IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

GAIL O'NEAL, Plaintiff, v. P.K. CLARK, and WHITECAP INSTITUTE, Defendants.	**ORDER RULING ON OBJECTIONS TO PRETRIAL DEPOSITION DESIGNATIONS** Case No. 2:14-cv-00363-DN-EJF District Judge David Nuffer

The parties served designations for deposition testimony to be presented at trial. The parties filed with the court their objections to the deposition designations and responses thereto. Based on the submissions, and for good cause appearing:

IT IS HEREBY ORDERED that the objections are overruled or sustained as indicated in the attached forms.

IT IS FURTHER ORDERED that, in preparing the deposition testimony for presentation at trial, all objections in the depositions and any responses of counsel thereto should be removed and not presented.

Signed September 28, 2017.

BY THE COURT:

David Nuffer
United States District Judge

Case Name O'Neal v. P.K. Clark/Whitecap Institute *Case Number* 14-CV-363 *Deposition of* W. Davis Merritt, M.D. *taken* Tuesday, June 23, 2015			
Plaintiff Designations – BLUE **Defendant Completeness—PURPLE** **Defendant Counter-Designations – RED (at end)**	**Defense Objections/Responses – RED** **Plaintiff Objections/Responses – BLUE**	**Exhibits**	**Ruling**
PLAINTIFF DESIGNATIONS			
4:24-5:2 **24· · · · ·[Q.] ·For the record, if you wouldn't mind just** **25· ·saying your name and business address?** ·1· · · · A.· ·Sure.· It's W. Davis Merritt, M.D.· 15 Shrine ·2· ·Club Road, Lander, Wyoming 82520.			
7:1-24 **·1· · · · Q.· ·Why don't we start with going through your** **·2· ·educational background starting with medical school,** **·3· ·Dr. Merritt.** ·4· · · · A.· ·University of North Carolina Chapel Hill, ·5· ·graduated 1985. **·6· · · · Q.· ·And that's when you received your M.D.?** ·7· · · · A.· ·Yes. **·8· · · · Q.· ·Did you have any additional schooling or** **·9· ·training thereafter?** 10· · · · A.· ·University of North Carolina Department of 11· ·Surgery, otolaryngology, head and neck surgery 12· ·residency, 1985 to 1990. **13· · · · Q.· ·And after you completed that residency, did** **14· ·you have any additional educational training?** 15· · · · A.· ·The American Academy of Otolaryngic Allergy. 16· ·I'm a fellow of the academy.· 2006. **17· · · · Q.· ·What does that entail?** 18· · · · A.· ·It is additional training and certification 19· ·in allergy affecting the ears, nose, and throat. **20· · · · Q.· ·Is that something that was a full-time** **21· ·educational pursuit, or was that something that you** **22· ·did --** 23· · · · A.· ·No, it is not a full-time fellowship.· It is 24· ·an additional certification in a subspecialty.			
8:7-17 **·7· · · · Q.· ·Besides that fellowship of otolaryngic** **·8· ·allergy, any other educational training?**			

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·9· · · · A.· ·Continuing medical education. **10· · · · Q.· ·Does Wyoming have an annual requirement in** **11· ·terms of how many hours you have to complete?** 12· · · · A.· ·Yes. **13· · · · Q.· ·And what is that?** 14· · · · A.· ·20 hours a year. **15· · · · Q.· ·And have you completed 20 hours a year since** **16· ·you've been in Wyoming?** 17· · · · A.· ·Yes.			
9:8-17 **8· · · · Q.· ·Will you take us through your work background** **·9· ·now briefly?** 10· · · · A.· ·I'm an ear, nose, and throat specialist in 11· ·private practice in Lander, Wyoming. **12· · · · Q.· ·And prior to coming to Lander, where were you** **13· ·at?** 14· · · · A.· ·Boise, Idaho. **15· · · · Q.· ·Approximately from when to when?** 16· · · · A.· ·1990 until 2009 in Boise.· 2009 until the 17· ·present time in Lander.			
10:4-17, 20-23 **4· ·on this.· You have not had any conversations with** **·5· ·Gail O'Neal outside your office when you were treating** **·6· ·her?** ·7· · · · A.· ·That's correct. **·8· · · · Q.· ·What other treating providers have you** **·9· ·discussed Ms. O'Neal's treatment with?** 10· · · · A.· ·Dr. Michael Stern in Jackson. **11· · · · Q.· ·Anybody else?** 12· · · · A.· ·No. **13· · · · Q.· ·Do you recall who referred Ms. O'Neal to you?** 14· · · · A.· ·It was Dr. Michael Stern. **15· · · · Q.· ·And what was the content of the communication** **16· ·between both of you?** 17· · · · A.· ·A phone call.			

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. . . **20· · · · Q.· ·Do you recall any communication between you** **21· ·and Dr. Stern about Gail O'Neal?** 22· · · · A.· ·We sent letters back.· They're documented in 23· ·the chart.· Copies of notes.			
11:21-12:7 **21· · · · Q.· ·I want to hand you what will be marked as** **22· ·Exhibit No. 2.** 23· · · · · · ·(Exhibit 2 marked.) **24· · · · Q.· . . . Do you recognize that** **25· ·letter, Dr. Merritt?** ·1· · · · A.· ·Yes. **·2· · · · Q.· ·What is it?** ·3· · · · A.· ·It's my letter to Dr. Shane on January 3rd, ·4· ·2013. **·5· · · · Q.· ·Will you read through that letter and inform** **·6· ·us what the content of your communication with** **·7· ·Dr. Shane was?**		Exhibit 2	
12:12-13:15 **12· · · · Q.· ·And what is the content of your communication** **13· ·with Dr. Shane?** 14· · · · A.· ·It describes her presentation and treatment 15· ·plan. **16· · · · Q.· ·And you had mentioned earlier that you don't** **17· ·recall discussing Ms. O'Neal with Dr. Shane.· Does that** **18· ·recall your memory that you did?** 19· · · · A.· ·Oh.· Oh, no.· What this is?· Yeah, I'm sorry. 20· ·I thought we were talking about Dr. Michael Stern. 21· ·This is a copy of my letter to Dr. Shane that I also 22· ·sent to Dr. Stern.· I believe it's the same letter. 23· ·I'll have to see. 24· · · · · · ·Oh, that's correct.· You know, I'm mistaken 25· ·about who referred her.· And it was Dr. Shane who ·1· ·referred her.· And my letter was back to him in ·2· ·response to his referral.· And then I made a referral			

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·3· ·to Dr. Stern. **·4· · · Q.· ·Okay.** ·5· · · A.· ·Yeah.· That was my mistake.· I had forgotten ·6· ·the sequence of events. **·7· · · Q.· ·Have you ever worked with Dr. Shane before?** **·8· ·In other words, has he ever referred any other patients** **·9· ·to you?** 10· · · A.· ·Yes. **11· · · Q.· ·And is your business relationship with** **12· ·Dr. Shane positive?** 13· · · A.· ·Yes. **14· · · Q.· ·Do you consider him a qualified practitioner?** 15· · · A.· ·Yes.			
13:19-14:4 **19· · · Q.· ·What I want to do now, Dr. Merritt, is go** **20· ·through some of your treatment records.· I first want** **21· ·to ask you, do you have an independent memory of** **22· ·treating Ms. O'Neal, or is your memory mostly confined** **23· ·to your actual treatment records?** 24· · · A.· ·Hmm.· The records reflect my memory, and -- 25· ·hmm.· Yeah, I have memories independent of what's in ·1· ·the records.· Yes. **·2· · · Q.· ·Okay.** ·3· · · A.· ·But the records are a good approximation of ·4· ·what's in my memory.			
14:12-15:5 **12· · · Q.· ·So what I'm going to do, I know you already** **13· ·have them, but just for the record, I'm going to hand** **14· ·you what will be marked as Exhibit 3.** 15· · · · · ·(Exhibit 3 marked.) **16· · · Q.· ·(By Mr. Pendleton) And do you recognize those** **17· ·records, Dr. Merritt?** 18· · · A.· ·Yes, I do. **19· · · Q.· ·What are they?** 20· · · A.· ·They're my office notes and operative		Exhibit 3	

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21· ·reports. **22· · · Q.· ·Related to specifically who?** 23· · · A.· ·Gail O'Neal. **24· · · Q.· ·And what we're going to do, they're in** **25· ·reverse chronological order, so let's start -- you'll** **·1· ·notice the Bates number on the bottom right corner?** ·2· · · A.· ·Okay. **·3· · · Q.· ·Fremont Nose & Throat 1 through 11?** ·4· · · A.· ·Okay.			
15:18-17:20 **18· · · Q.· ·Okay.· Let's start with number 11, please.** 19· · · A.· ·"Severe right anterior ethmoid and right 20· ·maxillary sinus mucosal disease with complete 21· ·obstruction of the right ostiomeatal complex.· This is 22· ·very likely to be the cause for her multiple failed 23· ·attempts to close the OA fistula." **24· · · Q.· ·So talk to us a little bit in best layman's** **25· ·terms as you can what your impressions were, what you** **·1· ·saw in Ms. O'Neal.** ·2· · · A.· ·She presented with an oral antral fistula on ·3· ·the right side, and she had chronic sinusitis affecting ·4· ·both the ethmoid and maxillary sinus on that side.· It ·5· ·obstructed the maxillary sinus outflow tract. ·6· · · · · ·And in that condition, it is difficult to get ·7· ·an oral antral fistula to close.· And so that was -- I ·8· ·was just reporting the cause for her failed OA closure. **·9· · · Q.· ·So just to make sure I understand, it sounds** **10· ·like there was an infection in the upper right** **11· ·maxillary sinus, correct?** 12· · · A.· ·That's correct. **13· · · Q.· ·And that infection is what was preventing the** **14· ·oral antral fistula from closing, correct?** 15· · · A.· ·That's correct. **16· · · Q.· ·Now, you note at the top of this note -- this** **17· ·is in the first paragraph.· You note -- this is about**			

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18· ·third sentence down.· "She does not have a known prior **19· ·history of sinus problems but does have a long history** **20· ·of sinus headaches that have been variably diagnosed as** **21· ·headaches due to sleep apnea and/or headaches due to** **22· ·migraine."** **23· · · · · ·Do you recall if that was something that** **24· ·Ms. O'Neal relayed to you?** 25· · · A.· ·Yes.· That was a response to one of my ·1· ·questions to her. **·2· · · Q.· ·And do you recall treating her prior to** **·3· ·this --** ·4· · · A.· ·No. **·5· · · Q.· ·-- date?· Okay.** ·6· · · A.· ·No. **·7· · · Q.· ·Do you recall Dr. Shane informing you that** **·8· ·she had a history of sinusitis?** ·9· · · A.· ·Hmm.· I don't recall him saying that one way 10· ·or the other.· But it's obvious that she does.· I mean, 11· ·that's why she was there.· So -- I think it's safe to 12· ·assume that she had it, but that's why -- that was my 13· ·understanding of why she was referred. **14· · · Q.· ·If she had a history of sinusitis, how would** **15· ·that affect her upper right maxillary sinus?** 16· · · A.· ·Well, she would have pain, pressure, 17· ·congestion, and discharge. **18· · · Q.· ·Okay.· Would it affect her teeth in any way** **19· ·potentially?** 20· · · A.· ·Hmm.· Hmm.· Yes.			
18:19-19:3 **19· · · Q.· ·Okay.· So if she had this history of** **20· ·sinusitis, is that something you would expect her to** **21· ·tell you prior to treatment?** 22· · · A.· ·Yes.· And when I asked her, she said no. **23· · · Q.· ·Is that something you would expect her to** **24· ·tell any treating provider that would be working with**			

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25· ·her sinus? ·1· · · A.· ·It depends on whether they asked her the ·2· ·question or not.· Patients often don't know what to ·3· ·tell their doctor.			
20:2-24 **·2· · · Q.· ·At the bottom of number 11, you'll note that** **·3· ·you cc Dr. Michael Shane on this note; is that correct?** ·4· · · A.· ·That's correct. **·5· · · Q.· ·If we look at the rest of your clinic notes,** **·6· ·this would be Fremont Nose & Throat 1 through 10, you** **·7· ·have not cc'd Dr. Shane on those like you did on** **·8· ·number 11.· Do you recall why that is?** ·9· · · A.· ·Yeah.· The -- the subsequent notes just 10· ·pertain to her preoperative and postoperative care.· So 11· ·I was communicating with Todd Bainter, who was 12· ·coordinating the medical aspects of her preoperative 13· ·care. 14· · · · · ·And I was coordinating with Michael Stern, 15· ·who was going to schedule a surgery that was to follow 16· ·mine.· So, you know, the -- the indications for the 17· ·procedure, the condition that we were evaluating her 18· ·was summarized in the first note. **19· · · Q.· ·So, in other words, Dr. Shane was no longer** **20· ·involved in this particular care, so it wasn't relevant** **21· ·to include him in the communication?· Is that a fair** **22· ·summary?** 23· · · A.· ·He wasn't involved in the details of pre- and 24· ·postoperative care, yeah.· . . .			
21:11-22:12 **11· · · Q.· ·Let's turn now, please, to number 10.· And as** **12· ·you look over this note, will you just give us a quick** **13· ·summary of your impressions of Ms. O'Neal?** 14· · · A.· ·Yes.· Would you like me to read it? **15· · · Q.· ·Just if you can just summarize your** **16· ·impressions from it, please.**			

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17· · · A.· ·The patient had a positive response to 18· ·medical management in preparation for surgery, and we 19· ·were coordinating the sequencing of her surgeries. **20· · · Q.· ·And will you summarize for us what the** **21· ·surgery plan was for Ms. O'Neal?** 22· · · A.· ·Yes.· To open the anterior ethmoid sinus, 23· ·evaluate the maxillary antrostomy, reconstruct it, open 24· ·it, evaluate the inside of the maxillary sinus, remove 25· ·any obviously infected or necrotic tissue, and then ·1· ·provide the adequate postoperative care that allowed ·2· ·the maxillary antrostomy to remain open and functioning ·3· ·afterwards. **·4· · · Q.· ·And so in layman's terms, if you can** **·5· ·summarize that -- what would that mean?** ·6· · · A.· ·We're opening up a blocked sinus so that the ·7· ·sinus can become healthy again.· Once the tissue in the ·8· ·sinus becomes healthy, then the success of an oral ·9· ·antral fistula repair is likely. **10· · · Q.· ·And that oral antral fistula repair was** **11· ·anticipated to be performed by Dr. Stern?** 12· · · A.· ·That's correct.			
22:19-23:19 **19· · · Q.· ·When you first saw Gail O'Neal and determined** **20· ·a treatment plan for her, did you use a cone beam CT** **21· ·scan?** 22· · · A.· ·Yes. **23· · · Q.· ·And is that the appropriate type of CT scan** **24· ·in order to evaluate an individual's sinuses?** 25· · · A.· ·Yes.· Well, there are other acceptable Page 23 ·1· ·methods too, but it's one of them. **·2· · · Q.· ·I want you to turn to number 6 and number 7,** **·3· ·Fremont Nose & Throat number 6 and number 7.· This is a** **·4· ·pathology report, correct?**			

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·5· · · · A.· ·Correct. **·6· · · · Q.· ·And what was the purpose of ordering a** **·7· ·pathology report?** ·8· · · · A.· ·Primarily to rule out malignancy as a cause ·9· ·for the patient's sinusitis. **10· · · · Q.· ·In your opinion, the surgery that you** **11· ·performed for Ms. O'Neal, was it medically necessary** **12· ·and appropriate?** 13· · · · A.· ·Yes. **14· · · · Q.· ·Was it successful in getting rid of the sinus** **15· ·disease that she had?** 16· · · · A.· ·Yes. **17· · · · Q.· ·And thereafter, are you aware of whether her** **18· ·oral antral fistula was properly remedied?** 19· · · · A.· ·Hmm.· No.			
24:12-13; 24:14-19; 24:20-25:1 **12· · · · Q.· ·I'm not sure if I understood the testimony** **13· ·you gave just a minute ago.** **14· · · · · · ·Did you say that you did not think -- did you** **15· ·give an opinion about whether Dr. Stern's procedure** **16· ·that he performed to close the fistula was appropriate?** 17· · · · A.· ·The plan to close it or the results? **18· · · · Q.· ·His plan to close it.** 19· · · · A.· ·It was appropriate. **20· · · · Q.· ·Okay.· And -- and I just -- maybe I didn't** **21· ·understand what your answer was.· Were you aware of the** **22· ·results, whether he was successful in closing the** **23· ·fistula?** 24· · · · A.· ·I don't have correspondence or records 25· ·indicating it was successful.· And I don't recall a 1· ·phone conversation with Dr. Stern.· But I know him very 2· ·well, so if it wasn't successful, I'm sure he would 3· ·have told me.	25:1-3 1·phone conversation with Dr. Stern.·But I know him very ·2· ·well, so if it wasn't successful, I'm sure he would ·3· ·have told me. Defendant objects to Plaintiff's proposed completeness addition in 25:1-3. Dr. Merritt lacks foundation to testify as to what Dr. Stern would or wouldn't have said or done. Defendant also objects as this testimony calls for speculation. Allowing lines 24:20-25:1, without finishing the answer to the question is misleading. This suggests the closure was not successful, which is the opposite of what Dr. Merritt's understanding is given his history and pattern of dealings with Dr. Stern.		OVERRULED. The testimony is not speculative and is based on Dr. Merritt's personal knowledge of and prior experience with Dr. Stern.
DEFENDANT COUNTER-DESIGNATIONS			

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10:24-11:14 **24· · · · Q.· ·And beyond those letters between you and** **25· ·Dr. Stern, do you recall any other communication** **·1· ·between both of you?** ·2· · · · A.· ·I can't recall when the phone call was. I ·3· ·have this vague memory I spoke to him on the phone ·4· ·about it, but I can't recall when it was or what we ·5· ·said. **·6· · · · Q.· ·And so you recall one phone conversation** **·7· ·between both of you?** ·8· · · · A.· ·Uh-huh (affirmative). **·9· · · · Q.· ·Beyond that, all communication was via** **10· ·letter?** 11· · · · A.· ·Yes. **12· · · · Q.· ·Which is contained in Ms. O'Neal's chart,** **13· ·correct?** 14· · · · A.· ·Yes.			
13:16-18 **16· · · · Q.· ·Are you aware that Dr. Shane referred** **17· ·Ms. O'Neal to Dr. P.K. Clark in Heber, Utah?** 18· · · · A.· ·No.			
18:3-18 **3· · · · Q.· ·If she has sinusitis, would that exacerbate** **·4· ·an infection in the sinus?· In other words, if she has** **·5· ·a history of sinusitis before this infection that she** **·6· ·got in the upper right maxillary sinus, can that** **·7· ·somehow exacerbate it?· In other words, can that** **·8· ·increase or -- what's another word -- make the** **·9· ·infection worse?** 10· · · · A.· ·Well, it's -- it's -- the question doesn't -- 11· ·the question doesn't make sense because sinusitis is 12· ·both an inflammatory and infectious condition, and they 13· ·can coexist.· Infection and inflammation can coexist 14· ·for a long period of time.· So it's not possible to say 15· ·when one infection began and another -- and when it	Plaintiff objects to 18:3-18 pursuant to Rule 403 of the Federal Rules of Evidence. Plaintiff finds it difficult to determine what exactly the question is, and whether the answer is even responsive to the question or is complete. This testimony would be confusing to the jury and should be excluded. The question and answer are not confusing and should be allowed. This question asks that if Plaintiff has a history of sinusitis, will that exacerbate the eventual sinus infection she develops. The response from Dr. Merritt indicates that it's difficult to determine when one infection ends and another begins, which will tell the jury that it's difficult to determine if the infection she develops is a result of		OVERRULED. The testimony is relevant to causation and its probative value is not substantially outweighed by any potential prejudice.

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16· ·stopped -- **17· · · Q.· ·Okay.** 18· · · A.· ·-- in a patient who's disease is chronic.	treatment from Dr. Clark or her history of sinusitis. Defendant's interpretation of this answer proves Plaintiff's point. This answer says nothing about the causation of Plaintiff's infection, and more likely refers to the multiple infections Plaintiff suffered post surgery and the difficulty in telling if it was one ongoing infection that was not being effectively treated, or recurrent infections.		
19:13-20:1 **13 if Dr. Clark is going to** **14· ·perform a sinus augmentation prior to some dental work,** **15· ·do you think it would be relevant to discuss her** **16· ·history of sinusitis?** 17· · · A.· ·You know, that's really a question about 18· ·dental practice, and I'm not an expert in dentistry. **19· · · Q.· ·Perfect.· Thank you.** **20· · · · · ·In the next -- this is two sentences later.** **21· ·This is again on number 11.· She says -- at least your** **22· ·note says, "She lives with her daughter and son who** **23· ·help in the management of their ranch here in Lander."** **24· · · · · ·Do you recall any conversation about that,** **25· ·any details about that?** 1· · · A.· ·No, I don't.	Plaintiff objects to 19:13-18 based on Rules 702 and 703 of the federal rules of evidence. Dr. Merritt states he is not an expert in dentistry, and therefore cannot answer the question. See Plaintiff's MIL No. 64. This question is appropriate given the answer. It is important for the jury to understand that Dr. Merritt is not an expert in dentistry. And that his opinions can't be relied upon in a standard of care analysis. This question and answer will demonstrate that to the jury.		OVERRULED. The question is appropriate given the answer. The testimony is relevant to the scope of Dr. Merritt's opinions.
21:3-10 **3· · · Q.· ·So do you have any opinion as -- you** **·4· ·mentioned that she had a sinus disease in her upper** **·5· ·right maxillary, as well as I think you said the** **·6· ·anterior ethmoid right?** ·7· · · A.· ·That's correct. **·8· · · Q.· ·Do you have any opinion as to the etiology of** **·9· ·that sinus disease?** 10· · · A.· ·I don't.			
22:13-18 **13· · · Q.· ·At any point did Dr. Stern relay to you any** **14· ·opinion he had as to Dr. Clark's care?**	Plaintiff objects to 22:13-18 pursuant to Rules 702-703 and 403 of the Federal Rules of Evidence. First, it is not particularly relevant for the jury to know that		OVERRULED. The questions are appropriate given the

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15· · · A.· ·No. **16· · · Q.· ·Do you have any opinion as to Dr. Clark's** **17· ·care?** 18· · · A.· ·No.	Dr. Stern did not relay any opinions on defendant's care to Dr. Merritt (R. 402). Second, Dr. Merritt is not an expert in generally dentistry or an oral surgeon, and therefore has no basis to testify as to the standard of care in this case (R. 702-703). See Plaintiff's MIL No. 64. Further, it is likely that Dr. Merritt's testimony that he has no opinion on Dr. Clark's standard of care would be misconstrued to imply that he is not critical of Dr. Clark's care, which is misleading (R. 403). This is not misleading, as it doesn't state any opinion on Dr. Clark's care. Again, it is important for the jury to understand that Dr. Merritt is not an expert in dentistry and his opinions should not be relied upon in a standard of care analysis. The question about his opinions on Dr. Clark are therefore important to establish Dr. Merritt's lack of foundation. Otherwise, Plaintiff will use Dr. Merritt's testimony in arguments that his opinions should be used in a standard of care analysis. Only by using this testimony that Dr. Merritt is not qualified to testify on these issues or that he has no opinions on Dr. Clark's care will the jury understand that Dr. Merritt lacks the foundation. As for the testimony about Dr. Stern relaying information, it is important for the jury to know what information Dr. Stern passed along to Dr. Merritt. This is a fact regarding the treatment of Plaintiff, and should therefore be allowed.		answers. The testimony is relevant to the scope of Dr. Merritt's opinions.
23:20-24:6 **20· · · Q.· ·Do you have any other opinions as to** **21· ·Dr. Stern's care of Gail O'Neal?** 22· · · A.· ·No. **23· · · Q.· ·Do you have any other opinions of**	Plaintiff objects to 23:20-24:6 pursuant to Rules 702-703 and 403 of the Federal Rules of Evidence. First, it is not particularly relevant for the jury to know that Dr. Stern does not have any opinions on any other doctor's care of plaintiff, or on the etiology of her		OVERRULED. The questions are appropriate given the answers. The testimony is relevant to the scope

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24· ·Dr. P.K. Clark's treatment of Gail O'Neal? 25· · · A.· ·No. **1· · · Q.· ·Do you have any other opinions as to** **·2· ·Dr. Michael Shane's treatment of Gail O'Neal?** ·3· · · A.· ·No. **·4· · · Q.· ·And do you have any other opinions as to the** **·5· ·etiology of Gail O'Neal's sinus disease?** ·6· · · A.· ·No, I don't.	sinus disease (R. 402). Second, Dr. Merritt is not an expert in generally dentistry or an oral surgeon, and therefore has no basis to give expert opinion testimony about the treatment by dentists in this case (R. 702-703). See Plaintiff's MIL No. 64. As noted above, it is important for the jury to understand that Dr. Merritt lacks foundation to give opinions on the standard of care, and these questions will so demonstrate. Otherwise, Plaintiff can twist his testimony and confuse the jury into thinking that Dr. Merritt does indeed have opinions about the standard of care. This testimony will definitively state to the jury that Dr. Merritt is not qualified to testify about, and has no opinion on, the standard of care. In tregard to the etiology of the sinus disease, he has foundation to testify about sinus disease, as demonstrated by his credentials as an ear nose and throat specialist. His opinions (or lack thereof) on the etiology of Plaintiff's sinus disease is therefore important to the jury, and opinions (or lack thereof) on the etiology of Plaintiff's sinus disease is therefore relevant. That is a criticial issue in this case: how did the sinus disease develop and what impact did it have on the implant failure. His lack of opinions will assist the jury in making that determination.		of Dr. Merritt's opinions.

