Singletary have dense bone?
A. The only way you can determine dense bone is to do a scan, a cone beam scan, which is like a CT scan except for dentistry. And you can get a measurement of density off a cone beam scan. Otherwise, X rays really don't tell you a bunch about bone, about dense bone.
Q. Was that done in this case, that scan?
A. No.
Q. What's your understanding of the telephone call on April 18th of 2011 by my client, Svetlana Singletary, after the extraction and follow-up?
A. I understand there was a phone call made to the office. It was answered by an office employee.
Q. And based upon your review of

Ms. Singletary's deposition, are you aware of the complaints that were conveyed during the telephone call?

A. I am.

Q. What were those complaints?

A. That he had pain and swelling.

Q. Do you know where the swelling was?

A. I don't recall. Can we review the document?

Q. I'll represent to you that it was pain and swelling of the cheek and the neck.

A. Okay.

Q. Based upon those complaints two days after a tooth extraction, is it your opinion that antibiotics would be indicated at that point?

A. Wisdom teeth extractions very often have pain and swelling in the cheek and neck at two days. So I wouldn't say antibiotics are indicated at that point, no.

Q. So it's not your opinion that swelling of the neck requires antibiotics or antibiotics are not indicated?

A. That is correct.

Q. And in your practice, if a patient came in two days post extraction of a wisdom tooth and they had pain, swelling in the cheek and in the neck, you

wouldn't prescribe antibiotics at that point.

MR. LEMONS: Your Honor, this is -- this is -- the question is what the standard of care requires, not as -- as --

THE COURT: Sustained.

MR. LEMONS: -- as the Court has ruled.

THE WITNESS: Am I supposed to answer?

MS. PATIN: No.

BY MS. PATIN:

Q. In your opinion, based upon the standard of care, would antibiotics be indicated if a patient came into the office two days post extraction of a tooth with pain and swelling in the neck and in the cheek?

MR. FRIEDMAN: Objection. Incomplete hypothetical.

THE COURT: Overruled. He can answer based on what he was given.

THE WITNESS: I didn't hear you. Am I supposed to answer?

THE COURT: You can answer.

BY MS. PATIN:

Q. You can answer.

A. Yes.

Q. Based upon the standard of care, what are the proper instructions for a follow-up of a routine

extraction?

A. Patient will be given some gauze. They'll be told to bite on the gauze for 20 minutes to stop bleeding. They'll be told to replace the gauze if the bleeding continues. Usually told to be -- to put ice on their face to help with swelling. Chew on the other side. Don't use a straw. Don't smoke anything, cigarettes, pipes, cigars, et cetera. Call the office if anything unusual occurs.

Q. And based upon the standard of care, what are the proper instructions for follow-up for a surgical extraction?

MR. LEMONS: Your Honor -- relevance, your Honor. No -- this case doesn't involve a surgical extraction.

THE COURT: Sustained.

MS. PATIN: May I approach?

THE COURT: Sure.

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

BY MS. PATIN:

Q. You mentioned that one of the proper instructions for follow-up of a routine extraction is that the patient call the office if there's any -- I'm not sure if you said complications or issues. If you

can remind me what you said, I'd appreciate it.

A. If swelling increases past the third day, if pain increases past the second day, if bleeding doesn't stop, call the office.

Q. And if Reginald Singletary, or his wife on behalf of him, called the office on April 18th of 2011, would that be following the proper instructions?

A. Yes.

Q. You were talking about complicating factors. One of the statements in your report is, "With proper instructions for follow-up, it is not usual to prescribe antibiotics post extraction without some other complicating factor being involved."

And you mentioned that there were no complicating factors on April 16th of 2011, correct?

A. Correct.

Q. Were there any complicating factors on April 18th of 2011?

MR. LEMONS: Objection. Calls for speculation, Your Honor.

THE COURT: He can testify as to what he knows. Overruled.

THE WITNESS: Based on Mrs. Singletary's deposition, she stated that there was swelling, swelling going into the neck. That would be a

complicating factor.
BY MS. PATIN:
Q. Would you agree that a treating dentist is responsible for the follow-up care of his or her patient based upon the standard of care?
A. Yes.
MS. PATIN: No further questions at this time.
THE COURT: Mr. Lemons.
MR. LEMONS: Thank you, Your Honor. Just a couple.

REDIRECT EXAMINATION
BY MR. LEMONS:
Q. Dr. Levitt, do you have your report there in front of you?
A. I do.
Q. What is the date of your report? What's the date on your signature on the last page?
A. Oh, thank you. 7/12/13.
Q. And at the time that you did that report, you didn't have Dr. Park's deposition, correct?
A. That's correct.
Q. Do you know when Dr. Park's deposition was taken?

A. No, I don't.
Q. Just to clarify and follow up on plaintiffs' counsel last questions regarding obligations of a treating dentist, it's your opinion in this case that Dr. Park provided treatment but was not the treating dentist; is that true?
A. That is true.
MR. LEMONS: That's all I have, Your Honor. Thank you.
THE COURT: Anything else for this gentleman?

CROSS-EXAMINATION

BY MR. VOGEL:
Q. Doctor, based on the questioning by Ms. Patin, did that change any of your opinions that you hold in this case?
A. No.
Q. So it's still your opinion that Dr. Traivai met the standard of care in this case?
A. It is.
Q. Is that your opinion to a reasonable degree of medical probability?
A. It is.
MR. VOGEL: Thank you.
MR. FRIEDMAN: Nothing, Your Honor.

THE COURT: Anything else?

MS. PATIN: Just one follow-up.

RECROSS-EXAMINATION

BY MS. PATIN:

Q. Dr. Levitt, after Dr. Park's deposition was taken, were you ever provided with a copy of it?

A. I'm not sure.

Q. Do you recall reviewing Dr. Park's deposition?

A. I recall the description of picking up an elevator and popping the tooth out. That couldn't have come from anyone's deposition but Dr. Park's. It could have come from Dr. Traivai, so I really don't recall reviewing it.

MS. PATIN: No further questions.

THE COURT: Anything else?

MR. VOGEL: No, Your Honor.

MR. LEMONS: No, Your Honor. Thank you.