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter–designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event "Notice of Filing" and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

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PLAINTIFF DESIGNATIONS			
7:4-7 ·4· · · · Q.· ·Why don't you give us your name and address ·5· ·just for the record? ·6· · · · A.· ·David Okano.· Office address 1208 Hilltop, ·7· ·number 209, Rock Springs, Wyoming 89201.			
7:16-9:4 **16· · · · Q.· ·Why don't you walk us through your** **17· ·educational background briefly, and we'll talk about** **18· ·that a little bit.** 19· · · · A.· ·Well, as far as undergraduate degree, I went 20· ·to the University of Wyoming.· So my bachelor's degree 21· ·is in zoology from the University of Wyoming.· I went 22· ·to dental school at the University of Nebraska Medical 23· ·Center, College of Dentistry.· That's in Lincoln, 24· ·Nebraska, otherwise known as the University of Nebraska 25· ·College of Dentistry. ·1· · · · · · ·I did a general practice residency at the ·2· ·VA Hospital in Milwaukee immediately after dental ·3· ·school.· Then I returned to the University of Nebraska ·4· ·Medical Center, College of Dentistry in Lincoln, once ·5· ·again, for my periodontal residency.· That's where I ·6· ·received my periodontal training.· I received a ·7· ·certificate of specialization in periodontics, along ·8· ·with a Master of Science in that -- the field of study ·9· ·was immunology for that period. 10· · · · · · ·I guess also I'm a board-certified 11· ·periodontist, which that was completed in 1992.· If you 12· ·need the dates, graduation from dental school was 1981, 13· ·graduation from perio graduate school was 1985. **14· · · · Q.· ·You mentioned the certificate of specialty** **15· ·that you received.· Did you receive that when you did** **16· ·your periodontal residency?** 17· · · · A.· ·That's correct.· That's the certificate of			

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18· ·specialty is in periodontics, which was received after 19· ·completion of my periodontal residency. **20· · · Q.· ·You mentioned that you also received a** **21· ·master's degree?** 22· · · A.· ·Yes. **23· · · Q.· ·What was that in again?** 24· · · A.· ·Immunology.· When you're in periodontal 25· ·graduate school, everybody that finishes periodontal ·1· ·graduate schools gets a certificate in periodontics. ·2· ·If you want to do a research project and defend a ·3· ·thesis, you can also get a Master of Science degree in ·4· ·dentistry.			
9:22-10:10 **22· · · Q.· ·You also mentioned that you're board** **23· ·certified.· Can you just briefly describe how you** **24· ·become board certified and who that is through?** 25· · · A.· ·Once you finish your periodontal program, ·1· ·you're eligible to sit before the American Board of ·2· ·Periodontology.· And you first take a written test. ·3· ·And once you've successfully completed the written ·4· ·test, then you go through an oral examination process. ·5· · · · · ·And you go before the American Board of ·6· ·Periodontology members, who ask you a lot of questions ·7· ·about periodontal disease and whether you have attained ·8· ·a certain level of understanding and competence.· And ·9· ·if you score satisfactorily, then you become board 10· ·certified in periodontics.			
10:24-11:11 **24· · · Q.· ·And why was that important to receive that** **25· ·extra credential?** 1· · · A.· ·Being in the middle of nowhere in Wyoming, ·2· ·it's hard to be judged by your peers and to realize ·3· ·where you may stand in your understanding of ·4· ·periodontics. ·5· · · · · ·One way that I could distinguish myself in			

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·6· ·Wyoming was to say that I was a board certified ·7· ·periodontist, which at the time I took it only ·8· ·25 percent of periodontists were board certified.· At ·9· ·that time I could say at least I met a certain 10· ·standard, that my peers stated that I had a certain 11· ·level of competency.			
12:25-13:11 **25· ·[Q]. . . , do you have any other education or** **·1· ·certifications for your practice as a periodontist?** ·2· · · · A.· ·I took a preceptorship in dental implantology ·3· ·at the University of Texas Health Science Center at ·4· ·San Antonio.·			
14:25-16:1 **25· · · · Q.· ·Is there a difference from periodontal** **1· ·implants versus any other type of implants an oral** **·2· ·surgeon or general dentist might perform?** ·3· · · · A.· ·Dental implants can be provided by dentists. ·4· ·Now, I would say that the periodontal specialists, the ·5· ·oral surgeons have additional training in surgical ·6· ·technique.· And the background is probably stronger. ·7· · · · · · ·That's not to say general dentists cannot do ·8· ·implants.· I see many general dentists who can do ·9· ·dental implants quite well.· So I'm not being 10· ·territorial as a periodontist saying only periodontists 11· ·or oral surgeons should do dental implants. **12· · · · Q.· ·That brings up a real good point, Dr. Okano.** **13· ·Will you just explain to us, and you have a little bit,** **14· ·but just further clarification what does a periodontist** **15· ·do?· What do they specialize in?** 16· · · · A.· ·A periodontist treats periodontal disease. 17· ·"Perio" means surrounding the tooth.· So periodontist 18· ·treatment involves the gum and bone structures of 19· ·teeth.· And we address inflammatory processes from gum 20· ·infections that destroy bone. 21· · · · · · ·But also over time, since the mid-1980s, the			

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22· ·specialty of periodontics has also incorporated the 23· ·surgical placement of dental implants.· So 24· ·periodontists -- almost every periodontist is going to 25· ·be providing implant -- dental implant services in ·1· ·their practices.			
16:24-17:14 **24· · · · · ·[Q.] Besides those educational degrees and** **25· ·certificates that you have, do you have any other** **·1· ·certificates or education relating to your work as a** **·2· ·periodontist?** ·3· · · A.· ·No other certificates, but I probably attend ·4· ·100 hours of continuing education per year or more in ·5· ·my field, periodontics, along with dental implantology. ·6· · · · · ·One real unique opportunity I've had in the ·7· ·last few years is I currently serve on the American ·8· ·Academy of Periodontology Board of Trustees, so I'm one ·9· ·of the 21 members from across the country serving on 10· ·the board of trustees for my specialty organization. 11· · · · · ·That has been very unique because I'm able to 12· ·sit at a table with some national and world experts in 13· ·my field and learn some of their techniques.· And that 14· ·in itself has been an education also.			
18:2-16 **·2· · · Q.· ·. . . So why don't you walk us** **·3· ·through real quick your work background beginning when** **·4· ·you completed your dental degree in 1981.** ·5· · · A.· ·Okay.· Well, I finished dental school in ·6· ·1981.· The general practice residency in Milwaukee, ·7· ·Wisconsin for the year after dental school was spent in ·8· ·various phases of dentistry.· It's a general dental ·9· ·residency, so I was exposed to all phases of general 10· ·dentistry.· Tremendous educational opportunity during 11· ·that one year. 12· · · · · ·And then the training in periodontal -- in 13· ·periodontics was completed in 1985.· And I immediately			

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14· ·opened my periodontal practice here in Rock Springs, 15· ·Wyoming in July of 1985 and have been here continuously 16· ·for the last almost 30 years.			
21:11-23 **11· · · · Q.· ·And have you had any conversations with a** **12· ·Dr. Shane in Lander, Wyoming and Riverton, Wyoming** **13· ·about Gail O'Neal?** 14· · · · A.· ·I have not spoken to Dr. Shane directly. 15· ·Dr. Shane made the original referral to me to evaluate 16· ·for periodontal disease.· That exam would have occurred 17· ·December 12th, 2011. 18· · · · · · ·I provided a letter of update to Dr. Shane 19· ·regarding my findings on December 12th, 2011.· That's 20· ·when the letter was sent.· So I've had only written 21· ·communications with Dr. Shane regarding Gail O'Neal. 22· ·But I have not talked to Dr. Shane personally about any 23· ·of the concerns or treatment, considerations for her.			
22:3-13 **3· · · · Q.· ·What I want to do now, Dr. Okano, is hand you** **·4· ·Exhibit No. 2.** ·5· · · · · · · · . . . ·6· · · · · · · · . . . this is Dr. Okano's ·7· ·records.· They are Bates numbered Okano 1 through ·8· ·Okano 11. ·9· · · · · · ·[A]:· Okay. **10· · · · Q.· ·. . . Before we get into your** **11· ·review of your records, Dr. Okano, do you have a memory** **12· ·independent of your records of Gail O'Neal?** 13· · · · A.· ·I do not.		Exhibit 2	
22:18-31:24 **18· · · · Q.· ·On Okano 2 and Okano 3, can you just describe** **19· ·for us what those records are?** 20· · · · A.· ·This is the routine social history on Okano 2 21· ·that all patients fill out regarding name, address, 22· ·demographic information.· Okano 3 is our medical			

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23· ·history, along with Okano 4 is a dental history.· So 24· ·all patients receive this information before I even 25· ·examine them. **1· · · Q.· ·So this is -- these are documents that** **·2· ·Gail O'Neal would have filled out in her first visit to** **·3· ·you, correct?** ·4· · · A.· ·That is correct. **·5· · · Q.· ·I want to focus briefly on Okano 3.· As you** **·6· ·look through Okano 3, is there anything on there that** **·7· ·Gail O'Neal filled out that gives you any cause for** **·8· ·concern about her dental health?** ·9· · · A.· ·No.· She had a little arthritis.· She was on 10· ·some hormone replacement therapy.· She had no 11· ·allergies, so there was nothing there that would 12· ·suggest any -- anything medically involved that she 13· ·would have disclosed at that time. **14· · · Q.· ·Let's turn to Okano 4.** 15· · · A.· ·Okay. **16· · · Q.· ·I want to focus on the upper left portion.** **17· ·It says, "Are you currently experiencing dental** **18· ·problems?" with a mark for "yes."· Do you see that?** 19· · · A.· ·Yes. **20· · · Q.· ·Below that where the explanation is, can you** **21· ·review that for us, please?** 22· · · A.· ·It says -- her writing was, "Soreness on left 23· ·bridge anchor teeth.· My notes would have said, "Avoids 24· ·chewing, present for eight years."· The bridge was 25· ·present for eight years. **·1· · · Q.· ·On that "present for eight years," does that** **·2· ·mean the bridge was present for eight years or the** **·3· ·soreness was present for eight years?** ·4· · · A.· ·The bridge by the patient history would have ·5· ·been there for eight years. **·6· · · Q.· ·As we go down -- continue going down that** **·7· ·left side of Okano 4, is there anything there that is**			

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·8· ·either filled out by Gail O'Neal or yourself that gives **·9· ·you cause for concern about her dental health?** 10· · · A.· ·Well, the yes/no column, those are all 11· ·symptoms of periodontal disease that we ask what they 12· ·might be experiencing that they can share with us 13· ·there. 14· · · · · ·There's really nothing unusual.· Those are 15· ·all symptoms of periodontal disease.· And her symptoms, 16· ·her chief complaint, basically that "yes" would be very 17· ·consistent with bone loss considerations. **18· · · Q.· ·And so the bleeding gums, breath odors, gum** **19· ·swelling or sores, and sensitivity to biting is** **20· ·commonly associated with periodontal disease, correct?** 21· · · A.· ·Yes. **22· · · Q.· ·If we go down towards the bottom left portion** **23· ·of that page, there's a question, "How long have you** **24· ·known about your gum condition?"· And "six months" is** **25· ·written in.· Do you see that?** ·1· · · A.· ·Yes. **·2· · · Q.· ·Is it common to develop periodontal disease** **·3· ·within a six-month period?** ·4· · · A.· ·Oh, it can.· But a lot of these patients ·5· ·don't know that they have it, and yet things are ·6· ·starting to develop.· In the early stages, it's almost ·7· ·considered a silent disease because there aren't a lot ·8· ·of symptoms. ·9· · · · · ·So the six months that she mentions could be 10· ·six months of awareness of these symptoms or could be 11· ·six months since her dentist told her about the 12· ·problems. **13· · · Q.· ·Do you recall which -- when she references** **14· ·six months if she was talking about the problems she** **15· ·was experiencing or if she was referring to something** **16· ·else?** 17· · · A.· ·I cannot recall.			

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18· · · Q.· ·Let's turn now, Dr. Okano, to Okano 6 and 7. **19· ·Do you recognize those documents?** 20· · · A.· ·Yes. **21· · · Q.· ·And what are they?** 22· · · A.· ·This is the letter that I sent back to the 23· ·referring dentist.· Dr. Shane referred Gail O'Neal to 24· ·my office.· I saw Gail in my Lander satellite office on 25· ·December 12th, and we did our examination. ·1· · · · · ·Every time that I do an examination by ·2· ·referral, I send a report back to the referring ·3· ·dentist.· So this is what Dr. Shane received from me ·4· ·following my examination. **·5· · · Q.· ·Do you know why Dr. Shane recommended that** **·6· ·Gail O'Neal see you?** ·7· · · A.· ·Yes.· It goes back to the symptoms that you ·8· ·saw on the soreness on the left bridge, the anchor ·9· ·teeth.· So Dr. Shane is a very good dentist who 10· ·diagnoses periodontal disease, recognizes when there 11· ·are periodontal concerns that would benefit from a 12· ·consultation and, perhaps, treatment from a periodontal 13· ·specialist. **14· · · Q.· ·So you have received referrals from Dr. Shane** **15· ·before?** 16· · · A.· ·Very regularly.· He's one of my best 17· ·referring dentists, very competent man. **18· · · Q.· ·And if we look at Okano 6, what I want to** **19· ·focus on is the diagnosis, the etiology, and the** **20· ·complicating factors.· Maybe what would be the most** **21· ·helpful, Dr. Okano, and the best use of your time is to** **22· ·have you go through those and talk to us about what** **23· ·your impressions of Gail O'Neal were.** 24· · · A.· ·Sure.· Following my examination, I always 25· ·establish a diagnosis to share with the patient and the ·1· ·referring dentist.· On the periodontal diagnosis, my ·2· ·diagnosis was chronic isolated advanced periodontitis.			

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·3· ·"Chronic" meaning it's probably longstanding; ·4· ·"isolated" meaning certain teeth are affected, not ·5· ·necessary every tooth; "advanced" meaning the severity ·6· ·of the bone destruction basically; "periodontitis" ·7· ·meaning bone loss. **·8· · · Q.· ·When you said "chronic" typically represents** **·9· ·that it's been present for an extended period of time,** **10· ·how long is that typically?** 11· · · A.· ·Probably several months, perhaps even some 12· ·years.· The diagnosis of periodontal disease typically 13· ·is called chronic or aggressive.· And a "chronic" means 14· ·longstanding over a period of time; "aggressive" 15· ·meaning very severe periodontal destruction at a 16· ·relatively young age. 17· · · · · ·So those -- chronic versus aggressive is 18· ·typically how we classify periodontal disease.· I go to 19· ·the extra extent of telling a referring doctor and 20· ·patient if it's generalized versus isolated and the 21· ·severity, whether it's mild, moderate, or advanced. **22· · · Q.· ·And then let's go to the etiological factors.** 23· · · A.· ·So gingival plaque, biofilms, and calculus. 24· ·What that means is below the gumline, which is where 25· ·all the action occurs that destroys the bone support, ·1· ·so below the gumline; plaque, which is the soft sticky ·2· ·bacterial film of deposit that leads to the infection ·3· ·and inflammation. ·4· · · · · ·Biofilms means that thin film of bacteria ·5· ·below the gumline that leads to the inflammation. ·6· ·Calculus means the hard calcified deposit.· That means ·7· ·that the bacterial plaque over time then hardens onto ·8· ·the tooth.· Calculus is otherwise known as tartar ·9· ·buildup. **10· · · Q.· ·Are these etiological factors typically a** **11· ·result of poor dental hygiene?** 12· · · A.· ·Well, typically.· I wouldn't go so far as to			

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13· ·say "poor" as much as "inadequate," or if these pockets 14· ·are real deep, they -- even with good efforts, they 15· ·simply cannot clean below the gumline far enough to 16· ·remove the irritating etiologic factors that lead to 17· ·the problem.· So that's why I won't say it was truly 18· ·due to poor oral hygiene. **19· · · Q.· ·Do you recall if you had any concerns about** **20· ·Gail O'Neal's dental hygiene at that time?** 21· · · A.· ·Not necessarily, no. **22· · · Q.· ·Are you saying you don't recall one way or** **23· ·the other?** 24· · · A.· ·I don't have it marked, but typically if I 25· ·see "poor," I absolutely mark "poor" on the chart.· So ·1· ·I think that in Gail O'Neal's situation, she was ·2· ·probably practicing reasonably favorable oral hygiene, ·3· ·which is true of most of Dr. Shane's patients.· They ·4· ·have reasonably good oral hygiene.· But once the ·5· ·disease progresses to certain levels, they simply can't ·6· ·control the disease factors. **·7· · · Q.· ·Let's go now to the complicating factors just** **·8· ·below the etiological factors.** ·9· · · A.· ·First one I say is "isolated severe 10· ·periodontal destruction of key prosthetic abutment 11· ·teeth."· That means that Gail had some bridgework in 12· ·her mouth, and the teeth that were supporting the 13· ·bridgework had experienced severe bone loss.· And any 14· ·time we have a key tooth that supports a bridge, that's 15· ·a complicating factor, especially when there's severe 16· ·disease. 17· · · · · ·The next one, "Progressing vertical defect 18· ·affecting the distal number 29," that means a type of 19· ·bone loss pattern around the root on a lower right 20· ·second premolar on the backside that's progressing. 21· · · · · ·That a type of osseous defect, meaning that 22· ·type of bony defect, is much more difficult to treat			

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23· ·and manage and particularly prone to deterioration if 24· ·left untreated. 25· · · · · ·And then the last comment I had there, "The ·1· ·loss of several maxillary teeth with compromises in ·2· ·prosthetic support for the future."· That means she's ·3· ·already lost a lot of teeth.· She's going to lose more ·4· ·teeth, and she's getting to the point where she just ·5· ·isn't going to have very many teeth left to support ·6· ·replacements. **·7· · · Q.· ·You had mentioned that she had had some** **·8· ·bridgework done.· Correct me if I'm wrong, but a bridge** **·9· ·is typically done by placing two implants between a --** 10· · · A.· ·No.· A bridge is not a dental implant. A 11· ·bridge is a replacement of missing teeth that utilizes 12· ·teeth on either side of the space that support crowns 13· ·that are connecting to artificial teeth.· So the bridge 14· ·is not a dental implant, unrelated to dental implants. **15· · · Q.· ·Just below the complicating factors in the** **16· ·periodontal prognosis, will you walk us through the** **17· ·teeth that you identify and the concerns that you have** **18· ·about those teeth?** 19· · · A.· ·Sure.· As far as the individual teeth, I 20· ·would consider the prognosis -- periodontal prognosis 21· ·hopeless.· That means there's so much bone loss they're 22· ·not likely to be saved. 23· · · · · ·I identified severe bone loss on the 24· ·maxillary right second premolar, the maxillary left 25· ·first premolar, and the maxillary left second molar. ·1· ·And unfortunately, the maxillary left first premolar ·2· ·and second molar, those were the anchor teeth for the ·3· ·bridge and the reason that she would lose her bridge ·4· ·because there was so much bone loss. ·5· · · · · ·Now, guarded, there were some teeth with a ·6· ·fair amount of bone loss, probably up to 50 percent or ·7· ·more of bone loss on the lower, the mandibular left			

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·8· ·second molar, the mandibular left second premolar, ·9· ·along with both mandibular right -- I'm sorry -- I said 10· ·the mandibular.· Let's correct the numbers and teeth 11· ·again. 12· · · · · ·Guarded were mandibular left second molar, 13· ·mandibular right second premolar, and both mandibular 14· ·right molars.· "Guarded" means there's a significant 15· ·amount of bone loss, perhaps 50 percent or more.· We 16· ·also know that guarded teeth can be retained for quite 17· ·some time. 18· · · · · ·So I'm not ready to say guarded teeth 19· ·necessarily should be removed, but that's a decision 20· ·that can then be made between the patient and their 21· ·general dentist as far as keeping and treating most 22· ·teeth or taking them out.· "Fair" means there's a 23· ·pretty good likelihood that teeth are going to last for 24· ·several more years.			
33:1-37:15 **1· · · Q.· ·Do you recall when you did this examination** **·2· ·of Gail O'Neal in December of 2011 if she informed you** **·3· ·of any preference she had of whether she wanted to save** **·4· ·the teeth, whether she wanted implants, or whether she** **·5· ·wanted something different all together?** ·6· · · A.· ·She did not have a preference.· I reviewed ·7· ·the concerns, the treatment possibilities.· I felt that ·8· ·it would be best for her to return to Dr. Shane to get ·9· ·these upper hopeless teeth out first because they were 10· ·bothering her.· They were symptomatic. 11· · · · · ·Since that was her chief complaint, I always 12· ·recommend the patient follow through with their chief 13· ·concern, which would be getting the hopeless teeth out, 14· ·getting out of the pain and discomfort. **15· · · Q.· ·Is there any reason with your specialty you** **16· ·wouldn't have suggested extracting the teeth yourself** **17· ·versus Dr. Shane doing it?**			

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18· · · A.· ·I will take some teeth out if I will follow 19· ·up with placing the dental implants.· And I'll take 20· ·those teeth out because there's a lot of treatment that 21· ·is sometimes necessary.· It's what we call site 22· ·preservation or site preparation. 23· · · · · ·And because there's so much bone loss around 24· ·some of these teeth, we will place bone grafts and 25· ·other regenerative procedures to try to save as much ·1· ·bone as possible for the future placement of dental ·2· ·implants.· I will take a few teeth out if I know that I ·3· ·may be the provider placing dental implants later on. **·4· · · Q.· ·Does that mean at this point you were not** **·5· ·anticipating seeing her again in your office, or were** **·6· ·you maybe anticipating seeing her for different** **·7· ·procedures?** ·8· · · A.· ·Different procedures were discussed that I ·9· ·would follow up. **10· · · Q.· ·So just describe that to us quickly.· In your** **11· ·mind, what were you suggesting Dr. Shane do, and then** **12· ·what were you suggesting happen in your office with** **13· ·Gail O'Neal?** 14· · · A.· ·I suggested Dr. Shane take out these three 15· ·hopeless teeth.· There was also a lower left molar 16· ·number 18 that looked like it had a root canal-type 17· ·problem. 18· · · · · ·So I don't do root canals.· But I noted that 19· ·there was likely a root canal problem, and Dr. Shane 20· ·could then follow it up in his office or refer for 21· ·further care. 22· · · · · ·Those seem to be the most acute treatment 23· ·needs.· And then eventually I could come back and treat 24· ·the periodontal disease, the bone loss around the teeth 25· ·that we would elect to save later on. **·1· · · Q.· ·And how did you envision providing that** **·2· ·periodontal treatment in the future to save those**			

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·3· ·teeth? ·4· · · · A.· ·It would involve periodontal surgery, ·5· ·otherwise known as gum surgery.· That's where we open ·6· ·up the gum tissues, clean out infection around the ·7· ·roots of teeth, clean off the roots, place some ·8· ·regenerative materials, bone grafting. ·9· · · · · · ·There are several regenerative materials that 10· ·are considered to help regenerate lost bone support. 11· ·And that was to be considered along the lower right 12· ·area.· And then a little isolated surgery to address 13· ·the infection on the lower left second molar number 18. **14· · · · Q.· ·So that periodontal treatment was envisioned** **15· ·for the lower left and lower right areas of** **16· ·Gail O'Neal's teeth, correct?** 17· · · · A.· ·That's correct.· Those were the possible 18· ·candidates for such treatment. **19· · · · Q.· ·Did you envision providing any periodontal** **20· ·treatment for the upper left or upper right?** 21· · · · A.· ·No.· Basically the treatment for those areas 22· ·was taking the teeth out.· So otherwise, the bone 23· ·support was reasonably favorable for those areas. **24· · · · Q.· ·So if the bone support was reasonably** **25· ·favorable for those areas, what would be the typical --** **·1· ·what would be the typical treatment that you would** **·2· ·suggest for those areas?** ·3· · · · A.· ·For the top teeth? **·4· · · · Q.· ·For the top teeth, the maxillary teeth.** ·5· · · · A.· ·Good oral hygiene, brushing, flossing, going ·6· ·back to her general dentist for professional cleanings ·7· ·of her teeth perhaps every six months.· And that would ·8· ·have given her a good opportunity to keep the teeth ·9· ·that had favorable enough bone support remaining. **10· · · · Q.· ·For the ones that you said were hopeless and** **11· ·should be extracted, numbers 4, 12, and 15, once those** **12· ·are extracted, what are her options?**			

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13· · · A.· ·Well, then she would have to evaluate the 14· ·remaining sites of missing teeth and decide if she 15· ·wanted to have replacements.· Some patients elect not 16· ·to do any replacements at all. 17· · · · · ·Gail would have been probably pretty 18· ·compromised in her chewing abilities with the loss of 19· ·that upper left bridge.· So she could have considered a 20· ·removable partial denture, otherwise known as a partial 21· ·plate. 22· · · · · ·Those are not real comfortable.· They don't 23· ·fit well.· They don't function as nicely as other 24· ·replacements.· She would not have been a real good 25· ·candidate for an upper bridge on the top right because ·1· ·there simply would not have been enough teeth to ·2· ·support the number of teeth that were -- that would ·3· ·become missing. ·4· · · · · ·And then dental implants, if there was ·5· ·sufficient bone, could certainly be considered for ·6· ·replacements.· And those are always the best ·7· ·replacements because they stay in the mouth.· They ·8· ·should function well as teeth. ·9· · · · · ·But I always caution patients that dental 10· ·implants are prone to the same periodontal disease that 11· ·cost her her teeth in the first place.· So we make a 12· ·very strong effort to encourage patients to take care 13· ·of the implants well because otherwise they get 14· ·infected, and they can be lost probably faster than 15· ·their natural teeth experience bone loss.			
38:9-39:16; 39:17-21 **9· · · Q.· ·And so the third option, and I think you** **10· ·suggested that, if possible, it's the best option, is a** **11· ·dental implant to replace that tooth?** 12· · · A.· ·That would be the best alternative if there's 13· ·sufficient bone to place such a dental implant. **14· · · Q.· ·If there is not sufficient bone to place that**			

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15· ·dental implant, is a bone graft advised? 16· · · A.· ·Sure.· There are various types of bone grafts 17· ·that can be provided for various reasons.· On the upper 18· ·arch, the maxillary sinus is always a factor to 19· ·determine if there's enough bone to place a dental 20· ·implant where you enter the sinus. 21· · · · · ·Now, there are some surgical procedures where 22· ·you can bone graft into the sinus to create more bone 23· ·to place an adequate length of dental implant into the 24· ·jaw bone.· So, yes, there are some regenerative 25· ·procedures available to enhance the bone in order to ·1· ·place a dental implant. **·2· · · Q.· ·At this time in December of 2011, if** **·3· ·Gail O'Neal had elected to proceed with dental** **·4· ·implants, would -- from your review of her, would that** **·5· ·have been a possibility?** ·6· · · A.· ·I don't know.· I personally would evaluate ·7· ·the jaw structures through a three-dimensional X-ray ·8· ·called a cone beam CT scanning machine.· And by ·9· ·providing that CT scan, then you have a 10· ·three-dimensional view. 11· · · · · ·You can take some very accurate measurements 12· ·of the bone that's available for dental implant 13· ·placements.· And then you can determine if, yes, you 14· ·can do dental implants; no, you can't; maybe you can if 15· ·you do some regenerative procedures ahead of time 16· ·before dental implants are placed. 17· · · · · ·That's just my philosophy on treatment.· I'm 18· ·not saying that's the standard of care, but you really 19· ·would not know how much bone you have unless you take 20· ·at least a panoramic X-ray and, better yet in my hands, 21· ·at least a three-dimensional X-ray.	Plaintiff objects to 39:17-21 based on Rules 702 and 703 of the Federal Rules of Evidence. Dr. Okano should not be allowed to testify about what the standard of care is or isn't, as he has not testified about the basis of his opinion. He already states at the beginning of this answer that it is only what he would do personally. See Plaintiff's MIL (Doc. 64). Dr. Okano is already testifying about the standard of care in lines 6-16, when talking about how he would evaluate the jaw structures with a CT scan. Lines 17-21 are simply a continuation of why he would evaluate the structures with a CT scan. If Plaintiff claims Dr. Okano lacks foundation to testify to these lines, then he also lacks the foundation to testify to the rest of the answer. Furthermore, Defendant has not designated any testimony where Dr. Okano testifies as to what the standard of care is. He instead defers from stating the standard of care at all, so he would not need any foundation in this case.		OVERRULED. The testimony in 39:17-21 is a proper completeness designation. The testimony is not stating an opinion of what the standard of care is or is not. The question requests Dr. Okano's opinion, and his answer is "I don't know." The remainder of testimony explains why his answer is "I don't know." The whole explanation is admissible. Additionally, Plaintiff has designated 43:17-44:2 in which Dr. Okano discusses methods for determining how much bone is present for purposes of an implant.
40:14-43:5 **14· · · Q.· ·So at that time in December of 2011, you had** **15· ·suggested to Gail O'Neal that she first needed to go**			

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16· ·see Dr. Shane for extracts of teeth numbers 4, 12, and **17· ·15, and then possible root canal treatment for number** **18· ·18, and then at that time to come back and see you for** **19· ·further periodontal treatment; is that right?** 20· · · A.· ·That is correct.· I actually saw Gail a 21· ·second visit for discussion on March 15th, 2012.· So 22· ·that should be part of the record as far as an update. 23· ·I believe that she had come to the Rock Springs office 24· ·to see Dr. Flath for the root canal treatment.· And I 25· ·took a quick minute to answer a few questions that she ·1· ·might have had at that time. **·2· · · Q.· ·Let's turn to that record, Dr. Okano.· That** **·3· ·is Okano 10.** ·4· · · A.· ·Okay. **·5· · · Q.· ·Why don't you -- I want to ask you a few** **·6· ·additional questions about the December 2011 visit.** **·7· ·But why don't you, while we're there, talk about the** **·8· ·March 2012 visit, what you discussed with Gail O'Neal** **·9· ·at that time and what your impressions were.** 10· · · A.· ·Specifically to the March 15th? **11· · · Q.· ·Yes, the March 15th.· Yes.** 12· · · A.· ·We talked about her periodontal concerns, the 13· ·bone loss problems that she had that I had diagnosed 14· ·and discussed treatment here.· Again, mentioned to her 15· ·that she had deep pockets, which were related to the 16· ·bone loss. 17· · · · · ·It looked like I must have seen a little bit 18· ·of swelling along the gum tissues along the lower 19· ·right.· That would be number 29.· The swelling and the 20· ·granulomatous type of lesion, that means quite an 21· ·inflammatory response, probably to the plaque 22· ·irritants.· If we were to do any surgery in that area, 23· ·I would evaluate that.· I might even take that tissue 24· ·and submit it for a biopsy to evaluate it further. 25· · · · · ·So we talked about the treatment once again,			

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·1· ·told her what we planned to do, where the sources of ·2· ·these materials may come from.· And then she had all ·3· ·questions answered at that time.· She said she would ·4· ·call back to schedule when she was able to proceed with ·5· ·treatment. ·6· · · · · ·I see that she was a rancher, so that's ·7· ·sometimes what goes on is the business with the ·8· ·ranching operations as far as when they can get back ·9· ·for treatment. **10· · · Q.· ·On the -- I'm going to term the second** **11· ·paragraph for the March 15th, 2012, visit on the right** **12· ·side of Okano 10, the second sentence says, "May** **13· ·consider osseous"?** 14· · · A.· ·"Osseous." **15· · · Q.· ·"Osseous grafting, and this treatment was** **16· ·reviewed."· What is that?** 17· · · A.· ·That's bone grafting, placement of bone 18· ·grafts into the hole in the bone around the tooth, 19· ·basically try to regenerate some lost bone support. **20· · · Q.· ·And what teeth are you specifically** **21· ·referencing when you mention that grafting?** 22· · · A.· ·That would be tooth number 29 that's listed, 23· ·the lower right second premolar. **24· · · Q.· ·And do you recall discussing any other bone** **25· ·grafting at that time with any other teeth?** ·1· · · A.· ·No. **·2· · · Q.· ·And just to reiterate, your focus during the** **·3· ·March 15th, 2012, visit was a review of teeth number** **·4· ·29, 31, and 32, correct?** ·5· · · A.· ·Yes.· That's correct.			
44:22-47:9 **22· · · Q.· ·On the next page, this is still under** **23· ·point 3, it is the second to last point, it says, "Also** **24· ·discussed the possibility of dental implants into the** **25· ·sites of numbers 4 and 13 for removable prosthetic**			

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overdenture abutment purposes." **You had talked a little bit about the** **overdenture abutment a little bit earlier, but just** **describe that process to us about how that's done.** A. Sure. When she was going to lose so many upper teeth, it would be really apparent an upper removable partial denture, partial plate, was not going to fit very well. A very good use of dental implants would be to place one dental implant on each side. And that would then support a partial plate and give it more stability. And that would be a relatively smaller amount of treatment, certainly much less cost than replacing individual teeth, two versus probably five or six dental implants. So I just brought up the possibility that those could be considered to support the partial denture plate there. **Q. In a situation like this where you had** **mentioned to her this overdenture abutment possibility,** **if Gail O'Neal came to you and said, I actually would** **prefer to do implants, I don't want a denture, would** **you have felt comfortable proceeding with that option** **instead?** A. We could have evaluated for that possibility. That would depend upon the three-dimensional X-ray, the CT scan to see how much bone was present in the key areas where dental implants to replace individual teeth would have been considered. **Q. Let's jump to point number 4 on Okano 10. It** **says, "Alternatives of," and then I want to go over** **the -- all points under that. Will you just go through** **those briefly?** A. Sure. As I mentioned before, I always discuss what happens if they do no treatment. So if she did nothing, then she could expect a continuation of the gum infections that would result in destroying			

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11· ·more bone support, and eventually you could lose enough 12· ·bone that you lose teeth, much like she was going to 13· ·experience on the upper arch. 14· · · · · ·I always talk about taking all the teeth out 15· ·as a possibility, because that's the question patients 16· ·ask, Well, maybe I don't want to keep the teeth.· I'll 17· ·just take them all out.· But I'll tell them the 18· ·extractions could be considered, but it wasn't 19· ·necessary overall. 20· · · · · ·Scaling and root planing is the nonsurgical 21· ·alternative to periodontal surgery, which I discussed 22· ·for several lower teeth.· And I always talk about 23· ·nonsurgical options, but I explain why surgery would be 24· ·a better treatment for cases where surgery is the 25· ·recommended treatment plan. ·1· · · · · ·And then I always talk about doing surgery ·2· ·without placing the regenerative material, the bone ·3· ·grafts, the membranes that we just talked about. I ·4· ·explain that we won't have as good a result. ·5· · · · · ·I have some patients who don't like to do ·6· ·bone grafting for whatever reason.· And I'll tell them, ·7· ·That's fine, we'll at least clean out the infection, ·8· ·but we may not have as good a result by not doing the ·9· ·bone graft to regenerate.			
49:25-50:6 **25· · · Q.· ·Did you discuss any sinus problems with** **·1· ·Gail O'Neal in any of your treatment?** ·2· · · A.· ·No, I did not, because we were not ·3· ·considering dental implant therapies.· If, in fact, she ·4· ·would have been interested in dental implants, I for ·5· ·sure would have done that CT scan to know what the ·6· ·sinus morphology would be.			

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19:16-20:13 **16· · · · Q.· ·You had talked a little bit about -- a little** **17· ·while ago about what a periodontist does and how they** **18· ·focus on disease of the supporting structures of teeth.** **19· · · · · · ·Those diseases, how are they typically** **20· ·developed?** 21· · · · A.· ·It's usually a result of inadequate oral 22· ·hygiene on the patient's part.· If patients aren't 23· ·brushing and flossing their teeth adequately, then the 24· ·bacteria in the mouth will build up at the gumline 25· ·along the roots of teeth. 1· · · · · · ·That stimulates an inflammatory response to ·2· ·the bacterial irritants.· And the inflammatory response ·3· ·ultimately eats away at the supporting structures, the ·4· ·gum and bone support.· I kind of liken it to termites ·5· ·eating away at the foundation of a house basically. **·6· · · · Q.· ·And I assume that the longer an individual** **·7· ·lets -- doesn't exercise proper dental hygiene and lets** **·8· ·that continue, the worse it gets, correct?** ·9· · · · A.· ·That is correct.· Left untreated, you will 10· ·continue to lose gum and bone support.· Ultimately, the 11· ·teeth can loosen up, and eventually adult tooth loss 12· ·occurs.· In fact, more teeth are lost as an adult from 13· ·periodontal disease than tooth decay.	Plaintiff objects to 19:16-20:13 pursuant to Rules 402 and 403 of the Federal Rules of Evidnece. Dr. Okano is testifying about the cause of these diseases generally, and not in relation to the plaintiff specifically. As Dr. Okano testifies elsewhere, he did not find that this plaintiff had poor oral hygiene, so this testimony about the effects of poor oral hygiene in general is irrelevant (R. 402). Should the court find that such generalized testimony is relevant, Plaintiff argues that it is more prejudicial than probative, as Dr. Okano specifically states this does not apply to this plaintiff, and is therefore inadmissible (R. 403). This testimony is relevant as a background to how Plaintiff came to need the treatment from Dr. Clark and is a critical issue in this case. Plaintiff claims that she lacked the bone support for implants, and it is important for the jury to understand why she lacked bone support so Dr. Clark can explain his approach of why he did what he did. Ultimately, Plaintiff will present testimony that she can never have implants in this area of her mouth, and a background on how bone loss happens is critical for the jury to understand why Dr. Clark did what he did. It is therefore relevant and not prejudicial.		OVERRULED. Per the [81] Docket Text Order, evidence of Plaintiff's oral hygiene is admissible at trial and is relevant to the issue of causation. This testimony is relevant to the issue of causation as background information to the causes of periodontal diseases, which may include poor oral hygiene. The probative value of the testimony is not substantially outweighed by any potential prejudice.
31:25-32:25 **25· · · · Q.· ·I just want to reiterate what you said to** **1· ·make sure that I understand it correctly.· I'm going to** **·2· ·use the tooth numbers for sake of reference.** ·3· · · · A.· ·Sure.			

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·4· · · · Q.· ·On "hopeless," numbers 4, 12, and 15, that **·5· ·means that there was so much bone loss that they cannot** **·6· ·be salvaged, and extracts should occur, right?** ·7· · · · A.· ·Yes. **·8· · · · Q.· ·On "guarded," numbers 18, 29, 31, 32, you say** **·9· ·guarded typically means that the bone loss is typically** **10· ·50 percent or more, and that they can be retained for** **11· ·some time.· But that's a decision, whether to remove** **12· ·them or not to remove them, typically between the** **13· ·patient and their dentist?** 14· · · · A.· ·Yes.· And it can also be a decision between 15· ·the patient and myself because if I am discussing 16· ·treatment alternatives, I want my patient to know that 17· ·if I'm treating a guarded tooth, we may or may not be 18· ·successful. 19· · · · · · ·And they need to be aware of that going into 20· ·the treatment plan that if we provide treatment, they 21· ·can still lose a tooth, but we gave it our best try. 22· ·For those patients that aren't comfortable with still 23· ·losing a tooth despite treatment, then I do not 24· ·recommend treatment.· Then it's, Okay, don't do 25· ·treatment.· Take it out at some point in the future.			
39:25-40:13 **25· · · · Q.· ·So if a practitioner were to take a cone V –** **1· ·cone beam CT scan, and they determined from the** **·2· ·measurements that there was enough bone or, with bone** **·3· ·grafting, proper bone grafting, that implants could be** **·4· ·viable, that would probably be the best alternative for** **·5· ·replacement for Gail O'Neal; is that correct?** ·6· · · · A.· ·It would be assuming Gail O'Neal understood ·7· ·all the treatment, the risk/benefits and alternatives, ·8· ·and she came to a good informed -- good decision on her ·9· ·part, informed consent. **10· · · · Q.· ·And decided that's what she wanted?** 11· · · · A.· ·That's correct.· It's still ultimately up to			

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12· ·the patient to make the best decision as to the best 13· ·treatment they would like to accept.			
43:6-44:17 **·6· · · · Q.· ·I just want to -- we've gone over quite a few** **·7· ·of these things.· But there's a few things on Okano 10** **·8· ·in the December 2011 visit that I want to quickly** **·9· ·review with you.· On point number 3, this is about** **10· ·halfway down the page.** 11· · · · A.· ·Okay. **12· · · · Q.· ·You had written in here treatment** **13· ·recommendations, correct?** 14· · · · A.· ·Yes. **15· · · · Q.· ·On the third point, you had written, "Advised** **16· ·recommendation to use bone graft, either synthetic or** **17· ·allograft in areas to attempt some regeneration.** **18· ·Patient had no reservations using either and understood** **19· ·the sources for both."** **20· · · · · · ·Is that bone grafting referencing numbers 29,** **21· ·31, and 32 as well?** 22· · · · A.· ·Yes. **23· · · · Q.· ·Is it referencing any other teeth?** 24· · · · A.· ·No. **25· · · · Q.· ·If we go down in that same section,** **1· ·Section 3, it is the last point on the left side, it** **·2· ·says, "Discussed possible use of a barrier for GTR** **·3· ·purposes."** **·4· · · · · · ·What does that mean?** ·5· · · · A.· ·A barrier means there's a thin layer -- ·6· ·wafer-like material that's placed over the top of the ·7· ·bone graft.· We know when regeneration occurs, it ·8· ·regenerates from the bottom of the hole in the bone to ·9· ·the top. 10· · · · · · ·And the tissue cells that can drop down from 11· ·the gum tissue into the hole in the bone, that can 12· ·inhibit the regenerative capabilities.· So that's why			

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13· ·this thin layer is placed between the bone graft and 14· ·the gum tissue so as to exclude tissues that can 15· ·inhibit repair of the bone graft.· And these are 16· ·materials that are used for that type of thin barrier 17· ·material.			
47:10-49:24 **10· · · · Q.· ·On point number 5, you talk about the** **11· ·surgical risks associated with any dental -- are you** **12· ·specifically referring to periodontal treatment or any** **13· ·dental treatment?** 14· · · · A.· ·Periodontal surgery, periodontal surgical 15· ·risks, although any surgery is going to have similar 16· ·risks of pain, infection, swelling, bleeding.· That's 17· ·associated with all surgery. 18· · · · · · ·The regenerative treatment failure if 19· ·provided, I will always caution that regeneration does 20· ·not always occur.· And then the rest is what happens 21· ·unique to the periodontal surgery that I talked about. **22· · · · Q.· ·In a situation like Gail O'Neal's, if she had** **23· ·elected either overdenture abutment or implants, is** **24· ·there a 100 percent guarantee of success with any of** **25· ·those treatments?** ·1· · · · A.· ·There is no 100 percent success given to any ·2· ·medical dental procedure to patients. **·3· · · · Q.· ·I want to jump down to point 8.· In point 8,** **·4· ·you note, "Importance of PMT's long term.· Emphasized** **·5· ·importance of long-term follow-up to successful** **·6· ·treatment and treatment would not be successful without** **·7· ·a long-term commitment to good oral hygiene and** **·8· ·long-term periodontal maintenance."** **·9· · · · · · ·Can you explain to us why you put that note** **10· ·in there?** 11· · · · A.· ·Anytime I treat periodontal disease, I always 12· ·tell them that we can't cure the problem, such as if 13· ·you have an appendicitis attack, you remove the			

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14· ·appendix.· It's cured.· You don't have to worry about 15· ·anything.· It's gone, never an issue. 16· · · · · ·The mouth is always going to have bacteria. 17· ·As long as you're alive, you're going to have live 18· ·germs.· And those germs are what cause the gum 19· ·infection to begin with. 20· · · · · ·That's why I emphasize to patients, In order 21· ·for you to have a successful result treating your 22· ·periodontal disease, you must commit to good oral 23· ·hygiene on your part every day and then return to the 24· ·dental -- to the professional dental office for 25· ·frequent cleanings of their teeth to stay on top of the ·1· ·gum condition. **·2· · · Q.· ·In a situation like Gail O'Neal's when you** **·3· ·saw her in December of 2011, if she elects to either do** **·4· ·an overdenture abutment or an implant, is it possible** **·5· ·for her to receive that treatment -- I should -- let me** **·6· ·phrase it this way.** **·7· · · · · ·Is it possible for her to be a viable** **·8· ·candidate for either treatment, to receive good** **·9· ·treatment and for either the overdenture or the implant** **10· ·to still fail?** 11· · · A.· ·Yes.· Yes.· We know that our -- if you look 12· ·at the success rates for dental implants, typically 13· ·what's reported is a 90 to 95 percent success rate. 14· ·That means 5 to 10 percent fail for various reasons. 15· · · · · ·I think that if you look long term and over 16· ·time, you're going to find that those success rates are 17· ·going to be less than 90 to 95 percent.· We have recent 18· ·information that says that in the hands of general 19· ·dentists, it's down to probably about 80 percent 20· ·success rate. 21· · · · · ·I'll always tell the patients when I do 22· ·dental implants that they can fail.· And if they do, 23· ·then we'll address them and see what can be done			

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24· ·afterwards.			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter–designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event "Notice of Filing" and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

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PLAINTIFF DESIGNATIONS			
3:13-25 **13· · · Q.· ·What I want to do is just for the record** **14· will you state and spell your name and give your** **15· business address.** 16· · · A.· ·Yes.· It's Eric M. Sheridan.· It's E-R-I-C. 17· M, as in Matthew.· And Sheridan, S-H-E-R-I-D-A-N. 18· My work address is 799 South 2nd in Lander, Wyoming 19· 82520. **20· · · Q.· ·And how long have you been in Lander?** 21· · · A.· ·About 16 years. **22· · · Q.· ·Okay.· And is that the extent of your** **23· professional practice?** 24· · · A.· ·No, it is not.· I spent three years working 25· for the United States Air Force.			
7:12-19 **12· · · Q.· ·In other words, do you have a memory -- if** **13· we're talking now and I asked you a question about** **14· your treatment of Gail O'Neal, can you think back** **15· and recall treating her or can you only remember the** **16· treatment that you provided to her based on what's** **17· in your notes?** 18· · · A.· ·Oh.· I have a fairly good recollection of 19· Gail O'Neal, treating her, in addition to my notes.			
8:10-9:9 **10· · · Q.· ·Why don't you begin by taking us through** **11· your educational background, please.** 12· · · A.· ·As far as dental related materials, I 13· attended the University of Michigan School of 14· Dentistry from 1992 to 1996, graduated May 12th. I 15· don't know what my rank in class was, but near the 16· middle. 17· · · · · ·When I graduated dental school, I joined 18· the United States Air Force, was stationed in Grand			

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19· Forks, North Dakota.· I had the privilege of working 20· under two fairly accomplished dentists when I was 21· there.· One was Dr. Robert Olson, and he was the 22· clinical director of the United States Air Force's 23· two-year general practice residency for -- for 24· dentists, which is -- it's a fairly prestigious 25· two-year program.· But by working with him, I was ·1· able to certainly glean much more knowledge of ·2· dentistry than I would have going right out into ·3· private practice immediately. ·4· · · · ·You know, I've taken -- I -- on average, ·5· probably 15 to 20 hours of CE course every year ·6· since I graduated. ·7· · · · ·I think that sums up my education, anyways. ·8· I don't have any specialty.· I am a general dentist. ·9· I do not place implants, but I do restore them.			
18:1-20:11 **·1· · · Q.· ·How did you first come into contact with** **·2· her?** ·3· · · A.· ·I was referred by a combination of Dr. ·4· Merritt, Dr. Stern, and Dr. Okano.· They mentioned ·5· the case, that it was a complicated case, and if I ·6· was willing to go ahead and restore her teeth.· And ·7· I said, yes, I would be. **·8· · · Q.· ·Okay.· Was that your understanding of the** **·9· extent of what you would be doing is restoring her** **10· teeth?** 11· · · A.· ·Yes. **12· · · Q.· ·And will you just for the record explain** **13· that to us briefly?· What does that mean to restore** **14· her teeth?** 15· · · A.· ·Well, the case was explained to me. I 16· never saw her until there was a resolution of the 17· complications, for the most part, from her surgery, 18· specifically in the upper right area where her sinus			

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19· was at question.· So restoring her was a matter of 20· making sure her occlusion was -- was going to be 21· okay, putting in crowns over the implants, the 22· abutments over the implants, and just making sure 23· she was comfortable. **24· · · Q.· ·Comfortable as in when she talks, when she** **25· eats, she's -- she's comfortable, doesn't have any** **·1· sensitivity?** ·2· · · A.· ·That as well as pain free in general. I ·3· don't know if you've ever had a toothache before or ·4· not, but sometimes toothaches are -- you don't need ·5· a trigger.· They just hurt for no reason.· So to ·6· make -- make sure that she wasn't having ·7· complications along those lines as well. **·8· · · Q.· ·And you had mentioned that you essentially** **·9· received this referral from Dr. Stern, Dr. Merritt,** **10· and Dr. Okano.· Can you give us an idea of what your** **11· conversation with each one of them was?** 12· · · A.· ·Dr. -- Dr. Stern filled me in on the -- 13· like I said, the failed implant and the subsequent 14· attempts at addressing the failure, and then just 15· the -- the remaining implants, which were apparently 16· asymptomatic and stable, that it should be 17· relatively straightforward with the exception of the 18· area of the sinus that was in question on that -- 19· the upper right maxillary sinus. **20· · · Q.· ·And do you recall -- you talked to Dr.** **21· Stern about that.· Did he relay anything to you** **22· about the treatment that she had already received,** **23· the implants that she had already received?** 24· · · A.· ·Yes.· With the failed implant, once again, 25· on the upper right maxillary sinus, he was abhorred ·1· with how that was attempted to be resolved. **·2· · · Q.· ·And why is that?** ·3· · · A.· ·Because the implant perforated the sinus,	19:20-20:11 – Defendant objects to this testimony as it contains inadmissible hearsay, since it is what Dr. Stern said to Dr. Sheridan. The parties have stipulated to waive any objections to hearsay in medical records, but this passage does not restate medical records, but instead restates something Dr. Stern said to Dr. Sheridan.		SUSTAINED IN PART. The rationale behind FRE 803(4) is based on the assumption that "patients have an overriding interest in telling the truth when seeking medical treatment." *United States v. Norman T.*, 129 F.3d 1099, 1105 (10th Cir. 1997). Dr. Stern was not a patient seeking

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·4· resulted in a sinusitis and a mass growing in the ·5· sinus, and Dr. Merritt's subsequent involvement to ·6· try and alleviate the infection that was in there ·7· and, you know, how -- the attempted treatment from ·8· the Whitehouse -- what's the name of the -- WhiteCap ·9· Institute -- excuse me -- on resolving that, just 10· packing the sinus with artificial bone or real bone 11· and not really addressing the underlying problem.	This is admissible hearsay pursuant to Rule 803(4) statement made for medical diagnosis or treatment. The statements made by these other doctors to Dr. Sheridan were made for the purpose of Dr. Sheridan taking over care, and pertinent to the medical diagnosis and treatment he would provide to plaintiff. It further describes plaintiff's past medical history, present condition, and the inception and/or cause of the medical condition, which are all expressly admissible under Rule 803(4). Rule 803(4) does not apply as the statements are not made by the person seeking medical treatment.		treatment, and therefore, FRE 803(4) does not apply to the content of his statements to Dr. Sheridan. *Field v. Trigg County Hos., Inc.*, 386 F.3d 729, 735-36 (6th Cir. 2004). However, the fact that Dr. Stern relayed information to Dr. Sheridan about the treatment Plaintiff had already received is not hearsay. ~~The~~ This portion of testimony is admissible: "**20· · · Q.· ·And do you recall -- you talked to Dr.** **21· Stern about that.· Did he relay anything to you** **22· about the treatment that she had already received,** **23· the implants that she had already received?** 24· · · A.· ·Yes."
22:3-25:24 **·3· · · Q.· ·When you first reviewed -- or I should say** **·4· met Gail O'Neal and looked at her teeth, what were** **·5· your impressions of her overall dental health?** ·6· · · A.· ·She was somebody in need of some care to ·7· restore to closer to ideal for us.· None of the ·8· implants were uncovered in there, so they were ·9· covered with mucosa and -- and gingiva.· So 10· regarding what everything looked like in there, I 11· only had a vague complete picture.· But the teeth 12· that she had in there, there was one tooth that was 13· in need of treatment.· It had been bothering her. 14· That was her -- one of her immediate concerns.· You 15· know, the other was just frustration on her part		Exhibit 2	