THE COURT: Ladies and gentlemen, any questions? We got one.

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

THE COURT: All right, Doctor, I've got two questions. The first one I'm not going to ask, but the

second one I will.

Does chronic periodontal disease imply infection?

THE WITNESS: No. Acute periodontal disease implies infection. Chronic means something very low grade. Without any exudate -- that's pus -- without any swelling, there's no acute infection going on.

THE COURT: Okay. We'll mark that Court's next in order.

Mr. Lemons, any follow-ups based on that one?

MR. LEMONS: No, Your Honor. Thank you.

MR. FRIEDMAN: No, Your Honor.

MR. VOGEL: No, Your Honor.

MS. PATIN: No, Your Honor.

THE COURT: Okay. Thank you, Doctor. Appreciate your time.

Next witness for the defense.

MR. FRIEDMAN: We'd like to call Dr. William Ardary M.D., D.D.S. I believe he's outside.

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

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

THE WITNESS: Yes.

THE CLERK: Please state your name and spell it for the record.

THE WITNESS: Should I sit down?

THE COURT: You can.

THE WITNESS: Yes. It's William Clark Ardary, A-r-d-a-r-y.

THE COURT: Great. Thank you, Doctor. I'm going to ask you to try to continue to speak into that microphone so everyone can hear you better.

MR. FRIEDMAN: Thank you.

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. Good afternoon, Doctor.

A. Hello.

Q. You've been retained in this case by my client, Dr. Lee and Summerlin Smiles, as well as on behalf of Dr. Florida Traivai, correct?

A. That's correct.

Q. Okay. What is your profession, Doctor?

A. I'm an oral and maxillofacial surgeon.
Q. And what school did you attend for your undergraduate training?
A. Undergraduate, I went to Idaho State University in Pocatello, Idaho.
Q. And then you went on to dental school?
A. I did.
Q. What dental school did you attend?
A. University of Southern California.
Q. And did you receive any awards or distinctions at USC dental school?
A. A few, yes.
Q. Graduated with honors?
A. Yes.
Q. Second in your class?
A. Yes.
Q. Doctor, what is the James Irvine Foundation Fellowship?
A. It was an award for academic excellence.
Q. And you received that?
A. Yes.
Q. What is the Founders Award?
A. I believe it was an award in the area of pathology with academic excellence.
Q. And you received that award?

A. I did.
Q. Doctor, what is the American Association of Oral and Maxillofacial Surgeons Award?
A. That's the award given by the American Association of Oral and Maxillofacial Surgeons to an undergraduate student that shows excellence in that field of study.
Q. And you received that award?
A. I did.
Q. Doctor, what is Omicron Kappa Upsilon?
A. It's an honor fraternity.
Q. Were you a member of that honor fraternity?
A. Yes, I was.
Q. And what is Alpha Tau Upsilon?
A. Another honor fraternity.
Q. Were you a member of that honor fraternity?
A. Yes.
Q. And, Doctor, what is Phi Kappa Phi?
A. Another fraternity -- honor fraternity.
Q. You were a member of that honor fraternity?
A. I believe I was, yes.
Q. Doctor, what did you do after graduating from USC dental school?
A. I went into a residency in oral and maxillofacial surgery.

Q. And what was the length of that residency?
A. That was three years.
Q. Three-year residency?
A. Yes.
Q. And so when you completed that residency, you were an oral surgeon?
A. That's correct.
Q. Do you have any further training or education beyond dental school and your three-year residency to become an oral and maxillofacial surgeon?
A. Yes, I do.
Q. And what further training or education have you completed?
A. Following my residency program, I attended the University of Southern California School of Medicine and graduated in 1985 with a medical degree.
Q. So you are both a physician and a dentist.
A. That's correct.
Q. And did you complete any internships in internal medicine?
A. I did. I completed my internship in internal medicine at the L.A. County Hospital in 1986.
Q. Have you done any teaching?
A. I have.
Q. Where have you done teaching?

A. At the University of Southern California, at the LAC USC Medical Center.

Q. Were you the director of postgraduate residency training in the oral and maxillofacial surgery department?

A. I was.

Q. Did you hold any other positions during that time?

A. Yeah. I -- I also was appointed as a chairman of the department, and I also took over the director of dentistry at the L.A. County Hospital as well.

Q. So you were their director both at the hospital, at L.A. County USC Medical Center, as well as the chairman of the maxillofacial surgery department at USC dental school?

A. That's correct.

Q. And what is the American Association of Oral and Maxillofacial Surgeons?

A. That's our organized body that governs the practice and whatnot of our specialty, oral and maxillofacial surgery.

Q. And what is the American Board of Oral and Maxillofacial Surgery?

A. Yeah. That's kind of a branch of the

American Association, but it's your -- your boards are an additional evaluation, both testing clinically and in written test to become what is called board certified. It verifies that you attended residencies and that you achieved a certain level of training competency.

Q. And are you board certified?

A. I am.

Q. What is the American Society of Dental Anesthesiology?

A. Well, in oral maxillofacial surgery, a lot of us administer our own anesthesia for patients. And people may recall, you go to the oral surgeon commonly to get a wisdom tooth out or something like that. A lot of patients will prefer general anesthesia or sedation, so anesthesia is a significant part of our specialty.

And that is another organized group that governs dental anesthesiology. You don't have to be an oral surgeon to be a member of that, but those of us in dentistry that also practice and administer anesthesia usually are a member of that. And I also am a fellow of that society as well.

Q. So you're a fellow of the American Society of Dental Anesthesiology?

A. Right. That means there was another board examination that was administered and went through that process as well.

Q. And how long have you been licensed to practice dentistry?

A. Since 1980, 34 years.

Q. How long have you been a licensed physician?

A. Since 1986.

Q. Do you have any privileges at any hospitals?

A. I do. Arcadia Methodist Hospital in California.

Q. And you have a private practice?

A. I do.

Q. How long have you had a private practice?

A. Since 1986 as well.

Q. And are you published?

A. I have published, yes.

Q. Where have you published?

A. I published in the American Association of Oral and Maxillofacial, the journal of our society, our specialty. I publish in the Triple O journal, which is oral pathology, oral medicine, and endodontics, that journal. I've also published in the Journal of American Dental Association.

Q. Thank you.

MR. FRIEDMAN: At this time, I would like to qualify Dr. Ardary as an expert in oral surgery and as a medical doctor.

THE COURT: Any objection?

MR. VOGEL: No, Your Honor.

MS. PATIN: No objection.

THE COURT: He'll be so recognized.

BY MR. FRIEDMAN:

Q. Now, Doctor, did you review the dental X rays and records from Summerlin Smiles in this matter?

A. I did.

Q. And based on your review, you saw that Dr. Traivai examined Patient Reginald Singletary, correct?

A. That's correct.

Q. And that was on March 24th, 2011?

A. That's correct.

Q. Do you recall what her findings were?

A. Yeah. I believe that she diagnosed, like, a severe generalized chronic periodontitis.

Q. What is periodontitis?

A. Perio -- well, step back to give a little explanation. Periodontia is what is composed of the teeth, the supporting structures of the teeth, periodontal ligament and the supporting alveolar bone,

and the gingiva or the gum tissues. That's the periodontia. Periodontitis is an inflammatory condition that involves those structures.

Q. And what does it mean that the periodontitis was severe?

A. It's -- it's a classification of the intensity of the process compared to maybe mild or moderate.

Q. What does it mean that the periodontitis was generalized?

A. It involved all the quadrants in the oral cavity.

Q. And what does chronic mean?

A. The duration. It would mean that it's long-standing usually greater than times of six months. Chronic would be long-standing duration as opposed to a acute which would be something that just came up like overnight.

Q. Based on your view, you saw that Dr. Traivai recommended scaling and root planing, correct?

A. That's correct.

Q. What is scaling and root planing?

A. Scaling or root planing are an important part of managing periodontitis. To step back again, as we all know, just from general function, use of your

teeth, you collect a biofilm which consists generally of maybe plaque, which is more of a softer material, and/or calculus which is calcified material. And in that biofilm, there's harboring your normal oral flora bacteria. And so scaling and root planing is the process of cleansing the teeth and the periodontal -- general periodontal ligament area under the gum tissues and the teeth themselves, and it's an important part of managing periodontitis.

Q. So for the layperson like myself, scaling and root planing is cleaning under the gums to treat periodontitis.

A. Essentially, yes.

Q. According to the records, was the scaling and root planing done for Mr. Singletary?

A. I believe it was done on the 24th by the hygienist, if I recall from the records.

Q. Okay. And Dr. Traivai also recommended the extraction of Tooth No. 32, correct?

A. She did.

Q. Was that extraction completed?

A. I believe that was done on, like, April 16th, 2011. It was taken out. I believe so, yes.

Q. What type of tooth is Tooth No. 32?

A. It's a third molar.

Q. And a third molar is also referred to by laypeople as a wisdom tooth?

A. That's correct.

Q. Where is Tooth No. 32 located in the mouth?

A. It's in the lower right quadrant. It's the most posterior tooth -- if you have all 32 of your teeth, it's the most posterior tooth present in the lower right quadrant.

Q. When you say "posterior," for the layperson, that's the one way in the back.

A. Yeah, way back by -- close to the angle of the jaw, in this vicinity.

Q. And can you describe for us what you mean by "the angle of the jaw."

A. Well, that's just a turn in your normal anatomy from what is called the ramus to the body of the mandible. And it sits -- the wisdom tooth, the third molar, would sit just anterior to that deflection in the body of the mandible.

Q. Thank you.

Doctor, do you regularly extract third molars or wisdom teeth in your practice?

A. Almost daily.

Q. Approximately how many third molar extractions would you estimate that you do on a monthly

basis?

A. A fair number. Maybe anywhere from 60 to 80 wisdom teeth on a busy month.

Q. So you extract 60 to 80 wisdom teeth a month in your practice.

A. Approximately, yeah.

Q. I'm going to make you do a little bit of math here. Do you have an estimate as to how many third molar extractions you've completed over the course of your career?

You know what, that's way too much math for the day. It's a whole lot.

A. It's a few thousand.

Q. Doctor, based upon your review of the records and other materials in this matter, did Dr. Traivai's treatment plan, recommending scaling and root planing and extraction of Tooth No. 32, comply with the dental standard of care?

A. Yes, it did.

Q. And you're providing that opinion to a reasonable dental and medical probability?

A. Absolutely.

Q. And what is your opinion of Dr. Traivai's treatment of the patient?

A. That her treatment was well within the

standard of care and appropriate for this particular patient.

Q. And upon what do you base that opinion?

A. On my education, training, and experience, and a review of the records.

Q. And you reviewed Plaintiff Svetlana Singletary's deposition transcript, correct?

A. Yes, I did.

Q. And you saw that she alleges that she called Summerlin Smiles on April 18th, 2011, two days after the extraction of the third molar, correct?

A. That's correct.

Q. And you saw in her deposition that she testified that she told whoever it was that answered the phone that Mr. Singletary had a tooth extraction Saturday and he's in a lot of pain, his neck is swollen, his cheek is swollen, can we come in?

Do you recall that testimony?

A. I do recall that.

Q. Doctor, have you or your office received calls from patients after completing third molar extractions?

A. Absolutely, yes.

Q. Thousands of times?

A. A lot of calls on questions on postoperative

questions, yes. Many, many times. Thousands, yeah.

Q. Is it unusual for a patient to complain of pain two days after a third molar extraction?

A. No. It's very -- very typical.

Q. Is it unusual for a patient to complain of swelling in the neck two days after Tooth No. 32 is extracted?

A. No, that would not be atypical either.

Q. Why do you say that?

A. Because of the location of the tooth and where swelling normally will be anticipated following a third molar surgery. The location of the tooth is, like I was describing, more posteriorly and near the musculature of the jaw. One of the main muscles that makes you close, the masseter. When that surgical insult causes the postoperative swelling and edema, the swelling typically can involve the cheek, the angle of the jaw, and this part of the anterior neck generally (witness indicating).