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16· more than anything, because she was ready to get 17· teeth. **18· · Q.· ·Going back to your conversations with Dr.** **19· Sheridan, do you recall a letter he sent to you --** 20· · A.· ·Dr. Stern? **21· · Q.· ·-- dated June 9, 2013?** 22· · A.· ·Dr. Stern? **23· · Q.· ·Dr. Stern.· Yes.** 24· · A.· ·Would that be his treatment notes? **25· · Q.· ·This would be a letter that he sent to your** **·1· office.** ·2· · A.· ·Let me look here.· June 9th? **·3· · Q.· ·June 9th.· Yes.** ·4· · A.· ·I'm just looking at it right now, the ·5· letter. **. . .** **·8· · Q.· ·And you can see, just to make sure that** **·9· we're looking at the same document -- do you have it** **10· in front of you, you say?** 11· · A.· ·Yes, I do. **12· · Q.· ·Let's go ahead and mark this as Exhibit** **13· Number 2.· And you'll see -- what I want you to do** **14· is just read that for us just so it's clear on the** **15· record, and then I may have one or two questions for** **16· you.** 17· · A.· ·Okay.· I'll start with Dear Eric, if that's 18· okay. **19· · Q.· ·Great.** 20· · A.· ·All right.· Dear Eric, I saw Gail O'Neal 21· today.· I uncovered her implants and placed 22· transgingival healing abutments.· I am enclosing a 23· surgical note and a copy of her postoperative pan. 24· All implants seemed integrated without mobility; 25· however, there were areas of bone loss as evident in ·1· the enclosed photos.· I gave Gail a bag full of			

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·2· impression components that were sent to me by ·3· WhiteCap Institute as well as a letter from one of ·4· their doctors telling what type of implants are ·5· placed.· I do not know how much help I will be in ·6· the restorative phase; however, you may either want ·7· to call WhiteCap Dental or call the manufacturer for ·8· assistance.· Please let me know if I can help in any ·9· way.· Sincerely, Mike. **10· · · Q.· ·I want to focus on the last paragraph** **11· there.· He mentioned, I don't know how much help I** **12· will be in the restorative phase; however, you may** **13· either want to call WhiteCap Dental or the** **14· manufacturer for assistance.** **15· · · · · ·I just want to make sure I understand what** **16· Dr. Stern relayed to you.· It seems from that** **17· paragraph that he is saying you may want to consult** **18· on that with WhiteCap Dental, yet he was fairly** **19· critical of Whitecap's treatment.· Why do you** **20· suppose he asked you to consult with them despite** **21· his concerns?** 22· · · A.· ·It would be where -- let me see if I can 23· find exactly where we're talking about. 24· Regarding -- each implant system has kind of its own 25· specifications, different kind of abutments that ·1· they use.· So if it's -- if it's an implant that Dr. ·2· Stern does not typically place, a kind of an ·3· implant, he wouldn't know what kind of an abutment ·4· was available for the implant.· So it was to get ·5· some input in that respect. **·6· · · Q.· ·In other words -- let me rephrase that and** **·7· make sure I understand it.· In other words, every** **·8· implant or abutment could be a little bit different** **·9· depending on how the manufacturer makes it or** **10· produces it, and maybe Dr. Stern is not familiar** **11· with that particular type of implant; is that right?**			

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12· · · A.· ·Yes.· But mostly on the restorative phase. 13· You know, I don't know if you -- have you researched 14· endosseous implants?· I assume you have. **15· · · Q.· ·Yes.** 16· · · A.· ·There are many different kinds of abutments 17· that manufacturers will -- will make that will screw 18· into the endosseous implant.· And each abutment will 19· have different height characteristics or a different 20· marginal component to it.· So that's the way I took 21· it as far as he doesn't know how much help he'll be 22· in the restorative phase, because he's not familiar 23· with the abutments, the -- the part that screws into 24· the implant, the actual endosseous implant.			
26:6-34:8 **·6· · · Q.· ·And do you recall, when you were looking** **·7· at -- when you were doing your restorative phase,** **·8· the particular type of implants that had been placed** **·9· in Gail O'Neal's mouth, were you familiar with that** **10· type of implant or was it something that you had** **11· never dealt with before?** 12· · · A.· ·It was a little different philosophy, I 13· would -- well, I guess back to the type of implant, 14· no, I had not dealt with that type of implant, that 15· manufacturer.· Typically Dr. Stern or Dr. -- or Dr. 16· Okano place my implants, so I -- those are what I'm 17· familiar with.· But it -- it doesn't -- I guess as 18· far as the restorative aspect goes, you customize 19· your abutment as much as you can, as far as your 20· order goes, based on what the manufacturer has 21· available. 22· · · · · ·So I guess the -- the gist of it is, no, I 23· had not seen that type of implant before, but on a 24· restorative aspect it doesn't so much matter as long 25· as you know the basic principles of an implant. **·1· · · Q.· ·Okay.· Now, you mentioned just a second ago**		Exhibit 3	

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·2· that there's a different philosophy, I think is the **·3· word you used, for the placement -- placement of** **·4· implants.· Can you expound on that a little bit,** **·5· what you meant?** ·6· · · A.· ·Some of the implants were placed in such a ·7· way that it -- in my opinion as a restorative ·8· dentist, it didn't allow adequate room for proper ·9· gingival health, essentially, between teeth.· You 10· need a little space between teeth for your gum 11· tissue to be healthy.· If they're too close 12· together, it's very challenging to keep it clean, 13· and it violates something called a biologic width. 14· You need a certain amount of width between the bone 15· and the gum tissue for the gum to be healthy. 16· · · · · ·So particularly on the upper right side, 17· once again, the only implant that's remaining up 18· there is very close in proximity to the tooth in 19· front of it.· So it was -- it proved challenging to 20· restore that one.· The two implants on the lower 21· left, it was just a different way to do it, but it 22· turned out rather nicely, I have to admit.· There 23· was two implants placed that were smaller diameter 24· implants that I just utilized one each as a root of 25· a single tooth rather than each implant being an ·1· individual tooth.· And I had not done that before, ·2· but I went over it with my lab tech, and that's what ·3· we came up with.· And it worked very nicely and it's ·4· nice and stable. ·5· · · · · ·So it was, like I said, just a different ·6· philosophy on some of the things, but it seems to be ·7· functioning. **·8· · · Q.· ·And so when you say it seems to be** **·9· functioning, are you saying despite the different** **10· philosophy on the placement of those implants?** 11· · · A.· ·I'm just saying it -- by saying seems, I'm			

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12· a longitudinal dentist.· You hope for long-term 13· success.· This is -- this is two years out. I 14· wouldn't call this longitudinal yet.· So that's what 15· I'm saying.· And, yes, because it is a little 16· different way to do it, particularly on that lower 17· left side.· The upper right side, that's an area 18· that we'll monitor, because it will be a challenge 19· always for her. **20· · · Q.· ·Now, when you say it will be a challenge, I** **21· just want to make sure I understand what you're** **22· saying.· Are you saying it will be a challenge** **23· because of that close proximity?** 24· · · A.· ·Yes. **25· · · Q.· ·As of this date, when you were able to** **1· restore that upper right tooth, do you recall what** **·2· number that was?** ·3· · · A.· ·I called it number -- number 3-4, ·4· essentially.· I cantilev- -- are you familiar with a ·5· cantilever -- cantilever bridge?· Are you familiar ·6· with that at all? **·7· · · Q.· ·Why don't you go ahead and explain it for** **·8· us.** ·9· · · A.· ·Sometimes what you -- what you can do with 10· a tooth is have a singular root or a singular 11· implant hold an additional tooth off one side of the 12· implant.· When you do that, you typically try to 13· take it out of occlusion so it doesn't hit.· It's 14· just to help give soft tissue support generally in 15· there, and when you smile, to fill in black spaces. 16· But it's nonfunctional.· So I cantilevered tooth 3 17· off of the implant.· And then tooth 4 is the -- is 18· the restored functional tooth. **19· · · Q.· ·Now --** 20· · · A.· ·So if you were to look at the radiographs 21· from my office, you can see it on the -- the			

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22· leftmost radiograph of the series. **23· · Q.· ·And while you -- when you're referring to** **24· that, can you -- because on the radiographs that you** **25· provided, there's dates below them.** ·1· · A.· ·Yes. **·2· · Q.· ·Can you identify which one you're looking** **·3· at for us?** ·4· · A.· ·7/3/2013. **·5· · Q.· ·Okay.** ·6· · A.· ·The leftmost radiograph.· The implant on ·7· the top portion of that radiograph.· You can -- you ·8· can grasp how close that is to the tooth adjacent to ·9· it.· There's not a ton of room to put a tooth in 10· there.· You know, contrast that to the tooth below 11· it, the implant below it, and you can see a little 12· larger section of bone between the two teeth where 13· the implant is sitting.· That makes it a little bit 14· healthier, a little bit more easy to restore. **15· · Q.· ·And which tooth on the bottom on that** **16· radiograph that you're identifying, which tooth is** **17· on the bottom and which tooth is on the top?** 18· · A.· ·On the bottom would be tooth 30.· And on 19· the top would be 3-4. **20· · Q.· ·So 3-4, if I look at this radiograph with** **21· the date 7/3/2013 --** 22· · A.· ·Yes. **23· · Q.· ·-- that is the bottom of the radiograph;** **24· correct?** 25· · A.· ·3-4 is the top of the radiograph. **1· · Q.· ·3-4 is the top of the radiograph.** ·2· · A.· ·Yes. **·3· · Q.· ·And the bottom of the radiograph is where** **·4· the date is; correct?** ·5· · A.· ·Correct. **·6· · Q.· ·Are you looking at your clinical notes and**			

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·7· radiographs for Gail O'Neal right now, then? ·8· · · A.· ·Yes, I am. **·9· · · Q.· ·Why don't we go ahead and attach that as** **10· Exhibit 3, please.** 11· · · A.· ·Yes. **12· · · Q.· ·And we're going to refer to this a little** **13· bit more as we go along here.** 14· · · A.· ·Okay. **15· · · Q.· ·Now, you mentioned that you placed -- you** **16· placed a restorative crown on number 4, and then you** **17· placed a certain kind of bridge so that it also** **18· covered the space where number 3 was; correct?** 19· · · A.· ·Correct. **20· · · Q.· ·Was it your understanding when you did that** **21· that it was impossible to place an implant in -- in** **22· the place of where tooth number 3 had been?** 23· · · A.· ·Yes. **24· · · Q.· ·Why was that impossible?** 25· · · A.· ·Well, I guess nothing is impossible.· Let's ·1· rephrase that, if I may.· Just unpredictable.· And ·2· once again, as I said, we try to be longitudinal ·3· dentists.· We want long-term success.· When you have ·4· areas of chronic infection, massive surgeries, the ·5· bone is unpredictably healthy, we don't know how a ·6· healing response would be when placing an implant in ·7· there.· Dr. Stern, in conversation, discouraged an ·8· implant there. **·9· · · Q.· ·Are you aware of any procedures that Dr.** **10· Stern did that essentially prevented any additional** **11· placement of implants in the number 3 spot?** 12· · · A.· ·No, I am not. **13· · · Q.· ·If Dr. Stern had done such a procedure that** **14· prevented any additional implants, would that, in** **15· your opinion, I guess hinder Gail O'Neal's dental** **16· health?**	32:7-8. Defendant objects as it contains inadmissible hearsay from Dr. Stern. This is admissible hearsay pursuant to Rule 803(4) statement made for medical diagnosis or treatment. The statement made by Dr. Stern to Dr. Sheridan was made for the purpose of Dr. Sheridan taking over care, and pertinent to the medical diagnosis and treatment he would provide to plaintiff. It further describes plaintiff's present		SUSTAINED. The rationale behind FRE 803(4) is based on the assumption that "patients have an overriding interest in telling the truth when seeking medical treatment." *United States v. Norman T.*, 129 F.3d 1099, 1105 (10th Cir. 1997). Dr. Stern was not a patient seeking treatment, and therefore, FRE 803(4) does not

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17· · · A.· ·Well, I guess what we -- it seems like a 18· leading question or speculation or something. I 19· don't know.· The way you're wording that, I'm 20· uncomfortable with.· You know, when you have chronic 21· sinusitis and a large mucocele or growth in the 22· sinus, you need to get that treated.· That will lead 23· to long-term issues.· So that needed to get 24· resolved.· That was the primary focus with Dr. 25· Merritt.· I think he was kind of the head runner on ·1· that, from what I understand from Dr. Stern.· So any ·2· surgeries that Dr. Stern did, from what it looked ·3· like to me, was just uncovering the implants and ·4· getting the healing caps in there. ·5· · · · ·You know, hypothetically, if there was ·6· something done that prevented an implant from being ·7· placed in there, yes, that would compromise a ·8· complete ideal dental health.· But in, I think, ·9· realistic terms, like I said, you have to deal 10· with -- deal with the cards you're dealt with, get 11· infection under control and pain under control. **12· · Q.· ·It was your understanding that the process** **13· here was that Dr. Merritt would treat her for the** **14· sinus issues she was having first; correct?** 15· · A.· ·Correct. **16· · Q.· ·And then once he completed that treatment,** **17· then she would follow up on care between you and Dr.** **18· Stern to address the additional dental problems.· Am** **19· I thinking correctly?** 20· · A.· ·Yes.· I would say that's accurate. **21· · Q.· ·Are you aware of an oro- -- oroantral** **22· fistula closure?** 23· · A.· ·Yes.· That's when the implant perforated 24· the sinus.· That's called an oral antral 25· communication, which means you have a -- essentially ·1· a hole that goes from your mouth up into your sinus.	condition. Such testimony is expressly admissible under Rule 803(4). This is not a hearsay exception because the statement is not made by the person being treated (in this case, the Plaintiff). Therefore, the medical diagnosis exception does not apply. Also, the statement from Dr. Stern does not describe a "present sense impression." It states that he discourages an implant. Since Dr. Stern is not describing or explaining an event or condition, but is instead relaying an opinion, the testimony is inadmissible hearsay and should not be allowed.		apply to the content of his statements to Dr. Sheridan. *Field v. Trigg County Hos., Inc.*, 386 F.3d 729, 735-36 (6th Cir. 2004). The testimony is also not describing or explaining an event or condition for the FRE 803(1) exception to apply.

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·2· So if you were to drink a glass of milk when you had ·3· such a complication, the milk would actually come ·4· out your nose.· I mean, it -- the whole thing is ·5· kind of an open system at that point.· And our ·6· mouths are dirty.· So that's where the sinus ·7· infection, the chronic sinusitis would come from, ·8· yes.			
41:1-42:1; 42:2-21 **1· · · Q.· ·Why don't we do this, Dr. Sheridan.· Why** **·2· don't we start with your July 3rd, 2013 entry.** ·3· · · A.· ·Okay. **·4· · · Q.· ·Why don't you go through each entry for us** **·5· and describe generally what you did and why you did** **·6· it.· And I may stop you occasionally along the way** **·7· to ask some questions.** ·8· · · A.· ·Okay.· Patient presents for -- this is the ·9· 3rd at 2:33 p.m.· Patient presents for new patient 10· exam and treatment plan.· Patient has been working 11· with Dr. Okano, Dr. Flath, Dr. Stern.· 7 verts 12· taken.· Patient has had scan at Dr. Olsen's and a 13· pan at -- in SLC at the office that placed her 14· implants.· Patient has several implants and Dr. 15· Stern will be exposing them so we can restore with 16· crowns. 17· · · · · ·Patient stated that number 17 still bothers 18· her sometimes.· Dr. Sheridan requested PA, and it 19· revealed that the patient does have an abscess 20· present.· He feels that the tooth should come out. 21· Patient sees Dr. Stern again next week so Dr. 22· Sheridan will talk to him about a treatment plan. 23· We also took upper and lower study model and bite 24· registrations.· Patient will return to clinic for 25· review of findings.· Patient understood.· Signed, ·1· me. **·2· · · Q.· ·When you talked in that note about treating**			SUSTAINED

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·3· tooth number 17, you noted that it likely would have **·4· to be extracted; correct?** ·5· · · A.· ·Correct. **·6· · · Q.· ·Number 17 is a tooth that was not treated** **·7· by WhiteCap Institute; correct?** ·8· · · A.· ·I can't answer that. **·9· · · Q.· ·Do you know if it was treated by WhiteCap** **10· Institute?** 11· · · A.· ·I do not. **12· · · Q.· ·Do you know if Dr. Stern treated tooth** **13· number 17?** 14· · · A.· ·I know he did not. **15· · · Q.· ·And when you looked at tooth number 17 on** **16· that date in July of 2013 --** 17· · · A.· ·Yes. **18· · · Q.· ·-- did you think it had any relation, in** **19· terms of the deterioration it received, to the** **20· implants that were placed by WhiteCap Institute?** 21· · · A.· ·No, I do not.· No relation.	(42:2-21 moved from counter-designation to completeness designation)		
42:22-50:20 **22· · · Q.· ·Why don't we jump to your next note, Dr.** **23· Sheridan.** 24· · · A.· ·Okay.· Patient presents for consult 25· appointment.· Patient would like to start moving ·1· forward with crowns over implants.· Patient also ·2· states number 17 is still hurting.· Dr. S examined ·3· implants and number 17.· Number 17 is now becoming ·4· mobile and positive to percussion.· Recommend ·5· patient take a prescription and return to clinic for ·6· surgical extraction number 17 in two weeks as tissue ·7· was still healing in number 18 and 19 area.· Patient ·8· understood and is scheduled for extraction number ·9· 17. 10· · · · · ·Implants healing well.· However, patient is 11· still waiting for Dr. Stern to expose number 4 and			

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12· place a healing cap.· Dr. Stern did not have enough 13· healing caps to fit all implants.· Patient did not 14· want to wait for number 4 to be exposed.· She wants 15· to go ahead and schedule appointment for crowns.· In 16· six weeks patient will have -- will return to clinic 17· for impressions for crowns over implants number 12, 18· 13, 14, 19, 30, and possibly 4 if healing cap has 19· been placed by then, all zirconia.· Patient also 20· wants to do crown preps number 8 and 9 at same time, 21· both Empress crowns.· Number 4 and 14 will have rest 22· seats in case patient wants to get an upper partial 23· in future.· Reaction given.· Patient is scheduled 24· for extraction number 17 and crown preps. **25· · · Q.· ·Couple questions about that.** ·1· · · A.· ·Yes. **·2· · · Q.· ·About the middle of that note, you** **·3· mentioned that the implants were healing well.· Are** **·4· those the implants that WhiteCap Institute placed?** ·5· · · A.· ·They are.· Specifically, it would be the ·6· healing caps over the implants are healing well. ·7· It's a surgery to -- to put a -- when you put an ·8· endosseous implant in, it's a little tricky.· It's ·9· kind of a race.· You want the bone to heal before 10· your gum tissue grows down along the implant.· So 11· you kind of cover things up and let it heal 12· undisturbed to allow the bone to heal completely and 13· actually grow into titanium. 14· · · · · ·But then you have to expose it.· You 15· have -- once it's been there for a sufficient amount 16· of time, and it varies, you expose it and put a 17· healing cap in.· And that's sometimes uncomfortable, 18· because you have to remove gum tissue and you suture 19· the gum tissue around the healing caps.· And that's 20· what that was referring to.· But, yes, it is those 21· same implants.			

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22· · · Q.· ·And so the healing cap is something that is **23· put on there that is kind of like a crown; is that** **24· right?** 25· · · A.· ·Sort of.· It's -- it's nonfunctional.· Its ·1· goal essentially is to help shape your gum tissue ·2· just a little bit, provide a place to put the ·3· abutment down into the endosseous implant.· You ·4· know, the abutment is the part that a crown is ·5· either screwed into or -- or cemented into.· So the ·6· healing cap is just to shape the gum tissue, ·7· essentially, and provide access for the restoring ·8· dentist. **·9· · · Q.· ·Okay.· So it's put in there to provide** **10· essentially a safe environment for the abutment so** **11· that the restorative dentist can them come in** **12· later --** 13· · · A.· ·Yes. **14· · · Q.· ·-- put on the crown, and have it be** **15· successful?** 16· · · A.· ·You got it. **17· · · Q.· ·And would the healing caps -- are you --** **18· are you aware of the -- of this provider that** **19· provided those to Gail O'Neal?** 20· · · A.· ·It looks like, from what I read on Dr. 21· Stern's note from Exhibit 2, WhiteCap Institute, 22· I -- I think, supplied those. **23· · · Q.· ·Did those appear to you to be appropriate** **24· healing caps?** 25· · · A.· ·Yes.· Absolutely.· Yes. **1· · · Q.· ·And then going just further down that note,** **·2· you -- the middle lower part, you said, Patient did** **·3· not want to wait for number 4 to be exposed.· Can** **·4· you explain that to us a little bit?** ·5· · · A.· ·With the components that Dr. Stern received ·6· from WhiteCap, they were one healing cap short, I			

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·7· think, is what it looked like.· So he did not ·8· provide that avenue that I was telling you about ·9· where you remove the gum tissue and put the healing 10· cap in so we have access.· He just left it covered 11· rather than exposing it without a healing cap. **12· · · Q.· ·With the intent of putting on a healing cap** **13· at a later date when he had it and then addressing** **14· number 4?** 15· · · A.· ·Yes. **16· · · Q.· ·And then the sentence below that, you note,** **17· In six weeks patient will return for implants -- or** **18· what is IMPS?** 19· · · A.· ·Oh, I'm sorry.· Impressions. **20· · · Q.· ·Impressions for crowns over implants 12,** **21· 13, 14, 19, 30, and possibly 4.** 22· · · A.· ·Yes. **23· · · Q.· ·Just -- just to make sure that I understand** **24· that correctly, so the idea here is that after those** **25· healing caps have done their work in six weeks, she** **·1· will return for impressions so she can get the --** **·2· the impressions for the crowns for those implants** **·3· which you will do as the restorative dentist;** **·4· correct?** ·5· · · A.· ·Yes. **·6· · · Q.· ·Okay.· Why don't we go to the next note,** **·7· please.** ·8· · · A.· ·Number 17 surgical extraction.· Review ·9· medical history.· Blood pressure 153 over 84.· Pulse 10· 60.· One carpule of mepivacaine 2 percent, one 11· carpule of Septocaine, a half carpule of Marcaine 12· anesthetic.· Patient gave postoperative instructions 13· and extra gauze.· Patient has also been contacted -- 14· excuse me.· Patient has also been having some 15· discomfort between back molars lower right.· Dr. 16· Sheridan explained that she has an open contact and			

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17· is catching food, so we will need to do crown number 18· 30 well -- as well -- 31 as well.· Patient 19· understood.· Gave prescription for infection and 20· pain. **21· · Q.· ·At that time you were not treating number 3** **22· and number 4; correct?** 23· · A.· ·That's correct. **24· · Q.· ·Okay.· Let's go to the next one.** 25· · A.· ·Okay.· Patient presents for crown preps 1· number 8 and 9 and for impressions for crowns over ·2· implants.· Patient just had cancerous lesion removed ·3· from upper -- left upper lip around vermilion ·4· border.· Patient had the suture removed recently so ·5· we will try not to stretch lip too much.· Vaseline ·6· liberally applied throughout procedure. ·7· · · · ·Number 8 and 9 Empress, 12, 13, 14, 19, 30 ·8· Brux crowns over implants.· We will only be doing ·9· one crown, number 19, in 18-19 area due to close 10· proximity of the two implants.· There isn't enough 11· room/clearance to place two separate crowns.· One 12· implant will act as the distal root, the other will 13· act as the mesial root. 14· · · · ·Review medical history.· BP 152 over 71. 15· Pulse 55.· Two carpules of mepivacaine 2 percent 16· anesthetic.· Cotton roll isolation.· Penta upper and 17· lower full arch impressions taken.· Used putty bite 18· registration from last time as per Dr. S.· Healing 19· caps removed from implants and metal impression 20· copings placed.· PA taken upper left to make sure 21· copings were seated and not cross-threaded.· Sent to 22· Lord's lab.· Stump shade number 8-A1, number 9-A3. 23· Basic shade 8 and 9.· Gingival A2 blend to A1 and 24· trans.· Shade for implant crowns A2.· Placed healing 25· caps back onto implants.· Structure temp number 8 ·1· and 9 cemented with NexTemp.· Patient scheduled for			

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·2· delivery. **·3· · · Q.· ·I just want to clarify, about the middle of** **·4· that note you said you will be doing one crown** **·5· number 19 and number 18-19 area due to close** **·6· proximity of the two implants.· Is that the one that** **·7· you were referencing earlier where because of the** **·8· close proximity you essentially did one crown and it** **·9· ended up working out quite well?** 10· · · A.· ·Yes.· It is. **11· · · Q.· ·Let's go to the next note.** 12· · · A.· ·Okay.· Patient presents to deliver number 8 13· and 9 as well as crowns over implants 12 through 14, 14· 19, and 30.· Number 19 crown was not in occlusion, 15· so Dr. S would like to send it back for more 16· porcelain.· Triple tray impression with light body 17· denture wash taken with crown in place to show how 18· much porcelain needs to be added.· Send back to have 19· porcelain added. 20· · · · · ·Tried to torque the rest of the implant 21· abutments down, but we did not have the right 22· wrench.· My lab guy, Mike, must have sent the wrong 23· one.· Hand tightened abutments only on -- or on 12 24· through 14 and 30 and delivered crowns with NexTemp. 25· Number 8 and 9 delivered crowns with RelyX Luting 1· Cement.· Placed chlorhexidine.· Dr. S will call Mike ·2· to see about a different torque wrench and patient ·3· is scheduled to redeliver crowns over implants on ·4· October 9th. **·5· · · Q.· ·I think you've already answered my question** **·6· on that, but Mike is your lab technician?** ·7· · · A.· ·That's correct. **·8· · · Q.· ·Okay.· Let's go to the next note.** ·9· · · A.· ·Okay.· Number 19 deliver crown with RelyX 10· Luting Cement.· Tried to remove bridge on upper left 11· to torque abutments down and recement with RelyX,			