Q. Doctor, is it unusual for a patient to complain of swelling in the cheek two days after a third molar extraction?

A. No. That would be typical as well.

Q. Doctor, was anything that plaintiff alleges she said in the call that she allegedly made atypical

for an extraction of Tooth No. 32 two days post?

A. No, it was not, not atypical at all.

Q. What type -- what types of things would you look for as red flags that maybe there is something other than the usual pain and swelling secondary to a third molar extraction?

A. Right. Things that would be atypical would be the presence of fever. Fever, maybe fever and chills; presence of malaise, which is really not feeling very well. Also, just a general fatigue. Those -- those are the types of things. Maybe severe limited opening. Those type of things is what you would -- would maybe be atypical.

Q. So those things would need to have been communicated for such post-op symptoms to be considered atypical secondary to an extraction of Tooth No. 32?

A. Yes. You'd have to have something more than typical pain or swelling to alert anybody that something atypical was happening in the postoperative course.

Q. And according to plaintiff's deposition, she didn't mention any of those things during her alleged phone call, correct?

A. I do not believe that she did.

Q. In terms of this case, is it important that

the patient already had an appointment scheduled for follow-up?

A. Yes.

Q. Why is that?

A. Well, it is generally a good medical and dental practice to follow your patients afterwards to assure that they're on track with the healing. And it also complies with the standard of care.

Q. And, Doctor, you reviewed plaintiff's deposition wherein she testified that the person who answered the phone left her with the impression that the symptoms she described were normal after wisdom tooth extraction and that they should get better the following day or the day after that.

You saw that, correct?

A. I do recall that, yes.

Q. And in your opinion as an oral surgeon and physician, was the information that plaintiff was allegedly provided accurate and in compliance with the standard of care?

A. Yes.

Q. And you state that opinion and all of your opinions here today to a reasonable dental and medical probability, correct?

A. Yes, I do.

Q. Doctor, did you review plaintiff's deposition wherein she testified that on the day after her alleged phone call to Summerlin Smiles, that the swelling in the patient's neck got a little bigger and began to move to the other side of his neck?

A. I do recall that.

Q. Now, if plaintiff had called Summerlin Smiles that day and communicated that the swelling in the patient's neck got a little bigger and began to move to the other side of his neck, would that have been a red flag that something unusual was occurring?

A. That would have been a red flag. That -- that's an atypical, especially the migration to the other side of the neck. That would be very atypical.

Q. And based on your review of plaintiff's deposition and the materials in your case -- in this case, it's your understanding that plaintiff did not call Summerlin Smiles with this information, correct?

A. Yes, that's my understanding that she did not call Summerlin Smiles or any other healthcare professional, as I recall.

Q. Doctor, based upon your review of all the records and materials in this case, is it your opinion that Dr. Lee and Summerlin Smiles complied with the dental standard of care?

A. Yes.
Q. And, Doctor, did you come to the opinion that Dr. Lee and Summerlin Smiles -- neither Dr. Lee nor Summerlin Smiles caused any harm to this patient, Mr. Singletary, or plaintiff in this matter?
A. No, they caused no harm in my opinion.
Q. Doctor, I'm going to ask you the same question relative to Dr. Traivai.
Based upon your review of all the records in this matter, is it your opinion that Dr. Traivai complied in all respects with the dental standard of care?
A. Yes, she did.
Q. And based upon your review of all the materials in this case, is it your opinion that Dr. Traivai did not cause any harm to the plaintiff or the patient in this matter?
A. That's correct, that would be my opinion.
Q. And these opinions that you have provided are all to a reasonable dental and medical probability?
A. Yes.
Q. Thank you.
MR. FRIEDMAN: I have nothing further, Doctor.
THE COURT: Mr. Vogel.

MR. VOGEL: Just a little follow-up. If I may, may I unplug the ELMO and plug my computer in there?

THE COURT: That's fine. Is it easier to do it there than --

MR. VOGEL: No, it's actually not.

CROSS-EXAMINATION

BY MR. VOGEL:

Q. Can you see that, Doctor?

A. I do. I see a panoramic X ray.

Q. Have you seen that before?

A. I have.

Q. In this case, which tooth are we talking about, Doctor?

And that screen you've got there is a touch screen. You can actually draw on it.

A. Oh, really? Tooth No. 32 is this tooth right there.

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

THE COURT: Come on up.

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

MR. VOGEL: My apologies, Doctor. That

hasn't been admitted into evidence yet.
BY MR. VOGEL:
Q. Did you review X rays in this case?
A. I did.
Q. If you could, there's a big binder behind you, No. 5.
A. The thick one?
Q. Yeah. And I believe there's an exhibit. It's No. 5.
A. Yes.
Q. All right. I believe the panoramic X ray, is that the last one in that exhibit there?
A. It appears so.
Q. Have you seen that X ray before?
A. Yes, I have.
Q. Is that part of the materials you reviewed as being documentation from Summerlin Smiles?
A. Yes, it is.
Q. Is that documentation that you reviewed that was from Summerlin Smiles related to Reginald Singletary?
A. Yes.
Q. Is that part of the evidence that you relied upon in coming to your conclusions in this case?
A. Yes.

Q. Do you have any reason to believe that this is not the document that it's purported to be?

A. No, I do not.

MR. VOGEL: Your Honor, I move to admit Exhibit No. 5, the panoramic X ray.

MS. PATIN: Objection, Your Honor.

THE COURT: Come on up, guys.

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

THE COURT: We're just going to allow the X ray to be used as demonstrative, at least at this time.

MR. VOGEL: That's fine. I appreciate that. Thank you.

Could we have it back up so the jury can see it?

THE COURT: See if I can get that one for you.

BY MR. VOGEL:

Q. Okay. So is your arrow pointing to Tooth No. 32?

A. Yes, it is.

Q. Okay. Now, you reviewed the deposition of Dr. Pallos; is that right?

A. I did.

Q. Do you recall his testimony wherein he indicated something to the extent that he did not see any evidence of an infection?

A. I do.

Q. I'll represent to you that just yesterday, he changed that opinion. He testified now that he believes there was infection at the time, and he says what he -- what he claims he's -- he's basing that on is that there was an apical abscess or apical radiolucency.

Do you see any evidence of that on this X ray?

A. There's absolutely no apical radiolucency on this X ray.

Q. All right. And if you could -- why do you say that? What about this X ray makes you say that?

A. Well, first off, it's not there. To be descriptive, what is there is what we call a mesioangular incline, tilting to the front, wisdom tooth with a spec of calculus right under my arrow. We also have some bone loss typical of periodontitis.

Q. The jury can't see where you're pointing.

MR. VOGEL: With the Court's permission, can you come down and --

THE WITNESS: Yeah, right in that pocket,

that triangle of space.

THE COURT: Doctor, he's asking that you step down.

THE WITNESS: I'm sorry.

MR. VOGEL: The jury can't see what you're pointing to really on the screen.

THE WITNESS: Oh, it's on this screen.

MR. VOGEL: Yeah, it's on here too. I'm sorry.

THE WITNESS: Yeah. I need my pointer would be better. See if you get rid of that arrow. There's a triangular dark shadow. That's bone loss. Bone used to be up on the tooth. It's now dropped down.

THE COURT: Okay. You're going to have to talk a lot louder if you're going to talk over there. Okay?

MR. VOGEL: There's a microphone right here, if you want to project that.

THE WITNESS: If I hold it. I was speaking a little low. Okay.

Anyway, the bone level is -- is here, as you can see the crest of it. This is now a pocket or a space in between the tooth. This collects bacteria, plaque, calculus. That's a sign of periodontitis.

THE MARSHAL: Doctor, try this.

THE WITNESS: Is that working?

That's a sign of periodontitis. You see here's a little fleck of calculus. That's difficulty in cleaning that tooth. That's what was needing to be scaled off of there because that's a risk for further periodontitis. When you have all of the collection of plaque and calculus, the bone gets inflamed and it backs away from that. If that process continues and you start losing teeth, there's already significant bone loss on the back part of the second molar. And that's significant because that's why this tooth should come out because it's a factor in -- in promoting more periodontitis, more periodontal disease.

The periapical region is this region right here on the bottom of the tooth. There is no periapical radiolucency. There's no periapical lesion in this case. What you see here is the mandibular canal.

If you look here, this is where your sensory nerve comes in from your brain into the lower jaw, into the jaw, and it supplies sensation to all the teeth. And you can see the stripe here. It comes in here at the mandibular foramena, and that's the stripe. That's supposed to be there all the way to here, and it comes out in your chin, called the mental nerve, m-e-n-t-a-l,

mental. And -- and that's what is the dark line. That's not a periapical lesion. That's normal anatomy.

A true lesion would be more similar to if this was -- right here. If you can see here on this tooth on the top, this is a little bit of periapical shadowing which would be consistent. Because this tooth here, see how it's missing its crown and it's broken down? And now, that nerve is reacting and causing a little bit of inflammation at the end. And it usually causes a circle that can be seen as an -- as a darkness. That's a apical lesion. There's no periapical radiolucency on this Tooth No. 32.

BY MR. VOGEL:

Q. All right. Now, it's my understanding that this tooth, though, was -- had like a necrotic pulp?

A. It could have a necrotic pulp. That's true. That would require other testing. It could have been necrotic.

Q. And does that mean that it's got an infection?

A. No, it does not mean it has infection. That means it is necrotic.

Q. Do you know what day those X rays were taken?

A. My understanding, they were taken the 24th of March.

Q. March 24th?
A. The first day that the patient was seen I believe.
Q. So roughly three weeks before the extraction?
A. Yes.
Q. If that Tooth No. 32 had an abscess or infection on March 24th, 2011, what sort of symptoms would you expect the patient to be exhibiting at that time?
A. An acute apical abscess?
Q. Correct.
A. Oh, boy. This patient would not have waited three weeks to get the tooth out. Because an apical abscess that's acute usually is associated with swelling, pain, pressure, buildup, and usually limiting patient activity, ability to chew, sometimes ability to sleep. An acute apical abscess is not going to be sat upon. Nobody's going to sit on that. That's going to require treatment. There would be definitely symptoms.
Q. What's your understanding of what Mr. Singletary's pain complaints were with respect to that tooth at that time?
A. There was no pain at this time. I think he had complained that there was some pain a month or two earlier. But at this time, there was -- pain had

resolved.

Q. Is it fair to say that you disagree with Dr. Pallos's opinion in that respect?

A. In terms of this tooth having an acute apical abscess?

Q. Correct.

A. Absolutely would disagree, 180 degrees.

Q. Is that based on the lack of pain?

A. Based on radiographic findings and the lack of symptoms, lack of pain particularly.

Q. Thank you, Doctor. Have a seat. Thank you, Doctor.

Now, is there any difference in the technique for removing a third molar versus other teeth?

A. Not in this case.

Q. Not in this case? Why do you say that?

A. Because it's any erupted tooth.

Q. What does that mean?

A. It's into the oral cavity. You have enough tooth structure to get what we call a purchase on.

Q. Okay. Now, in this gentleman's case, how would you -- how would you characterize the oral condition based on that X ray?

A. It's poor condition.

Q. Poor condition? Is it in such a condition

that would require a referral to a periodontist?
A. Not necessarily.
Q. Is that a judgment call by the dentist?
A. Yes.
Q. Just so I'm clear, are all the opinions that you've rendered here today regarding Dr. Traivai meeting the standard of care, are those all to a reasonable degree of medical probability?
A. Yes.
MR. VOGEL: Thank you, Doctor. I appreciate it.
THE COURT: Mr. Lemons?
MR. LEMONS: I have no questions, Your Honor.
THE COURT: Ms. Patin?
MS. PATIN: Just one second, Your Honor.
MR. VOGEL: Do you want these left up there?
MS. PATIN: No.
MR. VOGEL: I assume you don't want that left up there.

CROSS-EXAMINATION

BY MS. PATIN:
Q. Hi, Dr. Ardary.
A. Hello there.
Q. I actually think I've been pronouncing your

name wrong, so I'm glad you pronounced it for us today.

Just to go back to the X ray that you were just looking at, during your testimony, you testified that there was no apical radiolucency at Tooth No. 32?