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12· but it wouldn't come off.· Dr. S recommended we wait 13· until temp cement starts to weaken.· Same with 14· number 30.· Patient has been having a lot of cold 15· sensitivity with number 8 and 9 new crowns.· Checked 16· and adjusted occlusion.· Polished.· Patient could 17· feel a difference right away.· Patient needs to make 18· another appointment with Dr. Stern to uncover number 19· 4 and place healing cap.· Patient gave another card 20· for Dr. Stern.			
51:7-51:18 **·7· [Q].· Go ahead.** ·8· · · A.· ·Implant pieces from Dr. Stern in patient's ·9· paper chart.· And that's the -- the healing caps and 10· the impression copings, et cetera, for 3 and 4. 11· · · · · ·Number 3 and 4 Brux cantilever bridge over 12· implant number 4.· Review of medical history.· One 13· carpule mepivacaine 2 percent anesthetic given. 14· Removed healing cap and placed impression coping. 15· Penta solid upper impression taken.· Lower alginate 16· and bite reg sent to Lord's lab.· Shade A2.· Healing 17· cap replaced.· Patient scheduled for delivery of 18· crowns.			
51:22-57:14 **22· · · Q.· ·My -- my impression from what you said** **23· earlier is that the crown that you placed in the** **24· number 3-number 4 area is the one that concerned you** **25· the most; correct?** ·1· · · A.· ·I would say that's accurate. **·2· · · Q.· ·And the reason it concerned you the most is** **·3· because of the close proximity to the back molars?** ·4· · · A.· ·No.· To tooth number 5. **·5· · · Q.· ·To tooth number 5?** ·6· · · A.· ·Which is the premolar medially or mesially ·7· to number 4.· So in front of number 4. **·8· · · Q.· ·And so that concern that you had with the**			

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·9· close proximity to number 5, has that presented a **10· problem at any time for Gail O'Neal since you placed** **11· it?** 12· · · A.· ·We addressed it.· Yes, it had.· But we just 13· thinned the porcelain a little bit more to try and 14· give as much additional room as we could.· It's 15· called the interdental col, C-O-L.· You need a 16· certain amount of space in there, like I said 17· before, for your gum tissue to be healthy.· But 18· it -- the last time I saw her, she was doing well. **19· · · Q.· ·And that interdental col that you said,** **20· that space that you need --** 21· · · A.· ·Yes. **22· · · Q.· ·-- were you -- when you re-addressed that** **23· crown on 3 and 4, was that interdental col able to** **24· be met, for lack of a better way to say it?** 25· · · A.· ·I would say improved.· I -- I don't think 1· met.· But as I said, it's going to be an ongoing ·2· issue with her probably as far as keeping it clean. ·3· And she may -- every time she brushes her teeth or ·4· flosses her teeth in that particular area, she may ·5· experience bleeding.· Not significant amounts of ·6· blood or anything like that.· But when you don't ·7· have that adequate space, it just -- it leaves a ·8· little inflammation in there.· And inflammation ·9· essentially is just increased blood flow. **10· · · Q.· ·So if an implant -- because there's not an** **11· implant in number 4; correct?** 12· · · A.· ·There is an implant in number 4. **13· · · Q.· ·There's not one in number 3; correct?** 14· · · A.· ·Correct. **15· · · Q.· ·If there were an implant in number 3, could** **16· that area have been addressed differently so that** **17· there would be sufficient col area?** 18· · · A.· ·No.· It's all -- no.· That has to do with			

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19· the placement of number 4. **20· · · Q.· ·So would you say this space, this col space** **21· between the teeth, is that something that's** **22· promulgated by the American Dental Association or** **23· some other governing body?** 24· · · A.· ·I would say there is -- it's not a -- it's 25· not a -- I don't know.· I don't -- I don't know how ·1· to word that.· It is something that is taught.· We ·2· try to respect the biology of the body.· And ·3· that's -- you know, that is part of the Hippocratic ·4· Oath, as much as we're able to, you know, you try ·5· and create ideal situations as best you can. ·6· · · · · ·That tooth is not quite an ideal situation. ·7· Is it functional?· Yes.· Will it function for a long ·8· time?· Probably.· But will it be a little bit ·9· annoying?· Yes.· So I wouldn't say it's something 10· that's promulgated by the ADA or anything like that; 11· it's just there's a right way and a maybe not quite 12· so right way. **13· · · Q.· ·Okay.· And when you say right way and maybe** **14· not so right way, you mean in terms of the placement** **15· of the implant; is that right?** 16· · · A.· ·I would say, yes, in respecting the -- the 17· limits of the body essentially. **18· · · Q.· ·And I guess what do you mean by that when** **19· you say respecting the limits of the body?** 20· · · A.· ·There's a -- I briefly touched on this 21· before.· There's a biologic width that it's kind of 22· a minimal requirement about how far you stay away 23· from bone when we restore things to allow for 24· healthy gingiva.· So you -- when we restore crowns 25· and things like -- restore teeth with crowns and 1· place implants, what have you, as dentists in ·2· general, you try to promote a healthy biologic ·3· width.· That's what I mean.			

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·4· · · Q.· ·And so if that biologic -- that healthy **·5· biologic width is not maintained, that's what you** **·6· would classify as not -- not ideal?· Am I saying** **·7· that correctly?** ·8· · · A.· ·Yes.· You -- in my opinion.· I am not an ·9· expert on this, but, yes, if you violate those kind 10· of rules of thumb, it will just leave inflammation. 11· And inflammation over time does strange things.· It 12· could lead to bone loss long term, you know.· And it 13· might be -- not manifest for 10 years or 15 years, 14· but it -- it would have an effect on it.· So -- but 15· is it functional?· As I said before, yes, it's 16· functional.· Can she chew on it?· Absolutely, she 17· can chew on the tooth.· It's just not quite ideal. **18· · · Q.· ·Are you aware of any of the circumstances** **19· surrounding the placement of implant number 4?** 20· · · A.· ·I am not. **21· · · Q.· ·When -- well, let me get to that in just a** **22· second.· Why don't you go to your next note.** 23· · · A.· ·Okay.· Was that -- **24· · · Q.· ·November 19th, 2013.** 25· · · A.· ·Okay.· Patient presents for PXSC, which is ·1· just a cleaning.· No CC, which is chief complaint. ·2· Patient states all feels good for now.· See perio ·3· chart for current probe depths.· All are less than ·4· 4 millimeters.· Discussed need for using floss ·5· threaders where needed.· Recommend brushing two ·6· times daily and flossing daily as well.· Light ·7· deposit. **·8· · · Q.· ·What does light deposit mean?** ·9· · · A.· ·Oh.· That's funny.· A little bit of tartar, 10· calculus tartar.· You've had your teeth cleaned, I'm 11· certain, so you know when a hygienist cleans your 12· teeth, they have to remove deposits that are on your 13· teeth.· So she had light deposit.· It -- sorry.· I'm			

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14· just giggling because I'm thinking we might have 15· come up with a different way to -- way to write 16· that.· All right. **17· · · Q.· ·Understandable.· Understandable.** 18· · · A.· ·US is ultrasonic.· HS is hand scale. 19· Implant -- spelled wrong -- instrument and polish. 20· Okay.· Sorry. **21· · · Q.· ·I was going to just say, are you aware of** **22· any gum or bone diseases that Gail O'Neal had been** **23· treated for prior to your treatment of her?** 24· · · A.· ·No, I am not.· But periodontal disease is 25· something that is life- -- lifelong.· If you have it 1· even a little bit, you'll always be classified as ·2· having it.· She has a little bit of bone loss in a ·3· couple of places.· That's -- you know, whether or ·4· not she got treatment for that, I'm unaware, but... **·5· · · Q.· ·Did you think that -- the little bit that** **·6· you were aware of, did you think that eliminated her** **·7· as a candidate for implants?** ·8· · · A.· ·I don't -- I -- I don't think so ·9· necessarily.· As I said before, I didn't see her 10· until everything was resolved, so I don't -- I don't 11· know what it looked like where the trouble implant 12· was.· But aside from that, it looks like she has 13· sufficient bone to work with where every other 14· implant is placed.			
58:5-59:17 **·5· · · Q.· ·Let's go ahead and go to your next note,** **·6· please.** ·7· · · A.· ·On the 18th of December, number 3 and 4 ·8· delivered crown with RelyX Luting Cement.· And -- **·9· · · Q.· ·Does that mean that you actually placed the** **10· crown on that date?** 11· · · A.· ·Yes. **12· · · Q.· ·Okay.· Do you recall any concerns that Gail**			

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13· O'Neal had at that time when you placed that crown? 14· · · A.· ·We had explained to her that there was not 15· an ideal space in there between the -- this is not 16· from notes.· This is memory.· Not an ideal space in 17· there for the crown on the front side of number 4, 18· the mesial side.· So her concerns were just that. 19· She knew she would have to work a little harder for 20· that area. **21· · · Q.· ·Okay.· Let's go to your next note, please.** 22· · · A.· ·And this is June 2nd, 2014.· Exam.· Prophy. 23· No films.· Review medical history.· CC, patient 24· states that tissue number 3-4 region is sometimes 25· sensitive to brush.· Dr. X -- S explained that due ·1· to position of implant there is not adequate col, ·2· interdental col, area for tissue.· Dr. S did with ·3· high speed reshape crowns number 3-4 area to allow ·4· for more space.· No other need for treatment.· All ·5· probing depths within normal limits.· No BOP. ·6· Patient -- which is bleeding on probing.· Patient ·7· has difficulty getting floss threaders under ·8· implant, so I asked her to try going from the ·9· lingual, which is by the tongue side, and also 10· demonstrated soft picks going from lingual as well. 11· Ultrasonic.· Hand scale.· Polish. **12· · · Q.· ·And your reference to getting floss under** **13· the implant, that is the implant placed at the 3-4** **14· region; correct?** 15· · · A.· ·Probably, but not necessarily.· I'm sorry 16· that's not the most clear note there.· But probably 17· 3-4 since that's what we were talking about earlier			
60:7-61:2 **·7· · · Q.· ·Okay.· Let's go ahead and go to your** **·8· December 9th, 2014 note.** ·9· · · A.· ·Okay.· Adult prophy.· Panoral.· Review 10· medical history.· No chief complaints.· All probing			

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11· depths within normal limits.· No bleeding on 12· probing.· Patient has not seen Dr. Stern for over a 13· year following implants.· I took panoral today for 14· Dr. S to review as well as Dr. Stern.· However, it 15· was deleted.· My front desk person will call patient 16· and reschedule pano and exam with Dr. S.· Patient 17· was not charged for pano today.· Implant instrument. 18· Ultrasonic.· Hand scale.· Polish. **19· · · Q.· ·Dr. S is referring to you, Dr. Sheridan?** 20· · · A.· ·Yes.· Sorry. **21· · · Q.· ·Great.· And let's go to the last note** **22· there.** 23· · · A.· ·Patient presents for pano and doctor exam. 24· Took pano.· Revealed implants look fantastic. 25· Doctor noted patient had excellent home care. ·1· Tissue is looking great.· No problems.· Will just ·2· see patient back in six months for cleaning.			
61:9-64:22 9· · · A.· ·And there may be a little enthusiasm there 10· on -- on that note, because I didn't know how clean 11· she'd be able to keep that number 3-4 area.· But 12· as -- as you can see there, there was no -- the 13· previous, from the 9th, no bleeding on probing, 14· which was great, which means that she's working hard 15· enough that she's fighting inflammation in that 16· space between 4 and 5. **17· · · Q.· ·And so since your exam and treatment on** **18· December -- excuse me -- June 2nd, 2014, for that** **19· 3-4 region, are you aware of any complications that** **20· she's had in that region from the crown?** 21· · · A.· ·I am not. **22· · · Q.· ·Are you aware of an oral fistula that Gail** **23· O'Neal had prior to your treatment?** 24· · · A.· ·I am aware that she had one, yes. **25· · · Q.· ·Do you have any opinions as to that oral**			

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·1· fistula? ·2· · · A.· ·My opinions would be based on my ·3· conversation with Dr. Stern, but yes.· It's kind of ·4· what we went over before when I was -- I guess be ·5· more specific, if you would.· What do you want to ·6· know? **·7· · · Q.· ·So -- sure.· So when you had the** **·8· conversation with Dr. Stern -- and let me just make** **·9· sure that I understand what you're saying correctly.** **10· You're saying your opinions, if any, on the oral** **11· fistula are -- are from your conversation with Dr.** **12· Stern; is that right?** 13· · · A.· ·Yes.· As I have said, I didn't see Gail 14· until all of the major complications were resolved. 15· So I didn't see the oral antral communication. I 16· didn't see the treatment for it.· All I saw was the 17· end result.· So I guess my opinion regardless of 18· that is I know that an implant was placed in her 19· sinus.· That's the only way you'll get an oral -- 20· well, not the only way, but in this case that's the 21· way you're going to get an oral antral 22· communication.· And then the treatment was 23· inappropriate to resolve it.· So that's my opinion 24· on that. **25· · · Q.· ·Okay.· Why don't you explain that a little** **·1· more, because that is really getting into the meat** **·2· of this matter.· Why -- do you think that placement** **·3· of the implant on number 3 fell below the standard** **·4· of care and why?· And why do you think the** **·5· subsequent treatment, if any, fell below the** **·6· standard of care?** ·7· · · A.· ·As I kind of alluded to before -- I guess ·8· you said you've read up on endosseous implants.· So ·9· you know that an implant needs to be surrounded by 10· bone, essentially, to be stable.· If you put your	61:25-64:22. Defendant objects to this testimony as it contains inadmissible hearsay as it includes comments of Dr. Stern's that Dr. Sheridan is relating, and because Dr. Sheridan lacks foundation to provide these opinions, as he did not see the oral antral fistula, and his opinions derive only from what he was told by Dr. Stern. He admits on page 64 that "he can't prove [his opinion] because [he doesn't] have the stupid records." Doctors are allowed to base their opinion testimony on facts or data that they have "been made aware of or personally observed." Rule 703 of the Federal Rules of Evidence. Dr. Sheridan is not required to have personally observed the fistula to testify about it. He is also allowed to based his opinions on facts or data that is not admissible itself, such as hearsay, as long as experts in that field would reasonably rely on such facts/data. It is reasonable and common for doctor's to rely on the opinions, statements, and records of prior treating doctors when making opinions related to the care and treatment of a patient. Further, this is admissible hearsay pursuant to Rule 803(4) statement made for medical diagnosis or treatment. These statements made by Dr. Stern to Dr. Sheridan were made for the purpose of Dr. Sheridan taking over care, and pertinent to the medical diagnosis and treatment he would provide to plaintiff. It further describes plaintiff's past medical history,		~~OVERRULED (IN PART see below reputation issue). Dr. Sheridan may base his opinion on facts and data that he "has been made aware of or personally observed." FRE 703. The testimony is not relying hearsay statements to the jury. Dr. Sheridan indicates his opinion is based on his conversations with Dr. Stern (without disclosing the contents), and his personal observation of Dr. Stern and Dr. Merritt's records, and his treatment of Plaintiff. There is sufficient foundation for the opinion offered.~~

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11· implant into epithelium, which is kind of the sinus, 12· it won't be solid.· So that is a concern.· But also 13· you run the risk of communicating bacteria from your 14· mouth, in this case, because it was up in the sinus, 15· into the sinus, which creates a whole slew of other 16· issues.· Not only do you have an infection to worry 17· about, but you also have inflammation.· And as I 18· said before, inflammation is essentially just 19· increased blood flow.· When you have increased blood 20· flow in those places, it hurts.· It's painful.· Have 21· you ever had a sinus infection? **22· · · Q.· ·Let me -- let me ask you this, then.· You** **23· were mentioning the placement of the implant so that** **24· it's not surrounded by bone that continues to** **25· further perforate the sinus; right?** ·1· · · A.· ·Well, it was -- it was -- it doesn't ·2· nec- -- well, it may.· Like I said, I didn't see -- ·3· you're asking me to speculate a little bit here. **·4· · · Q.· ·And that's -- and that's what we want to** **·5· know.· I want to know, are you basing this opinion** **·6· exclusively off of what Dr. Stern told you or are** **·7· you basing it off of medical records and radiographs** **·8· that you have reviewed that show the sinus was** **·9· perforated?** 10· · · A.· ·Okay.· I have -- or I had read Dr. Stern's 11· records as well as Dr. Dr. Merritt's.· But like I 12· said, that was -- I can't prove that, because I 13· don't have the stupid records.· But I can see the 14· resultant effects of it based on the scar in her -- 15· in her mouth from the multiple surgeries to try and 16· resolve it.· That's undeniable.· So I think there is 17· a degree of inference that you can get from that. 18· Dr. Stern is, I think, exceptional as an oral 19· surgeon.· He's got great credentials.· I think Dr. 20· Merritt is exceptional as an ENT.· So just knowing	present condition, and the inception and/or cause of the medical condition, which are all expressly admissible under Rule 803(4). Additionally, the quote from page 64 is misleading and taken out of context. The full quote is: 10· · · A.· ·Okay.· I have -- or **I had read Dr. Stern's** **11· records as well as Dr. Dr. Merritt's**.· But like I 12· said, that was -- I can't prove that, because I 13· don't have the stupid records.· **But I can see the** **14· resultant effects of it based on the scar in her --** **15· in her mouth from the multiple surgeries to try and** **16· resolve it.· That's undeniable.·** So I think **there is** **17· a degree of inference that you can get from that.** 18· **Dr. Stern is, I think, exceptional as an oral** **19· surgeon.· He's got great credentials.· I think Dr.** **20· Merritt is exceptional as an ENT.· So just knowing** **21· that those two were both involved in the case** **22· implies a certain level of complication in there.** (emphasis added). This quote also outlines all of the bases for the opinions expressed by Dr. Sheridan on		

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21· that those two were both involved in the case 22· implies a certain level of complication in there.	this issue, including his review of past medical records, his personal examination of the patient, and his experience and history with the other two doctors involved in trying to fix plaintiff's mouth. This testimony, in conjunction with the earlier designated testimony laying out the doctor's education, training, and experience, qualify him to offer these opinions. First, the hearsay exception does not apply because the person being treated is not the speaker. Second, he admits that he lacks the foundation to reach his opinions, so his testimony should not be allowed.		~~This is not objected to for improper reputation evidence, but has the issue~~ ~~The testimony is improper reputation evidence, which does not go to Dr. Stern and Dr. Merritt's character for truthfulness and is not helpful to understand Dr. Sheridan's testimony or a fact in issue. *See* FRE 404(a), 608(a), 701. However, this testimony may be admissible to rebut other evidence of Dr. Stern and Dr. Merritt's qualifications as a practitioners, or to show Dr. Sheridan's bias.~~
66:23-67:24 **23· · · Q.· ·So the main overarching question on all of** **24· this is, then, do you have any opinions as to Dr.** **25· Clark's treatment, whether or not it fell below the** **·1· standard of care?** ·2· · · A.· ·I would say that the implants I restored, ·3· with the possible exception of 4, and time will tell ·4· on that -- as I said before, you know, we try to ·5· plan things long-term -- I think they were placed ·6· fine, appropriately.· The implant that failed, if ·7· it's in the sinus, it's inappropriate.· And ·8· that's -- there's no questioning that.· You -- you ·9· can't question that.· But that's not necessarily the 10· crux of the matter, in my opinion here.· And this is 11· opinion.· Eventually in life we're all going to make 12· mistakes.· It's -- it's just going to happen.· When 13· you do, you treat that right as best you can.· And 14· if you can't treat it, you send them to somebody who 15· can.· And I -- from what Gail told me about the	66:23-67:24. Defendant objects to this testimony as it contains inadmissible hearsay as it is a recitation of what Gail O'neal and Dr. Stern told Dr. Sheridan. Defendant also objects as Dr. Sheridan lacks foundation to reach these opinions. He admits that his conclusions came "exclusively" from Dr. Stern and Gail O'neal, and that since he didn't see the treatment, his opinions are "conjecture." For these reasons, this testimony should not be allowed. There are several opinions stated in this section, including: 1) the implant #4 placed in the sinus was inappropriate, 2) the procedure and subsequent treatment of the infection is questionable. It is a reasonable and common practice of doctor's taking over a patient's care to rely on the history of		OVERRULED. Dr. Sheridan may base his opinion on facts and data that he "has been made aware of or personally observed." FRE 703. The testimony is not relying hearsay statements to the jury. Dr. Sheridan indicates his opinion is based on his conversations with Dr. Stern (without disclosing the contents) and Plaintiff. He also earlier discussed that his opinions are also based on his personal observation of Dr. Stern and Dr. Merritt's records, and his treatment of Plaintiff. There is sufficient foundation for the opinion offered.

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16· procedure and treating the infection, I question if 17· that was done correctly.· From what Dr. Stern told 18· me about the treatment, I question if it was done 19· appropriately in there.· So that's my opinion.· Once 20· again, I didn't see it, so it is conjecture, but 21· take that -- take that for what it's worth. **22· · · Q.· ·That information you say came exclusively** **23· from Dr. Stern and Gail; correct?** 24· · · A.· ·Yes.	the patient, both as given by the patient and other treating doctors. This is an allowable basis for a doctor to give opinion expert testimony under Rule 703. It is also clear from this section of testimony that the doctor is basing this on his own examination of plaintiff, and he had reviewed the prior treatment records of Dr. Stern and Dr. Merritt. As was stated above, Dr. Sheridan has the education, experience and training to give this expert opinion testimony, which is reasonable based on his own treatment of the patient, his review of the records, and his conversations with the patient and Dr. Stern regarding her previous care. His own testimony demonstrates the lack of foundation for this statement. He says that "The implant that failed, if it's in the sinus, it's inappropriate." But he doesn't know if it is in the sinus. This will be confusing to the jury. He also says that "I question if that was done correctly." He does not give an opinion that it was done incorrectly. This is also confusing to a jury. And most importantly, he admits that "I didn't see it, so it is conjecture…" This is the ultimate reason that he lacks the foundation for these speculative opinions. He did not opine that to a reasonable degree of medical probability Dr. Clark's treatment caused the implant failure. Instead, he engages only in speculation and conjecture, and therefore lacks the foundation to present this testimony.		

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68:24-69:24 **24· · · Q.· ·I guess, are you aware of what treatment** **25· Dr. Clark provided to Gail O'Neal post placement of** **·1· the implants?** ·2· · · A.· ·In general, yes.· Specifics, no.· I know ·3· that there was bone placed up into the sinus around ·4· the implant, hoping to encourage it to stabilize. ·5· But as I said before, it's kind of a race against ·6· biology with an implant.· You want your bone to grow ·7· into it before your epithelium does.· If your ·8· epithelium grows into the implant, it's unstable. ·9· That's a failed implant.· Those are the 2 percent 10· implants that fail, is when epithelium gets in 11· there.· If it was placed in the sinus and you had a 12· communication, the epithelium would be racing along 13· the implant.· They grow -- epithelial tissues grows 14· much faster than bone.· It will migrate quickly.· So 15· you do what you can to preserve that. 16· · · · · ·In this case, if it was placed up into the 17· sinus, which it appeared it was based on her 18· panoramic radiograph, you can see the -- the 19· augmentation in the sinus, the bone, et cetera, the 20· scar up there, it -- it wouldn't be effective 21· because it's not -- it's not allowing the bone to 22· get into the implant.· The epithelium is already 23· there.· So, you know, it needed to be taken out 24· right then.			
DEFENDANT COUNTER-DESIGNATIONS			
34:19-35:5 **19· · · Q.· ·When you placed implants number 3 and** **20· number 4, teeth number 3 and number 4 in your mouth** **21· are molars; correct?** 22· · · A.· ·No.· 3 is a molar.· Number 4 is a premolar. **23· · · Q.· ·Okay.· When you look at number 3 and number** **24· 4, with -- in someone like Gail O'Neal, are you**			

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25· aware of any literature promulgated by the ADA or **·1· any other governing dental body that states that the** **·2· placement of implants as close as they were placed** **·3· in number 3 and number 4 constitutes a breach of the** **·4· standard of care?** ·5· · · A.· ·No, I am not.·			
35:14-37:18 **14· · · Q.· ·Now, when we look at that radiograph you** **15· identified in Exhibit 3, the -- the tooth -- or** **16· excuse me -- the implant that had been placed in** **17· number 3 and then had subsequently been removed was** **18· already removed when you saw her; correct?** 19· · · A.· ·That is correct. **20· · · Q.· ·Okay.· Are you aware of and did you receive** **21· any records related to Gail O'Neal's dental** **22· treatment prior to you treating her besides what you** **23· received from Dr. Stern?** 24· · · A.· ·I don't believe -- well, I got -- I do have 25· the letter from Dr. Woods.· It was not addressed to ·1· me, but it was addressed to Dr. Stern, just ·2· explaining which implants were used.· And that was ·3· dated June 6, 2013.· Dr. Stern gave me that so that ·4· I could figure out what kind of abutments I would ·5· use for the Hiossen implants.· As I said before, ·6· those are implants that I had not restored before, ·7· but... **·8· · · Q.· ·Did you receive any -- any records from the** **·9· WhiteCap Institute?** 10· · · A.· ·Just those.· Oh, wait a minute.· Yes.· I -- 11· like I said, I got a stack from Dr. Stern that I 12· don't have, unfortunately.· Those are -- are 13· missing.· But that was -- that was his treatment of 14· the infection and the exposure of the implants.· But 15· I -- I don't have anything from WhiteCap here. **16· · · Q.· ·Okay.· So just to be clear, the records**			

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17· that you say you received from Dr. Stern that you no **18· longer have, what did those constitute?** 19· · · A.· ·The treatment of the infection, 20· essentially, and the exposure of the -- the 21· implants. **22· · · Q.· ·And who would those records be from?· In** **23· other words, which -- which health care providers'** **24· records did that constitute?** 25· · · A.· ·Dr. Merritt and Dr. Stern. **·1· · · Q.· ·And so you did not have any records from** **·2· the WhiteCap Institute?** ·3· · · A.· ·I have the letter from Dr. Stern with the ·4· WhiteCap -- from the WhiteCap Institute, but I do ·5· not have any of their records, no.· And quite ·6· frankly, I don't -- I don't think that the letter -- ·7· or the records that I got from Dr. Stern had ·8· anything from WhiteCap, but it may have.· I don't ·9· think so, though. **10· · · Q.· ·Do you recall if the records from Dr. Stern** **11· also included any records from Dr. Shane?** 12· · · A.· ·I do not. **13· · · Q.· ·Do you recall if they included any records** **14· from Dr. Crane?** 15· · · A.· ·I do not. **16· · · Q.· ·Do you recall if they included any records** **17· from Dr. Okano?** 18· · · A.· ·I do not.			
61:3-5 **·3· · · Q.· ·When you said the implants looked** **·4· fantastic, is that referring to all implants --** ·5· · · A.· ·Yes.	(This is already included, in context, in Plaintiff's designations above.) These lines were not included in Plaintiff's designation, and should therefore be allowed.		OVERRULED. However, this testimony should be moved to completeness in Plaintiff's designation.
64:23-65:9; 65:9-19 **23· · · Q.· ·You had mentioned earlier that there are** **24· other causes of an oral fistula; correct?**			

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25· · · A.· ·Yes. **·1· · · Q.· ·Are you aware of any sinus infections that** **·2· Gail O'Neal had prior to your treatment?** ·3· · · A.· ·I am not. **·4· · · Q.· ·Are you aware of Dr. Merritt ever opining** **·5· that WhiteCap Institute or Dr. Clark's treatment** **·6· fell below the standard of care?** ·7· · · A.· ·I -- I don't think I can answer that.· No. ·8· You know, I -- I don't think they ever came out and ·9· said that, certainly.· But like I said, it's -- for 10· me, there's a certain inference that you can get 11· from it. **12· · · Q.· ·Okay.· Is that inference -- you said that** **13· inference is based on the information you were able** **14· to glean from Dr. Stern and from your review of Gail** **15· O'Neal and what appeared to be surgery that she** **16· received in the 3 to 4 region; correct?** 17· · · A.· ·In the 2 to 3 region. **18· · · Q.· ·In the 2 to 3 region.** 19· · · A.· ·Yes.	Defendant objects to lines 9-11 as they are non-responsive to the question, and therefore moves to strike this testimony. Allowing this question to come in without giving the full answer and explanation that follow is misleading, as it suggests that Dr. Merritt was not critical of Dr. Clark's treatment, which is directly contrary to Dr. Sheridan's testimony and understanding as he explains in the lines plaintiff has added. It should either all come in, or none of it should come in.		OVERRULED.
65:22-66:2 **22· · · Q.· ·Are you aware of anybody besides Dr. Stern** **23· who has opined that WhiteCap Institute or Dr.** **24· Clark's treatment of that -- I'm going to say 2 to** **25· 4 -- number 2 to 4 region, fell below standard of** **·1· care?** ·2· · · A.· ·No.			
66:12-22 **Are you aware of what the success** **13· rate is for the placement of implants?** 14· · · A.· ·Generally.· Not specifically.· It varies. **15· · · Q.· ·And it's certain that each implant will be** **16· absolutely successful?** 17· · · A.· ·No.			