A. That's correct.

Q. So you disagreed with Dr. Pallos's testimony, correct?

A. That's correct.

Q. Do you also disagree with Dr. Traivai's testimony?

A. If she said there was a periapical lesion?

Q. Yes.

A. I would be in disagreement with that.

Q. Did you have a chance to review Dr. Traivai's deposition in this case?

A. I did.

Q. And do you recall reading that Dr. Traivai said that Tooth No. 32 had to be extracted because it was nonrestorable?

A. I believe so. I don't have an exact recall, but yeah, that would be true.

Q. I'll represent to you that she did say that the tooth had to be extracted because it was nonrestorable. And I asked her why it was nonrestorable and she said there was apical

radiolucency.

And you disagree with Dr. Traivai, correct?

A. In terms of the apical area, there's no apical radiolucency. There is some radiolucency around it, but it's not at the apex of the tooth.

Q. Okay. So it's your testimony that there is radiolucency, but it's not apical radiolucency as Dr. Traivai testified to.

A. Yeah, because you can see there was nothing at the end of the tooth.

Q. And you mentioned that you reviewed quite a few records in this case, including the dental records of Summerlin Smiles, medical records from St. Rose Hospital, and you said you reviewed some other documents, I believe deposition transcripts?

A. I did review other documents including deposition transcripts, that's correct.

Q. Did you review any -- any other documents besides depo transcripts?

A. I did review, from an infectious disease doctor, an opinion letter or another write-up. I did.

Q. And after you reviewed all those documents, you didn't supplement your report, correct? This is the only report in the case?

A. That's the only report I was asked to write,

yes.

Q. Now, my understanding is that you are licensed in California with the State Board of Dental Examiners, correct?

A. That's correct.

Q. And you are not licensed here in Nevada, correct?

A. No, I am not.

Q. Taking a look at your expert report under your Discussion on page 2, you make a comment that "appropriate consent was given." It's in your first paragraph under Discussion.

A. Yes.

Q. How do you know appropriate consent was given?

MR. VOGEL: Object, Your Honor. This claim has already been dismissed.

THE COURT: It has.

MS. PATIN: It's part of his opinions. I'm just questioning how he was able to come to this opinion.

MR. FRIEDMAN: Objection. Relevance.

MR. VOGEL: It's not relevant, Your Honor.

THE COURT: Sustained.

/////

BY MS. PATIN:

Q. Dr. Ardary, does scaling and root planing remove all bacteria of the mouth?

A. All of it? No, it's not going to remove all of it.

Q. So there's no guarantee that even if scaling and root planing is done that all the bacteria in the mouth will be removed, correct?

A. Well, of course not, because it's -- bacteria is going to reside in other locations and on -- on the teeth.

Q. And you would agree that a dental surgery such as an extraction may cause bacteria in the mouth to enter the bloodstream and cause infection.

A. I would agree that it may cause bacteria to enter the bloodstream. Whether it causes infection or not is -- is not predictable.

Q. I'll represent to you that Dr. Traivai testified that after scaling and root planing, there's still no guarantee that an infection will not form following a tooth extraction.

Do you agree?

A. You can never guarantee that an infection will not occur in a postoperative wound. That would be -- I would agree with that.

Q. In your report, you also make a comment that "There are many factors that may lead to infection." Correct?

A. That's correct.

Q. What are those many factors that you're referring to?

A. I think mostly I was referring to the patient's state of their immune system and general health.

Q. And based upon your review of the medical records in this case -- well, I should say the dental records in this case, was there any reason to believe that Reginald Singletary had a compromised immune system?

A. No. He presented with a clear medical history. You would not assume that he would.

Q. And that he was in good general health.

A. That's my recollection based on a review of his completion of the health history.

Q. Would you agree that if the infection is not treated or if an infection is not treated, it can lead to death?

A. I would agree that it is possible that certain infections, if not treated, could lead to death, yes.

Q. What about the infection in this case?
A. Well, I'm not aware that there was any infection at the time of the extraction of the tooth.
Q. Are you -- you did review the St. Rose medical records, correct?
A. That's correct.
Q. So you're aware that Mr. Singletary did develop an infection, correct?
A. He did develop an infection, that's correct.
Q. And would you agree that if the infection was not -- if -- is not treated, it can lead to death?
A. I would agree that an infection, if not treated, could lead to death.
Q. This infection from the St. Rose medical records that Mr. Singletary developed.
A. The type of infection that he had, if not treated, could lead to death, that's -- that's true.
Q. Would you agree that antibiotics is the appropriate treatment for infection?
MR. VOGEL: Object to form. Vague.
MR. FRIEDMAN: It's beyond the scope of his expertise.
THE COURT: Overruled.
THE WITNESS: Now, could you repeat the question, please?

BY MS. PATIN:

Q. Would you agree that antibiotics is the appropriate treatment for infection?

A. That's a very vague question because antibiotics -- what type of infection? Infection where? You really have to define that further because if you wanted to get into a discussion on the use of antibiotics in infection, it gets to be very complex. And if you want to refer to dental infections particularly, not necessarily every dental infection is indicated to have -- to having antibiotics as the treatment of choice. This is where there's a myth in the use of antibiotics. Matter of fact, if you look at the literature --

Q. I apologize. I'll get more specific for you. I thought we were talking about this case with regard to infection, so let me rephrase that for you.

Would you agree that antibiotics is appropriate treatment for the infection that Reginald Singletary developed in this case?

A. Yes, once -- once he presented to the hospital, giving antibiotics was appropriate, that's correct.

Q. And so is it your opinion that antibiotics wasn't indicated prior to his arrival at the hospital?

A. Absolutely. They were not indicated prior to his arrival at the hospital.

Q. I'll represent to you that Dr. Traivai testified that swelling in the neck after a tooth extraction can occur due to infection.

Would you agree?

A. It could occur as a result of infection, yes.

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

Do you agree?

A. That antibiotics should be given just on the premise of swelling?

Q. Dr. Traivai's testimony is that antibiotics would be indicated if a patient experienced swelling of the extraction site following a tooth extraction.

Do you agree?

A. No, I do not agree with that.

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

Would you agree?

A. That's correct.

Q. And is it your opinion that the infection that developed by Reginald Singletary could not have

been prevented by a clinician with prescription of antibiotics?

MR. FRIEDMAN: Objection. Vague as to time.

MS. PATIN: I'm quoting his report, Your Honor.

THE COURT: I'll allow it.

THE WITNESS: Can you repeat the question, please.

THE COURT: The question: Is it your opinion that the infection that developed in Reginald Singletary could not have been prevented by a clinician with a prescription of antibiotics?

THE WITNESS: Yes. His particular type of infection would not have been prevented or its course altered just with antibiotics alone because it required a surgical intervention in this particular type of infection.

BY MS. PATIN:

Q. At what point was surgical intervention, in your opinion, necessary?

A. Once it was assessed that there was an invasion of the deep fascial planes -- once you invaded the deep fascial planes of the jaw and neck area with the accumulation of gases that were detected on the CT scan, that requires urgent surgical treatment.

Q. And that was determined when he was in the hospital as of April 21st of 2011, correct?

A. That's right. You would need special testing to determine that.

Q. Is it common practice and within the standard of care for a dentist to prescribe antibiotics to a patient when it's necessary?

A. When it's necessary, yes. It is in the standard of care to prescribe antibiotics when they are necessary, that's -- that's right.

Q. And based upon the standard of care, if there are complaints two days post wisdom tooth extraction of pain, swelling in the neck and cheek, is it your opinion -- opinion that antibiotics would be indicated at that point?

A. Not necessarily, no.

Q. So antibiotics would not be necessary if there was pain -- complaints of pain or swelling in the neck and cheek.

A. No, because it could be consistent with surgical edema, and that's not an indication for the use of antibiotics.

Q. And what would be the signs and symptoms of surgical edema?

A. Pain, swelling, edema.

Q. Swelling where?

A. Of the surgical site and the surrounding tissues. Depends upon the magnitude of the response of the patient. You operate on people and do surgical procedures that induces an inflammatory response, and that is -- part of that response is swelling and a release of chemicals by your body that produce pain.

Q. How would you treat surgical edema?

A. Usually it's managed by supportive care, like the application of ice. If it was significant, you could prescribe certain steroidal medicine. And you can do local pressure techniques following the procedure to minimize that surgical edema. But most of the time, it's going to run its course and resolve naturally by the healing process of the patient.

Q. And if a patient came into the office with complaints of pain and had swelling in the neck and in the cheek, would you be able to determine if it was from an infection versus surgical edema?

A. You may or may not be able to make a distinction of that at that time without further evaluation.

Q. Under what circumstances would antibiotics be indicated following a tooth extraction?

A. When there's infection that involves -- a

systemic -- significant systemic infection.

Q. How would you diagnose that?

A. You diagnose it based on the patient's symptoms, clinical signs, clinical findings, additional tests like radiographs, blood tests, cultures, sensitivities.

Q. And all of that would be done in the dental office?

A. Could be. But testing would require a microbiology lab. You would send the specimen to a lab.

Q. Would you agree that a treating dentist is responsible for the follow-up care of his or her patient?

A. Sure.

Q. Would you agree that -- let me rephrase.

If a patient called your office with complaints of pain and swelling in the cheek and the neck, would you have the patient come into the office?

A. I may or may not. Depends on the clinical circumstances of -- of how that information was -- was received.

Q. Under -- I'm sorry.

Under what circumstances would you have the patient come in?

A. When there would be clinical findings or symptoms that would be atypical for what you would expect two days postoperative procedure. At two days, it would be very typical to have pain and swelling, especially on a wisdom tooth in those areas. And I think, as I've already indicated, where I would have -- definitely want to see the patient if they complained of fever, chills, malaise, altered mental status, things like that, that show -- and something different than routine postoperative edema.

Q. When you say you would have to base that on clinical findings, how would you make these clinical findings without seeing the patient in the office?

A. Well, you wouldn't. You would -- you could -- ask additional questions. If the patient was talking to me, I would ask additional questions regarding the state of that. And if it seemed consistent with postoperative edema, most prudent practitioners could -- could make a statement that, well, that sounds pretty typical for this point in time. If there's any changes to that condition, we would -- we would need to check you.

Q. You mentioned typical versus atypical symptoms. Should both typical and atypical symptoms be explained or communicated to the patient following the

tooth extraction?

A. If the patient had indicated something that was atypical, then you could make the distinction and comparison between what would be expected, like pain and swelling, to something that would not be expected, like fever and chills, and say that this is something that's now a little atypical. It's not normally expected. That would raise a red flag that something else is going on other than normal postoperative recovery, and that evaluation could then be -- suggested to be more -- more urgent.

Q. Based upon the standard of care, should the typical and atypical symptoms be included in the post-op instructions?

A. Um, not -- not necessarily. The typical -- because you have to do what's typical and common. And what is common is -- is swelling, recovery, and -- and what to expect. Because that's what most people expect. I mean, you can't list every single atypical. It would not be within the standard of care to have to list every atypical possible symptom that could -- could develop because you can't predict those. You have to be reasonable in what you're -- in informing patients.

Q. So you would depend on the patient to call

you if he or she developed any atypical symptoms following a tooth extraction even though it's not necessary that you inform the patient as to what typical versus atypical symptoms are?

A. Well, most of us would encourage our patients to call with -- with any of these problems so that you can be evaluated or can make an assessment if there was any questions. I mean, I think that's prudent of most offices.

But we do depend upon -- not everyone can go home with the patient, so you really do depend upon the patient telling you or indicating that something is up, to try to make some type of a fair assessment on the postoperative period because the patient goes home, and they're there to recover on their own. So we do depend upon patients calling back in or coming back into the office if there are particular questions or problems develop.

Q. Or if they have atypical symptoms, correct?

A. Atypical symptoms as well as typical symptoms mainly.

MS. PATIN: No further questions at this time.

THE COURT: Anybody else?

MR. VOGEL: Couple of quick follow-ups.

RECROSS-EXAMINATION

BY MR. VOGEL:

Q. Doctor, does bacteria equal infection?

A. No.

Q. What's the difference?

A. Well, bacteria is a microorganism, and we all have bacteria in us, in our -- especially if we're talking the oral cavity, GI tract, respiratory tract. It lives there. So just because bacteria are there doesn't mean you're going to get an infection.