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18· · · Q.· ·And I think, correct me if I'm wrong, you **19· had mentioned earlier you do not place implants.** **20· You focus primarily on restorative work; is that** **21· right?** 22· · · A.· ·That's correct.			
70:12-18; 70:18-21 **12· If another treating provider** **13· were to opine that Gail O'Neal's oral fistula is** **14· directly attributable to something other than the** **15· implant at number 3-4 area, would that change your** **16· opinion as to Dr. Clark's treatment?** 17· · · A.· ·Well, yes, because it should be 2 to 3 18· area, not 3-4 area.· But if there was already an 19· oral antral communication present, that's an 20· automatic contraindication to get an implant put in 21· there.			
70:22-71:2 **22· · · Q.· ·Would you expect a patient to notify you of** **23· any sinus problems that they may be have -- may be** **24· experiencing prior to the placement of an implant?** 25· · · A.· ·I think that would be something that would ·1· have been reviewed in the medical history.· Yes, I ·2· would expect that.			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter–designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event "Notice of Filing" and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.

Case Name O'Neal v. P.K. Clark/Whitecap Institute *Case Number* 14-CV-363 *Deposition of* Colton Crane, D.M.D. *taken* Friday, May 22, 2015			
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PLAINTIFF DESIGNATIONS			
8:9-10 ·9· · · · A.· ·My name's Colton James Crane.· The business 10· ·address is 850 Main Street in Lander, Wyoming 82520.			
9:3-14 **3· · · · Q.· ·Perfect.· Why don't you take us through your** **·4· ·educational background really quick.** ·5· · · · A.· ·Okay.· I graduated with an accounting degree ·6· ·from Utah State University in 2001 with minors in ·7· ·economics, animal science, and chemistry.· I went to ·8· ·dental school at the Harvard School of Dental Medicine ·9· ·in Boston, Massachusetts, between 2001-2005, where I 10· ·received my DMD degree. 11· · · · · · ·In 2005, I passed the Northeastern Regional 12· ·board in 2005 and the Wyoming State board in 2005 and 13· ·began practicing in Lander with Dr. Michael Shane in 14· ·2005.· And that's my education, I suppose.			
10:14-20; 10:21-25 **14· · · · Q.· ·Have you had any additional training,** **15· ·educational training, certification besides your** **16· ·accounting degree and your dental degree?** 17· · · · A.· ·Pretty much every year between when I started 18· ·practicing and this year, I've gone and done continuing 19· ·education courses on implants, on materials, on 20· ·occlusion, on lots of different topics. 21· · · · · · ·Up until just recently, the State of Wyoming 22· ·has no continuing education requirement.· But I went 23· ·and did continuing education every year anyway because 24· ·I wanted to stay current and make sure I was doing 25· ·everything correctly.			
11:1-7 **1· · · · Q.· ·Approximately how many hours of continuing** **·2· ·education would you say you do a year?** ·3· · · · A.· ·Well, usually about one course, so it depends			

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·4· ·on how many hours it is.· The one course I went to was ·5· ·almost 20 hours, and I've been to courses that are five ·6· ·or six hours.· So probably an average of 10 to 12 hours ·7· ·a year of continuing education I would say.			
12:5-7, 9-19 **·5· · · · Q.· ·Why don't you just walk us through your work** **·6· ·background then when you started working with Dr. Shane** **·7· ·in 2005 to present.** ·. . . ·9· · · · · · ·[A.] Started in September or October of 2005. I 10· ·don't remember exactly which month it was, but it was 11· ·late in the year 2005 I began working with him.· We 12· ·went through a transition company, Mercer Transition 13· ·Company. 14· · · · · · ·And they had set up the transition process 15· ·that said that I was to meet with him on a weekly basis 16· ·to receive continuing education from him on a weekly 17· ·basis as far as materials, methods, everything that 18· ·was -- that I was going to be using in his practice. I 19· ·worked with him from 2005 through 2007.			
13:12-18 12· ·. . . I started practicing with Dr. Fowler 13· ·in 2007.· I think it was December of 2007.· And I 14· ·purchased that practice in May -- May 28th of 2008. 15· · · · · · ·And I worked there for about a year and a 16· ·half.· And at some point in 2009 or the beginning of 17· ·2010, I received a phone call from a Dr. Teresa Ruehl, 18· ·who had been a dentist out at Indian Health Services.			
14:2-13 2· ·. . . She called me, told me she would like ·3· ·to come and work in Lander, would I be interested in ·4· ·having her as an associate. ·5· · · · · · ·Initially I told her no because I didn't ·6· ·think the practice was busy enough.· But after some			

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·7· ·discussion, told her she could come as long as she knew ·8· ·she might not be busy.· She could work a couple days a ·9· ·week or whatever. 10· · · · · ·She agreed to that.· She came, started 11· ·working.· That was in I think 2011.· It's been a while, 12· ·but I think it was 2011 when she came and started 13· ·working with me.			
14:20-15:22 20· · · · · ·After a year or two, it became obvious that 21· ·there wasn't going to be enough work for both of us to 22· ·be full time.· So at that point we started looking at 23· ·other options. 24· · · · · ·We looked at a practice in Dubois.· We looked 25· ·at this practice over here as a satellite practice. ·1· ·The original intent was for she and I to both work in ·2· ·both offices. ·3· · · · · ·But I came over here first because I had been ·4· ·in the area longer and knew more people.· I'm on the ·5· ·college board.· So I figured that I would be able to ·6· ·establish a clientele more rapidly than she would. ·7· · · · · ·I started work here two to three days a week. ·8· ·And then at the time we decided on -- for her to buy ·9· ·half the practice.· She informed she didn't want to buy 10· ·any part of the Riverton office, she only wanted to buy 11· ·the Lander office. 12· · · · · ·We had some discussions.· And agreement was 13· ·made.· I sold her the Lander office.· And that was 14· ·probably three -- two and a half -- probably two and a 15· ·half years ago now.· It was December of 2013, I 16· ·believe.· Let's see, '14.· No.· It would have been 2012 17· ·is when I sold her that practice. 18· · · · · ·I've been working both offices since. I 19· ·worked here with Dr. Sackett.· He's the person that 20· ·owned this practice previously.· He now works two days 21· ·a week.· I work here four days a week, and I work in			

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22· ·Lander one day a week with Dr. Ruehl.			
16:21-17:1 **21· · · Q.· ·Do you have any opinions of Dr. Shane as a** **22· ·practitioner?** 23· · · A.· ·I think that Dr. Shane is an excellent 24· ·practitioner.· I saw his work firsthand for two years. 25· ·And he was careful.· He was cautious.· I think he's ·1· ·very good at what he did.			
17:7-10 **7· · · Q.· ·Do you recall -- do you have an independent** **·8· ·memory of treating Gail O'Neal apart from your** **·9· ·treatment records?** 10· · · A.· ·No.			
19:8-20:22 **·8· ·remember.· Do you have an independent memory of** **·9· ·treating Gail O'Neal on December 18th, 2012, apart from** **10· ·your clinical notes?** 11· · · A.· ·I remember she came to the office. I 12· ·remember having a conversation with her.· I rendered no 13· ·treatment at that visit, merely visited with her, did a 14· ·quick exam, and discussed possible options for her to 15· ·pursue with the situation that she was in. **16· · · Q.· ·Do you recall why she was seeing you at that** **17· ·time?** 18· · · A.· ·She told me that she had been a patient of 19· ·Dr. Shane's, and that Dr. Shane had referred her to the 20· ·WhiteCap Institute in Utah.· And I really hadn't heard 21· ·of the WhiteCap Institute before.· So I didn't know 22· ·anything about them.			
20:25-22:6; 22:7-10 **25· · · Q.· ·And when you did your examination of** **·1· ·Gail O'Neal, what were your impressions?** ·2· · · A.· ·Well, first of all, it was a very brief exam ·3· ·because it was something that I felt like was beyond my ·4· ·ability to really treat.· So when we -- when I looked,			

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·5· ·I could see a perforation going up into the sinus.· And ·6· ·my impression was that this was an area that was going ·7· ·to need someone besides me to fix it. ·8· · · · · ·And so she and I had a discussion.· I told ·9· ·her that she really had two options.· I don't know if 10· ·you want me to keep going or if you want me to stop 11· ·because I've already answered the previous question. **12· · · Q.· ·Maybe just summarize.· Maybe if you've** **13· ·already answered, maybe just summarize briefly.** 14· · · A.· ·Well, anyway, I told her she had two options. 15· ·That one option would be to go back to the WhiteCap 16· ·Institute and let them try to fix whatever was wrong, 17· ·give them another chance to do a bone graft, place some 18· ·implants, or if she didn't feel comfortable going back 19· ·to the WhiteCap Institute for whatever reason, that I 20· ·would recommend she go see an oral surgeon because it 21· ·was beyond my scope of treatment. 22· · · · · ·I told her that he would be a good person to 23· ·give her a second opinion and would be able to likely 24· ·fix whatever was wrong.· And that if she wanted me to, 25· ·I would be happy to restore the implants that he placed ·1· ·at some point. **·2· · · Q.· ·Did you refer her to a specific oral surgeon?** ·3· · · A.· ·You know, I refer to two oral surgeons. I ·4· ·don't remember if I specifically said one or the other, ·5· ·but I always refer to Dr. Stern in Jackson or Dr. Hardy ·6· ·in Casper. 7· · · · · ·I mean, this has been three years ago, and ·8· ·I've referred a lot of people to oral surgeons.· And I ·9· ·don't remember if I specifically referred her to one or 10· ·the other or gave her an option.· I don't remember.			
22:11-14 **11· · · Q.· ·I'm going to hand you what has been** **12· ·previously marked as Exhibit No. 2.** 13· · · · · · . . ., this is Dr. Crane's		Exhibit 2	

Case Name O'Neal v. P.K. Clark/Whitecap Institute *Case Number* 14-CV-363 *Deposition of* Colton Crane, D.M.D. *taken* Friday, May 22, 2015			
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14· ·records, Bates stamp numbers Crane 001 through 005.			
DEFENDANT COUNTER-DESIGNATIONS			
16:11-20 **11· · · Q.· ·What was your professional relationship with** **12· ·Dr. Shane?· Was it amicable or was it --** 13· · · A.· ·At first it was amicable.· Yeah, it was fine. 14· ·I was an associate.· He was a doctor.· And then when I 15· ·found out he wasn't going to sell me the practice, then 16· ·it became a little tense. 17· · · · · ·We always were professional with each other 18· ·and never -- I mean, we speak -- we're on good terms 19· ·now as far as things go.· So that's my impression of 20· ·the situation.			
20:22-24 **22· · · Q.· ·Do you recall her saying anything along the** **23· ·lines of she had lost faith or trust in Dr. Shane?** 24· · · A.· ·I don't remember her saying that.· I don't.			
23:3-24:11 3· · · Q.· ·Did you review any treatment records from any ·4· ·other dental practitioners? ·5· · · A.· ·No.· I simply did a quick exam, looked at the ·6· ·situation, listened to her story, and said, Based on ·7· ·what you've told me, these are your two options.· That ·8· ·was the extent of our conversation. ·9· · · Q.· ·Did you ever mention to Gail O'Neal in any 10· ·form that Dr. Clark had crippled her for life? 11· · · A.· ·No, absolutely not. 12· · · Q.· ·At any point did you make a determination or 13· ·conclusion that Dr. Clark was not qualified to treat 14· ·Gail O'Neal? 15· · · A.· ·No.· What I -- I what did say to her was that 16· ·if she wasn't happy with the work that had been 17· ·rendered, that there was an oral surgeon who would be	Plaintiff objects to 23:24-24:11 pursuant to Rules 702-703 and 403 of the Federal Rules of Evidence. This is improper expert opinion testimony (Rule 702-703), without sufficient foundation or basis. See Plaintiff's Motion in Limine on this subject (Doc. 64). Further, despite the doctor's admission that he does not know enough to have a strong opinion, this testimony suggests to the jury that this was just work that failed, and there was no violation of the standard of care. This is confusing and misleading to the jury, and should be barred by Rule 403. 9:3-14 and 10:14-20, sections both quoted by Plaintiff, demonstrate that Dr. Crane has foundation to talk about dental care, standard of care and causation of damages. He has certainly laid the foundation to		OVERRULED. Dr. Crane is qualified to offer an opinion as to these matters and his testimony will assist the trier of fact. Dr. Crane has a DMD from Harvard School of Dental Medicine, has passed the Northeastern Regional and Wyoming State boards, and has been a practicing dentist for approximately 12 years. He has also performed

Case Name **O'Neal v. P.K. Clark/Whitecap Institute** ***Case Number*** **14-CV-363**
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18· ·able to help her at this point. 19· · · · · ·But I -- I didn't know enough information 20· ·about her case or Dr. Clark to make an assessment. I 21· ·just said, These are your two options based on -- 22· ·you've got to decide what you're most comfortable with 23· ·and then do that. 24· · · Q.· ·Do you have any opinion about Dr. Clark's 25· ·treatment of Gail O'Neal? ·1· · · A.· ·I mean, it's obvious that that upper right ·2· ·quadrant failed.· But anytime you're doing bone ·3· ·grafting and things like that, there's a chance it's ·4· ·going to fail. ·5· · · · · ·So I don't think that it -- I don't think it ·6· ·would represent -- I really don't have a strong opinion ·7· ·of it.· I've seen work from oral surgeons fail.· I've ·8· ·seen work fail many times.· It's kind of the nature of ·9· ·treatment.· And so I would say I don't know enough of 10· ·the situation to have a strong opinion one way or the 11· ·other.	talk about failure rates of implants, and his ultimate opinion is that these implants were within the normal failure rates. This is not confusing to a jury. A jury will be able to understand the argument that a bad outcome does not necessarily mean a breach of the standard of care. If anything, this testimony will help them understand that there are four elements to negligence: Duty, breach, causation and damages. This testimony will help them understand that not all four were met. There was a duty, but it was not breached, even if the care caused damage. For that reason, this testimony is critical. Furthermore, Plaintiff is already eliciting opinions of quality of dental care regarding other providers, specifically, Dr. Shane, when asking his opinion on Dr. Shane in 16:21-17:1. Therefore, Plaintiff's argument that Dr. Crane lacks foundation is contradictory. Finally, Finally, Plaintiff objects to the entire section, but only lines 23:24 – 24:11 actually contain opinions. The rest are facts about Dr. Crane's treatment and should be allowed regardless of any ruling on Dr. Crane's foundation.		continuing education, including courses on dental implants, and has experience with seeing failed procedures. Dr. Crane's opinions are sufficiently reliable—they are based on the application of his knowledge and training to his treatment of Plaintiff. Dr. Crane's reasoning is sufficiently scientifically valid; there are no impermissible analytical gaps between premises and conclusions. Additionally, the probative value of the testimony is not substantially outweighed by any potential for confusing or misleading the jury.

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PLAINTIFF DESIGNATIONS			
4:16-19 **16· · · Q.· ·(By Mr. Pendleton) And just for the record,** **17· ·will you state your name and business address for us.** 18· · · A.· ·My name is Michael Shane.· My practice 19· ·location is 8125 Highway 789, Lander, Wyoming.			
7:2-9, 15-23 **2· · · Q.· ·Education beginning with graduate school.** **·3· ·Actually, let's start with undergraduate school.** ·4· · · A.· ·I have a Bachelor of Science degree with a ·5· ·major in zoology and minor in chemistry from ·6· ·Brigham Young University.· I graduated in 1970.· I went ·7· ·to dental school at the University of the Pacific in ·8· ·San Francisco.· I graduated in 1974, the degree of ·9· ·Doctor of Dental Surgery. . . . **15· · · Q.· ·Did you do any other post-dental school** **16· ·training?** 17· · · A.· ·Lots of hours of continuing education. **18· · · Q.· ·And how many hours would you say you do per** **19· ·year?** 20· · · A.· ·Well, while I practiced in California, we 21· ·were required to do 55 hours every two years.· So I did 22· ·that, in excess of that.· Here, I usually get, oh, 8 to 23· ·20 hours a year.			
8:5-14 **·5· · · Q.· ·. . . you mentioned that you had** **·6· ·practiced in California for a while.· Why don't you** **·7· ·take us through your work background starting from when** **·8· ·you graduated in 1974.** ·9· · · A.· ·I graduated in 1974.· I began practice in 10· ·Castro Valley, California, which is just east of 11· ·San Francisco.· I practiced there for about four years 12· ·as an associate.· I then moved to San Jose, California,			

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13· ·where I started my own practice.· I practiced in 14· ·San Jose for 17 years and then moved to Wyoming.			
9:1-8 **·1· · · Q.· ·All right.· And so you practiced four years** **·2· ·in Castro Valley, moved to San Jose, had your own** **·3· ·practice there for 17 years, and then moved to Wyoming.** **·4· ·So you've been in Wyoming approximately --** ·5· · · A.· ·Since 1994, 21 years this year. **·6· · · Q.· ·And have you practiced exclusively in Lander** **·7· ·that entire time?** ·8· · · A.· ·Yes.			
10:22-11:21 **22· · · Q.· ·I understand that you trained a little bit** **23· ·with Dr. Clark at one point; is that correct?** 24· · · A.· ·Yes. **25· · · Q.· ·When was that?** Page 11 ·1· · · A.· ·I don't remember the -- the date.· It's been ·2· ·five years ago perhaps. **·3· · · Q.· ·And what was the purpose for that training?** ·4· · · A.· ·Implant training.· I spent a week there and ·5· ·did that course.· It was an implant course for a week. ·6· ·And then I went back later with two patients for a ·7· ·mentoring session with him.· And that's all.· Well, no, ·8· ·I have been back with him again for tissue transplant ·9· ·training, a little occlusion training. **10· · · Q.· ·After the one-week training that you had with** **11· ·him, how many times have you trained with him** **12· ·thereafter?** 13· · · A.· ·Well, the mentor session and perhaps two 14· ·other times, two other classes. **15· · · Q.· ·And so those two other classes, were they a** **16· ·week-long session as well?** 17· · · A.· ·Two days. **18· · · Q.· ·Two days.· And you said the topics focused on**			

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19· ·tissue transplant and what else? 20· · · A.· ·There was some occlusion, soft tissue 21· ·transplant, augmentation.			
13:3-14:17 **·3· · · Q.· ·Let's turn a little bit to your treatment of** **·4· ·Gail O'Neal.· I'm going to hand you Exhibit No. 2.** ·5· · · · · ·(Exhibit 2 marked.) ·6· · · · · ·. . . this is Gail O'Neal's ·7· ·treatment records from Dr. Shane.· It's Bates numbered ·8· ·Shane 1 through Shane 26. ·9· · · · · ·. . . . **10· · · Q.· ·. . . Do you recognize those** **11· ·records, Dr. Shane?** 12· · · A.· ·Yes. **13· · · Q.· ·And what are they?** 14· · · A.· ·These first few pages are treatment notes 15· ·when Gail was in my office.· Then the next -- the rest 16· ·of it are X-rays and intra oral photographs I took 17· ·during the course of treatment and notes from 18· ·Dr. Clark's treatment. **19· · · Q.· ·Do you have an independent memory of treating** **20· ·Gail O'Neal apart from your notes, your treatment** **21· ·notes?** 22· · · A.· ·No. **23· · · Q.· ·Let's jump into your notes real quick.· How** **24· ·long approximately have you been treating Gail O'Neal?** 25· · · A.· ·Began in 1997, from 1997 to 2002, and then it ·1· ·began again in 2012. **·2· · · Q.· ·Why was there a break from 2002 to 2012?** ·3· · · A.· ·I don't know. **·4· · · Q.· ·From your treatment of Gail O'Neal, do you** **·5· ·have any general impressions about her dental health** **·6· ·and hygiene?** ·7· · · A.· ·Up to -- up to 2002, things were -- things ·8· ·were healthy.· There wasn't any advanced periodontal		Exhibit 2	

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·9· ·disease.· When we saw her again in 2012, she had 10· ·advanced periodontal disease involving most of her 11· ·posterior teeth in the upper arch. **12· · · Q.· ·And had you placed a bridge on her upper** **13· ·arch?** 14· · · A.· ·Yes. **15· · · Q.· ·And do you recall approximately when that** **16· ·was?** 17· · · A.· ·I can look, but it's 2002.			
16:12-17:10 **12· · · Q.· ·Why don't we go into your notes now.· And for** **13· ·sake of time and brevity, why don't you just go through** **14· ·each date that you treated Gail and provide us with a** **15· ·summary of your treatment and why you provided that** **16· ·treatment.** 17· · · A.· ·Do you want me to read the notes or just 18· ·summarize the notes? **19· · · Q.· ·If you can summarize them for the sake of** **20· ·brevity, that might be a little more helpful.** 21· · · A.· ·We saw her first January 10th, 2012. I 22· ·examined her and informed her that she had -- there was 23· ·a lot of bone loss on the upper right and upper left. 24· ·We gave her some options about removing some bridges. 25· ·She could have crowns and some implants, perhaps a ·1· ·removable partial denture. ·2· · · · · ·We talked to her about extracting tooth ·3· ·number 12 and number 16.· That's on the upper left.· We ·4· ·found an abscess on tooth number 18 in the lower left ·5· ·quadrant and told her that she needed a root canal ·6· ·there. ·7· · · · · ·We talked a little bit about how -- how ·8· ·implants would be done, including sinus lifts, and told ·9· ·her that I would refer to Dr. Clark in Heber Utah to 10· ·have any implants done.			