Q. Is one of the purpose of scaling and root planing to reduce the amount of bacteria?

A. That's absolutely correct.

Q. Is that what was done in this case?

A. That's right.

Q. You were quoted several passages, ostensibly from Dr. Traivai's deposition, that were kind out of context.

But does that change any of your opinions regarding whether or not Dr. Traivai met the standard of care?

A. No, it does not.

Q. And is it fair to state that you, as a physician and oral surgeon, you expect and rely upon

your patients to follow your reasonable post-op instructions?

A. That's correct.

Q. And would you agree with Dr. Pallos when he's testified in this case that post-op instructions in this case met the standard of care?

A. Would I agree with that -- that the postoperative instructions met the standard of care that were given as far as I know that they were given? They -- as far as I know, the post-op instructions that were given met the standard of care.

MR. VOGEL: Thank you, Doctor.

MR. FRIEDMAN: I have nothing, Your Honor.

THE COURT: Ms. Patin, any follow-ups?

MS. PATIN: One follow-up.

RECROSS-EXAMINATION

BY MS. PATIN:

Q. Dr. Ardary, does it meet the standard of care if a patient is told by office staff that pain and swelling are normal and that they should follow up in four to five days and they'll be called in for an appointment?

A. Well, when -- you have to go back and look at what is standard of care. And standard of care is what

most prudent offices, office staff, do under similar circumstances. And so my answer to that is yes, it met the standard of care. Because in this circumstances with what was presented or allegedly presented to the office staff was typical and routine for a wisdom tooth or third molar removal, and that most offices initially would expect that to be something that was normal and usual and customary, and that if everything worsened to then please call back and return and then you'll need evaluation. So it met the standard of care.

Q. What if the office staff that answered the phone doesn't have any dental training?

MR. FRIEDMAN: Objection. Irrelevant.

THE COURT: Overruled.

THE WITNESS: Well, to be honest with you, most of staff that are hired in dental or medical offices may not have any official medical or dental staff training. That -- there are some schools that teach in dentistry how to deal with the assisting aspects of things. But most of us hire people off and then train them.

So there is no organization or educational opportunity or state-run operation that I'm aware of that prepares front office staff on how to manage the phone or the front office. So most people, it would

not require specialized training to be able to -- to do that job.

BY MS. PATIN:

Q. And so is it your opinion that it's within the standard of care that front office staff that doesn't have specialized training advise patients as to care or postoperative care?

MR. FRIEDMAN: Object to relevance to this case.

MR. VOGEL: Misstates his testimony.

MR. FRIEDMAN: Misstates testimony. He testified about the information that's provided.

THE COURT: I'm going to allow it based upon how it was asked.

THE WITNESS: Repeat the question again for me, please.

MS. PATIN: Sorry, Your Honor.

THE COURT: Is it your opinion that it's within the standard of care that front office staff that doesn't have specialized training advise patients as to care or postoperative care?

THE WITNESS: It can be within the standard of care for them to advise patients if -- if instructed so correctly, yes.

/////

BY MS. PATIN:

Q. Instructed by whom?

A. Well, the dentist or physician that's in the office.

MS. PATIN: No further questions.

THE COURT: Anything else?

MR. VOGEL: No, Your Honor.

MR. LEMONS: Nothing, Your Honor.

THE COURT: Ladies and gentlemen, any questions? I don't see any hands.

Thank you, Doctor. Appreciate your time.

Got another witness or you want to take a break?

MS. GOODEY: Need to take a quick break, Your Honor. I'm sorry.

THE COURT: Let's take a quick break.

Ladies and gentlemen, 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 commentary on the trial by any person connected with this case or by any medium of information, including, without limitation, newspapers, television, the Internet, or radio. You are not to conduct any research on your own, which means you

cannot talk with others, Tweet others, text others, Google issues, or conduct any other kind of book or computer research with regard to any issue, party, witness, or attorney, involved in this case. You're not to form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

See you in about five or ten minutes.

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

THE COURT: We're outside the presence of the jury. Anything we need to take care of on the record, Counsel?

MS. PATIN: No, Your Honor.

MR. VOGEL: No, Your Honor.

MR. FRIEDMAN: No, Your Honor.

THE COURT: Is that the last expert you had for today?

MR. VOGEL: Yes.

MR. FRIEDMAN: Yes.

THE COURT: Going to put one of the -- one of -- you want to put your defendant on the stand at least for a while today?

MR. VOGEL: Sure.

THE COURT: Still want to end by about 3:30,

but that still gives us about an hour.

All right. Off the record.

(Whereupon a short recess was taken.)

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

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

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

Do the parties stipulate to the presence of the jury?

MR. VOGEL: Yes, Your Honor.

MR. FRIEDMAN: Yes, Your Honor.

MR. LEMONS: Yes, Your Honor.

MS. PATIN: Yes, Your Honor.

THE COURT: Okay, folks, I'm going to do the same thing I did to you yesterday, had to bring you back in to get your personal stuff. It's 2:30. I told you that we were going to end at 3:30 today anyway. Instead of breaking up one of the witnesses today and into Tuesday, since it's a long weekend, we're just going to wait and put the next witness on on Tuesday morning. We're going to start Tuesday at 10:00 o'clock. I have a calendar that morning, but we'll be done so that we can start by 10:00 o'clock.

And the attorneys all still assure me that the case will be done on Wednesday. So you just got Tuesday and Wednesday left of next week. So we'll go to that point.

During our break -- I'm going to admonish you again. I'll say it slow because we have a long weekend. Please don't go home and talk to anybody about the case.

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

We'll see you back Tuesday morning at 10:00. Have a good weekend. You can leave the notepads right

there in the chairs. Nobody else will be here.

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

THE COURT: All right. We're outside the presence. Anything else we need to take care of, Counsel?

MR. VOGEL: No, Your Honor.

MS. PATIN: No, Your Honor.

THE COURT: All right. Off the record. We'll see you Tuesday.

(Thereupon, the proceedings adjourned at 2:40 p.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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