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18:7-8, 18:17-19:19 ·7· ·. . . My notes, I have seeing her for the first time ·8· ·in January 2011.· And this is January 2012. **17· ·. . . Why don't you** **18· ·start with January of 2011 and describe your treatment** **19· ·of Gail O'Neal starting at that point.** 20· · · A.· ·She came in experiencing discomfort in her 21· ·upper left area, pointed to her very last tooth, which 22· ·is tooth number 16.· She had been taking ibuprofen for 23· ·that.· We took an X-ray, took some intraoral pictures. 24· · · · · ·We explored gum tissue, did a perio probing. 25· ·Those numbers, the perio probing showed on tooth number ·1· ·16 that she had considerable bone loss, especially on ·2· ·the distal aspect of number 16. ·3· · · · · ·We told her that it was periodontally ·4· ·involved, that there could be a fracture, which is ·5· ·possible.· Tooth had a perio abscess.· We told her at ·6· ·the time we could clean the root surface off and place ·7· ·a perio chip in there to help kill the bacteria in that ·8· ·area.· That would work as a temporary as long as -- ·9· ·temporary relief as long as the area was kept clean. 10· · · · · ·If the tooth was cracked, we told her it 11· ·would have to be extracted.· Then we could either look 12· ·at either implants or partial denture.· The only other 13· ·treatment she had was just to do nothing. 14· · · · · ·She reported that she'd like to hang onto the 15· ·tooth as long as she could because she doesn't want to 16· ·do anything right now, doesn't want to have the tooth 17· ·extracted until it bothers her more.· She was 18· ·acceptable to having the area cleaned and placing a 19· ·perio chip.· That's what we did.			
20:7-21:21 **7· · · Q.· ·Please continue.** ·8· · · A.· ·We next saw her in January -- on ·9· ·January 26th, 2011.· And she was here for a hygiene			

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10· ·visit.· I believe that was a hygiene visit. A 11· ·panographic X-ray was taken.· Four bite wings were 12· ·taken. 13· · · · · ·We did a comprehensive exam.· We asked her 14· ·about areas that were bothering her, and it was the 15· ·same as when she first come in.· The upper left area 16· ·was feeling better. 17· · · · · ·We perio probed everything.· I told her that 18· ·she doesn't have a lot to do except on the upper left 19· ·side, talked to her about losing that tooth on the left 20· ·side.· She understood that. 21· · · · · ·I told her that if she loses the tooth, then 22· ·she will lose the bridge also on that side.· And she 23· ·understood that.· I talked to her about seeing a 24· ·periodontist -- Dr. Okano is the one we use -- and 25· ·having him take a look at the area on that side.· She ·1· ·understood that. ·2· · · · · ·Also told her that she had a 6 millimeter ·3· ·pocket on the lower left side of her mouth.· We talked ·4· ·to her about the importance of seeing the periodontist ·5· ·so she didn't lose any more bone.· She understood that. ·6· · · · · ·We talked about the removal of the bridge on ·7· ·the upper left side.· And then -- let's see.· Once we ·8· ·removed that bridge, we talked about how to fill that ·9· ·space.· We talked about a partial denture or implant or 10· ·do nothing. 11· · · · · ·I told her that if she does nothing that she 12· ·will be forced to chew on the other side and do more 13· ·chewing on the front of her mouth.· Those teeth just 14· ·weren't built to be chewed on the way back teeth are. 15· · · · · ·I explained to her that Dr. Okano's office is 16· ·in Rock Springs, but he does come to Lander, and she 17· ·can see him to begin with.· We gave her Dr. Okano's 18· ·card.· I told her once she sees Dr. Okano, he will 19· ·write to me and let me know what he had found.· And			

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20· ·then she can return to our office to discuss the 21· ·results.			
22:3-24:14 **3· · · Q.· ·If you look at -- it's about the middle of** **·4· ·that record, there's a sentence that states, "Doctor** **·5· ·states that implants are the best option."** ·6· · · A.· ·That's right.· I did.· It's there.· I felt ·7· ·that implants would be a better option than a removable ·8· ·partial denture. **·9· · · Q.· ·And why did you think that was the best** **10· ·option?** 11· · · A.· ·Fixed -- fixed prostheses are better than 12· ·removable.· They're cleaner.· Patients wear them 13· ·better.· They function better. **14· · · Q.· ·Is that typically contingent on their ability** **15· ·to properly receive an implant?** 16· · · A.· ·Correct. **17· · · Q.· ·Let's turn to your next note.** 18· · · A.· ·Next note is February 18th, 2011.· This is a 19· ·hygiene visit.· I was at the hospital doing a hospital 20· ·case that day.· Hygienist did the treatment and 21· ·categorized her periodontal situation -- it's an 22· ·American Academy of Periodontology type 3, which means 23· ·that she had pockets between 4 and 8 millimeters and 24· ·would probably need surgery to correct the bony 25· ·defects. **·1· · · Q.· ·Is that -- that severity of the pockets, is** **·2· ·that why you referred her to Dr. Okano?** ·3· · · A.· ·Yes. **·4· · · Q.· ·Why don't you go to your next note.** ·5· · · A.· ·The next note is August 17th, 2011.· This was ·6· ·six months later, another hygiene visit.· Patient's not ·7· ·reporting any problems.· She's aware that something ·8· ·needs to be done to the bridge on the upper left.· And ·9· ·she's waiting until she sells her calves to do			

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10· ·anything. 11· · · · · ·Plaque buildup around the bridges, again, 12· ·same -- the same category of periodontal disease.· And 13· ·she's planning on visiting Dr. Okano after she sells 14· ·her calves. **15· · · Q.· ·Do you recall if Gail O'Neal did, in fact,** **16· ·visit Dr. Okano?** 17· · · A.· ·She did. **18· · · Q.· ·Do you recall what the results of that visit** **19· ·were?** 20· · · A.· ·Yes.· We have his notes, his letter to me. I 21· ·can refer to that.· Dr. Okano's letter is dated 22· ·December 12th, 2011.· That's when she was in for an 23· ·exam. 24· · · · · ·She was well aware of the significant 25· ·periodontal concerns in the maxillary left area. Page 24 ·1· ·Dr. Okano also noted concerns in other regions and ·2· ·discussed overall concerns with potential treatment ·3· ·alternatives.· He said, "I believe Gail is receptive to ·4· ·pursuing much treatment from both of our offices to ·5· ·restore dental health and function." ·6· · · · · ·Diagnosis was chronic isolated advanced ·7· ·periodontitis.· The factors are subgingival plaque, ·8· ·biofilms, and calculus.· Complicating factors were ·9· ·isolated severe periodontal destruction of key 10· ·prosthetic abutment teeth. 11· · · · · ·She had a progressing vertical defect on the 12· ·distal of number 29, loss of several maxillary teeth, 13· ·compromises -- with compromises in prosthetic support 14· ·for the future.			
25:7-26:22; 26:20-27:6 **7· · · Q.· ·You had already gone through your** **·8· ·January 2012 visit with her?** ·9· · · A.· ·Uh-huh (affirmative).	26:20-22 is repeated in plaintiff's designation and defendant's designation. (26:24-27:6 should be completeness designation instead of counter designation.)		SUSTAINED.

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10· · · Q.· ·Just a couple quick questions about that.· It **11· ·appears as though the bridge in her upper left had to** **12· ·be removed, correct?** 13· · · A.· ·Correct. **14· · · Q.· ·And so at that time your recommendations to** **15· ·her were to have the bridge removed on the upper left,** **16· ·to have number 12 and number 16 extracted, correct?** 17· · · A.· ·Correct. **18· · · Q.· ·And then to have implants replaced in their** **19· ·stead, correct?** 20· · · A.· ·Yes. **21· · · Q.· ·Do you recall at that time in January of 2012** **22· ·recommending any other implants besides number 12 and** **23· ·number 16?** 24· · · A.· ·No. **25· · · Q.· ·If you look at the bottom of January 2012, it** **·1· ·notes, "Patient next visit to extract 2 and 4."** **·2· · · · · ·Was the idea then to extract 12 and 16 at** **·3· ·that time and then 2 and 4 later?** ·4· · · A.· ·I don't recall.· This visit in January 2012 ·5· ·was -- was following Dr. Okano's visit.· And he ·6· ·indicated teeth that were hopeless, and 4 was one of ·7· ·them, yes.· So that's why that was scheduled. **·8· · · Q.· ·And did you agree with Dr. Okano's assessment** **·9· ·of the prognosis for certain teeth?** 10· · · A.· ·Yes. **11· · · Q.· ·When you referred Gail or Ms. O'Neal to** **12· ·Dr. Clark for implant work, did you make any** **13· ·recommendations to him as to which teeth you thought** **14· ·should receive an implant, or did you leave that** **15· ·exclusively up to his judgment?** 16· · · A.· ·I left it to his judgment because we hadn't 17· ·taken -- didn't have the proper records, the proper 18· ·X-rays to tell what implants should be put where.· So I 19· ·left that to him.			

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20· · · Q.· ·When you say "X-rays," are you referring to **21· ·cone beam CT scans?** 22· · · A.· ·Yes. **23· · · Q.· ·Is that the proper type of scan that should** **24· ·be conducted in order to find out which teeth should be** **25· ·extracted -- excuse me -- which teeth should receive** **1· ·implants and which ones shouldn't?** ·2· · · A.· ·Yes.· That will tell you where the bone is, ·3· ·how much bone, where the sinuses are, and whether or ·4· ·not sinus lifts or other procedures need to be done. ·5· ·If there's bone augmentation that needs to be done, ·6· ·that scan will tell.			
27:7-28:21 **·7· · · Q.· ·Why don't you go through your February 1st,** **·8· ·2012, note, please.** ·9· · · A.· ·Okay.· I reviewed Dr. Okano's letter with 10· ·her.· I decided not to extract tooth number 4 at the 11· ·time.· I informed Gail of the options for a bridge or 12· ·an implant on the upper right and also informed of her 13· ·possible implants on the upper left. 14· · · · · ·She was currently in need of periodontal 15· ·treatment.· So I'm referring her to Dr. Clark in Heber 16· ·for the implants in the upper right and upper left. I 17· ·informed the patient about a CT scan and 3D imaging to 18· ·show the areas better. 19· · · · · ·She apparently said that she would schedule 20· ·an appointment with Dr. Okano for the periodontal 21· ·treatment and Dr. Clark in Heber for the implants. I 22· ·told her that her periodontal disease needs to be under 23· ·control before we do any restorative work on her lower 24· ·teeth. 25· · · · · ·Patient was given Dr. Clark's information to ·1· ·make an appointment.· And I informed the patient of ·2· ·information about an implant in the lower left area, ·3· ·number 19.			

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·4· · · · Q.· ·At that time you said you decided not to **·5· ·extract number 4.· Why did you decide that at that** **·6· ·time?** ·7· · · · A.· ·I don't recall, but the tooth -- the tooth ·8· ·was not -- well, it was hopeless.· But taking that ·9· ·tooth out at that time cosmetically would not -- would 10· ·have revealed a space in her mouth when she smiled.· So 11· ·I'm sure that's why I left it. **12· · · · Q.· ·And at that time you also had scheduled a** **13· ·visit for a root canal on number 18, correct?** 14· · · · A.· ·Correct. **15· · · · Q.· ·Number 18 is one of the treatment teeth that** **16· ·Dr. Okano had identified, correct?** 17· · · · A.· ·Well, he identified it as being guarded.· And 18· ·X-rays showed that she had an abscess at the apices. 19· ·Dr. Okano's letter says, "Tooth number 18 presented 20· ·with an endodontic lesion," and it's evident on the 21· ·X-rays.			
31:10-20 **10· · · · Q.· ·Let's go to your next note, Dr. Shane.** 11· · · · A.· ·My next note was February 9th, 2012.· Gail 12· ·came in to have the root canal and number 18 done.· We 13· ·opened the tooth and filed the tooth, began taking 14· ·what's left of the pulp out of the tooth. 15· · · · · · ·We were unable to finish the root canal that 16· ·day because I couldn't get a very small file to go all 17· ·the way to the terminus of the root.· And so I -- I put 18· ·some calcium hydroxide in it, closed it up, told her 19· ·about that, and referred her to Dr. Flath, who's an 20· ·endodontist in Rock Springs, Wyoming.			
31:24-34:12 **24· · · · Q.· ·Are you aware of whether Ms. O'Neal completed** **25· ·that treatment with Dr. Flath?** ·1· · · · A.· ·She did.· She completed that on March 15th, ·2· ·2012.· And he sent us a post-op X-ray just with a note			

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·3· ·that it had a really sharp curve in the root, which is ·4· ·why we couldn't get down. **·5· · · Q.· ·Let's go to your next note, please.** ·6· · · A.· ·That's dated May 29th, 2012.· And Gail came ·7· ·in with a chief complaint.· She said she had implants ·8· ·done on the 17th of May and had -- stitches were there ·9· ·at the time. 10· · · · · · ·She also had a tooth extracted that -- that 11· ·the doctor did not plan on extracting.· Apparently the 12· ·doctor was me.· Patient said that on the upper left 13· ·above the stitches, she felt a sharp bump and had 14· ·concern, thought there might be a piece of bone coming 15· ·through. 16· · · · · · ·We examined it.· It wasn't a piece of bone. 17· ·I told her that the tissue up there looked healthy. 18· ·And I just tried to describe to her what she was 19· ·feeling.· It was just an edge from where the tooth was 20· ·extracted. 21· · · · · · ·Told her there was nothing there to be 22· ·concerned about.· She was concerned about the color of 23· ·her tongue at the time.· We asked her, you know, if she 24· ·was using a mouthwash.· She said yes. 25· · · · · · ·We told her that could be -- that could be ·1· ·part of it.· We also advised her to use a tongue ·2· ·scraper to help keep her tongue cleaner.· And her next ·3· ·visit was to have the sutures removed that Dr. Clark ·4· ·had put in. **·5· · · Q.· ·So this note is post Dr. Clark's treatment,** **·6· ·correct?** ·7· · · · A.· ·Yes.· This was on the 29th.· He apparently ·8· ·did his work on the 17th of May. **·9· · · Q.· ·And at this time on the 29th of May, did you** **10· ·have any concerns about Gail O'Neal's dental treatment** **11· ·from Dr. Clark?** 12· · · · A.· ·No.· We didn't -- we said that sometimes			

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13· ·looking at the upper left side, that bony bump, assured 14· ·her that the tissue looked good.· Everything looked 15· ·good.· She didn't have an abscess or infection.· There 16· ·wasn't a need to be concerned about there or anyplace 17· ·else in her mouth.· It looked normal. **18· · · Q.· ·Let's go to your next note.** 19· · · A.· ·Dated June 11th, 2012.· She was here to have 20· ·sutures removed.· And we removed sutures on the upper 21· ·right, upper left, lower left, and lower right.· At 22· ·that time we took three periapical X-rays, and I took 23· ·some intraoral photographs.· She thought she was only 24· ·getting 7 implants, but it looks like there may have 25· ·been 8.· I told her I would send the photographs and ·1· ·the X-rays to Dr. Clark. **·2· · · Q.· ·The photos and X-rays, why did you take those** **·3· ·and send them to Dr. Clark?** ·4· · · A.· ·Well, because she had a hole in the gum ·5· ·tissue in that upper -- upper right side.· And it ·6· ·didn't -- it wasn't normal.· I mean, it wasn't -- this ·7· ·had not healed the way I would expect it to heal.· So I ·8· ·sent four intraoral photographs and some radiographs to ·9· ·Dr. Clark. **10· · · Q.· ·And this hole that you mentioned, is that an** **11· ·oral antral fistula?** 12· · · A.· ·That's what it looked like.			
34:25-35:7; 35:8-10 **25· · · Q.· ·When you sent those photos and X-rays to** **·1· ·Dr. Clark, did you hear back from him at any point** **·2· ·about his impressions?** ·3· · · A.· ·Yes.· He wanted her put on -- given a ·4· ·prescription for Augmentin, which is an antibiotic. **·5· · · Q.· ·And are you referencing the June 19th, 2012,** **·6· ·note that you have?** ·7· · · A.· ·Yes. **8· · · Q.· ·And are you aware of whether she successfully**			

Case Name **O'Neal v. P.K. Clark/Whitecap Institute** ***Case Number*** **14-CV-363**
Deposition of **Michael Shane, D.D.S.** ***taken*** **Friday, May 22, 2015**

Plaintiff Designations – BLUE **Defendant Completeness—PURPLE** **Defendant Counter-Designations – RED (at end)**	**Defense Objections/Responses – RED** **Plaintiff Objections/Responses – BLUE**	**Exhibits**	**Ruling**
·9· ·took the Augmentin at that point? 10· · · A.· ·I have no record of that.			
35:11-37:15; 37:16-20 **11· · · Q.· ·Why don't we move to your next note on** **12· ·July 12th.** 13· · · A.· ·July 12th, she came in with -- her chief 14· ·complaint was that she still has a hole in the upper 15· ·right.· She said, quoting her, "When I used mouthwash 16· ·one day, it came out my nose."· She said, "When I suck 17· ·on a straw, I have no suction." 18· · · · · ·So we took some more intraoral photographs. 19· ·I examined her and informed her that the hole was not 20· ·normal.· I told her that we'd email the photos to 21· ·Dr. Clark and phone him. 22· · · · · ·I told the patient we would let Dr. Clark 23· ·know what the patient said, and Dr. Clark would contact 24· ·her on what needs to be done.· I told her that if 25· ·that -- that if the hole persists, it needed to be ·1· ·fixed.· Patient agrees with Dr. Shane, and she will ·2· ·wait for a phone call from Dr. Clark. **·3· · · Q.· ·So at this part in your own words, what were** **·4· ·your opinions of the hole, and how did you think it** **·5· ·should be treated?** ·6· · · A.· ·Well, it looked-like an oral antral fistula ·7· ·that has to be surgically closed. **·8· · · Q.· ·Is that something that you regularly** **·9· ·practice, or is that something that you would typically** **10· ·refer out to somebody else?** 11· · · A.· ·I would refer that out. **12· · · Q.· ·And at that time, had you referred that out** **13· ·to Dr. Clark to fix the hole?** 14· · · A.· ·Well, yes.· I sent him the photographs and 15· ·let him decide how he wanted to proceed with that. **16· · · Q.· ·Did Dr. Clark at that time inform you of his** **17· ·thoughts and impressions of the hole and how he was**			

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18· ·going to treat it? 19· · · A.· ·No. **20· · · Q.· ·At any time during Gail O'Neal's treatment,** **21· ·did Dr. Clark ever inform you of how he wanted to treat** **22· ·the hole?** 23· · · A.· ·No. **24· · · Q.· ·Why don't we go to your next note.** 25· · · A.· ·This would be July 18th, 2012.· Well, let's ·1· ·see.· By my request, those pictures were emailed to ·2· ·Dr. Clark. **·3· · · Q.· ·Okay.· Let's go to the next note.** ·4· · · A.· ·July 31st.· Gail came in.· She said, "Over ·5· ·the weekend, I've had a bad smell and icky taste like ·6· ·it's rotten."· She said she has an appointment next ·7· ·week in Heber to see Dr. Clark. ·8· · · · · ·"Patient said she called my office ·9· ·yesterday," the day before, "and was advised to come in 10· ·and have us take a look at it."· She told me it wasn't 11· ·as bad today as it was over the weekend or yesterday. 12· · · · · ·I examined the patient and stated that her 13· ·mouth looked good.· There didn't seem to be infection. 14· ·And she said she just wanted to be sure of that before 15· ·she went next week for her appointment with Dr. Clark. **16· · · Q.· ·Do you remember what your post-op** **17· ·instructions were?** 18· · · A.· ·I know that I had told her at some point in 19· ·this to not blow her nose.· Sucking on a straw would be 20· ·difficult.	37:16-20 moved from counter-designation to completeness designation.		SUSTAINED.
37:21-41:3 **21· · · Q.· ·Let's go to your next note.** 22· · · A.· ·Okay.· My next note, August 20th, she came in 23· ·to have -- just for a check.· Looked like she was 24· ·healing well.· The inside of her mouth, gingiva looked 25· ·good.· There were no special instructions.· Reappointed ·1· ·her to remove sutures.			

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·2· · · · Q.· ·At that time did it appear as though she was **·3· ·healing well?** ·4· · · · A.· ·The inside of her mouth.· The gum tissues ·5· ·looked healthy, nice and pink. **·6· · · · Q.· ·At that time did you have any concerns about** **·7· ·any of the implants that Dr. Clark had placed?** ·8· · · · A.· ·No. **·9· · · · Q.· ·And did you have any other concerns about any** **10· ·other work Dr. Clark had done at that time?** 11· · · · A.· ·No, except there was still the fistula. **12· · · · Q.· ·Let's go to your next note.** 13· · · · A.· ·Okay.· This was August 29th, removed the 14· ·sutures on the upper right and took two more intraoral 15· ·pictures.· I asked the patient not to blow her nose. **16· · · · Q.· ·Let's go to the next note.** 17· · · · A.· ·This is September 12th, 2012.· "Patient 18· ·became concerned on Sunday when she smelled a bad odor. 19· ·Today she rinsed her mouth out with mouthwash, and she 20· ·said it was a little pinkish in color and that her nose 21· ·was runny afterwards." 22· · · · · · ·I looked.· I took more intraoral pictures, 23· ·said that there still was a hole in the upper right 24· ·side.· And I told her that we'd send these pictures to 25· ·Dr. Clark.· I don't know who the doctor is on the ·1· ·notes.· It's Dr. Huber.· I think they got confused. ·2· ·Dr. Clark is in Heber. **·3· · · · Q.· ·So you don't know a Dr. Huber?** ·4· · · · A.· ·No, there is no Dr. Huber. **·5· · · · Q.· ·And let's go to your next note.** ·6· · · · A.· ·This will be October 10th, 2012.· She went to ·7· ·see Dr. Clark in Heber last Thursday.· They cleaned the ·8· ·area on the upper right, placed sutures.· She started ·9· ·having mouthwash and liquids that she had come out of 10· ·her nose again. 11· · · · · · ·There was a bad smell.· We put anesthetic in.			

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Plaintiff Designations – BLUE Defendant Completeness—PURPLE Defendant Counter-Designations – RED (at end)	Defense Objections/Responses – RED Plaintiff Objections/Responses – BLUE	Exhibits	Ruling
12· ·We kind of cleaned the surface area and placed four 13· ·more sutures to tighten the tissue around the fistula. 14· ·I took more intraoral pictures to send to Dr. Clark. **15· · · Q.· ·So at this point Ms. O'Neal had been to** **16· ·Dr. Clark about this fistula a couple times, correct?** 17· · · A.· ·Yes. **18· · · Q.· ·And the fistula was still present, correct?** 19· · · A.· ·Yes. **20· · · Q.· ·So at this point what are your impressions** **21· ·and how -- I guess what are your overall impressions** **22· ·about how that fistula is going to be fixed?** 23· · · A.· ·Well, I've had -- I've had very limited 24· ·experience with oral antral fistulas.· And how they're 25· ·repaired, I've read how they're repaired.· And at this ·1· ·point she just had sutures put in recently.· And I ·2· ·didn't know if that -- I didn't know if that was ·3· ·healing correctly, normally.· I didn't have that ·4· ·experience. **·5· · · Q.· ·And so is my impression correct then that you** **·6· ·were basically leaving the correction of the fistula** **·7· ·hole up to Dr. Clark's expertise and letting him** **·8· ·essentially deal with it exclusively?** ·9· · · A.· ·Yes. **10· · · Q.· ·Am I correct in thinking then that any** **11· ·treatment of the fistula is something that you left to** **12· ·Dr. Clark's sole discretion?** 13· · · A.· ·Yes. **14· · · Q.· ·. . .** **16· · · · · ·During this time, did you have any** **17· ·interaction with Dr. Clark about the fistula and how it** **18· ·was going to be repaired?** 19· · · A.· ·No. **20· · · Q.· ·Again, that's something that you left up to** **21· ·Dr. Clark?** 22· · · A.· ·Yes.			

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23· · · Q.· ·And so at this time, Ms. O'Neal was coming to **24· ·your office for regular checkups.· And if there's any** **25· ·concern with the work that Dr. Clark did, that's** **·1· ·something that you relayed to Dr. Clark, and you let** **·2· ·him deal with it exclusively, correct?** ·3· · · A.· ·Yes.			
41:13-42:8 **13· · · Q.· ·Why don't we go to that visit.** 14· · · A.· ·At that visit, this was November 26th, 2012, 15· ·she said nothing was getting better.· Mouthwash still 16· ·comes out of her nose.· She's discouraged at this 17· ·point.· It's been since last May when this started. 18· ·She had hoped to have her teeth done by Christmas.· She 19· ·was frustrated and discouraged by the length of time it 20· ·was taking. 21· · · · · · ·I took the sutures out that were put in last, 22· ·took more intraoral pictures to send to Dr. Clark to 23· ·see what he wanted to do next.· She still had -- she 24· ·still had air going in and out, fluid coming out of her 25· ·nose. ·1· · · · · · ·The hole was smaller than it was.· She told ·2· ·me they were still sore.· And -- and I just told her ·3· ·once the sutures were out that at least that part would ·4· ·feel better.· And we'd let her know if we found out ·5· ·anything different. **·6· · · Q.· ·Did you ever receive any information from** **·7· ·Dr. Clark as to why the fistula hole was still present?** ·8· · · A.· ·No.			
43:20-44:23; 44:16-45:16 **20· · · Q.· ·Let's turn to your last -- I think you have** **21· ·three more notes.· Why don't you briefly go through** **22· ·those.** 23· · · A.· ·I have a note for December 11th, 2012.· Gail 24· ·had called my office that day, wanted to know if at 25· ·this point I thought that it would be a good idea for	(44:16-23 is a duplicate of Plaintiff's designation) 44:24-45:16 moved from counter designation to completeness designation (defense designated it as either)		SUSTAINED.

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·her to see an ear, nose, and throat doctor, also ·wondered if it was possible to go forth with healing ·caps and crowns on the other side where the implants ·had healed. · · · · · ·And I thought that it would be a good idea at ·this point for her to see Dr. Merritt, who's an ear, ·nose, and throat specialist here in town.· And I -- we ·also suggested she have another pan taken, a panoramic ·taken so we can email that to Dr. Merritt, along with ·my treatment notes and intraoral pictures. · · · · · ·I also stated that it would be okay for Gail ·to continue the process on the upper left.· We told her ·the healing cap would be placed on the upper left, and ·then impressions for crowns.· And the crown and number ·18 could be done at this time. **· · · Q.· ·When you referred her to Dr. Merritt at this** **·time in December of 2012, did you have any** **·correspondence with Dr. Merritt after that** **·recommendation?** · · · A.· ·Yes. **· · · Q.· ·What was that correspondence?** · · · A.· ·I have a letter dated January 3rd, 2013, from ·Dr. Merritt's office.· . . . Do you want me to read this ·or -- **· · · Q.· ·You don't need to read it, but just give us** **·your impressions from it.** · · · A.· ·He said although she doesn't have a history ·of severe sinus disease, he thought that she had some ·chronic sinusitis on the right side for a while.· And ·that might be the cause for the headaches she had been ·having over the number of years. · · · · · ·Then he reviewed his -- his examination of ·her.· He did find some mucosal swelling and edema ·obstructing the right maxillary sinus outflow track. ·And he described other problems she was having in the			

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11· ·sinuses on the right side of her -- of her sinuses. **12· · · Q.· ·So was it your impression from what** **13· ·Dr. Merritt said that the -- the fistula hole was not** **14· ·healing properly because of the sinusitis versus** **15· ·Dr. Clark's care?** 16· · · A.· ·That would have been my -- my assumption.			
46:11-21 **11· · · Q.· ·Then why don't you just read your last note** **12· ·in January of 2013.** 13· · · A.· ·So January 7th, 2013, Dr. Stern and 14· ·Bridgette, that's an office staff of his, called 15· ·requesting Dr. Shane contact Gail regarding her sinus 16· ·opening. 17· · · · · ·They also requested we send copies of pre-op 18· ·and recent pans and notes from WhiteCap.· We emailed 19· ·both, as well as intraoral pictures from November 26th, 20· ·2012.· And a note here that Dr. Merritt had referred 21· ·Gail to Dr. Stern.			
52:24-53:3 **24· · · Q.· ·Okay.· Did you -- other than the notes for** **25· ·that day, it's fairly brief, do you recall if you did** **·1· ·anything else on that June 11th visit other than the** **·2· ·examination and taking the photos to send to Dr. Clark?** ·3· · · A.· ·No.· I have no record of doing anything else.			
53:11-54:8 **11· · · Q.· ·On the July 12th note, you mentioned -- it** **12· ·says, "Dr. Shane examined the patient and informed the** **13· ·patient that the hole is not normal."· What did you** **14· ·mean by that?** 15· · · A.· ·And what was the date again? **16· · · Q.· ·It was the July 12th, 2012.** 17· · · A.· ·I examined her and said that she still had a 18· ·hole in the upper right. **19· · · Q.· ·Right.· And then it goes down and it says,** **20· ·"Photos taken," and the next line says, "Dr. Shane**			

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21· ·examined the patient and informed the patient that the **22· ·hole is not normal."** **23· · · · · ·And I just wanted to know what you meant by** **24· ·"not normal"?** 25· · · A.· ·Well, an oral antral fistula is not a normal ·1· ·outcome of this -- of the procedure that she had had. **·2· · · Q.· ·It says in that note further down that he** **·3· ·"told the patient he will let Dr. Clark know what the** **·4· ·patient said, and that Dr. Clark should contact her on** **·5· ·what needs to be done."** **·6· · · · · ·Was that your expectation is that Dr. Clark** **·7· ·would follow up with Gail O'Neal about this hole?** ·8· · · A.· ·Yes.			
54:12-23; 54:24-55:8 **12· · · Q.· ·It looks like on August 29th when you removed** **13· ·the sutures, you took more pictures.· It doesn't** **14· ·specify in the notes, but were those pictures of the** **15· ·hole again?** 16· · · A.· ·Yes. **17· · · Q.· ·And the -- was the reason you were taking the** **18· ·photos to -- so that you could keep Dr. Clark informed** **19· ·of what was going on?** 20· · · A.· ·Yes.· That's the reason I took them. **21· · · Q.· ·Did you send all of the pictures to Dr. Clark** **22· ·that you took?** 23· · · A.· ·Yes. **24· · · Q.· ·Okay.· I just had noted on some of the notes,** **25· ·like on the 9/12 note, actually there's an entry** **·1· ·afterwards that said, "Emailed pics taken today along** **·2· ·with the information."· But on the 8/29 note, there is** **·3· ·no mention of sending the pictures to Dr. Clark.** **·4· · · · · ·Do you know why it is in the record sometimes** **·5· ·and not in the records another time?** ·6· · · A.· ·I don't know why that was not in the record. ·7· ·My office receptionist is the one that did the emailing	54:24-55:8 moved from counter-designation to completeness designation.		SUSTAINED.

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·8· ·of these.			
55:12-22 **12· · · · Q.· ·Okay.· But your memory is that all of the** **13· ·pictures were sent to Dr. Clark regardless of whether** **14· ·there's a separate entry saying they were?** 15· · · · A.· ·Yes. **16· · · · Q.· ·It looks -- if I counted these right, I think** **17· ·you saw Gail about 10 times after her first surgery.** **18· ·And on most, if not all, of those visits, I think all** **19· ·but the first one, if there wasn't sutures holding the** **20· ·hole together, there was a hole there.· Is that** **21· ·consistent with your recollection?** 22· · · · A.· ·Yes.			
DEFENDANT COUNTER-DESIGNATIONS			
12:8-20 **·8· · · · Q.· ·From those experiences that you had with** **·9· ·Dr. Clark, do you have any opinion as to his abilities** **10· ·and skills as a practitioner?** 11· · · · A.· ·I consider him an expert in -- in the 12· ·placement of implants, surgeries related to it, both 13· ·soft tissue and hard tissue surgeries. **14· · · · Q.· ·And are these opinions based primarily off of** **15· ·any literature you've read or primarily based off of** **16· ·your interactions with him?** 17· · · · A.· ·My interactions with him, watching 18· ·surgeries -- watching him do surgeries, seeing slide 19· ·presentations of results of other surgeries that he has 20· ·done, and conversations with other people in the class.	Plaintiff objects to 12:8-20 pursuant to Rules 702-703 of the Federal Rules of Evidence. Dr. Shane lacks the basis and foundation to testify as to these opinions in front of a jury. Not all general dentists place implants, and it appears from Dr. Shane's testimony that he does not place implants himself (he refers that out to other providers), and that his only training/education on implants was a short course taught by the defendant himself. This is an insufficient basis to rely on for an expert opinion that the defendant is an implant expert. Further, this is inadmissible reputation testimony under Rule 608 of the Federal Rules of Evidence. See Plaintiff's MIL No. 64. Dr. Shane has the foundation to testify to these opinions. His early testimony demonstrates that he is qualified to issue opinions as to dentistry. Page 25 of his deposition also shows that he trained with Dr. Clark, and is therefore very familiar with his care. This training was also for implant dentistry. Plaintiff can make the argument that his training came from the Defendant, and that the argument is therefore biased, but that is an argument that goes to weight, not admissibility. Dr. Shane has met the threshold		SUSTAINED.. The testimony is improper reputation evidence, which does not go to Dr. Clark's character for truthfulness and is not helpful to understand Dr. Shane's testimony or a fact in issue. *See* FRE 404(a), 608(a), 701..

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	of demonstrating enough training and experience to give this expert opinion. This opinion is also no different than the one Plaintiff elicits from Dr. Crane about Dr. Shane in 16:21-17:1 of Dr. Crane's deposition.		
14:18-16:11 **Q.· ·Okay.· So in that time period from when you** **·say she was healthy, had good dental health in 2002 to** **·when she had advanced periodontal disease in 2012, did** **·it surprise you that she had that advanced periodontal** **·disease in that time period?** A.· ·Yes. **Q.· ·Why would that surprise you?** A.· ·Well, her oral condition when she -- when I ·last saw her in 2002, things -- she was healthy. **Q.· ·This advanced periodontal disease, how is** **·that typically acquired?** A.· ·The most common cause of periodontal disease ·is plaque and calculus from inadequate home care. ·There can be things that can make it worse, diabetes, ·those kinds of things can just make the healing process ·slow and not work as well.· But principally periodontal ·disease is a plaque-generated disease. **Q.· ·Was it your impression when you saw her in** **·2012 that her home healthcare was inadequate?** A.· ·I think I have, you know, if you look at -- ·I'd have to look at the notes.· But when she had her ·teeth cleaned, there was -- there was considerable ·plaque and calculus on her teeth.· And that's not ·surprising given the depth of the pockets around the ·teeth that were failing. **Q.· ·And so at that time did you have any -- did** **·you make any etiological determinations as to why she** **·had the advanced periodontal disease?** A.· ·No, aside from -- aside from the observation			

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22· ·that she had plaque and calculus, subgingival calculus 23· ·on her teeth, no. **24· · · Q.· ·When you treated her in 2012, was there any** **25· ·indication that her home dental hygiene was inadequate?** ·1· · · A.· ·When she -- when she came in to have her ·2· ·teeth examined, that showed that she had -- she had ·3· ·plaque on her teeth and calculus on her teeth, which ·4· ·would indicate to some extent that her home care was ·5· ·inadequate.· The subgingival calculus was beyond her ·6· ·control at that point.· It can't be brushed off, can't ·7· ·be cleaned off at home. **·8· · · Q.· ·And the subgingival calculus is something** **·9· ·that develops when plaque and calculus is not** **10· ·adequately taken care of; is that correct?** 11· · · A.· ·Yes.			
24:16-25:6 **16· · · · · ·Is my understanding correct then that you had** **17· ·referred Ms. O'Neal to Dr. Okano for periodontal work** **18· ·and also to Dr. Clark for the implant work?** 19· · · A.· ·Yes.· And I told her I would refer her -- 20· ·that was in January.· I told her I would refer her to 21· ·Dr. Clark.· And it was later -- let's see.· Then later 22· ·that year she saw Dr. Okano. **23· · · Q.· ·And I just want to be sure on this point** **24· ·because I know Dr. Okano does implant work as well. I** **25· ·just want to be sure what the referral was on each of** **·1· ·these because it sounds like the referral to Dr. Okano** **·2· ·was strictly for periodontal work and not for implants.** **·3· ·And then the referral to Dr. Clark was for implants** **·4· ·exclusively; is that correct?· Is my understanding** **·5· ·correct?** ·6· · · A.· ·That's correct.			
28:22-29:8 **22· · · Q.· ·At this time with the amount of dental** **23· ·treatment that Ms. O'Neal needed, were you overall**			

Case Name O'Neal v. P.K. Clark/Whitecap Institute *Case Number* 14-CV-363 *Deposition of* Michael Shane, D.D.S. *taken* Friday, May 22, 2015			
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24· ·concerned about her dental health, or is this, I guess, **25· ·somewhat normal and typical?** ·1· · · A.· ·Oh, she had a lot more destruction in her ·2· ·mouth than we see normally.· I mean, this was -- this ·3· ·is a pretty involved case.· She was going to lose three ·4· ·or four teeth. ·5· · · · · ·She would lose function -- she would lose ·6· ·virtually all of her maxillary posterior teeth.· So she ·7· ·was chewing, and eating was going to be a problem for ·8· ·her.· So I was concerned about that.			
29:19-30:14; 30:15-17 **19· · · Q.· ·Because you had mentioned previously in 2011** **20· ·in your notes that you presented her with three** **21· ·options.· Option 1 is to do essentially nothing, and** **22· ·she'd have to chew on her front teeth in the other side** **23· ·of her mouth.· Number 2 would be to do a partial** **24· ·denture.· And then option 3 would be to do a series of** **25· ·implants; is that correct?** ·1· · · A.· ·That's correct. **·2· · · Q.· ·When you had mentioned those things to her,** **·3· ·is that decision something that is ultimately left up** **·4· ·to the practitioner that's providing that service to** **·5· ·her, as well as the preference of the patient** **·6· ·themselves?** ·7· · · A.· ·Yes. **·8· · · Q.· ·And are you aware of any literature from the** **·9· ·American Dental Association that talks about the** **10· ·success rates of implants?** 11· · · A.· ·Yes. **12· · · Q.· ·Are implants successful 100 percent of the** **13· ·time?** 14· · · A.· ·No. **15· · · Q.· ·Is that something that should be relayed to a** **16· ·patient before an implant is placed?** 17· · · A.· ·Yes.			

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30:18-21; 30:22-31:2 **Q.· ·Are you aware of whether you provided that** **·information to Ms. O'Neal prior to any implants being** **·placed?** A.· ·I don't think I did. **Q.· ·Do you recall if -- I should say do you know** **·if Dr. Okano provided that information to her?** A.· ·No. **Q.· ·Do you know if Clark provided that** **·information to her?** A.· ·No.			
31:3-9 **Q.· ·So at this time in February of 2012, just to** **·be clear, your recommendation for Ms. O'Neal is that** **·she proceed with Dr. Okano's recommendation for** **·periodontal work, and that she also see Dr. Clark in** **·Heber, Utah for implants on the upper right and upper** **·left, correct?** A.· ·Yes.			
42:9-43:19 **Q.· ·Throughout your treatment from 2011 through** **·2012, were you aware of any sinus problems that** **·Ms. O'Neal had?** A.· ·I was not aware of any. **Q.· ·You had mentioned earlier that you treated** **·Ms. O'Neal from 1997 to 2002 and then again from about** **·2011 through 2013, correct?** A.· ·Yes.· Correct. **Q.· ·Would you consider yourself her family** **·dentist during those time periods?** A.· ·Except for the nine-year hiatus. **Q.· ·As her dentist, did you ever have any** **·information from her about headaches that she had had** **·or any sinus history that she had?** A.· ·I don't think so, no.			

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Q.· ·If you had received information about a sinus **·history or headaches that she had, could that have** **·affected or changed the treatment that you provided to** **·her?** A.· ·Not that I provided, no. **Q.· ·Do you think it could have affected any of** **·the treatment that she received from any other** **·practitioner?** A.· ·Yes. **Q.· ·And how so?** A.· ·Well, if there was an ongoing sinus ·infection, that could have -- that could have ·jeopardized the success of implants -- well, of a sinus ·lift. **Q.· ·And if she had sinus problems, would you** **·expect her to inform you or other practitioners of that** **·problem prior to the placement of implants?** A.· ·I would have to guess that during the ·discussion of whether or not implants should be placed ·that that subject would have come up.· But I have no ·way of knowing if it did or didn't.			
45:22-46:7 **Q.· ·At that time had you referred Ms. O'Neal to** **·Dr. Stern, or is that something that Dr. Merritt did?** A.· ·Dr. Merritt did that. **Q.· ·Have you ever had any experience with** **·Dr. Stern?** A.· ·Yes. **Q.· ·And what is your opinion of Dr. Stern?** A.· ·I think he's a fine oral surgeon. **Q.· ·Okay.· You said that with a smile.· Do you** **·have any other opinions about him?** A.· ·He and I have had some issues over the years.	Plaintiff objects to 46:5-7 as irrelevant and not probative of the issues in this case, pursuant to Federal Rules of Evidence 402 and 403. A key issue in this case, and an argument which Defendant will make, is that Dr. Stern is biased against Dr. Clark, and his opinions should therefore be discounted. This testimony will help validate that defense. Dr. Clark testified as follows in his deposition: "But unfortunately, at the end of all this, she is asked to go to an oral surgeon that has, frankly, I have to tell you, has been very vindictive towards me. I think you read the interrogatories that he literally called me up and I had the most unbelieveable conversation in my professional life		SUSTAINED. Whether Dr. Shane and Dr. Stern had issues over the years is not relevant. The testimony does not show Dr. Stern is biased against Dr. Clark. Also, 46:3-4 is improper

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	where he said, 'I don't think I can even call you doctor.' You are – you know, he called me everything under the book. And he said that I had – I had permanently maimed Gail O'Neal. That broke my heart. He said you have permanently disfigured her. You have permanently set her up for never having teeth again in that area." *See* Deposition of Dr. Clark at 43:21-44:7. Defendant will use this testimony to demonstrate to the jury that Dr. Stern's opinions should be discounted because of the way he treats other dental providers, and that his opinions are not based on objective evidence, but that he has these types of issues with other dental providers as well.		reputation evidence, which does not go to Dr. Stern's character for truthfulness and is not helpful to understand Dr. Shane's testimony or a fact in issue. *See* FRE 404(a), 608(a), 701.
46:22-49:11 **22· · · · Q.· ·Besides that note in January of 2013, did you** **23· ·have any correspondence with Dr. Stern about** **24· ·Gail O'Neal?** 25· · · · A.· ·Yes.· He sent me a letter dated January 22nd, ·1· ·2013, indicating that he had seen Gail that day.· He ·2· ·enclosed his clinic notes.· He had received records ·3· ·from Dr. Clark, and he spent a lot of time going over ·4· ·them and trying to interpret them. ·5· · · · · · ·And in surgery, he said once her infection ·6· ·has settled down, Dr. Merritt will create a natural ·7· ·drainage pathway from her sinus.· If the sinus drains ·8· ·naturally, the proper oral antral fistula closure will ·9· ·be effective. 10· · · · · · ·He explained to her that due to multiple 11· ·unsuccessful attempts at closure and placement of 12· ·multiple foreign material, the bone grafts, that the 13· ·likelihood of success would decrease with each attempt. 14· ·But he thought that a suitable outcome could be had 15· ·with her. **16· · · · Q.· ·Did you have any concerns with Dr. Sterns'** **17· ·recommendations at that time?**			OVERRULED. The testimony is

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18· · · A.· ·No.· I have to backtrack on one thing I said. 19· ·I did have a conversation with Dr. Clark about his 20· ·conversations with Dr. Stern relating to Gail.· And 21· ·Dr. Stern was less than happy to involve Dr. Clark in 22· ·any treatment of Gail. 23· · · · · ·I believe Dr. Clark had offered to come over 24· ·to Dr. Stern's office and be involved or watch or talk 25· ·to him about closing that fistula.· And Dr. Stern was ·1· ·not going to let that happen. **·2· · · Q.· ·Do you know why Dr. Stern was not willing to** **·3· ·let that happen?** ·4· · · A.· ·No. **·5· · · Q.· ·Is it common for a practitioner like** **·6· ·Dr. Stern to allow another practitioner to come and** **·7· ·assist with the treatment of a patient?** ·8· · · A.· ·I have never asked to go see, but I have ·9· ·heard of other practitioners, specialists that would 10· ·allow another practitioner to come and watch a 11· ·procedure or see it. **12· · · Q.· ·If Dr. Clark had requested to you to come up** **13· ·to your office here in Lander and assist with treating** **14· ·Ms. O'Neal here, would you have allowed that?** 15· · · A.· ·Yes. **16· · · Q.· ·Dr. Shane, are you aware of any criticisms of** **17· ·you that Ms. O'Neal has given in this lawsuit?** 18· · · A.· ·No. **19· · · Q.· ·Would you be surprised if she had provided** **20· ·criticisms of you in this lawsuit?** 21· · · A.· ·Yes. **22· · · Q.· ·Do you have any thoughts on Ms. O'Neal not** **23· ·returning to receive any further treatment from you** **24· ·after January of 2013?** 25· · · A.· ·I was a little puzzled by it, but I was not ·1· ·overly concerned about it. **·2· · · Q.· ·Has Ms. O'Neal ever presented to you any**	Plaintiff objects to 47:18-48:1 as hearsay pursuant to Rules 801-803 of the Federal Rules of Evidence. Dr. Shane is merely repeating what Dr. Clark told him in a phone conversation that happened after Plaintiff had finished treatment with both of them, and therefore does not meet the requirements of a hearsay exception and is inadmissible. This is not hearsay because he is not describing what the individuals said; rather, he is testifying regarding his impressions. Plaintiff objects to 48:2-11 for lack of personal knowledge pursuant to Rule 602 of the Federal Rules of Evidence. This objections doesn't really apply to this testimony. The first question is if he knew why Dr. Stern wasn't willing to let the visit happen. He responded by stating that he did not know. This is not an inappropriate question or answer. As for whether it is common, Dr. Shane is qualified to testify what practitioners do. He did not state give any opinions as to Dr. Stern's actions, or what Dr. Stern does, so personal knowledge of Dr. Stern's actions aren't needed to give this testimony. Plaintiff objects to 48:12-15 as irrelevant and more prejudicial than probative pursuant to Rules 402 and 403 of the Federal Rules of Evidence. This is relevant. Dr. Clark has stated that he offered Gail O'neal additional treatment from other providers at no charge to her to fix the problem in a manner that she could receive dental implants in that area, but she refused and instead went to Dr. Stern, who used a buccal fat pad which precluded implants. This testimony will help validate this argument.		not hearsay. It is not offered for the truth of the matter asserted. Dr. Shane is testifying as to his impressions from his conversation with Dr. Clark. OVERRULED. The first question goes to Dr. Shane's personal knowledge. And there is sufficient foundation for the second response. SUSTAINED. Whether Dr. Shane would have allowed Dr. Clark to assist in treatment if Dr. Clark had requested is not relevant to whether Plaintiff refused Dr.

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·3· ·concerns that she had about your treatment or **·4· ·Dr. Clark's treatment?** ·5· · · · A.· ·No. **·6· · · · Q.· ·Do you have any opinion in this case of** **·7· ·Dr. Clark's care?** ·8· · · · A.· ·I consider Dr. Clark an expert from the ·9· ·things I've seen and been associated with him and have 10· ·always -- my experience with him is he's compassionate 11· ·and caring and very thorough.	Plaintiff objects to 48:16-18 for lack of personal knowledge pursuant to Rule 602 of the Federal Rules of Evidence. The answer is appropriate for the question, and the answer doesn't require any personal knowledge. The question asked if he was aware of any criticisms, and he is not, so he answered no. This is an appropriate question. Plaintiff objects to 48:19-49:5 as irrelevant and more prejudicial than probative pursuant to Rules 402 and 403 of the Federal Rules of Evidence. This is relevant because Plaintiff criticized Dr. Shane's care during her own deposition. She stated: "My confidence in Dr. Shane was a little bit shaken. And I wasn't – you know, I just didn't feel like he was as helpful as he could have been at resolving – in helping me find a solution, when he'd been my family dentist for, you know, 30 years or whatever, so…" *See* Deposition of Gail O'neal at 72:24-73:10. Therefore, criticisms of Dr. Shane are relevant, especially since he will be on the special verdict form, and Defendant has asked to apportion fault to him. Plaintiff objects to 49:6-11 pursuant to Rules 702-703 of the Federal Rules of Evidence. Dr. Shane lacks the basis and foundation to testify as to these opinions in front of a jury. Not all general dentists place implants, and it appears from Dr. Shane's testimony that he does not place implants himself (he refers that out to other providers), and that his only training/education on implants was a short course taught by the defendant himself. This is an insufficient basis to rely on for an expert opinion that the defendant is an implant expert. Further, this is inadmissible reputation testimony under Rule 608 of the Federal Rules of Evidence. See Plaintiff's MIL No. 64.		Clark's offer for treatment by other providers. OVERRULED. The question is not improper. OVERRULED. The testimony is relevant to apportionment of fault. SUSTAINED IN PART. The testimony is improper reputation evidence, which does not go to Dr. Clark's character for truthfulness and is not helpful to understand Dr. Shane's

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	Dr. Shane has the foundation to testify to these opinions. His early testimony demonstrates that he is qualified to issue opinions as to dentistry. Page 25 of his deposition also shows that he trained with Dr. Clark, and is therefore very familiar with his care. This training was also for implant dentistry. Plaintiff can make the argument that his training came from the Defendant, and that the argument is therefore biased, but that is an argument that goes to weight, not admissibility. Dr. Shane has met the threshold of demonstrating enough training and experience to give this expert opinion. Furthermore, Defendant has designated Dr. Shane as a treating expert witness, so Plaintiff was put on notice that Dr. Shane could give an expert opinion. This testimony should be allowed.		testimony or a fact in issue. *See* FRE 404(a), 608(a), 701.
53:4-10 **4· · · · Q.· ·Okay.· Do you know why it took eight days** **·5· ·before Dr. Clark got back to you with a request to** **·6· ·start Gail on antibiotics?** ·7· · · · A.· ·I don't know why. **·8· · · · Q.· ·Were you surprised that it took that long for** **·9· ·him to get back to you?** 10· · · · A.· ·No.	Plaintiff objects to 53:8-9 as irrelevant and more prejudicial than probative pursuant to Rules 402 and 403 of the Federal Rules of Evidence. This testimony is relevant. Plaintiff is claiming that Dr. Clark's treatment caused her injury, and has made an issue regarding the timing of antibiotics (*See* Amended Complaint at ¶58: "No post-op antibiotics were given." Plaintiff could point to a failure to give or a delay in giving antibiotics as a cause for infection. It is therefore relevant to provide testimony that the delay in prescribing antibiotics is not surprising in this case to Plaintiff's treating dentist. The testimony is therefore relevant and should be allowed.		OVERRULED. The testimony is relevant to breach of the standard of care and causation. The probative value is not substantially outweighed by any prejudice.
56:4-57:1 **·4· · · · Q.· ·(By Ms. McAllister) Are you aware Dr. Clark** **·5· ·is not an oral surgeon?** ·6· · · · A.· ·Yes, I'm aware of that. **·7· · · · Q.· ·Do you know -- why did you not recommend to** **·8· ·Gail to see an oral surgeon during any these follow-ups**			

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·9· ·when this hole continued to persist? 10· · · A.· ·Because of Dr. Clark's expertise and his 11· ·experience in dealing with sinus lifts and implants. **12· · · Q.· ·Do you know what the difference is between a** **13· ·dentist like Dr. Clark and an oral surgeon?** 14· · · A.· ·Yes. **15· · · Q.· ·How would you explain that to a lay person?** 16· · · A.· ·An oral surgeon is a dentist that's completed 17· ·four years of dental school and then has completed two 18· ·to three years of additional training to become an oral 19· ·surgeon. **20· · · Q.· ·And what would you -- under what** **21· ·circumstances would you recommend a patient see an oral** **22· ·surgeon rather than an dentist?** 23· · · A.· ·If I'm going to have teeth extracted that -- 24· ·that we can't do in our general dentist's office or if 25· ·I'm going to have a growth of some sort removed, a ·1· ·biopsy done, I would send them to an oral surgeon.			
57:13-16; 57:17-58:8 (Pendleton Objection omitted) **13· · · Q.· ·You had testified earlier about a potential** **14· ·for sinus problems affecting treatment relating to** **15· ·implants, right?** 16· · · A.· ·Yes. **17· · · Q.· ·Would it surprise you to know that Dr. Clark** **18· ·recommended going forward with implants in the upper** **19· ·right even after seeing the sinus issues in that** **20· ·March 2012 scan?** 21· · · A.· ·I don't have an opinion on that. **22· · · Q.· ·You just know that it's a potential issue for** **23· ·someone with sinus problems, it's a potential issue** **24· ·that could affect implant treatment?** ·2· · · · · ·THE WITNESS:· I know that -- I know that a ·3· ·sinus infection can be -- can create a problem in doing ·4· ·sinus lifts. **·5· · · Q.· ·(By Ms. McAllister) And -- and sinus lifts --**			

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·6· ·you knew Dr. Clark did a sinus lift in the upper right **·7· ·for Gail O'Neal, right?** ·8· · · · A.· ·Yes.			
58:9-12; 58:13-59:4 **·9· · · · Q.· ·Okay.· Were you aware that in December of** **10· ·2012, Gail started getting treatment for sleep apnea,** **11· ·including she was recommended to use a C-Pap machine?** 12· · · · A.· ·I was not aware of that. **13· · · · Q.· ·And if that treatment began in December of** **14· ·2012, that would not have affected any of the treatment** **15· ·you gave her, correct?** 16· · · · A.· ·It would not have affected my treatment, no. **17· · · · Q.· ·All of your treatment was before that time?** 18· · · · A.· ·Before December 2012? **19· · · · Q.· ·Right.** 20· · · · A.· ·Yes. **21· · · · Q.· ·And do you know the date of Gail's last visit** **22· ·with Dr. Clark?** 23· · · · A.· ·I do not know that date. **24· · · · Q.· ·Okay.· If the last date we've gotten a record** **25· ·for was October 2012, then Gail would have been** **·1· ·finished with -- actually with Dr. Clark prior to** **·2· ·December of 2012 when she started using the C-Pap,** **·3· ·correct?** ·4· · · · A.· ·If that's what your records show.·			

Instructions: One form should contain all designations for a witness. Plaintiff Designations (column 1) and Defendant Designations (column 2) will show the full deposition text that the party proposes to read in its case-in-chief. Completeness designations are proposed by the other party, under Fed. R. Civ. P. 32(a)(6), to be read with the designations. Counter–designations are read following the designations and completeness designations, similar to cross examination. This form should be provided in word processing format to the other party, who then will continue to fill in the form. The form is then returned to the proposing party for review, resolution of disputes, and further editing. The parties should confer and file a final version in PDF format using the event "Notice of Filing" and also submit a final word processing copy to the court at dj.nuffer@utd.uscourts.gov, for ruling.

All objections which the objecting party intends to pursue should be listed, whether made at the deposition, as with objections as to form, or made newly in this form, if the objection is of a type that was reserved.